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BY WILLIAM HUGHES, ESQ.

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9th and 10th VICTORIAE.

Shewing whether they relate to the whole or to any part of the United Kingdom, viz.:—

E. signifies that the Act relates to England (and Wales, if the subject extends so far).	
S.	Scotland.
I.	Ireland.
E. and I.	England and Ireland.
G. B.	Great Britain.
G. B. and I.	Great Britain and Ireland.
U. K.	The whole of the United Kingdom.

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Nov. 8, 1844, and Dec. 20, 1845.

MATHEW v. BATES.

Investment of trust funds—Breach of trust—Deposit of trust securities—Indemnity clause.

A trustee is bound not to entrust any person with the possession of trust property, so as to enable it to be misapplied, to a greater extent than is absolutely necessary, including in that term the ordinary course of business. Thus, where Exchequer bills had been left by a trustee in the hands of the brokers, who also acted to some extent in the capacity of bankers, pending a treaty for a mortgage, and had been sold by the brokers, who had applied the money to their own purposes, it was held, upon the failure of the brokers, that the trustee was liable to make good the loss to the trust estate.

William Mathew, who died in 1834, by his will devised certain real estates in the county of Suffolk, and also bequeathed his personal estate to the defendant, S. R. Brice, and another trustee who died in the testator's lifetime, upon trust, to pay the income to the testator's widow for her life, and after her decease to divide the principal amongst his younger children. He also appointed the trustees executors of his will. The testator empowered and directed his executors and trustees to sell the real estates either by public auction or private contract, and either altogether or in parcels, and to buy in the same as often as occasion should require, without being answerable for any loss which might happen from such buying in; and he directed that the receipts of his trustees should be discharges to purchasers. And after giving a contingent annuity of £600. to his wife, payable in part out of the money to arise from such sales, "gave all the stock and moneys to arise as aforesaid, and all his personal estate, of whatever nature or kind, upon trust for the equal benefit and participation of all his younger children as tenants in common at 21 years of age;" and he directed his said executors and trustees, from time to time, as any moneys should come to their hands, to manage the same at interest by investing the same in a competent share or competent shares of the Parliamentary stocks or public funds of Great Britain, or on real securities in England, in their names, or in the name of the survivor, his executors or administrators; and he gave them the power, at their discretion, to vary such stocks, funds, and securities. The will contained the following clause of indemnity: "It shall be lawful for my executors and the survivor of them, his executors, &c. out of the moneys which, by virtue of this my will, shall come to their hands, to reimburse themselves, &c. all the costs which they shall incur or sustain in the execution of

the trusts of this my will; and that they shall not be charged and chargeable with, or answerable or accountable for, any sum or sums of money other than such as shall actually come to their respective hands, or with or for any loss or damage which may happen by depositing any moneys to be received by them as aforesaid, in any bank or banker's hands, or elsewhere, for safe custody, or by laying out or investing the same, or any part thereof, in any real or government securities, or any of the public funds, or by any alteration or transposition thereof, respectively, nor with or for any loss or damage which may happen in or about the execution of this my will, or any of the trusts therein declared, without their respective wilful neglect or default." The defendant Brice sold the real estates, and in March 1840 the purchase-money was paid into his account with Messrs. Oakes, of Bury St. Edmunds, his bankers, by Mr. Almack, the testator's family solicitor, who had conducted the sales. In April the defendant ordered the principal part of the money, amounting to 8,000l. to be invested in Exchequer bills, by Messrs. Wakefield, of Broad-street, the brokers and bankers. This was done in order to make the funds productive during a treaty for a mortgage security which was going on. The Exchequer bills were left in the hands of Messrs. Wakefield. The mortgage negotiation was protracted and eventually went off, so that part of the Exchequer bills, to the extent of 4,000l. remained in the hands of Wakefield until the 6th of April, 1841, when they failed. Then it was discovered that they had sold the Exchequer bills and applied the produce to their own use, and their estate paid a dividend of only 6d. in the pound. Under these circumstances, the widow and younger children of the testator filed a bill for the administration of his estate, and to make the defendant, Brice, liable for the loss which had been sustained by Wakefield's failure. The cause was heard at the Rolls, upon bill and answer, and a correspondence which had taken place between the defendant and Mr. Mathew and Mr. Almack, her solicitor, was admitted and read, for the purpose of shewing that the defendant had consulted and apprised them of all his dealings with the trust funds, and that he had been anxious to do what was most for the benefit of his *cestui que trusts*. The Master of the Rolls decreed that the defendant was liable to make good the loss which had been sustained by the trust fund, with costs. (5 Beavan, 239.)

From that part of the decree the defendant appealed.

Bethell, Wigram, and Shee, for the appellant, contended that the defendant had done all that reasonable prudence dictated, and that he was not liable for the loss occasioned by the felonious act of the broker. They cited and referred to *Knight v. Lord Plymouth* (3 Atk. 480); *Ex parte Belcher* (1 Ambler, 218); *Jones v. Jervis* (2 Ves. sen. 240); *Harvey v. Aston* (1 Eden, 114); *Routh v. Jones* (3 Ves. 565); *Mossy v. Banner* (1 Jacob & Walk, 241); *Langford v. Gascoigne* (11 Ves. 333); *Shipbrook v. Hinchinbrook* (11 Ves. 252); *Underwood v. Stevens* (1 Mer. 712); *Clough v. Bond* (2 Myl. & Cr. 496); *Hanbury v. Kirkland* (3 Simons, 265); *Ex parte Griffin* (2 Glynn & Jameson); *Drever v. Maudslayi* (1 Ver. Real Prop. Cases, 183).

Russell and Chandless, for the respondents, the plaintiffs, contended that the defendant, by leaving the Exchequer bills in the hands of the Messrs. Wakefield, without any check or control, had enabled them to commit the misappropriation which had caused the loss of the trust-fund. They cited and referred to *Dawson v. Clarke* (18 Ves. 254); *Bacon v. Bacon* (5 Ves. 331); *Salway v. Salway* (4 Russell, 60; 2 Russ. & Myl. 215); *Shipbrook v. Hinchinbrook* (16 Ves. 472), and the cases mentioned by the counsel for the appellant.

Bethell, in reply.

JUDGMENT.

Saturday, Dec. 20.—The LORD CHANCELLOR.—The defendant, who acted as the sole executor of the will of William Mathew, was directed from time to time, as any money should come to his hands, to manage the same at interest, by investing the same in a competent share or shares of the Parliamentary stocks or public funds of Great Britain, or in real securities in England. He entered into an engagement to lend a part of this money on mortgage, and in the meantime, until the mortgage securities should be completed, he directed his brokers, the Messrs. Wakefield, to lay it out in the purchase of Exchequer bills. These Exchequer bills he left in the hands of his brokers, who acted also, to some extent, as bankers, and occasionally as the bankers of the defendant. Considerable delay took place in settling the mortgage securities, and the Exchequer bills were allowed to remain with Messrs. Wakefield from 4th March, 1840, to April 1841, when they became bankrupts. It was then found that they had sold a part of the bills to the amount of 4,000l. and applied the money to their own purposes.

The question is, whether the defendant is bound to make good this loss? It is very painful to be called upon to decide cases of this description.

As it was necessary to be prepared with the money when the mortgage should be completed, and as some

time might elapse before that could be effected, the purchase of the Exchequer bills for this temporary purpose might perhaps be a proper and prudent act, in order that the money might not be unproductive to the estate in the interval; I feel compelled, however, to come to the conclusion, after much anxious consideration, that the defendant was not justified in leaving these Exchequer bills to so large an amount, and for so long a period, in the hands of the brokers. It was, in effect, substituting the brokers for himself as guardians and trustees of this property. It was transferring his duty to them. The circumstance of their acting to a certain extent as bankers, and occasionally as his bankers, does not, I think, make any difference. They were allowed to mix these bills with the general mass of securities in their possession—securities in which they dealt—and to exercise an unlimited control over them. I think in this he acted inconsistently with his duty as executor and trustee of this fund. There was the obvious danger that if the Wakefields were at any time much pressed for money, they might not easily resist the temptation of making use of the bills, perhaps, at first, for a temporary purpose, and afterwards be unable to replace them. He was not justified in incurring this risk. It was his duty either to have kept the bills in his own possession, or, if they were entrusted to any other custody, they should at least have been so secured as to separate them from any other property in the possession of the person or persons with whom they were placed.

I am compelled to say, under these circumstances, that the defendant is responsible for the consequences of the insolvency and misconduct of the Messrs. Wakefield.

"Necessity," Lord Cottenham observes, "which includes the regular course of business, in administering the property, will, in equity, exonerate the personal representative; but if, without such necessity, he was instrumental in giving to the person failing possession of any part of the property, he will be liable."

The judgment must, therefore, be affirmed with costs.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Friday, Jan. 23, 1846.
MINTON v. CAVE.

Will—Construction—Bequest—Tenancy in common. T. M. by his will gave to his five daughters, M. S., E., J., and C. a sum of money, and directed the interest to be paid to them in equal parts or shares during their lives, and the principal to be vested in the funds in trust for them, or the survivors or survivor of them. After their deaths, the principal in equal parts to the surviving children, as they should arrive at the age of twenty-one. E. one of the daughters, died without having been married. Held, that the daughters who survived took the whole for their lives, as tenants in common.

The testator, Thomas Minton, by his will bearing date 7th April, 1832, bequeathed as follows: "I give and bequeath to my daughters, Mary (now Mary Campbell), Sarah, Elizabeth, Julia (now Julia Cave), and Catherine, 12,500l. chargeable on my real estate at Shelton alias Snape Marsh, and on my personal money in the funds of the stock of England, or elsewhere, the interest of the above sum, to be paid them in equal parts or shares during their lives, and the principal to be placed in the funds, or Bank of England, in trust for them, or survivors or survivor of them, and nothing but their receipts shall be a release or discharge to my trustees; nor shall any bankruptcy of themselves or their husbands, have any power over them or their said trustees, but solely for their maintenance; the principal, after their deaths, in equal parts to the surviving children as they arrive at the age of twenty-one."

The testator died in the year 1836, leaving his above-named five daughters heirs, surviving him. The bill was filed for the purpose of having the trusts of the will declared and carried into effect, and a decree was accordingly made in the year 1838, whereby the testator's five daughters were entitled to life interests for their separate use in the said sum of 12,500l. with liberty to any person to apply upon the death of any of the above-named daughters. Elizabeth Minton, one of the said testator's daughters, died in September, 1845, without having ever been married. Two of the other daughters were married, several of their children were now living, but two of them had died in their infancy. The question to be decided was, therefore, to whom Elizabeth's share in the trust fund was to go in consequence of her death.

On the behalf of the residuary legatee it was contended that none of the daughters were to take by survivorship, for that "after their deaths," was to be taken after their respective deaths; the meaning of the testator being to give the share of each one of his daughters to her children. Consequently the share of Elizabeth who died without leaving issue must go over to the residuary legatee.

For the surviving children of one of the daughters,

It was submitted that the testator's daughter took an absolute gift to them as tenants in common for life, and to the survivors of them; and that the expression "after their deaths," was a general one, signifying nothing more than after their interests were determined, which interpretation would shut out the residuary legatees.

For other parties who represented the deceased children of a daughter, it was contended that "surviving" was confined to the period of the testator's death.

THE VICE-CHANCELLOR.—In this case the testator has, in the first place, given a joint tenancy in the fund to his daughters, and then a tenancy in common during their joint lives. I say as tenants in common, for he directs as follows: "nothing but their receipts shall be a release or discharge to my trustees," &c. Now, he must be presumed to have intended that this bequest should continue so long as any of his daughters should require maintenance—that is, during their lives. He then goes on to declare that the principal, after their deaths, shall be given in equal parts to the surviving children as they arrive at the age of twenty-one. When, therefore, is the principal to go over? The expression is "after their deaths"—that is, after the deaths of all. There are no words of severance: after the death, therefore, of all of the daughters, the fund is to go to the surviving children, which I think is intended to mean the aggregate class of children. My opinion is, that as the testator gives the money to his five daughters during their lives, with a clause directing their receipts and the gift over, it makes those four daughters who survived their sister Elizabeth tenants in common during their lives. When another daughter dies, another question may arise in respect to an accrued share.

Saturday, Feb. 7.

RE BRISTOL AND EXETER RAILWAY COMPANY.
Ex parte CRESSWELL.

Master's office.—Costs of purchase by public company. Under the Railway Act for the above-mentioned company money was directed to be invested in land; and there had been two references to the Master relating to the purchase of two separate pieces of land, and an account had been taken of the amount due on certain mortgages of the said pieces of land. Held, that the costs of the proceedings must be borne by the railway company.

The 9th section of the Bristol and Exeter Railway Act reciting that the said railway was intended to be formed in or on a part of the pleasure grounds and orchards belonging to the vicarage of Creech St. Michael, as therein mentioned, enacts that the whole or any part of the compensation to be payable to the vicar in respect of the vicarage-house, pleasure-grounds, &c. taken from such vicarage for the purposes of the Acts, might, on petition to the Court of Exchequer, be laid out and disposed of in purchasing other property as therein mentioned. The 39th section provides for the payment and investment by order of the Court of purchase or compensation money, payable under the Act, to corporations and persons under disabilities. By the 44th section it was enacted that where by reason of any disability or incapacity of any party entitled to any lands to be taken or used, or in respect of which any satisfaction, recompense, or compensation should be payable, under the authority of that Act, the purchase money for the same, or the money paid for such compensation, should be required to be paid into the Bank of England for the purpose of being invested in the purchase of Consolidated or Reduced Bank Annuities, or in government securities, to be applied in the purchase of other lands to be settled to the like uses, in pursuance of that Act; it should be lawful for the said Court to order all the costs, charges, and expenses of or which might be incurred in consequence of the purchase, or taking, or using of such lands by the said company, under or by virtue of that Act; and also of the investment of the purchase and compensation money in Consolidated or Reduced Bank Annuities, or other government securities, or of the re-investment of such purchase and compensation money in land, together with the necessary costs and charges of obtaining the proper orders for such purposes, and for the payment of the dividends, interest, and annual produce of such Consolidated or Reduced Bank Annuities, or other government securities, to be paid by the said company out of the moneys to be received by virtue of that Act; and the said company should from time to time pay such sums of money for such costs, charges, and expenses as the said Court should direct.

Subject to the provisions of the above Act the railway company took the dwelling-house and certain lands, part of the vicarage and glebe lands, and paid a sum of money by way of compensation, which was invested in 2,748l. Consols.

The Master, by his report dated 13th November, 1844, made pursuant to a previous order of 18th April, 1843, found that the Rev. Henry Cresswell, the vicar, was entitled to an estate in fee-simple to a dwelling-house, &c.; and that the purchase thereof at the price of 1,606l. was a fit and proper purchase, and that a good title had been made thereto. By an order of the Court bearing date the 6th December,

1844, this report was confirmed, when it was referred back to the Master to ascertain what was due to certain mortgagees of the said dwelling-house, &c.; and by his report of 22nd April, 1845, found that 908l. was due to the said mortgagees. The sum of 1,624l., part of the said 2,748l. Consols, was accordingly sold out for the purpose of raising the said sum of 1,608l., leaving the sum of 1,124l. Consols remaining. The Master also, by a report of 23rd December, 1845, made in pursuance of an order of 15th March, 1845, found that it would be fit and proper that so much of the said sum of 2,748l. Consols should be sold as would be sufficient to raise the sum of 900l., and that the sum when raised should be laid out and invested in the purchase of certain lands and hereditaments comprised in an agreement of the 1st March, which had been entered into by Mr. Cresswell for the purchase of this land and hereditaments, for the sake of having the benefit of it transferred to the vicarage; and the Master was of opinion that a good title could be made thereto. The present petition was now presented by Mr. Cresswell, stating, among the foregoing matters, the existence of a mortgage on the last-mentioned property, then vested in the Rev. R. Shuttle, and praying that the report of 23rd December, 1845, might be confirmed, and that it might be referred back to the Master to ascertain what was due to the Rev. R. Shuttle for principal and interest on the said mortgage security, and praying a sale of a sufficient part of the said sum of 1,124l. Consols to raise the said sum of 900l., and praying that it might be referred to the Master to tax all parties their costs, charges, and expenses which might have been incurred in consequence of the investment of the said purchase or compensation-money, in purchasing the said dwelling-house, lands, and hereditaments, and in obtaining the said order of 15th March, 1845, and consequent thereon, and that such costs, charges, and expenses, when so taxed, might be paid by the said Bristol and Exeter Railway Company.

Stuart and Stevens, on behalf of the petition. *Bethell and Osborne*, on the part of the railway company, contended that it was unfair that the company should be called upon to pay all the costs of the different orders, amounting altogether to 408l., inasmuch as the dwelling-house and the land might have been included in the first petition in April, 1843, after Mr. Cresswell had obtained his contract for the land. Moreover, the costs of taking the various accounts due on the mortgages being very complicated and expensive, it was against all principles of justice that the company should be fixed with those costs. As to the second purchase, the rev. gentleman having agreed to purchase it, he ought to have completed his contract, and paid off the mortgages; in that case, it would have come to the railway company free of the present expense. The Act is not imperative as to costs, but makes it optional for the Court to deal with them according to its own principles of equity.

Stuart, in reply, contended that the title of which the mortgages formed a portion had been approved of by the Master, and that as Mr. Cresswell had entered into the agreement of the 1st March to purchase the lands in question for the benefit of the vicarage, he was entitled to call upon the company, under the 44th section of the Act, to pay all the costs incurred.

THE VICE-CHANCELLOR thought that the two purchases ought not to be included in the same report; for until it were properly ascertained that the dwelling-house were fit for the vicarage, it could not be determined whether the purchased land was so situated in respect to locality as to be a proper purchase. The company must, therefore, pay all the costs.

Costs to be paid in pursuance of the terms of the Act of Parliament.

ROLLS COURT.

Monday, Dec. 16, 1845, and Monday, March 2, 1846.
HITCHCOCK v. JACOBS.

Practice.—New Orders of 8th May, 1845—Order of course to amend—Replication.

After filing a replication, it is irregular to obtain an order of course to amend by adding parties; the old practice in that respect being altered by the New Orders.

The bill in this case was filed in April, 1844, and the answer was put in on the 22nd July following. On the 13th June, 1845, the plaintiff applied for an order as of course to amend by adding parties; and the defendant now moved to discharge that order for irregularity, the plaintiff having obtained it after filing a replication.

Dickenson, for the motion, contended that the common order to amend by adding parties was irregular, and that the old practice in that respect was now altered by the effect of the New Orders. The 65th Order is positive, giving leave to amend at any time for the purpose of rectifying a clerical error; but the 66th is negative, declaring that no further Order of course is to be obtained after replication except in the case provided for by the previous Order. Then the 67th Order provides generally for the granting of a

special Order, and the 68th for the case of a special Order after replication. These Orders, therefore, do alter the old practice, and that consistently with the 39th Order of the 26th August 1843, under which a plaintiff might amend by adding parties, setting down the cause on that objection only if taken by the answer, as it was in this case. There are merits, but the cause being before the Vice-Chancellor of England, they cannot be gone into here, the mere question of irregularity being the only point that can be discussed.

Turner (with him *Tennant*), contra.—It is conceded that the Order of course is regular, unless the New Orders have altered the practice. Now the language of the Orders of 1841 was just as strong as that of the New Orders, and notwithstanding the Order of course to amend by adding parties was not restricted to any particular time or state of the cause. (*Brattle v. Waterman*, 4 Sim. 125.) Besides, an order to amend by adding parties does not affect a plaintiff who has answered.

Dickenson, in reply.—The cases under the old practice do not apply. So far as the Order is affirmative the language is no stronger than before; but the negative clause is applicable to all cases without exception.

THE MASTER OF THE ROLLS.—It comes to this, whether or not a special application must be made for leave to amend. I shall consider.

March 2.—The MASTER OF THE ROLLS said he would grant the order asked, but without costs.

Tuesday, Jan. 20, 1846.

Re COLQUHOUN.

Taxation.—Mortgagor and Mortgagee—Specific items—Special circumstances—Retaining money in payment.

A mortgagor having sold the mortgaged premises under a power of sale, his solicitor retained out of the surplus moneys, after satisfying the mortgaged debt, the amount of his own bill of costs, and paid over the balance to the mortgagor, who received it without at the time making any objection. There was nothing to show that the solicitor had used any pressure, or that the mortgagor had not time enough to examine the bill; and there were no specific items complained of. A month after the retainer by the solicitor, but within the year, the mortgagor applied to the court for an order of reference to tax, which was refused. The retainer of a sum in payment of a bill of costs may or may not be proper, according to the circumstances.

This was a petition by a mortgagor, praying for an order of reference to tax the bill of costs of the solicitor of the mortgages. He had sold the mortgaged premises under a power of sale, and his solicitor had retained the amount of his bill of costs out of the surplus, after satisfying the mortgage debt, and had paid over the balance to the mortgagor. The sale of the premises took place in June, 1844, and a settlement between the parties was come to in May, 1845, on which occasion there was nothing to show that any pressure had been used by the solicitor, or that the mortgagor had not had abundant opportunity to examine the bill. In October 1845, the mortgagor presented a petition for taxation, and the case now came on to be heard.

Winstanley, for the petitioner, complained that the charges were excessive. [THE MASTER OF THE ROLLS.—Does the petitioner complain of any specific item? Is there any specific charge stated to be improper?} No; the petition is within the year. [THE MASTER OF THE ROLLS.—Yes, but the petition is not therefore to be granted as a matter of course.] There was a correspondence between the parties, which will show that there was an understanding between them that the question should be left open. Besides, there was no actual payment, but only a retainer by the solicitor of the amount of his bill out of our moneys; and we took what we could get. [THE MASTER OF THE ROLLS.—That retainer may or may not be correct. The only question is, whether on the ground of the negotiation, and discussion which has taken place, I can let the petition stand over to amend.] The letters and the affidavits shew that there was an understanding that there should be a discussion as to the items.

Kindersley, for the respondent, was not heard.

THE MASTER OF THE ROLLS.—This is a petition praying for the taxation after payment of a solicitor's bill of costs, but containing no allegation of any special circumstances on which to ground the order asked. It is stated, that the payment of the bill was by the solicitor retaining the amount out of a balance in his hands; but it is not alleged that the bill was then delivered, or that any pressure was used; so that there is nothing in the special circumstances of the payment to make out a case for the petitioner. Now is there any specific error alleged; but it was not quite clear whether the correspondence might not afford ground for giving leave to amend the petition. When, however, we come to the affidavits, and find no specific item mentioned even in them—not one—I must dismiss the petition with costs, but without prejudice to a new one being presented.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Saturday, March 7.

JOHNSON v. JOHNSON.

Will—Construction—Conversion of residue.

A testator gave the remainder of his property, of whatever nature it might be, to his wife, after payment of his debts and legacies, for her use and benefit during her life, and at her decease to be given to his children, &c.—Held, that the property was not to be enjoyed specifically by the wife.

The Rev. W. R. Johnson, by his will, dated the 10th of July, 1844, after certain bequests, gave as follows: "And as to the remainder of my property, of whatever nature it may be, I give it to my dear wife, after payment of my debts and legacies, for her use and benefit during her life, and at her decease, to be given to my children, to be equally divided among them, and in case of my wife intending to enter into any second marriage, then, before such marriage take place, I direct that she appoint trustees of my property, for the benefit of my children, so that the same be not wasted or made away with;" and the testator then appointed his wife executrix of his will. The testator died on the 27th of October, 1844, and the will was proved on the 19th of December, 1844. This suit was instituted by the children of the testator against the executrix, and a question arose as to the right of the widow to enjoy the residue specifically. The residue consisted of bond debts, leasehold property, and shares in public companies.

Chancellor, for the plaintiffs.

Rolt, for the defendant, cited *Collins v. Collins* (2 Myl. & K. 703); *Pickering v. Pickering* (4 Myl. & Cr. 289).

The VICE-CHANCELLOR said, that he had no doubt that this was a residue accompanied by all the consequences of a residuary gift.

Monday, March 9.

DALTON v. LAMBETH.

Practice—Costs of puisne incumbrancer in a foreclosure suit.

This was a foreclosure suit, and some discussion arose as to the costs of one of the defendants, a puisne incumbrancer, who had by his answer disclaimed, but had not stated that he never had claimed any interest in the subject-matter of the suit.

Russell, Mallins, Faber, and Proul, for the several parties.

The VICE-CHANCELLOR.—In a foreclosure suit, a puisne incumbrancer has a right to disclaim; and unless there be any thing special—any thing more—I think it is the right of the plaintiff (the first incumbrancer) to bring the cause to a hearing, and have his disclaimer at the bar, paying his costs and adding them to his own, unless there is any thing special. This applies only to foreclosure suits.

Tuesday, March 10.

ROEBUCK v. HABERSHON.

Will—Construction—Deferred annuity.

A testator, by his will, gave to J. H. all he had in the world, he paying to M. S. the sum of 50l. per year for life; and at her death to pay to C. S. her son, 500l. and W. S. her son, 100l. and M. R. 20l. per year for life, and 100l. in money, twelve months after his (the testator's) death, and J. C. to have 100l. paid him twelve months after the testator's death, and 20l. a year for life, &c.: Held, that the annuity given to M. R. was to be deferred until the death of M. S.

Matthew Habershon, late of Handsworth Hall Gate, in the parish of Handsworth, in the county of York, yeoman, made his will in the following terms:—"In the name of God, Amen. March 3rd, 1830. This is my last will and testament of Matthew Habershon, or Habershon, or Haberman. First, it is my just will and pleasure that all my just debts and funeral expence be paid, the charge of my will proofing, and probate, &c. &c. I give and bequeath to my brother, Joseph Habershon, all I have in this world, he paying to my sister, Mary Shimeids, the sum of fifty pounds per year for life, and at her death to pay Charles Shimeids, her son, five hundred pounds, and William Shimeids, her son, one hundred pounds, and Mary Rawbuck twenty pounds per year for life, and one hundred pounds in money twelve months after my death, and John Crawthorn to have one hundred pounds paid him twelve months after my death, and twenty pounds a year for life; and Mary Crossland, wife of John Crossland, daughter of George and Hannah Crawthorn, to have one hundred pounds in money paid at twelve months after my death, the death of Matthew Habershon, and twenty pounds paid every year for life. Matthew Habershon, or Habershon, or Haberman."

The testator died on the 26th of February, 1831, and his will was proved on the 16th of March, 1832, by the testator's brother, Joseph Habershon. Joseph Habershon died on the 11th of September, 1842, having, by his will, dated the 7th of February, 1839, appointed his sons, John Habershon and Matthew Habershon, the defendant, his executors,

and on the 14th of September, 1843, the said Matthew Habershon alone proved the will. The question which arose in this suit was, whether the annuity given to the plaintiff, Mrs. Roebuck, was contingent, and to take effect from the death of Mrs. Shimeids, her mother, or was payable from the testator's death.

Russell and Daniell, for the plaintiffs.

Cooper and H. Nichols, for the defendant.

Russell in reply.

The VICE-CHANCELLOR.—Whatever the testator intended to do with his pen, I am of opinion that he has been disappointed in his intentions. I now have nothing to do but to construe the will. According to this, I do not think myself at liberty to separate and withdraw either the words "and at her death to pay Charles Shimeids, her son, 500l." or the words "and at her death to pay Charles Shimeids, her son, 500l., and William Shimeids, her son, 100l." from the general course and current of the testator's language, for the purpose of avoiding a break, which, if read parenthetically in that way, would be avoided. As I assume that the testator did not make any parenthetical marks, I think myself not at liberty so to treat it. Not being at liberty so to treat it, and looking at the language that the testator has used in every other place where he has given legacies of 100l., I am of opinion that the legacy of 100l. to William Shimeids must be read as a postponed legacy of 100l., and that, being read as a postponed legacy of 100l., I believe, I am sorry to say, I am not at liberty to read this annuity to Mary Roebuck otherwise than as a postponed annuity. I must consider that the expression "after my death" is used ungrammatically, insufficiently, or obscurely, or elliptically (that is, perhaps, the more correct expression); but this was a very proper claim to raise, and therefore I shall give the costs to all parties.

Wednesday, March 11.

EARLY v. BENBOW.

Will—Construction—Legacy duty.

Where a testator by his will directed the legacy duty on the legacies therein given to be paid out of a certain fund, and by a codicil, which was directed to be considered and taken as part of his will, the testator gave other legacies; it was held that the duty on the legacies given by the codicil was not to be paid out of the fund provided by the will.

In this case, which is reported, ante p. 498, the following question was brought under the attention of the Court upon a motion to vary the minutes. The testator had, by his will, created a trust for the payment of "all his just debts, funeral, and testamentary expences, and the several legacies thereinbefore by him bequeathed, together with the whole of the legacy duty and duties payable in respect of the several legacies by him therein given, it being his will that such several legacies and annuities should be paid to such legatees and annuitants free of all deduction." By a codicil (which was stated to be a codicil to the will, and which the testator desired might be considered and taken as part of his will) certain other legacies were given, but nothing was said as to the legacy duty thereon.

Beck, for some of the legatees, contended that the codicil being desired to be taken as part of the will, the legacies given by the codicil were subject to the direction contained in the will concerning the legacies given by it. He cited *Sherer v. Bishop* (4 Bro. C. C. 55); *Hall v. Severne* (9 Sim. 515); and *Bonner v. Bonner* (13 Ves. 379).

Shebbear, for other parties, in opposition to the legatees, was not heard by the Court.

The VICE-CHANCELLOR.—I cannot hold that the word "herein" meant more than the particular instrument in which it was used, and therefore I cannot extend it to this codicil.

VICE-CHANCELLOR WIGRAM'S COURT.

March 12 and 23.

LISTER v. TURNER AND OTHERS.

Voluntary settlement—Fraud—Creditors—Deposit of title-deeds.

A voluntary settlement by a trader is void against creditors, although the settlor may, at the time of executing the settlement, have property three times the amount of his debts.

This was a suit by equitable mortgagees to set aside a voluntary settlement.

Wm. Slater married in the year 1830, without having executed any settlement upon his wife or future family, and was then, and after his marriage, a draper by trade until the year 1841, when he was embarked in business as a salt manufacturer; and in the year 1842, being possessed of property in value three times the amount of his debts, and twice the amount of his debts and liabilities, he executes a voluntary settlement whereby he conveys and assigns certain freehold property, mining, and railway shares, to trustees upon trust for the benefit of himself for life, remainder to his wife and children. He retains possession of the title-deeds, and certificates of the mining

and railway shares, notwithstanding the settlement, and in July following the execution of the settlement, he deposits the title-deeds, and mining and railway certificates, relating to the property comprised in the settlement, with the Union Bank of Liverpool, in consideration of advances made, and to be afterwards made, by the bank not exceeding 2,000l. to his order. In Feb. 1843, Slater was declared a bankrupt; the amount claimed by the Union Bank was 1,000l.

In June 1843, the solicitor for the trustees of the settlement gave the Union Bank notice of their claim under the settlement; whereupon the Union Bank, by their registered officer, filed the present suit against the assignees of Slater, the trustees of the voluntary settlement, the bankrupt, his wife and children to have the voluntary settlement declared fraudulent and void, and the property comprised therein sold, and the produce applied in payment of their claim.

Anderton and James, for the plaintiff, cited *Russell v. Hammond* (1 Atk. 15); *Walker v. Burrows* (1 Atk. 93); *Lord Townsend v. Wyndham* (2 Ves. sen. 10).

Parker and Craig, for the defendant, cited *Richardson v. Smallwood* (Jacob, 552); *Kerrison v. Dorrien* (9 Bing. 76); *Leach v. Wilkinson* (5 Ves. 384); *Norent v. Dodd* (1 Craig & Phill. 100); *Townsend v. Westmacott* (2 Beavan, 340); *Buckland v. Mitchell* (18 Ves. 100).

The VICE-CHANCELLOR.—This case questions the validity of a voluntary settlement as against subsequent mortgagees of the settlor's property, and the object of the bill is that the plaintiff may be treated as a purchaser for a good consideration under the stat. 27 Eliz. c. 4, by virtue of which it is alleged the settlement must be treated as void, for it is contended that Slater, at the time of executing the settlement, was indebted to the Bank, and other creditors, in an amount exceeding what he was able to pay or secure, and therefore that the deed of June 1842 was void under the statute of Elizabeth. I consider that *Buckle v. Mitchell* (18 Ves. 100) is a direct authority for holding that an equitable interest in land, entitling a party by contract to clothe it with a legal title, made such party a purchaser in the eye of the Court, and entitled the plaintiff to avoid the settlement and enforce his securities. As to the second question, the plaintiff being entitled under the 27th Elizabeth, it would have been unnecessary to notice the claim for relief under the 13th of Elizabeth, had not the defendant argued that this ground of claim for avoiding the deeds was altogether void, and that the plaintiff must therefore pay so much of the costs of the suit as had been incurred in respect to the claim. Those who contended that the claim could not be sustained under the 27th Elizabeth, could not, with success, urge that argument, unless they could shew that the evidence in the cause was insufficient to sustain the case. If the settlement was to stand, the deposit would become useless. The plaintiff had a direct interest in shewing that the settlement was invalid, and, if he succeeded in doing so, he thereby gave validity to his own security, as the plaintiff, by virtue of his security, had a specific interest in part of the property comprised in the deed. I consider he has an interest sufficient to entitle him to sustain this suit, and that he is entitled to sue for a decree under the 13th of Elizabeth; and that the plaintiff, as representing the Union Bank of Liverpool, is entitled to be considered as a purchaser for a good consideration within the meaning of the 27th of Elizabeth, and that the settlement is void as against the Bank, so far as it comprised the property mentioned in the deposit of July 1841. Let it be referred to the Master to take an account of the principal and interest due to the plaintiff under that security, and to tax the costs of the suit, the assignees to pay the Liverpool Bank what shall be found due for principal, interest, and costs within six months of the Master's report; and in default of payment, the property comprised in the plaintiff's security must be sold, and the proceeds applied in payment of what is due to the Bank; further directions and costs to be reserved.

Friday, March 13.

PARSONS v. MUNTZ AND OTHERS.

Practice—New Orders, May, 1845—Absconding—Service of Subpoena.

This cause first came before the Court upon a demurrer, which was overruled, and reported in the sixth vol. of the LAW TIMES, No. 148.

Hetherington now moved, on behalf of the plaintiff, for leave to substitute service of subpoena upon Messrs. Hill and Heald, the solicitors for the company, for Mr. Oliveira, one of the directors, who had absconded; he said the object of the plaintiff was to avoid the exposure consequent upon his taking the course directed by the 31st Order of May, 1845.

The affidavit in support of the motion stated that the plaintiff had called at Oliveira's house to serve him with a subpoena, when his servant said he was in France; he then served the subpoena upon his private solicitor, who returned it to the plaintiff, stating that Oliveira was abroad. Heald, the solicitor for the company, stated by his affidavit that at the conclusion of one of the meetings of the directors of the company, as one of the directors was leaving the room, he was served with a sub-

penna in this cause, whereupon he returned and stated the fact to the directors, who thereupon passed a resolution whereby Messrs. Hill and Heald were directed to enter an appearance for all the directors, and defend the suit for the company. Oliveira was not present at that meeting, but it was stated in the affidavit that the majority of the directors could at any meeting bind the minority in all acts relating to the company.

Robinson, by his affidavit, stated that Oliveira was in Paris.

The case of *Hobhouse v. Courtney* (12 Sim. 140) was cited in support of the motion.

THE VICE-CHANCELLOR.—I cannot make the order asked for; a solicitor for general business is not a solicitor for every suit which may be instituted against a client; this is a mere co-partnership, and must be treated as such: the parties are here attacked by a stranger; a general power to manage a co-partnership is not sufficient to do away with the necessity of serving each party personally.

Hetherington then moved, in the same cause, for leave to serve a subpoena upon Fowler, another defendant, in the manner directed by the 31st Order of May 1845, whereby in case it appears to the Court by sufficient evidence that any defendant, against whom a subpoena to appear to, or to appear to and answer a bill, has issued, has been within the jurisdiction of the Court, at some time not more than two years before the subpoena was issued, and that such defendant is beyond the seas; or that, upon inquiry at his usual place of abode (if he had any), or at any other place or places where at the time when the subpoena was issued he might probably have been met with, he could not be found, so as to be served with process, and that in either case there is just ground to believe that such defendant is gone out of the realm or otherwise absconded to avoid being served such process, then and in such case the Court may order that such defendant do appear at a certain day to be named in the order, and a copy of such order, together with a notice thereof, to the effect set forth at the foot of the order, may, within fourteen days after such order made, be inserted in the *London Gazette*, or be otherwise published as the Court shall direct. The affidavit stated that the plaintiff had called at defendant's house in Manchester-square, London, to serve him with a subpoena, when he was told by the servant who opened the door that Fowler was not at home, and that he could not say when he would be at home; whereupon plaintiff returned without leaving the subpoena, and called again some days after at Fowler's house to serve him, when the person who opened the door informed plaintiff that Fowler had gone away, and that the house was to be let, which was apparent from bills being upon the windows to that effect; and when plaintiff inquired where Fowler was to be found, he was told by the servant that he could not exactly say, for that he had sent a deed to him at Ostend which required his signature, and it had not been returned. An affidavit by Waddy stated that Fowler was staying out of the way at Ostend.

THE VICE-CHANCELLOR.—These proceedings should be *bond fide*; you might have served the party the first time you called, as service then upon the servant would have been sufficient; you missed your opportunity, and delayed effecting a service until you are able to proceed under this order; I shall make the order, directing publication at Ostend, as well as in *The Gazette*, for this is a case in which the party ought to be compelled to find out where the defendant is, as he lost his opportunity when he might have effected personal service; but in this case, as there is a company there are other persons who have a common interest with the defendant, and who appear, I make the order that the defendant do appear in 14 days after publication of the notice, and that such notice be published within 14 days from the date of this order.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Monday, Jan. 12.

MAYER v. WARD.

Bill of particulars—*Architect's commission*.

In this case, which was tried at Westminster at the sittings after Michaelmas Term, the plaintiff claimed the sum of 511l. 3s. as the balance due to him for work and labour as an architect. The bill of particulars set forth the work which the plaintiff had done, and the estimated expenditure for the buildings of which he had superintended the erection, and distinctly claimed five per cent. commission thereon, as the proper and customary reward of such professional services. Proof having been given of the sum on which the commission would be chargeable if the plaintiff was entitled to charge it, it was insisted by the plaintiff's counsel that he was entitled to charge five per cent. commission, according to the custom of the profession.

LORD DENMAN, C.J. said that such a claim could only be established by proof of an express contract to pay such a commission.

The plaintiff's counsel then proposed to call witnesses to shew the value of the work.

LORD DENMAN, C.J. permitted him to do so, saying that, although the particulars claimed a commission on the amount expended, it was open to the plaintiff to prove the value of his services, for that the statement of the services was the essential portion of the list of particulars, and all that was said about the commission was an unnecessary specification of the mode in which it was proposed to calculate the value of the work and labour. Ultimately the jury gave a verdict for the plaintiff for the amount to which he would have been entitled had there been an express contract to pay him five per cent. commission; but expressly rejected a finding of that amount as commission.

The *Attorney-General* now moved for a new trial, on the ground of misdirection, and on an affidavit of the attorney for the defendant, complaining of surprise, and stating that he could have shown a less sum to be due, had he not thought that the plaintiff was confined to proof of his right to commission. He cited *Davenport v. Davis* (M. & W. 507); *Roberts v. Elsworth* (10 M. & W. 653); *Breckon v. Smith* (2 A. & E. 488).

JUDGMENT.

LORD DENMAN, C.J.—We have looked to the bill of particulars, which was delivered by the plaintiff in this case; we have also looked to the affidavit of the defendant's attorney, and we think there is no ground for a new trial; although the particulars are mentioned in the commission as to the mode of estimating the services which the plaintiff puts forth, yet we do not think that could be reasonably supposed to bind him in his decision. We think they did not bind him as to that mode of calculation, and that he was at liberty to shew the value of his services, and he did so; we think, therefore, there is no ground for a new trial.

COURT OF COMMON PLEAS.

Nov. 14 and Dec. 23, 1845.

HINTON v. ACRAMAN.

Declaration on a bond given by the defendant, a trader, with sureties, under stat. 1 & 2 Vict. c. 110, s. 8, to pay such sum as the plaintiff should recover, in any action brought or to be brought, or to render, stated a judge's order for the defendant to render within a time certain, and two other judge's orders, enlarging such time, and a rule nisi in the Court of Exchequer for further time to render, and alleged as a breach that the defendant did not render according to the practice of the Court, or within the time mentioned in the judge's orders. Held, 1st, to be a good plea thereto that no writ of ca. sa. was sued out; 2nd, to be a bad plea that the first of such judge's orders was made before the time for rendering had expired, and was made ex parte; 3rd, that a plea that the rule nisi in the Exchequer was obtained before the expiration of the enlarged time, and that afterwards, on shewing cause, the Court of Exchequer directed the defendant to have further time to render, and that within such further time the defendant did render, was a good plea; 4th, that a certificate in bankruptcy, obtained after recovery of judgment, in the action brought for the original debt, but under a fiat issued before such judgment, was no bar of the debt on the bond; and, 5th, that the pendency of an action for the recovery of the debt commenced before giving the bond was a bad plea, as the bond was not given only for a sum to be recovered in an action already brought.

Debt on a bond for 2,700l. entered into by the defendant and his partners in trade, Daniel Wade Agraman, Alfred John Agraman, Thomas Holroyd, and William Morgan, together with James Oxley Bridges and Joseph Arthur Ballantine, as sureties, under and pursuant to the statute 1 & 2 Vict. c. 110, subject to a condition, which was declared to be that if the defendant, and the said Daniel Wade Agraman, Alfred John Agraman, Thomas Holroyd, and William Morgan, James Oxley Bridges, and Joseph Arthur Ballantine, or any or either of them, their, or his heirs, executors, or administrators, should well and truly pay, or cause to be paid to the plaintiff, his executors, administrators, or assigns, such sum or sums as should be recovered in any action or actions which then had been or thereafter should be brought for recovery of the said alleged debt, together with such costs as should be given in the same; or if the defendant and the said Daniel Wade Agraman, Alfred John Agraman, Thomas Holroyd, and William Morgan should render themselves to the custody of the gaoler of the court in which such action or actions had been or might be brought, according to the practice of such court or courts, or within such time and such manner as the said court or courts, or any judge thereof respectively, should direct after judgment should have been recovered in such action or actions, then the said writing obligatory to be void and of no effect, otherwise to be and remain in full force and virtue, &c.

The declaration then alleged that afterwards, and after the making of the writing obligatory and condition, to wit, on the 15th day of July, in the year

aforsaid, a certain action was commenced by the plaintiff against the defendant and the said Daniel Wade Agraman, Alfred John Agraman, Thomas Holroyd, and William Morgan, in her Majesty's Court of Exchequer at Westminster, for the recovery of the said debt in the said condition mentioned, together with such costs of the plaintiff as should be given in the same. The declaration then set forth a judgment recovered in such action, against the defendant and the said Daniel Wade Agraman, Alfred John Agraman, Thomas Holroyd, and William Morgan, for the sum of 1,698l. 5s. being 1,650l. for debt, 38l. 11s. 6d. for interest, and 14l. 13s. 6d. for costs; and the declaration alleged that the defendant and the said Daniel Wade Agraman, Alfred John Agraman, Thomas Holroyd, and William Morgan, did not, nor did any or either of them, or any or either of their heirs, executors, or administrators, nor did the said James Oxley Bridges and Joseph Arthur Ballantine, or either of them, or any or either of their heirs, executors, or administrators, at any time before the commencement of this suit pay, or cause to be paid to the plaintiff, the said sum of 1,698l. 5s. so recovered, as aforsaid, or any part thereof, according to the form and effect of the condition of the said writing obligatory. And the plaintiff further saith, that afterwards, and after the recovery of the said judgment in the said action by and at the suit of the plaintiff against the defendant, and the said Daniel Wade Agraman, Alfred John Agraman, Thomas Holroyd, and William Morgan, in the said Court of Exchequer, to wit, on the 19th day of August, 1845, a certain order was duly made in the last-mentioned cause, on the application of the plaintiff, by the Honourable Sir John Taylor Coleridge, knight, one of the justices of the Court of Queen's Bench, by which order the said Sir John Taylor Coleridge, so being such justice as aforsaid, ordered that the defendant and the said Daniel Wade Agraman, Alfred John Agraman, Thomas Holroyd, and William Morgan should surrender themselves to the custody of the marshal of the Queen's prison within ten days after service of a copy of that order on the defendant, and the said Daniel Wade Agraman, Alfred John Agraman, Thomas Holroyd, and William Morgan, and on the said James Oxley Bridges and Joseph Arthur Ballantine, a copy of which order of the said Sir John Taylor Coleridge, so being such justice as aforsaid, was afterwards, to wit, on the 20th day of August, 1845, duly served on the defendant and the said Alfred John Agraman, Thomas Holroyd, and William Morgan, and the said James Oxley Bridges and Joseph Arthur Ballantine, and a copy of which order was afterwards, to wit, on the 23rd day of August, 1845, duly served on the said Daniel Wade Agraman. And the plaintiff further saith, that ten days after service of a copy of the said order on the defendant, and the said Daniel Wade Agraman, Alfred John Agraman, Thomas Holroyd, and William Morgan, and the said James Oxley Bridges and Joseph Arthur Ballantine had, before the commencement of the suit, long elapsed. And the plaintiff further saith, that afterwards, and after the recovery of the said judgment, to wit, &c. the Honourable Sir Creswell Creswell, knight, one of the Justices of the Court of Common Pleas at Westminster, did make a certain order in the said last-mentioned cause, by which last mentioned order the said Sir Creswell Creswell, so being such justice as aforsaid, did order that the time for the defendant and the said Daniel Wade Agraman, Alfred John Agraman, Thomas Holroyd, and William Morgan, to render in that cause should be enlarged for a week, and that the further hearing of a certain summons to set aside the said order of the Honourable Mr. Justice Coleridge, for the defendant and the said Daniel Wade Agraman, Alfred John Agraman, Thomas Holroyd, and William Morgan, to render, should be adjourned until the 2nd day of September, A.D. 1845. And the plaintiff further saith, that on the 2nd day of September, A.D. 1845, a certain order was made in the last-mentioned action by the said Sir Creswell Creswell, so being such justice as aforsaid, by which last mentioned order the said Sir Creswell Creswell did order that the time for surrendering the defendant, and the said Daniel Wade Agraman, Alfred John Agraman, Thomas Holroyd, and William Morgan, should be enlarged until the fifth day of the then next Michaelmas term, without prejudice to the right of the bondsmen to render the defendant and the said Daniel Wade Agraman, Alfred John Agraman, Thomas Holroyd, and William Morgan, in the meantime, or to the right of the said plaintiff to recover the bond as forfeited. And the plaintiff further saith, that afterwards, and after the recovery of the said judgment, to wit, on the 4th day of November, in Michaelmas Term, A.D. 1845, a certain rule was made by the Court of our Lady the Queen, before the Barons of her Exchequer, in the said last-mentioned action, by which rule it was ordered that the plaintiff should show cause on Wednesday, the 9th day of November, then instant, why the said order of the said Mr. Justice Coleridge, and all proceedings thereupon had, should not be set aside with costs to be paid by the plaintiff, together with the costs of the proceedings before Mr. Justice Creswell in relation to the said order, being the proceedings had before

in that behalf mentioned, and of that application, or why the defendants, thereby meaning the defendants in the said last-mentioned action, should not have a fortnight after judgment pronounced on that rule, or such other time as the court should order in that behalf, to render themselves in custody as to the said last-mentioned action in discharge of their bail, and why all proceedings upon the bond should not be set aside with costs, and that in the meantime all proceedings in the last-mentioned cause, and against the defendant's bail, should be stayed upon notice of that rule to be given to the plaintiff, his attorney, or agent. And the plaintiff further saith, that neither the now defendant, nor the said Daniel Wade Acraman, Alfred John Acraman, Thomas Holroyd, and William Morgan, nor any nor either of them, rendered themselves or himself to the custody of the gaoler of the said Court of Exchequer, according to the practice of the same Court, or within the time mentioned in the said orders, or any or either of them after judgment had been so recovered as aforesaid, or within any other time or in any manner lawfully directed by the same court or any judge thereof, after judgment had been so recovered as aforesaid, according to the form and effect of the said condition of the said writing obligatory, but wholly neglected, omitted, and refused so to do, and the condition of the writing obligatory is and remains wholly unperformed contrary to the form and effect of the said writing obligatory, and of the said condition thereof.

The defendant pleaded, secondly, that after the recovery of the judgment in the declaration mentioned, and before the commencement of this suit, no writ of *capias ad satisfaciendum* was sued or prosecuted out of the said Court of Exchequer against the defendant, and the said Daniel Wade Acraman, Alfred John Acraman, Thomas Holroyd, and William Morgan, or any or either of them, upon the said judgment, and returned in the said Court. *Verification.*

Fourthly. That the said order so made by the said Sir John Taylor Coleridge, as in the declaration mentioned, was made before the time for rendering the said defendant, the said Daniel Wade Acraman, Alfred John Acraman, Thomas Holroyd, and William Morgan, in the said action so commenced against them, as in the declaration mentioned, according to the practice of the said Court of Exchequer had expired or elapsed, and that the said order was made *ex parte*, on the application of the said plaintiff, and without any previous summons of, or any previous notice to, the said defendant, the said Daniel Wade Acraman, Alfred John Acraman, Thomas Holroyd, and William Morgan, or any of them, or any agent, attorney, or solicitor of them or either of them. *Verification.*

Fifthly. That the said order was so made by the said Sir John Taylor Coleridge, as aforesaid, before the time for rendering the said defendant, the said Daniel Wade Acraman, Alfred John Acraman, Thomas Holroyd, and William Morgan, in the said action according to the course and practice of the court in which the same was so brought as aforesaid had expired or elapsed, and that after the making of the said order by the said Sir John Taylor Coleridge, as in the said declaration mentioned, and before the said ten days after the service of the said copy of the said order, as in the said declaration mentioned, had expired or elapsed, the said order stated in the declaration to have been firstly made by the said Sir C. Cresswell, was made by the said Sir C. Cresswell as in the said declaration mentioned, to wit, on &c. and that afterwards and after the making of the said last-mentioned order, and before the expiration of the time, to wit, the said week, given and appointed in and by the said last-mentioned order for the making of the said surrender as therein and in the said declaration mentioned; the said order stated in the said declaration to have been secondly made by the said Sir C. Cresswell, was made by the said Sir C. Cresswell, then being such justice as aforesaid as in the said declaration mentioned, to wit, on &c.; and that afterwards and after the making of the said last-mentioned order, and before the fifth day of Michaelmas Term in the said last-mentioned order, mentioned the said rule so made by the said Court of our Lady the Queen before the Barons of her Exchequer, as in the said declaration mentioned, was made by the said Court, to wit, on &c. And the defendant further saith, that afterwards, and after the making of the said last-mentioned rule by the said Court as aforesaid, and within a reasonable time for that purpose, to wit, on &c. notice of the said rule was given to the said plaintiff as in and by the same directed, and according to the course and practice of the said Court; and that afterwards, in Michaelmas Term, A.D. 1848, to wit, on the 24th day of November, in the year aforesaid, cause was shown against the said rule, and the said rule and matters therein contained were argued and discussed before the Court aforesaid, according to the course and practice of the last-mentioned order; and the said Court did thereupon, by a certain other rule then duly made according to the course and practice thereof, among other things order and direct that the said now defendant, the said Daniel Wade Acraman, Alfred John Acraman, Thomas Holroyd, and William Morgan, and their bail

or sureties, James Oxley Bridges and Joseph Arthur Ballantine, should have ten days from the day of the making of the rule now in recital to render the said now defendant, the said Daniel Wade Acraman, Alfred John Acraman, Thomas Holroyd, and William Morgan, in the said action so brought against them as aforesaid. And the defendant further said that, afterwards, and after the making of the said last-mentioned rule, and before the commencement of this suit, and before the expiration of ten days from the day of the making of the said last-mentioned rule and within the time for that purpose therein limited and appointed as aforesaid, to wit, on the 28th day of November, in the year aforesaid, the said now defendant, the said Daniel Wade Acraman, Alfred John Acraman, Thomas Holroyd, and William Morgan, did and each and every of them did respectively render themselves to the custody of the gaoler of the said court, as in and by the said last-mentioned rule was directed and ordered, and according to the form and effect, true intent, and meaning of the said condition. *Verification.*

Sixthly. That, after the making of the said writing obligatory in the declaration mentioned, to wit, on &c. and from thence continually until the issuing of the fiat in bankruptcy thereafter mentioned, the defendant, and the said Daniel Wade Acraman and Alfred John Acraman were dealers, chapmen, and co-partners and traders, according to and within the true intent and meaning of the statutes concerning bankrupts then in force. The plea afterwards set forth a fiat and proceedings in bankruptcy, under which the defendant and the said Daniel Wade Acraman and Alfred John Acraman were adjudged, and became bankrupts, and that, after the recovery of the judgment in the declaration mentioned, certificates of conformity of the defendant and the said Daniel Wade Acraman and Alfred John Acraman were duly signed by the creditors, and afterwards allowed and confirmed. The plea then stated that the several events in that plea before mentioned happened and took place, and the said certificates were obtained, allowed, and confirmed, as aforesaid, before the commencement of this suit, and before the issuing and return of any *capias ad satisfaciendum* at the suit of the plaintiff against the said defendant, and the said Daniel Wade Acraman and Alfred John Acraman, or any or either of them, upon the said judgment, and before any render of the defendant and the said Daniel Wade Acraman and Alfred John Acraman, or any or either of them, at any time or in any manner had been directed or ordered by the said Court of Exchequer or any judge thereof, and before the time for the defendant and the said Daniel Wade Acraman and Alfred John Acraman, or any or either of them, to the custody of the gaoler of the said Court of Exchequer, according to the practice thereof had elapsed, and before any breach or non-performance of the said condition of the said writing obligatory, or any part thereof. *Verification.*

Seventhly. That before the making of the said writing obligatory in the declaration mentioned, and long before the commencement of the action in the declaration mentioned, to wit, &c. a certain action was commenced by the plaintiff against the defendant and the said Daniel Wade Acraman, Alfred John Acraman, Thomas Holroyd, and William Morgan, in her Majesty's Court of Exchequer, at Westminster, for the recovery of the same identical debt in the said condition mentioned, together with such costs of the plaintiff as should be given in the same and the said action, then and from thence, until and at the time of the making of the said writing obligatory was and from thence hitherto hath been and is still pending in the said Court of Exchequer, and the plaintiff could and might have recovered said may recover in the said last-mentioned action the said debt in the said condition of the said writing obligatory mentioned. And the said defendant further saith, that at the time of the making of the said writing obligatory the said action in the declaration mentioned had not been commenced, and the said writing obligatory was then meant and intended by the several parties thereto to apply and did apply to the said action so commenced by the plaintiff, as in this plea mentioned, and was not by the said parties or any of them meant and intended to apply, and did not apply, to the said action so commenced, and in which judgment was so obtained, as in the declaration mentioned. *Verification.*

The eighth plea differed only from the sixth plea in setting forth the bankruptcy and certificates of the defendant and Daniel Wade Acraman, Alfred John Acraman, Thomas Holroyd, William Morgan, and James Norrway Franklin, instead of the bankruptcy and certificates of the defendant and Daniel Wade Acraman and Alfred John Acraman.

The plaintiff demurred specially to all the above pleas, and the same was argued in last Michaelmas Term by

Sir Thomas Wade (Manning, Serjt. with him), for the plaintiff.—The first question arises upon the second plea. The defendant says that the bond declared on was not forfeited unless a writ of *capias ad satisfaciendum* was issued; but that is not so; this bond is not a proceeding in the cause, and in that re-

spect differs from a recognizance of bail. The Courts moreover have put a particular construction on the condition of the recognizance, and have said that it creates only a qualified obligation to render in discharge of bail when the plaintiff has, by suing out the *ca. sa.* given notice to the bail that he requires such render to be made, and therefore as the *ca. sa.* arises out of the obligation itself, and is not merely a matter required by the practice of the Court, the not suing out a *ca. sa.* is a good plea to an action upon a recognizance of bail. This distinctly appears in *Sanden v. Proctor* (7 B. & C. 800), which is an express authority that a mere matter of practice cannot be pleaded, and that it was bad, therefore, to plead that the *ca. sa.* did not lie in the sheriff's office four days exclusive of the day it was lodged and the return day. *Cherry v. Powell* (1 D. & R. 50) is to the same effect. The present is an action on a bond given by the stat. 1 & 2 Vict. c. 110, s. 8. The bond is to be construed with reference to the terms it employs, and therefore it differs from the recognizance which has had given to it a particular construction by the Court. The statute says to render "according to the practice of such Court, or within such time and in such manner as the said Court or any judge thereof shall direct." The power so given to the Court or any judge is evidently different from what they would ordinarily possess. The legislature did not know how the party was to render, there being various things required in practice to be done before the *exoneretur* on the bail-piece can be entered, and therefore the mode of rendering is left to the practice of the Court, but the necessity of a *ca. sa.* to call on the defendant to render is not required in the case of this bond as in the proceedings on a recognizance. It is plain that this statute contemplated a render being made in a different manner from that pursued under a recognizance of bail. It would not have been necessary to have said in such time and manner as the Court or judge shall direct, if it was intended to confer only a power of extending the time to render, for that might always have been done before in exercise of the practice of the Court; but this is something different from the practice of the Court. This differs from a recognizance, as here the sureties cannot, after judgment, render so as to discharge themselves. [MAULE, J. referred to *Owston v. Coules* (10 Ad. & E. 193); there no *ca. sa.* was necessary, but that was before judgment.] A judge's order, with notice, is a much more important means of giving information than the lodging of a *ca. sa.* of which no notice is given. Next as to the fourth plea. This involves partly the same question as the last, if the plea means that the time made by the order of the judge to render expired before the return of the *ca. sa.* As to the order being *ex parte*, it was for the plaintiff to call for the render when entitled to do so, which, if no *ca. sa.* was required, would be when the judge might order. If the order, however, was irregularly obtained, that is not a matter which can be the subject of a plea. As to the fifth plea. The time to surrender expired on the fifth day of Michaelmas Term. The rule *nisi* did not extend the time for the surrender, it only called on the plaintiffs to shew cause why the order of Coleridge, J. should not be set aside, or why the defendant should not have such further time as the Court should order to render. If, therefore, the order of Cresswell, J. was broken, the Court of Exchequer had no power to extend the time—a right of action had accrued, and there was nothing on which that order could take effect. The seventh plea is, that another action in another court is pending for the identical debt. That is only a plea in abatement, and is bad in bar. The remaining pleas demurred to are the sixth and eighth pleas. These pleas state the certificate to be signed after the recovery of the judgment in the declaration mentioned, but they do not state whether the fiat was or not issued after such judgment; the fiat must be taken, therefore, to have issued before. The original debt was discharged by the certificate; but the plaintiff had also a statutory security, which did not arise until after the judgment, and was not, therefore, barred by this certificate. *James v. Campbell* (5 B. & Ad. 286), which was on the stat. 4 Geo. 3, c. 33, and the present statute is an extension of the former. Here no right of action existed on the bond until after the bankruptcy, and the debt so created by the bond was, therefore, not discharged by the certificate.

Tuford, Serjt. (Keating and Dowdell with him), contra.—In the first place, it is submitted that no right of action accrued on the bond until a writ of *ca. sa.* had been returned *non est inquisitum*; in the next place, that no such action accrued until the expiration of the utmost time given by the Court of Exchequer to render in, and that the *ex parte* order of a judge can only extend, but not limit the time for rendering, according to the practice of the Court. Thirdly, supposing Mr. Justice Coleridge had the jurisdiction to make the order he made, Mr. Justice Cresswell and the Court of Exchequer had power to enlarge the time for rendering, and that this Court cannot review the power of the Exchequer to make the order it made as being a matter relating to the practice of the Court; also that as the action on the bond in the Court of Exchequer is pending, there has been no

forfeiture of this bond; and, lastly, that the certificate was a good discharge, supposing the bond to be forfeited. With respect to the first, the legislature intended to assimilate the proceeding in the bond to those on the recognizance of bail, for which it is a substitute, the object being to create an act of bankruptcy instead of remaining the twenty-one days in prison, as given under the stat. 6 Geo. 4, c. 16. The same construction should, therefore, be put on this bond as had been on the recognizance, the terms of the condition in this bond being the same. The terms of the recognizance differed in this court from those of the recognizances in the Queen's Bench, but still the *ca. sa.* was required to be issued. (*South at the suit of Griffith, Cro. Car. 345*). The construction put on the word "render" in *Weddall v. The Mancaptors of Jocar* (10 Mod. 267), and *Wilmore v. Clerk* (1 Lord Raym. 156), and other authorities, shew that as a matter of right the bail are not bound to render the principal until the return of the *ca. sa.* and the same might be pleaded in bar. The recognizance is a bond of record, and there is no reason why that should be differently construed than a bond given by a statute. It is submitted that Mr. Justice Coleridge had no jurisdiction to render the order to be made, as a judge has not the power to limit the time for the render, and still less to make the order *ex parte*. As to the fifth plea, the rule and order of the Court of Exchequer being made according to the practice of that Court, this Court will not inquire into its propriety—even in a Court of Error it will not. (*Mellish v. Richardson* (1 Clarke & Fin. 224)). With respect to the seventh plea, it is submitted that the bond did not apply to any number of actions that the plaintiff might think proper to bring. The words in the Act are, "in any action which shall have been brought," and therefore the bond is not forfeited unless the plaintiff recover in that action; and since there is an action on the bond now pending, there is not a forfeiture, and the plea is good in bar. Lastly, as to the sixth and eighth pleas. The claim is barred by the certificate. *Jameson v. Campbell* was before the 6 Geo. 4, c. 16, and the law has been altered since that case. This, it is submitted, is a contingent debt, and might have been proved under the fiat. The case of *Dinsdale v. Eames* (2 Brod. & Bing. 8) is in favour of this view, and is supported by the case of *Littlewood v. Crouther* (3 D. & R. 533), which takes away the ground on which *Jameson v. Campbell* was decided—namely, that the surety might have sued the principal to such a bond.

Sir Thomas Wilde replied, citing *Hayward v. Heffer* (5 Q. B. 398); *Donnelly v. Dunn* (1 B. & P. 448); and *Attwood v. Partridge* (12 Moore, 431).

Cur. ad. vult.

JUDGMENT.

TINDAL, C. J. now delivered the judgment of the Court. This was an action on a bond entered into in pursuance of the statute 1 & 2 Vict. c. 110, s. 8. The declaration set out the bond and the condition, by which, after reciting that the plaintiff made an affidavit that a debt of 1,650*l.* was due to him by the defendant and his partners, who were traders within the bankrupt laws, and further reciting that the plaintiff had on the 23rd and 24th of March, 1843, caused the defendant and his partners to be served with a copy of the affidavit, and by this required the immediate payment of the debt; and further reciting that James Oxley Bridges and Joseph Arthur Ballantine had agreed to join the defendant and his partners in the said writing obligatory (subject to a condition for making the same void), as sureties for the defendant and his partners. The condition was declared to be, if the defendant or his partners, or the said Bridges and Ballantine, or any or either of them, should pay such sum as should be recovered in any action which should be brought for the recovery of the said debt; or if the defendant and his partners should render themselves to the custody of the gaoler of the Court in which such action had been or might have been brought, according to the practice of such Court or Courts, and in such time and in such manner as the said Court or Courts, or any judge thereof respectively, should direct, after such judgment should have been recovered in any action or actions, then the said writing obligatory was to be void. The declaration then stated that, after the making the said writing obligatory, an action was commenced by the plaintiff against the defendant and his partners in the Court of Exchequer, in which the sum of 1,698*l.* 5*s.* had been adjudged to the plaintiff for the damages and costs; to wit, the sum of 1,650*l.* as the debt in the declaration mentioned, 33*l.* 11*s.* 6*d.* for interest, and 14*l.* 13*s.* 6*d.* costs of the suit, of all which the defendant had notice. The declaration further states that neither the defendant, nor his partners, nor his sureties, paid the sum recovered, or any part of it. Further, it states that, after the recovery of the said judgment by the plaintiff, Coleridge, J. made an order by which it was ordered that the defendant and his partners should render themselves to the custody of the marshal of the Queen's prison within ten days after service of a copy of the order; a copy whereof was afterwards, to wit, on the 23rd of August, served on the defendant and his partners, and that ten days after such service

had then elapsed before the commencement of the suit. The declaration further states that on the 26th of August, Cresswell, J. made an order by which it was ordered that the time for the defendant and his partners to surrender should be enlarged for a week, and that the further hearing of a summons to set aside the order of Coleridge, J. should be adjourned to the 2nd of September, 1842. The declaration further states that on the 2nd of September, 1842, an order was made by Cresswell, J. by which it was ordered that the time for surrendering should be enlarged to the 5th day of Michaelmas Term, without prejudice to the right of the bondsmen to render the defendant and his partners, or to the right of the plaintiff to treat the bond as forfeited. The declaration further states, that afterwards, and after the recovery of the said judgment, to wit, on the 4th day of Nov. in Michaelmas Term, by a rule of the Court of Exchequer, a rule was made in the said last-mentioned action, by which it was ordered that the plaintiff should shew cause, on Wednesday, the 9th day of Nov. why the order of Coleridge, J. and the proceedings had thereon should not be set aside, with costs to be paid by the plaintiff, together with the costs of the proceeding before Cresswell, J. in relation to the said order; or why the defendants in the said last-mentioned action should not have a fortnight after judgment pronounced in that rule, or such other time as the Court should order in that behalf, to render themselves into custody as to the said last-mentioned action in discharge of their bail, and why ~~the proceedings on the bond should not be set aside~~, with costs, and that in the meantime all proceedings in such last-mentioned cause against the defendant should be stayed. The declaration further states that neither the defendant nor his partners, nor any or either of them, rendered themselves to the custody of the gaoler of the Court of Exchequer, according to the practice of the said Court, or within the time mentioned in such orders, or any or either of them, after judgment had been so recovered as aforesaid, or within any other time, or in any manner lawfully directed by the said Court, or any judge thereof, after judgment had been so recovered, as aforesaid, according to the form and effect of the said condition. To this declaration the defendant pleaded, secondly, that after the recovery of the judgment, and before the commencement of this suit, no writ of *capias ad satisfaciendum* was sued or prosecuted out of the Court of Exchequer against the defendant and his partners, or any of them; and the plaintiff having demurred to this plea, the first question in the case is, whether this plea furnishes an answer to the declaration. It has been settled by various decisions as to a *scire facias* on which a recognizance is given, it is a good plea that there was no writ of *capias ad satisfaciendum* issued against the principal. *Sandown v. Proctor* (7 B. & C. 800); *South v. Griffith* (Cro. Charles 345); *Weddall v. The Mancaptors of Jocar* (10th Modern); and some others. The necessity for the *capias ad satisfaciendum* did not rest on the mere rule of practice, but was a construction put by the Courts on the terms of the recognizance, as was said in the case of *Wilmore v. Clerk* (1 Lord Raymond, 156), the condition of the recognizance is, that if the defendant is condemned in an action in which payment is enforced, and do not pay, or render his body as a prisoner, the question will then be at what time the render ought to be? and the law says it ought to be when the plaintiff in the original action has signified that he will sue out execution against the bond, which he does by suing out the *capias ad satisfaciendum*. But it was contended on the behalf of the plaintiff, that although the rule was established with reference to the recognizances of bail, it ought not to apply to a bond under the statute 1 & 2 Vict. c. 110, that the recognizance of bail was an instrument peculiarly under the control of the Courts, which have put a particular construction on it, not entirely consistent with the natural import of its terms. But even if this were admitted to be so, still such is the established construction of the recognizance, and as the bond, as directed to be given under the statute of Victoria, is clearly made, if not in analogy with, yet nearly in the terms of, the recognizance of bail, and as the terms of the latter have obtained a judicial signification, we see no reason to doubt that the words of the bond were intended to bear the same sense; nor are the words which follow, "according to the practice of the Court," so immaterial as they were represented by the plaintiff's counsel, for although the necessity for issuing of the writ of *capias ad satisfaciendum* is not strictly speaking a mere matter of practice, but is required by the rule of law, yet the render made on the issuing of such a writ may be within the description of a render to the custody of the gaoler of the Court according to the practice of the Court. The words quite obviously refer to some recognised course of practice, though it is not easy to say what practice they relate to or intend to refer to, or whether they actually limit it to the recognizance of bail. We therefore think this plea is an answer to the action. The defendant further pleaded, fourthly, that the order of Mr. Justice Coleridge was made before the time of rendering the defendant and his partners,

according to the practice of the Court, had expired, and was made *ex parte* without any previous summons. The plaintiff has demurred thereto, and we think this plea is bad. It seems to be pleaded to the order of Mr. Justice Coleridge on two grounds; first, because the time for rendering had not elapsed when the order was made; but it was quite consistent with the plea that the time for rendering would have expired before the time limited by the order for the defendant and his partners to render, and if any order was made which operates to extend the time for rendering, such an order ought to be made before the time has expired for rendering. The second ground of objection is, that the order was made *ex parte* without a summons. It appears there was time to rectify any defect in the order, if any existed, by application to the Court to set aside the order, and until it is set aside the order cannot be treated as a nullity. There is also a further objection to the plea, that if the order of Mr. Justice Coleridge left the defendant without any justifiable cause in the plea for not surrendering pursuant to the practice of the Court on Mr. Justice Cresswell's order, the plaintiff would be entitled to succeed on this demurrer. The defendant has further pleaded, fifthly, that the order of Mr. Justice Coleridge was made before the time for rendering the defendant and his copartners had expired, and before the expiration of the ten days before the service of the order of Mr. Justice Coleridge, the first order of Mr. Justice Cresswell was made; and before the expiration of the time mentioned in the last order, the second order of Mr. Justice Cresswell was made; and before the 5th day of Michaelmas Term, the rule of the Court of Exchequer in the declaration mentioned was made; and that before the making of the said last-mentioned rule, and within a reasonable time of the former notice of the said rule was given by the plaintiff as by the Court directed, and according to the practice of the Courts; and that afterwards cause was shewn according to the practice of the Court, and thereupon the Court did, on the rule and according to the practice of the said Court, order and direct the defendant and his partners and their bail and sureties, within ten days from the day of the making the said rule, to render the defendant and his partners; and that within the time so limited the defendant and his partners rendered themselves to the custody of the gaoler of the court. The plaintiff demurred to this plea, on the ground that the order of Mr. Justice Cresswell only gave time to render till the fifth day of Michaelmas Term, and that the rule nisi of the Court did not give any extended time for the render; and it was contended that on the 5th day of Michaelmas Term the condition was broken, and the right of action vested in the plaintiff. But it appears to us that when the rule nisi was granted it was competent to the Court, under the Act of Parliament, to grant an extended time to render; and the Court, in granting the rule to shew cause why the time should not be extended, reserved its jurisdiction entire, and maintained the order for the extension of the time in the same state as when they granted the rule nisi. It seems to us, therefore, the defendant is entitled to judgment on this plea. The sixth plea sets forth a fiat in bankruptcy against the defendant, and that the certificates of conformity under the fiat issued after the making of the writing obligatory; but the plea does not allege that the fiat was issued after the recovery of judgment on the action brought for the recovery of the original debt. The plea not stating the fiat to have been issued after the recovery, in deciding on the validity of the plea, it must be assumed it issued before the recovery. The original debt in this case is undoubtedly barred; but it will not follow, as a consequence, that the bond given to secure the payment of the debt will be also barred, for which the case of *Jameson v. Campbell* (5 B. & Ald.) is in point. We must look, therefore, to the provisions of the statute, 6 Geo. 4, to determine this point. The certificate is, by section 126 of that Act, a bar to all debts and demands that may be proveable under the fiat against the bankrupt. The question will be whether this bond is proveable under the fiat. The only sections under which it can be so are the 51st and the 56th. By the 51st section, persons who have given credit to the bankrupt for any money, or other matter or thing, that shall not have become payable when the bankrupt committed the act of bankruptcy, whether such credit shall have been given, on any bill, bond, note, or other negotiable security or not, shall be entitled to prove such bill, bond, note, &c. as if the same was payable presently, and receive dividends equally with the other creditors, deducting only the usual rate of interest, to be calculated from the declaration of the dividend to the time when such debt would have become payable. This section, as far as relates to bonds; is to the same effect, and nearly in the same terms as the statute, 1 Geo. 1, c. 11, s. 1, by which bonds, though not presently payable, were admitted to be proved, and it has been decided on the construction of that Act that a bond conditioned for the payment of money on the happening of an event before the happening of that event could not. This appears by *ex parte Barker* (9 Ves.). It seems to us that the rule must apply to the 51st sect. 6 Geo. 4, c. 16. In

the present case it is not only uncertain at what time any debt can be due on the bond, but also whether any debt will ever become due, and it is uncertain whether the condition of the bond will be broken. Therefore this debt is not maintainable by virtue of the 51st section. The 56th section provides, "that if any bankrupt shall, before the issuing of the commission, contract any debt payable on a contingency that shall not have happened before the issuing of such commission, the person by whom such debt has been contracted may, if he think fit, apply to the commissioners to set a value upon such debt, and the commissioner is required to ascertain the value thereof, and admit such person to the proof; and if the value shall not be ascertained before the contingency happened, then such person may, after such contingency has happened, prove in respect of such debt, and provided such person had not, when such debt was contracted, notice of any act of bankruptcy by the bankrupt committed." On the construction of this section a distinction is taken in the case of *Ex parte Marshall* (Montague and Ayrton, cited and relied upon by Mr. Justice Erskine, in *Abbot v. Hicks* (7 Scott) between contingent liabilities that may never become due, and debts payable on contingencies, and it has been held that it is the latter only that are maintainable under the statute. In the present case, though in form a case of debt on a bond, it being dependent on the performance of a contingency, is in substance not a case of contingent debt, but a contingent liability. At the time the fiat issued, it was quite uncertain whether any debt would ever arise on the bond; it was at the time a liability that could not become a debt unless the condition was broken. It appears to us, therefore, judgment should be for the plaintiff on the demurrer to the 6th plea, and also to the 8th, which does not raise any other question than that raised by the 6th. The 7th plea states, that before the giving of the bond, an action was commenced by the plaintiff against the defendant and his partners for the recovery of the same identical debt in the condition mentioned, and that the said action, at the time of making the said writing obligatory, and from thence hitherto hath been and still is pending; that the plaintiff could and might have recovered in the said action the said debt, and at the time of making the said writing obligatory, the said action in the declaration mentioned had not been commenced; that the said writing obligatory was meant and intended by the parties thereto to apply to the said action so commenced by the plaintiff as in the said plea mentioned, and was not by the said parties or any of them meant or intended to apply, and did not apply, to the said action so commenced, or to the judgment so obtained as in the declaration mentioned. The plaintiff has demurred to this plea, and it seems to us the plea is bad. What the parties meant or intended as to what action it was meant to apply, must be collected from the terms of the condition, and no averment can be taken on that which does not appear on the face of the instrument. The condition is to pay such sum as shall be recovered in any action which had been or thereafter should be brought for the recovery of the debt, and it is a direct contradiction of the terms made use of to aver that the bond was only given for a sum to be recovered in an action already brought. We think, therefore, this plea is bad, and judgment should be given for the plaintiff on the demurrer thereto.

Judgment for the defendant on the second and fifth pleas, and for the plaintiff on the others.

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

Monday, March 30.
(Before Mr. Commissioner SHEPHERD.)
Re GOLDSMITH.
Practice—Costs.

Where a trader is summoned by a creditor under 5 & 6 Vict. c. 122, s. 11, and makes an affidavit under s. 12, that he verily believes he has a good defence to the whole of the demand, the Court will, as a matter of course, grant him the costs of his attendance.

Goldsmit, a trader, had been summoned by a creditor under an affidavit of debt filed in accordance with sec. 11 of the 5 & 6 Vict. c. 122, and had made a deposition upon oath in the form prescribed by the statute, that he verily believed he had a good defence to the whole of the sum demanded. Application was now made by his attorney for the costs and charges of his attendance, which, by the 18th section of the statute, the Court in its discretion is empowered to grant. It was submitted that the other commissioners had laid it down as a general rule that where, as in the present case, a party was prepared to swear that he believed he owed no legal debt to the party summoning him, he was entitled to have his costs.

On the other side it was urged that both the defendant and the trader made their depositions upon oath, and that the affidavit of the defendant was

more likely to be true, because it entered into a particular statement of the nature of the claim, its various items, &c.; while the oath of the trader was a mere general assertion of a supposed non-liability.

Mr. Commissioner SHEPHERD.—Undoubtedly the Act of Parliament leaves this matter to the discretion of the Court. But, as I understand it is now become an invariable rule to allow the trader his costs in cases of this kind, I shall not think it my duty to depart from such a rule. The costs will be ascertained in the usual way.

Application granted.

Tuesday, March 31.
(Before Mr. Commissioner FANE.)

Re JOHN WARREN.

Third fiat—Certificate.

Where two fiats have already issued against a bankrupt, and 15s. in the pound have not been paid under the second, and where the act of bankruptcy upon which the third fiat is founded is the filing of the bankrupt's own declaration of insolvency, the Court has still the power of granting the certificate, if the bankrupt, upon the facts of the case, appear to deserve it.

This was a sitting for the allowance of the bankrupt's certificate. It appeared that the bankrupt had already been a bankrupt twice previously—once in the year 1835, and the second time in the year 1840. No dividend had been paid under either of those bankruptcies, and the fiat, in the present instance, had been issued upon the bankrupt's own petition.

Cooke, for a creditor.—In this case the Court is bound to refuse the certificate. This is the third time that Warren has become a bankrupt, and no dividend has ever been paid under either of his former bankruptcies. It was said, by the Court of Queen's Bench, in *Fowler v. Coster* (10 B. & C. 427), that a third fiat against a bankrupt whose effects have not paid 15s. in the pound is void; and although in *Ex parte Welsh* (Mon. 378), Lord Brougham questioned that position, and declared that he could not bring his mind to say that the Great Seal had not the power to issue a third commission, yet the reasons he gives for his opinion, and the arguments employed by Sir George Rose, who was counsel in the case, proceed upon the supposition that there may be something for a Court of Bankruptcy to administer under a third fiat, and that it will be for the benefit of the creditors that the fiat should issue. That supposes, therefore, the case of a hostile creditor making a trader a bankrupt, not the case of a person making himself a bankrupt solely for his own advantage. Formerly, if a commission issued, for the bankrupt's own benefit exclusively, it used to be annulled as collusive. Undoubtedly the question of collusive bankruptcies is now at an end. But the power of making one's self a bankrupt was only allowed for the benefit of creditors, in order that something might be saved from the wreck of the bankrupt's property by a speedy application to the Court. In *Ex parte Chambers* (3 Dea. 494; 3 Mon. & A. 294, S. C.) Mr. Commissioner Holroyd refused to open or adjudicate upon a fiat issued against an uncertificated bankrupt, upon the ground that such a fiat was void in law. Now, this is virtually the same case. Under the statute, 6 Geo. 4, c. 16, s. 127, as this man's estate paid no dividend at his second bankruptcy, the certificate then obtained does not hinder his future estate and effects from vesting absolutely in the assignees under the second fiat. With reference to his property, he is therefore an uncertificated bankrupt, and, as it was now too late for the Court to pursue the course pointed out by the case referred to, the certificate ought, at once, to be refused.

Sturgeon, for the bankrupt, was not heard on this point.

Mr. Commissioner FANE.—After the decisions that have been come to it is a matter of doubt whether a third fiat is properly issued. Perhaps the leaning is in favour of its being issued. In this case, indeed, the bankruptcy is of the party's own creation; still I cannot visit upon the bankrupt the doubts of the different decisions. I have really nothing to do with the legal objection. If the Court above thinks fit to issue a fiat, I am bound to act upon it.

The merits were then gone into, and ultimately the certificate was allowed. *Certificate allowed.*

COUNTRY COMMISSIONERS' COURTS.

BRISTOL DISTRICT BANKRUPTCY COURT.

(Before Mr. Commissioner STEVENSON.)

Wednesday, March 18.

REYNOLDS v. PARKER.

Small Debts Act.

A debtor who veraciously defends an action, whereby the costs are increased, and who, at the time of giving instructions to his attorney to plead, has no reasonable prospect of being able to pay the costs incurred by the creditor, is, after judgment obtained, and on being summoned under 8 & 9 Vict. c. 127, liable to be committed under the 1st section of that Act, for having wilfully contracted that part of the judgment debt which consisted of the costs, without rea-

sonable prospect of being able to pay it, notwithstanding there was no evidence before the Commissioner that the original debt had been improperly contracted.

Samuel Parker, resident in Gloucestershire, was summoned to this court under 8 & 9 Vict. c. 127, on the application of Richard Reynolds, a creditor, for 32l. 15s. 6d. by force of a judgment obtained in the Court of Exchequer of Pleas. The debt amounted to 15l. and the taxed costs (a trial having taken place before the sheriff of the county, in consequence of the defendant's pleading the general issue) to 17l. 15s. 6d.

Wilkes, solicitor, of Gloucester, appeared on the part of the summoning creditor, and examined the debtor, who admitted that after he had been served with the notice of declaration in the action, he took it to an attorney, and instructed him to plead, telling him, at the time, he thought the creditor could not prove the debt plain against him; that at this time he knew perfectly well he owed the whole of the money, and that he had no means whatever of paying the costs which might be incurred in consequence of his pleading, if the creditor proceeded and obtained a verdict. The writ of trial was in court to prove the plea, verdict, &c. He then submitted that the debtor had wilfully contracted that part of the judgment debt which consisted of the costs, without having reasonable prospect of being able to pay it, within the meaning of the first section of the Act in question.

His HONOUR observed, that he doubted whether the statute applied to the costs, but only to the contracting of the original debt.

Where contended that this case was analogous to the case of an insolvent applying under 7 & 8 Vict. c. 96, who, on being proved to have been guilty of a vexatious defence, was liable to have his petition dismissed, for having incurred a debt (for costs) without any prospect of being able to pay it, under the 24th section of the Act; and that the words of that section, so far as they applied to this point, and the 1st section of 8 & 9 Vict. c. 127, were nearly similar, and, as he submitted, quite capable of the same construction.

His HONOUR considered the section referred to did apply to the costs (which formed part of the judgment debt), and that the debtor in this case had wilfully contracted the debt for costs without reasonable prospect of being able to pay it within the meaning of the 1st section of the Act; and, observing that it was a gross case, ordered him to be committed for the full term of forty days.

The debtor was required to remain in court whilst the necessary warrant was made out, when he was at once conveyed to prison.

[We would draw the attention of practitioners to this case, and suggest caution in recommending debtors to plead to actions when there is no real defence.]

CENTRAL CRIMINAL COURT.

Monday, Dec. 15, 1845.

REG. v. BULL and SCHMIDT.

Where two persons were indicted for making and engraving a plate for the purposes of forgery, and it was proved that one of them gave the order for the manufacture of the plate to an innocent agent, who never saw the other until it was completed—it was held that they were both correctly charged as principals.

The prisoners were indicted under the 1 Wm. 4, c. 66, s. 19, for making and engraving a portion of a plate, &c.

A correspondence was given in evidence between Bull, who resided in London, and Schmidt, who was upon the Continent, from which it appeared that they were jointly engaged in planning the forgery. The order for the plate was, however, given by Bull to an innocent agent before Schmidt came to England. On the arrival of the latter, he was taken by Bull to the house of the manufacturer, and the plate, in the condition in which it was when the indictment was framed, was given into their hands, and they were shortly afterwards taken into custody.

Ballantine, for the prisoner Schmidt, submitted that as both the defendants were indicted as principals, the evidence did not support the charge. It went to show that Schmidt was an accessory before the fact, for until the time when the plate was delivered into their hands in as complete a state as it ever was, he was never brought in contact either with it or the maker.

TINDAL, C.J.—Are not the letters sufficient for that purpose?

Ballantine contended that until something was done in consequence of the letters they only shewed an accessorial act. All the instructions for the plate were given by Bull. It was the making or engraving that constituted the gist of the charge, and to make a party a principal in any crime he must be near enough to render some active assistance in its commission. How could it be said that Schmidt could be thus assisting, when in fact he was upon the Continent?

ALDERSON, B.—How does he differ in this respect from Bull? Neither of them made or engraved the plate.

Ballantine contended that as Bull had acted immediately in the matter, he was to be considered as the maker. The innocent agent was a mere machine set in motion by Bull. Every act done by the former was virtually the act of the latter. It was precisely the same as though Bull had made and engraved the plate, and if he had done so, Schmidt, being absent, could be only an accessory. There was no difference between the principal case and one where a person counsels another to commit a felony without taking any active part in it himself. The learned counsel cited *R. v. Davis and Hall* (R. & R. 113).

Clarkson (with whom were *Badkin* and *Rew*) for the prosecution, cited *R. v. Mazon*, 9 C. & P. 676, and was stopped by the Court.

TINDAL, C. J.—It is contended that as Schmidt was on the Continent at the time when the order was given and the plate was made, he should not be indicted as a principal. That reasoning would be good if the actual maker had been a guilty party, because he would stand in a different position to those who had counselled him to the commission of the crime. But it altogether fails where the immediate agent is an innocent one. Then those who have plotted and arranged that he should do the particular act are themselves principals. Suppose the prisoners had been both abroad, and that having planned the forgery, one of them had given the order for the plate by letter; could it be doubted that they would be indictable as principals, and can it make any real difference that one of them is in this country. It seems to me, then, that the circumstance of the immediate agent in this forgery being an innocent person renders the rule of law as to principal and accessory inapplicable.

ALDERSON, B.—If a person does an act with a guilty intent, he is not the agent of any one. If he does it innocently, he is the agent of some person or persons; and if two have agreed to employ him, he is the agent of both. In this case, therefore, it is a question for the jury, whether the prisoners were jointly acting in the procuring this plate to be made. If they were, then the engraver acts on behalf of both. It makes no difference whether they were in England or elsewhere. When they have once agreed to do the thing, the act of one is the act of all, although the rest be absent at the time.

Irish Reports.

COURT OF QUEEN'S BENCH. CROWN SIDE.

Thursday, Jan. 15.

(Before *BURTON*, *CRAMPTON*, and *PERRIN*, J.J.)
RE JOSEPH NEWTON, otherwise *NUGENT*.

Habeas corpus—Invalidity of committal vitiates a good conviction—Liability of party resident in England to penalty for deserting his wife, so that she becomes chargeable upon the poor-rates in Ireland.

J. N. was sentenced by two justices, pursuant to the 1st and 2nd Vict. c. 66, sec. 59, to be imprisoned, and kept to hard labour for three months, for deserting his wife. The committal recited a conviction and sentence, which were in conformity with the statute, but in the mandatory part omitted to direct the gaoler to keep the prisoner to hard labour. The Court holding that the committal was bad, and the conviction thereby invalidated, discharged the prisoner.

Quare, does a man, though resident in England, apart from his wife, from a period prior to the passing of the Irish Poor-law Act, notwithstanding become liable to the penalties imposed by the 59th section, as soon as his wife becomes chargeable upon the rates of any Poor-law union in Ireland?

Joseph Newton, alias *Nugent*, who had been for upwards of twenty years preceding living in Liverpool, apart from his wife, was there arrested and brought to Dublin, in pursuance of a warrant issued by two justices of the Castle Division of Police, and by them convicted, under the 59th section of 1 & 2 Vict. c. 56, of having deserted his wife, so that she became chargeable upon the rates of the South Dublin Poor-law Union, and was committed to the Richmond Bridewell upon the 1st of December last. The committal, which recites as much of the conviction and preliminary proceedings as is necessary to render the case intelligible, was in the following terms:—

"Police District of Dublin Metropolis, Castle Division of Police, and County of the City of Dublin, to wit.

"To William Browne, one of the constables of the said police district, and his assistants, and to the keeper of the Richmond Bridewell, in the county of the city of Dublin:—Whereas, by a certain conviction, bearing date the 1st day of December, 1845, *Joseph Nugent*, of Liverpool, in that part of the United Kingdom of Great Britain and Ireland, called Great Britain, in said district, was duly convicted before us, *Frank Thorpe Porter* and *James Magee*, esqrs. two of the divisional justices of the Castle division of said police district, and justices of the peace in and for said district and division, upon the information and oaths of *Elizabeth Waldron*, of No. 6, Wood-quay, in the said district, wife of *Thomas Waldron*, and *Thomas*

Geraghty, wardmaster of the workhouse of the South Dublin Union in said district, of a certain offence committed by the said *Joseph Nugent* hereinafter mentioned, for that the said *Joseph Nugent*, on or about the 7th of April, 1845, at Dublin, in the county of the city of Dublin, and within the said district, did desert and leave his wife named *Mary Nugent*, whom he is liable to maintain, so that such wife has become destitute, and has been relieved in the South Dublin Union workhouse, at Dublin, to wit, at James-street, in the county of the city of Dublin, and within the said district, contrary to the statute in that case made and provided, whereby, and by force of the said statute, the said *Joseph Nugent* was, for his said offence, by us adjudged to be committed to the said Bridewell, the same being the house of correction of and for the county of the city of Dublin aforesaid, there to be kept to hard labour for the term of three calendar months from the date hereof; Now we, the said justices, do therefore, in her Majesty's name, require and command you, the said *William Browne*, to take the body of the said *Joseph Nugent*, and him forthwith to carry to the Richmond Bridewell, at the South Circular-road, in the county of the city of Dublin, and there to deliver him into the custody of the keeper of the said Bridewell, together with this warrant; and we, the said justices, do hereby command you, the said keeper, to receive into and safely keep in your custody, in the said Bridewell, the body of the said *Joseph Nugent*, for three calendar months from the date hereof, and for so doing this shall be to you or any of you a sufficient warrant and authority.

"Given under our hands and seals, at the public office of the said division, this 1st December, 1845.

"F. T. PORTER (L. S.)

"J. MAGEE (L. S.)"

Upon the 6th of December the prisoner was brought up by *habeas corpus* before Mr. Justice *Burton* in chambers, and sought to be discharged from custody, on the grounds hereinafter mentioned. The learned judge, however, not having the proceedings of the magistrates before him, remanded the prisoner until the ensuing Term, and now accordingly the prisoner, who had in the mean time, by consent, been allowed to stand out on bail, was brought up by *habeas corpus*, and a copy of the proceedings returned by the magistrates.

J. Chambers moved that the prisoner be now discharged.—He is entitled to his discharge on several grounds; he was, in the first instance, improperly arrested in England; having left this country and become a resident in England more than twenty years ago, he cannot be held to have committed an offence under the statute 1 & 2 Vict. c. 56, which applies exclusively to Ireland, and was not passed until long after his having become a resident in England. Secondly, it does not appear that the warrant of committal was signed at petty sessions in open court. (a)

Brewster.—That objection is cured by the interpretation clause.

CRAMPTON, J.—The statute does not say that the party shall be committed in open court, but that such person shall, on conviction in open court, be committed.

Chambers.—There is no step in the sentence. This is a highly penal statute, and in favour of liberty; it ought to be construed strictly.

Thirdly. The committal is bad. It does not authorise the keeper of the Bridewell to keep the prisoner to hard labour, which is the punishment prescribed by the statute; and where an offence is created by a statute, and a punishment is prescribed, a committal for a greater or a less punishment is void, and the prisoner must be discharged; for this Court will not give judgment upon the conviction of an inferior Court, though that conviction may be a good one. (*Vyse v. Baker*, Carth. 6.) The magistrates are bound by the committal. Where the committal is bad, the conviction is rendered void. (*Wicks v. Clutterbuck*, 10 B. Moore, 84, per *Best, C. J.*; *Rogers v. Jones*, 1 Ry. & M. 135.)

PERRIN, J.—Where, under the statute, a magistrate commits a man for three months, but omits the direction to keep him to hard labour, is he liable in an action for false imprisonment?—that is the question in this case.

CRAMPTON, J.—If the sentence is not authorised by the statute, whether it is in excess or diminution of punishment, it is a void sentence; but where the sentence is right, and the conviction is regularly drawn up, is the sentence made void by a defective committal?

Chambers.—It is. If a man were convicted of murder, but was only committed to gaol for three months, could the sheriff execute the sentence of the law upon him?

Brewster, Q. C. for the Crown, contra.—It is an

(a) The 59th sec. of 1 & 2 Vict. c. 56, provides "That if any person shall desert and leave his wife, &c. so that such wife, &c. shall become destitute and be relieved in the Workhouse of any Union, every such person shall, on conviction thereof before any justice of the peace, at petty sessions, in open court, &c. be committed to the common gaol or house of correction, there to be kept to hard labour for any term not exceeding three months."

error to say that the Court must either discharge or commit the prisoner; he is now in custody, and all I call upon the Court to do is to refuse to discharge him. The cases cited on the other side are referable to another principle; they were cases of civil actions against magistrates for false imprisonment; in *Rogers v. Jones* the conviction was framed under one statute and the committal under another (*Rex v. Taylor* (3 D. & R. Mag. Cases, p. 493); *Bailey, J.* in that case, says, "there is an old case in *Porteus v. R. v. Hawkins*, 272 which decides this, that if there is a conviction independently of the committal, the Court will not discharge on any defect in the warrant of commitment unless the conviction is before them;" and *Abbott, C. J.* observes, "and that is very reasonable, for otherwise there must be as much certainty and length in the commitment as in the conviction, which would be productive of great inconvenience." As to the objection that the prisoner's conduct does not amount to a desertion under the statute, because he had deserted his wife twenty years ago, the Act does not make it penal for a man to desert his wife, but to desert her so as that she becomes chargeable; and the offence only arises when she becomes chargeable upon the rates; therefore this is not, as was contended, an offence committed before the passing of the stat. (1 & 2 Vict. c. 56); as to the objection that the prisoner was improperly arrested in another country, no such thing appears on the face of the conviction, and this Court will say we have got the prisoner here, and having him within the jurisdiction of the Court which convicted him, we will leave him so. (*Ex-parte Susanna Scott*, 9 B. & C. 446), and cases there cited.)

PERRIN, J.—What do you say to the want of certainty in that part of the committal and conviction which recites that the prisoner deserted his wife "on or about the 7th of April?" and could the keeper of the Bridewell put the prisoner to hard labour upon this committal?

Brewster.—I think he could with perfect safety.

PERRIN, J.—Suppose the statute gives a form of the committal, how would it do to pursue that form, just leaving out these words?

Fitzgibbon, Q. C. on behalf of the guardians of the poor for the South Dublin Union.—If the warrant had even stopped after the recital of the conviction, and the direction to the keeper of the gaol "to receive the body of *Joseph Nugent*," it would have been sufficient.

CRAMPTON, J.—It might if it then said, "to undergo the sentence aforesaid." If the warrant had varied from the conviction by directing the gaoler to keep the prisoner for two months instead of three would it have been sufficient?

Fitzgibbon.—That portion might be rejected as surplusage. *Rex v. Taylor* governs this case. *Burn's* Just. p. 967.

CRAMPTON, J.—*Rex v. Taylor* does not go to the same extent at all; it decides that the Court will not discharge a prisoner merely on the ground of the committal being defective, until they have the conviction also before them.

BURTON, J.—The decision in *Taylor's* case is confined to cases arising under the particular statute.

Napier, Q. C. in reply.—The invalidity of the committal cannot be cured by the validity of the conviction. It is most important that the committal shall be right, as the conviction is not ever sent to the gaoler; he has nothing but the committal to go by. It might as well be said that if sentence of transportation was passed upon a prisoner, and the mandatory part of the commitment directed the gaoler to keep him in custody for two years, such a detention would be legal. This statute (1 & 2 Vict. c. 56) is a highly penal one, and should be most strictly construed, as there is no appeal given by it from the decisions of the justices.

The learned counsel cited the judgment of *Best, C. J.* in *Taylor's* case; and being about to address himself to the other objections, was stopped by the Court.

BURTON, J.—The Court is of opinion that your argument upon this part of the case must prevail; and that the prisoner, not being in legal custody, must be discharged.

CRAMPTON, J.—It is the warrant that the keeper of a gaol is to look to as to his authority, and not the conviction.

PERRIN, J.—It is not to be expected that the keeper of the gaol is to look into the Act of Parliament, and then put his construction upon the warrant; he is not to be expected to spell out his authority in that way. The prisoner was discharged.

Brewster applied that he should be put upon terms not to bring any action, but

The Court declined to interfere.

Tuesday, Jan. 27.

CRIMINAL PROSECUTION.

R. v. the Prosecution of EDWARD ELLIOT, and the Attorneys, v. JOHN MAHER, one of the Attorneys, and OTHERS.

In this case a conditional order having been obtained last Term (see 6 Law T. p. 189), on the application of the prosecutor, an attorney practising in the county of

Kilkenny, for liberty to file a criminal information to a conspiracy against the defendants, who were also attorneys practising in the same county.

Brewster, S.G. on behalf of the defendants, informed the Court that Mr. Maher, who had presided as chairman at the meeting at which the resolutions objected to by the prosecutor (see ante, p. 132) were passed, desired to express his regret at having put his name to them, as they were calculated to give offence to the prosecutor, who was a gentleman with whom Mr. Maher was acquainted in private life, and whose character ranked deservedly high for honour and high respectability. Mr. Maher would have to incur the penalty of paying the costs which had been incurred.

Napier, Q.C. for the prosecutor, was quite satisfied with the explanation which had been offered. He wished, however, to say that a statement which had been made by him when applying for a conditional order in this case, had been at the time questioned by a third party at that time present in court, but the truth of that denial was no longer put forward, and the statement put forward had not been authorised by the defendant.

By the COURT.—Let the conditional order be discharged, on payment of costs.

January 24 and 26, 1846.

(Before BURTON and CRAMPTON, Justices.)

REG. v. CHARLES GAVAN DUFFY, Esq.

Practice.—Dilatory plea in criminal cases—Verification of must be positive—Stat. 6 Anne, c. 10.

To an indictment for a libel, the defendant pleaded in abatement, and annexed to his plea an affidavit stating it to be true in substance and effect, "as he verily believed."

The Court on motion set aside the plea for want of a verification, holding that the stat. 6 Anne, c. 11, analogous to 4 & 5 Anne, c. 16 (English), applied to dilatory pleas in criminal as well as civil cases; and that an affidavit in support of such a plea must be positive.

On the 14th of January an indictment was found against the traverser, charging him with publishing, in the *Nation* newspaper, a wicked and seditious libel; to this indictment the traverser put in the following plea:—

IN THE QUEEN'S BENCH.

Charles Gavan Duffy, at the prosecution of the Queen.—And now on this day, to wit, in the 19th day of January, in the year of our Lord 1846, comes the said Charles Gavan Duffy, by John Mitchell, his attorney, into the court here of our Lady the Queen, and protesting that he is not guilty of the supposed offences in the said supposed indictment specified, or any of them, or any part thereof; for plea in abatement nevertheless saith, that he ought not to be compelled to answer the said supposed indictment, and that the same ought to be quashed, because he says, that the said supposed indictment was not publicly and in open court, by the jurors aforesaid, or in their presence, or in the presence of twelve of them, or of a number of them, sufficient according to law in that behalf, presented to the said court of our said Lady the Queen, as a true bill; but on the contrary thereof the same was heretofore, to wit, on the 14th day of January, in the year of our Lord last aforesaid, presented in open court to the said Court, as a true bill, by one of the jurors aforesaid only, to wit, by John Croker, in the presence of a less number than eleven of the jurors aforesaid, to wit, in the presence of five only of the jurors aforesaid, to wit, at Dublin, in the county of the city of Dublin. And the said Charles Gavan Duffy further saith, that the jurors aforesaid were not, nor were any of them severally or at all called over by his or their name or names in open court in the said court of our said Lady the Queen, by the proper officer in that behalf, or by any other person whatever, or at all, at or immediately before the time when the said supposed indictment was so presented as aforesaid to the said Court by the jurors aforesaid, to wit, at Dublin, in the county of the city of Dublin aforesaid, to wit, on the day and year aforesaid; and this he (the said Charles Gavan Duffy) is ready to verify. Wherefore he prays judgment of the said indictment, and that the same may be quashed, and so forth.

Annexed to the plea was an affidavit made by the traverser, stating the plea to be "true in substance and effect, as deponent verily believes."

Henn (with whom was **Napier**) now moved, that the plea pleaded in this case, which has been handed to the officer, should not be received and recorded, the same not having been delivered pursuant to the course and practice of the Court; or that the said plea may be set aside, the same having been pleaded irregularly and contrary to the practice of the Court; and inasmuch as the same has not been verified by a sufficient and proper affidavit of the truth of the allegations therein; nor has such affidavit been annexed thereto, or handed therewith to the officer, as is required by law, and by the course and practice of this Court; and that the said defendant shall plead over immediately on the decision of the Court as to the said plea pleaded.

First.—That this plea should have been filed on the

17th, for being a plea in abatement, it is of a purely dilatory nature, and does not go to the merits of the case, and therefore is to be viewed with strictness. In *Reg. v. O'Connell* the traverser appeared in person (2 Law T. 193) and not by attorney, and the Court held that the 60 Geo. 3, c. 45, makes no distinction between pleas in bar and in abatement, and that Act only applied where a party appeared in person, and not by attorney; and it has been conceded that before the passing of that statute the four days given to a defendant would have been reckoned both inclusive, and therefore Mr. Duffy, as he appeared by attorney, ought to have pleaded on Saturday; and even if he had appeared and pleaded in person, he ought to have put in his plea before the Court rose on Monday.

Secondly.—This plea in abatement cannot be sustained, for there is not a sufficient affidavit to verify it; by the 11th sec. of 6 Anne, c. 10 (analogous to 4 & 5 Anne, c. 16, s. 7, Eng.) no dilatory plea should be allowed unless the defendant makes a positive affidavit of its being true in substance and matter of fact. In *Gude's Pract.* (2nd vol. p. 131), and in *Tidd's Pract.* 1st vol. 641, (citing *Onslow v. Booth*, 2 Str. 706) the form of affidavit is given, which is positive as to the truth of the plea; but here the traverser only swears that the plea is true "as he is informed and believes." In *R. v. Jones* (2 Str. 1161), a plea in abatement having been put in to an information in nature of a *quo warranto*, it was set aside for want of a title to the affidavit annexed to it; the Court saying the practice of the Crown Office cannot alter the Act of Parliament.

PERRIN, J.—We have judicial knowledge of the fact stated in the plea, that only a few of the grand jury came into court with the bill of indictment.

Henn.—Could your lordship trust your recollection so far as to say how many jurors were in the box?

PERRIN, J.—I really think I could.

Henn.—Although the attention of the Court may have been in a particular case directed to the circumstances, in nine cases out of ten it might not, and the fact of how many jurors come into the box and hand down a bill is not a matter requiring judicial attention. In *Res v. Granger* (3 Burr. 1647) Lord Mansfield set the plea aside, and judgment was entered; here the Crown does not ask the Court to give judgment, but merely requires the traverser to plead to the merits, that the case may be investigated. *Hughes v. Alvarez* (2 Lord Raym. 1469, S. C. Str. 689), and *Pearce v. Davy* (Say. 293), are strongly in point. In the latter case, Denison, J. says, "It has been said that it is sufficient under the stat. 4 Anne, c. 16, if any matter be shewn to the Court by affidavit to induce them to believe the fact of the plea; but the construction has always been that the affidavit must be positive as to every matter of fact, for that the words 'probable matter' in that statute only extend to a matter of record, or to some other collateral matter, of the truth of which there cannot be a positive affidavit."

Robert Holmes (with whom were **O'Hagan** and **Sir Colman O'Loughlin**), contra.—Notice of this motion should have been received earlier; no affidavit has been made in support of this application: to set aside a plea upon motion in this way is a very strong measure. (See case of *Bray v. Haller*, 2 Moore, 213.) The object of the Crown is to set aside the plea which they are afraid to demur to, and then serve notice of trial the same day; the Attorney-General might take a conditional order, and then the traverser could shew cause against it.

Henn.—Notice of motion was served on the 22nd instant; it could not be done sooner, as the principal law officers of the Crown were engaged at the Special Commission at Mullingar.

Holmes.—We cannot help that; the plea was filed on the 19th instant.

Under these circumstances, the Court, upon consultation, directed the case to stand till the following Monday.

Monday, Jan. 26. (a)—**Henn** stated that he did not think it necessary to add any thing to what he had stated on the preceding Saturday.

Holmes and O'Hagan, for the traverser.—This is an attempt to get rid of a plea upon motion, which, except upon the allegation of a deficiency in the affidavit, could not be attempted. (*Res v. Cooke*, 2 B. & C. 618, per Abbott, C.J.) Mr. Duffy was not present when the circumstances alleged in the verifying affidavit took place, so that he could only swear upon his belief to their occurrence. The statute (6 Anne, c. 10) is applicable only to civil, and not to criminal cases (4 Blackst. C.P. 375); and, besides, I would ask the Court, with great respect, was there any judge in court who could doubt the truth of the plea? The circumstances stated therein took place in open court, and I consider that the Court are bound to take judicial notice of those facts, so that there was no necessity for an affidavit at all. In *Res v. Granger*, there was no verifying affidavit whatever, or probable cause shewn, to induce the Court to believe the fact alleged in the plea. At the trial of the *Shewcase* (27 State T. 267), five judges presided, a plea in abate-

(a) **Perrin, J.** was absent during the argument of the case upon the 30th inst.; and the Right Hon. Francis Blackburne, the newly-appointed chief justice, did not take his seat on the bench until a subsequent day.

ment was put in, and a similar objection to the present was taken; but the judges held, that the statute of Anne applied only to civil cases. The Court having cognizance of the fact stated in the plea, there is no necessity for a verifying affidavit.

BURTON, J.—Do you mean that the Court is bound to take notice of the fact of how many grand jurors come into court, when the foreman hands in the bill, so as to know whether there are a sufficient number present or not?

Holmes.—There ought to be twelve jurors present, and the Court are bound to take judicial knowledge of the fact.

BURTON, J.—I can only say, for my own part, that I don't know how many there were in the box at the time; it may be inadvertence on my part, but I am totally unaware of the circumstances.

Holmes.—With respect to petit juries, the Court are bound to take cognizance whether they are all in the box or not, when the foreman hands in the verdict to the Court.

BURTON, J.—In that case the judge always takes a note of the fact.

O'Hagan.—Even if a positive affidavit is required, it is not now too late to make it. *Onslow v. Smith* (2 Bos. & Pull. 386.)

Napier, in reply, cited *Foster, C. L.* p. 16; 2 Hale's P.C. lib. 2, c. 34, 87; 1 Stark. Cr. Pl. 312; Bacon's Ab. tit. Abatement, letter O; Com. Dig. Abatement, I, 11, plac. 6; 2 Saunders, 210, d, in notes. The Court should not set a precedent of allowing such a plea to remain on the file. They don't pretend at the other side to say that this affidavit complies with the statute. In *Pearce v. Davy* (1 Ld. Ken. 367) it is said by Denison, J., that the affidavit to verify a plea of this kind "must be positive; and so that, if false, the party may be indicted for perjury; and saying he believes won't do, for the plaintiff must rely entirely on what is sworn." Here they contend that the casual notice of a judge is to supply the place of an affidavit. But it is not because one judge may have looked up and seen the bill handed down that that knowledge is to supply the want of an affidavit. Ought the Crown, as is said, to have demurred to this plea, and leave such a precedent on the file? It is our duty to prevent public time being wasted. *Davison v. Chilmann* (1 Bing. N.C. 297), and *Odell v. Raymond* (2 Fox & S. 217) are in point. In the latter case, the Court said, "It must be made appear to the Court that such pleas are true in substance and matter of fact."

BURTON, J.—The affidavit in this case is not sufficient. A very important question has been raised, whether the statute of 6 Anne, cap. 10, is to be acted on in criminal cases? It is a very important question, and if the Court entertained any doubt upon the subject, we should certainly take time to consider it; but we do not think it necessary to do so, because it strikes us as being now too late to raise this question, which has already received the consideration of Courts in several instances, and we are of opinion that this statute does extend to criminal as well as civil cases. The next question raised is, whether the facts which have been put forward by the defendant amount to a dilatory plea? Certainly the plea is a dilatory plea, and the facts it discloses have no application whatever to the merits of the case. I do not think the plea shews any ground upon which the trial ought to be postponed. According to my judgment, if ever there was a case in which the positive assertion of a fact was necessary, and where that positive assertion was avoided and not made, it is the present case. The only thing, then, to consider is, whether there are sufficient grounds to induce the Court to believe that there has been some fatality which has prevented the traverser from making a fuller affidavit. [His lordship read the affidavit.] Nothing of that kind is suggested in the affidavit. No such thing is suggested as that a sufficient number of jurors did not concur in finding the bill. The defect relied on is only a defect in a matter of form. The traverser states in his plea that a sufficient number of jurors did not come into the box when the bill was presented, and in his affidavit he says he believes the plea to be true in substance and in effect. It is said that he was not present in court when the bill was handed down; that in this case he appeared and pleaded by attorney; but then, there is a person who ought to have been present—his attorney—who should have been present to see that not merely matters of substance but of form also were correctly done. Some person, at all events, might be expected to be present who could speak positively to the fact. On all these grounds, I am of opinion that this plea ought to be set aside and quashed.

CRAMPTON, J.—My opinion concurs with that of my brother Burton. This is the case of a dilatory plea, certainly not a case to be favoured by the Court; but, on the other hand, the Court will not take any right from the defendant, or deprive him of any privilege except as far as the statute has not been complied with. Now the question is, whether the statute of the 6th Anne, c. 20, s. 11, applies to criminal as well as civil cases? If the thing were *res integra*, it might be argued that it only applied to civil cases; but the statute has been passed a great number of

years: and it has frequently since received the construction of *Crowe*. It was considered in Lord Mansfield's time to apply to cases of misdirection. In the case of *R. v. Gough* 1 Bur. 517 it was so held. In all cases of this kind, with very few exceptions, and in all the books of practice, it has been held to apply to criminal cases, though in some cases the Crown does not choose to avail itself of the provisions of the statute. But there is the case which occurred in the year 1794 *Rex v. Smeaton*, 2 St. Tr. 267, which is opposed to the practice of the Court of Queen's Bench, both in England and Ireland, since that time; and are we to follow that case now? In *Kinloch's case* First C. L. 15 the parties were allowed to withdraw their plea of the general issue, to enable the parties to plead to the jurisdiction of the Court, the Attorney-General consenting—frankly consenting, but was consenting, at the suggestion of the Court. Now, whether the case of *Rex v. Smeaton* arose out of this case or not I cannot say, but the plea in that case was one which the prisoner could not be expected to have verified positively. By the 7th sect. of the statute it is provided, "that nothing in this Act before contained shall extend to cases of felony, murder, or to any indictment." &c. But it has been observed by Lord Mansfield 1 Bur. 517, *R. v. Gough*, that the 7th sect. of the statute 4 & 5 Anne, c. 16, which is precisely similar to the Irish Act 6 Anne c. 11, does not extend to the 11th section, which requires a verification of the plea, and in the last case of the kind which was before this Court, the traverser's plea was verified by affidavit. In that case *Reg. v. Duffy and others*, a verification was considered necessary under these circumstances. I agree with my brother Barton, that it is now too late to raise any doubts or difficulties upon this question, and am of opinion that there ought to be a verifying affidavit to sustain a plea of this kind; and the question then is, is that a proper verifying affidavit, or not? Now the statute is very precise; the words of the eleventh section are: "That no dilatory plea shall be received in any court of record, unless the party offering such plea do by affidavit prove the truth thereof, or show some probable matter to the Court to induce them to believe that the fact of such dilatory plea is true." Such an affidavit as was made in the case of *Reg. v. Duffy* was quite a proper one. Now the party putting in a plea of this kind is bound either to make an affidavit showing the truth of the fact averred in his plea, or to show some "probable matter" to the Court to induce the Court to believe that it is true. The Court is not to make a rule upon its own opinion of a matter of fact, upon the opinion of one, or of all the members of the Court, upon a thing which has passed many days before; it is for other parties to show these things to the Court, and not for the Court to show them to themselves. Then there is no affidavit of the party to verify the plea in this case. I think we should be establishing a most dangerous precedent if we granted such an application as that of the traverser's counsel. We are called upon to establish a new precedent, that all that passes before the eyes of the Court is to be registered in the minds of the Court. Suppose, as has been the fact, the case of one judge seeing what passed and two others not seeing it, what is to be done in that case? Is the rule to be made in conformity with the opinion of the one judge, or the majority? Under these circumstances, I am of opinion that this plea must be set aside.

Green, A. G.—I now apply that the defendant be ordered to plead over forthwith.

Holmes.—Within what time?

Henn.—Immediately.

CRAMPTON, J.—Of course, the defendant must plead immediately; it is just as if the plea had been refused the moment it was offered.

THE LEGISLATOR.

SUMMARY.

LORD BROUGHAM'S Bill for enforcing the use of short forms in Conveyancing is the only work of the Legislature interesting to the Profession. As this has been commented upon in a leading article, we make no further allusion to it here.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, March 27.
Administration of Criminal Justice.

Wednesday, April 1.
Insolvent Debtors, India.

Thursday, April 2.
Highways—"to amend the Laws relating to Highways"
Polling Places, Ireland—"to amend an Act of 2 & 3 Wm. 4."

(c) Vis.: That one of the grand jury who found the bill was an alien, and not a natural-born subject.

(b) Same case as *Reg. v. O'Connell and others* (3 Law T.)

by providing additional booths or polling places at Elections in Ireland where the number of Electors, whose names shall begin with the same letter of the alphabet, shall exceed a certain number."

BILLS READ A SECOND TIME.

Friday, March 27.
Corn Importation.

Act Union.

Monday, March 29.
Wednesday, April 1.
R. Hwy. Ac. Deposits
Administration of Criminal Justice.

Thursday, April 2.
Corners, Ireland.

BILLS READ A THIRD TIME AND PASSED.

Friday, March 27.
Burgis, Scotland.

Monday, March 29.
Indemnity.

ROYAL ASSENT.

Thursday, April 2.
Mr. Speaker reported the Royal Assent to the following Bills:—Mutiny—Marine Mutiny—Out-Prisoners Services, Children and Greenwich—Out-Prisoners Payment, Greenwich and Chelsea—Downpatrick Gas—Radcliffe and Pilkington Gas—Aylesbury Small Townments.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, March 27.
Stockport Improvement
North Bedford, Norwich Branch
Cameroon's Coalbrook Steam Canal, and Swanton and Lough-
ter Railway
Birmingham, Lancashire, and Cheshire Junction Railway
Hill and Lincoln Direct Railway
Bedfordwater and Tamworth Canal, Railway, and Harbour
Chard Canal Railway
Newport and Pwllheli Waterworks
Bristol Waterworks and Sewerage.

Monday, March 29.

San College Estate
Worcester Gas
Stafford, Burton, Leek, Potteries, and Crewe Railway
Inverness and Elgin Junction
Dunblane, Doune, and Callander Railway
Halesworth and Norwich.

Wednesday, April 1.

Loughborough, Dales, and Coalbridge Mineral Junction Rail-
way
Scottish Southern Railway
Manchester, Bolton, and Bury Canal Navigation and Rail-
way
Leeds and Thirsk Railway, North Eastern Extension
Survey Grand Junction
Newport, Aberporth, and Hereford Railway
Birmingham, Lichfield, and Manchester Railway
Vale of Meath Railway.

Thursday, April 2.

Bedfordshire Railway, Oxford and Bletchley Junction
South Staffordshire Junction Railway, with Branches, Nos.
1, 2, 3, 4
East of Fife Railway
Liverpool Paving, Sewering, and Watering
Liverpool Water.

BILLS READ A SECOND TIME.

Friday, March 27.

Bristol, Birmingham, and Midland Railways
St. Albans, Luton, and Dunstable Railway
Harrogate Waterworks
North of Norfolk Railway
East Dereham and Norwich Railway
Gloucester, Paisley, and Johnston Canal Sals
Warrington Waterworks
Bristol and Birmingham Railway, Gloucester and Stonehouse
Junction
Buckinghamshire Railway, Tring to Banbury
Birmingham, Wolverhampton, and Dudley Railway
Midland Railway, Erewash Valley Branches
Erewash Valley Extension
Reading, Guildford, and Baginbato Railway
Worcester and Perthdynall Railway
West London Railway Improvement and Extension.
Gloucester Union Arches
St. Austell Small Debts
London and Birmingham Railway Extension
Bristol and Gloucester, and Birmingham and Gloucester
Railways.

Monday, March 29.

Northumberland and Lancashire Junction Railway
Glasgow, Airdrie, and Monklands Junction Railway
Edinburgh and Bathgate Railway
Hartley Bridge and Calder Railway
Leeds and Thirsk Railway, Knaresborough Extension
Perth and Inverness Railway
Aberdeen, Banff, and Elgin Railway
Hamilton New Gas
Helenburgh Harbour
Helenburgh Extension and Police
Shrewsbury and Herefordshire Railway.

Wednesday, April 1.

Freston and Wyse Harbour and Dock, New Dock and
Railway
Ditto, Longridge Junction.
Bridgewater and Taunton Canal, Railway, and Harbour
Chard Canal Railway
South Leith Church
Kilnawack and Ayr Direct Railway
Boston, Stamford, and Birmingham Railway, Stamford to
Wimborch
North Wales Railway
Heronslane Dock
Darwen Waterworks
Charley Waterworks.

Thursday, April 2.

Plymouth Great Western Docks
Kinross Junction Railway, No. 1.
Blackburn, Darwen, and Bolton Railway
Huddersfield & Sheffield Junction Railway, Darfield Branch
Blackburn, Clitheroe, and North Western Junction Railway

BILLS READ A THIRD TIME AND PASSED.

Monday, March 29.

Brighton and Chichester Railway, Caldy Branch
Seath-Eastern Railway, Teasbridge Wells to Hastings and
Rye

Brighton, Lewes, and Hastings Railway Deviations, and
Eastbourne, Hailsham, Seaford, and Newhaven Branches.

Wednesday, April 1.

Bromsgrove Improvement and Small Townments
Sunderland Gas
Sunderland Waterworks
Monkland Canal.

Thursday, April 2.

Bury Gas
Great Western Railway
Essex Chase Road
Essex and Chester Canal.

SESSIONAL PRINTED PAPERS.

Bills—Destitute Poor, Ireland
Settlement of the Poor, 1823
Crowners, Ireland
Administration of Criminal Justice

Paper—Returns

Railway Bills Classification—Ninth Report
Woolen, Ac. Manufactures, Canada—Returns
Window Duty—Returns

Corn Laden Ships, Wheat—Returns

Van Diemen's Land—Paper

Ship Cauterage—Paper

Corn Laws, Cheltenham Petition—Report from Committee

Shipping—Returns

Public Debt—Account

Coal Whippers, Port of London—Paper

British Grenadier Ac.—Copies of Orders in Council, &c.

Incense and Distribution of Salaries, Ac. Public Offices—

Abstract of Accounts

Joshua Toulmin Smith—Papers

District Asylums—Returns.

Bills in Progress.

CHELSEA AND GREENWICH PENSIONERS.

By the Bill now before Parliament for amending the Act for rendering effective the services of the Chelsea out-pensioners, and extending it to the out-pensioners of Greenwich Hospital (which Bill, as amended, has been printed), it is proposed that the Act 6 & 7 Vict. c. 95, for the enrolment of Chelsea pensioners, shall extend to Greenwich pensioners who may have served in the Royal Marines in like manner as if they were out-pensioners of Chelsea Hospital; and that the whole number of pensioners of both hospitals to be enrolled in the United Kingdom is not to exceed 20,000 men, and that the days of inspection or exercise shall not exceed 12 in one year. In the event of any of the out-pensioners of Greenwich Hospital so enrolled volunteering their services to be kept on duty and pay for any period not exceeding six months, they shall only be employed within the United Kingdom, or along the sea-coasts thereof. The Lord Lieutenant of Ireland may call out the Irish pensioners to aid the civil power in the preservation of the public peace.

BUILDINGS ACTS.—A bill entitled an "Act to amend an Act for regulating the Construction and Use of Buildings in the Metropolis and its Neighbourhood." The Bill provides that a third official referee in addition to the two appointed under the existing law, shall be appointed by the Secretary of State; that any two of the official referees may act; that certain disqualifications for that office shall be removed, so that an official referee may heretofore be authorized by the Secretary of State to act as surveyor, architect, &c. provided he does not act as official referee, in the case of any building, &c. in which he is so employed; that special referees may be appointed by the Commissioners of Woods and Forests for such particular building or matter; that the salaries of the three referees collectively shall not exceed 2,000l. per annum; and that the sums now paid by the city of London and the counties of Middlesex, Surrey, and Kent, to the commissioners of works and buildings for the said official referees and the registrar, should heretofore be paid for that purpose into the Consolidated Fund.

ADMINISTRATION OF CRIMINAL JUSTICE.—The Bill to remove some defects in the administration of criminal justice: has been read in the House of Commons, having passed the House of Lords. It provides that in all cases where a Court is now by law empowered to award a sentence of transportation, it shall be lawful for such Court at its discretion to award such sentence for any term of years, not less than seven years, or to award such sentence of imprisonment with or without hard labour, as shall to the Court in its discretion appear just under all the circumstances. It is proposed to repeal the existing provisions under which for certain offences the party prosecuting is now required, at the Central Criminal Court, to enter into recognizances to prosecute, and to enable the party to go before the grand jury in the same manner as may be done before any other grand jury. It seems that doubts have been raised as to the proper place of trials where indictments have been removed by writs of *certiorari* from the Central Criminal Court into the Court of Queen's Bench, and in future such writs must specify the county or jurisdiction where the indictment is to be tried.

COUNTY ELECTIONS.—A Bill to limit the time of taking the poll in counties at contested elections of members to serve in parliament to one day:—“Whereas it is expedient that the time of taking the poll at contested elections of knights of the shire be limited to one day; be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that at any contested election of a knight or knights to serve in parliament for any county, or for any riding, parts, or division of a county, the poll shall be kept open during one day only (any law or statute to the contrary notwithstanding); and such poll shall commence at eight of the clock in the forenoon of the third day after the day fixed for the election of each knight or knights, and the polling shall continue during such day only, and no poll shall be kept open later than four of the clock in the afternoon. Provided always, and be it enacted, that if such third day after the day of election be Sunday, Good Friday, or Christmas-day, then the poll shall take place on the day next following such Sunday, Good Friday, or Christmas-day; and if Christmas-day fall on a Saturday, then on the Monday following. And be it enacted, that this Act shall not extend to Ireland.”

FRIENDLY SOCIETIES.—The Bill of Mr. Duncombe to amend the Act of 4 & 5 Wm. 4, relating to friendly societies, has been considerably altered in the committee. It was printed on Saturday last, with fifteen clauses, instead of three, as originally issued. It bears the names of Mr. T. Duncombe and Mr. Hawes. Purposes for which friendly societies may be formed are declared, and all existing societies, for which rules have been sanctioned, to be deemed to be within the provisions of the rected Act from the allowance of such rules. Mr. Tidd Pratt is to be paid a salary equal to the net average amount of fees received by him during the last three years, for certifying the rules of friendly societies, after deducting the necessary expenses of his office, &c. He is to be styled the Registrar of Friendly Societies in England, and the registrar hereafter to be appointed in England is to receive not more than 800*l.* a year. In case the fees are insufficient, then the remainder for salary and expenses to be paid out of the Consolidated Fund. It is declared that after the passing of this Act the barrister or advocate appointed to certify the rules of friendly societies shall be styled the Registrar of Friendly Societies in England, Ireland, and Scotland respectively. Disputes are to be referred to the registrar; and when a trustee is absent from England, bankrupt, insolvent, &c. the registrar may order the stock of a society to be transferred and dividends paid.

PROSECUTORS, WITNESSES, &c.—Presented by Lord Denman, and intitled, “A Bill for the Punishment of such as shall endeavour to deter Prosecutors, Witnesses, and Jurors from the discharge of their Duty.” Enacts, that every person who shall, in any part of the United Kingdom of Great Britain and Ireland, after the passing of this Act, by any threat, either written or spoken, or by giving or offering any bribe or benefit, or in any other manner, endeavour to deter any person from appearing as a witness, prosecutor, or juror on any occasion on which he is by law bound or required to appear, or from honestly discharging his duty as such witness, prosecutor, or juror, and every person who shall wilfully injure the person or the property, either real or personal, of any person who shall have appeared as a witness, prosecutor, or juror, by reason of his conduct as such, shall, on being duly convicted of such offence, be liable, at the discretion of the Court before which he shall be so convicted, to be transported beyond the seas for any term not exceeding fifteen years, nor less than seven, or to be imprisoned for any term not exceeding two years, with or without hard labour.

HOUSE OF LORDS.

PRACTICE OF CONVEYANCING.

FRIDAY, March 27.—Lord BROUGHAM brought in a Bill—which he should move to read a first time now, and a second time shortly after the holidays—to redeem a pledge he had given to extend the wholesome and salutary provisions of two Acts of last session, for simplifying the conveyance and sale of landed property and the granting of town leases. Those measures had operated to the comfort of those who were really interested, but to the discomfort of certain parties who practised in conveyancing. He did not, however, much care for those worthy counsel and attorneys, but rather regarded their clients, whose time and money had both been saved by the Acts in question. His present Bill extended the former provisions to all sales and exchanges, and to the forms of leases. One of the greatest evils to which landowners in this country were subjected was the expense of conveyancing, and the consequent uncertainty of title. A body of evidence had been given before the committee on burdens on land, which was quite frightful in this respect as shewing the difference between the number of years' purchase in this

and other countries, in consequence of the expense here that attended conveyancing. The expense of the conveyance of an acre was as great as that of a large estate, and his measure would give great facility to the commerce in land. There was a reluctance on the part of the profession, he had understood, to use the new forms because they were not compulsory, but he defied any one to make them so, for if a man chose to use the long form of conveyance in preference to the short one, he could not compel him to adopt the latter. But in the present Bill he had inserted a provision giving the Taxing Master power to take the matter into consideration, and not to allow the long form in costs, if it were shown that the short one was sufficient.—Lord CAMPBELL concurred in the Bill. Three years ago he had himself introduced a measure of the kind. He regretted, however, that his noble and learned friend should have expressed an opinion that the profession were hostile to it; for he felt sure that they would be ready to adopt any improvement, and when these forms were promulgated by authority, there was no doubt of their being adopted.—Lord BROUGHAM explained. He did not mean that the profession as a body objected to these forms, but only alluded to certain practitioners of both branches of the profession.—Lord BEAUMONT could not refrain from congratulating those interested in real property that this question had at last been taken up by one of the ability of his noble and learned friend. Any one who had attended to the evidence before the burdens upon land committee, must know that the transfer of property was not only impeded by the present system, but that a great deal of capital which would be otherwise invested in the cultivation of land was prevented from being employed in that way in consequence of the difficulty of raising money on mortgage, and in other transactions.

The Bill was then read a first time.

HOUSE OF COMMONS.

HIGHWAYS.

THURSDAY, April 2.—Sir J. GRAHAM rose to move for leave to bring in a Bill to amend the laws respecting highways in England. The House was aware that the sum levied for the maintenance and repair of highways in England annually amounted to 1,600,000*l.* In the Act brought in by the Speaker, a permissive power was given to parishes to unite for the purpose of conjointly maintaining highway and other paid officers. This power being permissive and not compulsory, had not been brought into general use; and the principal object of the measure which he sought to introduce was to substitute a compulsory for a permissive power. To make the new enactment perspicuous and perfect, he had thought it better to repeal all existing laws with respect to highways, and to introduce a Bill re-enacting and consolidating the whole. The first important provision was, that districts should be formed throughout England and Wales, generally speaking, co-terminous with the registration districts. He proposed to give to the enclosure commissioners, a body constituted by recent Act of Parliament, the power of forming and regulating the districts. That would reduce the number from 1,400 or 1,500 to 550. The Bill would then provide that, for each district, a surveyor should be appointed, to be a paid officer, with assistant surveyors. The power of appointing surveyors should rest with the local board in each district, the salary being fixed by them, and the choice of the officer subject to the veto of the commissioners; the power of dismissing officers should be with the enclosure commissioners, and concurrently with this power of dismissal should be the power of dismissal on the part of the board. With respect to the election of the board, he proposed that it should be elected for two years by all rate-payers in each parish and township maintaining its own roads. Each parish or township was to be represented at the district board by one or more way-wardens as the enclosure commissioners should determine. No hamlet, having less than four miles of road, had the right of choosing way-wardens. He proposed that there should be two paid officers in each district; one the surveyor, the other the clerk of the board. He proposed that there should be a general annual meeting, in which the accounts for the whole year should be made up, and the estimates of repairs for the ensuing year should be brought under their consideration by the paid surveyor of the district. He proposed that the accounts of the district should be annually audited, and he would suggest, inasmuch as it accorded with the plans of his right hon. friend, that the poor-law auditors should audit annually the highway accounts. These accounts, so audited, should be transmitted annually to the enclosure commissioners, and they should report annually to the Secretary of State, and each report, together with the abstract of accounts, should be laid annually before the two Houses of Parliament. He gave also the power, by the unanimous consent of the way-wardens forming the district board, to convert the charge of the highway district into a union charge instead of a parochial or township charge, with the consent of the parochial commissioners. He proposed that three rates should be made

in the district, one district rate for the joint expenses, salary of the surveyor, salary of the clerk, and the general expenses of the board, the proportion for the district to be submitted to the enclosure commissioners in London, and receive their sanction. If the district should come to the resolution to make the charge a union charge, then only one rate would be necessary; but if they should not be so disposed, then there must be two rates levied, one district rate for the district charges; and, as at present, a parochial or township rate for the maintenance of the roads. He proposed to retain the present maximum rate of ten pence a rate; and that there should be no more than three rates in the course of the year, thus making the maximum highway rate per year 2*s.* 6*d.* in the pound. He proposed also that the rate should be collected by the collector of the poor rate; and with respect to the remedy in case of non-payment, and also in appeals, that it should be identical with that which at present regulated the collection of the poor rate. He proposed further that power should be given to borrow money for effecting improvement of the highways with the consent of the enclosure commissioners, providing that the principal and interest should be paid within 20 years. And with the view of enabling the commissioners to form a judgment before any outlay of such borrowed money was made, he would give them the power to send down an inspector to make a survey and report upon the condition of the highways, and the expediency of effecting the projected improvements. He reserved all the existing liabilities to repair, and also retained all the principal provisions which were so recently sanctioned by Parliament. With reference to South Wales, he should state that there were particular provisions in the Acts regulating the turnpikes in that part of the principality which would appear to interfere with the extension of this bill to the highways there; therefore, he should suggest that South Wales should be exempted from the operation of this amended Highway Act. The right hon. baronet concluded by moving for leave to bring in his bill.

THE MAGISTRATE.

Summary.

The usual summary of cases in the last term is completed below.

A reference to our report of such portion of the parliamentary debates as affects or interests our readers, will afford an outline of the Bill brought in by Sir JAMES GRAHAM, and read a first time on Thursday, to repeal all existing laws with respect to highways, and to reconstruct and consolidate the whole. We reserve comment on this important measure until the Bill shall have been printed, and a full opportunity thus afforded of canvassing the merits of its proposed enactments.

THE NEW POOR REMOVAL BILL.

ANOTHER, and still another, we involuntarily exclaimed, when we took up this; and, as we suppose, —since three weeks only have passed—the latest attempt at patching that system of settlements and removals which, stamped as it is in every part with proofs of legislative carelessness and incompetency, is yet, by dint of much litigation, tolerably well understood. As we hastily glanced over the sections, we naturally felt somewhat pleased that the very absurd dictator-barrister scheme (see 6 Law T. 43, 67) had been nipped in the bud. But our next question was,—Is there any necessity for the present Bill? As it is more than probable that a few years will see the abolition of all removals, would it not be far better to add a few clauses which embody positive amendments, such as section 22, abolishing the right to go to the sessions for costs, than do away with an existing system, and substitute, as the present Bill proposes to do, a system just sufficiently resembling it, to render the old decisions analogous, and yet sufficiently different to open the flood-gates of doubt and difficulty, and give new vigour to parochial litigation? For instance, 4 & 5 Wm. 4, c. 76, s. 79, as to sending a copy of examination, will no longer be in operation; but ss. 14 and 16 require a copy “of the grounds upon which the warrant was made.” Why this difference?

This is our general view as to the expediency of the alterations in the practice. The enactments as to non-removability stand upon a different footing altogether. We shall discuss them hereafter; but we first propose to consider the alterations in practice.

The Bill opens with repealing “so much of the following Acts, and of all Acts to amend or continue

the same, as relates to the removal of poor persons settled in England." It then specifies the titles of 17 statutes, beginning with 13 & 14 Car. 2, and ending with 4 & 5 Wm. 4, c. 79; but in the margin are given the sections supposed to be repealed, which may be considered the framer's commentary upon the words "so much as relates to," &c. At the very threshold of this Bill we may say that there is great obscurity. It is easy to say "so much as relates to," but not so easy to sift relevant from irrelevant words. That this is no imaginary difficulty will at once be seen, when we observe that we differ entirely from the view taken by a writer in the columns of a learned cotemporary, *The Justice of the Peace*. (See Nos. for March 21 and 28.) He there assumes that the Act repeals the whole of every section specified in the margin, just as if each had been numerically mentioned in the body; and hence argues "that settlement by apprenticeship; by rental of a tenement, under the 13 & 14 Car. 2, c. 12, s. 1; and 9 & 10 Wm. 3, c. 11; by payment of rates; and by acknowledgment by certificate," will thereby be abolished; and that the settlement by estate will be restored to what it was prior to 9 Geo. 1, c. 7, s. 5; "so that a person may gain a settlement by any estate purchased under, at, or over 30l." Now, if this were the effect of the statute, it would be a paltry subterfuge, almost amounting to a fraud, to foist off a Bill for abolishing certain settlements and suspending others, as a Bill to amend the law of removal of persons settled. But we do not thus charge Sir James Graham, for we know of no principle or authority upon which those marginal notes can have the effect given to them by our learned cotemporary. We shall not go through each statute to ascertain whether there is or is not any thing "relating to the removal of poor persons," but merely observe that, besides the absence of authority, or principle upon which the marginal notes could be called part of the statute, the addition of the words "settled in England," clearly shews that the effect as well as the aim of the statute is to leave all existing settlements untouched, and to add no new ones, although the operation of the existing ones may be suspended, or destroyed by the non-removability clauses. Then to take one or two instances only, it is clear the repealing clause can operate without repealing the sections specified in the margin, and probably it is so in every case. Thus 3 W. & M. c. 11, s. 3—10 inclusive are in the margin, and hence it is said settlement by payment of rates is abolished, because it owes its origin to the 6th section. But is that section repealed by the words "relating to the removal of poor persons?" They can operate, if not upon the section continuing the 13 & 14 Car. 2, certainly upon s. 9, which gives an appeal in the cases of the settlements created by that Act, and for which the 25th section is substituted in the new Bill. So, again, sec. 7 is mentioned in the margin, although the settlement by hiring and service thereby created was destroyed by 4 & 5 Wm. 4, c. 76, s. 64, which expressly enacted "that no settlement should thereafter be gained by hiring and service, or by residence under the service, or by serving an office." We are ready to admit that the far more simple method would be to specify in the body of the Act what sections or parts of sections are to be repealed, and that also that the difficulty of clearly harmonising these half mutilated Acts with the present, and, above all, with the Poor-Law Amendment, which is incorporated with this by sec. 37, will be great. Still, we cannot see that this Bill either intends, or, what is much more to the purpose, that it effects the destruction of any existing settlement. That a different view has been already taken, renders it quite certain that, if the Bill passes as it stands, there will be many litigated questions upon this single section alone. This, therefore, must be remedied by a declaratory clause that nothing herein contained shall alter or destroy any of the existing settlements, or any of the modes of acquiring a settlement. Having thus explained what we believe is the effect of the first section, we shall hereafter proceed to set forth both the alterations that are made in the practice of removals, and the defects which may be apparent in the different clauses.

(To be continued.)

REVIEW OF MAGISTRATES' CASES.

(Continued from page 352.)

We omitted last week the case of *Reg. v. Great Western Railway*, being desirous of giving it a separate notice, commensurate with the importance of

the questions there litigated and decided. We have been prevented from doing this at the length we intended, but rather than delay, for a further period, we shall now give a brief view of the points involved in it, referring our readers to the elaborate report of it (*supra*, p. 316), for the full statement of the facts, and the mode in which the sessions arrived at the several amounts.

The Great Western Railway Company being the sole occupiers and owners of a trunk line, and the sole occupiers and lessees of two branch lines, carried on a large trade upon all three lines. The branch lines were worked at a loss, because thereby the main line was benefited. The different stations and buildings on all were rated separately.

The main line passed through the parish of Tilehurst, and was rated in that parish in an amount ascertained by taking the gross receipts of each mile in that parish, and deducting therefrom various expenses, including maintenance of way, rates and taxes, other than the property tax, and the annual depreciation of the plant or moveable stock, together with interest on the plant and tenant's profits. Against that rate the Company appealed, and upon that appeal they claimed the following, in addition to the above deductions. 1st. The depression and wear and tear of rails, sleepers, &c. (not including the above item for maintenance of way). 2nd. The buildings, stations, &c. rated or rateable, separately from the railway. 3rd. A per centage on the outlay in forming the Company, obtaining the Act, and other original expenses. 4th. Income tax. 5th. Additional parochial assessments, not actually paid, but which would be payable in consequence of the recent decisions of this Court on the rating of railways. 6th. The annual total loss on the two branch lines. It was held, on a case reserved, that the 1st and 4th deductions were proper, the 3rd, 5th, and 6th were improper, and that the second deduction, though correct in principle, could not be made in this case because no annual fund had in fact been appropriated for the purpose. From the time that this case has remained under the consideration of the Court, even after the deliberation which preceded their judgments in the *South Western Railway* (1 Q. B.) and the *Grand Junction Railway* (4 Q. B.), the principles of these cases may be regarded as finally established. The main point in all is, that while the profits first of trade, gain, or profits are not rateable, yet that to ascertain the value of the occupation, the only proper subject of the rate, all must be included that forms part of it at the time, whether permanently or not; and, further, that in fixing the sum which it would, after due deduction, be supposed a tenant would give, all concomitant circumstances are to be considered, or, to use the words in the *Grand Junction* case, not merely what a lease would give the tenant a legal title to, but all that which it would give him the means of doing or enjoying. It followed from this, that land upon which a railway is, must be rated according to its actual value in the rating parish, although such value arises in a great measure from station-houses and other works not within the parish.

In considering the deductions to be made in any case, the question is, whether they arise upon the ordinary occupation, exclusively of trade; or, if referable to trade, whether they are referable to trade only, and do not enhance the value of the occupation. In either of these cases the deductions are to be made. The amount is to be settled by the sessions. Going back, then, to the proposed deductions in this case, it will be seen that two were contested, which previously had been conceded. 1. The depreciation and wear and tear of rails and sleepers (being the solid timber and iron work of the lines) over and above the annual repairs, or maintenance of way, which are directly distinguishable from each other.

The deduction itself was objected to; first, because there was no actual outlay; and next, because there was not even any fund created as a reserve for the purpose, which might be equivalent to an outlay. The Court decided that the deduction was right in principle, as being quite as certain an increase of expenditure as actual repairs; but that the second ground of objection was fatal, and that, in order to establish such a claim, the company must set apart an actual sum for the purpose.

The same analogy which decided its correctness in principle decided its incorrectness in this instance. For if repairs, however much needed, be not made, no deduction in respect thereof can be allowed.

The other contested deduction was in respect of

the rateable value of the buildings appurtenant to the main and branch lines, and separately rated in their respective parishes. This point was not discussed in the *Grand Junction* case, but the Court now decided that the appellants were entitled to the deduction, and as the respondents properly treated the whole line, and the whole profits, and the whole outgoings as entire, it was indifferent whether the stations so rated were in the same parish or elsewhere. The income-tax was also allowed as a deduction, because it would affect the amount of rent a tenant would be willing to pay.

The other deductions claimed were not supportable upon any principle hitherto recognised, although something could be urged in favour of the sixth. The third was in respect of interest upon the expenses incurred in obtaining the line. This is absent, as much connected with the existing rateable value as the expense of litigating the title to land bought fifty or a hundred years ago. The fifth claim was in respect of such parochial assessments as should become payable in consequence of recent decisions. This was very summarily disposed of in the judgment, and we apprehend the principle that rating always proceeds upon the facts as they are found, is decisive upon it, for no information whatever was given as to when or how these payments were to be made, or even what they were.

The sixth claim was, in respect of the loss upon the branch lines. This was disposed of also upon an old principle, viz. that the terms "beneficial" and "profitable" are not convertible terms.

The Court further declared that in ascertaining the deduction for tenant's profits, the per centage should be calculated, not upon the original value of the plant and stock, but upon the existing value, however depreciated. But they declined to answer a question put by the sessions as to the mode of ascertaining the tenant's profits, whether as claimed by the respondents, the original value of the plant should be taken, and ten per cent. thereon taken, or as the appellants said, a per centage (fifteen per cent. in this case) upon the gross receipts. This they considered was solely a question for the sessions, and not a question of law. E. W.

THE PRACTICE OF SUMMARY CONVICTIONS.

By T. W. SAUNDERS, Esq. Barrister-at-Law.

(Continued from page 507.)

PART III.—CHAPTER II.

The formal conviction and order—continued.

BEARING in mind the distinctions pointed out in the last chapter as existing between convictions and orders, it will be convenient to consider these documents in future as identical, and without, therefore, distinguishing the rules hereafter to be laid down as applicable peculiarly to the one species of instrument or the other, to assume that they apply equally to each, subject to the exceptions which have before been mentioned.

The general form of conviction.—In modern Acts of Parliament, which confer on magistrates a power to hear and determine summarily, a form of conviction is usually inserted for their guidance. To provide, however, a safe and convenient precedent for adoption in cases in which no particular form is given, the Legislature has supplied a form, which may be filled up and used as circumstances may warrant. The statute referred to is the 3^d Geo. 4, c. 23, entitled "An Act to facilitate summary proceedings before justices of the peace and others," and commences as follows:—

"Whereas great inconveniences often arise in summary proceedings before justices of the peace, deputy-lieutenants, and others, from the want of a general form of conviction: Be it therefore enacted, that from and after the passing of this Act, in all cases where a conviction shall have taken place, and in any particular form for the record thereof hath been directed, the justice or justices, deputy-lieutenant or deputy-lieutenants, or other person or persons duly authorized to proceed summarily therein, and before whom the offender or offenders shall have been convicted, shall and may cause the record of such conviction to be drawn up in the manner and form following, or in any words to the same effect, suitable thereto (that is to say):—"

"County (or as the case may be) of } Be it remembered, That on the } day of } in the year } of our Lord } at } in the county of } A B, of } the county of } labourer (or as the case may be), personally came before me (or, before us, &c.) C D, one (or more as the case may be) of her Majesty's

justices of the peace for the said , and informed me (or, us, &c.) that E F, of , in the county of , on the day of , at , in the said , did (here set forth the fact for which the information is laid), contrary to the form of the statute in such case made and provided; whereupon the said E F, after being duly summoned to answer the said charge, appeared before me (or, us, &c.) on the day of , at , in the said , and having heard the charge contained in the said information, declared he was not guilty of the said offence; (or as the case may happen to be) did not appear before me (or, us, &c.) pursuant to the said summons, (or, did neglect and refuse to make any defence against the said charge); whereupon I (or, we, &c. or, nevertheless I, or, we, &c.) the said justice (or, justices) did proceed to examine into the truth of the charge contained in the said information; and on the day of aforesaid, at the parish of aforesaid, one credible witness, to wit, A W, of , in the county of , upon his oath deposeth and saith (if E F be present, say, in the presence of the said E F) that within months (or as the case may be) next before the said information was made before me (or, us, &c.) the said justice by the said A B, to wit, on the day of , in the year , the said E F, at , in the said county of , (here state the evidence, and as nearly as possible in the words used by the witness; and if more than one witness be examined, state the evidence given by each); (or, if the defendant confess, instead of stating the evidence, say) and the said E F acknowledged and voluntarily confessed the same to be true; therefore, it manifestly appearing to me (or, us, &c.) that he the said E F is guilty of the offence charged upon him in the said information, I (or, we, &c.) do hereby convict him of the offence aforesaid, and do declare and adjudge that he the said E F hath forfeited the sum of of lawful money of Great Britain for the offence aforesaid, to be distributed (or, paid, or as the case may be) according to the form of the statute in that case made and provided. Given under my hand (or, our hands, &c.) and seal, the day of , in the year of our Lord "

The second section enacts—

"That in all cases where two or more justices, deputy-lieutenants, or others, are authorized and required to hear and determine any complaint, one justice, deputy-lieutenant, or such other person, shall be competent to receive the original information or complaint, and to issue the summons or warrant requiring the parties to appear before two or more justices of the peace, deputy-lieutenants, or others, as the case may require; and after examination upon oath into the merits of the said complaint, and the adjudication thereupon by any such two justices, deputy-lieutenants, or other persons being made, all and every the subsequent proceedings to enforce obedience thereto or otherwise, whether respecting the penalty, fine, imprisonment, costs, or other matter or thing now enacted or to be hereafter enacted, may be enforced by either of the said justices, deputy-lieutenants, or other persons, or any other justices of the peace or deputy-lieutenant for the same county, riding, or place, in such and the like manner as if done by the same two justices, deputy-lieutenants, or other persons who so heard and adjudged the said complaint; and where the original complaint or information shall be made to any justice or justices of the peace, deputy-lieutenant or deputy-lieutenants, or other person or persons, different from him or them before whom the same shall be heard and determined, the form of conviction shall be made conformable and according to the fact."

The third section enacts—

"That in all cases where it appears by the conviction that the defendant has appeared and pleaded, and the merits have been tried, and that the defendant has not appealed against the said conviction, where an appeal is allowed, or if appealed against the conviction has been affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case."

When the statute empowering the justices to convict says that "the conviction shall be in the form following," or uses other words, shewing that the form prescribed is not to be departed from, such form only can be used, unless, indeed, the

words "to the like effect" be added. (*R. v. Jeffries*, 4 T. R. 769; *R. v. Priest*, 6 T. R. 538.) In which case also care must be taken that the conviction is precisely according to the intent and meaning of the Act. (*Griffiths v. Harries*, 2 M. & W. 335.) (s) Where, in any given case, the form of conviction prescribed by the statute cannot literally be followed so as to show the real facts and circumstances, it should be departed from so as to be made to apply with greater perspicuity. (*R. v. Hasell*, 13 East, 139; *R. v. Ridgway*, 5 B. & Ald. 527.)

The several parts of a conviction.—Venue.—Information.—The statement of the venue in the margin indicates only the place at which the conviction was made, and not where the offence was committed, so that it in no way supplies the want of the allegation of place in the body of the conviction. (*R. v. Austin*, 8 Mod. 309.)

The conviction then recites the information or charge, and this usually in the past tense; and where the information has previously been taken in writing, it should be followed as nearly as possible, otherwise it may be stated shortly, according to the facts. The legal requisites of an information have before been fully described, and it will, therefore, be unnecessary here to repeat them.

The summons; appearance or non-appearance of defendant.—The conviction should set out that the defendant was summoned to answer the charge, except in those few cases in which justices have jurisdiction to convict on view of the offence, (which, when they arise, must be specially referred to); but when the defendant appears, by the conviction, to have been present during the proceedings, and to have heard all the witnesses, and not to have asked for time for his defence, the statement of the summons may be dispensed with. *R. v. Stone* (1 East, 649.) It is sufficient, under the 3 Geo. 4, c. 23, s. 1, as before observed, to state generally that the defendant was duly summoned; and this form of statement is now sufficient in all cases except where a different mode of statement is not prescribed. *R. v. Stone* (1 East, 639); *R. v. Hall* (6 Dow. & Ry. 84); *Mason v. Barker* (1 Car. & Ker. 107, n.) The statement of the summons is not, however, conclusive upon the defendant, and he may, in an action against the convicting justice, shew that he never was, in fact, summoned to answer the charge. *Mason v. Barker*, *supra*.

The statement of the appearance or non-appearance is prescribed by the form of conviction given in the 3 Geo. 4, c. 23, s. 1. Unless where it is rendered necessary by the terms of the Act, the defendant need not appear in person, but may appear by counsel or attorney, 6 & 7 Wm. 4, c. 114, s. 2. Where, however, he thus appears, the fact should be so stated. Where the information is taken by one justice, and the conviction takes place before another, or others, as it may do under the provisions of the second section of the 3 Geo. 4, c. 23, care should be taken that the statement in the conviction is in accordance with the facts.

Confession of defendant.—If the defendant appear and confess the charge, the conviction should be made conformable to the fact, and then, instead of stating the evidence, which in such case is unnecessary, it should proceed at once to the statement of the conviction itself, and the adjudication. This, however, is to be understood only as applicable to cases where the entire charge is admitted; for if the confession merely goes to a particular fact, which is but a single ingredient out of several of which the offence is made up, the conviction, after stating the confession in the terms of the defendant, should proceed to state the evidence as to the other facts constituting the offence. (*R. v. Gage*, 1 Stra. 546; *R. v. Hall*, 1 T. B. 320; *R. v. Little*, 1 Burr. 613.) The statement of a confession is provided for by the form given in the 3 Geo. 4, c. 23. The confession cures any defect in the manner of the taking of the evidence. (*R. v. Hall*, *supra*.)

The statement of the evidence.—As a general rule, the whole of the evidence adduced in support of the charge should be stated in a clear and perspicuous manner, and as nearly in the words of the witnesses as possible. In *Rex v. Warnford* (5 D. & Ry. 489), which was an application for a mandamus to justices to amend a record of a conviction on the Game Laws, by setting out the evidence on which it was founded as nearly as possible in the words used by each witness, it being suggested that, as the record stood, it made the witnesses swear in the technical language of the statute, and not in the words actually used by them, Abbott, C. J., said,

"All that is required of them is, to set out the evidence as nearly as possible in the words used by the witnesses; that is, the substance and effect, but not every word. Here it is suggested that the witnesses are made to speak in the language of an Act of Parliament. No illiterate witness, nor, indeed, any witness, would say that the defendant 'did use a certain engine called a gun, and a certain dog called a pointer, to kill and destroy the game.' The conviction must set out the language used by the witness, in order that it may be seen whether a right conclusion is drawn from it." The rule was made absolute. So, too, it is the duty of the justices to set out all the material evidence adduced on the behalf of the defendant; and in the case of *Rex v. Ris* (4 D. & Ry. 332), which was a similar application to that in *R. v. Warnford*, Abbott, C. J., observed, "I am clearly of opinion that the direction in the statute (3 Geo. 4, c. 23) embraces the evidence both in support of the information and for the defendant. The justices are not bound to set out all the irrelevant matter which may happen to be given in evidence before them; they are to state the evidence, as nearly as possible in the words used by the witnesses, but this must be understood to mean such evidence as is relevant to the charge contained in the information. The justices must use their discretion in this matter, but it is quite clear that it is their duty to attend to the general directions contained in the statute. * * * There was a similar application to this made last Easter Term, in the case of a game conviction, and we were of opinion on that occasion that it was the duty of the magistrates to set out the evidence on both sides, where it was relevant to the matter in issue."

Must be on oath in the defendant's presence.—The name of each witness should be mentioned, and it should be stated that he was examined upon oath; nor is this allegation dispensed with by the insertion of the words "having duly examined into the allegations and the proofs." *Re Jones* (1 New Sess. Ca. 3); *Re Tordoff* (1 Ib. 171, 1 New Mag. Ca. 17 s.c.); *Reg. v. Wroth* (1 New Sess. Ca. 494); and this whether the statute expressly requires such statement to be made or not. *Reg. v. Lewis* (13 L. J. M. C. 46); *Re Gray* (1 New Sess. Ca. 354, 1 New Mag. Ca. 116 s.c.); in which latter case Mr. Justice Patteson said, "Then what am I to understand by the words 'duly examined' into the allegations and proofs? Does that mean that the witnesses were examined on oath? Certainly that is not proved by the term 'allegations,' and I do not think that I can assume that 'proof' must mean legal proof given upon oath. The conviction, therefore, is bad, because it does not appear on the face of it that the witnesses were examined on oath." According to *Reg. v. The Justices of Buckinghamshire*, (14 L. J. M. C. 45, 1 New Mag. Ca. 192), where the witness makes an affirmation, the statement in the conviction should be conformable with the fact.

The evidence should be stated to have been given in the defendant's presence, to the end that he may be shewn to have had an opportunity of cross-examining, (unless the conviction shew that the defendant did not appear). (*Reg. v. Tordoff*, 5 Q. B. 933, 1 New Sess. Ca. 171; 1 New Mag. Ca. 17 S.C.; *Rex v. Vipont*, 2 Barr. 1163; *R. v. Crowther*, 1 T. R. 125.)

Evidence should be set forth at length.—It is a general rule that in a conviction the evidence should be set out, that the Court may judge whether the justices have done right, *Rex v. Killett* (4 Burr. 2062), and this though the defendant may have neglected or refused to have attended, *R. v. Read* (Doug. 469); and the form given in the 3 Geo. 4, c. 23, requires this to be done in cases within that Act. Some modern Acts of Parliament which prescribe a form of conviction, as the Game Act, 1 & 2 Wm. 4, c. 32, s. 39, omit all statement as to evidence: in such cases it is of course sufficient to follow the form given. But, although it is the duty of the justices to set out the whole of the evidence which is relevant, both on the part of the complainant and the defendant, their decision will not be questioned if there be any evidence, however small, to justify their decision. Upon this point, Lord Kenyon observed, in *Rex v. Davis* (6 T. R. 177), "With regard to the other objection (viz. that the evidence was not sufficient to support the conviction), here was evidence tending to prove the offence. That being the case, we have no authority to examine further and see whether the conclusion drawn by the magistrate be or be not the inevitable

(s) Although, as a general proposition, it is sufficient to follow the form of conviction given to the statute, yet there are cases in which it is not; as, where the facts do not shew some of the ingredients necessary to make up the offence. (*Fletcher v. Callthorpe*, 1 New Sess. Ca. 542, where all the cases are collected.) And in a later case, *Reg. v. Johnson* (2 New Sess. Ca. 174), Lord Denman observed, "It might be supposed, that when a statute gives a form of conviction, that form, when adopted, must necessarily be good; but the Court has found itself bound to impose some restrictions on that general proposition; for if an Act contains a description of an offence, and of the circumstances which are required to constitute it, and if the form given in the statute does not contain all the particulars which, by the provisions of the statute, go to make out the offence, it becomes impossible for the Court to say that the offence has been committed."

conclusion from the evidence. It is sufficient in convictions if there were such evidence before the magistrate as in an action would be sufficient to be left to a jury: here we cannot say that there was no evidence of the fact for the consideration of the magistrate." (*R. v. Smith*, 8 T. R. 588; *Res. v. Reason*, 6 T. R. 277; *Reg. v. Bolton*, 1 Q. B. 66; *R. v. Glossop*, 4 B. & Ald. 616.)

The information and the conviction being in their natures distinct, no statement in the former can be referred to for the purpose of supplying a deficiency in the latter. Notwithstanding, therefore, the information may have been taken upon oath, and contain a perfect description of the offence, yet if any particular necessary to make up the charge be wanting in the conviction, this instrument will be bad, and will not in any way be assisted by a reference to the information. (*R. v. Stone*, 1 East, 639; *R. v. Crisp*, 7 East, 389.) It will be unnecessary to instance the various particulars in which the evidence may be insufficient, as these will altogether depend upon the requirements of the Act of Parliament upon which the proceedings are founded. It may, however, be here observed that every ingredient which the statute points to as essential to the offence must be developed clearly by the evidence, and be made apparent upon the face of the conviction. The rules applicable to informations, which have before been considered, may equally be applied to convictions.

A warrant of commitment under an Act such as the 4 Geo. 4, c. 34, which by section 3 treats the conviction and commitment as one matter, must be construed as a conviction, whether it recites a conviction or not. (*Re Gray*, 1 New Sess. Ca. 354; 1 New Mag. Ca. 116, s. c.; *Reg. v. King*, 13 L. J., M. C. 43.) In the former of these cases Mr. Justice Patteson, in answer to the argument that the commitment must be construed as an order, merely said, "I cannot be told that because the Act of Parliament has been drawn imperfectly, that is, in general terms, this must be considered an order and not a conviction; for if magistrates are to have power under an Act of Parliament over an offence, then any instrument by which they convict parties under such Act is a conviction." So, in conformity with this position, it was held, in *Reg. v. Tordoff*, 5 Q. B. 933; 1 New Sess. Ca. 171; 1 New Mag. Ca. 17, S. C. that a warrant of commitment under that Act should show that the witnesses were examined upon oath in the presence of the defendant. (*In re Copestick*, 1 New Sess. Ca. 181.) It would seem from this that it is necessary to the validity of such an instrument that it set out the evidence, as in the case of a formal conviction, in order that the Court may see (as no other conviction in fact exists) that the defendant has been convicted upon legal and sufficient evidence; indeed, in the case of *Gray* (*supra*), Mr. Justice Patteson expressed a strong opinion that this was necessary, though a decision upon the point was not necessary for the determination of that case.

Of stating the evidence of the defendant.—It is the duty of the justices, as before has been seen, not only to state the evidence in support of the complaint, but that also, if material, produced by the defendant, particularly since if it appear from his evidence that the act was committed in the *bona fide* assertion of a claim of right, the jurisdiction of the magistrate ceases. (See *ante*, p. 40.) *Res. v. Love*, 17 T. R. 153, n.; *R. v. Rix*, 4 Dow. & Ry. 332. So, also, if the defendant could show a former conviction for the same offence.

Of stating an adjournment.—If an adjournment have taken place at the instance of either party, that fact also should be stated upon the conviction, in order that it may appear not only that the conviction is a faithful record of all that has actually taken place, but that it may be seen that the conviction has taken place within the time limited.

(To be continued.)

JUVENILE OFFENDERS.

(From the *Athenæum*.)

In discussing the subject of juvenile reformatories, reference has been repeatedly made lately to the French Institution of this description at Mettray, near Tours. It may gratify our readers, therefore, if we communicate to them a few particulars regarding this, which we have obtained from an intelligent and benevolent friend recently returned from the continent, and who devoted two days to its inspection.

The *Colonie Agricole et Pénitentiaire de Mettray*, was founded in 1826, chiefly by private subscription;

one individual, the late Count Léon d'Ourches, having bestowed on it no less a sum than 140,000 francs in his own lifetime. The King, the Royal Family, and the principal public boards and officers also contributed. Its object is to receive youth who have committed offence, but been discharged from the central prisons under a benevolent law, which in France places criminals below a certain age, not under punishment, but under what is called *discipline correctionnelle*. It is, thus, only one of many similar institutions; but it has become remarkable by certain peculiarities of construction and discipline, and by extraordinary success in attaining its object. It is calculated to receive 400 boys; who are not housed in one great building, but are distributed into ten small ones,—the inmates of these being further divided into four parties of ten each, who are trained together, and taught by every means possible to consider themselves members of a family and interested in the conduct of their companions equally with their own. It is to the "social," or it may be also called the "domestic," principle thus involved that M. Demetz, the benevolent director of the establishment, who, we believe, also originally suggested its plan, attributes his great success; but its other arrangements seem equally judicious.

The object aimed at being to give especially a rural education, a considerable extent of land is annexed to the establishment, which is entirely cultivated by the "colonists," as they are termed; and while they are thus taught husbandry practically, their minds are opened to its theories by lectures on all its principal departments. Workshops are also maintained, in which all the principal rural trades—common shoemaking and tailoring included—are taught and exemplified. Reading, writing, and arithmetic, and linear drawing are superadded; and the whole is crowned by very careful religious instruction.

The forms of discipline are, as much as possible, persuasive, not coercive. There are no walls,—no stripes; but a list of honour is kept, into which continued absence of offence for three months gives a title to admission; and cells are attached to the chapel, and thus specially within the persuasive influence of the priest, for the refractory. The whole influence of the families is further enlisted in the cause of order and punctuality. These vie with each other in having the names of their partners exhibited in the approving list; and offences is found to be more checked by being thus rendered unpopular in the community than by any form of restraint proceeding from superiors.

These are the general principles of the Institution at Mettray; but let us now mark their results. According to its last Report, now before us, 521 boys have been admitted into it since its foundation,—of whom 105 were received in the course of last year: 12, having been found incorrigible, have been returned to the central prison from which they were transferred; 17 have died,—of whom 6, strictly speaking, never joined, having been originally received into the Infirmary and never left it; 144 have been discharged to places—7 of these have been re-convicted; 9 are but indifferently conducted; but 128 are without reproach, and promising to do well.

In the interior of the establishment, the success, and, by consequence, the excellence of the management are not less manifest. During the last year, three-fifths of the inmates maintained their name on the list of honour; and the religious feelings of all appear powerfully developed. According to the rites of the Catholic Church, a greater degree of solemnity is given to the religious exercises, even of the very young, at different seasons of the year; and a considerable diminution of petty offences is always found to precede these occasions and characterise the preparation for them.

The object being to rear labourers, not scholars, only one hour per day is given to instruction purely intellectual,—but, possibly through this very circumstance, the progress made is very rapid. Of the entire number who have been received, 137 were previously able to read, and 84 to write; but in a very short time after entering, all are made to read, write, and cipher easily and readily; and in mental arithmetic especially their proficiency is even remarkable. Very many draw well; and all study music as a recreation. In church music they are especial proficient. An air of intelligence and good purpose pervades the whole establishment; with a remarkable look of trust and affection towards their benevolent chiefs, M. Demetz and Viscount Breteignières de Courtaillies,—the latter of whom originally bestowed the ground on which the establishment stands, and, residing in its near neighbourhood, shares the labours of M. Demetz as resident director.

The revenues of the institution proceed partly from private subscription, partly from an allowance made to it by Government of what each boy would cost per day were he detained in prison; and, exclusive of the cost of new buildings and other permanent improvements, the expense, we are assured, does not very much exceed this latter sum, and is likely to fall below it when the land attached to the institution is brought into full cultivation.

There is a striking resemblance between some of the principles which M. Demetz has here so happily exemplified and those contended for by Captain Maconochie in his various writings on secondary punishment; and the combined testimony of two men who have been each so favourably placed for observation, and who could neither have borrowed from the other, is otherwise valuable than from its mere intrinsic weight. We are obviously on the eve of a great change in the whole tendencies of our criminal treatment. Everything seems to point to this, even the errors made in regard to it; and we may observe, in reference to that branch of the subject in which Captain Maconochie is a labourer, that the prejudices against the prisoner's return to society will be half removed, and the efforts of those who are seeking to promote it greatly assisted, when the prison shall, under a system of judicious discipline, have become a place in which men are supposed to be made better, instead of worse.

STATISTICAL SOCIETY, Dec. 22.

Lord MONTAGLE, President, in the Chair.

The Rev. Whitworth Russell, Inspector of prisons, at this meeting, brought to a conclusion the subject which interested the society at its first sitting for the session in November—"the statistics of crime in England and Wales from 1839 to 1843." The philosophy of crime—that science which investigates the causes, traces the extent, and inquires into the proper remedy of crime—states Mr. Whitworth Russell—may be said to be almost in its infancy. But already has it attracted a widely-extended attention, by the beneficence of its aim, by the rapidity of its advance, by the acknowledged success which has attended its exertions, and by the certainty of its ultimate triumph. By the term "crime" is meant a violation of the law of the land, and not a violation of the Divine law; such transactions as Mr. Locke, in his "Human Understanding," observes are sins; in the same way that a violation of the philosophical law, or the law of opinion, would be a vice. Hence it is plain, that in attempting to exhibit the amount of crime in any country, its moral character and condition is not estimated, because the sins and vices of the people are not taken into account. This is mentioned by Mr. Whitworth Russell to guard against a misconception of the design of his paper, which is to approximate as closely as possible to an estimate of the amount of ascertained crime in England and Wales during each of the five years which the inquiry embraces. Doubtless a vast amount of crime will at all times elude human detection; but this is no impeachment of the law or police of the country, which aims not at impossibilities. Mr. Russell demonstrated by tables the amount of committals for crime at a given time; the variations in the numbers in the same place at different times, or in different places at the same time; the prisoners classified according to age, according to sex, according to the nature of the charge or sentence, according to the number of recommitments; the numbers committed, convicted, or acquitted, together with the ground of acquittal in special cases; the proportion which the total numbers of criminals bears to the several classes of criminals and to the population; and finally, the amount and degree of education, or the total absence of education, intellectual, moral, or religious. The tables laid before the meeting were the result of vast research, and eleven in number, and particularized as follows:—

1. Prisoners tried at assizes and sessions during each year of the series.
2. Prisoners under summary convictions during each year of the series—a very numerous class, exceeding 70,000 per annum, of whom no information is to be obtained, except in the criminal tables published by the home inspectors of prisons.
3. The result of the proceedings respecting the prisoners tried at assizes and session—i. e. the prisoners convicted, acquitted, &c.
4. The prisoners recommitted.
5. Terms of imprisonment before trial.
6. Terms of imprisonment after trial.
7. Terms of imprisonment under summary convictions.
8. Prisoners sentenced to transportation and terms of transportation.
9. Game law convictions.
10. Vagrant Act convictions.
11. State of instruction of prisoners.
- 12 and 13. Comparative view of the increase or decrease of crime in certain counties where there is a constabulary force and where there is none.
14. Comparative view of the statistics of crime in France and Belgium with those of England and Wales.
15. View of the increase and decrease of the two classes of crime, assizes and sessions, and summary convictions in the several years between 1839—43.
16. Tables showing the increase or decrease per cent. compared with the population, among military prisoners, repeated thieves, and a miscellaneous class, in assizes, in the want of surties, and under the following laws:—Malicious Trespass Act, Larceny Act, Police Act, Revenue Laws, Bastardy Laws.

To ensure general accuracy, Mr. Russell has constructed a table of population calculated on the basis of the census of 1841, taken according to the ascertained rate of the annual increase of the female lives during the period 1831—1841. The value of such a table is at once apparent.

The results arrived at by Mr. Whitworth Russell, in his elaborate work, are, in his opinion, far from satisfactory. He finds that a considerable increase has taken place both of those for trial or tried at assizes or sessions, and of those committed under summary convictions.

The increase of assize and session prisoners is 13.5 per cent.
That of summary convictions 20.8 "

Total increase 34.1
He also finds that the year 1842 exhibits the greatest amount of increase, namely:—
In the assize and session prisoners ... 13.5 per cent.
In summary convictions 9.9 "

Total increase in that one year 23.4

Whereas in the following year there is a decrease of 5.7 per cent. on assize and sessions, and only an increase of 2.4 per cent. in summary convictions, which shows a total decrease of 3.3 per cent. on the year. The great increase of 1842 is attributed by Mr. Russell to the general distress which then prevailed, and that the decrease of crime in 1843 was to a great degree caused by returning prosperity. In 1842 assaults increased—males, 17.3 per cent.; females 6.4 per cent. In 1843 assaults increased in males 1.1, and in females decreased 3.4. Want of sureties in 1842 increased—males, 11.9; females, 5.2. In 1843 increased—males, 6.9; females, 26.5. Malicious Trespass Act in 1842 increased—in males 24.1; females, 29.1. In 1843 increased—males, 6.3; females, 6.2. The main increase in 1842, with a corresponding decrease in 1843, was in thefts, resulting, probably, from distress. In 1842 increased—males, 24.1; females, 29.1. In 1843 decreased—males, 73.3; females, 5.5 per cent. No estimate could be formed by Mr. Russell of the proportion which the acquitted bear to the convicted under summary jurisdiction. No return of any kind is made by magistrates either of the number or nature of the cases dismissed by them, either when administering justice at their own houses, or when acting in petty sessions. This, under many points of view, and for many reasons which might be assigned, is an important and extraordinary omission, and is deserving of serious attention. The vast disproportion in different counties both in the amount of crime and in the amount of convictions and acquittals demands careful consideration, and manifests serious defects in the existing systems. The long terms of imprisonment before trial is a serious evil, and should be diminished in every possible manner, whilst the extremely short terms of imprisonment under summary convictions (89.2 per cent being under three months) are any thing but calculated to repress crime and to deter the first offender from pursuing the fatal career upon which he has unhappily entered. Game-law convictions go on increasing in a most serious manner, and in a degree beyond all other classes of crime, and are neither checked by prosperity or distress; but, perhaps, the least satisfactory feature of the whole of the inquiry is the lamentable state of ignorance which prevails throughout all classes of offenders. Mr. Russell interested the meeting with highly valuable observations on the bearing of intellectual, moral, and religious influences upon the prevention and repression of crime, which, we regret from want of space, we are unable to notice. We may briefly state, however, that Mr. Russell found, after a most careful and laborious investigation among the prisoners, there were on the annual mean of the five years:—

Those who could neither read nor write, 9,530, or 34.9 per cent. assizes and sessions; 26,924, or 38.1 per cent. summary convictions.

Those who could read only, 6,329, or 22.5 per cent. assizes and sessions; 13,932, or 20.6 per cent. summary convictions.

Those who could read or write badly, 9,596, or 33.3 per cent assizes and sessions; 22,278, or 33.2 per cent summary convictions.

Those who could read and write well, 2,627, or 9 per cent. assizes and sessions; 2,667, or 4 per cent. summary conviction.

A very animated discussion followed the reading of the paper, and it was not until eleven o'clock that the meeting adjourned.

THE LAWYER.

Summary.

THE legal events of the week have been very unimportant. We hear that, in consequence of the verdict in the case of *Woodmer v. Tobby*, many of the companies have resolved to enforce the payment of deposits by allottees, and that actions will be immediately commenced against

those who refuse to contribute the small sum required of them as their share of the preliminary expenses. No doubt this will be generally adopted, and it will be the duty of the legal advisers of allottees to recommend their clients to pay, rather than incur the cost and anxiety of a struggle, where success is so doubtful; that is, provided they are satisfied that the demand is a fair one; that the expenses are not unreasonable; and the quota apportioned to each share its proper proportion of the expenses, and that it will be honestly applied. In such cases the first loss is always the least.

A great effort is being made by the shareholders to put a stop to many of the railway Bills now passing through Parliament, on the plea that they create liabilities which, in the present state of the market, cannot be met. The course is clear enough. Let the shareholders petition against their own Bill, which, it seems, they may do at any stage, and Parliament will accede to their prayer; and if they find any difficulty in settling, let the company be placed under the Joint Stock Companies' Bankrupt Act.

THE PRACTICE OF WILLS.

By G. S. ALLNUTT, Esq. Barrister-at-Law.

BOOK I.

CHAP. III.—ON THE EXECUTION OF WILLS.

(Continued from page 465.)

This branch of the subject is one not requiring many remarks, so far as the duty of the solicitor attending the execution of a will is concerned, as the course to be pursued is very clearly stated by the 1 Vict. c. 26. Several cases have, however, occurred where, through the ignorance or carelessness of testators, the precise form required has not been adopted; and, consequently, questions have arisen whether the execution of such wills was or was not valid; and it may be useful to mention some of these cases, for the guidance of the solicitor as to wills which may come before him, whether for probate, or to consider the propriety of having them re-executed.

By the 9th section of the 1 Vict. c. 26, it is enacted "That no will shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned; (that is to say) it shall be signed at the foot or end thereof by the testator or by some other person, in his presence, and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses, present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary." These directions are clear and precise, but a few remarks may be made upon the solicitors' duty under this section, as the chief object is to place the circumstances of the due execution of the will beyond the possibility of a doubt.

Attesting witnesses.—In the first place, it is desirable that the attesting witnesses should be persons of competent education fully to understand the nature of what they do; and also of such a station in society as to obviate any doubt which might arise as to the *bona fides* of the transaction. It is too often the practice to employ menial servants as attesting witnesses, and although, in the absence of other more competent persons, these may be properly employed, yet their attention to the more important particulars of the transaction, and their subsequent recollection of the circumstances, are not likely to be such as to render it desirable, in any cases where it can be avoided, to employ them. The solicitor himself, and his clerk, if they be not parties interested under the will, are in general cases the most proper persons to act as attesting witnesses.

Where any doubt may be raised as to the sanity of the testator, or as to his capacity to make a will, it would be prudent to have his medical attendant as an attesting witness.

As to the persons who are competent to be attesting witnesses, the 1 Vict. c. 26, contains the following provisions:—By the 14th section it is enacted "That if any person, who shall attest the execution of a will, shall at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid." By the 15th section it is enacted "that if any person shall attest the execution of any will to whom, or to whose wife

or husband, any beneficial devise, legacy, estate, interest, gift, or appointment of, or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person, or wife, or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will." By the 16th section it is enacted, "That in case, by any will, any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof." By the 17th section it is further enacted, "That no person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof."

From these sections it will be seen that the principal object of the framers of the Act upon this point has been to render the will valid, notwithstanding any objection which may exist to the witnesses who attest its execution. The solicitor will not, for obvious reasons, rely upon these enactments when he has the opportunity of selecting witnesses, not coming within the classes whose competency is declared by this Act. The 9th section of the Wills Amendment Act does not, it will be seen, require that the witnesses should sign the will in the presence of each other, but it will not be prudent in any case that either of the witnesses should leave the room until every requisition of the Act is complied with.

Memorandum of attestation.—Although no form of attestation is necessary, it will be proper to obtain the signatures of the witnesses to a memorandum stating that all the requisite forms of execution have been attended to, as otherwise they may be called upon to prove several particulars of the execution which may altogether have escaped their recollection. This memorandum should be read over to the witnesses, and if they are illiterate persons, it should be properly explained to them, in order to call their attention more particularly to the circumstances under which the testator signed the will. In a previous chapter will be found a form of attestation; but the following may be adopted where the will is written on several sheets, each of which it is always desirable should be signed.

The above-written will of the above-named testator A B was signed by him at the foot or end thereof, and each of the preceding sheets thereof was signed by him in the presence of us, being both present at the same time, who, in his presence, in the presence of each other, and at his request, have hereunto subscribed our names as witnesses.

If the will be signed by some other person for the testator, the following form of attestation should be used:—

The above-written will of the above-named testator A B was signed at the foot or end thereof by C D, in the presence and by the direction of the said A B, and such signature was made by the said C D, and acknowledged by the said A B, in the presence of us, being both present at the same time, who, in the presence of the said A B, and of each other, and at the request of the said A B, have hereunto subscribed our names as witnesses.

Reading the will.—If, from weakness or ignorance, the testator is unable to sign the will with his own hand, it will be prudent to read it over to him, and to obtain his assent to its expressing his intentions, in the presence of the witnesses, in order the more clearly to identify the document signed with what it is his purpose to sign. This may not be necessary, but it is desirable in all cases where it can be accomplished; for in *Durnell v. Cornfield* (8 Jurist, 215), it was held by the Prerogative Court that a knowledge by a testator of the contents of a testamentary paper was essential to its admission to probate; and that where capacity was undoubted, knowledge of the contents would be inferred from the fact of execution; but that where the capacity

was hazarded, it would be otherwise. The proof of the testator's knowledge of the contents of the will will, however, vary with the circumstances of the case; and, therefore, in *Edwards v. Fincham*, a case before the Privy Council, reported in 7 Jurist, 25, it was held that the will of a blind person was good, though not proved to have been read over to her before execution, and although the disposition of her property thereby was very different from that by a former will made a short time before, the will being proved to be in conformity with the instructions given by her to her solicitor.

It may be useful to mention here, that, in *Wilson v. Beddard* (12 Sim. 28), it was held that if a testator, who is unable from illness to sign his will, has his hand guided in making his mark, it is a sufficient signature within the Statute of Frauds.

Exercise of power of appointment.—By the 10th section of the 1 Vict. c. 26, it is enacted, "That no appointment made by will in exercise of any power shall be valid unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity." Although this section renders the exercise of a power of appointment by will, duly executed according to the provisions of the Act, valid without the forms of execution prescribed by the power being adopted, yet there appears to be no reason why the intention of the parties by whom the power was given should not still be carried out when practicable. The 9th section requires the attestation of "two or more witnesses;" and if, by the deed or will giving the power of appointment, three or four witnesses are required, it will perhaps be desirable, though not necessary, that this number of witnesses should be employed.

It remains only to notice the cases which have been decided as to the execution of wills since the 1 Vict. c. 26, came into operation.

Signature or acknowledgment by the testator.—As to the position of the testator's signature; in *Re Gaudinier*, it was held by the Prerogative Court (Oct. 3rd, 1843), that where a will was written on two sides of a sheet of letter paper, the first and the third, the second being blank, and the signature of the testator and the subscription of the witnesses were affixed at the lower part of the second side, there being no room on the third side, the execution was sufficient to satisfy the requisitions of the Act. Where the dispositive part of a will was on the first side of a sheet of paper, and the second was left blank, and the attestation clause and signatures of the testator and attesting witnesses were on the third side, probate was granted. In the goods of John Gore, 3 Curt. 758.

The mere circumstance of a testator calling in witnesses to sign without any further explanation, does not amount to an acknowledgment of his signature within the intention of the 9th section of the 1 Vict. c. 26. *Holt v. Genge* (before the Privy Council, Feb. 14, 1844, 8 Jurist, 323).

In *Blake v. Knight* (3 Curt. 547), it was held by Sir H. J. Fust, that the Court is not bound to have positive affirmative evidence that a will was signed or a signature to a will acknowledged by a testator in the presence of witnesses, before it can pronounce for the validity of that will; and that the testator's acknowledging to the witnesses a certain paper to be his will, and to be all in his handwriting, and his name being signed to it when propounded (although the witnesses could not swear to the signature having been affixed at the time they signed their names) was an acknowledgment of his signature.

In *Cooper v. Beckett* (3 Curt. 648), it was held by the same learned judge that a will was signed by the testator before the witnesses subscribed it, contrary to the recollection and belief of the witnesses, their testimony, however, not being sufficiently positive to counterbalance the presumption arising from the circumstances.

Where, however, there was positive evidence of one of the attesting witnesses that the will was signed after he and the other witness had subscribed, the evidence of the other witness being that it was not signed in the presence of the witnesses, and there being no circumstance upon which a reliance could be founded that the witnesses were mistaken, the

Court pronounced against the will. (*Pennant v. Kingscale* (3 Curt. 642).)

Signature of attesting witnesses.—The will must be subscribed by the witnesses themselves, and therefore where one of the witnesses, in the presence of the testator, subscribed the will first for himself, and then for the other witness, both being present at the same time, the will was rejected. In *re White* (7 Jur. 1045).

Where one of the witnesses made a mark to a will, and a wrong name was by mistake afterwards set opposite to the mark, probate of the will was granted. (*Re Ashmore*, 3 Curt. 756.)

Though an acknowledgment of the signature of the testator is sufficient, it is different with an attesting witness; and therefore in the case of *Moore v. King* (7 Jur. 205), where a testator signed a codicil in the presence of one witness, who attested and subscribed it, and the testator on the next day, in the presence of the first witness and another person, acknowledged his signature, and the first witness also acknowledged his signature, but did not again subscribe the will, though the other person signed as a second witness, it was held that the attestation was not sufficient.

The foregoing are some of the principal cases which have arisen upon the apparently clear directions given by the 9th section of the Act; and they form a *satisfactory proof* of the facility of any attempt to frame a legislative rule, which cannot, through the ignorance or caprice of parties, be made a subject for dispute and litigation. The state of the law may, in some cases, be justly blameable, but the acts of parties themselves are more frequently the cause of the expense and mischief which legal proceedings occasion. However clear a law may be, there will always be found persons who, either disregarding its requisitions, or, from a false spirit of economy, neglecting to have the assistance of competent advisers, will, by their conduct, damage the interests of themselves and of those dependent upon them. As this state of things is generally known and recognised, it ought to be more taken into consideration than it appears to be by those who, in certain disjointed particulars, are at the present time so active in amending and re-amending for the purpose of simplifying, some of the most complicated parts of our legal system.

PROMOTIONS, APPOINTMENTS, ETC.

(Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.)

The Lord Chancellor has appointed Charles Steward, of Ipswich, in the County of Suffolk, gent. and John Thomas Tweed, of the City of Lincoln, gent. to be Masters Extraordinary in the High Court of Chancery.

COMMISSIONS SIGNED BY LORDS-LIEUTENANT.
COUNTY OF CAMBRIDGE.—D. S. Davies, esq.; T. D. Lloyd, esq.; J. L. Davies, esq.; J. B. L. Phillips, esq. to be Deputy Lieutenants.

COUNTY OF GLAMORGAN.—R. Boteler, esq.; E. H. H. Lee, esq.; E. T. Llewellyn, esq.; H. H. Vivian, esq., to be Deputy Lieutenants.

COUNTY OF BUCKINGHAM.—T. A. Boswell, esq.; C. Tower, esq.; J. T. Senior, esq.; C. T. Gaskill, esq.; R. T. Gilpin, esq.; G. Carrington, jun., esq., to be Deputy Lieutenants.

COURT PAPERS.

ORDER OF THE COURT OF CHANCERY.

EASTER VACATION.

Thursday, March 19, 1846.
Whereas, by the first article of the 8th of May, 1846, it is provided that "the Easter Vacation is to commence and terminate on such days as the Lord Chancellor shall every year specially direct." And whereas Easter week, or a period equal thereto, has usually been observed as a vacation in the several offices of this Court. And whereas, part of Easter week will in the present year fall within Easter Term. His lordship doth order that the Easter Vacation for the present year do commence on Saturday the 4th day of April next, and terminate on Tuesday the 14th day of April next. And that this order be entered with the registrar and set up in the several offices of this Court. (Signed) E. D. COLVILLE.

EASTER HOLIDAYS IN THE CHANCERY OFFICES.—The keeping of the Easter holidays by the clerks in the Chancery offices, when those holidays fall in Term time, has long been a source of great inconvenience to solicitors, and prejudicial to the inter-

ests of their clients. The matter, however, having at length been brought under the notice of the Lord Chancellor, his lordship has caused the following order to be issued, viz.:—"Order of Court.—Whereas, by the first article of the eighth of the General Orders of the Court of the 8th May, 1845, it is provided that 'Easter Vacation is to commence and terminate on such days as the Lord Chancellor shall every year specially direct.' And whereas Easter week, or a period equal thereto, has usually been observed as a vacation in the several offices of this court; and whereas part of Easter week will, in the present year, fall within Easter Term: his lordship doth order that the Easter vacation for the present year do commence on Saturday, the 4th day of April next, and terminate on Tuesday, the 14th day of April next. And that this order be entered with the registrar, and set up in the several offices of this court.—E. D. COLVILLE."

SHERIFFS' COURT, RED LION-SQUARE, April 2.
—A County Court was held on Thursday, when Hemp, the Sheriff's officer, made the following proclamations of outlawry. By the publicity given to these proceedings, several persons have lately obtained discharges to the actions:—Charles Craven, at the suit of W. H. H. Reed; Sir R. D. Henagan, at the suit of C. Plowden and another; Sir H. Floyd, at the suit of A. Smith and another; G. A. Young, at the suit of O. Roberts; W. Ironmonger, at the suit of W. H. Vernon; George Holes (two cases), at the suit of George S. Ford and the assignees of James Gibbs, a bankrupt; Robert R. Craig, at the suit of Morris Levy; the Hon. W. F. Byng, at the suit of Charles Lewis; John Eden Spalding, at the suit of Lawrence Levy and another; Francis P. Parker, at the suit of Thomas Sanford; Augustus Peacock, at the suit of George D. Sewell; William Jones Burdett, at the suit of Charles Barnett; Charles S. Reynolds, at the suit of Edward Smith; H. H. Wernick, at the suit of Robert Warren; George Linsley, at the suit of W. De Bernardy; Thomas Sharp, at the suit of Peter Playne and others; W. B. Metcalfe, at the suit of W. Reeve and another; James Menzies, at the suit of Benjamin Sams; John Rathbone, at the suit of B. Sams.

LEGAL INTELLIGENCE.

INNS OF COURT.

Return to an Order of the Honourable the House of Commons, dated 9th of February, 1846, for, A Statement "of the Regulations of the Four Inns of Court having the power to call to the Bar, with the date of each regulation, and the authority by which it was made; and specifying any distinction made between the members of the Universities of Oxford and Cambridge and others."

Ordered, by The House of Commons, to be printed, 16th March, 1846.

LINCOLN'S-INN.

Lincoln's-inn, February 1846.

The Society of Lincoln's-inn begs to submit, for the information of the Honourable the House of Commons, the following statement:—

That the orders and regulations for the good government of the society are made from time to time by the treasurer and masters of the bench, in council summoned specially for that purpose.

That at a council held on the 30th day of June, 1762, the following proposals were laid before this council by committees appointed by the four Inns of Court:—

PROPOSALS, JUNE 18, 1762.—That the standing for the bar be five years from admission, none to be called under the age of twenty-one years; that twelve Terms' commons be actually kept; that masters of arts and bachelors of laws of the Universities of Oxford and Cambridge be dispensed with two years' standing, but not with any commons; no exception with regard to Ireland or the West Indies; no attorney or solicitor, clerk in Chancery or Exchequer, to be called until they have discontinued practice as such for two years.

The above proposals were signed by committees of the four Inns of Court.

Upon the report of the committee appointed by the Society of Lincoln's Inn to meet committees of the other Inns of Court to take the above proposals into consideration, wherein it appeared that the above regulations were proper to be observed and practised by all the Inns of Court, it was ordered that for the future no person shall be called to the Bar in this Society before the end of five years from the time of his admission, nor shall any person be called to the bar who shall be under the age of twenty-one years; that every person shall actually keep commons in the hall for twelve Terms before he be called to the Bar; that Masters of Arts and Bachelors of Laws of the Universities of Oxford and Cambridge may be called to the Bar at the end of three years from the time of their admission; but this is not to dispense with keeping their usual commons.

That no person be called to the Bar before the time.

prescribed, on account or pretence of his practising the law in Ireland or the plantations.

That no attorney, solicitor, clerk in Chancery or Exchequer, shall be called to the Bar until the end of two years, at least after they have discontinued practising as such.

That at a council held the 31st day of May, 1793, the privilege granted to Masters of Arts and Bachelors of Laws of the Universities of Oxford and Cambridge, of being called to the Bar at the end of three years from the date of admission, instead of five, was extended to graduates of the University of Dublin, upon their taking either of those degrees.

That in addition to the student keeping twelve Terms, agreeably to the rule of June 1762, he is required to perform nine reading exercises before thirty-two barristers in the hall, three of which only can be performed in one Term.

Copy of Resolutions for Admission to the Society of Lincoln's Inn, made at an adjourned Council, held February 21, 1828.

Ordered, That from and after the first day of Easter Term next, the following resolutions, submitted by the committees of the Inns of Court relative to admission, be adopted by this Society:—

1. That every application for admission shall be accompanied with a testimonial, signed by a Benchman of this Society, or by two barristers, attesting that the person so applying is known to the said benchman or barristers as a gentleman of character and respectability; that he is a fit person to be admitted a member of the Society, and to be called to the Bar.

2. That every person who shall hereafter apply to be admitted a member of this Society shall sign a declaration that he is desirous of being admitted for the purpose of being called to the Bar; and that he will not, without the special permission of the Benchers in Council, take out or apply for any certificate in pursuance of the statute 44 Geo. 3.

3. That this permission be not granted until the person has kept such commons in the Hall of this Society as are required to be kept to qualify him to be called to the Bar.

4. That the permission be for one year only, and that every petition for the same shall state the circumstances upon which the petitioner applies.

5. That no person be admitted of this Society whose name stands on the roll of attorneys or solicitors, or who is attested to an attorney or solicitor.

P.S.—All other particulars can be found in the Report of the Common Law Commissioners, in the printed minutes of the Honourable the House of Commons; Fifth and Sixth Reports, p. 42.

HENRY WILLIAM TANCRED, Treasurer.

MIDDLE TEMPLE.

All regulations as to admission of students and call to the Bar are made by the authority of the Masters of the Bench, in Parliament assembled.

To constitute a Parliament, it is necessary that at least five Masters of the Bench should be present.

The regulations now in force as to admission of students and call to the Bar are as follows:—

Regulation dated May 8, 1790.—A candidate for the Bar must be proposed by a Master of the Bench, who is required to be able to give an account to the Masters of the Bench of the character and qualifications of the gentleman he proposes.

July 16, 1762.—Twelve Terms are required to be kept as a qualification for call to the Bar.

A gentleman may be called to the Bar at the age of twenty-one years, if he shall have been a member of the Society for the period of five years.

Note.—He being otherwise entitled to be called.

April 19, 1782.—To keep a Term, a member must dine in the hall of the Society at least three days in the Term.

November 23, 1798.—No person can be called to the English Bar unless he shall, previously to his keeping any of the Terms requisite for that purpose, have deposited with the treasurer the sum of 100l., the same to be returned, without interest, upon his being called to the Bar or quitting the Society, or, in case of death, to the personal representative. But this does not extend to any person who shall, previously to his being called to the Bar, produce a certificate of his being a member of the College of Advocates in Scotland, or of his having kept two years' Terms in any of the Universities of Oxford, Cambridge, or Dublin.

Note.—This is the only distinction made between members of the Universities and others.

The name and description of every candidate for being called to the Bar is published in the hall a fortnight before he is called to the Bar.

July 2, 1805.—If any person be offered or proposed to be admitted a member, and be rejected, a certificate of the same is immediately communicated to the other societies, notifying such rejection.

June 1, 1821.—The names of gentlemen proposed for the Bar in this Society are sent to each of the other societies; and the lists of candidates for the Bar in the other Inns of Court, which may be sent to this House, are sent to the Masters of the Bench of this Society.

May 18, 1825.—Every applicant for admission to the Society must state his age, description, and resi-

dence, and the residence and designation of his father, and also that he is desirous of being admitted a member for the purpose of keeping Terms for the Bar; and that he will not, either directly or indirectly, without the special permission of the Society by order made in Parliament, apply for or take out any certificate in pursuance of the statute 44 Geo. 3. c. 98. s. 14, before he has kept such commons in the hall of this Society as are required to be kept to qualify him to be called to the Bar. And his application must be accompanied by a certificate signed by two barristers of the Society, and must afterwards be approved by a Benchman; without which his admission cannot take place.

No recipient for entering into commons can be granted to any person whose name stands on the rolls of attorneys or solicitors, or who shall be engaged in any profession other than the law, or in any trade, business, or occupation. Should any person be found to act contrary to the aforesaid rules, he would be liable to be expelled the Society.

April 24, 1835.—Persons of the full age of twenty-three years and upwards, whose names shall have been upon the books of the Society three years, may be admitted to the Bar after keeping twelve Terms, provided that in all other respects they be entitled to be called to the Bar.

November 3, 1843.—Members of the London and Durham Universities have the same privileges as the members of Oxford and Cambridge Universities, with respect to calls to the Bar.

May 3, 1844.—No attorney at law, solicitor, writer to the signet, or writer of the Scotch courts, proctor, notary public, or parliamentary agent, or person acting as such, and no clerk of or to any barrister, conveyancer, special pleader, attorney, solicitor, writer to the signet, or writers of the Scotch courts, proctor, notary, parliamentary agent, clerk in Chancery, or other officer in any court of law or equity, whether such clerk be attested or in the receipt of a salary or of other remuneration for his services, is allowed to keep commons in the hall of the Society, available for the purpose of being called to the Bar, until such person, being an attorney, shall have taken his name off the rolls, nor until he and every other person above named or described shall have ceased to act or practise as such attorney, writer to the signet, or writer of the Scotch courts, solicitor, proctor, notary, agent, or clerk as aforesaid.

No person can apply for or take out any certificate in pursuance of the statute 43 Geo. 3. c. 98. s. 14, without the special permission of the Society by order made in Parliament under pain of expulsion; such permission not being granted until the person applying for the same shall have kept such commons in the hall of the Society as are required to be kept as a qualification for the Bar; and, when granted, to endure for one year only, but may be renewed by order of Parliament upon petition.

Every applicant for admission is required to sign a statement to the above effect.

Jan. 27, 1837.—For the future the judges are requested to entertain the application of any gentleman who shall be refused admission into this Inn of Court, the Society being willing to be bound by the decision of the judges on such application.

EDWARD ELDRED, Sub-treasurer.

INNER TEMPLE.

The regulations "As to the Admission of Students and Call to the Bar," by the Honourable Society of the Inner Temple, are made by the authority of the Masters of the Bench of the same Society assembled in Parliament or Bench table.

The regulations in regard to both these subjects now in force and acted upon by this Society are as follows:—

Regulation dated Feb. 1, 1780.—A person in holy orders cannot be admitted a member of this Society.

Jan. 29, 1819.—No person under the age of fifteen years can be admitted a member of this Society.

Feb. 11, 1829.—No person can be admitted a student of this Society without a previous examination by one barrister of the Society, named for that purpose by the Masters of the Bench, and a certificate signed by the examiner, of the competency of the candidate for admission, in classical attainments and the general subjects of a liberal education; such examination to include the Greek and Latin languages, or one of them at least, together with such subjects of history and general literature as the examiner may think suited to the age of the candidate:—May 6, 1845; but this regulation not to apply to any gentleman who, upon his application to be admitted a member, shall have taken the degree or have passed his examination for the degree of Bachelor of Arts in either of the Universities of Oxford, Cambridge, or Dublin, and shall produce a certificate to that effect.

June 28, 1846.—Before any person can be admitted a member of this Society, his age, residence, and condition in life must be stated in writing, and such statement represented to the treasurer, or, in his absence, to some other Benchman or Benchers of the Society; and that no person be admitted without the approbation of such treasurer, Benchman or Benchers, or by an order of the Parliament or Bench table; and in case of any misrepresentation in this particular, his admission will be avoided.

Feb. 8, 1828.—That such application for admission must be accompanied with a testimonial signed by a Benchman of the Society or by two barristers, attesting that the person so applying is known to the said Benchman or barristers as a gentleman of character and respectability; that he is a fit person to be admitted a member of the Society, and to be called to the Bar.

That such applicant shall sign a declaration that he is desirous of being admitted for the purpose of being called to the Bar, and that he will not, without the special permission of the Benchers, by order made in Parliament or Bench table, take out or apply for any certificate in pursuance of the statute 44 Geo. 3. c. 98, to practise as a special pleader, conveyancer, or draftsman in equity; which permission is not granted until the person has kept such commons in the hall of this Society as are required to be kept to qualify him to be called to the Bar, viz. twelve Terms; such permission is granted for one year only, and renewed upon application from time to time, at the discretion of the Bench.

No person can be admitted a member of this Society while engaged in trade.

Jan. 24, 1837.—The judges are requested to entertain the application of any gentleman who may be refused admission into this Society; this Society being willing to be bound by the decision of the judges, upon such application.

Keeping Terms.—To keep a Term the student must dine in the hall of this Society two days in each of two separate full weeks of the Term:—(May 9, 1828); except that students residing at the Universities may keep their Terms by dining any three days in the Term.

February 8, 1828.—No person can be admitted into commons whose name stands on the roll of attorneys or solicitors, or who is under articles to any attorney or solicitor.

Jan. 30, 1844.—No attorney-at-law, solicitor, writer to the signet, or writer in the Scotch courts, proctor, notary public, parliamentary agent, or other agent to any appellate court, or other person acting as such, and no clerk of or to any barrister, conveyancer, special pleader, attorney, solicitor, writer to the signet, or writer to the Scotch courts, proctor, notary, parliamentary agent, clerk in Chancery, or other officer in any court of law or equity, whether such clerk be attested or in the receipt of a salary or of other remuneration for his services, can be allowed to keep commons in the hall of this Society, available for the purpose of being called to the Bar, until such person being an attorney shall have taken his name off the rolls, and until he and every other person above named and described, shall have ceased to act or practise as such attorney, writer to the signet, or writer of the Scotch courts, solicitor, proctor, notary, agent, or clerk as aforesaid.

June 22, 1798.—No person can keep Terms in this Society available for the English Bar unless he shall, previous to his keeping any Terms requisite for that purpose, have deposited with the treasurer of this Society the sum of 100l., the same to be returned upon his call to the Bar, quitting the Society, or in case of his death, to his personal representative; but this order not to apply to any person who shall, previous to his being called to the Bar, produce a certificate of his being a member of the College of Advocates in Scotland, or of his having kept two years' Terms in any of the Universities of Oxford, Cambridge, or Dublin:—(November 20, 1821); nor to any person who shall be admitted into commons for the purpose of being called to the Irish Bar, and shall produce a certificate that he has been admitted a student of King's Inn, Dublin.

CALLS TO THE BAR.

June 26, 1762.—No person can be called to the Bar in this Society who shall not have been admitted full five years, and shall be twenty-one years of age, and shall have actually kept twelve Terms' commons, except that Masters of Arts and Bachelors of Law of either of the Universities of Oxford or Cambridge shall not be restrained to five years' standing, but may be called after they shall have been admitted and actually kept commons full three years.

June 13, 1793.—The privilege of the above order of 26th June, 1762, extended to the like graduates of the University of Dublin.

July 1, 1794.—But the above privilege not to extend to mandames or honorary degrees.

June 22, 1798.—The name of every gentleman offering himself for the Bar must be published in the hall of this Society a fortnight before the day of call.

November 27, 1807.—Every gentleman desirous of being called to the Bar must make, or cause to be made, his application to one of the Masters of the Bench to move his call.

June 16, 1798.—No Master of the Bench of this Society can propose any gentleman for the Bar without he is able to give some account to the Masters of the Bench of the character and qualifications of the gentleman he proposes; and no person can be called to the Bar by this Society until the next Parliament after that at which such person has been proposed by one of the Masters of the Bench.

July 3, 1794.—No person in deacon's orders can be called to the Bar in this Society.

March 4, 1846. GEORGE SPENCE, Treasurer.

GRAY'S INN.

March 1846.—The Society of Gray's Inn is one of the four Inns of Court having the power to call to the Bar, and they admit students to be members of the Society for that purpose. The Society is governed by the senior barristers, including those who have been called within the Bar as Queen's counsel or by patent of precedence, and they are called Readers and Masters of the Bench, or, more concisely, Benchers. The regulations as to admission of students and call to the Bar are made from time to time by the authority of the Benchers, who meet together in the hall of the Society at least once a week during each law Term, to regulate the affairs of the Society; and such meetings are called pensions, and the orders made thereat, orders of pension.

In searching for the early regulations and their dates, it has been necessary to revert to the institution of this Society, which appears to have been about the middle of the 14th century; but there is not any record in writing in the possession of the Society, of their regulations or proceedings before the reign of Queen Elizabeth. There are, however, in the work of Sir William Dugdale, entitled "*Origines Judiciales*," some earlier statements of the regulations and proceedings of the Benchers of each Inn of Court; and the same work contains, not only the orders made by the Benchers of Gray's Inn down to the reign of King Charles the Second, but also various orders made by the judges, either alone or with the Privy Council, and sometimes by the Privy Council only, for the regulation of the Inns of Court.

These orders and regulations, and the orders of pension of Gray's Inn, contain many matters respecting admissions and calls to the Bar, which have been repealed by subsequent orders and regulations, or have become obsolete in a great degree; and it is conceived that the date of each of these ancient regulations, or even a statement of them, is not required by the order of the honourable House.

It may, however, be shortly stated that the effect of these orders and regulations was, amongst other matters, that as to students to be admitted members, attorneys were excluded; members were to pay a fine upon admission, and were to perform certain moots or exercises, and to keep twenty Terms' commons by dining in the hall of the Society, before they could be called to the Bar, and such call could not take place until a certain time after admittance, such time being at first nine years after admission, and afterwards reduced to eight and then to seven years; and by an order of pension made in 1603, it is stated to be the King's commandment, delivered by the judges, that none should thereafter be admitted into the Society unless he were a gentleman by descent, until his Majesty's pleasure should be further known.

No order has been found in the records of this Society, as having been made by the judges or Privy Council, since the year 1664; nor is there any material order of pension at present existing and in force, made between that period and the year 1762, when an order of pension was made, which may be considered as having superseded all former orders and regulations as to calls to the Bar, and the same is as follows:—

"Gray's Inn.—At a pension held the 7th day of July, 1762, it is ordered, that for the future no person shall be called to the Bar in this Society before the end of five years from the time of his admission, nor shall any person be called to the Bar who shall be under the age of twenty-one years: That every person shall actually keep commons in the hall twelve Terms before he be called to the Bar: That Masters of Arts and Bachelors of Laws of the Universities of Oxford and Cambridge may be called to the Bar at the end of three years from the time of their admission, but this is not to dispense with keeping their usual commons: That no person be called to the Bar before the time prescribed, on account or pretence of his practising the law in Ireland or the plantations: That no attorney, solicitor, clerk in Chancery or Exchequer, shall be called to the Bar until the end of two years at least after they shall have discontinued practising as such."

The above regulations were made after a conference with the other Inns of Court, who made similar orders for their respective societies.

By an order of pension of the 17th day of June, 1769, it appears that it was resolved by the four Inns of Court, that from Michaelmas Term then next, no articulated clerk either to an attorney or solicitor, or to a clerk in the Court of Chancery or Court of Exchequer, ought to be called to the Bar until his articles should either have expired or have been cancelled for the space of two whole years; and that, in order to prevent improper persons from being called to the Bar before due inquiries had been made concerning their characters and qualifications, no person should be called to the Bar until the next pension after that at which such person should have been proposed by one of the Masters of the Bench. And by an order of pension of the 29th day of June 1793, it was ordered (after a conference with the Societies of the Inner and Middle Temple), that in the order of the year 1762 (hereinafter stated), after the words "Masters of Arts and Bachelors of Law of the Uni-

versities of Oxford and Cambridge," the words "and of Dublin" be inserted.

By another order of pension dated the 8th day of July 1794, it was ordered (after a conference with the other Inns of Court), that a person in deacon's orders ought not to be called to the Bar; it having previously (in the year 1779) been declared to be the opinion of the Society, that a person in priest's orders was not a proper person to be called to the Bar, regard being had to the 76th canon, made in 1603. And by an order of pension of the 27th of December 1794, it was ordered (after a conference with the other Societies), that the privilege allowed to Masters of Arts and Bachelors of Laws, by the general rule of 1762, respecting calls to the Bar, should not extend to mandamus or honorary degrees.

By an order of pension, dated the 20th day of June 1798, it was ordered that the following resolutions (which had been agreed upon at a meeting of a committee of Benchers of the four Inns of Court) should be adopted and confirmed by this society; viz. That every society should be at liberty to continue or make such rules respecting the keeping of terms as then prevailed, or as they should thereafter think fit; provided that no student in any of the Inns of Court should be permitted to keep a Term in order to his being called to the Bar, without having been present in the hall, at least three days in such Term, at the time when grace is said after dinner: That no person who should have been admitted into any of the Inns of Court since the 24th of April then last, or who should thereafter be admitted (except as thereafter excepted), should be called to the English Bar, unless he should, previous to his keeping any of the Terms requisite for that purpose, have deposited with the treasurer of the Society to which he belonged, the sum of 100*l.*, the same to be returned, without interest, upon his being called to the Bar or quitting the Society, or, in case of his death, to his personal representative, but this was not to excuse him from paying his duties regularly, nor from giving the usual bond upon admission; provided that this order was not to extend to any person who should, previous to his being called to the Bar, produce a certificate of his being a member of the College of Advocates in Scotland, or of his having kept two years' Terms in any of the universities of Oxford, Cambridge, or Dublin; and in case such deposit as aforesaid should have been made, the same should be immediately returned to him, upon his producing such certificate as is above mentioned: and that the name and description of every candidate for being called to the Bar should be hung up in the hall, a fortnight before he should be called to the Bar.

By an order of pension dated 16th November, 1825, it was ordered, that receiving the sacrament by students, as a qualification for the English Bar, should be in future dispensed with; and by another order, dated 29th April, 1835, it was ordered, that no solicitor or attorney should be allowed to keep commons for the Bar until his name was taken off the rolls: and by an order dated 11th day of June, 1844, it was ordered, that from and after Trinity Term, 1844, no attorney at law, solicitor, writer to the signet, or writer of the Scotch courts, proctor, notary public, parliamentary agent, or agent to any appellate court, or person acting as such, and no clerk to any barrister, conveyancer, special pleader, attorney, solicitor, writer to the signet, or writer of the Scotch courts, proctor, notary, parliamentary agent, or agent to any appellate court, or of or to any officer in any court of law or equity (whether such clerk should be articulated or in receipt of a salary or other remuneration for his services), should be allowed to keep commons in the hall of the Society, available for the purpose of being called to the Bar, until such person being an attorney should have taken his name off the rolls, and until he and every other person above named or described should have ceased to act or practise as such attorney, solicitor, or writer of the Scotch courts, proctor, notary, agent, or clerk as aforesaid: and that no commons which, after Trinity Term, 1844, should be kept, or attempted to be kept, by any person so disqualified as aforesaid, should be allowed to him towards his qualification for the Bar.

The above statement contains all the written regulations of the Society of Gray's Inn, as to admissions and calls, now considered as existing and in force, with the date of each regulation; but there are some practical regulations of a minor nature, not specifically reduced into writing, and the dates of which cannot be given, but which depend on custom and ancient usage; these regulations may be best explained by the following statement:—

When a gentleman applies to be admitted as a student for the English Bar, he is required to fill up a printed form. If, upon due inquiry, no objection appear to the applicant, this form is signed by a Bencher, and he is admitted upon payment of certain stamp duties and fees, and upon executing a bond with a surety, conditioned to abide by and keep the rules of the Society. If any objection appears, the same is laid before the Benchers when they meet, and they investigate the same. After admission, and

after he is of sufficient standing, and has kept the Terms, and has otherwise conformed to the regulations, the student intimates to the Steward of the Society his intention to be called to the Bar, and his name and description are then screened in the dining-hall of the Society for at least a fortnight during Term time, and his name and description are also sent to the other three Inns of Court; a certificate of his qualifications is then drawn up and examined by two Benchers, who sign the same if found correct. These qualifications are, that the student is of full age and standing in the Society, and has kept a sufficient number of Terms, and performed his exercises (the latter being at present a matter of form only), and that he is possessed of a chamber in the Inn, in his own right, or has paid a fine of 20*l.* in lieu thereof. The student then presents his petition to the Benchers to be called, and produces the certificate of his qualifications, which are read at a pension of at least five Benchers; and is proposed by a Bencher, and no objection appears, he is at the next or some succeeding pension called before the Benchers, who cause the oaths of allegiance and supremacy, or, (if he is a Roman Catholic) the oath provided for that purpose, to be administered to him; he is thereupon called to the Bar and becomes a barrister, and his name as such is published in the hall of the Society. If any objection appears, the call to the Bar is postponed, and the objection is carefully investigated by the Benchers.

It will appear from the foregoing statement that the distinction now remaining in this Society between members of the Universities of Oxford, Cambridge, and Dublin, and also members of the College of Advocates in Scotland, and other persons not being such members, is only as to the deposit of 100*l.*; which by the regulation of the year 1798, hereinafter stated, is dispensed with in the cases therein mentioned.

It should be stated that students are admitted members of this Society for the purpose of being certificated special pleaders and conveyancers, and also of being called to the Irish bar; and members are also admitted for the purpose only of holding chambers within the Inn: the foregoing regulations are referred to in these cases, so far as the same apply.

THOS. GREENE, Treasurer.

WILL OF THE LATE LADY HOLLAND.—Probate of the will and four codicils of the late Right Honourable Elizabeth Vassall, Baroness Dowager Holland, was granted on the 16th of March to the Right Hon. Lord J. Russell, Mr. B. Curry, Old Palace-yard, and Mr. W. A. Loch, of Edinburgh, the executors. The personality in England was sworn under 80,000*l.* The will is dated the 31st of August, 1845, and the last codicil on the 30th of October, a month before her death. Her first bequest is to the Queen, if her Majesty will condescend to accept it, of the picture of his Royal Highness the Duke of York, surrounded by the British residents and other English gentlemen when his Royal Highness was at Florence. To Lord J. Russell, the portrait of his grandfather, John, Duke of Bedford, by Sir Joshua Reynolds; and the vase of French china, with the portrait of Francis, Duke of Bedford, painted upon it in Paris by her order; and bequeaths to his lordship the net proceeds of the Kennington estate for life, and the residue of her property not specially disposed of. To the Speaker of the House of Commons, to complete his set of portraits, that of the Hon. James Abercromby, now Lord Dunfermline. To the Earl of Carlisle, the portrait of the Duke of Devonshire. To the Earl of Aberdeen, certain specific bequests in token of gratitude for his kindness towards her. Also bequests to the Duke of Devonshire, the Duchess of Sutherland, and many other of her personal friends. To the Hon. W. Cowper, her set of H. B.'s caricatures; to Mr. Cornelius Babington, 1,500*l.* and an annuity of 50*l.*; to Lady Caroline Babington, 200*l.*; to Mr. B. Curry, her executor, 200*l.*; to her godson, the Hon. T. A. Powys, 300*l.*; to Mr. Thomas Doggett, 550*l.* and an annuity of 150*l.*; and to Mr. W. Doggett, 200*l.* and 40*l.* a year; other small bequests and legacies and annuities to her servants; to the poor of Milbourn, 200*l.*; and mourning to the ten girls she annually clothed. All her property, real and personal, in the island of Jamaica, she leaves to her son, Lord Holland, her Britannic Majesty's Minister at the Court of Tuscany, for his use absolutely, also an annuity of 500*l.*; and should Lord Holland die in the lifetime of Lord J. Russell, to continue the annuity to her daughter Lady Lilford, to whom she has left some specific bequests. In her ladyship's disposition of the Kennington estate in favour of Lord J. Russell, she has expressed it as entirely emanating from her sincere affection for his lordship, and that it was also an intention formerly entertained by the late Lord Holland to make a similar disposition of the reversion of the Amptill estate in his favour, and hopes his lordship will accept the gift as a token of affection from both. She has empowered her lordship to charge the estate at Kennington with a sum of 7,000*l.* for the benefit of his children, Georgiana, Adelaide, Victoria, and John, as his lordship may direct; the

estate after his lordship's death, to be held in trust for Lord Lilford, and at his decease for such three of eight persons named in the first codicil as may become entitled thereto, being six of the children of Lady Lilford, and the two daughters of Lord John Russell. To the British Museum she bequeaths a box given to her by Napoleon; the bequest forms a principal part of her second codicil, and is to the following effect:—"Amongst the things which I chiefly value, is the box bequeathed to me by the Emperor Napoleon, and a card originally inclosed in it, bearing on one side a memorandum, from which it appears that the cameo which forms the lid of the box was presented to Napoleon by Pope Pius VI. at Talentino in 1797, and on the other side these words, 'In the Emperor's own handwriting, *L'Empereur Napoleon à Lady Holland, témoignage de satisfaction et d'estime.*' These relics I bequeath to the British Museum, and desire that the box and card may be inclosed in a glass case and kept locked up, so that they may not be handled, and to be deposited in a room of the library of the Museum in which the autographs of distinguished persons and curiosities are kept." Directs her executors to expend 300l. in a monument in Milbourne Church, to be placed beside that executed by Sir Richard Westmacott to the memory of the late Lord Holland, and leaves a legacy to Sir Richard. The Baroness died at her residence, Great Stanhope-street, May-fair, on the 17th of November last, in her 76th year. She was the daughter and heiress of R. Vassall, esq. of Jamaica; was first married to the late Sir G. Webster, of Battle Abbey, Sussex, which marriage was dissolved by Act of Parliament, and on the 9th of July, 1797, was married to the late Lord Holland.—*Observer.*

THE BRAZILIAN PIRATES.—Our readers will recollect the circumstances attending the trial and acquittal of the prisoners charged with piracy on the coast of Africa, and the murder of the crew of her Majesty's ship *Wasp*. The prisoners, on being acquitted, were sent home by the British government. One of them, Majaval, was a Spaniard, a young man of rather superior manners and address, who acted as cook, was charged in the trial as being the person who inflicted the murderous blow on Midshipman Palmer. The prisoners were, in all probability, indebted for their acquittal to the munificence of the late High Sheriff of the county, Edward Simcoe Drowe, esq. of the Grange, who, with his wonted generosity, finding that most inadequate provision was made for their defence by the Brazilian government, caused the learned Serjeant Manning to be retained on their behalf; and the high personal character of the learned serjeant, and his equally high reputation as a lawyer, secured from the Court that attention to his exposition of the law which would not have been obtained by a junior counsel, even supposing that his critical acumen had enabled him to raise the same points, and give the same breadth of principle to his exposition as the learned serjeant did. The prisoners all expressed themselves most grateful to the High Sheriff; and it was a proud spectacle to see these wild and lawless men leaving our shores, and bearing away with them, for the rest of their days, an adequate conception and living experience of the impartiality and dignity of British law. The prisoner, Majaval, who as we have said, had evidently received a superior education to the rest, and had much of the manners of a gentleman, is a native of the town of Prima, near Barcelona. He left England in the highest spirits, rejoicing in the prospect of returning to his family, snatched as it were from the jaws of death. But on arriving at Barcelona he was arrested by the authorities and thrown into prison, charged with the crime of piracy, for which it appears he is amenable to Spanish law. He has written a letter to the late High Sheriff, praying for a copy of his acquittal in the British court, expressing the renewal of his thanks for the kindness which he experienced here, and describing his disappointment at being a second time incarcerated. The letter contained also one inclosed for General Espartero, between whose family and Majaval's there appears to have been some connection, with a view to get the influence of the General with the British authorities. Having heard a rumour of these circumstances, we have made inquiry of John Milford, esq. of Coaver, who had interested himself much on behalf of the prisoners, and by his knowledge of the Spanish language, was of great assistance to them; and he informs us that he was on a visit to the High Sheriff, at Grange, and he saw and translated the letter, and finds the facts to be as above stated. It is scarcely necessary to add, that the humanity of Mr. Drowe will prompt him to do all that he can in the matter. Mr. Milford states, that on his correspondence with the family of Majaval, he was impressed with the respectability of his father; and the young man who was found engaged in this desperate traffic was possessed of brilliant talents and an adventurous spirit. He has good reason to hope that the narrow escape he has had will be the means of snatching him from the destructive course in which his wild spirit and love of enterprise had first embarked him.—*Western Times.*

BILLIARD AND BAGATELLE TABLES.—In a few days a part of an Act of last session (8 & 9 Vict.

c. 109), relating to games and wagers, will take effect in respect to billiard and bagatelle tables in other than public-houses. It is provided by the 11th section, that from the 5th of April next, in the counties of Middlesex and Surrey, every house, room, or place kept for public billiard playing, or where a public billiard table or bagatelle board, or instrument used in any game of the like kind is kept, at which persons are admitted to play, not being under a victualler's license, shall be licensed under this Act. That every person keeping any such billiard or bagatelle table without being licensed for the house where it is so kept, and also every person licensed under this Act who shall not, during the continuance of such billiard license, put and keep up the words, "Licensed for billiards," legibly printed, in some conspicuous place near the door and on the outside of the house specified in the license, shall be liable to be proceeded against as the keeper of a common gaming-house; and besides any penalty or punishment to which he may be liable, if convicted of keeping a common gaming-house, shall, on conviction of keeping such unlicensed billiard table, bagatelle board, or other instrument, before a magistrate or two justices, be liable to pay such penalty, not more than 10l. for every day on which such table or board shall be used, or in the discretion of the magistrate or justices, may be committed to the House of Correction, with or without hard labour, for any time not more than one calendar month, and in default of payment of a fine or costs, the goods of a defendant may be sold. By the 13th section, persons licensed must not allow any persons to play at billiards or bagatelle, after 1 and before 8 o'clock in the morning, or at any time on Sundays, Christmas-day, or Good Friday, or on any public fast or thanksgiving day; and by another section (the 14th) constables and police-officers are empowered to enter the premises as often as they think proper, and if refused, such refusal to be deemed an offence against the tenor of the license. The charge for an annual license is by the 10th section fixed at 6s. which license is granted by justices assembled in session to such persons as in their discretion are fit and proper to keep billiard tables or bagatelle boards.

RETIREMENT OF MR. HILL, Q.C.—Mr. Mathew Davenport Hill, the eminent Queen's Counsel, who has for a considerable period led on the Midland Circuit, announced on Saturday that after twenty-six years' attendance on the circuit, he was addressing for the last time a jury in the courts of Warwick.

POLICE (IRELAND).—Return of the number of policemen employed as personal orderlies and clerks by the Inspector-General of Police, &c. in Ireland. Nine are, it appears, so employed, at an annual expense of 445l. 18s. There are also employed in other capacities than that of an ordinary constable, nineteen others, at an annual expense of 609l. 11s.

LUNACY.—By the Lunacy Act of last year (8 & 9 Vict. c. 100, s. 88), the several commissioners are required to visit asylums and private houses. They have recently made their first report to the Lord Chancellor, shewing their visits, the patients seen, and miles travelled, during the six months ending the 4th of February last. The report was yesterday issued as a Parliamentary paper. Dr. Turner made 148 visits, saw 6,593 patients travelled 3,351 miles. Dr. Hume made 105 visits, saw 3,813 patients, and travelled 2,718 miles. Mr. Procter made 131 visits, saw 6,550 patients, and travelled 3,138 miles. Mr. Mylne paid 170 visits, saw 5,382 patients, and travelled 4,081 miles. Mr. Hall (who died on the 30th of October last) paid 11 visits, saw 876 patients, and travelled 729 miles. Dr. Pritchard (who was appointed on the 31st August last) paid 102 visits, saw 4,626 patients, and travelled 2,052 miles; and Mr. Campbell paid 22 visits, saw 396 patients, and travelled 995 miles. Mr. Campbell was appointed on the 26th of November last.

CORN LAWS.—A Parliamentary paper, obtained by Mr. Moffatt, the member for Dartmouth, has been issued, shewing the number of addresses and memorials presented praying for the opening of the ports and repeal of the Corn Laws, since the 1st of September last. From the first branch it seems that 111 "addresses praying for the opening of the ports and repeal of the Corn Laws have been transmitted to the Secretary of State for the Home Department, and presented by him to the Queen, since the 1st of September, 1845." Of that number 46 were for opening of the ports; some of the addresses were for opening the ports and for a repeal of the Corn Laws. The memorials of the city of London, Liverpool, and Manchester appear in the document. There were, it appears, by the second part of the return, 168 memorials addressed to the First Lord of the Treasury, the Lords of the treasury, the Lords of the Privy Council, &c. praying for the opening of the ports, since the 1st of September, 1845, and two for the importation of Indian corn.

METROPOLITAN POLICE.—Annual accounts of receipt and expenditure for the purposes of the Metropolitan Police, Police Superannuation Fund, and Police Courts, in 1845.

PROCEEDINGS OF LAW SOCIETIES.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

GENERAL MEETING, MARCH 25, 1846.

Mr. Commissioner Foulblanque in the Chair. The minutes of the last meeting (the 4th inst.) were read and confirmed.

The following members were balloted for and elected:—The Duke of Buckingham, K.G., the Earl of Radnor, Lord Farnham, Thomas Parker, esq. solicitor, and Gerard Blisson Wharton, esq. solicitor.

The Report of the Committee on Criminal Law on the following reference:—"To consider the propriety of recommending the adoption of the plans of Captain Maconochie for the management of transported and other criminals," was ordered to be received.

The Report of the Committee on the Law of Property on the following reference was presented:—"To consider the law relating to mortgages." It was agreed that the Report should be further considered at the next meeting.

It was referred to the Committee on Equity, "To consider whether any and what mode can be devised for expediting the business in the offices of the Masters."

Adjourned till Wednesday, the 8th day of April next, at eight o'clock in the evening precisely.

Notices for Wednesday, the 8th of April.

1. The Report of the Committee on the Law of Property on the law relating to mortgages will be further considered.

2. The Report of the Committee on Criminal Law on the following reference will be presented:—"Whether unaggravated larcenies of small amount may not be advantageously submitted to the jurisdiction of the Petty Sessions."

CORRESPONDENCE.

SELECTIONS FROM CORRESPONDENCE.

"A COUNTRY ATTORNEY" writes thus on the subject of a "General Registry of Deeds":—

For a complete answer to all the points and arguments stated in favour of a general, or rather, central registry (for that is, in truth, the grand secret of the whole affair), I would refer you and your numerous readers to an excellent and admirable pamphlet, entitled "Cursory Observations on a General Register," by the present Lord Chancellor of Ireland, Sir Edward B. Sugden (published in 1834 by Murray and S. Sweet), who is a friend of our branch of the Profession, and not one of your canting, weening, chattering lords, bawling on an unearned, ill-merited pension of some 4,000l. a year. I trust Sir Edward Sugden may be induced to re-publish the pamphlet, with any further remarks occurring to him. He floored the "sawdust" at once.

NOTICE.

Post-office Orders must be made payable to Mr. JOHN CROCKFORD, Publisher of the Law Times.

To Readers and Correspondents.

J. J. (Whitechurch).—Thanks for the suggestion, which shall receive full consideration.

SUB ARTICULIS.—We are glad to find that the design of the Law Students' Society has not been given up, and we expect soon to be able to give the Profession further information respecting it. The question as to admission of articled clerks to the announced lectures of the Middle Temple, we cannot at this present answer; though our impression is that the lecture will be limited to the members of the Inns of Court.

We have received many letters from Shareholders in the "Solicitors' and General Life Assurance Society," in approval of the suggestion to effect policies, on their own lives, or those of members of their families, with announcements on the part of several to adopt this course at once. We take this opportunity of making our acknowledgments for the cordial expressions which many of these letters convey, and which though intended for the public through our columns, in the present superabundance of more urgent matter, we are unable to insert.

NOTICE TO SUBSCRIBERS.

The volumes of the LAW TIMES, neatly, strongly, and uniformly bound, for 5s. 6d. each, with the name and address of the owner on the cover, 1s. extra, if sent to the office. If the numbers for binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

THE LAW TIMES.

SATURDAY, APRIL 4, 1846.

TO READERS.

THE custom that prescribes, on the occasion of a new volume, some acknowledgment for the past, we are unable, at this commencement of the SEVENTH volume of the LAW TIMES, to extend to promises for the future. With every successive volume it has been our duty to announce improvements, all of which have been successively accomplished, until now the list is well-nigh exhausted; although we shall continue to receive with gratitude the suggestions of our readers, and adopt them when practicable.

On one subject we must be permitted a few remarks. The plan of presenting *verbatim* reports of all the written judgments has now been continued for eighteen months, with almost entire success, and, as we are assured, to the satisfaction of our readers. But the introduction of this great, and, indeed, unique improvement has necessarily drawn largely upon our volumes, and compelled the publication of repeated double numbers, to enable us to keep pace with the reports without sacrificing the other useful departments of the LAW TIMES. These double numbers, we have now ascertained by experience, cannot be less in the half-year than five, making a slight additional cost, but which, we presume, that no reader will object to pay in return for upwards of 130 written judgments, the average contained in each volume. Notwithstanding the many improvements and the consequent great increase of expense in the getting up of the LAW TIMES, no addition has been or will be made to its price. But from the beginning of the present year there has been an alteration in the allowance on pre-payments. Henceforth the prepaid subscription will be 1*l.* 5*s.* for the half-year, and 2*l.* 7*s.* for the year, which will include all the double numbers, being a reduction for payment in advance of nearly twenty-five per cent. on the half year, and of thirty per cent. on the year.

It is necessary, also, to state that, for the future, no subscription can be suffered to remain unpaid for more than two half years. The reason of this will be apparent when we state that the ascertained bad debts, during the three years the LAW TIMES has existed, amount to no less a sum than 72*l.* and the list of defaulters would fill upwards of four closely printed columns. Our publisher, therefore, must be excused if, in the exercise of necessary vigilance, he may sometimes appear to be importunate. He assures us that stringent measures to enforce a settlement have never been adopted until repeated applications had made, and the courtesy of a reply to them refused. He has also stated some cases of gross fraud, which it will probably be our duty to make known to the Profession, to warn others against similar impositions.

CONVEYANCING.

LORD BROUGHAM has hit upon a scheme for compelling the use of his neglected *short forms*. It is to be provided by statute that the Taxing Masters shall disallow the charges for the long forms when in their judgments the short ones may have been used.

The device is creditable to his lordship's ingenuity. But why was it not introduced into the original statute? The Brougham Law Reforms have been all remarkable for this sort of legislative dove-tailing. Every measure has been required to be patched and tinkered half-a-dozen times in order to make it fit for use, and when set in motion it has so jarred with other parts of this legal machine, that it has proved more a hindrance than a help. The

reason of this we take to be that Lord BROUGHAM is rather a theoretical than a practical Reformer. He frames laws upon abstract principles, or as if he were handling new materials with unbounded power to mould them at his will. Hence he introduces changes that may be well enough in themselves, but which, because they are not in harmony with the existing system, are the sources of more inconvenience and trouble, and consequent cost, than the evils they were intended to remedy.

So it was with the Conveyancing Acts of last Session. To short forms there is no rational objection. But no arrangement was made to secure to the solicitor a fair remuneration for his labour and skill bestowed, by substituting some other mode of payment than the length of the conveyance. The solicitors would not be parties to a voluntary change that would deprive them of their fair emoluments. So the Act became a dead letter.

We said then, that it appeared to us the most prudent course for the Profession was to accept the short forms, and use them, and arrange among themselves a scale of charges in conveyancing that would meet the altered circumstances. The recommendation was not adopted, and the result is now apparent. The short forms must be used, or if the conveyancer shall prefer the long ones, he must introduce them at his own expense. Would not the proposition we ventured to suggest have been far better than this which is now about to be forced upon the Profession?

Our readers may rely upon it that the landlords are resolved to diminish the expense of conveyancing, so as to enable them to deal with land more readily than heretofore, and to meet the new position in which pending legislation is about to place them. The Legislature will adopt any plausible plan for this purpose. If defeated for one session, it will certainly appear again, and probably in a more obnoxious form. Our earnest advice, therefore, to the Profession is, to adopt the change, and demand compensation, instead of waiting until the change is forced upon them without any compensation. Let them make a virtue of necessity. Nor in the end do we believe that loss will be sustained. Whatever facilitates the transfer of land will increase the number of conveyances, and we think that as a general rule the lawyers will find that their own true interests square with those of the public. The utility and applicability of short forms have been monstrously over-rated by the proposers, who are manifestly ignorant of the practical difficulties that forbid their employment in many cases; but still there are conveyances in which all or some of them may be used with perfect security. Lord BROUGHAM need not have been in such a hurry to force his mis-shapen offspring into the hands of the Profession. Whatever of it is good would have been adopted as soon as the first fit of horror at the sight of the stranger had passed away, and we trust that so harsh a measure of compulsion as that now before the House of Lords may yet be withdrawn.

LIABILITY OF ALLOTTEES.

THE argument put forward last week in support of the general proposition of the liability of allottees for payment of the deposit on shares applied for, appears to have taken many of our readers by surprise. It is certainly strange, that this argument, seemingly so palpable, should have been altogether overlooked by the learned counsel who have conducted the cases hitherto tried. In compliance with numerous requests from parties interested, both as members of committees and as allottees anxious to learn more particularly the reasons for the opinion at which we have arrived, we repeat, with details, the argument which we did little more than indicate last week.

All the cases so confidently relied upon, and on which the decision in *Spettiswood's case*

was avowedly founded, were antecedent to the Joint Stock Companies Act.

Previously to that Act, a company had no recognized existence—was not formed, in fact—until the execution of the deed; they who promoted it were merely an association of persons trying to get up a company upon their own responsibility, armed by law with no powers, and if they failed they were very properly held by the Courts to be liable for the expenses of their incomplete scheme.

But the Joint Stock Companies Act has altered all this—has placed such an association upon a footing altogether different; has recognized its existence, and endowed it with certain powers and authorities. Therefore the arguments that properly determined the previous cases are wholly inapplicable to the present case.

We write on circuit, where we have not access to books, and, therefore, are unable to cite the very words of the statute; but the general outline is sufficient for our purpose, and will, we believe, be found correct.

The Joint Stock Companies Act, then, provides that the promoters of a company may register it provisionally, registering also their names as such promoters.

Upon registration the company has a recognized existence in law, and the promoters are empowered by the statute to perform a certain number of acts necessary for the carrying out their object, and completely forming such company.

Among the powers with which they are thus invested, is that of demanding and receiving deposits, not exceeding in amount 10*s.* for every 100*l.* of shares allotted, where the scheme is one that does not require the assistance of Parliament, and a larger sum where compliance with the Standing Orders of Parliament is necessary: such deposits to be applied expressly in payment of the preliminary expenses.

The law never gives a right without a remedy; and having thus authorized the demand and receipt of deposits for a specified object, will enforce their payment.

This argument assumes, of course, that all has been rightly done, namely, that the scheme is *bond fide*, and that the promoters, who are only the trustees and managers for the whole body of shareholders, have faithfully discharged their duty. And, even if they have acted unfairly, it may be a question whether this be not a matter for which the shareholders must afterwards seek redress in equity, and not a defence in law.

It has been asked, "Who are the parties to sue?" As already stated we are writing without reference to book, and from memory, merely, of the statute; but our strong impression is, that the action should be brought by the registered promoters, who, if we rightly remember, are the parties empowered by the statute to allot shares and receive deposits. But this will, of course, be ascertained by examination, before such a step is taken.

If the view we have taken be the right one, the question of the liability of allottees will be narrowed to a single point. At all events, entertaining a very strong opinion upon it, we deem it to be our duty to submit it to the consideration of the readers of the LAW TIMES, than whom there could be no better judges of its worth.

THE INDEX LEGUM.

THE Index Legum, for the half-year ending the 1st of January last, is almost ready for the press, and will be issued in time to be bound with the volume of the LAW TIMES just completed. It will be stamped so as to be sent by post, and be contained, we hope, in about four numbers, perhaps in less. It will contain a full digest, arranged for practical convenience, of all the reports published during the half year, together with tables of the cases upon the statutes, and rules of Court, &c.

Readers desirous of adding to their volumes this ready reference to all the law of the half year, should send their orders immediately, as only a limited number will be printed.

PROFESSIONAL MALPRACTICES.

Our attention has been directed to the subjoined advertisement which appeared in the *Times* of Friday, the 27th ultimo. Should any of our readers have the means of informing us who the considerate gentleman is that thus invites employment, we shall deal with him as he deserves.

Railway Bubbles.—Parties being sued for pretended claims by railway projectors will be defended at a very trifling expense, by a gentleman of long standing in the profession. Apply to M. Y. Mr. Darcy's, 5, Buckingham-street, Strand.

SHAM LAWYERS.

ANOTHER of the fraternity which it is the aim of this *Journal* to suppress, we find exercising his powers of intimidation at Sunderland.

No. 1, East Cross-street, Sunderland.
March 6, 1846.

Madam,—I am instructed by Mr. Edward Bowmaker, of Sunderland-green, to apply to you for the payment of the sum of 2l. 9s. 3d. which you are indebted to him; and unless the same be paid to me, at my office, on or before Monday, the 9th inst. proceedings will be immediately taken, to enforce payment, without further notice.

ROBERT ROBSON, Sheriff's Officer.

BIRTHS, MARRIAGES, AND DEATHS

[The charge for the insertion of the above is 5s.]

BIRTHS.

BAYLIS.—On the 30th ult. at Park-place-gardens, the lady of Thomas Henry Baylis, esq. of the Inner Temple, of a daughter.

WESTON.—On the 28th ult. at Highbury-grove, the lady of George Weston, esq. Barrister-at-Law, Lincoln's-inn, of a son.

MARRIAGES.

BROOK. Herbert, esq. Barrister-at-Law, of the Inner Temple, to Ellen Thorthwaite, eldest daughter of the late John Thompson, esq. M.D. of Leeds, on the 26th ult. at Kendal.

ERKINE. Major, of H.M.'s 48th regiment, to Augusta Pratt, daughter of the late Hon. Sir William Oldball Russell, Chief Justice of Bengal, on the 31st ult. at St. Mary's, Cheltenham.

LITTLE. J. esq. solicitor, of Stoke Devonport, to Fanny Marian, eldest daughter of Richard Lewellin, esq. of Upper George-street, Bryanston-square, on the 31st ult. at St. Mary's, Bryanston-square.

WILSON. John, esq. solicitor, of Pall-mall, to Jane, only daughter of Mr. Henry Richardson, of Knott Mill, on the 31st ult. at St. John's, Manchester.

DEATHS.

ASTON. John, esq. solicitor, on the 28th ult. at his residence, Newbold, aged 86.

FOLEY. Edward Thomas, esq. on the 26th of March, at his seat, Stoke Edith Park, Herefordshire.

HAYWARD. Charles Woodcock, eldest son of the late W. W. Hayward, esq. solicitor, at Cambridge, on the 31st ult. aged 22.

SHARPLES. Thomas, esq. a Benchor of the Middle Temple, on the 28th inst. in Lincoln's-inn.

THE CRITIC.

New Books.

The Real Property Statutes of William IV. and Victoria, with Explanatory Notes, &c. By WILLIAM F. BROWELL, Esq. of the Middle Temple, Barrister-at-Law. London, 1846. Spottiswoode.

ONE of the multitudinous editions of the recent real property statutes; but it possesses this peculiarity, that it collects all that have been passed during the last and present reigns. Mr. BROWELL has accompanied them with appropriate notes, afforded ready access to their contents by a copious index, and thus has produced a really useful volume.

The list of contents suggests some reflections on the attempts that have been made, with such doubtful success, to improve this branch of our law. Here are no less than twenty-five statutes avowedly framed for the purpose of reforming certain evils, whose existence nobody disputes, and yet which baffle the most sagacious lawyers when their removal is attempted. Of all these twenty-five Acts of Parliament, how many have accomplished the objects of the framers? Certainly not half a dozen. The Statute of Limitations has been an entire failure; it has not shortened titles; on the contrary, it has rather increased the lawyer's labour, and there-

fore the client's cost. The Fines and Recoveries Act has been more fortunate, but this has not done what it promised. As for the Acts of last session, they have failed altogether; where they do not positive mischief they are waste paper. The short forms of conveyancing are disregarded, and the Assignments of Terms Act is unintelligible.

What is the cause of this? Manifestly that our Law Reformers are tinkers, not manufacturers: they try to stop one hole in an old vessel, and they make twenty. Our law of real property is a system, and cannot be reformed in parts; it must be reconstructed or let alone; if they want the courage or ability to undertake the former, let them leave meddling with the latter. What better proof of their impotence than the Conveyancing Acts of last session, undoubtedly sound in principle, and which reason and common sense must approve. But they are neglected because they are made optional and not compulsory; because the form is changed without arrangements made for changing the mode of remuneration. If the Act had provided that Conveyancers should be paid by some other scale than length, their interest in hurry would have been the same as the client's. But our unspractical statesmen overlooked this, and their law is laughed at.

Perhaps the most interesting extract we can make from Mr. BROWELL's volume will be a portion of a letter from H. BELLENDEN KER, Esq. to the Lord Chancellor, upon the design and intended construction of the notorious Transfer of Property Act. It will help to explain the Amendment Act.

My Lord,—In compliance with your lordship's direction, I have, in conjunction with Mr. Hayes and Mr. Christie, revised the Act passed in the last session "for simplifying the Transfer of Property," (7 & 8 Vict. c. 76.) Though most of the various objects which that Act embraces are of a practical and beneficial character, and ought to be included in any comprehensive scheme for ameliorating the law of property, yet the apparent inexpediency of some of its provisions, except, perhaps, as parts of such a scheme, and the confessedly imperfect frame of others, induce us to recommend, as the clearest and safest course, that the Act should be wholly repealed, and the clauses of which the policy is unexceptionable be re-enacted in a different form.

We are quite sensible of the difficulty and danger attending any attempt at legislation on detached points of a complicated system, especially where the proposed changes tend to contradict principles on which that system is based; and we have, therefore, approached the subject not without considerable diffidence. The conviction that such partial remedies cannot be too cautiously applied, has induced us to review the Act with the intention, first, of confining it to points which may safely admit of being thus separately treated; and, secondly, of legislating upon those points with greater accuracy and perspicuity. But although we have prepared the Bill now submitted to your lordship, after the merits and defects of the existing Act had been amply discussed by the Profession, it is yet very possible that we may have failed, either to select for omission the objectionable portions only, or to enhance, by alterations in arrangement and expression, the practical value of the rest. The result, indeed, of some recent statutes has shown that the most elaborate enactments differ from the least accurate only in the degree of help which they require from judicial exposition.

There are two sections of the Transfer Act which it is proposed altogether to omit:—

1st. The ninth section, enabling the executor or administrator of a mortgagee to convey the legal estate outstanding in his real representative.

2ndly. The tenth section, enabling trustees and others to give discharges for moneys.

1st. As regards the ninth section, which provides for the conveyance of a mortgaged estate by the executor or administrator of the mortgagee, the design is good; but it is so imperfectly carried out by the very limited terms of the enactment, that practically the power is attended with very little real advantage. It is necessary, for the purposes of title, to ascertain that possession has not been taken, that no action or suit is pending, and that the legal estate is vested in the real representative of the mortgagee; for a mere negative allegation of these facts in a deed of conveyance would not satisfy a purchaser. But it is obvious that the necessity of proving these facts, and particularly the fact of the legal estate being vested in the real representative (the very difficulty often being that the heir is unknown), destroys, in a great measure, the utility of the enactment. The clause, besides, authorises a conveyance only on actual payment to the executor or administrator of the whole debt;—not extending to a conveyance on part payment or a conveyance under any arrangement for exonerating the whole or part of the lands without payment; nor to cases where the money has been paid in the mortgagee's lifetime, or the executor has received the money at a former period, or has accounted

to a bequest of, or has assigned the debt. And, moreover, as the power—a bare statutory authority—is not conferred on the proving executor alone, it might be considered (though not, we think, on a just view of the provision) necessary to its due execution, that an executor who had not proved, or had even renounced the probate, should join—a possible construction, which would not only narrow still further the range of the power, but probably implicate many titles depending on the contrary assumption. Another more material objection arises from the want of a precise definition of what shall, for the purposes of the Act, be considered as falling within the term "mortgage"—a term which, taken according to its strict legal acceptation, would exclude a large proportion of the transactions comprehended under the popular meaning of that term, and clearly within the mischief sought to be remedied by the clause in question. Such a definition should, therefore, be given as would extend the benefit of the enactment to all cases where, according to the rules of a court of equity, a party is entitled to call for a conveyance of any property, pledged or charged as a security for money, on satisfaction of the debt; whether the security be in the form of a mortgage, to which the right of foreclosure is incident, or of a conveyance to the creditor or his trustee upon trust to sell, or in any other form whatever. Some method, too, more satisfactory than the use of such terms as "his executor or administrator," should be devised for ascertaining the person by whom, in every possible state of circumstances, the act is to be performed; for it is only by the expression of a rule of law in general and comprehensive terms, that there can be any reasonable hope of attaining completeness or certainty. Then, as regards the principle involved in this section of the Act, if it be fit that a mortgagee's executor or administrator (who, after being paid in full, has no further interest in the matter, and who, as he might, be it observed, have recovered the debt, although unable to make or procure a re-conveyance of the estate, may refuse to exercise the statutory power, vested in him as a mere instrument for the convenience of others) should be enabled by his act to denude the heir or devisee of the legal estate, and vest it in the mortgagee or his nominee, it must *a fortiori* be fit that the unpaid executor or administrator should be enabled to command the legal estate for the purposes of the security and the better administration of that portion of the assets of his testator or intestate. It can hardly be contended that the equity of the executor or administrator to have the full benefit of the unsatisfied and forfeited mortgage is not as strong and as urgent at least, as the equity of the mortgagee to have the full benefit of the redemption. In each case the same principle applies; and that principle, fairly carried out, would require that every person entitled to call for the legal estate should be enabled to obtain it with as little difficulty and expense as may be consistent with safety to the right parties and with the maintenance of the distinction between the jurisdictions of law and equity. In the actual state of the law, there are three modes by which a party equitably entitled may get in the legal estate—1st. By obtaining, often at a great expense, often on imperfect evidence, which leaves the title open to question—a conveyance from the party in whom the estate is actually vested, if competent and willing to convey it. 2ndly. In certain cases of incapacity, absence or refusal, by the still more costly remedy of an order of the Court of Chancery, made on a summary application by petition, pursuant to the Acts relating to infant trustees, &c. but which application involves a reference to the Master, with all its consequences. 3rdly. In cases not within those Acts (which are crippled by many unnecessary exceptions), at a still greater expense, by means of a suit in equity regularly instituted. Now all the cases to which the above Acts extend fall within the principle of the power in question enabling the executor or administrator of a mortgagee to convey; and that principle once admitted should be adopted to its fullest extent, unless it can be shown that its general adoption would be productive of inconvenience. But if the general power were so framed as to make its exercise dependent on the fact of the right in equity to call for the legal estate being really in the party who makes the disposition, no undue advantage would be obtained, while the title would be relieved from the necessity which at present exists of proving that the legal estate is vested in the party by whom (or by whose substitute) it is assumed to be conveyed. Having arrived at the conclusion that a free, yet well-considered application of the principle already admitted by the Legislature is of the very essence of a wise and just amendment of the law of real property, no attempt has been made to fit the existing clause to the particular case at which it is aimed. If, however, it should be deemed expedient to make a partial application of the principle—to amend the law by engrafting upon it an anomalous provision—the ninth section of the Transfer Act may be so modified as to attain more perfectly the very limited objects of its framers. Though these observations are applied to outstanding legal fees, yet the mischief extends to outstanding terms of years, which, notwithstanding all the remonstrances of the Profession and the prac-

tial examples afforded by every railway Act of the summary abatement of those nuisances, remain to this day a fertile source of expense, difficulty, and delay, in the deduction of titles to real estates.

Secondly, As regards the tenth section, which enacts that the payment to, and the receipt of, any person to whom any money shall be payable, or any express or implied trust, shall be a discharge, it is conceived that it never could have been in the contemplation of the framers of the Act to render in equity the receipt of the person entitled at law under every trust whatsoever (whether merely implied or otherwise) an effectual discharge to the party paying. The effect of this new rule, if carried to its fullest extent, would be to alter essentially one of the most important principles of a court of equity. It is conceived that the rule was intended to remedy an inconvenience of a much narrower extent. In equity the person beneficially entitled is the person to concur in directing the payment to the trustee, except where the *cestui que trust* is unascertained or incompetent, or where there is some trust shewing that the trustee was to have the money at his disposal for a particular purpose (as that of re-investment, &c.), or where there is an express declaration absolving the person paying from seeing to the disposition of the money. The rules as to the liability of a party paying money to a trustee, without the concurrence of the *cestui que trust*, to see the money duly applied, have varied, and are not yet precisely defined. To avoid any question, it has been usual to accompany a trust for sale, &c. with a declaration that the receipt of the trustee shall be a sufficient discharge. This occasionally is omitted, and thence a difficulty may arise, either in ascertaining whether the party paying is or is not bound to see to the ultimate disposition of the money, or in procuring the concurrence of the party entitled, who may be abroad, &c. The evil goes to this extent only; but the remedy is far more extensive, and is one which a very slight consideration will shew the danger of adopting. There can be no question but that it would be desirable to supply a fit remedy, by carefully ascertaining the state of the law as regards any discrepancies or uncertainties, and removing them, and so to extend the rule as to obviate all practical inconvenience. Perhaps a rule which, with some modifications, should give every trustee having an express power to sell or raise money an authority to give a receipt for it, would be advisable. And such a rule would be consistent with the 30th Order in Chancery, which renders it unnecessary to make the *cestui que trust* parties to a suit where there are trustees competent to sell and give receipts; but if the clause as it stands in the Act were to remain, it would of necessity lead to an alteration of the practice; and in all cases where there was a trustee of money, under any trust direct or implied, it would become unnecessary to make the persons interested parties. The remainder of the section refers to the receipts of the survivors of mortgagees being effectual discharges. Similar objections apply to this branch of the clause. Trustees often lend money on mortgage, and take the security to themselves as joint tenants, not noticing the trusts in the deed; but generally there is inserted a declaration that the receipt of the survivor shall be a discharge, thus negating the equitable tenancy in common. When this declaration is omitted, and a trustee dies, it becomes necessary to shew the trust of the money, and the power of the surviving trustee to give a receipt for it; and this evidence becomes part of the mortgagor's title. It was to remove this inconvenience that the clause was framed; but it goes far beyond the evil in question, by making the receipts of the survivor of all mortgagees who are at law joint tenants, sufficient. Now in practice many persons, not trustees, &c. take securities in joint tenancy; and it would seem very inexpedient thus to repeal generally the salutary equitable rule as regards these securities, and to allow the survivor to possess himself of the whole funds, without the concurrence of the representatives of the other equitable tenant in common. Supposing, however, that this part of the clause is retained, the expression of the rule in the statute being inaccurate, it would require considerable alteration.

As these two sections involve great and extended alterations of the law, without supplying any complete or careful expression of the rules, it has been thought necessary to explain at length the reasons for omitting them from the proposed Bill.

In the preparation of this Bill very little more has been attempted than a re-enactment, in terms more precise and apt, of the clauses of the existing Act. If it had not been considered expedient to confine the present Bill to a re-enactment of the clauses of that Act, except as above stated, and if there had been sufficient time, it is conceived that much advantage might have been derived from enactments which would remove many of the inconveniences arising from the present state of the law relating to the transfer of property. There are many points, in addition to those relating to outstanding legal estates, already adverted to, as to which enactments might be framed calculated to effect a great diminution of expense in tracing titles. The whole law relating to judgments is very confused and obscure, and the law relating to covenants might be altered with advantage. A reference

to the reports of the Real Property Commissioners will fully prove that much yet remains to be done towards simplifying the transfer of, and removing various difficulties relating to the evidence of the title to real property.

The Law and Practice of Railway and other Private Bills, &c. By JAMES J. SCOTT, of the Middle Temple, Barrister-at-Law. London, 1846. Richards. Pp. 662.

Railway Parliamentary Practice; with an Appendix, containing the standing Orders of both Houses of Parliament relating to Railways, &c. By HENRY RIDDELL, Esq. of the Middle Temple, Barrister-at-Law. London, 1846. Benning and Co. Pp. 352.

THE flood of railway Bills with which the Parliament is well-nigh overwhelmed has suggested the two volumes whose titles appear above, each having for its object to instruct those to whom the conduct of Bills is intrusted in the art and mystery of preparing and carrying them through both Houses of Parliament. Mr. SCOTT's is the most elaborate; Mr. RIDDELL's, the most compact. But perhaps the fairest course towards both of these gentlemen will be to describe the most prominent features of each of the rival volumes, leaving it to the reader's judgment to determine which is best adapted to his wants or his means.

Mr. SCOTT divides his treatise into three parts. The first part is devoted to the proceedings prior to the introduction of private Bills into Parliament. It is subdivided into two chapters, which describe successively the preliminary proceedings for establishing railway companies, and the proceedings requisite before presenting petition for Bill to Parliament. The second part details the order of proceedings in the House of Commons, with notes illustrative of such proceedings, and then the order of proceedings in the Lords. The third and last part contains the special proceedings in Parliament, as altered for the practice of the present session, and forms the most valuable, because the most original portion of the work. To make the treatise as useful as possible to the practitioner, Mr. SCOTT has introduced maps of plans and sections, as required by the Standing Orders, and an appendix of special Acts of Parliament.

Mr. SCOTT has used great diligence in the collection of his materials, and his volume will be a useful hand-book for all interested in parliamentary practice.

From the very nature of the subject, nothing offers of sufficient interest to the reader to justify extract at this season, when there are so many other urgent claims upon our columns.

Mr. RIDDELL's plan is to describe the course of a railway Bill, from the time when a petition is presented to the House of Commons for leave to bring it in, to the time when it is ready to receive the royal assent; for this purpose he enumerates and explains the several proceedings enjoined by the Standing Orders of both Houses of Parliament on the promoters of the Bill, at each distinct stage thereof. The Standing Orders are conveniently arranged in the order in which Committees usually take the proofs of compliance; the evidence required for proving such compliance is stated after the Standing Order that enjoins it, and after each Standing Order the cases in which questions either as to the construction of or compliance with such order may have arisen, are stated, together with the decisions which have been given thereon by committees. A chapter is devoted to the proceedings connected with postponed railways; another contains a succinct statement of the evidence required to support the preamble of a railway Bill; and a third explains the present mode of taxing and recovering costs in Parliament.

Mr. RIDDELL has devoted special attention to a topic involved in much obscurity—to wit, that of parliamentary *locus standi*. He has collected the decisions on this point with much care, and, with great acuteness, endeavoured to deduce from them something like the principles which appeared to guide the judgments of the various committees.

This description of Mr. RIDDELL's treatise will suffice to satisfy the experienced practitioner that it is the production of one who understands the art of making a law-book. The materials are well put together; they follow in a natural order, and everything is to be found in its proper place. It offers just what the man of business wants, and encourages him with no reprints of statutes, or matters not immediately connected with the subject. Hence

it is that a neat small volume is made to contain as much actual information as can be found in works very much more bulky.

Gladly would we transfer to our columns the new and useful chapter on Parliamentary *Locus Standi*; but its length forbids, and we have endeavoured in vain to select parts which would be intelligible of themselves. We must, therefore, refer our readers to the volume for this information, and we can do so with confidence that they will not be disappointed.

JOURNAL OF PROPERTY.

THE following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

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Public Sales.

By Messrs. SHUTTLEWORTH and SONS.

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A freehold house, No. 156, Fenchurch-street, City, let at 110l. per annum—2,520l.

By Messrs. HOGGART and NORTON, at the Mart.

An improved rental at 67l. 15s. for three years, and 77l. 15s. for 31 years, arising from a house and shop, No. 12, Curzon-street, May-fair—490l.

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A freehold house and premises, No. 49, Skinner-street, Snow-hill; estimated rental, 200l. per annum. The purchaser will be entitled to the rental or possession of the premises in three years from Lady-day last, that being the period at which the ground lease expires. The ground-rent receivable until the expiration of the lease is 20l. per annum, and 8l. per annum redeemed land-tax—2,950l.

A house, No. 9, Judd-place East, New-road, held for 99 years from June 1791, at a ground-rent of 8l. 8s. per annum—810l.

A residence, No. 13, Chester-street, Grosvenor-place, with coach-house and stabling; held for 64 years, at a ground-rent of 31l. 10s.—1,790l.

By Messrs. RUSHWORTH and JARVIS, at Garraway's.

A policy, dated June 23, 1840, effected in the Mutual Society, for 2,000l. on the life of Mr. John Linnit, whose age did not then exceed 55, at the annual premium of 114l. 6s. 8d. the sum and additions payable in case of death during the year 1846, are stated by the office to be 2,378l. 18s.—380l.

A bill of exchange, dated 17th June, 1845, drawn by John Linnit upon, and accepted by Hym Hymans for, 486l. 15s., payable at eight months after date—40l.

A similar bill for 500l., payable at nine months after date—40l.

A similar bill for 500l., payable at ten months after date—40l.

A similar bill, payable at eleven months after date—125l.

A similar bill, payable at twelve months—120l.

A ditto, payable at thirteen months after date—130l.

By Mr. MOORE.

Six houses, Nos. 1 to 6, Morgan-street, Commercial-road; held for 21½ years, at 14l. 14s., rates and taxes 9l. 17s. 6d., net rental 46l. 18s. 6d.—155l.

A freehold house, No. 11, Globe-road, Mile-end—205l.

Thirteen 8l. shares in the Commercial Gas Light Company—71l. 10s.

By Mr. MOORE, at the Mart.

A freehold house in Globe-road, Bethnal-green, containing 6 rooms and garden. Land Tax 7s. per annum—205l.

Six small houses in Morgan-st. Commercial-road, lot at 717. 10s. dilapidated; lease 23 years; ground-rent 14s. 14s.; taxes about 10s.—1884.

Thirteen 5s. shares in the Commercial Gas Company, paying a dividend of 5s. per cent. all paid up, 73s. 3s.

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Tuesday, March 21.

Alderton, W. S. steel pen manufacturer, last exam. April 21.—**Ashton, T. J.** tailor, further div. next week. Groom, London.—**Clement and Co.** tea dealers, joint div. next week. Belcher, London.—**Cork and Co.** coach builders, joint div. next week. Turquand, London.—**Goddard, G.** tea dealer, last exam. passed.—**Hague and Co.** engineers, joint div. next week. Whitmore, London.—**Kent, R.** victualler, last exam. May 8.—**Parr, J.** coal dealer, div. next week. Groom, London.—**Payne, R.** brassfounder, further div. next week. Groom, London.—**Prentice, G.** hahmonger, last exam. April 29.—**Reynolds, T.** cheesemonger, last exam. April 27.—**Schofield, J.** cutler, assignee, April 7.—**Spiers, W.** printer, last exam. passed.—**Watson, B. L.** manufacturer of flags, div. next week. Graham, London.

Wednesday, March 22.

Barnes, G. innkeeper, further div. next week. Groom, London.—**Ingis, A.** draper, last exam. April 30.—**Vines, J.** miller, div. next week. Johnson, London.—**Walker, W. J.** bootmaker, last exam. sine die.

Thursday, March 23.

Fargy, W. victualler, div. next week. Follett, London.—**Hay and Titterton,** oilmen, joint div. next week. Follett, London.—**Tucker and Co.** grocers, joint div. and sep. of each next week. Graham, London.

Friday, March 24.

Baker and Co. warehousemen, last exam. April 21.—**Batt and Batt,** oilmen, joint div. next week. Pennell, London.—**Chesser, W.** cooper, last exam. passed.—**Essell, B.** draper, last exam. April 24.—**Fisher, W.** commission agent, last exam. passed.—**Geertz, H.** upholsterer, further div. next week. Groom, London.—**Jones, R. T.** chemist, div. next week. Pennell, London.—**Kesteven and Co.** merchants, div. next week. Whitmore, London.—**Kington, R.** jeweller, last exam. May 14.—**Kingzett, E.** teacher of music, further div. next week. Belcher, London.—**Melville, T.** carpenter, last exam. sine die.—**Pescos, J. T.** metal refiner, last exam. sine die.—**Smayke, F.** fringe manufacturer, last exam. May 19.—**Young, J.** shipowner, last exam. passed.

Saturday, March 25.

Jones, F. wine merchant, last exam. passed.—**Robson, C. O.** plasterer, last exam. April 30.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Allen, C. maltster, first, 5s. 4d. Alsager, London.—**Barber, C.** calico printer, first, 2s. 11d. Pett, Manchester.—**Chamberlaine, J.** glass merchant, first, 5s. 6d. Turquand, London.—**Clarke, R. B.** plumber, first, 11d. Whitmore, London.—**Cooper and Beattie,** drapers, first, 9s. Wakley, Newcastle.—**Graham and Co.** calico printers, joint, 7s. Follett, London.—**Isard and Co.** upholsterers, first, 1s. Green, London.—**Jones, E.** sea. paste-board manufacturer, first, 2s. Whitmore, London.—**Jephin, J.** draper, 4s. 6d. Wakley, Newcastle.—**Leit, A.** timber merchant, second, 11d. Whitmore, London.—**Mackenzie, R.** commission agent, first, 2s. 6d. Alsager, London.—**Miles, J.** painter, first, 3s. 1d. Bird, Liverpool.—**Perry, D.** currier, first, 2s. 3d. Bird, Liverpool.—**Payne, G.** tailor, 2s. 3d. Belcher, London.—**Tomas and Men,** merchants, first, T. 20s. Whitmore, London.—**Whittington, G. T.** merchant, first, 4s. 6d. Belcher, London.—**Whittaker, H.** silk throwster, second, 1d. Fraser, Manchester.

Insolvents' Estates.

Brigham, C. Roman Catholic clergyman, Dodden, first and final, 1s. 7d. Wakley, Newcastle.—**Uryshart, G.** super-intendant in the Navy Payments Office of the Treasury of the Navy, Brompton, 3s. 3d. (in addition to 9s. 3d. by former divs.)

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, March 27.

Bidmead, I. draper, Tipton—**Com-Chalvey, March 14.** Trusts. J. S. Wilson, gent. Gresham-st. and B. Smith, warehouseman, St. Martin's-le-Grand. Sols. Sole and Turner, Aldermanbury.—**Clarke, C.** draper, Goswell-road and Cranbourne-st. March 6. Trusts. A. Beater, Aldermanbury, and J. S. Wilson, Maiden-lane, warehousemen. Sol. Sole, Aldermanbury.—**Clarkson, J.** plumber, Barnsley, Feb. 16. Trusts. T. Bague, gent. and T. Dale, jun. broker, both of Barnsley. Sols. Tyas and Harrison, Barnsley.—**Salmon, J.** carpenter, Beaumont, Essex, Feb. 21. Trusts. J. Salmon, farmer, Great Oakley, J. Salmon, farmer, Great Clacton, and E. Cook, land agent, Stratford St. Mary. Sol. Spurling, Thorpe.—**Smith, S.** hosier, Burlington-arcade, Feb. 14. Trusts. W. Y. Hall, glove manufacturer, Wood-st. and P. Bunnell, warehouseman, St. Martin's-le-Grand. Sols. Goddard and Eyre, Wood-st.—**Williams, M.** hosier, Greenwich, March 2. Trusts. H. Sturt, Wood-st. and J. R. Boufield, Houndsditch, warehousemen. Sols. Sole and Turner, Aldermanbury.

Gazette, March 31.

Abrams, J. D. tailor, York, March 30. Trusts. J. Baker, linen draper, and G. Peacock, woollen draper, York. Sols. Newstead and Wilkinson, York.—**Bacon, W.** grocer, Helions Bumpstead, Essex, March 18. Trusts. J. S. Robson, and F. Emson, grocers, Saffron Walden, and S. Cole, farmer, Helions Bumpstead. Sols. Messrs. Good, Saffron Walden.—**Booth, H.** silk dyer, Leek, March 21. Trusts. R. Sadler, draysalter, Macclesfield, and W. Milner, silk manufacturer, Leek. Sol. Sawkins, Leek.—**Chaloner, J.** carrier, Wrexham, March 21. Trusts. A. Chaloner, widow, Yale, and W. Chaloner, farmer, Llanarmon, farmer. Sol. James, Wrexham.—**Maisey, W.** March 20. Trusts. W. England, clothier, and A. J. Pearce, miller, Westbury. Sol. Pullen, Warminster.—**Monk, J.** yeoman, Wantage, March 31. Trusts. R. Greenaway, yeoman, Stevenon, and S. Ste-

venson, yeoman, Wantage. Sol. Ormond, jun. Wantage.—**Potts, T.** mercer, Newcastle, March 16. Trusts. H. Hickson, gent. Manchester, E. Nettleship, warehouseman, London, and J. Corbett, broker, Newcastle. Sol. Inglefield, Newcastle.—**Webb, T. G.** lace warehouseman, Wood-st. March 16. Trust. W. Wray, gent. King-st. Sol. Ogbourne, Pancras-lane.—**Webb, F.** wine merchant, Cooper's-row, Tower-hill, March 7. Trusts. N. Crosland, gent. Mincing-lane, and J. N. Robertson, gent. New London-st. Sols. M'Leod and Steuning, London-st.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, March 27.

ARKELL, JOHN, miller, baker, and maltster, Donnington-mill, Gloucestershire, April 4 and May 12, at eleven, Bristol, Com. Stevenson; Acraman, off. ass.; Brookes, Stow-on-the-Wold, and Short, Bristol, sols. Date of fiat, March 23. Bankrupt's own petition.

BURGHOUS, BENJAMIN MERRER, ironmonger, Liverpool, April 7, and May 8, at twelve, Liverpool, Com. Phillips; Casanova, off. ass.; Chester and Co. Staple-inn, and Tyrer, Liverpool, sols. Date of fiat, March 16. Bankrupt's own petition.

CLIFTON, ROBERT, brewer, maltster, and merchant, Brandon, Suffolk, April 3 and May 11, at half-past eleven, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Hensman, Basing-lane, and Wayman and Co. Bury St. Edmunds, sols. Date of fiat, March 17. G. Moore, H. J. Oakes, R. Bevan, and W. R. Bevan, bankers, Bury St. Edmunds, pet. crs.

EDMOND, THOMAS, merchant, Liverpool and Bombay, April 16 and 30, at twelve, Manchester; Hobson, off. ass.; Abbott, Charlotte-st. and Atkinson and Co. Manchester, sols. Date of fiat, March 5. P. W. V. Dudgeon, D. Scott, and R. Richmond, merchants, pet. crs.

FEATHERSTONE, JAMES, and KIRKPATRICK, ROBERT, iron founders, Manchester, April 16, at eleven, May 1, at twelve, Manchester, Hobson, off. ass.; Fisher and De Jersey, Alderley-st. and Barker, Manchester, sols. Date of fiat, March 21. J. Pickles and E. Hall, iron merchants, Manchester, pet. crs.

HALL, JESSE, share-broker, printer, and stationer, Rochdale, Lancashire, April 9 and 30, at twelve, Manchester. Hobson, off. ass.; Norris and Co. Bartlett's-buildings, and Heaton, Rochdale, sols. Date of fiat, March 21. Bankrupt's own petition.

KINGDOM, DAVID JAMES, baker, No. 31, Boston-st. Mary-lebone, April 7, at two, May 8, at one, Basinghall-st. Com. Fonblaque; Belcher, off. ass.; Messrs. Harrison, Walbrook, sols.

ROGERS, WILLIAM, draper, Leves, Sussex, April 4, at half-past two, May 23, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Soles and Turner, Aldermanbury, sols. Date of fiat, March 24. T. Devas, W. Devas, H. Minchener, and G. F. Routledge, warehousemen, Lawrence-lane, pet. crs.

TERRITT, JONAS, auctioneer and land and estate agent, Cambridge, April 3, at eleven, May 8, at twelve, Basinghall-st. Com. Fonblaque; Belcher, off. ass.; Wilkin, Furnival's-lane, sol. Date of fiat, March 30. Bankrupt's own petition.

TIMMINS, JOSEPH, brick maker, Caynham, Shropshire, April 14 and May 8, at eleven, Birmingham. Christie, off. ass.; Colmore and Beale, Birmingham, sols. Date of fiat, March 20. F. Timmins, brass founder, Birmingham, pet. cr.

Gazette, March 31.

BARRATT, JOHN CHARLES, carver and gilder and dealer in pictures, 308, Strand, April 3, at half-past twelve, May 8, at twelve, Basinghall-st. Com. Fane; Alsager, off. ass.; Taylor, Moorgate-st. sol. Date of fiat, March 24. Bankrupt's own petition.

BARTLETT, THOMAS JOHN MOTREY, bill broker, 9, Pall-mall East, April 7, at half-past eleven, May 12, at twelve, Basinghall-st. Com. Fonblaque; Pennell, off. ass.; Poole and Marston, Norfolk-st. sols. Date of fiat, March 23. R. Ward, warehouseman, Lilliput-lane, pet. cr.

COUCHMAN, CHARLES, brickmaker, Curlew-cottage, Hamersmith, April 6, at twelve, May 9, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Jones, Clifford's-lane, sol. Date of fiat, March 24. J. Warren, brickmaker, Hounslow, pet. cr.

DORLING, EDWARD, Berlin wool dealer, Ipswich, April 9, at half-past eleven, May 11, at twelve, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Rees and Langford, Friday-st. sols. Date of fiat, March 24. S. R., and W. Block, warehousemen, Newgate-st. pet. crs.

DUNNINGTON, HENRY, glove manufacturer, Nottingham, April 14, at half-past eleven, May 9, at half-past ten, Birmingham; Valpy, off. ass.; Freeth and Rawson, Nottingham, and Hodgson, Birmingham, sols. Date of fiat, March 21. F. Robinson, T. Moore, and J. Nixon, directors of the Nottinghamshire Banking Company, pet. crs.

EDMOND, WILLIAM and THOMAS, merchants, Liverpool and Bombay, April 17 and May 1, at twelve, Manchester; Hobson, off. ass.; Abbott, Charlotte-st. and Atkinson and Co. Manchester, sols. Date of fiat, March 6. P. W. V. Dudgeon, merchant, Manchester, and D. Scott, and R. Richards, copartners, pet. crs.

ELLIS, JAMES ROBERT, brass founder, 144, Houndsditch, April 7 and May 11, at half-past twelve, Basinghall-st. Com. Shepherd; Graham, off. ass.; Lawrence and Pews, Bucklersbury, sols. Date of fiat, March 28. Bankrupt's own petition.

ELKINS, VALENTINE, coach maker, coach smith, book-seller, and stationer, 1, Southampton-place, Euston-sq. and 68, High-st. Marylebone, April 14 and May 15, at twelve, Basinghall-st. Com. Holroyd; Groom, off. ass.; Fiddy, Temple, sol.

HAYARD, JAMES ROGER, commission agent and oil retailer, Mount-pleasant, Rhymney, Brecon, April 23 and May 15, at eleven, Bristol, Com. Stephen; Miller, off. ass.; Phillips, Cardiff, sol. Date of fiat, March 24. Bankrupt's own petition.

HIRST, JOHN, and GRAHAM, JOSEPH, cloth dressers, Oseott-st., Leeds, Yorkshire, April 19 and May 4, at eleven, Leeds, Com. Burge; Hope, off. ass.; Williamson and Co. Verulam-buildings, and Cariss, Leeds, sols. Date of fiat, March 25. F. Wilson, Wakefield, and D. Clifton, Dewsbury, cloth manufacturers, pet. crs.

HOWE, WILLIAM, bricklayer, carpenter, and builder, Boxford, Suffolk, April 7, at half-past ten, May 13, at one, Basinghall-st. Com. Fonblaque; Pennell, off. ass.; Gale-

worthy and Nichols, Cook's-st. and Salmon, Bury St. Edmunds, sols. Date of fiat, March 21. Bankrupt's own petition.

KELLY, MICHAEL, provision dealer, Liverpool, April 24 and May 15, at twelve, Liverpool, Com. Ladbroke; Turner, off. ass.; Vincent and Sherwood, Temple, and Jones, Liverpool, sols. Date of fiat, March 24. Bankrupt's own petition.

NEWTON, LANCELOT, warehouseman, Getter-lane, Chapp-aside, April 14, at eleven, May 12, at twelve, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Hensman, Basing-lane, sol. Date of fiat, March 23. F. Rheinlander and J. Collins, commission agents, Watling-st. pet. crs.

ROWBOTHAM, THOMAS KENWORTHY, bookkeeper and accountant, Huddersfield, Yorkshire, April 13 and May 4, at eleven, Leeds, Com. Burge; Hope, off. ass.; Lever, King's-rd. Robinson, Huddersfield, and Sanderson, Leeds, sols. Date of fiat, March 23. Bankrupt's own petition.

SCOTT, JOHN, fruiterer and commission agent, Newcastle-upon-Tyne, April 6, at twelve, May 23, at two, Newcastle, Com. Ellis; Baker, off. ass.; Harrie, Newcastle, and Chisholme and Co. Lincoln's-inn-fields, sols. Date of fiat, March 24. Bankrupt's own petition.

FRUHL, JOHN, wine and general merchant, 19, Beer-lane, Lower Thames-st. April 8, at half-past one, May 14, at eleven, Basinghall-st. Com. Evans; Bell, off. ass.; Philip, Great St. Helena, sol. Date of fiat, March 23. H. P. Tessen, victualler, Upper East Smithfield, pet. cr.

Meetings at Basinghall-street.

Gazette, March 27.

Boorman, L. alvermuth, Gravesend, April 7, at twelve, (adj. Jan. 21) last exam.—**Bromley, W.** scrivener, Gray's-inn-sq. Gray's-inn, April 21, at eleven, div.—**Carville, J.** commission agent, Little Love-lane, April 21, at one, and—**OW, W.** poultryer, Leadenhall-market, April 21, at two, div.—**Hulse, R.** chemist and druggist, 14, Little Tower-st. April 21, at eleven, div.—**Moham and Simons,** wine-merchants, Mincing-lane, April 7, at half-past eleven, proof of a debt.—**Palmer, A.** druggist, Feltwell, April 9, at half-past twelve, to choose new ass.—**Ward, W.** auctioneer, Manchester, April 21, at half-past twelve, div.—**Winston, T.** merchant, Cophall-buildings, April 9, at eleven, (adj. Feb. 6) last exam.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Calvey, B. draper, Tooley-st. April 10, at one.—**Carville, J.** commission agent, Little Love-lane, April 21, at one.—**Denn, T.** victualler, Chancery-st. April 10, at half-past one.—**Williamson, C.** wine-merchant, Oxford-st. April 21, at eleven.

Gazette, March 31.

Alexander, W. H. and Richards, C. B. hardwaremen and factors, Upper Clifton-st. Finsbury, April 24, at twelve, further joint div.—**Baker and Eastwood,** warehousemen, London, April 21, at twelve, and—**Bartlett, C.** merchant, Southampton, April 22, at half-past eleven, and—**Bennet, C.** scrivener, Spalding, Lincolnshire, April 22, at one, div.—**Callthorp, J.** ironmaster and coal filter, Licham, Suffolk, April 22, at one, div.—**Darwell, J.** ironfounder, brassier, and distiller, April 22, at one, further div.—**Dawson, W.** ironmonger, brassier, and distiller, April 22, at one, further div.—**Fisher, W.** commission agent and dealer in coal, St. John's-wood, April 21, at eleven, and—**Feeler and Little, Thomas,** tea dealers, Little Tower-st. April 24, at one, and—**For, R. G.** wine merchant, Canterbury, April 22, at eleven, and—**Gurney, J.** brewer, Lambeth-walk, April 22, at eleven, and—**Hill, J.** licensed victualler, Six Bells, Queen-st. Ham-mer-smith, April 21, at one, div.—**Jaikins, J.** currier and leather seller, Crown-pl. Old Kent-rd. April 22, at one, div.—**Latham and Perry,** merchants, Devonshire-sq. April 22, at twelve, sep. aud. of Latham.—**Muggeridge, H.** wire drawer, St. John-st. April 22, at eleven, and—**Muggeridge, R.** woollen draper, High-st. Birmingham, April 21, at one, div.—**Newton, A. L.** merchant, Bury-st. St. Mary-axe, April 21, at two, div.—**Pulvertoft, T.** gent. Wisbech St. Peter's, Isle of Ely, April 22, at one, joint div. and sep. of Pulvertoft.—**Ralph and Ralph,** builders, Shepherd's-st. Upper Brook-st. April 22, at eleven, aud.—**Stephen, G.** scrivener and bill broker, 4, Skinner's-pl. St. Paul's, and 7, William-st. Knights-bridge, April 17, at twelve, div.—**Waddell, J.** ship and insurance broker and shipowner, 1, Lime-st. and Leadenhall-st. April 21, at eleven, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Blackmore, C. tailor, Cork-st. April 22, at two.—**Challen, J.** brewer, Odiam, April 22, at twelve.—**Coe, J.** money scrivener, St. Paul's, April 22, at half-past eleven.—**Denning, I.** watchmaker, Titchborne-st. April 22, at twelve.—**Eadie, E.** bookseller, Chancery-lane, April 22, at eleven.—**Fisher, W.** commission agent, York-place, and Ordnance-rd. St. John's-wood, April 21, at eleven.—**Fricker, H.** innkeeper, Southampton, April 22, at one.—**Frost, J. W.** coffee dealer, Back-lane, Kingland-green, April 22, at eleven.—**Goss, R.** corn dealer, Clare, April 22, at twelve.—**Hawley, T. F.** cheesemonger, Barnsbury-road, April 22, at half-past eleven.—**Howell, T.** hotel keeper, Queen's Head, passage, Newgate-st. April 22, at two.—**Longridge, G. W.** ironmonger, Gun-derland, April 22, at half-past twelve, Newcastle.—**Oakley, A.** seedman, Southampton, April 22, at eleven.—**Payne, G. F.** dealer in optical instruments, Liverpool, April 21, at twelve, Liverpool.—**Saunders, T. F.** brewer, Burton-upon-Trent, April 22, at one.

Meetings in the Country.

Gazette, March 27.

Allerton, R. wheelwright, Bottle com Linacre, April 21, at eleven, Liverpool, aud.—**Bhaskara, W.** manufacturing chymist, Little Bolton, April 8, at twelve, Manchester, proof of a debt.—**Boulton, J.** needle maker, late of Redditch, Tardebigg, Worcester, April 18, at eleven, Birmingham, div.—**Brown, E.** merchant, Birmingham, April 18, at eleven, Birmingham, div.—**Eltholt, S.** and **Allen, J.** corn factors, Wakefield, York, April 30, at eleven, Leeds, joint aud. and April 21, at eleven, second and final joint div. and first and final sep. of each.—**Kelly, W. L.** printer and stationer, Tewkesbury, Gloucestershire, April 30, at half-past twelve, Bristol, aud. and April 23, at eleven, div.—**Milnership, T.** coal and ironmaster, and retail brewer, Moseley New Colliery, Wolverhampton, Staffordshire, April 17, at eleven, Birmingham, aud. and April 18, at eleven, div.—**Reed, J.** shipbroker, Newcastle, April 8, at twelve, Newcastle (adj. March 11), last exam.—**St. John, C.** coach proprietor, Birmingham, April 20, at eleven, Birmingham, final div.

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THE REPORTS.

Equity Courts.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Thursday, Feb. 12.

RIGBY v. RIGBY.

Practice—Pleading—Discovery of documents, &c.
The plaintiff's bill contained an allegation of his title to an estate (the subject-matter of the suit), and prayed an account of the rents and a discovery of documents, &c. relating to the estate. One of the defendants pleaded in bar to the relief, and to a discovery of documents relating to the rents, setting forth in his answer a list of all the documents "in his possession or power relating to any of the matters in the said bill mentioned," except such documents as related exclusively to rents. Upon the ground that the documents in question might, in their recitals, contain information to which the plaintiff was entitled on other points, the plea was overruled generally.

The plaintiff, John Rigby, in his bill, stated "that his uncle, John Rigby, after surrendering certain copyholds to the use of his will dated 22nd January, 1812, directed the trustee therein named to stand fined and seised of all his aforesaid surrendered copyhold estates in trust for the use of his brothers, William Rigby and Thomas Rigby, from and after his decease, equally to be divided between them as tenants in common and not as joint tenants during their natural lives, and to and for the use of the survivor of them during the natural life of such survivor, and, from and after the decease of such survivor, in trust for the use of his nephew John Rigby and his heirs and assigns. The testator died in 1812, and besides the said William Rigby and Thomas Rigby, the testator had two other brothers, one who died in the lifetime of the testator, leaving a son, John Rigby, the defendant, and another, Henry Rigby, the father of John Rigby, the plaintiff. The bill stated the respective deaths of Henry Rigby, William Rigby, and Thomas Rigby, and that since the death of Thomas Rigby the defendant, John Rigby, had continued in possession of the said copyhold estates, and charged that the defendants had in their possession documents, &c. relating to the matters aforesaid, and whereby if produced, the truth thereof would appear." And prayed that it might be declared that the said testator by his nephew John Rigby, in the said will named, meant the plaintiff, and not the defendant John Rigby, and that the plaintiff might be declared entitled to the said copyhold estates, and prayed an account of the rents and profits of the said copyhold estates since the decease of the said Thomas Rigby.

To this bill the defendant John Rigby put in a plea and answer, whereby he pleaded in bar to all the relief prayed, and to so much of the discovery as asked for an account of the rents and profits, and as required, the discovery or production of documents relating to the receipt or application of the rents and profits of the said copyhold estates or some part thereof since the death of the said Thomas Rigby; and for plea saying that he the defendant was the testator's nephew John Rigby in the said will named. To certain other parts of the bill the defendant John Rigby answered as follows, that in a schedule to his answer annexed he had "set forth a full and true list of all the documents now in his possession or power,

relating to any of the matters in the said bill mentioned, with the exception of such documents in his possession or power, as related exclusively to the rents and profits of the said copyhold estates or some part or parts thereof received by this defendant since the death of the said Thomas Rigby, or to the personal occupation of the same estates, or to some part or parts thereof by this defendant since the death of the said Thomas Rigby." And save as in the said schedule mentioned, the defendant denied the possession of any documents, &c., "relating to the matters, or any matter in the said bill mentioned, whereby, if the same were produced, the truth of such matters, or any of them, would appear, except documents relating exclusively to rents and profits so received by the defendant since the death of the said Thomas Rigby as aforesaid, or to the personal occupation by the defendant since the death of the said Thomas Rigby, of the said copyhold estates and premises, or some part or parts thereof." *Jas. Parker and Ran. Palmer*, in support of the plea.—The statements in the bill may be divided into two parts. The one which relates to the identity of the individuals who claim the property, which must be answered; the other part is consequential upon that, and against which we claim a right of protecting ourselves. This is a case where one party, a total stranger, asks for an account of the rents and profits of a gentleman's estate. The plea ought not to be disregarded by the Court, inasmuch as it proffers a fair issue as to identity.

Robson, for the bill, contended that the plea was not in fairness an insurable plea; and that it only aimed to protect the defendants from a discovery of the documents which related to the rents and profits; and might contain incidental information by rentals, &c., to which the plaintiff was justly entitled.

The VICE-CHANCELLOR.—The bill contains a general allegation that the defendants are in possession of documents relating to the matters aforesaid. Your plea goes to the whole relief, and so much of the discovery as prays an account of the rents and profits. Can this be taken as a division of the bill into two parts? The documents, as you state them, are not divided into two parts, since they all relate to some of the matters aforesaid.

J. Parker.—I have a right to protect myself from the production of documents relating to the discovery covered by the plea, if I produce all those which relate to the other matters mentioned in the bill. We gave the plaintiff all such documents as do not relate exclusively to rents and profits.

The VICE-CHANCELLOR.—I do not understand what is meant by the expression "exclusively," for although it may be taken as signifying a deed which did relate to the rents and profits exclusively, yet there may be contained in that same instrument recitals or descriptions of parties, which might afford information to which the plaintiff is entitled. The plea avers that the defendant is the party named in the bill as the testator's nephew, John Rigby; still the plaintiff is entitled to a discovery of the rents and profits, and all that you allege is, that you have set forth in a schedule all that do not relate exclusively to the rents and profits. You then ask protection from discovery of the documents which relate to the rents and profits. The circumstance of the defendant's being entitled, affords no reason why he should not make a discovery of those deeds which relate to the rents and profits.

Plea overruled, without leave to stand for answer.

Friday, Feb. 13.

BOSTOCK v. SHAW.

Practice—Parties—Fraudulent Settlement—Representatives of Settlor.

To a bill filed for the purpose of impeaching a settlement on the ground of fraud, an objection was raised for want of the representatives of the settlor. Held, that such representatives were unnecessary parties.

The bill stated that one Robert Bennett, for securing the repayment of a sum of 180*l.* to the plaintiffs, deposited with them in July, 1840, a certain lease, and at the same time gave them a written memorandum of the transaction. The plaintiffs, at the request of Robert Bennett, advanced the further sum of 30*l.* and received another memorandum at the foot of the former one; that an indenture of settlement was alleged to have been made, dated the 24th Sept. 1838, whereby the said Robert Bennett professed to assign to Joshua Shaw, his executors, administrators, and assigns, the premises comprised in the said lease upon certain trusts, for the benefit of the said Robert Bennett, Mary Ann Bennett, his wife, and William Bennett and Mary Ann Bennett, his two children, and all and every other child and children of the said Robert Bennett and Mary Ann Bennett the elder, as therein mentioned; that, until the month of August, 1844, the plaintiffs had never heard or had any suspicion that the said Robert Bennett had made any such settlement; that the plaintiffs were purchasers for valuable consideration of the said leasehold premises to the extent of 170*l.* and interest; and that the said indenture of 24th September, 1838, was a voluntary settlement, and fraudulent and void against the plaintiffs as such purchasers, as aforesaid; that in June, 1845, the said Robert Bennett died.

The bill was filed against Joshua Shaw, Mary Ann Bennett, the elder, William Bennett and Mary Ann Bennett, the younger, praying that the said indenture of 24th Sept. 1838, might be declared fraudulent and void against the plaintiffs, and that the said defendants might be declared only entitled to the said leasehold premises, subject to the aforesaid equitable mortgage, and that the defendants might be decreed to pay to the plaintiffs what should be found due on taking an account of principal and interest. The defendants now objected that the representatives of Robert Bennett, the settlor, ought to be made parties, and upon this objection the cause was set down (a).

Tennent, in support of the objection, contended, that the plaintiffs did not positively state that there is such an indenture of settlement, but simply this, namely it is alleged that there is; and there exists no instance in which the Court has gone to the extent of declaring an instrument fraudulent in the absence of the party making it.

Piggott, for the plaintiffs, stated, that the settlor had by the settlement made an absolute assignment of all his interest to the defendants.

His HONOUR thought, that, looking at the whole record, whatever infirmity there might have been in the allegations contained in the bill, it was sufficient that the substantial question was, whether the settlement should stand good as against the mortgagees. If not, his opinion was, that the bill might stand without the settlor's representatives, and therefore overruled the objection.

ROLLS COURT.

Tuesday, Feb. 17.

Re RICHARDSON.

Solicitor's bill of costs—Delivery—Taxation—Paying over trust money—Delivery of papers.

Four persons having taken a conveyance of property claimed by a fifth, for the purpose of raising money to prosecute his claims, employed a solicitor, and deposited the money &c. with him; three of the trustees, together with the cestui que trust, having employed another solicitor, applied to the Court to order the delivery of the former solicitor's bill, and to refer it for taxation, they undertaking to pay what should be found due. The former solicitor was forbidden by the fourth trustee to deliver his bill, pay over the money, or deliver up the papers. The Court ordered the delivery of the bill and taxation, reserving all other questions and also costs, and permitting the solicitor to review his bill, though made out fully, if not actually delivered.

One William Mobbs having, or conceiving himself to have, a right to certain property, but not having the means of asserting his rights, arranged with four persons to become trustees for him of the property for the purpose of raising money to prosecute his claims. The trustees appointed Mr. Richardson their solicitor, and certain moneys which had been raised, as well as papers, were deposited in Mr. Richardson's hands. Three of the trustees, together with the cestui que trust, having thought fit to change their solicitor, demanded his bill of costs from Mr. Richardson, together with an account of the money transactions, and a delivery of the papers, and he having refused, Mobbs presented a petition to that effect, which was dismissed. The present petition did not, as before, ask for the money in his hands, but only for the delivery of his bill, and an order for its taxation when delivered, &c. they undertaking to pay what should be found due.

Shaper, for the petitioners, read the affidavits, and stated that Thomas Smith, the other trustee, would not join.

Kinderley, contra, said that the respondent was willing to deliver his bill, and to comply with the wishes of the petitioners; but he held a sum of money which had been borrowed to prosecute the suit of Mobbs, and there were also papers in his hands, and he was directed by Thomas Smith not to give up either the money or the papers, inasmuch as Smith was liable to other persons from whom the money was borrowed. [The MASTER of the ROLLS.—That can be discussed and settled hereafter, if only the delivery and taxation of the bill be ordered now.] The controversy is between the three trustees and cestui que trust on the one hand, and the remaining trustee on the other.

Moore, for Thomas Smith, said, he considered him-

(a) This was under the 30th Order, 26th August, 1841, which directs, "that when the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set the cause down for argument upon that objection only; and the purport for which the same is so set down shall be notified by an entry to be made in the Registrar's Book, in the form or to the effect following (that is to say), 'Set down, upon the defendant's objection for want of parties,' and that where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order for liberty to amend his bill by adding parties; but the Court, if it thinks fit, shall be at liberty to dismiss the bill."

self only liable, but that the others, though they said they were, really were not liable.

The MASTER of the ROLLS said, he understood that the four trustees employed the solicitor, and it had not been denied. He would therefore order the bill to be delivered and taxed, and would reserve all other questions, which, if he could, on the jurisdiction he then exercised, he would consider. If the bill had not been delivered, though fully made out, the solicitor might review it, and he allowed him six weeks to deliver it.

Wednesday, Feb. 25.

BRADSTOCK v. WHATLEY.

Consent to pass decree—Change of solicitor—Irregularity—Order to restore solicitor.

It being necessary to have the consent of a defendant, who had not been properly served, to the passing of a decree, so as to make it binding, application was made to the solicitor of one set of defendants, of whom this defendant was one, to act, but he refusing to do so, the solicitor of the plaintiffs having got the defendant's signature to a consent to pass the decree, obtained an order making himself solicitor of the defendant in place of his own solicitor, and the decree was passed. The defendant having moved to discharge the order for changing the solicitor, it was ordered, not that the order should be discharged, but that the original solicitor should be the solicitor on the record, and the costs should fall on the plaintiff. In this case Ann Whatley, one of a set of defendants, made so at the hearing, being found in the registrar's office not to have been duly served, it was necessary to have her appearance and consent to the passing of the decree, in order to make it binding upon her; and for that purpose application was made to her solicitor, who was the solicitor of her co-defendants, to act for her; but he refusing to do so, she was applied to by a solicitor on behalf of the plaintiffs to sign a paper in presence of her son, whereby she consented to the passing of the decree. The solicitor for the plaintiffs having obtained this consent, was doubtful how he should proceed upon it, but, acting on advice, he got the common order to change solicitors, substituting himself in the place of the defendant's solicitor. This it was thought necessary to do in order to avail himself of the defendant's consent, for no one but the solicitor on the record for the time being acting for the defendant could give instructions to counsel, or take any step on her behalf, and so the consent would be inoperative, if acted on by the solicitor for the plaintiffs as such. The decree was accordingly passed, Mrs. Whatley assenting thereto by her new solicitor. The matter, however, coming to her knowledge, and that of her own solicitor, they were both dissatisfied; and hence the present motion to discharge the common order to change solicitors, which, if successful, would be equivalent to setting aside the decree. The motion was opposed, therefore, by the plaintiffs, and it was alleged at the bar, though there was no affidavit to that effect, that the plaintiff's solicitor had proposed to the defendant's solicitor to obtain the common order to restore him, and that this suggestion was made before the notice of motion. On the other hand, Mrs. Whatley, as well as her son, in whose presence and with whose approbation the consent was given, denied that anything had ever been said to them about a change of solicitors, and if they had known it was intended, the consent would not have been given.

Turner (with him Borrell) contended that the order to change solicitors had been improperly obtained, and ought to be discharged. Mrs. Whatley was not told, nor was her son, that the change was intended to be made, or she would not have agreed to it.

Kindersley (with him Pitman) said his clients had no objection to obtain the common order to restore the defendant's solicitor, and a suggestion of that kind had been made to the other side before motion, but there was no affidavit of it. The order was, to appear for Mrs. Whatley and consent to the passing of the decree, and her solicitor refusing to do so, her consent was obtained by the plaintiffs; but as no solicitor can give authority to counsel except the solicitor on the record, it was therefore thought necessary to go through the form of changing the solicitor. This, it is said, was wrong, and the defendant says she never consented to it; but if the only way of making the consent she gave operative was by changing the solicitor, it is clear she virtually assented to that step. The plaintiff's solicitor had no objection to pay for the common order to change solicitors, the cost of which is 7s.; and also for another order to restore the defendant's solicitor; but it is submitted he ought not to pay more.

The MASTER of the ROLLS.—It seems this lady was one of a set of defendants who were brought before the Court at the hearing, and that she could not be duly served. This being discovered in the registrar's office, application was made to the solicitor of these defendants to appear and consent for her to the passing of the decree; but he refused to do so, and the decree, if passed, would not therefore be binding on his clients. Application was then made through a son of the defendant for her consent, and it was

accordingly given in his presence and with his approbation; but the question was, how to proceed after having got it. The plaintiff's solicitor says it would have been useless for him to proceed unless he was the solicitor on the record, and so, after taking advice, he got himself substituted for the purpose of giving the consent and authorising the passing of the decree. It would have been better if he had told the lady of the difficulty, and prevailed upon her to give a peremptory order to her solicitor or to some one else to appear for her; he did not do so, however, but at the same time he did not act on his own authority without advice which appeared satisfactory. Well, having got himself substituted as solicitor, and having appeared and consented, he was *functus officio*. Inquiries having been made by the defendant's solicitor, who was desirous of communicating with Mrs. Whatley, he finds himself displaced, and wants to know how he is to get out of the difficulty, and it occurs to him that the only way is to obtain an order to discharge the order for a change of solicitors. Now that is not a proper order; for if he had done what the other party did, there would have been no occasion for the change. First, then, no costs must fall upon this lady in consequence of the proper effort made by the plaintiff's solicitor to supply the defect of her non-appearance. On the other hand, as she did consent to pass the decree, let it not be disturbed. The proper order is, that the defendant's original solicitor shall be the solicitor on the record, and the costs to fall on the plaintiffs.

Saturday, March 21.

GOLDING v. CASTLE.

General Orders—Master's finding—Master's duty on a reference to him—Inconvenience of his not drawing a conclusion.

The 48th General Order of August, 1841, requires the Master not to insert states of facts, &c. in his reports, but to refer to them merely; and the Master ought to come to a conclusion on the matters submitted to him as well as that the parties may have the opportunity of excepting to his report, as that the Court may have the benefit of his finding. And where, in a report, the Master had set forth a full state of facts, &c. and had come to no conclusion upon them, the Court referred the report back to him to review it.

This was an administration suit, and, by the decree made at the hearing, it was ordered that it should be referred to the Master to inquire who were the next of kin of the testator, and to ascertain whether any and what debts were due to his estate from a particular defendant therein named; also to inquire who were interested in the residuary estate, and whether any and what proceedings ought to be taken to get it in or otherwise in respect thereof, with liberty to state special circumstances. The matter having come before the Master, and the executors having carried in certain states of facts, and having produced several affidavits relating to the debts in question, the Master set them out in his report at full length, notwithstanding the 48th General Order of August, 1841, which directs that states of facts, &c. shall not be set out, but only referred to. The Master also found some debts due, but he left it for the consideration and direction of the Court whether any proceedings ought to be taken by the executors to recover and get in the residuary estate. The report was duly confirmed, and the cause now came on upon further directions; but the attention of the Court being drawn to the report, the further hearing was directed to stand over.

The MASTER of the ROLLS observed that the Master had, in violation of the rule of Court, founded on the General Orders, set out in full the states of facts, affidavits, &c. which had been carried in before him, and, besides, had come to no conclusion respecting the matters submitted to him. He had never seen a greater departure from the rules of the Court in the form of a Master's report. It was of the utmost importance that the rules of the Court should be adhered to; and the interest of the parties in the cause, as well as of the suitors in general, required that they should be so. The Master in this case had come to no conclusion, and the parties were therefore deprived of the opportunity of excepting to the report, and the Court was deprived of the benefit of the Master's finding on the facts and evidence before him. He was unwilling to increase the expense, but he could not adjudicate on a report in this state. He would therefore discharge the Order confirming the Master's report, and refer it back to the Master to review it, so far as related to the points on which he had come to no conclusion.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Monday, March 9.

GOODWIN v. GOSNELL.

Misconduct of solicitor.

Where, upon the pleadings in a suit, the conduct of a solicitor, who was a defendant, appeared to have been grossly improper, the Court, after disposing of the case, ordered that the solicitor should, by a certain

day, shew cause why his name should not be struck off the rolls.

This suit was instituted against the executor of a will and Mr. George Price Hill, his solicitor, for the purpose of having a sum of stock, which had been improperly sold out, replaced. The allegations of the bill were substantially admitted by the answers. The conduct of Mr. George Price Hill, as it appeared upon the pleadings, formed the principal subject of discussion, and after the other parts of the case had been disposed of,

The VICE-CHANCELLOR said, I have now so far disposed of the cause. I must do more. An old man, in a lowly class of society, a Worcestershire peasant, scarcely or not at all above the station of a farm labourer, happens to be a trustee under a farmer's will, of a sum of stock amounting to 650l. Three per Cent. Consols, for the benefit of the Goodwin family, who are infants—for the benefit, probably, of unborn persons. The stock stands in the name of the testator, and is bequeathed to his sole acting executor and trustee, for the benefit of the children, and that bequest of the stock is for this purpose a specific bequest, and has been assented to. I must, upon the evidence, consider the trust as fixed, and the fund as clear, except that the legacy-duty, amounting to 1l. per cent. which makes the amount something less than 8l. has not at this time been paid. In this state of things the old man, the trustee, seems to have received the ordinary application from the legacy-duty office, as I collect, on the subject of the duty, and to have consulted Mr. Hill, a solicitor, upon it. Mr. Hill advises him to sell the whole of the stock. I desire now not to be understood as adopting the evidence of Mr. Gibbon, a witness in the cause. I do not put it so unfavourably to Mr. Hill as that evidence does. He advises him to sell the whole of the stock, the will giving no authority for this purpose. This advice was plainly unjustifiable, and most manifestly unwarranted. Perhaps it might not have been wrong to sell, or to advise the sale of, a specific part of the stock to pay the duty, but for that object certainly not so much as 15l. could have been wanted. I am bound to attribute to Mr. Hill a knowledge of the title to the stock in question, of the circumstances of that title, and also a knowledge of the nature of the advice he gave. I cannot, upon the evidence before me, ascribe to the trustee a sufficient degree of knowledge or information to enable him to judge whether the advice given him was right or wrong. The trustee follows the advice. Mr. Hill causes a blank power of attorney to be prepared in favour of his London agent, Mr. Smith; it is sent down to Mr. Hill, who procured its execution by the trustee, and then sent it back to London, where the agent, Mr. Smith, under Mr. Hill's direction, acted upon it by selling out the stock and paying the clear proceeds, amounting to more than 590l. sterling into a London banking-house, to the credit of Mr. Hill's account with a country bank, by which transaction the clear produce of the whole sale found its way into the name and into the power of Mr. Hill, and in fact came into his hands. It is unnecessary to characterise such a transaction. But the matter does not end here. Mr. Hill afterwards dealt with the money, and in doing so it was materially at his peril, by lending it, or representing himself to have lent it, on a security on which (even supposing, as I collect, the will had authorised a sale) it would have been unwarrantable and improper in its nature to have lent it upon. He misapplied grossly, and represents himself to have misapplied grossly, in some other manner, the remainder of the money, and claimed all, or nearly all, the remainder, as being due to him for charges of an unreasonable nature, at least in part, and with which, as to part, the persons who were beneficially interested in the fund could have nothing to do. He prepared, and caused to be executed, a release to himself in respect of these transactions. What would have been the right mode of dealing with or viewing conduct such as this, had the trustee been a person of education, or a man capable of protecting himself, I need not say. Upon the evidence before me, I believe that the trustee here was a helpless and ignorant instrument—a mere instrument in the hands of Mr. Hill, without any judgment, or with scarcely more judgment or volition for any effectual, substantial, or useful purpose, in this matter, than the pen with which he was made to sign his name. It has been said of other persons, and in other instances, and it may be said of Mr. Hill and of this case, that the regret that a professional man should have so conducted himself is only equalled by the wonder that, as he has the means of preventing this transaction from being brought under public observation, he should have allowed it to go forth to the world as he has. None of the parties interested have made any application against him except by the institution of this suit. I see no reason for supposing Mr. Hill to be unable to satisfy the pecuniary demand which the plaintiffs have upon him, if it had not been necessary that the case should come before the Court. As it is, however, unfortunately the case has come before the Court, and it is now judicially before me, and my understanding of the



duty I owe to this profession and society prohibits me from treating it as not containing any thing beyond a mere matter of civil litigation. If a solicitor by his employment professionally on behalf of an ignorant man, and by means of the confidence reposed in him by his client—by means of information given him by the client—is enabled to acquire, and using those means for the purpose of acquiring, does acquire by them, from the client, the property of others for whom the client is trustee, and to whom he is answerable for it—if the solicitor thus acquires, and I do not merely say unduly, I do not merely say unjustly, and for an improper purpose, but in a manner which the solicitor must have known to be improper and unfair, for purposes which he must have known to be manifestly unjustifiable—if, having done so, the solicitor actually does misapply the property so unduly acquired, and if the purpose for which, and the manner in which, he so misapplies it, is to any extent substantially for his own private advantage, benefit, or profit, and if the client so relying upon the solicitor is a person by education and station so incapable of forming a correct estimate of the propriety or impropriety of the act of the other as to be substantially a mere instrument or machine in his hands, used by him as I have said, I am not prepared to say that such a professional man ought to remain a solicitor of any court. Assuming the act of acquiring property under such circumstances not to amount to an indictable offence, I do not see any other reason than that against the substantial applicability to him of a term or terms more ordinarily and familiarly in use in jurisdictions of a kind differing from this, and which I need not more specifically express. As I am to my great regret unable to say that the materials before me do not afford a probable ground for apprehending the supposed case, which I have been mentioning, to be a substantially correct description of Mr. Hill's conduct in respect of the 650*l.* stock, and its produce, and, therefore, for questioning the propriety of the continuance of Mr. Hill as an officer of the court, I should in my judgment, considering the nature of the case, be deserting one of the most important duties belonging to the judicial office, were I not to order, as I now do, that Mr. Hill do shew cause, on some future day to be now fixed, why, having regard to his answer and to the evidence in this cause, his name should not be struck of the roll of solicitors of the Court of Chancery.

The second day of Easter Term was then fixed for Mr. Hill to shew cause.

Russell, Goodere, Renshaw, Wigram, and Rogers were the counsel for the several parties.

Saturday, March 14.—The VICE-CHANCELLOR said that a somewhat similar order to that which he had made in this case, had been made in 1794, in *Dungey v. Angom*. The order in the registrar's book (5th August, 1794; A. 1793, fol. 542), appeared to be as follows:—"And it is further ordered that the said Anthony Stevenson be struck off the roll of solicitors of this court unless he shall, on the first day of next Michaelmas Term, shew unto this Court good cause to the contrary."

VICE-CHANCELLOR WIGRAM'S COURT.

Monday, March 2.

WALFORD v. ADIE.

ADIE v. WALFORD.

Joint Stock Company—Liability—Member of Committee—Sale of shares—Embarrassment—Fraud.

A member of the committee of a Joint Stock Company may sell his shares to the company without fraud upon the other shareholders, where the proceeding is done according to the rules of the company, and thus relieve himself from further liability, although he knew at the time the company were embarrassed, and obtained that information from the situation he held in the company.

This was an original bill and cross bill for a discovery, which came on for hearing together. The first bill was filed by Walford on behalf of himself and the other members of the Birmingham Coal Company, against the defendants Adie and Robinson, and prayed to have the transfer of twenty-two shares in the company made by Adie declared fraudulent and void, and that the same might be cancelled, and that Adie might be decreed to pay the calls which had been subsequently made upon them, and contribute ratably with the other shareholders to the payment of the debts of the company.

The company in question was formed in the year 1793, and the defendant Adie held twenty-two shares in it, and was a member of the committee of management. The company became very embarrassed, and during that time, and while Adie was a member of the committee, he sold the shares to the company in July 1835, and made a transfer of the shares into the name of the secretary, Robinson, in trust for the company, which was duly registered. The bill charged that Adie knew the company was embarrassed when he sold the shares, and that he did so to avoid liability as a shareholder; for after the sale and transfer Adie ceased to act on the committee,

Romilly and Daniel, for the plaintiffs, Wood and Stinton, for the defendants.

The arguments are fully entered into in the JUDGMENT.

The VICE-CHANCELLOR.—I do not find in the bill any suggestion that the committee of management exceeded its authority in buying the shares on behalf of the company, or that the price given for them exceeded the market value of the shares at the time. A supplemental bill was filed, introducing charges of fraud and of false and fraudulent representations, alleged to have been made by the committee of management, of which Adie was a member, as to the state of the company's affairs. It was alleged that Adie was a party to these fraudulent representations. Assuming the authority of the committee extended to the purchase of shares on behalf of the company, and that no excess of price was charged for those shares, I should assume that the position of Adie, as a member of the committee of management, was not such as to bring him within the scope of the equitable rule relied on in the argument, which, if it applied in this case, would place Adie under an incapacity to sell to the company. Would the sale of shares, in that view of the case, be impeachable on the ground of fraud, or otherwise? The answer to this question, although not strictly called for by the pleadings, might be material. As explaining the view which I take of the other branches of the case, my opinion is, that the sale, in that view of the case, could not be impeached; that the concerns of the company at the time of the sale were in a depressed state, might, perhaps, not admit of dispute; but that it was the duty of any shareholder, upon that account only, to retain his shares, no one, I think, can with any success contend. If that were so, the position of Adie, as a member of the committee of management, could not place him in a different position, unless it could be shewn he took undue advantage of his situation as a committeeman, to sell his shares at an undue value to a party who had not the same means of knowledge as himself: this was not the case in the present transaction; the committee of management thought it was for the interest of the company that they should become the purchasers of the shares; the committee had the same means of information as Adie himself; the solicitor of the company was one of the body, and generally acted as chairman of the committee who had purchased other shares, about the same period, for a similar price. If the purchase were really onerous to the company, the members of the committee, other than Adie, were acting in direct opposition to their individual interests, inasmuch as it appeared that more than one-fourth of the shares of the whole concern was held by the managing committee other than Adie; every thing had been done openly; the whole transaction had been entered in the books of the company; then could Adie's position, as a member of the committee, render the sale void? The agreement was, that his contract could not bind the company, unless it was made with the committee; and that as he was the seller, he was incapacitated from acting as a member of the committee, and therefore the committee for the time being could not contract. Considering the objection involved as one of the greatest importance, I shall consider the objection to be well founded, and consider whether, upon that assumption, the present bill could be sustained, always remembering that the price at which the shares were sold had not been made the subject of the bill; the retirement of the defendant, and his consequent escape from liability, were grievances complained of by the original suit. Upon this point, however, I felt less difficulty during the argument than perhaps any other part of the case. The defendant was a shareholder in a mining partnership; in July 1835, he retired from the partnership by selling his shares to the company; he had, ever since, lost all the privileges of a partner. The sale of Adie's shares was (as I assume for the purpose of argument) voidable at the option of the company; but if the company in such a case had thought fit to avoid the sale, they were bound to have done so with promptness. The company having notice of the sale could not be permitted to carry on the concerns in the absence of Adie, reserving to themselves the power to affirm the transaction if the concern should turn out prosperous, or to rescind it if it should appear to be for the interest of the company that it should do so. In a concern of such a nature, it was the right of Adie to know, at the earliest moment, whether the company elected to treat the sale void or not, especially where, as in this case, Adie might, without the consent of the company, have got rid of his shares to other persons. In fact, no step had been taken from the time of the sale in 1835 until 1841, when the bill was filed. During this interval the company had obtained, and had since acted upon, the provisions of the Act of Parliament obtained in 1836, enlarging their capital, creating new shares, and extending their mining operations, and Adie had been permitted to consider himself throughout as unconnected with and as having no interest in the concerns of the company. The question then was, from what time it was to be considered that the company had acquiesced in the sale; or, in other words, at what time it was to consider the company as having had notice

of the sale, if the shareholders generally had managed their own concerns; as, in the case of ordinary partnerships, it would not be unreasonable to presume that they were acquainted with the contents of their own books; in the present case it was not unreasonable to impute to the shareholders at large a knowledge which the committee had acquired. I think the body of shareholders are clearly bound by acquiescence in the present case. The shareholders would, from a circular sent at the annual meeting, be aware whether Adie continued a shareholder or not, but this alone would not have notified to whom the shares had been sold; it was not notified that they had been sold to the company; however, after March 1836, it was admitted that the fact of Adie's having ceased to be a shareholder became a subject of discussion amongst the shareholders, but it was not known then to whom he had sold them. It was clear that, immediately after the meeting of June 1837, it became known to the shareholders, or some of them, including the plaintiff Walford, that Adie's shares had been sold to the company. Having got this notice, they did not call upon the committee to convene a special meeting to take active steps until August 1838, when a committee was appointed to inquire into the transaction. The bill was filed in 1841. I do not find a word of explanation for the delay; the question, therefore, was, whether the Court was to pronounce a decree which was to have the effect of making Adie a partner from July 1837 in a trading concern of a fluctuating character, and involving him in all the subsequent transactions of the company. All the facts of this case proved the soundness of that general rule, which imposed upon parties engaged in a fluctuating trading concern of this character, the necessity of promptitude and activity in stating what were their intentions; it had been said that Adie was privy to a fraud in misrepresenting the state of the account in 1835. Adie denied actual knowledge of those accounts. I cannot, without inquiry, trust to the evidence on that point, but I think this observation is applicable to it, that if Adie were guilty of fraud, it was one by which he was making himself liable, nor can I in the slightest degree connect the alleged misrepresentation with the sale which is the subject of complaint. I must, therefore, dismiss the original and supplemental bill with costs, and the cross bill, filed for the purpose of discovery, without costs.

Saturday, March 14.

HUNTER v. NOCKHOLES.

Practice—Injunction—Defendant.

A defendant cannot move for an injunction against a plaintiff.

A person who has no personal interest in the subject-matter cannot move for an injunction, even though he may be a party defendant in a suit.

The plaintiff, as equitable mortgagee, had obtained an order to remove the defendant from the office of receiver over the estates of Sir Francis Vincent, who is living in Italy. The defendant was the agent of Sir Francis, and in that character had been made a party to the suit for the purpose of having an account of the rents received by him. When the defendant was removed it was referred to the Master to have another receiver appointed; but before the receiver was appointed, the plaintiff had gone down to the estates and caused a fall of timber and underwood to be made; whereupon the defendant moved *ex parte* for an injunction to restrain the plaintiff from removing the timber he had cut down, and from further proceeding to cut down timber or underwood on the estate in the cause. The motion was supported by an affidavit of the facts.

Schomberg appeared in support of the motion, and cited *Blanchard v. Cawthorne* (6 Sim. 155).

The VICE-CHANCELLOR.—I never heard such an application being made by a defendant. The proper course would have been to file a bill and pray an injunction. No doubt after an order for a receiver, the act of cutting the timber is highly improper; but the affidavit is defective by not stating the time Nockholes first heard of the intention to cut timber. Had this application been made by Sir Francis Vincent, his duly appointed agent, or any one having an interest in the property injured, the Court would have granted it; but the mode in which it is now made is altogether irregular, for it is admitted Nockholes, who makes it, has no personal interest in the subject-matter of the suit; he is the mere agent of Sir Francis Vincent discharged by the Court, and does not now appear in the character of agent for Sir Francis Vincent, but as an accounting party defendant in the suit. A party so circumstanced has no right to apply for an injunction. I therefore refuse the application.

Schomberg immediately proceeded before the Lord Chancellor, and made a similar application which was refused on the same ground, but the Lord Chancellor said the plaintiff had laid himself subject to an application for violating an order of the Court.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Tuesday, Jan. 27.

HAWKINS and ANOTHER v. BENTON.

Award—Declaration on.

A declaration stated that divers disputes had arisen and being depending between one of two plaintiffs, S. H. and the defendant, of and concerning certain premises and buildings, and also between the other of the plaintiffs, W. C. and the defendant, of and concerning the said premises and buildings. S. H. commences an action against the defendant and his bailiff for breaking and entering the said premises, and that while the said action and the said disputes were so depending, it was agreed to refer the cause and the matters in difference between the two plaintiffs and the defendant in the introductory part of the count mentioned to R. A. esq. a barrister, with power to him to direct for what sum the verdict should be entered, and to settle all matters in difference. It then sets out the award of the arbitrator, who found that the plaintiff had a good cause of action against the defendant, and was entitled to a verdict therein, and assessed the damages at "the sum of forty shillings, to be paid by the said defendant to the said plaintiff, S. H. and W. C. who consented to become a party in the cause," and directed the costs to be paid by the defendant. It then, after setting out the necessary averments, concluded in debt for the amount of the damages and taxed costs. The defendant demurred on the ground that the declaration did not show that W. C. was a party to the action which had been referred, or that there was any matter in difference between S. H. and W. C. jointly and the defendant, and yet the arbitrator ordered the damages to be paid to S. H. and W. C. jointly:—Held, that as an equitable claim might exist by which W. C. was virtually co-plaintiff with S. H. there must be judgment for the plaintiff.

Middlesex } Sarah Hawkins and William Cole, the to wit. } plaintiffs in this suit, by William Whalley, their attorney, complain of Robert Benton, the defendant in this suit, who has been summoned to answer the said plaintiffs by virtue of a writ issued on the sixth day of March, in the year of our Lord one thousand eight hundred and forty-five, out of the court of our lady the Queen, before the Queen herself at Westminster, and the plaintiffs demand of the defendant the sum of three hundred and fifty-four pounds, ten shillings, which the defendant owes to and unjustly detains from them. For that whereas divers disputes, controversies and differences having arisen and being depending between the now plaintiff, Sarah Hawkins, and the now defendant, Robert Benton, of and concerning certain premises and buildings. And whereas, also, divers disputes, controversies, and differences having arisen and being depending between the said plaintiff, William Cole, and the defendant, of and concerning the said premises and buildings, the plaintiff, Sarah Hawkins, heretofore, to wit, on the eighth day of June, one thousand eight hundred and forty-one, commenced an action at law in her Majesty's Court of Queen's Bench at Westminster against the now defendant and one John Smith acting as the bailiff and servant of the said Robert Benton in that behalf, for breaking and entering the said premises, and taking away certain goods and chattels therein, which said action or suit, at the time of making the order hereinafter mentioned, was depending and undetermined. And whereas, while the said action was so depending as aforesaid, and while the said several controversies and disputes in the introductory part of this count mentioned were so depending as aforesaid, it was agreed by and between the said several parties to the said suit, and by and between the said several parties and the said William Cole, that it would be for the benefit of all the parties aforesaid, and also for the benefit of the said William Cole, that the said cause, and all the several matters in difference in the introductory part of this count mentioned, as well as all other matters then in difference, if there should then be any such, between the parties to the said suit, and all other matters in difference, if there should be any such, between the said defendants and the said William Cole, be referred to arbitration. And thereupon, heretofore to wit, on the first day of October, in the year of our Lord one thousand eight hundred and forty-three, by an order of the honourable Mr. Justice Coleridge, then being one of the justices of the said Court of Queen's Bench, made in the said action, dated the day and year last aforesaid, it was amongst other things ordered, with the consent of the attorneys on both sides of the said cause, and also with the consent of the attorney of the said William Cole, that a verdict in the said cause be entered for the plaintiff, Sarah Hawkins, for the sum of 50l. subject to the award of Robert Allen, esq. barrister-at-law, who should be at liberty to order and direct for whom and what sum the verdict should be finally entered; and it was, by the said order and with such consent as aforesaid, referred to the award, order, arbitration, final end and determination of the said Robert Allen to settle all matters

in difference between the said parties to the said action, and between the defendants and the said William Cole, who consented to be made a party thereto, and to order and determine what he, the said Robert Allen, should think fit to be done by either party respecting the matters in dispute, who thereby agreed to be bound and concluded by such determination, and to remain contented and satisfied therewith, so as the said Robert Allen, the arbitrator aforesaid, should make and publish his award in writing of and concerning the matters so referred ready to be delivered to the said parties on or before the last day of Michaelmas Term then next ensuing, or in case of the death of the said parties, or either of them, to their or either of their personal representatives requiring the same. And it was by the said order and with such consent as aforesaid, further provided, that the said parties should in all things keep such award so to be made as aforesaid, and that the costs of the said cause should abide the event of the said cause, and that all other costs should be in the discretion of the said arbitrator, who should direct and award to, and by whom, and in what manner, the same should be paid; and it was by the said order, and by such consent as aforesaid, further directed that the said arbitrator should have power, with or without the consent of the said parties, to enlarge the time for making his said award from time to time, as occasion might require, and possess the same powers as a judge at Nisi Prius, and should also be at liberty, if he should so think fit, to examine the said parties to the said suit, and their respective witnesses, upon oath; and also, that neither the then plaintiff, nor the defendants, or the said William Cole, should bring or prosecute any action or suit of law or in equity against the said arbitrator, or bring any writ of error, or prefer any bill in equity against each other, of and concerning the matters so referred; and that if either party should, by affected delay or otherwise, wilfully prevent the said arbitrator from making his said award, he should pay such costs to the other as the said Court of Queen's Bench should think reasonable and just; and by the said order, and with the like consent, it was further directed, that the said order should be made a rule of her Majesty's said Court of Queen's Bench, if the said Court should so please; and thereupon heretofore, to wit, on the twentieth day of November, in the year of our Lord one thousand eight hundred and forty-three, the said Robert Allen, in pursuance of the power reserved to him by the said order of reference, did, by a certain memorandum in writing on the said order, enlarge the time for making his said award until the sixth day of December then next ensuing, and did afterwards by a certain other memorandum in writing on the said order of reference, to wit, on the sixth day of December, in the year last aforesaid, further enlarge the said time until the tenth day of January, in the year of our Lord one thousand eight hundred and forty-four, and did afterwards, to wit, on the said last-mentioned day, by a certain other memorandum in writing on the said order of reference, further enlarge the said time until the first day of March, one thousand eight hundred and forty-four. And whereas, before the making of the award hereinafter mentioned, to wit, on the first day of November, one thousand eight hundred and forty-three, the said John Smith died, and the plaintiffs, Sarah Hawkins and Wm. Cole, in fact, say, that afterwards and before the expiration of the time limited by the said last-mentioned memorandum in writing made by the said arbitrator, on the said order of reference, to wit, on the twenty-second day of February, in the year of our Lord one thousand eight hundred and forty-four, the said Robert Allen, in pursuance of the said order of reference and the said several memorandums on the said order, did make and publish his award, arbitration, and final end and determination in writing, of and concerning the said premises, ready to be delivered to the said parties in difference, or such of them as should require the same, and bearing date heretofore to wit, the day and year last aforesaid, and did thereby award, adjudge, and determine that all further proceedings in the said cause should from thenceforth cease and be no further prosecuted; and that the said plaintiff had good cause of action against the said defendant in the said cause, and was entitled to a verdict therein, and did thereby assess and award the damages at the sum of forty shillings, to be paid by the said defendants to the said plaintiffs, Sarah Hawkins and William Cole, who consented to become a party in the cause. And the said arbitrator did thereby further direct and award that the costs of the said reference and award be paid by the said defendants, as by the said award reference being thereunto had will more fully and at large appear, of which said award the now defendant, the said Robert Benton, afterwards, to wit, on the first day of March, in the year of our Lord one thousand eight hundred and forty-four, had notice. And the plaintiffs further say that afterwards, to wit, on the seventeenth day of October, in the year of our Lord one thousand eight hundred and forty-four, it was duly ordered by the said Court of Queen's Bench, that the said order of the Honourable Mr. Justice Coleridge, together with the three said several memorandums of the said

arbitrator thereon, should be made a rule of the said Court. And the plaintiffs aver that at the time of making the said order of reference, and from thence until after the making the said award, there were not any matters in difference between the said plaintiff, Sarah Hawkins, and the defendants, in the said suit, or either of them, or between the said William Cole and the said defendants in the said suit, or either of them; nor were there any other matters, differences, or questions brought before the said arbitrator, or was the award of the said arbitrator made or given in respect of any causes or matters in difference whatsoever other than the controversies and disputes in the introductory part of this count mentioned. And the plaintiffs further say, that the costs of the said action, reference, and award, afterwards, to wit, on the twenty-third day of August, in the year of our Lord one thousand eight hundred and forty-four, were duly taxed at a large sum of money, to wit, the sum of one hundred and seventy-five pounds, five shillings, of all which said premises the defendant afterwards, to wit, on the first day of March, in the year one thousand eight hundred and forty-five, had notice. Yet the defendant did not, nor would, on the said first day of March, or at any time before or since, although often requested so to do, pay to the plaintiffs the said sum of forty shillings in the said award mentioned, and the said sum of one hundred and seventy-five pounds five shillings, the amount of the said costs, or any part thereof, but hath hitherto wholly neglected and refused, and still neglects and refuses so to do, whereby an action hath accrued to the plaintiffs to demand and have of and from the defendant the said sum of forty shillings, and one hundred and seventy-seven pounds five shillings, parcel of the said sum above demanded by the plaintiffs. And whereas the defendant, on the first day of March, in the year of our Lord one thousand eight hundred and forty-five, was indebted to the plaintiffs in one hundred and seventy-seven pounds five shillings, for money found to be due from the defendant to the plaintiffs on an account then stated between them, which said sum of one hundred and seventy-seven pounds five shillings was to be paid by the defendant to the plaintiffs on request, yet the defendant, although often requested so to do, hath not paid the said sum of one hundred and seventy-seven pounds five shillings, residue of the said sum above demanded, or any part thereof to the plaintiffs, but hath hitherto wholly refused, and doth still refuse so to do; whereby, and by reason of the non-payment of the moneys in this declaration mentioned, an action hath accrued to the plaintiff, to demand and have of and from the defendant the said sum of money above demanded; yet the defendant hath not paid the said sum of money above demanded, or any part thereof, to the plaintiff's damage of ten pounds, and thereupon they bring suit.

Demurrer and joinder.

The defendant stated the following point:—That it does not appear by the declaration that the said William Cole was any party to the action which was referred to, or that any matters in difference between the said plaintiffs, Sarah Hawkins and William Cole, jointly, and the defendants were referred to the arbitrator; yet the award directs the sum of forty shillings to be paid as damages by the defendants to the said Sarah Hawkins and William Cole, jointly.

Gray, in support of the demurrer.—The arbitrator has treated Cole as a plaintiff, which he was not. He has found 40s. damages, which will carry costs. *Non constat*, that if he had severed the damages, he would have awarded a sum that would have carried costs. The action was one of trespass, and perhaps the real plaintiff would not be entitled to costs.

By the COURT.—The arbitrator might have thought that an equitable claim existed, by which Cole was virtually a plaintiff with Hawkins.

Best, for the plaintiffs, was not called on.

Judgment for the plaintiffs.

COURT OF EXCHEQUER.

Saturday, Jan. 31.

(Before ROLFE, B. sitting in the Exchequer Chambers.)

DUFFIELD v. MORRETT.

Commission to examine witnesses abroad, effect of. An order of a judge directing that a commission issue for the examination of witnesses abroad on behalf of the plaintiff, if served on the defendant's attorney, is a revocation of a notice of trial which the plaintiff's attorney may have given, and if the plaintiff chose not to avail himself of the order, he cannot proceed to trial without giving fresh notice in the regular way.

In this case notice of trial had been given on the 5th of December for the first sittings in Hilary Term. On the 7th of January a judge's order for a commission to examine witnesses at Gibraltar on the part of the plaintiff was served on the defendant's attorney. On the morning of Tuesday, the 14th of January, being the first day of the first sittings, the defendant's attorney received from the plaintiff's attorney the following letter:—"Duffield, Executors,

Dec. v. Merrett. Dear Sir,—I shall be able to prove my case without a commission now, and it will be in the paper on Wednesday. If you choose to settle it in the mean time you can do so, to save expense. Dear Sir, yours truly, A. M. To D. K. esq." No notice was taken of this letter, and on the following Friday the cause was tried, and, no one appearing for the defendant, a verdict was taken for the plaintiff. On a former day (8 Law T. 328) Keene obtained a rule nisi for setting aside the verdict with costs, on the ground of irregularity, against which cause was now shown by

Higgins and Bagley.—The defendant was not a party to the order for the commission; he had not ever applied to be allowed to cross-examine the witnesses produced before it. As the defendant had no interest in it, the plaintiff was at liberty to abandon it whenever he pleased. Subject to that liberty, it was served on the defendant, who therefore could not have been misled.

Keene, contra.—The service of the order for the commission either suspended or revoked the notice of trial. If the former was the case, such notice of the abandonment of the order should have been given as would have left sufficient time to the defendant to prepare for trial. Notice on the first day of the sittings at which it was intended to try was a mere snare; such an order, however, when served, is so inconsistent with a previous notice of trial, that it operates as a revocation of it. If that be so, a fresh notice was required. The letter received by the defendant's attorney is deficient in all the requisites of a notice of trial; it was too informal to operate even as a notice of the abandonment of the order for the commission.

ROLFE, B.—This rule must be made absolute, on the strict ground that service of the order for the commission was a revocation of the notice of trial, being wholly inconsistent with it. That being so, the plaintiff was bound to give fresh notice of trial, according to the rules of the Court. It is not pretended that the letter which has been read can be considered a regular notice of trial. *Rule absolute.*

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

Thursday, April 2.
(Before Mr. Commissioner FANE.)
Re HANCE.

A debtor wilfully absenting himself from the meetings of his creditors, forfeits all his right to assistance from the laws under which the Court is enabled to act.

The insolvent in this case was described as a gentleman.

The facts are stated in the following judgment.

HIS HONOUR.—The insolvent, on the 18th of December, 1844, filed a petition in this court under the 5 & 6 Vict. c. 116, and obtained protection till the 24th of January, 1845, when he was to attend and meet his creditors, who also had notice to meet him on that day. When the day arrived, neither he nor his attorney attended; a person came to say he was ill, but no medical certificate was produced. His protection of course ceased. On the 9th of July, 1845, he filed another petition, and on the 11th made an affidavit, in which he swore he was prevented by illness from attending on the 24th of January, and I gave him protection again till the 8th of August following. His creditors assembled, some attending at great expense by counsel, and again the insolvent was absent. I of course refused to name a day for making a final order, or to renew the insolvent's protection. Up to this time the insolvent was at large, but having been taken in execution on the 2nd of January, 1846, he served notices on his detaining creditors, that on the 9th of January he should move that the protection granted on the 11th of July, 1845, should be renewed, and that a new day should be fixed for his first examination, or that a day should be named for granting him a protecting order, under the 28th section of the Act, or that such other order might be made as to the commissioner should seem meet. He thus harassed his creditors by compelling a third attendance. On that motion he was supported by a very able counsel, Mr. Cooke; but, upon full consideration, I declined to make any order whatever at his instance. The ground on which I acted was this: every insolvent is entitled to have a full and fair opportunity, in the presence of his creditors, and subject to their opposition on each occasion of coming up, of satisfying the Court that his conduct has been such as he ought not to be imprisoned either for fraud in incurring his debts, or for fraud in not paying them all or in part; but though he is to have a fair and full opportunity, he is to avail himself of it, and must attend every meeting or give a satisfactory excuse. If he were to be allowed to summon his creditors as often as he pleased, and, when they were assembled, stay away, offering no sufficient excuse to the Court at the time, and then to have a new day appointed and summon them again, a debtor would have nothing to do but to continue this process until all his injured creditors were weary of fruitless and

expensive attendance, and then pass unopposed. I, for one, will never sanction, directly or indirectly, the notion that a debtor can pursue such a course. This debtor had one opportunity on the 24th of January, 1845; he neither availed himself of it, or sent at the time a proper excuse for his absence. I think I erred in giving him a second opportunity, but I erred on the side of mercy, and gave him a second opportunity on the 8th of August, and again he stayed away, sending no proper excuse at the time. The insolvent has since applied to me by counsel, upon an affidavit sworn on the 26th of February last, in which he attempts to excuse his non-attendance on the two occasions referred to. His excuse as to the first is illness, and as to the second that he was summoned to attend another court as witness; to this I answer that it was a paramount duty to attend this court and meet his creditors here; and if he preferred the performance of the other duty he must take the consequences. His affidavit, however, does not state that he did attend as a witness; but even if he did, I would not accept that as an excuse, after his previous unexcused non-attendance. I repeat, therefore, that I will make no order upon this petition for his relief. He must get out of prison either by satisfying his creditors, or by having undergone such imprisonment as the Insolvent Debtors' Court may deem an adequate punishment for his offences. I have taken pains to explain the ground of my proceeding in this case, because I wish it to be clearly understood by all persons concerned, that a debtor not attending to meet his creditors, if wilful, is not only a very serious offence, but is one which will occasion to the debtor himself a forfeiture of all his right to assistance under the laws under which the Court is enabled to act.

Friday, April 3.

(Before Mr. Commissioner FANE.)

Ex parte RICHARD TAYLOR.

1 & 2 Vict. c. 110, s. 8.—Taking affidavit off the file.

A commissioner has no power to order an affidavit filed under 1 & 2 Vict. c. 110, s. 8, to be removed from the file of the court, even where the affidavit is manifestly insufficient to support proceedings to a fiat in bankruptcy.

John Rufford had filed an affidavit under the 8th section of 1 & 2 Vict. c. 110, stating "that Richard Taylor was justly and truly indebted to the deponent in the sum of 1,000l. as the holder for value of a certain bill of exchange, drawn by, &c. to the order of Messrs. Roscoe, Arnold, and Leete, and accepted by Richard Taylor; and that the said Richard Taylor was, as the deponent verily believed, a trader, &c."

Bagley now applied, upon the behalf of Taylor, that the affidavit might be taken off the file for insufficiency. This was a preliminary proceeding, taken with a view of involving the applicant in the serious consequences of bankruptcy. The objection to the affidavit was, that it did not disclose any legal debt. The right to sue upon a bill of exchange could not pass except by indorsement, and Rufford was bound to shew in his affidavit that he was the indorsee. The affidavit in this case was analogous to the old affidavit, to hold to bail and in that legal certainty had always been required. Thus, there were cases to shew that it was not sufficient for an affidavit to state that a bill of exchange was duly indorsed, unless they shewed an indorsement to the deponent by the person properly authorized to indorse. (*M'Faggart v. Ellice*, 9 Bing. 114; *Lewis v. Gompertz*, 2 Cr. & J. 352; *Woolley v. Escudier*, 2 M. & S. 392.) Here the affidavit did not shew that the bill was ever endorsed at all. [Mr. Commissioner FANE.—Admitting the affidavit to be bad, have I any jurisdiction to do as you ask me? If your client relies upon the insufficiency of the affidavit, he may feel secure that he cannot be made a bankrupt.] Then, as to the jurisdiction of the commissioner, this is the first Court where the application should be made. In *Ex parte Hall re Hall*, M. & C. 448, a question somewhat similar arose. There the question was, whether an affidavit taken by a Master extraordinary in Chancery was properly sworn. In page 449 of the report, the language of Sir George Rose, in his judgment, implies that the commissioner may, if he think fit, remove the affidavit.

Whitehead, the registrar, referred to *Ex parte Cheese* (3 Mon. D. & D. 79.)

Bagley.—In that case there was no objection to the affidavit itself; the only question there was whether the 8th section of 1 & 2 Vict. c. 110, was repealed by the 11th section of 5 & 6 Vict. c. 122.

Mr. Commissioner FANE.—I have looked at the two cases to which reference has last been made, and I see nothing to induce me to alter the view which I at first entertained. In *Ex parte Hall*, Sir George Rose seems to intimate that the commissioner might have considered all the circumstances in order to determine for what amount the security should be taken. Now that is quite consistent with my opinion; I think that there are two functions only entrusted to the commissioner. Supposing an affidavit to be filed, and notice given to the debtor, and the debtor, under the fear of the consequences, to come and tender a bond, the commissioner is required to look first to

the amount in which the bond is entered into; and, secondly, to the sufficiency of the sureties who are to enter into it. With any further considerations, in this stage of the proceedings, the Court has nothing to do. If no bond shall be ultimately given, and proceedings shall then be taken to make Taylor a bankrupt, the Court of Bankruptcy will then be called upon to pronounce upon these preliminary and interlocutory matters. It will then be time enough to shew any such defect, either in the affidavit filed, or in the notice of its being filed, or in the form of the bond, as will prevent a fiat from being properly founded upon it. The objection, therefore, is at present premature, and my decision is now, as in similar cases it always has been, that when the creditor has once filed his affidavit, I have nothing to do with its sufficiency until a fiat is issued upon it.

Application refused.

Circuit Reports.

SOMERSET SPRING ASSIZES.

Taunton, Thursday, April 2.

(Before Mr. Baron ROLFE.)

REG. v. JNO. SAMFSON.

Embezzlement—Assistant overseer.

An assistant overseer, appointed under 59 Geo. 3, c. 12, s. 7, is not "a clerk or servant" to the overseers so as to be guilty of embezzlement.

Prisoner was indicted for embezzling certain moneys, which were laid in several counts, as the property of the churchwardens and overseers of the parish of Bedminster, and of the treasurer of the Bedminster Union.

The facts proved were, that in 1836, the prisoner was appointed a collector of the poor-rates of the Bedminster Union, under an order of the Poor Law Commissioners. A subsequent decision in the Queen's Bench had determined that such an order was invalid. In consequence of this, at a vestry meeting duly convened and held on the 23rd of June, 1839, he was formally elected assistant overseer for the parish of Bedminster, under the provisions of the 59 Geo. 3, c. 12, s. 7. The appointment was duly confirmed by the justices at their petty sessions. This appointment specified that the prisoner should discharge all the duties of overseer. Subsequently, he received moneys, for which he had not accounted, and for this the present indictment was preferred.

Cockburn, Q.C. submitted that upon these facts the prisoner was not a "clerk or servant," either of the overseers or guardians, and therefore could not be guilty of embezzlement. The first invalid appointment as collector had been set aside by the act of the vestry formally appointing him to the office of assistant overseer. As such he was to all intents and purposes an overseer, having co-ordinate authority and powers. It was, he believed, contended for the prosecution, that the order of the Poor Law Commissioners was good until formally invalidated. But, even if it were so, it would not alter the fact; the parish had chosen to appoint him assistant overseer; the justices had confirmed the appointment; he was paid a salary instead of a commission as before; as the inhabitants appointed so they dismissed him; as an overseer he had to account to the vestry—he was liable to a penalty for not doing so; he was not a servant of the overseers, and therefore could not be guilty of embezzlement.

Stone, for the prosecution, contended that it was clear from the terms of the indemnity bond that the prisoner was a servant, one of the conditions being that he should duly account to the overseers. It was clear, at all events, that the second count charging him as a clerk to the Board of Guardians, could be sustained, for the 97th section of the Poor Law Amendment Act expressly provided against the misemployment by the overseers of the moneys of the guardians of unions.

ROLFE, B. without calling on *Cockburn* for a reply, said that he was quite satisfied that the prisoner was, to all intents and purposes, an overseer. The very purpose of the statute under which he was appointed was to enable large parishes, whose duties were too onerous to be properly discharged by unpaid officers, to obtain the assistance of a competent person at a salary. In this case the parish had chosen to avail itself of the statute to appoint an assistant overseer, and to confer upon him all the powers of that office to their full extent. He was, therefore, an overseer for all purposes, and not the mere clerk or servant of the overseers. Had they chosen to limit his powers by the appointment it might have been otherwise. As to the second count, he had been at first struck by the argument of Mr. Stone, but on looking at the 97th section of the Poor Law Amendment Act, it is clear that the word "penalties" is used there in its popular, and not in its strictly legal sense. It cannot mean felonious misappropriation. It would, indeed, be absurd to hold otherwise, for the section imposes a pecuniary penalty, and how could that be levied after a conviction for felony? But, even if it were otherwise, the charge could not be sustained by the present count, for to bring it within the provisions of that section it should have alleged that the prisoner was overseer. *Not Guilty.*

NORTHERN CIRCUIT. Liverpool.

Under the statute 5 & 6 Will. 4, c. 76, s. 34, by which it was enacted, that if any person shall wilfully make a false answer to certain questions therein mentioned, he shall be deemed guilty of a misdemeanour, and may be indicted and punished accordingly. It is not sufficient that the indictment charges the prisoner with having made the answers "falsely, fraudulently, and deceitfully," omitting the word "wilfully," and such omission is a fatal objection in arrest of judgment.

The false personation of a voter at a municipal election, held under the provisions of the above statute, is not an offence at common law, nor is it an indictable offence as describing an act done in disobedience to the statute, and for which no express punishment is provided, inasmuch as it is identical with the offence intended to be provided for by the 34th section.

The first count set out that, after the passing of the 5 & 6 Will. 4, c. 76, "An Act to provide for the regulation of municipal corporations in England and Wales," her Majesty, Queen Victoria, granted to the inhabitants of the borough of Great Bolton a charter of incorporation pursuant to the provisions of that statute, by which charter the borough was divided into certain wards or districts, one of which was called Exchange Ward, for the election of councillors. It then stated the acceptance by the inhabitants of the said charter, and that afterwards, on the 1st of November 1844, at Bolton aforesaid, and in the said Exchange Ward of the said borough, a certain election of two councillors for the said ward was had and holden before A B, alderman, and C and D, assessors of the said ward, and that, before and at the time of the election, the name of one John Holden appeared on the burgess roll of the said borough, and in the ward list of the said Exchange Ward then in force, and that the defendant, well knowing the premises, but intending falsely and fraudulently to personate the said John Holden at the said election, and to vote as a burgess as and in the name of the said John Holden at the said election, falsely and fraudulently presented himself at the polling place for Exchange Ward, and then delivered to the said alderman and assessors a certain voting-paper (setting it out.) It then charged that the said voting-paper having been delivered, two of the burgesses of the ward required the said alderman to put to the said Richard Bent the three questions prescribed by the 34th section of the Act, and that the said alderman then put to the said Richard Bent the following question, that is to say—*"Are you the person whose name is signed as John Holden in the voting-paper now delivered in by you?"* to which question the said Richard Bent then and there *falsely and fraudulently* answered, *"I am."* And the said alderman then and there put to the said Richard Bent the following question, that is to say—*"Are you the person whose name now appears as John Holden on the burgess roll now in force for this borough, being registered therein as rated for property described to be situate in Spring-garden?"* to which said last mentioned question the said Richard Bent then and there *falsely and fraudulently* answered, *"I am."*

The first count then stated the putting of the third question, and then proceeded to negative the truth of the answers to the first and second questions.

The three following counts varied from the first in the statement of the charter of incorporation and the holding of the election, but described the offence in precisely the same way.

The fifth count was as follows:—"And the jurors, &c. do further present, that by the said Act of Parliament hereinbefore mentioned, made and passed in the sixth year of the reign of his late Majesty King William the Fourth, it is, amongst other things, provided and enacted, that in every case in which there shall be a division into wards of any borough, the burgesses of every such ward, and none others, shall, on the day fixed for the first election of councillors, separately elect, from the persons qualified to be councillors, the whole number of councillors assigned to such ward respectively; and on the 1st day of November in any subsequent year shall separately elect from the persons qualified to be councillors, one-third part of the whole number of councillors assigned to such ward." And in a certain other part of the said Act, after enacting that the burgess lists, when revised and signed as is therein directed, shall be copied in a book for that purpose provided, it is provided and enacted, that every such book in which the said burgess lists shall be so copied, shall be the burgess roll of the burgesses of such borough entitled to vote in the choice of the councillors and auditors of such borough at any election which may take place between the 1st day of November inclusive in the year wherein such burgess roll shall have been made, and the 1st day of November in the succeeding year. "And the jurors aforesaid, upon their oath aforesaid, do further present that after the grant of the said charter of incorporation as aforesaid, and after the same was duly accepted by the inhabitants of the borough of Bolton as aforesaid, to wit, on the 1st day of November, in the ninth year of the reign of her said Majesty Queen Victoria, at the parish aforesaid, in the county

aforesaid, and within the Exchange Ward aforesaid of the said borough, an election was had and holden for the electing of two councillors for the said Exchange Ward of the said borough; and that the said R. B., being a wicked and evil disposed person, and well knowing the premises, but contriving, &c. to contravene the said provisions of the said Act of Parliament, and to prevent a fair election of councillors from taking place for the said Exchange Ward, and wrongfully and deceitfully wishing to make it appear that D. and M. who were then and there respectively candidates for the office of councillors of and for the said Exchange Ward, were duly elected councillors of and for the said ward on the day and year last aforesaid, at the parish aforesaid, in the county aforesaid, and within the said Exchange Ward at the election aforesaid for the said ward, falsely, fraudulently, deceitfully, and contrary to, and in fraud of the provisions of the statute aforesaid, in that behalf did personate one J. H. at the said election (the name of the said J. H. being then on the said burgess roll of the said borough, and on the ward list of the said ward, which was then and there in force), and the said R. B. then and there as in the name of the said J. H. did give his vote for the said J. D. and J. M.; whereas in truth and in fact the said R. B. never was called or known by the name of J. H. and whereas in truth and in fact the said R. B. was not the person whose name so appeared upon the burgess roll and ward list as aforesaid, as J. H.; and whereas in truth and in fact, the said R. B. was not then or at any other time possessed of, or the occupier or owner of the property for which the said J. H. then and there appeared by the said burgess roll to be rated, and whereas in truth and in fact the said R. B. had then and there no right whatever to give his vote in the name of the said J. H.; and whereas in truth and in fact the said R. B. was not then, nor is he now a burgess of the said ward or of the said borough of Bolton; and whereas in truth and in fact the said R. B. had then and there no right whatsoever to vote at the said last-mentioned election, in contempt of the provisions of the statute aforesaid, in contempt of our said lady the Queen, &c. against the form of the statute, &c. and against the peace, &c." The sixth count was substantially the same as the fifth, except that it set out the charter of incorporation with greater particularity.

The prisoner having pleaded not guilty, and been tried and found guilty,

Joseph Pollock moved to arrest the judgment. He first took some points as to the sufficiency of the averments shewing that the election was held in pursuance of the statute, and then proceeded. The next objection appears to be fatal to this indictment. In no part of this indictment is it alleged that the defendant wilfully made a false answer to any one of the questions. The words are "falsely, fraudulently, and deceitfully" in some of the counts, and "falsely and fraudulently" in others. *Re v. Stevens* (5 B. & C. 246) is in point. [WILLIAMS, J.—The language of the statute is the important point, because how is it possible for me to say that I know that any other word will supply the place of the word expressly used in the statute?] *Re v. Davies* (1 Leach, 493) is also in point. As to the two last counts, they are not good on the statute, nor are they good at common law. The personation alleged is not shewn to be an offence cognizable by law.

Cross, contra.—I submit that it sufficiently appears by intentment that the answers were made wilfully. All that is required by the Act is, that it shall appear, either directly or by intentment, that the thing was done wilfully. The words here are equivalent to those in the statute. That this is sufficient is to be inferred from the judgment of Abbott, C.J. in the case of *Re v. Stevens*, cited on the other side. *Cox's case* (1 Leach, 71) shews that the word *wilfully* is not necessary in an indictment for perjury at common law. No person could read the present indictment, with common understanding, without seeing that it appears on the face of it that the act was done wilfully. The two last accounts charge the prisoner with having acted in direct fraud and contravention of the Act of Parliament. Fraud against an Act of Parliament is an offence at common law.

WILLIAMS, J.—But does that apply where the Act of Parliament prescribes a specific remedy for the act of which you complain?

Cross.—In this case there is only such a provision where the questions are put, but we may suppose a case in which personation has taken place, and the questions have not been put. Is it to be said that in such case, because the questions are not put, there is no punishment for the personation?

Pollock, in reply.

WILLIAMS, J.—I am extremely unwilling to express an opinion on so heavy a question, but I have a most serious doubt as to the omission of the word *wilfully* in the four first counts. I should dislike much to express an opinion at present either way, and I will liberate the prisoner on bail to appear at the next assizes, and in the meanwhile I will deliberate either myself, or with such assistance as I can get, after the example of a learned brother in a similar case at a former assizes.

The prisoner was accordingly let out on bail, to appear at the present Spring Assizes, when the following written judgment of WILLIAMS, J. was read for him by PATTESON, J.

JUDGMENT.

The defendant was convicted before me at the last assizes holden at this place, upon an indictment containing six counts, of which the four first were framed upon the Municipal Corporations Act, 5 & 6 Wm. 4, c. 76, and especially upon the 34th section, which authorises, under certain circumstances, three questions to be put to any voter at a borough election, and the offence charged is giving false answers to two of those questions. The two last counts, without at present describing them more minutely, are for falsely personating a certain voter at an election of two councillors for the borough of Great Bolton. The objection to the four first counts is that in describing the offence they do not pursue the language of the statute, and to the two last that they disclose no offence at all. The four first counts differ from each other only in setting forth with more or less particularity the charter of incorporation granted to the said borough of Great Bolton, and other matters introductory to the election of two councillors for one of the wards of that borough, at which the said offence is charged to have been committed, but in the description of that offence there is no difference whatever.

The sections of the Act, which are material to the present purpose, are the 31st, which directs that the election of councillors shall be on the 1st of Nov.; the 32nd, which provides that the mode of voting shall be by delivering a voting paper, in a certain prescribed form, to the mayor or other presiding officer; and the 34th, on which the question arises, that enacts that the mayor or other presiding officer, if required by two competent burgesses, shall put to the voter, at the time of his delivering in the voting paper, the following questions:—

1st Are you the person whose name is signed A B in the voting paper now delivered in by you?

2nd Are you the person whose name appears as A B in the burgess roll for this borough, being registered therein as rated for property described to be situated in (street, &c.)?

3rd Have you already voted at this election?

Then follows—"And if any person shall wilfully make a false answer to any of the questions aforesaid, he shall be deemed guilty of a misdemeanour, and may be indicted and punished accordingly."

All the four first counts state that the defendant, upon delivering in a voting paper in the name of one John Holden, a burgess entitled to vote at the said election, was asked by the presiding officer (who was duly required by two competent burgesses to put them) the three questions in the terms of the Act of Parliament above set forth; and then the statement in all those four counts (that in truth being the statement of the offence) is in the same words, and as follows:—"to which questions (each of the two first) the defendant then and there *falsely and fraudulently* answered, 'I am.'" But the words of the 34th section, as has been already shewn, are, "if any person shall *wilfully* make a false answer to any of the questions aforesaid, he shall be deemed guilty of a misdemeanour;" and the question is, whether the omission of the word "*wilfully*," in the said four first counts, vitiates those counts, and I am of opinion that it does.

Now, Lord Coke, in his reading upon the statute of 5th Elizabeth, the words of which are, "If any person shall wilfully and corruptly commit any manner of wilful perjury," mentions two cases, in which a statement that the thing was done "falsely and corruptly," without adding *wilfully*, was held to be vicious and insufficient. (3 Inst. 167.) In the case of *Re v. Davis* (2 Leach), the indictment was upon the Black Act, which makes it felony for any person "wilfully and maliciously to shoot at another." The indictment charged that the prisoner "unlawfully, maliciously, and feloniously did shoot at A B;" and held ill, for omission of the word "*wilfully*." In a note to the latter case, others are referred to, which are to the like effect. So, also, is the language of the judges (*Cox's case*, 1 Leach) as to the importance of the word "*wilfully*" in the said statute of 5th Elizabeth against perjury. Whether the words, "*falsely and fraudulently*" be equivalent to "*falsely and wilfully*" is an inquiry into which I decline to enter. That the expression "*wilful*" is, in general, sufficiently significant cannot be doubted, when it is recollected that the definition of murder by Hawkins is, "The wilful killing a man of malice aforethought," and moreover, that "*wilfully*" is to be found as well as "of malice aforethought," in every indictment for murder that I ever saw or heard of. But beyond all this, "*wilfully* to make a false answer to the questions" proposed is the definition of the offence by the Legislature itself; *quod voluit dixit*, and whether any other language must have the same meaning as that which I find used, cannot but be doubtful, and is a question which I am not able or willing to decide. That the words of the statute must be pursued, is a safe and certain rule; an inquiry whether other words bear the same mean-

lag, must be precarious and uncertain. I think, therefore, that, both upon principle and authority, these four first counts are defective.

The two last counts, after stating the incorporation of the borough of Great Bolton, with most of the particulars contained in the four first counts, and referring to certain provisions in the 5 & 6 Wm. 4, c. 76, which it is not necessary to set out, as no objection or question arises thereon, contain an allegation that on the first of November, in the ninth year of Queen Victoria, an election of two councillors for a certain ward in the said borough took place, and then state the offence. In this (the material) part, both counts are the same, and to this effect: "that defendant well knowing the premises, but intending deceitfully and fraudulently to contravene the said provisions of the said Act of Parliament, and to prevent a fair election of councillors from taking place for the said ward, and wrongfully and deceitfully wishing to make it appear that A and B, who were then and there respectively candidates for the office of councillor of and for the said ward, were duly elected councillors thereof, on, &c. at, &c. at the election aforesaid for the said ward, falsely, fraudulently, deceitfully, and contrary to and in fraud of the provisions of the statute aforesaid in that behalf, did personate one John Holden (the name of the said John Holden being then on the said burgess-roll of the said borough and on the ward-list of the said ward, which were then and there in force); and the defendant then and there, as and in the name of the said John Holden, did give his vote for the said A and B (then follow allegations negativing the identity of defendant with said John Holden, and the pretended qualifications of defendant to give him a right to vote), in contempt of the provisions of the said statute, in contempt of our said lady the Queen and her laws, to the evil example, &c. against the form of the statute in such case made and provided, and against the peace, &c."

And, first, with respect to the conclusion, "against the form of the statute," that may be disposed of at once, by observing, that there is no such offence as "false personation" (so described) in the Act of Parliament, nor are the words "personation" or "personate" to be found in it. It is true that wrongfully giving a false answer to the three allowable questions has acquired the popular appellation of the "false personation" of a voter, but in the statute itself there is no language in any degree resembling that which has been used in describing the supposed offence contained in those two last counts. The question, therefore, arises—do these counts contain the description of an offence at common law? No case to maintain the affirmative was cited, nor is it believed that any such can be found. The precise case, indeed, is not very likely to have occurred; because, until the recent Act, no election of councillors for a borough could have been held; but none in principle resembling it was produced.

The analogy is all the other way. In certain instances false personation—as of soldiers, sailors, and bail, for fraudulent purposes, is made an offence. And this case does not resemble one where a statute enjoins or prohibits some particular act, without any penalty being attached to the breach of its provisions; for the supposed offence intended to be described in those two last counts is expressly provided for by the said thirty-fourth section, upon which the four first counts are framed; but, as I have already said, in my opinion, defectively.

The consequence is, that the judgment must be arrested.

THE LEGISLATOR.

Summary.

Mr. WYSE's motion for a committee on Legal Education in Ireland, has been acceded to, and the inquiry will be one of great interest. An abstract of his speech, which was too long for publication in full, will be found below.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Monday, April 6.

Parliamentary Electors and Freeman—"to regulate the times of payment of Rates and Taxes by Parliamentary Electors, and the Registration of persons claiming to be rated to the relief of the Poor, and abolish the Stamp Duty on the admission of Freeman."

Wednesday, April 8.

Bankruptcy and Insolvency—"to amend the Laws relating to Bankruptcy and Insolvency."

Commons' Inclosure—"to authorise the Inclosure of certain Lands, in pursuance of the recommendation of the Inclosure Commissioners of England and Wales."

BILLS READ A SECOND TIME.

Monday, April 6.

Insolvent Debtors, India
Polling Places, Ireland.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, April 5.

Tortoth-park Improvement
Caledonian Railway, Dumfries Branch
" " Leith Junction
" " Dundee Branch
" " Midlothian Branch
" " Glasgow, Garmkirk, and Coatbridge
" " Railway
West Cornwall Railway.

Monday, April 6.

Oldham, Manchester, Liverpool, and Birkenhead Junction
" " Railway
Oxford, Worcester, and Wolverhampton Railway
Ipswich and Bury St. Edmund's Railway, Extension to Ely,
with a branch therefrom
London and Birmingham Railway, Weedon and Northamp-
ton Branch
Scottish Central and Caledonian Junction Railway
Portbury Pier and Railway
Sheffield, Ashton-under-Lyne, and Manchester Railway,
Whalley-bridge and Hayfield Branches.

Tuesday, April 7.

Wilts, Somerset, and Weymouth Railway
Midland Railways, Clay Cross and Newark

Wednesday, April 8.

Forth and Clyde Junction Railway
Edinburgh, Leith, and Granton Railway, Extension and
Branches
Cambridge Improvement
South Devon Railway, No. 2, Amendment and Branches

BILLS READ A SECOND TIME.

Friday, April 5.

Arbroath and Forfar Railway, amendment
Norfolk Railway, Norwich Branch
Leeds Central Railway Station
Kilmarnock and Troon Railway
Leicester Improvement
Birkenhead, Lancashire, and Cheshire Junction Railway
Wexford Harbour Improvement
Sligo Harbour Improvement
Liverpool Sanatory Regulations
Improvement
Charing Cross Bridge Company.

Monday, April 6.

Inverness and Elgin Junction Railway
Dunblane, Doune, and Callander Railway
Tramway Embankment
Sidmouth Market
Severn Navigation
Manchester Markets
Caledonian Insurance Company
Carshalton Rates
Hull and Lincoln Direct Railway
Wexmouth Roads
Port Ellen Harbour
Edinburgh Paving
Leith Paving
Aldrie Police
Greenlaw Roads
Sligo Ship Canal
Halesworth and Norwich Railway
East and West India Docks, and Birmingham Junction
" " Railway, by order
London and Windsor Railway

Tuesday, April 7.

Schoolmasters' Widows' Fund
Campbelltown Harbour, Waterworks, &c.
Cameron's Coalbrook Steam Coal, and Swansea and Lou-
ggor Railway
Port Gordon Harbour
Kilmarnock Waterworks
Gorbals Gravitation Waterworks
Hamilton Gas
Kendal Union Gas and Water
Rotherham Gas

Wednesday, April 8.

Surrey Grand Junction Railway
Newport, Abergavenny, and Hereford Railway
South Staffordshire Junction Railway, with Branches, Nos.
1, 2, 3, 4
Leeds and Thirsk Railway, North Eastern Extension
Caledonian Railway, Dumfries Branch
" " Dundee Branch
" " Mid Lothian Branches
" " Leith Junction
" " Glasgow, Garmkirk, and Coatbridge
" " Railway Branches
Leamhago, Dalsell, and Coatbridge Mineral Junction Rail-
way

Scottish Southern Railway
East of Fife Railway
Manchester, Bolton, and Bury Canal Navigation and Rail-
way, and Manchester and Leeds Railway Amalgamation
Birmingham, Lichfield, and Manchester Railway
Buckinghamshire Railway, Oxford and Bletchley Junction
Bristol Waterworks
Vale of Neath Railway.

BILLS READ A THIRD TIME AND PASSED.

Monday, April 6.

Middleton Gas
Eastern Union and Hadleigh Junction Railway
Woodstock Roads.

Tuesday, April 7.

Birmingham Cemetery
Welsh Charity School Incorporation
Willingham Inclosure and Drainage.

SESSIONAL PRINTED PAPERS.

Ile of Man—Returns
Knockenterry Disturbances—Copy of Communications
Homicides, Ireland—Extracts from the Police Reports
Wale Fishery—Account
Stock Transferred—Account
Bills—Highways
Polling-places, Ireland
Experimental Squadron—Return
Bill—Railway, &c. Deposits, amended
Education, India—Paper
Timber-Laden Ships—Returns
Bill—Parliamentary Electors and Freeman

HOUSE OF COMMONS.

LEGAL EDUCATION IN IRELAND.

TUESDAY, APRIL 7.—Mr. WYSE, in rising to move for a select committee to inquire into the present state of legal education in Ireland, and the means for its further improvement and extension, said he wished he could boast the knowledge or experience of a professional man, or at least quote the wishes of the profession, so as to enable him to speak comprehensively on the subject. But on this occasion he felt all the inferiority of a layman, though, being such, he believed he stood in an im-
partial position, and was the less likely to be con-
founded with party feelings the interests and concerns
of ancient and venerable, but at the same time anti-
quated, institutions. He (Mr. Wyse) had no other
view in bringing forward the question but the exten-
sion of legal education, in common with every branch
of education. It was not the first time that he took
an interest in the subject. In 1838 he had brought
the question forward in the committee on Irish edu-
cation, and that committee had recommended the in-
stitution of a sort of high law school, and also similar
subsidiary schools in such new universities as might
thereafter be established in Ireland. In 1840, too,
he had headed a deputation composed of some of the
most eminent men at the Irish bar, and waited on
the Secretary for Ireland, Lord Morpeth, praying
that the society just established in Ireland—the
Law Institution of Ireland—should receive a charter
from the Crown. That institution proposed to confer
instruction by the means of lectures. In 1843 he pre-
sented a petition to that House from the principal
of that institution, praying a charter for it, and also that
inquiry might be instituted into the state of legal
education in Ireland; and in the same year he gave
notice of a motion for inquiry into the state of Ire-
land, legal education inclusive. There was not a class
in the community who were uninfluenced by the op-
eration of the law, and not a single relation of society
in which the lawyer was not called in as the prime
mover. Any deficiency in education in that profession
was, consequently, a public grievance of a grave
character. The answer usually made to attempts at ame-
lioration in respect to it was that the Bar of England
had hitherto produced as great men as the bar of any
other country, and that the force of native genius was
still sufficient for all purposes of the profession of the
law. But if that was true of the law, it should be
true of other professions, which was found not to be
the case; and the absence of previous professional
education in the one was as justifiable as in the other.
The want of that previous training had been deeply
felt and greatly regretted by some of the most eminent
men in the legal profession, inclusive of the late
lamented Master of the Rolls in Ireland, Sir Michael
O'Loughlin. Chief Justice Storey, the ornament of
American jurisprudence, advocated it; and he (Mr. W.)
believed that there was not a man at the Bar in this
country who would not say the same. This being the
case, it became important to provide a remedy for the
evil. In looking at the different universities of Eu-
rope it would be found that there was not one,
except those of England and Ireland, which had not
alone adequate means of legal instruction afforded to
the students; but legal learning had been made se-
condary only to the principal objects of each univer-
sity. It was so in Spain. In Italy it is so likewise,
from the time when Tirabocchi wrote about the
greatness of the University of Bologna. In the Ro-
man states the system prevailed. In the University
of Pisa it formed a prominent feature in the course
of education; and in Pavia, reformed as the institu-
tion of the university had been by the Austrians, civil
law and jurisprudence were still an essential portion
of study for the student. The same spirit had ex-
tended itself to Russia, and founded the Imperial
Law School of St. Petersburg; and in Scotland—
nearer home—since the report of the commissions of
1826 and 1833, the faculty of teaching law had been
revived in the universities of that country. There
was a recognition of the necessity of a previous
education for the profession of the law in the consti-
tution of this faculty; and there was an admission
on the part of that eminent judge, the Lord
Justice Clerk of Edinburgh, that such a society as
existed in Ireland would be advantageous to Scotland.
In England, however, there were neither the same
facilities nor the same zeal in relation to the subject.
The Inns of Court were originally intended as colleges
of a great law university, in practice at least; and
the act of 3rd Henry 8 enjoined the student to make
himself acquainted with a knowledge of the law before
entering on the legal profession. There had been
exercises as well as commons, but the former were
discontinued, except at Lincoln's-inn, where some
reading exercises were kept as a mere matter of form,
the latter being the only qualification for call to the
bar. That munificent man, Cardinal Wolsey, when
keeper of the Great Seal, had complained that the
lawyers were grossly ignorant of the civil law; and
he had projected a great legal university in London,
to be devoted to the study of the law in all its
branches. Sir Edward Coke lectured for years
upon the law in Lyon's-inn; and Lord Mansfield
held that those places were seminaries of legal

instruction. Within the last two or three years, however, a general feeling had grown up in the legal profession as to the necessity of some reform in respect of preliminary legal education, and on the 17th January this year the benchers of the Middle Temple assembled in Parliament had recognised the deficiency that existed in respect of the entire neglect of jurisprudence, by proposing to establish two professors for the purpose of instructing students in civil law and jurisprudence. Since then it had been again mooted among the bar whether a law university should not be established in London to provide for the education of students in all branches of the legal profession. He would now return to the case of Ireland. In 1839 a society called the Law Institution was established in Ireland by an eminent Irish lawyer—he alluded to Mr. Kennedy. In 1840, the Lords Justices expressed their approbation of the principle of the institution, but recommended in place of their wish for incorporation that they should seek for an endowment. The Queen's Inns Institution gave a donation of 400l. In 1841 the Institution made several applications to Government, but without success, and in the subsequent year the grant they had enjoyed was withdrawn. The institution was established for the study of the law, and on this ground they claimed support. The Queen's Inns received together about 7,147l. per annum in money, and though he did not wish to throw any discredit on those most respectable bodies, yet he considered a question might be fairly raised, whether some portion of this sum might not be advantageously appropriated to the endowment of legal professors in the Dublin Institution, or in any other public institution of an equally eligible character. Lectures had been given at the institution by men whose talents had shed a lustre on the Irish bar, and even after the grant was withdrawn, to evince the value of these lectures he would state that the number of pupils, instead of diminishing, had increased. He put it to the government to say whether it would not be advisable to give a permanent character to this institution. He had, he feared, trespassed too much on the patience of the House, but he was so deeply interested in the subject, that he could not bring himself to shorten his address. In the charter of incorporation for the new colleges, he had seen with satisfaction that a law chair was to be established; and as there were chairs for all the liberal professions, he called on Government to complete the public means for legal education by establishing schools and colleges in Dublin, and to aid those established out of the public funds. An hon. MEMBER moved that the house be counted, which having been done, and forty members not being present, the Speaker adjourned the house at eight o'clock.

WEDNESDAY, April 8.—Mr. WYSE moved for the appointment of a select committee to inquire into the present state of legal education in Ireland, and the means for its further improvement and extension.—Mr. WARBURTON recommended that the inquiry be made general, because the London University was very strict in examining into the legal acquirements of students there, but had not the power of granting a degree in that department of science.—Motion agreed to.

THE MAGISTRATE.

Summary.

Nothing has occurred requiring special comment.

THE NEW SETTLEMENT BILL.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Government has introduced a Bill into the House of Commons to prevent an unnecessary removal of paupers, but, as far as I can see, without the slightest attempt to improve the numerous defects in the existing laws of settlement and removal, which are too well known to your country readers to require commenting upon. If there is to be a Settlement Law, then why should not some revision, amendment, and consolidation of the laws take place? I beg to forward you the form of a petition to Parliament, several of which are already in preparation, and will shortly be presented. In fact, the Government measure proposes some change in the law, but without providing either for the past or the future. I am, Sir, yours, &c.

March 31, 1846.

F.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled.

The Petition of the Churchwardens and Overseers of the poor of the parish of in the county of

HUMBLY SHEWETH,—That under the operation of the existing laws which relate to the settlement of the poor in England and Wales, parishes are obliged to bear heavy costs of maintaining paupers who are not their settled parishioners, and of tracing their legal place of settlement.

That in order to prove a settlement by birth or parentage,—or by renting a tenement and being rated thereto,—or by apprenticeship (which are the most frequent grounds of settlement), the necessary evidence which the law now requires to be adduced before justices of the peace in petty sessions previous to an order of removal being made, can only be procured at great expense to the removing parish.

That your petitioners are advised that the law of evidence, so far as it relates to the law of settlement and removal of the poor, might be greatly improved.

(Here state any special remarks on the subject of the poor law, or the expense of obtaining removal orders, or any other fact worthy of comment.)

Your petitioners represent that the statutes which govern the settlement law and removal of the poor are very numerous, and are productive of litigation; at the present time settlements exist, and can be set up by paupers; and their children may hereafter claim their settlements from their parents, by the following methods, viz. :—

By renting and occupying at the rent of 10l. for one year, and by being rated thereto.

By renting a tenement at the same rent, and by payment of rates, a settlement can be gained by a residence of forty days.

By estate.

By hiring and service—(gained prior to the 14th August, 1834).

By apprenticeship.

By office bearing.

By acts of a parish, viz., giving relief to parties when resident in another parish.

By acknowledgment by certificate.

By receiving paupers under a former order of removal, and unappealed against.

By parentage settlement.

By marriage.

By birth—as to legitimate children.

By birth—as to illegitimate children.

By a widow's settlement by marriage.

By settlement of a deserted wife or family.

That several of the foregoing Acts of Settlement are again divided into different periods, because at certain periods the law made various requirements necessary to be observed in order to constitute a legal settlement.

That although the statute 4 & 5 Wm. 4, c. 76, directly repeals many of the modes above set forth of acquiring a settlement, yet all such settlements as were gained before the passing of that statute are not affected, and the effects of such modes of settlement will continue to be felt for a great number of years, if the settlement law remains.

That many of the foregoing cases of settlement depend upon nice distinctions and subtle reasoning of law, by which means parishes frequently sustain injustice by being saddled with paupers who are not their parishioners.

That, from the above-stated cause, and by the nature of their office, overseers feel great reluctance, and that, they would not be justified in accepting paupers from another parish upon a mere allegation as to the alleged settlement of such paupers, without having a proper statement in writing, which fully set forth the means by which such settlement was gained, first submitted for their consideration.

Your petitioners also represent, that in the case where a pauper is sought to be removed from one parish to another, if overseers were to be summoned to attend before a bench of magistrates, to hear the statement of alleged settlement and evidence in support thereof, and to shew cause against it, or in any manner to be called upon to admit the settlement of a pauper, without having a written examination sent to them setting forth the settlement, they would experience great difficulty in concurring with any such proceeding, for, being unacquainted with the law, they might be the means of inflicting great injustice upon their parish and fellow rate-payers.

Your petitioners represent that they have had their attention directed to "A Bill to consolidate and amend the law relating to the removal of the Poor," which is now before your honourable House; and your petitioners view with apprehension the various clauses which it contains as being likely to increase the difficulties under which your petitioners and overseers in general now labour, inasmuch as there does not seem to be any provision in the Bill to amend the numerous laws of settlement and their great defects, or to improve the practical working of the Settlement Law, or its well-known defects.

That your petitioners beg humbly to represent that they are advised, and do believe, that the confusion which now surrounds the laws of settlement of the poor, and of their removal, is capable of being cleared away; and that the laws, if consolidated and amended, could be greatly improved and simplified, and that such a course would be productive of the greatest benefit to parishes, by the saving of vexatious questions and disputes, and litigation as to settlement, and would prove beneficial not only to rate-payers, but would also be an act of justice towards the poor.

Your petitioners therefore humbly pray, that your honourable House will be pleased to take into consi-

deration the existing state of the law of settlement, and of removal of the poor, and the manner in which the interests of the rate-payers and the welfare of the poor are affected; and whether relief in the premises might not be afforded by a revision, consolidation, and amendment of the law of settlement and of the law of removal.

THE EXPENSES OF CORONERS.

The conduct pursued by the justices of the county of Devon has produced a considerable sensation among the coroners of that county. It would seem that in instances where inquests have been held, and verdicts of "Natural Death," or "Died by the visitation of God," have been returned, the justices in quarter sessions assembled have refused to allow the fees and expenses of the inquests, on the ground that such inquests were unnecessary.

The coroners contend that the justices are thereby making what amounts to an *ex post facto* law, because it is not until the inquest has been held that such a decision can be come to; nor is it possible for a coroner to anticipate what the verdict will be until the facts upon oath are before him; he cannot make a previous inquiry, because of whom is he to inquire? It is reported to him that there has been a sudden death, and, according to the common law, he is bound to make inquiry as to the cause of the death. "The office of coroner is so ancient," says Judge Dodderidge (3 Bulstrode, 176), "that its commencement is unknown, but the duties of the office seem to have been well defined and understood in the time of Bracton, who writes, 'That without delay, upon sudden death, the coroner do inquire;' and the statute 4 Edward 1, *De officio coronatoribus*, is directory; and by the stat. 3 Henry 7, c. 1, the coroner is to forfeit 100s. if he be remiss and make not inquisition upon the view of the body dead."

The registrar-general of births and deaths, in his report for 1841, says, "That the coroner's inquest, from its popular nature, has contributed not only to the detection and repression of crime, but to the general abhorrence of assassination and the tender regard for human life which pervade the minds of the people of this country;" and he says, in 1845, "Inquests are held in the cases of sudden as well as violent deaths."

But Lord Denman's dictum, in the case of *The Queen v. The Great Western Railway Company*, has been seized upon by the justices of Devon. His lordship in that case is reported to have said, "If the verdict be 'Death by the visitation of God,' nothing more is done, for, in truth, it appears that there was no occasion for an inquest."

The preliminary step, in order to punish crime, is the inquiry and committal by a magistrate of the supposed offender, and yet no fault is found with that magistrate, although the party is subsequently acquitted. He had information that a crime had been committed, and he was called upon to institute an inquiry. The coroner has information brought to him; he is bound to institute an inquiry. If it should appear that the death should have been caused by violence he is paid his fees, but if it should turn out that the party, although dying suddenly, died from natural causes, his expenses are withheld; thus giving a power to the justices over the coroner which they ought not to possess. The magistrate cannot deprive a prosecutor of his expenses because a prisoner has been acquitted.

The justices of Devon came to this resolution, "That the committee of accounts be instructed not to pass the expense of any inquest where the verdict is 'Natural death,' or 'Visitation of God,' unless reasons are shewn them that suspicion fairly arose that such death was not natural." How can this be ascertained without inquiry, and how is this inquiry to be carried on but by the means pointed out by the law? At the Midsummer Sessions of 1845, the expenses of several inquests were disallowed. One of them was an inquest held upon the body of an old man of 74 years of age, who was last seen alive on the evening of the 10th June, and was found dead the next afternoon in an outhouse; and yet it was held by the justices that this was not a fit subject for an inquest. Another instance was, that of information being conveyed to a coroner, that a child had been found dead in its mother's bed; the informant could not say whether it had been overlaid, or smothered, or had died from natural causes. The coroner thought it his duty to hold an inquest, the matter was inquired into, and the jury returned a verdict of "Natural death." The justices refused to allow any of the expenses of that inquest. If such a proceeding is to be sanctioned, how can a coroner act? A mother of an illegitimate child has only to smother the child instead of cutting its throat, and she can ride off with impunity.—*The Times*.

THE PRACTICE OF SUMMARY
CONVICTIONS.

By T. W. SAUNDERS, Esq. Barrister-at-Law.

(Continued from page 507.)

PART III.—CHAPTER IV.

The Formal Conviction and Order—concluded.

The statement of the adjudication.—After the statement of the evidence the conviction should contain an adjudication of the defendant's being convicted, and this notwithstanding the punishment is fixed and unalterable, since no conviction can be sustained unless it has the judgment of the justices apparent upon its face. "A conviction," it was said in *Res. v. Harris* (7 T. R. 238), "is in the nature of a verdict and judgment, and therefore it must be precise and certain," and in that case the conviction was quashed, for not stating any judgment of fine or imprisonment, though it stated that "he is hereby convicted by us, the said justices, by the testimony of, &c. of the offence charged upon him in and by the said information, according to the form of the statute in such case made and provided." (*Day v. King*, 5 Ad. & Ell. 365.) No precise form of words need be used, and it is only necessary that the decision of the magistrates should be expressed with clearness and certainty. The form given in the 3 Geo. 4, c. 23, should, however, be used in all cases to which it is applicable, but inasmuch as it applies only to pecuniary forfeitures, care must be observed in framing the adjudication in cases where it cannot be used. (See forms.) The only general rule that can be laid down relative to an adjudication is that it must strictly follow the provisions of the Act of Parliament upon which it is founded, and that any excess, diminution, or variation of the penalty fixed by the statute will render the conviction entirely void. (*R. v. Hall*, Cowp. 60; *R. v. Elwell*, 2 Lord Ray. 1514; *R. v. Salomons*, 1 T. R. 251; *Groome v. Forrester*, 5 M. & S. 314; *R. v. Payne*, 4 D. & Ry. 72.)

Statement of penalty.—The statement of the penalty, whether of fine or imprisonment, must be exact, and according to the statute; thus the sum must be fixed, and the length of imprisonment clearly defined. (*R. v. Elwell*, 2 Lord Ray. *supra*; *R. v. Vipont*, 2 Burr. 1163; *R. v. Ashton*, 8 Mod. 175; *Re Reynolds*, 13 L. J. M.C. 65; 1 New Sess. Ca. 51; *Fletcher v. Cuthbert*, 1 New Sess. Ca. 589); and the same observations apply to the costs when awarded.

Of including several offences and penalties in one conviction.—There is no objection to including several offences of the same nature in the same conviction, but where they are so included, care must be taken that the penalties are properly adjudged; thus in *Newman v. Bendyshe and Another* (10 Ad. & Ell. 11), which was an action of trespass against magistrates for the seizure of the plaintiff's cart, the defendants justified under a conviction upon the 11 Geo. 4, and 1 Wm. 4, c. 64, s. 14, whereby the plaintiff was convicted of keeping his house open for the sale of beer, and selling beer, and suffering the same to be drunk and consumed in the house at unlawful times, and was adjudged to pay a penalty of 40s. as for a single offence. It was held that this conviction was bad, inasmuch as the acts charged constituted three distinct offences, to which only one penalty had been affixed, as upon a conviction for one offence only. (*Res. v. Salomons*, 1 T. R. 249; *R. v. Swallow*, 8 T. R. 284.)

When, however, several acts are charged in the conviction, it will in general depend upon the construction of the statute, whether they merely compose one offence, or are to be treated as distinct violations of the Act. Acts done on different days are always treated as distinct offences, *R. v. Matthews* (10 Mod. 27); but where they are committed on the same day, they ought or ought not to be so treated according to their nature; thus, upon a conviction under the 12 Geo. 2, c. 26, for selling books unlawfully imported, it was held that each act of selling on the same day was a distinct offence. (*Brooke v. Milliken*, 3 T. R. 509.) But under the 29 Car. 2, c. 7 (the Sunday Trading Act), it was held in *Cropps v. Durden* (Cowp. 640), that a person can commit but one offence on the same day, by exercising his ordinary calling on a Sunday, though the acts charged against him as having been committed on that day are distinct from each other. (*Res. v. Bleasdale*, 4 T. R. 809; *Warneford v. Kendall*, 19 East. 21; *Melton v. Chaceley*, 1 Esp. N. P. 123; *R. v. Lovet*, 7 T. R. 152.)

Where several offenders.—When several defendants are convicted of the same offence, whether it be in its nature joint or several, a joint award of one penalty against them is bad; for it should be several against each, that each defendant may know how much he has to pay. (2 Hawk. c. 10, s. 16; *Morgan v. Brown*, 4 Ad. & Ell. 515.)

It will often be a question of considerable doubt, whether, if two or more commit an act punishable by a certain penalty, distinct penalties of the full amount can be imposed upon each defendant, or only one penalty amongst the whole; or, in other words, whether one offence only is committed or several? If a statute impose a penalty for a certain act, then if two or more commit it, only one penalty is in general incurred. (*R. v. Bleasdale*, 4 T. R. 809; *Hardman v. Whitesacre*, Bull. N. P. 189.) If, however, the penalty imposed by the statute be obviously on each offender, or if the offence committed be of a several nature, so that the guilt of each person is clearly distinct from that of the others, a distinct penalty upon each should be imposed, as upon a distinct offence. Thus in *Res. v. Hude and Others* (5 T. R. 542), which was an indictment upon the 18th sec. of the 1 W. & M. c. 18 (the Toleration Act), for disturbing a dissenting congregation, it was held that each individual (out of many) was liable to the full penalty of 20l. imposed by the statute. The principle applicable to these cases is very clearly laid down by Lord Mansfield in *Res. v. Clarke* (Cowp. 612), where he says, "Where the offence is in its nature single, and cannot be severed, there the penalty shall be only single; because, though several persons may join in committing it, it still constitutes but one offence. But where the offence is in its nature several, and where every person concerned may be separately guilty of it, there each offender is separately liable to the penalty, because the crime of each is distinct from the offence of the others, and each is punishable for his own crime. For instance, the offence created by stat. 1 & 2 Phil. & M. c. 12, is, 'the impounding a distress in a wrong place,' one, two, three, or four may impound it wrongfully; it still is but one act of impounding, it cannot be severed. It is but one offence, and therefore shall be satisfied by one forfeiture."

Statement of award and distribution of penalty.—The conviction must state the manner in which the penalty is to be disposed of. Where the application of the penalty is fixed by the statute, it may be directed "to be distributed (or paid) according to the form of the statute in such case made and provided." (*R. v. Scale*, 8 East, 574, per Lord Ellenborough; *R. v. Thompson*, 2 T. R. 18.) Where, however, any discretion is given to the justices as to the amount of the penalty or the parties to receive it, these facts must be specifically ascertained and set out (*R. v. Dimesey*, 2 T. R. 96; *R. v. Symonds*, 1 East, 189; *R. v. Smith*, 5 M. & S. 133); and any error in these particulars will render the conviction bad, and subject the justices (if the defendant be imprisoned upon it) to an action of trespass (*Griffith v. Harries*, 2 M. & W. 335) (where all the cases are collected, and the law is very clearly laid down). (*R. v. Priest*, 6 T. R. 538; *R. v. Glossop*, 4 B. & Ald. 616; *R. v. Smith*, 5 M. & S. 133.) The 3 Geo. 4, c. 23, prescribes a general form of adjudication which should be followed in all cases to which it is applicable. Where the statute gives the justices power to mitigate the penalty, and they mitigate it accordingly, this fact should be stated; and the adjudication should therefore award the whole penalty, and then proceed to state to what sum it has been mitigated. A judgment for too small a penalty is as bad as one for too much. (*Res. v. Symonds*, 1 East, 189.) If justices are empowered to award damages "not exceeding" a certain sum, they ought to ascertain the amount of damage, and award a sum commensurate with the injury, and not award the full amount irrespective of the actual loss. (*R. v. Harper*, 1 Dow. & Ry. 222, per Best, J.)

Adjudication as to costs.—The conviction should also adjudicate as to the costs; and where the statute, under which the conviction has taken place, says nothing upon this subject, the justices may act upon the 18 Geo. 3, c. 19 (see *ante*, p. 43). The amount of the costs must be specifically ascertained and decided by the justices themselves at the time of the conviction. (*Res. v. St. Mary, Nottingham*, 13 East, 57, n.; *Sekwood v. Mount*, 1 Q.B. 726; 1 Gale & D. 358, s. c.; *Lock v. Sekwood*, 1 Q.B. 736; 1 Gale & D. 366, s. c.; *R. v. Long*, 1 Q.B.

740; 1 Gals. & D. 387; *R. v. Clark*, 5 Q.B. 327; *R. v. Symonds*, 1 East, 189 (see *ante*, 45). These must, however, have been a complaint made against some party to enable the justices to give costs under the statute, as where a magistrate having received information upon oath that a turnpike-road was out of repair, summoned the surveyor under the 5 & 6 W. 4, c. 50, s. 94, to appear at a special sessions, and at that time two magistrates ordered a party to view the road and report thereon to them at another special sessions, and such person having reported at the latter sessions, (the surveyor being present) that the road was out of repair, the surveyor was ordered by the justices to repair it within six weeks, and at the same time they ordered him under the 18 Geo. 3, c. 18, s. 1, to pay 2l. 3s. as costs, it was held that the justices could not award costs in such a case under the Act. (*George v. Chambers*, 11 M. & W. 149.)

The conclusion of the conviction.—The conviction concludes with the signature of the justice or justices, and the affixing of their seals, whereby it becomes a formal record, and is capable of being produced in evidence. (Dalt. c. 115; *R. v. Ellwell*, 2 Stra. 794; *Basten v. Carrow*, 3 B. & C. 649.) It matters not, however, when these are affixed, (*R. v. Barker*, 1 East, 186), so that it appears according to the date that the conviction in fact took place within the time limited by law for the prosecution. (*R. v. Bellamy*, 1 B. & C. 500; 2 Dow. & Ry. 727, s. c.) Where a warrant of commitment directed the gaoler to imprison a party for three months, omitting the day of the month on which it was granted, it was held bad, as the length of imprisonment was thereby uncertain. (*Re Fletcher*, 13 L. J. M. C. 16.)

(To be continued.)

THE LAWYER.

Summary.

The business of the ensuing Term is expected to be very heavy. The settlement of the disputes growing out of railway affairs almost exclusively occupies the attention of the Profession, and is yielding a rich harvest.

PROMOTIONS, APPOINTMENTS,
ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been pleased to appoint the Right Hon. Charles John Viscount Canning to be one of her Majesty's commissioners for inquiring into and considering the most effectual means of improving the metropolis, and of providing increased facilities of communication within the same.

The Queen has been pleased to approve of Mr. Clement Frederic Good, as consul at Hull for his Majesty the King of Denmark.

The Queen has been pleased to appoint Norman William Macdonald, esq. to be Captain General and Governor-in-Chief in and over the colony of Sierra Leone and its dependencies.

The Lord Chancellor has appointed C. Steward, of Ipswich, in the county of Suffolk, gent. and J. T. Tweed, of the city of Lincoln, gent. to be masters extraordinary in the High Court of Chancery.

The Poor Law Commissioners have appointed J. T. Graves, esq. barrister-at-law, of the Inner Temple, to be an assistant Poor Law Commissioner, in the place of Mr. Tuffnell, who has resigned.

COMMISSIONS SIGNED BY LORDS LIEUTENANT. SHROPSHIRE.—T. C. Whitmore, esq. and R. F. West, esq. to be Deputy Lieutenants.

SHROPSHIRE Militia.—R. F. Hill, esq. to be Lieutenant-Colonel; H. C. Taylor, esq. and J. Whitmore, esq. to be Captains; J. V. Lovett, jun. gent. to be Lieutenant; W. Boyce, gent. and P. A. Beck, gent. to be Ensigns.

SALOP.—T. C. Whitmore, esq. and R. F. West, esq. to be Deputy Lieutenants.

COURT PAPERS.

CHANCERY SITTINGS.

Easter Term, 1846.

Before the LORD CHANCELLOR.

Wednesday, Apr. 15—Appeal Motions

Thursday 16—Petition day

Friday 17

Saturday 18

Monday 19—Appeals

Tuesday 21

Wednesday 22

Thursday 23—Appeal Motions

Friday.....24	Petition day. Unopposed Petitions and Appeals
Saturday.....25	
Monday.....27	Appeals
Tuesday.....28	
Wednesday.....29	
Thursday.....30	Appeal Motions.
Friday.....May 1	Petition day. Unopposed Petitions and Appeals
Saturday.....2	
Monday.....4	Appeals
Tuesday.....5	
Wednesday.....6	
Thursday.....7	Petition day. Unopposed Petitions and Appeals
Friday.....8	Appeal Motions

Such days as his Lordship is occupied in the House of Lords excepted.

Before the VICE-CHANCELLOR OF ENGLAND.

Wednesday Ap. 15	Motions
Thursday.....16	Petition day
Friday.....17	Short Causes, Petitions (unopposed first), and Causes
Saturday.....18	
Monday.....20	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday.....21	
Wednesday.....22	
Thursday.....23	Motions
Friday.....24	Petition day. Short Causes, Petitions, and Causes
Saturday.....25	
Monday.....27	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday.....28	
Wednesday.....29	
Thursday.....30	Motions
Friday.....May 1	Short Causes, Petitions (unopposed first), and Causes
Saturday.....2	
Monday.....4	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday.....5	
Wednesday.....6	
Thursday.....7	Petition day. Short Causes, Petitions, and Causes
Friday.....8	Motions

Before the MASTER OF THE ROLLS.

Wednesday, Ap. 15	Motions
Thursday.....16	Petitions, unopposed first
Friday.....17	
Saturday.....18	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Monday.....20	
Tuesday.....21	
Wednesday.....22	Motions
Thursday.....23	
Friday.....24	
Saturday.....25	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Monday.....27	
Tuesday.....28	
Wednesday.....29	
Thursday.....30	Motions
Friday.....May 1	
Saturday.....2	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Monday.....4	
Tuesday.....5	
Wednesday.....6	
Thursday.....7	Petitions, unopposed first
Friday.....8	Motions

Before VICE-CHANCELLOR KNIGHT BRUCE.

Wednesday, Ap. 15	Motions
Thursday.....16	Petition day. Petitions and Causes
Friday.....17	Pleas, Demurrers, &c.
Saturday.....18	Short Causes and Causes
Monday.....20	Pleas, Demurrers, Exceptions, Causes, &c.
Tuesday.....21	
Wednesday.....22	Bankrupt Petitions and Causes
Thursday.....23	Motions and Causes
Friday.....24	Petition day. Petitions and Causes
Saturday.....25	Short Causes and Causes
Monday.....27	Pleas, Demurrers, Exceptions, Causes, &c.
Tuesday.....28	
Wednesday.....29	Bankrupt Petitions and Causes
Thursday.....30	Motions and Causes
Friday.....May 1	Petition day. Petitions and Causes
Saturday.....2	Short Causes and Causes
Monday.....4	Pleas, Demurrers, Exceptions, Causes, &c.
Tuesday.....5	
Wednesday.....6	Bankrupt Petitions
Thursday.....7	Short Causes and Causes
Friday.....8	Motions

Before VICE-CHANCELLOR WIGRAM.

Wednesday Ap. 15	Motions and Causes
Thursday.....16	Pleas, Demurrers, Exceptions, Causes, &c.
Friday.....17	
Saturday.....18	Short Causes, Petitions (unopposed first), and Causes
Monday.....20	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday.....21	
Wednesday.....22	
Thursday.....23	Motions
Friday.....24	Petition day. Pleas, Demurrers, &c.
Saturday.....25	Short Causes, Petitions, &c.
Monday.....27	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday.....28	
Wednesday.....29	
Thursday.....30	Motions and Causes
Friday.....1	Petition day. Pleas, Demurrers, &c.
Saturday.....2	
Monday.....4	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday.....5	
Wednesday.....6	
Thursday.....7	Petition day. Short Causes, Petitions (unopposed first), and Causes
Friday.....8	Motions and Causes

COMMON LAW SITTINGS.

Sittings at Nisi Prius, in Middlesex and London, before the Right Hon. Sir NICOLAS CONYNGHAM TINDAL, Lord Chief Justice of her Majesty's Court of Common Pleas, in and after Easter Term, 1846.

IN TERM.—MIDDLESEX.

1st sitting, Wednesday, April 22
2nd sitting, Thursday, April 29.

IN TERM.—LONDON.

1st sitting, Friday, April 24
2nd sitting, Monday, May 1.

AFTER TERM.—MIDDLESEX.

Saturday, May 9.

AFTER TERM.—LONDON.

Monday, May 11, to adjourn only.

The Court will sit during Term from day to day till the Causes are taken.

To sit at ten during Term, and half-past nine after Term.

CAUSE LISTS, HILARY TERM, 1846.

COURT OF QUEEN'S BENCH.

New Trials remaining undetermined at the end of the Sittings after Hilary Term, 1845.

Michaelmas Term, 1844.

Glamorgan—Burgess v. Taff Vale Railway Company

Hilary Term, 1844.

London—Lowe v. Penn.

Easter Term, 1845.

Surrey—Dobson, knt. and Another v. Blackmore the elder

Herts—Girdlestone v. McGowan, in replevin

Bucks—Rowles v. Senior and Others

Cambridge—Layton v. Hurry

Chester—Stewart v. Wilkinson

Wills—Lee v. Merrett

Devon—Doe dem. Earl of Egremont v. Courtenay

Doe dem. Dayman v. Moore

Wood v. Hewett

Barratt v. Oliver

Doe several dems. Molesworth, bart. and Others v. Sleeman and Another

Tanner, extrix. &c. v. Moore

Somerset—Lambert v. Lyddon

Northumberland—Bloxham v. Shaw

Davidson v. Reed

Durham—Ray v. Thompson

Reg. v. Great North of England Railway Compy.

Hansell v. Hutton

York—Doe dem. Lord Downe v. Thompson

Lord Viscount Downe v. Thompson

Phillips v. Broadley

Devon—Petch and Wife v. Lyon

Brown v. Ayre

Wilson v. Nightingale and Others

James v. Brook

Lincoln—Saffery v. Wray

Leicester—Hassell v. Heming

Warwick—Doe dem. Bowley and Others v. Barnes

Stafford—Inskip v. Smallwood and Another

Salop—Stokes v. Boycott, in replevin

Monmouth—Prickett v. Gnatix

Williams v. Stiven

Gloucester—Clutterbuck v. Halls

Glamorgan—Doe dem. Simpson v. John

Middlesex—Hopkins v. Richardson.

Trinity Term, 1845.

Middlesex—Rich v. Dix

London—Curling v. Shepherd

Sheringham v. Collins

Day (by her next Friend) v. Edwards

Sedgwick v. Hammon.

Middlesex—Paul and Wife, extrix. &c. v. Simpson

Mitchell v. King.

Michaelmas Term, 1845.

Middlesex—Wimberley v. Hunt

Baker v. Drew

Reg. v. Thornton

Same v. Gompertz

Gibbons v. Hunter and Another

Goode v. Cochrane

Ford v. Beech

Jacob v. Dawes

London—Buisson v. Staunton

Brown v. Harnot

Welsh and Another v. Reed

Murrieta v. Oldfield

Nicholl v. Gillan

Stafford—Skerrett v. Christie and Another

Biddlestone and Others, assignees, &c. v. Burdett

Essex—Rogers v. Kenny

Doe dem. Goody v. Carter

Surrey—Gillett v. Bullivant

Youell v. Cross

Archer v. Smyth

Doe dem. Pennington and Others v. Barrell

Northampton—Sutton, a pauper, v. Macguire

Cardiff—Taylor v. Clay and Another

Doe dem. Lord v. Kingsbury

Carmarthen—Protheroe v. Jones

Chambers v. Thomas and Another

Same v. Same

Same v. Same

Cardigan—Doe dem. Jenkins and Another v. Davies and Others

Brecon—Mayberry v. Mansfield

York—Smith v. Smith

Marshall v. Powell and Another

Spence, a pauper, v. Meynall and Another

Doe dem. Norton v. Norton

Bainbridge v. Bourne, the younger

Wilkinson v. Haygarth

Same v. Same

Bainbridge v. Lax and Others

Durham—Smith v. Hopper and Others

Reed v. Same

Hinde v. Raine and Another

Devon—Mayor, &c. of Exeter v. Harvey and Another

Damerell v. Protheroe and Others

Shank v. Sweetland

Cornwall—Marshall v. Hicks

Somerset—Doe dem. Earl of Egremont and Another v. Williams and Another

Bristol—Addison v. Gibson.

Hilary Term, 1846.

Middlesex—Page v. Hatchett

Doe dem. Tebbutt and Others v. Brent and Orr.

Hunter v. Caldwell

London—White and Another v. Burnley

Bond and Another v. Nurse and Another

Turner v. Ambler

Reg. v. Kensington and Another.

Middlesex—Lovelock v. Franklin

For Judgment.

Willoughby v. Willoughby

Brooks v. Bockett

Same v. Same

Holford v. Bailey

Belcher and Others v. Gummow

Rogers v. Brenton, as to nonsuit

Gillett v. Whitmarsh

Doe dem. Earl of Egremont v. Langdon

Musgrove v. Emerson

Cocker v. Musgrove and Another

May and Wife v. Burdett

Bodmer v. Butterworth

Doe dem. Reg. and Another v. Archbishop of York and Others

Reg. v. Douglas

Reg. v. The Corporation of Manchester

Hope v. Harman

Solomon v. Lawson

Alford v. Farlow

Griffith v. Lewis.

CROWN PAPER, Easter Term, 1846.

Wednesday, April 22.

Essex—Reg. v. H. J. Conyers and Others, part heard

London—Reg. v. William Jones

Kent—Reg. v. The Mayor, &c. of Sandwich

Middlesex—Reg. v. George Buchanan

Middlesex—Reg. v. The Inhabitants of Mile End Old Town

Salop—Reg. v. The Inhabitants of Gorton

Cornwall—Reg. v. The Inhabitants of St. Gennys

Yorkshire—Reg. v. Joseph Foster

Devon—Reg. v. The Inhabitants of High Bickington

Reg. v. The Inhabitants of Ashburton

Middlesex—Reg. v. William Bond, esq.

Wills—Reg. v. The Inhabitants of Bradford

Surrey—Reg. v. Thomas Paynter, esq.

Kent—Reg. v. The Mayor of Dover

Yorkshire—Reg. v. The Inhabitants of Keighley

Ely—Reg. v. The Inhabitants of Chatham, Kent

Yorkshire—Reg. v. The Inhabitants of Northwram

Devon—Reg. v. The Inhabitants of Newton Ferrers

Surrey—Reg. v. The Churchwardens of St. Mary, Lambeth

Leicestershire—Reg. v. The Inhabitants of Radcliffe Caley

Lincolnshire—Reg. v. The Trustees of the River Welland

Huntingdonshire—Reg. v. The Inhabitants of Molesworth

Devon—Reg. v. The Inhabitants of Holme

Essex—Reg. v. The Inhabitants of Saffron Walden

Bucks—Reg. v. The Churchwardens, &c. of Aylesbury, with Walton

Middlesex—Reg. v. The Inhabitants of St. Giles-in-the-Fields.

Surrey—Reg. v. Thomas Pocock

Middlesex—Reg. v. The Inhabitants of St. Clement Danes

Staffordshire—Reg. v. Thomas Pratt

Northumberland—The Newcastle and Carlisle Railway company

Middlesex—The Inhabitants of St. Anne, Westminster

Worcestershire—The Birmingham and Gloucester Railway Company

Devon—James Griffin

New Sarum—The Inhabitants of St. Martin

Middlesex—A. R. Hamilton v. Reg. in error

Reg. v. The London, Westminster, and Vauxhall Steamboat Company

Northumberland—Reg. v. The Inhabitants of Walbottle

Middlesex—Reg. v. The Inhabitants of Watford, Herts

Bucks—Reg. v. The Inhabitants of Little Marlow

Surrey—Reg. v. The Inhabitants of Crondall, Hants

Cornwall—Reg. v. The Inhabitants of Mylor

England—Reg. v. The Commissioners of Stamps and Taxes

Middlesex—Reg. v. The Inhabitants of St. Paul, Covent-garden

London—Charles Wright v. The Queen in Error.

COURT OF EXCHEQUER.

Sittings in Easter Term, 1846.

NEW TRIAL PAPER, Easter Term, 1846.

For Judgment.

Moved Michaelmas Term, 1845.

Bristol—Kynaston and Others (assignees, &c.) v. Davis and Others

London—Brown and Others v. Wilkinson and Others

Middlesex—Bunnett v. Smith

Anglesea—Hughes v. Buckland and Others.

Northumberland—Knight, clerk, v. Marquis of Waterford

Stafford—Aston v. Perkes and Another

Easter Term, 1844.

Liverpool—Rogers and Another v. Maud.

Hilary Term, 1846.

22nd Jan. 1846.—*Beynon v. Margaret Jones*. Mr. E. V. Williams.
 24th Jan. 1846.—*Mumery against Paul*. Mr. Pashley.
 15th Jan. 1846.—*Way v. Smith and Another*. Mr. Lucas.
 24th Jan. 1846.—*Band v. Hill*. Mr. Leah.
 24th Jan. 1846.—*Doe several dems. of Lloyd and Another v. Roe*. Mr. Brown.
 26th Jan. 1846.—*Berlington v. Griffith*. Mr. Voules.

SPECIAL PAPER, Easter Term, 1846.

For Judgment.

Duncan v. Benson, demurrer, heard 2nd June, 1845
Doe dem. Hand v. Earles and Another, special case. Heard 21st Jan. 1846.
Doe dem. Lloyd and Another v. Ingleby, special case. Heard 21st Jan. 1846.
Cooks and Another v. Turner and Others, special case. Heard 13th Feb. 1846.

For Argument.

Offer v. Windsor, demurrer
Ashley and Others v. Pratt and Others. Special case, by order of the late Lord Abinger.
Griffiths v. Pike, demurrer. To stand over at the request of parties, until special case settled.
The Dean and Chapter of Ely v. Cash, special case, by order of the Lord Chancellor.
Trail, esq. v. Bonney, special case, by order of Mr. Baron Alderson.

COURT OF COMMON PLEAS.

No. on List. *Appeal Case*.
 216. *New Sarum. Wills, App.; Adey, Resp.*
 DEMURRER PAPER, Easter Term, 1846.

Wednesday, April 22.

Gordon and Others v. Ellis and Another
Wright v. Burroughs and Others
Powles, P. C. v. Page
Gibbs and Another v. Flight and Another
White, administrator, v. Hancock
Beard v. Egerton and Others
Candell and Another v. Dawson
Cooper v. Shepherd
Brown v. Gill
Pryce v. Belcher
Benham v. Earl of Mornington
Casson v. Peplow
Smith v. Shirley
Gayard v. Sutton
Turner v. W. Brown
Tinniswood v. Pattison
Tuckwell v. Morris
Carr v. Maude.

Friday, April 24.

Dormay v. Borradaile
Fitzgerald and Another v. Lane and Another
Reynolds and Others v. Fenton
Messent v. Reynolds
Doe dem. Bloomfield v. Eyre.

Wednesday, April 29.

Friday, May 1.

REMANET PAPER, Easter Term, 1846.

Enlarged Rules.

To sixth day—*Zulueta and Others v. Miller and Others*
Keys and Others, exors. v. Irvine
Bentley v. Carver and Others
 To tenth day—*Tolson v. Bishop of Carlisle and Others*
Tomlinson, clerk, v. Boughey, bart. and Another.

NEW TRIAL PAPER, Michaelmas Term, 1846.

Liverpool—*Holden v. Liverpool New Gas and Coke Comp.* partly heard on Jan. 28
Yorkshire—*Doe (Atkinson) v. Fawcett and Others*
Bristol—*Price and Uxor v. James*
Souch v. Strawberry

New Trials of Hilary Term last.

Middlesex—*Nash v. Kempstead*
Gerard v. Richmond
Hunter v. Clarke
Walker v. Remmett
London—*Pott and Others, Assignees, v. Eytton and Another*
Ross v. Hill
Warne v. Bromley
Forsyth v. Allan
Roberts v. Granerson
Bennett v. Deacon

Civ. ad. vult.

Patteson and Others v. Holland and Others, to stand over till the act. fa. in Queen's Bench is determined
Doe (Woodall and Others) v. Woodall and Another
Benson v. Chapman

LEGAL INTELLIGENCE.

INTERESTING CASE.—An affair of some interest came before the Civil Tribunal on Wednesday. It was relative to the property of the celebrated Lavoisier, one of the most distinguished men of science of the last century, and who became a victim to the revolutionary fury in 1794. From the statement made to the Tribunal by the advocate of Madame de Chazelles, the niece and heiress of Madame Lavoisier, it appears that her husband left scarcely any fortune, but that she was again married to another eminent scientific man, the Count de Rumfort, and that he died in 1836, having survived her second husband, and left a large fortune to her niece. It was not until August, 1845, that any pretender came forward to dispute the succession of M. Lavoisier, but at that time some person had busied himself with finding out the relations, or those who thought they were so, of the deceased, but who were all too distant, even supposing their relationship to be real, to have any legal claim, and Madame de Chazelles was served with no less than forty-nine suits. The delusion of these

claimants had gone to such a length that they imagined that the two streets called Les Rues de Rumfort and the Rue Lavoisier, which were built upon ground belonging to the Count de Rumfort, had really been paid for with the fortune left by Lavoisier. For many months past these forty-nine claimants have furnished occupation to the gentlemen of the law; but on Wednesday, when the case was called on, not one of them appeared, either in person, or by his attorney, to support the claim, and the Court declared that none of them had proved a relationship to M. Lavoisier. In the course of the statement made by M. Fontaine, the advocate of Madame de Chazelles, he mentioned in an affecting manner the mode in which M. Lavoisier had met his death. He had, after his marriage, purchased for 700,000 francs a place as farmer-general, but continued his scientific pursuits. On the 16th April, 1794, he was arrested and thrown into prison, and soon afterwards was tried and condemned to die as a conspirator against the republic, and for "having put into tobacco water and other ingredients injurious to the health of the citizens who make use of that article." When he was summoned, in conformity with this atrocious and stupid sentence, to go to the place of execution, he was engaged in writing a paper on an important scientific discovery, and solicited a respite of three days to enable him to complete it; but the president of the Revolutionary Tribunal replied: "*La republique n'a pas besoin de savans.*" On returning to prison, after his fruitless application, he resumed his writing, and went tranquilly on until the moment when he was dragged forth to be executed, leaving the sentence on which his pen was occupied in an unfinished state.—*Galignani*.

JUDICIAL BLUNDER.—At the Monmouth Assizes, which terminated on Saturday, April 4, Lord Denman's opinion that trial by jury may sometimes become "a mockery, a delusion, and a snare," was rather amusingly illustrated. It would appear that it is customary to insert in commissions issued from the Home-office for the holding of assizes the names of the sergeants and Queen's counsel who usually attend the circuit. On Friday week, Baron Pollock, fearing that he would not be able to open Gloucester Assizes on Monday, if unassisted, assigned the trial of several cases to Mr. Serjeant Allen, who took his seat in the Borough Court, and proceeded with business. After the trial of some twelve or fifteen cases, it was discovered that the learned serjeant's name had been omitted in the commission, and that his powers as a judge were about as great as those of the crier of the court. Consternation quickly seized the Court, counsel, prosecutors, *et hoc genus omne*—all but the luckless prisoners, who no doubt felicitated themselves with having gained a second chance for their liberty. Fresh juries had to be empanelled, messengers dispatched with painful celerity to remote parts of the county for witnesses, and, in fact, the entire of the proceedings to be commenced *de novo*. On Saturday morning, however, the irregularity was cured by the re-trial of the several prisoners by the Chief Baron. It is worthy of remark that one of the convicts, who had been sentenced to fifteen years' transportation on his first conviction, escaped with seven on the second.

ARREARS OF BUSINESS IN THE COMMON LAW COURTS.—The arrears of business in the three common law courts at Westminster, viz.—the Queen's Bench, Common Pleas, and Exchequer, continues undiminished, notwithstanding the exertions of the learned judges of those Courts by an increase of their sittings in banco after each term. The great and principal arrear, however, is in the Queen's Bench. From those lists it appears there are 101 rules for new trials, the first of which, *Burgess v. Taff Vale Railway Company*, was moved in Michaelmas Term, 1844; in addition to which there are 20 standing for judgment, two of which were argued as long back as Michaelmas Term, 1843. The special paper contains a list of 46 special cases and demurrers for argument, and seven standing for judgment. On the Crown side there are 41 enlarged rules, and in the Crown paper 43 rules. At Nisi Prius in Middlesex there is an arrear of 75 causes, 42 of which are special juries, seven only being stayed by injunctions. In London 80 causes, 18 of which are special juries, and eight stayed by injunctions. In the Common Pleas the arrears are comparatively slight, there being only five enlarged rules, 14 rules for new trials for argument, and three for judgment, one appeal case under the Registration of Voters Act, and 18 demurrers; at Nisi Prius in London 27 causes, remanets, 23 of which are special juries; and in Middlesex, six special jury causes. In the Exchequer the peremptory paper contains only eight rules; the special paper, five rules for argument, and four for judgment; and the new trial paper, 13 rules for argument, and two for judgment. At the Nisi Prius, both in London and Middlesex, the arrear is trifling.

HOME CIRCUIT.—At the conclusion of the business of this assize on Wednesday morning, a number of the petty jury made, through their foreman, a representation of what they considered to be a great hardship upon that body to the Lord Chief Justice, with a view to get his lordship's co-operation to enable them to obtain a remedy for the grievance of

which they complained. The jury said that a great number of persons were summoned on the petty jury, and they had to attend a great many days, and all they received for their attendance was 8d. for each trial when they were engaged on the civil side. The special jurors who were summoned received a guinea for their attendance, and the day was fixed for the trial on which they were summoned, so that they were put to very little inconvenience or expense, although they were in a much better position to sustain that inconvenience; and the object of the present application was to impress upon his Lordship the necessity that there should be a change in the present system, and that the petty jurors should be more adequately remunerated for their attendance. If this were done, it would not be necessary to summon so many jurors, as there would, of course, be a greater readiness on their part to attend and perform their duty if they received reasonable remuneration to reimburse them for their loss of time and the expenses to which they were subjected.—The LORD CHIEF JUSTICE said, he thought the observations of the petty jury were of importance, and he should give them his consideration.

HOLIDAY AT THE LAW AND EQUITY OFFICES.—The whole of the offices connected with the common-law and Chancery offices will be closed on Saturday, Monday, and Tuesday next, and by a general rule of court, signed by all the judges of the Courts of Queen's Bench, Common Pleas, and Exchequer, no declaration, plea, or other pleading can be dated, filed, or delivered, nor the time for pleading to any declaration be computed between the Thursday next before Good Friday and Wednesday in Easter week; but where the time for appearing to any writ of summons or other process of such courts, within eight days after the service of such writ of summons or process, shall expire on either of the above-named days, then Wednesday in Easter week is to be deemed and taken to be such eighth day.

CORRESPONDENCE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As one of the readers of the LAW TIMES, you will perhaps permit me to address to you a few comments on the views which you have lately promulgated with regard to the "liability of allottees," and especially with regard to the two recent cases of *Walstab v. Spottiswoode*, and *Woolmer v. Toby*. With the former of those cases I am well acquainted, as I have been concerned, not indeed in that, but in other cases arising upon the same facts, and in the affairs of the same railway. I confess that I am of opinion, though that view is against my interest, that the verdict in that case ought to stand for the plaintiff; and I am also of opinion that the verdict in *Woolmer v. Toby*, ought to be sustained, and that the two verdicts are not in the least inconsistent with each other. Had I not the certainty that I am supported in this opinion by some of the first men in the Profession, I should have been rather staggered by the obvious tendency of your mind to coincide with the popular view as to their inconsistency. I was, undoubtedly, one of those who was surprised at the line of argument which you adopted in both your articles on this subject; and though I believe I agree with you in the conclusion to which you come with respect to the case of *Woolmer v. Toby*, I entirely differ from your mode of arriving at it. I think that whatever is the liability of an allottee upon the contract which is made up of his application to the committee and their allotment to him, such liability is wholly unaffected by the Joint Stock Companies Act. You lay it down very broadly that "previously to that Act, a company had no recognized existence—was not formed, in fact, until the execution of the deed; they who promoted it were merely an association of persons trying to get up a company upon their own responsibility, armed by law with no powers, and if they failed they were very properly held by the Courts to be liable for the expenses of their incomplete scheme." Admitting, for the sake of argument, the whole of your proposition, I submit to your readers that it does not prove your case. It does not shew that such an "association of persons might not have recovered under the circumstances disclosed in *Woolmer v. Toby*, although it admits their liability under those of *Walstab v. Spottiswoode*." If a single person, called A, had been desirous of establishing a grocer's shop in a given village, for the establishment of which a capital of 200l. was necessary, and supposing, in the first instance, that A was desirous of bringing this about, without himself taking any share in the business, but for the convenience of himself and his neighbours. Supposing then, also, that A had communicated with two persons, B and C, each of whom had signed the following contract: "In consideration of your giving me a half share in the proposed grocery business at ———, I agree to accept the same, and to pay to you 100l. towards the capital"—supposing that neither B nor C knew anything of each other, but that each of them looked to A only as the party with whom he contracted. A

then takes a shop and performs the other preliminaries for the establishment of the business. Upon application to B and C for their money B pays and C refuses. In consequence of C's refusal, 100l. not being an adequate capital, A is compelled to give up his project after having incurred much expense and trouble. Can there be any doubt as to the position of the parties? B is in no default. He has paid to A 100l. as his share of the capital of a business to be established. He has done his part towards enabling A to establish it. He knows nothing of, and has nothing to do with, the other means employed by A, nor of any other person with whom A has contracted. As between him and A the consideration has failed: no business has been established, and he is entitled to receive back the whole of his money. C, on the contrary, has broken his contract; he has been the cause of the failure of A's exertions, and he is liable to A, not to pay the 100l., but to pay whatever damages A has sustained by reason of the non-establishment of the business through his default.

I take it there can be no doubt that, as between A, B, and C, this would have been the legal result of the state of things above described.

Now, then, instead of supposing A to represent a single individual, let us suppose the same letter to typify ten, fifty, a hundred, or even a regiment of persons. Where would have been the difference? I have no doubt that B might have recovered back his 100l. either from the individual or the collective A, while C would always have been liable, in the same manner, for his breach of contract. I think, also, that A, in the above case, is exactly in the position of the promoters of a railway who have entered into the usual contract with some hundreds of allottees, and having received from some of them the stipulated deposit, have been prevented from carrying out the scheme by the default of the others. I think those who have paid their money as a deposit upon shares in a company which has never come to maturity must be taken to have paid it upon the assurance of the promoters that such a company would be formed, and are upon its failure entitled to their money back again, without reference to the causes which have produced the failure. On the other hand, I think the defaulters are liable to the promoters for whatever damage has resulted from their breach of contract. This I take to have been the law as well before as since the statute, and the material point in which I differ from you is, that I think the statute has no bearing whatever upon the question in either of the cases referred to, except so far as it disables persons from being promoters at all till they have complied with its provisions. The Joint Stock Companies Act is from beginning to end a disabling and not an enabling statute, and (with all due deference to your opinion), it recognizes the existence of nothing which was not recognized by law before, nor does it endow any person with any power or authority which they had not before. I very humbly submit that it is a great mistake to suppose that the promoters are by the statute empowered, properly speaking, to do any acts whatever. It was the object of the statute to prohibit the projectors of such companies from doing any thing whatever in their formation until compliance with its provisions. It therefore commences by prohibiting them from doing all acts whatever, and then goes on in certain cases, and upon certain terms, to except certain acts which it enumerates, and which were all perfectly legal before the statute, from that general prohibition. I therefore think you are mistaken in assuming that the Act in question has had any effect upon such associations, except that of depriving them of certain powers, rights, and authorities which they, in common with the rest of mankind, possessed before. There is one other of your statements upon which I will make an observation. Where do you find the clause in the statute which enacts that the deposit is to be applied expressly in payment of the preliminary expenses? I have searched diligently for it, and without success. I find, indeed, that the statute authorises the deposit to be received by way of earnest, an expression which I have some difficulty in translating so freely as you have done. My view of the question, therefore, comes to this, that the plaintiff in *Walstab v. Spottiswoode* is entitled to recover back his money, which he has paid upon the faith of the establishment, by the defendants, of a company which has not been established, and that the plaintiffs in *Woolmer v. Toby* are entitled to recover against Toby for his breach of contract, not the deposit itself, which is no longer necessary, but such damages as they have sustained by reason of its non-payment at the proper time; and I further think that neither one case nor the other is in the least affected by the statute to which you have alluded. I have the satisfaction of knowing that I concur in opinion with some of our most eminent lawyers, and therefore I have great confidence in the result. I am, Sir, &c.

A BARRISTER.

TRANSFER OF PROPERTY ACTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In your remarks on the new Conveyancing Acts, you recommend the Profession to accept the short forms, and to guard themselves against loss by

a fresh arrangement as to charges. In the latter part of your article you justly observe that "the applicability and utility of short forms have been monstrously over-rated by the proposers, who are manifestly ignorant of the practical difficulties that forbid their employment in many cases." How can these two propositions be reconciled? If the Profession adopt Lord Brougham's forms, they will be precluded from exercising a discretion in the matter. All conveyances, no matter how important, must be brought to this bed of Procustes, and be cut to the parliamentary length. I believe no one but Lord Brougham or Lord Campbell, whose ignorance is only equalled in this matter by their vanity and ill-will to the Profession, is not aware that Mr. Hayes, "*venerabile nomen*," Mr. Crabbe, &c. &c. have long since published short forms of conveyancing, and that there are very few of the Profession who do not adopt them in small matters. When affairs of importance come under their notice they generally get their drafts prepared or settled by counsel, and the spiteful remarks of Lord Brougham, on introducing his measure, fall much heavier on counsel than on solicitors. If Lord Brougham's Acts should, for the misfortune of the country, pass, rely on it that most useful class of gentlemen, the conveyancing counsel, will feel its effect severely, and will have to thank his lordship for cutting up their emoluments. For what man, with the fear of the taxing master before his eyes, will ever send his papers to counsel to settle? Will he not naturally, and *ex necessitate*, draw his own drafts, however desirable it might otherwise have been to have trusted to more experienced heads than his own? You seem to think that the length of conveyances operates against the transfer of property. This may do so to some small extent, but the Stamp Act is an infinitely greater bar. Doubtless this must have occurred to the noble and learned lords; but to modify this Act and make it correspond with the increased desire to make property change hands with more facility might undoubtedly benefit the attorneys, and they will take very good care this shall not be done. I do not attribute these motives to their lordships. They do not attempt to conceal them. They parade them in their speeches. It is truly melancholy to see the number of tinkers employed in mending and marring (*inter alia*) the law of real property. We have the Real Property Commissioners (who I suppose are having a good snooze), the Society for Promoting the Amendment (?) of the Law, and a host of individuals in both Houses of Parliament, those being most prominent who know least of the subject. Never was the old proverb of "too many cooks" more likely to be verified.

There was a body incorporated, as was generally supposed, to watch over the interests of the Profession, to amend abuses, and to guard it from ill-considered and unfair reforms. This body was called "The Law Institution," but nothing has been heard of it of late, but its having sanctioned by "*nil dicit*" one of the worst jobs of modern times. Perhaps you will be kind enough to inform your readers whether this body is or is not extinct.

I am, Sir, yours, &c.

"ONE, &c."

CUMMING v. BEDBOROUGH.

SIR,—I am certain, from your courtesy on all occasions when I have addressed you relative to any error which seemed to have crept into any case reported in the *LAW TIMES*, you will not consider that I am intruding upon your valuable time by calling your attention to an error of considerable importance which appears in this case; an error which I am very sorry to add has led me into considerable annoyance by the attack made upon me by a client, who, relying on the report, was induced to proceed to a trial of a similar case in a special action on the case, at the last assizes for this county, in which Mr. Whateley, who argued the case of *Cumming v. Bedborough*, was leading counsel for my client, and the moment Mr. Whateley read my brief, he saw the difficulty my client was in. For the decision in the above case was not only "That if a landlord thought proper to distrain for rent without first deducting the income tax, he would be liable to a special action on the case," but to which report should have been added a most important point, viz. "to enable the tenant to support such action, he must give notice to the landlord that he had paid the same, and demanded repayment." At least this was the ruling of the Lord Chief Baron Pollock in the case of my unfortunate client. Now, in reference to the case of *Cumming v. Bedborough*, not one word appears as to the necessity of the tenant first giving notice of such payment, and demanding same; and, therefore, if such formed any part of that judgment, it ought to have so appeared in your report of it, if the Profession are to rely on such reports, and in which I have no doubt, they, as well as myself, place implicit confidence; and therefore I think you will not feel offended at my calling your attention to the variance in the report and that of the real judgment of the Court (at least so said to be); because either your report of the case is wrong, or the Chief Baron held differently in my case than what appears in the judgment in *Cumming's* case, argued in

the Court of Exchequer, Saturday, February 7th, 1846, 6 L. Journ. 396.

I am, sir, yours, &c.

FRANCIS COLLINS.

24, Widemarshe-street, Hereford, April 3, 1846.

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATEVER.

A CONSTANT READER.—We think both are liable.

QUESTOR is anticipated.

AN ARTICLED CLERK.—The Bill is to be introduced by the Government, when it has more leisure.

UNARTICLED CLERK.—Stephen's "*Blackstone*."

H. N. C. (York).—Thanks for the hint; it shall have attention.

A SUBSCRIBER.—We do not know in what number this case is to be found.

J. B.—The question falls within the rule of exclusion.

J. J. (Southmolton).—The list of cases during Term would fill two or three columns; and already we can with difficulty find room for matter of urgent importance. It is not with the *LAW TIMES* as with journals that report only a few cases. The title-page and Index to Cases in Real Property Reports will be contained in the next number.

NOTICE TO SUBSCRIBERS.

The volumes of the *LAW TIMES*, neatly, strongly, and uniformly bound, for 5s. 6d. each, with the name and address of the owner on the cover, 1s. extra, if sent to the office. If the numbers for binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

NOTICE.

The subscription for the current half-year is now due, and subscribers desirous of availing themselves of the great reduction allowed for pre-payment, should forward the same in the course of the ensuing week. The prepaid subscription is 11. 5s. for the half-year, and 24. 7s. for the year, being a reduction respectively of 25 and 30 per cent.

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N. B.—For Scale for Estate Advertisements, see JOURNAL OF PROPERTY.

THE LAW TIMES.

SATURDAY, APRIL 11, 1846.

LAW OF DEBTOR AND CREDITOR.

MR. HAWES has introduced into the House of Commons the measure prepared by the London Committee of Merchants for the law of Debtor and Creditor. We have not seen the bill, but we understand that it is the same as that circulated by them among the Profession during the recess, and a short time since published in our columns. If so it be, we must say of it that it appears a very inefficient measure. It is but another of the tinkering to which this branch of the law has been yearly subjected, verifying the proverb as to the consequences of tinkering. Again do we call upon the city committee, and upon Mr. HAWES, to attempt no petty and perplexing changes for the present, but to await a more auspicious, because more leisurable, season in the legislature, and then to introduce a complete code of Debtor and Creditor founded upon definite principles, and reduced to practice with a well-constructed system of administration. The necessities of the country demand it, and ere long it must be forced by public opinion upon the attention of Parliament.

We have been tempted more than once to plunge into this great subject, and endeavour to drag out of the existing chaos some of the principles that should pervade a code, and some of the plans that might be adopted for working it. But the magnitude of the task has deterred us from the enterprise. Fifty articles would not suffice, for, once begun, new paths would open out, and topic would so beget topic, that the patience of the reader would be exhausted long before the argument. It has been preferred, therefore, to treat from time to time of particular branches of the subject with a view to impress upon the reader a sense of existing evils and desirable remedies, so as to prepare the way for the great change that must be made ere long.

Certainly it was with some surprise that we saw in a legal contemporary, a few weeks since, a severe attack upon a law that to us appears to be one of the most admirable provisions of recent enactments, and yet which we are surprised to learn is very seldom used; the consequence, probably, of those provisions not being sufficiently known to the Profession.

We allude to the Debtors' and Creditors' Act, 8 & 9 Vict. c. 127.

As our contemporary has employed language unusually strong in speaking of this statute, which he terms "an atrocious violation of all equitable principle," we will briefly present an outline of its purpose and provisions, that any impressions produced by this denunciation, which must have been made when the writer was labouring under some strange delusion, may be removed from the minds of our readers, and that they may more frequently advise their clients to avail themselves of such beneficent arrangements.

And first for the purpose of the Act.

It is very important that persons whose affairs are embarrassed should be induced by some facilities to bring them to a settlement as speedily as possible. Postponement is almost sure to be attended with loss to the creditors, and unless some facilities be given, debtors will prolong the struggle while there is anything to lose.

Again, there is a very large class of persons who have incomes arising from their personal labours, but no property. When such persons become embarrassed, it is for the interest of their creditors that, instead of passing through a prison, and losing character and income, a portion of the profits of their future labours should be secured for the creditors.

And again, it is very desirable that a man anxious to act honourably, and make a just arrangement with his creditors, should be enabled to do so without public exposure.

The purpose of the Debtors' and Creditors' Act is to effect these most desirable objects.

It, therefore, permits an individual who may find himself in embarrassed circumstances, but who yet is anxious to make the best provision in his power for the payment of his debts, to consult the equal interest of all his creditors, and protect both them and himself from the rivalry of a few who may seek to press their claims at the expense of the rest.

To proclaim embarrassment to the whole world through the *Gazette*, would, in the great majority of cases, be to deprive the debtor of the income derived from his personal labours, and consequently the creditor of the only fund to which he can look for payment.

The manner of effecting these objects is by permitting any debtor, not being a trader, with the consent of one-third in number and value of his creditors, testified by their signing his petition, to present a petition to the Court of Bankruptcy, setting forth his assets, his embarrassments, and their cause, and the means proposed for future payment, and praying that the proposal may be carried into effect under the superintendence of the Court.

Here, then, is the first security for fair dealing in the required sanction of one-third of the

creditors before the petition can be presented at all.

Upon presentation, a commissioner is to examine *privately* into the matter of the petition, and if satisfied that all has been fairly done, and that the debtor is desirous of making a *bond fide* arrangement with all his creditors, and that the proposal is a reasonable one, he is to direct a meeting to be held of *all* the creditors.

Here is the *second* security against undue advantage. Now for the *third*.

A meeting of the creditors is to be held, to which *all* are to be summoned. If a majority of those present at this meeting approve the proposal, a second meeting is to be called, when, if *three-fifths* in number and value of the creditors present assent to it, and sign a resolution to that effect, the commissioner is to grant protection to the debtor.

It would be difficult to frame provisions affording more security to creditors than these—consulting at once their interest and that of the honest debtor; yet are these the enactments which our contemporary denounces as "a measure essentially defective and unjust," as "an outrage on justice," and so forth. Surely, if *three-fifths* in number and value of a man's creditors approve of a proposal for the settlement of his affairs, there can be no danger of "the temptations" which, it is said, this law "holds out to the unprincipled and dishonest." Whatever is for the interest of three-fifths, is for the interest of the remaining two-fifths, if the latter intend fairly, and desire only to share equally with the rest. The objectors to this statute must be a class of creditors who contemplate taking every thing for themselves, and leaving nothing for the rest. This is precisely the proceeding which it is the aim of our insolvent and bankrupt laws to prevent. The policy of those laws is to secure an *equal* division among *all* the creditors, and by no measure in the statute-book is this policy so successfully, wisely, and beneficently carried out as by the Debtors' and Creditors' Act.

LEGAL EDUCATION IN IRELAND.

MR. WYSE, the member for Waterford, has, it will be seen, brought this subject under the consideration of the House of Commons. Nothing was done, for the House was counted out, but the attention thus directed to the question will not be without its uses, in stimulating those authorities who may do much without Parliamentary assistance. Legal education in Ireland is, indeed, in a very undesirable position; it is, if possible, worse than in England; for here students can attend a few "readings," as they are called, and law lectures are delivered at the Law Institution, King's College, and University College. But the aspirant to the Irish Bar cannot obtain even these poor advantages at home; he must come to London for whatever learning he wishes to acquire. He is compelled to eat a portion of his Terms in one of the English inns of court; and hitherto they have given him only food for his stomach—they have made no provision for his instruction.

There are advantages in fixing the Irish student in London, which would make it undesirable to dispense with that portion of his apprenticeship. It must tend greatly to the removal of prejudices of nation, sect, and party, enlarge the sympathies, widen the experience, and assist mightily in preparing him for the duties of an advocate, so infinitely varied in their demands. But something should be done to teach him a little *law*, either at home, or here, or at both. Ireland may fairly claim a professor or two for her law students, and if King's Inn be too poor to provide them, they should be furnished by the State. But surely the admission fees of the Dublin students would amply provide for their instruction, if properly applied. Before the hand is put into the public purse, it should be ascertained that the corporation entrusted with

the nursing of the embryo lawyers is too poor to provide teachers for them. Should it prove so to be, then let the State help them. But the revenues of King's Inn, and their application, must first be investigated, and we trust that an inquiry will be instituted without delay.

INDEX LEGUM.

A GENERAL Index to all the Law of the half-year ending 31st of December last, is in the press for binding with the volume of the *LAW TIMES* just completed. It is the most complete Digest of the Law ever published, for it includes *all* the reports. It will be stamped for post in numbers price 1s. each, and be comprised in about four or five numbers. As the impression will be limited, persons desirous of binding it with the volume should send their orders immediately.

THE CRITIC.

Sett Books.

The Bench Formulist; being a Directory to the Forms of Instruments and Processes used by Justices of the Peace out of Sessions. London: Knight and Co. 1846.

It is difficult to describe this admirable work, which condenses into a compact volume of 520 pages precedents of every form used by magistrates, with copious instructions for its use, and citation of the authorities and cases. After an introductory chapter on the nature and range of the duties of justices, the component parts of a Bench instrument are analysed and minutely explained. The third chapter describes those instruments, their classes and distinctions, and then follow the forms in the various classes of procedure, arranged methodically, and apparently exhausting the subject.

The plan is as follows.

The form is set out in italic on the left of the page, and on the right, side by side, is a note of instructions when and how it is to be used, with the statute prescribing it, or the cases on which it has been confirmed. A closing chapter treats of the defects in justices' procedure, and how they may be amended, or how advantage may be taken of them; and an alphabetical list of cases and statutes cited, with a copious Index, complete a work which will, we think, be found to be one of the most valuable assistants ever offered to justices and their clerks—indeed, to all practitioners who have anything to do with that now extensive branch of the law committed to the administration of justices of the peace. It is a work of wonderful diligence and labour.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 6s.]

BIRTHS.

GLABER.—On the 9th inst. in Gloucester-place, Portman-square, the lady of Thomas Sydenham Clarke, esq. of Lincoln's-inn, barrister-at-law, of a son.

HANCE.—On the 5th inst. at 17, Alexander-square, Brompton, the wife of Charles Hance, esq. barrister-at-law, of a son.

MARRIAGES.

DABENT, George Webb, esq. M.A. third son of the late John Roche Dabent, esq. her Majesty's attorney-general for the Island of St. Vincent, to Frances Louisa, third daughter of W. F. A. Delane, esq. on the 4th inst. at St. James's, Piccadilly.

ROBINSON, Frederick, esq. of the Inner Temple, barrister-at-law, to Mary, second daughter of the Rev. John P. Potter, of Russell-place, Fitzroy-square, on the 4th inst. at St. Pancras.

SANGER, William, esq. of Essex-court, Temple, to Miss Jane Lawrence, on the 4th inst. at St. Pancras New Church.

DEATHS.

CORPE, George Bernard, esq. surgeon, and coroner for the borough of Southampton.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY

ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.

(Continued from page 534.)

Protector's power of giving or withholding consent.—The protector has the absolute power of

giving or withholding his consent; and any shift or contrivance by which it shall be attempted to control this power, and any agreement to prevent him from exercising his absolute discretion, or entered into by him to withhold his consent, will be void (sect. 36); nor shall he be deemed a trustee with respect to his power to consent (*ib.*); neither shall a court of equity interfere to restrain him in the exercise of it (*ib.*); nor treat his giving consent a breach of trust (*ib.*); and the rule as to dealings between donees and objects of powers will not apply to dealings between protectors and tenants in tail (sect. 37). A protector who is the owner of a prior particular estate—as an estate for life, for instance—does not, as we have just before remarked by conveying away his estate, thereby cease to be the protector, but may at any time during his life consent to a disposition under the statute, notwithstanding the estate by which he was originally constituted protector has become vested in another person. And as on the one hand the protectorship does not cease by the protector's conveying away the property that originally made him such; so, on the other, he may consent to the disposition by the tenant in tail, and still retain his own estate, or he may, if he think proper, convey as well as consent; and if he does the latter, whatever estate he has in the lands may be included in the conveyance; but if he merely consents, the effect of such consent will be to bar all the ulterior limitations to take effect after or in defeasance of the estate tail, but his own estate in the premises will remain untouched.

Tenant in tail's power of disposition.—Every actual tenant in tail, whether in possession, remainder, contingency, or otherwise, is empowered, after the 31st day of December, 1833, to dispose of the entailed lands, either in fee or for any lesser estate, as against all persons whose estates are to take effect after or in defeasance of any such estate tail, saving always the rights of all persons in respect of estates prior to the estate tail, and the right of all other persons except those against whom such disposition is by this Act authorised to be made (sect. 15). The Act, therefore, afterwards enacting (sect. 34), that where there is a protector his consent shall be requisite to enable an actual tenant in tail to create a larger estate than a base fee, a disposition made without such consent will only confer an estate of that kind, similar, as I have before remarked, to that formerly effected by a fine with proclamations. But if there is no protector, or the tenant in tail procures the consent of the former, then the assurance acquires all the force and operation which a recovery duly suffered would formerly have done; and will not only bar the estate tail of the tenant in tail, but also all estates, rights, titles, interests, and powers, to take effect after the determination or in defeasance of the same. As the statute prescribes a deed as the only instrument by which estates can be disentailed, a contract, though under seal, will be insufficient to bind any one beyond the tenant himself, who, as I have before stated, if he enters into a contract for the sale of the entailed property, will be bound to perform it specifically. A will is altogether inoperative. But, notwithstanding that an estate cannot be disentailed except by deed, it is not necessary that such deed should be an indenture, any assurance, unless it be a will by which a person can convey the legal estate in fee-simple absolute, provided it be enrolled as prescribed by the Act, will suffice. It must, however, be a formal instrument complete in all its parts; a court of equity having no power to relieve in case of defective or informal assurances; and every assurance by a tenant in tail (except a lease not exceeding twenty-one years at rack-rent, or not less than five-sixths of a rack-rent), will be inoperative unless enrolled in Chancery within six calendar months after the execution; but when so enrolled it will take effect from the time it was executed (sect. 41.) Yet, for all this, a purchaser should lose no time in getting his deed enrolled, as a subsequent *bonâ fide* purchaser for valuable consideration would be entitled to priority in case he should get his deed enrolled before the first purchaser. No proof of the execution of the deed is required at the time of enrolment, consequently the certificate of enrolment is no proof of execution. (*Bishop v. De Burgh*, before Vice-Chancellor Knight Bruce, 22nd December, 1845, 6 Law T. 295.)

Where protector's consent is given by a distinct deed.—The consent of the protector may be given either in the disentailing assurance or by a distinct

deed to be executed either on or at any time before the day on which the assurance shall be made. If given on a subsequent day the consent will be inoperative (sect. 42.) But where such consent is given by a distinct deed, it will be considered as absolute and unqualified, unless such deed shall refer to the disentailing assurance, and shall confine the protector's consent to disposition thereby made (sect. 43.) And when the protector has once given his consent he cannot afterwards revoke it (sect. 44.)

Assurance under this Act will pass both legal and equitable estates, and also mere rights.—An assurance under this Act will pass estates both legal and equitable, vested or contingent, and also mere equities and rights; so that, where the issue in tail would have been barred by a fine, with proclamations, under the old system, the person who, unless so barred, would have been the tenant in tail, may still, by a conveyance under such act, produce the same effect as he could formerly have done by being vouched in a common recovery, (sect. 19.) And although a conveyance without the protector's consent will only pass a base fee, still where such base fee, and the remainder, or reversion in fee in the same lands, unite in the same person, and there shall be no intermediate estate between the base fee and such remainder or reversion, then the base fee will be enlarged into as large an estate as the tenant in tail could have created with the consent of the protector. And it seems that, under a preceding statute, 3 & 4 Will. 4. c. 27. s. 23, that where an assurance which, for want of the protector's consent, can only convey a base fee, the title will, nevertheless, become enlarged into a fee simple, absolute at the end of twenty years; and thus, after the expiration of that period, become effectually exonerated and discharged from all estates in remainder or reversion, (sect. 39.)

Voidable estates, how confirmed.—A voidable estate created by a tenant in tail in favour of a purchaser, for valuable consideration, will be confirmed by a subsequent disposition of such tenant in tail by any assurance under this Act, (other than a lease not requiring enrolment,) by the tenant in tail alone where there is no protector, or with the protector's consent where there is; and should the latter refuse to consent, the voidable estate may still be confirmed to the extent the tenant in tail could have disposed of the same without such consent, (sect. 38.) But a voidable estate cannot be confirmed as against a subsequent purchaser for valuable consideration, and without notice, (*ib.*)

Analogy between a fine and an assurance under the statute.—I have shortly before remarked that a tenant in tail might, by a fine, have barred the entail, so as to have concluded himself and his issue, whether he were actually seised in tail or not; nor was this extinguishing power confined merely to the tenant in tail himself, but extended also to the issue, the latter of whom might, by levying a fine in their ancestor's life-time, have bound the estate as far as they and their issue were concerned, or, in other words, the issue inheritable under the entail could, by levying a fine with proclamations, have barred their expectancies; but this they are now expressly prohibited from doing by the Act now under consideration, which expressly directs that "nothing therein contained shall enable any person to dispose of any lands entailed in respect of any expectant interest, which he may have as issue inheritable to any estate tail therein" (sect. 20); and the assurance by which he could formerly have effected this (*viz.* a fine), the Act itself has swept away. Even under the old law, if the heir in tail who levied the fine had died, and there had been a failure of issue of his descendants because the entail descended on him or his issue, the fine would not have barred any of the collateral issue (1 Prest. Abs. 403), and although the entail was extinguished by the fine levied under these circumstances, the lands, in case no alienation had taken place might still have descended to the issue, not as heirs inheritable under the entail, but as heirs general, the estate descending as a determinable fee, and so entitling the common heir to take to the exclusion of the special heir (*Baker v. Willis*, Cro. Car. 476); yet such special heir, though no estate remained in him, still retained the bare personal privilege of being vouched in a common recovery, the effect of which may, as I have already remarked, be accomplished by an assurance under this Act. This has introduced the modern practice by which a tenant in tail, where he sells his estate and is un-

able to procure the consent of the protector, enters into a covenant to perfect the title at a future period, when, by there ceasing to be a protector to the settlement, he will have full power by a disposition in pursuance of the Act to enlarge such base fee into a fee-simple absolute (sect. 38.) Precedents of forms both of the covenant for perfecting the title at a future period, as also of the deed of further assurance in pursuance of such covenant, will be supplied in the appendix.

Practical observations.—It must always be kept in mind that the Act now under discussion only enables the tenant in tail to dispose of the entailed lands, as against persons claiming under the entail, and those whose estates are to take effect after it, and does not affect prior estates (sect. 15.) For example, if lands were limited to A, for life, remainder to B, for life, remainder to C, in tail, with divers remainders over, and C were, during the life of A & B, with the consent of the protector, to make a disposition in pursuance of this Act, its effect would be to bar C's estate tail, and the remainders expectant thereon; but the preceding estates for life of A & B would remain as they were before. Nor can any assurance under the Act convey a larger interest than is commensurate with the estate out of which it is derived. In this respect, therefore, the law remains as it was previously: for where an estate tail was limited out of a lesser estate than a fee simple absolute, the tenant in tail could not, even by suffering a common recovery, have extended his estate beyond the duration of the estate out of which it was carved. If, therefore, it had been derived out of a base fee, or a fee subject to a condition, or out of an estate tail, never effectually barred, so as to enlarge the original estate into a fee simple, a recovery suffered by the owner of such derivative estate tail could not, in right of such derivative estate tail, have had any other effect than to bar the remainder or reversion in fee of the person by whom the estate tail was created, and of all persons claiming under him. (*ib.*) But a tenant in tail might, by suffering a recovery, have defeated a condition subsequent, annexed to his estate, a breach of which would have determined his estate; as for example, a condition to reside for a certain period of the year on the entailed property, or to assume the name and arms of the person creating the settlement. The like observations are also applicable to conditions for avoiding the estate on the nonpayment by the tenant in tail of a particular sum of money, as 100l. to A & B; or where the enjoyment of the estate is restricted to some uncertain period, as so long as a particular tree should stand. (1 Mod. Rep. 111; *Page v. Hayward*, 2 Salk. 570; *Pig. Com. sec. 176*; *Fearne*, C. R. 423, 7th edit.; *Gulliver and Corrie v. Shuckburgh Ashby*, 4 Bur. 1929; *Drier and Edgar v. Edgar*, Cow. 379.) And it seems that the same end may now be attained by an assurance under this Act.

What tenants in tail are restricted from barring the entail.—There are certain persons, however, who, notwithstanding they may fill the characters of tenants in tail, are, nevertheless, restricted by this Act from disposing of their estates, as indeed they were under the pre-existing law. These are, 1st, tenants in tail after possibility of issue extinct, (sect. 18.) 2nd. Tenants in tail where the reversion is in the Crown, (*ib. ib.*) And 3rd, women tenants in tail *ex provisione viri*, under the statute 11 Hen. 7, who are expressly disabled from making any disposition under this Act, except with such consent as was previously necessary under the said statute 11 Hen. 7, to have rendered a fine or recovery levied or suffered by her valid and effectual (sect. 16.) But except as to any settlement made previously to the passing of this Act (3 & 4 Wm. 4. c. 74) the statute 11 Hen. 7, is repealed, (sect. 17.)

Restrictions upon recoveries how removed.—The restrictions by which a tenant in tail was disabled from docking the entail, so as to defeat the remainder, except in Term time, during which alone a recovery could have been suffered, are wholly removed, and thus the remainder-man's very small remaining chance is taken away from him altogether; so that whether a disentailing deed be made in Term time or in vacation is wholly immaterial.

Other modes of assurance by tenants in tail.—Another mode of assurance by which a tenant in tail might formerly have barred his issue, was a warranty; as, for instance, by a lineal warranty with assets, or a collateral warranty without assets, provided he had an actual estate tail in possession;

but by the fourteenth section of the Fine and Recovery Substitution Act (3 & 4 Wm. 4, c. 74) all warranties of land, which after 31st Dec. 1833, shall be made or entered by any tenant in tail thereof, shall be absolutely void against the issue in tail, and all persons whose estates are to take effect after the determination or in defeasance of such estates tail.

The Fine and Recovery Substitution Act also cures defects in fines and recoveries (sects. 5, 6, 7, 8). This must, however, form a subject for our future consideration. The operation of the Act upon dispositions of copyhold tenants in tail, and upon the estates tail of bankrupts, will be discussed under the respective heads of Copyholders and of Bankrupts. The operation of the Act upon the landed property of married women, except so far as relates to the protectorship, has been already treated on under the head of Married Women. (See ante.)

Discontinuance.—Another mode by which a tenant in tail might formerly have disentailed his estate was by discontinuance. This he might have done by conveying away the entailed property by a tortuous mode of conveyance—as a feoffment, for instance—by means whereof the estate tail became discontinued, and the estate of the heir in tail and those in remainder or reversion turned into mere rights, which they could not have restored by entry, but were driven to their action by writ of *formedon secundum formam doni*. A mere innocent mode of conveyance, as a lease and release, or a bargain and sale inrolled, would not have produced this effect; and such heir in tail or remainder man might, at the time their estates would otherwise have fallen into possession, have entered on the lands or brought their action of ejectment for the recovery of them. And now, by the stat. 3 & 4 Wm. 4, c. 27, which, after abolishing writs of *formedon*, amongst the other real actions swept away by that Act, expressly enacts that no discontinuance shall for the future defeat any right of entry or action for the recovery of land; so that the heir in tail or remainderman, notwithstanding the tenant in tail should convey by such a tortuous mode of conveyance as would formerly have worked a discontinuance, may still enter or bring their action of ejectment, as in those cases where such tenant in tail had attempted to convey by an innocent mode of assurance; and now, by the recent statute 8 & 9 Vict. c. 106, no feoffment made after the 1st day of October, 1845, shall have any tortuous operation for any purpose whatever.

(To be continued.)

Public Sales.

By Mr. WILLIAM MARSHALL, at the Mart.

A residence, No. 18, Great Percy-street, Pentonville; held for 73½ years, at a ground rent of 6l. per annum; let at 50l. a year—600l.

Eleven similar houses, being Nos. 19 to 41, in eleven lots—produced 600l. each house.

A cottage residence, No. 49, Richmond-road, Islington; held for 99 years from Christmas, 1845, at a ground-rent of 3l.; let at 42l. fixtures included—450l.

Three similar houses, in separate lots—450l. each house. A residence, No. 4, George-terrace, Barnsbury-road; held for 64 years at 4l. 10s. ground-rent; let at 30l.—270l.

By Messrs. SHUTTLEWORTH and SONS, at the Mart. The advowson and perpetual right of presentation in the rectory of Shire, of the value of 800l. 12s. 11d. per annum—sold for 5,500l.

A policy for 4,000l. effected with the London Association Dec. 1, 1824, on a life aged 51; annual premium 107l. reduced premium 37l. 9s.—1,310l.

The reversionary interest to one-eighth part of 2,000l. Three per Cent. Consols, on the decease of a lady in the 72nd year of her age, provided a gentleman aged 38 survive her—115l.

The absolute reversion to 300l. sterling, payable on the decease of the survivor of two lives aged 59 and 52—66l.

The contingent reversion to one-fourth of a moiety or equal half part of the following stocks:—2,313l. 14s. 1d. Three-and-a-Quarter Annuities—1,331l. Ditto, 193l. ditto, 1,000l. Three per Cent. Consols, payable on the death of two lives aged 75 and 58 years, provided a life aged 27 shall survive them—175l.

A policy for 1,000l. with a bonus of 260l. effected with the Imperial, 7th May, 1843, on a life aged 66; annual premium 32l. 5s.—550l.

A ditto for 2,000l. effected with the Globe, 14th June, 1830, on a life aged 66; annual premium 87l. 10s. 8d.—535l.

The contingent reversion to one-eighth part of 2,000l. Consols, provided a gentleman aged 41 should survive a gentleman aged 81, and a lady aged 75—90l.

One share of 100l. in the Plymouth Corporation Tontine, established 1811, capital stock 30,000l. raised in 15 classes—95l.

A policy for 1,800l. dated July 24, 1822, in the Amicable Society on a life aged 66, apportioned premium 63l. 18s. original total premium 711l.—620l.

By Mr. ROBERTS, at the Mart.

Four houses, Nos. 1 to 4, Park-place, Battersea; held for 66 years from September, 1841, at 9l. 6s. per annum—980l.

A house, No. 11, New Park-road, Battersea; held for 82½ years, at 5l. per annum—245l.

A ditto, No. 12—240l.

A ditto, No. 13—240l.

A ditto, No. 14—230l.

Two houses, Nos. 8 and 9, Ann's-terrace, Walworth; held for 59 years at 8l. per annum, let at 40l.—345l.

Two ditto, Nos. 10 and 11—350l.

Two ditto, Nos. 12 and 13—400l.

Two ditto, Nos. 6 and 7, Smith-street, Walworth; held for 58½ years, at a ground rent of 8l.—400l.

Two ditto, Nos. 8 and 9; held for 60 years, at a reserved rent of 10l.—400l.

Two ditto, Nos. 10 and 11; held for 60 years, at 6l. per annum—350l.

Four houses, Nos. 20 to 23, Burton-street, Walworth; held for 41½ years, at 5l. per annum—400l.

Four houses, Nos. 5, 6, 7, and 8, Webb-street, Walworth; held for 41½ years, at 5l. 5s. 4d.—400l.

Building ground, at Peckham, Surrey—1150l.

By Mr. WILLIAM MARSHALL.

A house, No. 1, Sutherland-terrace, Brixton; held for 76½ years, at 4l. 10s. per annum—325l.

A ditto, No. 2—330l.

By Messrs. D. S. BAKER and SON.

A residence, No. 30, Park-place West, Liverpool-road, Islington; held for 99 years from Lady-day, 1799, at 3l. 6s. per annum—535l.

A house, No. 3, Highbury-crescent, Islington; held for 99 years, from June 1844, at a ground-rent of 22l. per annum—1,065l.

A house, in Upper Barnsbury-street—400l.

A ditto—400l.

By Messrs. HUMPHREYS and WALLEN.

A house, yard, and range of stabling, in James-street, Salmon's-lane, Limehouse; the property is copyhold—555l.

Three small copyhold houses, Nos. 1, 2, and 3, Victoria-place, Limehouse—466l.

The following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

For the first 70 words 5s.

For every succeeding 30 words . . . 1s.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cent. Consols	94½	95	95½	95½	96	96½
Three per Cent. Reduced	94½	95½	95½	95½	96	96½
New Three-and-a-quarter per Cent. Long Annuities	104	104½	104½	104½	104½	104½
Bank Stock	2094	2093	2093	2093	210	2094
India Stock	2604	2604	2604	2604	2604	2604
India Bonds, prem.	33	33	33	33	33	33
Exchange Bills, prem.	30	31	31	31½	30	30

FOREIGN.

Spanish Five per Cent.	26½	26½	26½	26½	26½	26½
Spanish Three per Cent.	35½	36½	36½	36½	36½	36½
Russian	112½	112½	112½	112½	110	109
Peruvian	39	39½	39½	39½	39½	39
Portuguese	56½	56½	56½	57	57	57
Mexican	304	304	304	304	304	304
Dutch Two-and-a-Half per Cent.	60	60	60	60	60	59½
Four per Cent.	94½	94½	94½	94½	94½	93
Danish	88	88½	88½	88½	88½	88½
Colombian	17½	17½	17½	17½	17	17
Chilian	99½	99½	99½	99½	99½	99½
Buenos Ayres	394	394	407	412	412	41
Brazilian	83½	83½	83½	84	84	84½
Belgian	97	97½	97½	97	97½	97½

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Tuesday, March 31.

Blacker and Co. warehousemen, last exam. May 18.—Bonella, W. timber merchant, last exam. passed.—Dalton, J. grocer, last exam. passed.—Docker, H. oilman, last exam. April 30.—Harrison, S. provision merchant, last exam. April 9.—Kilson, W. soap manufacturer, last exam. sine die.—Leader, J. M. coachmaker, div. next week. Graham, London.—Pinner, J. undertaker, last exam. April 9.

Wednesday, April 1.

Moger, T. poultryer, div. next week. Bell, London.—Mortimer, T. victualler, div. next week. Johnson, London.

Friday, April 3.

Collins, C. yarn agent, last exam. May 19.—Collier, J. W. victualler, div. next week. Whitmore, London.—Evans, J. cheesemonger, div. next week. Johnson, London.—Freibout, A. jun. silk manufacturer, outlawed.—Harries, J. butcher, last exam. passed.—Marshall, B. tallow melter, div. next week. Johnson, London.

Saturday, April 4.

Sandaver, J. cabinet maker, last exam. sine die.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Alderton, C. tailor, first, 1s. to new proofs. Edwards, London.—Baldwin, B. warehouseman, 5s. 4d. Follett, London.—Bailey, D. cheesemonger, 2½d. Follett, London.—Blinkhorn, W. manufacturing chemist, 2s. 3½d. Fraser, Manchester.—Crick, J. maltster, 8½d. Freeman, Leeds.—Dyson, J. scythe manufacturer, 3s. 3d. to new proofs. Free-

man, Leeds.—Gainer, J. dyer, 2s. 3d. Hutton, Bristol.—Gibbs, W. soap manufacturer, second, 1s. 5½d. Turner, Liverpool.—Gillett, J. B. dyer, first, 1s. 8d. Young, Leeds.—Herring, J. S. builder, 1s. 3d. Follett, London.—Hicks, C. T. drug grinder, first, 6s. Edwards, London.—Hoskeworth, G. worsted spinner, further, 1½d. Freeman, Leeds.—Hobson, W. merchant, 3s. 4d. Freeman, Leeds.—Lowther, J. builder, first, 3s. Edwards, London.—Moore, J. draper, 2s. 3d. Follett, London.—Newman, W. 1. horse dealer, 3s. 1d. Hutton, Bristol.—Parkinson, A. wine merchant, first, 9½d. Young, Leeds.—Sawyer, G. tailor, first, 4s. 6d. Edwards, London.—Spofford, J. draper, first, 7s. 1d. Edwards, London.—Watts, W. R. chemist, 9½d. Hutton, Bristol.—Webb, C. apothecary, first, 20s. of Webb and Godfrey, Edwards, London.—White, C. H. draper, first, 1s. 8d. Edwards, London.—Vates, C. banker, fourth and final, 3s. 3d. Christie, Birmingham.—Young, J. ship builder, 1½d. Hutton, Bristol.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, April 3.

Booth, A. hatter and furrier, Chester, March 17. Trusts. W. Hope, accountant, Chester. Sol. Faulkner, Chester. Clark, S. stonemason, Wallingford, Feb. 19. Trusts. T. Gabriel, timber merchant, Wallingford; and T. Owen, auctioneer, Wallingford. Sols. Messrs. Hodges, Wallingford.—Ingram, J. grocer and draper, Westbury, Wiltshire, March 26. Trusts. D. Williams, linen merchant, Bristol, and J. Nutting, general warehouseman, Bristol. Sols. Prideman and Son, Bristol.—Maisey, W. grocer, Westbury, Wiltshire, March 26. Trusts. W. England, clothier, Westbury, and A. J. Pearce, miller, Westbury. Sol. Pullen, Warminster.—Ridley, J. draper, Newark, March 10. Trust. A. Beater, warehouseman, Aldermanbury. Sols. Sole and Turner, Aldermanbury.—Rollet, G. H. cabinet maker, and Eliza Frances, his wife, Gainsborough, March 31. Trusts. H. Hall, wharfinger, and G. Kidson, stonemason, both of Gainsborough. Sol. Bellamy, Gainsborough.—Whitlock, S. draper, Prospect-place, Mile-end-road, March 7. Trust. F. Dennant, warehouseman, Fountain-court, Aldermanbury. Sols. Messrs. Sole and Turner, Aldermanbury.

Gazette, April 7.

Belbin, T. ironmonger, Andover, April 2. Trusts. G. Bartholomew, carpet manufacturer, Finsbury-pavement, and J. R. Hunter, upholsterer, Moorgate-st. Sol. Conquest, Moorgate-st.—Birch, W. J. tailor, Manchester, March 18. Trusts. J. Griffiths, woollen manufacturer, Gresham-st. and J. W. Gabriel, woollen draper, Regent-st. Sols. Bradley and Co. Bow Church-yard.—Egley, T. bookseller, New Bond-st. April 3. Trust. R. Marshall, bookseller, Stationers'-hall-court. Sol. Birkett, Cloak-lane.—Lerner, H. builder, Robert-st. Chelsea, March 27. Trust. J. Spenceley, oilman, Goodge-st. Sol. Dodd, New Broad-st.—Read, J. draper, Honiton, March 16. Trust. D. Smith, gent. Wood-st. Sols. Surr and Gribble, Lombard-st.

Bankrupts.

Gazette, April 3.

BRADFORD, WILLIAM GEORGE, tailor, Bucklersbury, City, April 18, at eleven, May 16, at one, Basinghall-st. Com. Goulburn; Green, off. ass.; Tatham and Son, Staple-inn, sols. Date of flat, March 26. H. S. Fairfort, gentleman, Carey-street, C. Hewer, butcher, Newgate-market, H. Salisbury, gentleman, Queen-st. Cheapside, and F. A. Burge, surgeon, Hackney, pet. crs.

COOK, THOMAS MASKELL, publican, Bath, April 20 and May 15, at twelve, Bristol, Com. Stephen; Hutton, off. ass.; Mansford, Bath, sol. Date of flat, March 19. R. B. Arnold, wine merchant, Bath, pet. cr.

DUFFIELD, ABRAHAM, and DUFFIELD, MARK, ironmongers, braziers, and zinc workers, Slough, Buckinghamshire, April 9, at eleven, May 15, at twelve, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Taylor, Moorgate-street, sol. Date of flat, March 30. W. S. Simkin, ironmonger, London-wall, pet. cr.

DUTT, JOHN, carpenter and builder, 9, Upper-st. St. Mary, Islington, April 17 and May 21, at two, Basinghall-st. Com. Evans; Bell, off. ass.; Wright, Gracechurch-st. sol. Date of flat, April 1. Bankrupt's own petition.

DYKES, ELIZABETH SMITH, basket maker and cooper, Romford, Essex, April 18, at two, May 23, at one, Basinghall-st. Com. Goulburn, Green, off. ass.; Gadsden and Flower, Furnival's-inn, and Flower, Romford, sols.

FORSALL, THOMAS, surgeon and boarding and lodging-house keeper, Grove-house, Doddington-grove, Kennington, April 11, at half-past two, May 23, at twelve, Basinghall-st. Com. Goulburn; Green, off. ass.; Blagood, Carey-st. sol. Date of flat, April 2. A. Flower, auctioneer, New Bridge-st. pet. cr.

HAYE, JAMES, and AYRES, HENRY, woollen drapers, Newgate-st. City, April 16, at half-past two, May 21, at one, Basinghall-st. Com. Evans; Johnson, off. ass.; Everest and Co. Hatton-garden, sols. Date of flat, March 31. Bankrupt's own petition.

HENRY, THOMAS, draper, Liverpool, April 30 and May 19, at twelve, Liverpool, Com. Ludlow; Bird, off. ass.; Walker, Furnival's-inn, and Bradley, Liverpool, sols. Date of flat, March 31. Bankrupt's own petition.

HOLMES, JOSEPH RICHARD, brewer, Eagle Brewery, Poplar, April 9, at half-past one, May 11, at one, Basinghall-st. Com. Shepherd; Graham, off. ass.; May, Queen-q. sol. Date of flat, March 23. J. Holmes, shipowner, Portsea, pet. cr.

MARLAND, HENRY, silk throwster, Hazel-grove, Bosden, Cheshire, April 14 and May 20, at twelve, Manchester; Fraser, off. ass.; Coppock and Woollam, Stockport, and Coppock, Cleveland-row, sols. Date of flat, March 24. D. Parkinson, banker, Stockport, on behalf of the Bank of Stockport, pet. cr.

MORRIS, JOHN, auctioneer and dealer in furniture, Manchester, April 16 and May 12, at twelve, Manchester; Fraser, off. ass.; Gregory, and Co. Bedford-row, and Cooper, Manchester, sols. Date of flat, March 31. Bankrupt's own petition.

OLIVER, MICHAEL, innkeeper and livery stable keeper, Longtown, Cumberland, April 20, at one, May 25, at twelve, Newcastle, Com. Ellison; Wakley, off. ass.; Mounsey and Gray, Staple-inn, Mounsey, Carlisle, and Hoyle, Newcastle, sols. Date of flat, March 19. J. Turner, wine merchant, Carlisle, pet. cr.

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

March 7 and 19.
BAGGATT v. MAUX.

Corried woman—Superior use—Claims against anticipation—Life estate and fee-simple.
Equity, which has created the separate estate, will so mould it as to render it effectual for its object, the protection of a married woman; and, therefore, where an intention to restrain anticipation is plainly expressed, the Court will give effect to it.
There is an absolute interest or a fee-simple is given to a feme covert, the restriction on anticipation is equally binding during coverture as it is where a limited or life interest is given.

Married woman with a separate estate, and restrained from anticipation, is absolutely disabled from making any alienation of her interest during coverture.

The testator, John Warren, by his will dated the 26 of September, 1836, gave and devised unto his daughter, Alice Baggatt, the wife of William Baggatt, he younger, "all that his freehold estate situate and being on the west side of Great Windmill-street, in the parish of St. James, Westminster, in the county of Middlesex, with the appurtenances; consisting of the premises called the Ball-yard, in the occupation of Mr. Robert Newman; and three houses in Great Windmill-street messuages, being No. 42, in the occupation of — Brodie, Esq.; No. 43, in the occupation of — Bushwell, and known by the name or sign of the Bull public-house; and No. 44, in the occupation of Mr. Brandish; to hold the same unto his said daughter, Alice Baggatt, and her heirs for ever; and after making dispositions of other property in favour of the other daughters, the testator declared as follows: "And I hereby declare that neither of my said daughters shall sell, charge, mortgage, or encumber the estates or property by me given, devised, and bequeathed to them; and that my daughters shall have, receive, and take such estates and property each of them for their own sole, separate, and respective use, benefit, and disposal, and have the sole management thereof, independent of their husbands for the time being; and the same, or any part thereof, or any part thereof, shall not be subject or liable to the debts, control, or intermeddling of their husbands for the time being; and that the respective receipts of my said daughters alone, signed by them with their seals, shall from time to time be a good and sufficient discharge for the said rents, dividends, and interest, or yearly produce, and moneys hereby given, devised and bequeathed to them respectively, to the parties paying the same, and that the said estates or property shall go to such child or children, or other person or persons in such shares or manner as they, my said daughters, shall, by their respective last will and testament in writing, or by any writing if that purport, to be executed in the presence of two or more credible witnesses, give, direct, or appoint

the same." The testator died shortly after the date of his will, and Alice Baggatt, his daughter, entered into the receipt of the rents. The premises, called the Ball public-house, were at the date of the will and of the testator's death subject to a lease for 31 years, dated the 19th of January, 1816, by which the rent of 60*l.* was reserved. In June 1840, Baggatt, the husband, purchased the residue of the term granted by that lease, and with the full knowledge, and the active assistance of his wife, borrowed 600*l.* of Meux and Co. to enable him to fit up and conduct the said public-house; and in order to secure the repayment of that loan, a lease dated the 10th day of June, 1840, for 31 years at the rent of 60*l.* was granted by Mrs. Baggatt and her husband to one Evans, who declared that he held the term in trust for Baggatt, the husband. The husband then deposited that lease, and the other deeds relating to the Ball public-house, with Meux and Co. and signed a deposit, agreeing to make an underlease, by way of mortgage, to secure the loan of 600*l.*, and subsequent advances. Baggatt soon afterwards disposed of the business to Croft, who rented the public house at 90*l.* a year upon an understanding with Meux and Co. that the rent should be paid to them. Baggatt and wife having afterwards refused to permit the rent to be paid to Meux & Co., they filed a bill against Baggatt and Croft, the tenant, for a specific performance of their agreement; and, upon a motion before the Vice-Chancellor, a receiver was appointed. On that occasion the Vice-Chancellor expressed a clear opinion, in conformity with his decision in *Brown v. Bamford*, that Mrs. Baggatt had a right to make the lease, notwithstanding the restrictive clause.

Mrs. Baggatt, by her next friend, then commenced the present suit against Meux and Co. Evans, and her husband, charging fraud, misrepresentation, and contrivance, and praying that it might be declared that, by the true construction and operation of the will of the testator, John Warren, she was restrained from disposing of her estate and interest in the public-house by way of anticipation, and from executing any valid conveyance or disposition thereof; and that the lease of the 11th of June, 1840, might be declared void as against the plaintiff, and that it might be declared that the lease was obtained by undue and improper means, and that the same ought to be delivered up to be cancelled; and that the plaintiff might be declared to be entitled to the fee-simple and inheritance of the said public-house and premises, for her sole and separate use, exclusive of her husband, subject to the residue of the term of thirty-one years granted by the lease of 19th of January, 1816.

Meux and Co. by their answer, denied fraud, but admitted notice of the terms of the will, and that the lease was taken as the best means of effecting a security to them. They proved in evidence that the plaintiff had been active in the whole of the loan transaction.

Vice-Chancellor Knight Bruce held that the plaintiff was, by the terms of the will, effectually restrained from anticipation, and that the lease was a charge or incumbrance within the terms of prohibition, and decreed that the lease of 10th June, 1840, should be delivered up, and the interest thereby created assigned to a trustee, to protect the plaintiff's inheritance. Against that decree the defendants, Meux and Co. appealed.

Swanston and Bush, for the plaintiff.
Jas. Russell and Preeling for the defendants, Meux and Co.
The following authorities were referred to during the argument: *Tullett v. Armstrong* (4 Myl. & Cr. 390); *Brown v. Bamford* (11 Sim. 127); *Bradbury v. Peidoto* (3 Ves. 324); *Doe dem. Evans v. Williams* (5 Jurist, 219); *Cox v. Chamberlain* (4 Ves. 631); *Barrimore v. Ellis* (8 Sim. 1).

JUDGMENT.
THE LORD CHANCELLOR.—The only distinction I can find between this case and that of *Tullett v. Armstrong* is, that the clause against anticipation precedes the clause of the gift, and that is a distinction which I consider wholly immaterial. You need not, therefore, trouble yourself, Mr. Swanston, on that part of the argument, but as to the transaction itself, I am not quite sure that I understand it correctly.

Swanston stated the transaction.
THE LORD CHANCELLOR.—You need not trouble yourself further; I think the appeal must be dismissed. In the case of *Tullett v. Armstrong*, Lord Cottenham appears to me to have exhausted the whole subject, and I think it quite impossible that the principle on which such cases are based, as there laid down, can ever be again touched with success. There never was a case argued in this court in which the whole subject-matter appears to have been more thoroughly sifted, and Lord Cottenham there came to the conclusion, in which I fully concur, that, as a court of equity creates that particular kind of estate, called the separate estate, a court of equity has full power to modify it, where it sees fit to do so; a distinction which appears to me to be founded in sound sense, and a just appreciation of the principles of equity. In the case before me, the feeling of the parties, with respect to the law on this subject, is shown by the

mode they adopted in their attempt to defeat the settlement. There were seven years of the old lease unexpired; and the reservation offered in the new lease is, in effect, a reservation to the husband alone. It is merely a circuitous mode of attempting to defeat the provision against alienation. The forms they had recourse to prove very plainly that, in their opinion, it was a good and valid settlement. I consider the decision of the Vice-Chancellor to be perfectly right. The appeal must be dismissed with costs. In the case of *Tullett v. Armstrong*, I have heard that Lord Cottenham struggled against the principle as being at variance with his previous impressions. The knowledge of that fact rendered his ultimate decision in that case still more valuable.

HUNTER v. NOCKHOLLS.

Practice.
Application by a defendant, the receiver of the principal defendant in the cause, to enforce an order obtained by the plaintiff.

Schenberg applied *ex parte* on the behalf of Mr. Nockholls, one of the defendants in the cause, as the agent of Sir Francis Vincent, the principal defendant, who is resident in Italy, to restrain the plaintiff *Hunter*, the equitable mortgagee of certain real estate of Sir Francis Vincent in Suffolk, from cutting timber on the estate. An order for a receiver had been recently made upon the application of the plaintiff, but that order had not been drawn up. The plaintiff, however, had sent men upon the estate to cut down, and who were actually engaged in cutting down, the underwood, and the plaintiff stated it to be his intention forthwith to cut down some of the larger trees on the estate.

Vice-Chancellor Wigram had refused the application as irregular, notwithstanding the act of cutting timber from an estate over which the Court had appointed a receiver was in the highest degree improper; that it was a motion by a defendant himself, a mere agent of the owner of the estate, against the plaintiff in the cause, to restrain him from cutting timber; and that if the defendant was the agent of Sir Francis Vincent, his simple course was to file a bill in his name against the plaintiff, and apply for an injunction in that suit.

The present was an application by way of appeal from the Vice-Chancellor's decision. The plaintiff had been expressly prohibited, by the order for a receiver, from proposing himself as such receiver.

THE LORD CHANCELLOR.—I have examined the papers and considered the case. It appears to me that Nockholls has no interest in the estate, and he cannot, therefore, ask for an injunction; but I think he may make an application against the plaintiff for violating an order of the Court, and that such an application will be attended to.

Schenberg.—During the interval which has elapsed since the application was first made to Vice-Chancellor Wigram, the plaintiff has abandoned his proceedings, and it had, therefore, become unnecessary to ask the Court for any order.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Monday, Jan. 12, 1846.

HINE v. LAST.

Trade mark—Right of surviving partner in trade—Representative of deceased partner.

W. B. H. and C. J. P. filed their bill, in which they alleged a right to a trade mark in the word "Ethiopian," upon black cotton stockings, acquired by W. B. H. while in partnership with others deceased, praying an injunction, and an account of profits. The defendants, by their answer, denied the plaintiff's right to the mark as a trade mark, alleging that other persons were in the practice of using the word prior to W. B. H. and any of his previous partners; but they admitted that they, the defendants, had copied the mark from the plaintiff's stockings, denying, however, they did so with any fraudulent intention. The evidence adduced by the plaintiffs as to their right in the mark was by no means satisfactory, but in some parts contradictory. But the courts in refusing a motion to dissolve an injunction held that the defendants having made so complete a copy of the plaintiff's trade mark, the difference being only nominal, must have been taken to have done so with an intent to obtain an advantage to which they were not entitled.

Held also, that although the personal representative of W. B. H.'s deceased partner might have some right to participate with W. B. H. in the property of the mark, yet W. B. H. had such a prima facie interest therein as entitled him to file the bill.

The present suit was commenced in October, 1845. The bill stated that the plaintiffs, William Baker Hine, and Christopher John Parker, were co-partners in the trade or business of wholesale hosiers; and that they, or the said William B. Hine, in partnership with other persons, all of whom were now deceased, or had retired from the said business, had carried on such business from the year 1827 down to the present time. That in the year 1832, a Mr. Burford, then and now also carrying on the business of a dyer

at Stratford, in the county of Essex, used, and has ever since used, in his said business, a dye of a black colour, for dyeing cotton stockings and other cotton goods, which dye was and is of a very superior quality; and ever since the year 1832, the plaintiff W. B. Hine, and his said co-partners, and also the plaintiffs ever since their said co-partnership have caused and do, at a considerable expense to themselves, cause cotton stockings, purchased in an unbleached state, to be dyed by the said Mr. Burford with the said black dye, with a view to their selling the same when so dyed; and such stockings when so dyed are of great excellence and of a fast colour, which does not wash out. That in order to distinguish such cotton stockings from black cotton stockings prepared or sold by other parties, they have, ever since the year 1832, which was the time when they began having their stockings dyed with the said superior black dye, caused, and do now cause, each of the said cotton stockings when so dyed, to be at the same time stamped or marked with a trade mark, of the description following, that is to say, six plain lines one above another, and about the eighth of an inch apart, going round each stocking, near the top of the leg, and the word "Ethiopian," printed in Egyptian characters below the said lines, in the form of a segment of a circle; which said lines and word, or marks, are of a greyish white, or light slate colour, being produced by a partial extraction of the said black dye by means of a chemical process, and the same are very conspicuous on the stocking, and are as durable thereon as the said black dye. That the said Wm. B. Hine, and his late partners, were the first designers of the said trade mark, and the first persons who used the same, and the stamps with which the same have been and are made, have always been procured solely on account of plaintiffs and the said previous firms respectively; and such trade mark has never hitherto been used by any persons or person other than the plaintiffs, and the said previous firms, of which the plaintiff, W. B. Hine, was a member, except by the defendants, as hereinafter stated. The bill then went on to state, that although the plaintiffs and the said previous firms have been in the habit of selling various qualities of black cotton stockings, yet they never did, and do not cause any cotton stockings to be stamped or marked with the said trade mark, except those dyed with the said superior black dye, and those of a good quality in the material, and of the best kind of make, that is to say, of the make which is technically called in the trade "two thread and properly fashioned," describing the article. That the said stockings so made, with the said trade mark, had gained great repute for their excellence, and were in great demand in the market, where they were commonly called and known by the name of "The Ethiopian black cotton stocking," or "Ethiopians." That the plaintiffs had recently discovered that the defendants, who also carried on the business of wholesale hosiers, had sold, and were now in the course of selling, black cotton stockings, under the name of "Ethiopians," or "Ethiopian black cotton stockings," and with a trade mark thereon, precisely the same in all respects as that used by the plaintiffs as aforesaid, or differing therefrom in this respect only, that the six lines and the word "Ethiopian," are more faintly stamped, and are less conspicuous on the stockings so sold by the said defendants, than on those sold by the plaintiffs; and that the said defendants caused the said trade mark to be put thereon in fraudulent imitation of the trade mark used by the plaintiffs. The bill, therefore, prayed that the defendants might be restrained from selling or disposing of any black cotton stockings with any mark or marks thereon, similar to, or in imitation of the marks used by the plaintiffs as aforesaid; and also from stamping or marking with the trade mark, &c.; for delivering up to plaintiffs of all the black cotton stockings in their possession so marked, and for an account of the profits. The plaintiffs had obtained an injunction *ex parte*, according to the terms of the prayer.

The defendants, by their answer, denied that the plaintiffs had acquired any right to the mark, and word "Ethiopian," mentioned in the bill, as a trade mark, or that they, or any of the previous firms to which the plaintiff, W. B. Hine, belonged, were the inventors of that name as applied to stockings, and that the name "Ethiopian" was applied to black stockings for some years prior to the year 1832. And that the word "Ethiopian" has, during the last fourteen or fifteen years, been commonly printed and marked upon black cotton stockings in Nottingham and elsewhere, and the character of letters called the Egyptian character has been commonly adopted, in consequence of the facility with which it is printed. That Mr. Francis Pike Hewitt, of Nottingham, hosier, did, in the year 1830, manufacture black cotton stockings, and on such stockings had the word "Ethiopian" printed or marked, so that the same shewed in white on the black stockings, and that prior to, and in the year 1832, he sold several thousand dozens of such stockings, and that he continued to make and sell such stockings up to and in the year 1842. They, the defendants, admitted that in the month of May, 1844, they caused black cotton stockings to be marked for them with the word

"Ethiopian," and with white lines running round the top in the manner described in the bill of complaint, and which are in imitation or copy from the marks which the said complainants allege to be, but which the defendants deny to be the said complainants' trade mark, but that the defendants did so without any intention to defraud or injure the said complainants, or of passing them off as the manufacture of the said plaintiffs. The defendants now moved to dissolve the injunction. Affidavits were filed, both on the part of the plaintiffs and also on that of the defendants. Those for the defendants in support of the motion going to prove that the word "Ethiopian" had been printed on black cotton stockings before the year 1832, and that the plaintiffs could not have any exclusive right to the use of the mark, and that it was not understood in the trade that they had such exclusive right. Those for the plaintiff going to shew the contrary to be the case.

Stuart and Pryor, for the motion to dissolve, contended that the plaintiffs had not made out a case of exclusive right to the mark, neither had they proved a fraudulent intention on the part of the defendants for the purpose of doing injury to the plaintiffs, which they were bound to do, otherwise their case utterly failed.

Cases cited for defendants, *Knott v. Morgan* (2 Kee, 213), *Perry v. Truefitt* (6 Bea. 66), *Croft v. Day* (7 Bea. 84).

Belhell and Toller, in support of the injunction.—The Lord Chancellor, in *Mellington v. Fox* (3 My. & C. 338), entirely negatives the proposition on the other side, when he lays it down, that although no fraudulent design in the use of the mark was proved, that circumstance does not deprive the plaintiff of the exclusive use of the mark. The plaintiffs here contend that they have an absolute property in the mark, they having used it ever since the year 1832. The defendants say, "We admit that we did copy the mark, but we prove, at the same time, that the plaintiffs have no property in the mark, because some one similar to this has been used prior to the year 1832." At law, such a proposition is wholly untenable, for where a particular mark has been used by a number of persons, and then it ceases to be used, and afterwards some other person has adopted the mark, and gained credit by it, he derives a property in it.

Stuart, in reply.—You have not proved the exclusive right to the mark as you ought to have done. And this more clearly appears by the case of *Mellington v. Fox*, than any other. There is a great difference between the case of a trade mark and that of a copyright. The former is a species of property which may only be gained by exclusive use, whilst the latter becomes known to all the world. The cases of *Croft v. Day*, and *Goul v. Aleploglu* (6 Bea. 69, note), shewed a circumstance very different from the present case, for there the name of the plaintiff was introduced.

The VICE-CHANCELLOR.—I could not help at first being struck by the statement in the bill with respect to the devolution of the partnership, which made it seem a possible case that although the plaintiffs may have acquired a right to use this mark, yet, for aught I know, a certain portion of that same right may be vested in the personal representatives of the deceased partner. I remember a case wherein I came to the determination that a right to use a trade mark is in the nature of a personal chattel, and will, of course, devolve to the party's representatives; and for any thing I know, there might be some other person to participate with the plaintiffs in the property. *Prima facie*, however, I cannot but think that whether the plaintiff Hine has the right in himself, or whether he possesses that right jointly with some other persons, he has still a sufficient right to bring forward a case like the present. There is evidently much contradiction upon these affidavits; and I cannot think that if the defendants had not been impressed with the notion that the plaintiffs enjoyed a beneficial right in the use of the mark, they should, intending to make an imitation of it, have made so perfect an imitation as they in fact have done, the difference being no more than nominal. I think it is clear, upon the face of the transactions, that the defendants were aware that they might gain an advantage by so doing to which they were not entitled. My opinion is, therefore, that the injunction must continue; and I shall direct the plaintiff to bring such action as he may be advised, with liberty to apply.

Motion refused.

ROLLS COURT.

Jan. 13, and March 20.

IN RE BEDSON.

Taxation—Disputed items—Gratuities to stationers in registrar's office, and to clerks of Accountant-General.

An order was made directing the apportionment and transfer to a separate account of certain shares in a fund, in a cause in which a person was entitled individually, and also in a representative character, and the Master made his report thereon; the legacy duty payable on the latter shares could not be dis-

charged by the person entitled, and therefore delay was occasioned; this difficulty being got over, a petition was presented in order to get the transfer of the fund as quickly as possible, and the order was not proceeded with. The solicitor, on taxation, as between him and his client, was allowed the costs of this petition, but not the costs of transfers obtained after the Master's report, but rendered useless by the delay.

Gratuities, called "expedition money," are usually paid to the stationers employed in the registrar's offices, and to the clerks of the Accountant-General, but they are not allowable (if opposed) on taxation, as between solicitor and client.

A solicitor will be allowed an item charged to his client before he has actually retained him, if the circumstances under which the service for which the charge is made was rendered are such as to shew that obstacles in the way of the client's accomplishing his object have been thereby removed, though the service itself was done for and occasioned by a third party.

In this case two petitions were presented, one by the solicitors, complaining of the Taxing Master's certificate, and praying relief, and the other by the clients, praying that the report might be confirmed; or if it should not, that they might be permitted to except thereto in certain particulars. The facts of the case are fully reported in 6 Law T. 294, and need not be here repeated. The solicitors having been successful on their petition, it now became necessary to take into consideration that of the clients.

The first item complained of was a sum of 3l. 13s. 3d. part of a sum charged for attendance, &c. on Hugh Brown, the plaintiff's solicitor in the suit of *Lloyd v. Mason*. It appeared that the property in that suit had been sold in 1838 in lots, and the purchasers required the delivery up of deeds, &c. before completing, which they could not have, as they were in the hands of the solicitor of an incumbrancer, who would not deliver them till his charges, &c. were paid. Brown not having the means of doing so, Messrs. Bedson and Rushton agreed to advance the necessary amount. At this time (February 1842) Messrs. Bedson and Rushton were in communication with Mr. and Mrs. Campbell, who wished them to co-operate with Brown, but it did not appear that they were retained as their solicitors till the 28th of April, 1842. The charge in question arose out of the attendances necessary in co-operating with Brown; and the petitioners objected to it on the ground that it was not incurred in the discharge of their duties to them as their solicitors, which they denied they were at the time. The next item objected to was the expenses of a petition presented in January 1845, for the apportionment and transfer to a separate account of certain shares in the fund in the cause in which Mrs. Campbell was interested individually, and also as representative of deceased brothers and sisters. It appeared that an order having been made on further directions that the Master should apportion and transfer those shares to a separate account, he did apportion them, and by his report of the 23rd November, 1844, declared what Mrs. Campbell was entitled to in both capacities, and transfers were afterwards taken out; but because of there being no means of paying the legacy duty, the order was not carried out, and the transfers became useless. After the money was raised to pay the duty, and in order to expedite the getting the money out of court, the petition complained of was presented in January 1845, to carry over the shares, &c. The expenses of the petition and of the transfers were objected to. The next items objected to were a charge of 3l. 3s. paid to the clerks of the Accountant-General, and a charge of 10s. paid to a stationer in the registrar's office. These payments are usually made, it seems, as gratuities, and are called "expedition money," and in this case were intended, as alleged, to expedite the passing of the order made upon the obnoxious petition of January 1845.

Kindersley (with him Craig) contended that the petition was unnecessary if the order on further directions had been carried out; and besides, it was presented without instructions. As to the shares to which Mrs. Campbell was entitled in her representative character, the petition clearly was unnecessary, the order in such case being simply to pay to the personal representative; and as to her individual share, it ought to have been carried to a separate account, under the order on further directions, and then a short petition only would be necessary to get it transferred. Besides, it was unnecessary to go back to the beginning of the suit, and recite all the proceedings therein, as had been done; and as to the dividends accrued due since the Master's report, it would have been easy to include them by amendment. Then as to the transfers, they ought to be disallowed, for they were quite useless. As to the item charged with reference to Brown, it is clearly to be disallowed, for the petitioners were not the clients of Messrs. Bedson and Rushton at the time; nor did they become so till the 28th of April, 1842. It is said they were, but they positively deny it, and the solicitors do not produce any entries in their books in proof that they were; and in the absence of entries, the Court will not take into consideration the mere fact that the petitioners

had some communication on the subject with these solicitors. [The MASTER of the ROLLS.—I would rather take into consideration the circumstances of the case, and see whether service was rendered to Mr. and Mrs. Campbell, in removing obstacles in their way.] But the whole transaction had reference to Brown. Then as to the charges for payment to the stationer and clerks, they are quite gratuitous, and ought to be disallowed.

Turner (with him Prior) contended that the delay occasioned by the want of means to pay the legacy-duty, and the other circumstances of the case, justified the presenting of the petition; that the transfers were bespoken in the hope of being used immediately, and afterwards, by subsequent events, became useless; that the item in connection with Brown was a fair charge, for it was for the benefit of the petitioners; and, lastly, the gratuities to the stationer and clerks were usual and customary.

Friday, March 20.—The MASTER of the ROLLS.—This is a petition praying for liberty to except to the certificate of the Taxing Master in certain particulars. The first subject of complaint is the charge of 3*l*. 13*s*. 3*d*. for business done for Mr. Browne. I have read the affidavits, and I think the business was done for or on account of the petitioners, and this item must, therefore, be allowed. The second item objected to is the costs of the petition on which the order was made for carrying over the funds in the cause. In 1844 an order was made on further directions for apportioning and carrying over the shares in the fund to a separate account, and on the 23rd November, 1844, the Master made his report, whereby he certified that he had appropriated certain shares to Mrs. Campbell, but the shares were not then carried over under the order, but a new petition was presented in January 1845 for that purpose. This petition, it is said, was unnecessary, and ought not to have been presented. In the absence of explanation, the presumption would be that the solicitors might have got the transfers under the order, and not having done so, I would disallow the costs of the petition; but the solicitor, using his best exertions, could not, because of the legacy-duty required to be paid, proceed in that way, and therefore a petition was not unnecessary, and the certificate cannot on that account be disturbed. There were three other items, which, it is said, ought not to be allowed. First, the sum of 10*s*. paid to the stationer or clerk in the registrar's office; and this, I think, ought not to be allowed. Secondly, the sum of 3*l*. 3*s*. paid to clerks in the Accountant-General's office, not for stated services, but by way of gratuity. These gratuities are said to be customary, and I find them mentioned in the Chancery Commissioners' Report of 1816, and they are there explained by Seth Ward; again I find them mentioned in 1825. The Report of the commissioners in 1826 recommended their abolition, but no general order was made to that effect; and the clerks, in 1827, returned them as sums for which they were entitled to compensation. True, it is customary to pay them, and they are taken without any concealment, and they are not forbidden; and on taxation, some of the Masters in Ordinary used to allow them, others to disallow them, if opposed, and others to disallow them altogether. There is no such thing as any right to the gratuity, and the clients are to have their business done with the same zeal and diligence, whether they are given or not; and they are, therefore, under no obligation to pay such a charge. The remaining item of 1*l*s. for the transfers I cannot allow; it seems hard, but the client is not obliged to pay it. The Master may review as to these, but not the others.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Monday, March 9.
WADDINGTON V. YATES.
Will—Construction.

A testator gave all his real and personal estate to trustees, their heirs, executors, administrators, and assigns, upon trust, to permit his wife to receive and enjoy the rents, issues, and profits thereof during her life; or otherwise should, with the consent of his wife, sell and dispose of his said real and personal estates, and invest the purchase-money, and pay the interest thereof to his said wife for her life; and from and immediately after her decease, upon trust, that his said trustees, or the survivor of them, should pay to A. B. the sum of 50*l*., and to C. D. the sum of 50*l*., which he thereby gave and bequeathed to them accordingly; and also that his said trustees, or the survivor of them, or the heirs, executors, administrators, or assigns, of such survivor, should pay, distribute, and divide, all the residue and remainder of the moneys to arise, and which should be received from his said real and personal estates, unto and equally between all and every his nephews and nieces who should be living at the decease of his said wife. The wife died before the real estate was sold: Held, that the nephews and nieces were entitled to the property, although not sold.

William Titley, by his will dated the 4th of January, 1820, after directing that all his just debts, funeral and other charges, should be fully paid, and be-

queathing to his wife, Charlotte Titley, 1,000*l*., gave, devised, and bequeathed to Thomas Wilson and Francis Yates all and every his messuages and dwelling-houses, buildings, gardens, hereditaments, and premises, with their and every of their appurtenances, &c.; and also all his household goods and furniture, plate, linen, ready money, and securities for money, debts, and effects, and all other his personal estate whatsoever and wheresoever; to hold all his real and personal estate, and every part thereof, unto the said T. Wilson and F. Yates, their heirs, executors, administrators and assigns, for ever, upon trust, that they his said trustees, or the survivor of them, or the trustees, executors, administrators, or assigns of such survivor, should permit and suffer his said wife, Charlotte Titley, to take, receive, and enjoy the free use, interest, wear and enjoyment of the rents, issues, and profits thereof, for and during the term of her natural life, to and for her own use and benefit; or otherwise should, with the consent and approbation in writing of his said wife, sell and dispose of all his said real and personal estates, to the best purchaser or purchasers thereof, and for the most and best price or prices which could be got and obtained for the purchase of the same; and upon receipt of the purchase-money arising from the sale of his said real and personal estates, should put, lend, and place the same out at interest upon Government or other real security, as they in their discretion should think safe and good, and also should well and truly pay the interest to arise, and which should be received therefrom, unto and into the proper hands of his said wife, for and during the term of her natural life, to and for her own use and benefit; and from and immediately after her decease, then upon trust, that they his said trustees, or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, should well and truly pay unto William Harris the younger, his apprentice, the sum of 50*l*. and unto the said Thomas Wilson the sum of 50*l*. which the said testator thereby gave and bequeathed unto them accordingly; and also that his said trustees, or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, should well and truly pay, distribute, and divide all the residue and remainder of the moneys to arise, and which should be received from his said real and personal estates, unto and equally between and among all and every his nephews and nieces (except John Bennett) who should be living at the decease of his said wife Charlotte Titley, and which the testator thereby gave and bequeathed unto them accordingly. The testator died on the 7th of July, 1820, leaving Charlotte Titley, his widow, and the two trustees named in his will, him surviving. Thomas Wilson died on the 8th of May, 1828, leaving the said Francis Yates surviving; and Francis Yates died on the 10th of November, 1830, intestate, leaving the defendant, Francis Yates, his only son and heir-at-law, him surviving. No sale of the real estate of the testator had been made during the lifetime of Charlotte Titley; the suit was instituted against the heir-at-law of the surviving trustees, and the representatives of the heir-at-law of the testator, for the administration of the estate under the direction of the Court: the principal discussion was between the devisees under the will and the representatives of the heir-at-law, it being alleged by the latter that in the events which had happened there was an intestacy as to the real estates.

Rolt and Hanson, for the plaintiffs.

Jedwine, for the trustee.

Archibald Smith, for the representatives of the heir-at-law, cited *Brown v. Bigg* (7 Ves. 279).

The VICE-CHANCELLOR.—This is one of the cases in which nonsense must be set against nonsense, in order to give the sense some chance. My impression is, that the mere legal estate, notwithstanding the words "permit and suffer," which occur in the first instance but not in the second, according to the true construction of the will, is vested in the trustees. That being so, the testator gives the real and personal estate upon trust, to permit the wife to receive the rents and profits; or otherwise, with the consent of the wife, to sell all his real and personal property, and then the wife to receive the income of the produce of the sale. Then, having provided in each way for her during her life, he goes on thus, "and from and immediately after her decease, then upon trust, that they, my said trustees, or the survivor, or the heirs (this is part of the nonsense), executors, administrators, or assigns of such survivor, shall well and truly pay unto William Harris the younger, my apprentice, the sum of 50*l*. and unto the said Thomas Wilson the sum of 50*l*. which I hereby give and bequeath to them accordingly." I think this shews a positive intention that those two legatees should have their legacies without reference to the mere personal estate. He goes on, "and also that my said trustees, or the survivor of them, or the heirs;" the heirs could have had nothing to do with it if the sale had been made in the lifetime.

A. Smith.—The trustees may both have died in the lifetime of the wife.

The VICE-CHANCELLOR.—Well, probably that observation is liable to be made in the manner you

have stated. Therefore, if that is a just remark, as perhaps it is, it would exclude that argument, if argument it deserves to be called. But it would leave this remark, as to the two legacies of 50*l*. "And also that my said trustees, or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, shall well and truly pay, distribute, and divide all the residue and remainder of the moneys to arise, and which should be received from my said real and personal estates, &c." The remark may seem trifling, but in a case in which substance is to be protected against the form, it is a matter of legitimate remark that he does not say "to be received by the said sale," but, "pay what shall be received from my said real and personal estate." The whole will shews that if he had any nephews and nieces living, at the death of his wife, those nephews and nieces should have the entire property, converted or unconverted, real and personal. That is my impression of the true result to be collected from this will.

VICE-CHANCELLOR WIGMAN'S COURT.

Thursday, March 26.

Ex parte BOURNE.

A Court of Equity does not recognise the character of common law guardian as conferring a right to be receiver of the infant's estate.

Elmsley appeared upon this petition of an infant, by his father as guardian and next friend, to have a sum of money paid by the directors of the Dorchester and Weymouth Railway, for lands belonging to the infant, brought into court and invested, and asked for an order to pay the dividends arising from the investment to the father, on the ground that he was entitled to receive them by common law right as guardian, being already in receipt of the rents of the remaining lands.

The VICE-CHANCELLOR.—I cannot make the order so far as the payment of the dividends to the father. You shew no sufficient ground for such an order; a mere title as common law guardian is not sufficient; the rights attendant upon such a character are by no means clearly defined amongst the authorities. The late Mr. Jacob, after diligent research, has stated it to be extremely doubtful what they are in reference to the estate of the infant; I therefore order the money paid by the railway company to be invested, and the dividends arising therefrom to be invested from time to time as they accrue.

BROWN AND OTHERS V. WHITEWAY AND OTHERS.

Romilly moved, "on behalf of Thomas Brown, Elizabeth Conway, widow, and John Filiter the younger, that the bill filed the 8th of Jan. 1846, in the names of the above-named complainants, by Messrs. Edwards and Whiteway, of Lincoln's-inn-fields, for Messrs. Watts and Whitbourne, of Teignmouth, and the demurrer thereto filed the 17th of Jan. next following by Messrs. Pain and Hatherby, of Great Marlborough-street, on behalf of the defendants Whiteway, Nicholas Watts, Geo. Ferris, Whitbourne Mortimer, Wm. John Watts, and Martha Hatherley, widow, and John Brown and Sophia his wife, may be taken off the file; and the demurrer allowed on the 20th of Feb. last may be discharged, and all other proceedings discharged; and that Messrs. Edwards and Whiteway and Messrs. Watts and Whitbourne may be ordered to pay the costs, and the cost of the present application," and was proceeding to explain the grounds for this application, when

Molins appeared for Messrs. Edwards and Whiteway and Messrs. Watts and Whitbourne, and consented to the order being made to the full extent of the application.

Shaper appeared for the parties who had demurred.

Romilly proceeded with his statement of the grounds upon which the application was made.

Molins interrupted him by saying such statement was wholly unnecessary, and if he proceeded, a long contrary statement of facts would have to be made, which would uselessly take up the time of the Court.

The VICE-CHANCELLOR.—You have had a consent for all you ask by your motion; you cannot put yourself in a better position by any statement you may be able to make, which would only lead to a counter-statement from the other side.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Wednesday, April 15.

COCKERELL AND OTHERS V.

Use and occupation.

Evidence which simply negatives the title of a plaintiff suing for use and occupation, to whom the defendant has paid rent, is not an answer to the plaintiff's *prima facie* case. Either a counter claim must be

set up, or it must be shewn in whom a good present title is.

This was an action for use and occupation, to which the defendant pleaded *non-assumpsit*, and a verdict passed for the plaintiff, with damages 60l.

Talford, Serjt. now moved for a rule that should call on the plaintiff to shew cause why the verdict should not be set aside, and a new trial had, on the ground of misdirection. The evidence shewed that the defendant had been in possession for some time before May 1841, but to whom he had paid rent did not appear. For the plaintiffs, it was shewn that the defendant had paid rent to them "as the representatives of the late Mr. Cockerell," on the requisition of their attorney, from May 1841, to September 1843: and the probate of a will was produced, to make out the plaintiffs to be the representatives of the late Mr. Cockerell.

For the defendant it was contended, that as he had not been let into possession by the plaintiffs, he was not estopped from disputing their title. And he called witnesses, who shewed that no person of the name of Cockerell had been admitted a copyholder of the manor of Whitechurch, of which the lands in question were copyhold of inheritance, for the last fifty years, and that before the commencement of that period they had been in the occupation of a person named Beckett. Platt, B. who tried the case, said that the defendant ought to do more than simply negative the *prima facie* title of the plaintiffs, and ought to go on and set up a counter claim in himself, or a present title in others better than the *prima facie* title of the plaintiffs; and he told the jury that there was no defence to the action. This was a misdirection.

LORD DENMAN, C.J.—It is clear that there was a *prima facie* title in the plaintiffs; I do not see anything that could be held to get rid of it.

PATTESON, J.—The defendant could only get rid of the *prima facie* case made out for the plaintiff by making out another. Rule refused.

BUSINESS OF THE WEEK.

Wednesday, April 15.

R. v. SANDERS.—Rule nisi for superseding a writ of *certiorari*, removing into this Court, from the Middlesex Sessions, an indictment for keeping a gaming-house, under the 25 Geo. 2, c. 36, s. 10, on the ground that the *certiorari* is taken away by that statute.—Sir F. Kelly, S.G.

HARRIS v. JENNINGS.—Rule nisi for setting aside verdict as against evidence.—Crowder, Q.C. Refused.

PRIMBERTON v. COLLS.—Rule nisi for arresting the judgment, or for a *reine de novo*, in an action on the case for slander by words, not in themselves actionable, on the ground that the reluctance of the plaintiff's curate to co-operate with him in the discharge of his clerical duties, on account of the alleged slander, was not in law special damage.—Shee, S.

R. v. PELHAM.—Part heard.

COURT OF COMMON PLEAS.

Thursday, April 16.

HOWARD, Executor, &c. v. BUNBURY.

In an action of *assumpsit* proof of a transfer of stock from the plaintiff to the defendant is good evidence in support of a count for money lent.

This was an action of *assumpsit*. The first count stated that Irene Caroline Howard, the testatrix, heretofore, to wit, &c. was possessed of 1,000l. Four per cent. Consols, and that, in consideration that she would transfer the same to the defendant, the defendant undertook to pay, on request, the then value of the stock, and 5l. per cent. interest, until the time of payment. It then averred performance by the plaintiff, and a request made for payment.

Breach—Non-payment.

The declaration contained also counts for the price of the stock transferred, for money lent, for interest, and upon an account stated. At the trial at the sittings in London after last Hilary Term, the special count was abandoned, and a verdict taken for the plaintiff for 1,149l. upon the count for money lent.

Manning, Serjt. now moved for a new trial, upon the ground that the verdict was against evidence. It appeared at the trial that the transfer had taken place in 1837, and that the defendant, who was then the holder of other similar stocks, did not sell out this or any other of his stock until some years after. There were some letters in evidence written by the defendant, in which the defence set up by him was, that he had purchased an annuity for the deceased with the proceeds of the stock, by her express desire; and it appeared that during the life of the testatrix he had paid her quarterly 5l. per cent. interest upon the nominal amount of the stock. It was submitted, that the real character of the transaction was a transfer of stock, not a loan of money. No money, in fact, ever passed between the parties. Had it been intended for a loan, the stock would have been at once sold out, and then the expense of commission would not have been needlessly incurred. The remedy is upon a special contract, not upon a common money count.

ERLE, J.—There is a case in which it was held that a plea of payment might be supported, by shewing that an account had been stated between the

parties in reference to goods sold and delivered by each to the other. If so, why might not these parties agree to treat the stock as money?

TINDAL, C.J.—The only question is, whether there was any evidence at all for the jury. Upon the count for money lent, I think, upon the whole, that there was sufficient evidence to warrant their verdict. The letters themselves are evidence of that description, unless the mere fact of the transfer prevents their being so. This does not seem to me to be the case. There is a case very similar to this (*Harrington v. Macmorris*, 5 Taunt. 228), in which a similar objection was overruled.

COLTMAN, CRESSWELL, and ERLE, JJ. concurred. Rule refused.

PAUL v. DOD and HOLMES.

Where goods were sold upon an agreement that part of the purchase-money should be paid immediately, and that successive bills to become due three months after each other should be given for the residue.—Held, that an action for goods sold and delivered could not be brought until the last bill was due.

Debt, for goods sold and delivered, and for work and labour done.

Plea. Never indebted.

At the trial before Lord Denman, C. J. at the last Surrey assizes, it appeared that the plaintiff was an upholsterer, and claimed a sum of 240l. for the furniture supplied, and for decorations made for a house belonging to the defendants. At the time of the order being given, Holmes, one of the defendants, agreed to pay 30l. down, and to give successive bills of 30l. each, and at 3 months each for the residue, until the whole was paid. At this time the whole expense was expected not to exceed 80l. Subsequently Holmes consented to be jointly liable for the larger amount, but nothing more was said as to the mode of payment. The goods were delivered, and the work done during the month of April, 1845; the writ was issued January 6, 1846. No payment whatever had been made, and no bills given for any part of the amount due. Under these circumstances Lord Denman at the trial nonsuited the plaintiff upon the ground that the credit was unexpired, reserving leave to the plaintiff to move to enter a verdict for himself for such amount as the Court should think fit.

Channell, Serjt. now moved accordingly.—The defendants not having complied with their undertaking to pay part of the money immediately, and to give bills for other parts, we are remitted to our original cause of action. At all events, if we are not entitled to recover the whole amount, yet we may recover the money that ought to have been paid upon the execution of the order, and the instalments for which the bills would now rightly be due; that will be a sum of 90l. Credit for that part is now at all events expired. (*Mussen v. Price*, 4 East, 147; *Dutton v. Solomonson*, 3 B. & P. 582; *Brooke v. White*, 1 N. R. 330; *Steadman v. Goveh*, 1 Esp. 5; *Nickson v. Jepson*, 2 Stark. 227.)

TINDAL, C.J.—The plaintiff ought to have declared upon the special contract to pay part of the money down and the residue by bills at regular intervals. In that form of action the defendants are clearly liable for a breach of their contract. But they cannot be sued in this way at all, until the whole time which any of the bills would have to run is out. That is the true result of the cases to which we have just referred. I think there should be no rule.

COLTMAN, J. concurred.

CRESSWELL, J.—I am of the same opinion. We cannot separate any parcel of these goods and of this work from the residue, or say that any part of the goods were sold, or any part of the work performed, for a money payment.

ERLE, J.—I agree with the rest of the Court. There is in this case one entire contract, one consideration, and one promise. We are not at liberty to alter a contract of this nature, or to divide it in any manner. Rule refused.

Note.—There were other grounds upon which a nonsuit was asked for at the trial, but this was the ground upon which the nonsuit ultimately proceeded, and the only ground noticed by the Court upon this motion.

BUSINESS OF THE WEEK.

Wednesday, April 15.

RICH v. BASTERVILLE.—Byles, Serjt. moved, pursuant to leave reserved, for a rule to shew cause why the verdict found for the plaintiff should not be set aside and a nonsuit entered, or, why a verdict should not be entered for the defendant upon one or both of the issues.

JARDINE v. SHELDON.—Channell, Serjt. moved for a rule to shew cause, first, why the nonsuit in this case should not be set aside and a new trial had; and, second, why the costs of the nonsuit and of this application should not be paid by the defendant to the plaintiff. In support of the latter part of the rule he cited *Doe dem. Tindal v. Roe* (5 Dowl. 420).

RUMBALL v. UNETT.—SMITH v. UNETT.—Byles, Serjt. moved for a rule to shew cause why an order of Cresswell, J. made in these cases on April 8 should not be set aside, and why the service of the writs of summons upon the defendant should not be set aside with costs, for irregularity. The following authorities were referred to:—*Newnham v. Hannay* (5 Dowl. 259); *Lush's Practice*, 388; *Hinton v. Stevens* (4 Dowl. 283); *Chubb v. Nicholson* (1 Harr. & W. 666); *Graves v. Waller* (1 Scott, 310); *Child v. Marsh* (3

M. & W. 433); *Tyler v. Green* (3 Dowl. 439); *Edwards v. Collins* (5 Dowl. 228.)

Thursday, April 16.

TYTTE v. DAVIES.—Channell, Serjt. moved, pursuant to leave reserved, for a rule to enter a nonsuit upon the ground of the improper reception of evidence. Rule refused.

HODGES, suing in *formd pauperis*, v. TOLIS and ANOTHER.—Channell, Serjt. moved for a rule, calling upon the plaintiff to shew cause why he should not pay the defendants' costs of the day, and why the plaintiff should not be dispaupered. He referred to *Reg. Gen. H.T.* (2 Wm. 4, c. 110); *Facer v. French* (5 Dowl. 554); *Doe v. Trussell* (5 Ea. 505); *Pratt v. Delarue* (10 M. & W. 573). The Court thought that the facts hardly warranted the latter part of the rule, but on the former part there was a

Rule to shew cause.

Doe dem. HARRISON v. HAMPTON.—Channell, Serjt. upon the part of the lessor of the plaintiff, moved for a new trial, upon the ground of misdirection. *Res v. Edmondson* (1 Mood. & Rob. 24) was cited. Rule to shew cause.

GAMBLE v. KURTZ.—Channell, Serjt. moved for a rule, calling upon the defendant to shew cause why the special verdict found by the jury should not be entered as a verdict for the plaintiff upon the second and third issues. *Gleason v. Brand* (4 Scott N.R. 944) was referred to.

Rule to shew cause.

COURT OF EXCHEQUER.

Wednesday, April 15.

RUTHORN AND OTHERS v. GAMBLE AND ANOTHER.

An action was brought by a provisional committee against their engineers. The defendants procured a release from two members of the committee, one of whom had parted with his interest, and whose release was therefore fraudulent. Held, that the release of the other was good, nevertheless.

This was an action brought by the plaintiffs, who were provisional committee-men of the Liverpool, Preston, and North Union Railway Company, against the defendants, who were engineers, and had been employed by them to prepare the necessary plans and sections for deposit at the Board of Trade, &c.

Crompton now moved for a rule to shew cause why a plea of release pleaded herein, *purs darrein continuance*, should not be set aside, on the ground of fraud. It appeared that the defendants had been employed by the company to prepare the plans and sections of the line for the company, and had engaged to do so by the 30th of November, in time to be deposited with clerks of the peace of the various counties through which the line passed, and also at the Board of Trade; but they had failed to fulfil their contract, whereby the company were prevented from going to Parliament this session. Many letters had been written to the defendants by the company, pressing them to forward the work, which they had promised to do on receiving advances of money, which from time to time had been paid to them accordingly; but in spite of this the plans and sections were not forthcoming on the 30th of November, nor indeed could the company obtain them from the defendants afterwards.

Upon this an action was brought against them in the names of the provisional committee, which was ripe for trial at the spring assizes, when a plea of release by two of the plaintiffs was pleaded *purs darrein continuance*; the release being dated the 19th of March, the plea put in on the 20th. It was now submitted, that the release had been obtained by fraud and collusion between the defendants and the parties giving it—they being only nominal parties to the action, and joined for the sake of form, but not possessing any real interest therein. They were both friends of the defendants; and one of them, of the name of Randle, had, it appeared, received 1l. per share on the shares he held on account of his deposit, and had given up all interest in the residue, on receiving an indemnity against all responsibility from the other provisional committee-men, and had authorised them to use his name in all actions, suits, &c. So it was contended, that he was a mere naked trustee for the others, with only a colourable interest, and that his releasing the defendants was a gross fraud.

The other person releasing, Duncan did so jointly with him; he had originally possessed 200 shares, but 150 of them had come in, and it was not known even whether he held the remaining 50, and had any interest in the company, but at all events it was submitted that as he had released jointly with Randle, the whole transaction was tainted with fraud, and the Court would set aside the plea.

POLLOCK, C.B.—If one party is entitled to release, his doing so with another who has no such power will not vitiate the release by him, and a release by one is as good as two; here you shew that Duncan has some interest, for he holds 50 shares.

Crompton.—But this is in reality a fraud by him, for he has parted with nearly all his interest, and *Phillips v. Clagett* (11 M. & W. 84) shews that the party releasing must have some immediate interest in the subject-matter of the action to enable him to release, which it is submitted that Duncan had not here, and there is a case of distinct fraud against all the parties.

By the COURT.—This is really a case where two parties release, one of whom has no real interest in

the subject-matter of the action, while the other has. Now you are bound to show an indisputable case against both, to enable this Court to interfere, and say this plea shall not be pleaded, which you have not done; your remedy must be by filing a bill against Duncan, and making him responsible.

Rule refused.

RAIL COURT.

Wednesday, April 15.

(Before Mr. Justice COLLIERIDGE.)

DUNCAN v. THE MANCHESTER, BURY, AND ROSENDALE RAILWAY COMPANY.

Grey moved for a rule to quash the *mandamus* therein, or for ten days further time to make the return. The ground for quashing the *mandamus* was, that the writ directed more to be done than was justified by the rule.

Rule nisi.

Thursday, April 16.

ERNE v. EARL FERRERS.

Judgment as in case of a consent.

Burrows moved, in this case, for a rule absolute for judgment as in case of a consent, for not proceeding to trial, pursuant to a peremptory undertaking. This was an action brought against Earl Ferrers, upon a promissory note, said to have been made by him, but which was questioned in the late case of *Smith v. Earl Ferrers*.

Rule absolute.

BUSINESS OF THE WEEK.

Wednesday, April 15.

PRICE v. JEFFERIES.—F. Edwards moved to enlarge the peremptory undertaking given herein.

Rule nisi.

The following enlarged rules are set down in the peremptory paper for argument in the Bail Court:—

BOTTOMLEY v. BUCKLEY.

GRIFFITHS v. THOMAS and ANOTHER.

DON dem. HAXBY v. PRESTON and ANOTHER.

CROFTS v. OSBORN.

COLEMAN v. HOLMES.

WELL v. PICKERELL.

ALEXANDER v. WILLIAMS.

REG. v. JOHN EATON and ANOTHER.

REG. v. THE JUSTICES OF DEVON.

REG. v. THE RECORDERS OF KING'S LYNN.

REG. v. THE JUSTICES OF MIDDLESEX.

BYRNE, treasurer, &c. v. WILLIAMS.

Re JOHN Wm. KNIFE, Gent. one, &c.

DON dem. BELLAMY and OTHERS v. PARTITION.

SOMER v. JENCKE, the journey.

REG. v. THE INHABITANTS OF LEEDS.

Prosecutor's rule.

Defendant's rule.

BURKE v. SAMP.

Re GEORGE SAML. FORD, Gent. one, &c.

Re ROBT. FURNESS LOWE, Gent. one, &c.

The cases in this paper will be proceeded with after the first and second sittings at Nisi Prius are concluded, by calling on two cases on each day, immediately after the Bar has been gone through for moving rules nisi.

Thursday, April 16.

ROBERTS v. VANDERBOMER.—Crowder, Q.C. moved to enlarge the peremptory undertaking herein.

Rule nisi.

Re parts ST. ANNE'S, WESTMINSTER.—Pashley moved for a writ of *certiorari* to bring up an order of justices, in order that it might be quashed for defect of jurisdiction.

Rule nisi.

LANE v. NEWMAN.—Lush moved to set aside the writ of *habeas corpus* and appearance for irregularity.

Rule nisi.

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

Tuesday, April 7.

(Before Mr. Commissioner FORTLANQUE.)

Re LADD.

Amendment of schedule.

The Court is empowered, by 7 & 8 Vict. c. 96, s. 30, to amend the schedule, even where there had been an omission of the signature of the attorney on one of the sheets.

Insolvent came up for his final order.

An objection was taken that there was a fatal omission in the schedule, the attorney who was the attesting witness having neglected to affix his signature to one of the sheets.

Duncan, contra, contended that, there being no fraud or culpable negligence, the Court might amend.

His HONOUR, after referring to the cases, said it was certainly an objection which ought not to be favoured, after two or three previous hearings on the merits of the case. He was at first afraid that the terms of the statute were so imperative that he could not admit of the amendment; but he was now satisfied that, under 7 & 8 Vict. c. 96, s. 30, there was a general power to amend the schedule. He should, therefore, allow the insolvent to re-swear the sheet in dispute, that it might be duly attested.

Circuit Reports.

OXFORD CIRCUIT.

NISI PRIUS.

Gloucester, Saturday, April 11.

(Before the LORD CHIEF BARON.)

DON dem. WOOD v. ELIAS.

A judge will not try a cause on which he had been

formerly engaged as Counsel, but will order it to be made a *remand*.

A special application was made by Godson, who requested to know if his lordship would fix a day for the trial.

The CHIEF BARON.—By no means, it must be made a *remand*. It cannot be tried by me at all. It must have been perfectly well known to those who entered the cause that I should try the cause in this court, and it was no secret that I came down here only a few years ago to dispute that very will. I, at that time, entertained a very strong opinion upon that case, and have had no reason to alter that impression since; and it would be an act of great imdecorum on my part to sit and try the case. I expressed an opinion as to Dr. Lushington's sitting in the capacity of judge, after having been engaged as counsel, and I still adhere to that opinion. I consider that it is a course which is calculated to bring the administration of justice into question, if not into contempt.

Tuford, Serjt. on behalf of the lessee of the plaintiff, observed that his client would be perfectly satisfied that his lordship should adjudicate upon the case; but if his lordship felt a disinclination so to do, perhaps an arrangement might be made for Baron Platt to take it.

The CHIEF BARON said it was his duty to take the business of that court, and he did not conceive that he should be justified in asking his brother Platt to discharge his office for him. So far, therefore, as he was concerned, he should direct the cause to be made a *remand*.

THE LEGISLATOR.

Summary.

AFTER the shortest Easter recess ever known, Parliament last night resumed its labours. But such is the quantity of urgent business, that it is not likely any of the projected measures of Law-Change will pass during the present session. We hope next week to be enabled to lay before our readers an outline of the contemplated measure for the winding up of the railway schemes.

PARLIAMENTARY PAPERS.

BRICKS.—Return of the duties paid upon bricks in the several excise collections in England from 1839 to 1845 inclusive. The total amount collected in 1839 was 459,664l.; and in 1845, 558,415l. The amount in 1839, in the London district, was 93,911l.; in the Manchester district, 34,798l.; and in the Rochester district, 24,173l. In 1845, in the London district, 31,267l.; in the Manchester district, 44,290l.; and in the Rochester district, 44,644l. Including the metropolis, there are 56 separate collections; in five of which, during the last year, the amount received was less than 500l.

COUNTY ELECTIONS (SESSIONAL PAPER, 138).—Draft of a bill limiting the term of taking the poll in counties, on contested elections to a period of one day.

* The Acts having this mark, are continued to the date against them, and to the end of the then next session.

† The Acts having this mark are continued to the date set against them, and to the end of the then next session.

Naval Medical Supplemental Fund Society to expire at the end of this session: Insolvent Debtors (East-Indies), March 1, 1845*; Lunatic Asylums (Ireland), August 1, 1845*; Arms (Ireland), November 13, 1845*; Indemnity, March 25, 1846; Mutiny Act, April 25, 1846; Mutiny Act (Marine Forces), April 25, 1846; Copyholds Enfranchisement, June 21, 1846*; Soap (Excise Allowance), July 31, 1846*; Sugar Duties, July 5, 1846; Sugar Bounties, July 5, 1846; Turnpike Act (Ireland), July 31, 1846*; Militia Pay (G. B. and I.), August 1, 1846*; Turnpike Acts (E. & W.), August 1, 1846*; Newfoundland Government, September 1, 1846; Militia Ballot Suspension, October 1, 1846; Poor-rates (Stock in Trade Exemption), October 1, 1846*; Highway Rates (E.) October 1, 1846*; Loan Societies, October 1, 1846*; Ordnance Survey, December 31, 1846; Western Australia, December 31, 1846*; Trade Navigation, July 15, 1847; Poor-law Commissioners, July 31, 1847*; Tithes Commutation, July 31, 1847*; Oaths, Unlawful, September 1, 1847*; Ecclesiastical Jurisdictions, December 31, 1847; Property Tax, April 6, 1848; Churches, July 20, 1848; Bonded Wheat, August 31, 1848*; Stamp Duties (Ireland), October 10, 1848; Lines, Hempen, &c. Manufactures (Ireland), July 29, 1849*; Spirits (Ireland), August 24, 1849; Assaults (Ireland), September 1, 1849; Commons Inclosure, August 8, 1850*; Usury, January 1, 1851; Assessed Taxes, April 5, 1851; East-India Company's Territories, April 30, 1854; East-India Company foreign trade,

1854; Prisons (Scotland), January 1, 1851; Coal Trade (Port of London), July 5, 1852; Highland Roads and Bridges, July 24, 1854*.

JOINT-STOCK COMPANIES.—On Saturday last the report of the Registrar of Joint-Stock Companies to the Board of Trade, for the year 1845, made pursuant to the 7 & 8 Vict. c. 110, was issued. It extends to 53 pages, and, as a matter of course, "railway projects" are conspicuously prominent in the details. The next return will probably shew a great many "building societies." By the section mentioned, the registrar is required annually to make his report under twelve different heads:—1. Companies provisionally registered. 2. Companies completely registered. 3. Cases in which application has been made for the enforcement of penalties for failure to register, and the result of the proceedings thereon. 4. Companies provisionally registered, but not completely registered in the year. 5. Regulations made by the Committee of Privy Council for Trade, with regard to the returns required to be made by the companies. 6. Return of persons appointed to the office of registrar of joint-stock companies, and other officers and clerks, and their salaries, &c. and the rules for the regulation of the said office. 7. Return of the amount of all fees paid at the offices for the registration of joint-stock companies. 8. Scale of fees appointed by the Lords of her Majesty's Treasury for the services performed by the registrar, and amount of such fees. 9. Causes in which companies have failed to appoint auditors, and the proceedings taken thereon. 10. Return of prosecutions under the Act for offences not before specified. 11. Return of the number of bankruptcies of joint-stock companies, and the amount of debts and assets of such companies. 12. Modifications made by the Committee of Privy Council for Trade in the conditions and regulations to be observed by companies. Information is afforded under the several heads, and it would have been an improvement provided a classification of the projects registered had been made. It seems that 1,520 joint-stock companies were provisionally registered last year, of which railways form the principal portion. Only "457" were completely registered in the year, some of which do not appear in the class "provisionally registered," having been either registered in the year preceding, or registered as existing previous to 1st November, 1844 (when the Act came into force). Of the fifty-seven there are only four railways. Under the third head already mentioned the return is nil. Under the fourth it appears that 1,464 companies in the year "provisionally registered," but did not in the time become completely registered. By the Act, the provisional registration is for a certain period, mentioned therein. Under the fifth head the return is nil; and under the next the officers appointed are mentioned. It appears that the total fees paid at the office in London in the year amounted to 9,857l. 19s. 9d. for which 7,190l. was paid for certificates of provisional registration, and only 36l. for renewals of the same (the fee for registration being 5l. 6s.). The fees paid at the branch office in Dublin amounted to 505l. 9d. of which 410l. was for certificates of provisional registration, and only 15l. for certificates of complete registration. The total fees in London and Dublin, on account of joint-stock companies in the year, amounted to 10,363l. 0s. 6d. Under the three next heads the return is nil. Under the eleventh, it appears that only one bankruptcy had occurred—"The Forth Marine Insurance Company;" the debts and assets had not been ascertained when the return was prepared. The Board of Trade, under the twelfth head, modified the deed, &c. of the Lewes Gas-Light Company. The returns are signed by Mr. F. Rogers, the Registrar of Joint-Stock Companies.

PRIVATE BILLS.—Lists for committees.

NAVY.—Statement of excess of expenditure for the year ending 31st March, 1845, beyond the grants for the year—44,420l. 6s. 10d.

H. S. CHAPMAN, Esq. (New Zealand).—Copies of the documents relating to the appointment of Mr. Chapman as a Judge of the Supreme Court at Wellington, in 1843.

TRADE AND NAVIGATION.—Returns for the year ending 5th January, 1846.

LUNATICS.—Returns made to the Lord Chancellor by the Commissioners in Lunacy, under 8 & 9 Vict. c. 100.

SUGAR.—Further correspondence respecting the claim of Spain, that the sugars of Cuba and Porto Rico should be admitted into the United Kingdom upon the same terms as the sugars of the United States and of Venezuela.

POPULATION, POOR-RATES, &c.—Returns of the population, the amount levied for poor-rates, and the ratio of the amount levied to the population, in each county of England and Wales, for the years ending Lady-day 1813, 1824, 1834, and 1844. Also, of the amount levied for poor-rates in England and Wales (exclusive of Kent, Middlesex, and Surrey) for the years ending Lady-day 1826 and 1841, with the amount and the proportion per cent. levied on landed property, dwelling-houses, and other kinds of property. Also an account of the expenses of medical relief in each union and parish of England and Wales,

under the regulations of the Poor-law Commissioners, for each of the three years ending Lady-day, 1845, together with the total cost of relief to the poor in each union. The general ratio of poor-rates to population in England and Wales appears to have been, in 1813, 17s. per head; in 1844, it was only 8s. 7d. per head, or about one-half. Among the counties, the ratio seems to rise pretty regularly in proportion as the district is purely agricultural; and to fall nearly with the extent of employment afforded in mines, manufactures, &c. The three highest (in 1844) are Essex, Huntingdon, and Wilts, average 12s. 5d. per head,—the three lowest, Chester, Cornwall, and Cumberland, average 5s. 5d. per head. The amount expended in medical relief in England and Wales, in 1844, was 157,409l. showing a slight increase on the previous years.

Bills in Progress.

HIGHWAYS.—The Government Bill on this subject, brought into the Commons last week, renders it compulsory on the part of parishes and districts to combine for the management of the highways. Under the existing Act (5 & 6 Wm. 4, c. 50), a permissive power to combine is given; but so few parishes have availed themselves of the advantage, that it is deemed advisable to make the arrangement compulsory. The sum levied annually in England for highway-rates amounts to 1,600,000l.; and the number of officers employed in managing the rate and the highways is from 14,000, to 15,000. Under the compulsory system it is expected that from 500 to 600 persons will suffice. The new Bill repeals the present Act, and consists of 116 clauses; but with the exception of thirty-five, they are merely a re-enactment of the present law, with very slight modifications. Certain parishes are to be united, and the districts thus formed are to be placed under the management of local boards, the repairs of the highways in each being conducted by a competent paid surveyor. The formation of the districts is to be arranged by the Commissioners of Enclosure; and these gentlemen are to perform important functions of various kinds under the Bill when passed. The Board in each district is to be elected for two years, by the rate-payers of the several parishes; each of which is to be represented by one or more waywardens, as the Commissioners of Enclosure shall determine. No hamlet or division of a parish containing less than four miles of highway is to have a separate waywarden, but is to be combined for highway purposes with the parish of which it forms part. The waywardens, when elected, are to serve for two years. They are to be elected precisely in the same manner and according to the same scale of voting as the guardians of the poor. They are to appoint a district surveyor, a clerk, and treasurer—the latter unpaid, as he would probably be the banker of the district; and they are to fix the salaries of the two former, subject to the approval of the Enclosure Commissioners. At the annual meeting the accounts are to be submitted, and at the same time the surveyor is to present his estimate of the probable expenses of maintaining the several highways in the district for the ensuing year. He is to have power, with the unanimous consent of the waywardens, to convert the charge into a union, instead of a township or parochial charge. Except where it is settled otherwise by such consent, there will be two rates to be contributed by the parishes of each district,—first, a rate for the joint expenses of the district, viz. the salaries of officers and necessary expenses of the board; the Commissioners of Enclosure to determine in what proportion each of the constituent parishes is to contribute to this rate: second, a rate for the separate repairs of the highways in each parish. The accounts are to be audited by the poor-law auditor. It is also proposed that the maximum to be levied, viz. 10d. at one time, or 2s. 6d. in the pound per annum, shall be retained as in the repealed Act. South Wales is exempted from the operation of the Act.

THE WIND UP.

Ministers have lost no time in fulfilling the promise given by Sir Robert Peel on Wednesday last, that directors of railway companies, and through them shareholders, should without delay be put in possession of an outline of the Government measure for facilitating the wind up of their speculations. The following circular and inclosure have been forwarded to all provisionally registered railway companies from the Joint Stock Companies Registry Office:—

"Joint Stock Companies Registry Office,
Serjeants'-inn, April 11, 1846.

"Gentlemen,—I annex a copy of a letter which I have received from the Lords of the Committee of Privy Council for Trade, and which I am directed to communicate to such provisionally registered railway companies as it may concern. I forward it to you, as I do not perceive that your company has notified to this office either its dissolution or its incorpora-

tion by Act of Parliament.—I am, Gentlemen, your obedient servant,

"FREDERICK ROGERS,

"Register of Joint Stock Companies."

"Office of Committee of Privy Council for Trade,
Whitehall, 9th April, 1846.

"Sir,—I am directed by the Lords of the Committee of Privy Council for Trade to communicate to you the following information with a view to your making it known, with the least possible delay, to those provisionally registered railway companies to which it relates.

"It is the intention of her Majesty's Government immediately after Easter to propose to Parliament a Bill to enable any railway company, which at the time of the passing of the Bill shall not have obtained an Act of Parliament, to dissolve itself.

"By the Bill it is intended to provide for the calling of a meeting of the shareholders, either by the managing body, or by a given number of shareholders, at which meeting it is intended that the holders of a majority of the shares in the company, or the holders of three-fifths of the shares belonging to those present or represented by proxy at the meeting, shall have the power to determine upon the dissolution of the company.

"Due provision will be made for a sufficient public notice being given of the time and place of meeting, and of the mode in which absent shareholders are to be represented by proxy.

"Upon the dissolution being carried at the meeting, the property of the company is to become vested forthwith in certain persons to be appointed for the purpose of winding up the concern, and after discharging the liabilities, for distributing the surplus.

"The actual holders of scrip are to be taken as shareholders entitled by themselves, or their proxies, to attend the meeting.—I have the honour to be, Sir, your obedient servant,

(Signed)

"JOHN LEFEVRE.

"F. Rogers, esq. &c. &c."

THE MAGISTRATE.

Summary.

No topic of interest has engaged attention during the holidays.

POINTS IN MAGISTRATES' LAW.

CONSTRUCTION OF THE WORD "FORTHWITH."

THE 4th section of statute 7 & 8 Vict. c. 101 (the Bastardy Act,) provides for an appeal by the putative father against an order in bastardy, as follows:—"And if, within 24 hours after the adjudication and making of any order on the putative father, as aforesaid, such putative father give notice of appeal to the mother of the bastard child, and also within seven days give sufficient security, by recognizance or otherwise, for the payment of costs, to the satisfaction of some one justice of the peace, it shall be lawful for such putative father to appeal to the general quarter sessions of the peace to be holden after the period of fourteen days next after the making of the said order, &c."

And the Amendment Act, 8 Vict. c. 10, s. 3, enacts that "in respect of any order to be made after the passing of this Act, the party entering into any such recognizance shall forthwith give or send a notice in writing of his having so entered into such recognizance to the woman in whose favour the said order shall have been made.

At the last quarter sessions the construction of the word "forthwith" in this section came under discussion.

In that case the putative father had suffered eight days to elapse between the time of entering into the recognizance and giving notice of such recognizance to the mother.

It was contended that this was not a compliance with the statute, which requires the notice to be given forthwith. This word, in its ordinary sense, was equivalent to "immediately," "without delay;" in its legal sense it means as soon as practicable. In this case, allowing the utmost latitude of construction, eight days could not be said to be "forthwith." It would involve this practical difficulty—that if the putative father were to take the seven days allowed to find recognizances, and then eight days to give notice of their being completed, and the appeal were to be within fourteen days from the making of the order, the mother might receive no notice at all. Besides, the whole spirit of the Act is to discourage appeals and protect the mother. Notice of appeal must be given within twenty-four hours; then the reasonable period of seven days was allowed to the appellant to procure sureties; and then, going back to its first strictness, the

notice of the recognizance was to be given "forthwith," such notice being equivalent to a notice of trial.

On the other hand, it was strongly urged that the word "forthwith" was to be construed liberally, and that it meant in law a reasonable period. In this case no practical inconvenience had arisen, and the mother had in fact ample notice.

The Court, however, held that the statute had not been complied with.

In the same case, a question was raised as to costs. The statute empowers the justices to "order such costs to be paid by either party as to them or him may seem fit." Costs were refused to the respondent, on the ground that the decision was purely on a technical objection, and not on the merits.

But it appears to us that this rule, excellent as it is when applied to an appellant, bears very hardly against a respondent, who is forced into court against her will, and, being there, is bound to take every objection of law as well as of fact. If the rule were to be generally applied, there would be no end to appeals in bastardy; the rich father would successfully struggle against the poor mother, and the object of the law would be defeated.

E. W. C.

NEW SETTLEMENT BILL.

TO THE EDITOR OF THE LAW TIMES.

SIR,—F's letter and his form of petition, which appear in your paper of the 11th inst. have called to my recollection that on reading the copy of that Bill, as inserted in one of your late papers, I fancied I discovered that it would not affect settlements in, or removals from, townships.

This pressed so much upon my mind as to induce me to address Sir James Graham upon it; and I then took leave to suggest to him that, as the law now stands, removing townships, parishes, or unions, are hardly dealt with in this; that, if they effect a removal of paupers, they are compelled to lose the expenses of procuring the order, which, in some instances, have been equal in amount to the maintenance of the paupers for some years.

This I submitted was capable of remedy in the following manner:—

By enabling the removing parish, township, or union officers to give notice to the officers of the parish, township, or union supposed to be the place of settlement of the paupers that it is intended on a day and at an hour, and place named, to apply to two justices for an order for the removal of the paupers; at which time and place the officers of the township, parish, or union to which it is intended to remove the paupers may, if they see fit, attend by themselves, their counsel, or attorney, and cross-examine the witnesses and examine the documentary evidence to be adduced by the removing township, parish, or union. And by giving the magistrates power to order, if they see fit, repayment by the respondent officers to the applying officers of their expenses in obtaining the order of removal.

It has since been suggested to me by an intelligent member of the board of guardians for this district, that with the notice of intention to apply, copies of the evidence intended to be adduced ought to be sent; and this, I think, would be a great addition to my plan.

Because the officers so served would have an opportunity, before attending the magistrates, of ascertaining how far they could hope to alter the facts disclosed by the evidence, and might with propriety accept the paupers as proposed by the bill, or by their cross-examination of the *vis a voce* evidence discover grounds to justify the justices in withholding an order of removal.

This plan would not do away with the right of appeal; but would much lessen the chance of necessity for it.

And would lead to meetings of the parish officers, and, whilst securing the rights of every one, would much lessen litigation.

I am, Sir, Yours, &c.,

A. T. STRAVENSON.

Darlington, April 13, 1846.

THE PRACTICE OF SUMMARY CONVICTIONS.

By T. W. SAUNDERS, Esq. Barrister-at-Law.

(Continued from page 14.)

PART III.—CHAPTER V.

The warrant of commitment.

THE power to commit a defendant to prison upon a summary conviction being altogether of statutory origin, and in some degree repugnant to the principles of the common law, must be exercised with caution, since it is ever watched with jealousy. Such commitments are inflicted either as original

punishments or as a consequence of the non-payment of the penalty or costs imposed, or other disobedience to the order of the justices. In these cases the enactments applicable to the individual cases should be consulted and strictly pursued. It has before been seen (*ante*, page 49) that, by the 5 Geo. 4, c. 18, s. 1, whenever a penalty is directed to be recovered, and the justices, in default of payment, may distrain on the offender's goods, and may commit him if a sufficient distress for the whole penalty and costs cannot be found, the justice may order him to be detained in custody until the return of the warrant of distress, unless the defendant shall give security for his appearance at such return, and that in case it shall appear by the confession of the defendant or otherwise that he has not sufficient goods to satisfy all the penalty and costs, the justice may, at his discretion, without issuing a warrant of distress, commit the defendant for such period, and in like manner as if a warrant of distress had issued and *nulla bona* returned; and also, by s. 2, that whenever penalties are directed to be recovered by distress, but no remedy is provided, where sufficient distress cannot be found, or in case it shall appear that the defendant has not sufficient goods within the justice's jurisdiction, the justice may proceed in like manner as upon a return of *nulla bona*, and may commit the offender to the common gaol for any term not exceeding three calendar months, unless the sum adjudged to be paid and the costs shall be sooner paid; and that, by sec. 4, the justice is empowered, where it shall appear to him that the recovery of the penalty is likely to be attended with rainous consequences to the defendant, to withhold any warrant of distress, and to commit the offender instead, provided it be with the consent in writing of the defendant. It has also been seen (page 43) that, by the 18 Geo. 3, c. 19, where any complaint shall be made before any justice of the peace, and any summons or warrant shall in consequence have issued, it shall be lawful for any justice, who shall have heard and determined the matter of the complaint, to award costs to be paid by either of the parties to the party injured; and in case of default, or of not giving security for the same, to the satisfaction of the justice, he may by warrant cause the said sum to be levied by distress and sale of the goods of the party, and, in default of goods, he may commit such party to the House of Correction for any time not exceeding one month, nor less than ten days, or until such sum, together with the expenses of the commitment, be first paid.

The foregoing enactments should be borne in mind in all cases in which a commitment is about to be made as a subsidiary punishment in default of payment of a penalty, since, should the commitment be made primarily when it is only authorised to be made in default of payment or a sufficient distress being had, it will be bad, and will expose the magistrate to an action of trespass for assault and false imprisonment.

It has been seen (page 50) that where a defendant is convicted in one penalty under a statute inflicting imprisonment on the failure of a sufficient distress, and he has goods sufficient to satisfy a part only of the amount to be distrained for, the goods ought not to be taken at all, but the imprisonment should be inflicted; but where he is separately convicted in two penalties, and his goods are sufficient to satisfy one penalty but not the other, they ought to be distrained upon for the one penalty, and the imprisonment should be imposed for the other. (*R. v. Wyatt*, 2 Lord Raym. 1195, 11 Mod. 54.)

When a defendant is committed for a second offence, the imprisonment may be directed to commence at the determination of the first imprisonment. (*R. v. Wilkes*, 4 Burr. 2577.)

In every case in which the imprisonment takes place as a substituted or subsidiary punishment, the fact and reason of its being such should be stated upon the face of the warrant of commitment.

Form and requisites of the warrant of commitment.—The commitment is usually made by the justices, or one of them, who convicted the defendant; but by the 3 Geo. 4, c. 23, s. 2, a commitment may in all cases be made by one justice, even though the conviction must be made by two, and this whether such justice were one of the justices making the conviction or not. Where, however, the Act of Parliament providing for the conviction requires the justices who make the conviction to be the same who grant the summons, a conviction not by the same justice will be bad, and a warrant

issued thereupon will consequently be illegal. (*Jones v. Gurdon*, 2 Q.B. 600.)

The warrant of commitment must in all cases be in writing (2 Hawk. c. 16, s. 13; *Hutchinson v. Lowndes*, 4 B. & Ad. 118), under the hand and seal of the justice by whom it is made, and should be directed to the officer who is to apprehend the defendant, and the gaoler (*R. v. Smith*, 2 Stra. 934) into whose custody he is to be delivered. When the justices have authority to detain a defendant in custody until return shall be made to a warrant of distress, such order of detainer need not be in writing. (*Still v. Walls*, 7 East, 533.) The warrant also should describe the justice by whom it was granted, shewing his authority, and designating him according to his style and jurisdiction. (*R. v. York*, 5 Barr. 2684; *Ex parte Addis*, 2 Dow. & Ry. 167; 2 Hawk. c. 16, s. 13.)

The cause of the commitment must be stated with clearness, and it must shew that the complaint was one over which the justice had jurisdiction. (*R. v. King*, 13 L.J. M.C. 43; *Johnson v. Reid*, 6 M. & W. 124; *R. v. Chaney*, 6 Dowl. 281; *Re Peerless*, 1 Q.B. 143.) And it must state specifically that the defendant was convicted of the offence, which fact must not be left to inference. (*R. v. Rhodes*, 4 T.R. 220; *R. v. Cooper*, 6 T.R. 509.) So, too, there must be no ambiguity in the description of the offence, but it must be stated with certainty. (*R. v. Harpur*, 1 Dow. & Ry. 222; *R. v. Dugger*, 5 B. & Ald. 791; *Re Copestick*, 1 New Sess. Ca. 181.) It must not state the offence in the alternative or disjunctive. (*R. v. North*, 6 Dow. & Ry. 143; *R. v. Pain*, 7 Dow. & Ry. 678.) In general it will be sufficient to follow the words of the statute (*R. v. Remnant*, 5 T.R. 169), but there are many cases which have already been referred to in which this may not be enough. (*Reg. v. Chaney*, 6 Dowl. 281; *Re Fletcher*, 13 L.J. M.C. 16; *Fletcher v. Culikarp*, 1 New Sess. Ca. 529; *Reg. v. Johnson*, 2 New Sess. Ca. 170.)

It is never necessary, in a mere warrant, to set out the evidence (*R. v. Waller*, 8 Mod. 5), but where the warrant is itself in the nature of a conviction it has all the attributes of this latter description of instruments; therefore a warrant of commitment under the 4 Geo. 4, c. 54, which is in effect a conviction also, was set aside in *Rex v. Tordoff*; 5 Q.B. 933; 1 New Sess. Ca. 171, for not shewing that the witnesses had been examined in the defendant's presence; and also in *Re Gray*, 1 New Sess. Ca. 354; 1 New Mag. Ca. 116, S.C. for not stating that the evidence was given upon oath. (*R. v. Lewis*, 13 L.J. M.C. 46.) It is, however, imperatively necessary to shew clearly all that is required to give the justice jurisdiction. (*Wilkins v. Wright*, 2 Crom. & M. 191; *R. v. King*, 13 L.J. M.C. 43; *Wicks v. Clutterbuck*, 4 Bing. 333; *R. v. Johnson*, 7 Dowl. 702; *Johnson v. Reid*, 6 M. & W. 124; *R. v. Peerless*, 1 Q.B. 143.)

So the commitment must correspond with the conviction in every material particular, for if it shew an offence of a different nature, it will be bad. (*Rogers v. Jones*, 3 B. & C. 409; *Wood v. Fenwick*, 10 M. & W. 195; *Daniel v. Philipps*, 1 C.M. & R. 662.)

The warrant must be precise as to the time and manner of the defendant's imprisonment, and of the conditions of his discharge. Where, therefore, a party was committed to prison for three months, and the warrant omitted the day of the month upon which it was granted, the imprisonment was held bad. (*Re Fletcher*, 13 L.J. M.C. 16.) It should specify clearly whether the imprisonment is for a certain time, at all events, or only until the payment of a penalty, &c. (*Dr. Groenvelt's case*, 1 Lord Raym. 213; *R. v. Rogers*, 1 Dow. & Ry. 156; *R. v. Helps*, 3 M. & S. 331; *Ex parte Addis*, 2 Dow. & Ry. 167), and should not direct him to remain in confinement until discharged by due course of law. (*Foxley's case*, 1 Salk. 351; *R. v. Barnes*, 2 Stra. 917; *R. v. Hall*, 3 Burr. 1636; *Robson v. Spearman*, 3 B. & Ald. 493.)

The condition upon which the defendant is to be discharged should be plainly stated, such as the payment of a certain sum of money or otherwise. (*Groome v. Forrester*, 5 M. & S. 314; *Ex parte Leake*, 9 B. & C. 234; *Robson v. Spearman*, *supra*; *R. v. Elwell*, 2 Lord Raym. 1575; *R. v. Hall*, Cowp. 60; *R. v. Catherall*, Fitz. 266; *R. v. Payne*, 4 Dow. & Ry. 72; *R. v. Rogers*, 2 B. & Ald. 778; see also *Re Reynolds*, 1 New Sess. Ca. 51.) The warrant also should state to whom the amount (if any) is to be paid. (*R. v. Helps*, 3 M. & S. 331.)

The warrant should be accurately dated; but if not issued too soon, it will not be vitiated by being dated before the proper time. (*Newman v. Hardwicke*, 3 Nev. & Per. 368.)

If the warrant be bad in part, it is bad for the whole. (*Ex parte Addis*, 2 Dow. & Ry. 167; *Morgan v. Brown*, 6 Nev. & Man. 57; *Goff's case*, 3 M. & S. 203.)

Some Acts of Parliament give justices a power to amend a warrant of commitment, but where such an amendment takes place under such an authority, the fact of its being so, should clearly be shewn upon the amended warrant. (*Re Elmy and Sawyer*, 1 Ad. & Ell. 843; 3 Nev. and Man. 733, S.C.) As a general rule, however, warrants of commitment cannot be amended after they are once signed and sealed, and in this respect they are like orders of justices; where, however, a return to a *habeas corpus* stated that the prisoner was committed for three months, by warrant of a justice (set forth in the return), reciting a conviction by the justice on which the warrant purported to proceed, for an offence under stat. 4 Geo. 4, c. 34, s. 3, the recited conviction in which was bad; and the return then stated that a week after such commitment, the prisoner being still in custody, the same justice delivered to the gaoler another warrant of commitment, reciting and grounded upon a conviction of the same date as the first, by the same justice, setting forth the same offence, and imposing the same punishment, in which conviction no material defect appeared; it was held that the prisoner was not entitled to be discharged; the return shewing a good warrant under which he was in custody. (*Reg. v. Richards and Others*, 5 Q.B. 926; *Reg. v. Walker and Others*, 1 New Sess. Ca. 182, S.C.) In this case it appeared to be admitted, upon the authority of *Elmy and Sawyer's case*, *supra*, that a warrant of commitment can be amended after it is issued, a position the very reverse to that which that case bears out. In that case, *Elmy and Sawyer* were convicted under the Smuggling Act, 3 & 4 Wm. 4, c. 53, and committed to gaol until they should pay a certain forfeiture. Section 90 of that Act empowered justices to amend any conviction or warrant of commitment. Four days after the commitment, the warrant, which was defective in point of law, was withdrawn from the gaoler's possession and another substituted, it not appearing by whom. The second warrant was of the same date, and signed and sealed by the same justices as the first, and did not materially differ from it, except that in the recital of the conviction certain words were said to be adapted for "slinging" casks instead of "slinging or sinking," and the name of the place at which the party was said to have been detained for his offence was altered. The above facts and copies of the warrants being returned on *certiorari* and *habeas*, the Court held that they could not presume, either from the facts returned or from the warrants, that the second warrant was substituted by the justices as an amendment of the first, in pursuance of the authority given them by the Act; and the prisoners were therefore ordered to be discharged. This, then, is an express authority that (except where a power is given by the statute) a good warrant cannot be substituted for a bad one; and if this point had been made in *Reg. v. Richards and Others*, it is difficult to see how the decision which was pronounced in that case could have been come to, since it clearly appeared by the gaoler's return that the second warrants, upon which he detained the prisoners, were nullities, from the fact of their having been made long after the committal of the parties for the offence with which they were charged by them.

As a general rule, if there be a warrant of commitment defective in form, and it shews a conviction, the conviction itself should be brought before the Court, together with the warrant, and if the conviction appear to be good, the Court will not interfere (*R. v. Taylor*, 7 Dow. & Ry. 622); but where the writ of *certiorari* is taken away from the defendant, so that he cannot remove the conviction, the Court will assume that the warrant correctly sets out the conviction; and if this appears to be defective, will discharge the defendant, it being the duty of the prosecutor in such cases to bring the conviction before the Court. (*R. v. Chaney*, 6 Dowl. 281.)

It has already been seen, that where the defendant is of sufficient ability to pay the expenses of his committal to gaol, they may be recovered of him by distress. (3 Jac. 1, c. 10; 27 Geo. 2, c. 3.)

The warrant of commitment, unless it be made returnable at a certain time, remains in force until it is executed, however long, if the magistrate granting it be living. It cannot be executed on a Sunday (*R. v. Myers*, 1 T. R. 265); and if the defendant tender the amount for which he is apprehended to the officer, it should be taken, and the prisoner set at liberty (*Smith v. Sibson*, 1 Wils. 153); and by the 3rd section of the 5 Geo. 4, c. 18, it is enacted that "if the offender, after commitment to prison, shall pay the amount of the penalty and the costs, he shall be forthwith discharged." If the defendant requires it, a copy of the warrant should be given to him (see the chapter on *Habeas Corpus*); and by the Habeas Corpus Act, 31 Car. 2, c. 2, s. 5, a gaoler is subject to a heavy penalty for neglecting to give a copy of the warrant within six hours after demand.

The manner of executing a warrant has before been shown. (Part 2, chap. 1, p. 46, *ante*.)

It may here be observed that by some Acts of Parliament, as the 7 & 8 Geo. 4, c. 29, s. 73 (the Larceny Act); 7 & 8 Geo. 4, c. 30, s. 39 (the Malicious Mischief Act); 9 Geo. 4, c. 31 (the Act relating to offences against the person); and the 1 & 2 Wm. 4, c. 32, s. 45 (the Game Act), it is provided that no warrant of commitment on a conviction upon such Act shall be held to be void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there is a good and valid conviction to sustain the same. But as there is no general enactment upon the subject, a good conviction will not help a bad warrant where the statute providing for the proceedings does not contain such a clause. (*Wickes v. Cluttorch*, 2 Bing. 485.)

If the defendant be in custody upon an insufficient warrant, his immediate means of release are by a writ of *habeas corpus*.

(To be continued.)

TAWELL'S CONFESSION.—At the meeting of the Bench magistrates in quarter session last week, a resolution, moved by Dr. Lee, was carried by six to three majority, calling on the chaplain, the Rev. Mr. Cox, to give up the document handed him by Tawell just before his execution. Mr. Cox, who was in court just before the vote was taken, said, "I have made up my mind from the first that no earthly power shall extort from me that which was committed to my custody, let the consequences be what they may. I do not hesitate to say that, standing up in conference with a fellow-creature on the brink of eternity, and on being supplicated by him, I consented to hold as private and confidential that which was committed to me. I did give that promise."

The following building has been duly registered for the solemnisation of marriages, pursuant to the Act of the 6 & 7 Wm. 4, c. 85:—The Presbyterian meeting-house, situated at Shaw's-lane, in Altrincham, in the parish of Mowden, in the county of Chester, in the district of the Altrincham union.

THE LAWYER.

Summary.

THE term has begun with about the average quantity of business. But we understand that a vast number of writs have been issued, and a multitude of suits are in progress relative to railway affairs. These will probably occupy the *Nisi Prius* courts at the sittings after Term, but they will scarcely swell the term business till Michaelmas. It is, however, to be hoped, for the sake of all parties, that the government measure will enable an amicable arrangement to be made of all disputes, and a winding up of the affairs without further litigation. Until that Bill becomes law, it would be prudent to suspend proceedings of every kind. The question as to the liability of allottees is still fiercely debated, and the most contradictory opinions are given. Of this liability as a matter of fairness and justice there can be no doubt, but in affairs of this sort no man seems to dream of moral obligation. To save himself, he cares not what injustice he inflicts upon others. So the allottees, on the faith of whose agreement to pay their deposits the expenses were incurred, are now trying to shift the burden from themselves upon those who trusted to their promises, and some of the newspapers actually speak of a demand for contribution towards those expenses as extortion, and de-

nounce the attorneys for threatening proceedings. At least, the demandants have justice, if not law, on their side, and our strong opinion is that they have law as well as justice.

A rule was obtained yesterday in the important case of *Woolmer v. Toby*, on all the points reserved at the trial. We shall report it fully next week.

PROMOTIONS, APPOINTMENTS, ETC.

(Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.)

Her Majesty has been pleased to appoint R. Ingham, esq. Attorney-General, and J. L. Adolphus, esq. Solicitor-General, for the County of Durham.

POOR-LAW COMMISSION OFFICE, 80-MERSET-HOUSE, APRIL 7.

In pursuance of an Act passed in the session of Parliament held in the 4th and 5th years of the reign of his late Majesty King William IV. cap. 76, intitled "An Act for the amendment and better administration of the Laws relating to the Poor in England and Wales:"

This is to give notice, that the Poor Law Commissioners have appointed John Thomas Graves, of the Inner Temple, esq. Barrister-at-Law, to be an Assistant Commissioner of Poor Laws; and that the said John Thomas Graves, on the 7th day of April instant, took the oath required by the said Act before the Hon. Mr. Justice Cresswell, one of the judges of her Majesty's Court of Common Pleas, at his chambers in Rolls'-gardens, Chancery-lane.

By order of the Board,
EDWIN CHADWICK, Secretary.

In pursuance of an Act passed in the session of Parliament held in the 4th and 5th years of the reign of his late Majesty King William IV. cap. 76, intitled "An Act for the amendment and better administration of the laws relating to the poor in England and Wales:"

This is to give notice, that the Poor Law Commissioners have appointed John Ball, of No. 85, Stephen's-green, Dublin, esq. barrister-at-law, to be an Assistant Commissioner of Poor Laws for a period of six months from the 2nd day of April instant; and that the said John Ball, on the 3rd day of April instant, took the oath required by the said Act before the Hon. Mr. Justice Cresswell, one of the judges of her Majesty's Court of Common Pleas, at his chambers in Rolls'-gardens, Chancery-lane.

By order of the Board,
EDWIN CHADWICK, Secretary.

This is to notify that, in pursuance of an Act passed in the session of Parliament held in the 1st and 2nd years of the reign of her Majesty Queen Victoria, intitled "An Act for the more effectual relief of the destitute poor in Ireland," the Poor Law Commissioners have directed John Ball, esq. Assistant Poor Law Commissioner, to carry the provisions of the said Act into execution.

By order of the Board,
EDWIN CHADWICK, Secretary.

The Lord Chancellor has appointed Octavius Green, of Cambridge, in the county of Cambridge, gent. to be a Master Extraordinary in the High Court of Chancery.

CROWN OFFICE, APRIL 17.—MEMBERS RETURNED TO SERVE IN THIS PRESENT PARLIAMENT.—Borough of Richmond, Henry Rich, esq. in the room of the Hon. Wm. Nicholas Ridley Colborne, deceased.—Borough of Malton, the Hon. Wm. Thos. Spencer Westworth Fitzwilliam, commonly called Viscount Milton, in the room of John Walbank Childers, esq. who has accepted the office of Steward of her Majesty's Chiltern Hundreds.

COMMISSIONS SIGNED BY LORDS-LIEUTENANT.
TOWER HAMLETS.—G. C. Redman, esq.; A. W. Beetham, esq. to be Deputy Lieutenants.

COUNTY OF HEREFORD.—F. R. Haggitt, esq. to be Deputy Lieutenant.

COUNTY OF OXFORD.—Col. H. Dawkins; R. B. Marham, esq.; J. S. Phillips, esq. to be Deputy Lieutenants.

COUNTY OF DURHAM.—W. B. Gardyne, esq. and Lieut.-col. J. Dalgarra to be Deputy Lieutenants.

COUNTY OF DURHAM.—Durham Militia.—J. R. Bowly, gent. to be Lieutenant.

COUNTY OF BUTE.—Lord Rossmore; Right Hon. J. S. Wortley; Lieut.-col. C. Stuart; A. Fallarton, esq.; R. McKirdy, esq.; W. Marshall, esq.; D. Salmon, esq.; A. Sharp, esq.; C. V. Stuart, esq.; N. Jamieson, esq. to be Deputy Lieutenants.

COURT PAPERS.

CHANCERY CAUSE LIST.

In and after Easter Term.

Before the LORD CHANCELLOR.

Strickland v. Strickland, 2	Ditchburn v. Cabbam
Vandelaar v. Blagrove	Bellamy v. Sabine
Ladbroke v. Smith	Attorney-general v. Maitland
Coomes v. Lewdase	Johnson v. Child
Minor v. Minor, 2	Kidd v. Maitland
Dalton v. Hayter	Dord v. Whitwick
Deeks v. Stanhope	Carmichael v. Carmichael
Turner v. Newport	Whitby v. Mowall
Attorney-gen. v. Maitland	Heming v. Swinerton
Wardens of Beistol	Trail v. Bull
Truelock v. Robey	Yonge v. Jones
Youngshead v. Gieborne	Wrightson v. Mearns
Whitworth v. Gangan	Lawrence v. Bewles
Shah v. Shipman	Gompertz v. Gompertz, 2
Black v. Chaytor	Morris v. Howes, 2
Mitford v. Reynolds, 2	Thomas v. Blinham
Thwaites v. Foreman	Bonds v. Slyman
Watts v. Lord Eglintoun	Jones v. Mangan
Curren v. Belworthy	Cooper v. Picher
Watson v. Parker	Safield, v. Johnson.

Before the VICE-CHANCELLOR OF ENGLAND.

De Beauvoir v. De Beauvoir	Dorville v. Wolf
Hardy v. Hull	Beck v. Hunt
Duke of Leeds v. Lord Amhurst	Bates v. Richardson
Bryan v. Twigg, 6	Rodgers v. Mowall
Blackwell v. Bryan	Cutshall v. Homer
Friswell v. King	Richards v. Patterson
Attorney-general v. Earl of Devon	Reach v. Downer
Henderson v. Eason	Bowbar v. Bowbar
Terry v. Wecher	Hutchinson v. Alinger
Simmons v. Holt	Clarks v. Bell, 2
Garrod v. Moor	Attorney-gen. v. Smith, 2
Smale v. Beckford, 2	Brooks v. Southwicks
Peacock v. Kearnst	Woodman v. Madgen
Morrison v. Watkins	Jones v. Jones
Wright v. Barnwell	Bird v. Lucas
Greenway v. Buchanan	Mills v. Fisher
Walton v. Morritt	Hawthorne v. Lyell
Parker v. Hawkes	Attorney-gen. v. Parnes
Dawson v. Bagley	Crook v. Parnes
Penny v. Turner	Kempson v. Abbott
Gifford v. Withington	Tyson v. Adams
Daniell v. Hill	Dawson v. Chappell
Isaels v. Featherstonhaugh	Andrew v. Moon
Lane v. Durant	Higham v. Hewis
Pocock v. Johnson	Wait v. Horton
Cope v. Lewis	Parlor v. Donelson
Evans v. Stanger	Bryan v. Twigg
Attorney-gen. v. Trevanion	Sheldrake v. Gray
Sturt v. Cooke	Stanger v. Gray
Blundell v. Gladstone, 4	Flight v. Bushby
Hedgkinson v. Barrow	Groom v. Stinton
Colbourn v. Colling	Vallance v. Parnell
Langton v. Langton, 2	Ford v. Wastell
Gowar v. Bennett	Allen v. Knight
Rickson v. Smith	Corbett v. Lambick
Palmer v. Pattison	Farmor v. Earl Pender
Minter v. Wraith	Ward v. Ward
Mason v. Wakeman	Alinger v. Miller
Hemmings v. Spiers	Leadbury v. Parks
Chambers v. Waters	Ash v. Hale
Lord Bunsford v. Archbp. of Armagh	Baxter v. Abbott
Smith v. Robinson	Patterson v. Wiles, 2
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Vale v. Sherwood, 7	Hickin v. Bury
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Branscomb v. Branscomb	Lander v. Kendall
Appleyard v. Owens	Bagshaw v. McNeill
Conquest v. Lenaghan	De Beauvoir v. De Beauvoir
Boag v. Robinson	Morris v. Ward
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BEFORE THE MASTER OF THE ROLLS.

Tristram v. Roberts, part heard	Lancaster v. Evans, 2
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Hope v. Hope, 2	Sanderson v. Dobson
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Richardson v. Horton, 2	Pleanty v. West
Attorney-General v. Bealing	Attorney-General v. Evans, 2
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Campbell v. Crook	Attorney-General v. Cyprien
Lethbridge v. Chetwode	tion of Lancaster
Augerand v. Parry	Martin v. Sedgewick
Hodgkinson v. Cooper	Wilson v. Sir W. Edm
Hedges v. Harper	Brown v. Balfitt
Lockhart v. Hardy	Stone v. Stone
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Hardy v. Arndell	Suckmore v. Dimes, 2
Lockhart v. Lee	Jones v. Maurice, 2
Lockhart v. Hardy	Madgwick v. Madgwick
Lockhart v. Grouh	Conner v. Ainge
Mathews v. Bagshaw, 2	Jackson v. Jackson, 2
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Churchman v. Capon	Prior v. Watkins
Attorney-General v. Irons	Wedderburn v. Wedderburn, 2
goss' Company	Hodgkinson v. Wyatt
Home v. Sterling, 2	Clark v. Chish
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Barnes v. Hastings	Whitaker v. Pooley
Attorney-General v. Reese	Jones v. Jones
Gray v. Edwards, 2	Meire v. Williams
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Margrave v. Margrave	Baith v. Knapley, 2
	Meyer v. Mouton.

FOR JUDGMENT.

James v. Cooper
 Earl Nelson v. Lord Bridport
 Jaldenby v. Spofforth
 Jersling v. Parker
 Jialles v. Beanclick
 Jacks v. Tipping

Smith v. Radham
 Lockhart v. Hardy
 Bainsbridge v. Bainsbridge
 Nelson v. Duncombe
 Duncombe v. Nelson.

Before VICE-CHANCELLOR WIGRAM.

Atkinson v. Boyes
 Parr v. Bank of England
 Carr v. Gylby (3)
 Bell v. Bell
 Cooper v. Turner
 Day v. Wallis
 Hale v. Pease
 Cox v. Bernard
 M'William v. M'William
 East v. East
 Phillips v. McIntoshagen
 Richardson v. Corbett
 Blythe v. Blythe
 Hutton v. Hepworth
 Williams v. Hilditch

Beaman v. Beaman
 Steele v. Steele
 Edgar v. Davis
 Woods v. Woods
 Ranken v. Harwood
 Pole v. Harwood
 Tindal v. Jorlin
 Ward v. Key
 Lancaster v. Jackson
 Thomas v. Reynolds
 Meek v. Carter
 Balls v. Kingland
 Preston v. Wilson
 Rowland v. Mammel
 Woodman v. Phillips

Before VICE-CHANCELLOR KNIGHT BRUCE.

Leonard v. Sander
 Sutherland v. Cooke, 2
 Hulkes v. Hulkes
 Goodwin v. Gorwell
 Jay v. Knash
 Barnard v. Davis
 Attorney-General v. Clarke
 Taylor v. Taylor
 Barker v. Harrison
 Dunning v. Hards
 Hodgkins v. Hipkiss
 Chalmers v. Watmouth, 2
 Culley v. Pritchett
 Knight v. Greenwood
 Garmstone v. Gaunt
 Hall v. Austin
 Dickson v. Ward, 2
 Davies v. Archer
 Jenkins v. Gower
 Nichols v. Newman, 2
 Toombs v. Rock
 Wilder v. Bellingham
 Monckton v. Woodcock
 Chilton v. Rogers
 Barrow v. Harrison
 Follett v. Wesley
 Ploart v. Bishop of Hereford
 Eyre v. Green
 Williams v. Bland
 Glover v. Cockrell
 Middleton v. Wolf

Matchett v. Palmer
 Bove v. Shuttleworth
 Ashton v. Deleton
 Barham v. Dowager de Cirk
 ford, 3
 Morrell v. Fisher
 Rowe v. Hardy
 Marsh v. Marsh
 Parker v. Morrell, 3
 Watts v. Montgomery
 Hanwell v. Denton
 Roberts v. Humphreys, 3
 Holland v. King
 Cator v. Bidsont
 Andre v. Andre
 Davies v. Price
 Glover v. Powell
 Browne v. Mithe
 Wood v. Hardisty
 Morgan v. Pulley
 Robinson v. Sladden
 Taylor v. Ryland, 2
 Meade v. Whitmore
 Sanders v. Richards
 Attorney-General v. Mayor of
 Newcastle-upon-Tyne
 Boleau v. Radlin
 Hawthorne v. James
 Fugh v. Bambow
 Wilkes v. Higginson
 Thomas v. Fitch

COMMON LAW SITTINGS.

EXCHEQUEUR OF PLEAS.

Sittings at Nisi Prius in Middlesex and London, before the
 Right Hon. Sir FREDERICK POLLOCK, Knt. in and after
 Easter Term, 1846.

IN TERM.—MIDDLESEX.

1st sitting, Friday, April 17 | 2nd sitting, Friday, April 24
 3rd sitting, Monday, May 4

IN TERM.—LONDON.

1st sitting, Wed. April 22 | 2nd sitting, Thurs. Ap. 30
 And by adjournment, if necessary, Friday, May 1.

AFTER TERM.—MIDDLESEX.

Saturday May 9.

LONDON.

Monday, May 11, to adjourn only.

The Court will sit in Middlesex, at Nisi Prius in Term, by
 adjournment from day to day, until the Causes entered for
 the respective Middlesex sittings are disposed of.
 The Court will sit, during and after Term, at ten o'clock.

EASTER TERM EXAMINATION.

The examiners appointed for the examination of
 persons applying to be admitted attorneys, have fixed
 Thursday, the 30th day of April instant, at half-past
 nine in the forenoon, at the Hall of the Incorporated
 Law Society, in Chancery Lane, at ten o'clock pre-
 cisely, to take the examination. The articles of
 clerkship and assignment, if any, with answers to the
 questions as to due service, according to the regula-
 tions approved by the judges, must be left on or be-
 fore Wednesday the 22nd instant, with the secretary.
 Where the articles have not expired, but will ex-
 pire during the Term, the candidate may be examined
 conditionally, but the articles must be left within the
 first seven days of Term, and answers up to that
 time.

A paper of questions will be delivered to each can-
 didate, containing questions to be answered in writing,
 classed under the several heads of—1. Preliminary.
 2. Common and Statute Law, and Practice of the
 Courts. 3. Conveyancing. 4. Equity and Practice of
 the Courts. 5. Bankruptcy and Practice of the
 Courts. 6. Criminal Law, and Proceedings before
 Justices of the Peace.

Each candidate is required to answer all the preli-
 minary questions (No. 1.); and it is expected that he
 should answer in three or more of the other heads of
 inquiry—Common Law and Equity being two thereof.
 Law Society's Hall, 9th April, 1846.

LEGAL INTELLIGENCE.

BIRMINGHAM BOROUGH SESSIONS, APRIL 11.
CONVICTION OF A SHAM LAWYER,
AND SENTENCE TO SEVEN YEARS' TRANS-
PORTATION.

This morning after the grand jury had been impan-
 nelled before M. D. HILL, esq. Recorder of the bor-
 ough, a man named Thomas Latham was called on
 his recognizances to take his trial on a charge of hav-
 ing obtained money under false pretences.

Miller appeared for the prosecution; Miller for the
 prisoner, a person heretofore very respectably con-
 nected in the town.

The prisoner pleaded not guilty, and by permission
 of the Court was allowed to stand close to and in-
 struct his counsel.

There were five counts in the indictment. The first
 count charged that certain goods of one Peter Booth
 having been taken under a distress for rent, the pris-
 oner falsely represented to Booth that he was an
 attorney, and could cause the goods to be restored;
 and by that false pretence obtained from Booth cer-
 tain moneys amounting to 6s. 8d. with intent to de-
 fraud him thereof.

The second count charged the pretences to be only
 that the prisoner was an attorney.

The third count charged the prisoner, by similar
 false pretences as the first, with obtaining certain
 other money, amounting to 15s.

The fourth count charged a similar pretence to the
 second, and the obtaining 15s. thereby.

The fifth count charged the prisoner with falsely
 pretending to one Martha Collins, that he was an
 attorney, authorized to practise in the Borough Court
 of Birmingham, and by that pretence obtained from
 the said Martha Collins 10s. 8d. the moneys of her
 husband, John Collins, with intent to defraud him
 thereof.

Miller stated the case: he said the charges against
 the prisoner were of a serious nature. The present
 was a prosecution instituted for the purpose of
 putting a stop, if possible, to a system by which
 many great frauds might be, and were, in fact,
 daily being committed in Birmingham against a class
 of persons above all others least able to bear up
 against fraud. The facts of the case were these:—
 On the 10th of February last, a distress for 17. 17s. 6d.
 rent was put into the house of a man named
 Peter Booth, who lived in Windsor-street, and it was
 supposed by Booth that there had been something
 illegal in the proceedings. Booth's wife having pre-
 viously heard some account of the prisoner, went to
 his house in Bradford-street, and asked him whether
 he was a lawyer. The prisoner said he was, upon
 which Mrs. Booth told him about the distress which
 had been put into her house, and it was arranged
 that the prisoner should come to her residence and
 see her husband. The prisoner called according to
 promise, and Booth took the prosecution which had
 been adopted by his wife to ask the prisoner if he
 was a lawyer. The prisoner said he was, and he
 could get back their goods which had been distrained,
 if they would give him 6s. 8d. Booth said he would
 not mind giving that sum if the prisoner could do
 what he said. The prisoner said "he was just the
 man;" and having received the money he departed.
 In the evening, however, he returned again, and said
 he must have 17. 2s. to issue a writ against the land-
 lord, who had been acting in a very illegal manner.
 Booth asked the prisoner why he did not tell him
 that in the morning? The prisoner replied that he
 did not think of it; but it would be all quite imma-
 terial to Booth, as the prisoner would be sure to
 recover all the money back again, together with the
 goods. It was, in fact, just as easy as giving two
 halfpence in change of a penny-piece. Booth then
 said he had not the money, but he would borrow it,
 and he did raise 10s. The prisoner said he must have
 6s. more, and he would put the rest to him-
 self, as it was a dead robbery on the part of
 the landlord. Having thus obtained the last penny
 his poor dupes could borrow, he decamped,
 leaving the goods to be sold the following Mon-
 day. The second charge against the prisoner was for
 having obtained money from a poor woman, named
 Collins. Proceedings were taken against Collins in
 the Borough Court, and the day on which notice was
 served the prisoner called at the house of Collins, and
 said he was a lawyer of the Borough Court, and if she
 would give him 10s. 8d. he would stop further pro-
 ceedings. The poor woman gave him the money, and
 he left the house, saying all would be right. Unfor-
 tunately, all was not right. In a few days a declara-
 tion was filed. The prisoner called again, and on
 being told what had happened, he said, "That is just
 the very thing I wanted. Now I will make him pay
 10s." He then left to stop all further proceedings,
 and in a few days execution issued, and the poor
 person's goods were sold. These were the facts, which
 he (Miller) should prove against the prisoner; and he
 had no doubt the Recorder would tell the jury that if
 they believed that when the prisoner said he was a
 lawyer he meant to convey that he was an attorney,
 and that by means of that misrepresentation he ob-

tained the people's money, he would be guilty of
 obtaining money under false pretences.

Miller submitted that they ought not to go into
 evidence of the second offence upon the same charge.

The Recorder said it was admissible, but it was
 a rule founded in justice and mercy not to press the
 second offence under the same charge.

Miller abandoned the evidence in the case of Col-
 lins, and Booth and his wife having clearly proved
 their case against the prisoner.

Miller, on the part of the prisoner, submitted that
 there was no case, and that it was not punishable at
 common law for a person to propose to do that which
 an attorney might do. The prisoner's conduct might
 be an offence against the Act for the regulation of
 that profession, but at common law his conduct did
 not amount to a misdemeanour.

The Court desisted from Miller, and

The learned gentleman went to the jury and said,
 the facts were these:—The prisoner was clerk to Mr.
 Page, an attorney, and in that capacity he waited
 upon Booth and proposed to render him the required
 professional assistance. He had been known and
 recognised in the Borough Court as Page's clerk, and
 if such was the case, he could not be held guilty of the
 charge laid against him.

Miller then called witnesses to prove his statement,
 and in conclusion said, there was one witness he was
 most anxious to have examined. He meant Mr.
 Page. The prisoner's friends had been trying to pre-
 cure his attendance, but they could not.

The Recorder said, he would postpone the case,
 to afford time for Mr. Page to attend. A subpoena
 was then obtained, and a messenger discharged to
 serve it upon Mr. Page. In an hour the man re-
 turned, and said he had seen Mr. Page, and that
 gentleman had said "Very well," and gave him
 (witness) to understand he would come to court.
 This, however, he did not do, and the Recorder sent
 the messenger again, to tell Mr. Page that the Court
 was waiting for him. The messenger went, and re-
 turned with an answer that he had seen Mr. Page at
 his office, and was told by him that he had not
 received sufficient notice, and he could not attend, as
 he was going out on special business.

The Recorder then said, having heard the state-
 ment of the last witness on oath, he pronounced Mr.
 Page guilty of contempt, and should order a warrant
 to be forthwith issued for his apprehension.

A warrant was immediately placed in the hands of
 Tandy, a constable, who left the court in search of
 Mr. Page. In about an hour he returned, and said
 he had searched Mr. Page's office, and every place of
 resort where he thought it likely to find him, but in
 vain.

The Recorder then directed a writ to issue to the
 sheriff to attach Mr. Page for contempt.

Miller said he had no further evidence, upon which
 Miller replied, and contended, that according to the
 evidence the prisoner had said he was a lawyer, when,
 in fact, he was no attorney, what he meant to con-
 vey, and that if he had not so represented himself the
 parties would not have parted with their money.

The Recorder summed up the evidence with great
 precision, observing that the charge against the
 prisoner was one of a most serious nature. Before
 they convicted the prisoner they must be of opinion
 that he did represent himself to be an attorney, not
 by using the word attorney, but by using words in-
 tended by himself to be understood as such. They
 must be of opinion that the prisoner undertook to get
 back the goods, and they must be of opinion that
 all this was false and fraudulent on the part of the
 prisoner.

The jury, after a short consultation, found the
 prisoner guilty, with a recommendation to mercy.

The Recorder said the prisoner had been im-
 prisoned six months before for a fraud of a somewhat
 similar nature. The learned gentleman then addressed
 the prisoner in severe terms, and sentenced him
 to seven years' transportation.

AMERICAN LAWYERS' DIRECTORY.—We per-
 ceive that Judge Kiame, the well-known author of
 the Quarterly Law Compendium, has opened a Di-
 rectory in the Reading Room at the Astor House, in
 which are entered weekly the names and residences
 of all the subscribers to this excellent and popular
 work. The catalogue already contains the names of
 about eighteen hundred lawyers, scattered through
 some seven hundred towns and cities, and embracing
 every State in the Union. The plan strikes us as
 one of the very best modes of advertising that legal
 gentlemen could possibly have, and we should not be
 at all surprised if each of the thirty thousand lawyers
 in the United States should send in his name, with
 the dollar to back it, the moment he is led to reflect
 upon the great advantages to be gained from so small
 a sum. Besides getting the Quarterly Compendium,
 which is worth five dollars a year instead of one, con-
 taining as it does a valuable digest of all important
 cases reported in the United States and Great Brit-
 ain, every lawyer through the medium of this Direc-
 tory will have an opportunity of making himself
 known to the entire Profession throughout the coun-

try, as well as to merchants, who have frequent occasion for the services of distant attorneys. The list now numbers over five hundred legal gentlemen in the State of New York alone. We think it will be speedily doubled when it is known that the trifling sum of one dollar per annum, not only entitles subscribers to an annual volume of 250 pages of carefully condensed Reports, but affords through the Directory (which is "chained up" in the Astor Reading Room, and added also as an appendix to the Compendium) the best advertising facilities. Henceforth, when a merchant or lawyer in this city requires the transaction of law business in any State or town in the Union, he need only refer to this Directory to find a suitable correspondent. The advantages of the plan are too obvious to be dwelt upon; and no lawyer, who consults his own interest, will neglect to avail himself of them at once.—*New York Mirror.*

COMMITTEE OF A BANKRUPT.—At the Leeds District Bankruptcy Court on Monday last, James Ramsden, of Armley, near Leeds, cloth manufacturer, a bankrupt, was committed to York Castle, by Mr. Commissioner Burge, for not satisfactorily answering the questions propounded to him.

INCREASE OF ATTORNEYS.—The number of persons who have given the required notices, and complied with the regulations, as certified by the list issued from the Law Institution, of their intention to apply in the ensuing Easter Term to be admitted attorneys of the Court of Queen's Bench, amount to 147.

CHARITABLE BEQUESTS.—The late Rev. Christopher Wordsworth, D.D., rector of Buxted and Uckfield, late master of Trinity College, in the University of Cambridge, has left the following charitable bequests; free of legacy duty:—To the Incorporated Society for Promoting the Enlargement, Building, or Repairing of Churches and Chapels, 500*l.*; to the Incorporated National Society for Promoting the Education of the Poor in the Principles of the Established Church throughout England and Wales, 500*l.*; to the Incorporated Society for the Propagation of the Gospel in Foreign Parts, 500*l.* He directed that each servant (male and female) should have mourning and a year's wages. His freehold estate he has devised to his eldest son, the Rev. Charles Wordsworth, M.A. second master of Winchester College; and has bequeathed his funded property, canal shares, policies on his life, and the residue of his property, to his two sons, the said Rev. C. Wordsworth and the Rev. Christopher Wordsworth, D.D. head master of Harrow School. The latter is the acting executor. The personal property was estimated at 25,000*l.* The deceased attained the age of 71, and died at Buxted parsonage on the 2nd of February last.—*Observer.*

CHANCERY ARREARS.—EASTER TERM.—It appears by the Equity Causes Register, that the number, including entries up to the closing of the Registrar's office, during the present holidays, of appeals before the Lord Chancellor, and original causes before the Vice-Chancellors for hearing or disposal on pleas, demurrers, exceptions, or further directions, is 285 (exclusive of those before the Master of the Rolls). Of this total, 46 are appeals before the Lord Chancellor, 135 are causes before the Vice-Chancellor of England; 71 before Vice-Chancellor Bruce, and 33 before Vice-Chancellor Wigram.

THE LATE MR. LISTON.—The will of this late popular comedian has just been proved in Doctors' Commons, and his effects were valued for probate duty at 40,000*l.* He has left his plate, jewellery, pictures, books, furniture, carriages, horses, &c. to his wife, absolutely. The residue of his property, which he directs to be invested in the funds in the names of trustees; he has left to be enjoyed by her for life, and gives a power of appointment over the same by will or otherwise; and in case so much as 6,000*l.* is by her unappointed, he gives such sum to his daughter, Mrs. Rodwell—the dividends for her own use, and the principal at her death to her two daughters, Emma and Elizabeth, or to the survivor; and in case his wife does not make any disposition of the residue, he gives the same, or so much thereof as remains unappointed, to his son, Captain John Terry Liston. He appointed as his executors his relict, and J. R. Durrant, of the Stock-Exchange; C. Turner, of Brompton; and W. Taylor, of Park-street, Grosvenor-square. The will is dated in April, 1842; and he made a codicil in January last.—*Morning Post.*

COOKE v. WETHERALL.—Our readers may remember that a new trial was granted in this case to try the guilt of the defendant, who is alleged to have committed the double crime of incest and adultery. It was to have been tried at the Kingston assizes, but the plaintiff declined to proceed, although he had paid his costs pursuant to the rule of the Court.—*Berkshire Chronicle.*

THE BRIDGEWATER ESTATE.—Some idea may be formed of the interests involved in the estate of the trustees of the late Duke of Bridgewater, and also of its magnitude, from the fact that in the present parliamentary session, agents are engaged in watching, supporting, or opposing no less than thirty-five private bills.—*Liverpool Standard.*

CORRESPONDENCE.

TO THE EDITOR OF THE LAW TIMES.

HUGHES ON CONTRACTS.

SIR,—I could not but feel highly gratified that my suggestion as to Law Books should have obtained the powerful support of a "Leader;" and I trust the invitation given, both to authors and readers, will be duly responded to by the profession.

In reference to one of the works now in progress in the LAW TIMES, that of "Hughes on Contracts," it has occurred to me that instead of stopping short, as such works usually do, without extending to the conveyance, the profession would be greatly benefited by a companion volume, by the same author, of *Precedents of Purchase Deeds*, of both freehold and leasehold property. The forms should be simple as well as special, concise yet not too brief, in short in the most approved style of conveyancing, and accompanied with practical remarks and dissertations. The recent alterations in the law render such a work necessary. We should then have, in two small volumes, a complete work on purchases, and purchase deeds. Should the author be disposed so to extend his plan, and signify it through your pages, many of your readers, as well as myself, would, I doubt not, feel pleasure in stating what they require in such a work, out of which some valuable hints may be gleaned.

While I am writing, permit me to offer two or three suggestions to yourself. First, that *only one treatise at a time* should be published in the LAW TIMES; for works so published are of little use for reference, for want of contiguity, and of an index. Secondly, that earlier and greater attention should be paid to Bills in progress, and to the practical working of recent Acts. Thirdly, that the business of the week in Courts of Equity should be given, as well as in the Courts of Common Law, to enable solicitors in the country to ascertain the progress of business, and to form some judgment when their own cases are likely to come on—in short the reasons for giving the information as to the Common Law Courts are equally applicable to the Courts of Equity.

My desire for the benefit of the profession has induced me thus to occupy your pages, and

I am, Sir, yours, &c.

April 11, 1846.

J. R.

REG. F. RICHARD BENT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I observe that by some accident the name of the above case, which was reported in your last number, page 30, was omitted from the heading. Perhaps, as it is a case of some importance, those of your readers to whom it may be interesting, will be good enough to supply it with the pen, so that they may afterwards be able to find it by reference to the index.

April 14, 1846.

YOUR REPORTER.

TO THE EDITOR OF THE LAW TIMES.

SIR,—My attention has been called to your report in the LAW TIMES of 4th inst. of the judgment of Vice-Chancellor Wigram in *Lister v. Turner and Others*.

From the report it would appear that the settlement was declared void, though the settlor, at the time of executing the settlement, had property to three times the amount of his debts. Nothing of the kind can, however, be gathered from the judgment really given; for the deed was declared void only as against the plaintiff, who, as an equitable mortgagee, was to be considered as a purchaser within the 27th Elizabeth. The decision went no farther; and it is evident the settlement was not declared altogether void, as the parties taking under the settlement have a right to redeem.

I send you a copy of our agent's letter, with his note of the judgment and decree, from which you will be able to amend your report.

I am, Sir, yours, &c.

CHARLES GREEN.

Romilly and Rolt, for the plaintiff; *K. Parker and Craig*, for the trustees, wife, and infants; *W. M. James*, for the bankrupt; *Anderton*, for the assignees.

Northwich, April 16, 1846.

LISTER F. TURNER.

DEAR SIRS,—The Vice-Chancellor delivered judgment herein this morning.

After stating the circumstances of the deposit with the bankers, and the subsequent bankruptcy of W. Slater (which, if they had stood alone, would have given rise to no difficulty, for the plaintiff's right would then have been clear), he proceeded to the transaction which had occasioned the argument at the bar. This was the discovery by the plaintiff that in June 1841, a month previous to the equitable mortgage, the mortgagor had conveyed to a trustee for the benefit of his wife and children, so much of the property comprised in the plaintiff's security as is situate in Meadow-street and Brunswick-road.

This conveyance was voluntary. It was therefore necessary for the plaintiff to avoid this conveyance before he could enforce his security. The bill, therefore, seeks to avoid this deed as against the plaintiff on two grounds, either as a voluntary conveyance void against a subsequent purchaser under the 27th Eliz. or, if he fails in this, then the plaintiff seeks the benefit of the 13th Eliz. by which voluntary conveyances by insolvents are declared void as against creditors. The first point to decide, therefore, is whether an equitable mortgagee is a purchaser within the 27th Eliz. and the Vice-Chancellor thought the case of *Buckland v. Mitchell* (18 Vesey) had decided that point in the affirmative. The next point raised upon this part of the bill was as to the costs of the suit occasioned by the issue of insolvency, which, it was contended, were unnecessarily incurred if the Court should decide the question upon the 27th Eliz. and that the plaintiff ought, in that event, to pay the costs occasioned by tendering that issue, more particularly as the plaintiff's evidence was (it was argued) insufficient to prove that part of his case. But the plaintiff as a creditor had great interest in shewing the invalidity of the deed, and, in the opinion of the Court, a sufficient interest to sustain the suit; and, seeing that the evidence of insolvency is very strong, there is no ground for distinguishing the costs. Having, therefore, decided that the plaintiff is to be relieved, the only remaining subject for consideration is, in what form that relief should be given.

The Vice-Chancellor then made his decree in the following terms:—

"Declare that the plaintiff is a purchaser within the 27 Eliz. and that the deeds of the 16th June, 1841, are fraudulent and void so far as they comprise the property included in the plaintiff's security. Refer it to the Master to ascertain what is due to the plaintiff for principal and interest, and tax his costs of this suit, and decree that the defendants pay to the plaintiff what is reported due, within six months, and upon such payment let the deeds comprised in plaintiff's security be given up to such party as the Master shall certify to be entitled to receive them. In default of payment, let the Master ascertain of what property the plaintiff's security consists, other than the settled property; and if the plaintiff consent, let such property be sold and the proceeds applied in payment of the plaintiff's debt, interest, and costs, and, if the same shall be insufficient for that purpose, then let so much of the property in Meadow-street and Brunswick-road be sold as will be sufficient, and, if necessary, the whole of such property, and reserve further directions and costs."

C. F. TAGART.

1, Raymond-buildings, Gray's-inn.

ADVERTISING FOR BUSINESS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The following advertisement in the *Times* of to-day is really too bad:—

"RAILWAY BUBBLES."

"Parties being sued for pretended claims by railway projectors, will be defended at a very trifling expense by a gentleman of long standing in the profession. Apply to M. Y. Mr. D'Arcy's, 5, Buckingham-street, Strand."

Surely you will reprobate so gross an attempt to catch the unwary. By the Post-office Directory Mr. D'Arcy appears to be a tailor. What gentleman of long standing could think it fit, or proper, to advertise for business through the medium of a tailor's shop?

I am, Sir, yours, &c.

A SOLICITOR OF TEN YEARS' PRACTICE.

City, Thursday, March 26.

SELECTIONS FROM CORRESPONDENCE.

W. thus treats of Short Conveyances:—

SIR,—I fully agree with you in your observations on the necessity of professional men coming to some immediate understanding as to a new and remunerative scale of charges in conveyancing. The profession must arouse itself and shake off the old precedent system, which certainly must fall before, or at all events be modified to suit, the increased intelligence of the age. I have myself, although a junior country practitioner, seen several instances of precedent prejudices perpetrated by some of my brethren.

In a recent instance, the verb "is," which had been inserted after the word indenture, for the purpose of making the introductory part of the deed readable before coming to recitals, was, without ceremony, struck out of the draft by a brother chip. Some concise covenants, from the printed precedent of a modern conveyancer, were also inserted; this, however, would not suit, and the whole host of synonymous terms were superadded to my operative words, thus making a curious medley, which would have added lustre to one of old Lilly's entries. The additions would have rendered another stamp necessary, and to avoid unpleasantness they were allowed to remain, and I was compelled to shorten other portions of the draft in the best manner I could!

April 11th, 1846.

"A. H." thus comments on the Transfer and Property Acts:—

SIR,—I have been waiting for some time to see whether any of your readers would take up Lord Brougham's compulsory Bill for short forms; and I am happy to say I am glad your correspondent, "One, &c." has taken, in my opinion, the proper view of the subject. If my lords Brougham and Campbell would conceive how much less they have paid for the stamp duties on their purchases of, say 10,000*l.* than purchases of 150*l.* and pay the difference over as conscience-money—follow this up by seeking for a revision of the Stamp Duties, instead of endeavouring to rob those on whose shoulders they have been placed in their present position, it would be much more to their credit than pursuing their present course as tinkers, and trying to patch up that of which they are practically ignorant.

Your correspondent's remarks are so much to the point, that I cannot do otherwise than give my cordial assent to his observations. It is so well known that the profession, I believe generally, have for some years practically endeavoured to shorten conveyances from the precedents of Hays, Coventry, Crabbe, Dickenson, and others, and have shewn more conscientious feeling towards their clients than the said *tinkers* have towards their former friends. If they would look into the short forms in the works I have named, surely they will find them short enough; but I presume they would like to have their deeds prepared gratis.

I trust the profession will take up the matter warmly; and with every wish of success.

Perhaps some of our readers may be enabled to assist our correspondent's researches in the "rights of a husband."

I should feel obliged if you, or any of the numerous readers of the *LAW TIMES*, would direct me to the law respecting the right (if any) of a husband to chastise his wife under peculiarly irritating circumstances, and, in particular, where I could find Mr. Justice Buller's memorable opinion of the right of a husband over the wife, to the exercise of the *thumb-stick*.

"S. M. J." transmits the following remarks on the case of *Angell v. Angell* reported in No. 155:—

May I apologise for officiously remark upon your report of this case, merely for my own information?

After stating that the right to bring an action of ejectment accrued to the lessor of the plaintiff in 1784, upon the father of the defendant's first receiving the rent reserved by the lease wrongfully or adversely, and by the lapse of twenty years from that time was barred in 1804, you add in conclusion, that the word "rent" in the 16th section, means "rent reserved on a lease" which saved the right of the lessor of the plaintiff. Can this be correct? For though the possession and receipt of the profits of the land were not adverse to the right or title of the lessor of the plaintiff at the time of the passing of the Act, yet the receipt of the rent reserved on the lease must surely have been so. But construing this word "rent charge," the former part of the sentence, that is, the first alternative, would alone protect the plaintiff.

THE LAW DIGEST.

The first number of "The Law Digest" (Index Legum) is published to-day. Another number is in the press, and both will be forwarded to the subscribers next week. This Digest includes all the decisions reported between the 1st of July and 31st of December, 1845. The arrangement has been adopted with a view to practical convenience and ready reference; and we believe, from the labour and pains which have been bestowed upon it, the Digest will be found in every way useful. It will be continued half-yearly.

THE LAW TIMES.

SATURDAY, APRIL 18, 1846.

SOLICITORS' INSURANCE OFFICE.

WE may now congratulate the Solicitors on the formal establishment of their own Insurance-office. On the 6th inst. it was completely registered, and the society has at length a legal existence, with the powers and privileges of a corporate body as conferred by the recent statute.

And already has business begun to flow into it from all quarters. We understand that more than twenty proposals for policies

were received during the first week; thus more than justifying the anticipations we ventured to indulge, when first we submitted the plan to the regards of the Profession.

It now remains only for the Solicitors cordially to support the society they have so auspiciously founded, and thus to make it, as it is undoubtedly in their power to do, the most extensive and most flourishing insurance-office in Europe. As the profits are regulated by the amount of business, and the Solicitors will obtain in their own office a fairer share of the profits they produce than elsewhere, while, at the same time, equal advantages are given to their clients, it depends upon themselves whether they will realize the benefits which the Deed of Settlement has secured to them.

It must be borne in mind, that it is not to the shareholders only that these benefits are secured—they are offered equally to all members of the Profession transacting their business in the Solicitors' Office; all, therefore, are equally interested in promoting its success. It is established, not for the advantage of the members of the Society alone, but for the common good of the whole Profession. There is not a Solicitor in the United Kingdom who may not, if he pleases, secure large personal benefits from this establishment; none whom its prosperity does not concern; none who might not obtain a direct interest in its existence, and a share in its profits, by transacting his business there; and so making for himself an annuity, whose amount will grow with the profits, as the profits will grow with the amount of business.

If the principle upon which this establishment has been founded be fully understood, it cannot fail to be approved; and if supported as it deserves to be by those for whose benefit it was intended, sure we are that the 6th of April, 1846, will be a memorable day in the annals of the Profession, as the commencement of an institution from which still increasing benefits will flow to the Solicitors, and to which they will hereafter point with pride as an honour to the Profession to which it belongs, from the fairness of its principles and the caution but liberality of its conduct, and as yielding peculiar advantages to all who resort to it.

If so it should prove, as we doubt not it will, we shall ever look back upon the labour we bestowed upon its design and execution as the best return that could be made to the Profession for the confidence they have so generously reposed in the *LAW TIMES*, and through which alone it was enabled to bring about the establishment of the SOLICITORS' INSURANCE OFFICE.

INCAUTIOUS COMMITTALS.

ALL who have watched the proceedings at the Assizes and Quarter Sessions, must have noticed with surprise how frequently bills are thrown out by the grand jury, or prisoners acquitted, with a remark from the judge that there was not the slightest evidence against them.

But it has seldom occurred to the spectators that this was proof of some great defect in the administration of justice by the tribunal that sends the prisoner to trial upon such defective evidence; and it is not until some case of more than common hardship occurs, when the evil has fallen upon a party whose position in life attracts to him more of public attention than is usually bestowed upon criminals, that people begin to ask why such a wrong should be, and who is in fault? and the public press echoes the public feeling, and lifts its potent voice against the mischief.

Such a case occurred at the last assizes for Somerset; and as it forcibly illustrates the evil of which we have more than once made complaint in these columns, we narrate it, hoping that it may serve as a caution, at least, to those whose duty it is to administer justice in the earliest stage of criminal prosecution.

A respectable farmer, an old grey-haired man, possessed of considerable fortune, highly

respected in his neighbourhood, of unstained character, was charged by a neighbouring farmer with *sheep-stealing*! It appeared that one of the prosecutor's flock had strayed into the prisoner's field, had joined his flock, and had been—not killed and cut up, and hidden away, but—marked with the prisoner's mark! It was, moreover, suggested that there was some sort of enmity on the part of the prosecutor against the prisoner.

As may be supposed, the case broke down. The learned Judge who presided at the trial told the jury that there was not the slightest pretence for charging the prisoner with stealing the sheep, and directed an acquittal; and so thought everybody who heard the trial; so thought the jury; and the prisoner left the dock amid the general sympathy of the audience.

But what a poor consolation to be told that he quitted the court without the slightest stain upon his character, after having been taken up on a charge of felony, committed to prison, arraigned with a herd of thieves and prostrated, put to the cost of a hundred pounds at least for his defence, and condemned to months of torturing anxiety! And to what does he owe all this? To the culpable carelessness of the committing magistrates. If they had exercised any judgment upon the evidence, they must have come to the same conclusion as the Judge, the jury, and the audience,—that there was no pretence for a charge of felony. But so it is, not in rare instances, but repeatedly, an assize or sessions seldom passing without them; they commit for trial upon the merest shadow of a case, hoping, we presume, that more evidence will afterwards be procured. They forget the ruin and the wretchedness they thus produce, the families they plunge into want, the burdens they throw upon the parishes, the cost to which they put the county for a trial that can end only in an acquittal, the destruction of a man's character and virtue, if he have any, which is the certain result of a prison.

We do not accuse the magistrates of intended harshness; or wantonly using their powers; we believe that it arises from thoughtlessness. They do not reflect rightly upon the serious consequences of a committal, or they would refuse it when the evidence was not such as a judge would allow to go to a jury. We cannot disguise from ourselves that there is a leaning towards a committal where there is doubt, while, in propriety, the doubt should turn the scale the other way. It is no secret that there is a sort of rivalry among magistrates to appear the most frequently on the calendar—it is deemed a proof of activity; nor can we forget that their advisers also have some interest in a similar result. Far be it from us to impute to either any intentional departure from justice. But we know how the judgment is biased unconsciously towards any object we deem desirable. We have noticed the matter here, hoping that it may not be without an influence upon the many members of the magistracy who are our readers, and that our newspaper contemporaries may be induced to lend their powerful aid towards the removal of a mischief much more extensive than would be believed by those whose duties do not compel them to close attention to the proceedings of our criminal courts in the provinces.

CONVICTION OF A SHAM LAWYER.

AT length, through the spirited exertions of some members of the Profession at Birmingham, an example has been made which will do more to put to flight the whole tribe of Sham Lawyers than all the exposures of their practices which have appeared in the *LAW TIMES*.

Acting in accordance with the recommendation we have so often and so strongly urged to indict for obtaining money under false pretences, this form of proceeding was adopted against a Sham Lawyer who has more than

once figured in these pages. The charge was maintained; a conviction was procured, and after a suitable address from the Recorder, the severe punishment of transportation for seven years was awarded.

A full report of this very important case appears among our Legal Intelligence. We trust that it will be widely diffused as a warning to the many others who are pursuing similar practices in all parts of the country. If, after this emphatic notice, they continue their misconduct, it will be the duty of the Profession to institute similar proceedings.

The evidence in this case proves that the race of Sham Lawyers is a serious public evil. They plunder the poor and the ignorant. The mischiefs to the Profession are trifling compared with the injury they inflict upon society, so that their suppression is really a public duty.

LIABILITY OF ALLOTTEES.

THE letter of our correspondent, "A Barrister," published last week, and the conflicting opinions daily put forth in the newspapers and prevailing in the Profession, induce us to return to this subject, for the purpose of testing our conviction by the arguments of those who dissent from it. We have no other desire than to arrive at the truth, and add our humble mite to the arguments by which it must ultimately be determined.

Our correspondent, it will be observed, admits our conclusion, but disputes the reasons upon which we have founded it. He has no doubt about the liability of an allottee, but he thinks that it exists independently of the Joint-Stock Companies Act, and, indeed, that this statute in no way affects the question, our argument being based entirely upon the consequences of that enactment.

The argument of the "Barrister" is, that the Joint-Stock Companies Act is a restrictive and not an enabling statute; that it gives no new powers, and recognizes no new form of partnership; it only prescribes limits to such associations, and their proceedings, as previously recognized; therefore, that former principles and decisions are still applicable to them, and that the provisions of the new statute do not at all affect the point at issue.

This is a substantial objection. Let us examine its validity.

The purpose of the statute is stated in the preamble to be "to make provision for the due registration of Joint-Stock Companies during the formation and subsistence thereof; and also, after such complete registration as hereinafter mentioned, to invest such companies with the qualities and incidents of corporations, &c." "and also to prevent the establishment of any companies which shall not be duly constituted and regulated according to the provisions of this Act."

Here are three objects distinctly defined:—

1st. The registration of companies during their formation.

2nd. After their formation, investing them with certain privileges.

3rd. The prevention of companies otherwise formed.

Thus the Act is both an enabling and a disabling statute.

The term "Joint-Stock Company" is defined to mean, "Every partnership whereof the capital is divided, or agreed to be divided, into shares, and so as to be transferable without the express consent of all the copartners."

The promoters of a company are first required to register it provisionally.

The seventh section prohibits "any joint-stock company" "to act otherwise than provisionally, in accordance with this Act" until complete registration; thus recognizing its existence as a company before complete registration.

We come now to the important section, which, in our opinion, enables the promoters of companies provisionally registered to do certain defined acts, and consequently to enforce the powers thereby vested in them. That section is the 23rd, and we ask particular attention to its language.

And be it enacted, That on the provisional registration of any company being certified by the Registrar of Joint-Stock Companies, it shall be lawful for the promoters of any company, so registered, to act provisionally, &c. &c.

To assume the name of the intended company,

coupled with the words "registered provisionally;" and also

To open subscription lists; and also
To allot shares and receive deposits by way of earnest thereon, at a rate not exceeding 10s. for every 100l. on the amount of every share in the capital of the intended company, &c. &c.; and also

To perform such other acts only as are necessary for constituting the company, or for obtaining letters patent, or a charter, or an Act of Parliament.

If this be not a legislative recognition of the existence of a company, and an express power given to the promoters to allot shares and take deposits, no language would convey such an intention.

And if such a power be hereby given, contracts made in pursuance of it must be valid and may be enforced. Where the law gives a right, the Courts always find a remedy.

Let us now trace the further proceedings.

Thus empowered, the promoters publish a prospectus, setting forth a scheme, and ask the public to take shares in it; in other words, to join them in a limited partnership to carry it out.

Certain persons, called "subscribers" in the Act, approving the plan, say they will become such partners, and will take so many shares, upon which they will pay the deposits required by the promoters and allowed by the statute.

The promoters accept the offer, and request the payment of the deposit accordingly.

They incur certain expenses necessary for constituting the company, and to which the subscribers have, by their promise to pay the deposit, agreed to contribute.

The subscribers do not pay the deposit they had agreed to pay, and upon the faith of which those expenses have been incurred.

Upon this agreement, made up of the application for shares and the allotment, an action is brought.

Upon the face of it there can be no doubt that this agreement is good. Its subject-matter is expressly authorized by law. It is in its terms clear and unconditional. "If you will allot me so many shares, I will pay the deposit thereon." "We do allot them. Pay." Such are the terms. Here is a proposal, an acceptance, a bargain completed.

The defences set up are numerous.

1st. That it was a condition that all the shares should be taken, and the project carried out.

But where is such a condition either expressed or implied? The promoters have asked you to join them in an endeavour to effect a certain scheme. You have consented. You did not make it a condition that you should not pay unless it succeeded. You agreed to share the chances with them.

2nd. That the scheme was a bubble, impracticable and absurd.

But you should have looked to that before you agreed to join it. You were as competent to judge of its worth as the promoters. The rule *caveat emptor* applies here.

3rd. That the promoters were guilty of fraud. This would be a good defence, but the onus of proof falls upon you.

4th. That they spent more money than they had a right to do.

This is no answer to your agreement. When you have paid, you will have a right, as a member of the company, to question their management of its affairs in a court of equity.

Such are the substantial defences, and such the answer to them. With technicalities we do not deal here. Our purpose was to examine only the broad question of the liability of allottees, apart from the form of action. That is altogether a distinct inquiry.

For the reasons assigned above, we therefore still maintain the opinion we first expressed, unshaken by the argument of the "Barrister," and the various objections put forth in the newspapers.

THE CRITIC.

New Books.

The Practice of the High Court of Chancery. By EDMUND ROBERT DANIELL, F.R.S., Commissioner of the Court of Bankruptcy. Second Edition, with considerable Alterations and Additions, adapting the Text to the last General Orders and the most recent Decisions of the Court. By THOMAS EMERSON HEADLAM, M.A., Barrister-at-Law. In 2 vols. London: Stevens and Norton. 1846.

Daniell's Practice is now, we believe, in equity, that which "Chitty's Archbold" is in the common

law—the authority to which everybody refers, and which everybody uses: and undoubtedly to this distinction it is well entitled, for it is one of the most practical of books of practice; methodical in its arrangement, precise and perspicuous in its composition, and assuming nothing as already known to the inquirer, and, therefore, too familiar to be stated.

Mr. DANIELL having been promoted to an office that has necessarily diverted his attention from the immediate subject of his treatise, and prevented him from keeping pace with the progress of this branch of the law, he very prudently committed to Mr. HEADLAM the task of preparing for the press a second edition, when the approval of the profession had exhausted the first.

And Mr. HEADLAM's duty was no light one. As he truly observes, during the period that has elapsed since the publication of the first edition, more extensive changes have taken place in the Practice of Chancery, than in any other period of similar duration in the annals of the Court. "Not only have numerous and most important Orders been issued; but the increase in the numbers of the Courts of Equity, and the great attention now bestowed in reporting their decisions, have multiplied the sources from which conclusions of Law and rules of Practice are ordinarily deduced." These have necessitated the introduction of a great deal of new matter, and the substitution of much that is recent for much that was thus rendered obsolete. Avoiding, therefore, the inconvenient but favourite practice of preserving the original entire, and introducing, in the form of notes, cautions against reliance upon it as having been altered by recent orders or decisions, Mr. HEADLAM has adopted the more rational plan of so remodelling the text "as to render it, as nearly as possible, what I conceive it would have been, had Mr. DANIELL now published it for the first time." Therefore, where a case, for instance, cited in the original, has been affirmed by a more important one of recent date, the most modern authority has been substituted for the other. This is very preferable to the book-making practice of many editors, who cite case upon case, though all resolving the same point, to the grievous burden of the pocket and patience of the reader.

The changes introduced by the recent General Orders have compelled the entire omission of some chapters in the original, and the replacing of them with others adapted to the existing state of the practice. The Orders of last May were, it seems, though promulgated, not in operation at the time when the body of the text was prepared for the press. But Mr. HEADLAM preferred to introduce the Orders themselves in their proper place in the text, to stringing them together in an appendix, and troubling the reader with double references. But this arrangement deprived him of the advantage of subjoining the decisions since given upon those Orders. To meet the difficulty, he has collected those decisions, and added directions how they may be inserted in the text so as to bring down the authorities, throughout both volumes, to the present time.

To make the work still more complete and acceptable, Mr. HEADLAM has added some entirely new chapters on subjects not treated of in the first edition, such as, "on Writs and Orders in the nature of Injunctions;" "The Payment of Money and Transfer of Stock out of Court;" "The Production of Documents;" "Petitions for the Appointment of Guardians, and Orders of Maintenance;" and "The Statutory Jurisdiction of the Court."

It will be unnecessary to describe minutely the plan and divisions of a work with which most of our readers must be well acquainted. Enough that we have stated the alterations and improvements effected in this new edition. Nor will any extracts be required to justify the opinion we have expressed, for already it has been approved by the judgment and experience of the Profession.

The New Chancery Practice: comprising all the alterations effected by the New Orders, 8th May, 1845, and an Appendix of Forms. By HERBERT AYCKBOURN. Second edition, enlarged and carefully revised. By THOMAS H. AYCKBOURN, Esq. of the Middle Temple, Barrister-at-Law, and HERBERT AYCKBOURN. London, Butterworth.

THIS is the pocket-book of Chancery practice, and DANIELL's is the text-book. In a small volume,

without inconveniently small type, Mr. ARONSON has contrived to condense the substance of the existing practice in Chancery with many of the cases down to the present time.

The first edition of this work was noticed very favourably in the *Law Times*. We observed then that the author had cited largely from our reports. Glancing over the present volume, we cannot find that he has availed himself of the much more numerous and valuable reports of the Equity Courts now published in these pages. This is a serious omission. In the *Law Times* alone, is every practice case decided in the Courts of Equity fully and carefully reported; there many important ones are recorded of which no other report exists, and they are brought down to a much more recent period than any other. To have overlooked such a source of information deprives a book of practice of half its value, for the practitioner requires every decision, and especially the latest ones, and he who proceeds depending upon Mr. ARONSON's cited cases as the last and only ones will not improbably find himself tripped up by his opponent who chances to have noted some of the numerous decisions only to be found in these pages, because here alone is the rule adopted of reporting every practice case without exception.

Many applications have been made to us to take advantage of our large corps of reporters to give to the profession a work which is stated to be much needed—a series of Reports of Equity Practice Cases. If approved, we would willingly add Equity Cases to the Common Law Practice Cases now publishing for the Verulam Society, but page separately, so that it may be purchased and bound as a distinct work.

JOURNAL OF PROPERTY.

A Practical Treatise on the Law of Auctions: with Forms, Tables, Statutes, and Cases, and Directions to Auctioneers. By JOSEPH BATHMAN, LL.D., of Lincoln's Inn. 3rd edition, 12mo. London, 1846. Maxwell and Son.

This is a work that needs no other introduction than its name. It has been long the standard authority upon the subject of which it treats, and the new edition has been called for by the recent abolition of the auction duty. It describes, first, the auctioneer's license; then the authority to sell; the preliminaries of a sale under a distress for rent; appraisements and valuations; particulars and catalogues; and conditions of sale. The second part examines the incidents of sale, and, successively, the sale itself; private biddings and puffers; the contract, and the formalities required for it; and the deposit. The third part, devoted to the posterior regulations, treats of the enforcing of the contract; of the auctioneer's commission and expenses of sale; and of the auctioneer's responsibility for the property and the sale proceeds. There is an appendix of statutes, cases, forms, rules, and tables; a list of cases cited, and a copious index. The work is indispensable to the auctioneer, and will be found very useful to the solicitor.

The following will afford a good specimen of the matter and manner of this work, and will be acceptable information to our readers, both solicitors and auctioneers:—

THE AUCTIONEER'S COMMISSION AND EXPENSES OF SALE.

An auctioneer who is employed to conduct a sale, is, in general, entitled to recover from his employer a fair remuneration for his trouble. The amount of this remuneration is either regulated by a particular contract between the auctioneer and his employer (a), or is determined by the usage of

trade (b); the usage yielding in this, as in all other cases, to positive agreement. The usual mode of compensation is by a *per centage* upon the purchase-money, called a "Commission" (c). Sometimes the expenses of advertising, catalogues, warehouse rent, and warehousemen, are included in the auctioneer's commission; but if not, he is entitled to charge the same to his employers, in addition to his

claim could be supported were private agreement. When there is a particular commission commonly charged, and the seller was aware of the custom, that would, in most cases, be the measure of the allowance. (1 Sugd. 71.) But if there be no contract, express or implied, and no usage, it seems that no commission can be recovered. Thus, where a person performed work for a committee, under a resolution entered into by them, "that any service to be rendered by him should be taken into consideration, and such remuneration be made as should be deemed right," it was held that an action would not lie for such work, the resolution importing that the committee were to judge whether any remuneration was due. (*Taylor v. Brewer*, 1 M. & S. 290.) For cases where certain sums by way of commission have been allowed on agency transactions, as being regulated by usage of trade, see *Ricke v. Meyer* (3 Camp. 412); *Cohen v. Paget* (4 Camp. 96); *Roberts v. Jackson*, 2 Stark. 226. (See also *Levi v. Barnes*, 1 Heist. 473; *Chapman v. De Tustet*, 2 Stark. 204; *Stewart v. Kable*, 3 Stark. 361; *Paley*, P. & A. 101.)

(b) For example, although a broker has in general no claim for compensation, except as against his employer, whether he be the vendor or vendee, yet it appears that, where colonial produce is sold through the intervention of such an agent, he is entitled by the usage of trade, in London, if there be no express stipulation to the contrary, to one-half per cent. commission from the purchaser as well as the seller. (*Ricke v. Meyer*, 3 Camp. 412.)

(c) Commission, when applied to factors and brokers, is either ordinary or *del credere*—the former being a mere compensation for the trouble taken by the factor or broker in performing his employment; the latter includes, in addition to this, a certain premium given in return for a guarantee by the factor or broker of the solvency of the persons with whom he may deal on his principal's behalf. (Russell's W. & B. 154.) The amount of commission to which a broker is entitled has, in some instances, been regulated by Act of Parliament. Thus by 16 Anne, c. 39, s. 121, brokers are restricted from taking more than 2s. 9d. per cent. for buying or selling any tallies, orders, exchange-bills, exchange-tickets, bench-bills, or any share or interest in any joint stock created by act of Parliament, or by letters patent under the great seal, or bonds of any company thereby created. So, by 12 Anne, stat. 2, c. 16, and 53, Geo. 3, c. 141, s. 9, certain rates are established for procuring loans. (See *Pryce v. Wilkinson*, 3 Bing. 470.)

The following list of charges, on sales by auction, and other business usually entrusted to auctioneers, is copied from the printed circular of a London establishment:—

For conducting sales by auction of stock in trade, furniture, and effects	5 per cent.
For conducting sales by auction of estates under 1,000l.	2½ per cent.
For ditto above 1,000l.	1½ per cent.
Surveys, advertisements, printing, &c. extra.	
For the sale of estates, &c. by private contract	2½ per cent.
For ditto above 1,000l.	1½ per cent.
For letting houses and estates on the first year's rent	2½ per cent.
(If let for a longer period, the commission is chargeable on two years' rent.)	
For registering particulars	5 shillings.
For the valuation of furniture, fixtures, stock in trade, libraries, and effects	2½ per cent.
For an inventory or schedule of fixtures from 1 to 4 guineas.	
For estimates and valuations for compensation under Acts of Parliament for public improvements, railroads, &c.	2½ per cent.
For estimates of loss or damage by fire, and making claims upon insurance offices	2½ per cent.
For surveying and making a report as to the state of repair of a house and premises prior to a tenancy 1 to 4 guineas.	
For specification and notice of dilapidations 2 to 5 guineas.	
For specification and valuation of ditto	5 per cent.
For estimating the annual value of house property 1 to 2 guineas.	
For valuations of houses and estates for mortgages, as security prior to advances, under 1,000l.	1 per cent.
For ditto above 1,000l.	½ per cent.
For collecting rents, and the general management of houses and estates	2½ per cent.

commission (d). And in some cases the commission is recoverable, although the estate be not actually sold by auction, or by the direct agency of the auctioneer employed (e). Notwithstanding this general right to remuneration, the auctioneer may be deprived of it, if, in consequence of his negligence or unskillfulness, no benefit accrues to his employer from the service performed (f). And when through his blunder the auction duty attached on a sale which would have been otherwise exempt, he could not recover such duty from his employer, although he might have been compelled to pay it out of his own pocket (g). If the payment of the commission is, by contract or usage, made to depend on a contingency, it cannot be recovered until after the contingency shall have happened (h). When the transaction has been regular on the part of the auctioneer, he has a lien for his commission and expenses on any goods of his employer which may be in his possession (i), and he may lawfully retain

(d) *Paley*, P. & A. 107. Where, by agreement between a factor or broker and his principal, it is stipulated that the former shall be paid a certain commission, but the agent claims a further remuneration on account of extra attendance, it will be for the jury to say whether, in giving such attendance, the agent was merely performing a duty contemplated by the agreement; and if they find that this was the case, he will not be entitled to any extra charge. (*Marshall v. Parsons*, 9 C. & P. 656; *Russ. F. & B. 156*.) As to the cases in which an agent is entitled to advances made on goods consigned for sale, and interest on such advances, see *Russ. F. & B. 179*; 3 & 4 Wm. 4, c. 28, s. 28.

(e) *Rainey v. Vernon*, 9 C. & P. 550. In this case the plaintiff was employed to sell ground-rents by auction, on terms of receiving a commission of 1 per cent. "on sale." After he had advertised the sale, but before the day of sale, the defendant sold the ground-rent by private contract. On the ground of custom, the jury found for the plaintiff for the full commission. In another case it was held that a spirit-broker was entitled to a commission of half-a-crown per purchaser for putting a quantity of rum up for sale by auction, although each sale turned out to be ineffectual. (*Stewart v. Kable*, 3 Stark. 361; *Ellenborough*.)

(f) *Denco v. Daverell* (3 Camp. 451); *Jones v. Nanney* (13 Price, 76; *M'Clell. 25*). And see *Hammond v. Holday* (1 C. & P. 354); *White v. Chapman* (1 Stark. 113); *Hurst v. Holding* (3 Taunt. 35); *Mortimer v. Abbas* (1 Marsh. 76; 5 Taunt. 861). But in general an agent is not liable for loss if he act bona fide on the best advice he is able to obtain. (See *Miles v. Bernard*, Fane's Add. C. 61; *Smith, Merc. Law*, 55.)

(g) *Capp v. Topham* (6 East, 392; 2 Smith, 443). In this case Lord Ellenborough said, that "even if there was no warranty on the part of the auctioneer, and it was only a mutual error between him and the vendor, he could not call upon his companion in error for a contribution." (See *Christie v. Attorney-General*, 6 Bro. C. C. 520). So that in cases of this nature, the burden will remain upon the person upon whom it is charged. And it even seems to have been considered, that if an auctioneer, through ignorance, adopted an improper mode of saving the duty, upon an undertaking by the seller to save him harmless, the duty must be paid by the auctioneer; and that he could not recover under the undertaking, because it is illegal to indemnify against penalties. (*Owen v. Perry*, Sitt. West. Dec. 6, cor. Lord Ellenborough; 1 Sugd. 22.)

(h) *Russ. F. & B. 158*; see *Winter v. Mair* (3 Taunt. 531); *Roberts v. Jackson* (2 Stark. 226). Thus where an agent was to be paid a per-centage on the sum obtained, it was held that he could not recover until the money was received by the principal. (*Bull v. Price*, 5 M. & P. 2; 7 Bing. 287.)

(i) A factor has a lien upon each portion of goods in his possession, for his general balance, as well as for charges arising upon those particular goods. 46 T. R. 262; 6 East, 23, n.; *Man v. Shipner*, 3 East, 529; *Curtis v. Barclay*, 5 B. & C. 141. See 1 Burr. 494; 1 Bl. R. 102; 2 Burr. 937. And the lien attaches not only upon the goods in specie, but upon the proceeds. *Drinkwater v. Goodwin*, (Covp. 261, 255); 2 East, 277; 3 B. & P. 496; and securities received in the course of his business. (*Willis*, 400; *Paley*, P. & A. 120). But the lien must be claimed in respect of similar dealings between the agent and the principal, and not in respect of dissimilar and collateral transactions. (*Weiden v. Gould*, 3 Esp. 268, per Lord Kenyon, C. J.; *Houghton v. Matthews*, 3 B. & P. 494-5, per Heath, J.; *Mortimer v. P. 403*.) Property detained as a lien cannot, it is said, be sold, used, or disposed of, by the party detaining, unless with the consent of the owner, but he may plead his lien as a defence to any action which may be brought against him for the recovery of the property, or he may assert it as a matter of title whereon to ground an action for the purpose of reclaiming such property, if he have

such commission and expenses out of any deposit or sale proceeds which may be paid to him on account of his employer(k). And should he be compelled, by reason of a defective title, to repay the deposit, he can recover the same from his employer(l).

A PRACTICAL COMMENTARY

ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.

(Continued from page 39.)

6. Tenants for Life.

A tenant for life, unless restrained by condition, may alienate his lands to the extent of the estate he takes in them; or he may create any lesser interest out of it (Cru. Dig. tit. 3, ch. 1, pl. 32); but then it must not exceed, in point of duration, the extent of his life interest in the premises, as a long term of years for instance: though even this will still be effectual as long as the lessor's estate endures. But he cannot create a larger estate; and an attempt to do so by a tortious mode of assurance, as a feoffment or the like, has been held to be a forfeiture of his estate. (Gilb. Ten. 38; Wright Ten. 203; 1 Ins. 251.) But if he had adopted an innocent mode of conveyance, as a lease and release (Cru. Dig. tit. 3, c. 1, pl. 36; Fearn, C. R. 473; Willes Rep. 383; 2 Blac. Com. 275), or bargain and sale enrolled (Cru. Dig. tit. 32, c. 10, pl. 32, 33; Seymour's case, 10 Rep. 95), which have not the effect of divesting estates in remainder or reversion, it would not have effected a forfeiture; nor, it seems, will even a feoffment have that operation; for the future the recent statute 8 & 9 Vict. c. 106, s. 6, enacting that a feoffment made after the first day of October, 1845, will not have any tortious operation, the cause of forfeiture altogether ceases as far as concerns future feoffments; but as the Act is only prospective, feoffments made previously will still retain their tortious property.

How far tenant for life may be restrained from alienating his estate.—A tenant for life may be restrained by express condition from alienating his estate in the lands either during the whole or any part of his term: and notwithstanding that a distinction seems formerly to have been taken between a lease made to a man and his assigns, and where the word assign was omitted, and that in the former case he could not be restrained from alienating his estate, though in the latter he might, that distinction has been long exploded, and the doctrine above laid down fully established. (Hob. 170; 1 Ins.

been unlawfully dispossessed of it. The rights of a broker in enforcing his lien are, it is believed, measured strictly by this rule; those of a factor, however, are somewhat more extensive. Thus, it is clear, that, where a factor has a lien on goods which have been entrusted to him for the purpose of sale, he may claim this right, not only on the goods whilst they are in his possession, but likewise on the price of the goods when sold; and hence it follows, that, having the lien, he may sell the goods and enforce payment to himself in opposition to his principal. (Per Bayley, J., *Hudson v. Granger* 5 B. & A. 27, 31; see also, per Mansfield, C.J., *Drinkwater v. Goodwin*, Cowp. 256.) So, it is said, that when the principal consigns a cargo of goods to his factor for sale, with a limit as to price, the latter may bring the goods into the market against the will of the principal, in order to satisfy his own advances; provided the principal does not, on receiving notice of the factor's intention so to do, repay him the amount. (3 Kent. Comm. 642.) And a sale by a factor under such circumstances would, even without notice, bind the principal to the third party. (Per Lord Abinger, *Warner v. M'Kay*, 1 M. & W. 591, 528; Russ. F. & B. 210; but see *ib.* 511, &c.)

(k) And the buyer cannot defend himself from the claim on the ground that the vendor principal is indebted to him in a greater sum, which debt he sets off against the price; because the principal himself can never say that, except when there is nothing due to the factor. (*Drinkwater v. Goodwin*, *ubi supra*; and see *Hammond v. Barclay*, 2 East, 227; but see *Coppin v. Craig*, 7 Taunt. 243; Morton, V. & P. 431.) And in case of an action of trover by the assignees on the bankruptcy of his employer, he is entitled to deduct any sum that he may have paid for rent, and a reasonable sum for expenses of sale, but not for removing the goods from the premises. (*Grimshaw v. Atterwell*, 8 C. & P. 6.)

(l) But not the costs of defending the action brought by the purchaser for recovery of the money, unless the vendor had authorised the defence, nor without declaring specially. (*Spurrier v. Elderton*, 5 Esp. 1.)

204, a, 223, b.) But a tenant in tail cannot, as I have already shown, be restrained by any condition from barring his estate tail (see *ante*); neither can a protector of a settlement, though he may chance also to be a tenant for life under the settlement, be restrained from giving or withholding his consent to dispositions made in pursuance of the fine and recovery substitution Act. (See *ante*.)

Tenant by the curtesy.—A tenant by the curtesy is a tenant for his own life; and, consequently, the rules above laid down, with respect to assurances by ordinary tenants for life, are also applicable to him. (Cru. Dig. tit. 57, c. 5; 2 Ins. 309.) In one respect, however, it seems that a tenant by the curtesy has a more extensive power of disposition than an ordinary tenant for life; the former takes by operation of law, and not by way of conveyance; and consequently his estate is not burdened with any restrictions against alienation, as we have just before seen that of the tenant for life may be subjected to.

7. Tenants pur autre vie.

Tenants *pur autre vie*, unless restricted by some express condition, may alienate their estates and pass an interest commensurate with the lives of the *cestuis que vie*, or for any lesser interest, so that it does not exceed that duration. Tenants *pur autre vie* are also liable to forfeit their estates in like manner as tenants for life by attempting to dispose of them by a tortious mode of conveyance; but as all tortious modes of conveyance seem now to be done away with (3 & 4 Wm. 4, c. 74, s. 2; 8 & 9 Vict. c. 106, s. 6), it appears as a necessary consequence that no mode of conveyance, made by a tenant for life or tenant *pur autre vie*, can, for the time to come, or more correctly speaking, subsequently to the 1st of October, 1845, operate as a forfeiture of his estate. The grantee of a tenant for life becomes, as a matter of course, tenant *pur autre vie*; but if he reconvey the estate to his grantor, the latter will again become tenant for life, the estate *pur autre vie* being the lesser, merging in the estate for life, which is the greater estate; as it also will where lands are limited to one person for the life of another, with remainder to himself for his own life: the latter, in the eye of the law, being considered as the greater estate.

Tenants in dower.—Tenants in dower were subject to the same restrictions respecting alienation as other tenants for life. But where a doweress aliened any feoffment, and the feoffee died seised, whereby the entry of the person in reversion was taken away, he could have had no writ of entry *ad communem legem*, until after the decease of the tenant in dower; and then the warranty, which was at that time usually inserted in all deeds, barred the reversioner if he was heir to the doweress. To remedy this evil, it was provided by the statute of Gloucester (6 Ed. 1, c. 7), that upon the alienation in fee, or for life of a tenant in dower, she should forfeit her estate, and that the heir should have a writ, *in casu proviso*, in her lifetime. By the statute 11 Hen. 7, c. 20, also, and 32 Hen. 8, c. 36, no feoffment, fine, recovery, or warranty by a tenant in dower will take away the right of entry in the heir or reversioner, but shall be a forfeiture of her estate; so that even previously to the act of 3 & 4 Wm. 4, c. 27, s. 39, the heir might have entered upon the lands, or have brought his action of ejectment for the recovery of them; but it would have been no forfeiture of her estate unless she had conveyed by some tortious mode of conveyance, which it seems she is now no longer able to do. (3 & 4 Wm. 4, c. 74, s. 2; 8 & 9 Vict. c. 106, s. 4; see also *note*.)

8. Tenants for years.

A tenant for years, unless prohibited by the express terms of his lease, may assign over his term or grant an underlease (Cru. Dig. tit. 8, ch. 2, pl. 45); but this power of alienation may be restricted by the lease (Hob. 107; 1 Ins. 204, a, 223b); which restriction will be equally binding upon the representatives as upon the lessee himself. (*Moore's case*, Cro. Eliz. 26; *Berry v. Taunton*, *ib.* 331; *Pennant's case*, 3 Rep. 64; *Roe dem. Gregson v. Harrison*, 2 T.R. 425.) Yet, although a voluntary assignment by a lessee or his representatives, where there is a restriction against assignment, will be a forfeiture of the lease, it will be otherwise where the assignment is made by operation of law, as where the lease is taken in execution, and sold in pursuance of it (*Doe dem. Mitchinson v. Carter*, 8 T.R. 57), unless it be fraudulently and collusively done by the lessee, in order, by such means, to evade the condition; as, for example, if

the lessee were to give a warrant of attorney to confess in judgment to a creditor, for the express purpose of enabling such creditor to take the lease in execution under the judgment, which would be construed as such an act of fraud upon the lessor, that the latter would be enabled to recover the premises from a purchaser under the sheriff's sale, (*Doe v. Carter*, 8 T.R. 300.) In the case of a lessee who is, by the terms of his lease, prohibited from assigning, becoming bankrupt, the prohibition will be discharged, and his assignees may sell and assign his interest, without incurring a forfeiture (6 Geo. 4, c. 16, s. 75; *Doe dem. Cheere v. Smith*, 1 Marsh. 359; 5 Taunt. 795; 2 Rose, 280; *Doe dem. Mitchinson v. Carter*, 8 T.R. 300; *Lloyd v. Crispe*, 5 Taunt. 249; *Holland v. Worsley*, 1 Camb. N.P. c. 20), unless such interest is, and as it undoubtedly may be, made determinable on the lessee's becoming a bankrupt, and the lessor enabled, on the occurrence of that event, to enter upon the demised premises, as if for a forfeiture (*Roe v. Galliers*, 2 T.R. 133; *Brandon v. Robinson*, 18 Ves. 429.)

Conditions in restraint of assignment not favoured.—Conditions to restrain a lessee from assigning are not favoured; therefore, a condition of this kind will not preclude the lessee from underletting the property. (*Crisoe and Blencowe v. Bugby*, 3 Wils. Rep. 234; 2 Blackst. 766.) And conditions of this kind affect the original lessor and his personal representatives only, and do not extend to his assignees; consequently, if the lessee assigns the term with his lessor's assent and license, such assignee may assign to any other person, without any further assent on the part of the lessor. (*Dumpon's case*, 4 Rep. 119, b.) So a demise to A, B, and C, with a like condition, if the license to alien be granted to, and A aliens accordingly, the condition will thereby be determined with respect to B and C also. (*Leeds v. Crompton*, cited 4 Rep. 120, a; 1 Roll. Abr. 472, G. pl. 7; *Taylor v. Shum*, 1 B. & P. 21; Steph. N.P. 1124; Selw. N.P. 480, 9th edit.) And where the condition is that the lessee shall not alien any part of the land without the lessor's consent, and the lessor afterwards consents to his alienating a part, the condition will thereby become discharged as to the residue (4 Rep. 120, a). There is, however, one species of assignment by license of a lessor which will not discharge the condition, and which we must be careful not to lose sight of; which is, where there is an exception out of the usual restriction to alienate, in favour of an assignment by will, and the lessor assigns by will accordingly, and after the lessee's death his executors make another assignment, and not by will, in which case, it seems, the last assignment will be invalid. (*Lloyd v. Crisp*, 5 Taunt. 249.) And although a condition not to assign without license will not affect an underlease, yet a lessee may be restricted as well from underletting as from assigning, if a proviso to that effect be inserted in the lease. And a Court of Equity will not relieve against a forfeiture occasioned by a breach of covenant against assigning or underletting without the consent of the lessor. (*Davies v. Moreton*, 2 Cha. Cas. 127; 2 Cru. Dig. tit. 13, ch. 1, s. 52; 1 Mad. Pract. 40, 2nd edit.; Selw. N.P. 481, 9th edit.; *Hill v. Barclay*, 18 Ves. 63; *Loyal, Lord, v. Ranalagh*, Lord, 3 Ves. & Bea. 31; *Rob v. Harrison*, 7 T.R. 245; *Doe dem. Holland v. Worsley*, 1 Campb. N.P.C. 20.) There is, however, a distinction between those cases where the lease contains a condition for avoiding the lease in cases of alienation, and where the lessee merely enters into a covenant against so doing; for it is only in the former case that the lease will be forfeited by the alienation; in the latter the lessor's only remedy is by an action for damages for the breach of covenant. (*Paul v. Morse*, 8 B. & C. 488; see also *Whickot v. Fox*, Cro. Jac. 398; *Fox v. Swann*, Sly, 483; 2 Cru. Dig. tit. 13, ch. 1, pl. 40, 41.) But if a lessee for years attempts, by a tortious mode of conveyance, to create a larger estate than by law he is entitled to do, and thereby divests the estate in remainder or reversion, it will operate as a forfeiture of his estate. (Dy. 362, 366; 1 Ins. 251; Cro. Eliz. 332.) But where a lease may be avoided for breach of a condition, if the lessor should accept rent due afterwards, or distrain for the same, after notice of the cause of forfeiture, it will restore the validity of the lease. (Cru. Dig. tit. 13, ch. 1, pl. 52; Selw. N.P. 481, 9th edit.; *Goodright dem. Walter v. Davids*, Cow. 804; *Whickot v. Fox*, Cro. Jac. 398.) But it would be otherwise if the lessor, at the time he received the rent, or distrained for the

same, was ignorant of any cause of forfeiture having been incurred. (*Roe dem. Gregson v. Harrison*, 2 T. R. 425.)

9. Copyholders and tenants of customary estates.

A copyholder, although he formerly held his tenements merely at the will of the lord, has now established his right so firmly, that as long as he continues to render the services and observes the customs of the manor, he can neither be turned out of his possessions (*Wat. Cop. 52, 93; Williams v. Lonsdale*, 3 Ves. 572), nor precluded from transferring his estate and interest in the copyhold premises. But notwithstanding this extensive power of alienation, a copyholder, in the absence of an express custom, cannot, without the license and authority of the lord, make a lease for more than a single year (4 Rep. 26, a; *Bulstr. 190; Jackson v. Hoddeston*, Cro. Eliz. 35; *East v. Harding*, ib. 498; *Moore*, 393; *Mathews v. Wheaton*, 6 Vin. Abr. 119) even by parol (*East v. Harding*, *supra*, *Wat. Cop. 327*); nor even for one year, if it be to commence in futuro (ib.); and should he presume so to do, he will thereby incur a forfeiture of his estate; as he will even where he has a license, if he exceeds it, and grants a longer term than by the terms of such license he is empowered so to do. (*Jackson v. Neale*, Cro. Eliz. 395.) Where, however, there is a custom in the manor for copyholder to grant leases, a term granted in pursuance of the custom would be good, and of course no forfeiture. (Vin. Abr. 118; *Cru. Dig. tit. 10, ch. 5, pl. 8*.) And if a lease be made with the lord's license, no matter how long the term, it will be effectual; nor can any forfeiture accrue thereby (6 Vin. Abr. 217); and the lessee in such case may assign his term, or make an underlease, without any new license being requisite for that purpose; the interest of the lord during the continuance of such term having been already discharged by the license. (*Turner v. Hodges*, *Hutt. 102*.) In order also that a copyholder's lease may operate as a forfeiture, a common law interval must pass; consequently, a mere covenant or an agreement for a lease, ~~and not a lease~~ (*Gibb. 233; Richards v. Clegg*, 3 Keb. 688; *Wat. Cop. 328; Hamlen v. Hamlen*, 1 Bulstr. 190; *Doe v. Elare*, 2 T. R. 739; *Doe v. Morris*, 2 Taunt. 52; *Doe v. Luffin*, 4 East, 221; *Denn v. Cartwright*, 38. 29.) Upon the same principle, therefore, a feoffment without livery, or a bargain and sale without enrolment, whereby the copyholder professes to convey a freehold interest, will not effect a forfeiture of his estate (*East v. Harding*, Cro. Eliz. 498; *Co. Litt. 59, a; N. (3); Wat. Cop. 327; Godb. 369; Gibb. 255*); because, from the imperfection of those assurances, they were incapable of passing a common law interest; yet in order to work a forfeiture, it is not requisite that the conveyance should be made by a tortious mode of assurance, for if it be made by such an instrument as is capable of passing common law interest in freehold property, it will be sufficient (*Lit. s. 84; Cru. Dig. tit. 10, ch. 5, pl. 5*); the ground of which is, that a copyholder being but a tenant at will, such an act of alienation would be treated as a determination of his will. But a bargain and sale, although enrolled, will not produce this consequence; because a bargain and sale only passes an use till the statute operating upon such use transfers the possession; and as a copyholder is incapable of being seised to an use, the statute cannot attach, the consequence of which is, that no estate passing, there can be no forfeiture. (*Wat. Cop. 328*.) And it also seems that a surrender by a copyholder for life, to the use of another in fee, will be no forfeiture (*Oldcott v. Leveil*, *Moore*, 753; *Wat. Cop. 328; Bullock v. Diblay*, 4 Rep. a.); as a surrender is incapable of passing more than the party making it can lawfully transfer; and even if such a surrender could pass the fee, it would be no more than the fee of the copyhold interest, and not an estate at common law; which, as I have before remarked, is essential to work a forfeiture; besides, where a surrender is made, it must be done with the privity of the lord, or, which is the same thing, of his steward; and if the lord accept the surrender in fee from the copyholder for life, and admit the appointee accordingly, it will be his own act. (*Wat. Cop. 329*.)

Relief in equity.—Relief is sometimes afforded by a Court of Equity where a copyholder has inadvertently incurred a forfeiture (1 *Mad. Prac. 44*, 2nd edit.); but this has rarely, if ever, been done when the act occasioning the forfeiture was a wilful and voluntary one; consequently whenever it has been incurred by the copyholder, having conveyed a common law estate (*Sir H. Peachey v. Duke of*

Somerset, 1 Str. 447; *Pre. Cha. 574*), or a lease without license, relief has been always refused. (18. 1b.; see also 1 *Mad. Prac. 44*.)

Copyholders, tenants in tail.—With respect to copyholders who are tenants in tail, the most usual mode by which they barred the entail was by suffering a recovery in the lord's court; but in some manors there was a custom to bar them by a mere surrender, whilst in others it was optional to adopt either a recovery or a surrender for that purpose; either mode of assurance producing precisely the same result. The late statute of the 1 Wm. 4, c. 65, which re-enacts the statute 47 Geo. 3, c. 8, s. 2, and extends to lands in ancient demesnes, as well as to copyholds, empowered all persons not being under coverture, and every *fewer covert* also, (provided she was solely examined by the lord or steward of the manor), to appoint an attorney for the purpose of surrendering the lands, in order to constitute a tenant to the plaintiff, for suffering a recovery in the lord's court. These Acts have been since repealed by the Fine and Recovery Substitution Act (3 & 4 Wm. 4, c. 74), by which last-mentioned Act the barring of estates tail in copyholds must for the future be governed; which, in the case of legal estates, must be effected by surrender; and, where the estate is merely equitable, either by surrender or by deed. (Sec. 50.) And where the consent of a protector is necessary, the deed by which he consents must be produced to the lord or his steward at or before the surrender, which the lord or steward must indorse, and enter the deed and indorsement on the rolls; and the indorsement is to be evidence of the production; and the lord or steward is to endorse upon the deed a memorandum of such entry. (Sec. 52.) In case the protector does not consent by deed, his consent must then be given to the person taking the surrender; and if the surrender be out of court, the consent should be stated in the memorandum of the surrender, and the memorandum signed by the protector; which, when entered on the rolls, will be evidence both of the consent and surrender; but if the surrender be in court, the surrender must be entered on the rolls, and a statement of the consent, which entry, or a copy, is to be available as evidence, as any other entry on the court rolls, or a copy thereof. (Sec. 52.) An equitable tenant in tail may dispose of his copyhold estate, by a deed, to be entered on the rolls; and, if the protector consent, by a separate deed, the latter must be executed either previously to or simultaneously with the disposition, and entered on the rolls by the lord or his steward, who must indorse on the deeds a memorandum of them; and unless the deed be so entered it will be void, as against a subsequent purchaser for valuable consideration. (Sec. 53.) But neither disposition will require enrolment, otherwise than by entry on the court rolls.

(To be continued.)

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Chilian	99½	99½	99½	99½	99½	99½
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By Mr. F. CHINNOCK, at the Mart.
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THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, April 6.

Evill and Co. cloth manufacturers, joint div. next week. *Alsager*, London.—*Moir*, G. bootmaker, last exam. passed. —*Self*, C. plumber, last exam. passed.—*Todd and Todd*, warehousemen, last exam. May 8.—*Wilkinson*, T. iron-monger, last exam. passed.

Tuesday, April 7.

Boorman, J. L. silversmith, last exam. passed.—*Brewster*, W. F. chymist, last exam. passed.—*Childs*, R. tailor, last exam. April 28.—*Froeschlen and Price*, tailors, joint div. next week. *Graham*, London.—*Garland*, R. corn chandler, last exam. May 5.—*Hemblen*, S. H. grocer, last exam. passed.—*How*, V. builder, assignees, April 21.—*Knights*, J. cattle dealer, last exam. passed.—*Knox*, J. carpenter, last exam. May 12.—*Leman* and *Co.* wharfingers, joint div. and sep. B. next week. *Graham*, London.—*M'Entire*, R. commission agent, div. next week. *Graham*, London.—*Nunn*, J. haberdasher, last exam. passed.—*Smart*, J. watchmaker, last exam. June 9.

Wednesday, April 8.

Shirt, J. cheesemonger, last exam. passed.—*Spaul*, J. wine merchant, assignees, April 22.

Thursday, April 9.

Humphreys, W. hotel keeper, last exam. sine die.—*Winstan*, T. merchant, last exam. sine die.

Friday, April 10.

Earp, G. B. ship broker, last exam. April 14.

Saturday, April 11.

Banister, C. J. draper (late joint and fin. div. with R. Banister, next week). *Green*, London.—*Forshall*, T. surgeon, assignees, April 18.—*Harvey*, W. B. mercer, last exam. May 23.—*White*, W. tailor, last exam. passed.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Cobham and Wright, builders, joint, 1s. 3d. on new proofs. *Follett*, London.—*Coleman and Hall*, ironfounders, joint, 4s.; sep. Hall, 6½d.; *Coleman*, 6½d. *Turquand*, London.—*Curtis*, J. H. bookseller, 4d. *Pennell*, London.—*Dixon*, F. carrier, 3s. 6d. *Follett*, London.—*Drinkwater*, W. window cord manufacturer, fin. 1s. 7d. *Port*, Manchester.—*Evans*, C. S. master mariner, first, 4s. 10d. *Pennell*, London.—*Hague* and *Co.* engineers, first, *Hague*, 4d. *Whitmore*, London.—*Hughes*, R. upholsterer, 2s. *Turquand*, London.—*Knives*, H. S. silk throwster, second, 1½d. *Edwards*, London.—*Kohne*, H. stay maker, first, 1½d. *Whitmore*, London.—*Mabbs*, J. jun. baker, 5½d. *Follett*, London.—*Mortimer*, J. bookseller, 8d. *Follett*, London.—*Pettigrew*, R. jun. tailor, second, 3s. 9d. *Whitmore*, London.—*Ratnell*, T. tailor, 1s. 6d. *Follett*, London.—*Senior*, W. hosier, first, 3s. 6d. *Hope*, Leeds.—*Simpson* and *Co.* engineers, sep. *Simpson*, 2s. 4d. *Follett*, London.—*Smethurst*, W. machine maker, 7s. 7d. *Fraser*, Manchester.—*Safe*, W. printer, first, 1½d. *Whitmore*, London.—*Sugden*, J. and W. machine makers, joint, 4s. 3d. *Hope*, Leeds.—*Sugden*, J. and D. fancy cloth manufacturers, sep. *J. Sugden*, 9s. *Kynaston*, Leeds.—*Tapp*, C. coachmaker, 1½d. *Follett*, London.—*Walker*, H. D. innkeeper, second, 1s. 2d. *Pennell*, London.—*Wenman*, T. merchant, first, 9s. *Valpy*, Birmingham.—*Williams*, W. victualler, 2s. 6d. *Follett*, London.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, April 10.

Bates, T. farmer, Sibbertoft, Northamptonshire, March 28. Trusts. S. Berridge, sen. farmer, Sulby, and W. Pell, jun. farmer, Clipston. Sol. Wartyaby, Market Harborough.—*Birkhead*, J. K. woolstapler, Heckmondwike, March 9. Trusts. T. Barff, woolstapler, Wakefield, and R. Armitage, shopkeeper, Heckmondwike. Sols. Messrs. Carr, Gomersal.—*Gresley*, C. woollen draper, High-st. Borough, March 10. Trust. A. Caldecott, warehouseman, Cheapside. Sol. Ashurst, Cheapside.—*Hale*, W. linen draper, Highworth, Wiltshire, March 19. Trusts. D. Smith, Wood-st. and John Baggalay, Love-lane, warehousemen. Sols. Sole and Turner, Aldermanbury.—*Heaton*, H. currier, Horncastle, April 4. Trusts. R. H. Scott, gent. and T. Collinson, currier, both of Horncastle. Sols. Sellwood and Conington, Horncastle.—*Holgate*, G. R. chinaman, High Holborn, April 2. Trust. J. Sparkes, agent, Thavies-inn. Sol. Catlin, Ely-place.—*Rhodes*, E. hatter and furrier, Leeds, March 25. Trusts. E. Cuthbert, Cheapside, and T. Bevington, King William-st. wholesale furriers. Sols. Sole and Turner, Aldermanbury.

Gazette, April 14.

Beets, E. W. dealer, New Buckenham, Norfolk, April 8. Trusts. **J. W. Kilverston, esq.** and **J. Wellington, farmer,** Eccles. Sol. **Clowes, New Buckenham.**—**Done, J.** salt manufacturer, Tiverton, April 4. Trust. **J. Eytton, banker,** Nantwich. Sol. **Dumville, Tarporley.**—**Taylor, R.** dyer, Idol-lane, March 13. Trust. **J. R. Reeves, merchant,** King's Arms-yard, Coleman-st. Sol. **Warton, Crown-court,** Threadneedle-st.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.
Gazette, April 10.

CARTWRIGHT, CHARLES HENRY, grocer, Warrington, Lancashire, April 27 and May 19, at twelve, Manchester; Pott, off. ass.; Sharpe and Co. Bedford-row, and Rowe, Liverpool, sols. Date of fiat, April 7; Bankrupt's own petition.

DAVEY, WILLIAM, coal merchant, Pentewan, St. Austell, Cornwall, April 29 and May 20, at eleven, Exeter, Com. Bere; Hirtzel, off. ass.; Cumming and Son, Bodmin, Messrs. Smith, Southampton-buildings, and Stogdon, Exeter, sols. Date of fiat, April 3. R. Hodge, mariner, St. Austell, pet. cr.

FOLLY, EDWARD, licensed victualler, Coach and Horses, Stoke Newington-green, April 24, at half-past one, May 22, at two, Basinghall-st. Com. Fane; Whitmore, off. ass.; Dimmock and Burbey, Sise-lane, sols. Date of fiat, April 6. J. and W. Nicholson, distillers, St. John-st. pet. crs.

ILLINGWORTH, MARTHA, SMITH, WILLIAM, and WRIGHT, JOHN, worsted spinners and worsted manufacturers, Bradford, Yorkshire, April 21 and May 14, at eleven, Leeds, Com. West; Young, off. ass.; Wells, Bradford, and Courtney, Leeds, sols. Date of fiat, April 6. J. Stead, wool stapler, Bradford, pet. cr.

KNIGHT, JOHN, mercer and draper, Waterloo-house, Preston, Lancashire, April 21 and May 20, at twelve, Manchester; Fraser, off. ass.; Reed and Langford, Friday-st. and Sale and Co. Manchester, sols. Date of fiat, March 21. D. Ainsworth, fustian manufacturer, Manchester, pet. cr.

LANGLEY, HENRY CHARLES, apothecary, chemist, and druggist, 1, Suffolk-place, Hackney-rd. April 21, at half-past one, May 28, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Wheatley, Walbrook, sol. Date of fiat, April 7. A. D. Langley, spinster, Peter-st. Spitalfields, pet. cr.

ORAN, JAMES BOULTON, brewer and maltster, Birmingham, April 22 and May 16, at eleven, Birmingham, Com. Daniel; Bittleston, off. ass.; Bartlett, Birmingham, sol. Date of fiat, April 6. Bankrupt's own petition.

MATTHEWS, THOMAS, draper, Aldgate High-st. April 23, at twelve, May 21, at eleven, Basinghall-st. Com. Shepherd; Graham, off. ass.; Sole and Turner, Aldermanbury, sols. Date of fiat, April 7. H. and J. Wood, warehousemen, Red Lion-cd. Watling-st. pet. crs.

RICKARDS, THOMAS, watch maker and jeweller, Wootton-under-Edge, Gloucestershire, April 27 and May 22, at eleven, Bristol, Com. Stephens; Miller, off. ass.; Husband and Wyatt, Gray's-inn-sq. sols. Date of fiat, April 1. J. G. Reeves, factor, Birmingham, pet. cr.

ROE, HENRY, goldsmith and jeweller, Liverpool, April 28 and May 26, at eleven, Liverpool. Com. Ludlow; Turner, off. ass.; Bridger and Blake, London-wall, and Dodge, Liverpool, sols. Date of fiat, April 6. Bankrupt's own petition.

WEATHERHOG, ROBERT, and WEATHERHOG, RICHARD, farmers, and dealers in corn, Stone, Kent, April 17, at two, May 29, at twelve, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Tripp, Adelaide-pl. London-bridge, and Hayward, Dartford, sols. Date of fiat, April 9. A. Russell, gent. Dartford, pet. cr.

Gazette, April 14.

DAVIES JOHN, mercer and draper, Shrewsbury, April 27 and June 8, at twelve, Manchester, Pott, off. ass.; Clarke and Co. Lincoln's-inn-fields, Messrs. Wace, Shrewsbury, and Crossley and Sudlow, Manchester, sols. Date of fiat, April 3. R. Wace, gent. Shrewsbury, pet. cr.

GROHAM, THOMAS, baker and beerhouse-keeper, Chard, Somersetshire, April 23 and May 21, at one, Exeter, Com. Bere; Herniman, off. ass.; Dornmet, Chard, Church, Bedford-row, and Stogdon, Exeter, sols. Date of fiat, April 3. R. Grabham, miller, Ilminster, pet. cr.

ROE, JAMES, dyer, Manchester, April 30 and May 21, at twelve, Manchester; Hobson, off. ass.; Gregory, and Co. Bedford-row, and Morris, Manchester, sols. Date of fiat, April 6. J. Morris, attorney, Manchester, pet. cr.

WALLACE, JAMES, grocer and tea dealer, Durham, April 24, at half past ten, May 28, at one, Newcastle, Com. Ellison; Wakley, off. ass.; Marshall, Durham, Harle, Newcastle, and Sole and Turner, Aldermanbury, sols. Date of fiat, April 6. T. J. and J. Hansell, and T. Wren, jun. millers, Stockton-upon-Tees, pet. crs.

Meetings at Basinghall-street.

Gazette, April 10.

Blyth, J. grocer and cheesemonger, Chelmsford, May 2, at eleven, aud. and div.—**Bretton and Tunwell,** upholsterers, Charlotte-st. May 5, at twelve, aud.—**Brooke, J.** miller, Goodstone, May 1, at half-past one, aud.—**Gale, J.** sen. and jun. ropemakers and paint and colour manufacturers, Love-lane, Shadwell, May 2, at twelve, fin. div.—**Lawrence, S.** dealer in watches, Bedford-st. April 24, at eleven, last exam.—**Lovegrove, J.** barge builder, Rotherhithe-st. April 24, at one, last exam.—**Maclean, M.** cloth factor, Basinghall-st. and of Stroud, clothier, May 5, at eleven, aud.—**Oldham, J.** silk warehouseman, Wood-st. May 2, at half-past twelve, fin. div.—**Robson, C. O.** plasterer and builder, 10, Finsbury-st. Finsbury-sq. May 2, at one, div.—**Pratt and Bodie,** builders, Addison-rd. North and Queens-rd. Nottingham-hill, April 24, at twelve, last exam.—**Vanderplank, B.** woollen warehouseman, Love-lane, April 24, at eleven, last exam.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Baldwin, W. victualler, Notting-hill, May 1, at twelve.—**Blackburn, I.** engineer, Minorities and Northumberland-alley, May 4, at one.—**Guy and Smith,** drapers, Farringdon-st. and Ludgate-hill, May 2, at half-past one.—**Harris, J.** butcher, Leadenhall-market, May 1, at two.—**Hoppe, C.** chinaman, Blackfriars-rd. May 1, at half-past one.—**Hulse, R.** chemist, Little Tower-st. May 1, at eleven.—**Noir, G.** bootmaker,

John's-row, St. Luke's, May 5, at one.—**Ricketts, J.** grocer, Gosport, May 4, at half-past twelve.—**Self, C.** plumber, Sun-st. May 1, at half-past twelve.

Gazette, April 14.

Brooke, J. miller and corn merchant, Gooderstone, Norfolk, May 6, at two, div.—**Burleigh, W.** scrivener, Haverhill, April 29, at twelve, prf. of a debt.—**Cooper, J.** painter and glazier, Hanover-st. Hanover-sq. May 6, at half-past twelve, div.—**Cross, S. M.** corn merchant, Nelson-st. Greenwich, April 28, at one, last exam.—**Garland, R.** corn chandler, Walham-green, May 5, at eleven, aud.—**Herpent, F.** warehouseman, factor, and merchant, Sherrard-st. Golden-sq. May 7, at twelve, div.—**Linnit, J.** goldsmith, Argyle-pl. Regent-st. May 6, at eleven, aud.—**Sporer, J. F.** tailor, St. James's-st. Piccadilly, May 6, at one, further joint div. and further sep. div. of Sporer.—**Rogers, H.** money scrivener and coach proprietor, Thetford, Suffolk, May 8, at twelve, div.—**Shirt, J.** cheesemonger, Brett's-bldgs. Camberwell-rd. May 6, at two, aud.

MEETINGS FOR THE ALLOWANCE OF CERTIFICATES.

Banister, C. J. draper, Derby, May 6, at twelve.—**Ellis, T.** wine and bottle merchant, Great St. Helen's, May 6, at eleven.—**Gibson, C.** cheesemonger, South-st. Grosvenor-sq. May 6, at half-past eleven.—**Harrison, S.** provision merchant, Poole, May 6, at twelve.—**Kearlton, W.** cheesemonger, Lamb-st. May 6, at twelve.—**Knights, J.** cattle dealer, Great Melton and Thurgarton, May 6, at twelve.—**Ross, Sir J. kn.** banker, May 8, at half-past eleven.—**Sisley, J.** carpenter, Margate, May 8, at eleven.—**Turner, J.** manufacturer of printing materials, Brocks-st. May 7, at eleven.—**White, C. H.** draper, Gravesend, May 6, at twelve.—**Williams, J. D.** blacking manufacturer, Newcastle, May 6, at one.

Meetings in the Country.

Gazette, April 10.

Banford, R. maltster, Pontefract, May 4, at eleven, Leeds, aud.—**Melanby, J.** broker and coal fitter, Hartlepool, April 20, at eleven, Newcastle, last exam.—**Raudon, J. C.** wool merchant, Leeds and Huddersfield, May 4, at eleven, aud.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Aldrett, J. ropemaker, Rugeley, May 2, at eleven, Birmingham.—**Gay, W.** builder, Cheltenham, May 5, at one, Bristol.—**Gillet, J. B.** dyer, Bradford, May 7, at eleven, Leeds.—**Gore, J. G.** innkeeper, Cheltenham, May 5, at one, Bristol.

Gazette, April 14.

Bulmer and Bulmer, shipbuilders, South Shields, May 6, at half-past ten, Newcastle, joint aud. and sep. of J. Bulmer.—**Clarke and Co.** bankers, Leicester, May 8, at eleven, Birmingham, sep. audits of Clarke and Phillips.—**Drewry, R.** banker, Penrith, May 6, at twelve, Newcastle, aud.—**Fidgeon and Co.** merchants, Birmingham and Sheffield, May 8, at eleven, Birmingham, joint aud. and sep. of Fidgeon and Getley.—**Granger, W.** paper manufacturer, Relly-mill, Durham, May 5, at one, Newcastle, aud.—**Hall, W.** grocer and flour dealer, Claypath, Durham, May 5, at half-past twelve, Newcastle, aud. May 6, at one, div.—**Hodgson, R.** grocer and tea dealer, May 5, at twelve, Newcastle, aud. and May 6, at twelve, div.—**Lewis, R.** woollen manufacturer, Wootton under Edge, May 11, at eleven, Bristol, aud.—**Nell, W.** common brewer and wine and spirit merchant, Ardwick and Manchester, May 7, at twelve, Manchester, aud. and May 8, at twelve, further div.—**Patterson, T.** and **Codling, J.** earthenware manufacturers and partners in trade, Sherif-hill, Gateshead Fell, Durham, May 5, at eleven, Newcastle, joint aud. and sep. of Patterson, and May 7, at two, final joint div.—**Schultz and Carr,** stock brokers, Liverpool, April 28, at eleven, Liverpool (adj. April 6), last exam.—**Taylor, T. M.** merchant, Newcastle, April 29, at half-past one, Newcastle (adj. April 7), last exam.—**Tildesley, M.** timber dealer, Wolverhampton, May 8, at eleven, Birmingham, aud.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Knight and Knight, upholsterers, Bath, May 5, at eleven, Bristol, as to M. T. Knight.—**Wilders, R.** brewer, Burton upon Trent, May 12, at twelve, Birmingham.

Partnerships Dissolved.

Gazette, April 7.

Balkwill, F. and **Baldwin, C.** Liverpool, April 6.—**Brooke, P. J.** (deceased), and **E. Shepley-hall** Print-works, and Manchester, Feb. 5. Debts paid at the counting-house, Manchester.—**Cooper, T.** and **W.** and **Strongtharm, G.** lime masters, Minworth Dutton, and Bodmore-heath Wharfs, Warwickshire, March 25. Debts paid by either partner.—**Cope, W.** and **Wright, J.** lace manufacturers, Nottingham, March 25.—**Fitzmaurice, J.** and **Sage, W. J.** surgeons, Holloway, April 4. Debts paid by Fitzmaurice.—**Forshall, T.** and **Davies, H.** surgeons, Kennington, April 4.—**Goodland, W.** and **Quant, J.** and **Goodland, C.** coal merchants, Tiverton, March 31. Debts paid at the counting-house, Tiverton.—**Holme, H.** and **J.** boot makers, Manchester, April 3. Debts paid by J. Holme.—**Hudson, J. C.** and **W. R.** bankers, blackheath, April 1. Debts paid by J. C. Hudson.—**Langman, J.** and **G.** pawnbrokers, Hanley, March 18. Debts paid by J. Langman.—**Laycourt, R.** Bel-don, W. and **Butler, R.** railway contractors, Witton le Wear, April 2.—**Merry, H.** Phipson, E. and **Parker, C.** Birmingham, March 31.—**Plumtree, J.** and **Gibbons, M.** grocers, Lincoln, April 6.—**Rye, H. B.** and **Thomas, T. P.** mine agents, Old Broad-st. March 25.—**Stainforth, S.** and **Hutton, G.** grocers, Sheffield, April 2. Debts paid by Hutton.—**Strongtharm, G.** and **Cooper, T.** lime masters, Dawend, Walsall, Essington, and Rugeley, March 25. Debts paid by either partner.—**Thorpe, M.** and **Holewell, E.** brewers, Spalding, April 2. Debts paid by Holewell.—**Wickens, J.** and **Bird, W.** stationers, Old-st. April 6.—**Wallen, W.** sen. and jun. architects, Finsbury-circus, King-st. Cheapside, and Greenwich, April 4. Debts paid by Wallen, sen.—**Woodward, W.** and **Walker, W. W.** tailors, Chelsea, April 6. Debts paid by Woodward.

Gazette, April 10.

Archer, W. and **Ladd, W.** grocers, Hammersmith, March 25.—**Arkell, J.** Large, W. and **Arkell, R.** brewers, Stratton St. Margaret's, April 6. Debts paid by J. Arkell.—**Becan, R.** and **Whitaker, H.** jun. cotton spinners, Wigan, May 27.—**Beck, R.** and **Mason, R.** tallow refiners, Liverpool, Feb. 5. Debts paid by Beck.—**Blanchard, J. C.** and **J.** boot makers, Tavistock, March 25.—**Bushnell, R.** and **Deansbury, C. L.** livery stable keepers, Duke-st. and Greyhound-yard, Piccadilly, April 7. Debts paid by Deansbury.—**Carpiss, T.**

Robson, J. and **Culverwell, J.** haberdashers, Bristol, Feb. 14. Debts paid by Culverwell.—**Clarke, A.** and **Crazen, E.** milliners, Manchester, April 4.—**Cornish, J.** and **Austin, J.** looking glass polishers, Short's-gardens, April 8.—**Dean, J.** and **Barns, W.** attorneys, Gray's-inn, April 1.—**Foot, S.** and **Radeliffe, C. H.** attorneys, Salisbury, April 7. Debts paid by either partner.—**Freeman, J.** and **F. brewers,** Tottenham, April 9. Debts paid by F. Freeman.—**Garnham, J.** and **W. W.** drapers, Beccles, March 11. Debts paid by J. Garnham.—**Hartley, G.** and **Heath, J.** attorneys, Giggleswick, April 7. Debts paid by Hartley.—**Hale, S. W.** and **Pope, J.** coach makers, Margaret-st. April 9. Debts paid by Hale.—**Hilla, A.** and **Hanson, J.** jun. manufacturing chemists, Croydon, April 8.—**Irlam, T.** and **Wanostrocht, V.** Hardman, R. J. and **Kewley, J. S.** general brokers, Liverpool, so far as regards Kewley and Hardman, April 8.—**Leavens, R.** and **Barraclough, J.** jun. wood turners, Reading, March 7. Debts paid by Leavens.—**Irons, W.** jun. and **G. farmers,** Luton, April 6. Debts paid by Irons, jun.—**Mander, T.** and **Paine, A.** linen drapers, Birmingham, April 1. Debts paid by Mander.—**Mathews, T.** Castle Carey, and **Bird, R.** Crewekerne, girth web manufacturers, April 4.—**Morrison, S. S.** Booth, J. and **W. and Holt, J.** lace manufacturers, Nottingham, April 6. Debts paid by Messrs. Booth.—**Rawling, J.** and **S. dyers,** Bradford, April 7. Debts paid by B. Rawling.—**Sanger, J.** and **Martin, A.** wine merchants, Philpot-lane, April 2.—**Saw, H.** and **J.** woollen manufacturers, Dukinfield, Jan. 22.—**Schmitt, J.** and **Hodgkinson, E.** livery stable keepers, Wigan, April 6.—**Skipper, R.** and **J. S.** corn merchants, Liverpool, April 5.—**Stevenson, G.** and **E. millers,** North Wingfield, March 23. Debts paid by G. Stevenson.—**Walter, W.** and **Denninbray, S.** attorneys, Kingston-upon-Thames, April 4.—**Watson, R.** and **Lambert, M. W.** brass founders, Newcastle, March 31. Debts paid by Watson.—**Withers, H.** and **Ommond, R.** jun. lacemen, Hedge-row, Islington, April 8. Debts paid by Ommond.

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, April 7.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Bell, E. F. clerk, Fletton, April 17, at half-past eleven.—**Davis, E.** tailor, Bridport-st. Dorset-square, April 16, at twelve.—**Ferris, M.** widow, Rye-lane, Peckham, April 16, at eleven.—**Mason, T.** coach smith, New-yard, Westminster, April 10, at eleven.—**Saue, T.** servant, Hutchinson-st. Houndsditch, April 16, at eleven.—**Simpson, J.** artist, Carlisle-st. April 16, at eleven.—**Webster, F. T.** straw hat manufacturer, Plympton, April 16, at eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Chubb, R. out of business, Lifton, April 15, at eleven, Exeter.—**Hole, H.** tailor, Bath, April 27, at eleven, Bristol.—**Jones, J.** stone mason, Bristol, April 23, at half-past eleven, Bristol.—**Lewis, T.** farmer, Bath, April 23, at eleven, Bristol.—**McDonald, D.** surgeon, Tiverton, April 15, at eleven, Exeter.—**Purdy, G.** bricklayer, Leeds, April 17, at eleven, Manchester.—**Ryan, M.** surgeon, Bury, April 20, at one, Manchester.—**Sellers, W.** hawker, Oldham, April 16, at twelve, Bristol.—**Short, W.** butcher, Walcot, April 17, at twelve, Bristol.—**Skinner, S. S.** cattle dealer, Homton, April 15, at eleven, Exeter.—**Stoddard, J.** innkeeper, Longton, April 25, at half-past ten, Birmingham.—**Walker, W.** ear proprietor, Liverpool, April 24, at twelve, Liverpool.—**Withers, I.** cider dealer, Staverton, April 21, at eleven, Bristol.

MEETINGS AT BASINGHALL-STREET.

Peters, J. tailor, Gillingham, April 28, at half-past eleven, div.—**Savage, J.** tea dealer, Kentish-town, April 30, at eleven, aud.

Gazette, April 10.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Allan, J. warehouseman's assistant, Stockwell, April 21, at eleven.—**Brasse, J. R.** out of business, Marie-lane, April 23, at two.—**Burnman, T.** out of business, Ellis's-sq. Penton-st. Walworth, April 21, at eleven.—**Crozon, J. C.** baker, George-row, Bermondsey, April 23, at two.—**Deane, J.** book-seller, Oxford, April 23, at one.—**Edge, W.** tide-waiter, St. George's-pl. Saint George's East, April 23, at eleven.—**Fraser, R.** general dealer, Rayleigh, April 23, at two.—**Howe, J. D.** Minister, Isle of Sheppy, April 23, at eleven.—**Keates, T. J.** lime burner, Sutton, Surrey, April 23, at eleven.—**Powell, W.** undertaker, Coppice-row, Clerkenwell, April 11, at two.—**Ralph, W.** fly proprietor, Hilder-pl. Tonbridge-wells, April 11, at two.—**Twycross, E.** pork-butcher, Brick-lane, Bethnal-green, April 23, at eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Ford, J. cabinet maker, Bath, April 17, at eleven, Bristol.—**Garbutt, J.** clerk, Bradford, April 23, at eleven, Leeds.—**Gawntlett, E.** corn factor, Bristol, May 4, at eleven, Bristol.—**Hinchliffe, T.** stonemason, Halifax, April 21, at eleven, Leeds.—**Hind, J.** manufacturer, Bradford, April 21, at eleven, Leeds.—**Hughes, H.** farmer, Lysfane, April 17, at half-past twelve, Liverpool.—**Iredale, J.** beer retailer, Huddersfield, April 21, at eleven, Leeds.—**Jowett, J.** sen. cotton-warp maker, Halifax, April 21, at eleven, Leeds.—**Jowett, John,** cotton-warp maker, Halifax, April 21, at eleven, Leeds.—**M'Lenn, P.** seaman, Liverpool, April 14, at one, Liverpool.—**Muggrave, J.** and **Brown, R. A.** stock brokers, Leeds, April 23, at eleven, Leeds.—**Richardson, W.** cloth maker, Calderwey, April 23, at eleven, Leeds.—**Robinson, J. R.** bobbin turner, Leeds, April 21, at eleven, Leeds.—**Sims, W.** publican, Allertonhorpe, April 21, at eleven, Leeds.—**Swiliffe, W.** stock-mason, Halifax, April 21, at eleven, Leeds.—**Thompson, A.** joiner, Sherburn, April 20, at eleven, Newcastle.—**Thompson, H.** cheese factor, Nottingham, April 17, at eleven, Birmingham.

From the Gazette of Friday, April 17.

Bankrupts.

Bedford, T. baker, Croydon-common.—**Sankey, E.** out-voce, Canterbury.—**Billings, B.** victualler, Harlow, Essex.—**Stearman, W.** carpenter, Princes-street, Cadogan-street, Chelsea.—**Wills, W.** glove manufacturer, Foster-lane, city.—**Morley, H. R.** merchant, Yorkshire.—**Jackson, G. J.** shoe broker, Liverpool.—**Fisher, T.** shoemaker, Liverpool.—**Lord, A.** dyer, Collyhurst.

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

March 10, 12, and 13.

WHITMALL v. FRATHERSTONEHAUGH.

Practise—Amending bill—68th Order of May, 1845—Due diligence.

In granting upon an application to the discretion of the Court, the judge properly looks to the spirit and intention of the New Orders, although the application was made, but not finally disposed of, before the promulgation of the New Orders, and therefore upon a motion for leave to amend under the old practice, the Court considers whether due diligence has been used, within the meaning of the 68th Order of May, 1845. Where the time for amending expires when the Master's office is closed, and therefore application for time to amend cannot be made to the Master, the application must necessarily be made to the Court: Where fair diligence has been used to obtain the papers from counsel, who was prevented by press of business from advising on the amendments, the Court will not attribute to the client on that account want of due diligence.

This was an appeal from an order of the Vice-Chancellor of England, refusing a motion for leave to amend the bill, on the ground that the plaintiff had not shown that he had used due diligence. The Vice-Chancellor held that the affidavit in support of the motion in the Court below, only went to show that due diligence had been used during one part of the time; and that notwithstanding the motion had stood over since April, 1845, the motion was to be treated as governed by the New Orders of May, 1845. The affidavit did not appear to his Honour to have been made according to the spirit of the 68th Order; and decided that the diligence must be co-extensive with the whole time. From that decision the plaintiff appealed. The answer was filed on the 29th of November, 1844, and the plaintiff's solicitor did not lay the answer before his counsel until the 14th of January, 1845. The interval was thus accounted for. On the 12th of December, the copy of the answer was sent by the agent in London to the plaintiff's solicitor at Worcester, when some time was required for communication between the plaintiff who lived several miles from Worcester, and it was sworn that the instructions for the amendments could not have been prepared as to lay them before counsel until the 14th of January. The amendments required were extensive and complicated, so that counsel had not completed them till the 12th of February. The draft of the amendments was then sent into the country, and in a few days returned to town, and again laid before counsel for final settlement. The time for amending expired on the 20th of March, and the amendments, as settled, were presented from counsel on the 31st of March, 1844. The Master's offices had been closed since the 31st of March, and were not opened until the 3rd of April, consequently no application for time to amend could have been made to the Master. The first seal was on the 7th of April, but notice of motion for leave to amend was given for the 15th of April, the first day of Easter Term, and stood over from time to time until July, when the motion was in part heard,

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was heard again in November following, and finally disposed of on the 15th of December last.

Relit, for the appellant.

Walker and Bacon, contra, referred to *Bartolozzi v. Johnson* (2 Hare, 633); *Attorney-General v. Fishmongers' Company*, 1. They contended that the materiality of the amendments ought to have been shewn, by informing the Court what were the nature and scope of the amendments; and that due diligence had not been used.

Relit, in reply.—The affidavits were sufficient under the 13th Order of 1828, which in July was the order by which this motion was governed; that the plaintiff was bound to use fair and reasonable diligence, which had been done in this case. In *Phillips v. Goding*, Vice-Chancellor Wigram said, that in order to shew that the proposed amendments are material, the plaintiff must either have the certificate of counsel, or an affidavit as to materiality.

JUDGMENT.

The LORD CHANCELLOR.—I am satisfied that the amendments which were asked in this case are material and necessary. Then comes the question, whether reasonable diligence has been exercised in preparing the amendments; and first as to the New Orders. The application was made on the 1st of April, that is, the notice of motion was given for that day. That was long before the New Orders came into operation; some considerable time before they were even promulgated. The question came on for consideration before the Court in July; that was after the promulgation of the New Orders, but before they came into effect. The motion was not finally disposed of until after the 28th October; it came on in December. Although this was after the New Orders, yet, as the Court had possession previously to the orders being promulgated, I think it was proper for the decision of the Court to consider the effect of the New Orders. As to what was said by the Vice-Chancellor, or is supposed to have been said as to the New Orders being applicable to the case, satisfactory explanation has been given. It is an application to the discretion of the Court, and the Court might very properly have declined to exercise that discretion, by its consideration of the New Orders. The Vice-Chancellor is said to have been of that opinion, and I entirely concur in it. He would look to the New Order, consider the spirit of the Order, and that would assist him in guiding his discretion in the case. Then, with respect to the bill. The 29th of March was the time within which the application for leave to amend ought to have been made. The amendments were not completed till the 31st of March. If the amendments had been completed in time, that is, if they had been completed two or three days earlier, the application must have been made to the Master under the order of October 1838. But the Master had closed his office on the 31st of March, which was Good Friday, and the office was not open again until the 3rd of April, a few days before Easter Term. If, therefore, the plaintiff had been in time, four or five days earlier, which would have been in complete time, he could not have applied to the Master, who alone had jurisdiction in the first instance, for leave to amend. He would have been placed in precisely the same situation as he now stands; he would have been under the necessity of making his application to the Court, because the six weeks would have expired before the office was again opened. It seems to me that the defendant has, in this view of the case, sustained no prejudice. The material fact to be considered is, that applications of the kind are applications made to the discretion of the Court. In this respect, the parties would have been precisely in the same situation as they are now placed, if the amendments had been made four or five days earlier; as they would have been precisely in time. That brings me to the consideration of the delay; and as to what took place in the chambers of the learned counsel, unless I were perfectly satisfied from some facts brought before me, that there had been unnecessary delay by the learned counsel, I should have been unwilling to refuse the plaintiff leave to amend on that account.

Gentlemen in the profession will not in each case consistently with other avocations and other claims upon their time, and both solicitor and counsel have done all that was necessary and proper on this occasion. I agree, therefore, that it must be taken that due diligence must be considered to have been used. Every one must know how counsel are occasionally pressed; how difficult and laborious Chancery drawing is, and how much attention and care it requires, so that no gentleman could undertake, within a certain time, to do work of that description. The solicitors appear to have done all they could. They applied at the chambers over and over again, and could not obtain the amendments in time. They did all that was possible. Now I am to consider the time from the 29th of November until the 12th of December, and I am to consider the time which elapsed from the 12th of December to the 14th of January. As to these distant periods, my attention was directed to them, and I have read the affidavits. From December 12th to January the 14th, is, I think, well accounted by the necessary preparation of instructions for counsel,

but the interval between the 29th of November and the 12th of December, affords some ground for doubt. The solicitor in town had in that time obtained the office copy of the answer, and prepared and sent the brief copy of it to the solicitor in the country, and this appears to be rather a long delay; yet, as the defendant has experienced no injury, I think I should be exercising a sound discretion by allowing the amendments to be made. It was said that the plaintiff might file a new bill, but that would occasion a considerable difficulty in the shape of costs, and I do not think it necessary to drive the plaintiff to that by refusing the application. As this matter came before me upon a rehearing and upon an improved state of facts, and a further affidavit making a different case from that before the Vice-Chancellor, the plaintiff must pay the costs of the appeal; and as the application is for indulgence, the plaintiff must likewise pay the costs of the application to the Vice-Chancellor.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

March 14, 16, and 17.

MATTHEW v. EDWARDS.

Mortgagee and mortgagee—Power of sale.

A mortgagee having a power of sale cannot, as between himself and the mortgagee, exercise it in a manner merely arbitrary, but is bound to exercise some discretion, so as not to throw away the property, but to act in a proper and business-like manner, with a view to obtain as large a price as fairly and reasonably, with due diligence and attention, can, under the circumstances, be obtained.

Circumstances under which the Court set aside a sale made by a mortgagee under his power of sale.

By a settlement made upon the marriage of the Rev. Hugh Matthie, in 1837, two sums of 3,000*l.* and 1,000*l.* secured by mortgage on freehold lands, were assigned to trustees, upon certain trusts, for himself, for life, and, after his death, for his wife for life, and after her death, for the children of the marriage; and in default of children, for the Rev. H. Matthie absolutely. Between November 1842 and July 1843, Mr. Matthie, through his solicitors, Messrs. Harper and Parry Jones, of Whitechurch, raised four sums of 200*l.*, 100*l.*, 250*l.*, and 120*l.* respectively, and mortgaged his reversionary interest under the settlement to secure the repayment of them. The last-mentioned sum of 120*l.* was lent by Thomas Wilkinson, and the mortgage-deed, dated the 6th of July, 1843, contained a power of sale by public auction or private contract, upon default being made in payment of the principal, together with interest, at 5*l.* per cent. upon the 1st of September, then next. The trustees of the settlement were Mr. Harper and the Rev. R. B. Home. After the death of Mr. Matthie, which occurred on the 9th of December, 1843, Mr. Wilkinson exercised his power of sale in the manner stated in the Vice-Chancellor's judgment. This suit was instituted by Mrs. Matthie, to set aside the sale, and the defendants to the suit were the mortgagees, Messrs. Harper and Jones, and Eyton, the purchaser.

Wigram and Renshaw, for the plaintiffs.
Russell and Hall, for the mortgagees, and Messrs. Harper and Jones.

Anderson and Torriano, for the defendant Eyton.
The VICE CHANCELLOR.—I hope, for the credit of society—especially of a certain class of society—that proceedings such in character as these which accompanied the sale which is now impeached in this suit are not of frequent occurrence. I have the satisfaction of believing that they are not. The sale in question, which it is the object of the bill to set aside, although it may have been, as I think it was, far from commendable—although it may have been, as I think it was, a measure of striking and extraordinary harshness—is not, therefore, necessarily to be set aside in a court of justice. The question is, whether there are judicial grounds upon which it ought to fall. Mrs. Matthie was married to her late husband, the Rev. Hugh Matthie, a clergyman, in December 1837, she being about twenty-three years of age. Previously to the marriage, a settlement was made of sums amounting to 4,000*l.* due on mortgage. His Honour then stated the particulars of the settlement and the first three mortgages, and said, "The fourth is that of Wilkinson, for 120*l.*, lent in July 1843, who, through the defendants Harper and Parry Jones, made, or attempted or professed to make, under the power of sale contained in his security, the sale in question in this case. It is admitted that Harper alone, or together with his partner Jones, was concerned as solicitor for Mr. Matthie on the matter of each security. As to that to Mr. Wilkinson for 120*l.* the principal and interest were made payable on the 1st of September 1843, eight weeks after the advance, for which, therefore, Mr. Matthie, being charged with the expense of the security, itself not a short instrument, may be considered as having become liable to pay at a rate somewhat of the dearest. In default of payment upon the first of September, Wilkinson had the pre-emptory and absolute power of sale, without notice, and without agreement to give notice, conferred on him by the deed. That any man having a solicitor should

have been allowed, for the sake of borrowing 120*l.* to execute such a deed, may be reasonably thought a matter of wonder. So, however, it was; Mr. Matthie must be considered as bound, as between him and Wilkinson, by the instrument. Mr. Matthie died on the 9th of December, 1843, without having paid the money, not leaving any child of the marriage, as was ascertained in the following year. It was not believed, and I cannot assume, that in or before March 1844, when this suit was commenced, it was known to the plaintiff, or any one else, that there would be no issue of the marriage. By Mr. Matthie's will and codicil the plaintiff and Mr. Hone were appointed executrix and executor. The latter has not proved, but probate was granted to the widow alone on the 23rd of January, 1844, and not till so late a day as that. The mortgagees, by virtue of the securities, were specialty creditors, Messrs. Harper and Jones were simple contract creditors of Mr. Matthie. The assets left by him were supposed to be insufficient for the payment of all his debts in full. The defendant, Wilkinson, through the instrumentality of Messrs. Harper and Jones, his solicitors, put up the reversionary interest in the 4,000*l.* to sale by auction on the 27th of January, 1844, knowing that the plaintiff and her friends and advisers objected to it. An agent on the widow's behalf attended at the auction-room, and protested against the sale, and it nevertheless proceeded, the agent making one or more biddings. The highest bidder was the defendant, Eyton, at 1,020*l.* and Harper and Jones, for the vendor, bid the reserved bidding, 1,500*l.* and the property was bought in. On the 3rd of February, Wilkinson, through the same solicitors, contracted to sell the reversionary interest to Eyton, who had been the ward of Harper and was the brother-in-law of Jones, by private contract, for a thousand guineas, upon the terms and stipulations of the auction conditions, when the same was professed to be intended to be publicly sold. This was followed by a more formal contract, under seal for the same purpose, dated Feb. 5; for what good reason it does not seem very easy to understand. This was the state of things which it is the object of the suit to set aside. A correspondence commenced, exactly one week after the death of Mr. Matthie, with a letter to Mr. Hone, the brother of the widow, from Mr. Jones, dated the 16th of December, 1843, as follows:—"As you did not make any definite arrangement with Mr. Parry Jones yesterday as to the most important matter in which we are concerned in the affairs of my late lamented friend Mr. Matthie, namely, the payment of his debts, I send a special messenger with this, to say that if you do not give to us on Monday next an irrevocable authority to Messrs. Churton, the auctioneers, to pay what shall be found due to us, upon reference to some respectable solicitor, in case we do not agree about the same, we shall file a bill in Chancery for the due administration of his estate and effects." This letter was written just one week after the death of Mr. Matthie; to it Mr. Hone on the same day replied that he was not in a situation to make any statement (and no wonder he was not, for his brother-in-law had been dead but a week) with regard to the affairs of Mr. Matthie. Three days after, Messrs. North and Orred, that is, on the 19th of December, wrote a letter thus:—"Some of the friends and connections of the late Rev. Hugh Matthie have advised with us as to his affairs, and particularly with reference to a letter written to Mr. Hone on the 16th inst. by your clerk, Mr. P. Jones, which we feel confident that you cannot have seen before it was dispatched. The parties we have alluded to have under their consideration the propriety of coming forward, if they can see their way clearly, to provide a fund for the payment of the just debts of the late Mr. Matthie, a design in which they are influenced solely by the great reluctance which they feel that any thing like the discredit of insolvency should attach itself to the memory of so near a connection; but as yet, of course, they cannot commit themselves to any such engagement, the performance of which must altogether depend upon the state in which they may find the affairs of the deceased, of which their knowledge as yet is extremely limited. But as the first step towards obtaining the information necessary to enable them to decide, we are instructed to say that they will provide means for the payment of what you and we may agree to be justly due to you on being put into possession of all the papers of the deceased in your custody. We have not yet seen the Rev. Mr. Hone, but are instructed that he will sanction the above arrangement as executor, if he determines to assume that office, but as to which he has by no means made up his mind." The correspondence then proceeded by letters, in which Messrs. Harper and Jones inquired whether Messrs. North and Orred would undertake to appear to process for Mr. Hone, and offering to transmit to them an account of what was due to Harper and Jones from the estate of Mr. Matthie. On the 21st of December North and Orred, after referring to the difficulties that stood in the way of proving Mr. Matthie's will, proceeded—"Our instructions are confirmed to pay all that may be found to be due to you from the deceased, upon receiving all his deeds and papers, of which, toge-

ther with an account, we should be glad to receive a list at once, including the three mortgages and title-deeds, which it will be most necessary, for the security of all parties to the new proposed arrangement should be placed in the control of those who may come forward to pay the general debts (a proposal still under the consideration of the family); and to this end we presume you would have no objection, under the circumstances, to resign the trusteeship, in order to the appointment of one of the relatives or connections we have mentioned. Indeed, an undertaking to this effect seems the necessary preliminary of any arrangement." On the 2nd of January, 1844, North and Orred wrote, "We have also since our last been instructed to act on behalf of Mr. Hone, one of the trustees, and of the parties beneficially interested under Mr. Matthie's settlement, and should be glad of such information as to the nature and particulars of the several investments, and the valuations, &c. on which they were made, and the rate of interest, and the punctuality of its payment, as may enable us to advise them properly as to this trust." This information was the next day offered, upon North and Orred informing Harper and Jones who was to pay their charges; but Harper and Jones declined the proposal that Mr. Harper should retire from the trusteeship, and desired that the creditors should be satisfied that nothing had been removed, of which there were said to be serious complaints. On the 6th of January North and Orred informed Harper and Jones that difficulties had arisen as to the probate, from the fact of Mr. Matthie having left children. On the 12th a letter was written to the same parties, referring to the fact that a sale of the reversionary property had been publicly advertised, and saying, "If you will now postpone the sale, and will send us an abstract of the mortgage last in date, with such particulars of the others, and of the sums due on each, as will enable us to prepare an assignment of the whole; and if you will fix a day and place for payment, at a sufficient interval only to allow us conveniently to prepare the deed, we undertake, on behalf of our clients, that the whole principal, interest, and costs, justly due on the above-mentioned securities, shall be paid on such day upon the execution of a proper assignment. If you decline to give us this information, we request to be made acquainted with the address of the several mortgagees, in order that we may make similar applications to them personally." To this, on the 16th, Harper and Jones replied, "There is due from the late Mr. Matthie, on mortgage to four clients of ours, 670*l.* with interest from the time the several advances were made;" "and also the amount due to ourselves, of which you have had particulars; in addition to which there are further charges for advertising and preparing for the sale. On receipt of this, namely, principal and interest and amount due to us, we will, on behalf of our clients, postpone the sale." On the 25th, North and Orred refused to comply with such conditions, but said, "If the sale be postponed, we hereby not only pledge to such payment," (that is, of principal, interest, and costs on the mortgages,) "our respectable clients, the Rev. Mr. Coxon, the Rev. Mr. Hone, and Mrs. Matthie, but also ourselves personally undertake to pay such principal, interest, and costs, within a fortnight from this date, upon the execution of a proper assignment. Under these circumstances, we also, on behalf of our clients, protest against the sale, as unnecessary, oppressive, and improper, and beg to give you notice, that if it be proceeded with, we shall apply to a Court of Equity to set it aside, with costs." Then followed two letters, expressing surprise that the property should have been sold, warning the parties not to complete, and again offering payment, and stating the intention, on refusal, of filing a bill. By a letter dated 5th February, the day when the second agreement was executed, Harper and Jones said that they made no claim on the reversionary interest, save the sums due to their clients. Such was the correspondence; and I regret the loss of the public time occupied in reading it, but the reading of it I consider a public duty. It is impossible, I think, for any impartial man to be made aware of this correspondence, and the circumstances I have stated, without feeling regret that the transactions which have been disclosed should have existed. Both parties, however, are entitled to have their respective rights decided upon grounds strictly judicial, as to the validity of the sale in question. I think that a mortgagee, having a power of sale, cannot, as between himself and the mortgagor, exercise it in a manner merely arbitrary; but is bound to exercise some discretion, so as not to throw away the property, but to act in a proper and business-like manner, with a view to obtain as large a price as fairly and reasonably, with due diligence and attention, can, under the circumstances, be obtained. Here, neither the particulars nor the conditions of sale stated the age of the tenant for life. She is described of a particular age, "or thereabouts." What prudent man would, upon such a statement, make a calculation of price, founded upon the age of the tenant for life? I think none. The certificate of her baptism was produced in the auc-

tion-room, but this only proves that the party was not born after the date mentioned in that document. This statement of age was of so loose a description, that it would naturally discourage and keep off prudent purchasers. I think it was in the highest degree imprudent to sell at the time the parties did sell, without a guarantee against the probability of issue of the marriage being born. It has been said, that the mortgagee was not bound to wait until the fact could be ascertained. Some cases there may be in which such a remark may have weight; in the circumstances of this case it has none. The solicitors have proceeded, in my judgment, oppressively and unreasonably to execute the right of sale contained in the security, given for 120*l.* not seven months before the mortgagor's death having happened not more than two months. Upon the fact which I have stated, an injunction to restrain a sale attempted on the 27th of January would, I think, have been most certainly granted had such an application been made. I have seldom been made aware of a proceeding equally harsh, equally oppressive; but the proceeding was not only harsh and oppressive, but it was inequitable upon the grounds which I have stated. Wilkinson may, possibly, in all this strange course of acting, have been an instrument in the hands of others, and there is reason for suspecting that he has been; but the evidence in the cause does not enable me to say that Wilkinson was so grossly ignorant—so mere, so utter a machine—as to be entitled to protection from any of the ordinary consequences of his conduct as between the plaintiff and himself. The sale must be set aside with costs as against him. The bill must be dismissed as against Messrs. Harper and Jones without costs, without prejudice to any question as between the plaintiff and any of the other defendants respectively, and without prejudice to any question as to Mr. Harper's trusteeship of the settlement. I refuse Messrs. Harper and Jones their costs, recollecting perfectly well the charges in the bill against them; but being quite satisfied also that they were the substantial movers and authors of the sale, and that their conduct has been established to have been, with regard to the matters in question, such as to have rendered it not unreasonable for the plaintiff to make them defendants, and such as to take away from them all shadow of title to receive a single shilling in the shape of costs. I declare that the agreements of 1844 cannot be sustained as against the plaintiff. I direct a reference to the Master, to inquire what was due for principal and interest, to the mortgages at the time of the tenders to them, and for costs other than of this suit. The defendant Wilkinson must pay the plaintiff her costs of the suit up to this time.

VICE-CHANCELLOR WIGMAN'S COURT.

WHITMORE v. RYAN.

Practice—Jurisdiction—Stat. 3 & 4 Vict. c. 94—Orders of May, 1845—Service of subpoena abroad—Discretion.

The jurisdiction of the Lord Chancellor to make orders for the administration of suits in equity cannot be questioned in the inferior courts of equity. It is at the discretion of the Court and not as of right, that the plaintiff is entitled to have an order for service of subpoena upon a defendant out of the jurisdiction under the 33rd Order of May 1845.

This motion created some surprise upon the Court, and, from its novelty, much attention in the Profession, from it being in fact a direct attack upon the jurisdiction of the Lord Chancellor and other judges in equity to make the 33rd Order of May 1845.

The plaintiffs were assignees of Dyer, a bankrupt, who had carried on business as a foreign merchant in London, and had large transactions with the defendant when a merchant residing at Barcelona in Spain; a large balance was due from the defendant to the bankrupt out of those dealings. The defendant left Spain previous to the year 1841, and settled in Ireland, where all his property was situated, and during his residence there, the bill in this suit was filed against him in the English Court of Chancery, for an account and payment of the balance due from him to the bankrupt. After the bill was filed, and before service of the subpoena, the defendant came to England, and some negotiation took place between the bankrupt and the defendant in respect to the debt, when nothing was concluded, and the defendant returned to Dublin without having been served with a subpoena, but it did not appear that he absconded to avoid being served.

The plaintiffs, after many attempts to have the balance between the bankrupt and the defendant settled without suit, at length, in November, 1845, they obtained an order under the 33rd general Order of May, 1845, to serve a subpoena in this suit upon the defendant, near Dublin, and in December following they obtained an order to enter an appearance for the defendants, under the same general Order of May, 1845, which was entered accordingly.

Wood and Metcalfe moved to have the orders for service of the subpoena, and entering an appear-

now discharged, and the appearance expunged, on the ground that the Lord Chancellor and the other judges in equity had no jurisdiction to make the order under which the proceedings complained of were taken; and the Court had no such jurisdiction before the Act. 3 & 4 Vict. c. 94, under which the Orders of May, 1845, were framed. That statute did not extend the jurisdiction of the Court; it merely empowered the Lord Chancellor and the other equity judges to make alterations in the mode of exercising the jurisdiction of the Court, and amongst other proceedings, to make such alterations as might seem expedient in the form of writs, and the mode of sealing, issuing, executing, and returning the same; no extension of the jurisdiction is given; the power is merely to alter, not to extend; and that the words of the 33rd Order, allowing service of subpoena on a foreign defendant in any suit must be interpreted in reference to the intent of the statute, and that order, if it admitted of a different construction, was not within the authority of the statute; the consequence of allowing such service would be to transfer, at the plaintiff's pleasure, all suits from the Irish Court of Chancery to the English Court of Chancery, and that such service would be opposed to the principles of international law, by making a foreigner, who neither resided nor had property here, amenable to the courts of this country; and cited, *White v. Rose* (3 Q.B. Rep. 278); *Journe v. Lord McDonald* (Dickens, 251); *Scott v. Lough* (4 Ch. Cas. Brown, 213); *Shaw v. Lindsey*, 18 Ves. 496).

Romilly and Wilcox, for the defendants, argued, by direction of the Court, solely in support of the discretion of the Court, under the circumstances of the case, in granting the orders sought to be discharged by this motion, and cited *Moslyn v. Febrzas* (Purston Cooper's Rep. 27); *Travers v. Buckley* (3 Ves. Sen. 83); *Cranston v. Johnson* (3 Ves. Jan. 206).

JUDGMENT.

The VICE-CHANCELLOR.—I do not mean to express any opinion whether the Act of Parliament, and the orders made in pursuance of it, are proper or not with reference to the questions of international law; or whether it might be reasonably expected that foreign countries would treat the judgment as conclusive, where the right had been decided in the absence of the party, and where the subpoena was served in a foreign country. I shall also abstain from considering whether the Act of Parliament was intended to give the Judge of the Court of Chancery, who framed the Orders of May, 1845, power to make an order like that now called in question; I shall only consider whether the thirty-third order did give the Court power to make the orders now sought to be discharged, and that that power has been exercised with sound discretion. Notwithstanding the argument, I can entertain no doubt about the effect of that order. It was properly admitted, that the case must be dealt with as if the very words of the order were contained in the Act. Great weight was due to the observation that had been made about the extensive nature of the 33rd Order; that it empowers the Court, in substance, if it thinks fit, to order a subpoena to be served upon a foreigner who has never been within the jurisdiction, or upon a British subject who has not been within the jurisdiction within two years of the filing of the bill; that argument, however, to be good, must be good to this extent, that if a party is within the jurisdiction, and leaves England, having actually stated in the presence of witnesses that he is going to Boulogne, for instance, to avoid process, the Court cannot order subpoena to go against him. My opinion is, that the order does in terms give authority to do so, and being in the Act of Parliament, it must be taken to embrace the case in question. Being of that opinion, the only ground to consider is, whether the defendant has shewn sufficient circumstances attending the grant of this order to satisfy the Court it has not exercised a sound discretion in making the orders now sought to be discharged. If the discretion were soundly exercised, no rule of natural justice appeared to be violated by the order for the service of the subpoena in Ireland; the object of such service being to give an absent party notice of a proceeding in England, so as to prevent any decree being made against him, without having an opportunity of being heard; previous to the power now given to effect service on parties out of the jurisdiction, there were serious difficulties in the way of parties in obtaining an adjudication of their rights. I shall not attempt to define in what cases the Court ought to make orders, and in what it ought not; a simple case might be put of two men living in Ireland, having dealings together, and accounts arising out of those dealings, the witnesses living there; one of the parties might come to this country, and file a bill against the other; probably, in a case of that kind the Court might not think it right to make an order for service upon the absent party; but in a case where there were numerous parties, all living here, and witnesses also living here, if one of the parties chose to go to Ireland, it might be extremely proper to say that service should be made upon that party in Dublin, in order to prevent a failure of justice; but in the present case, had the Court been as well aware of all the circumstances, when it made the order now complained of, as it is

now, I do not think I should have made such an order, unless the defendant had given a better reason than appeared upon the affidavits for not having filed the bill in Dublin; the order, however, had been made, and was quite regular; there had been no improper concealment on the part of the plaintiff; and the question was what was to be done in the existing state of things? With regard to the affidavits which had been filed on either side, I give both parties credit for intending to speak the truth; parties swearing in 1846 as to the effect of the conversations which had taken place in 1843, might, with the fullest intention to speak the truth, be unable correctly to represent what had passed. The plaintiff, it appeared, did intend to serve the defendant in England before he returned to Ireland, and the defendant might himself have been alive to that, and yet without conceiving himself under an obligation to say what he was going to do, he might have taken the other party by surprise by going back to Ireland sooner than was expected; it was clear an opportunity had existed for serving the defendant in this country, which would have been taken advantage of if he had not returned to Ireland sooner than was expected. By allowing the appearance to stand the Court would not be placing the defendant in a worse situation than he would have been, had he been then, or on any other occasion, served with a subpoena in England. There was no ground to suppose the plaintiff's conduct to be fraudulent, though it did not appear why the bill had not been filed in Ireland; and the balance of the testimony in which both parties intended to represent the truth, was in favour of the plaintiff. The 32nd Order of May, 1845, does not give a plaintiff a right to call upon the Court to order service of subpoena abroad; it was intended merely to empower the Court to do so when in justice to the plaintiff it ought to be done, and when it might be done without injustice to the defendant. The only question, therefore, which remained to be considered, was, whether the Court, having an order regularly served, saw any reason to discharge it; in the present case I do not; but in future I shall be more circumspect as to the cases in which I make such orders. Let the present orders, therefore, and the appearance, stand, reserving the costs.

COMMON LAW COURTS.

COURT OF QUEEN'S BENCH.

Thursday, April 16.

Dox dem. RICHARDS and ANOTHER v. EVANS.
Stamp—Letters of administration—Demand of possession.

Ejectment tried at Swansea, at the last assizes, before Wightman, J.—The declaration contained two demises; and the verdict was for the plaintiff on the demise by Richards.

Chilton, Q. C., moved, pursuant to leave reserved, to enter the verdict on that demise, for the defendant, on the ground, 1st, that letters of administration, produced as a necessary part of the case, on the part of the lessor of the plaintiff, were insufficiently stamped with a 1*l.* stamp, the property being above the value of 100*l.*; and 2ndly, that there had been no demand of possession.

Rule nisi.

*Dox dem. DARE v. BOWDITCH.**Stat. 4 Geo. 2, c. 28—Construction of lease.*

Ejectment, tried at the last assizes for the county of Devon, before Rolfe, B. Verdict for the lessor of the plaintiff.

Greenwood now moved, pursuant to leave reserved, for a nonsuit, on the ground that no sufficient right of entry had been proved to satisfy the stat. 4 Geo. 2, c. 28. The question turned entirely upon the construction of a clause in the defendant's lease, whereby it was agreed that if the rent should not be paid within twenty days after it became due, that then the landlord might distrain "or enter on the premises for the same until it be fully satisfied." That was not an entry for the purpose of avoiding the lease, such as the statute contemplated.

Rule nisi. Cause to be shewn within four days; a certificate for immediate execution having been signed by the counsel on both sides.

*GIRDLESTONE v. MCGOWRAN.**Replevin—Right to distrain.*

Bequest to the use of A. of the lease of one house, and to B. of the lease of another, providing that the rent of both shall be charged upon A.'s house, and that if B. should at any time be called upon to pay any part of the rent, he might distrain upon A. C. became assignee of B.'s interest, and was also executor under the will. Being called upon to pay rent, and having paid it, he distrained upon A. for the amount. In an action of replevin, to which he avowed that he had been compelled to pay as assignee: Held, that he was bound to give evidence that he had been called upon and compelled to pay in that character.

Replevin.—A rowry that one Francis McGowran died possessed of a term in three houses, Nos. 75, 76, and 77, Webber's-row, under a lease from the city of London; that he bequeathed Nos. 75 and 76 to Mrs.

Smith, one of his daughters, and No. 77 to trustees, for the benefit of Mrs. Girdlestone, the wife of the plaintiff, and provided by his will that the whole rent payable to the city for the three houses should be charged on No. 77; and that if at any time Mrs. Smith should be called upon and obliged to pay any part of such rent, she should be entitled to distrain upon No. 77 for the amount which she should so pay; that the testator appointed the defendant his executor; and that Mrs. Smith had assigned to him, the defendant, all her estate and interest in No. 77; that he being such assignee, had been called upon and forced, and obliged to pay to the city of London a certain sum, being part of the rent due and payable for the said houses; that he had paid such sum as such assignee as aforesaid; and had distrained for that amount upon the plaintiff's houses.

Pleas in bar (amongst others).—

10th. That the defendant paid the said rent voluntarily, without this, that he was called upon or forced or obliged to pay as in the said avowry alleged.

11th. That the defendant did not pay the said rent *modo et forma*.

At the trial before Alderson B., at Kingston, the evidence consisted of the lease from the city of London; an assignment of that lease to Francis McGowran; his will; and the assignment of Mrs. Smith's interest thereunder to the defendant. Evidence was also given, that a printed notice to pay the rent (according to the practice of the city) had been served upon the defendant; but the notice itself was lost; and a receipt for the rent as "of Jas. McGowran" (the defendant) was proved. The verdict was for the plaintiff on the first two issues, and for the defendant on the rest, subject to a motion to enter it for the plaintiff on those issues; a rule nisi having been obtained for that purpose on the ground that there was no evidence that the defendant had been compelled to pay as alleged in the avowry.

Petersdorff and Willes now shewed cause.—The evidence is perfectly clear that the payment made by the defendant was not a voluntary payment; he paid in obedience to a formal notice requiring him to pay; and terror of suit is a sufficient compulsion. (*Brough-ton's case*, 5 Rep. 24.) If it be said that it is not proved in what character the defendant paid the rent, the answer is twofold: 1st, the character is not put in issue here; 2ndly, even if it were, it is immaterial and irrelevant; and would involve an inquiry into matters of trust; which is the province of a Court of Equity.

E. James and Lush, contra.—The whole question here is in what character the defendant paid this rent. He filled two characters, that of executor under the will, and that of assignee of Mrs. Smith's interest. In the former character he was bound to pay the rent out of the house on which this distress was made, and *prima facie*, the presumption would be that he paid it as executor out of the assets. It was only a payment in his character as owner by the assignment of the houses 75 and 76 that would entitle him to distrain, and therefore the avowry alleges that he was called upon and obliged to pay as assignee. Upon that allegation issue is taken; and the defendant was bound to give evidence that he was called upon in that character; but no evidence of that sort was given; and the verdict must, therefore, be entered for the plaintiff upon that issue.

By the COURT.—The plaintiff is entitled to a verdict on the 10th issue. The foundation of the defendant's right to distrain is, that he was assignee; and therefore he ought to shew, by distinct evidence, that he was required to pay, and paid in that character. The only evidence is that of a receipt given to him, not at all expressing in what character the money was paid; and that certainly cannot satisfy the express and necessary averment contained in this avowry, and put in issue by the 10th plea. The issue raised by the 11th plea is different, for that only denies the fact of the payment.

Rule absolute.

STRICKLAND v. MANFIELD.

Banker's cheque—Exemption from stamp duty—Date of place.

A country banker's cheque in the usual form, but headed "Dorchester Old Bank, established 1786." Held, to contain a sufficient date of place to bring it within the provision of stat. 9 Geo. 4, c. 49, s. 15, exempting such cheques from stamp duty; there being no evidence that those words did not describe the place where, in fact, it was drawn.

Assumpsit for money had and received; to which the defendant had pleaded (amongst other pleas) that he had given to the plaintiff a cheque on a banker, which the plaintiff had received in full satisfaction and discharge. At the trial before Rolfe, B. at the last Dorchester Assizes, the defendant, in support of his plea, produced a cheque, which was in the usual form, addressed "To Messrs. Williams, Cox, &c. Pay to my order, &c." but contained no date of place except the following heading: "Dorchester Old Bank. Established 1786." It was objected that the cheque was invalid, for want of a stamp, it not being within the stat. 9 Geo. 4, c. 49, s. 15, which exempts from stamp duty drafts on bankers, provided that the place where they are issued be specified therein. The

learned judge overruled the objection, and a verdict was found for the defendant.

Cockburn, Q.C. now moved for a rule nisi for a new trial, on the ground of misdirection. "Dorchester Old Bank" is the name of the bank, not a description of the place where the cheque was drawn. [Lord DENMAN, C.J.—That involves a question of fact. The drawer ought to state upon the face of the cheque where he actually drew it; and if in this case it was drawn at the Dorchester Old Bank, it was right. Did you prove that it was not drawn there?] No.

Lord DENMAN, C.J.—Then this may be a date of place; and you do not prove that it is not so. That is an answer to the objection.

The other judges concurring, *Rule refused.*

PEMBERTON v. VAUGHAN.

Sale of good-will—Agreement stamp—Restraint of trade.

This was an action upon an agreement for the sale of the good-will of a business, tried in Middlesex, before Lord Denman, when a verdict was found for the plaintiff.

Pearson now moved for a rule to shew cause why a nonsuit should not be entered, and also in arrest of judgment; first, on the ground that the agreement was improperly stamped with an eighteen-penny bill-stamp, instead of a one pound agreement-stamp; the declaration claiming above 20l. although at the trial the plaintiff only sought to recover a smaller sum. Citing 55 Geo. 3, c. 184, sched. part 1; and *Pinner v. Arnald* (2 Cr. M. & R. 613); secondly, in arrest of judgment, for the insufficiency of the declaration. The declaration set out an agreement which contained an absolute prohibition upon the defendant from exercising the trade within a mile; that is an unreasonable restriction, for it would continue after the plaintiff had ceased to require any such protection, and cannot, therefore, be supported. (*Hitchcock v. Coker*, 6 Add. & Ell. 438, 454.)

Lord DENMAN, C.J.—It protects the house, not the plaintiff's business. Take a rule. *Rule nisi.*

CURTIS v. PUGH.

Acceptance of goods within 17th section of the Statute of Frauds.

Debt, for goods sold and delivered. Plea, never indebted.

The trial took place before Lord Denman on the 28th February last, when a verdict was found for the plaintiff. The question was, whether there was any acceptance of the goods within the 17th section of the Statute of Frauds; the evidence being, that two hogsheds of glue, for the price of which this action was brought, were sent to the defendant; that for the purpose of examination, the glue was taken out of the hogsheds, and upon that examination, declared by the defendant to be deficient in quality; and that the glue had been partially injured by the removal, and could not be re-packed in the hogsheds. The learned judge was of opinion that the injury done to the glue by its removal from the hogsheds was sufficient to constitute an acceptance.

Martin, Q.C. now moved for a rule to shew cause why the verdict should not be set aside, and a nonsuit entered, on the ground that there was no sufficient acceptance of the glue within the statute. The acceptance must be an acceptance with the intention of taking to the goods; there must be a transfer and taking possession of the goods. (*Baldev v. Parker*, 2 B. & C. 37; *Phillips v. Bistolfi*, 2 B. & C. 511; *Elliott v. Thomas*, 3 Mee. & W. 170.) If injury has been done, an action for that injury may be sustained; but it cannot affect the question of acceptance under the Statute of Frauds. *Rule nisi.*

ROLLS v. SENIOR AND ANOTHER.

Trespass—Indorsement of writ—Attorney.

An attorney indorsed a writ of execution thus, "The defendant resides at Wolverton, and is an innkeeper," and delivered it to a sheriff's officer, by whom it was executed at an inn, in Wolverton, in which the execution debtor resided, but which belonged to his mother-in-law. The execution-debtor was not himself an innkeeper, but he managed his mother-in-law's business. Held, that the attorney was liable in trespass for seizing the mother-in-law's goods; especially as he had become the assignee of the debt, for which the execution had issued.

Trespass, for seizing the plaintiff's goods. Pleas, not guilty, and a justification under a writ of execution.

At the trial, it appeared that the writ of execution had issued in a suit of *Gandell v. Daw*, and that one of the defendants, named Cheshire, was the attorney in that suit; that Cheshire had indorsed the writ in these words, "The defendant resides at Wolverton, and is an innkeeper," and delivered it to an officer, who executed it at the house of the plaintiff, which was an inn at Wolverton. The defendant in that action, Daw, was the son-in-law of the plaintiff, managed the business of the inn, and resided there; but the jury found that the goods seized belonged not to him but to the plaintiff, and the verdict was entered accordingly. A rule nisi for a nonsuit had since been

obtained, on the part of defendant Cheshire, on the ground that there was no evidence for the jury as against him; and also upon an affidavit stating that he had taken an assignment of the debt, for which the action against Daw was brought.

Pashley and Power now shewed cause.—There can be no doubt that the defendant Cheshire is liable in this action; the rule is perfectly well settled, that a party who sues out process, and causes it to be executed, is liable in trespass, if the goods of a wrong person are seized (*Barker v. Braham*, 3 Wils. 368); and in this respect there is no distinction between the attorney and the party in the cause. (*Green v. Elgie*, 5 Q.B. 99; *Codrington v. Loyd*, 8 Ad. & Ell. 449; *Sedley v. Sutherland*, 3 Esp. 202; *Bates v. Pilling*, 6 B. & C. 38; *Bryant v. Clutton*, 1 M. & W. 408.) But further, if there be any case in which an attorney could so completely avoid interference as to escape liability, the present is not one of that sort; for here the defendant misled the sheriff by a false indorsement on the writ. *Jarman v. Hooper* (6 M. & G. 827) and *Sowell v. Champion* (6 Ad. & E. 407) are quite distinguishable.

O'Malley, contra.—It is admitted that there is no difference between the attorney and the client; if the one is liable, so is the other; neither is it disputed that if the attorney direct the sheriff to take the goods of A, and they are wrongfully taken, he is liable; but in this case the defendant Cheshire directed the attorney to do one thing and he did another. The writ required him to seize the goods of Daw, and he seized those of the plaintiff; but then reliance is placed upon the indorsement. Now the attorney is required by a rule of Court to give the best description of the defendant he can; and the description given in this case was sufficiently accurate to be a compliance with that rule. Besides, if a mere mistake would make the attorney liable, he would be so in the case of every interpleader rule which comes before the Court. At all events, if he were liable at all, case and not trespass would be the proper remedy. In *Sowell v. Champion* (6 Ad. & Ell. 407) the circumstances were much stronger to shew that the attorney knew where the writ would be executed, yet the Court held that he was not liable in trespass.

Lord DENMAN, G.J.—The only principle established by *Sowell v. Champion* is, that the attorney is not a trespasser, unless he directs the particular goods to be seized; but the question here is whether he did direct them to be seized, and it seems to me that he did so. He desired the officer to go to an inn at Wolverton, kept by Daw, for the purpose of seizing Daw's goods; he therefore stated that which naturally led the officer to believe that Daw was the owner of the house; and that is clearly enough to make him liable. This view of the case is greatly strengthened by the position which the defendant had taken as assignee of the debt; for he had become substantially the plaintiff in the former action. There is no ground for questioning the case of *Sowell v. Champion*, but it is not applicable here.

PATTESON, J. concurred.

WILLIAMS, J.—In *Sowell v. Champion* nothing was done which could mislead the sheriff.

WIGHTMAN, J. concurring, *Rule discharged.*

Friday, April 17.

WOLMER v. TOBY.

Railways—Liability of allottees—Provisional committee—Allotment of the whole number of shares—Readiness and willingness to allot shares.

The defendant had applied for shares to the directors of the Direct Exeter, Plymouth, and Devonport Railway Company, which had been allotted him by the company, and he was sued for his proportion of the expenses upon the project, which had failed, and had been abandoned. The trial took place at the late assizes for Exeter, and a verdict given in favour of the plaintiffs.

Kinglelake, Serjt., in pursuance of leave granted, now moved for a rule nisi for a nonsuit upon the following grounds.—First, That the action could not be maintained, inasmuch as the project was a quasi partnership between the plaintiffs and defendant, who were to be associated in the undertaking, under which circumstances there could be no action maintained by any one or more partners against another by the rules of the common law. 2nd. That the parties to the undertaking at the time of the defendant's offer to take shares were not the same persons as those at the time the allotment of shares was made. The defendant had offered to take shares from one set of managers, whilst the allotment took place when there was another set of persons intrusted with the management. If he were to be thus bound, the greatest injustice might be inflicted; for it might possibly be that when the defendant thus offered, all those intrusted with the management were able, honourable men, whilst the managers at the time of the allotment might be men of incompetency, or men of straw. It might be a quite different scheme from that in which he proposed at first to take shares. For, it was to be observed that, more than two months had transpired from the period of the offer to the time of the allotment of the shares. In effect the defendant was prepared upon the 13th of October to accept of

shares and embark in a scheme with certain substantial individuals; but it was not until the 15th of December that he was informed by the plaintiffs that he was associated by them with parties, other and quite distinct. Was he bound to accept their offer, or was this acceptance of the defendant as a subscriber and partner in the terms of the defendant's offer? 3rd. They had allotted but 36,000 shares, whereas by the prospectus it was admitted that their capital was to be raised by the issue of 40,000 shares, and the defendant's offer was to take 50 shares out of the 40,000 to be created; and it would appear to be the duty of the committee not to make any allotment till they made the whole. 4th. In point of fact the scheme had been abandoned, and that without going before Parliament. That abandonment was actually before the allotment, as was proved by the preparatory steps towards that object. According to *Neckels v. Crosby* (3 B. & C. 814), as the scheme had been abandoned, these plaintiffs could have no right to recover the money agreed to be subscribed. The same principle had been recognized in the case lately tried in the Exchequer. (*Walstab v. Spottiswoode*.) [PATTERSON, J.—Had you a plea to meet the state of facts at the time? The being ready and willing to perform the plaintiffs' part of the contract might mean that they were so ready when the deposits should be paid up.] That question had not been submitted to the jury. The main question was the reasonableness of the time taken up in the allotment. [PATTERSON, J.—Upon the issue of their being ready and willing to allot you the shares, you should have insisted on that issue being found for you. I cannot understand how you suffered that issue to be found against you.] 5th. There was a variance between the contract as stated and the contract really proved. The actual consideration stated was, that there should be 40,000 shares issued, and that the company should go to Parliament for their bill. This should have been alleged in the declaration and the contract set out correctly. The letter of application was in these terms: "That the defendant would accept a certain number of shares, and would pay the deposit on them when required so to do." The plaintiffs had no right to reject the less convenient phrase and insert the terms "pay the deposits upon the 20th December." [Lord DENMAN, C. J.—What says the letter of allotment upon that point?] That letter announces the fact of the shares being allotted to defendant, and requires payment on the 20th December. That letter, however, would not, in law, affect or alter the contract or its terms, as stated in the prospectus. 6th. Admitting the plaintiff had any title to recover any thing at all, the verdict was excessive, being for the whole deposit, 105l. whereas the plaintiffs' estimate of damage was only to the extent of 6l. This, therefore, was all they could recover, if they could recover at all. 7th. The learned judge misdirected the jury upon the only question left to them. The 13th of October was the day of application for shares; the allotment did not take place till the 15th December following. Upon the 30th of October there had been a resolution come to, by which the directors were to be at liberty to absorb all the shares themselves. On the 1st December, in consequence of some alarm or panic, a resolution was passed not to incur further expense in the engineering department of the railway line, but on the 15th of December they proceeded to allot the shares. On the 17th they proceeded to take the opinion of counsel as to the liability of the allottees. In fact, that allotment, at so late an hour, had been devised merely as a pretext to give the managing directors, or committee, a colour for instituting an action to recover back the expenses incurred in the project. The learned judge, Mr. Baron Rolfe, had told the jury that he did not see that two months was an unreasonable time to occupy in allotting 40,000 shares. That might be true as a general proposition, but the question the learned judge should have submitted was whether, under all the circumstances of the project, it was proper and reasonable to have allotted all the shares upon the 15th of December? There had been enough of evidence adduced to shew that had there not been circumstances of an alarming nature disclosed with respect to the state of the railway share-market, they had no intention to make any such allotment, but that the shares on hand would all have been appropriated by the provisional directors themselves; and these disclosures should not have been withheld from the jury in the learned judge's charge to them. Finally, the judgment in this case should be arrested, upon the ground that the direction contained no averment that the provisional directors had allotted the 40,000 shares.

The Court granted the rule upon all these grounds. *Rule nisi.*

LEWIS v. SAMUEL.

Money paid—Attorney—Agreement to charge only the money out of pocket.

An attorney agreed to conduct a criminal prosecution, and not to charge his client "full costs, except the money out of pocket." Held, on the jury finding that the prosecution had failed in consequence of the negligence of the attorney, that he was not entitled to recover

The money out of pocket as money paid to the defendant's use.

WATSON, Q. C., moved for a rule to show cause why no damages in this case, in which a verdict had passed in the plaintiff with 38l. damages, should not be increased by a sum of 106l. The defendant employed a plaintiff to prefer and conduct a prosecution for perjury against a person who had been a witness in a case in which the defendant had been interested. The plaintiff agreed to conduct the prosecution for the costs out of pocket, and gave a memorandum to the defendant in the words that follow: "Mr. Lyon Samuel, Yourself, and The Queen v. Isaacs, I hereby undertake not to charge you full costs in this indictment, except the money out of pocket. Yours, &c." The prosecution failed, and, as the defendant thought that the failure had been caused by the negligence of the plaintiff, he refused to pay the money out of pocket. The plaintiff brought his action for the money out of pocket, and sought to recover it as money paid. The jury found that the prosecution had failed through the negligence of the plaintiff, and the learned judge before whom the case was tried held that to be an answer to the plaintiff's claim, giving leave to move to increase the damages by the amount of the money out of pocket. The ruling was wrong, or though the negligence might be ground of a cross-action, in an answer to a demand for work and labour, it was not an answer to a claim for money paid. (*Jones v. Manning*, 1 M. & W. 833.)

LORD DENMAN, C. J.—This motion proceeds on the assumption that there is a difference between money and money's worth. The defendant asked the plaintiff to prosecute the man; and the plaintiff did not, that is, he omitted to do that for which the defendant had promised to pay. All attorneys' bills have items that would answer the description "money paid."

PATTON, J.—I cannot see how money thus expended can be called money paid to the use of the defendant. If this claim could be enforced, an attorney who had chosen to withdraw all the witnesses, or to abandon the case, at the moment of the trial, would be entitled to claim the money out of pocket.

WIGHTMAN, J.—If a coachmaker were to agree to build me a carriage for the money out of pocket only, and were to send me one that would not go, would he be entitled to the money out of pocket?

Rule refused.

WILLIAMS v. FREDERICKS.
Damages by game—Rabbits—Immaterial issues—Agreement as to incorporeal hereditament.

CHILTON, Q. C., moved for a rule for judgment *non obstante veredicto*, upon an issue found for the defendant. This was an action upon an agreement between the plaintiff, as lessee of lands, and the defendant, as tenant of a house, by which the plaintiff gave the defendant leave to sport over certain lands, the defendant undertaking to make compensation for the damage done by the game; the amount to be ascertained by two referees to be appointed, one by each party, upon notice of damage done. It appeared, that under this agreement, the defendant had occupied the house and sported over the lands during 1843 and 1844. Damage was done by game. The plaintiff gave notice of damage done, but the defendant appointed no referee. In 1846, the plaintiff appointed a referee, who proceeded, *ex parte*, to assess the damage for 1843 at 60l., and for 1844 at 48l.; but the defendant had paid nothing. These facts were stated in the declaration, various issues were taken, all which were found for the plaintiff but the 8th, which was, that notice of the appointment of the referee by the plaintiff was not given within a reasonable time to the defendant. This was found for the defendant. The jury assessed the damages at 106l. The motion was now made upon the ground that all that had been done was *ex abundante cautela*, and that no notice of the appointment was necessary, and the issue found for the defendant was therefore immaterial.

V. Williams, for the defendant, also moved for a cross rule, in arrest of judgment, or for a new trial. 1. Because the agreement, being as to an incorporeal hereditament, was void, not being stated to have been under seal. (*Bird v. Hippinson*, 2 A. & E. 696.) The suggestion there thrown out about the enjoyment under it, meant only that use and occupation might be, not that possession under such an agreement would make it valid. 2. That the contract was to pay the damages, to be ascertained by referees appointed in a particular method; and that if the defendant refused to appoint a referee, the action should have been against him for that breach, and not in the present form. There is also ground for a new trial, as no evidence was given to distinguish the damage done by hares, or other game, and rabbits, which are not given.

The Court granted both rules, Lord DENMAN, C. J., intimating, however, his strong opinion that the case ought to be settled between the parties.

Rules granted.

FOSTER v. BANK OF ENGLAND.

A transfer of stock at the Bank of England is valid at least against the transferor, although the transfer is not underwritten by the transferee, to show that he accepts the stock.

SHAW, Serjt. moved to set aside the verdict for defendant, and pursuant to leave reserved. It was an action on the case against the Bank of England for not paying dividends upon certain stock claimed by the plaintiff. It appeared that on January 23rd, 1841, 373l. 19s. 6d. was standing in the plaintiff's name in the Bank books, but that on the following day it was transferred, and as such the jury found for the plaintiff. There was no doubt she had been defrauded by one Ozley, and it was contended that the transfer was void, because the provisions of 11 Geo. 4 & 1 Wm. 4, c. 13, had not been complied with. The Statute requires that no transfer shall be made except in the form specified, and that mentions that the transfer must be underwritten by the transferee. (*Davis v. Bank of England*, 2 Bing. 393; *Coles v. Bank of England*, 10 A. & E. 437; *Gade's case*, 2 Leach. 732.)

DENMAN, C. J.—I am of opinion that this transfer is valid. At first it appears that the Act states that acceptance is essential, but it is impossible to suppose that this could have been intended, for no person absent from London could become a purchaser of stock, and many things might occur to prevent a person from coming. Then looking more narrowly at the words of the Act, it will appear that this expressed construction is not the true one. Transfer properly refers to the transferor, and then the words as to acceptance by the transferee are merely directory, and the case in Leach is also an authority, for if no transfer would be valid without the acceptance, then he could not have been convicted of forgery.

PATTON, J.—This is not a question of the right of the transferee against the Bank—which might make some difference—but whether the transferor can say that his transfer is void, although he has received the purchase-money. I agree that this cannot be the meaning of the Statute, and in practice the acceptance is rarely made.

WILLIAMS, J. and WIGHTMAN, J. concurred.

Rule refused.

DOE dem. MERRINGTON and DALY v. DALY.
Can a husband maintain an ejectment against his wife?

BRAMWELL moved for a new trial. The lessor of the plaintiff, in the only demise found against the defendant, was the husband of the defendant, and it was submitted that, as in law a husband could not maintain an action for a tort against his wife, so he could not bring ejectment, with intervention of John Doe making no difference. Or, at any rate, the judgment could not be in the usual form, and the Court could interfere.

Rule granted—not to go into the New Trial paper.

DOE dem. JACOB v. PHILIPS.
Statute of Limitations—Presumption of surrender.
8 & 9 Vict. c. 112.

GURNEY, Q. C. moved for a rule nisi to set aside the verdict for the plaintiff in this case. The title through which the lessor of the plaintiff claimed was an outstanding lease, granted in 1786, in respect of which there was no possession subsequent to 1787, when it was assigned to one Holyhead. Possession was enjoyed by the *cestui que trusts*, but this claim should have been made within five years of the passing of the 3 & 4 Wm. 4, c. 27. *Nepes v. Doe dem. Knight* (3 M. & W. 594) & *Doe v. Williams*, were cited. 2. The learned judge should have directed the jury that the term must be presumed to have been surrendered. The property was dealt with inconsistently with the existence of the term. 3. The 8 & 9 Vict. c. 112, as to unexpired terms, would operate here, and prevent the lessor of the plaintiff recovering possession, although he may recover nominal damages for the trespass. There is no provision in that Act for actions then pending.

Rule granted.

PARNELL v. SMITH.
Friendly Societies' Acts, 33 G. 3, c. 54, & 59 G. 3, c. 128.—Action by trustee of dissolved society.

BULL, Q. C. moved to set aside the verdict for the plaintiff, and to enter a nonsuit, pursuant to leave reserved. The plaintiff was surviving trustee of a certain friendly society, and brought an action for money had and received against the defendants, who, as stewards of the society, had, in pursuance of a vote passed by all the members, drawn the residue of the funds out of the Bank, and distributed it among the members. The verdict was found for the plaintiff, damages 179l. 11s. 3d. The grounds of this motion were: 1. That the plaintiff had no right to sue, because the rules, as altered in 1823, had not been enrolled under the 33 Geo. 3, c. 54, as was necessary, but under 59 Geo. 3, c. 128, which did not apply. (*Parnell v. Smith*, 6 L.T. 315.) 2. There was no evidence of the plaintiff's appointment as trustee. In the enrolment under 59 Geo. 3, it was mentioned that he was appointed trustee, but he did not claim under that statute. *Battye v. Townrow* (4 Camp. 6) was cited. 3. Money had and received will not lie by the trustee against the stewards, 33 Geo. 3, c. 54, s. 8. 4. The money was lawfully divided by a vote of all the members. 54 Geo. 3, ss. 8, 13. 5. The proper evidence of the enrolment was not produced.

6. He also moved, in arrest of judgment, that the declaration did not shew him to be trustee, according to the statute, but merely stated generally that he was trustee. (*Davidson v. Bower*, 2 D. N.S. 115.)

Rule nisi.

SANBERS v. GUARDIANS OF ST. NEOTS.

Parol agreement by board of guardians.

GUNNING moved to set aside the verdict for the plaintiff, and for a new trial. 1. Because the verdict was against evidence. 2. That the liability, if any, was proved only by a verbal order, and that the defendants could not be liable, except upon a contract under seal. The jury had found the goods supplied were necessaries.

Rule nisi.

OLDFIELD v. FLEMING.

Several pleas.

The Court refused to allow a plea denying the making of a cheque in addition to a plea of illegal consideration, although it was sworn that the defendant's object was to avail himself of the invalidity of the cheque under the Stamp Laws, as not being drawn within the requisite distance of the place it purported to be drawn. A judge at chambers had previously refused to allow the plea.

M. Smith moved for a rule nisi for leave to add a plea, denying the making of the cheque. Mr. Justice Coleridge at chambers had allowed a plea of fraud and covin, and also that the cheque was given for money lent at play, but had refused to allow the plea now sought to be added. An affidavit stated that the object of the plea was to show that the cheque was invalid under the Stamp Act.

LORD DENMAN, C. J.—The learned judge has exercised his discretion, and we see no reason for interfering.

Rule refused.

DOE dem. CROSS v. CROSS.

An instrument operating *inter vivos* may also operate as a will, if it contains words of disposition, as a will.

Therefore, where a soldier abroad, being entitled to property under his father, sent home a document, purporting to be a power of attorney to his mother, to receive the rents during his life, and in the event of his death before his return, he thereby assigned and declared her to be the sole owner thereof during her life; and if further contained words negativing any intention to part with his power over the property during his life. Held, that by his death before his return, this operated as a devise to the mother.

KEATING moved to set aside the verdict for the lessor of the plaintiff, and to enter it for the defendant. The lessor of the plaintiff was the widow of one Cross, who had died intestate, and she now claimed through a will of the eldest son, Peter Cross. The defendant was the second son, and was entitled, if the document was not a will. It was a power of attorney executed in India, and duly attested by two witnesses, by which Peter Cross empowered his mother, as his attorney, to receive the rents and apply them to her own use during his life, and until his return; and if he died abroad he assigned and declared her to be the sole owner during her life. At the same time he negatively expressed any intention of giving up his right over it during his life. It was now submitted that this was no will, because it clearly operated as a deed *inter vivos*, and could not also be a will. (*Attorney-General v. Jones*, 3 Pridg. 368.)

LORD DENMAN, C. J.—We do not want any case upon this point. Here are clear words of disposition of property in case of death, and we can see no reason, or find no authority, whatever, to say that this is not a will because it also operates *inter vivos*.

Rule refused.

GARBETT v. ADAMS and ANOTHER.

Railway—Solicitor's bill.

Is an attorney who acts as a local solicitor to a railway, receiving also a commission for shares, that he promises to be taken, bound to deliver a signed bill of two claims to commission, and for non-professional disbursements?

TALFOURD, Serjt. moved for a rule nisi for setting aside the verdict for the defendants on the second and third issues. The question was, whether an attorney who acts as local solicitor, and also as local agent and shareholder for a railway company, can recover the amount of his commission and non-professional disbursements, without delivering a signed bill, under the 6 & 7 Vict. c. 73, s. 37. (*Alley v. Aldridge*, 13 L.J. 155; *Re Simons*, 14 L.J. 41, Q.B.; *Simons v. Peacock*, ib. 296.)

Rule nisi.

BODLEY v. REYNOLDS.

Special damage is recoverable in trover.

ALLEN, Serjt. moved for a rule nisi to reduce the damages, or for a new trial, on the ground that special damage, although alleged in a declaration in trover, was not recoverable; citing *Moon v. Raphael* (2 Scott. 789), and mentioning a declaration of Pollock, C.B. in a recent case.

The Court said they would confer with the Lord Chief Baron, and upon a subsequent day,

Refused the rule.

Saturday, April 18.

THOMPSON v. PIGOTT AND OTHERS.

Trespass—Agreement to assign lease and fixtures—Damages.

Trespass, for seizing goods, chattels, fixtures, and effects. *Pleas*: 1, not guilty; 2, not possessed; 3, that the goods, &c. were not the property of the plaintiff.

It appeared, at the trial before Lord Denman, that the plaintiff had discounted a bill for a bankrupt of the name of Smith, and received from him a written security in the following form:—"In consideration of Mr. Thompson discounting a bill, &c. I have this day deposited with him, as a collateral security, the lease of my house and premises, situate, &c. and I have assigned the whole of the fixtures, as per inventory, in and about the house in question, &c.; and if the said bill shall remain unpaid for the space of seven days, I agree to execute a mortgage of all my estate and interest in and to the said lease, together with the several fixtures, &c., such lease and fixtures to be sold by auction, &c.; but if Mr. T. should wish to sell the fixtures on the premises, I authorize him to do so, without subjecting himself to an action." That instrument was dated in September 1843; the bill was dishonoured at maturity; and in March 1844 a fiat issued against Smith. The defendants, the assignees of Smith, in May following directed an auctioneer to take down the fixtures and sell them, which was done. The value of the fixtures, as attached to the house, was 80*l.*, but when detached, only 36*l.* A verdict was found for the plaintiff, damages 80*l.*

Martin, Q.C. now moved for a rule to shew cause why a nonsuit should not be entered, on the ground that, according to the proper construction of the memorandum, the lease and fixtures could not be separate; that the memorandum did not operate as an immediate assignment of the fixtures, but that both lease and fixtures were to be comprised in the mortgage; and that, therefore, they were not the property of the plaintiff. Secondly, to reduce the damages to 36*l.* on the ground that, if the action could be maintained at all, the amount of damages was the value of the fixtures, when detached from the house.

Rule nisi.

EVANS v. ONYACK.

Excessive distress—Deduction of property-tax. Case, for excessive distress.

Plea, not guilty.

At the trial before the Lord Chief Baron at the last Hereford Assizes, it appeared that the plaintiff had paid a sum of 3*l.* 6*s.* 6*d.* property-tax, and that the defendant had distrained for the full amount of rent due, without deducting for that sum. Verdict for defendant.

Huddleston moved for a rule to shew cause why the verdict should not be set aside and a verdict entered for the plaintiff on the ground that by stat. 5 & 6 Vict. c. 35, the landlord was bound to deduct the property-tax from the rent, and that the landlord had no right to distrain for more than the rent, minus the property-tax.

Cases cited: *Cumming v. Bedford* (6 L. T. 396); *Carter v. Carter* (5 Bing. 406.)

Rule nisi.

JOYNSON v. OLDFIELD.

Debt for work and labour in executing writs and processes for the defendant. Verdict for the plaintiff for 5*l.* 4*s.* 6*d.*; tried before Williams, J. at Chester.

Chilton, Q.C. moved for a nonsuit, or to reduce the damages: first, on the ground that the plaintiff's work was not done in executing writs, but in seising under a power in a mortgage deed; secondly, that a sum of 5*l.* charged for arresting a person could not be recovered, since stat. 1 Vict. c. 55, s. 3, prohibiting the recovery of any fees but such as have been allowed by the taxing officer; and also that some payments had been proved.

Rule nisi.

BLAGG v. GIBSON.

Evidence under never indebted and payment.

In an action for money had and received to recover the balance of a banking account: Held, that the bankers could not, under pleas of never indebted and payment, avail themselves of a defence that they had discounted a bill drawn by the plaintiff, and dishonoured by the acceptor at maturity.

Debt for money had and received, and on an account stated. *Pleas*, except as to part, 1st. never indebted. 2nd. Payment, and as to that part payment into Court. At the trial at the last assizes for Hertford, before Lord Denman, it appeared that the defendants were bankers, and that the plaintiff had had an account with them; the balance of which account he sought to recover in this action. The bankers had been in the habit of discounting bills for the plaintiff, and debiting his account with the amounts, as funds came in to meet them. On one occasion the defendants had discounted a bill drawn by the plaintiff and accepted by one Penzon, and had handed the proceeds to Penzon. That bill became due on the 16th May, 1844, and was dishonoured; but the plaintiff's account was not debited with the amount until the 31st December. The last item in the pass-book was in June; and an entry was made in pencil, stating a balance of 2*l.*; but when that

was delivered to the plaintiff it was accompanied with a memorandum, informing him that that balance was subject to Penzon's bill. The plaintiff drew upon the defendants for the 2*l.*; but the defendants refused to pay that amount, claiming to deduct the amount of Penzon's bill; and the question was, whether they could avail themselves of that defence under either of the pleas, "never indebted" or "payment." Verdict for the plaintiff.

Shee, Serjt., moved to set aside that verdict, and to enter it for the defendant upon those issues, pursuant to leave reserved.

By the COURT.—The discounting of Penzon's bill is clearly not a payment; nor can it, since the new rules, be given in evidence under "never indebted." It is a question of liability on a bill of exchange; or is rather the subject of a set-off for money lent.

Rule refused.

MILLARD P. BROOKS.

Evidence of contract—Advertisement.

An advertisement in a Colonial newspaper, announcing the time at which a vessel would sail for England, and specifying the accommodation provided for passengers, held to be evidence of the terms of the contract between the owner of the vessel and a passenger.

Talfourd, Serjt. moved for a rule to shew cause why the verdict given in this case should not be set aside, and a new trial granted, on the ground of misdirection. This was an action on a contract to carry the plaintiff and his wife from New South Wales to this country. The defendant was a shipowner, and the contract, if any, was made by his captain, who commanded the *Achilles*, a vessel belonging to the defendant. The captain had inserted in the newspaper of the colony an advertisement, in which it was stated that the vessel would sail in December, 1842, and a certain supply of food was also guaranteed to steerage passengers. The plaintiff had agreed to come to England by this vessel. The vessel did not sail till March, 1843, and the plaintiff brought his action, complaining first of the delay, and next of the food supplied, both as to quantity and quality. As to this latter complaint the jury had negatived it, but had found a verdict for the plaintiff on the other ground. The learned judge had told the jury that the advertisement was a contract, and that was the misdirection complained of.

The Court thought that the advertisement, when adopted by the parties as it appeared to have been, did amount to a contract, and therefore refused the rule.

Rule refused.

STANDEN v. CHRISTMAS.

Breach of contract to keep in a tenant-like manner—Use and occupation—Action by assignee of reversion.

Assumpsit by the assignee of the reversion. The first count was on a special contract to keep the interior of the premises in repair; the 2nd on a contract to keep in a tenant-like manner; and the 3rd, for use and occupation; tried at Lewes before Alderson, B. who directed a verdict for the defendant on the ground that the statute 37 Hen. 8, c. 34, does not apply to cases where the lease is not by indenture.

Borill now moved for a rule for a new trial on the ground of misdirection. The case relied upon at the trial was *Buckworth v. Simpson* (5 Tyr. 344); but that only decides that where there are special terms, the statute will not apply unless the lease is by indenture. If the terms are such only as arise from the relation of landlord and tenant, there the assignee may sue, though there be no indenture. For rent he may sue at common law, independently of the statute. (1 Chitt. on Pleadings, 19; *Vyryan v. Arthur*, 1 B. & C. 410; *Hall v. Burgess*, 5 B. & C. 332; *Glover v. Cope*, 1 Salk. 185; 3 Sw.; *Isherwood v. Oldknow*, 3 M. & S. 382.) He moved also on the ground that the learned judge had incorrectly told the jury that there was no evidence that the property was copyhold; or that the plaintiff was assignee of the reversion. Rule nisi.

Tuesday, April 21.

WORTH v. GRESHAM AND ANOTHER.

Assumpsit for work and labour—Liability of provisional committee-men of a projected railway company.

This was an action of *assumpsit* for work and labour. The cause was tried at York, before Mr. Justice Coleridge, when it appeared that the plaintiffs were surveyors and engineers at Sheffield, and the work done was done by them upon a railroad intended to unite Leeds and Lincoln, and called the Leeds, Lincolnshire, and Midland Junction Railway. The defendants were provisional directors of the company. Two persons named Chambers and Webster were the attorneys residing at Sheffield, and they entered into the project to form this railway, and employed the plaintiffs. The plaintiffs, before entering upon the work, required a guarantee from them to the amount of 100*l.* until the business of the company should be transferred to the hands of a managing committee. Upon the 15th of October the certificate of the provisional registration under 7 and 8 Vict., cap. 110, was drawn up by the Registrar of Joint-Stock Companies, and in that certificate it was recited that the two attorneys were

the promoters of the scheme. On October 18, the guarantee asked for by the plaintiffs was given to them by Webster and Chambers. This guarantee was to cease on the scheme being transferred to the provisional committee of management. On the 26th of October, Gresham wrote to Webster and Chambers, requesting that shares in this railroad should be allotted to him, and further requesting that he might be appointed one of the members of the provisional committee. These requests were complied with, and on the 28th of the same month, Copeland (the other defendant) was likewise made an allottee of shares and a provisional committee-man. On the 3rd of November, a return was made to the Registrar of Joint-Stock Companies of the names of the members of the provisional committee, and this return included the names of the two defendants. On the 10th of November the scheme of the company was virtually given up. The work for which the plaintiff claimed compensation was begun on the 23rd of October, and did not conclude till the 2nd of November. Application had been made for 7,000 shares, but these were not in fact allotted until after the project had in substance been given up, when the allotment was made for the purpose of receiving from the applicants subscriptions to meet the expenses which had been incurred. No money, however, had been obtained upon the allotments. No objection was made to the work or the charges of the plaintiff. These facts having been proved, the Jury returned a verdict for the plaintiff.

Dundas, Q.C. now moved for a rule to shew cause why that verdict should not be set aside, and a nonsuit entered, or a new trial had. The first question was, whether the whole demand could be recovered from Messrs. Webster and Chambers, or only the sum of 100*l.* upon the guarantee which they had given, because if they were liable for the whole amount on the ground that the business had not been transferred to the committee of management, then the action could not be maintained. At the trial the guarantee was read, and Mr. Webster was called as a witness. There was no doubt that the guarantee was to be void on the business of the railway being transferred to the committee of management. The question, therefore, was, whether the business had been so transferred. There was no doubt that a meeting of the committee was called, but only one gentleman attended, and there was nothing to shew that the management had ever passed out of the hands of Messrs. Webster and Chapman. Mr. Justice Coleridge told the jury that both parties looked to the formation of a committee of management, and to the transfer of the business to that committee; that the liability of Messrs. Chapman and Webster was subject to the change to be effected by the formation of that committee; that the committee had been formed, and it was clear took up all existing liabilities; and that, in his opinion, they were bound to make compensation for such services as were necessary for the maintenance and existence of the scheme itself; that the services of the plaintiff were of that kind, and that, consequently, there ought to be a verdict for the plaintiffs. This was clearly a misdirection; as, in fact, a transfer of the business of the company, in the manner in which the guarantee had contemplated it, had never taken place. The liability, therefore, remained with the Messrs. Chapman and Webster, and had not become attached to the members of the provisional committee.

Rule nisi.

DAY v. SHARP.

Retirement of partner—Action by retired partner for services—Projected railway company.

The secretary of a railway company, who had previously been a member of the provisional committee: Held, entitled to maintain an action for his services as secretary against another committee-man, who having become so whilst the plaintiff was a member of the committee, continued to act after the plaintiff had been to his knowledge appointed secretary, and attended meetings at which the plaintiff had acted in that capacity.

This was an action for work and labour, and money paid, tried at York, before Mr. Justice Coleridge, when it appeared that in the autumn of last year a project was started for a railway company, to be called the East-Riding Junction Railway. The company did not exist for more than two months. The defendant had no doubt been one of the committee-men of the company, but the plaintiff had likewise been so, and at an earlier period of the existence of the company. The defendant had become a committee-man on the 10th of October, the plaintiff being so at that time, and having been so for some days before. Their names were afterwards advertised together in that character. On the 16th of October, it was resolved that a secretary should be appointed, and the plaintiff was appointed to that office. This action was for service performed and money expended by the plaintiff on behalf of the company, and in furtherance of the scheme from the time when the plaintiff was appointed secretary to the company up to the 30th of November, when the company came to an end. Two prospectuses were issued after the plaintiff had been appointed secretary; and in neither of them was his name mentioned as a com-

mittee-man, but it was mentioned as secretary. These prospectuses were sent in the usual manner to the defendant as one of the committee-men; but he was not present when the appointment took place, though there seemed no doubt that he had been present at some meeting of the committee after that appointment had been made. Verdict for the plaintiff.

Baines, Q.C. now moved for a rule to show cause why a nonsuit should not be entered. He submitted that this action was not maintainable. The plaintiff was a shareholder, and the question was, whether such a person—one who had been so engaged in an undertaking of this kind—could at his pleasure retire from it so as to divest himself of the character of partner, and enable himself to sue those who had been his partners for money paid and for work done for the partnership. Citing *Holmes v. Higgins* (1 B. & C. 74); *Monypenny v. Harland* (1 Car. & P. 352); *Kidwelly Canal Company v. Raby* (6 Price, 93).

LORD DENMAN, C.J.—It seems to me that this is the case of several partners agreeing with one among their number that he should cease to hold that character, and should assume another. [Baines.—There was no evidence of the assent of all the partners.] Then might arise the question, whether those who made the arrangement had authority to bind such of their partners as were absent; but it does not appear that such a question can arise here. The circumstances of the case do not permit it. It appears to me very sufficiently proved that the defendant had consented to this new arrangement. That fact completely distinguishes this case from those which have been referred to, and prevents it from falling within the rule as to the general liabilities of partners.

PATTESON, J.—I think that the defendant is estopped by his own acts. The plaintiff's name was left out of the prospectus as a committee-man, and inserted as a secretary. The defendant continued a committee-man, knew of the alteration, and attended meetings after it had been made.

WILLIAMS, J. concurred.

COLERIDGE, J.—The view now taken by the Court, is that which I took at the trial. I never thought that the question of partnership liability arose. I thought that the defendant had bound himself by his own acts. *Rule refused.*

LYOUD HARRISON.

Money paid in the service of a projected railway—Liability of co-projector.

This was an action for money expended in the business of a projected railway. The plaintiff and defendant were both attorneys, and the defendant had become committee-man of the "London Union Railway," the object of which was to unite the Great Western with the Birmingham Railway. This scheme was abandoned by its projectors, as it appeared that the Great Western and Birmingham Railway Companies had determined to unite their means and exertions to effect the same object, but the scheme had been in existence from the middle of October to the month of December last. The plaintiff had acted as the attorney and solicitor of the company, and had superintended much of its business, and had made payments on account of the company to some considerable extent. The cause was tried before Mr. Justice Coleridge at the sittings in the present Term, when the defence set up was that the plaintiff was himself the concoctor of the scheme, and had induced several persons to become members of the provisional committee, by giving them an indemnity from the time of their entering office up to the time when deposits should be paid upon the shares. The defendant further set up an arrangement between all the directors and the plaintiff, by which the thirty-nine directors subscribed 10l. each, and the plaintiff had accepted it in payment of his claim. It did not appear that the plaintiff had given the defendant any indemnity, because, as he insisted, the defendant had been the real projector of the company, and he (the plaintiff) was entitled to recover from him as from any ordinary director, compensation for work and labour performed for the company. The learned Judge expressed his opinion that this action could not be maintained by the one against the other of them; and the jury returned a verdict for the defendant.

Shee, Serjt. now moved for a rule to show cause why this verdict should not be set aside and a new trial granted, on the ground of misdirection, and that the verdict was against the evidence.

LORD DENMAN, C.J. did not think that there were any grounds to disturb the verdict. This was clearly not money paid to the use of the defendant.

PATTESON, J.—This is purely a question of credit, and there is abundant evidence that credit was not given to defendant. If the promoters of railway schemes will incur liabilities in order to procure the names of respectable persons to appear on their provisional committees, they must prepare themselves to endure the consequences of their own act.

DAVIS G. GIBBER.

"An Unlawful dog," within stat. 10 Geo. 4, c. 50, s. 14. If there be evidence that a dog is brought into the Forest of Dean for the purpose of taking or destroying deer, &c. the dog is an "unlawful dog" within the

meaning of stat. 10, Geo. 4, c. 50, s. 14, and if not delivered up, may be shot by the gamekeepers whilst going along a public highway which passes through the forest.

Trespass for killing a dog.

Plea, the general issue by statute.

At the trial before Pollock, C.B. at the last Gloucester assizes, a verdict was found for the defendant.

Godson, Q.C. on the 18th inst. moved for a rule to show cause why that verdict should not be set aside, and a new trial granted on the ground of misdirection. It appeared that the plaintiff and a friend were walking in the Forest of Dean, accompanied by a dog, when a noise of dogs was heard not far from them, and the plaintiff's dog, hearing the others give cry, opened too, but was immediately checked and brought back by his master. Some little time afterwards, and whilst the plaintiff and his friend had the dog behind them, the gamekeepers came up and demanded that the dog should be delivered up to them. The plaintiff refused, and the gamekeepers then shot it. The plaintiff brought this action to recover damages for the dog, and the case turned upon the provisions of the 10 Geo. 4, c. 50, s. 14, which thus described the powers to be enjoyed and exercised by the gamekeepers, "and also to take, seize, and destroy all unlawful dogs, nets, guns, and engines used for the purpose of taking or destroying deer, beasts, or birds of chase or warren, or other game or fish." Here the dog was not used for that purpose; there was no evidence to that effect. The highway on which those parties were walking ran through the forest, and was certainly within its boundaries, but it was a public highway, and was a place where many private individuals had residences, and where all the public were entitled to walk. Under these circumstances it was submitted that the Lord Chief Baron ought to have told the jury that the gamekeepers had no right to kill the dog, and his not having done so was a misdirection.

Cases cited:—*Vere v. Lord Cawdor* (11 East, 568); *Janson v. Brown* (1 Camp. 41.) *Cur. adv. vult.*

LORD DENMAN, C.J. now delivered judgment.—This was a case, which Mr. Godson moved a few days since, and in which it was supposed that the Lord Chief Baron had misdirected the jury. This was an action for killing a dog. The questions were, whether the dog was, within the meaning of the statute for the protection of game in the Forest of Dean, "an unlawful dog;" and whether the dog was in the forest for the purpose of killing game. The Lord Chief Baron states, that the evidence shewed clearly that the dog was brought into the forest by persons engaged in poaching, and had been set on the deer. There was poaching at the same time in the same forest by other parties, but it was not proved that they and the plaintiff were connected together. Still they were there near each other. There is no doubt about the facts, and the Court think, under the circumstances, the dog must be treated as an unlawful dog, used for the purposes prohibited by the statute. There will, therefore, be no rule. *Rule refused.*

EADES V. BOOTH.

Infant plaintiff—Petition to appoint next friend—Practice.

An infant plaintiff being only twenty months old, the Court appointed a next friend upon a petition prepared by the father, and signed by the father with the infant's name thus:—"A B, by me, her father, and next friend, C D."

Spinkes moved the Court to appoint a next friend to the infant plaintiff, she being only twenty months old. The only difficulty was that the infant was too young even to present a petition, for the appointment of her next friend, according to the usual practice; but the father of the infant had prepared a petition, stating the circumstances; and had signed it with the name of the infant in this form:—"A B, by me, her father and next friend, C D." *Rule absolute.*

Monday, April 20.

DAVIS V. PALK.

Trespass—Denial of possession—Judgment non obstante verdicto.

Chilton, Q.C. moved for a rule nisi to enter judgment for the plaintiff non obstante verdicto, for the defendant on the second issue, or for a new trial. It was trespass for entering a salt mill and expelling plaintiff therefrom, with a writ de bonis appropriatis for salt. The pleas purported to answer the whole, but the second plea did not traverse the possession of the salt. The issue, therefore, found for the defendant, were immaterial. [PATTERSON, J.—Is it not a discontinuance?] According to the recent cases, plaintiff is entitled to judgment non obstante if other material issues are found for him. (*Negelen v. Mitchell*, 7 M. & W. 612, overruling *Phummer v. Lea*, 2 M. & W.) Evidence was admitted to shew that the defendant was equitably entitled to the premises which was not admissible, as the plaintiff was actually possessed. Proof of undivided possession is not necessary. (*Whittington v. Bocall*, 5 Q. B. 139; *Mason v. Farnell*, 12 M. & W. 674.) A *fi. fa.* was also admitted as evidence without proof of the judgment, although the

plaintiff was no party to the judgment. A memorandum of the deposit of title-deeds, attested by a witness, was admitted without the attesting witness, nor was it stamped. *Rule nisi.*

GINGELL V. GIFFORD.

Trespass—Estoppel by admission.

In trespass quare clausum, the defendant pleaded liberum tenementum, and proved a conveyance from A, who had entered into an agreement to purchase from the plaintiff, which, however, had never been performed:—Held, that on proof that the plaintiff had, subsequently to the agreement and conveyance, spoken of himself as tenant to A, the jury were justified in finding the verdict for the defendant.

Shee, Serjt. moved for a rule nisi for a new trial, for misdirection and for the verdict being against evidence. It was an action of trespass quare clausum. Plea, not guilty, not possessed; and as to part, liberum tenementum. New assignment and traverse. It appeared in evidence that the plaintiff had entered into an agreement to sell the premises to a Miss Couchman, but before conveyance executed, Miss Couchman conveyed to the defendant. After the agreement, the plaintiff frequently spoke of himself as tenant to Miss Couchman, and the jury had found for the defendant.

The Court refused to disturb the verdict.

Rule refused.

MALLEY V. PUMFREY AND WIFE.

The voluntary relinquishment of a charge of assault, upon which the plaintiff was arrested, is not such evidence of the want of reasonable and probable cause, that the Court will set aside a nonsuit where the judge at the trial has ruled that there was not absence of reasonable and probable cause.

Pigott moved to set aside a nonsuit. It was an action for false imprisonment, in consequence of a charge of assault made by the female defendant. It appeared that the plaintiff and one Bridges had gone to the public-house kept by the defendants; that some dispute took place; that Mrs. Pumfrey made a deposition before a magistrate, and the plaintiff was brought up upon a warrant issued thereon; but that at the hearing she had not proceeded with the charge, upon which the present action was brought. Mr. Baron Platt, before whom it was tried, held that this was not proof of the absence of reasonable and probable cause, and nonsuited the plaintiff. It was now submitted that the learned judge was wrong, according to *Nicholson v. Coghill* (4 B. & C. 21); *Hamilton v. Reddell* (Rose on Evidence, p. 406).

LORD DENMAN, C.J.—In *Nicholson v. Coghill* (4 B. & C.) it was said to be a question for the jury. If it had been left to the jury, and they had found that there was reasonable and probable cause, they would have been justified. Then if the judge takes it upon himself to decide this, as according to the later cases he may, and he decides in the same way, is he not to be justified? I should have found here that there was reasonable and probable cause. *Rule refused.*

KIND V. EVERSHED.

Malicious Damage Act—Owner of premises—Reasonable cause for arrest.

M. Chambers, Q.C. moved for a rule nisi to set aside the nonsuit. It was an action of false imprisonment, for causing the plaintiff to be arrested and taken before a police magistrate under the 7 & 8 Geo. 4, c. 30. It appeared that the plaintiff, having built several houses at Brighton, occupied one, and while superintending some alterations under the advice of a surveyor, the defendant told him to desist, and on his refusal, a policeman was sent for, and the plaintiff was taken before the magistrate, who, however, dismissed the charge. At the trial, upon cross-examination, the son of the plaintiff stated that he had heard his father say that the house in question was mortgaged, and that the defendant was the attorney to the mortgagee. Upon this it was contended that the plaintiff was entitled to notice of action under 7 & 8 Geo. 4, c. 30, ss. 24, 26, 27, 41, and the learned judge being of that opinion, he was nonsuited. This was wrong, for the plaintiff was within the proviso in the section, for he was acting under a reasonable belief of his right. At least it was a question for the jury when the magistrates had discharged the case on that very ground. Then the defendant was not the owner, or servant of the owner, entitled to interfere. The only question put to the jury was, whether the defendant acted *bona fide*; but to entitle him to notice, he ought to have had reasonable cause for his opinion, and this should have been put to the jury. (*Hopkins v. Crow*, 4 A. & E. 774; *Cann v. Clipperton*, 10 A. & E. 582.)

The Court granted the rule, but intimated that they did so principally because it was not shewn that the defendant was connected with the premises, and entitled to interfere. *Rule nisi.*

TUCKER V. CLARKSON.

Trover—Scrip certificates.

Shee, Serjt. moved, pursuant to leave, to set aside the verdict for the plaintiff, and enter a nonsuit.

It was an action of trover for scrip certificates. It appeared that one Tyrrell, being allottee of certain shares, sold to the defendant, who sold them to one Hull. The jury, however, found that Hull was acting for the plaintiff. Hull paid the deposit, and obtained the certificates, which he handed to the defendant, and upon his refusal to give them to the plaintiff, his action was brought. It was contended that, as the scrip certificates were not in existence at the time of the contract of sale to the plaintiff through Hull, trover could not be maintained, but that the action should have been upon the contract for non-delivery.

Rule nisi.

DOR DEM. GROVES V. GROVES.

Limitation Act—Estoppel.

Wesby moved, pursuant to leave, to enter a nonsuit, the Court to draw inferences as a jury.

It appeared that one William Hart died in 1798, leaving his son, John Hart, then fifteen years of age, heir to the premises in question. In December, 1798, the widow, who was dowable, but never had dowry assigned to her, married the defendant, and after taking out administration, occupied the premises. The son, John Hart, lived there until 1805, when he came of age, and up to 1841. The defendant's name was painted upon the door, and the shop license was in his name. He also paid chief rent, and was rated to the poor's rates. In 1842, the defendant applied to the lessee of the plaintiff for 150l. as a loan, and then, by the advice of an attorney, John Hart executed the mortgage, under which the lessor of the plaintiff now claimed, but the defendant was no party to the deed.

Under these circumstances there was no title in the lessor of the plaintiff. The defendant's title was perfect by the effect of the Limitation Act. (*Doe dem. Jukes v. Somers*, 14 M. & W. 39; *Scott v. Dixon*, 3 Drur. & Warren.) There was no estoppel. (*Lyon v. Reed*, 13 M. & W.; *Co. Litt.* 352; *Pickard v. Sears*, 6 A. & E. 469.)

Rule nisi.

REG. V. JONES.

Poor-rates—Exemptions under 6 & 7 Vict. c. 36—Religious Tract Society.

No society can be exempted from rates under 6 & 7 Vict. c. 36, unless its laws expressly and in terms prohibit any dividend, gift, division, or bonus in money among any of its members.

Semble, that societies established for religious purposes (as the Tract Society) are not within the meaning of the Act.

This was an appeal under 6 & 7 Vict. c. 36, against the certificate given by Mr. Tidd Pratt, to exempt the Religious Tract Society's premises in Paternoster-row from poor-rates. The Sessions quashed the certificate, subject to the opinion of the Court.

Robinson, in support of the order of Sessions.—This society is not within 6 & 7 Vict. c. 36, s. 2. The words of that section exempt "premises belonging to any society instituted for purposes of science, literature, or the fine arts exclusively," provided such society "shall not, and by its rules may not, make any dividend, gift, division, or bonus in money unto or among any of its members." To comply with this statute, it is not sufficient that the rules do not direct a division, but they must expressly forbid and prohibit it. The rules of the Religious Tract Society do not do this. In fact some division of the profits is made, for the 4th rule allows subscribers to purchase at reduced prices, and clergymen collecting for the society receive half the amount of the collection in books. These are supposed to be for distribution, but they may be sold if the parties think proper. But even if the rules here are sufficient, yet the Religious Tract Society is not within any of the classes mentioned. It must come under the head "literary," or none at all. Can it be said, looking at its rules and avowed objects, as shown by all its reports, to be for literary purposes exclusively? Its object is to teach Christianity, to make men religious, to give them knowledge only in such a form as shall conduce to their salvation hereafter. Incidentally, literature may be encouraged, because this must be done through books; but this is an accidental means only, not the purpose for which it is instituted exclusively. They do not teach theology generally, but only limited sectarian notions, excluding the largest portion of literature, all ancient, and a great part of modern. Influencing the mind to a particular course is their object, not instruction generally. Even their books containing scientific knowledge are professedly written with religious views, and in a religious strain. The Anti-Corn-Law League, if it confined its exertions to printing and circulating publications, might claim exemption with equal right. On both these grounds, the exemption cannot be allowed.

Talford, Serjt.—The words "shall not" or "may not" cannot have the construction contended for, or the statute will be a dead letter. It must be taken with reference to the circumstances when it was passed. Its title and preamble show that it was intended to exempt literary and scientific societies, yet no society of this kind contains such a rule in express terms. It would be an insult to insert such a rule, as much as saying the trustees shall not steal the funds. Take the Literary Fund for example. It suffices, if the rules do not authorise any such dis-

tribution, and show that it would be directly against the objects of the society, and a breach of trust and duty so to apply the funds. The Court of Chancery would interfere just the same whether there was a written law against it or not. [*WIGHTMAN, J.*—You say that the affirmative laws as to the disposition of the funds are equivalent to an express prohibition.] Yes. Nor is there in fact any breach of the proviso; the rules pointed out do not authorise a division or bonus of money. They only give a species of commission. But as this can be remedied by the society passing an express law, the more important question is, whether the Religious Tract Society is within the statute. Is it to be said that religion, the highest source of poetry and all literature, and the subject of all that is most permanent and great in literature, is to exclude the society from the benefit of the statute? The publication of the society in almost every spoken tongue, the circulation of such works as "Pilgrim's Progress," "Butler," &c. is in every way conducive to literature; and the higher object they have in view is not to put them beneath the societies aiming at more inferior and limited ends. Could it be denied that a society instituted for the cultivation of taste, which should seek this end solely by selling cheap models and copies of works of art, would be within the words "for the purposes of the fine arts?" It is a monstrous thing to exclude religious literature from the character of literature. Would not a writer of these tracts be entitled to the benefits of the Literary Fund? Lord Bacon terms religion the greatest of all sciences.

Lord DENMAN, C. J.—It appears to me that there is no doubt that this does not comply with the terms of the statute. That expressly requires that the society shall not, and, by its rules, may not, make any dividend, &c. It is not enough that the rules do not permit any such division, but they must distinctly prohibit it. We are asked as to the other point, and although we give no decision upon it, yet I must say that I entertain very great doubts upon it. It is a forced construction of the words to say that it is a literary purpose, because religion, which it seeks to spread, is the highest of all species of literature. It may seem strange that such bodies should not be exempted, but it is still more odd that, if this argument be the correct one, literature should be put after science in the statute.

PATERSON, J.—I think the first objection is fatal. The words are express and distinct, and a prohibitory law is essential. As to the other question, as at present advised, I cannot think that the Religious Tract Society can be called instituted for literary purposes exclusively. Throughout its publications the object is to spread religious knowledge.

WILLIAMS, J. and *WIGHTMAN, J.* concurred. *Order of Sessions confirmed.*

BUSINESS OF THE WEEK.

Thursday, April 16.

ROBINSON V. WARD.—*Rule nisi* for setting aside verdict for plaintiff, and entering it for the defendant, on the ground that proof of a tender of 7l. "for rent" proved a tender of 7l. parcel of the moneys mentioned in a declaration, which contained counts for use and occupation, work and labour, money lent, money paid, and on an account stated.—*Bramwell.*

JONES V. LITTLEWOOD. *Cur. adv. vult.*

R. V. GREGORY.—*Motion* for judgment on the defendant, who stands convicted of a libel on the Duke of Brunswick. Postponed on the ground that judgment had not been signed.—*Talford, 8.*

PAGE V. HATCHETT.—*Sir John Bayley* moved to discharge the rule obtained by the defendants, the plaintiff agreeing to abandon so much of the second count as related to certain of the goods therein mentioned. The Court, in giving judgment upon an application for a new trial in this case, had said that there was to be no rule if the plaintiff would abandon the count in trover within 14 days. Upon that count there had been a demurrer to the replication, and the plaintiff had obtained judgment upon that demurrer, so that by abandoning that count altogether they would give up the costs of the demurrer, which was not, he supposed, the intention of the Court. They were willing to abandon the whole of the second count, except that part to which the demurrer applied. *Rule nisi.*

R. V. PELHAM.—*Argument concluded.* *Cur. adv. vult.*

Friday, April 17.

FOLLETT V. ANDREW. *Cur. adv. vult.*
DOR DEM. BENNETT, V. HARRY.—*V. Williams*, moved to set aside the verdict for the plaintiff upon a stamp objection. Postponed for the production of the deed. *Monday, April 20.*

WHITMORE AND OTHERS, Assignees of GREEN, V. LAKE.—*Talford, Serjt.* moved to set aside the verdict for the defendant, as against evidence. *Cur. adv. vult.*

GREEN V. WINGOT.—*Prædiergnat* moved to set aside the verdict for the plaintiff, on certain issues, as against evidence. *Cur. adv. vult.*

LEWIS V. SAMUEL.—*M. Chambers, Q. C.* moved to reduce damages, or to enter the verdict for the defendant, or for new trial.

Rule refused as to the reduction of damages; as to the other points, Cur. adv. vult.

DOR DEM. DYKE V. DYKE.—*Allen, Serjt.* moved to set aside the nonsuit in this case. Before his opening, the Lord Chief Baron had nonsuited the plaintiff, considering that his construction of the will could not be supported. It turned upon the description of the premises. *Rule nisi.*

PENDERY V. JONES.—*Watson, Q. C.* moved to set aside the verdict for the plaintiff, on the ground of surprise, and the improper admission of an agreement, or to reduce the damages. *Rule refused.*

REG. V. PARSONS. **REG. V. LEWIS.**—*Points to be taken*

when defendants brought up for judgment. In the former case *Peerson* subsequently applied to the Court to order the affidavits to be filed at once; but *Shaw, Serjt.* objected, the course was not usual; and upon his undertaking that no others but those already sworn should be used, the Court refused the order.

MOUNTAIN V.—*Bullock, Q. C.* moved for a rule nisi for setting aside verdict, and entering a nonsuit, for trespass, for taking sheep. The plaintiff derived his title to the sheep by having purchased them on a given day from a person, to whom the defendant had agreed to sell them on the next day, at a price certain, if that person should then be willing to take them at this price; and that, 1st, the contract between the defendant and that third person was void by the Statute of Frauds. *Sed*, the defendant had the whole of the day following that of the sale to the plaintiff to avoid his contract with the plaintiff's vendor; and, 2nd, that the bargain could only be transferred by the consent of all three parties. *Rule nisi.*

PENROSE V. EVANS.—*PENROSE V. EVANS.*—*Chilton, Q. C.* moved for rules in each of these cases, which came upon the same deed, of a very peculiar character. *Rule refused.*

HANCOCK V.—*Chilton, Q. C.* moved for a rule nisi, to enter nonsuit. *Rule refused.*

SMITH V. ASCHER.—*Shaw, Serjt.* moved for a rule nisi to set aside the verdict for the defendant, as against the evidence. It was a question of fact as to the identity of a railway proposed, and a railway executed. *Rule refused.*

DE FOINVILLE V. DE BOINVILLE.—*Douglas, Serjt.* moved for a rule nisi to reduce the damages. The question was whether certain furniture were included in an assignment of stock in trade. *Rule refused.*

Rule nisi, not to go into the new trial paper.
COX V. BINGHAM.—*Pigott* moved for a rule nisi to reduce the damages. *Rule refused.*

Wednesday, April 22.

REG. V. LORD MAYOR OF LONDON.—*M. D. HILL, Q. C.* (with whom was *Pauling*) was heard in support of the right of Mr. Ashurst to be admitted in the Lord Mayor's Court, under 6 & 7 Vict. c. 78. *Cur. adv. vult.*

Thursday, April 18.

HUMPHREYS V. MARMER. *Cur. adv. vult.*
EVERSHED V. BROWN.—*Pigott* moved to reduce the damages, or for a new trial. Verdict for the plaintiff, damages 100l.

Rule nisi, unless the plaintiff would consent to reduce the damages to 100l.

HUMPHRY, Q. C. for the plaintiff, consented to the reduction.

CHRISTIE V. PICKFORD. *Cur. adv. vult.*

VINCENT V. DORE. *Cur. adv. vult.*

SIR P. ROSE V. THE MARQUESS OF WESTMINSTER. *Cur. adv. vult.*

HILL V. HAYWOOD. *Cur. adv. vult.*

SAMUEL V. GREEN.—*Debt, on a cheque.* Verdict for the plaintiff. *Lord* moved to enter a nonsuit, on the ground that there was no evidence of privity between the plaintiff and defendant, and that debt, therefore, was not maintainable. *Rule nisi.*

Friday, April 21.

ASSER V. WALKER. *Rule refused.*

(A note of this case next week.)

DOR DEM. HAYWARD V. TINSLEY.—*Effectment by mortgage.* The question was, whether the legal estate passed under a mortgage deed. *Crompton* moved for a rule to set aside the verdict, but the Court suggested a special case.

Rule nisi, unless a special case agreed upon.

DOR DEM. ANGEL V. ANGEL. *Rule refused.*

(This case will be reported next week.)

LAURIE V. DAVIS. *Cur. adv. vult.*

MORTIMER V. MOORE. *Leave to amend refused.*

BLUCK V. SIDERWAY.—*Assumpsit* for money had and received, to recover a sum of money loaned to the defendant as treasurer of a club. The defence was that the sum of the plaintiff was the subscriber to the club; that the money had been received from him; and that the defendant was liable to him. The case was tried before the Under-sheriff of Staffordshire, who left to the jury the question whether the money was the money of the plaintiff. *Petersford* moved for a new trial on the ground of misdirection. The proper question for the jury was, whether the sum had descended the money as agent for his father. *Rule nisi.*

Wednesday, April 23.

REG. V. SANDWICH.—*Demurrer* to a return to mandamus, to give a bond to Mr. Mourilyan under the Municipal Corporations Act. The question turned upon the right of the corporation to traverse certain points, which had been admitted upon a return to a former mandamus, on behalf of Mr. Mourilyan. *Whitcomb, Q. C.* (with whom was *Wash*), in support of demurrer. *Peacecock, contra.*

Judgment for the Crown, and peremptory mandamus ordered.

Judgment in the following cases will be delivered on Monday, the 27th inst.:

SOLOMON V. LAWSON.

GRIFFITHS V. LEWIS.

REG. V. DOUGLAS.

ALFRED O. FARLOW.

COURT OF COMMON PLEAS.

Tuesday, April 21, 1846.

TOTCH V. STRAWBRIDGE.

A contract with B, for the support of A's illegitimate child. At the time of the contract, it was contemplated that it should continue for more than a year. It was, however, agreed that B should keep the child as long as A pleased, and should be paid monthly. Held that this was not a contract within the meaning of the phrase, "not to be performed within the space of one year," in the 4th section of the Statute of Frauds.

Semble—The statute relates only to actions brought to recover damages for the non-performance of executory contracts, and not to actions, brought to recover payment of a debt due in respect of an executed consideration. This was an action of indebitatus assumpsit, for

the lodging and maintenance of, and for goods supplied to, a certain child, at the request of the defendant.

Plea, non assumpsit.

At the trial before Erie J. at the last summer assizes at Bristol, it appeared that the child was an illegitimate child of the defendant, which had been supported by the plaintiff under a parol agreement. The agreement was for the payment of a guinea a month by the defendant. At the time of entering upon the agreement, when the child was only a few months old, it was proposed that the plaintiff should take charge of it for a year certain, and it was then objected by the defendant, that as the child was so young, the proposed rate of payment would be more advantageous to the plaintiff during the first, than during any subsequent year, and that it would not be fair, unless the plaintiff would continue to keep the child upon the same terms after the expiration of the year. The plaintiff then agreed to keep the child as long as the defendant pleased.

Under these circumstances, it was objected that the contract was one "not to be performed within the space of one year from the making thereof," and therefore by 29 Car. 2, c. 3, s. 4, required a note in writing. Erie J., upon this, consulted the plaintiff, reserving leave to move to enter a verdict for 15l. A rule having accordingly been obtained for that purpose, cause was now shown by

Manning, Serjt.—This is a case within the latter part of the 4th section of the Statute of Frauds. It is similar to the cases in which it has been held, that a contract of service or apprenticeship to commence at a subsequent day, is within the clause, and must be in writing. (*Snelling v. Lord Huntingfield*, 1 Cr. M. & R. 20; *Bracegirdle v. Hoald*, 1 B. & A. 722.) There the agreement might have been determined by the death of the servant or apprentice, yet the law looked to the fact that the parties contemplated a service of more than a year. In this case the evidence shows that more than a year's duration was contemplated, because the objection is taken that the limit of one year would be disadvantageous to the defendant. Even where it is competent for the parties to set an end to the contract upon certain terms within the year, yet if by the whole tenor of the agreement the parties have in view some more distant period, the rule applies. (*Birch v. Earl of Liverpool*, 9 B. & C. 392; *Boydell v. Drummond*, 11 B. & C. 134; *Peter v. Campbell*, 5 K. 11; *Wells v. Horton*, 4 Bing. 46.) If the defendant had pleased that the child should be kept until it was twenty-one years of age, and then a claim had been made for payment, all the mischief would have been done which the statute was designed to prevent. [TINDAL, C.J.—This action is brought on an executed contract; an *indebitatus assumpsit* for work and labour, not a contract executory for which the statute was provided.] That difficulty does not press. For there is no implied contract, the child being illegitimate, and the statute excludes parol evidence of an actual contract where the agreement is not to be performed within the year. If I give a parol guarantee and goods are supplied and the contract executed, I am not liable. [CHESWELL, J.—There is not in that case a primary liability. There would be if you ordered goods to be delivered fifteen months hence, and accepted them when they were delivered.]

Wilde, Serjt., in support of the rule.—This is an executed contract under ordinary circumstances. The plaintiff has done all on his part; the defendant has acquiesced and has had the benefit. *Indebitatus assumpsit* will therefore lie. It is just the same case as if he had put his horse out to livery at a given sum per month. Would it in that case be contended that if the horse were kept for more than a year, the stable-keeper could not recover for its keep upon a quantum meruit? Further, even were this contract executory, it is not within the statute. The payments were made monthly, and there was nothing to hinder either party from dissolving it within a year. It has been held that part performance does not take a case out of the statute, but here there was a perfectly good performance every month. So a contingency is not within the statute, which does not extend to cases where the thing may be performed within the year. (*Fenton v. Kibblers*, 3 Burr. 1278; 1 Smith's Leading Cases, 143.) Not only was there the contingency of either party dissolving the contract, but even the child's life was but a contingency.

TINDAL, C.J.—This rule must be made absolute. In the first place, this is not an action within the scope of the Act at all. It is founded upon a by-gone consideration, viz. the nourishment and care afforded to the child by the plaintiff at the request of the defendant. There was evidence enough for the jury that the defendant assented that the child should be taken care of, and had made partial payments. I think, therefore, that he was entitled to recover in the action in the common form. The words of the statute are "No action shall be brought whereby to charge any person (*inter alia*), upon any agreement that is not to be performed within the space of one year from the making thereof;" meaning no action to recover damages for the non-performance of a contract. That is quite different from avoiding an action of this kind.

The object of the statute was to prevent fraudulent practices, which are commonly endeavoured to be upheld by perjury and subornation of perjury, which may be instanced by an imputed promise to serve for twenty years, or to enter into a partnership for life. Matters of this last kind, not strictly to be performed within a year, are protected by the solemnity of writing. The case now before the Court was sufficiently supported by the ordinary evidence of an executed consideration. In the next place, if an action on an executed consideration could ever be brought within the statute, this is not within its terms. The words "not to be performed within the space of one year," point out a contract not capable of being performed within a year. The rule to be extracted from *Boydell v. Drummond* is, that a case is within the statute where it is the understanding of the parties that it is not to be performed within the year. I see nothing in these terms necessarily to extend the agreement beyond the year. If a contract be made to serve for two years, that is within the statute; but a contract to serve without the limitation of any certain time is not within it.

COLTMAN, J.—I think that this case is not within the statute. It is a contract to sustain the child for successive months, and is subject to be defeated by the defendant. It therefore comes within the rule as to a contingency laid down in *Peter v. Campbell*, and never yet impugned. The other point it is not necessary for us to determine, or I might have had some difficulty; as even in the case of an executory consideration, it might be necessary to refer to the contract to make out the case.

CHESWELL, J.—I also am of opinion that this rule must be made absolute. I think that the evidence shows that the contract was never within the meaning of the words "not to be performed within a year," in the 4th section. The contract was really a contract from month to month, so long as both parties pleased.

ERLE, J.—Upon consideration, I think the verdict should be entered for the plaintiff. We must not allow the treaty which preceded the contract to operate against the contract. The contract ultimately was, that the arrangement should continue as long as the defendant should think proper. If so, it is clear that there is a contingency, and the statute does not apply. Rule absolute.

BUSINESS OF THE WEEK.

Friday, April 17.
DORRIS, BAYLEY AND OTHERS v. FOSTER.—Byles, Serjt. (with him Ogilvie), moved to set aside the verdict for the plaintiff, and enter a nonsuit, or a verdict for the defendant. 59 Geo. 3, c. 12, s. 17; 4 Geo. 2, c. 28, s. 2; and *Doe dem. Lytton v. Goldwin* (2 Q.B. 148), were referred to.

PIGGOTT v. EASTERN COUNTIES RAILWAY COMPANY.—Shee, Serjt. (with him James), moved for a new trial, upon the ground of the improper reception of evidence, and that the verdict was against the evidence. Rule to show cause.

ELSTON v. GASCOWNE.—Channell, Serjt. moved for a new trial, upon the ground that the damages awarded were excessive. Cur. adv. vult.

Saturday, April 18.
ELSTON v. GASCOWNE. Rule to show cause.

FOSTELL v. JOHNSON.—Channell, Serjt. (with him Crompton) moved for a new trial, on the ground of misdirection. Rule to show cause.

GARLY v. ROUND.—Byles, Serjt. moved for a new trial on the ground of misdirection. He cited *Beany v. Wyndham* (14 L.J. N. S. 7 Q.B.); *Goss v. Quinton* (3 Man. & G. 625.). Rule to show cause.

COULTAS v. BOWES.—Sir Thomas Wilde, Serjt. (with him Byles, Serjt.), moved for a new trial, on the ground that the verdict was against evidence. Cur. adv. vult.

SIGGARS v. PAINTER AND ANOTHER.—Talford, Serjt. moved for a new trial, on the ground that the verdict was against evidence. Rule to show cause.

SKELTON v. ALCOCK.—Byles, Serjt. moved for a new trial, upon the ground that the verdict was against evidence, and that evidence was improperly admitted. *Smith v. Kelly* (4 Rep. 349) was quoted. Rule to show cause.

CAVES v. JONES.—Dowling, Serjt. moved to enter a suggestion on the roll under 23 Geo. 2, c. 30, ss. 5, 7. Rule to show cause.

HUGHES v. ABE.—C. Jones, Serjt. moved to set aside the verdict for the plaintiff, and to enter a nonsuit, or for a new trial, upon the ground of the improper reception of evidence. Rule to show cause.

BIRKHONTS v. LLOYD AND OTHERS.—Byles, Serjt. moved for a new trial, upon the ground of a misdirection. Rule refused.

FITCH v. CUTTS.—Shee, Serjt. (with him Marsh) moved for a new trial, upon the ground of misdirection, and that the verdict was against evidence. *Partridge v. Simmons* (5 B. & A. 383); and *Bird v. Boulter* (4 B. & A. 443) were referred to. Cur. adv. vult.

DORRIS, GAIKSFORD AND OTHERS v. STONE.—Channell, Serjt. (with him Fitzherbert) moved, pursuant to leave reserved, for a new trial, unless the plaintiff would consent that the verdict, as to part, should be entered for the defendant. He quoted *Slattery v. Pooley* (6 M. & W. 674); *Howard v. Smith* (3 Man. & G. 254); *Roe dem. Trinitown v. Kemmis* (9 Clk. & Fin. 784); *Carpenter v. Buller* (8 M. & W. 309.). Cur. adv. vult.

BOYCE v. CHAPMAN AND ANOTHER.—Channell, Serjt. moved to set aside the judgment signed by the plaintiff, against Chapman, for irregularity. He referred to R. G. H. T. 4 Will. 4, 2; and *Seaton v. Seale* (3 Dowl. 537.). Rule to show cause.

HARRIS v. ROBINSON.—C. Jones, Serjt. moved to set aside the appearance entered for the defendant, and all subsequent proceedings, for irregularity. He mentioned R. G. H. T. 2 Will. 4, and *Harrison v. Teit* (4 Bing. N. C. 442.). Rule to show cause.

Monday, April 20.

DORRIS, GAIKSFORD AND OTHERS v. STONE. Rule to show cause.

GAMBLE v. KURTZ.—Talford, Serjt. (with him Webster) moved for a cross rule to that obtained by Channell, Serjt. on April 16, calling upon the plaintiff to show cause why a nonsuit should not be entered, or why the verdict should not be entered for the defendant upon the 1st, 2nd, or 3rd issues, or why there should not be a new trial upon the ground that the verdict was against evidence. Rule to show cause.

TEMPEST v. KILNER.—Byles, Serjt. moved for a rule to enter a nonsuit, or to reduce the damages to 25l. Rule to show cause.

GIBBONS v. ALISON.—Shee, Serjt. (with him Petersdorff) moved for a new trial upon the ground of misdirection, and that the verdict was against evidence. Rule to show cause.

HOLDEN v. LIVERPOOL NEW GAS AND COKE COMPANY.—Argument concluded (part heard Jan. 26). Cur. adv. vult.

PRICH AND URON v. JAMES.—Channell, Serjt. showed cause. Talford, Serjt. (with him Phinns) supported the rule. Rule absolute for a new trial.

Tuesday, April 21.

ZULUSTA AND OTHERS v. MILLER AND OTHERS.—Sir T. Wilde, Serjt. showed cause. Channell, Serjt. in support of the rule. Cur. adv. vult.

KEYS AND OTHERS, Executors, v. IRVINE.—Byles, Serjt. in support of the rule. No one showing cause. Rule absolute.

BARTLEY v. CARVER AND OTHERS.—Channell, Serjt. showed cause. Sir T. Wilde, Serjt. in support of the rule. Cur. adv. vult.

DORRIS, ATKINSON v. FAWCETT.—Sir T. Wilde, Serjt. commenced his argument against the rule. Argument adjourned.

COULTAS v. BOWES. Rule to show cause. The cases of BENTLEY v. CARVER, and WHITE v. HANCOCK, will be reported next week.

Wednesday, April 22.

GORDON v. ELLIS. Judgment for the plaintiff. FOWLES, Public Officer, v. PAGE. Cur. adv. vult. NEVILLE v. TIPPIN.—Byles, Serjt. moved to set aside the judgment signed in this case, for irregularity. (Reg. Gen. E. T. 2 Will. 4; 1 Jervis's Rules, 93.) Rule to show cause.

COURT OF EXCHEQUER.

Wednesday, April 15.

HINCKER v. JAMES. Where in an action against a party for not delivering certain sacks of flour to arrive by a ship at a certain port, it appeared, from the terms of the contract, that a specific thing was contracted for.

Held, that it was not enough for the plaintiff to show that the ship arrived with an equal quantity of flour on board to that contracted to be delivered, but that he must show that the specific flour contracted for arrived in that ship.

This was an action against the defendant for not delivering certain flour. The declaration was on a special agreement, setting out that the defendant had sold to the plaintiff certain, to wit, 200 sacks of flour, at 37s. per sack, to be delivered to him when the ship *Wanderer* arrived at Newport, and there were allegations that the *Wanderer* arrived at Newport in August, 1845, with 200 sacks of flour on board, but that, although the plaintiff was ready and willing to receive and pay for the said flour, and requested the defendant to deliver the same, yet the defendant wholly neglected it, and refused so to do, to the damage of the plaintiff.

The defendant pleaded several pleas, one of which was, that although the said ship did arrive, yet she did not arrive with the said goods on board. At the trial the bought and sold note was put in, and was in form as follows:—"Sold 150 to 200 sacks of fresh flour, at 37s. per sack, to be delivered ex *Wanderer*, on her arrival at Newport." Evidence was also given of the arrival of the *Wanderer* at Newport, with 200 sacks of flour on board. For the defence it was shown that the flour was not consigned to the defendant, and that he had no control over it. Upon this, a verdict was directed to be entered for the defendant, with liberty to the plaintiff to enter a verdict for 70l. which was the difference between the value of the flour at the time the ship arrived and the time when the contract was made, flour having risen in price.

Whateley.—Q. C. now moved accordingly, and contended that as the defendant had undertaken to deliver the flour when the ship arrived, he did so at his own peril, and the fact of the flour which actually came by the *Wanderer* being consigned to another person and not the defendant could not affect the question.

PARKER B.—The fact of the sold note mentioning the quantity as 150 to 200 sacks, shews that the parties contracted with respect to some specific thing. Now, how do you make it appear that the 200 sacks of flour which did arrive by the *Wanderer* at Newport was the subject matter of the contract?

Whateley.—That, it is submitted, does not matter. The defendant undertakes to deliver the flour when the *Wanderer* arrives, and was therefore bound to do so on that arrival taking place; then it is clear that he could have compelled the plaintiff to take the flour.

By the Court.—It is clear, by the words of the said

note, that the parties were contracting for some specific thing, and it was for the plaintiff to shew that the specific thing so contracted for did arrive; that he has not done. You may have a nonsuit instead of a verdict, so that on another trial you may have an opportunity of supplying this, which may be only a deficiency of evidence.

Whateley assenting to this course,
Talford, Serjt. (who had appeared for the defendants at the trial), consented, on behalf of his clients, to this course.
Rule absolute for a nonsuit.

OLROYD v. CHADWICK and ANOTHER.
New trial.

This was an action brought to try the validity of a warrant of distress which had been issued by the defendants, who were justices, to collect poor rates. The assessment was made under the 43 Eliz. c. 2, which, before it could be enforced, must be allowed by two justices, and notice published in the church, under 17 Geo. 2, c. 3, since the 7 Wm. 4, and 1 Vict. c. 45. This notice is not to be given in the church, but to be reduced into writing, and to be affixed on or near to the doors of the churches or chapels in the parish. In this case it seemed that prior to 1832 there had been an old chapel in the parish, where divine service was performed, which fell into ruin, and a new chapel was built, under 59 Geo. 3, c. 102, s. 40, which was duly consecrated, and the galleries, pewing, sacramentary vessels, and parish chest, which had been in the old chapel, were removed to the new. The windows of the old chapel were then blocked up, but it was used for burials and occasionally christenings; divine service, however, was never performed there.

The ground on which the parties brought this action against the justices was, that they had illegally issued the distress, the rate being bad for want of sufficient notice. They contended that as it was necessary to give notice on the doors of all the churches and chapels in the parish where it was made before it could be enforced, notice should have been affixed to the door of the old chapel as well as the new, which had not been done. At the trial a verdict was taken for the plaintiff, with leave to the defendants to move for a nonsuit.

Martin, Q.C. now moved accordingly, and contended that it was only necessary to give notice on the doors of those churches and chapels in which divine service was performed; and he cited *R. v. Marr* (12 A & C. 779), and *R. v. Whip* (4 Q.B. 141); he also stated that these were points arising on the face of the warrant of distress.
Rule nisi.

Thursday, April 16.
TORK v. DARBY.
New trial.

This was an action for an illegal distress for rent, and it appeared that the plaintiff had held a farm, for the rent of which the distress was made, of one Mountain—Mountain being tenant to Darby. In October 1843, the three parties met, and it was agreed between them that Mountain should cease to be tenant to Darby in June 1844, and that Tork should be his tenant instead. In March 1844, however, Darby represented to Tork that he had the freehold of the farm, and agreed to sell it to him, but was afterwards unable to make a title to the feehold (having only a term of 1,000 years, and was unable to get in the freehold). In August 1845, Darby put in a distress for rent due from June 1844 to June, 1845. At the trial, a verdict was taken for the defendant, with liberty for the plaintiff to move to enter a verdict, damages, 22l. 6s. 6d.

Humphrey, Q.C. now moved accordingly, and contended that this distress could not be put in, as Tork was never tenant to Darby, the agreement to sell having been made by Darby before the time when Tork was to come in as his tenant.
Rule nisi.

HILLS v. CROSSLAND.
New trial.

This was an action for a malicious prosecution. Verdict for the plaintiff, damages, 50l. It appeared that the action arose out of a prosecution which had been instituted against the plaintiff for an alleged assault committed at a vestry meeting, and of which he had been acquitted.

M. Chambers, Q.C. now moved for a nonsuit, on the ground that it had been proved at the trial that the plaintiff had at the vestry done what amounted to an assault in law; and that therefore, although he had been acquitted, it could not be said that there was an absence of reasonable and probable cause for the defendant's preferring the indictment, which was essential to enable him to maintain this action.

Rule nisi.
BEAMISH v. OWENS.
New trial.

Semble—A, who was an attorney, being engaged in negotiations for the sale of an estate of his own, devolved the conduct of the business with regard to it on his partner; and then made certain statements to him, which went to shew that he could not make out his title. Held, in an action brought against A to recover back the deposit money, that the relation of attorney and client existed between them, and that

the communications were privileged.

This was an action to recover back the sum of 650l. which had been paid by the plaintiff to the defendant, as a deposit on the sale of an estate which had not been completed; the breach alleged being, that the defendant had neglected to make out a good title.

The defendant had had a verdict on two pleas: 1st, that the plaintiff was not ready and willing to accept and pay the residue of the money; and 2ndly, that the defendant had not had a reasonable time allowed him by the plaintiff to make out his bill; and leave was reserved for the plaintiff to move to enter a verdict for 650l. *non obstante veredicto*, on the count for money had and received, if the Court should be of opinion that he was entitled to do so, on all the facts of the case.

Watson, Q.C. now moved accordingly, citing *Jacob v. Lee* (2 M. & R. 33); *Morris v. Horner* (1b. 392); and *Rogers v. Custance* (1b. 179). This was on a point relative to a notice to produce. There was also a point as to the admission of evidence. It appeared that the defendant Owens was an attorney, and at the time the negotiation relative to the sale of the estate took place, he was in partnership with a gentleman named Grice; but this partnership had since (and prior to this action) been dissolved. It also appeared that the defendant had asked him to attend to this negotiation with regard to the sale of the estate. At the trial it was proposed to call him, on the part of the plaintiff, to prove certain statements made to him by the defendant, which went to shew that he could not make out his bill, but it was objected that those statements were privileged, and his evidence was held inadmissible by Mr. Baron Platt, who tried the cause. It was now contended that the relation of client and attorney did not exist between them, and that the evidence was admissible.

By the COURT.—If the partner asked the witness to conduct this business, why should not the relation of client and attorney exist? If for any reason Owens devolved the task of conducting the business with regard to this estate on his partner, it is clear the relation would exist; and as it is clear that the statements were confidential, they ought to have been excluded; on the other points there will be a *rule nisi*.

ENGLEHART v. MOORE.
Attorney's bill.

This was an action on an attorney's bill; the only plea was that no signed bill had been delivered, the plaintiff had a verdict, damages 27l. 15s. 2d.

Humphrey, Q.C. now moved to set this verdict aside and enter a verdict for the defendant, on the ground that no sufficient bill had been delivered, no Court was anywhere mentioned in the bill as to where the business was done, but it was headed "Yourself at the suit of Peroy;" this, it was submitted, was insufficient. (*Lewis v. Primrose*, 13 L.J. Q.B. 269.) *Rule nisi.*

Saturday, April 18.
POTT and OTHERS v. CLEGG.
New trial.

In this action various issues had been found for the plaintiff, and one for the defendant, who had also leave to move to enter a verdict on one of the issues found for the plaintiff on a question of set-off, the question being whether the defendant could avail himself of a declared balance in his favour in a banker's book as a set-off, the balance being declared more than six years before action brought, or whether it was barred by the Statute of Limitations.

Chilton, Q.C. now moved accordingly. *Rule nisi.*

FENWICK v. BOYD and ANOTHER, and THE SAME v. THE SAME.

These were actions by and against the same parties on a charter-party. Verdicts for the plaintiff in the first action, damages 635l. 13s. with leave for the defendant to move for a new trial; in the second, 1,885l. 16s. 6d. with leave to move for a new trial or a nonsuit.

Jervis, Q.C. now moved accordingly, and stated that as the facts were the same in both cases, he thought it best to move them together in the first action. The grounds on which he moved for the new trial were, that the facts of the case did not bring it within the terms of the second part of the charter-party so as to let in the question of time and right, and also in arrest of judgment that the contract was not properly set out.

The same points arose in the second case, with the addition of this, that the action was, it was contended, brought too soon, as the goods were warehoused under 5 & 6 Wm. 4, c. 87, s. 47; and as that Act enacts that the cargo, when so warehoused, shall be considered to be in the ship, this was an action for freight with the cargo in the ship.

Rule nisi in both cases.

SWINTON v. THOMPSON.

In an action on a warranty of goods alleged to have been sold by sample, Held, that an invoice which was delivered with the goods, formed no part of the contract, but was merely a memorandum of the goods so delivered, and the sum to be paid.

This was an action brought against the defendant

on a warranty of champagne, which the plaintiff in his declaration alleged was sold by sample, and to be delivered equal in quality to a bottle which had been produced. The plea was, that the sale was not a sale by sample. A verdict having passed for the plaintiff, *Whateley, Q.C.* now moved to enter a verdict for the defendant, on the ground that the invoice which was sent to the plaintiff at the time the wine was delivered contained no such stipulation; and as he had received the wine under such invoice, it, in fact, formed the contract, as the goods were there described, and the terms of credit mentioned.

By the COURT.—The jury have found the fact that there was a sale by sample; the contract was made quite independent of the invoice, which was merely sent to inform the party what he had to pay. It is nothing more than a memorandum of what the goods sent are, and of what the plaintiff was to pay, and need not include the conditions of the sale, which could not bind him in any way.
Rule refused.

WOOLLEY v. DAVISSON.
New trial.

This was an action for the value of shares in the Leeds and Thirsk Railway Company, bargained and sold. The defence was, that the defendant was only an agent in the sale, and was not liable as principal. A verdict was directed for the defendant, with leave to the plaintiff to move to enter a verdict, if the Court should be of opinion that the plaintiff, on all the facts, was so entitled.

Baines, Q.C. now moved accordingly, citing *Owen v. Gooch* (2 Esp. 567); *Story on Agency*, 267 & 288; *Thompson v. Dacensport* (9 B. & C. 78); 2 Smith's Leading Cases, 223; *Paley's Principal and Agent*, 372.
Rule nisi.

Wednesday, April 22.

WALSTAB v. SPOTTISWOODE.

Liability of a provisional committee-man at suit of an allottee of shares in a railway scheme which is not carried out.

In this case *Martin, Q.C.* moved for a rule to shew cause why a nonsuit should not be entered pursuant to leave reserved—the first count of the declaration being special, and the second for money had and received, and a verdict having been found for the plaintiff on each of these counts, with 78l. 15s. damages.

It appeared that the plaintiff had applied for 30 shares in the Direct Birmingham, Oxford, Reading, and Brighton Railway, and the letter of application contained the usual promise to accept the shares, to pay the deposit of 2l. 12s. 6d. upon each share, and to sign the parliamentary contract and subscribers' agreement. The letter of allotment contained directions for payment of the deposit money to certain bankers therein mentioned, and for obtaining the scrip on production of the banker's receipt.

The motion for a nonsuit was made on two grounds—1st. That from the agreement contained in the above letters, no promise could be raised for the delivery of scrip by the defendant to the plaintiff, who had paid his deposit money on the 30 shares; and, secondly, that money had and received would not lie in this case.

On the first point, *Martin* contended that a provisional committee-man has authority to do those acts only which are prescribed by the Joint Stock Companies' Act, 7 & 8 Vict. c. 110, in which he referred particularly to ss. 2, 23, 25; and that this Act gives no power to issue scrip before complete registration. He likewise insisted that the agreement (if any) established by the letters of application and allotment was respecting shares and not scrip, and that the first count of the declaration was consequently not supported by the evidence. On the second point he argued that, although money had and received would lie where there had been a total failure of consideration, yet in this case the committee had no power to dissolve the company, and therefore there had been no such total failure; but even if there had been, the contract being illegal, the money paid by the plaintiff could not be recovered back. On both grounds the Court granted a *Rule to shew cause.*

BUSINESS OF THE WEEK.

Wednesday, April 15.

MIDDLETON v. LESTER.—*Humphrey, Q.C.* moved for a new trial on the ground that the verdict was against evidence.
Cur. adv. vult.

DEW v. BURGESS.—*M. Chambers, Q.C.* moved to set aside the nonsuit herein.
Rule refused.

Thursday, April 16.

BEYNON v. DAVIS.—*Gray* shewed cause. *V. Williams* is support of his rule.
Cur. adv. vult.

MUMFERY v. PAUL.—*Petersdorf* shewed cause against a rule which had been obtained to stay the proceedings herein, on the ground that the course of action had been described in a previous action. The Court said that that action had not been disposed of on the merits, and that the rule must be discharged with costs.
Rule discharged.

BRUNN v. CHUCK.—*Jervis, Q.C.* moved to set aside the first judgment herein, on the ground of irregularity.
Rule nisi.

NASH v. BROWNE and OTHERS.—*Whateley, Q.C.* moved for a new trial on the ground that the verdict was against evidence.
Cur. adv. vult.

WITLEY v. BONEVILL.—*Whateley, Q.C.* moved for a new trial, on the ground that the verdict was against evidence.
Cur. adv. vult.

Friday, April 17.

JOETT v. SPENCER.—*Jervis*, Q.C. moved for a rule to shew cause why the judgment in this case should not be arrested.

Rule to shew cause.

CHAMBERLAIN v. THE CHESTER AND BREKENRIDGE RAILWAY COMPANY.—In this case, which was tried before Williams, J., at the last Chester Assizes, *Crompton*, on behalf of the defendants, moved for a rule to shew cause why a nonsuit or verdict for the defendants should not be entered on the plea of not guilty, and why the judgment should not be arrested. He also moved for a rule to shew cause why there should not be a new trial, on the ground of the improper reception of evidence. He cited *Plin v. Currell* (6 M. & W. 234).

Rule to shew cause.

SCOTT v. RICHARDS.—*Talfourd*, Serjt. moved, on behalf of the plaintiffs in this case, which was tried at Reading before the Lord Chief Baron, for a new trial, on the ground that the verdict was against evidence.

Rule refused.

BICKLEY v. BOYDELL.—*Whiteley*, Q.C. moved for a rule to shew cause why the verdict on certain of the issues joined between the parties in the above cause, which was tried at Stafford before the Lord Chief Baron, should not be entered for the plaintiff, with damages agreed on. He cited *Plin v. Currell* (6 Bing. 200); *Pearce v. Chesign* (4 A. & E. 225); *Doe dem. Pearson v. Rles* (8 Bing. 178); *Stanforth v. Fox* (7 Bing. 590); *Doe dem. Philip v. Benjamin* (9 A. & E. 644); and *Pool v. Bentley* (12 East, 108); to shew that an instrument may operate as a present demise, even where a future lease is contemplated and agreed upon by the parties. On other points he referred to *Holford v. Dunnell* (7 M. & W. 348); *Wetherill v. Howells* (1 Camp. 237; Bsc. Abr. Waste, C. 4; 2 Wms. Saunde. 289); *Johnson v. Carr* (1 Leving, 152); *Darwin v. Stacey* (12 A. & E. 506).

Rule to shew cause.

WOOTON v. FRUCTUOSO.—In this case *Humphrey*, Q.C. moved for a rule to shew cause why there should not be a new trial, on the ground of misdirection, and that the verdict was against evidence. He cited *Frestone v. Butcher* (9 C. & P. 543); 2 Smith Lead. Cas. 250; *Snout v. Ibery* (10 M. & W. 1); *Dysart v. Dysart* (1 Robertson Ec. R. 100).

Rule to shew cause.

LINDSEY v. ALCOCK.—*Watson*, Q.C. moved for a rule to shew cause why there should not be a new trial, on the ground that the verdict was against the evidence.

Rule to shew cause.

JONES v. FOSTER.—*Martin*, Q.C. moved for a rule to shew cause why the verdict in this case tried before Williams J., at Carnarvon, should not be entered for the defendant on the 1st and several other issues, and also for a new trial. He cited *Henniker v. Turner* (4 B. & C. 157), and on the first breach in the declaration, the Court granted a new trial.

Rule to shew cause.

JONES v. CARTER.—*Jervis*, Q.C. moved for a rule to shew cause why there should not be a new trial, the verdict having been entered for the plaintiff by direction of the learned judge (Williams), the facts being the same as in the preceding case.

Rule to shew cause.

ABRAMS v. HARRIS.—*Jervis*, Q.C. moved for a rule to shew cause why there should not be a new trial, on the ground that the verdict was against evidence.

Rule to shew cause.

BLUNDELL v. YATES.—*Charnock* moved for a rule to shew cause why there should not be a new trial, 1st, on the ground of misdirection, and that evidence was improperly admitted; 2ndly, that the verdict was against evidence. On both points the Court granted a new trial.

Rule to shew cause.

HUGHES v. HUGHES.—*Jervis*, Q.C. moved for a rule to shew cause why there should not be a new trial, 1st, on the ground of improper rejection of evidence, as to which he cited *Cornish v. Searell* (8 B. & C. 471); 2ndly, because there was no direct proof of permission, under the plea of *ave et licentia*.

Rule to shew cause on both grounds.

Saturday, April 18.

BALL v. EBBETS.—*Crocker*, Q.C. moved for a new trial, on the ground that the verdict was against evidence.

Rule nisi, unless the defendant will consent to a verdict for the plaintiff on the first count.

MASON v. JENKINS.—*Talfourd*, Serjt. moved for a new trial.

Rule nisi.

CROMER v. CHUCK.—*Rule* discharged with costs. Will be fully reported next week.

HOLFOED v. KERSEY.—*Alexander* moved for a new trial. This case, also, will be reported next week.

Rule nisi.

Reports of the following cases are omitted for want of room. They will appear next week:—

HUNTINGDON v. GRAND JUNCTION RAILWAY COMPANY.

Rule nisi for new trial.

MAYOR OF POOLE v. WITT. *Rule nisi for new trial.*

MITCHELL v. NEWARK. *Rule refused.*

TILK v. BUXTON.—*M. Chambers*, Q.C. moved for a new trial, on the ground that the verdict was against evidence.

Rule nisi.

NORRIS v. BARNES. *Rule nisi.*

BART v. WILD. *Rule nisi.*

HUGHES v. MANN AND OTHERS. *Rule nisi.*

Monday, April 20.

GEORGE v. BRIDGEMORE. *Rule refused.*

LAURIE v. DOUGLAS. *Rule nisi.*

LAW v. THOMPSON. *Rule nisi.*

ALNOT v. REAT. *Cur. adv. vult.*

BRADLEY v. TONGE. *Rule nisi.*

WHEELER v. DOLLAWAY. *Rule nisi.*

GOLDICUT v. BINNION. *Rule nisi.*

FINLAYSON v. PILEBROW. *Rule refused.*

HOGGINS AND ANOTHER v. FIELD. *Cur. adv. vult.*

HUTCHINSON v. EAST LANCASHIRE RAILWAY COMPANY. *Cur. adv. vult.*

BOULEY v. BELL. *Rule nisi.*

KERRISLAKE v. COLL. *Rule nisi.*

DANIEL v. FIELDING. *Rule nisi.*

HARRIS v. COLLEY. *Rule nisi.*

ALEXANDER v. ROYLE. *Rule nisi.*

Tuesday, April 21.

BARNETT v. HARRIS.—*Channell*, Serjt. moved for a rule to shew cause why the nonsuit entered in this case should not be set aside, on the ground of the improper rejection of evidence, and on affidavits. He cited *Wilks v. Hepburn* (14 L. J. M. S. C. P. 235). On both points a

Rule to shew cause.

GRANT v. MADDOX.—*Martin*, Q.C. moved to set aside the verdict for the defendant and for a new trial, on the ground of the improper admission of evidence and misdirection.

Rule to shew cause.

WILKINSON v. SCOTT.—*Knowles*, Q.C. moved for a new

trial in this case, on the ground of misdirection; citing *Sykes v. Dixon* (9 H. & E. 698); *Young v. Timmins* (1 Cr. & J. 331); 6 T. R. 321.

Rule to shew cause.

REID v. TATE.—*Knowles*, Q.C. moved for a new trial, on the ground of misdirection, of surprise, and that the verdict was against evidence.

Rule refused.

FLITCHER v. MARSHALL.—*Watson*, Q.C. moved for a nonsuit and in arrest of judgment. On the first point, the Court granted a new trial.

Rule to shew cause.

MARSDEN v. NEWMARCH.—*Watson*, Q.C. moved for a rule to shew cause why the verdict in this case, which had been found for the plaintiff, should not be entered for the defendant; he likewise moved, in arrest of judgment, and for a new trial. On all points, the Court granted a new trial.

HAHN v. DALTON.—*Baines*, Q.C. moved for a rule to shew cause why the verdict which had been found for the defendant should not be entered for the plaintiff. He cited *Slevens v. De Medina* (4 Q. B. 422); *Pool v. Hill* (6 M. & W. 835); *Wilks v. Smith* (10 M. & W. 355).

Rule to shew cause.

Rule to shew cause.

BATSON v. RICHARDS.—*Watson*, Q.C. moved for a rule to shew cause why the verdict in this case should not be set aside, and a new trial had on the ground of misdirection.

Rule refused.

GRACE v. INGOLL.—In this case, which will be found reported 14 M. & W. 95, *Humphrey*, Q.C. moved for a new trial on the ground of misdirection, and that the verdict was against evidence.

Rule to shew cause.

ASHBY v. BATES.—*Humphrey*, Q.C. moved for a new trial on the ground of misdirection, that the verdict was against evidence, and that the learned judge (Coltman) had ruled that the wrong party was entitled to begin.

Rule to shew cause.

Wednesday, April 22.

DOE dem. STACE v. WHEELER.—*Peacock* moved, in this case, to enter a nonsuit; he likewise moved to stay proceedings on payment of costs by defendant, pursuant to stat. 7 Geo. 2, c. 20. As to the rule for a nonsuit he cited *Doe dem. Pool v. Errington*, (3 Nev. & Man. 646), and in support of his motion to stay proceedings, and for a reconveyance of the premises, he referred to the above mentioned statute. On each point the Court granted a new trial.

Rule to shew cause.

NAYLOR v. SCORAH.—*Martin*, Q.C. moved for a rule to shew cause why the verdict in this case should not be set aside and a new trial had on the ground of misdirection.

Rule to shew cause.

JACKSON v. SMITHSON.—*Shoe*, Serjt. moved for a new trial in this case on the ground of misdirection, and that the verdict was against evidence. He likewise moved in arrest of judgment. On the two last-mentioned grounds, the Court granted a new trial.

Rule to shew cause.

SMITH v. JEFFRIES.—*Shoe*, Serjt. moved for a new trial on the ground of misdirection; he also moved to enter a nonsuit pursuant to leave reserved.

Rule to shew cause.

SMITH v. RANSOM.—*Bramwell* moved for a new trial, on affidavits, and on the ground of the improper rejection of evidence.

Rule refused.

PRICE v. RICHARDSON.—*E. V. Williams* moved to enter a nonsuit.

Rule to shew cause.

OWEN v. MANN.—*Yardley* moved for a nonsuit, or to enter the verdict for the defendants, or for a new trial. On all the points the Court granted a new trial.

Rule to shew cause.

THOMSON v. GREGORY.—*Jervis*, Q.C. moved for a new trial, on the ground that the verdict was against evidence.

Rule refused.

WILKES v. STEVENS.—*Peterborough* moved for a new trial, on the ground that the verdict was against evidence. He cited *Hicks v. Duke of Beaufort* (4 Bing. 229).

Rule refused.

ROOTH v. MILLNS.—*Pashley* moved for a new trial, on the ground of misdirection.

Rule to shew cause.

LEE v. DREW.—*Piggott* moved to enter a nonsuit, or for a new trial, on the ground of misdirection respecting the sufficiency of notice of dishonour of a bill of exchange; and on this point the Court granted a new trial.

Rule to shew cause.

COLEGRAVE v. SUMMERTON.—*Huddleston* moved for a new trial, on the ground that the verdict was against evidence, and of misdirection.

Rule to shew cause.

FARRY v. NEWMAN.—*Byles*, Serjt. moved to enter the verdict for the defendant, on points reserved. He cited stats. 7 & 8 Geo. 4, c. 29; 18 Geo. 3, c. 19, and 3 Geo. 4, c. 23, s. 22; *Reg. v. Wilcock* 14 L. J. N. S. Magistrates' Cases, 104.

Rule to shew cause.

HARWOOD v. FIFE.—*Bovill* moved for a rule to shew cause why a nonsuit should not be entered, and for a new trial, on the ground of the improper reception of evidence. He cited *Doe v. Hillen* (2 Dowl. P. C. N. S. 094).

Rule refused.

RAIL COURT.

Friday, April 17.

(Before Mr. Justice COLERIDGE.)

BEDWELL (a pauper) v. COULSTING.*Motion to dispanper a plaintiff.*

T. W. Saunders moved for a rule to dispanper the plaintiff, and for the costs of the day for not proceeding to trial pursuant to notice. It appeared that issue having been joined herein, and notice of trial given, the plaintiff obtained an order to sue in *forma pauperis*; that he subsequently countermanded this notice, and afterwards gave a fresh notice for the sittings in last Hilary Term, but that immediately before the trial he withdrew the record, but has since given a fresh notice of trial for the first sitting in the present Term. (*Doe dem. Leppingwell v. Trussell*, 6 East, 505; *Pratt v. Delarue*, 10 M. & W. 512; *Facer v. French and Another*, 5 Dowl. 554.)

Rule nisi.

Saturday, April 18.

LEWIS v. CULLEWIS.

When a cause is referred at Nisi Prius to the Master, in order that he may determine the matters in difference, and direct by whom, to whom, and in what manner the costs are to be paid, and he decides accordingly, his decision is in the nature of a certificate, and not an award, and is not bad for not providing for the costs of the reference.

E. James moved to set aside the Master's award or certificate herein. This cause was referred at Nisi Prius to the Master, a verdict having been taken for 37l. the order of reference directing the Master to decide upon all matters in difference, and to direct by whom, to whom, and in what manner the costs should be paid. The Master found that the plaintiff had sustained damages to the amount of 37l. (the amount of the verdict) besides his costs of suit. The present rule was moved on the four following grounds:—1st. That the Master had not awarded as to the costs of the reference. 2nd. That the finding as to the costs is ambiguous and uncertain. 3rd. That he has not determined upon all the issues, which were five in number. 4th. That the Master has stated in his award that he had considered the evidence of the parties, but not stated that he had examined any witnesses (this point was afterwards abandoned.) (*Morgan v. Smith*, 1 Dowl. N. S. 617.)

COLERIDGE, J.—I think there is nothing in the first objection. The Master has proceeded correctly; he has considered this as a certificate, and not as an award. Now a certificate is totally distinct from an award, for an award is addressed to the parties, whereas a certificate is addressed to the officer of the court, and is resorted to under certain circumstances, and with the view to saving expense. Mr. James relies here upon certain particular terms in the instrument, but I think that makes no difference; you must look at the broad distinction in the case, and it appears to me that this is merely a certificate of the Master; it follows, therefore, that there is also nothing in the second objection. I will look at the third.

Rule refused on the two first points. Cur. adv. vult. on the third.

Monday, April 20.

(Before Mr. Justice COLERIDGE.)

EVANS v. JONES.

Distringas to compel an appearance, where the excuse is that the defendant is ill in bed.

Corrie moved for a *distringas* to compel an appearance under the following circumstances. The usual calls and appointments had been made, but on each occasion the defendant had been denied, the servant saying that he was ill in bed, and could not be seen.

Distringas granted.

Tuesday, April 21.

(Before Mr. Justice WIGHTMAN.)

REG. v. THE JUSTICES OF ANGLESEA.

Where the six months during which a party may apply for a certiorari have elapsed, the Court will not (except with the consent of all parties) permit the writ to issue, notwithstanding application was in due time made at chambers for the writ, and was not then obtained, in consequence of the absence of the judge.

Peacock moved for a *certiorari* to bring up an order of sessions, subject to a special case. The order in question was made on the 14th of October, now more than six months since, and beyond the time, therefore, which, by the 13 Geo. 2, c. 18, s. 5, is allowed for moving for the writ. Application had been made to a judge at chambers on the 11th instant (within the six months), for the writ, but no judge attended chambers that day, nor until the 15th, in consequence of the Easter holidays. Application had subsequently been made to Mr. Justice Coleridge, who referred the applicants to the Court. Under these circumstances it was sought to have the writ issued *nunc pro tunc*.

WIGHTMAN, J.—Have you any authority for such an application, when you are out of time?

Peacock.—There is no express authority, but the chairman of the sessions consents to the application.

WIGHTMAN, J.—That will not do; you should have the consent of the other side. The only authority upon which this writ issues in such a case is by statute, and you have not complied with it.

Rule refused.

Wednesday, April 22.

REG. v. THE MAYOR, ALDERMEN, AND BURGESSSES OF BATH.

Certiorari to remove an order of a Town Council in order to quash same for defects apparent on its face.

T. W. Saunders moved for a *certiorari* to bring up an order of the town council of Bath, made on the 25th of January, 1836, for the purpose of quashing the same for defects apparent on its face. The order in question was made under the provisions of the 87th section of the 5 & 6 Wm. 4, c. 76 (an Act to provide for the regulation of Municipal Corporations in England and Wales) which enacts "that it shall be lawful for the council of any borough in any part of which there is a local act for the lighting thereof, to make an order that any part of such borough not being within the provisions of any local act for the lighting thereof, shall, from and after a certain day to be named in such order, be taken to be within the provisions of such local act or acts for lighting any part of such borough as the common council shall specify in such order; and after such day the part named in such order shall be within the provisions of the act or acts so specified, so far as relates to lighting, or to any rates authorized to be levied for the purpose of

lighting," &c. The order itself was in these words: "It is ordered that such parts of the parish of Lyncombe and Widcombe mentioned in the report of the watch committee as necessary and proper to be lighted, shall, after the 1st day of February next, be taken to be within the provisions of 'an Act for better paving, cleansing, lighting, watching, regulating, and improving the city of Bath, and the liberties and precincts thereof,' so far as relates to lighting the same." It was now contended that inasmuch as this order does not shew upon its face what are the parts of the parish to be lighted under it, it does not comply with the terms of the foregoing section, and is therefore bad. *Rule absolute.*

BUSINESS OF THE WEEK.

Friday, April 17.

HARRIS v. KIMBERLEY.—*Allen*, Serjt. moved to set aside the nonsuit herein, the plaintiff having been nonsuited at the last Gloucester assizes in his absence, which was occasioned by a mistake as to the time of the sitting of the Court. *Rule nisi for a new trial on payment of costs.*

STOCKER v. DORAN.—*Bovill* moved, on the part of the plaintiff in this cause, which was tried before the undersheriff of Middlesex, for a new trial, on the ground of misdirection. *Rule nisi, on payment of costs.*

Re ROBERT SWANN.—*Joyce* moved for a rule, calling upon an attorney to pay 7l. the amount of taxed costs, pursuant to his undertaking. *Rule nisi.*

Ex parte — *Burney* moved for a rule, calling upon an attorney to answer the matters of an affidavit. *Rule nisi.*

Saturday, April 18.

LAZARUS v. HOPKINS.—*Wordsworth* moved for a rule for a new trial herein, on the ground of its having been taken out of its turn as an undefended cause, in the defendant's absence. *Rule nisi.*

REG. v. CLARK.—*Whateley*, Q.C. moved to enlarge the rule herein. *Application granted.*

TOLSON v. SANDERSON.—*Pushley* moved to enlarge the peremptory undertaking herein. *Rule nisi.*

Re FORD, Gent. one, &c.—*The Attorney-General* applied for liberty to read an affidavit on the discussion of this rule, notwithstanding the said affidavit had not been filed in due time. *Rule nisi; to come on with the other rule.*

REG. v. THE INHABITANTS OF LUGGERSHALL.—*O'Malley* moved to make absolute a rule for imposing a fine of 200l. on the above inhabitants for the non-repair of a highway. *Rule absolute.*

Ex parte PEPPER.—*The Attorney-General* moved to enlarge the fiat for the admission of the applicant as an attorney. *Rule nisi, to be admitted the last day of this Term.*

Thursday, April 23.

SMITH v. RAYSON.—*Temple* moved to set aside the verdict herein, and for a new trial. The cause was tried before the under-sheriff for Westmoreland, when a verdict was returned for the defendant. *Rule refused.*

Ex parte PHILLIPS.—*H. Hill* moved that the articles of clerkship of this gentleman might be enrolled *nunc pro tunc*. *Application granted.*

JONES v. WILLIAMS. **DOUDNEY v. HUMBER.**—*T. W. Saunders* moved to make absolute these rules, no cause being shewn. *Rules absolute.*

POOLE v. SPILLER.—*Whigham* moved for a distringas to proceed to outlawry herein. *Rule granted.*

Monday, April 20.

ADAM v. ROWE.—*Payne* moved to set aside an award, on the ground that the arbitrator had not disposed of all the issues. (*Kilburn v. Kilburn*, 13 M. & W. 671; *Morgan v. Thomas*, 9 Jur. 92.) *Rule nisi.*

BOWEN v. WILLIAMS.—*Crouch* moved, on the part of the defendant, for a new trial in this case, which was tried before the under-sheriff for Middlesex, when a verdict was found for the plaintiff, on the grounds of misdirection, and the verdict being against evidence. *Rule nisi.*

REG. v. WELSMAN.—*W. H. Cole* moved for an attachment against the above party, for not complying with an undertaking given by him to produce certain documents. *Rule nisi.*

Tuesday, April 21.

MARCHANT v. LLOYD.—*Pigott* moved, on the part of the defendant, to enter a nonsuit herein. The action was tried before the under-sheriff of Middlesex, when a verdict was returned for the plaintiff. (*Roberts v. Elsworth*, 2 Dowl. N.S. 426; *Douglas v. Home*, 12 Add. & Ell. 641; *Curtis v. Richards*, 1 Man. & Gr. 46.) *Cur. adv. vult.*

BORDIER v. BARNETT.—*Bovill* moved to discharge a rule for a commission to examine witnesses abroad. *Rule nisi.*

AUSTER v. HOLLAND.—*Gray* moved to set aside the writ of summons and all subsequent proceedings, on the ground that the action had been commenced without any authority from the plaintiff, and that the plaintiff's attorneys should pay the costs. *Rule nisi.*

Ex parte DEPHLIDGE.—*Corrie* moved for a *certiorari* to remove into this court the depositions taken by the coroner in a case of manslaughter, and that the applicant may be admitted to bail in the county. *Application granted.*

CLARK v. HUGHES.—*Maeulay* moved for a rule to set aside the verdict herein, and for a new trial, on the grounds—1, of the rejection of evidence; 2, of misdirection; and 3, of the verdict being against evidence. The action was brought by a surveyor against one of the provisional committee of the Sheffield, Nottingham, and London Direct Railway, and was tried before the under-sheriff of Nottinghamshire, when a verdict was returned for the plaintiff. *Rule nisi.*

Wednesday, April 22.

TAGG v. SIMONS.—*Dowdell* moved for a rule to strike out the defendant's pleas, or that the plaintiff should be at liberty to sign judgment on thirteen of such pleas, and the defendant to pay the costs. *Rule nisi.*

ROWBOTHAM v. BALL, Clerk.—*Butt*, Q.C. moved for a rule to strike out the demurrer as frivolous. *Rule nisi.*

REG. v. THE RECORDER OF NEW SARUM.—*Stade* moved for a rule for the costs of the *mandamus* herein. *Rule nisi.*

DUGGAN v. GEE.—*M. Smith* moved, on the part of the defendant, that the rule obtained herein by the plaintiff may be discharged, the plaintiff having neglected to pay the costs. *Rule nisi.*

WAGNER v. MANSFIELD.—*Thomas* moved, on the part of the defendant, for a new trial in this case, which was tried before the Secondary, on the ground of misdirection and the verdict being against evidence. *Cur. adv. vult.*

FORD v. ARNOLD.—In this case, which was moved on Monday, the Court granted a *Rule nisi.*

LANE v. HOLLOCK.—*Bovill* moved to set aside a warrant of attorney, on the ground of usury. *Rule nisi.*

THE LEGISLATOR.

Summary.

THE important work of the week has been the introduction of the government measure to enable railway companies to wind up their affairs and dissolve. Particulars will be found in a leading article. The Charitable Trusts Bill is meeting with a formidable opposition, although the Lord Chancellor has declared his intention to pass it.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Thursday, April 23.

Corresponding Societies and Lecture Rooms Bill—"to amend the Laws relating to Corresponding Societies and the Licensing of Lecture Rooms."
Exchequer Bills, 18,380,206l.—"for raising a sum of money by Exchequer Bills for the service of the year 1846."

BILLS READ A SECOND TIME.

Friday, April 17.

Commons Inclosure.

BILLS READ A THIRD TIME AND PASSED.

Wednesday, April 22.

Railway, &c. Deposits

Commons Inclosure.

Thursday, April 23.

Coalwhippers, London.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Thursday, April 17.

Lough Swilly and Lough Foyle Drainage.

BILLS READ A SECOND TIME.

Friday, April 23.

Dublin Wide Streets

Lincoln Waterworks

Wakefield Waterworks

Lancashire Waterworks

Edinburgh and Glasgow Union Canal

Ardrossan Municipal Police and Improvement

Rothsay Municipal and Police

Forth and Clyde, and Monkland Navigation Junction.

Forth and Clyde Navigation, and Bowling Bay Improvement

Pow of Inchaffray Drainage

Airdrie and Coatbridge Waterworks

Worcester Gas

Queensferry Passage

Sion College Estate

Sheffield General Cemetery.

Belfast Consumers' Gas

Belfast Improvement

Gravesend and Milton Waterworks

Liverpool Water.

Liverpool Paving.

Newport Waterworks

Wolverhampton Stipendiary Justice

Wath-upon-Deane Improvement

Wednesday, April 22.

Legal Quays, London

Tunbridge Wells Improvement

BILLS READ A THIRD TIME AND PASSED.

Friday, April 17.

Boston Waterworks

Rochester Bridge

Witham Navigation

Tuesday, April 21.

Liverpool Docks

Royal Asylum of St. Anne's Society

Upwell-cum-Welney Rectory

Dundee New Gas

Glasgow Waterworks.

SESSIONAL PRINTED PAPERS.

Bills—Commons Inclosure

Bankruptcy and Insolvency

Highland Roads and Bridges—Thirty-second Report of Commissioners

Shannon Navigation—Seventh Report of Commissioners

District Asylums—Supplemental Return

Bridlington Piers and Harbour—Account

Education, Ireland—Paper

Sugar—An Account of Session 1841 reprinted

National Debt—Account

Railways and Canals Amalgamation—First Report from Committee

Civil Contingencies—Account and Estimate

Cotton Twist and Yarn—Account

Archbishops and Bishops—Returns

Greek Loan—Correspondence

Oregon Territory—Correspondence

Joint Stock Companies—Report of the Registrar

Public General Acts—Caps. 5 to 12

Mint—Returns

Marriages—Returns

Railway Department, Board of Trade—Report, with Appendices 1 and 2

Cows and Bullocks—Papers

Public Income and Expenditure, Balance Sheet—Account

Poor Law—Return

Postage, East India—Return

Scarcity Commission—Weekly Reports

General Terminus and Glasgow Harbour Railway, &c. Bills—Minutes of Evidence
Scarcity Commission—Further Return
Prisons of Ireland—Twenty-fourth Report of Inspector-General
Criminal Offenders, Ireland—Tables
British Museum—Paper
Railway Deposits—Returns
Sugar—Return
Gauge Commission—Minutes of Evidence.

PARLIAMENTARY PAPERS.

POPULATION AND POOR-RATES.—An interesting return connected with the population and poor-rates of England and Wales (obtained by Mr. Woodhouse, the member for East Norfolk) has been printed. The hon. member moved, on the 9th inst. for "a return showing the population, the amount of money levied for poor-rates, and the ratio which the amount levied for poor-rates bore to the population in each of the counties in England and Wales during each of the years ended Lady-day, 1813, 1824, and 1844; also a return of the amount levied for poor-rates in England and Wales (exclusive of the counties of Kent, Middlesex, and Surrey) for each of the years ended Lady-day 1826 and 1841, distinguishing the amount levied on landed property, dwelling-houses, and all other kinds of property, with the proportion per cent. which the amount levied on each description of property bears to the total amount levied." He also moved for "an account of the expenses of medical relief in each union and parish of England and Wales under the regulations of the Poor Law Commissioners ending Lady-day 1843, 1844, and 1845, together with the total cost of relief to the poor in each union." By the first branch of the returns it seems, that in 1811 the total population of England and Wales was 10,150,615; the total money levied for poor-rate, county-rate, &c. for the year ended Lady-day, 1813, was 8,646,841l. and the rate per head on the population was as much as "17s." The population in 1821 was 11,978,875; the poor-rates, &c. in 1824 amounted to 6,833,630l. and the rate per head on the population was then 11s. 5d. In 1831 the population was 13,897,187; the poor-rates, &c. 8,338,079l. and the rate per head on the population 12s. In 1841 the population was 15,906,741; the poor-rates, &c. 6,847,205l. and the rate per head on the population, 8s. 7d. The ratio which the amount levied for poor-rates bore to the population varied very much. In 1813 the highest ratio was in Sussex, where it was as much as 36s. 11d.; and the lowest in Cumberland, where it was only 10s. 1d. In 1844 it was the highest in Wilts, where it was 12s. 11d.; and the lowest in Cumberland, where it was only 5s. 1d. In the second part of the return a statement is made shewing the amount levied for poor-rates in England and Wales (exclusive of Kent, Middlesex, and Surrey), at certain periods—namely, 1826 and 1841. In 1826 it was 5,740,436l. and in 1841, 5,154,352l. The aggregate totals of Kent, Middlesex, and Surrey, not included in the above totals, were 1,255,720l. in 1826, and 1,197,476l. in 1841. The third and last branch of the return has reference to the amount of money expended for medical relief, under the regulations of the Poor-law commissioners. In 1845, there were 591 unions in England and Wales. In 1843 the amount expended for medical relief was 147,263l. in which year the total cost of relief to the poor, including medical relief, was 4,626,356l. In 1844 the amount expended for medical relief was 152,229l. when the total relief to the poor, including medical relief, was 4,455,017l.; and in 1845, the amount expended for medical relief was 157,409l. in which year the total cost of relief to the poor, including medical relief, was 4,474,275l.

EXPIRING LAWS.—(SESSIONAL PAPER, 123.)—The report of the committee appointed to inquire what temporary laws of a public and general nature are now in force, and which laws of a like nature have expired since the date of the last report, or are about to expire. The following list comprises such temporary Acts as are to determine on fixed dates, unless renewed by the Legislature, with the period of their expiry.

Bills in Progress.

PARLIAMENTARY ELECTORS.—A draft of a Bill for regulating the times of payment of rates and taxes by Parliamentary electors, and for abolishing the stamp duty on the admission of freemen. This Bill is brought in by Sir De Lacy Evans and Mr. Hawes, and consists of only one clause, by which it is intended to provide that, after the passing of this Act, no person whose name is or shall be upon the register for the time being, as entitled to vote in the election of a member or members to serve in Parliament for any city, town, or borough in England, shall be required, in order to entitle him to have his name inserted in any list of such voters for that city, town, or borough for the following year, to have paid any poor rates or assessed taxes, except such as shall have become payable from him previously to the 11th day

of October in the preceding year; and that no stamp duty shall be chargeable on the admission of any freeman in any city, town, or borough in England, returning a member or members to serve in Parliament.

DEATH BY ACCIDENTS COMPENSATION.—A draft of an Act for securing compensation to the families of persons killed by accidents is now under their Lordships' consideration. The Bill is presented by Lord Campbell, and enacts that henceforth an action may be brought against any person causing the death of another through neglect, in the same mode as is at present the case, when the accident has not resulted fatally. The action is to be for the sole benefit of such person or persons as are entitled to the personal effects of the deceased; and in every such action the jury may award whatever damages they may think proportioned to the injury resulting from such death to the parties for whom and whose benefit the action has been brought.

HOUSE OF LORDS.

REFORMATION OF CRIMINALS.

TUESDAY, April 21.—Lord CAMPBELL presented a petition from the Lord Provost, the council, and the magistrates of the city of Edinburgh, to which their common seal was attached, praying that there might be established houses in which persons who had been convicted and imprisoned might be received and employed after their liberation, in order that they might thereby be enabled to be restored to society.

RAILWAY LEGISLATION.

THURSDAY.—The Earl of DALHOUSIE stated the provisions of the Bill for the Relief of Railroad Companies desirous of winding up their concerns. A meeting of share and scrip holders may be held, after due notice in the *Gazette* and newspapers, and at this meeting, the sole business of which is to be the consideration of the question of dissolution, proxies will be allowed. If a clear majority, comprising three-fifths of the holders, with one-third of the capital stock, shall be in favour of a dissolution, the company shall thenceforth be, *ipso facto*, dissolved. But the Bill will only meet the immediate case of incubate companies, where the entire body, or a clear majority are decidedly in favour of winding up their concerns. Meantime railway bills already in Parliament may be pressed forward, against the wishes of a majority of the shareholders.

The Railway Relief Bill, which he was now introducing, could be sufficiently advanced to meet all the cases to which it was intended to be applicable. There were many reasons why the governing body of a railway company should be anxious to obtain their bill, against the wishes of the holders. Pride and rivalry, the sensible benefit to be derived from a possession of the deposits, local and personal advantages, and other causes operated. It was requisite, therefore, that the Railway Relief Bill should have the aid of a sessional standing order, to be enacted by both Houses, and grounded on the resolutions already made public. They should have the power of stopping all railway bills whatever, at their third reading, unless they were warranted in proceeding, in any particular case, by a petition presented, under certain conditions, certifying the desire of the clear majority of the shareholders to obtain their bill. The necessity for the procedure was manifest. The railway acts which were sanctioned last session entailed on the country the application of between seventy and eighty millions sterling to be withdrawn from the spare capital of the country, and applied to the construction of these works. Great activity was manifested in carrying them forward, so much so that the prices of labour and materials had been augmented by fifty per cent., thereby affecting all estimates. Yet to these seventy or eighty millions to which we were already pledged, the five hundred bills now in Parliament proposed to add the enormous sum of about three hundred millions sterling. He would not enter into any speculation as to the power possessed by the commerce and trade of the country to throw off any given amount of spare capital. It was sufficient to state that these speculations were pressing severely on the industry of the country, and paralysing all commercial operations, as well as stopping the usual accommodation on which commerce and trade depended. The noble lord concluded by laying the Railway Relief Bill on the table, and reading the resolutions which he will propose as a sessional order on Monday next.—Lord BROUGHAM, while reserving to himself the power of more minutely considering details, gave a general sanction both to the bill and the sessional order. He was glad to see a prospect of a termination to that railway mania, which had reflected little credit on the character of the country, and had grievously damaged its morality. After a discussion, shared in by a number of peers, the Railway Relief Bill was read a first time, and the resolutions are to be proposed as a sessional order on Monday. Their lordships then adjourned.

HOUSE OF COMMONS.

MINT PROSECUTIONS.

TUESDAY, APRIL 21.—Mr. H. BRANLEY rose

to put a question to the right honourable baronet opposite. He had seen, in a report of the Bow-street police-court, inserted in the *Times* newspaper of April 14, a statement of a rather extraordinary nature. There were two cases of uttering base coin to women of bad character, which were disposed of by Mr. Powell, the Solicitor to the Mint, informing the magistrate that the Mint had, by a recent regulation, declined to follow up or aid any prosecutions against persons for passing base coin to women of bad character. The question which he (Mr. Berkeley) wished to put was, whether it was the determination of her Majesty's Mint to put the law altogether in abeyance as regarded the passing of base money upon unfortunate females? and if so, whether the principle was to be carried out in all cases in which the offences were committed against females of unfortunate character?—Sir GEORGE CLERK having himself seen the statement in the *Times* to which the honourable member had alluded, had made inquiry at the Mint at once as to its correctness. He had ascertained that no such regulation as that mentioned either existed now, or had ever existed, and that the statement had originated in some mistake. The paragraph had also attracted the attention of her Majesty's Attorney-General, who had felt it his duty to inquire into its accuracy, and the result was that he had ascertained that some mistake must have been made by the reporter as to the expression used by the solicitor to the Mint. The solicitor always exercised a discretion as to the cases brought before the magistrates; it being for him to see whether there was a sufficiently conclusive evidence to justify the carrying on of the prosecution, and in the cases alluded to he did not think the evidence sufficient. He therefore allowed the magistrate to discharge the prisoners.

FRIENDLY SOCIETIES' BILL.

WEDNESDAY.—The House of Commons was engaged at its early sitting, in forwarding the Friendly Societies' Bill through committee. Certain clauses of the proposed enactment raised discussions, and more especially that which prevents the transfer of shares.—Mr. DUNCOMBE contended that this power was necessary to protect the working class, when combining against their employers for a rise in wages. This proposition was controverted by Sir JAMES GRAHAM, while the Solicitor-General contended for the existing provision in the Bill as calculated to afford to the working man's family the amplest protection against his temporary improvidence. A portion of the clauses were reserved for discussion on Friday next.

COUNTY ELECTIONS.

Mr. ELPHINSTONE moved the second reading of the County Elections Bill.—Lord WORSLEY, Mr. BAIGT, and Mr. B. ESCOTT supported the principle of the measure, as being calculated to promote increased purity at elections, by curtailing the period of their continuance.—Colonel T. WOOD, moved, "That the Bill be read that day six months." The amendment was supported by Mr. NEWDEGATE, who apprehended from the contemplated change a terrible accession of strength to the Anti-Corn-law League at any future general election.—Mr. B. DENISON, Sir J. GRAHAM, and Lord G. BENTINCK took the same course from a fear that the county constituencies would be curtailed of their present fair proportions if less time were allowed them to record their votes.—Colonel SIBTHORP avowed himself hostile to the Bill in consequence of its tendency to check the circulation of money at an election. Upon a division the bill was lost, there being for the second reading 32, and against it 55. The other business having been disposed of, the House adjourned.

COURTS OF LAW AND EQUITY.

THURSDAY.—Mr. THORNELEY, in the absence of the hon. and learned member for Kinsale (Mr. Watson), gave notice that it was the intention of that gentleman, on Thursday, May 7, to move for a select committee of inquiry into the fees and compensation in the courts of law and equity.

THE MAGISTRATE.

SUMMARY.

THE important decision of the week relating to Magistrates' Law, is commented upon below.

EXEMPTIONS FROM RATES UNDER 6 & 7 VICT. c. 36.

THE first decision upon the construction of this Act is too interesting and important to be postponed until our usual summary, especially as the effect of it is almost to reduce the statute to a dead letter. The 6 & 7 Vict. c. 36, as those engaged in parish business will know, was passed for the purpose of giving a wholesome encouragement to societies established for the cultivation of literature, science, and the fine arts. The title is, "An Act to exempt

from county, borough, parochial, and other local rates, land and buildings occupied by scientific or literary societies;" and the preamble goes on still further, and recites the expediency of exempting societies established exclusively for literature, science, and the fine arts. By the first section the requisites to obtain this exemption are:—

1. That the premises shall belong, either as tenant or owner, to a society instituted for purposes of literature, science, or the fine arts *exclusively*.
2. That they shall be occupied for the transaction of its business, and for carrying into effect its purposes.
3. That the society shall be supported, wholly or in part, by annual voluntary contributions.
4. And "shall not, and by its laws may not, make any dividend, gift, division, or bonus in money, unto or between any of its members."
5. That it obtain the certificate of the barrister appointed to certify the rules of friendly societies, or by sect. 5, in case of his refusal, shall have appealed to and procured the decision of the Court of Quarter Sessions in its favour.

Acting upon this statute, many societies have claimed and obtained exemption, and amongst them the Religious Tract Society, in respect of its premises in Paternoster-row. Against the certificate, however, in this instance, an appeal was duly entered according to sec. 6; and the Sessions decided against the exemption, subject to a case, which on Wednesday last was argued. It will be seen from the report that the only point absolutely decided was the meaning of the words "shall not, and, by its rules, may not." The statute being to exempt from a legal liability, the society was bound to bring itself within its very terms; and the Court held that "by its rules may not," could only mean that the rules must expressly prohibit any such division. It was urged strongly, and probably most truly, by Mr. Serjt. Talfourd, that no such society ever had inserted such a superfluous rule, which could only have been looked upon as a gratuitous insult to those appointed to control its funds. But as the Courts cannot consider the effect of statutes when the words seem plain, this argument was disregarded. It was urged also, that the express application of the funds being directed so as to exclude impliedly any such division, would give the Court of Chancery the same right to interfere to prevent such a misapplication of the funds as an express prohibition. We apprehend, however, that this is not quite so; for if there were an express prohibition, and the collected funds of the society were, by the consent and vote of *all* its members, to be so appropriated, the Attorney-General might call upon the Court to prevent such an improper transfer of funds, which had been amassed for other purposes, and in fact increased by virtue of the very exemption under the statute; whereas a mere implied prohibition would not give him equal right. The words of the statute are certainly curious, and a further reason might have been urged in favour of the view adopted by the Court, from the 3 & 4 Wm. 4, c. 30, exempting places of divine worship from rates. There the proviso is, not that parts from which rents may be received are to be excluded from the exemption, but only parts "from which persons shall receive any rent or rents, or shall derive profit or advantage." However, the Court has now expressly decided that there must be such an express prohibition in the rules, and unless an Amended Act be immediately brought in, all societies of the kind intended by the Act, should pass such an affirmative rule. It is quite clear that an appeal against such exemption already granted, *if made in time*, must be successful.

Here, however, sect. 6 is to be regarded. Appeals exist only by statute, and, therefore, the time limited, and the requisites made necessary by the statute, must be strictly observed. The words give the appeal "within four calendar months next after the first assessment of such rate made after such certificate shall have been filed as aforesaid, or within four calendar months next after the first assessment of such rate made after such exemption shall have been claimed by such society." This last clause refers, we suppose, to the notice of the certificate being granted given by the society under sec. 2, or to a claim under sec. 5. On reading this clause attentively, it appears that if four months have been allowed to elapse since the certificate or notice thereof was first granted to any society, no appeal could be had under the 6th section. If this be so, then this nullifying decision will have little effect, for most of the societies in existence,

when it passed, have probably availed themselves of its provisions, and established their right to exemption by obtaining a certificate unappealed against. For, however wrongly the certificate may have been given, it is a decision of a competent jurisdiction, and would be conclusive in favour of a society, if, in spite of it, the overseers were to rate it, in consequence of *Reg. v. Jones*. It would be like a removal upon an order unappealed against, or the decision of magistrates, under the Highway Act, as to nuisances or repairs (*Mould v. Williams*, 5 Q. B.), and be conclusive evidence of the facts found by it, viz. that the society is in accordance with the provisions of the statute.

The other question discussed, and decided—so far as the unanimous opinion of Lords Denman, Patteson, Williams, and Wightman, J.J., not delivered judicially, is of authority—was, whether the Religious Tract Society could be considered instituted for the purposes of literature exclusively. It is clear, from their rules and all their publications, that their main object is religious, the spreading of sound Christian knowledge, by means of tracts and cheap publications, written entirely with religious views, even when treating of scientific or historical subjects. Notwithstanding the argument that religion is the highest source and object of literature, we think that such a society was not intended to be included in the Act. And we would test it thus: supposing the statute had not been passed, would not the secretary or acting committee of the Tract Society have considered themselves much depreciated, if not scandalized, by it being said that the Religious Tract Society was instituted for literary purposes exclusively, or even for literary purposes at all? No one acquainted with the tone and character of their publications can doubt that they would have scorned such a description of their objects; and however much it may be desirable that such useful societies should be quite as much protected and encouraged as mere literary or scientific societies, yet it would have been straining the Act to have brought it within the exemption. E. W.

THE PRACTICE OF SUMMARY CONVICTIONS.

By T. W. SAUNDERS, Esq. Barrister-at-Law.

(Concluded from page 48.)

Of actions against justices in respect of summary convictions.

THE subject of the liability of magistrates for acts done under summary convictions is one of considerable importance, and should ever be fresh in the minds of justices, when called upon to convict summarily; since, careful as the Legislature has been to throw around these functionaries every reasonable protection in the exercise of their lawful authority, it affords them no immunity in cases in which (however innocently) they have acted without it. The great rule upon magisterial liability is this: if the justices have acted without jurisdiction in fact, or if there is an apparent want of jurisdiction upon the face of the conviction, they will be liable in trespass to the defendant. This rule is too well established, and too frequently acted upon, to render any further observation upon it at all necessary. (*Crepps v. Durden*, Cowp. 640; *Lancaster v. Greaves*, 9 B. & C. 628; *Hill v. Bateman*, 1 Stra. 710; *Groome v. Forrester*, 5 M. & S. 313; *Gimbert v. Coyney*, M'Cle. & You. 469; *Morgan v. Brown*, 4 Ad. & Ell. 515; *Hutchinson v. Lovendes*, 4 B. & Ad. 118; *Ex parte Johnson*, 7 Dowl. 705, 3 M. & W. 426; *Ex parte Ormrod*, 1 Dowl. & L. 827; *Kite and Lane's case*, 1 B. & C. 101; *Rex v. Hazell*, 13 East, 139; *Rex v. Stone*, 1 East, 636; *Welch v. Nash*, 8 East, 394; *Stevens v. Clark*, Car. & Mar. 509; *Chaney v. Payne*, 1 Q.B. 712; *Jones v. Gurdon*, 2 Q.B. 600; *Cave v. Mountain*, 1 Man. & Gr. 267; *Reg. v. Bolton*, 1 Q.B. 66; *Mason v. Barker*, 1 Car. & Ker. 100; *Hardy v. Ryle*, 9 B. & C. 603; *Weaver v. Price*, 3 B. & Ad. 409; see rules of construction, ante, p. 90.) If, however, on an action brought, the justices can produce a perfectly good conviction, it will be a complete answer, and will entitle them to a verdict. (*Lowther v. Earl Radnor*, 8 East, 113; *Brittain v. Kinnaird*, 1 B. & B. 432; *Fulmers v. Fotch*, Holt, 287; *Chaney v. Payne*, 1 Q.B. 712; *Gray v. Cookson*, 16 East, 19; *Sellwood v. Mount*, 1 Q.B. 726; *Fawcett v. Fowles*, 7 B. & C. 394.) The conviction, however, to be a good defence, must be connected with the warrant of commitment, for if there be any material variance,

as if it describe a different offence, it will be unavailing. (3 B. & C. 409; *Wickes v. Clutterbuck*, 2 Bing. 483; *Davis v. Copper*, 10 B. & C. 28; *Rogers v. Jones*, 3 B. & C. 409.)

In cases in which the justices shew jurisdiction, but their conviction is nevertheless defective, the 43 Geo. 3, c. 141, steps in for their protection. That statute, by sec. 1, enacts,

"That in all actions whatsoever, which shall at any time after the passing of this Act be brought against any justice or justices of the peace in the United Kingdom of Great Britain and Ireland, for or on account of any conviction by him or them had or made under, or by virtue of any Act or Acts of Parliament in force in the said United Kingdom, or for or by reason of any act, matter, or thing whatsoever, done or commanded to be done, by such justice or justices for the levying of any penalty, apprehending any party, or for or about the carrying of any such conviction into effect, in case such conviction shall have been quashed, the plaintiff or plaintiffs in such action or actions, besides the value and amount of the penalty or penalties which may have been levied upon the said plaintiff or plaintiffs in case any levy thereof shall have been made, shall not be entitled to recover any more or greater damages than the sum of two pence, nor any costs of suit whatsoever, unless it shall be expressly alleged in the declaration in the action wherein the recovery shall be had, and which shall be in an action upon the case, only, that such acts were done maliciously, and without any reasonable and probable cause."

Sec. 2 enacts,

"That such plaintiff shall not be entitled to recover against such justice any penalty which shall have been levied, nor any damages or costs whatsoever, in case such justice shall prove at the trial that such plaintiff was guilty of the offence whereof he had been convicted, or on account of which he had been apprehended, or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence."

The foregoing enactment applies only to convictions, and to those alone that have been quashed. (*Rogers v. Jones*, 5 Dowl. and Ry. 268; *Massey v. Johnson*, 12 East, 67; *Gray v. Cookson*, 16 East, 13.)

It is here unnecessary to specify the various instances in which a justice may render himself liable to an action of trespass in respect of a conviction by him; suffice it to say, that if his conviction upon its face shews a want of jurisdiction, or he has been guilty in any way of excess (*Crepps v. Durden*, Cowp. 640; *Davis v. Copper*, 10 B. & C. 28; *Groome v. Forrester*, 5 M. & S. 314), or has not followed the necessary forms prescribed by the statute (*Davison v. Gill*, 1 East, 64; *R. v. Broderip*, 5 B. & C. 240; *Mitchell v. Forster*, 12 Ad. & Ell. 72), or he has mistaken his powers and has committed where he should have issued a warrant of distress (*Hill v. Bateman*, 1 Str. 710), or if he commits a party for re-examination for an unreasonable time, he will be liable in trespass (*Davis v. Copper*, 10 B. & C. 28; *Edwards v. Ferris*, 7 C. & P. 542); and he will, in the event of an improper conviction, be liable in damages for all the consequences that generally follow upon the execution of a warrant: as the party being handcuffed, having his hair cut short at the prison, &c. (*Mason v. Barker*, 1 Car. & Kir. 100.)

Notice of action.—Before any action can be commenced against a justice of the peace for any thing done by him in the execution of his office, it is necessary that notice should be given him of such intended proceeding. This is provided for by the 24 Geo. 2, c. 44, which, by sec. 1, enacts, "that no writ shall be sued out against, nor any copy of any process at the suit of a subject shall be served on any justice until notice in writing of such intended writ or process shall have been delivered to him, or left at the usual place of his abode by the attorney or agent for the party who intends to sue or cause the same to be sued out or served at least one calendar month before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action which such party hath or claimeth to have against such justice of the peace; on the back of which notice shall be indorsed the name of such attorney or agent, together with the place of his abode, who shall be entitled to the fee of 20s. for the preparing and serving such notice, and no more." The 5 & 6 Vict. c. 97, which renders uniform the notice of action in all cases, provides that it shall be as above, viz. one calendar month. By section 3 of the 24 Geo. 2, c. 44, it is provided that the plaintiff in such action shall not recover,

unless at the trial he proves that he has given such notice; and, by section 5, that he shall give no evidence at the trial of any cause of action, except such as is contained in the notice. The 2nd section of this enactment enables justices to tender amends and plead such tender, and pay the amount into court.

Numerous decisions have taken place upon the construction of this Act, which applies only to cases in which the justice acts as such, and under colour of his magisterial functions, and not to cases in which he had no colour of authority, and could not be supposed to believe that he had. (*Heseldine v. Grove*, 12 L. J. M. C. 10; *Wedge v. Berkeley*, 6 Ad. & Ell. 663; *Cann v. Clipperton*, 10 Ad. & Ell. 582, where most of the cases on the subject are collected; *James v. Saunders*, 10 Bing. 429.) A distress and replevin is not within the 24 Geo. 2 c. 44. (*Fletcher v. Wilkins*, 6 East, 283; *Waterhouse v. Keen*, 4 B. & C. 211.) The notice must be a formal one. (*Lewis v. Smith*, Holt's C. N.P. 27; *Norris v. Smith*, 10 Ad. & Ell. 188.) It is right also to name the description of process intended to be issued, though, indeed, this must be by writ of summons. It appears not to be essential to name in the notice all the parties intended to be sued, though the name of the party served must be inserted. (*Jones v. Simpson*, 1 C. & J. 174; *Bar v. Jones*, 5 Price, 168.) The form of action need not be mentioned, but the cause of action must be strictly described (*Sabin v. Deburgh*, 2 Camp. 196; *Breese v. Jerdein*, 12 Law J. Q.B. 234); though it is much safer to describe the form of action itself. In describing the cause of action, great care must be used to set it out clearly and explicitly. (*Towsey v. White*, 5 B. & C. 133; *Breese v. Jerdein*, supra; *Martins v. Uppecher*, 1 Dowl. N.S. 553; 3 Q. B. 662.) The notice, however, will not be construed with the same strictness as the pleadings in a cause, and it need not, therefore, be so precise in its allegations; it will be sufficient if it informs the party substantially of the ground of complaint (*Jones v. Bird*, 5 B. & Ald. 837); but inasmuch as the plaintiff will not be permitted to go into any cause of action except such as is contained in the notice, it is of importance that he should give a full description of the injury for which he seeks compensation. (*Robson v. Spearman*, 3 B. & Ald. 493; *Stringer v. Martyn*, 6 Esp. 134; *Aked v. Stocks*, 4 Bing. 509.) So the notice must be specific that an action will be brought, and should not leave this fact at all conditional. (*Norris v. Smith*, 10 Ad. & Ell. 188.) The notice, also, must be indorsed with the name and address of the attorney or agent for the party (*Morgan v. Leach*, 10 M. & W. 558); it need not be signed by any person. It is sufficiently indorsed with the initials only of the Christian name of the attorney (*Meyhew v. Lock*, 7 Taunt. 63; *James v. Swift*, 4 B. & C. 681), where the attorney is described as at his offices, it is sufficient. (*Roberts v. Williams*, 1 Gale, 315, 4 Dowl. 483; *Stears v. Smith*, 6 Esp. 138; *Orborn v. Gough*, 3 B. & P. 551; *Taylor v. Fenwick*, 7 T. R. 635, n.) The day both of serving the notice, and of bringing the action, must be excluded. (*Young v. Higgin*, 6 M. & W. 49; *Webb v. Fairman*, 3 M. & W. 473; *Reg. v. The Justices of Shropshire*, 8 Ad. & Ell. 173; *Reg. v. The Justices of Middlesex*, 2 New Sess. Ca. 73.)

Limitation of action.—By the 8th section of the 24 Geo. 2, c. 44, it is enacted, "That no action shall be brought against any justice of the peace for anything done in the execution of his office, or against any constable, headborough, or other officer or person acting as aforesaid, unless commenced within six months after the act committed." Although this is the general enactment upon the subject, it will not be safe to be guided in all cases by it; since it frequently occurs that the legislature imposes other limitation in particular cases: and by the 5 & 6 Vict. c. 97, s. 5, it is enacted, "That from and after the passing of this Act, the period within which any action may be brought for anything done under the authority or in pursuance of any such Act or Acts (public local and personal, or local and personal Acts) shall be two years; or in case of continuing damage, then within one year after such damage shall have ceased; and that so much of any clause, provision, or enactment, by which any other time or period of limitation is appointed or enacted, shall be, and the same is hereby repealed."

The six months are to be reckoned exclusive of the day of committing the act. (*Hardy v. Ryle*,

9 B. & C. 603.) Where, however, the injury is a continuing one, as imprisonment, the period may be calculated from the last day of it. (*Massey v. Johnson*, 12 East, 67; *Weston v. Fournier*, 14 East, 491; *Collins v. Rose*, 5 M. & W. 194; *Lloyd v. Wigney*, 4 M. & P. 222.)

By the 21 Jac. c. 12, s. 5, actions against magistrates for anything done in the execution of their office, can only be brought in the county in which the acts complained of were committed.

THE LAWYER.

Summary.

THE number and importance of the Reports compel the curtailment of every other department of the LAW TIMES. We have space only to refer to them generally. The Reports of the rules nisi granted in both the great cases of *Woolmer v. Toby* and *Walstab v. Spottiswoode*, shew that the Judges are quite as much puzzled as the Profession and the public, to know what is the real state of the law. As every contribution is useful in such a state of perplexity, we have ventured our mite of argument. The views we have taken are, we believe, novel; of their soundness the reader will judge.

It will be observed that we have been unable, for want of room, to bring down the reports of all the cases to our prescribed period of Wednesday evening. In the Exchequer they could not be completed beyond Friday last. Next week a double number will, we hope, enable us to bring up the arrears. And during the next busy two months we shall probably be obliged to resort to double numbers almost weekly, in order to keep pace with the heavy business of the courts.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

WHITEHALL, April 18.—The Queen has been pleased to direct letters patent to be passed under the Great Seal of the United Kingdom of Great Britain and Ireland, granting unto Francis Martin, esq. Norroy King of Arms, the office of Clarenceux King of Arms, and Principal Herald of the south, east, and west parts of England, vacant by the decease of Joseph Hawker, esq. late Clarenceux.

The Queen has been pleased to direct letters patent to be passed under the Great Seal of the United Kingdom of Great Britain and Ireland, granting unto James Fulman, esq. Richmond Herald, the office of Norroy King of Arms, and Principal Herald of the north parts of England, vacant by the promotion of Francis Martin, esq. to the office of Clarenceux King of Arms.

The Lord Chancellor has appointed Charles Marsh Lee, of New Sarum, in the county of Wilt, gent. to be a Master Extraordinary in the High Court of Chancery.

THE TEMPLE, April 18.—The undermentioned gentlemen have been called to the Bar by the Hon. Society of the Middle Temple, and were this evening sworn in, viz. Messrs. Charles Newton, Edward Morris, and John Sparrow Stovin.

IRISH LAW APPOINTMENTS.—Mr. Sealy Townsend, one of the Masters in Chancery, whose resignation has been so often reported, has at length retired from public life. He is upwards of eighty years old. Mr. Serjeant Howley and Mr. Brewster, Solicitor-General, are spoken of as likely to obtain the vacant mastership. The salary is 2,500l.

COURT PAPERS.

TRANSFER OF CHANCERY CAUSES.—For the purpose of equalising the amount of business to be disposed of before the various equity judges, "The Lord Chancellor has directed that the following causes in the paper of the Vice-Chancellor of England be transferred to the paper of Vice-Chancellor Wigram:—*Appleyard v. Owers*, *Bosq v. Robinson*, *Whitcombe v. Deakins*, *Bates v. Hunt*, *Bates v. Rickerby*, *Rodgers v. Nowill*, *Cottorell v. Horner*, *Hutchins v. Alsager*, *Cloake v. Rolfe*, *Brooke v. Rounthwaite*, *Jones v. Jones*, *Bird v. Luckie*, *Milne v. Barker*, *Kempson v. Abbot*, *Fyson v. Addams*, *Groom v. Hinton*, *Elliott v. Elliott*, *Vallance v. Fennell*, *Allen v. Knight*, *Ward v. Ward*, *Same v. Whitmore*, *Alsager v. Miller*, *Lasbury v. Perks*, *Patterson*

v. Wilson, *Same v. Baldwin*, *Lander v. Kendall*, *Jones v. Thomas*.

RENEWAL OF ATTORNEYS' CERTIFICATES.

Applications for the last day of Easter Term, 1846.

QUEEN'S BENCH.

1. Darlington, John, Shipley Hall, near Bradford.
2. Daniel, Edward, 10, Spencer-terrace, Lower-road, Islington.
3. Cutten, Charles Edward, Liverpool-street, City; and Harrow.
4. Maude, John Wilkinson, Leeds.
5. Meacher, John, 33, Frederick-street, Gray's-inn-road.
6. Pearson, John Brooksbank, jun. Newcastle-upon-Tyne.
7. Smith, Robert Boughton, Hemel Hempstead.
8. Welsh, John Hare, 1, Mary-place, Bow-lane, Poplar; and Bristern-place.
9. Welch, Charles Hewitt, Ashbourne, Derbyshire.

LEGAL INTELLIGENCE.

INFLUENCE OF RAILWAYS.—In the civil court at Chester last week Mr. Jervis, Q.C. applied to the learned judge, Mr. Justice Williams, to adjourn the court to half-past nine o'clock the next morning, on the ground that, as the trains did not arrive before that time, it would be a great convenience to the special jurors who were summoned for that day, and who, in consequence, were not likely to be in court before that hour. His Lordship observed, that the railways had now become the masters of almost all the trade, and everything else in the country, and even her Majesty had to submit to their arrangements. He supposed, therefore, as he was only one of her Majesty's commissioners, no alternative remained for him but quietly to strike and submit likewise.

GUILDHALL. — METROPOLITAN RAILWAY JUNCTION COMPANY.—On Monday, the magistrates, Mr. Alderman Gibbs and Sir Peter Laurie, gave their decision upon the complaint of Mr. Jones, the chairman of a committee of shareholders in the Metropolitan Railway Junction Company, against the solicitor to that company, for neglecting to file at the company's registration office a list of the subscribers, and the copy of the form of a letter of allotment. The objection raised by Mr. Wire, on behalf of the defendant, to the complaint, was that the clause which required such particulars to be filed did not apply to railways, inasmuch as the judges had decided that such works were not within the meaning of the Act, where they were not specially referred to in the clause, and there was no such special reference to railways by name in the 4th clause, on which the complaints rested. He further urged that the letter of allotment was not a circular or handbill addressed to the public or subscribers, nor did it relate to the formation or modification of the company. Sir P. Laurie and Mr. Alderman Gibbs said they were both of opinion that the 4th clause of the Joint Stock Company's Act did not affect the registration of such a document as a letter of allotment, and the 28th clause could not be made to apply to railways; so that they dismissed the first and second informations. With regard to the third, against Mr. Barber, the solicitor, for not registering the list of subscribers, they were of opinion that he should have given in the names and residences of the subscribers to the company, within one month of his obtaining them, and having neglected to do so, they adjudged him to pay a penalty of 10l. The magistrates said they had been assisted by a legal authority, so as to come to a sound judgment, and they were satisfied they were right.—An application was made for costs, but refused, when Mr. Wire said he was not satisfied with the decision arrived at by the magistrates, and that he should appeal during the month allowed him by law.

"I'M NO ORATOR."—At the East-Riding sessions, which took place at Beverley last week, a prisoner was tried for stealing an axe, and at the close of the case for the prosecution, the jury were told to consider their verdict. Having done so, they turned towards the bench, and on being asked whether they found the prisoner guilty of the offence or not, the foreman of that body hung down his head, as if ashamed of the duty imposed upon him, and would not for some time speak a single word. He was then asked by the chairman if they (the jury) had all agreed upon one verdict, to which he, in a very feeble tone of voice, scarcely audible, said, "I agree with the other," or something to that effect. On again being asked by the clerk of the peace what their verdict was, the frightened foreman, with much to do, muttered out the following short sentence, which occasioned much hearty laughter in the court—"I'm no orator." However, on being informed that he had only to say whether the prisoner was guilty or not, he rose up his head, and with a smile upon his face, the true index of good temper, in a sonorous voice replied, "Not Guilty." The emphatic manner in which he pronounced the words "Not Guilty," again threw the Court into laughter.—*Yorkshireman*.

PRELIMINARY EXAMINATIONS OF ARTICLED CLERKS.—It is intimated by the examiners of persons applying to be admitted attorneys, that the requisite examination will take place on the 30th inst. The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations provided by the judges, must be left at the usual place on or before the 22nd inst. Where the articles have not expired, but will do so during the Term, which commences to-day, the candidate may be examined conditionally, but the articles must be left as above within the first seven days of Term, and answers up to that time. A paper of questions will be given to each candidate, containing questions to be answered in writing under the heads of preliminary, common, and statute law, practice of the courts, conveyancing, equity and practice of the courts, bankruptcy, criminal law, and proceedings before justices of the peace. Each candidate is required to answer all the preliminary questions, and it is expected he should answer in one or more of the other heads of inquiry.—*Globe*.

IRISH LEGAL INTELLIGENCE.

On the 16th of April, being the first day of Term, the following gentlemen were called to the Bar by the Lord Chancellor, having been previously sworn in before Mr. Justice Crampton in the Queen's Bench:—Daniel Lea Lynch, Theophilus Thompson, William Irvine, jun., William Basil Orpin, George Tighe Hopkins, Robert Griffin, John Hamilton, Wilder-Cooley, William Hastings Beckett, and Hugh Halliday, esqrs.

Mr. Brewster, her Majesty's Solicitor-General, and Mr. Hatchell, Q.C. were elected Benchers of the Honourable Society of the King's Inns, in the room of the late Judges Moore and Johnson. The vacancy created by the death of J. J. Fealony, esq. Q.C. will, it is said, be filled up by the election of Mr. Tomb, Q.C. of the North-East Circuit.

J. S. Townsend, esq. Master in Chancery, has resigned; Mr. Serjeant Howley, Q.C., Mr. Baldwin, Q.C., Mr. Brooke, esq. Q.C. are severally mentioned as his probable successors.

By the death of Artrim Hill Cornwallis Pollock, esq. the situations of Clerk of the Crown for the County of the City of Dublin, and for the Counties of Dublin, Carlow, Kildare, Kings County, Leamford, Meath, Westmeath, Wexford, and Wicklow, are vacant.

THE MAGISTRACY.—The Lord Chancellor has appointed Christopher D. Bellow, Richard D'Arcy, and Ormsby Elwood, esqs. to the Commission of the Peace for the County of Galway.

CORRESPONDENCE.

SELECTIONS FROM CORRESPONDENCE.

A Correspondent thus replies to a query put last week:—

In answer to your correspondent, who wishes to be directed to the law respecting the right (if any) of a husband to chastise his wife, the following, in my opinion, may be relied upon:—"By some ancient authorities it was considered that a husband has it so far under his power that he might give his wife moderate correction. But they also held, that this right was confined within reasonable bounds, and the husband was prohibited from using any violence to his wife. *Alien quam ad virum ex cause regiminis et castigationis uxoris sua licite et rationabiliter pertinet.* (Moore, 874, F.N.B. 80.) The civil law gave the husband the same or a larger authority over his wife, allowing him, for some misdemeanor, *flagellis et fustibus acriter verberare uxorem*; for others only *modicam castigationem adhibere*. (Nov. 117, c. 14, and Van Leeuwen, in loc.) But with us, in the polite reign of Chas. 2, the power of correction began to be doubted. (1 Sid. 113; *Lord Leigh's case*, 3 Keb. 433.)"

Perhaps I need not add, for the further information of your correspondent, that a wife may now have security of the peace against her husband (*vide Lord Leigh's case*, *ubi sup.* 2 Lev. 128), or in return, a husband against his wife. (*Sim's case*, Str. 1207.) Yet the lowest rank of people, who were always fond of the old common law, still claim and exert their ancient privilege in this respect. And I believe the courts of common law will still permit a husband to restrain a wife of her liberty in case of any gross misbehaviour. (*R. v. Lister*, Str. 478; *Child v. Hardyman*, lb. 875; *Re Cockrane*, 8 Dowl. 630.)

"CAMBRIENSIS" thus writes:—

Considerable and useful discussion has lately taken place in the LAW TIMES on the subject of short conveyances, but little has lately been said on the necessity of a short and easy mode of recovering small debts in country districts. Those counties which contain no courts but only the county court are badly off, more particularly the Welsh counties.

The present circuitous, vexatious, and expensive proceedings in the different county courts, operate as a denial of justice, and honest plaintiffs are deterred thereby from attempting to recover small debts. A knavish defendant has only to instruct one of the numerous sharp county court practitioners, and lay down a few shillings, when the action is forthwith defended, and every possible delay consistent with what is termed "the practice," is resorted to. If the plaintiff perseveres, he may be able to get to trial in six or nine months' time, at the expense of from three to six pounds, and in the majority of cases the plaintiff never obtains a single farthing towards his debt and costs.

I appeal to every respectable practitioner, and to the public generally, as to the truth of the above statements, and whether it is not high time for the Augean stable to be cleansed by some master-spirits.

"A CORRESPONDENT" asks if

Any of your numerous readers will, at his earliest convenience, inform the undersigned what is the highest charge a surrogate can make for administering the oaths to two executors on their proving a will?

GEORGE F. ELAND.

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

A STUDENT (Rochdale).—"Stephens's Commentaries," and "Broom's Selection of Legal Maxims."

INQUIRER.—Clearly it would be wrong to procure the appointment of churchwardens for the purpose of securing the parish business. But we apprehend he could not legally conduct it, or at least charge for it, while himself the parish officer.

A. A. having signed the deed, is barred from receiving back his deposits. He has become a partner, and his only remedy is in equity.

A CORRESPONDENT would be greatly obliged if any reader could direct him where he may find in what manner a person may be punished or prevented from drawing conveyances, and charging and taking the regular fees for attendances, not being either an attorney or certificated conveyancer. Our correspondent desires the best information on this subject which the experience of any reader can give him, as he is desirous of punishing a gross case of this nature which has recently occurred.

NOTICE TO SUBSCRIBERS.

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The subscription for the current half-year is now due, and subscribers desirous of availing themselves of the great reduction allowed for pre-payment, should forward the same in the course of the ensuing week. The prepaid subscription is 11. 5s. for the half-year, and 21. 7s. for the year, being a reduction respectively of 25 and 30 per cent.

Post-office Orders must be made payable to Mr. JOHN CROCKFORD, Publisher of the Law Times.

THE LAW TIMES.

SATURDAY, APRIL 25, 1846.

THE WINDING UP.

THE Bill for enabling inchoate Railway Companies to wind up their affairs and dissolve is before Parliament, and, from the outline of

the plan, as stated by Lord DALHOUSIE, it appears to be efficient for its purpose.

It was intended to provide that power should be given to the provisional directors, or governing body of any of these companies, which would enable them, if they thought proper, to convene a meeting of the scripholders for the purpose of considering whether they ought to dissolve the company or not. It was intended to provide that in case the provisional directors did not think proper to convene such meeting, that then, on the requisition of a small number of shareholders, say five, the governing body should be required to call such meeting of the company, for the purpose of taking into consideration the question of winding up their affairs or proceeding with the bill, and that such meeting should have power of deciding on the matter, provided that due notice should be given in the *Gazette* and in the newspapers, and that a sufficient time should elapse before the meeting was held, so that so far as possible all parties interested in the matter should be aware of the object of the meeting, and should have an opportunity of being forthcoming at the meeting. It was intended that at that meeting no other question save that of the dissolution of the company should be taken into consideration. There were provisions in the bill as to the election of chairman, and other matters of detail, with which it was not necessary he should trouble their lordships. It might, however, be right that he should state that provision was made for the selection of scrutineers to examine the votes given at the meeting. The power of voting was intended to be given to all who were actual owners of the stock of the company, whether they were originally scripholders who had not parted with their first allotments, or whether they were persons who had purchased the scrip of others. He might state also, that the votes could be given by the holders in person, or, following the analogy of existing companies, that they should be given by proxy, that the production of scrip should entitle the holder to vote in person or by proxy. It was also intended that there should be a further provision to enable parties holding scrip to go before the Court of Chancery, or before a justice of the peace, and on production of the scrip, and on the numbers being verified by the court or by the justice, the certificate to that effect could be transmitted to the meeting, and allowed in the votes by proxy. If it appeared at the meeting that on the votes being taken there was a clear majority of the scripholders in the company, either present in person or by their proxies, in favour of a dissolution of the company, that then such dissolution should take place. As the bill stood, the votes would be given on the scale provided in the case of joint-stock companies; that is, a vote for every share up to ten, and then an additional vote for every five shares up to fifty, and one vote for every ten shares up to one hundred. They had taken this scale in preparing the bill; but then, as it was evident that if a clear majority of the whole number of stockholders in the company were required, in order to empower the meeting to dissolve the company, that a dissolution would be a very difficult thing to effect, it was further provided that if three-fifths of the whole stock of the company as represented at the meeting, either in person or by proxy, were in favour of a dissolution, power should be, in such case, given to dissolve the company, provided that the stock represented at the meeting shall not be less than one-third of the entire stock of the company. The object of the bill was to provide for a fair representation of the sense of the company. Of course, if a majority of the whole company should be in favour of a dissolution, there would be no difficulty; but inasmuch as it was possible that small meetings might be packed by the directors to attain their own purposes, it was required that at least one-third of the whole stock of the company should be represented at the meeting. If at such meeting it were decided that a dissolution should take place, it was then proposed that the meeting should next determine the mode in which the affairs of the company were to be wound up. It was the object of the government in preparing this bill to avoid as much as possible any alteration of the existing liabilities, or of the remedies of creditors against the persons interested in these companies under the present law. It was proposed, therefore, that it should be left to the meeting themselves to decide whether they would leave the affairs of their partnership to be wound up according to the law applicable in ordinary partnership; but if that course were objected to, then the company were to have power to elect for themselves an official trustee, who should be empowered to act with an official trustee appointed as under the Court of Bankruptcy. These two trustees were to take upon themselves the satisfying of all claims against the company, and of then dividing the remainder of the funds, if any, amongst the shareholders. It was not intended that the liabilities of those who were now liable by law should be affected by this bill. It was provided that if there were a residue after all claims were paid, it should be divided among the shareholders; but if the amount were not sufficient to meet

these claims, then that the residue should be made good by those who were now liable.

Let us subjoin a few words of exhortation to the Profession. A flood of litigation, yielding a present harvest to the lawyers, has been inundating the country, carrying anxiety, distress, and ruin, into thousands of families. It is notorious that a very large proportion of the claims thus attempted to be enforced, under terror of legal process, are gross impositions or monstrous over-charges. The claimants are, for the most part, swindlers, who, having induced persons thoughtlessly to lend their names to provisional committees, now turn round upon them, and avail themselves of the absurdities of our law of partnership, to plunder the victims they had entrapped. We entreat members of the Profession to be very careful not to lend themselves to proceedings of such a character—not to multiply actions for the sake of increasing costs,—not to sanction accounts that are extortionate,—but when instructed to recover a demand upon innocent members of a committee, themselves the victims of fraud, to ask no more than, upon an examination of the account, they are satisfied is really due; and, instead of issuing a multitude of writs, to use their best endeavours to procure an amicable settlement by contributions from all parties liable. By such conduct the lawyers may not reap so great present gain as from the reckless war of writs now proceeding, but they will, in the end, secure the respect and confidence of the community, which, we regret to say, has been not a little shaken by the events of the last six months.

We feel assured that the hint will be taken in good part, and the LAW TIMES will be excused if its anxiety for the reputation and influence of the Profession should have induced it, at this moment of temptation to conduct injurious to that reputation, to trespass somewhat beyond its province, and play the part of an adviser.

VERULAM FORMS.

THE entire series of Forms in Parochial and Magistrates' Law so long in preparation by Messrs. KNIGHT, and the whole of which has, by an arrangement with them, been placed at the service of the members of the Verulam Society, at the Society's prices (that is at twenty per cent. below the published price) is now ready, and may be had in any quantity, by order, at the LAW TIMES office. A printed list of the forms will be sent to any applicant.

A number of valuable law books published by the same establishment are included in this liberal offer to the members of the Verulam Society.

THE LAW DIGEST.

Two of the five numbers that will comprise this useful work are now published. The others are in the press. As it is intended to be bound with the volume of the LAW TIMES just completed, subscribers are recommended to withhold their volumes from the binder until they can add this Digest, which will contribute so greatly to the value of the volume for the purposes of reference. In future the Digest will be completed simultaneously with the volume, so that a like delay in binding will not, we hope, be again necessary.

LIABILITY OF ALLOTTEES.

WE have received a short pamphlet by Mr. GEORGE J. SHAW, maintaining the non-liability of allottees. As this argument has been much cited in the newspapers, and especially by those who desire that allottees should escape from contribution to the expenses incurred on the faith of their agreements, we proceed to examine its validity.

We quite agree with Mr. SHAW that the case of *Woolmer v. Toby* is not a decision upon the point, and in all probability will not decide it, for it will go off upon one of the incidental questions.

It is remarkable that Mr. SHAW omits all notice of the Joint Stock Companies Act, and rests entirely upon the old cases. Either he was not aware of the provisions of that Act, or he considers that they do not affect the question.

Granting the latter to have been his opinion, let us see if it be a sound one.

The first step is to ascertain what were the precise points decided by those cases, and whether they are in any manner affected by the provisions of the Joint Stock Companies Act.

Mr. SHAW first cites *Dickenson v. Valpy* (10 B. & C. 128). In that case two points were raised: first, whether the directors had authority to bind the shareholders by drawing and accepting bills of exchange; second, whether the facts that the defendant had applied for shares, paid instalments thereon, attended meetings at the place of business, and signed the deed, were sufficient evidence that he was a partner. The case was decided upon the first point, which has nothing to do with the present question; and although a query was raised upon the second, it would not now be entertained for a moment in the face of recent decisions, in which the mere attendance at a meeting, without signing any deed or making any payment, has been held to constitute a partnership with its liabilities. If Mr. Baron PARKE'S dictum be worth anything, there can be very few valid partnerships, and four-fifths of the provisional committee-men might escape their present troubles. This case is worthless.

The next case cited is *For v. Clifton* (6 Bing. 776). In that the point raised and decided was simply, what constituted a partnership, so as to make the defendants liable for the debts of the concern. Only a few shares had been allotted, fewer still had paid the deposits, only sixty-five had signed the deed. The defendants had applied for shares and paid deposits, but only one of them had signed the deed. The point at issue was distinctly put by TINDAL, C. J.—“The main and important question in this case undoubtedly is, whether, under the circumstances proved at the trial, the defendants were actually partners in the company.” And it was held that they were not partners.

But very different is the question between the allottee and the parties with whom he has entered into an agreement to take shares and pay deposits. It is not pretended that allottees are partners, or the remedy would be in equity, and not at common law. This case, therefore, is altogether beside the question.

But, argues Mr. SHAW, the case of *Nockells v. Crosby* (3 B. & C. 824) decided that the subscriber to an abortive scheme might recover back the whole amount of deposits paid, without deduction of any part for expenses.

But is that case on all fours with the present one?

The defendants had put forth a scheme for a tonne. The plaintiffs and others had agreed to join it, and paid deposits; but nothing was done towards carrying it into execution—it remained a mere scheme. And BAYLEY, J. observed, that “on all projects some expense must be incurred before many members join the concern. Upon whom should that fall? Undoubtedly, if the scheme proves abortive, it should fall upon the original projectors, and not upon those who advance their money upon the faith of its going on.” HOLROYD, J. said, “I think that the expenses incurred in setting a scheme on foot are not to be paid out of the concern, unless they are adopted when it is actually in operation.” And LITTLERDALE, J. observed, “If persons set a scheme on foot, and assume to be the directors or managers, all the expenses incurred before the scheme is in actual operation must, in the first instance, be borne by them. When it is in operation, the expenses and charge of management should be borne by the concern, and then it may be fair that the preliminary expenses should be paid in the same way.”

The question, then, that arises in the application of this rule is, when a scheme is to be considered in actual operation; for, according to the dicta of the three judges in *Nockells v. Crosby*, until it is in actual operation (they do not say “until it is completed”) the subscribers cannot be compelled to contribute to the expenses, but afterwards they may.

Hence it is that the Joint Stock Companies Act comes to our aid.

Before that Act no scheme was in operation until

all the money was subscribed, and the deed actually signed.

But the Joint Stock Companies Act has provided for putting schemes into “actual operation,” at an earlier period. It has given to them a provisional existence, with defined provisional powers; enabled them to receive subscriptions and take deposits, and do all other acts necessary for carrying the plan into effect. And surely the legislature did not contemplate that these necessary acts could be done without money; and for what purpose is the limited deposit of 10s. per share allowed to be taken, if not to meet that necessary expenditure?

The statute allows the promoters to assume the name of the company, on provisional registration. Is not that being “in actual operation” for the purposes permitted by the Act?

And if provisional registration be not “actual operation,” what is it? At what point does a railway company, for instance, come into “actual operation,” if not at this stage of its legally recognized existence? If not then, it cannot be till the Act of Parliament is obtained, and if that fails, the directors are, according to the popular construction of the case cited, liable to pay all the expenses.

There is another principle which has been quite overlooked in this discussion, namely, that a party shall not be suffered to take advantage of his own wrong. But this rule would be violated if it were permitted to allottees, first, by their non-fulfilment of their contract to prevent the scheme from being carried into “actual operation,” and then, to plead the consequences of their own default as an excuse for that non-fulfilment.

There remains now but one point to be considered, and that is, granting the authority of the directors to allot shares, and that provisional registration is a putting of the scheme into “actual operation,” so as to place it without the range of the case of *Nockells v. Crosby*, what is the nature of the contract, under such circumstances, entered into between the promoters of the company and the allottees?

Mr. SHAW lays down three propositions:—

First, he says, it is decided by *For v. Clifton* and *Dickenson v. Valpy* that an allottee enters into a conditional contract only.

It may be fairly questioned whether these cases so decide. *Dickenson v. Valpy* is, as we have shewn, no authority at all, and it may be argued that the terms of the contract in the other case imply conditions which cannot be implied from the express terms of the contract in the cases now contended. But, granting that the contract be conditional; that the application for shares, and the letter of allotment, together do not constitute the whole contract, but that the prospectus and a multitude of other considerations belong to it, the question still arises, what, under existing circumstances, are the conditions of the contract, failing which, it is avoided?

We contend that, if it be permitted to import into the contract more than appears upon the face of it, the implied condition on the part of the provisional committee can only be that they will do all that reasonably can be done to carry out the scheme; there is nothing from which the most forced construction could imply a condition that if the scheme failed they would pay all the expenses—still less that they would do so if it failed, not through any act of theirs, but by reason of the non-fulfilment of the undertaking entered into by the allottees. The committee contract to do precisely what the law empowers and authorizes them to do—neither more nor less. If any thing can be imported into the contract, if its terms may be construed by reference to something extra the written language, what better interpreter can there be than the law by which the entire proceeding is regulated? It is a fiction of our law, that its letter and spirit are presumed to be known to every person arrived at years of discretion; and all acts done are presumed to be done with that knowledge. If, therefore, there be a statute affecting some subject, all acts done relating to that subject are presumed to be done with reference to the statute by which these acts, if doubtful, will be interpreted. When, therefore, an allottee contracts to take shares, he does so with reference to the statute that empowers the party with whom he deals to issue them; the terms of the statute are the implied conditions (if any) of the contract, and those terms are, that the promoters shall receive deposits and do all other acts requisite for the carrying out of the scheme; and which receipt of deposits and which acts the allottee, by his implied contract, recognizes and authorizes. If the allottee

fail in his part of the contract, and thereby prevent the promoters from performing their part of the contract, an action will lie.

It may be further contended that, the payment of the deposit being a necessary preliminary to the carrying out of the scheme, the allottee is first bound to perform his condition precedent; and then, if the promoters fail to perform their part, an action might possibly be maintained against them by the allottee who has performed his.

Hence it is that the cases of *Walstab v. Spoffis-woode* and *Woolmer v. Toby*, supposing them to be both supported, are not, as they appear at the first view, contradictory. Indeed, they rather support each other; and Mr. SHAW'S conclusion is not warranted by a more critical review of the cases and the principles upon which they are founded, into which the interest of the question has induced us to enter.

The results at which we have arrived are—

1st. That the contract of an allottee to pay the deposit is a condition precedent to the contract of the promoters to carry out the scheme, for breach of which an action may be maintained.

2nd. That this conclusion is not at all inconsistent with the argument in *Nockells v. Crosby*, that if, after the allottee has performed his condition, the promoters fail to perform theirs, an action for their breach may be maintained against them by the allottee.

3rd. That the contract is regulated by the terms of the statute under whose provisions it is made, and that the contract of the promoters is to do only that which the statute empowers them to do, namely, to the best of their ability to endeavour to carry out the scheme.

4th. That the previous cases do not bear the precise construction put upon them, and are materially modified by the provisions of the Joint Stock Companies Act, under which companies have a recognized existence, and are “actually in operation” immediately on provisional registration.

The question has here been argued abstractedly from technical questions, as to the proper plaintiffs, or conditions or exceptions in the form of application, or of the letter of allotment. These are, of course, altogether beside the main question of the liability of allottees, and must be argued on distinct grounds.

E. W. C.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 6s.]

BIRTH.

PARSON.—On the 15th inst. at Haslemere, Surrey, the wife of G. J. Parson, esq. collector, of a daughter.

MARRIAGES.

GARRETT, Samuel Silver, esq. of Lincoln's-inn, to Mary Ann Bainbridge, eldest daughter of William Fenwick, esq. of Stanhope, in the county of Durham, on the 15th inst. at St. Giles's, Cripplegate.

JOHNS, Edward Chester, esq. of Lincoln's-inn, barrister-at-law, to Jane Lewis, second daughter of the late James Corde Pownall, esq. of the Island of Jamaica, on the 4th inst. at Calne, Wilts, by the Rev. W. L. Pownall.

DEATH.

MORRIS, Edward Rowe, esq. for above 30 years an active magistrate and deputy-lieutenant for the counties of Middlesex and Essex, on the 15th inst. at Edmonton, aged 70.

THE CRITIC.

New Books.

A Treatise on the Law relating to Patent Privileges, for the sole use of Inventions; and the Practice of obtaining Letters Patent for Inventions; with an Appendix of Statutes, Rules, Forms, &c. &c. By W. M. HINDMARCH, Esq. Barrister-at-Law. London, 1846. Stevens and Norton.

THIS is the most elaborate work on the Law of Patents which has been yet offered to the Profession. Its completeness will be best shewn by a short summary of the contents.

After an introduction, descriptive of the objects of letters patent, the author proceeds to treat of the grantor of a patent, and the power of the Crown to grant the sole use of inventions, and then of the grantee of a patent privilege. The fourth chapter describes the grant of a patent, and the construction of it; the fifth, the nature and qualities of an art or invention which may have been made the subject of a patent; and the sixth, of the duration of a privilege granted by a patent, and its prolongation. The next subject treated of is the very important one of the Specification of an Invention for the purpose of procuring a patent, which is

followed by a statement of the law and practice relating to the confirmation of patents, their alteration and amendment, specifications and enrolments, and the nature of the right or property of an inventor in his invention, and the disposition of it. The Remedies for Patents and for the Public respectively are next reviewed, and then the evidence to be given in actions respecting letters patent. A concluding chapter treats of the Practice respecting Patents; containing the most minute instructions for preparing and enrolling specifications, and altering patents and enrolments, full particulars of the practice respecting disclaimers and memorandums of alteration under stat. 5 & 6 Wm. 4, c. 83, s. 1, and of the practice of the Judicial Committee of the Privy Council respecting the confirmation and prolongation of patent privileges.

An Appendix contains a most elaborate collection of Statutes, Rules of Practice, and Tables of Fees and Stamps, and forms and entries in all the variety of proceedings both at law and in equity. There is a table of cases cited, and an extensive index. Mr. HINDMARSH has evidently bestowed a great deal of labour upon the composition of this work, which will, we doubt not, be appreciated by the Profession. The hand of a man of business is visible in its preparation, and that is of itself a great recommendation.

The subject offers nothing of sufficient moment to our readers to justify extract at this busy season, when the Reports of the Term are crowding our columns, and all other matters must give place to them.

Precedents of Conveyances and other Instruments relating to the Transfer of Land to Railway Companies; with Introductory matter and Explanatory Notes. By HENRY TRYWHIT FRENCH and T. HIBBERT WARE, Barristers-at-Law. London, 1846. Reader.

ALTHOUGH railways, and all that concerns them, present a very different aspect now from that which they offered a few months since; still they are going on, and must continue to extend, however slowly. Therefore there must be need of such a collection of precedents as this, most of which are stated to be adaptations of drafts framed under railway Acts, passed before the Consolidation Acts came into operation. The object of the work is to afford some assistance in the preparation of the instruments of more ordinary occurrence, relating to the acquisitions of land in England and Wales for railway purposes.

The Precedents are arranged in conformity with the divisions of the Lands Clauses Consolidation Act, under the heads of—1. Freeholds; 2. Copyholds; 3. Common or Waste Lands; 4. Lands in Mortgage; 5. Rent Charges; 6. Lands on Lease. But besides these, there is a collection of other general forms, such as nominations of surveyors, valuations, and nominations of trustees to receive compensation; forms for arbitration, for jury proceedings, and a variety of miscellaneous precedents.

Notes are appended, where necessary; and these seem to be written with accuracy, and to display sound judgment. The index is very copious, as that of a law book should be; and although we cannot test the accuracy or the value of precedents by perusal, they appear to be artistically drawn; and, if what they appear, the work must be an acceptable addition to the library of the practitioner.

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James Matheson, esq. of the Lews and Achany, M.P. has purchased the estate of Bennetfield, in Ross-shire, for 12,500*l.*—*Inverness Courier.*

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Brazilian	39 1/2	39 1/2	39 1/2	39 1/2	39 1/2	39 1/2
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THE GAZETTES.

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Tuesday, April 14.
Barr, G. B. ship broker, last exam. April 21.—Newton, L. warehouseman, assignees, May 14.

Thursday, April 16.
Le Jeune, H. maltster, div. next week. Bell, London.

Friday, April 17.
Blacklocks, R. innkeeper, last exam. passed.—Hadden, W. J. brewer, last exam. May 19.—Hewitts, J. butcher, last exam. May 1.—Stephen, G. scrivener, div. next week. Pennell, London.

Saturday, April 18.
Harris, W. J. tailor, last exam. passed.—Morgan, E. coach builder, last exam. May 10.—Fritchett and Oridge, drapers, last exam. May 9.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Allen, M. apothecary, sine die. Pennell, London.—Allen, C. maltster, ss. 6*d.* Alinger, London.—Arrowsmith, W. earthenware manufacturer, second, 3*d.* Turner, Liverpool.—Baker, J. grocer, ssal. 5*d.* Belcher, London.—Baltcher, J. butcher, first, 5*d.* Miller, Bristol.—Best, C. printer, 7*d.* Johnson, London.—Best and Swarden, printers, joint, 5*d.* Alinger, London.—Bismead, D. warehouseman, 2*d.* 6*d.* to new proofs. Edwards, London.—Blackmore, C. tailor, first, 9*d.* 6*d.* Groom, London.—Blow, G. F. carrier, 2*d.* 3*d.* Bell, London.—Brearson, W. H. cotton manufacturer, sine die. Turquand, London.—Cheesman and Co. chinamen, final joint, 11*s.* to new proofs. Alinger, London.—Clarkson, W. bootmaker, first, 10*d.* Groom, London.—Cook and Co. coach-builders, second, joint, 3*s.* Turquand, London.—Cress, J. provision merchant, final 3*d.* Miller, Bristol.—Davies, S. coal merchant, 2*d.* 6*d.* Alinger, London.—Dow, J. A. draper, ss. Follett, London.—Evans and Co. merchants, joint, 1*s.* 3*d.* Alinger, London.—Footner, B. cabinet maker, none further. Johnson, London.—Freeman, B. boxer, 3*s.* Johnson, London.—Gastler, F. merchant, fin. 1*d.* and 1-10*th.* Pennell, London.—Gilbert, C. tailor, 3*d.* 9*d.* Edwards, London.—Hardy, G. innkeeper, 4*d.* 3*d.* Johnson, London.—Harraden, H. B. printer, 1*s.* 6*d.* to new proofs. Pennell, London.—Harris, J. Q. hat manufacturer, 1*s.* 6*d.* Bell, London.—Hart, J. builder, 2*d.* 4*d.* to new proofs. Edwards, London.—Hay and Titterton, oilmen, joint, 4*s.* Follett, London.—Haywood, G. bricklayer, 1*s.* 3*d.* Belcher, London.—Hobson, T. butcher, 2*d.* Edwards, London.—Jones, B. draper, first, 6*d.* Groom, London.—Knight, W. C. builder, 11*d.* Edwards, London.—Limes, J. H. butcher, 1*s.* 6*d.* Green, London.—Ling, B. timber dealer, 3*d.* Alinger, London.—Mann, J. T. laceman, 5*d.* Edwards, London.—Middleton, J. hay salesman, 10*d.* Green, London.—Mell, J. C. wine merchant, 3*s.* 4*d.* to new proofs. Edwards, London.—Nightingale, J. innkeeper, first, 5*d.* 6*d.* Fraser, Manchester.—Morton and Co. bankers, 2*d.* Turquand, London.—Norman, C. coach builder, none. Johnson, London.—Parsons, W.

corn dealer, 2*s.* Alinger, London.—Peeke, J. miller, ss. Edwards, London.—Perry, G. T. plumber, ss. 2*d.* Bell, London.—Peterson, J. innkeeper, ss. 5*d.* Green, London.—Pitt, J. carpenter, 6*d.* Johnson, London.—Ragney, J. victualler, 1*s.* Johnson, London.—Richardson, W. wine merchant, ss. Green, London.—Robinson, T. innkeeper, 7*s.* to new proofs. Cazenove, Liverpool.—Rogers, H. annuities, second, 10*d.* Edwards, London.—Saidrahe, W. H. bootmaker, ss. Johnson, London.—Smith and Smith, warehouseman, joint, 2*s.* 4*d.* to new proofs. W. Smith, 11*s.*; R. Smith, 12*s.* 4*d.* Pennell.—Solomon, S. tailor, 1*s.* 6*d.* Belcher, London.—Stacey, R. upholsterer, 1*s.* 3*d.* Bell, London.—Stech, C. W. draper, 2*s.* 6*d.* Bell, London.—Stiffen, T. J. master-carpenter, ss. none. Edwards, London.—Taylor, W. J. grocer, 3*s.* 7*d.* Bell, London.—Thomas, S. balloon manufacturer, none made. Groom, London.—Van Duijck, G. M. merchant, 1*s.* 11*d.* Green, London.—Walker, H. D. innkeeper, 2*d.* Pennell, London.—Wells, T. W. merchant, 2*d.* 3*d.* Edwards, London.—Winstanley, T. commission agent, sine die. Johnson, London.—Woodams, J. builder, first, 10*d.* Turquand, London.

Investments' Estates.

Whitehead, G. farmer, Fife-house, Jarrold, first, ss. 10*d.* Baker, Newcastle.

ASSIGNMENTS.

To Trustees for the benefit of Creditors.

Gazette, April 17.

Cottrell, G. H. leather dresser, Bathurst, and Brammit, et. Bernersdoor, March 11. Trust. J. Smith, jun. tenant Little Britain. Sol. Turner, Charles-st. City-nd.—Johnson, J. miller and baker, Hemmings, Lincolnshire, April 11. Trusts. J. Armstrong, bankers agent, and J. Johnson, merchant, both of Horncastle. Sol. Bedford and Coaling, Horncastle.—Kerry, J. framemaster, New Radford, April 11. Trusts. J. Redgate, ironfounder, D. New, iron merchant, and B. Walker, iron merchant, all of Nottingham. 3*d.* Wadsworth, Nottingham.—Lowe, G. apothecary, Wrexham, April 14. Trusts. W. Pierce, tanner, and T. Francis, grocer, both of Wrexham. Sol. Hughes, Wrexham.—Macleod, V. farmer, Stowrath, Lincolnshire, March 21. Trusts. S. Smith, farmer, West Deeping, and H. Vaughan, wine merchant, Market Deeping. Sol. Fennell, Stamford.

Gazette, April 21.

Alger, W. A. drysalter, Manchester, April 1. Trust. V. Perry, oil merchant, Manchester. Sol. Atkinson and Co. Manchester.—Barley, C. C. grocer, Walsby, April 14. Trusts. W. T. Oldham, druggist, Walsby, and S. Piggott, gent. Great Yarmouth. Sol. Woodward, March.—Bruder, J. provision merchant, Plymouth, Feb. 28. Trust. S. Gubbary, grocer, Plymouth. Sol. Edmunds, Plymouth.—Giles, G. bricklayer, Bealby, Sussex, Feb. 28. Trusts. E. Reeves, shopkeeper, and D. White, miller, both of Bealby. Sol. Langham, Hastings.—Nesher, G. J. bookbinder, South March 20. Trusts. J. Leighton, printer, Johannesburg.—Fleet-st. and D. Wemyss, bookbinder, Charles-st. Haddington. Sol. Nicholson and Co. Lime-st.—Parker, F. lace per meter and mill toy manufacturer, Walsby, Feb. 28. Trusts. J. Cohen, merchant, and M. Byatt, pawnbroker, both of Birmingham. Sol. Fitch, Birmingham.—Ragney, J. M. draper, Peckham, April 6. Trusts. J. Bagley, Love-lane, and W. Jones, Friday-st. warehouseman. Sol. Sole and Co. Aldersbury.—Williams, W. innkeeper, Shanklin, Isle of Wight, April 14. Trusts. B. Mew, liquor Newport, and W. Horlock, butcher, Sandown, both of the Isle of Wight, and P. Nind, hotel keeper, Leicester-sq. Sol. Meares, Griffiths, Newport.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, April 17.

BRAUNTON, ALEXANDER MOORCROFT, woolen cloth manufacturer and merchant, Hooley, Almondsbury, Yorkshire, April 20 and May 21, at eleven, Leeds, Com. West; Young, off. ass.; Cumming, King-st. and Brooks and Co. Huddersfield, sols. Date of fiat, April 12. Bankrupt's own petition.
BILLINGS, BENJAMIN, victualler and common brewer, Harlow, Essex, April 23, at half-past one, May 23, at eleven, Basinghall-street, Com. Shepherd; Turquand, off. ass.; Butt, Grant, Russell-st. sol. Date of fiat, April 13. J. Bernard, miller, Harlow, pet. cr.
FIGGERS, THOMAS, boot and shoe manufacturer, Liverpool, May 1 and 20, at eleven, Liverpool, Com. Phillips; Morgan, off. ass.; Kirk, Symonds-lane, and Parsons, Liverpool, sols. Date of fiat, April 12. Bankrupt's own petition.
JACKSON, JOSEPH GEORGE, share broker, Liverpool, April 20 and May 20, at twelve, Liverpool, Com. Phillips; Cammoe, off. ass.; Cornthwaite and Adams, Old Jersey-chambers, and Pemberton, Liverpool, sols. Date of fiat, April 6. J. Hadwin, merchant, Liverpool, pet. cr.
LOAN, ABRAHAM, dyer, Collyhurst, Manchester, April 20 and May 19, at twelve, Manchester, Fraser off. ass.; Gregory and Co. Bedford-row, and Cooper, Manchester, sols. Date of fiat, April 6. E. Atkin, drysalter, Manchester, pet. cr.
MILLS, WILLIAM, glove manufacturer, Foster-lane, City, April 24, at eleven, May 23, at two, Basinghall-st. Com. Goulburn; Green, off. ass.; Fisher and De Gervay, Aldersgate-st. sol. Date of fiat, April 13. Bankrupt's own petition.
MORLEY, HENRY RAWSON, merchant, King's-lane, City, April 20 and May 20, at eleven, Hall, Com. Morgan; Kynton, off. ass.; Hobden and Son, Hall, sols. Date of fiat, April 3. T. W. and T. Jerns, and T. Wood, iron merchants, pet. cr.
REDFORD, THOMAS, baker, Croydon-common, Surrey, April 24, at half-past twelve, May 20, at eleven, Basinghall-st. Com. Fane; Alinger, off. ass.; Russell and Co. High-st. Berwick, sols. Date of fiat, April 6. G. Chisholm, miller, Wotton, Surrey, pet. cr.
SABNEY, EDWARD, surgeon and apothecary, Canterbury, April 21 and May 23, at half-past eleven, Basinghall-st. Com. Shepherd; Graham, off. ass.; Richardson and Co. Bedford-row, sol. Date of fiat, April 14. E. Sabney, gent. Canterbury, pet. cr.
STEARNS, WILLIAM, carpenter and builder, 2, Princes-st. Cadogan-st. Chelsea, May 1, at two, May 20, at eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Smith, New-ma, sol. Date of fiat, April 13. Bankrupt's own petition.

Gazette, April 21.

ALLEN, THOMAS, hotel keeper and shoe manufacturer, Lb.

cleworth, Castle Church, Staffordshire, May 5 and June 13, at eleven, Birmingham, Com. Balguy, Christie, off. ass.; Reed and Langford, London, Flint, Stafford, and Mottram and Knowles, Birmingham, sols. Date of fiat, April 14. D. Smith, maltster, Stafford, pet. cr.

ANTHONY, DANIEL, apothecary, Audley, Staffordshire, May 12, at eleven, May 20, at twelve, Birmingham, Com. Balguy, Valpy, off. ass.; Williams, Hanley, and Smith, Birmingham, sols. Date of fiat, April 16. Bankrupt's own petition.

BELSHAW, WILLIAM, licensed victualler, Manchester, May 1, at eleven, May 21, at twelve, Manchester; Hobson, off. ass.; Gregory and Co. Bedford-row, and Hitchcock and Co. Manchester, sols. Date of fiat, April 8. H. Unthank, wine merchant, Manchester, pet. cr.

BENNETT, WILLIAM, japanner and tin plate worker, Wolverhampton, May 8 and June 13, at half-past ten, Birmingham, Com. Balguy, Christie, off. ass.; Brown, Bilton, and Smith, Birmingham, sols. Date of fiat, April 9. J. P. Whitehead, blank tray manufacturer, Bilton, pet. cr.

BIGGS, JOHN, undertaker, 41, Houndditch, April 28, at half-past one, May 22, at half-past eleven, Basinghall-st. Com. Evans; Bell, off. ass.; Messrs. Baddelley, Leman-st. sols. Date of fiat, April 16. Bankrupt's own petition.

BRIDGEMAN, RICHARD, common brewer, Enfield, Middlesex, April 30, at half-past two, and May 28, at one, Basinghall-st. Com. Evans; Bell, off. ass.; Messrs. Palmer, Mitre-court-chambers, sols. Date of fiat, April 18. W. Palmer, hop merchant, Mark-lane, pet. cr.

CLARKSON, JAMES, plumber and glazier, Barnsley, Yorkshire, May 5 and 26, at eleven, Leeds, Com. West; Freeman, off. ass.; Jacques and Co. Ely-place, Hallowell, Huddersfield, and Carter, Leeds, sols. Date of fiat, April 7. W. Deb and J. Hansen, lead pipe manufacturers, Rochdale, Yorkshire, pet. crs.

CRAMPSON, JOHN BURNES, coal merchant, 24, Wharf-rd. City-basin, City-rd. May 5, at half-past eleven, June 2, at twelve, Basinghall-st. Com. Holroyd; Groom, off. ass.; Parker and Co. Raymond-buildings, sols. Date of fiat, April 16. B. Russell, accountant, Warwick-st. Charing-cross, pet. cr.

CROFT, JAMES BOBINS, commission merchant, Liverpool, May 1, at twelve, May 27, at eleven, Liverpool, Com. Phillips; Cassmore, off. ass.; Vincent and Co. Temple, and Littledale and Bardwell, Liverpool, sols. Date of fiat, April 1. Bankrupt's own petition.

CAWDS, WILLIAM, coal merchant and ship owner, Weymouth and Melcombe Regis, Dorsetshire, April 30, at one, May 27, at eleven, Exeter, Com. Berr; Herniman, off. ass.; Garland, Dorchester, Sowton, Great James-st. and Terrell, Exeter, sols. Date of fiat, April 16. Bankrupt's own petition.

DAWSON, BENJAMIN, woollen manufacturer, Buerell, near Rochdale, Lancashire, May 2 and 23, at twelve, Manchester; Hobson, off. ass.; Norris and Co. Bartlett's-buildings, and Henton, Rochdale, sols. Date of fiat, March 27. Bankrupt's own petition.

DEACON, THOMAS ELISHA, tanner, Comer-hall, Hemel Hempstead, Hertfordshire, April 27, at two, June 1, at eleven, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Mathers, King William-st. sol. Date of fiat, April 17. Bankrupt's own petition.

FITZJAMES, HENRY LAMBERT, furrier or dealer in furs, Walcot, Bath, Somersetshire, May 12, at twelve, June 4, at eleven, Bristol, Com. Stevenson; Miller, off. ass.; Webb and Son, Bath, sols. Date of fiat, April 9. G. Skinner, surgeon, Bath, pet. cr.

FOWKES, HENRY, share broker, Manchester, May 4 and June 9, at twelve, Manchester; Pott, off. ass.; Milne and Co. Temple, and Crossley and Sudlow, Manchester, sols. Date of fiat, April 15. Bankrupt's own petition.

HUGHES, GRIFITH JONES, commission merchant, forwarding agent, and general merchant, 21, Brunswick-buildings, Liverpool, May 4, and June 1, at eleven, Liverpool, Com. Ludlow; Bird, off. ass.; Wilks, Furnival's-lane, and Brown, Liverpool, sols. Date of fiat, April 13. Bankrupt's own petition.

HUTCHINSON, HENRY, merchant, Liverpool, May 4 and June 1, at twelve, Liverpool, Com. Ludlow; Bird, off. ass.; Sharpe and Co. Bedford-row, and Jeakins, jun. Liverpool, sols. Date of fiat, April 17. Bankrupt's own petition.

JOHNSTONE, DAVID, joiner and builder, Choriton upon Medlock, Manchester, May 4, and June 9, at twelve, Manchester; Fraser, off. ass.; Gregory and Co. Bedford-row, and Cooper, Manchester, sols. Date of fiat, April 14. W. Keasley, timber merchant, pet. cr.

KELLY, WILLIAM, common brewer, Chester, May 4 and June 1, at twelve, Liverpool, Com. Ludlow; Turner, off. ass.; Humphreys, Chancery-lane, and Thomas, Manchester, sols. Date of fiat, April 13. E. Hodgkinson, architect, Chester, pet. cr.

LATHAM, SAMUEL METCALFE, banker and ship agent, Dover, May 7 and June 9, at twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Bridges and Co. Red Lion-sq. sols. Date of fiat, April 17. E. Elwin, solicitor, Dover, pet. cr.

PACE, JOHN and HENRY, general merchants, St. Michael's-alley, Cornhill, May 1, at half-past two, June 2, at one, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Lando, King's Arms-yard, sol. Date of fiat, April 1. C. Oswald, gent. Hartlepool, pet. cr.

SALMON, JOSEPH, carpenter and builder, Beaumont, Essex, May 6, at two, June 2, at eleven, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Ambrose, Chancery-lane, sol. Date of fiat, April 8. J. Ambrose, brickmaker, Copford, Essex, pet. cr.

STEPHENSON, CHRISTOPHER, worsted manufacturer, Colas, Lancashire, May 8 and 29, at twelve, Manchester; Hobson, off. ass.; Johnson and Co. Temple, and Hitchcock and Co. Manchester, sols. Date of fiat, April 14. H. Wilkinson and T. Waddington, worsted spinners, Halton, near Skipton, pet. crs.

STEPHENSON, ROBERT, apothecary, 6, Southwick-st. Hyde-park, April 28, at half-past one, May 29, at one, Basinghall-st. Com. Ponblague; Belcher, off. ass.; Chamberlayne and Menden, Great James-st. sols. Date of fiat, April 17. A. F. Chamberlayne gent., Great James-st. Bedford-row, pet. cr.

TAYLOR, THOMAS, grocer and tea dealer, Newcastle-upon-Tyne, May 4, at twelve, June 11, at half-past one, Com. Elkin; Baker, off. ass.; Harle, Newcastle, and Chisholme and Co. Lincoln's inn-fields, sols. Date of fiat, April 13. Bankrupt's own petition.

TOPHAM, JAMES, road contractor, Brewood, Staffordshire, May 2 and 30, at eleven, Birmingham, Com. Daniell; Bittlestone, off. ass.; Turner, Wolverhampton, and Smith, Birmingham, sols. Date of fiat, April 13. Bankrupt's own petition.

WALKER, WILLIAM, and WILLIAMSON, BENJAMIN, share brokers and share dealers, Leeds, May 5 and 26, at eleven, Leeds, Com. West; Freeman, off. ass.; Wiglesworth and Co. Gray's inn, and Smith and Co. Leeds, sols. Date of fiat, April 17. Bankrupt's own petition.

Meetings at Basinghall-street.

Gazette, April 17.
Bucher, W. commission agent and dealer in carpets, Great Marlborough-st. May 8, at one, div.—**Cotswold, T.** builder, Salisbury, May 11, at half-past one, and div.—**Mars, J. C.** merchant, 46, Lime-st. May 12, at eleven, div.—**Plas, J. M.** licensed victualler, 5, Great Bath-st. Cold Bath-sq. May 11, at two, div.—**Reay and Reay,** wine merchants, Mark-lane, April 27, at half-past twelve, by order of the Court of Review, to choose new ass.—**Stewart, J.** builder, Clement's-lane, May 12, at eleven, and—**Wace, E.** and **Pier, T.** merchants, Castle-st. Falcon-sq. and Barbadoes, West India, May 1, at half-past one, joint aud. and May 8, at half-past one, fur. joint div.—**Whit, J.** leather cutter, Coggeshall, May 4, at twelve, last exam.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Boorman, J. L. silversmith, Gravesend, May 9, at twelve.
Pinner, J. undertaker, Regent's-pl. Mile-end-rd. May 11, at half-past two.—**Trigwell, J. J.** beer-shop keeper and builder, Harrow-rd. May 9, at two.—**Wale, W.** tailor, Aylesbury, May 9, at twelve.

Gazette, April 21.

Altwater, W. dyer and scourer, 24, Devonshire-st. Queens-sq. May 12, at half-past one, fin. div.—**Cassell and Tindall,** leather sellers, Northampton and Sheffield, May 14, at twelve, and—**Dewdney, I.** watchmaker, Titchbourne-st. May 12, at eleven, and—**Emmott and Emmott,** goldsmiths, Bevis Marks, May 18, at eleven, and—**Fraser, J. W.** coffee dealer, Great Tower-st. May 13, at eleven, and—**Green, G. H.** and **Green, G. H.** wholesale stationers, Bage-yard, Bucklebury, May 12, at half-past one, esp. div. of G. C. Green.—**Hamilton, J. L.** wine merchant, 2, King-st. St. James's, May 12, at eleven, div.—**Hooper, T. W.** chemist, Bathurst-st. May 18, at half-past one, and—**Johns, J.** cook and confectioner, 29, Grosvenor-st. West, Piccadilly, May 12, at twelve, div.—**Kington, R.** jeweller, Jewin-crescent, May 14, at twelve, and—**Kellman, G. A.** pianoforte maker, St. Martin's-lane, May 14, at one, proof of two debts.—**Maclean, M.** cloth factor, 7, Basinghall-st. and clothier, Stroud, Gloucestershire, May 18, at one, div.—**Martin, J.** fringe manufacturer, Wood-st. May 14, at twelve, and—**Taylor, W. H.** stove manufacturer, Square Shot Tower, May 14, at twelve, and—**Turner, C. H.** carpenter, Houndditch, May 13, at eleven, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Noch, H. outfitter, Finsbury, May 12, at eleven, div.—**Stocker, S.** sen. hydraulic engineer and victualler, Seckford, May 14, at half-past twelve.

Meetings in the Country.

Gazette, April 7.
Pocklington, R. Winthorpe, Nottinghamshire, and **Dickinson, W.** Newark-upon-Trent, Nottinghamshire, bankers, May 21, at eleven, Birmingham, and div.—**Todd, T.** dealer in cotton and wollen goods, Manchester, April 22, at twelve, Manchester (adj. April 14), fin. div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Bromley, J. manufacturer, Bolton-le-Moors, May 7, at twelve, Manchester.—**Duke, J.** plaster merchant, Newark-upon-Trent, May 18, at eleven, Birmingham.—**France and Lawton,** stock brokers, Leeds, May 11, at eleven, Leeds.—**Harding, W.** cotton manufacturer, Stockport, May 13, at twelve, Manchester.—**Phillips and Co.** cotton spinners, Manchester, May 12 at twelve, Manchester.

Gazette, April 21.

Boord, S. woollen draper, Bristol, May 11, at two, Bristol, and—**Clarke, J. Mitchell, R. Phillips, J.** and **Smith, T.** bankers, Leicester, May 12, at eleven, Birmingham, esp. div. of Clarke and Phillips.—**James, G.** draper, Leamington-prior, May 16, at eleven, Birmingham, and—**Middleton, G.** wine merchant, Nottingham, May 15, at eleven, Birmingham, and—**Perry, G.** coach builder, Stroud, May 18, at twelve, Bristol, and—**and May 19, at eleven, div.—Tomkinson, W.** money scrivener, Norwich, Cheshire, May 13, at eleven, Liverpool, div.—**Verdes, S.** merchant, Liverpool, May 8, at eleven, Liverpool (adj. April 14) last exam.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Dardier, G. merchant, Liverpool, May 14, at twelve, Liverpool.—**Hill, J.** currier, Birmingham, May 15, at eleven, Birmingham.—**Jee, J. A. H.** insurance broker, Liverpool, May 12, at eleven, Liverpool.—**M'Gibbon, J.** bootmaker, Liverpool, May 12, at eleven, Liverpool.—**Owen, P.** miller, Liverpool, May 14, at eleven, Liverpool.—**Perry, G.** coach builder, Stroud, May 18, at eleven, Bristol.—**Rhodes, S.** worsted spinner, Bradford, May 14, at eleven, Leeds.—**Roberts, I.** grocer, Mold, May 12, at eleven, Liverpool.—**Walton, J.** coal merchant, Liverpool, May 12, at eleven, Liverpool.

Partnerships Dissolved.

Gazette, April 14.

Bagley, W. and **Newby, W. C.** attorneys, Stockton, April 3.—**Bevan, R.** and **Whitaker, H.** jun. cotton spinners, Wigan, May 27, 1845.—**Billing, W.** and **Wilson, W. A.** veterinary surgeons, Liverpool, March 9.—**Bardon, W. W., Collingwood, R.** and **French, W.** and **R. sen.** and **jun.** brewers, Bedlington, Jan. 1. Debts paid by **W. French.**—**Buttlerworth, J.** and **Heape, R.** woolstaplers, Rochdale, April 2.—**Buttlerworth, J.** and **B. and Heape, R.** oil merchants, Rochdale, April 2.—**Buttlerworth, J.** and **Heape, R.** T. woolstaplers, Rochdale, April 2. Debts paid by **Heape, R.**—**Clark, W. D.** and **J. Smiths,** Sermon-lane, Liverpool-road, March 25.—**Crook, T., Clayton, J.** and **Swarbrick, J.** cotton manufacturers, Preston, April 8.—**Fraser, D.** and **Lett, A.** accountants, King-st. March 26.—**Gannon, G.** and **J. joiners,** Appleton and Warrington, April 9.—**Gill, W. W.** and **Altwood, W. F.** artists, Cheltenham, March 12.—**Knight, T.** and **Chappel, J.** bricklayers, Liverpool, June 30.—**Leggott, G.** and **Seabry, T.** last makers, Hall, April 2.—**Priestley, J.** sen. and **J.** cotton spinners, Tottington Higher

End, April 10. Debts paid by **J. Priestley.**—**Reding, J.** and **Judd, W. N.** printers, Horse-shoe-court, Ludgate-hill, April 11.—**Sanderson, E.** and **Lomas, E.** commission agents, Nottingham, April 9. Debts paid by **Lomas.**—**Sanderson, E., and Lomas, E.,** Nottingham, and **Payne, J. B.** Perry-st., near Chard, lace manufacturers, so far as regards Sanderson, April 9. Debts paid by the remaining partners.—**Terry, E.** and **Irwie, R.** jun. grocers, Dudley, March 18.—**Walkden, G.** and **T. solicitors,** Mansfield, April 13.—**Wilton, R.** and **Preston, E.** ship brokers, Liverpool, April 6.

Gazette, April 17.

Begg, T. St. Michael's-alley, Cornhill, and **Kerr, A.** New-foundland, merchants, April 1.—**Brown, T.** and **Owen, E.** coachmakers, Birmingham, Sept. 29.—**Buckley, K.** and **Stibington, J.** linen merchants, Rochdale, April 18. Debts paid by **Bibbington.**—**Davies, S.** and **Jarrett, W.** stock brokers, Great Driffield, April 1.—**Frith, H., Leigh, J., Hartley, S., and Garold, W.** corn dealers, Glossop, Feb. 21. Debts paid by **Frith.**—**Oliver, V. C.** and **J. C. French** importers, Wood-street, Chancery, April 10. Debts paid by **V. C. Oliver.**—**Gowers, S.** and **Mark, H.** linen-draper, Tottenham-court-road, March 3. Debts paid by **Gowers.**—**Hanning, J.** and **Glazebrook, N. S.** surgeons, Walton-on-the-Hill, April 14. Debts by **Hanning.**—**Holt, W.** and **Milnes, J.** woollen manufacturers, Rochdale, April 11.—Debts paid by **Holt.**—**Howitt, M.** and **W. B. Rindrapers,** Edgware-road, March 25. Debts paid by **M. Howitt.**—**Legg, S.** and **Andrew, S.** shipwrights, Liverpool, April 16. Debts paid by **Legg.**—**Maugham, R.** and **Kennedy, T.** attorneys, April 1.—**Muriel, C.** and **B.** surgeons, Wellington-st. Southwark, Dec. 31. Debts paid by **Muriel.**—**Seddon, J.** and **Ordination, H.** surgeons, Shelton, March 25.—**Swinsborne, W.** and **G. P. carvers,** Great Coggeshall, April 1. Debts paid by **Swinsborne.**—**Tanner, W.** and **T. Rindrapers,** Stratford-upon-Avon, April 14. Debts paid by **W. Tanner.**—**Taylor, J.** and **Smith, W.** engravers, Little Queen-st. April 15.—**Thornston, S. M., P.** and **W. boat builders,** Miffield, April 11.—**Thornley, T.** and **W. Balper** and **Ripley,** March 10.—**Worms, L.** and **Purser, M. A.** milliners, Bridge-road, Lambeth, April 6.—**Wright, E.** and **G. coal merchants,** Cromer, and brick merchants, Rinton, March 31.

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, April 14.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Allen, D. spirit merchant, High-st. Southwark, May 2, at half-past eleven.—**Carpenter, J.** beer retailer, Portsea, April 28, at eleven.—**Cassell, J.** rope maker, Bancroft's-place, Mile End, May 2, at half-past eleven.—**Forster, C.** beer seller, Brandon, April 28, at eleven.—**Hackshaw, T.** hair dresser, New Palace-road, Lambeth, May 2, at eleven.—**Hunt, M.** green grocer, Robert-st. Brixton, April 28, at eleven.—**Landor, J.** widow, Great Wilde-st. April 23, at eleven.—**Mervel, W. R.** watchmaker, White Rose-court, May 2, at twelve.—**Peck, J.** carpenter, Dean-st. Commercial-road, May 2, at twelve.—**Priddy, W. S.** jun. Buttery, April 28, at eleven.—**Reynolds, P.** London-st. April 18, at two.—**Simmons, T. H.** grocer, Alpha-place, Old Kent-road, May 2, at eleven.—**Stevens, H.** farmer, Purbright, April 28, at eleven.—**Stewart, P.** clerk, Crown-place, Old Kent-road, May 2, at half-past twelve.—**Thompson, N. J.** painter, Camden-st. Kensington, May 2, at twelve.—**Winterton, T.** tailor, Whitechapel, May 2, at eleven.—**Young, S. D.** attorney, Bury St. Edmunds, April 24, at two.

PETITIONS TO BE HEARD IN THE COUNTRY.

Barnett, T. bridge, Warwick, April 25, at half-past ten, Birmingham.—**Bridge, T.** agent, Manchester, April 22, at twelve, Manchester.—**Cooke, C.** packer, Hulme, April 24, at twelve, Manchester.—**Harrison, G. H.** warehouseman, Nottingham, April 25, at eleven, Birmingham.—**Hill, J.** farmer, Clumstock, April 23, at one, Exeter.—**Jessop, J. B.** stationer, Exeter, April 23, at one, Exeter.—**Lau, J.** out of business, Rochdale, April 23, at twelve, Manchester.—**Mamford, J.** cart owner, Totterth-park, April 21, at eleven, Liverpool.—**Mey, W.** superannuated labourer, Devonport, April 21, at ten, Plymouth.—**Owen, J.** coal dealer, Liverpool, April 22, at eleven, Liverpool.—**Poundall, T.** druggist, Hulme, April 22, at twelve, Manchester.—**Schurples, J.** joiner, Blackburn, April 24, at twelve, Manchester.—**Smith, E.** engraver, Hamabottom, April 22, at twelve, Manchester.—**Thomas, J.** farm bailiff, Egremont, May 1, at twelve, Bristol.—**Walker, W.** provision dealer, Longton, April 17, at eleven, Birmingham.—**Wenlock, R.** sen. farmer, Colwick, April 17, at eleven, Birmingham.

Gazette, April 17.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Allen, J. beer retailer, Brighton, April 28, at twelve.—**Caray, W.** cabinet maker, Crown-st. Bow-st. April 28, at twelve.—**Duwall, G.** cooper, Cherry-garden and Cross-st. Bermondsey, April 28, at eleven.—**Morris, E.** engineer, Ebury-st. Pimlico, April 28, at twelve.—**Nesb, A.** cabinet maker, Chelton-st. Somers-town, April 24, at one.—**Neckes, H.** clerk, Brewer-st. Golden-square, April 28, at half-past twelve.—**Shedbridge, R.** out of business, Maidstone, April 28, at half-past one.—**Stintzsch, G.** teacher of drawing, Moscow-road, Baywater, April 23, at twelve.—**Tudor, P. T.** out of business, Northfleet, April 28, at twelve.—**Tuffing, I.** out of business, Woodland-grove, Trafalgar-road, Greenwich, April 28, at eleven.—**Vincent, R.** farmer, Tilney St. Laurence, Norfolk, April 28, at eleven.—**Ward, J.** sealing wax manufacturer, King's-ter. North, Bagnigge-wells-road, April 30, at one.—**Welch, J. G.** clerk, Dean's-cottage, Dunstan-road, Kingland, April 30, at one.—**Whitley, C. E. M.** (known as Clara Seyton), vocalist, Haymarket, April 20, at twelve.

PETITIONS TO BE HEARD IN THE COUNTRY.

Fiddling, J. woollen weaver, Butterworth, May 2, at twelve, Manchester.—**Hardwick, C.** cloth manufacturer, April 29, at eleven, Leeds.—**Harries, C.** late leather dresser, Leeds, April 28, at eleven, Leeds.—**Howard, J.** lately inkeeper, Bradford, April 28, at eleven, Leeds.—**Jelly, A.** late butcher, Birmingham, April 22, at half-past ten, Birmingham.—**Leeming, J.** mechanic, Otley, April 28, at eleven, Leeds.—**Mellor, W. W.** labourer, Bradford, April 28, at eleven, Leeds.—**Pool, T.** victualler, York, April 28, at eleven, Leeds.—**Nutt, G.** policeman, Milverton, April 24, at eleven, Birmingham.—**Shaw, S.** labourer, Long Preston, April 28, at eleven, Leeds.—**Starkey, J.** victualler, Wolverhampton, April 27, at

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LORD CHANCELLOR'S COURT.

Friday, March 13.

ANDERSON v. GARRARD.

Practice—New Orders of May 1845—Infant defendant out of the jurisdiction—Service of subpoena—Assignment of guardian.

Where an infant defendant, resident out of the jurisdiction, has been served with a subpoena under an order made in pursuance of Acts of 2 Wm. 4, c. 35, and 4 & 5 Wm. 4, c. 82, the Court will not order an appearance to be entered for such infant, until a guardian has been assigned under the 32nd Order of May 1845, in precisely the same way, and after the same notice, as if the infant defendant had been resident within the jurisdiction.

In this cause Vice-Chancellor Knight Bruce gave leave in July last that subpoenas should be served upon two adult defendants in the cause and their infant children resident in Virginia, in the United States. By an Act (2 Wm. 4, c. 35) for "remedying the inconvenience and delays of justice, arising from the defect of jurisdiction in courts of equity, to effectuate the service of their process in such parts of the United Kingdom of Great Britain and Ireland as are not within the jurisdiction of such courts respectively," it was enacted that it might be lawful for the Court of Chancery in England, upon special motion of the complainant in any suit instituted concerning lands, or tenements, or hereditaments in England or Wales, to direct that service in any part of the United Kingdom of Great Britain and Ireland, and in the Isle of Man respectively, of any subpoena or letter missive, and of all subsequent process to be had thereon, upon any defendant or defendants in such suit then residing in such part of the said United Kingdom or Isle of Man, in which he, she, or they should be so served, should be deemed good service of, or be made upon, such defendants, upon such terms, and in such manner, and at such time, as to the Court should seem reasonable; and thereupon the Court might proceed upon the service so made, as if the same had been duly made within the jurisdiction of the Court.

By 4 & 5 Wm. 4, c. 82, the previous Act was extended to suits concerning any lien, judgment, or intromission upon any lands, tenements, or hereditaments in England or Wales, money in any government or other public stock, or shares in public companies; and it was enacted that the provisions authorizing the Court to direct the service in any part of the United Kingdom, &c. of any subpoena or letter missive, and of subsequent process, upon defendants residing in such parts of the United Kingdom, &c. in which they should be so served, should be deemed good service upon such defendants, &c. should be and was thereby extended to any defendants

in such suits as thereinbefore mentioned, who should appear by affidavit to be resident in any place, specifying the same, out of the United Kingdom. And after directing the method of proceeding upon applications for such orders, the Act directs that afterwards, upon an affidavit of such service had, the Court might order an appearance to be entered for such party, in such manner and at such time as the Court should direct.

On the 12th March a motion was made before the Vice-Chancellor, for leave to enter an appearance for all the defendants, adult and infant, upon an affidavit that they had been duly served with the subpoenas, according to the provisions of the Act, and the order of July; the Vice-Chancellor thought the statutes did not apply to infant defendants, because the word "resident" implied an act of volition, of which infants were by law incapable, and he therefore declined to decide upon the motion, but recommended an application should be made to the Lord Chancellor.

Bevir, for the motion, said, the only authority for the application was the case of *Jones v. Geddes* (9 Jur. 1009), (6th Dec. 1845), in which the Vice-Chancellor of England had made an order, under the 32nd General Order of May 1845, assigning a guardian to infants resident in Scotland.

The LORD CHANCELLOR.—What is the course of proceeding if the infants are resident here?

Bevir.—The course is to move for the appointment of guardians under the 32nd Order of May 1845. That Order directs that, "if upon default made by a defendant in not appearing to, or not answering a bill, it appears to the Court that such defendant is an infant, so that he is unable of himself to defend the suit, the Court may, upon the application of the plaintiff, order that one of the solicitors of the Court be assigned guardian of such defendant, by whom he may appear to, and answer, or may answer the bill, and defend the suit." But no such order is to be made unless it appears to the Court, on the hearing of such application, that the subpoena to appear to and answer the bill was duly served, and that notice of such application was, after the expiration of the time allowed for appearing to or answering the bill, and at least six days before the hearing of the application, served upon, or left at the dwelling-house of the person with whom, or under whose care, said defendant was at the time of serving the subpoena, and (in case of such defendant being an infant not residing with or under the care of his father or guardian) that notice of such application was also served upon, or left at the dwelling-house of the father or guardian of such infant, unless the Court at the time of hearing such application thinks fit to dispense with such last-mentioned service."

In the present case the infants lived with their father and mother, in Virginia, who had been served with the subpoenas, and were themselves defendants.

The LORD CHANCELLOR.—What reason is there for dispensing with the service of the notice in this case more than in ordinary cases?

Bevir.—Your lordship then will give leave to serve the infants, in America, with notice under the 32nd Order?

The LORD CHANCELLOR.—Yes; that will do.

Friday, March 6.

Re PARRY, a Lunatic.

Practice in lunacy—Continuance of gratuities allowed by the lunatic.

Prior supported a petition to confirm the Commissioner's report, which, amongst other things, approved of the continuance of an allowance of 10s. a week to Mary Draper. The petitioner was the committee of the person and estate, who was also sole next of kin and heir of the lunatic. The petition had stood over to produce affidavits as to the nature of the connection between the lunatic and Mary Draper. It appeared that she was a woman with whom the lunatic had some time since cohabited, but such cohabitation had ceased at the time of his lunacy, and she was resident at Southsea, at a distance from him. The allowances had been constantly paid for some time.

The LORD CHANCELLOR was disposed to make the order, if the evidence as to cessation of cohabitation was clear. For that purpose his lordship said he would look through the affidavits and decide.

The case has since been mentioned, and the allowance made.

Thursday, April 16.

Re DYCE SOMER, a Lunatic.

Practice in lunacy—Lunatic out of the jurisdiction—Repayment of an advance made to the lunatic—Recovery.

Jas. Parker supported a petition by Mr. Solaroli, the lunatic's brother-in-law, for the repayment of 600l. which he had advanced to the lunatic in Paris, where he is now resident at large, being deemed by the French authorities a person of sound mind, and competent to manage his person and affairs. Vouchers and affidavits to verify the advance, and proof that it actually came to the lunatic's hands having been given,

The LORD CHANCELLOR.—I am satisfied with the evidence, and I think the sum ought to be allowed;

as, however, there must be a reference to the Commissioner upon other matters mentioned in the petition, I must have the finding of the Commissioner that this allowance is proper, in order to form some record in lunacy.

Turner and Lloyd, for the committee of the estate; and

Bethell and Calvert, for the committee of the person, consented.

January 31, and April 15 and 16.

HALL v. LACK.

Practice—Appeal—Costs—Injunction.

Where, pending an appeal motion from an order dissolving an injunction, the cause was heard in the court below, when the injunction so dissolved had been revived in a modified form, upon the hearing of the appeal motion, no costs, which then formed the only question, were given to either side on the appeal; but the plaintiff, the appellant, having, by the non-performance of an undertaking he had given in the court below, when the injunction was granted, rendered an application to the Court necessary, it was held that he was properly ordered to pay the costs of the motion for dissolving the injunction.

This was an appeal by the plaintiff against an order of Vice-Chancellor Knight Bruce, by which an injunction was granted to restrain the defendant from receiving a pension. The bill was filed to enforce a security for an annuity which Lack, a retired civil servant of the government, had given upon his pension of 1,000l. An injunction had been originally granted to restrain Sir William Boothby, the officer by whose hand the pension was payable, and the defendant, Lack, from paying or receiving, respecting any money on account of the pension or retiring allowance of the defendant Lack; and upon that motion, the plaintiff undertook to take certain proceedings required by the Court, by a specified time. Having failed to do so, the defendant Lack moved to dissolve the injunction, and the Vice-Chancellor having made Lack and two sureties on his behalf enter into recognizances to pay into court all sums received on account of the pension beyond 500l., dissolved the injunction, and directed the plaintiff to pay the costs of the motion.

Lee and Heathfield, for the plaintiff, the appellant.

James Parker and Roll, for the defendant Lack.

Elderton, for other defendants.

It having been stated that the cause itself would be heard by the Vice-Chancellor, the present motion was directed to stand over until after the hearing of the cause. On the 15th of April, the cause having been heard, and by the decrees the plaintiff had been directed to bring an action at law to try the validity of his annuity, and the injunction against the receipt of the pension by the defendant Lack was revived.

Parker and Roll, for the defendant.—The respondent stated that all the questions upon the appeal motion had been disposed of by the decree on the hearing, except the costs. The judgment given to secure the annuity had been set aside by the Court of Queen's Bench, on the defendant's application, but that Court had refused to set aside the grant of the annuity, on the ground that the Annuity Act gave the Court no power to do so in a summary way. When the injunction was granted, the plaintiff gave an undertaking to file a replication, and join in a commission and examine witnesses during Trinity Vacation, 1845, but he did not act up to that undertaking, as he filed his replication in July, and did not examine his witnesses during Trinity Vacation.

The defendant Lack then moved to dissolve the injunction, on account of the plaintiff's non-performance of his undertaking, for which the Vice-Chancellor thought no sufficient excuse was offered. He therefore dissolved the injunction, requiring the defendant to enter into the recognizance above stated, and the plaintiff was ordered to pay the costs of the motion. They contended that the plaintiff had rendered a motion necessary, and had an indulgence shown to him on the terms of paying the costs of the motion, and that on that short ground the defendant was entitled to the costs of this appeal without going into the merits. That, since the injunction was granted, the Court of Queen's Bench, a court of competent jurisdiction, had held that the judgment given for securing the annuity was not a valid one, which was a new circumstance. The plaintiff had obtained the injunction originally on giving an undertaking he had not performed.

The LORD CHANCELLOR.—In consequence of the plaintiff's default, an application to the Court became necessary, and the Court gave the defendant the costs of that motion.

Roll.—Yes; and the judgment had been since found to be invalid.

The LORD CHANCELLOR.—What was the blot?

Roll.—That no money had been advanced, but that the sum for which the annuity had been given was the result of various bill and discount transactions. Then there was the collateral ground of the undertaking by plaintiff not having been performed, which alone would have rendered an application to the Court proper.

The LORD CHANCELLOR.—The defendant had a right to make some application to the Court, the

plaintiff having failed to perform his undertaking, and the question upon this appeal motion was, whether the order made upon that application was a proper order; that order gave the defendant costs. When this motion was opened, I understood that the cause would be heard in a few days, and I directed the motion to stand over. The cause has now been heard; but if I am to determine this question of costs, I must go into the whole question.

Some argument on the merits then took place, and Lee and Heathfield, for the plaintiffs, contended that as the cause was heard pending the argument of the appeal motion, no costs of the appeal should be given.

JUDGMENT.

Thursday, April 16.—The LORD CHANCELLOR.—A motion having been made before the Vice-Chancellor Knight Bruce to dissolve an injunction which restrained the defendant from receiving his pension, that motion was granted upon an undertaking by the plaintiff to do certain things prescribed to him. The plaintiff failed to do those things, and a second motion became necessary, and the injunction was then dissolved. Under this state of circumstances, I cannot say that the second motion was an improper one; and I am therefore of opinion that the costs of it must be paid by the plaintiff. By the decree subsequently made in the cause, the injunction thus dissolved has been revived, and is now standing. There are, therefore, circumstances in this motion which prevent me from giving the costs of the appeal against the order made on the motion. There will be no costs on either side on the appeal.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Monday and Tuesday, Feb. 23 and 24, 1846.

SEARLE v. LAW.

Turnpike bonds—Voluntary settlement.

A. L., by a voluntary deed, made an assignment of certain turnpike bonds and shares in certain public companies to a trustee, his executors, administrators, and assigns, upon trust for himself, A. L., and his assigns during his life and as he should appoint; and in default of such appointment, and so far as it should not extend after the decease of the said A. L., upon trust for the benefit of his great nephew A. L. then delivered to the trustee the bonds and share certificates which continued in the trustee's possession; but the settlor took no further steps for transferring such bonds or shares, or completing the assignment. A. L. the settlor, died in 1840. It appeared from the report of the Master, to whom the cause stood referred, that the deed did not effectually transfer the property. Held, that nothing passed by the deed; and that therefore the personal representatives of A. L. were entitled to the property.

The will stated that, by an indenture bearing date the 25th day of March, 1836, after reciting that Alexander Law, the uncle of the defendant, was lawfully possessed of or entitled to the sum of 2,000*l.* secured by twenty deeds poll on the Totnes turnpike-roads; and that he was possessed of or entitled unto twenty shares in the West of England Fire and Life Insurance Company; and also to ten shares of 100*l.* each of and in the capital of the National Provincial Bank of England, "and also my other forty shares if not disposed of to any persons during my life." And reciting that the said A. Law, the uncle, was desirous of making a settlement of the said sum of 2,000*l.* and the aforesaid shares in the said West of England Fire and Life Insurance Company, and National Provincial Bank of England respectively, and the interest, dividends, and proceeds thereof, for the benefit of himself and his great nephew, Alex. Law, and his issue; and for that purpose he had determined to assign the same respectively unto F. Searle, his executors, administrators and assigns, upon the trusts, and for the purposes thereafter declared. It was witnessed, that for and in consideration of the natural love and affection which the said Alex. Law, the uncle, had and bore for and towards his said great nephew, and in order to settle the said moneys, shares, and premises in manner thereafter mentioned, and for the nominal consideration therein expressed, he, the said Alex. Law, the uncle, did grant, bargain, sell, assign, transfer, and set over and confirm unto the said Francis Searle, his executors, administrators, and assigns, all that the sum of 2,000*l.*, secured by the said thereinbefore mentioned deeds poll, and all those said twenty shares of and in the capital stock of the said West of England Fire and Life Insurance Company, and also all those the aforesaid ten shares of 100*l.* each, in the capital of the National Provincial Bank of England, and all bonuses and sum and sums of money then or thereafter to become payable in respect of the same, any or either of them, and all interest, dividends, and accumulations thereof respectively to have, hold, receive, and take the said moneys, shares, property, and all and every other the premises thereby assigned, or intended so to be, unto the said Francis Searle, his executors, administrators, and

assigns, upon the trusts, and to and for the ends, intents, and purposes thereafter expressed and declared of and concerning the same, and for the considerations and purposes aforesaid, the said Alexander Law, the uncle, did thereby make, ordain, constitute, and appoint the said Francis Searle, his executors and administrators, his true and lawful attorney and attorneys, in the name of him, the said Alexander Law the uncle, his executors or administrators, to receive and get in all shares and all other the premises thereby intended to be assigned with the usual powers and authorities. And it was thereby declared and agreed by and between the said parties thereto, and the said Alexander Law, the uncle, did thereby for himself, his executors, and administrators, expressly declare that the said Francis Searle, his executors and administrators, should stand and be possessed of and entitled unto all and singular the moneys, shares, property, interest, and other the premises thereby assigned, or intended so to be, upon certain trusts for the said Alexander Law, the uncle, and his assigns, during his life; and upon further trust to dispose thereof as the said Alexander Law, the uncle, should appoint; and in default of such appointment, and so far as such appointment should not extend, then, after the decease of the said Alexander Law, the uncle, upon certain trusts for the benefit of the said Alex. Law, the nephew, and his issue.

At the time when the deed was executed, Alexander Law, the uncle, was possessed of only ten shares in the National Provincial Bank of England, but he afterwards purchased forty more shares, and caused the words "And also my other forty shares, if not disposed of to any persons during my life," above mentioned, to be inserted in the deed by an auctioneer. No alteration was made, however, in the operative part of the deed, which additional forty shares were held to be therein included. The twenty deeds poll and the certificates of the twenty shares in the West of England Fire and Life Insurance Company, and of the fifty shares in the National Provincial Bank of England, were, under the directions of Alexander Law, the uncle, delivered to Francis Searle, as trustee, and continued in his possession, but no further steps were taken for transferring the said bonds and shares.

The uncle, Alexander Law, died in the month of March, 1840. A question now arose between the parties entitled under the deed of 1836, and the personal representatives of Alexander Law, the uncle, touching the validity of the gift; each party claiming the whole of the property comprised in the deed. Under these circumstances the trustee filed his bill praying that he might be discharged from the trusts of the indenture of 1836, and that the rights of the parties might be determined under the direction of the Court.

The cause came on to be heard on the 28th Feb. 1844, and it was then referred to the Master to state whether, by the constitution of the above-mentioned companies, any and what formalities were necessary for effecting the transfer of shares in the capital stock of the said companies. The Master, by his report of the 30th May, 1845, found, among other things, that several formalities in each of the before-mentioned Companies were necessary according to their respective constitutions for effecting a transfer of shares by the proprietors thereof.

Bethell and Wright in support of the bill.

Stuart and Follett, for the defendant, Alexander Law, the great nephew, contended that the deed of transfer was clear, and that, therefore, the property must be held to pass under it. The case falls short of *Fortescue v. Barnett* (3 My. & K. 36.) According to the Master's report, the trustee has complete possession of the insurance company's shares, and he finds there was no formality requisite for their transfer. We do not require the aid of the Court as to the Bank shares, for by making a requisition to the Bank we may become proprietors at any time. Our case is distinguishable, therefore, from every other wherein the Court is called upon to take an active part.

Cases cited:—*Hill v. Cureton* (2 My. & K.); *Ex parte Pye* (18 Ves. 149); *Sloane v. Cadogan* (3 Sug. V. & P. App. 66); *Edwards v. Jones* (1 My. & C. 226); *Antrobus v. Smith* (12 Ves. 39); *Ward v. Audland* (8 Sim. 576, a.)

Anderson and Shapter, for the administrator of Alexander Law, the uncle, contended that the gift was absolutely void, the Master having declared that, according to the regulations of these companies, there must be an acceptance to constitute an effectual transfer. (*Dillon v. Coppin*, 4 My. & K. 647; *Beaton v. Beaton*, 12 Sim. 281; *Jefferys v. Jefferys*, 1 Cr. & Ph. 138; *M'Fadden v. Jenkins*, 1 Hare, 458; *Walburn v. Ingilby*, 1 My. & K. 61, 77; *Malcolm v. Scott*, 3 Hare, 39; *Meek v. Kettlewell*, 1 Hare, 464.)

Bethell in reply.

The VICE CHANCELLOR.—I cannot understand that there is any property in the plaintiff upon which I can make any order. It is quite plain that Alexander Law, the uncle, intended to effectuate his purpose by means of an assignment to the plaintiff; but he never did any thing besides executing the deed. He, doubtless, meant that all parties should take such provisions as were intended there through the operation of

the deed; there was no general purpose of standing trustee for any one. It appears as clear as possible, that upon the Master's Report and on the Act of Parliament (3 Geo. 4, c. 126, s. 81), to which I was referred, no interest has, in point of fact, passed to the plaintiff, and, consequently, that he is a mere holder of these documents of title, which, under the circumstances, belong to the personal representatives of Law the elder.

Declare that no legal property in the turnpike bond, the insurance shares, nor the Bank shares passed to Searle, and that the same are not affected by any declaration of trust. Searle to deliver up the securities to the personal representative of Alexander Law, the testator. Costs out of the fund as between Solicitor and client.

Wednesday, February 25.

PLAVER v. ANDERSON.

Practice.—Residence.—Security for costs.

Where the plaintiff to a bill does not appear to have any permanent residence, the Court will compel him to give security for costs.

This was an application that the plaintiff might be ordered to give security for the costs of a suit. In the bill, the plaintiff was described as residing at 15, Bury Street, St. James's; but in the affidavits in support of the present motion, it appeared that although he was resident there in lodgings at the time when the bill was filed, he left that place a fortnight afterwards, and went to Paris, and subsequently had been residing at Bath. And in a notice served a short time ago by the same solicitors who were his solicitors in the suit, he was described as of Carlisle.

Stuart and Stratton, for the motion, cited *Weeks v. Cole* (14 Ves. 518); *Sandys v. Long*, (2 My. & K. 487); *Calvert v. Day* (2 You. & Col. C. C. 217).

Bethell, against the motion, contended that the plaintiff having given his true residence on the bill, was not bound to remain there during the progress of the whole suit. His very employment or occupation may preclude him from having any permanent residence, and must be therefore be prevented from suing. He is not domiciled abroad, so as to bring him within the rule as laid down in *Weeks v. Cole*. We do not deny his having been in Paris, but he is now within the jurisdiction.

Stuart, in reply, urged that it is necessary for a man to state his permanent residence, in order that the defendant may know where to serve him with process or where to apply for costs. Whenever, therefore, a plaintiff has no permanent residence, he ought to give security.

The VICE-CHANCELLOR.—It appears from the facts as they are stated upon the affidavits that sufficient is disclosed from which to infer the plaintiff has no fixed residence; and although this case is not liable to the observations made in *Sandys v. Long*, because it contained the true and proper description of the plaintiff at the time when the bill was filed, still his residence was of such a fleeting and transitory nature, that the description was not available for the purpose of giving any circumstantial information to be of any available use to the defendant.

Order made.

ROLLS COURT.

Tuesday, Feb. 17.

HEMING v. ARCHER.

Practice.—Conveyance of legal estate.—Suspension of distribution of purchase-money.—Infant.

A person who was a party to a creditors' suit purchased an estate in which he was beneficially interested under a decree made therein, but because of the infancy of certain of the other parties, and of the disclaimer of a trustee *pur autre vie*, he could not obtain a conveyance of the legal estate. Under those circumstances, the distribution of the purchase-money among the parties interested therein was suspended by the Court, till a conveyance of the legal estate could be made.

The facts of this case are reported in 5 Law T. 281. It was there decided that, under the circumstances, the Court had no jurisdiction by virtue of the 1 Wm. 4, c. 47, ss. 11, 12, to direct the testator's heir-at-law, or the equitable tenant for life, to convey the estates to a purchaser under a decree in the cause; the devisee in trust, *pur autre vie*, having disclaimed, and there being only equitable life estates. The cause having now come on upon further directions, the parties interested asked for the distribution of the purchase-money; but the purchaser objected, and insisted that there should be no such distribution till he had obtained a conveyance of the legal estate, which he was unable to do till certain of the parties should come of age. On the other hand, it was contended that, as the purchaser was himself beneficially interested in the estate, under the will, and was a party to the cause, the objection ought not to prevail, for he had bought with full knowledge of the difficulty.

Kindersley, Roupell, Daniel, Blazam, and Faber, for the several parties.

The MASTER of the ROLLS said, he could not order the purchase-money to be distributed till the purchaser had got a conveyance of the legal estate. The purchaser could not be supposed to know what construction the Court would put upon the Act, nor, therefore, that there was no jurisdiction to direct a conveyance. There did not appear to be any way of getting over the difficulty but by an Act of Parliament; and, if they should think proper, the plaintiff might have a reference to the Master, to inquire whether it would be for the benefit of all parties that an Act should be obtained.

Thursday, Feb. 26.
RIGBY v. PINNOCK.

Practice—New Orders of May 1845—Amendment—Traversing note—Time.

A commission to take the answer of several defendants who were abroad was obtained, and the answers were to be sent over, but, to save the expense of a special messenger, they were kept back for an opportunity to send them; under the circumstances the plaintiff obtained an order to amend and served it upon the defendants, and on taking an office copy it was found that they were required to answer the interrogatories, though, as to some of them, a notice accompanied the service of the order to amend, that they were not required so to answer. On the eighth day after service of the order the plaintiff moved that the defendants, who had been so noticed, should either file their answers or allow the plaintiff to file a traversing note against them, and the motion was refused, the defendants having six weeks to answer under the 14th rule of the 16th Order, and not being confined to eight days under the 38th rule of the same Order. The 38th rule of the 16th Order applies to the case of amendments after answer, and the 14th rule of the same Order to that of amendments before answer. If no answer has been put in, the clerk of records and writs will receive an answer to the original bill, though it has been amended before the answer is presented.

In this case the bill was filed on the 14th July 1845, and an appearance was entered for the defendants (against whom the present motion was made) on the 28th of the same month, and, therefore, the time for answering expired on the 22nd September. On the 3rd November a motion was made for a commission to take the answers of these defendants who were abroad, their solicitor stating that the answers were then engrossed, and undertaking to use all expedition; and, the commission having been executed, the answers were detained for the purpose of being sent by the first opportunity without the expense of a special messenger. The plaintiff, however, was dissatisfied with the delay, and gave notice that if the answers were not filed by the 21st of February, he would apply to the Court for leave to file a traversing note against them. On the 18th of February the plaintiff served the defendants with an order to amend, and on taking an office copy of the amendments they found that they were required to answer the interrogatories; notice, however, had been given to those defendants against whom the present motion was made, that they should not be required to answer. On the 26th of February the plaintiff moved that the defendants should either file their answers or allow him to file a traversing note against them.

Cairns, for the motion.

Kindersley (with him Hallett) for Edward and Thomas John Pinnock, two of the defendants, said that if the plaintiff would dispense with a special messenger, he might have the answers immediately. The order to amend was served on the 16th of February after the answers were prepared and ready to be sent, and on taking an office copy of the amendments the defendants found they were required to answer the interrogatories, though notice was also served that they would not be required to do so. Besides, Thomas John Pinnock is an insolvent, and his assignees must have time to answer. [The MASTER of the ROLLS.—Would the clerk of records and writs receive an answer to the original bill after amendment?] It is not likely he would; the answer must be not to the original bill which does not exist, but to the amended bill.

Turner, for other defendants, contended that as the plaintiff had amended by adding parties, viz. the assignees of the insolvent, they must have time to answer, as they could not answer without answering the amendments; it was the same as if an original answer was required, and they must have six weeks. Besides, the 38th rule of the 16th Order clearly applies to amendments after answer, as the 14th rule of the same Order applies only to those before answer.

Cairns, in reply, contended that the defendants, not being required to answer the amendments, had only eight days, under the 38th rule of the 16th Order, not six weeks, under the 14th rule of the same Order, in which to answer, unless they took out a warrant for further time; and as they had not done so, and it was then the eighth day, after service of the order to amend, the motion was quite regular.

The MASTER of the ROLLS.—The question is, whether the motion can be granted. The plaintiff having, since the answers were taken (though, perhaps, I ought to take no notice of that), amended

under an order obtained for that purpose, the record is altered. It is not like a case in which an answer is put in, and then the bill is amended, and precaution is taken that the defendant is not subject to any process, but is left to himself to answer or not as he pleases. But in this case there is an amendment, and no intimation contained in it, but only a notice accompanying the service that the defendants were not required to answer the amendments. Well, this notice is given, and the answers are actually ready if there was a fitting opportunity of sending them, the messenger's oath being required; but they are not to the amended bill, but to the original bill; and yet they are asked to file them, or have a traversing note filed against them. My impression is, the answers, if tendered, would not be received, because they are to a bill not now on record; and, if so, the motion is mistaken, because the answers are to the original bill; and in that case to file a traversing note would be against all principle. I will not dispose of it until I inquire.

His lordship, in the course of the day, communicated with the clerk of the records and writs, who said he would receive the answers, notwithstanding the amendments, if no other answer had been put in. This, however, did not dispose of the motion; and the Court then decided on the application of the Orders, and was of opinion that the motion was premature and fruitless, the defendant having six weeks to answer, under the 14th rule of the 16th Order.

Thursday, Jan. 15, and Thursday, March 5.

Re SMITH.

Taxation—Constructive payment—Jurisdiction in cases of taxation—Special directions to taxing Master—His duty when no such directions.

In ascertaining what payments have been made on account of bills, questions of law and of fact may arise which may require to be determined even in the limited jurisdiction under which bills are taxed, but whatever the Court itself might feel to be its duty in such cases, the Master's duty is to confine himself, in a case where he has received no special directions from the Court, to simple payments plainly proved to have been made on account of the bills, and not to take upon himself to certify whether a certain alleged transaction, not amounting to actual payment, is or is not a transaction which a court of law or equity would, under the circumstances, adjudge to constitute a debt or payment.

An order being made, on the petition of a country solicitor, for the taxation of all his town agent's bills, the taxing Master taxed all the bills except those which had been previously taxed or paid, and as to these he called upon the town agent merely to prove his alleged disbursements. It was held that charges in a petition for leave to except to the report were without foundation, no specific error being alleged to have been made.

In this case two petitions were before the Court, one praying leave to except to the taxing Master's certificate, and the other that it should be confirmed. It appeared that Mr. George Smith was the town agent of Mr. James Husband, a country solicitor, from the year 1825 down to the close of 1840, during all which time there had been no taxation of his bills, nor any settlement of accounts in relation thereto. Mr. Husband having been, as he alleged, defrauded by Mr. Smith in a great variety of transactions, discontinued him as agent in the latter end of 1840, and employed Messrs. Bourdillon and Sons; and in May, 1841, presented a petition praying (see *Re Smith*, 4 Beav. 309.), for the delivery by Smith of papers, &c. of his further bill of costs, and his cash account during the years 1830, 1831, 1832, 1833, and 1834; and praying a reference to the Master to tax the bills from 1825 down to 1840 inclusive, to settle and adjust the cash account, and to take an account of all dealings and transactions between them; and that in the taxation the Master might be ordered to have regard to an agreement stated in the petition as to the employment of Smith as agent. The order made on this petition was, that the petitioner paying into Court the sum of 1,000*l.* and undertaking to pay what should appear to be due on taxation of his bills, Mr. Smith should deliver his further bill of costs, from the foot of the last bill delivered; and that the Master should tax the bills and ascertain the amount due thereon to Smith, "having regard to the sums of money which have been paid by or on behalf of Mr. Husband to Mr. Smith on account thereof." But the Court refused to entertain the question of the agreement, or to order an account of dealings, &c. for the purpose of adjusting the general cash account, on the ground that there was no jurisdiction to do so on a petition for taxation. The papers, &c. were also ordered to be delivered to the new agents. Accordingly, on the 19th November, 1841, Husband paid into Court the 1,000*l.* and on the 6th Dec. Smith delivered his further bill of costs, and on the 7th the deeds, papers, &c. and soon after the taxation commenced, and was not completed till July 1845, when the taxing Master certified that Smith's bills of costs, amounting to 9,176*l.* 6*s.* 8*d.* had been laid before him, and he had taxed them at 8,751*l.* 17*s.* 10*d.* and that, having regard to the payments on account thereof, he

found due to Smith, on the bills, the sum of 2,632*l.* 5*s.* 3*d.* In pursuance of this finding, Smith, on the 18th of July, 1845, presented a petition for payment of what was due, and of costs in the various proceedings, and Husband afterwards presented his petition for liberty to except to the certificate, and the two petitions now came on to be heard, Husband's petition being opened first. The petition complained of frauds being committed by Smith, alleging that he had charges in his bills for disbursements never made for counsel's fees, &c. and that in the course of taxation many of these were paid, and vouchers produced which would not otherwise have been paid; and that, after all, ninety-five items amounting to 107*l.* 17*s.* 10*d.* for counsel's fees were disallowed, and 222 items, amounting to 173*l.* 9*s.* 10*d.* overcharges, were reduced or disallowed; that all the bills had not been taxed, but that about twenty had been allowed on the mere voucher of Smith of the several sums charged therein, on the ground that these bills had been paid to Husband by his clients. It appeared that they were in bankruptcy, and had been taxed by the proper officer. But the principal objection arose out of the payments alleged to have been made in respect of the bills, that being the only extent to which the Taxing Master was directed to go into the cash account. It appeared that the cash account was not taken into consideration till January, 1844, and that Mr. Smith had been allowed all his cash disbursements, whether in relation to professional business or not, but that two particular items had been disallowed to Husband amounting to 500*l.* each; and the disallowance of these formed the principal ground of complaint. It appeared that in August, 1835, Husband and one Malachy were at the office of Smith, and Malachy being in possession of a large number of shares in the Wheal Brothers Mine, sold Smith twenty-five of them for 500*l.* which he requested Husband (as he alleged) to pay, and he would credit the same against the bills of costs, and Husband accordingly agreed to do so. At the same time, also, Smith bought twenty-five shares of Husband at 500*l.* and agreed, as was alleged, to give him credit for 500*l.* part thereof against his bills of costs, the odd 50*l.* being paid by a cheque, which stated the circumstances under which it was given. Smith also, as was alleged, made at the time an entry of the sums in his cash book, to the credit of Husband, and gave a receipt for 1,000*l.* which was produced to the Master. When the matter came before the Master, he thought the evidence insufficient as to the payment of the 500*l.* to Malachy, and as to the other 500*l.* he thought the consideration of it did not come within the terms of the order of reference, and he disallowed them both. The entries in the book of Smith were not in evidence; and as he would not produce them, the Master refused to compel him. The points then were, whether Mr. Husband should be allowed in account the two sums of 500*l.* and whether the Master was right in refusing to tax the twenty bills already mentioned.

Turner (with him Cole), for the petitioner, cited *Oakeley v. Pasheller* (10 Bligh, 548); *Thompson v. Percival* (5 B. & Ad. 925), to show that the credit given by Smith amounted to payment to him.

Kindersley and Daniel, contra.

March 5.—The MASTER of the ROLLS stated the facts, and proceeded:—The first observation to be made on the case is this, that the sums of 500*l.* each formed part of the petitioner's complaint on his first petition, in which it was stated that Smith omitted to credit him in account with a sum of 1,000*l.* for which he ought to have been credited in 1835, and for which the petitioner held Smith's receipt in his own hand, dated 5th August, 1835. That petition contained no allegation of an agreement by Smith to give credit for this sum of 1,000*l.* but only asked for relief on the general account, which I refused; and the order was made that the Master should have regard only to such sums as were paid on account of the bills. To meet the terms of the order, this petition states an entry in a book, in the presence of the petitioner and Malachy, crediting the petitioner with 1,000*l.* as against the bills of costs, but the affidavit of Husband omits the words "as against," &c. There is, however, both averment and alleged agreement, supported by affidavit, that Smith did agree that the two sums of 500*l.* each should be credited against the bills. Smith insists that the transaction as to the shares was fraudulent and void, and that the sums alleged to be paid to Malachy were, in fact, never paid, and that there was no such agreement as that alleged, and that the Master was right in not allowing the sums. Notwithstanding the importance of keeping the jurisdiction in cases of this kind within its proper limits, and the propriety of directing the Master to have regard only to sums paid on account of the bills, yet it is not improbable questions may arise as to what payments have been so made, both of law and of fact, which may require to be determined even in this jurisdiction; and when they should so arise, it would be right to settle them according to law and justice. But when the Master has received no special directions from the Court, it is his duty to confine himself to simple payments plainly proved to have been made on account of the bills. Upon a conflict of evidence,

he may have to certify that a payment has been made, but he ought not to take upon himself to say whether a particular transaction, not amounting to actual payment, is such a transaction as either a court of law or of equity would adjudge to constitute a debt or payment. And in this case, considering the form and manner in which the plaintiff's claims to this and the two sums of 500*l.* each were discussed and disposed of on the former petition, and the absence of any explanation of the circumstances under which he seeks to establish his claim on a different footing; considering the form of the order, directing regard only to be had to the sums paid on account of the bills, and the absence of special directions as to the sums claimed in the petition; and further, having regard to the claim of the 500*l.* alleged to have been paid, and the 500*l.* which it is alleged ought to be deemed to have been paid, I am of opinion the Master has properly disallowed these sums, and that in respect of them there is no ground for giving the petitioner leave to except to the report. I am further of opinion that the charges made in this petition, that the Master has not fully taxed all the bills which he was ordered to tax, is without any just foundation. All the bills not previously taxed or paid were fully taxed; as to the others, Mr. Smith was called upon to prove his alleged disbursements, and I do not find that the petition contains any allegations of any specific error. On the whole, therefore, I am of opinion that the petition must be dismissed, with costs.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Saturday, March 7.

SCOTT v. BROADWOOD.

Pleading—Statute of Limitations—Bill of discovery. To a bill of discovery in aid of an action of ejectment, the Court held a plea of the Statute of Limitations to be good.

This was a bill of discovery filed in aid of an action of ejectment brought by the plaintiff, Joseph Scott, for the recovery of a brewery and houses at Westminster. The bill stated the claim of the plaintiff as heir-at-law to Sir Andrew Chadwick, who was seised of the property in question, and died in March 1768; and it was alleged that the property was, at the time of Sir Andrew Chadwick's death, held of him on leases which expired in June 1826. To this bill the defendant, by leave, filed two pleas as to a portion of the property; first, of a fine levied by Sarah Law, as heiress-at-law of Sir A. Chadwick, and — Taylor, in Hilary Term, 20 Geo. 3; and, secondly, of the Statute of Limitations. The first plea contained the usual averments in a plea of fine and non-claim, and was accompanied by an answer denying that the property was comprised in any of the leases alleged in the bill. The second plea was of the 3 & 4 Wm. 4, c. 27, and contained the usual averments in support of it.

Teed and Schomberg, in support of the plea, cited *Gast v. Osbaldiston* (1 Russ. 158); *Cholmondeley v. Clinton* (Turn. & Russ. 107); *Macgregor v. East-India Company* (2 Sim. 349), and *Chadwick v. Broadwood* (3 Bea. 308 and 530).

Roll and Welford, for the bill, contended that the plea of a legal bar to a bill of discovery was not good (*Hindman v. Taylor*, 3 Bro. C. C. 483; *Mendizabel v. Machado*, 1 Sim. 68; *Robertson v. Lubbock*, 4 Sim. 173; *Bailey v. Sibbald*, 15 Ves. 185; and *Leigh v. Leigh*, 1 Sim. 349); and that the statute not having been pleaded in the action of ejectment, it could not be pleaded to this bill. (*Macgregor v. East-India Company*, 2 Sim. 349.)

The VICE-CHANCELLOR said that he could conceive cases in which to a bill of discovery in aid of an action at law, the Statute of Limitations would not be a good plea. He was, however, of opinion that the present bill was so framed, that the second plea was a good plea to the extent it went, and must be allowed with costs. It was not, therefore, necessary to give any opinion as to the first plea, subject to the hearing of the defendant's counsel upon the question of costs.

The second plea was allowed, and no order was made as to the first.

Wednesday, March 25.

ATTORNEY-GENERAL v. GARDNER.

Practice—Orders of August 1841.

Jurisdiction or discretionary power of the Court, by the effect of the 8 & 9 Vict. c. 105, to relax the terms of the Orders of August 1841.

Russell and R. Palmer, on behalf of the plaintiffs in this case, moved that they might be at liberty to set down the cause for argument upon the objections taken by the defendants for want of parties, notwithstanding the expiration of fourteen days (allowed by the 39th Order of August 1841) from the filing of the respective answers. They cited *Medhurst v. Allison* (4 Hare, 479).

Roll, for the defendants, contended that the Orders of August 1841 had acquired the force and effect of an Act of Parliament, and could only be varied or rescinded by two or more of the judges of the Court,

pursuant to the 4 Vict. c. 94, and 4 & 5 Vict. c. 52. (*Coburn v. Gandy*, 1 Phil. 513.) The difficulty in the present case had not been removed by the 8 & 9 Vict. c. 105, which was relied upon in *Medhurst v. Allison*.

The VICE-CHANCELLOR.—The case of *Medhurst v. Allison* is an authority for a convenient and reasonable construction of an Act of Parliament, and, without expressing any opinion of my own, I shall follow it.

Roll applied for his costs.

The VICE-CHANCELLOR said, that the defendants might elect whether they would then take 4*l.* or let the costs be reserved.

VICE-CHANCELLOR WIGRAM'S COURT.

Friday, March 20.

DELMAR v. ROGERS.

Cankrein moved, under the 24th Order of August 1831, for leave to enter a memorandum of service of copy of the bill in this cause upon one of the defendants, and supported the application by an affidavit of a copy of the bill having been served, and stating the time when the service was made, as required by the above Order.

The VICE-CHANCELLOR.—Does the affidavit state that the bill prays no direct relief against this defendant, and that the copy served was a correct copy of the bill?

Cankrein.—It does not.

The VICE-CHANCELLOR.—Unless you can assure me of the truth of those facts of your own knowledge, from having drawn the pleadings, the motion must stand over to have the affidavit amended to satisfy the Court upon these particulars.

The affidavit was amended, and the rule was then made.

HAMMOND v. SMITH.

Will—Construction—Vested interest.

Where a will admits of a double construction in consequence of events which subsequently happened, the Court will give effect to that construction which will nearest carry out what was apparently the intention of the testator, had the event which raised the construction not occurred.

John Hill, by his will, dated in October 1810, bequeathed the interest of 800*l.* Consols to *Hester Fox*, for life, and after her decease, to his cousin, *Robert Smith*, for his life, and after their decease bequeathed as follows:—"The said capital, or principal sum of all such money in the Three per Cent. Consols, that I may be possessed of or entitled to at the time of my decease, to the two said children of my said cousin, namely, *Robert Smith* and *Ann Smith*, equal share and share alike, if both of them be living, or the whole to the survivor on his or her attaining the age of twenty-one years; and the reversionary interest of the said children shall become a vested interest, and transmissible interest in them respectively at the age of twenty-one years." The testator died in 1814. *Robert Smith*, the younger, died in the lifetime of the tenants for life of the fund, having attained twenty-one years of age, and assigned his reversionary interest to the plaintiff; and the question was, whether *Robert Smith* took a vested or contingent interest in the fund under the will.

Romilly and Robtson, for the plaintiff, cited *Perry v. Wood* (3 Vesey, jun. 204), *Brown v. Biggs* (7 Vesey, jun. 279), *Moral v. Sutton* (1 Phillips, 533).

Walker, for the defendant *Ann Smith*, who claimed the whole fund by survivorship, the last tenant for life having died, cited *Cripps v. Walcott* (4 Mad. 11), *Faber v. Beverley* (1 Collyer, 108).

The VICE-CHANCELLOR.—The words "transmissible interest," in the second clause in this will, must weigh strongly in the decision of this case for the plaintiff; the words used in the first clause are more flexible, and cannot be construed as shewing an intention in the testator to deprive one of those parties who should attain twenty-one years of age, marry, and have children; but in case he died in the lifetime of the tenants for life, his children should have nothing. To construe the will in that manner, it must follow, that in case both *Robert* and *Ann* had died in the lifetime of the tenant for life, there would have been an intestacy. I am strongly of opinion for the prior construction, and that these children took a vested interest on attaining twenty-one years of age, and therefore give judgment in favour of the plaintiff, and order the costs to be costs in the cause.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Tuesday, April 21.

DOE dem. ANGEL v. ANGEL.

Ejectment—Evidence—Bill and answer in Chancery—Misdirection.

In an action of ejectment, the sole question in the

cause being whether one T. A. of Evesham, in Worcestershire, from whom the lessor of the plaintiff proved his descent, was the same person with one T. A. carrying on business in London as a haberdasher in partnership with his brother twelve years before; a bill in Chancery, filed by that brother alone as a trader, was offered in evidence to show the dissolution of the partnership; and the answer thereto, and another bill and answer in Chancery, in a suit in which a member of the same family on defendant, were offered as declarations with regard to the condition in life of that family. Held, inadmissible.

Ejectment, tried at the last Surrey Assizes before Lord Denman, C.J. when a verdict was found for the defendant. The lessor of the plaintiff claimed the property in question under a will, whereby it was devised to the male heir of Wm. Angel, the first purchaser of Crowhurst, and he claimed as a descendant from the youngest son of John, the eldest son of Wm. Angel, the first purchaser of Crowhurst. The issue of the plaintiff at the trial satisfactorily traced the family of the testator at Crowhurst down to Thomas, the sixth son of John Angel, who held the office of caterer or purveyor to the court until his death in 1670; and the question in the cause was whether the lessor of the plaintiff was the male heir of the Thomas. In support of his claim, the lessor of the plaintiff proved his descent from a Thomas Angel, who, in 1682, was married at Evesham, in the county of Worcester, and who, in the marriage register, was described as of Cleeve Priors, in the county of Worcester, a tailor, and about the same age as the Thomas Angel of Crowhurst. The cause turned entirely upon the identity of the Thomas Angel, so married at Evesham, with the Thomas Angel, descended from the testator; and in order to prove that they were the same person, a copy of an entry in the register of the parish of Evesham was produced, but the register itself was not produced. The entry was of the burial of that Thomas Angel, and contained, in addition to the usual entry, these words, "descended from Crowhurst." The witness who produced the copy of the entry was cross-examined as to the state of the original register, and stated that it was discoloured and crumpled. The counsel for the defendant, in his address to the jury, imputed fraud to the entry, and commented upon the non-production of the original register, which he stated to have been in court; and the learned judge, in summing up the case, said that the entry appeared open to a good deal of suspicion; and that though he imputed no fraud to the present lessor of the plaintiff, they could not doubt that somebody had dealt with the register. It was proved that, in 1684 and 1685, Thomas Angel, the sixth son of John, had been in partnership with his brother Justinian as haberdashers; and in order to show that that partnership had been dissolved, a bill in Chancery, filed in 1677 by Justinian alone, described as a haberdasher, against one Townroe, and his answer, were offered in evidence, and rejected as being the declarations of other persons, not on a question of pedigree. Upon the same ground were rejected the bill (filed 1701), and the answer thereto, in a suit of Angel v. Smith, offered for the purpose of shewing that Justinian and his family at that time had been in comparative poverty.

Shee, Serjt. now moved for a rule to show cause why the verdict should not be set aside, and a new trial granted, on the grounds of the improper rejection of evidence and misdirection, and that the verdict was against evidence. First, the bill filed by Justinian is admissible, and evidence of the fact that at that time he was suing alone as a trader; and the declaration upon oath of Townroe, the defendant, was admissible to shew the condition of the parties at that time; being made without any interest to misrepresent, and on a matter analogous to a question of pedigree. The same observation applies to the bill and answer in the second suit of Angel v. Smith; and although these documents do not come precisely within the rule upon which such declarations are usually admitted, still they do fall within the broad principle upon which that rule rests. That principle is, that the best evidence which can be obtained is to be admitted. [COLERIDGE, J.—Then the letter of a deceased witness, giving an account of a transaction, would be admissible.] But this is so closely connected with a question of pedigree, that the rules of evidence applicable to pedigree cases ought to prevail in this; and in pedigree cases nearly all the evidence is hearsay,—inscriptions on monuments, entries in Bibles, and so forth; and the reason given by Gilbert (on Evid. 212) is, that no better evidence can be obtained. [COLERIDGE, J.—The evidence in pedigree cases is the exception; you are making it the rule. Besides, in pedigree cases evidence of reputation is received, although better evidence is also given.] In *Gleadow v. Atkin* (1 Cr. & M. 424), Bayley, J. rests these cases upon the principle above mentioned. [He also referred to *R. v. Eriih* (8 East, 542); *Higham v. Ridgway* (10 East, 120); *Warren v. Grenville* (2 Stra. 1129; 2 Selw. N. P. 754); *Herbert v. Tuckal* (T. Raym. 84); *Lloyd v. Wait* (Turn. & Phill. 65); *Monckton v. Attorney-*

General (3 Russ. & M. 156.)] Secondly, it was a misdirection on the part of the learned judge to tell the jury that there could be no doubt that the register had been dealt with; the presumption being that the entry was genuine, until impeached by evidence; and, thirdly, the verdict was against the evidence, because there was no evidence given to impugn the authenticity of that entry; and taking it to be genuine, the plaintiff's case was clearly made out.

PATTERSON, J.—I think my lord was quite right in the rejection of this evidence. First, a bill in Chancery was offered, to prove that a certain partnership was dissolved; but how could it be evidence of that fact? It is well settled that a bill in Chancery is no evidence of the facts stated in it; and the reason is obvious; it is the mere statement of counsel. Then the answers are the declarations of strangers, which would not be admissible on a question of pedigree, which this was not; for the only question in the case was one of identity. I hardly understand the ground of misdirection. It might be a prudent course on the part of the counsel not to put in the original register; but it was certainly a course open to observation, considering the extraordinary nature of the entry. Lastly, as to the verdict being against the evidence, it was entirely a question for the jury. On the one hand, certainly, there were strong coincidences of time and age; but on the other hand there were matters calculated to excite suspicion; and all having been left to the jury, I think we should not be justified in disturbing their verdict.

WILLIAMS, J.—The argument of the learned counsel on the point of evidence amounts to this, that because there is a necessity for the evidence, therefore it ought to be given. Evidence of reputation a pedigree cases is admitted as an exception to the general rules of evidence, as ancient as the rule itself. It would be very dangerous if the commentary of the learned judge upon a case, not any misstatement of it, should be considered a ground for a new trial. As to the last point, I agree that the non-production of the original register, and the very unusual nature of the entry itself, meeting the very difficulty of the case, were circumstances of suspicion, which might properly weigh with the jury; and I must add that it is a remarkable fact that no intercourse should have been shown between the two supposed branches of this same family; that the poor should have shown no appetite for the rich during forty-five years.

COLERIDGE, J.—If the entry were genuine, it would be conclusive of the case; but I cannot agree that it is taken to be genuine until the contrary was proved; there being circumstances to excite suspicion, I think it was quite open to the counsel for the defendant, or the learned judge, to comment upon them. As to the rejection of evidence, it is admitted that the evidence offered in this case did not fall within the general rule; because this was not strictly a question of pedigree; but it is contended that it comes within a principle, laid down much too broadly, that the best evidence which can be attained may always be given. The only doubt I have at all entertained was, whether the bill might not be received as evidence of the fact that the plaintiff had used as a trader and alone; but, upon consideration, I think that that would be to receive the contents of a bill as evidence of a fact; which would certainly be wrong.

LORD DENMAN, C. J.—I entirely agree with the rest of the Court as to the rejection of this evidence; and as to the point of misdirection, I doubt whether I used, without qualification, the words ascribed to me. I cannot agree with the learned counsel that every presumption was to be made in favour of the entry. That might be the case if it were an ordinary entry; but if the clergyman himself chooses to step out of his way and add to an entry the statement of a fact quite out of his knowledge, that alone would be sufficient to excite great suspicion against it. But here there were other circumstances. The disappearance of the family from Crowhurst was at the root of the case; but how can we tell that they did disappear, for from the register of that parish, 16 pages, from 1680 to 1701, had been cut out. And, further, there was a total absence of any evidence of intercourse or connection between the two alleged branches of the family from 1784 to 1837. In my opinion, the present state of the case is quite satisfactory; and ought to be so to all parties concerned. The case is perfectly dead and lifeless; it is not possible that any reasonable mind can now suppose that the lessor of William Angel, the first purchaser of Crowhurst.

Rule refused.

ASSER v. WALKER.

Contract for sale of shares through a broker—Principal and agent.

A party who instructed a broker to buy shares for him, held liable to the party from whom the broker bought the shares, though the several contracts were made with the broker by name; and though, when applied to for his principal, he gave another name, as well as that of the defendant.

Assumpsit on an agreement to buy and accept ten

shares in the Oxford, Worcester, and Wolverhampton Railway. Breach: the refusal to accept. Pleas: 1st, the general issue; 2nd, that the plaintiff was not ready and willing to transfer, &c. within a reasonable time; 3rd, a denial of notice; tried before Coleridge, J. at York, when a verdict was found for the plaintiff. It appeared that the defendant had instructed Mr. Barr, a sharebroker at Leeds, "to buy for him" the shares in question; but that the contract between them was in these terms:—"16th Oct. Bought of John Barr ten shares, &c." and "sold to Mr. Walker, &c. at so much per share, payable on the 16th day of Nov. &c." On the same 16th of Oct. Barr, acting under similar instructions, bought for one Hay ten shares in the same railway on the same terms. There was a similar contract between the plaintiff, who was also a sharebroker at Leeds, for the sale to Barr of certain shares in the same railway. Barr did not disclose the name of the plaintiff, and the question was, whether there was any evidence to fix the defendant with the liability; and whether Barr was not the principal. When the period for transfer arrived, an application was made by the plaintiff to Barr for his principal; and he referred the applicant to Hay as well as the defendant, saying that he might go to either of them; and in the first instance the plaintiff applied to Hay; but evidence was given that it was the well-known practice of brokers during the currency of an agreement to deliver shares by a certain time, to enter into several contracts for the sale of them in the meantime, and not to disclose the name of their principal until the close of the transaction.

FALCON, Q. C. now moved for a rule to shew cause why the verdict should not be set aside, and a nonsuit entered, or for a new trial; first, because there was no evidence to fix the defendant; and, secondly, on the ground of misdirection. Barr was clearly the principal; he was so treated in the written contracts; there was no privity between the plaintiff and defendant, as is clear from the fact, that when the plaintiff applied to Barr for his principal, the answer was: "You may take your choice between the defendant and another person." The learned judge, therefore, ought to have told the jury that there was no evidence against the defendant.

By the COURT.—It was a matter proper for the decision of the jury upon the evidence.

Rule refused.

Thursday, April 23.

TRIX AND WIFE v. THORN.

Frivolous demurrer—Replication in action on bond.

M. Smith moved for a rule nisi to rescind an order of Cresswell, J. setting aside the demurrer as frivolous. The action was on a bond given to the wife, *dam sola*, conditioned for the payment of money by a day certain, with a general breach. Plea: setting out the bond on oyer, and alleging performance generally. Replication, assigning breaches; and special demurrer thereto, on the grounds, first, that it did not appear that the cause of action accrued before the commencement of the action, all the dates being under a *vide licet*: as to which he cited *Parkinson v. Whitehead* (2 Man. & G. 329); *Skinner v. Lambert* (4 M. & G. 477); *Tucker v. Webster* (10 M. & W. 371); secondly, that the replication was bad for not concluding to the country: citing *Roakes v. Manser* (1 C. B. 531); *Bush v. Leake* (3 Doug. 255); and 1 Wm. Saund. 108, n.; thirdly, that the replication was double, in assigning a breach of the condition to pay the principal together with the interest, the principal and interest being separate debts: citing *Dickenson v. Harrison* (4 Price, 282.)

Rule nisi.

STEWART v. WILKINSON.

Trover—Colourable sale between plaintiff and defendant.

In an action of trover for a heifer, upon a plea of not possessed, an apparent sale and transfer of the heifer from defendant to plaintiff having been proved,—Held, that the defendant was at liberty to shew that that sale and transfer was merely colourable, and that the jury having so found, the verdict could not be disturbed.

Trover for a heifer. Pleas: 1st, not guilty, 2nd, not possessed. At the trial it appeared that the heifer originally belonged to the defendant, but that an agreement had been entered into, which the defendant contended was merely colourable, with a view to its agistment on some common lands, for the sale of the heifer to the plaintiff, and an actual transfer of the heifer, and a payment of a sum of money as the price, were, in fact, made. The jury, however, found that the sale was merely colourable, and gave a verdict for the defendant. A rule nisi having been obtained to set aside that verdict, and enter a verdict for the plaintiff, on the plea of not possessed, or for a new trial,

Chilton, Q. C. and E. V. Williams now shewed cause, and contended that, though an agreement, fraudulent and colourable, will not operate against third parties, yet that a party to it could not avail himself of his own wrong, as a defence to an action. (*Doe v. Roberts*, 2 B. and Ald. 367; *Brackenbury v. Brackenbury*, 2 Jacob and W. 391; *Montefiori v. Montefiori*, W. Black, 363; *Curtis v. Perry*, 6 Ves. 739; *Steele*

v. Brown, 1 Taunt. 381; *Harmer v. Westmacott*, 6 Sim. 284.)

Welsby, contra, was not called upon.

LORD DENMAN, C. J.—This is exactly the same case as if the parties had said, "we will go before witnesses, and pretend to buy and sell, but will really not do so." Then if either party repents, and can get peaceable possession of the thing given up, he has a right to retain it. The only case at all at variance with this view is that of *Montefiori v. Montefiori*; where Lord Mansfield, C. J. said that "no man shall set up his own iniquity as a defence any more than as a cause of action;" but in that case, the party who had made the fraudulent representation was seeking to enforce a claim founded upon it; and I think that the authority must be limited to such cases.

PATTERSON, J.—The cases cited of colourable qualifications to kill game, &c. are distinguishable in this respect, that they are carried out by means of conveyances, which having a well-known legal operation, cannot be rendered so merely formal as the transaction in the present case.

The other judges concurring, Rule absolute.

Practice.

LORD DENMAN, C. J. at the commencement of the argument in the above case, suggested a *stet processus*, which being declined, on the part of the plaintiff, his lordship added, that parties must fully understand that when they sought to set aside verdicts, they did so at the risk of paying costs, even though the verdict should be set aside. The Court reserved to itself the right of considering the circumstances of each case, and did not by any means treat it as a matter of course that if the verdict was set aside, the party succeeding would be entitled to his costs.

Welsby, though the rule had been made absolute, consented to a *stet processus*.

Friday, April 24.

CHRISTIE AND OTHERS (Assignees) v. PICKFORD. Trover by assignees of bankrupt. Goods in the order and disposition of the bankrupt.

Trover for thirty chests of soap, by the plaintiffs, as assignees of a bankrupt.

Pleas: first, not guilty; second, not possessed; third, that plaintiffs were not assignees. At the trial before Tindal, C. J., at the last Warwick Assizes the last issue was found for the plaintiffs; the two former for the defendant. It appeared that the bankrupt, before committing an act of bankruptcy, by leaving the country, had ordered Messrs. Pickford, the defendants, to deliver a large quantity of soap to the British Alkali Company; but that a portion remained undelivered when he left; that immediately after he had left the country, one of the plaintiffs, a principal creditor, requested Messrs. Pickford to take possession of the remaining casks; and gave them afterwards a written notice that they were his property, and directing them to hold them to his use. Notice of the intention to open a fiat was also served upon them; but the defendants delivered the soap to the British Alkali Company, who were substantially the defendants in this action. There was some conflicting evidence as to the question, upon whose behalf the defendants consented to hold the goods after the bankruptcy; and the learned judge left that question to the jury.

HUMFREY, Q. C., on Saturday, April 18, moved for a new trial, on the ground of misdirection, contending that the goods in question were clearly in the order and disposition of the bankrupt, at the time of the bankruptcy, with the consent of the true owner; and that that was a pure question of law, upon which the learned judge ought to have expressly directed the jury.

Cur. adv. vult.

LORD DENMAN, C. J., now stated, that they had consulted the Lord Chief Justice, and found that he had left the case to the jury precisely as counsel wished. There would therefore be no rule.

Rule refused.

Friday, April 24.

OLIVERSON v. BRIGHTMAN.

BOLD v. ROTTERHAM.

Insurance.

A policy of insurance contained clauses permitting the ship to go to any of certain ports mentioned, Canton being one, with liberty to ship, transship, and re-ship as should be necessary, and continuing the risk until the ship reached the final port of destination. The ship arrived at Hongkong when hostilities were going on between the Chinese and the English; and the cargo having been put on board a ship, not a carrying ship, the loss ensued.

Held, that this was a risk insured against. But, *secus*, where the policy did not contain the clause as to shipment, transshipment, and the acts done shewed that the removal of the ports was not a mere temporary and necessary removal, but intended to be a final removal from the ship, in which they had arrived.

These were two special cases as to the liability of the underwriters upon two policies upon goods in the Penang. The question in each was, whether the goods had reached their final destination, according to the terms of the policy. The policy in the first allowed the vessel to go to any one of numerous ports mentioned (Canton and Hongkong being two of them),

with leave to ship, re-ship, and transship the goods, the risk to continue until the goods reached the final port of destination. The policy in the second case did not contain this clause as to re-shipment and transshipment. It appeared, upon the facts stated, that, on the arrival of the *Penang* at Hongkong, there were hostilities going on between China and the British forces, but no war had been actually proclaimed by the Queen; that in consequence of some repairs being needed by the *Penang*, the goods were placed on board a species of receiving vessel, and, whilst there, the loss ensued. It appeared, also, that this vessel had been prepared prior to the arrival of the *Penang*, and that the agents to whom the *Penang* had been consigned had advertised her as to sail almost immediately after her arrival.

The *Solicitor-General* (with whom was *Crompton*), on behalf of the underwriters in the first case, submitted that the facts shewed that the final port of destination had been reached; for that by reason of the war Canton could not be reached, so that the risk was at an end, and the voyage having been put an end to by a peril not insured against (citing 12 East, 283; *Phillips on Insurance*, American edition). In the second case they were not called on.

Martin, Q. C. (with whom was *Tomlinson*), contra, contended that there was no war, in the sense which would have rendered it illegal for the *Penang* to have gone to Canton, and therefore the case cited was no authority. (*Hulton v. Evans*, 4 M. & G.) In the second case it was contended, that, notwithstanding the absence of the trans-shipment clause, the goods had not reached the port of final destination; and that, whatever the intention of the consignees might have been, no actual deviation from the terms of the policy had taken place.

Lord DENMAN, C.J.—I have no doubt in either of these cases. In the first, I am of opinion that the policy was framed exactly to meet the circumstances which took place. There was great uncertainty as to the relation between England and China, and therefore permission was given to go to any of the numerous ports mentioned. Then it expressly appears, that although it would have been inexpedient to have gone on to Canton, it would not have been illegal. No war had been actually proclaimed. The goods might also have been reshipped and sent elsewhere, as, for instance, to Singapore. The underwriters are therefore liable. In the other case, it is equally clear that they are not liable. The policy contained no clause allowing the trans-shipment, and the goods were taken out of the *Penang*, and under circumstances which go far to shew that the agents had made Hongkong the place of final destination; but, at any rate, it was a deviation not provided for in the insurance.

Judgment for plaintiff in the first case, and for the defendant in the second.

SCOTT V. HARTLEY.

Covenant—Quiet possession.

The eviction of the sub-lessee, for rent due from the lessor to the superior landlord, is a breach of the lessee's covenant for quiet possession, against all claiming under, by, or through him.

Covenant, demurrer to plea, which, however, being admitted to be bad, the question was the goodness of the declaration.

Pearcock in support of the declaration.—This is covenant for breach of the covenant for quiet possession. It states the covenant to be, that the plaintiff should quietly have, hold, and enjoy, all and singular the demised premises, free from all eviction or claim from any claiming through, by, or under the defendant. The breach was, that the defendant did not suffer and permit the plaintiff to hold, &c. without any let or hindrance from, &c.; but, on the contrary, that after the making of the covenant, and during the demise, and whilst, &c. a distress was made in and upon the plaintiff's goods, then being in and upon the said premises, for and on behalf of a certain person, to wit, &c. for the sum of 60l., in respect of rent before then due to him, as superior landlord, &c. It is said that this is a paramount title, and not a claim under the defendant, but this is not so. It is in respect of a contract between the defendant and the superior landlord. Then it is objected, that it is not sufficiently averred that this rent was due, or how it was due. But this, although possibly a ground of special demurrer, is good after pleading over and upon general demurrer.

Flood, contra, cited *Woodhouse v. Jenkins* (9 B. 431), *Ireland v. Birchell* (2 B. N. C. 90), *Spencer v. Marriott* (1 B. & C. 457), *Stanley v. Hayes* (2 G. & D. 411), *Noble v. King* (1 H. Bl. 34), as to the first point. He also argued that the statement in the breach was insufficient, for not shewing when and how the rent was due.

By the COURT.—It is clear that this is a breach of the covenant for quiet possession. The superior landlord claims the rent through and under the contract with his tenant, the defendant, and upon general demurrer the breach is certainly sufficient.

Judgment for plaintiff.

TENNANT V. CRASTELL.

The 17 Geo. 2, c. 3, s. 2, which imposes a penalty

upon overseers omitting to furnish a copy of a rate forthwith after demand, is not repealed by 6 & 7 Wm. 4, c. 96.

Greg moved (April 20), in arrest of judgment in this action, in which the plaintiff had sued the defendant, as overseer, for a penalty under 17 Geo. 2, c. 3, s. 2, for not delivering copy of a rate forthwith. The jury had found that four days was not "forthwith," but it appeared to be open to great doubt whether the 17 Geo. 2, c. 3, was not incidentally repealed by 6 & 7 Wm. 4, c. 96, the Parochial Assessment Act. The 17 Geo. 2 was passed when the duties of the overseers were very much less onerous than now. A rate then was usually made in four columns, it was now made in sixteen. Under the 6 & 7 Wm. 4, c. 96, any one may inspect the rate. [*WIGHTMAN, J.*—Are not the acts different? One gives a penalty for refusing to deliver a copy, the other for refusing inspection.] The whole subject-matter has been altered, and publicity, the object of the first Act is now obtained in another way. (*Reg. v. St. Edmunds*, 2 Q.B. 72; *Reg. v. Suffolk*, 2 Q.B. 85, were cited.) *Cur. adv. vult.*

On a subsequent day (April 25) the Court refused the rule, briefly expressing their opinion that the 17 Geo. 2 was not repealed. *Rule refused.*

Saturday, April 25.

SIR F. ROE V. THE MARQUIS OF WESTMEATH.

Obstruction of ancient lights—Misdirection.

In an action for obstructing ancient lights, in which it appeared that the building causing the obstruction was separated from the windows obstructed by a public street in the metropolis, the learned judge left it to the jury to say whether there had been any substantial diminution of light, observing that whether the intervention of a public street would be a good ground of defence was a question of law:—Held, no misdirection.

This was an action on the case to recover damages for an obstruction of the plaintiff's ancient lights, tried before Mr. Justice Wightman at the last sittings at Westminster, when it appeared that the plaintiff and the wife of the defendant were possessed of houses separated at their sides by a small street called White Horse-street, the front of each house being in Piccadilly. At the rear of Lady Westmeath's house the buildings were originally low, and she wishing to increase the accommodation in her house, built some additional rooms, which reached from thirty to forty feet above the street. These additional rooms had the effect of darkening the rooms at the back of Sir Frederick Roe's house. He therefore brought the present action. The learned judge told the jury that whether the intervention of a street between the two buildings amounted to a satisfactory excuse for the defendant's building, was a question of law, and left to them only the question whether the light had been substantially diminished. The jury therefore found, on the fact of the obstruction of light, a verdict for the plaintiff.

Sir F. Kelly, S.G. on Saturday, April 18, moved for a rule nisi, for a nonsuit, or a new trial, on the ground of misdirection. This is the first case of an action for obstructing lights on the opposite side of a public street in a great town; and it will be productive of great inconvenience if such actions can be maintained. The principle of law is undoubtedly, that no man is to use his own property to the injury of his neighbour; but that must be qualified by the conflicting principle, that every one may make a reasonable use of his own property in a convenient place; and in a crowded city it is unreasonable to complain of an erection on the opposite side of a public street. But even if there is no abstract principle of law, prohibiting an action under these circumstances, still it is a matter of great importance to be considered by the jury; and was in this case improperly withdrawn from their consideration by the learned judge. In a recent case of *Rich v. Boston*, tried on the 6th Feb. Erie J. in summing up a similar case, told the jury, "that the law was clear, that no man had a right to use his property to the injury of his neighbour; but that it was equally clear that any man might make a reasonable use of his own property in a convenient place, though it were to the detriment of his neighbour; and that though the value of the plaintiff's premises was clearly lowered, still no action could be maintained if the injury proceeded from a reasonable use by the defendant of his own property in a convenient place;" referring apparently to *Com. Dig.* *Cur. adv. vult.*

Lord DENMAN, C.J., now stated, that Mr. Justice Erie's ruling in the case referred to had been misapprehended, that that learned judge had left the case in the ordinary way, and had not in any way afforded an authority for the present application. The rule must therefore be refused. *Rule refused.*

HILL V. HAYWOOD.

Money lent—Particulars—Evidence.

In an action for money lent, evidence was given of an admission by the defendant that he had had the money, accompanied with a statement that it had been "allowed in the rent." The rent was due from the plaintiff's brother to the defendant's mother-in-law. The plaintiff then tendered the mother-in-law's

rent-book, produced by the defendant in obedience to a notice, in order to shew that no allowance had been made in the rent. Held, admissible evidence for that purpose.

Assumpsit for money lent, money paid, and on an account stated.

The bill of particulars contained various items, all for money lent, and concluded thus: "Above are the particulars of the plaintiff's demand, for the recovery whereof she will avail herself of all or any of the counts of the declaration." At the trial it appeared that the plaintiff lived with her brother in a house, which he rented of the defendant's mother-in-law; that the plaintiff's attorney went to the house of the mother-in-law, where defendant also lived, and made a demand of the money sought to be recovered; that the defendant denied the debt, and thereupon the plaintiff's attorney read several items from a paper, one being an item of 40l.; that the defendant having said, "I don't owe you 40l." the mother-in-law interposed, and said, "I agree to the 40l. but it was allowed in the rent;" and the defendant added, "If any thing has been advanced to me, it has been allowed in the rent, as the book will shew." Notice to produce that book had been given, and it was produced accordingly. It appeared to be a book containing entries as to the rents belonging to the mother-in-law, but some of them in the defendant's handwriting; and it was used by the plaintiff to shew that there was no entry of any allowance against the rent due from the plaintiff's brother in that book. Verdict for the plaintiff, 145l.

Allen Serjt. (on Saturday, April 18) moved for a rule to shew cause why a nonsuit should not be entered, or a new trial granted. First, the book, if evidence at all, was evidence of an account stated, not of money lent; and the plaintiff by the particulars of demand was confined to evidence of money lent. (*Roberts v. Edwards*, 2 Dowl. N.S. 456.) Secondly, the book was improperly received. It was not the defendant's book, but the mother-in-law's rent-book, and there was no proof that the defendant had any custody or control of the book.

PATTERSON, J.—The plaintiff proves an admission by the defendant that he had had the money, accompanied with a statement that it had been allowed for the rent; and then he uses the book to negative the statement as to the allowance. *Cur. adv. vult.*

Lord DENMAN, C.J. now stated that they had seen the learned judge, and were of opinion that they ought to be no rule. *Rule refused.*

VINCENT V. DORE.

Promissory note—Action against surety—Arrangement with creditors—Delivery up of note.

Assumpsit on a promissory note, made by the defendant a testator as surety for one Mary Baldry.

Plea (amongst others), that the said Mary Baldry being in embarrassed circumstances, the said note had been given as a collateral security for advances made to her by the plaintiff, &c. That afterwards an arrangement was entered into between the said Mary Baldry and her creditors, of whom the plaintiff, Messrs. Nicholson, and Messrs. Combe and Delaford, were the principal, whereby they agreed to accept 10s. in the pound upon money lent, and 5s. in the pound upon goods sold; and no proceedings were to be taken on the note. The plea concluded by alleging that just before and at the time of making the arrangement, an account was stated with the plaintiff of the principal and interest due on the note; and then alleging payment of the composition. Upon the construction of that plea the learned judge (*Lord DENMAN, C.J.*) at the trial thought that the plaintiff was bound to prove that the other two creditors named in the plea were parties to the arrangement for the delivery up of the note; but the evidence was, that that part of the arrangement was made with the plaintiff's agent, after the agents for the other creditors had left. Verdict for the plaintiff, 100l.

Petersdorff, on Saturday, April 18, moved for a rule nisi for a new trial, on the ground of misdirection, and that the verdict was against evidence. The arrangement as to the note was quite immaterial to the other creditors; because they accepted a composition in full discharge, and were paid at the time; and the plea does not allege that the other creditors were parties to that arrangement. *Cur. adv. vult.*

Lord DENMAN, C.J. now said that they thought there ought to be a *Rule nisi.*

April 18 and 26.

ELLIS V. ABRAHAM.

If a plaintiff declares that the defendant maliciously and without probable cause preferred an indictment, the assumpsit is proved if one of the charges was malicious and preferred without probable cause, although there was good ground for another of the charges preferred.

This was an action for a malicious prosecution. It was tried at the sittings in London after last Term, and a verdict passed for the plaintiff. The indictment declared on charged the now plaintiff with perjury, and contained two assignments of perjury; and at the trial evidence was given which shewed that, as to one of the assignments of perjury, the indictment had been preferred without reasonable or probable cause.

The defendant's counsel proposed to give evidence to shew that there had been reasonable and probable cause for preferring the indictment on the second assignment of perjury. It was, however, intimated by the learned judge who tried the case, that, in his opinion, a verdict for the plaintiff could be supported, though the jury should find that there was want of probable cause for one only of the assignments for perjury, and further evidence was not given.

Watson, Q.C. now moved for a new trial, on the ground of misdirection.—The ground of action was, that the plaintiff had preferred the indictment without reasonable or probable cause; that means the whole indictment. If the defendant preferred one of the several charges included in the indictment with reasonable or probable cause, then the indictment was not in the whole preferred without reasonable or probable cause. *Deleport v. Towne* (1 Q.B. 333) is an authority so far as acts are concerned; and the principle is well laid down in *Johstone v. Sutton* (1 F.R. 547). *Reed v. Taylor* (4 Taun. 616) is a direct authority the other way; but *Mansfield, C.J.* put that decision on the want of precedent for the application. *Cur. adv. vult.*

Saturday, April 25.—*Lord DENMAN, C.J.*—The argument in support of the application is based on a fallacy. If it be true that an indictment was not preferred with reasonable or probable cause, because, though there was good ground for preferring one of the charges in it, there was not good ground for preferring the other, it must be equally true that there was reasonable or probable cause for preferring it, because, though there was no good ground for preferring one of the charges in it, there was good ground for preferring the other. *Rule refused.*

Monday, April 27.
LAYTON v. HURRY.
5 & 6 Wm. 4, c. 59.

A plea justifying a trespass by conversion of seven horses and sale of two, under the provisions of 5 & 6 Wm. 4, c. 59, must shew affirmatively that the sale of the two was necessary to pay the expenses incurred for the keep of all. A plea which omitted this covenant was held bad after verdict.

*Trespass for seizing and converting seven horses, and selling two of them. Plea, under the 5 & 6 Wm. 4, c. 59, that the seven horses were unlawfully seized, damage feasant upon the defendant's close, and that they were duly impounded, and for the expenses incurred in supplying them with food during the seven days, the two horses were sold in market overt after the requisite notice according to the statute had been given. There were other pleas upon which nothing now turned, as the rule obtained by *Byles, Serjt.* was for a new trial, or for judgment for the plaintiff, non obstante verdicto upon this plea.*

Gunning and Couch now shewed cause.—The interpretation to be put upon this statute is either that it is lawful to sell all beasts that are impounded for the expenses of their keep, and the surplus is to be rendered to the owner, in which case the plea is good, for although it is not averred that the sale of the two was necessary, or that the surplus was given to the owner, that omission does not make defendant a trespasser *ab initio*, being only an abuse of a statutory power. (*Smith v. Egginton*, 7 A. & E. 167; *Shawland v. Gorett*, 5 B. & C. 485.) And the defendant cannot be in a worse situation, because he has sold only two instead of all. Or the statute may authorize the sale of such as may in the discretion of the person who has impounded them be thought necessary, and if this is done *bona fide* the defendant is justified. Here the omission of the allegation that the sale of two was necessary was only ground of special demurrer, and the plea is, at any rate, good after verdict.

Byles, Serjt. contra.—Whatever be the power given by this statute, that should have been strictly followed and pleaded; but here the plea does not accord with any construction, and the averment that the sale of the two was necessary is an essential averment, the omission of which the verdict does not in any way cure.

Lord DENMAN, C.J.—It is true that the statute gives power to sell the animals for the expense of their keep, but this must have a reasonable construction, and a fair and proper discretion must be exercised in the sale. Then a plea justifying the sale of two for the keep of seven, must shew that it was reasonable and necessary to do so.

The rest of the Court concurred. But, *Lord DENMAN, C.J. added.*—We do not say that he was a trespasser *ab initio*, but that the sale of the two horses is not justified.

Rule absolute for new trial unless arranged. (a)

LEE v. MERRETT.

Money had and received.

Semble, an action for money had and received will not lie, where, upon a settlement of accounts between the parties, there has been a mistake in the allowance of a sum twice over, but where no money actually passed between the parties.

(a) This was necessary, as the plea being found bad after verdict, the plaintiff was entitled to damages in respect of the sale of the horses thus left unjustified, and only the jury who try the issues can assess the damages.

Crowder, Q.C. shewed cause against a rule for nonsuit obtained by *Kinglake, Serjt.* The point was, whether an action for money had and received would lie, when, upon a settlement of accounts between the parties, a sum had been twice allowed by mistake, but no money had actually passed between them. *Wharton v. Walton* (4 B. & C. 163) was distinguished, but

The Court intimated that they felt a very strong opinion that the action could not be maintained, and they deferred hearing the argument in support of the rule.

Wednesday, April 29.

REG. v. INHABITANTS OF HIGH BICKINGTON.

Certificate of chargeability.

The only evidence of chargeability taken before the removing justices was a certificate under 7 & 8 Vict. c. 101. A copy of this was sent with the other examinations, and at the end of the copy was written: "This certificate was received in evidence by us, two of her Majesty's justices of the peace for the county of Devon, and acting therein. Sept. 13, 1844." Then followed a copy of the signatures of two justices of the same name as the removing justices. The certificate referred, by name, to all the paupers removed. Held, that there was sufficient evidence that the certificate was produced in the course of the inquiry touching the settlement of the paupers, and that they were the paupers named therein.

On appeal against an order of removal from Atherington to High Bickington, the Sessions confirmed the order, subject to a case. The only evidence of chargeability produced before the removing justices was contained in a certificate under 7 & 8 Vict. c. 101, which was as follows:—"The board of guardians of the Barnstaple Union, in the county of Devon, do hereby certify that on the 7th December, inst. Ann Ford, wife of John Ford, and Thomas, aged about nine years, Mary Ann, aged about seven years, Triphena, aged about four years, and John, aged about one year, her children, became, and are now chargeable to the parish of Atherington, in the said union; in testimony whereof the common seal of the said guardians is hereto affixed, at a meeting of their board this 13th day of September, 1844. (L.S.)—A. S. Willett, presiding chairman of the said board.—Counter-signed by J. S. Clay, clerk to the board of guardians of the Barnstaple union." A copy of this was sent to the appellants, and to it was appended the following note:—"This certificate was received in evidence by us, two of her Majesty's justices of the peace for the county of Devon, and acting therein, the 13th of September, 1844.—J. Dene; James Whyte." The other examinations were solely as to the settlement.

The grounds of appeal were, that the examinations contained no sufficient evidence that the paupers, or any, or either of them, were, at the date of the application for or making such order, chargeable to the parish of Atherington. That it did not appear by the said examinations that any certificate of the chargeability of the said paupers, or any, or either of them, was produced or proved before the justices, at the making of the said order of removal. The sessions overruled the objections, and confirmed the order.

Greenwood (with whom was *Rowe*), in support of the order of Sessions.—The objection made is twofold. 1. That the present examinations do not shew that the chargeability was legally proved. 2. That it does not appear that the certificate produced related to the paupers removed. As to the first point, this exhibit, as it may be called, is unnecessary altogether. The statute 7 & 8 Vict. c. 101, s. 69, enacts, that the certificate shall be sufficient evidence of all the facts stated therein, and no further evidence of chargeability shall be required. Then the Poor Law Amendment Act requires a copy of every examination to be sent, and here a copy was sent. But even assuming that an exhibit was necessary, it sufficiently appears here that the certificate was taken with reference to and pending the inquiry into the pauper's settlement. It purports to have been produced before the same justices who made the order, and upon the same day. It will be intended, therefore, that it was in the same proceeding. This intendment has been made as to convictions. (*Re v. Thompson*, 2 T. R. 18; *Re v. Bennett*, 6 T. R. 75; *Re v. Swallow*, 8 T. R. 284; *Re v. Crisp*, 7 East, 389, 393); which cases are not overruled. 2. There was no necessity to have any one to identify the paupers as the persons named in the certificate. Those to be removed are all the same name as those in the certificate, even to Trephina. It is solely a question for the magistrates. How, indeed, could any proof meet this objection? *Reg. v. Slouford* (2 Q.B. 526), which may be relied upon on the other side, is clearly distinguishable. That only decided that the grounds of appeal could not be held to refer to the examinations, merely because there was one Jackman mentioned in each. He was then stopped.

Mericalc (with whom was *M. Whyte*) *contra.*—It is clear that, to support an order of removal, evidence of the chargeability of the paupers is necessary; then the certificate is a mode of proof substituted for the more usual one by witnesses. It must, therefore, be shewn, that the certificate was in fact

produced before the magistrates. It is not so shewn. The case finds expressly that "the paper which purported to be a certificate of chargeability appeared to be a copy; the signatures were copies, and the place of the seal was marked with the letters L. S. How, then, is it proved to be the certificate produced? It is no exhibit, as it is called, for it does not authenticate it as a copy, but is only a copy of certain words attached to a certificate, which may or may not have been produced, pending the inquiry as to the settlement of these paupers. (*Reg. v. Shipston-upon-Stour*, 6 Q. B. 119.) 2. The identity of the parties referred to in the certificate and those removed is in no way shewn. The mere fact that it is sent at the same time is nothing (*Reg. v. Shipston-upon-Stour*); nor is the identity of name any thing. (*Reg. v. How*, 11 A. & E. 159; *Reg. v. Stockton-upon-Tees*, 2 New Sess. Cas.) Then *Reg. v. Tordoff* (5 Q. B. 933) disposes of the cases cited as to intendment. So identity must always be proved when a previous conviction is brought forward against a prisoner.

Lord DENMAN, C.J.—I have no doubt about it. The Sessions were quite right. *Order confirmed.*

REG. v. BUCHANAN.

Attorneys' and Solicitors' Act.

Practising at the Quarter Sessions as an attorney without being duly admitted is a misdemeanor, indictable under 6 & 7 Vict. c. 73. Disobedience to the express prohibition of a statute is indictable as a misdemeanor, although the offence is a new one, and there is another punishment inflicted by a subsequent section.

Secus, if the prohibition and punishment are contained in the same section.

This was an indictment against Mr. Buchanan, under 6 & 7 Vict. c. 73, for practising as an attorney at the Quarter Session at Canterbury, without being duly qualified. It had been removed into this Court by *certiorari* (see 5 L. T. 238), and the defendant having failed in an application to quash it, had demurred to the indictment.

The *Solicitor-General* (with him *Horne*), in support of the demurrer.—This indictment is framed upon the 6 & 7 Vict. c. 73, s. 2, and contains no charge of an indictable offence. It never could have been intended to make the acting as an attorney an indictable offence, since the deprivation of the power of receiving fees, under sec. 26, and the liability to be punished for a contempt of Court under sec. 31, are ample provisions against the evil intended to be put down by the statute. Comparing this with the previous statutes, the same inference will be drawn. The 2 Geo. 2, c. 23, and 22 Geo. 2, c. 46, would apply to parties acting before Courts of Quarter Sessions, yet there is no single precedent of any indictment under those statutes. Applications have been made to punish for contempt, and parties have been prevented from receiving their fees, but no indictment has been presented. If this defendant is indictable, then any person who ever appears before a petty justice would be liable, for the second section does not contain the exception which the 35th does as to plaintiffs and defendants. [*PATTESON, J.*—But how can a man act as an attorney for himself?] The 26th section would be quite unnecessary if practising as an attorney is an indictable offence, for, according to all principles, no fees could be recovered for acting in a way prohibited by statute. In addition to that, there is the penalty as to contempt of Court. [*PATTESON, J.*—That section does not refer to practising before justices. *Lord DENMAN, C.J.*—And possibly not to Courts of Quarter Sessions.] It certainly does apply to Quarter Sessions, because it is a court of law, as has been determined as to the taxation of costs. (*Clarke v. Donnan*, 5 T. R. 694; *Sykes v. Webster*, 1 D. P. C. 708.) As to practising before justices the prohibition suffices, for the justices would not allow such persons to practise, and they could not recover their fees, and even money paid could be recovered back. But the general question arises upon this indictment which has never been judicially decided, and that is, whether an indictment will lie for doing something prohibited by a statute, although there is a distinct penalty attached to it by another section of the statute. [*PATTESON, J.* referred to *Reg. v. Price* (11 A. & E. 727).] That was an indictment under the Registration of Births' Act, and no summary proceeding was given as there is here. No doubt the dicta of the judges are strong in favour of an indictment lying, but it is submitted that there is no distinct authority for it, and to hold this as a general rule would tend to multiply criminal proceedings infinitely; as, for instance, all the numerous prohibitions and directions contained in such Acts as the Factory Acts, or the Merchant Seamen's Act. He then referred to and stated at length *Castle's case* (Cro. Jac. 644); *R. v. Harris* (4 T. R. 205); *R. v. Wright* (1 Burr. 543); *R. v. Gregory* (5 B. & Ad. 555.) Each case must depend upon its own circumstances, and a mere prohibition is not sufficient to ground an indictment. But it must be of a public nature, and such as reasonably may be considered an offence, and such as we may suppose the legislature intended to make an offence. Here, looking at the Act itself, and that it was a mere substitution for former Acts, under

which an indictment was never heard of, and that the object, which may be said to be the procurement of well-qualified men to act as attorneys, is provided for by the other remedies given, and consequences arising from the statute, it is too much to say that it is also an indictable offence.

The *Attorney-General* (with whom was *Bodkin*) *contra*, not called upon.

LORD DENMAN, C.J.—The defendant is indicted for acting as attorney, not being qualified, in conducting an appeal at the Court of Quarter Sessions, which is forbidden by the 2nd section. I am clearly of opinion that the clause relates to a matter of a public nature, and that the offence, as described, is indictable. I quite agree that, if the same clause which prohibits the doing a particular act affixes a penalty, then the only remedy is by enforcing that penalty. It is as if the legislature said you shall not do this upon pain of so and so. But where the prohibition is in general terms, then I think that an indictment will lie, although a separate and additional penalty may be added in a subsequent clause. We cannot draw any inference from the provisions of other Acts, but I may observe both upon the 22 Geo. 2 and the present Act, that many unnecessary clauses are introduced; for it is obvious that no costs could be recovered for doing what is prohibited by statute; and also the assuming to act as an attorney without being so, is clearly a high contempt of the Court. Acting without the qualifications required by the Act is a factitious offence, but it is necessary for the general good that these regulations should be observed. I consider the true rule to be that laid down in *Re v. Wright*, and, if this were not so, there would be a prohibition which would have no effect. Crofton's case may be said to be an infamous one, for it is quite clear that where the punishment is inflicted by the same section that creates the offence, no indictment will lie, unless there be also a general prohibition.

PATTESON, J.—It may be that there is no express decision upon this principle; but I think that the law is as laid down in *R. v. Dickenson* (1 Saund. 135).

WILLIAMS and WIGHTMAN, JJ. concurred.

Judgment for the Crown.

The *Solicitor-General* then prayed leave for the defendant to plead, stating that there were affidavits which would shew that the offence was committed, if at all, under very mitigating circumstances.

LORD DENMAN, C.J.—I think the request unreasonable; and if the facts are as stated, that may be matter for us to consider in determining the punishment.

Application refused.

REG. v. GAWTON.

Where a parish is divided into separate townships, and churchwardens appointed for the whole, they cease to be necessary parties to appeals, and it suffices if the notice of appeal is signed by the overseers.

This was a case stated, which involved the old question as to the signature of the churchwardens being necessary to the notice of appeal, where the parish has been divided into townships, with separate overseers. It arose upon a removal from one of the townships into which Wrexham is divided to another, and the facts found were nearly the same as those in *Reg. v. Acton* (6 Law T.), which was a question from the same parish. The Quarter Sessions had overruled the objection, subject to the present case. The Court called on

Whately, Q.C. and *Phillimore* to distinguish the case. —*Reg. v. Acton* is different, because there the township was partly in one county and partly in another, and it was found there that churchwardens were in some cases appointed separately. Here the churchwardens are stated to have been appointed for the whole. Then they are churchwardens for each part. [WILLIAMS, J.—No, they are churchwardens for no part. This was decided in *Re v. Nantwich* (16 East.)] *R. v. Marsh* (5 A. & E. 468) is an authority the other way. There would be no inconvenience, as suggested, in their being parties on each side, or the majority of the parish officers might act without them.

V. Lee, contra, referred to *Re v. North Riding* (6 A. & E. 803; *Re v. Derbyshire* (ib. 885); *Re v. Warwickshire* (ib. 873); *Reg. v. Acton* (6 Law T.).

LORD DENMAN, C.J.—Suppose this were a new case; if the parish is divided, and overseers appointed separately, they are overseers for all purposes.

PATTESON, WILLIAMS, and WIGHTMAN, JJ. concurred.

Order confirmed.

REG. v. ASHBURTON.

Apprenticeship deed—Allowance by justices.

A deed of apprenticeship, under 56 Geo. 3, c. 139, which in the body of it accords with the requirements of the statute is good, although the allowance does not state affirmatively, or by distinct words of reference, that the justices who signed it were the same as those who made the order, or were acting in and for the county at the time the allowance was made.

On appeal, the Sessions confirmed the order, subject to a case, the single point in which was, whether the allowance by justices to an apprenticeship deed, under 56 Geo. 3, c. 139, must shew distinctly, or by reference, the jurisdiction of the justices who

allowed it, and that they were the same who made the order.

Greenwood (with him *Merivale*) in support of the order.—This indenture of apprenticeship in every respect agrees with the requisites of the statute. It recites the consent of the justices, and the date of the order, and then the allowance is dated the same day, and signed by two justices, bearing the same name as those by whom the order was made, and purports to be by two of her Majesty's justices, and to have been allowed before the execution of the deed by any of the parties. It is clear that in fact they were the same justices who made the order; and no form of allowance is required by the statute. It only requires that the indenture be allowed by such justices; that is, the justices who made the order of apprenticeship; and it is a question of fact for the Sessions to determine. It might as well be objected that the deed is not good, because not signed by the overseers as such. [PATTERSON, J.—It cannot be necessary to aver that they are the said justices.] Yet they must contend for that, for even if their jurisdiction had been stated, it could not have been shewn they were the same identical justices mentioned in the indenture. *Re v. Hinckley* (1 B. & Ald. 327); *Re v. Countesthorpe* (2 B. & Ad. 487), were referred to.

ROWE, contra.—There are two fallacies in the argument on the other side. It is assumed that the word such in the Act means the same justices who make the order. But this is not so, for any justices having jurisdiction might sign the allowance, and it is supposed not to be an act of jurisdiction. But this is clear. [PATTERSON, J.—They must sign together. See *R. v. Hamstall Ridware*, 3 T. R. 380.] That being so, their authority to do the act must distinctly appear as in jurats. (*Reg. v. Shipston-upon-Stour*, 6 Q. B. 119.) The identity of name is not sufficient, nor that like allowance took place upon the same day.

(*Reg. v. St. Anne's, Westminster*, 2 New Sess. Cas.; *Reg. v. Bloxham*, 1 New Sess. Cas.) The question is open here, for the objection was, that the allowance by justices did not legally appear upon the face of the documents, which the Sessions overruled. It should have stated that they were acting in and for the county. (*Reg. v. Stockton*, 2 New Sess. Cas.; 1 New Mag. Cas.) Or at least words of reference should have been inserted, so as to show they were the justices whose jurisdiction is set out in the indenture.

LORD DENMAN, C.J.—This is no doubt an act of jurisdiction, and I am very unwilling to favour any laxity of practice in these matters, and have some doubt whether this is a sufficient statement, but the rest of the Court think otherwise.

PATTERSON, J.—If this allowance were to have validity as a document separate from the indenture, then it would be necessary to shew the jurisdiction of the justices who make it. But taken with the documents it suffices. Such must mean the same justices; then it is stated that prior to the execution of the indenture the allowance was signed. And the presumption of *omnia rite acta* applies. The indenture also refers to the order of the justices who are of the same name as those who sign the allowance, and it is executed upon the same day after the allowance; then it is clear that the documents shew that they had jurisdiction.

WILLIAMS and WIGHTMAN, JJ. concurred.

Order of Sessions confirmed.

Tuesday, April 28.

Pleading—Debt on a deed—Covenant.

Debt. The declaration set out a deed which, after reciting the assignment, by the defendant to the plaintiff, of a policy of insurance, contained a covenant by the defendant to pay to the insurance office the annual premiums, and provided that, if he should neglect or refuse to do so, it should be lawful for the plaintiff to pay them, and recover the same in an action as for money paid to the defendant's use. The declaration then alleged the nonpayment by the defendant, and the payment by the plaintiff of a certain premium, whereby (the defendant not having repaid him) an action had accrued, &c. Held, upon demurrer, that the declaration was good, and that it was not necessary for the plaintiff to sue in covenant.

Debt on a deed, which recited that a policy of insurance had been effected in the Caledonian Insurance Office, on the life of the defendant, for 999l. and that the defendant, being indebted to the plaintiff, it had been agreed that he should assign the policy to the plaintiff; and that he had so assigned it. The deed then contained a covenant by the defendant that he would pay the annual premiums, and all sums necessary to keep the policy alive; and an agreement by him, that if he should at any time refuse or neglect to pay such premiums, &c. it should be lawful for the plaintiff to pay the same, and "to sue for and recover the same in an action at law as for money paid to the use of the defendant." The declaration then alleged that an annual premium had become due; that the defendant had neglected and refused to pay; and that the plaintiff had paid the same; whereby, and by reason of the defendant not having repaid the same to the plaintiff, an action had accrued, &c. To this declaration the defendant demurred.

Petersdorff, in support of the demurrer, contended

that the plaintiff ought to have brought his action in covenant upon the deed. Wherever the covenant upon which the plaintiff proceeds is a covenant to perform any act beyond the simple payment of money from the one party to the other, debt will not lie on the deed; the action must be in covenant. Here the covenant is collateral, to pay the insurance office; and therefore debt will not lie. (*Harrison v. Matthews*, 10 Mee. & W. 768; *Randall v. Rigby*, 4 M. & W. 130.) And no agreement between parties can vary the proper form of action. (*Ker v. Osborne*, 9 East, 378; *Marshall v. Hopkins*, 9 East, 313; *Lindon v. Hooper*, Cowp. 414.)

Crompton, contra.—Debt will lie where by deed upon a particular event a sum certain is to be paid; and that is the case here. The annual premium is a sum certain; for *id certum est quod certum reddi potest*; and the plaintiff proceeds upon the implied covenant to repay contained in the words "it shall be lawful for him to sue for and recover the same, &c." (*Hooper v. Shepherd*, 2 Strange, 1089; *Ingleton v. Cripps*, 2 Lord Raym. 814; Com. Dig. "Debt," A. 4.) In *Randall v. Rigby*, and *Harrison v. Matthews*, the covenants were collateral; and therefore debt would not lie; but in *Evans v. Jones* (5 Mee. & W. 295) it was held that debt would lie upon a covenant by the defendant to pay a sum certain, though the same sum was by the same deed secured by a mortgage. [LORD DENMAN, C.J. mentioned the case of *Yates v. Aston*, 4 Q.B. 182.]

Petersdorff, in reply.—In the cases cited, the covenants were direct covenants between the parties to the action; but here the covenant is to pay the office; and a tender to the plaintiff of the amount of the premium, or even payment of it to him, would be no answer to an action for the breach of that covenant.

LORD DENMAN, C.J.—I entertain no doubt that this action is maintainable. A deed is set out, which shews that the defendant ought to have paid money; that it was not paid; and that he had agreed that the plaintiff should pay it, and recover it from him as money paid to his use. It seems only necessary to state the case to shew that debt will lie.

WILLIAMS, J. and COLBRIDGE, J. concurring.
Judgment for the plaintiff.

BUSINESS OF THE WEEK.

Thursday, April 23.

DOE dem. DARE P. BOWDITCH. Cur. ads. vult.
BARCLAY v. KEMP. Cur. ads. vult.
DOBSON v. BLACKMORE. Part heard.
R. v. HURST.—The *Attorney-General* moved for a criminal information. Rule nisi.

Saturday, April 25.

R. E. CONNORS. Cur. ads. vult.
POLLETT v. FORREST. Cur. ads. vult.
SCADDING v. LORANT. Cur. ads. vult.

Monday, April 27.

DOBSON v. BLAKEMORE.—*Shee, Serjt. Piscock*, and *Pigott* were heard in support of the rule. Cur. ads. vult.
DOE dem. EGREMONT v. COURTENAY.—*Crowder, Q.C.* (with whom was *Butt, Q.C.*) was heard against the rule.

Adjournd.
WHITE v. COE.—*Dowling, Serjt.* moved for a rule nisi to reduce damages.

Rule nisi, not to go into the New Trial Paper.
Written judgments were delivered in the following cases:
REG. v. DOUGLAS. Rule for new trial refused.
ALFRED v. FARLOWE. Rule refused.
SOLOMON v. LAWSON. Rules absolute in arrest of judgment.
GRIFFITHS v. LEWIS. } *ment.*

Wednesday, April 29.

REG. v. BRADFORD.—*Hodge, and Fitzgerald*, in support of the order of Sessions. *Pashley, contra.*

REG. v. KEIGHLEY.—*Pashley and Overend*, in support of the order of Sessions. *Hall and Ingham, contra.*
Order confirmed.

These two cases will appear next week.
The following cases were disposed of without argument, the parties not appearing:—

REG. v. BOND.
REG. v. PAYNTER.
REG. v. ST. GENNYS.
REG. v. FOSTER.

COURT OF COMMON PLEAS.

April 21 and 22.

BENTLEY v. CARVER.

Costs—Practice.

The costs incurred by a cause being made a remanet, are costs in the cause, and are therefore not chargeable upon a defendant obtaining a new trial on the payment of costs.

This was a town cause, originally entered for the sittings after Trinity Term, 1844. In consequence of the length of the cause list, it had been made a remanet, and not tried until the sittings after Michaelmas Term in the same year. A verdict was then found for the plaintiff, which was afterwards set aside, and a new trial granted upon payment of costs by the defendant. In taxing these costs, the Master, upon the authority of *Robinson v. Day* (2 N. & M. 670), allowed to the plaintiff the costs of the cause being made a remanet. A rule had been obtained for the Master to review his taxation, against which cause was now shewn by

Channell, Serjt.—The rule was settled, after con-

considerable deliberation, in *Robinson v. Day*. There a pointed distinction was made between town and country causes. In the latter it is admitted the earlier decisions are to the effect that, in the case of a new trial, the party to whom it is granted is not liable for the expense of making a cause remanet. [TINDAL, C. J.—Why should there be any difference between them?] In town causes, the expenses are often incurred several times as the Court proceeds from sittings to sittings. The cause in the country has to be re-entered, and then a fresh notice of trial given, and has no priority; whereas in town it is continued in the list until it gradually finds its way to the top, and no fresh notice of trial is requisite.

Wilde, 8r Thos. Serjt. in support of the rule.—The case of *Robinson v. Day* was decided without referring to the old decisions. In practice none of the officers of the other courts, or even of the Queen's Bench, act upon the principles of that case. Costs upon a new trial granted, and costs of the day, stand upon the same footing; and in the latter the costs occasioned by a cause being made a remanet, are not included. (*Waters v. Weatherby*, 3 Dowl. 328; *Brett v. Stone*, 1 D. & L. 140.) The proper costs to be allowed in both cases are those to which either party has been put in preparing for trial. Where either party in an earlier stage of proceedings has obtained costs of the day, still the party ultimately successful has the costs of the cause being made a remanet. There is no reason why a party should be in a worse position as to the costs of the cause, because a verdict has been found which the Court thinks ought not to stand, and which may perhaps be upset at the second trial. (*Gibbons v. Phillips*, 8 B. & C. 437; *Saddler v. Evans*, 4 Burr. 1986.)

TINDAL, C. J.—If this were *res nova* I should be disposed to make this rule absolute, but we will speak to some of the judges of the other courts.

Cur. adv. vult.

On the following day TINDAL, C. J. said:—We have mentioned this case to some others of the judges. They agree with us that *Robinson v. Day* was decided upon some misapprehension, and must be over-ruled. In cases of this kind no costs are to be allowed but costs of the day; the rest are to be costs in the cause.

Rule absolute.

WHITE v. JAMES HANCOCK.

Debt may be maintained upon an obligation for a sum to be paid to A or his attorney, or to B.

Where a declaration upon such an obligation described it as for a sum to be paid to A: Held, that if this were a variance, it was cured by setting out a bond.

Debt on a bond in the common form.

The defendant set out the bond on oyer, "know all men, &c. that we, James Hancock and John Hancock, as sureties for J. B. are severally held and firmly bound in 100l. each to J. White, to be paid to J. White or his certain attorney, executors, &c. or to the treasurer of the Company for the time being, &c." It then set forth the condition, which was for the faithful performance of his office by J. B. to the company. The defendant then demurred, assigning for causes that the action of debt was not maintainable on this bond, that the declaration did not set forth the legal effect of the bond, that it did not shew that the money was not paid to the treasurer, &c.

Byles, Serjt. in support of the demurrer.—The action of debt will not lie, unless there is a simple duty to pay some one person. (*Viner's Abridg. Debt D. Pl. 3*; *Wentworth's office of Executor*, 123; *Harrison v. Matthews*, 10 M. & W. 768.) [TINDAL, C. J.—That was a covenant that the defendant or some one else would pay. In this case the defendant is to pay at all events. The same objection might be made to every bond, as the form always is to pay A B, or his attorney. Here a particular attorney, viz. the treasurer of the company, is pointed out.] Then here is a variance. The bond now appears not to be in the terms set forth in the declaration.

CRESSWELL, J.—You have corrected that by setting out the bond for the plaintiff. His declaration shews a good cause of action, and you cannot now demur. Tindal, C. J. referred to Anon. (3 Salk. 119; *Dyer*, 350, a.); you are out of Court upon this objection.

Judgment for the plaintiff.

Wednesday, April 22.

GORDON v. ELLIS and OTHERS.

Pleading—Partners—Set off.

There, in an action by partners, the defendant seeks to set up the defence that the partnership was a secret one, and that he dealt with one of the partners, relying upon a set-off between himself and that partner, he must shew distinctly by his plea, that the other partners concurred in something which induced him to suppose that he was dealing with a person who had no partners.

Assumpsit for money received to the use of the plaintiff, and upon an account stated.

Plea, that before the said money was had or received, and before the stating of the account, &c. to it, &c. the plaintiffs carried on their trade and business in partnership as copartners, and thereupon hile the plaintiffs continued to be and were such

partners as aforesaid, to wit, &c. the said plaintiff, M. F. G. with the privity and concurrence of the other plaintiffs, applied to and requested the defendants, who then carried on, and still continue to carry on in partnership together the trade and business of auctioneers and appraisers, and also then retained and employed them, the defendants, as such auctioneers, to put up to sale and dispose of certain property of and belonging to the plaintiffs, as such copartners as aforesaid, which they, the said defendants, then agreed to do; and they, the said defendants, further say, that at the said time, when the said M. F. G. applied to and requested them to sell and dispose of the said property, and also at the time of selling and disposing thereof, and at the time when the debts and moneys hereinafter mentioned to have become due from the said M. F. G. to the defendants, became and were due as hereinafter mentioned, the defendants believed that the said M. F. G. was the sole and exclusive owner of the said property, and had full power and lawful and absolute authority to sell and dispose of the same, and receive the proceeds thereof, as and for his own property, and for his own sole use, benefit, and advantage, they, the defendants, then having, and they in fact say, that they had no notice or knowledge whatsoever that the said other plaintiffs, or any other person whatever, had any right, title, estate, or interest whatever in the said property, or any part thereof, and the defendants further say, that the said defendants afterwards, to wit, &c. sold and disposed of the said property for certain sums of money, being the same identical moneys in the declaration above-mentioned, and for which this action is brought; and that after the said M. F. G. had so retained and employed them as aforesaid, and before the said defendants had any notice that the said M. F. G. was not the sole and exclusive owner of the said property, or the proceeds thereof, or any part thereof; and before the commencing of this suit, &c. the said M. F. G. was indebted to the defendant, &c. shewing a set-off in the usual form.

To this plea there was a replication, which was specially demurred to. The argument, however, was confined to the validity of the plea.

Byles, Serjt. (with him *Willes*) for the defendants.—The plea is good upon general demurrer. The effect of it is, that the defendants knew no one in the transaction but M. F. G. In ordinary cases, it is true, that there is no set-off of a debt due from one member of a firm against a debt due to the whole firm. But these partners are in the nature of undisclosed principals. They allow M. F. G. to be the sole and exclusive owner of the goods; he has possession of them, and deals with them as his own, exactly as a factor might do. [TINDAL, C. J.—It does not appear clearly that M. F. G. had possession.] (*Carr v. Hinckley*, 4 B. & C. 647) At all events the other partners lie by. The defendants had no notice. All is said to be done with the privity and concurrence of the co-partners. It is a well-established rule of law, that partners who do not appear, and undisclosed principals are to be placed upon the same footing. (*Stims v. Bond*, 5 B. & Ad. 393; *Stacey v. Ross*, 1 Esp. 470.) All that the plea need aver is, that the other partners did not appear to the defendants. The fact that the defendants knew of the partnership at the time of the employment should come from the other side. (*George v. Clagett*, 7 T. R. 359; *Rabone v. Williams*, 7 T. R. 360, note a.) Formerly this defence might be set up under the general issue. Now, it will suffice on general demurrer, if the plea state, in substance, that when M. F. G. employed the defendants, he employed them as the true and sole owner.

TINDAL, C. J.—No, that will not do, unless it shews some concurrence on the part of the other partners. Here there is no allegation, nothing whatever to shew any default by the other partners. This is a mere plea of set-off against one partner.

Channell, Serjt. (with him *Bovill*), for the plaintiffs, were not called upon. *Judgment for the plaintiffs.*

Thursday, April 23.

GERAUD v. RICHMOND.

Yearly salary—Statute of Frauds.

1. An agreement to receive a person as clerk, and to pay him a salary at rates varying each year until after the fifth year, is within the latter part of the 4th section of the Statute of Frauds.

2. Under an agreement whereby A undertakes to pay to B a salary at the rate of £ a year, nothing is recoverable as a rateable proportion for part of a year.

Assumpsit for wages or salary for services done and performed by the plaintiff, &c.

Plea, non assumpsit.

At the trial it appeared that the action was brought to recover wages for services performed by the plaintiff. On the 2nd of May, 1842, the plaintiff entered into the service of the defendant upon the following memorandum being signed by the defendant: "I agree to receive you as clerk or book-keeper in my establishment, in consideration of your paying me a premium of 300l. and to pay you a salary at the following rates, viz.: for the first year, 70l.; for the second, 60l.; for the third, 110l.; for the fourth,

130l.; for the fifth and following years, 150l.: and I also agree, in case of the death of either of us, to return 150l." It appeared in evidence that, upon the occasion of this memorandum being signed, the plaintiff had said to the defendant that it would suit him to receive his salary quarterly; and it was shown that that had been the uniform mode of payment between the parties. At the time of action brought the plaintiff had served for more than three, but less than four, years. All payments due to the end of the third year had been made, and the plaintiff now claimed a quarter's salary.

Under these circumstances Colman, J. consulted the plaintiff, upon the ground that he could sustain no action until the end of the fourth year, reserving leave to move to enter a verdict for 46l. A rule having been obtained for that purpose,

Byles, Serjt. now shewed cause.—The plaintiff was rightly nonsuited. The contract only provided for a yearly payment. It is like the case of a yearly rent reserved which is only payable at the end of the year. (*Bacon's Abridg. Rent F. Lutwych*, 231; *Spain v. Arnott*, 2 Stark, 256; *Turner v. Robinson*, 5 B. & Ad. 789.) This is not like the case where a contract is rescinded by mutual consent, upon an understanding that payment should be made *pro rata*. (*Thomas v. Williams*, 1 A. & E. 685.) Unless, therefore, this contract could be varied by parol, the nonsuit must stand. But this is an agreement "not to be performed within a year," within sect. 4. of the Statute of Frauds, and therefore could not be by parol at all. There is in it, moreover, no contingency. Written agreements would be valueless if they could be varied by parol. (*Goss v. Lord Nugent*, 5 B. & Ad. 58; *Marshall v. Lynn*, 6 M. & W. 109.) Neither can they be varied by the conduct of the parties. The mere fact that the payments have been made quarterly will not affect the question. *Ridgway v. Hungerford Market Company* (5 A. & E. 171) has no bearing upon this case.

Talfourd, Serjt. in support of the rule.—The written contract only defines the rate, not the time or mode of payment. The year is only mentioned to facilitate the calculation. In the absence of an express contract, services done entitle the plaintiff to payment. There is no analogy between this case and that of rent. The latter is an entire matter, very different from personal service. This is more like the case of use and occupation, with the debt accruing *de die in diem*. [CRESSWELL, J.—If there were no evidence but the written contract, would the plaintiff after a day's service, be entitled to require pay for that day?] I think he might. Then it is consistent with this case that there was a substituted agreement for quarterly payments. That would bring it to the case of *Ridgway v. Hungerford Market*. That supposition is helped by the evidence that the payments were always made quarterly. But even without this, it may be argued that the time of payment is left entirely open and unsettled. [CRESSWELL, J.—Then you come to this. If the time of payment is material, there is a material term of the contract not provided for, and as the contract extends over five years, the Statute of Frauds puts you out of Court.]

TINDAL, C. J.—It appears to me that this contract binds the parties for five years, and is therefore within the Statute of Frauds. It is an agreement that cannot be performed within a year. The work and labour was done either under this contract or under none. Then this contract must have the same construction as a lease, reserving a yearly rent, and the salary must be regarded as a yearly salary, payable at the end of every year, and at no other time. Were we to interpose any other terms we should violate the statute. But the plaintiff wishes it to be inferred, from the conduct of the parties, that quarterly payment was contemplated. The actions, however, of the parties cannot carry it further than parol evidence would. Both are alike inadmissible, to alter or vary a written contract. That is clear from *Goss v. Nugent*. The case of *Ridgway v. Hungerford Market Company* was quite different. There the nonsuit was directed upon a different point, and there was no decision upon any point like the present.

COLTMAN, CRESSWELL, and ERLE, JJ. concurred. *Rule discharged.*

Saturday, April 25.

TOMLINSON, CLERK, v. BOUGHEY and OTHERS.

Practice—Costs.

In carrying out 6 & 7 Wm. 4, c. 71, s. 46, the Court will follow the general rule of giving costs to the successful party, or against the party making default, unless there be some special circumstances to justify a departure from that general rule.

This was a feigned issue under the Tithe Commutation Act, 6 & 7 Wm. 4, c. 71, in which Talfourd, Serjt., had obtained a rule for judgment, as in case of a nonsuit. The plaintiff was rector of Stoke-upon-Trent, in Staffordshire; the defendants, owners of lands within the parish. Proceedings being taken before an assistant tithe-commissioner, under the statute, the defendant set up fourteen several moduses. Of these ten were found in their favour. The rector commenced his action in order to try his right, pur-

suant to section 46. The defendants having refused to accept the issue, the matter came before the Court in Easter Term 1845, and the Court decided that upon all the moduses found for the landowners, except two, the decision of the commissioner was final. (*Tomlinson v. Boughey*, 1 C.B. 663.) Issue was joined as to these two in Trinity Term 1845. The plaintiff then made a fruitless attempt to change the venue. No further steps having been taken, the present rule had been obtained, against which

Channell, Serjt. shewed cause.

It is doubtful whether this is the proper form of procedure to obtain the costs, which, by sec. 46 of the statute, are left in the discretion of the Court in which proceedings are taken. The cases of *Wick v. Colton*, 1 D. & L. 227, and *Sandys v. Beverley*, 12 M. & W. 568, are contradictory. It is agreed, however, that no objection shall be taken to the form of the rule. All the more important matters of dispute between the parties have been already decided in favour of the defendants, without costs. *Tomlinson v. Boughey*, 1 C.B. 672. It now appears, by his affidavit, that he has declined to proceed, upon the ground that the prospect of a verdict is insufficient to warrant the expense of a trial.

Talfourd, Serjt. in support of the rule.—There is nothing to take this case out of the general rule, that the defendant should have his costs where the plaintiff declines to proceed. It is of no consequence to inquire what were the plaintiff's motives for following his present course. The defendants have been put to expense in preparing for their defence, and are entitled to be reimbursed.

TINDAL, C.J.—Under 6 & 7 Wm. 4, c. 71, s. 46, we may vary from the usual rule if we please. But I think, in this case, there is no sufficient reason for departing from that rule. The form, however, of the rule, now made absolute, had better be that of an order under the statute that the defendants should have their costs.

Rule accordingly.

SMITH v. UNETT.

RUMBALL v. UNETT.

Practice—Waiver.

The defendant, an attorney, being served with process out of the county for which the writ was taken out, thanked the party serving him for certain acts of courtesy in the mode of service, and promised to attend to the writ. Held, a waiver of the irregularity.

In these cases the writs described the defendant of a certain place in Staffordshire, at which he resided. He had, however, an office in Birmingham, more than a mile from the boundary of the county of Stafford, at which he was in the habit of attending daily. On April 1st, a clerk to the plaintiff's attorney called upon him at his office, and was admitted to see him in his private room. It appeared that the plaintiff's attorney and the defendant were on terms of intimacy, and that upon the occasion referred to the clerk of the plaintiff's attorney, after expressing his regret at the unpleasant nature of his errand, and his desire that the matter might be transacted as quietly as possible, served the defendant with copies of the writs. The defendant said that he was much obliged for the consideration shewn him in the mode of service, and that he would attend to it. On April 7th, a summons was taken out to shew cause, before Cresswell, J. at Chambers, why the service of the writs should not be set aside for irregularity. Cresswell, J. discharged the summons, with costs, upon the ground that the application should have been made within four days. On the first day of the present Term Byles, Serjt. had obtained a rule for rescinding the order of Cresswell, J. and for setting aside the service of the writs.

Talfourd, Serjt. now shewed cause.—The circumstances amount to a waiver of an irregularity that may have been committed, and the defendant, having accepted the service, cannot now set it aside. As an attorney, he must have known at the time of service that he had the power of objecting, if he thought fit.

Byles, Serjt.—The observation of the defendant, "I will attend to it," only meant, "I will defend myself as well as I can." There is nothing to shew that at the time of service the defendant was aware of the defect. He might not know exactly where the boundary of the county was, and whether the room in which he was sitting was within 200 yards of the borders or not.

By the COURT.—It is impossible, under the circumstances, to think that the defendant did not know the boundary over which he must have passed every day on his way to his office. Whether he did or not is not very material, as he took the writ for better or worse, and was very grateful for the courtesy exhibited in the mode of serving it. There was a plain acceptance of the service.

Rule discharged, with costs.

DOE dem. PHILLIPS v. ROLLINS.

Where a verdict was found for the plaintiff, subject to a special case, to be settled by an arbitrator, and the arbitrator having settled the case, the defendant refused to obtain the signature of a serjeant, the Court ordered that, unless the defendant caused the case to be

signed by a serjeant in his behalf within a week, the *postea* should be delivered to the plaintiff.

This action was tried before Tindal, C.J. in August 1845; a verdict was found for the plaintiff, subject to a special case, to be settled by a person named in the order, at Nisi Prius, and therein called an arbitrator. The order provided that "the costs of the cause and of the reference should abide the event of the said award," but it gave the arbitrator no power finally to determine the cause. The special case had been accordingly settled and signed by a serjeant, on behalf of the plaintiff. The defendant had been requested, but had refused, to procure the signature of a serjeant on his own behalf.

Channell, Serjt. after referring to *Mostyn v. Champneys* (1 Scott, 57) and *Jackson v. Hall* (8 Taunt. 421), upon the suggestion of the Court, took a rule ordering that unless the defendant caused the case to be signed by a serjeant in his behalf within a week, the *postea* should be delivered to the plaintiff.

Rule accordingly.

Monday, April 27.

WALKER v. REMMETT.

Letter of attorney—stamp.

A document in the following form: "I do hereby authorise you to indorse, or cause to be indorsed, my name to three several bills of exchange now in your possession (describing them), which said indorsement I do hereby undertake shall be binding upon me," is a letter of attorney within the meaning of 55 Geo. 3, c. 184, sched. part 1, and must be stamped accordingly.

Assumpsit—Indorsee against Acceptor of a bill of exchange, drawn by Harrison to his own order, and indorsed to the plaintiff. Plea: that Harrison did not indorse. It appeared that the bill being in the hands of one Herbert, Harrison wrote to him the following letter:—"I do hereby authorise you to indorse, or cause to be indorsed, my name to three several bills of exchange, now in your possession (describing them, and one of them being the bill upon which the action was brought), which said indorsement I do hereby undertake shall be binding upon me; and I do further undertake to pay you the amount of the several bills as they shall become due, if they shall not be duly honoured when mature." At the trial it appeared that the bill had been indorsed by Herbert in Harrison's name, and this document, stamped with an agreement stamp, was offered in evidence to prove that Herbert acted with Harrison's authority. It was objected that this was a letter of attorney, and required to be stamped as such, and that therefore being merely stamped with an agreement stamp it was inadmissible. The evidence was, however, received, and a verdict found for the plaintiff. In last Term a rule had been obtained for a new trial, upon the ground of the improper reception of evidence, against which,

Byles, Serjt. now shewed cause.—This document is not within the meaning of 55 Geo. 3, c. 184, sched. part 1. There three different special kinds of letters of attorney are mentioned: the first, as to the receipt of prize money; the second, as to wages; the third, as to the sale of stock, &c. Then fellows "letter or power of attorney of any other kind, or commission or factory in the nature thereof." The latter part of this description belongs to the laws of Scotland, and factory, in Scotch law, is "one species of mandate or agency where the agent is paid for his trouble." (Bell's Principles of the Law of Scotland, sec. 80.) The letter of attorney here intended is, therefore, something analogous to factory, the former part of the description belonging to English, the latter to Scotch law. That shews that some kind of formal instrument is intended. The Courts will put a liberal interpretation upon any Acts of Parliament imposing duties, so as not to make any instruments liable to them, unless manifestly within the intention of the legislature. *Warrington v. Furber* (8 East, 242), per Lord Ellenborough; *Tomkins v. Ashby* (6 B. & C. 541), per Lord Tenterden. There are only two cases directly in point. *Case v. Barnard* (8th Jan. 1827, G. H.), reported in the notes to "Chitty on Stamps," 186. There it is said, "A paper authorizing A to sell certain property, and thereout pay rent and expenses, and his own commission, signed by B, does not require a stamp." *Monmouthshire Canal Company v. Kendal* (4 B. & A. 458) raised a similar point without deciding it. *Reg. v. Kelt* (12 A. & E. 559) was a much stronger case than this. This is not a letter of attorney, according to the ordinary use of language. In such ordinary use a formal instrument is always contemplated. If this be decided to be a letter of attorney, there is no employment of one person by another, down to the case of a lady authorizing her servant to buy a skein of silk, which will not, if in writing, require to be stamped. Suppose the letter had been, "I'll bear you harmless, if you indorse the bills," and he had then failed to indemnify the person to whom such letter was sent, would there be no remedy against him, unless the letter were stamped as a power of attorney? Or if A writes to his attorney, "You may sell my estate for so much," and there is an action for breach of contract, would that require more than an agreement stamp? [TINDAL, C.J.—Is there not a difference between the case where the instrument is to be used as

an agreement, and the case where it is to be used as a procuration?]

Dowling, Serjt. in support of the rule.—This instrument is either an agreement, or a power of attorney. If merely an agreement, then the plaintiff must fall upon the issue as to the indorsement. In most cases, if a party chooses to rely upon an implied agency, that may be established by matter in pais; but, if the agency is sought to be proved by an instrument in writing, it can only be by power of attorney. In the latter case, it must be stamped according to the statute. The latter part of this document is a mere agreement by Harrison to do what the law would compel him to do, and may be rejected as surplusage. Rejecting it, the remainder is a simple power of attorney, in no very extraordinary form. *Case v. Barnard* is merely a *nisi prius* decision, come to at a time when the stamp laws were not well understood. In that case, and in the *Monmouthshire Canal Company v. Kendal*, the evidence disclosed matters rather agency than of attorney. Here, Herbert is entrusted with discretionary power, and the discretion so allowed him tends to make him the attorney of Harrison. *Reg. v. Kelt* (12 A. & E. 559) was a case much considered by the Court, and is in favour of the defendant. (He referred also to 7 & 8 Vict. c. 21 s. 1, and sched.)

TINDAL, C.J.—It appears to me that this instrument falls within the words of the Stamp Act, which, after describing certain special letters of attorney, adds, "A letter or power of attorney of any other kind." Under that sweeping description, I cannot help including any delegation in writing to another to perform an act in one's own name. That is the appointment of an attorney. In Comyn's Dig. it is said, "An attorney is he who is appointed to do anything in the place of another. And he has a general authority, or a special one, for some particular purpose: as to make livery; to deliver a deed, &c.;" and from *Cole Littleton*, 52 a, it appears, that he may be appointed either by simple letter, or by deed. Then, in this case, he was appointed by letter. But it is said on the other side, that this is an agreement only, and therefore the stamp of a power of attorney is unnecessary. To this it may be answered that there is no agreement, but what the law would imply from the circumstances. Besides, as an agreement it would be bad, for no consideration appears in it. All is to be done on one side. We have no authority to take this case out of the operation of the Stamp Laws.

COLTMAN, J.—This case must be governed by *Reg. v. Kelt*. In that case, the Court seems to rely a little upon the discretion entrusted. I must say, I do not see here that any discretion is given; but it is by no means necessary to constitute one man attorney for another; that discretion should be allowed him. In the case of a letter of feoffment, the attorney is to make livery, and has no discretion whatever.

CRESSWELL, J.—I am of the same opinion. I quite agree with the principle upon which it is said that the Stamp Laws are to be construed, and if I thought this case doubtful I should hesitate to bring it within them. But it seems to me to fall directly within the words of the Act. It is certainly no part of the definition of an attorney, that he should have a discretion to exercise.

ERLE, J.—I concur with the rest of the Court so far as to say that a written authority to indorse a bill of exchange is within the provisions of the Act. I only wish to guard against this decision being thought to extend the provisions of the statute further than we intend. It appears to me that the judgment must be confined to the case of authorizing one's name to be put on a bill of exchange.

Rule absolute for a new trial.

Tuesday, April 28.

LUARD and OTHERS v. BUTCHER and OTHERS.

A feigned issue in the form employed previous to the passing of 8 & 9 Vict. c. 109, is not "a suit for recovering any sum of money alleged to be won upon any wager," within the meaning of 8 & 9 Vict. c. 109, s. 18.

8 & 9 Vict. c. 109, s. 19, is an enabling, not a compulsory enactment, and therefore feigned issues may still be stated in the form of wagers between the plaintiff and the defendant.

This was a feigned issue, in the usual form of a wager of 5l. between the plaintiffs and the defendants. It was tried before Maule, J. at the first sittings in London, in the present Term, and a verdict found for the plaintiff, damages 1s.

Kinglake, Serjt. applied for a rule to shew cause why there should not be a new trial, upon the ground of misdirection, or why the judgment should not be arrested. The misdirection was alleged to consist in telling the jury that there was sufficient evidence to warrant a verdict for the plaintiff, and the Court having heard what the evidence was, refused a rule upon this point.

Upon the second point, Kinglake, Serjt. submitted, that, by the recent Act, the declaration was bad in arrest of judgment. By 8 & 9 Vict. c. 109, s. 18, "All contracts or agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void; and no suit shall be brought or maintained

in any court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager." [CRESSWELL, J.—There is no real contract here.] [TINDAL, C. J.—It is not a wager in the sense of the Act. The Act relates to a real wager. Here, everything is based upon fiction.] Then sec. 19, together with the 2nd schedule, provides a new form in which questions of this sort are to be tried. The marginal comment on that section is "Proceedings under feigned issues abolished," and the section itself, after reciting that "many important questions are now tried in the form of feigned issues, by stating that a wager was laid between two parties," and "that such questions may be as satisfactorily tried without such form," enacts, "That in every case where any court of law or equity may desire to have any question of fact decided by a jury, it shall be lawful for such Court to direct a writ of summons to be sued out, by such person or persons as such Court shall think ought to be plaintiff or plaintiffs against such person or persons as such Court shall think ought to be defendant or defendants therein, in the form set forth in schedule 2, and thereupon all the proceedings shall go on and be brought to a close in the same manner as is now practised in proceedings under a feigned issue." The fair inference is, that even in feigned issues a wager is void, and that it is for that reason a new form is substituted, which form all parties are bound to employ. [TINDAL, C. J.—The 19th section only says, that the Court may order it to be in that form; it does not say, that you must employ that form and no other.] [CRESSWELL, J.—The plaintiff makes up a complete issue, and delivers it to the defendant. The defendant returns it with his consent; they both agree to try a particular question in a form based upon a fiction.] [TINDAL, C. J.—You assent to it upon the chance of succeeding, and when you fail you come here and object.]

Rule refused.

Wednesday, April 29.
BROWN v. GILL.

1. To entitle the steward of a court-baron to preside over its proceedings, it need not appear that he is also steward of the manor.
2. A court-baron is properly described, as being held "before A. B. esq. the steward of the said court, and C. D., E. F. and others, suitors of the said court."
3. After pleading and judgment in an inferior court, it cannot be objected, that the plaintiff by which proceedings were commenced did not disclose the form of action.
4. It is unnecessary that the names of more than two of the suitors should appear upon the judgment or other proceedings of a court-baron.

This was a writ of false judgment, upon the judgment of the court-baron, of R. Mattocks, esq. lord of the manor of Taunton Dean, in the county of Somerset. The roll of proceedings described the court as a court-baron holden at Castle Hall, in and for the said manor, according to the custom of the said court, and manor from time immemorial, before William Kinglake, esq. the steward of the said court, a free suitor thereof, and William Upham and William Eardley Mulford, and others, free suitors of the said court. It then set out, that on the 28th day of November, A.D. 1843, came James Gill, and levied his plaint against John Brown, in a plea of 39s. 11d. and a particular day was given for the appearance of both parties. On the appointed day, the proceedings shewed the appearance of both parties by their attorneys, and a declaration by J. G. against J. B. in an action of debt. Then followed an impanipance. A long series of proceedings were then set out, always alleged to be before W. K. esq. steward, and W. U., W. E. M., and others, free suitors. The judgment was in the following form: "At which next court held in and for the manor aforesaid, and within the jurisdiction aforesaid, on the 9th day of October, A.D. 1844, before Wm. Kinglake, esq. steward, and Wm. Upham, Wm. Eardley Mulford, and others, free suitors of the said court, came, as well, &c." Then came a description of the jury, the verdict for the plaintiff, &c.—"and hereupon all and singular the premises being, &c. it is considered by the said Court, &c."

Kinglake, Serjt. for the plaintiff in error, the defendant below.—First, if right to insert the name of the steward at all, it should be as steward of the manor only, not as steward of the court. The steward of the court may not even be a free suitor, and may have no right to be present. Secondly, the steward of a court-baron, even though he may be a constituent member, is not a judge of the court. The judges are the free suitors. Here it is stated that the court was held before the steward and free suitors, and then follows an *ideo consideratum*. That shews that it was the judgment of the steward and free suitors. This court-baron is the court of the freeholders, and is incident to every manor: in it the free suitors are the judges, and it is quite distinct from the customary court baron, which is the court of the copyholders, and in which the steward only is judge. The power of the court-baron is much more extensive than that of the latter. [TINDAL, C. J.—It is stated at the commencement of the proceedings

that he is a free suitor as well as steward. The same state of things must be presumed to continue unless there is an allegation to the contrary, and then why should he lose the privilege of a free suitor, merely because he is also steward? It is stated that he is a free suitor at the commencement of the proceedings in 1843, there is no subsequent allegation to the same effect, and judgment is not until the end of 1844. There is no inference in favour of these proceedings, because it is not a court of record. The capacity in which he is everywhere said to be present is as steward. There is no distinction as to this point between the county court and the court-baron. In both the judges are the suitors only. (4 Inst. 268; Brooke's Abr. "Court Baron," pl. 11; *Ibid.* "Judgment," pl. 118; *Jones v. Jones*, 5 M. & W. 523; *Holroyd v. Breare*, 2 B. & A. 473; *Kingsley v. Nassau*, M. & M. 52.) Thirdly, the plaintiff is merely levied against the defendant in a plea of 39s. 11d. That does not shew what the character of the plaintiff or the form of action was. Fourthly, the names of all the free suitors present ought to be stated. The judgment may have been given by some of those whose names do not appear. (*Lewis v. Weeks*, Carth. 85, 7 Dowl. 844; *Rex v. Mein*, 4 T.R. 480.)

Channell, Serjt. for the defendant in error, the plaintiff below.—*Jones v. Jones* has no application: there the declaration was held bad on special demurrer, for not describing the county court according to the old precedents. Lord Coke (4 Inst. 55) describes the county court "as the court of the sheriff held at B;" but at page 57 he describes the court-baron as held "before the steward and suitors." The expression in the judgment, "It is considered by the Court," means the Court above described: if that description be, as it is, correct, the question is at an end. By 4 Inst. 56, it appears that in the court of the hundred, the suitors are the judges in the same way as in the court-baron. Yet in Bacon's Abrid. "Hundred Court," where to a description of the hundred court as being held "coram seneschallo et seclatoribus," it was objected that it should have been "coram seneschallo pro seclatoribus," the description was held good. *Holroyd v. Breare* decided that the steward was not a mere ministerial officer, but a constituent and essential part of the Court. With regard to the last point, only a sufficient number of suitors to give the Court jurisdiction need be named. This principle is adopted in the description employed for Courts of Quarter Sessions. *R. v. Main* is a very different case. That was a *quo warranto*, and the defendant rested his case upon the validity of a particular election. The title which he set up failed him.

Kinglake, Serjt. in reply.

TINDAL, C. J.—It appears to me that the judgment of the inferior Court ought to be affirmed. Four objections have been taken to the regularity of the proceedings. First, that the steward of the court does not appear to be also steward of the manor; and that he is not competent to be present, unless he is also steward of the manor. But there is nothing in the style of the court to shew that it is necessary that the steward of the court need be steward of the manor. In Comyn's Digest, "Copyhold" (R. 5), referring to Co. Lit. 61, b, it is said, "A steward may be retained by deed, or by parol, and a retainer by parol may be for a court-leet as well as for a court-baron. A retainer by parol continues till it be discharged." That does not speak of the steward of the manor, but of the court. We know in practice, that stewards of the courts are often appointed by particular deputation. The second objection, and that upon which most reliance is placed, is, that it appears upon the face of the proceedings that the court was held before improper judges, and that being so, the Court would be without jurisdiction. If the style employed be the wrong style, then the whole proceedings are irregular. It will not, however, be necessary to consider who are really the judges of the court, since the description of the court agrees with the usual style. Mr. Kinglake does not necessarily put himself in the position of a judge. He has a known definite duty to perform, namely, to collect the suffrages of the suitors; on the other hand, the suitors have their definite duty, namely, to judge. *Jones v. Jones*, and the other cases relate to county courts. But there is a difference between the style of the two courts, so that what might be law in one case would not be in the other. The style of the county court is "Essex to wit. The first county court of A. B. &c. held at C." It might be usurpation to say that it was held before the sheriff; but in describing the court-baron you must say that it was held "before the steward and the suitors." In the Year Book, 21 H. 6, p. 34, it seems to have been thought well to describe the county court as held before the sheriff. As to the third objection, that the plaintiff does not specify the form of action, that goes only to a matter of irregularity, and the time is gone by for taking the objection. It has been said, indeed, that no intendment is to be made in favour of the proceedings, because the court-baron is not a court of record; but in all inferior courts, when the matter is within the jurisdiction of the Court, every intendment ought to be

made for the regularity of the proceedings. As to the last point, that all the names of the suitors are not specified, no authority has been cited to shew that you must set out all the names. You must shew the names of two freeholders, because there can be no court unless there are two. There is a case, too, in Willes' Reports that they must be two old freeholders, and that it is not sufficient to make a new one. Why should we encourage prolixity, and perhaps mistakes, by requiring any thing so inconvenient as the names of all the suitors, without authority, I cannot see.

CRESSWELL, J.—With regard to the third objection; it is not usual in these inferior courts to set out the nature of the claim in the plaint. If it were necessary, the omission would only be an irregularity, which the defendant cures by appearance and pleading.

The rest of the Court concurring,
Judgment for the defendant in error (the plaintiff below).

BUSINESS OF THE WEEK.

Thursday, April 29.

BOWLEY v. BELL.—Channell, Serjt. moved, pursuant to leave reserved, to enter a nonsuit or for new trial, upon the ground that the verdict was against evidence.

Rule to shew cause.

EVERETT v. SMALLPIECE.—Channell, Serjt. moved for leave to plead *puls darrein continuance*, and that the affidavit that the matter of the plea arose within eight days might be dispensed with. Hecited Reg. Gen. H.T. 4 Wm. 4; *Chitty's Archbold*, 452; *Powell v. Duncan* (5 Dowl. 550); *Dunn v. Hill* (11 M. & W. 470).

Friday, April 30.

BEARD v. EGBERTON AND OTHERS.—Wild, Sir Thos. Serjt. (with him Webster and Ogilvie) in support of the demurrers. Channell, Serjt. (with him Groves and J. Brown) contra.

Cur. adv. vult.

HARRIS v. ROBINSON.—No cause being shewn against the rule obtained by C. Jones, Serjt.

Rule absolute.

COOPER v. SHEPHERD.—Dowling, Serjt. in support of the demurrer. Talford, Serjt. (with him Hawkins, contra.)

Part heard.

ROBINSON v. WHITE.—Talford, Serjt. moved for a rule ordering —, an attorney of the court, to pay the costs occasioned by his acting for an assumed client without authority, and the costs of this application.

Rule nisi.

Saturday, April 30.

RICKETTS AND OTHERS v. ARSCOTT AND OTHERS.—Channell, Serjt. moved for a rule to sign judgment against certain of the defendants, who had been served with notice to appear to a *sci. fa.* in this case, and had not appeared.

Rule nisi.

Monday, April 27.

HUNTER v. CLARKE.—Dowling, Serjt. (with him Bramwell), shewed cause against the rule obtained to enter a nonsuit, or to reduce the damages. The question turned upon the admissibility of a certain agreement, but as it appeared that the objection had not been taken at the trial, the rule was discharged as to the first point. As to the second, it was contended that the damages should be reduced.—C. Jones, Serjt. in support of the rule.

Rule discharged.

BENNETT v. DUELAND.—Wilkins, Serjt. moved for a rule to shew cause why the Master should not review his taxation, and why an order of Colman, J. for allowing the defendant all costs incurred subsequent to a summons to stay proceedings, should not be rescinded.

Rule refused.

DOE dem. — v. ROE.—Channell, Serjt. moved for judgment against the casual ejector. The notice to appear was served on the 32nd of March. It was, however, dated April 32nd, but required the party served to appear next Term. It was submitted that this might be regarded as an impossible date, and that the case was similar to *Doe dem. Woodroop v. Roe* (5 Scott N.R. 800), and *Doe dem. Sanders v. Roe*, (12 M. & W. 536).

Rule absolute.

Tuesday, April 28.

DOE dem. ATKINSON v. FAWCETT.—Sir T. Wilde, Serjt. concluded his argument against the rule. Channell, Serjt. in support of it.

Cur. adv. vult.

Wednesday, April 29.

SPECIAL PAPER.

COOPER v. SHEPHERD.—Argument concluded.

Cur. adv. vult.

FRYCE v. BELCHER.—Talford, Serjt. for the defendant; and Kinglake, Serjt. for the plaintiff.

Argument adjourned.

RULES.

DOE dem. DOREY v. ROE.—Channell, Serjt. moved for a rule to shew cause why service of the declaration and notice in ejectment upon the premises should not be good service. He produced affidavits, shewing several fruitless attempts to serve the tenant in possession.

Rule to shew cause.

COURT OF EXCHEQUER.

HARRISON v. ROSCOE.

In an action of *assumpsit* on a bill of exchange brought by a second indorsee against the drawer, the notice of dishonour proved was a notice by the plaintiff's attorney (by the authority of the plaintiff), but who, by mistake, gave the notice in the name of the first indorsee, and not in the name of the plaintiff: Held, that this misrepresentation of the name did not make the notice of dishonour void, for as the first indorsee might have recovered on this notice, the defendant had every defence as against the plaintiff as he would have had against the first indorsee.

This was an action of *assumpsit* by indorsee against the drawer of a bill of exchange. The bill was dated December 21, 1844, payable four months after date, and was indorsed by the defendant to one Vaughan, and by him to the plaintiff; the plea was no notice of non-payment. The case was tried before Mr. Wellsby, the Recorder of Chester, when it appeared that the bill

became due on the 24th of April, when it was dishonoured; notice was given to the defendant of the dishonour in the following form:—"Sir, I am requested by Mr. Vaughan, of this city, to apply to you for payment of the amount due on you and your brother, D. Roscoe's dishonoured bill to him, and as Mr. Vaughan is very pressing for the amount, I trust you will immediately oblige me with the same, together with my charge as under, I am, &c." By the evidence given at the trial it also appeared that the attorney was not authorised to give any notice of dishonour, and also that Vaughan's name was inserted by mistake instead of that of the plaintiff. Whereupon it was contended by the defendant's counsel that the notice was bad, as Vaughan had given no authority to the attorney to give the notice. The learned recorder, however, directed a verdict to be entered for the plaintiff, giving the defendant leave to move to enter a nonsuit.

Jervis, Q.C. having obtained a rule nisi, *Egerton and Unthank* now (Feb. 9) shewed cause, and contended, upon the authority of *Chapman v. Keane* (3 A. & E. 193), that the notice was sufficient, it being enough if a defendant had notice of dishonour from any one who was a party to the bill, although not the holder.

Jervis and Atkinson, contra. *Cur. adv. vult.*
Some time after, the judgment of the Court was delivered by

PARKE, B.—This case was argued some time since before the Lord Chief Baron, my brother Platt, and myself, on shewing cause against a rule to enter a nonsuit on a point reserved by Mr. Wellsby, the learned recorder for Chester. The question in this case is a perfectly novel one, never having been before the Court. It was an action upon a bill of exchange drawn by the defendant payable to his order, and by the defendant indorsed to W. H. Vaughan, and by W. H. Vaughan again to the plaintiff. The defendant pleaded that there was no notice of dishonour. The bill was, in the body, made payable in London, and it became due on the 24th of April. On the 26th an attorney at Chester, acting for the plaintiff, gave notice to the defendant of the dishonour, stating he was required by the drawer, Vaughan, to desire payment of the defendant's dishonoured bill, but he swore he was not authorised by Vaughan to give that notice, and at the time that he gave the notice he gave it in a wrong name by mistake. The sole question is, whether this notice was sufficient. We have already intimated our opinion that the notice was in sufficient time if it be considered as given by the plaintiff, and if it sufficiently referred to the bill in question. Since the case of *Chapman v. Keane* (3 A. & E. 193), it must be considered as perfectly settled that a notice of dishonour need not be given by the holder, but it may be said to be sufficient if a notice is given in due time by any one who is a party to the bill. The decision in the case that came before Chancellor Kent is referred to in the 3rd volume of his Commentaries, p. 108, and by Mr. Justice Story on Bills of Exchange, s. 304. The former states the rule to be general that the notice may be given to any one who is a party to the bill; the latter states it more fully, and says that the notice would be sufficient, although not given by the holder or his agent, if it comes through some person holding, or who is a party to the bill, or who will be entitled to require the reimbursement thereof. The notice, by the terms of the rule, as laid down by the Queen's Bench, must be given in due time by a party to the bill—that is, in due time, as if he was the plaintiff himself, and was suing; and, consequently, the case where a bill has been discharged by the laches of the holder, and is excluded; and so the terms of the rule, laid down by Mr. Justice Story, seem to exclude the case of a party to the bill, who could not sue on it as being a party to the bill, unless it is so understood; otherwise the mischief would happen, pointed out by Mr. Jervis, that there might be a bill having twenty indorsees; the owner might retain the bill for twenty days, and then recover against the drawer by a notice given by the first indorsee, which the indorsee himself could not do. Such a notice as this would not be in due time if given by the first indorsee; it would be bad, and would not support an action. The rule extends equally to a notice by an acceptor, who could not sue himself on the bill after taking it up. The instances referred to in which a notice by an acceptor have been held good at *nisi prius* are in Mr. Chitty's book on Bills, 227; and *Rosher v. Kieran*, 4 Camp. 87, which is explained by Bayley on Bills, 259, and this is explained under the supposition that the acceptor had a special authority to do so. In the present case it appears the directions given were not such as can be understood to have given a discharge by the holder at the time. The notice by him on the 26th would have been in sufficient time to have supported an action by him, and consequently an action by the plaintiff; there is, therefore, no objection to the notice on this ground, nor, indeed, would there have been any if the attorney had omitted or refused to state in whose behalf he applied. That was held in the case of *Woodthorpe v. Lawes* (2 M. & W. 109). It had been previously so laid down in Kent's Com. 2 vol. 108, where he says, "Any agent in the possession of the bill may give the notice, and it need not state at

whose request it was given, nor who was the owner of the bill." It remains, therefore, to consider what is the effect of not giving a true description of the party in whose behalf he gave this notice. This point has not been decided; but in *Chapman v. Keane* (the only case that bears upon it) it will appear the plaintiff's clerk was authorised, by the nature of his employment as clerk, to give it on behalf of the plaintiff, and he was, by the express authority of the holder, to give it for him. Here there is an untrue statement; but made unintentionally, and by a mere mistake. No doubt there is a difference between the two cases, where the notice is given by an authorised person, without stating on whose behalf it is given, and where an untrue intimation is given. In the one case the party is put upon inquiry, in the other he is misinformed. What ought to be the result of a misinformation? It is to be recollected that whether a party is misled or not as to the person giving the notice, the object of the notice is answered by the information of the dishonour of the bill: the person to whom notice is given is entitled to withdraw from the effects of it, or take a remedy against the prior party; and we think it reasonable to hold, that the misrepresentation of the name of a person on whose behalf notice is given ought not wholly to avoid the notice, but only to place the party giving it in the same situation, as to the party to whom it is given, as if the representation had been true. I therefore think that the defendant ought to have every defence against the plaintiff that he would have had if the notice had been given and the party's name had been correctly described. This is in analogy to the law and of contract with factors in similar cases where a contract is not avoided by a mistake that had been committed by the vendor. This was the case referred to in the judgment by my brother Alderson just delivered. The other party has all the equity against the real as against the apparent owner. If, therefore, in the present instance, a notice by Vaughan would have been bad, as it would have been if he had been discharged by laches, the defendant would have had a good defence, and the plaintiff would have had no right of action on the bill against the defendant; if he had taken it up, the defendant would have had a defence, and if good, as, on the evidence, it appears to us it would have been, the defendant has not been injured, and has no right to complain of misrepresentations. We think the ruling of the learned recorder right, and the rule ought to be discharged.

Rule discharged.

Saturday, April 18.

HUNTINGDON v. THE GRAND JUNCTION RAILWAY COMPANY.

New trial.

This was an action brought by the plaintiff against the defendants to recover the value of three casks of pearl shells, which had been deposited in the storehouses of the defendants, at Liverpool, and stolen therefrom. There were two counts in the declaration, one stating that the goods were to be taken care of and safely kept by the defendants, and delivered to the plaintiff on request, for reasonable reward to be paid to the defendants by the plaintiff in that behalf. The second count was a count in *trover*. A verdict having been found for the plaintiff,

Alexander, Q.C. now moved (pursuant to leave reserved) for a nonsuit, on the ground that there was no contract for reward proved, so as to support the first count; but that it was a mere bailment without reward; and as to the second count, there was no conviction proved.

Rule nisi.

THE MAYOR OF POOLE v. WHITT.

New Trial.

This was an action of covenant for rent. The plea was eviction. Verdict for the plaintiff, with leave for the defendant to move to enter a verdict.

Cockburn, Q.C. now moved accordingly. It appeared that the action had been brought to recover certain rents for a market, of which the defendant was lessee to the corporation, and the facts set out in the plea and relied on as a defence were, that some time since a gentleman named Parr, who was the town clerk of Poole, had been removed from that office, under the Municipal Corporation Act, and that the corporation awarded him compensation for the loss of his office, which was secured by a bond for 4,000*l.* Some time in 1838, this bond was put in force by Mr. Parr, and an *elegit* was sued out against the lands of the corporation on a judgment obtained on it. At this time the market was let by lease to a Mr. Browne, who attorned to Mr. Parr and paid him the rents, with the knowledge and without any objection on the part of the corporation. In 1840, his lease expired, and a Mr. West became lessee, and paid the rent to Parr as lessee until 1843, when his lease expired, and the defendant, Whitt, then became lessee; he also received notice from Mr. Parr, and paid him the rents without objection from the corporation for the first year of his lease. The corporation then thought that they had discovered something which would avoid the *elegit*, and gave notice to the defendant to pay his rent to them; this being refused, the present action was brought. The ground on which the corporation said the *elegit* could not issue was, that there

had been a prior mortgage for years of the market, and therefore that Parr could not have the writ. This, it was contended, was not so; for if they were sufficiently in possession to execute a lease, the rents could be taken in execution here they had a disposing power over them.

ROLFE, B.—If this was a mortgage for years, surely the reversion might be taken in execution.

Authorities cited: *Lyster v. Dollond* (3 Brou. Chan. Cas. 478, 1 & 2 Vict. 110).

Rule nisi.

MITCHELL v. NEWARK.

In an action by a sharebroker against a party for not accepting certain shares in a foreign railway, it appeared that there were no shares (strictly so called) in the market, but that the plaintiff had bought what was current in the market as shares in that company, namely, a letter of allotment. Held, that this satisfied the authority to buy shares.

This was an action brought by the plaintiff, who was a broker, to recover 150*l.* the price paid by him for certain shares in the Belgian Eastern Junction Railway Company.

At the trial it appeared that the authority given to the plaintiff by the defendant was to buy fifty shares in this company. By the prospectus which was put in, it appeared that no shares were to be issued by the company until three-tenths of the capital had been paid up; but letters of allotment were issued to the persons to whom shares were allotted, and it appeared that these letters of allotment were current sale in the share market. The plaintiff bought a letter of allotment of fifty shares for the defendant at the price of 150*l.* and on the defendant's refusing to accept the same, brought the present action.

At the trial it was contended that the purchase of a letter of allotment did not satisfy the authority to buy shares, and that therefore the defendant must have a verdict. The jury, however, under the direction of the Chief Baron who tried the cause, found for the plaintiff, damages 150*l.*

Humfrey, Q.C. now moved for a new trial, on the ground of misdirection, and contended that as the defendant had distinctly used the word "shares" in his authority to the plaintiff, the word must be taken in its strict literal meaning, and that it could not be satisfied by a purchase of something which might be equivalent to shares.

POLLOCK, C.B.—I left it to the jury to say whether the defendant meant the plaintiff to buy shares, strictly speaking, or what was on sale in the market as such, and they have found for the plaintiff.

Humfrey.—But it is submitted that it was not for the jury to decide that question, but the Court, upon the construction of the words of the prospectus. Now, if Newark had brought an action against Mitchell for not buying shares, would it not have been an answer to the action to say that there were no shares in the market?

By the COURT.—There is no rule of law to compel us to shut our eyes to what really was the intention of the parties, and it is clear they meant the thing really bought: it was quite a question for the jury. Here was an authority given to do something, and it was for them to say what was meant. They have decided, and we do not think we should disturb that decision.

Rule refused.

CREMER v. CHUCK.

At the trial of a cause at *Nisi Prius*, a verdict was taken for the amount claimed by the plaintiff, subject to a reference: the arbitrator to have power to make an award, or to give a certificate as to the sum for which the verdict was to stand; some months after the trial the arbitrator, instead of making an award, gave his certificate for the sum found by him to be due: Held, that the plaintiff might immediately proceed to sign judgment and tax his costs, and was not obliged to wait until after the four first days of the next Term.

In this case a verdict had been taken at the trial by consent for the plaintiff for the amount claimed, subject to a reference; the arbitrator to have power to make an award, or to give his certificate as to the amount for which the judgment was to be signed.

The arbitrator did not make an award, but two Terms after the verdict gave his certificate, whereupon, on the 7th of April, the plaintiff signed judgment.

Jervis, Q.C. having obtained a rule, calling on the plaintiff to shew cause why this judgment should not be set aside, on the ground that it was irregular, having been signed before the first four days of the Term after the certificate was given had expired,

Martin, Q.C. and *Willes* now shewed cause, and contended that the judgment was perfectly regular. This was not like the case of an award; it must be taken that the verdict was given six months since, and this certificate is given merely to settle the amount for which the execution is to issue, the whole being done by consent of the parties. It is not contended that the defendant cannot come here within the first four days of the next Term after the certificate is given, to set aside the certificate; if there were any ground for such motion, all that is contended is, that there is no stay of proceedings, and that the plaintiff's hands are not tied from taxing his costs,

and signing final judgment, immediately on the certificate being given.

Cases cited: *Ames v. Lettice*, (6 M. & W. 216); *Hobdale v. Miller* (3 Scott, N.S. 163); *Little v. Newlan* (1 M. & G. 976).

Jervis, Q.C. in support of his rule, admitted that he could cite no direct authority in his favour, but contended that it must be taken that the verdict was given at the time the arbitrator gave his certificate, and not when the trial was had. The certificate was, in fact, the verdict, and if so, the defendant had all the first four days of the next Term in which to move, and the plaintiff could not proceed to sign judgment until after that time.

Cases cited: *Cheekam v. Sturtivant* (12 M. & W. 515).

By the COURT.—This rule must be discharged. The question shortly is, whether the verdict is to be considered as delivered at the time of the trial, or when the arbitrator sent in his certificate. We think it is to be considered as a verdict delivered by the jury at the trial. It is clear that the plaintiff could not, after the trial, elect to be nonsuited; and for all purposes of form the verdict is delivered at nisi prius. The parties agree that the jury shall give a certain price, subject to be reduced by the arbitrator if he think fit. The defendant cannot complain of any hardship, and if we interfered we should do great injustice. Rule discharged with costs.

Monday, April 20.

LOWRIE V. DOUGLASS AND OTHERS.

New trial.

This was an action against the defendants, as common carriers, for not safely carrying certain barrels of pearlash, whereby the same was wholly lost. The facts were, that the pearlash had been shipped on board a vessel of the defendants' at a foreign port, to be delivered in London. The bill of lading was in the usual form, and undertook to safely carry, "the perils of navigation excepted." The ship arrived in the London Docks on the 1st of July, 1845, when the crew were discharged, and "lumpers" engaged to unload the ship, which was partly done, when, by some mismanagement, she was overset, and the pearlash destroyed by the water. The question made at the trial was, whether this was a "peril of navigation." The learned judge who tried the cause thought it came within the protection of the exemption in the bill of lading, and directed a verdict for the defendant, giving the plaintiff leave to move to enter a verdict for 227l. 5s. 11d. the value of the pearlash, if the Court should be of opinion that he was entitled to recover.

Jervis, Q.C. moved accordingly, and contended that it was clear that this could not be a peril of the sea by which the goods had been lost, for the voyage had ended and the crew were dismissed. He cited *Thompson v. Whitmore* (3 Tannt. 237); *Fletcher v. Ingles* (2 B. & A. 315.) Rule nisi.

LOW V. THOMPSON.

Nonsuit.

Jervis moved for a nonsuit herein. He stated that the declaration was for work and labour, care, diligence, and attendance. The particulars stated the action to be brought for a salary of 200l. a year, as clerk to the defendant. Rule nisi.

BRADLEY V. TONGE.

New trial.

This was an action on a special agreement; verdict for the plaintiff, damages, 40s.

It appeared in this case that the defendant had incurred various liabilities, and become indebted to a considerable amount to the plaintiff, whereupon he undertook to convey a certain estate to the plaintiff in discharge of these liabilities. He failed to do this, and the present action was brought on the special agreement. At the trial the value of the estate was proved, and it was contended that that should be the measure of damages. The learned judge, however, who tried the cause directed a verdict for 40s. giving the plaintiff leave to increase it to say sum the Court should think fit.

Whately, Q.C. now moved accordingly, citing *Hopkins v. Graybrook* (6 B. & C. 61.) Rule nisi.

FINLAYSON V. PILBROW.

New trial—Misdirection.

In this case a verdict had been found for the plaintiff.

M. Chambers now moved for a new trial, on the ground that the verdict was against the weight of evidence, and also on the ground of misdirection.

The misdirection complained of was, that the learned judge did not direct the jury at all as to the effect of one part of the evidence given.

By the COURT.—How can you move for a new trial on the ground of misdirection, when there has been no direction at all? The motion for a new trial stands in the place of a bill of exceptions; now there is nothing here to except to. Rule refused.

BOULEY V. BELL.

New trial.

This was an action of *indebitatus assumpsit*, for money paid.

Plea, non assumpsit.

At the trial the contract was proved by a paper, which was put in, in the following form:—"On or before the 23rd I undertake to pay a call of 2l. 5s. per share on the five shares in the Grimstead and East Sheffield Railway, sold by you, on my account, on the 28th of July last, pledging myself to sign the necessary transfer of the shares." It was objected that this document required an agreement stamp; it was, however, admitted in evidence, and a verdict found for the plaintiff, leave being given to the defendant to move for a nonsuit.

Martin, Q.C. now moved accordingly.—There were other points in the case, one of which was, whether or not it was requisite for the vendee of shares in a railway to tender to the vendor a transfer-deed, duly stamped, for the vendor to sign, under 8 Vict. c. 16, s. 14. Rule nisi.

KEARSLAKE V. COLE.

Nonsuit.

This was an action against the defendant for money paid to his use. Plea, non assumpsit. It appeared that Kearslake, who was a partner in the Commercial Bank of England, at Birkenhead, had become surety to the Bank for all advances made to Cole up to 500l. Cole, some time after this, became embarrassed, and was in debt to the Bank 1,100l. His creditors, however, agreed, on his assigning all his property for their benefit, to take a composition; and the Bank and also the plaintiff were parties to the deed. The Bank received their proportion of the composition, upon which Kearslake paid them 500l., as the sum he had been answerable for, and then brought the present action against Cole to recover the money, as money paid to his use. A verdict having been found for the plaintiff.

Martin, Q.C. now moved for a nonsuit pursuant to leave reserved, on the ground that Kearslake, by being a party to the composition deed, had discharged Cole from his liability as to the 500l., for it was a debt then owing, but if not it was clear that the surety was released from his liability by the Bank taking the composition, and he had no right to pay the money to the Bank and then seek to recover it of the debtor Cole, who had denuded himself of everything to get rid of his liabilities.

Cases cited: *Lewis v. Jones* (4 B. & C. 515, and note); *Walley v. Stubbs* (18 Ves. jun. 20).

Rule nisi.

DANIEL V. FIELDING.

New trial.

This was an action on the case for maliciously causing the plaintiff to be arrested on an affidavit of debt, under 1 & 2 Vict. c. 110, s. 3. The verdict was for the plaintiff.

Martin, Q.C. now moved in arrest of judgment, on the ground that the declaration was informal, as it was not therein alleged that the affidavits, on which the order to arrest had been obtained, were false, but only that the statements therein were false; it was nowhere alleged that the defendants knew them to be false.

Cases cited: *Hensworth v. Fowkes*, 4 B. & Ad. 449. Rule nisi.

HUGHES V. MANN AND OTHERS.

Motion to set aside a judgment.

Atherton moved for a rule, calling on the plaintiff to shew cause (in three actions by and against the same parties) why the judgment as against one of the defendants, George Mallien, should not be set aside with costs. He stated, that at the trial of these causes all the defendants but Mallien were represented by counsel, but that the causes as to him were undefended; when the causes were called on, an arrangement was entered into between the counsel for the plaintiff and the counsel representing the other defendants, to take a verdict for the plaintiff, on which judgment had been signed against all, including Mallien. This, it was submitted, was irregular, as he was no consenting party to such arrangement. Rule nisi.

HARRIS V. COLLEY.

New trial.

This was an action on a special agreement.

The declaration set out, that the defendant, who was a cab keeper, had agreed to let, and the plaintiff to take, a certain house, at the yearly rent of 20l. and the defendant was not to give the plaintiff notice to quit so long as he paid the rent to defendant. It was further agreed that the defendant was to employ the plaintiff as his foreman to collect the money from the cabmen, for which the plaintiff was to receive a sum not exceeding 1l. 1s. per week. The breach set out was, that the defendant would not, in pursuance of this agreement, continue to employ the plaintiff, so long as he retained possession of the said house, but, on the contrary thereof, discharged him, and would not pay him the said sum of 1l. 1s. per week. The defendant pleaded, amongst other pleas, that it was the plaintiff's duty to receive the money from the cabmen frequenting the defendant's yard when requested, and

that on a certain day the plaintiff was requested to receive the money from certain cabmen, and amongst others one Beauchamp, but he did not nor would receive the said money, whereupon the defendant discharged him.

Replication, *de injuria*.

At the trial it was proved that the plaintiff had been called and requested to come to the yard and receive the money of several cabmen, and that he refused to come; but the witness would not swear whether or not he mentioned the name of Beauchamp to the plaintiff, as a man whose money he was to receive; whereupon it was contended, on behalf of the plaintiff, that the plea was not proved, and Platt, B. who tried the cause, so ruling, the plaintiff had a verdict, damages 60l.

Martin, Q.C. now moved for a new trial, on the ground of misdirection, and contended that it was not at all material that the name of the man should have been mentioned. Rule nisi.

Thursday, April 23.

TENNANT V. PARKER.

Semble—In an action of trespass, the defendant paid 6l. into court; on a replication of damages *ultra*, the plaintiff had a verdict for 1l. Held, that this was not a recovery of more than 40s. by verdict of the jury, so as to entitle the plaintiff to his costs.

This was an action of trespass for an illegal distress. The defendant paid 6l. into court, but the plaintiff replied damages *ultra*.

At the trial, the plaintiff had a verdict, damages 20s.

Gunning, now moved for a new trial, on the ground that the verdict was against evidence.

PARKE, B.—I thought the 6l. ample, but I can hardly say that the verdict was a perverse one. There was evidence on which they might act.

ALDERSON, B.—They have only recovered 20s. damages; that will not carry costs, so you are not much hurt.

Gunning.—But it is said by the Master that per-adventure this is a recovery of 7l.

PARKE, B.—This is not a recovery of 40s. by a verdict of the jury; they cannot get their costs.

Rule refused.

GATHERCOLE V. MIALL.

In an action brought by a clergyman against the publisher of a newspaper for a libel, the subject-matter of the libel complained of was an article containing a severe comment on certain sermons preached by the plaintiff in his parish church, and also on the printed rules of a charity established by him in the parish. Held (on a motion for a new trial), that evidence might be given of the receipt of copies of the paper containing the libel by various persons, not to shew malice on the part of the defendant, but to shew the extent of the mischief to the plaintiff's character. Held, also, that as the charity was a private one, established by the clergyman, his conduct in framing the rules by which it was regulated was as much protected from comment as the acts of a private individual in the ordinary affairs of life.

Semble—*Alderson* dubitante; *Rolfe* dissentiente—that a sermon preached by a clergyman in his parish church, in the ordinary discharge of his duty, is equally protected from comment.

This was an action of libel, brought by the plaintiff (who is the vicar of Chatteris) against the defendant as publisher of the newspaper called *The Nonconformist*. The case was tried at the last assizes for the city of Cambridge, and the libel complained of was an article reflecting very severely on the conduct of the plaintiff in the pulpit, in preaching violent sermons against the dissenters (who were a numerous body in his parish); and also on his conduct with regard to his breaking up a clothing society which had existed in the parish for some years, and forming another under the name of "The Chatteris Church Clothing Society;" this society was formed on the principle of the exclusion of the dissenters from any participation in the benefits of the society, and the rules (which were printed) classed the dissenters with "drunkards, schismatics, adulterers, opium-eaters, and other persons committing deadly sin." These words had also been very severely commented on in the article which formed the libel complained of. At the trial the plaintiff proved that the defendant was the responsible party to be sued, by evidence from the Stamp Office in the usual way, and then proposed to give evidence that a copy of the paper containing the libel had been received at the Chatteris reading rooms on the day after the publication. This was objected to, first, on the ground that it was not shewn to be sent by the defendant, and secondly (as it was proposed to give parol evidence of its contents), that no sufficient search had been made for it; it was, however, admitted. When the plaintiff's case had closed, Mr. Serjeant Byles, who conducted the defendant's case, proceeded to contend that the comments of the defendant upon the sermons preached by the plaintiff and the rules drawn up by him were quite fair, and that the defendant was justified in his comments. Mr. Baron Parke, however, interrupted the learned serjeant, and ruled that comments of that kind by the press upon unpublished sermons were not justifiable, nor were

they upon the rules of a private charity. Upon this the learned serjeant did not press that part of his defence, or give any evidence of any particular sermon. When the learned Baron summed up the case to the jury, he laid it down to them that it was his opinion that unpublished sermons were not to be made the subject of comment, but stated that it was not necessary to decide the point in the present case, as no evidence had been given of any particular sermon preached by the plaintiff. With regard to the question of the charity, he distinctly laid it down that the conduct of the vicar of a parish in the administration of a charity established by him was not to be made the subject of criticism and comment by the public press. The plaintiff had a verdict, damages 200l.

Wilde, Serjt. now moved for a new trial.—First, it is submitted that the evidence with regard to the newspaper alleged to have been received at the news-room at Chatteris was improperly admitted. The evidence given was, that a paper having the name of *The Nonconformist*, and dated the 7th of January, 1846, was received at the news-room, but there was no evidence whatever to shew that the defendant sent it there, upon which the evidence was objected to by the defendant's counsel. [PARKE, B.—I did not receive it as evidence of malice, but to shew the circulation of the paper, and so the extent of the mischief to the plaintiff's character.] But I submit that it is not competent to the plaintiff to give this evidence, unless the sending is traced to the defendant; for it may be that the plaintiff extended the circulation himself to increase the damages. Then parol evidence of its contents was improperly received, as there was no sufficient search proved. The witness, who was the president of the rooms, proved the receipt of a paper called *The Nonconformist*, but did not know what became of it; he had not got it, and did not know where it was; on statement this parol evidence of its contents was received; now how could this be evidence against the defendant to influence the damages?

PARKE, B.—I only received it as a copy of such a paper as that proved to be published by the defendant. The libel was read to the witness, and he stated that the paper he received contained such an article.

POLLOCK, C. B.—Suppose this was a caricature, which is more easily identified than a paper, surely it would be enough for a person to say "I saw a copy of this caricature which has since been burnt."

Wilde.—I am not prepared to admit that that would be evidence against the defendant of a libel circulated by him.

PARKE, B.—The evidence was admitted by me to show the circulation, and not malice by the defendant; and the question is, whether the fact that a copy of the paper containing the libel, and printed by the defendant, which gets to the reading room, is not evidence to shew the extent of the damage to the plaintiff's character by the circulation.

Wilde.—I contend this is an unauthorized circulation by a third party, for which the defendant is not liable. Then as to the libel itself, it is no part of my duty to contend that the plaintiff is not entitled to a verdict, but let him recover damages commensurate with the libel. I contend that the jury should have been told by the learned Baron that the libel was a comment on sermons and facts of great public interest, and if they thought that the defendant had exceeded the bounds of fair and proper criticism, that they should give damages for such excess. My Brother Byles, in his address to the jury, was submitting this view of the case to the jury, when he was interrupted by Mr. Baron Parke, who laid it down that a sermon, if not printed and published, could not be made the subject of remark.

PARKE, B.—What I said has been misunderstood. I certainly interfered in the course of my brother Byles' address, with the view of saving time, and I might then have said that sermons were not the subject of remark; but when I came to sum up the case to the jury, I expressly withdrew that question from them, as one which it was unnecessary to decide, for it did not arise, although I entertained, and still entertain, a strong opinion, that a sermon does not afford any justifiable occasion for comment.

Wilde.—It was useless to tender evidence of sermons when the opinion of the judge was so clearly against this evidence being admissible; and I contend that the defendant had a right to comment within certain limits, which has not been submitted to the jury.

PARKE, B.—At all events, I am confident that whatever I said did not operate to prevent Mr. Serjeant Byles from offering proof.

Wilde.—Then as to the charity: that is, I contend, a public act. The rules are printed and given to the world. The rules commence with a perverted text of Scripture; and Mr. Gathercole tells us we are to do good to all the world, but not to dissenters, adulterers, or murderers. This is his interpretation of charity. How is this to be corrected? If you say that the press may not correct such injustice as this by public comment, a great public injury is inflicted. The article complained of may, perhaps, exceed the bounds of fair and proper criticism, but that is a

question which was never submitted to the jury, who were told by the learned Baron that there was no right to comment at all. It is impossible not to feel that whatever falls from so eminent a judge must greatly influence a jury, and control a counsel in the exercise of his discretion in the conduct of the case. Here an opinion was expressed at one time, which went to exclude both sermons and regulations from criticism; but nothing can be more public than sermons delivered in a large parish, and regulations concerning the administration of the charity within that parish. They are both subjects of public interest, and were therefore fairly open to criticism.

PARKE, B.—Do you mean to contend that if I, in my private capacity, chose to establish a charity, print rules, and administer my bounty in an exclusive manner, that the press have a right to comment on it?

Wilde.—That may be questionable, but here the public are concerned; this is a parish with 5,000 parishioners, and the example of the vicar is calculated to have great influence in his parish, and surely the public have an interest in these 5,000 persons. The rules are set forth as "under the patronage of the vicar;" how can this be said to be a private act? upon the whole case, then, it is submitted, both on the question of misdirection of evidence, and also on the ground of misdirection, there should be a new trial.

PARKE, B.—Before my brothers give judgment I again beg to state, that I never meant to bind myself to the opinion I had expressed in the course of my brother Byles' speech, as to the exemption of sermons, although I had then, and still have, a strong opinion that they ought to be so, unless they are printed, and so made public property by the clergyman; but when I came to sum up, I expressly guarded myself, and did not lay it down so broadly, as it was unnecessary to decide the point, which never arose in this case, for no sermon was proved. With respect to the rules of the club, I did not think that they afforded any occasion which could justify any comment being made on them. I so directed the jury, and it is for the Court to say whether I was right or wrong in so doing.

POLLOCK, C. B.—We are all agreed that in this case there ought to be no rule. The rule is moved for on two grounds: first, misconception of evidence, and, secondly, misdirection. Now, as to the first ground, the defendant was proved to be the proprietor of the *Nonconformist* newspaper, and a paper containing the libel was put in and proved; it was then proposed to shew that other papers containing the libel were in circulation. This was done not to shew malice, but the extent of the injury to the plaintiff's character. A witness was called, who took upon himself to say that he saw a paper in the news-room and proposed to give evidence of its contents, on the ground that it was lost. Now in all these cases the evidence as to the loss must vary; if a paper or document of importance is said to be lost, this may call for evidence of considerable search before parol evidence is admissible; but, on the contrary, as to that which is merely like waste paper, small search will suffice. In the present case search was made in the reading-room, where the paper ought to have been, and it could not be found. They could not be expected to ask all the various people who frequented that room if they had it; so the paper must be taken to be lost. It is then said that it was not shewn to be circulated by the defendant, and therefore he is not liable for the mischief it may do. Now the paper was printed by the defendant, and issued by him, and wherever found he must be held responsible for the mischief done by it. On these grounds, therefore, I think that the evidence was rightly received. The second point, on misdirection, proceeds on the objection that my brother Parke laid down the same rule of law with regard to sermons which are preached and the regulations of the charity club, as that which is applicable to private conversation and the private characters of individuals, while it is contended that they both justify remarks passed on them, with truth and justice, provided they are honest and *bona fide*; and that such remarks can be justified under the general issue. Sir T. Wilde has argued this as a case of great importance, and it is undoubtedly one of vast and grave importance. He contended that the law ought to allow public opinion to operate on these subjects, on the ground that public interests demanded a supervision of them. I certainly agree that all measures of a public nature ought to be subject to comment, and that all *bona fide* and honest remarks on public parties ought to be allowed; but we must take care not to allow that feeling to carry us along when the interests of the public are pressed, with the object of pushing that doctrine too far. The commentator may comment on everything, provided truth be the foundation, and justice the superstructure of his comment, and that doctrine must be applied to the two questions which have been raised to-day. I must say that I for one go along with my brother Parke. I think that a sermon preached by a pastor to his congregation may be made the subject of comment, fettered by the rule that you do so with truth and justice. Mr. Baron Parke, however, did not exclude any proof of a sermon, and in the course of the cause, and of the

summing up, he expressly drew the attention of the learned counsel to the fact, that no sermon had been proved. On this ground alone I think the rule may be refused as to that point. As to the rules of the charity, I quite agree that licentious comments cannot be applied to such. When a work is published criticism is invited; but here the question is, whether a parochial charity, with the vicar at its head, and confined in its application to certain parties, may be made the subject of licentious criticism. It is enough to apply the ordinary rule to this case, namely, that every body may comment on every thing if truth and justice be observed, and I therefore think that in that rule has been transgressed there is no ground laid for a new trial.

ALDERSON, B.—I am of the same opinion. But although I think there ought to be no rule, yet if the question had been, simply, whether sermons are open to criticism, I should have doubted about refusing it. At the same time, I am by no means sure that I should not have agreed with my brother Parke's view on that subject. I think that this rule ought to be refused on the first ground most clearly; and as to the misdirection, if my brother had told the jury, that to observe on sermons preached by clergymen was not within the law, I should have doubted very much whether I could adopt that direction; though I might ultimately have come to the same opinion which my Lord Chief Baron and my brother Parke entertain. It seems to me that the distinction between the right to comment on public and private matters and men is very difficult of comprehension; where the limits are I do not exactly see, or where they begin or end. You may comment on a judge or an actor as such. You may say a judge is not clear, or an actor is not fit to represent certain parts, but you cannot observe on their private characters and conduct. I do not exactly see where the limits are to be pointed out. I think you may say, perhaps, that a man is a bad preacher; the dullness of a sermon is a very proper subject of comment and public opinion. Perhaps you have no right to comment on the doctrine contained in a sermon, for there is a proper Court which has cognizance over unsoned doctrines put forth in sermons. Now, this act of preaching a sermon is done in the ministerial public capacity of a clergyman. He is bound to preach, and that is why I doubt whether he is liable to comment on that score; but as to the administration of a charity established by him in his parish, that is no part of his public duty; he differs, therefore, in that respect, in nothing from any other private individual who may institute a charity within his parish, and select the objects of participation. Such acts are protected from comment as the acts of private individuals; and though every man may comment on private charities, he must do so in the same way when they are conducted by a clergyman as by any other private individual. A clergyman differs in nothing from any other man by reason of that character, and is no more open to comment than any other private person is. For these reasons, therefore, I think this rule must be refused.

ROLFE, B.—With regard to the point, as to the admission of evidence, I entirely agree with the rest of the Court; and after the way in which the Lord Chief Baron has stated his reasons, it would be mere pedantry in me to put the same reasons in different words. Then as to the misdirection, I think this must be taken to have been a formal direction to the jury as to the charity, though not so as to the sermons, for my brother Parke corrected himself afterwards. The question then is, whether my brother was right in telling the jury that this charity was such as not to entitle the defendant to the privilege of commenting on its rules as he might on any public acts. It was argued at first as though the direction had been, that the policy of having charities from which dissenters were to be excluded was not to be discussed at all. But that was not the way in which it was put at the trial. If it had been, I should have gone along with Sir T. Wilde in contending for a right to comment on such a policy. That is a public act which would warrant observation, and I may take this opportunity of saying, that, in my opinion, comments on public sermons would have come within the category of public acts. That point, however, does not arise in this case; for the observation was expressly withdrawn from the jury. But as to the rules, I think it most preposterous to say that the conduct of a clergyman in administering a charity is not within the category of public acts on which fair comments may be made. These comments, however, were not fair. There is no pretence for saying that they are; and as this was a mere private administration of charity, I think it is protected from comment, though we may doubt the propriety of the course adopted by the defendant.

PARKE, B.—I wish to add a word or two as to the question whether I was right in saying that no occasion was afforded by the plaintiff's conduct respecting the rules of the charity to warrant the comments of the defendant. I certainly entered more fully than I would have done under ordinary circumstances into the law of libel in this case, and having done so, I intimated to the jury that I thought these rules afforded no occasion which could render the comments of the defendant excusable; I at the same

time told them, that if any such occasion had been given, the defendant might resort to it under the general issue. As to the sermons, I entertained a strong opinion that a clergyman, by preaching verbal sermons, did not make them public property, as when he was preaching a sermon in the ordinary discharge of his duty as a pastor in his parish church. I thought that that afforded no sufficient occasion for comment, and, with all due respect to the judgment of my brother Rolfe, I think so still; however, in this case, the point does not arise, as I never so directed the jury.

NICHOLS v. STANWAY.
Motion in arrest of judgment.

This was an action by the plaintiff as indorsee of a bill of exchange.

Chilton, Q. C. now moved an arrest of judgment on the ground that it was not shewn on the face of the declaration that the bill was a negotiable instrument transferrable by indorsement; it was not stated to be payable to bearer or to order. *Rule nisi.*

BOWEN v. HODGES.
Motion for nonsuit—Evidence.

In an action by an attorney for his fees for passing the defendant through the Insolvent Court, the retainer was proved by a copy bearing the seal of the Insolvent Court, and given by the officer of the court under 1 & 2 Vict. c. 110, s. 105.

Held, that the retainer which was filed in the court was such a "proceeding" as was contemplated by that section, and therefore the copy was properly admitted in evidence.

Held also, that it was not incumbent on the plaintiff to prove the delivery of a signed bill to the defendant before he could recover, and that 6 & 7 Vict. c. 73, s. 37, had not altered the rule of law in that respect. This was an action on an attorney's bill tried before the sheriff.

The declaration was for work, labour, and materials, and money paid in passing the defendant through the Insolvent Court. Verdict for the plaintiff.

Woobrych now moved for a nonsuit on several grounds: first, he contended that it appeared at the trial that the plaintiff had a partner, and therefore he ought to have been joined in the action; and that, although there might be an arrangement between the partners that one should conduct this business, yet this he contended did not alter the question. (*Arden v. Tucker*, 4 B. & Ad. 815.) [**PARKE, B.**—There is abundant evidence on the sheriff's notes to shew that the contract was made with the plaintiff alone, and that the defendant knew nothing of the other partner.] Then the evidence by which the retainer was proved was improperly admitted. The document put in was a copy of the retainer, and bore the stamp of the seal of the Insolvent Court. It was put in under the 105th sec. of 1 & 2 Vict. c. 110, the original retainer having been filed in the Insolvent Court; but it was submitted that a retainer was not such a document as was contemplated by that section, which merely required the officer of the Insolvent Court to give copies (under the seal of the court) of the "petition, vesting order, schedule, order of adjudication, and other orders and proceedings." Now this, it is contended, is no "proceeding" within the meaning of the Act.

PARKE, B.—As this document is furnished by the officer of the court, I think we must infer that it is such a "proceeding" as he has power to furnish under the section referred to. Here a certified copy was produced, and I think it is a proceeding of which a copy is properly grantable by the Insolvent Court.

Woobrych.—Then it was not proved that any signed bill was delivered. [**PARKE, B.**—That can only be taken advantage of by a proper plea.] But the late Act 6 & 7 Vict. c. 73, s. 37, enacts that no attorney shall commence any action for his fees until one month after the delivery of his bill signed.

PARKE, B.—It is not necessary to prove that in the first instance, but only when the point is raised by a plea.

By the COURT.

Rule refused.

Friday, April 24.

GARBETT v. YARBOROUGH.
Libel—Sufficiency of justification.

In this case, which was tried before Platt, B. at the last Shrewsbury Assizes, **Keating** moved for a rule to shew cause why the verdict which had been found for the plaintiff on certain of the issues should not be entered for the defendant; or, why there should not be a new trial. This was an action on the case for libel, the alleged libel being contained in these words, which were proved to have been written by the defendant: "I understand that a warrant was applied for yesterday for the plaintiff, and I sincerely hope that he is by this time in custody." The question now brought before the Court was, whether the plea of justification was sufficient without containing an express averment that an information, on oath, had been laid before the magistrate for obtaining the warrant.

Keating argued that it was not necessary to prove the fact of an information upon oath; that the warrant might have lawfully issued without such informa-

tion; and that if an information upon oath was not necessarily to be inferred from the declaration, the plea in justification need not aver it. He cited *Sweetapple v. Jesse* (5 B. & Ad. 27); *Kelly v. Partington* (5 B. & Ad. 645); *Clarke v. Poslan* (6 C. & P. 423); *Baslen v. Carew* (3 B. & C. 649). [**PARKE, B.**—What does the expression "charged with felony before a magistrate" import? Not necessarily that there was an information upon oath.

Rule to shew cause.

HUGHES v. BUCKLAND.

The owner of land, and of a fishery, who takes into custody parties fishing in the night-time, at a spot adjoining to, but beyond the limits of, his estate, is entitled to notice of action under the stat. 7 & 8 Geo. 4, c. 29, if he acts bona fide, and with reasonable grounds for believing that he so acts under the authority of that statute.

This cause was tried at the Carnarvon Assizes before **Parke, B.** It is an action of trespass against the defendants, being the gamekeepers and servants of Colonel Pennant, for seizing the nets of the plaintiffs, and taking them into custody. The defendants pleaded not guilty, under stat. 7 & 8 Geo. 4, c. 29.

At the trial, it appeared that at the time of committing the alleged trespass, the plaintiffs were not actually within the limits of Colonel Pennant's property, but within a very short distance (a foot or two) of such limits, and that Colonel Pennant was likewise owner of the adjacent fishery, though not of the precise locus in quo.

The question was, whether, under these circumstances, the defendants were entitled to notice of action, and had a right of venue pursuant to the provisions of the above-mentioned statute.

The learned baron held that such notice was necessary, and the verdict was accordingly entered for the defendants, with leave to the plaintiffs to move to enter the verdict for them, if the Court should think fit, with damages, which, to prevent the necessity of a new trial, were assessed by the jury.

Yardley (with whom were the *Solicitor-General* and *Townsend*) now shewed cause against the rule which had been obtained to enter the verdict for the plaintiffs, pursuant to the leave reserved. If Colonel Pennant had reasonable grounds for believing, and did *bona fide* believe, that he had the exclusive right of fishery at the locus in quo, which was the opinion both of the learned judge who tried the cause and of the jury, the defendants were entitled to the protection of the stat. 7 & 8 Geo. 4, c. 29. Here Colonel Pennant had the right of fishery in a part of the same water wherein the plaintiffs were fishing, though he was not actually the owner of the precise spot. It is submitted that he is, nevertheless, within the meaning of the 35th section of the above statute. The judgment of *Patteson, J.* in *Hopkins v. Crowe* (4 A. & E. 774, 777), will be relied on by the other side, but the current of authorities is in favour of the defendants. It must be borne in mind that the plaintiffs, at the time of the alleged trespass, were engaged in taking fish in the night-time, and within a foot or so of Colonel Pennant's property. The cases which decide that magistrates and other officers are protected who act wrongly, or even beyond their jurisdiction, but *bona fide* and with reasonable grounds for believing that they have jurisdiction, and are entitled to act, apply to the present case. (*Bird v. Gunston*, 4 Doug. 275; *Prestidge v. Woodman*, 1 B. & C. 12.)

POLLOCK, C. B.—A magistrate, although bound to act within his jurisdiction, need not enter into nice questions respecting the limits of property.

PARKE, B.—The question is, whether the word "owner" must be strictly construed, in order that the party may be entitled to the protection given by the 75th section of the statute.

Yardley referred to *Daniel v. Wilson* (5 T. R. 1), *Cook v. Leonard* (6 B. & C. 351), and was then stopped by the Court.

Jervis, Q. C. and **Welsby**, in support of their rule.—The cases respecting magistrates and other officers will be found to go to this extent only, that when a person fills that particular character to which protection is intended to be given by some particular statute, he is entitled to the protection and immunities thereby afforded, even though he exceeds the authority delegated to him by law, provided he had reasonable grounds for believing that he had jurisdiction, and was entitled to act. (*Bird v. Gunston*, 4 Doug. 275; *Prestidge v. Woodman*, 1 B. & C. 12; *Jones v. Williams*, 3 B. & C. 762; *Greenwoy v. Hurd*, 5 T. R. 553; *Daniel v. Wilson*, 5 T. R. 1; *Beechey v. Sides*, 9 B. & C. 806; *Ballinger v. Ferris*, 1 M. & W. 628; *Butler v. Ford*, 1 Cr. & M. 662; *Wedge v. Berkley*, 6 A. & E. 663; *Norris v. Smith*, 10 A. & E. 188; *Cann v. Clipperton*, 10 A. & E. 582; *Pratt v. Hillman*, 4 B. & C. 269; *Bush v. Green*, 4 B. N. C. 41; *Lidster v. Barrow*, 1 Per. & Dav. 447.) In all the cases which have been cited on the other side, it will be found that the party protected has been authorised to act in virtue of some particular character, *eo nomine*: the principle of those cases does not apply here.

They also cited *Weller v. Toke* (9 East, 364); *Jones v. Gooday* (9 M. & W. 736).

Townsend cited *Rudd v. Scott* (8 So. N. R. 631), and was then stopped.

POLLOCK, C. B.—It is not necessary to advert to the numerous cases which have been cited in the course of the argument. It is our duty to endeavour to ascertain the meaning of the statute, the provisions of which have been so much discussed, and to give it such a meaning as may render its various clauses consistent. This will be done by holding, that persons who honestly, though mistakenly, do an act in pursuance of the statute, are protected. In every act there are three ingredients,—time, place, and circumstance. Now a magistrate who acts at the wrong time, or under circumstances which do not entitle him to act, is clearly protected (*Cann v. Clipperton*); why then should place be considered more important than time or circumstance? The present case is like that of a magistrate who acts as such out of his jurisdiction. Moreover, sec. 75 expressly protects the present defendants, as persons acting in pursuance of the statute, and having reasonable grounds for the belief that they were acting within and under its authority. Even if the words of the 63rd sec. had been repeated in the 75th sec. I should still think that this rule ought to be discharged.

ROLFE, B.—I confess that I have, during the argument, changed the grounds on which my opinion was founded. I at first thought that Colonel Pennant was entitled to protection as owner of the fishery close adjoining to the locus in quo. I now think that all persons are so entitled, under the 75th section, who are sued for any act done *bona fide* in the belief that they are so acting in pursuance of the statute, though this protection must be confined to those who knew what the provisions of the Act were, and thought the particular circumstances of the case brought them within those provisions. This view will explain, and is in accordance with what *Patteson, J.* said in *Hopkins v. Crowe* (4 A. & E. 777.)

PARKE, B.—The words "in pursuance of this Act" apply to persons believing *bona fide* that they are authorized under the Act. *Rule discharged.*

Saturday, April 25.

ADAMS v. NORTON.

*Motion to set aside a writ of *accedas ad curiam*.*

Cowling moved for a rule calling on the defendant to shew cause why the writ of *accedas ad curiam* sued out in this case should not be set aside. He stated that the action was one in a Court of Conscience, and the judgment was for the plaintiff; he also stated that he had an affidavit which set forth that the statute under which the Court acted was in all respects like the Acts usually regulating the practice of Courts of Request, and that, as their practice was different to that of the Courts of Common Law, the writ of *accedas ad curiam* would not lie.

Cases cited: *Scott v. Bye* (9 Moore, 649); *Bates v. Turner* (10 Moore, 32); *Tingle v. Raston* (ib. 171). It was also contended that, if any writ could issue, it should have been a writ of false judgment.

Rule nisi.

HUGHES v. STEWARD.

In an action of debt, for use and occupation, where no sum certain has been agreed on to be paid for rent, it is not necessary to have a writ of inquiry, but the plaintiff may sign final judgment, and issue execution at once, subject to an application to the Court by the defendant, if the plaintiff take too much.

In this case the declaration was in debt for use and occupation, and, a plea having been put in too late, the plaintiff signed final judgment.

Willes now moved to set aside the judgment on the ground that it was irregular. He stated that no fixed sum had been agreed on to be paid by the defendant for the premises, and therefore there ought to have been a writ of inquiry before the plaintiff was entitled to sign final judgment.

POLLOCK, C. B.—That is not necessary. My experience has always been, that if you proceed in debt you may issue your execution for what sum you please, subject to an application to the Court if you take too much.

PARKE, B.—Your application is at least a half century too late to my certain knowledge.

Rule refused.

LAMB v. SMITH.

Motion to set aside a plea of non-jolinder.

G. Pollock moved to set aside a plea of non-jolinder herein. The residences of the parties who it was alleged by the plea ought to have been proved in the action, were set out both in the plea and the affidavit verifying the plea, and the present application was made on an affidavit which stated that inquiry had been made at the places which were set out in the plea as the residence of three of the persons so named, and they were not known there.

Case cited: *Whally v. Golding* (9 Dowd.)

Rule nisi.

NEW TRIAL PAPER.

BRETON v. TIMS.

Action to recover back a deposit—construction of a condition of sale.

Where objections to a title of an estate are to be taken within a limited time after the delivery of an abstract

of title, this means such objections only as are patent on the face of the abstract.

This was an action brought by the plaintiff, who had bid for an estate at an auction, to recover certain deposit-money which he had paid; a verdict having been found for the plaintiff, a rule nisi for a new trial was obtained, against which

Jervis, Q.C. and *Hawkins* now shewed cause. The question turned upon the construction to be put on one of the conditions of sale, which was as follows:—

"The vendors shall, within seven days after the day of sale, deliver to the purchaser of each lot, or his or her solicitor an abstract of title to the lot purchased by him or her, and all objections and requisitions (if any) that may arise to or upon the title, shall be made in writing within ten days from the day of the delivery of the abstract, and on deposit thereof, the title shall be considered accepted."

The facts were, that the defendants delivered an abstract pursuant to this condition, and more than ten days after it was so delivered, an objection to the title was discovered by the vendee, but which did not appear on the face of the abstract, and the question now was, whether the vendee could take an objection to the title, as the ten days had elapsed. It was now contended that the time only applied to such defects of title which were apparent on the face of the abstract.

Jervis was stopped by the Court, who called on *Bramwell* and *Willes* to support their rule.

Bramwell.—First, the objection is too late, as it ought to have been made within ten days of the delivery of the abstract, within which time, it is submitted, all objections must be taken, whether patent on the face of the abstract or otherwise; but then, if this is not so, the objection was one which would have been shown to be erroneous, if time had been given to the defendant; but the plaintiff brought his action immediately on the refusal to pay back the deposit money. Here a reasonable title was disclosed on the face of the abstract, which is all that is necessary.

By the COURT.—The true meaning of this condition is, that the purchaser is to take all objections which are patent on the face of the abstract within ten days; but it is preposterous to say that he is precluded from taking an objection to the title, which he discovers *ab initio*, after that time.

On this point, rule refused.

There was a point on a stamp (not argued) on which the Court said there would be a new trial, on payment of costs. Rule accordingly.

Tuesday, April 28.
THORNETT v. HAINES.

At the sale of an estate by auction, two persons acted as "puffers" of the property offered for sale, by making fictitious biddings:—Held, that if they so acted as agents for the vendor, the sale was fraudulent and void, and that the vendee was entitled to recover his deposit from the auctioneer.

Byles, Serjt. Robinson, and Wordsworth, shewed cause against a rule which had been obtained by *Humphrey, Q.C.* for entering a nonsuit in the above case, or for a new trial; and the question for the consideration of the Court was twofold. First, whether there was sufficient evidence to shew that two persons who had acted as "puffers" at the sale of an estate by auction, had so acted as agents for the vendor; and, secondly, if the Court should be of opinion that the evidence adduced at the trial (a portion of which was objected to on behalf of the defendant) was sufficient for this purpose, whether the puffing avoided the contract, and whether the plaintiff, the purchaser, was, consequently, entitled to recover from the defendant, the auctioneer, the amount of deposits paid by him on the sale. As to the latter point, *Byles, Serjt.* cited *Cicero de Officiis*, lib. iii. s. 15; *Beeswell v. Christie* (Cowp. 395); *Howard v. Castle* (6 T.R. 642); *Crowder v. Austin* (3 Bing. 368); *Wheeler v. Collier* (Moo. & Malk. 123); *Rea v. Marsh* (3 Yo. & J. 331); which are authorities at common law to shew that puffing invalidates a sale by auction; and *Robinson and Wordsworth* contended that very slight evidence was sufficient to establish the agency; and as to the second ground for opposing the rule, they referred to the following cases in equity. *Woodward v. Miller* (15 L.J., N.S. 6); *Bramley v. All* (3 Ves. 620); *Id.* 625, n.; *Smith v. Clarke* (12 Ves. 477); *Meadows v. Tanner* (5 Madd. 34); *Sug. V. & P.* 53; 2 Kent. Com. 537, 539. They argued that Courts of equity did not hold a sale by auction to be invalid, if a single agent had been employed to bid with a view to enhance the price of the property offered for sale, in the absence of any express stipulation on the subject, whereas Courts of law did hold the sale to be void under such circumstances, and that the vendor is bound to give notice of his intention to bid; but they submitted that where more than one party was thus employed to puff at the sale, such sale was, both at law and at equity, invalid, which latter proposition they contended was decisive of the present case; two parties having been so employed, assuming their agency to be established.

Humphrey, Q.C. in support of his rule, argued that the agency had not been proved, and that to the facts

of this case, the maxim of law was applicable, *delegatus non potest delegare*. On the second point, after he had attempted to distinguish the equity cases already cited, the Court were unanimously of opinion that the rule should be discharged, the sale being rendered void by the puffing—supposing the agency of the parties who acted as puffers to have been proved by the evidence, as to which *Cur. adv. vult.*

Wednesday, April 29.

KERRIDGE v. SIMPSON.

From the statement of this special case, it appeared that the plaintiff had purchased property at a sale by auction, subject to certain conditions of sale, the fourth of which was alone material for the determination of the question submitted by order of *nisi prius* to the Court. According to this fourth condition, the vendor was required to furnish the abstract of his title to the property sold within four days of the sale, for the perusal of the purchaser, who was to be allowed fourteen days for sending in objections to the title, or requisitions connected therewith; the condition of sale contained likewise a proviso, that the purchaser should be considered to have waived all objections to the title, if no objection or requisition was sent in within the 14 days above mentioned. It further appeared, that the purchaser had, subsequently to the sale, received the abstract of title, which was submitted by him to counsel, and that he had, prior to the expiration of the 14 days, returned the abstract to the attorney acting on behalf of the vendor, with the queries and opinion of counsel, who advised that the title was essentially defective. The plaintiff having been unable to ascertain the names of the vendors, gave notice to the defendant (the auctioneer), that the contract of sale was at an end, and brought the present action against him for recovery of the deposit paid by the plaintiff at the time of the sale. The question for the opinion of the Court was, whether the plaintiff must be taken to have delivered his objections to the title as stipulated by the fourth condition, and if so, whether he could maintain an action for money had and received against the auctioneer.

Humphrey, Q.C. for the plaintiff.—It is clear that the action will lie if the Court should be of opinion that there has been a delivery of objections to the title such as to comply with the conditions of sale. The course taken by the plaintiff is that usually adopted; the objections to the title specified in the margin of the abstract left with the vendor's attorney are, moreover, perfectly reasonable and valid objections.

Butt, Q.C. for the defendant.—The contract of sale had not been rescinded before action brought. The rule is, that the auctioneer holds the deposit for the vendor, if the title be made out, and for the vendee, if the title be not made out, or if the contract be rescinded. Money had and received was not maintainable in the present case, because the contract had not been rescinded. (*Sugden, Vendors and Purchasers*, 75-6; *Duncan v. Cufe*, 2 M. & W. 244.)

By the COURT.—The mode here adopted by the plaintiff is a very usual mode of stating objections to title. The demanding the deposit from the auctioneer was in fact a rescinding of the contract. The plaintiff is entitled to recover.

Judgment for the plaintiff.

HAMMOND v. DAYSON.

The declaration in this case contained two counts. The first was on a promissory note for 15l. and the second, on an account stated, for 30l. The defendant pleaded three pleas: first, to the note; second, as to 15l. part of the account stated, that the cause of action in respect of this 15l. was the same as that in the first count alleged, and that the facts set forth in the first plea as constituting a good defence to the count on the note were true; the third plea, as to the residue of the second count, was *nuncquam indebtedatus*. To the second of the above pleas the plaintiff demurred specially.

Willes, in support of the demurrer.—The second plea is bad, because it answers more than it professes to answer. The issue offered by that plea, viz. as to the truth of the allegations in the first plea, is an immaterial issue, and could not, therefore, be traversed by the plaintiff. *Gray v. Plindor* (2 B. & P. 427) is in point, and *Mee v. Tomkinson* (4 A. & E. 262) is an instance of the proper mode of pleading in a case like the present. 1 Wms. Saunds. 286, note (i); the note to *Foot v. Baker* (5 Man. & Gr. 335); *Henry v. Earl* (8 M. & W. 228), and *Mitchell v. Cragg* (10 M. & W. 367), are authorities for the plaintiff. [*PARKE, B.*—The plea answers that part of the declaration to which it is pleaded, and would, besides, answer another part of the declaration if it had been pleaded to it, but that is no objection to the plea.] There is another ground of demurrer, viz. that the second plea refers to the first plea; incorporates the matter of that plea with itself, and avers its truth; the plaintiff is thereby embarrassed, as alleged in the demurrer, and cannot take issue without bringing immaterial facts before the jury.

By the COURT.—This might be a good objection, but it is not sufficiently pointed out in the demurrer.

Judgment for the defendant on the demurrer.

BUSINESS OF THE WEEK.

HOVILL v. BROWN.—*White* moved for a rule calling on the defendant to shew cause why he should not pay 55l. 12s. and costs on an agreed verdict which had been taken *habeas*.

Rule nisi.

HART v. SIGGERS.—*Parry* moved for a new trial on the ground that the verdict was against evidence.

Rule nisi.

SELLER v. JONES.—*Bosell* moved for leave to enter a nonsuit herein, or to enter a verdict for the defendant, or for a new trial, or to arrest the judgment (pursuant to leave reserved), on the construction of a contract in a survey bond.

Rule nisi.

Friday, April 17.

MIDDLETON v. LESTER. Rule to shew cause.

Friday, April 24.

CLARKE v. LEVI.—In this case a verdict had been found for the plaintiff, damages five guineas. *Ogley* now moved for a new trial, or to reduce the damages to one guinea.

Rule to shew cause why there should not be a new trial on payment of costs, unless the plaintiff consents to reduce the damages to one guinea.

PARKER v. WRIGHT.—In this case *Jervis, Q.C.* moved on affidavits to set aside a release, which, it was alleged, had been obtained under fraudulent circumstances; and for a rule calling upon certain parties, attorneys of this court, to answer the matter of the said affidavits, and to pay the costs of these proceedings. On the suggestion of the Court, the case stood over, to give time for the parties concerned to come to some arrangement.

COLLISON v. THE NEWCASTLE AND DARLINGTON RAILWAY COMPANY.—In this case *Knowles, Q.C.* moved (April 21) for a new trial, on the ground of surprise and the improper reception of evidence, the verdict having been for the defendants. The Court having conferred with the learned judge (*Parke, B.*) who presided at the trial, and having ascertained that the verdict was satisfactory to him, refused the rule.

Rule refused.

COCKROCK v. HORNER.—*Martin* moved for a rule, calling on the defendant to shew cause why the time for making the award in this case should not be enlarged, or why the plaintiff should not be at liberty to sign judgment and proceed to execution: he cited *Parbery v. Newnham* (7 M. & W. 378); *Potter v. Newman* (3 Cr. M. & R. 745).

Rule to shew cause.

Saturday, April 25.

RIDLER v. ROBERTS.—*Crowder, Q.C.* moved for a rule, calling on the plaintiff to shew cause why execution for costs should not issue in this case, on the ground that the writ of error sued out herein was frivolous.

Rule nisi.

The Court rose at one, to take Crown cases with the other judges.

Monday, April 27.

ASHLEY v. PRATT.—*Martin, Q.C.* was heard for the plaintiff. *Watson, Q.C.* contra.

Cur. adv. vult.

THE DUN AND CHAPTER OF ELY v. CASH.—Special case from Chancery.

Sent back to be amended.

TRAIL v. BORN.

Referred back for the case to be amended.

BURROWS v. ATKINSON.—*Demurror*.—*Pence* said he could not support the declaration in this case, and prayed leave to amend, if he found he could do so.

Leave to amend within 10 days, otherwise judgment for the defendant.

COLLINS v. HOFWOOD. *Parke* heard.

Monday, April 28.

SMITH v. THE GREAT NORTH OF ENGLAND RAILWAY COMPANY.—It appeared that the case and all motions in difference between the above parties were referred to arbitration: the award, with respect to the costs, was in favour of the defendants; with respect to the matters in difference, it was in favour of the plaintiffs. *Bosell* now applied for a rule, calling upon the defendants to shew cause why the defendants should not, under the above circumstances, pay their proportion of the costs of the reference, without setting off the costs in the action which had been found for them.

Rule to shew cause.

ASTON v. PARKES.—*Butcher* shewed cause against a rule which had been obtained by *Gray* to enter the verdict in the above case for the plaintiff, or for a repender. The question was, whether a plea of tender and payment into court to a declaration, alleging a trespass to the plaintiff's goods and person, was good after verdict.

Cur. adv. vult.

NAYLOR v. ELLERTON.—In this case, which was an action for seduction, *Wilkes, Serjt.* had moved (April 22) for a new trial, on the ground of excessive damages. The Court then intimated that they would confer with *Coleridge, J.* who tried the case; and having done so, now stated that the learned judge did not consider the damages, under the circumstances proved at the trial, to be excessive, and refused the rule.

Rule refused.

SAIL COURT.

Friday, April 24.

(Before Mr. Justice WIGHTMAN.)

METCALF v. TATTERSALL.

Judgment as in case of a nonsuit, for not proceeding to trial.—Sufficiency of affidavit on shewing cause.

Addison shewed cause in this case, which was a motion for judgment as in case of a nonsuit for not proceeding to trial. The affidavit of the plaintiff stated that he omitted to go to trial in consequence of "inadvertently, and in ignorance of an important fact in the cause, having failed to instruct his attorney."

B. Lowes submitted that this was insufficient, and that the affidavit ought to have disclosed what the important fact really was. *Cleasby v. Poole*, 3 Dowd. 162.

WIGHTMAN, J. thought that as this was the first default, the excuse was sufficient for discharging the rule on the usual terms.

Rule discharged on a peremptory undertaking.

Saturday, April 25.

BEDWELL (a Pauper) v. COULSTING.

Where a plaintiff, who sues in *formal pauperis*, is guilty of venal conduct, as withdrawing the record on

the day of trial, the Court will dispauper him, and at the same time direct him to pay the costs of the day.

The plaintiff in person shewed cause against a rule calling upon him to shew cause why he should not be dispaupered, and why he should not pay the costs of the day, he having withdrawn the record. The present action was commenced on the 20th of May, 1844, and issue was joined on the 22nd of April, 1845, and notice of trial given for the sittings after Trinity Term; this notice was afterwards countermanded. On the 7th of January, 1846, the plaintiff obtained an order to sue *in forma pauperis*, and gave a fresh notice of trial for the first sitting in Hilary Term following. The cause having been made a *remanset* to the sittings after Term, it was put into the paper for the 5th of February, on which day the plaintiff withdrew the record. On the 31st of March, he gave a fresh notice of trial for the second sitting in this present Easter Term. The affidavit of the plaintiff stated that the record was withdrawn at the sittings after Hilary Term in consequence of being unable at the time to prove the handwriting of the defendant; the affidavit further stated, that the record was again withdrawn on the day of trial, at the second sittings in this Term, by the advice of counsel, in order to add another count.

T. W. Saunders, in support of the rule, contended that the plaintiff's own affidavit shewed that his conduct had been most vexatious, in having once countermanded notice of trial, and twice withdrawn the record on the days of trial, and this, as the defendant's affidavit shewed when the defendant had brought up witnesses from Bristol, and had instructed counsel—that if the plaintiff could do this with impunity he could go on putting the defendant to endless expense in the same way.

WIGHTMAN, J. thought the conduct of the plaintiff clearly vexatious, and that the rule should be made absolute.

Rule absolute.

Monday, April 27.

AMADIO V. SHOWELL.

Quere, whether when one party obtains a judge's order, but neglects to serve it, the other can obtain a duplicate thereof, and proceed upon it?

Bail moved to set aside the judge's order, together with the judgment and execution thereon. It appeared that an action having been commenced in this case, certain terms were agreed upon by the respective attorneys for its settlement, and it was arranged that the defendant should give a judge's order for the payment by instalments of the debt and costs, with the usual power to enter up judgment, and issue execution in default of payment. In pursuance of this arrangement the defendant's attorney drew up an order, and attended at the office of the plaintiff's attorney for the purpose of serving it; but finding the plaintiff's attorney not there, the order was not served. On shewing the defendant the order, the latter expressed his disapprobation at the terms, and requested that it might not be served. The order was accordingly not served. After this, the plaintiff's attorney went to the judge's chambers and obtained a duplicate of such order, and in due time signed judgment, and issued execution thereupon. It was now contended that the plaintiff's attorney was wrong in the course he had adopted; that until the order was actually served the defendant had a right to abandon it, in which case the only course open to the plaintiff was to take out a summons himself, with the view of obtaining an order upon the consent filed, and that it is only where an order is actually served that the opposite party can obtain a duplicate original from the judge's clerk. (Lush's Practice, p. 806.)

Rule nisi.

ADDISON V. WILLIAMS.

Judgment as in case of a nonsuit—Sufficiency of affidavit in shewing cause.

Wilson shewed cause against the rule herein for not proceeding to trial pursuant to notice, and he offered *stet processus*. The affidavit of the plaintiff's attorney, upon which he shewed cause, stated that on the 18th of February last the deponent was accosted in the highway by the defendant, who demanded, in an insulting manner, why deponent did not go on with the action; and that he further said that deponent might "law him as much as he liked," at he "could get nothing besides his body."

Hance, contra, argued that this was no evidence of solvency, and that the plaintiff ought to be compelled to proceed.

WIGHTMAN, J. thought that sufficient was shewn to call upon the defendant to accept the *stet processus*.

Rule discharged, unless the defendant accepts a *stet processus*.

Tuesday, April 28.

MAPLE V. WOODGATE.

Here a plaintiff enters an appearance for the defendant in ignorance that the latter has already appeared, that is an irregularity, and not a nullity, and the defendant must take advantage of it in due time. Where such an appearance was set aside by a judge, but the defendant omitted to serve the order before the period for his pleading would have expired, and

the plaintiff signed judgment as for want of a plea: Held, that he was regular in so doing.

F. V. Lee shewed cause against a rule to set aside two orders of Mr. Justice Cresswell, and why the sum of 9l. 9s. paid to Mr. Lewis, the defendant's attorney, should not be repaid to the plaintiff. It appeared that the writ of summons in the present case was served on the defendant on the 6th of March, that the defendant duly appeared on the 13th, notwithstanding which the plaintiff appeared for him on the 16th, and on the same day filed his declaration, and served notice of the same. That on the 18th the defendant took out a summons to set aside the appearance entered by the plaintiff, and all subsequent proceedings, on the ground of an appearance having been entered by the defendant in due time, whereupon an order was made by Mr. Justice Cresswell in the terms of the summons; that on the 23rd, the said order not having been served, the plaintiff signed judgment, and gave notice of taxation for the following day; that later, on the said 23rd, the defendant's attorney served the order for setting aside the appearance as aforesaid; that on the same day the defendant took out a summons to set aside the judgment, on the ground of irregularity, the former order setting aside the appearance still existing, and no declaration having been delivered. Upon the hearing, Mr. Justice Cresswell made an order, whereupon the sum of money mentioned in the rule was paid as and for the costs of these irregularities. The present rule was obtained on the ground that, inasmuch as the order for setting aside the appearance was not served until after the period for pleading had elapsed, it was waived, and the judgment signed was consequently regular, and the order of Mr. Justice Cresswell for setting it aside wrong. It was now contended, first, that the appearance entered by the plaintiff was a nullity, and could not, therefore, be made the foundation of the subsequent proceedings; second, that if not a nullity, but merely an irregularity, the defendant still was in time in serving the order, since he served it within six days after it was made, and the plaintiff well knew of its existence.

Lush, contra, argued that the defendant, in allowing so long a period to elapse before serving the order, namely, a period beyond that allowed for the next step—his pleading—he had virtually abandoned his order. That this being merely an irregularity, and not a nullity, the defendant was bound to have served his order before the expiration of the period for taking the next step. (Charge v. Farhall, 4 B. & C. 865; Kenny v. Hutchinson, 6 M. & W. 134.)

WIGHTMAN, J.—This is merely an irregularity, and I always treat these cases as such. That being so, the party is bound to take steps promptly. The application of the rule stood in this, that when a party is in danger of a step being taken, he should take measures to prevent it. Now, in this case, the order not being served before the other party were entitled to take the next step, it was served too late, and this rule must, therefore, be made absolute.

Rule absolute.

COLEMAN V. HOLMES.

New trial—No evidence to go to the jury.

Miller shewed cause against a rule obtained by Wise, to set aside the verdict herein, and for a new trial. The case was tried before the under-sheriff for Middlesex, when a verdict was returned for the plaintiff for the full amount claimed, 18l. 15s. In opposition to the rule, it was contended that the verdict was correct.

Wise was not called on, his lordship being of opinion that there was no evidence whatever to support the verdict.

Rule absolute.

Wednesday, April 29,

Before Mr. Justice COLERIDGE.

ADAM V. ROWE.

Award, motion to set aside.

To a declaration containing three counts, the defendant pleaded, first, non assumpsit and three other pleas; the cause being referred, the arbitrator found for the plaintiff on the first, third, and fourth issues, and for the defendant on the second. Held, on an objection to the award, that the first plea raised three distinct issues (one on each count), upon which, therefore, the arbitrator had not decided that the award was good, one issue in fact only having been raised upon the three counts, each of which the arbitrator must be taken to have decided for the plaintiff.

Mellor shewed cause against a rule to set aside the award of the arbitrator in this case, on the ground that he had not awarded upon all the issues. This was an action in which the declaration contained three counts: first, goods sold and delivered; second, money lent; third, an account stated. The defendant pleaded, first, non assumpsit, except as to 29l. 11s. 1d.; second, as to that sum, a tender; third, except as to the said sum, a set-off; and fourth, as to the said sum, payment. Upon these pleas issues were joined. The cause was referred to arbitration, and the arbitrator awarded as follows: "As to the issues, firstly, thirdly, and lastly joined, I find and certify for the plaintiff, and I find and cer-

tify that the verdict so found do stand." The second issue he found for the defendant, and reduced the verdict to 3l. 18s. 11d. This rule was obtained on the ground that there being seven issues in all, the arbitrator had disposed of only four. (Kilburn v. Kilburn, 13 M. & W. 671; Morgan v. Thomas, 9 Jur. 92; Stonehewer v. Farrer, 14 L. J. N. S. Q. B. 122.)

It was now argued that, notwithstanding the declaration contained three counts, upon either of which the plaintiff may have recovered, yet as the first plea of non assumpsit was pleaded to the whole declaration, it raised but one issue, and not several issues, and that the arbitrator had therefore disposed of all the issues, and that this case was therefore distinguishable from Kilburn v. Kilburn.

Lush, contra, contended that the arbitrator had not decided upon all the issues; that the plea of non assumpsit raised three distinct issues, one upon each count of the declaration, and that this case was not distinguishable from that of Kilburn v. Kilburn.

COLERIDGE, J.—I think Mr. Mellor has succeeded in pointing out a material distinction between this case and Kilburn v. Kilburn. In that case there was no finding on any distinct issues; here, however, there are four issues on the record, each of which is found by the arbitrator. We must give a liberal construction to the language of the arbitrator. Nobody can doubt that by the first issue he meant all that was comprised within the plea of non assumpsit, and there is therefore a finding upon that issue. But then it is said that that plea raises distinct issues; and I grant that it does; but if it is suggested that the arbitrator may have intended to have found on one count in the declaration, and not on another, there would have been something in the argument; but it is clear that he meant to find for the plaintiff in respect of all the causes of action in the declaration. The only difficulty in such cases is as to the costs; but, as he finds for all the matters, the difficulty does not arise. Without, therefore, impugning any of the authorities cited, I think I ought to discharge the rule.

Rule discharged.

BUSINESS OF THE WEEK.

Friday, April 24.

STINTON V. BLOXAM.—Cockburn moved that the costs of the first trial herein, which was in the plaintiff's favour, might be set off against the costs in the second trial, which terminated in favour of the defendant, the Court having given no directions as to these first costs.—WIGHTMAN, J. would speak to the other judges. Cur. adv. ocul.

Re HAYWOOD, Gent. One, &c.—Addison moved for an attachment against this gentleman for not delivering his bill of costs, pursuant to a judge's order. Rule nisi.

Re UNWIN, Gent.—Willes moved to discharge the rule obtained against Mr. Unwin herein. No one appearing to support it. Rule discharged with costs.

WROTH V. LORD WILLIAM PAGET.—Whigham moved for leave to enter an appearance for the defendant *sec. ad.* it appearing that he had received the writ in a letter and acknowledged it; the affidavit, however, not being conclusive as to the defendant's handwriting, the motion stood over for such further evidence.

JEFFERIES V. MAY.—T. W. Saunders applied, on behalf of the plaintiff, to change the venue herein from Middlesex to Bristol. Rule nisi.

DOE dem. BODY v. COX.—Lush moved to set aside the judgment signed on the award of the arbitrator herein, and the award itself, on the ground that the said arbitrator had exceeded his authority. Rule nisi.

CARPENTER v. DICK.—Francillon moved for a rule to enter a nonsuit or for a new trial in this case, which was tried before the Under-sheriff of Gloucestershire, on the ground of misdirection, and the verdict being against evidence. (Mortimer v. Wright, 6 M. & W.) Rule nisi.

REG. v. ROBERTS.—Unthank moved for a certiorari to remove a coroner's inquisition for manslaughter, together with the depositions, into this court, and for a rule to admit the defendant to bail in the country. Application granted.

Saturday, April 25.

WROTH V. LORD WILLIAM PAGET.—Whigham having obtained an affidavit verifying the defendant's handwriting, obtained a rule to enter an appearance.

REG. V. THE SOUTH EASTERN RAILWAY COMPANY.—Godson, Q.C. moved for a rule for a mandamus commanding the above company to pay to the paymaster of the forces the sum of 10,000l. pursuant to their Act of Parliament, for the improvement of the river Rother. Rule nisi.

HENDERSON AND OTHERS v. DALMAINE.—Wise moved for a *distraint* to compel appearance. Granted.

BUTLER v. ROSE.—Gray moved to set aside the attachment herein against the sheriff on payment of costs. Rule nisi.

REG. V. THE JUSTICES OF THE ISLE OF ELY.—Couch moved for a mandamus, directing the above justices to enter continuances and hear an appeal. Rule nisi.

STINTON V. BLOXAM.—WIGHTMAN, J. said, he had conferred with the Court, who thought that no order ought to be made as to the costs of the first trial.

NEWMAN v. JOHNSON.—Thomas moved for a new trial, on the grounds of the verdict being against evidence, and upon affidavits shewing surprise. The action was tried before the Under-sheriff of Middlesex. Rule nisi.

PRICE v. JEFFERIES.—Wise shewed cause against the rule herein for enlarging the peremptory undertaking.—F. Edwards, contra.

Rule absolute on payment of the costs of this rule.

Monday, April 27.

Ex parte BULL.—Allen, Serjt. moved for a *habere corpus* to bring up the applicant, now a prisoner in York goal, upon a commitment by one of the Commissioners of the Leeds District Court of Bankruptcy, in order that he may be discharged for defects apparent upon the face of the warrant. Rule nisi.

REG. V. THE GUARDIANS OF THE OLDHAM UNION.—Tunstall moved to make this rule absolute; no cause being shewn. Rule absolute.

Ex parte THE GREAT WESTERN RAILWAY COMPANY.—*Pashley* moved, in two cases, to quash the return to the *certiorari* herein, and to set aside the allowance of the sums mentioned in such return. *Rule nisi.*

De Medina v. Riggie and Others.—*Corrie* moved for a rule to amend the judgment roll, by entering an award of costs for one defendant, for whom a verdict had been returned. *Rule nisi.*

Ex parte CHARLES HEWITT.—*Lush* moved for a *habeas corpus* to bring up the applicant from Kingston gaol, to which he had been committed under the 57 Geo. 3. c. 93, by a warrant under the hand of Mr. Cottingham (the police magistrate), in order that he may be discharged for defects apparent on the face of the said warrant. *Writ granted.*

GURNEY v. CHAPMAN and Others.—*Willes* shewed cause against a rule for discharging the rule for a special jury herein.—*Lush, contra.* *Rule discharged.*

Tuesday, April 28.

HOPKINS v. LEMAGE.—*Godson, Q.C.* moved on affidavits for a rule to rescind a judge's order, holding the defendant to bail. *Rule nisi.*

STOCKER v. DORAN.—*Hake* shewed cause against this rule, which was to set aside the verdict, and for a new trial.—*Bovill, contra.* *Rule absolute, on payment of costs.*

ROSCOE v. CLARK.—*Crompton* moved for a new trial in this case, which was tried before the under-sheriff of Lancashire. *Rule nisi.*

SOLOMON v. NIMMO.—*F. V. Lee* moved for a rule to discharge the rule for a new trial herein, the costs not having been paid. *Rule nisi.*

MARCHANT v. LLOYD.—*Pigott* having moved for a new trial herein, on a former day, his Lordship directed a *Rule nisi.*

Ex parte ROBINSON.—*Smith* moved for a *certiorari* to remove into this court an indictment for a libel, found at the last assizes for Gloucestershire. *Writ granted.*

STOKOE v. WINSHIP.—*Matthews* having, on a former day, applied for a rule to shew cause why certain documents should not be delivered up to be cancelled, &c. his Lordship granted a *Rule nisi.*

Wednesday, April 29.

WALL v. PICKERNELL.—*Willes* shewed cause against the rule to set aside the *fi. fa.* herein, as having issued against good faith. *Jervis, Q.C. and Gray, contra.* *Rule absolute.*

Ex parte CHARLES HEWITT.—*Crompton*, who shewed cause against the discharge of the prisoner, admitted that he could not support the warrant. *Lush, contra.* *Prisoner discharged.*

JEFFERIES v. MAY.—*T. W. Saunders* shewed cause against a rule for judgment as in case of a nonsuit. *Crompton, contra.* *Rule discharged upon a peremptory undertaking to try at the sittings after Term.*

Circuit Reports.

NORFOLK SPRING CIRCUIT.

Aylesbury.

CIVIL SIDE.

(Before Mr. Justice MAULE.)

HOUNSLOW v. FOUNTAIN.

Trover—*title*—*wrong doer*—*executrix de son tort*—*distress for rent.*

In an action of *trover* the plaintiff must shew that his title is a good one, even against a *wrong-doer*, and one *wrong-doer* cannot maintain *trover* against another.

An *executrix de son tort* cannot confer such a title as would suffice to maintain *trover* against a *wrong-doer*. *Trover* for wheat.

Pleas: not guilty and not possessed.

Byles, Serjt. (with him *O'Malley*), proved that one Thomas Mossman, who was tenant of the defendant, died indebted to his landlord for one year's rent, and also to the plaintiff in the sum of 2l. 10s. Soon after his death his widow sent a message to the defendant to come and "take the standing crops for his rent, and pay over the surplus to her;" and on the same day the plaintiff applied to the widow for payment of his bill. On her saying she had sent to the defendant, as above mentioned, the plaintiff persuaded her to sell the crop to him, on the ground that it was hers to do as she pleased with, and thus wipe off her husband's debt to him. He accordingly went next morning at day-light to the field with carts and horses to cut and remove the crops. While this operation was in progress the defendant interfered, and caused the crops to be taken away, after having put a lock and key on the gate. It further appeared that the widow had not taken out letters of administration to her husband, who had died intestate, but was acting as an *executrix de son tort* in his affairs. Under these circumstances,

Gunning, (with whom was *Couch*), submitted that the case for the plaintiff had failed to shew any title in him to the property in question. If the defendant was a *wrong-doer*, so was the plaintiff, who had obtained possession of the wheat illegally.

Byles, Serjt. and *O'Malley, contra*, relied on *Orton v. Teppings*, contending, that the widow, being *executrix de son tort*, might confer a title to the property of the deceased, which would be good against all the world save the rightful executor, when he should appear. It was not likely here that any regular administration of the affairs of the deceased would take place, and it was very clear that the widow had taken upon herself the office of *executrix de son tort*. She had just made over the wheat to the defendant, in satisfaction of his rent, by a verbal message, but afterwards changed her intentions, and regularly sold it to the defendant for 10l. his debt of 2l. 10s. being to be taken in part payment of that sum. Under this

bargain and sale it was that the plaintiff took possession of the wheat in question, and being so possessed, the defendant had taken it from him. It was therefore submitted that there was a title in the plaintiff quite sufficient to maintain the present action.

MAULE, J.—I think the plaintiff has failed to prove a sufficient title, and that the defendant is entitled to a verdict. It is incumbent on the plaintiff in *trover* to shew, even as against a *wrong-doer*, that his title is a good one; but that is not shewn here, for the title is derived from the widow, who had no power by law to dispose of the property of her deceased husband. She could not sell in her own right, nor could she do so as representing her husband. What passed between her and the plaintiff, therefore, amounts to nothing, while as far as the defendant was concerned, it seems that he had a right to seize the crops and distrain upon them for one year's rent, which was in arrear at the death of the tenant, without any permission from any one. I should therefore be inclined to say, that he could claim to detain this wheat as under a distress for rent, for he had done every thing which was necessary to constitute a distress, and that there was no evidence of any title to this wheat in the defendant; but as it is impossible to say that the Court might not hereafter think that there was something to go to the jury, I shall take their opinion on the subject.

The learned judge then left the case to the jury, who found for the defendant.

Verdict for defendant.

Bankrupt and Insolvent Courts.

COUNTRY COMMISSIONERS' COURTS.

BRISTOL DISTRICT BANKRUPTCY COURT.

(Before Mr. Commissioner STEPHENSON.)

Friday, April 17.

RE BOARD.

Attorney—*Privileged communication*—*Practice as to, same in bankruptcy as in other courts.*

On a former day, an attorney of the name of Beddow had been summoned to attend as a witness before the registrar, to give evidence as to an execution which had been levied at the suit of his client upon the goods of the bankrupt. He then objected to give evidence, on the ground of the information having been obtained in his capacity of professional adviser to his client. The registrar held that the rule did not apply to cases in bankruptcy, and Mr. Beddow then gave his testimony under protest. The examination having been adjourned to this day,

Smith applied to the Commissioner (*Chaverson*) to take the former examination off the file, and it was agreed that the question should be fully argued, and the former examination considered as expunged by consent of both parties.

Smith.—I submit that any instruction given by a client to his solicitor for the purpose of securing a debt due from the bankrupt is a privileged communication. It can make no difference whether the document, as to which the witness is proposed to be examined, comes into his possession directly from the client himself, or from the hands of a third party, provided it be a document which he necessarily obtains in pursuance of his duty to his client. There is no difference in the application of the general rule as to privileged communications in matters of bankruptcy, and cases in the other courts. He then cited *Nixon v. Mayoh* (1 Moody & Rob. 76); *Cromack v. Heathcote* (2 Brod. & Bing. 4); *Ex parte Temple* (2 Glyn. & J. 21); *Wheatley v. Williams* (5 L. J., N. S. Exch. 237); *Doc dem. Peter v. Watkins* (6 L. J., N. S. C. P. 107); *Tarquand v. Knight* (6 L. J., N. S. Exch. 4); *Desborough v. Rawlins* (7 L. J., N. S. Chan. 171). The result of the cases is, that any communication whatever made to the attorney, without capacity, is within the privilege, and I therefore confidently submit that the examination of Mr. Beddow respecting this transaction is within the privilege and cannot be proceeded with.

Linklater, contra, argued, that in matters of bankruptcy, the rule did not apply, and that Mr. Beddow was bound to give evidence.

His HONOUR, on a future day, gave judgment in favour of the objection, holding that he could see no distinction which could be drawn in matters of bankruptcy, which gave him greater authority than that which was exercised by the other courts, and that he had no power to compel the witness to answer, in case of his refusal.

THE LEGISLATOR.

Summary.

THE topics of the week have been wholly without interest for the Profession. No measure affecting the law has made any progress, save the two excellent measures of Lord CAMPBELL for abolishing the antiquated absurdity of

deadends, and introducing the principle of—long since recognized in the jurisprudence of the continental countries—compensation for death by accident to the families of those for whose service that death was incurred. These Bills are passing the Lords with unanimous assent; but we regret to learn that some of the great railway interests are about to employ their influence in the Commons to defeat the latter measure again, as they succeeded in doing last year. The LORD CHANCELLOR persists in urging forward his Charitable Trusts Bill, spite of the energetic opposition it is meeting from public and private bodies, who have, or think they have, an interest in preventing their management of charities from being inquired into by prying officials. This matter of legislation for charities is a striking specimen of the power of great personal interests in this country to thwart a public good, when the mass of the community has no stimulus to counter-exertion. Many years have elapsed since the abuses in the management of charities engaged the attention of the government. A commission was appointed—it pursued its inquiries with diligence—its report exhibited an unsuspected amount of property held under the pretence of charitable trusts, but, in truth, perverted in the most scandalous manner. Successive governments have acknowledged the wrong, and have attempted a remedy. All have failed—defeated by the interests leagued for the preservation of their plunder. Stimulated by the outcry from every lip of "something must be done!" Lord LYNCHURST has proposed to do something—a small measure, it is true, and having this great defect, that it deals only with the little charities, strikes at the petty abuses, scares away the small pilferer, but leaves the great abuses—the plunderers on a large scale—untouched. This was a mistake. It is beginning at the wrong end, and rouses more indignation from the invaded interests than if all had been subjected together to the inspection and controul of the law. The measure has other defects, in too much complication, and being too costly in the working, although the charities would gain vastly by the change, even were the cost three-fold what it is. These, however, are defects which might easily be cured in committee. To reject the Bill altogether would be to abandon an improvement, so far as it goes; it is a step in the right direction, and would doubtless clear the way for another more efficient one. It is to be hoped that the subject will be at least admitted to discussion, and that personal interests will not be suffered again to triumph over the public good.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Tuesday, April 28.

Railways Companies Bill—"for facilitating the winding up of the affairs of Companies formed for making Railways, and which shall not have obtained the authority of Parliament."

BILLS READ A SECOND TIME.

Friday, April 24.

Exchequer Bills, 18,380,200l.

BILLS READ A THIRD TIME AND PASSED.

Friday, April 24.

Insolvent Debtors, India.

Wednesday, April 29.

Exchequer Bills.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Monday, April 27.

Thames Haven Dock and Railway

Eastern Counties Railway enlargement

" " Farringdon Station

" " Thames Junction.

Tuesday, April 28.

Northampton and Bedford Railway

North Gravesend Railway

Oxford, Coventry, and Burton Railway

Derbyshire, Staffordshire, and Worcestershire Railway

Trent Valley and Midlands Junction Railway.

Wednesday, April 29.

Morayshire Railway

Banffshire Roads

Manchester, Bolton, and Bury Canal

Birkenhead and Llangollen Railway

Somerset Small Debts Bill

Lancaster and Preston Junction
Edinburgh and Leith Waterworks
Newcastle, Edinburgh, and Glasgow Railway
Ipswich, Norwich, and Yarmouth Railway
Thetford, Eury, and Newmarket Railway
Birmingham and Oxford Junction
London and Birmingham (Coventry) Railway
Northern and Southern Connecting Railway.

Thursday, April 30.

St. Albans, Hatfield, and Hertford Junction
Bristol and Birmingham Railway
Midland Great Western Railway, Ireland
Belfast and County Down Railway.

BILLS READ A SECOND TIME.
Friday, April 24.

Stockport Improvement
Dunstable Improvement
Allhallows Tithes

Monday, April 27.

Holme Reservoirs
Cambridge Improvement
Forth and Clyde Junction Railway
Glasgow Municipal, Police, and Statute Labour
Oldham, Manchester, Liverpool, and Birkenhead Junction
Railway
Alliance Gas Company.
Portbury Pier and Railway
Sheffield, Ashton-under-Lyne, and Manchester Railway.
Whaley-bridge and Hayfield Branches.
London and Birmingham Railway, Woodon and Northampton Branch
West Cornwall Railway
Oxford, Worcester, and Wolverhampton Railway
Wilts, Somerset, and Weymouth Railway
South Devon Railway, No. 2, Amendment and Branches
Midland Railways, Clay Cross to Newark.

Tuesday, April 28.

Gellon Inclosure
Frilford Inclosure.

BILLS READ A THIRD TIME AND PASSED.
Friday, April 24.

Bolton Waterworks

Monday, April 27.

Scottish Midland Junction
Glasgow, Kilmarnock, and Ardrossan Railway
Edinburgh and Glasgow Railway, Amendment and Branches
Clyde Dock and Harbour
South-Eastern Railway, Extension of Stations at Ashford
Rye to Rye Harbour
Exeter and Exmouth Railway
Midland Railway, Syston to Peterborough Deviations and Branches
Glasgow, Paisley, Kilmarnock, and Ayr Railway Amendments and Branches, Nos. 1, 2, and 3
Weston-super-Mare Pier
Brighton and Chichester Railway, Bognor and Little Hampton Branches
London and Brighton Railway, East Grinstead Branch.

Tuesday, April 28.

Taunton Gas
Eastern Union and Hadleigh Junction Railway, further proceedings
Maldon, Witham, and Braintree Railway.

SESSIONAL PRINTED PAPERS.

Bills—Joint Stock Banks, Scotland and Ireland, amended
Corresponding Societies and Lecture Rooms
Friendly Societies, amended
Naval Civil Departments
Superannuations—Account
Commissions—Return
Window Duty, Accounts
Gauge Commission—Appendix and Index
1. Commissariat Services—Account of Receipt and Expenditure
2. Commissariat Services, Chests abroad—Account of Receipt and Expenditure
Railway Bills Classification—Eleventh Report
Outrages, Ireland—Return
Murders, &c. Ireland—Return
Committals, Limerick—Return
Cotton—Returns
Railways, Metropolitan—Copy of Commission, &c.
Sugar Duties—Copies of Two Orders in Council
Cricklade and Wootton Bassett Union—Paper
Post Office, Mails—Returns
Assessed Taxes, England—Cases determined on Appeal
Finance Accounts—Classes 1—3
Smoke Prohibition—Report by Sir H. T. De la Roche and Dr. Playfair.

PARLIAMENTARY PAPERS.

THE MINT.—Some returns, extending to nearly 30 pages, obtained by Mr. Hume, were printed connected with the Mint. In 1844 the salaries and emoluments of officers of the Mint amounted to 8,904l. 10s. Mr. Gladstone was that year "The Master and Worker." His salary was 2,000l. with stationery and 10l. in money; he did not draw the money (10l.) The charges of coinage paid in the same year were 27,245l. 16s. 8d. The total expenditure of the Mint in the year (given in detail) was 59,311l. 10s. 10d. Under the head "extraordinary expenses," there is a sum of 6,977l. 2s. 7d. as paid the Bank of England for the loss by deficiency on the light gold coin received by them on account of the Government, and sent into the Mint for recoinage. The expenses of the Mint prosecutions are included in the document now printed. In 1844 (the general statement, with details in a schedule, being given from the year 1836) it appears that 375 Mint prosecutions were ordered, of which 51 were felonies and 324 misdemeanors; the total annual charge for the prosecutions in that year was 9,080l. 10s. 6d. In the preceding year the expense was 11,077l. 19s. 10d. In no prosecution (it is stated) are more than two counsel employed. Among Mr. Hume's inquiries by the returns was one to ascertain the amount of stationery supplied to the several

offices of the Mint for the last nine years. The return is given. In the year 1844-5 the stationery amounted to 12l. 7s. 4d. The Master had only 19s. 5d. worth in the nine years. There are several other returns rendered in the document now made public, numbering ten different "particulars," as the legal profession would call them; and from the information afforded, it does not seem very probable that the hon. member (as very often happens in the profession mentioned) will apply for "further and better particulars."

PENNY POSTAGE.—The annual returns, just published, show that the progress of penny postage, during the year 1845, has been much greater than at any former period. The number of letters delivered in the United Kingdom, was 971½ millions, being an increase of nearly thirty millions on the year 1844. The gross revenue for the year was 1,901,580d. being an increase of nearly 200,000l. on 1844, and nearly four-fifths of the amount under the old system. The net revenue, notwithstanding that more than 100,000l. was paid to the railway companies, for work done in former years, was 775,986l. being an increase of 56,000l. on 1844. While the London district (old twopenny) post letters have increased to such an extent, that the revenue derived from them must far exceed that which was obtained from the same class of letters before the reduction of the rates. In January of the present year, the number of letters delivered in the United Kingdom was at the rate of 303 millions per annum; or, excluding the franks, four times the number under the old system. The money-orders, since 1839, have increased about thirty fold.

HOUSE OF LORDS.

DEODANDS ABOLITION BILL, AND DEATH BY ACCIDENTS COMPENSATION BILL.

FRIDAY, April 24.—Lord CAMPBELL, in moving the order of the day for the second reading of these bills, expressed his opinion, in which he had been borne out by Mr. Wakley, that no benefit arose from the imposition of deodands. For the loss of life by accident, compensation was given to the families of the unfortunate sufferers, by the law of France, and also by that of Scotland, and the same principle should be applied in this country. He had been told that the railway interest in the House of Commons was so great—one company having eighty votes—that there was no chance of the bills passing in that house; he hoped, however, that the hon. members connected with railways would remember their duties as citizens and men, and feel disposed to do justice to their fellow-men.—Lord LYTLETON and Lord BROUGHAM supported the bills.—The Lord CHANCELLOR said that last year he obtained her Majesty's consent to this bill, and there was no doubt that it would be obtained this session.—Lord BROUGHAM said that her Majesty's consent could be obtained at any stage of the bill. Both bills were then read a second time.

INSOLVENT DEBTORS.

THURSDAY, April 30.—Lord BROUGHAM laid upon the table a bill for the amendment of the Insolvent Debtors' Act, which was read a first time.

HOUSE OF COMMONS.

CHARITABLE TRUSTS BILL.

TUESDAY, April 18.—Sir G. GREY called the attention of the right hon. the Home Secretary to the Charitable Trusts Bill. That Bill was introduced into the House of Lords last year, and referred to a select committee, but owing to the advanced period of the session, it was not possible to proceed with it. This session the Charitable Trusts Bill had been laid on the table of the House of Lords some weeks ago, and nevertheless the second reading of it had not yet been moved. It certainly was desirable, that while the House of Commons was occupied with important business, that bills of that kind should be proceeded with in the House of Lords, and he therefore wished to know whether it was the intention of the Government to proceed with the Charitable Trusts Bill in the other House, or to abandon it for the present session?—Sir J. GRAHAM said, that he had had an opportunity of conferring with the Lord Chancellor that day, and he could state that it was the intention of the noble and learned lord to proceed with the Bill.—Sir G. GREY: Without delay?—Sir J. GRAHAM: The noble and learned lord assured me that it was his intention to proceed with the bill.

BANKRUPTCY AND INSOLVENCY.

THURSDAY, April 30.—At the request of the ATTORNEY-GENERAL, who urged the importance of the subject, and the quantity of business now before the House.—Mr. HAWES consented to postpone the second reading of the Bankruptcy and Insolvency Bill for a fortnight.

THE MAGISTRATE.

Summary.

No subject of any moment connected with the administration of the law has been mooted

during the week. The decision on the Act exempting Literary Institutions from rates has made a considerable stir, and we understand that most of them are taking steps at once to place themselves within the words as well as the spirit of the Act, by adopting the rule recommended in our last.

RATING OF LITERARY AND SCIENTIFIC INSTITUTIONS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Observing the attention given in your last number to the subject of the exemption of Literary and Scientific Institutions from rates, I beg to call your attention to a most important decision respecting them, which was given on Saturday last at the Quarter Sessions, Guildhall, in the case of the City of London Institution, Aldersgate-street.

This Institution, on the passing of the Act, 6 & 7 Vict. c. 36, obtained the barrister's certificate, and filed it. Notice was given to the collector of the parish rates, by the Secretary, that such was done, and no further demand was made from October 1843 till December 1845. In that month the parish officers summoned the Secretary for upwards of two years' poor-rates, which summons being attended before the city magistrates, and the exemption claimed, was dismissed.

They then proceeded, in the manner pointed out in sec. 6 of the Act, to appeal against the certificate of the barrister, and this came on for argument on the 25th inst. at Guildhall, before the Recorder and a Bench of Aldermen, the title of the appeal being *Edward Lane v. George Stacy*, the Secretary of the Institution. Mr. Clarkson and Mr. Bodkin appearing for the appellant, Mr. Stacy being represented by Messrs. Prendergast and Parry. The latter objected, in the spirit of your article last week, that the time for appeal had expired; four months from the filing of the certificate had clearly elapsed, notice of the claim to be exempt having been given in October 1843, and a rate having been made in January 1844. Four months had also elapsed since the first assessment after the claim. On this point, however, the Court held that no claim of exemption was made until December 1845 before the magistrates, and that the appeal was, consequently, in time; the Recorder, in disposing of the point, remarked that he was not called upon to go into the question of whether a verbal notice might not, under certain circumstances, form a good claim, as, in the present, it was not a proper one made in answer to the demands by an authorized person; and he intimated that, as he did not think the Society was obliged to make any formal claim until they were called upon to pay, no notice before the summons would have been of service, and that, therefore, all societies who have not been pressed for the rates, and made out their exemption before a competent authority, can, after any length of time, be called on by an appeal.

The case being then proceeded with, the first ground of appeal, viz.: "that the certificate was bad upon the face of it" was supported by an allegation that it recited the Act of Parliament constituting the authority, to Mr. Tidd Pratt, to grant it as "an Act made and passed in the sixth and seventh years of the reign," &c. This, it was contended, was an impossibility, and the necessity for the insertion of the words, "in a session holden in the sixth and seventh years," insisted on, and notwithstanding the general usage of the profession in so reciting Acts, the fact that Acts of Parliament themselves so refer to others, the printed title of the Act, and every argument that could be urged, the Court on the citing of a case where the Queen's Bench set aside an indictment for so refusing to an Act, gave judgment for the appellant, and refused to allow the opinion of the superior Court to be taken on the point.

I would, therefore, particularly call the attention of your readers to the effect which this decision will have, inasmuch as, the certificate being a lithographed form, it has been used in the case of every institution applying under the Act, amounting to several hundreds in number, and they are now, by no fault of their own, but solely by the erroneous wording of the barrister's certificate, exposed to be proceeded against for the recovery of serious arrears; for, by the decision on the preliminary objection, no lapse of time will be a bar to such process.

The Act being thus completely nullified in its object of assisting such meritorious institutions, I quite concur in your suggestion that legislative interference, in their behalf, is necessary; and, under the circumstances, even think it should be stretched to the extent of protecting them from the past rates, to which they will otherwise be liable, if left to procure fresh certificates.

As an additional argument for such Act of Amendment, may be adduced the necessity of the law against appropriation of funds to the member's benefit laid down in *Reg. v. Jones*, because, as few, if any, institutions have such express law, and time is now decided

to be no protection, all will be liable to have their exemption defeated on this ground.

I am, Sir, Yours, &c.
London, April 27, 1846. F. W. B.

RATING OF LITERARY INSTITUTIONS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In your last paper you argue that the certificate of Mr. Tidd Pratt, given however improvidently to supposed Literary Societies, is yet conclusive if unappealed against. Permit me to suggest that this is erroneous.

You cite *Mould v. Williams* (5 Q.B.) in support of the finality of the certificate, to which may be added a long list of cases from *Brittain v. Kinnaird* (1 Bro. & Bing. 432) to *Reg. v. Hickling* (14 Law J. M.C. 177, 9 Jur. 1,075).

There are all cases of convictions and orders made after summoning and hearing all parties; and are final, whether an appeal be given or not. But there is a manifest distinction between them and proceedings *ex parte*. *Welsh v. Nash* (8 East, 394), and in 1 Brod. & Bing. Dallas, C.J. says, "*Welsh v. Nash* was no sooner cited in *Gray v. Cookson* (16 East), than Bayley, J. distinguished it as turning only on an *ex parte* order of justices, a proceeding in no way resembling a conviction where the matter is investigated on oath in the presence of both parties." In *Welsh v. Nash* an appeal was actually made, and the order was confirmed, and yet the Court afterwards held it bad in an action of trespass.

There is also this further point. Mr. Pratt's certificate and the rules of the society are, by the Act, to be read together. The certificates are, that "this society" is entitled. This, therefore, involves an inspection of the rules, to see what society is intended. The absence of a rule prohibitory of a bonus becomes then a patent objection, and the proceedings are bad on the face of them. The estoppel in an order of removal arises from the overseers being named in the order as direct parties, and is created by their receiving the paupers, and so recognizing its validity, for it is only an order *executed* which is final. Moreover the Literary Societies' Act gives no appeal to the overseers *ex officio*, but only to rate-payers; and the appeal was apparently intended only as a ready means of quashing an improper order, but without any expression or inference that the omission of an appeal should bind the parish for ever.

I am, Sir, yours, &c. E.

[The point noticed shall receive further consideration next week. As our obliging correspondent must have probably observed, there was not time to go so fully into it last week as it deserved.]

PAYMENT OF JURORS.—On Tuesday night a very numerous and highly respectable meeting of the inhabitants of Wandsworth was held, in the large room of the Ram Inn, for the purpose of petitioning parliament for an alteration of the law relating to jurors, as advised by Lord Chief Justice Denman at the late Lent Assizes, at Kingston. At half-past eight o'clock Robert W. Burchard, esq. of East-hill, one of the churchwardens, took the chair.—Mr. SAMUEL CUMBERS moved the following resolution:—"That this meeting is of opinion that very serious inconvenience and loss is sustained by those inhabitants of this parish who are called upon to serve as common and petit jurors at the assizes for the county, held at Kingston, Croydon, and Guildford, inasmuch as, in the first place, a much larger number of persons than are necessary for the performance of the required duties are from time to time summoned, and compelled to attend at the assize towns as jurors, and are there detained for a period of eight or ten days, to the great neglect and damage of the private affairs of such jurors, and at a heavy, and in many cases injurious, expense to themselves; and, in the next place, that the evil thus inflicted is greatly aggravated, and much injustice perpetrated upon the common jurors, in consequence of the practice adopted of requiring such a large number of their body to act in the Nisi Prius Court for so many days as is customary for the very inadequate payment of eightpence to each juror upon each cause. This meeting, being fully assured that, if the common jurors were fairly remunerated for their loss of time and for their services in the Nisi Prius Court, not only would the duties of the jurors be more satisfactorily performed, but a small number of them only would be required to be summoned, as their attendance would then be given much more cheerfully for the performance of a disagreeable duty. At the same time, this meeting desires to express its decided opinion that the trials in the Crown Court should be performed by the petit jurors, without fee or reward, and as a duty necessary for the well-being of society at large." The resolution was carried with acclamation. Petitions founded on the foregoing resolution were also seconded by Mr. PARSONS. Lord Denman was to be respectfully requested to present the petition to the House of Lords, and to support the prayer thereof, and Sir Frederick Thesiger, Knight, her Majesty's Attorney-General, was to be respectfully requested to present

the petition to the House of Commons. And further that he, together with Henry Kemble, Esq., and Edmund Antrobus, Esq. the member for the eastern division of this county, be respectfully requested to support the prayer thereof. Mr. MORRIS, solicitor and vestry clerk of Putney, said that that parish would be most happy to co-operate with the parishioners of Wandsworth in carrying this measure; he had already prepared a petition, which was signed by eighty individuals. It was then agreed that the petition should lie for signature at Messrs. Fletcher and Roberts's office; and after a vote of thanks had been passed to the chair, the meeting separated.

The chairman of the Surrey Easter Sessions, in addressing the Grand Jury on Monday, remarked that crime seemed to be fast decreasing in that county: the calendar was becoming lighter each session.

THE LAWYER.

Summary.

THE business of the Term has been exceedingly heavy. The mass of reports in the present double number fails to keep pace with it. We shall continue to give double numbers whenever needful during Term. The adoption of small type for the "Business of the Week" in the various Courts has already permitted a considerable increase of matter. But the length of the written judgments, the greater particularity with which all the more important cases are reported, and the plan of giving all the practice cases in the Courts of Equity as well as in the Common Law Courts, have so multiplied the demands upon our space that it would be impossible to present this useful mass of information to the Profession without the adoption of frequent double numbers at the seasons when business is most urgent.

THE PRACTICE OF WILLS.

By G. S. ALLNUTT, Esq. Barrister-at-Law.
BOOK I.

CHAPTER IV.—ON THE REVOCATION OF WILLS.

(Continued from page 16.)

Marriage of the testator.—Under the law existing previously to 1838, and which is of course still applicable to all wills of real estate, made before that year, the subsequent marriage of the testator and birth of a child operated as a revocation of the will. This may be stated as a general rule; "but such a case as this," (says Sir R. P. Arden, M.R. in *Gibbons v. Gaunt*, 4 Ves. 848), "has never yet been decided; the birth of children by the first wife after the execution of the will, and after the death of the wife a subsequent marriage and no children by that, I do not say it will have the same effect. I am not the judge to decide that. But there is not a single argument applying to the feelings of mankind to draw a decision from the Court, that will not apply to the one case as much as the other."

There were, however, exceptions to the general rule before stated; or rather the presumption, upon which the rule was founded, might be overruled by circumstances indicating a different intention on the part of the testator. In deciding the case of *Sheath v. York* (1 Ves. & Bea. 390), Sir Wm. Grant, M.R. said,—

"Long after it had been settled by decisions of the Ecclesiastical Court, with the concurrence of common law judges, sitting in the Court of Delegates, that marriage and the birth of a child would amount to a revocation of a will of personal property, it remained a doubt whether such an alteration of circumstances would have the same effect with regard to a will of real estate; but it is now settled that even a devise of land may be revoked by what Lord Kenyon, in the case of *Doe dem. Lancashire v. Lancashire* (5 Term. Rep. 58), calls "a total change in the situation of the testator's family." What shall be deemed such a total change may be matter of controversy in each new case; but all the cases in which hitherto wills of land have been set aside upon this doctrine have been very simple in their circumstances, and such as, when the doctrine was once received, could admit of no doubt with respect to its application. In all of them the will has been that of a person who having no children at the time of making it, has afterwards married, and had an heir born to him. The effect has been to let in such after-born heir to take an estate disposed of by a will made before his birth. The condition implied in these cases was that the testator, when he made his will in favour of a stranger or more remote relation, intended that it should not operate if he should have

an heir of his own body. In this case there is no room for the operation of such a condition; as this testator had children at the date of the will, one of whom was his heir-apparent, who was alive at the time of the second marriage, of the birth of the children by that marriage, and of the testator's death. Upon no rational principle, therefore, can this testator be supposed to have intended to revoke his will on account of the birth of other children; those children not deriving any benefit whatsoever from the revocation, which would have operated only to let in the eldest son to the whole of that estate which he had by the will divided between the eldest son and the other children of the first marriage. It is true the Ecclesiastical Court has decided that the will was revoked as to the personal estate; that is, in opposition to their decision in *Thompson v. Sheppard*, in 1779, where, under circumstances precisely the same, the will was held not revoked, even as to the personal estate. There was, in that case, an appeal to the Delegates, but it was not prosecuted. The revocation, however, as to the personal estate, had an effect which might perhaps have been intended by the testator—that of letting in the after-born children with those of the first marriage; but the principle of the decision has no bearing whatsoever upon the devise of the real estate, which, according to my opinion, stands unrevoked."

The principle of the decision in the Ecclesiastical Court, alluded to by Sir William Grant, in the last-mentioned case, would of course be applicable to a devise of real estate if the testator's heir-at-law should be a child of the second marriage.

By the 18th section of the 1 Vict. c. 26, it is enacted, as to wills made since the year 1837, "that every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of such appointment, pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin, under the Statute of Distributions);" and by the 19th section of the same Act it is enacted, "that no will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances." These provisions, it will be observed, have set at rest, as to wills coming within their operation, all the questions as to revocation which have arisen from the presumed alteration of the testator's intentions on account of the difference of his circumstances.

Cancelling, &c.—By the 6th section of the 29 Car. 2, c. 3 (commonly called the Statute of Frauds), it is enacted that "no devise in writing of lands, tenements, or hereditaments, nor any clause thereof, shall at any time after the said 24th day of June (1677), be revokable otherwise than by some other will or codicil in writing, or other writing, declaring the same, or by burning, cancelling, tearing, or obliterating the same by the testator himself, or in his presence and by his directions and consent; but all devises and bequests of lands and tenements shall remain and continue in force until the same be burnt, cancelled, torn, or obliterated by the testator or by his directions in manner aforesaid, or unless the same be altered by some other will or codicil in writing, or other writing of the deviser, signed in the presence of three or four witnesses declaring the same; any former law or usage to the contrary notwithstanding."

It has been decided upon this section that the burning, cancelling, tearing, or obliterating the will must be done with the intention of revoking the will. (*Onions v. Tyrer*, 1 P. Wms. 346; *Hyde v. Hyde*, 1 Eq. Ca. Ab. 409; and *Scruby v. Fordham*, 1 Add. 74.)

Where there are duplicates of a will, one of which is in the testator's possession, and he cancels that part which is with him, the legal presumption is, that the duplicate in the possession of another is not to prevail. "My opinion goes farther" (Lord Erskine observed in *Pemberton v. Pemberton*, 13 Ves. 310); "that if the testator himself has possession of both, the presumption holds, though weaker; and farther, that even if, having both in his possession, he alters one, and then destroys that which he had altered, there is also the presumption, but still weaker. But all these cases, according to *Burtonshaw v. Gilbert* (Cowp. 49) are matter of evidence."

In *Utterson v. Utterson* (3 Ves. & Bea. 122), an interlineation had been introduced in a will, excluding one of the testator's sons, who had been previously named with the other children, from taking an interest in certain property given for the

benefit of all the children. By a codicil, the testator, after expressing his disapprobation of the conduct of his son, declared that, instead of leaving him an equal share with his brothers and sisters, it was his determination that he should have no more of his property than one shilling only. The testator afterwards became reconciled to his son, and cancelled the codicil by drawing a pen across it, but omitted to strike out the interlineation in the will. Sir W. Grant, M. R. in giving judgment, said:—

"It seems to me that the codicil itself sufficiently shews that, previously to the date of it, the testator had done no act by which this son could be excluded. It speaks of the testator's determination to exclude him as then taken; and that intention was carried into effect by that codicil. He likewise assigns a specific reason for the exclusion, offence taken at some part of his son's conduct. The parol evidence expresses what that conduct was, and at what time it took place. The necessary presumption seems to be that the will was altered at the same time, and for the same reason as the codicil was made. Then, when the codicil is obliterated, does he in effect recall the whole declaration, both as to his dissatisfaction and its consequences? Even independently of the parol evidence of reconciliation, it seems to me that the act of obliteration speaks as clearly as words could have done, a change of intention as to the exclusion, and not merely as to the mode of effecting it. It is the same as if he had said, 'This codicil no longer speaks my sentiments; I am no longer dissatisfied with my son; and no longer mean to make any distinction between him and my other children.' If that is the fair inference from the obliteration, as I think it is, the consequence is that the will is set up again with regard to the plaintiff."

It is generally presumed by the ecclesiastical courts, that where a testator has revoked his will, any codicil to that will is also revoked. This presumption, however, may be rebutted by the codicil being completely independent of the will, or by the circumstances of the revocation. (*Usticke v. Bowden*, 2 Add. 116; *Medley v. Asheton*, 2 Add. 229; and *Tegart v. Squire*, 1 Curt. 289.)

The act of cancellation, &c. need not be complete if what is done is sufficient to satisfy the words of the Act, and is done with the intention of revoking the will. Thus, a partial tearing, *animo revocandi*, was held sufficient in *Bibb v. Thomas* (H. Blacks. 1043.) The words of the Act must, however, be to some extent complied with, and the attempt to comply with them is not sufficient, however clear the testator's intention to revoke the will may be. Thus, where a will was thrown on the fire by the testator, and the cover only was singed, it was held to be no revocation; for, as Mr. Justice Patteson observed, "to hold that it was so, would be saying that a strong intention to burn was a burning. There must be at all events a partial burning of the instrument itself; I do not say that a quantity of words must be burnt; but there must be a burning of the paper on which the will is." (*Doe v. Harris*, 6 Adol. & Ell. 209.)

If the testator change his intention before the act is completed, it has been held that the will is not revoked. (*Doe v. Perkes*, 5 B. & Ald. 489.)

A will might be wholly or partially revoked by cancellation. In *Mence v. Mence* (18 Ves. 348), Sir William Grant, M.R. declared the cancellation of a residuary bequest complete by the testator's striking out with a pencil the disposing part; that such cancellation was as effectual as express revocation; and that it would have been sufficient if only the names of the legatees had been struck out. Striking out the name of one joint tenant gives the whole estate to the other; but it is otherwise as to tenants in common. (*Larkins v. Larkins*, 3 Bos. & P. 16, 109.)

Where, however, a testator had, in declaring a trust for a certain person, drawn his pen through that person's name in some parts of the declaration, but had not done so in others, the Court held that the bequest was not revoked. (*Martins v. Gardiner*, 8 Sim. 73.)

In *Coward v. Marshall* (Cro. Eliz. 721), it was held that a subsequent will of lands is only a revocation so far as the dispositions are inconsistent. Where it has been found that the testator made a subsequent will, the contents of which were unknown, or that the testator made a subsequent will differing from the first, but in what particular was unknown, and that it did not appear what had become of the subsequent will, it was held that the first will was not revoked. (*Hungerford v. Nosworthy*, Sho. P. C. 146; *Hutchins v. Bassett*,

Salk. 502; and *Harwood v. Goodright*, Cowp. 87, 7 Bro. P. C. 489.)

Where a testator intends a substitution which is ineffectual, the obliteration will not amount to a revocation. (*Short*, on the demise of *Gastrell v. Smith*, 4 East, 419; and *Kirke v. Kirke*, 4 Russ. 435.)

By the 20th section of the 1 Vict. c. 26, it is enacted, "that no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction with the intention of revoking the same." And by the 21st section it is enacted, "that no obliteration, interlineation, or other alteration, made in any will after the execution thereof, shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will, opposite or near to such alteration, or at the foot or end of, or opposite to, a memorandum referring to such alteration, and written at the end, or some other part of the will."

Many of the decisions upon the old law will be applicable to cases under these sections. It must be particularly observed that a will cannot now be revoked by cancellation or obliteration, except so far as the words or effect of the will, before such alteration, shall not be apparent.

A FACULTY OF LAW FOR LONDON.

In all educational institutions, and more particularly in new foundations, almost every thing depends on the choice of teachers. The friends of education are too apt to neglect this truth—to lay undue stress upon systems and arrangements, and hurt their schools by over-legislation. If judicious appointments are made, it is advisable to leave a wide option to the persons appointed as to modes and methods of tuition. Teaching is an art, to perfection in which there go two qualifications,—natural aptitude and training for the task, and experience. Every teacher has a way of his own; and it is best not to trammel him with too many directions.

In truth, eminent schools are more frequently made by teachers than teachers by schools. Bologna was made by Irnerius and the Doctors who succeeded him; and was more efficient and famous under their spontaneous, unregulated guidance, than after it had statutes framed for it. Black, Cullen, and Gregory made a medical school in the University of Edinburgh; since the University has taken the management of the school upon itself, it has dwindled away, while a lustier and more flourishing one has sprung up without the walls.

For this reason, we have been more gratified by the choice the Benchers of the Middle Temple have made of a Reader on Civil Law and Jurisprudence, than even with their spirited resolution to establish the lectureship, and the able paper in which they announced their determination. In the hands of Mr. George Long, the readership will be a reality. An admirable classical scholar, profoundly conversant with Roman antiquities and history, familiar with all that has been written by Savigny and other modern civilians, and with the compilations of Justinian, Mr. Long is at the same time a man of business and a man of the world; having noted with a discerning spirit the phases of society both in this country and in America. His practice as a barrister has been sufficient to enable him to make the Roman and English legal systems mutually illustrative, and to impart reality to his prelections on legal doctrines. Above all, Mr. Long possesses in an eminent degree both the talent and the taste for teaching; as his success in the University College Latin chair has amply shewn.

Mr. Long, we confidently believe, will form a class to which students will flock, because they will feel themselves benefited by it. The Benchers of the Middle Temple have evoked a spirit that will work out their wishes powerfully. Which of the Inns of Court moves next? Will Lincoln's Inn contribute its teacher of Equity Jurisprudence? The Inner Temple, its Reader on the Constitutional and Criminal Law? Serjeants' Inn, a brace of Doctors for the Law of Real and the Law of Personal Property? Will the conveyancers, equity draftsmen, and special-pleaders club for the foundation of a lecture on the theory and practice of Conveyancing and Special-

pleading. If these and a few more chairs were as well filled as the Civil Law chair of the Middle Temple, London would have a Faculty of Law equal to any in Europe. The preparatory and auxiliary studies of the scholars might be carried on in King's or University College—or in the library of the British Museum, as good a college as either. A Faculty of Law, founded and supported by the Inns of Court, and affiliated to the incorporated educational institutions of London, would be preferable to a Law College with classes for the preparatory studies; because the young lawyers, being brought into collision with students destined for other professions, would have the pedantry of the profession rubbed off them—or more correctly, would be prevented from contracting it.—*Speaker*.

SHAM ATTORNEYS.

We refer with much pleasure to the decision in *Reg. v. Buchanan* reported in this day's journal, as further shewing the means of protection which the law affords against the noxious class of Sham Lawyers, injurious both to the Profession and to the public. We make this remark, not intending to cast any imputation whatever upon Mr. BUCHANAN individually, for we do not know the precise facts under which the indictment was preferred, and it was stated by the Solicitor-General on Wednesday, that the offence, if committed at all, was committed under circumstances of very great mitigation. We speak only of the important principle established by the decision—which is that the infringement of an express prohibition of a statute is indictable as a substantive misdemeanor, although the act prohibited is lawful at common law, and although a subsequent section in the statute may affix another and accumulative punishment for the same infringement. This has certainly been usually regarded as the rule—according to the *dicta* of the Court in *Rea v. Wright* (1 Burr. 545), and in *Rea v. Harris* (4 T. R. 202.) There ASHUMAR, J. laid down the rule to be, "That where a new offence is created by Act of Parliament, and the penalty is annexed to it by a separate substantive clause, it is not necessary for the prosecutor to sue for the penalty, but he may proceed on the prior clause, on the ground of its being a misdemeanor." This is now established to be the law by the unanimous and clear judgment of the Court of Queen's Bench in the principal case.

There are, then, now three efficacious methods of punishing sham attorneys.

1. By indictment for the misdemeanor under 6 & 7 Vict. c. 73, s. 2, which extends to acting as an attorney or solicitor in "any cause, matter, or suit, civil or criminal, to be heard, tried, or determined before any justice of assize, of oyer and terminer, or gaol delivery, or at any general or quarter sessions of the peace for any county, riding, division, liberty, city, borough, or place, or before any justice or justices, or before any commissioners of her Majesty's revenue." One advantage of this course is, that the evidence would be proved with ease, as the trial would of course take place where the offence was committed. The punishment would be fine or imprisonment, or both, and would vary according to the circumstances of the case.

2. Where the case is very gross, and money has been received by the sham attorney, an indictment for obtaining money under false pretences might be preferred, as in the recent case at Birmingham (*supra*, 49, 51). Under such an indictment, even transportation may be the result of a conviction.

3. There is a third remedy possessed by the superior Courts, and expressly given by section 36 of the Act, where the offence is committed in a county court. That section declares that it shall be deemed a contempt of the court in which the action, suit, or proceeding shall have been prosecuted, carried on, or defended. We understood the Lord Chief Justice to express his clear opinion that, affecting to practise in a court without being duly qualified, would be punishable as a contempt of that Court. And this section was probably inserted only because a county court is not a court of record. That the superior courts would punish for such a contempt we have no doubt. It is to be further remarked, that section 31 makes it a statutable contempt for attorneys to commence or defend suits, &c. whilst in prison. This offence, is made punishable upon the application of any person.

These various modes, therefore, being clearly open, it depends upon the exertions of the members of the Profession, and more especially of the Law Societies, whether an effectual stop shall be put to this class of persons or not. Every day's

experience shows the evil they cause, from the ignorance of the parties upon whom they remorselessly prey. Only those who have mixed much with the lower classes are aware of the extent of their ignorance; and, as a specimen, we may mention an occurrence that actually took place this last week. A poor woman appeared in the Court of Queen's Bench, having walked up from Windsor in a great fright to know what was to be done to her. She had received a declaration in ejectment, and, as she said, had done what John Doe advised her, and made her personal appearance at Westminster!

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been pleased to appoint Alexander Stewart, esq. to be Master of the Rolls for the province of Nova Scotia.

The Queen has been pleased to approve of Mr. Thomas Roberts, as Consul at Milford Haven for his Majesty the king of the Belgians.

The Queen has also been pleased to approve of Mr. Thos. Haire, as Consul at Gibraltar for the Grand Duke of Mecklenburg-Schwerin.

The Queen has been pleased to approve of Mr. James Henty, as Consul at Launceston, Van Diemen's Land, for his Majesty the king of Prussia.

COMMISSIONS SIGNED BY LORDS LIEUTENANT.

NORFOLK.—The Hon. Edward Thornton Wodehouse; the Hon. Berkeley Wodehouse; William Norris, esq.; and Thomas Kerslake, esq. to be Deputy Lieutenants.

SURREY.—John Courage, esq.; George Scovell, esq.; Samuel Palmer, esq.; Algernon Perkins, esq.; and James Forbes Young, esq. to be Deputy Lieutenants.

COMMISSIONS SIGNED BY THE LORD LIEUTENANT AND HIGH STEWARD OF KIRKCUDBRIGHT.

G. S. Abercromby, jun. esq.; W. Miller, esq.; M. C. Maxwell, esq.; W. K. Laurie, esq.; and J. Hall, esq. to be deputy lieutenants.

The Rev. Dr. Jackson, of Lowther, has been appointed chancellor of the diocese of Carlisle, vacant by the decease of the Rev. Walter Fletcher.

COURT PAPERS.

COURT OF QUEEN'S BENCH, April 30.

Easter Term, 9th Victoria.

This Court will, on Saturday the 9th, and Monday, the 11th of May next, hold sittings, and will proceed in disposing of the business in the Special Paper and New Trial Paper, and in giving judgment in cases that may then be pending. By the COURT.

Notice has been posted that *Reg. v. Douglas* will not be called on next Monday.

ADMISSION OF SOLICITORS IN CHANCERY.

NOTICE.

Secretary's Office, Rolls, April 16, 1846.

The Master of the Rolls has appointed Wednesday, May 6th, at the Rolls Court, Chancery-lane, at a quarter past 3 in the afternoon, for swearing so-
licitors.

Every person desirous of being sworn on the above day must leave his common law admission, or his certificate of practice for the current year, at the secretary's office, Rolls-yard, Chancery-lane, on or before Tuesday, May 5th.

SHERIFFS' COURT, RED LION-SQUARE, April 30.

—PROCLAMATIONS OF OUTLAWRY.—A county court was held to-day before Mr. Under-sheriff Burchell, when the following proclamations of outlawry were made by Hemp, the officer:—Charles Craven, at the suit of W. H. H. Reed; Sir R. D. Hanegan, at the suit of C. Plowden and another; Sir H. Floyd, at the suit of A. Smith and another; G. A. Young, at the suit of O. Roberts; G. Hicks (two cases), at the suit of G. S. Ford and the assignees of James Gibbs, a bankrupt; J. Menzies, at the suit of B. Sams; W. M. Higgins, at the suit of C. G. Pool; M. Denys, at the suit of J. Angel; C. Stewart, at the suit of J. B. Byron; F. Twysden, at the suit of R. Bryant; J. Salmon, at the suit of W. E. Goatley; A. H. Kenney, at the suit of the Queen; J. E. Spalding, at the suit of L. J. Nathan; F. B. Parker, at the suit of T. Sanford; W. J. Bardett, at the suit of C. Bennett; C. S. Reynolds, at the suit of E. Smith; H. H. Wernick, at the suit of Robert Warren; Geo. Linley, at the suit of C. W. De Bernardy; T. Sharp, at the suit of P. Plague and others; W. B. Metcalfe, at the suit of W. Reeve and another; F. T. Gotobed, at the suit of R. Lewis and another; W. Bailey, at

the suit of C. W. De Bernardy; W. F. Byng, at the suit of J. Jones; T. L. Wellesley, at the suit of O. Richards; W. T. D. Lloyd, at the suit of D. E. Columbine.

LEGAL INTELLIGENCE.

WILL of Mr. JOHN ASHTON, of HYDE.—This gentleman, a younger brother of the late Mr. Thomas Ashton, and a man of large property and somewhat eccentric character, died on Saturday last, leaving a will, by which, as we understand, a considerable sum will come into the hands of Government towards the payment of the national debt. This will, we believe, was made some years ago, when Mr. Ashton, after giving a number of specific legacies to different individuals, bequeathed the residue of his property, which he then estimated at 30,000*l.* to the Chancellor of the Exchequer, to be applied in diminution of the national debt. Since that time, however, his property has so far accumulated that the residue which will pass by this bequest is estimated at about 150,000*l.* This amount, however, may be somewhat diminished if Government should think proper to carry into effect a bequest in the will, which, contrary to the obvious intentions of the testator, has lapsed by the death of the individual in whose favour it was made. This was a considerable legacy to his late manager, who died some time ago, leaving a wife and family, whom Mr. Ashton supported, and for whom he probably supposed that he had provided by his will; but the bequest being specific to the manager alone, has been rendered void by his death, and the amount, we believe no less than 20,000*l.*, goes to swell the residue accruing to the Government. We imagine that if the Lords of the Treasury should feel satisfied that it was Mr. Ashton's intention that this bequest should stand for the benefit of the widow and family, they will think it right to carry that intention into effect.—*Manchester Guardian.*

LEGAL FORCES, &c. OF ENGLAND.—The following is an analysis of the individuals occupied in England in a judicial or other administrative or legal professional character, in April, 1846:—5 equity judges, 15 common law judges of the superior courts at Westminster, 1 judge in civil law, 1 admiralty judge, 2 judges in bankruptcy, 12 masters in chancery, 2 masters in lunacy, 5 visitors in lunacy, 11 commissioners in lunacy, 6 commissioners in bankruptcy, 12 country commissioners in bankruptcy, 96 recorders, 21 metropolitan and suburban magistrates, 24 clerks of the High Court of Chancery, 25 Lord Chancellor's officers, and a legion of other officers attached to the equity and common law public offices, ~~the latter to the amount of~~ above 3,080 barristers, exclusive of 28 serjeants-at-law. There are 74 Queen's counsel, including the Attorney and Solicitor-General; 23 advocates, members of the College of Doctors of Law; 122 certificated special pleaders and conveyancers, not at the bar, above 2,800 metropolitan attorneys, upwards of 4,000 country attorneys, 106 proctors and notaries, 34 notaries public, 55 parliamentary agents, 31 Scotch law agents in London, 51 Irish law agents in London, and 14 patent agents. There are also in London 124 law and public offices.

SENTENCE ON A BARRISTER FOR FORGERY, AT DUBLIN.—Mr. John Sargent was put forward to receive sentence. He had been convicted of forging a bill of exchange, purporting to be the draft of General Saunders. Mr. Sargent, who is a barrister, had been agent to the General, who died since the period when the case had come before the primary tribunal, where the case had been at the instance of the deceased General. Baron Richards, in passing sentence upon this gentleman, said, "Had you been convicted of a similar offence previous to the wise and merciful relaxation of the criminal laws, you would be standing there to receive sentence of death, instead of that which the Court has now to pronounce against you." The learned judge then pronounced against the convict sentence of transportation for seven years. There is a strange force in the words which I have underlined, giving to this gentleman's case a deeper interest than ordinary. It is said that he was actually under sentence of death in 1821, and was left for execution, for the crime of forgery. The story of his reprieve is thus told:—In the year just mentioned, George IV. visited this country. Mrs. Sargent, who appears to have made a most devoted wife, was incessant in her efforts during the period of the monarch's stay in Ireland to induce the Royal clemency towards her unfortunate husband. She was not, we believe, successful at the first, but, that no solicitation—that no importunity should mar her generous and devoted purpose, she directed her steps to Kingstown on the day when the Royal visitor left the shores of the Emerald Isle. The lady was unable to press through his guards to fling herself at the monarch's feet and to implore him to do an act of grace as he departed, but she screamed her prayers and entreaties, so that above the acclamations of the thousands who witnessed his departure, George IV. heard the sobbing solicitations of Mrs. Sargent. The

king did not relent, and the lady, maddened by failure, flung herself from the jetty into the sea, that she might die in her distraction. The Royal voyager was not proof against such devotion—he pardoned the husband, and the wife was happy. I know not whether the lady yet survives; but the husband seems destined, at sixty years, to prove the punishment which the law now awards against forgery, having in his youth escaped the death of a felon for a similar crime. Is it not a strange history?

An amusing scene occurred in the Sheriff's Court at Hull on Wednesday week. The second case for adjudication having occupied till nearly nine o'clock in hearing, the coroner clearly summed up the evidence, and explained to the jury his view of the case. He stated, however, that he did not wish them to be at all biased by what he had said, and therefore he handed them in a copy of the Act of Parliament to guide them in their decision. The jury having expressed a wish to retire, the usual oath was administered to the bailiff, that he should keep them without "meat, fire, or candle," until they came a decision. One of the jurors, naturally enough, said, "How, then, are we to read the Act of Parliament?" This was a poser: judges, jury, and counsel seemed equally at a nonplus. The bailiff, however, soon got over the difficulty, by saying, "Come, sirs, gentlemen; I'll take you to a room where there is gas-light."—*Hull Packet.*

Mr. Pollock, the Clerk of the Peace for the county and city of Dublin and thirteen other counties in Ireland, died on Monday, at Mountains Town, in country seat. The demise of this pluralist will create several vacancies, which will be filled up by five separate appointments!

IRISH LEGAL INTELLIGENCE.

The following gentlemen have been appointed by the Lord Lieutenant to the under-mentioned vacancies in the office of Clerk of the Crown, caused by the death of A. H. C. Pollock, who held the office as reversioner under a patent granted by the Crown to his father:—Mr. Japhet Alley, county and city of Dublin; Mr. J. J. Stamford, county of Meath; Mr. Charles Pemberton, King's County; Mr. George Pilkington, Queen's County; Mr. John Edmund Roche, county of Wexford; Mr. George Geale, county of Longford; Mr. Wm. Keogh, county and city of Kilkenny; Mr. Wm. Greene, county of Westmeath; Mr. J. M'Mahon, county of Wicklow; Mr. John Maher, county of Louth; and Mr. James Barry, county of Kildare.

Sir Compton Domvile, Bart. Custos Rotulorum of one county of Dublin, has appointed George Wade, esq. clerk of the peace for the county, in the room of A. H. C. Pollock, esq. deceased.

It is now generally understood that Wm. Brooke, esq. Q.C. one of the most distinguished lawyers at the Chancery Bar, has been appointed Master in Chancery, in the room of John Sealy Townsend, esq. who has resigned, having arrived at the advanced age of eighty-three years. The appointment has given the most unqualified satisfaction to both branches of the Profession.

The Court of Chancery, at its rising, was adjourned until Saturday, when his lordship will sit to hear motions. It is an almost unprecedented circumstance that the cause list should have been cleared off at so early a day in Term; but several causes having been struck out, for non-attendance of solicitors, is partly the reason of this occurrence.

PROPERTY TAX.—A return of the amount of property-tax collected in England, Wales, and Scotland during the respective years ending January 8, 1844 and 1845. The following were, it appears, the sums realised under each schedule:—

	Year 1844.	Year 1845.
Schedule A.....	£2,378,000	£2,366,047
B.....	317,716	318,807
C.....	796,709	766,666
D.....	1,599,698	1,541,970
E.....	321,478	313,900
Total....	5,412,784	5,303,389

Decrease in 1845.... 109,194

SUPERANNUATIONS IN PUBLIC DEPARTMENTS.—A Parliamentary document has been issued extending to nearly 50 folio pages, giving an account of all allowances or compensations granted as retired allowances or superannuations in all public offices or departments which remain payable on the 1st January, 1845; the annual amount which was granted in the year 1845; the annual amount which ceased within the year, and the total amount remaining payable on the 31st December last. The total compensation and superannuation allowances remaining payable on the 31st December last were 635,973*l.* 5*s.* 3*d.* It seems that the compensation allowances payable on the 1st

January, 1845, amounted to 253,421l. 15s. 5d. The annual amount of compensation allowances granted in the year 1845 was 3,405l. 8s. 3d. and the annual amount of compensation allowances which ceased within the year was 13,137l. 5s. 2d. Of superannuation allowances, after deducting a sum of 34,375l. 1s. 3d. allowed by the 4 & 5 Wm. 4. c. 24, the actual charge on the public on the 31st December last, was 395,183l. 6s. 9d. The superannuation allowances granted last year were 54,236l. 5s. 4d. and the amount which ceased in the year was 31,789l. 0s. 5d. Separate accounts are given from the various public departments.

THE ARMY.—By a return obtained on the application of Captain Layard (Carlton), a statement was made of the expense incurred from the year 1840 to 1845, by the rewards paid for the apprehension of deserters, &c. The information on the return does not extend beyond the 31st of March, 1845. The following results appear:—In the year ending March 1841, the expense for the apprehension, subsistence, and escort of deserters was 2,634l.; for the subsistence of other soldiers in confinement it was 10,364l. The number of rank and file in the year, exclusive of India, was 82,670. In 1841-2, under the first head, it was 4,385l.; under the second, 10,779l.; and the number was 80,970. In 1842-3, under the first head, 3,959l.; under the second, 10,185l.; the number was 84,140. In 1843-4, under the first head, 2,874l.; under the second, 11,213l.; the number was 88,737; and, in 1844-5, under the first head, 2,168l.; the second, 11,975l.; and the number 88,261. This is by no means an explicit return to the order of the House of Commons.

RELIGIOUS WORSHIP.—It appears from a Parliamentary return just issued, that 2,467 places of religious worship have been registered in England and Wales for the celebration of marriages. Of these, 195 belonged to the Presbyterians; 970 to the Independents or Congregationalists; 599 to the Baptists; 267 to the Armenian Methodists; 78 to the Calvinistic Methodists; 301 to Roman Catholics; five were "foreign churches;" and 52 miscellaneous. In the year 1844, there were 132,249 marriages in England; of these 120,000 were according to the rites of the Established Church; while 12,240 were otherwise performed, 3,446 having been effected in the offices of the Superintendent Registrars.

ILLEGITIMATE CHILDREN IN IRELAND.—The return to Mr. Sharman Crawford's motion for an account of the "number of women having illegitimate children relieved in the workhouses in Ireland during the half-year ending the 25th September, 1845," has been printed by order of the House of Commons. From the summary of the returns from 119 workhouses, it appears the numbers relieved during the above period were—women having illegitimate children, 2,091; illegitimate children, 3,688.

PROCEEDINGS OF LAW SOCIETIES.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

General Meeting, April 8, 1846.

JOHN HERBERT KOE, Esq. Q.C. in the Chair. The minutes of the last meeting (the 25th March last) were read and confirmed.

The following were elected as Corresponding Members: Tristram Kennedy, esq. Barrister, Principal of the Dublin Law Institute, and Joseph Napier, esq. Q.C. Dublin.

The following members were balloted for and elected: the Earl Grey, and Thomas Henry Farrer, esq. Barrister. The report of the committee on the Law of Property on the following reference: "To consider the law relating to Mortgages," was ordered to be received.

The report of the Committee on Criminal Law on the following reference was presented: "Whether unaggravated larcenies of small amount may not be advantageously submitted to the jurisdiction of the Petty Sessions." It was agreed that the report should be printed and further considered at the next meeting.

The following reference was made to the Committee on Equity: "To consider the subject of Charitable Trusts."

April 22.

MR. COMMISSIONER FENBLANQUE IN THE CHAIR.

The minutes of the last meeting (the 8th instant) were read and confirmed.

The following members were balloted for and elected: Thomas Baring, esq. M.P.; Raikes Currie, esq. M.P.; and William Bryden, esq.

The report of the committee on Criminal Law on the following reference: "Whether unaggravated larcenies of small amount may not be advantageously submitted to the jurisdiction of the petty sessions," was ordered to be received.

The report of the committee on the Law of Property on the following reference was presented:—"To consider of the propriety of establishing a general register of deeds and instruments affecting real property."

It was agreed that the report should be printed, and further considered at the next meeting.

Heirs-at-Law, Next of Kin, &c. Wanted.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent impertinent curiosity, a fee of a shilling for each inquiry must be paid to the publisher, or if by letter, postage stamps inclosed.]

1. WILL WANTED.—OF WILLIAM TAPRELL, of 5, Stanhope-street, Newcastle-street, Strand, previously of 41, Carey-street, Lincoln's-inn.
2. SARAH GRIFFIN, spinster, formerly of Gracechurch-street, and at Mrs. Cottle's, 3, Camberwell-grove, something to her advantage.
3. NEXT OF KIN OF SAMUEL NEDHAM, merchant, from the neighbourhood of Manchester, died at Brody, in Galicia, June 25, 1835.
4. NEXT OF KIN OF WILLIAM SHEPPY, of Totteridge, in the county of Hertford, farmer, died April 20, 1813.
5. HEIR-AT-LAW and in GAVEL-KIND OF THOMAS ASHBE, late of the parish of Hearn, in the county of Kent, farmer, died July, 1831.
6. REPRESENTATIVES OF — BAXTER, upholsterer, of Piccadilly, or Oxford-street, in 1810, something to their advantage.
7. NEXT OF KIN OF SUSANNAH CURTIS, of Park-lane, Middlesex, and Thistle-green, Brompton, died Nov. 1, 1832.
8. MRS. BARUGH and her children, natural daughter of the late HENRY PONT, Recorder of Cambridge; bequeathed 200l. by will of FRANCIS BURTON, late of Upper Brook-street, Middlesex.
9. ANN GETTINGS and her children, and PHILLIPPA MARIA ATKINS and her children, sisters and devisees of WILLIAM MEULK, of Taunton, Somerset, died Jan. 1790.
10. JOHN CUDLIFF, of Great Charlotte-street, Blackfriars. WILLIAM GLOAG, formerly of the Ordnance Medical Department, Woolwich. GABRIEL GREGORY WHITE, formerly of 34, Old Broad-street, and Lloyd's.
- MATTHEW BOWEN, formerly of St. Mildred's-court. LEWIS HAPPY, formerly of 6, Egremont-place, New-road.
- S. B. SWEETMAN, formerly of Gainford-place, Upper Islington.
- C. S. FENWICK, Dulwich.
11. NEXT OF KIN OF ELIZABETH SMITH, late of New-road, Brighton, died Oct. 1834.
12. NEXT OF KIN OF GEORGE DAWE, Esq. R. A. Newman-street, Marylebone, afterwards of St. Petersburg, died 16th Oct. 1839.

CORRESPONDENCE.

SOLICITORS' LIFE INSURANCE OFFICE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am gratified to learn this society is now in full work. I beg to refer you to my letter of the 24th March last, and to your observations thereon (vol. 6, p. 530). In earnest of my pledge, I have to inform you that I have now effected an insurance on my own life for 600l. and on a branch of my family for 200l.—together 800l. May I, therefore, ask you how the list you proposed sending to the different shareholders is progressing? I hope most successfully, and that every individual shareholder will hasten to follow my example by effecting a personal insurance for as large an amount as may be convenient. With the cordial and zealous co-operation of all its members, depend on it, this society will, ere long, take up such a position as will exceed the expectations of its most sanguine supporters. I am sure the best thanks of the Profession at large are most justly due to you for the interest you have taken for their benefit by your honest advocacy of this measure.

I remain, Sir, yours, &c.

A WILTSHIRE SHAREHOLDER.

April 27, 1846.

POINT OF PRACTICE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Will one of your readers enlighten me on a question of deep import to attorneys and solicitors?

A solicitor, employed by B. delivers to B. sec. stat. his bill of costs, extending over a period of twenty years, and two years after delivery of the bill, B. becomes bankrupt.

We will suppose that the solicitor tenders his claim for proof against B.'s estate, stating in his deposition the delivery of the bill to B. and that more than twelve calendar months had elapsed, at date of fiat, since delivery of bill. The commissioner will decide that he cannot allow the proof till bill taxed, and so

he will annul the provision in 6 & 7 Vict. c. 73, s. 37, which, after twelve months, protects a bill from taxation, except under "special circumstances." The commissioner will support his decision by referring to the uniform practice of his court.

I shall be glad to know if "attorneys and solicitors" are, in circumstances most adverse to them, to be thus deprived of a protection which the legislature has thought fit to give them against a solvent debtor in the above enactment, by a "simple rule of Court?" for the application of which, in the case supposed, there is no reason whatever.

I am, Sir, yours, &c.

SPECTATOR.

SELECTIONS FROM CORRESPONDENCE.

"ONE, &c." thus again addresses us on the subject of Short Conveyances:—

I am glad to find that my remarks on the "Short Conveyances" Act have met with the approbation of other gentlemen of the Profession. I do not indeed find a dissentient voice, and more than that, I do find, that both in town and country, every solicitor who has any regard for his character does adopt the short forms alluded to in my former letter. Whether or not Mr. Hayes, and other gentlemen who have devoted their lives to the study and practice of Conveyancing, are better calculated to perform this task with discretion and safety, or whether my Lords Brougham and Campbell, who cannot by possibility have given their attention to the subject, except incidentally, and in the most superficial manner, is a question which, from every one, except perhaps the noble lords themselves, admits of but one answer. To the credit of the Bar, there prevails always a strong general desire among this body not to interfere with one another's peculiar branches of study. It will often happen that common law and equity questions arise out of the same case, and the solicitor is always told by the gentleman to whom he submits his papers, that he must take the opinion of Mr. — on such and such points, he, the gentleman consulted, being unwilling to advise on a subject out of his practice. Lords Brougham and Campbell, however, reject these curbs upon the universality of their talents; common law, equity, and conveyancing are alike familiar to them, and a statute scratched off *currente calamo*, if it bear the stamp of their genius, is a fit substitute for the labour and wisdom of ages. Our ancestors were not imbued with this mania for law making. The *Statute of Uses*, for instance, was the result of very great research and labour, and when passed was not followed immediately by Acts to amend and repeal Acts, &c. as we see done now every day. I am not desirous of returning to the forms or dilatoriness of antiquity, but I do think it is a serious evil, and one against which it is the duty of every reflecting person to protest, that the most momentous questions affecting the property of the country are to be treated in a crude and careless manner, and to be sacrificed to individual caprice and personal prejudices. The subject is treated of in the *Spectator* of last week. The Editor alludes more particularly to Belgium, in which country it is stated that by reason of the facility of transferring land, money may be raised on it at 2 per cent. I confess I do not understand how the transfer of land and the rate of interest of money operate on one another, as I do not believe that the value of money so raised in this country is affected by any presumed difficulty or expense in creating mortgages. There can be no mode of transfer more simple or less expensive than that of the public funds; and yet the mode of transfer cannot be said to affect the rate of interest, which is about equal to the rent of land. But we must not be guided by the laws of other countries, although we may perhaps borrow hints, as *their* laws are mostly founded on different principles from ours. If we look to France, we shall find conveyancing not much less expensive or complicated than our own system, notwithstanding the "Code Napoleon." I beg to state, that I am not opposed to reforms in the law, but I wish those reforms to be worked out by competent and unprejudiced parties; still more desirous am I of rousing the Profession to a sense of their dangers and duties, and to urge those who have the ability, and have constituted themselves the guardians of the Profession, to shew, what I now very much doubt, that they feel a sincere interest in its general welfare and prosperity.

"W. R." thus replies to a query of last week as to the proper fees of Surrogates:—

The question with respect to the highest charge of a surrogate on proving a will, can only be answered by considering the nature of his office and duty. A will, although proved only in common form, is considered, in the short progress which it thus undergoes, to obtain the sanction of a court of probate; and to that end it must necessarily have a judge to give effect, *pro forma*, to its judicial acts. A surrogate, therefore, is the representative or *locum tenens* of the strict judge or official of the court of probate, and in strictness he can have no personal interest in its fees of office. Like other courts of English law, a fee is payable in ecclesiastical courts upon administering

an oath, a custom which would surely be more honoured in the breach than the observance, inasmuch as it thus connects with an act of religious obligation a pecuniary advantage to the administrant. The fee is usually a shilling, which by usage is paid to the surrogate upon every oath administered by or before him; and any further payment is either excessive or gratuitous.

Castle Meadow, Norwich.

"E. C." (Leeds) thus answers a query relating to sham conveyancers:—

I would refer your correspondent in last number, who inquires how an unqualified person may be punished for drawing conveyances and charging for them, to the 44 Geo. 3, c. 98, s. 14, which enacts, that any unqualified person drawing any conveyance for fee or gain, shall be liable to a penalty of 50l.

Having waited a considerable length of time for a reply, by some senior member of the Profession, to the query suggested by your correspondent "A. B." in No. 153 of the LAW TIMES, p. 467, as to whether or not, in consequence of the decision in *Reg. v. Steward of Eton College*, it would be necessary in a conveyance by tenants in common, to have a separate lease stamp for each tenant in common, and no such reply having been made, I would suggest, with all due deference as a junior, that as tenants in common have a unity of possession, they would be entitled to grant a lease for possession under one stamp. The decision above referred to certainly seems to have been not in accordance with the generally received opinion of the Profession. (See *Lee on Abstracts*, p. 275.)

NOTICE.

The subscription for the current half-year is now due, and subscribers desirous of availing themselves of the great reduction allowed for pre-payment, should forward the same in the course of the ensuing week. The prepaid subscription is 1l. 5s. for the half-year, and 2l. 7s. for the year, being a reduction respectively of 25 and 30 per cent.

Post-office Orders must be made payable to Mr. JOHN CROCKFORD, Publisher of the Law Times.

THE LAW TIMES.

SATURDAY, MAY 2, 1846.

CONVEYANCING.

THERE is no subject that so urgently demands the most anxious consideration of the Profession as the present state and prospects of this important branch of business. We may be assured that great changes are impending which, if not anticipated by the prudence of the Profession, and preparation made to meet them, will be productive of very serious consequences to the general emoluments, and thus to the social status, of its members.

It would be more pleasant to flatter our readers with hopes that the innovations threatening are impracticable; that the lawyers are powerful enough to resist them; that the legislature is too much busied with other matters to trouble itself about law reforms. It is easy to write leading articles exhibiting the difficulties and absurdities of short forms, and the folly of cheap conveyances; but, satisfied that neither argument nor ridicule will avert the mischief, it is the part of an honest friend to set about the more troublesome and unpleasing task of warning the confident, rousing the indolent to action, and suggesting the course which should be pursued under the circumstances, so that the evil may be diminished by foresight, and as much of good extracted from it as energy and exertion can secure, both from legislation and by internal arrangements. Such task be ours.

LORD BROUGHAM's new bill for abbreviating conveyances would, of itself, offer small cause for alarm, whether measured by the influence of its author or the worth of the measure. But its reception is a sign of a change

that has taken place in the minds of those who have more power to carry out their opinions. The truth is, and the Profession cannot be too often and too earnestly warned of it, that the coming changes in the commercial policy of the country, the abolition of the protection hitherto possessed by agriculture, has turned the attention of the landowners to the various burdens by which land is affected. Among these, not the least grievous they assert to be the cost of conveyances. It is a tax upon the property, and practically operates to diminish its value by preventing its free interchange in the market. Resolved, if the produce of their land is to compete with the produce of the world, that it shall do so on more equitable terms, and that land shall have no heavier burdens, or be more trammelled than personal property, the landlords are already crying out for relief from these impediments. An intimation was given in the short debate on the introduction of Lord BROUGHAM's Bill, that they are resolved, by some means or other, to reduce the difficulties and costs that attend the transfer of land. On this point all parties were agreed. The men who desire it have the power to carry out their desire; and when interest urges we may be sure that the wish will ere long shape itself into action.

True, there are difficulties not calculated upon; obstacles not foreseen; forces that may be arrayed in powerful opposition to the design. But with such a stimulus, we may be sure that these, though they may delay, cannot defeat. For good or for ill, whether with or without the sanction of the lawyers, no long time can elapse before the legislature will compel great changes in the practice of conveyancing.

It is, therefore, a matter for grave consultation with the Profession, if it shall commit itself to an uncompromising opposition, which, we verily believe, will be hopeless against the forces ranged on the other side; or if it shall, with as much good humour as it can command, admit the fairness of the landlords' demand, give its practical aid in the accomplishment of the object, and accompany this with such conditions and securities as may greatly modify, if not altogether remove, the evil, and which, although they might be denied to a conquered opponent, could not be refused to an assistant and ally.

What, then, should be done to lighten a mischief we cannot hope altogether to avert? Let us make terms; let us convert hostile measures into a friendly compromise. Let us say to the landlords, "We admit your complaint. We feel with you that the cost of conveyancing is greater than it should be; we allow that land should be made a more marketable commodity. We will cordially aid your endeavour to make it such by reducing the cost of its transfer, and removing present obstacles. But your measures will not effect your object. They are wanting in practical wisdom. They are framed in the closet, not in the office. They purpose to legislate for parts of a great system, without reference to the working of the whole machine. You apply your remedy too partially; you attack a symptom, and not the disease. Take us to your counsels; meet us in friendly conference; call in our practical experience to correct your theories. We will shew you the true seat of the mischief; we will prove to you that it is in your own legislation that the cause of the cost of conveyancing is to be found. Your unjust, because unequal, stamp laws, your imperfect Statutes of Limitation, have produced the greater portion of the cost and difficulties of which you complain. They swell the amount of our bills, but they do not add materially to our profits. If land were more readily transferred we should gain in the increase of conveyances at least as much as we should lose in diminished charges. We will lend you our experience and our influence;

but you must do us some acts of justice in return. We are grievously wronged by a tax imposed upon us alone of all the professions. If you reduce our profits, relieve us of this burden. Conveyancing is the most profitable branch of the lawyer's practice, and requires at least as much skill as any other. Yet is the larger portion of this business abstracted from us by persons who have paid none of the fees, who have not been compelled to the costly education, who have been submitted to no test of examination, as we have been. Prohibit this invasion for the future."

By language such as this, and by such a course of conduct, do we believe that the Profession will more profit than by a dogged opposition to changes that must be made.

The particular arrangements by which they should strive to make those changes harmless we propose to consider in future articles.

AN EXPLANATION.

MANY correspondents have inquired what is "THE LAW DIGEST," some time since announced as an intended addition to the LAW TIMES, and now actually in course of publication.

The design is to present half-yearly a complete Index to the Law as propounded by the Judges and by statute during the preceding six months.

The plan is this. Suppose, for instance, it is desired to know what has been promulgated upon the Law of Executors, or of Bankruptcy, during the period over which the DIGEST extends. By referring to that word, a note of every case published will be found under its appropriate subdivisions; thus affording immediate access to the actual law, brought down to the latest practicable period.

This plan, of course, does not differ materially from other Digests; but in its execution it is unique. The value of such an Index must depend wholly upon its completeness. Unless every case ever reported, is to be found there, it is almost worthless. Now, it so happens, that the other Digests are not complete. One gives only the cases reported in what are called "the regular Reports;" others omit altogether those of the *Law Journal*, the *Jurist*, or the *Law Times*. No one presents all the reports. But THE LAW DIGEST, disclaiming all petty jealousies of other reports and publishers, and looking only to the wants of the Profession and the purpose of such a work, includes all the cases in all the reports, and thus contains many hundreds that will be looked for in vain elsewhere.

The utility of such a publication must be apparent. It is printed like the LAW TIMES, for the convenience of being bound with its half-yearly volumes, which will thus present a ready reference, whose value can only be appreciated by the practitioner, who seeks his information amid the hurry of business.

As this is a first attempt to form so comprehensive an *Index Legum*, doubtless some defects will be apparent, spite of the vast labour and care that have been bestowed upon its preparation. These practice and experience will remove, and each succeeding half-year will enable us to make it more and more perfect, especially if our readers will point out any errors, or improvements, or additions, which, when they come to use it, may suggest themselves.

In its length it will be about four or five numbers; according to the number of reports and statutes the half-year may have produced. And in future it will be brought out before the close of the volume of the LAW TIMES, so that it may be completed simultaneously with it, and avoid the present delay in the binding.

SHAM LAWYERS.

THE conviction and transportation of one of this tribe at Birmingham, and the decision

in *Reg. v. Buchanan*, will, we hope, inspire them with a more salutary dread of public exposure than they have hitherto exhibited. They have no shame, but they have fears; therefore we continue to publish their doings. Here is the latest received: it comes from Manchester. Mr. N. BROWNING, Clerk, should be looked to.

"Hannah Johnston,
"I am instructed by Mr. William Cartwell, of 9, Green-street, Oak-street, to apply to you for a debt of 8s. 7d. due to him for goods sold; and if the same, together with all lawful costs and charges, be not paid to me, or to plaintiff, within five days from this date, an action will be commenced against you for the recovery of the same, under the provisions of the late Act of Victoria, cap. 127, and dated August 9, 1845, intituled 'An Act for the better securing the Payments of Small Debts.'

"And for your information I hereby quote from the Penal Clause the following:—

"Any debtor refusing to disclose every transaction respecting his property, or the sale or disposal thereof, or having made away with his property for the purpose of defrauding his creditors, or of contracting more debts than he was able to pay, or who being in receipt of wages or salary, or other income, and shall refuse or neglect to pay such instalments as shall be fixed by the Court, for every such offence, and in respect of each and every such instalment, he shall be liable to forty days' imprisonment in the Common Gaol."

"N.B.—No imprisonment, under this Act, goes to extinguish any debt nor instalment fixed by the Court; and by a late order of the Home Secretary, fraudulent debtors are limited to prison diet, and allowed to see their friends only once a week.

"N. BROWNING, Clerk.
"April 11, 1846."

HEIRS-AT-LAW AND NEXT-OF-KIN.

READERS will observe the addition of a new feature to the *LAW TIMES*.

It is proposed to preserve here a complete list of Heirs-at-Law, Next-of-Kin, Legatees, &c. that have been advertised for during the present century. Such a list may be valuable for reference, and certainly is peculiarly fitted for a Journal circulating among the Legal Profession. Of course none will be included that have appeared during the current year. These are proper subjects for advertisement, and would be liable to duty. The further particulars as to references, and the date when, and place where, the advertisements appeared, are also omitted, for the same reason; but they may be known at the Office, where a register is kept. We trust that the interest and utility of this information will justify the labour bestowed on its collection.

VERULAM SOCIETY.

PART VI. of *Real Property and Conveyancing Cases*, completing the first volume, will be ready on Saturday next.

Mr. SAUNDERS's *Practice of Summary Conveyances*, with the addition of a collection of Precedents, is now in the press, and will be added to the publications of the Society.

We repeat, that all the valuable law books, published by Messrs. KNIGHT will be supplied to the members at the Society's prices, viz. a reduction of 20 per cent.

THE CRITIC.

New Books.



A Summary of the Law of Railways, with an Appendix. By FREDERICK WALFORD, Esq. of the Inner Temple, Barrister-at-Law. Second edition. London: Blankarn. 1846.

This work has been considerably enlarged, although the general arrangement remains as it was when we noticed the first edition. That arrangement, therefore, it will be unnecessary to repeat. Since its first publication, many novel questions have arisen, to which Mr. WALFORD has devoted great learning and astuteness, especially on the subjects of the rights and liabilities of the parties concerned in companies for the formation of railways, such as allottees of shares, provisional directors, &c. in ignorance of which so fearful an amount of respon-

sibility has been incurred, and so much ruin and misery have been produced. The Appendix includes the latest reports of the proceedings of two of the most important committees of the present session, useful as a guide to practitioners; the most recent resolutions of both Houses of Parliament, the suggestions lately issued by the chairman of committees, and a succinct view of the question what constitutes a *locus standi* to be heard before a railway committee against a bill, and the grounds of opposition that may be taken by opponents. Forms of railway deeds have been added, together with some unreported cases of recent occurrence. We have had occasion lately to notice many works devoted to the law of railways. Our readers will best judge, from the description we have given of the nature of the contents of each, which of them best supplies the information they require. It will be seen that Mr. WALFORD's is as comprehensive as any that has appeared, and it has in its favour the additional testimony of a second edition.

Bail Court Reports. By THOMAS W. SAUNDERS and EDWARD LAWES, of the Middle Temple, Esquires, Barristers-at-law. Vol. 1, Part I. Benning and Co.

THIS is the first attempt to give to the Profession a distinct series of reports of the cases decided in the Bail Court. A few of them find their way into the Q. B. Reports; many are reported in the *Jurist and Law Journal*; notes of every case by Mr. SAUNDERS are regularly published in the *LAW TIMES*, and the most important of them are comprised in the *New Practice Cases* of the Verulam Society. But this is the first complete collection, and the cases appear to be very carefully and fully reported.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY

ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.
(Continued from page 55.)

10. Bankrupts and their Assignees.

As the law formerly stood, under the statute 13 Eliz. c. 7, a trader, from the moment of his committing an act of bankruptcy, was deprived of all power of disposing of his property, so that all alienations or dispositions made by him after that time were absolutely null and void (Henley's Bankrupt Laws, 258, 3rd edit.); and this whether the purchaser was or was not cognizant of the act of bankruptcy. By a subsequent enactment, however (21 Jac. 1, c. 15, s. 1), no purchaser for a valuable consideration was to be impeached unless a commission issued within five years after the act of bankruptcy. By a still more recent enactment (46 Geo. 3, c. 135), all *bond fide* conveyances and transactions with any bankrupt, more than two years before the date of his commission, were rendered valid, notwithstanding any prior act of bankruptcy, unless the party purchasing had notice of it. And by the still more recent Act, 6 Geo. 4, c. 16, s. 81, all conveyances by, and all contracts with, any bankrupt, *bond fide* made and entered into more than two calendar months before the issuing of the commission, are rendered valid, notwithstanding any prior act of bankruptcy, if the person dealing with the bankrupt had not at the time of such dealing notice of any prior act of bankruptcy. And even if the purchaser had such notice, provided he were a *bond fide* one, and for a valuable consideration, the sale will not be impeached by reason thereof, unless a commission or fiat shall be sued out against the bankrupt within twelve months after the act of bankruptcy, instead of the five years, as the law stood previously. (Sec. 86.) And under the recent Act, 2 Vict. c. 4, s. 12, all *bond fide* conveyances by a bankrupt, previous to issuing a fiat against him, are rendered valid, notwithstanding a prior act of bankruptcy, unless the purchaser has notice of it. Nor will a purchaser be affected by such notice, unless a fiat be sued out within twelve calendar months after the act of bankruptcy; and all contracts entered into with any bankrupt before the issuing of the fiat are rendered valid, unless in the case of a fraudulent preference.

Property of bankrupt how vested in his assignees.—As the law formerly stood, the estate of the

bankrupt did not become vested in his assignees until it had been duly assigned to them by the commissioners (stat. 20 Jac. 1, c. 19), in which assignment the provisional assignee or assignees (if any had been chosen) must have joined; and until such assignment was made, the property was not transferred out of the bankrupt (*Ex parte Proudfoot*, 1 Atk. 253; *Jacobson v. Williams*, 1 P. Wms. 385, 386); but now, under the late Act, 1 & 2 Wm. 4, c. 56, ss. 25, 26, all the real estate of the bankrupt vests in his assignees by virtue of their appointment, without any deed of conveyance whatever. And it is the duty of the assignees to sell the property at the earliest convenient opportunity; nor ought they to delay the sale upon the probability of the property fetching a higher price at some future period (*Ex parte Goring*, 1 Ves. 168; see also 6 ib. 622; Henley's Bankrupt Law, 215, 3rd edit.; *Ex parte Montgomery*, 1 G. & J. 338); and the Court will reluctantly interfere to stay a sale upon an application from the assignee for that purpose; and the provisional assignee is now expressly prohibited from all control over this subject.

Power of sale in assignees.—The assignees may sell by private contract; but for all this they should be cautious of so doing without the consent of the creditors; for if it were to be shewn, upon a complaint made by the latter, that more money might have been made of the property by a public sale, it would be a circumstance of evidence against the assignees not to be disregarded. (*Ex parte Dunsman*, 2 Rose, 66; *Macpherson v. Gibb*, 1 C. & P. 149; Henley's Bankrupt Law, 216, 3rd edit.) And where the property is sold by public auction, no assignee should buy in any of the lots without the knowledge and approbation of the creditors; as in that case, should any loss be incurred upon a resale of any of the lots so bought in, he will be charged with the loss on the lot undersold, notwithstanding there may be a gain upon the resale of the other lots sufficient to make a balance in favour of the bankrupt's estate. (*Ex parte Lewis*, 1 G. & J. 69; *Ex parte Buxton*, ib. 355.)

Assignees bound to produce a good title.—In *Pope v. Simpson* (5 Ves. 145), Lord Roslyn expressed an opinion (which seems wholly uncalled for by the circumstances of the case) that where parties purchased of assignees, they had no right to expect more than that the assignees should deliver over such a title as the bankrupt had; but this doctrine, which is at utter variance with former decisions upon the subject (*Orlebar v. Fletcher*, 1 P. Wms. 737; *Spurrier v. Hancock*, 4 Ves. 667; Henl. Bkt. Law, 218, 3rd edit.; 1 Mad. Pract. 438, 2nd edit.), has not since been adhered to. Its correctness was indeed repeatedly denied by Lord Eldon (see *White v. Poljambé*, 11 Ves. 337; *McDonald v. Hansom*, 12 Ves. 277; see also 18 Ves. 512), who said expressly that he never knew the principle adopted by Lord Roslyn in *Pope v. Simpson*. "Previously to that decision," observed his lordship, "I always said, and I say now, that if assignees of a bankrupt agree to sell, they agree to sell with a good title" (11 Ves. 343); and it has since been finally determined that assignees of bankrupts stand in precisely the same situation as other vendors of real property (*McDonald v. Hansom*, *supra*); consequently, they may, like ordinary vendors, enter into stipulations with respect to the title and the evidence to be adduced in support of it (*Frome v. Wright*, 4 Mad. 364); and this it is their bounden duty to do should the circumstances of the title require it. They must also, where the property is sold in lots, and in fact in all cases where the title-deeds are not to be delivered over to all the purchasers, take especial care to provide against furnishing attested copies, or other copies of deeds or documents that cannot be handed over to the purchaser; for unless protected by a stipulation of this kind, assignees must, like all other vendors, where the title-deeds cannot be delivered, give attested copies of them at the expense of the estate. (*Ex parte Stuart*, 2 Rose, 215; Henl. Bkt. Law, 218, 3rd edit.; see also *ante*, p. 6.)

Effect of Fine and Recovery Substitution Act upon estates of bankrupt tenants in tail.—Before the passing of the Fine and Recovery Substitution Act (3 & 4 Wm. 4, c. 74), where a bankrupt was tenant in tail, the mode by which the entail was barred was by the usual deed of bargain and sale of the commissioners, which had the same effect as any rightful assurance by the tenant in tail himself. (1 Com. Dig. 98, pl. 34, 35.) Hence, if he were tenant in tail in possession, the bargain and sale would have produced the same effect as a common

recovery, and have barred not only the estate tail, but also all remainders expectant thereon. (1 Prest. Abs. 173, 174.) But where the bankrupt had only an estate tail in remainder, expectant on an estate of freehold in some other person, the commissioners could only have conveyed a base fee, producing the like effect that a fine with proclamation by the bankrupt himself would have done; because, not having an estate of freehold, he was unable to suffer a recovery. (*Pye v. Danbuz*, 3 Bro. C. C. 595; *Jervis v. Tayleur*, 3 Barn. & Ald. 557; see also 1 Com. Dig. 98, pl. 35; Henl. Bkt. Law, 228, 3rd edit.) Upon this doctrine a doubt arose whether at a future period (when the bankrupt or his issue, who but for the bankruptcy would have been seised in tail in possession, and so qualified to suffer a recovery), the commissioners could, by a subsequent bargain and sale, produce the effect of a recovery, and, thus barring the remainder, enlarge the previous base fee into an absolute estate in fee simple: a point so exceedingly doubtful, that it became the usual practice to require a common recovery, either from the bankrupt himself, or from his issue in case of his death (1 Prest. Abs. 174); but now, under the 56th section of the Fine and Recovery Substitution Act, a disposition by the commissioners will have the same effect as a recovery by the bankrupt and his issue under the same circumstances; that statute empowering the commissioners to dispose of the estate just in the same manner as the bankrupt himself could have done; and also, by a subsequent disposition, to enlarge the base fee into a fee simple, absolute in all cases, where the bankrupt himself or his issue could have done so; the statute placing the commissioner, as to any power of alienation, in precisely the same situation as the bankrupt himself would have occupied. In like manner, also, is his power of disposition restricted; consequently, if there be a protector to the settlement, as the latter gives or withholds his consent, to that extent is the commissioner enabled to bar the entail. (Sec. 38, and see *ante*.) And where, for want of such consent, the commissioner is only enabled to pass a base fee, and there should afterwards, during the continuance of the base fee, cease to be a protector, the base fee will become enlarged into a fee simple absolute. (Secs. 60, 61.)

Power of commissioners of bankrupts to confirm voidable estates.—The commissioner is also empowered, accordingly as the protector gives or withholds his consent, to confirm a voidable estate in favour of a purchaser (sec. 62); and where there ceases to be a protector during the continuance of a base fee, where that only passes it will become enlarged into a fee simple absolute; but it is by the same clause also provided, "that if the disposition made by such commissioner as aforesaid shall be made to a purchaser for valuable consideration, who shall not have express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed against such purchaser and the persons claiming under him."

Acts of bankrupt how void as against disposition by commissioners.—All acts and deeds done and executed by the bankrupt tenant in tail are rendered void against any disposition by the commissioner under this Act (sec. 63); but, subject to the powers given to the commissioner, and to the estate in the assignees, the bankrupt shall have the same powers of disposition under this Act as he would have had if he had not become bankrupt. (*Id. id.*)

Effect of disposition by commissioners.—The disposition of the commissioner shall, if the bankrupt be dead, have in the cases therein mentioned the same operation as if he were alive; that is to say, in case at the time of the bankrupt's decease there shall be no protector of the settlement by which the estate tail of the actual tenant in tail, or the estate tail converted into a base fee, as the case may be, was created; or in case the bankrupt had been an actual tenant in tail of such lands, and there shall at the time of the disposition be any issue inheritable to the estate tail of the bankrupt in such lands, and either no protector of the settlement by which the estate tail was created, or a protector of such settlement, who, in the manner required by this Act, shall consent to the disposition, or a protector of such settlement who shall not consent to the disposition; or in case the bankrupt had been a tenant in tail entitled to a base fee in such lands, and there shall, at the time of the disposition, be any issue who, if the base fee had not been created, would have been actual tenant in tail of such lands, and

either no protector of the settlement by which the estate tail converted into a base fee was created, or a protector of such settlement, who, in the manner required by this Act, shall consent to the disposition. (Sec. 65.)

Disposition of commissioners, except of copyhold, must be enrolled in Chancery.—The disposition of the commissioner, except in the case of copyholds, will be void, unless enrolled in Chancery within six months after execution; and all dispositions of lands held by copy of court roll must be entered on the court rolls of the manor; and if there shall be a protector who shall consent to the disposition of such copyholds, he shall give his consent by a distinct deed, which consent shall be void unless the deed of consent be executed by the protector, either on or at any time before the day on which the deed of disposition shall be executed by the commissioner; and such deed of consent shall be entered on the court rolls; and it is imperative on the lord or steward to enter every deed required by this Act to be so entered on the court rolls of the manor, and to indorse on every deed so entered a memorandum signed by him, testifying the entry of the same on the court rolls. (Sec. 59.)

11. Corporations.

All ecclesiastical and eleemosynary corporations were restrained by certain statutes, passed in the reign of Queen Elizabeth (stats. 1 Eliz. c. 19; 13 Eliz. c. 10; 14 Eliz. c. 11 and 14; 18 Eliz. c. 11; and 43 Eliz. c. 49), from every mode of alienation except that of leasing; and they were placed under very considerable restrictions even in the exercise of this power. Incumbents of livings were, however, enabled, under the statutes 17 Geo. 3, c. 53, and 21 Geo. 3, c. 66, to raise money, by way of mortgage, for repairing or building houses; and by statute 55 Geo. 3, c. 147, incumbents of benefices are enabled to exchange parsonage-houses and glebe lands, with the consent of patron and ordinary, for other houses and lands, and also to purchase lands to be annexed to such benefices as glebeland thereof, and by mortgage of their tithes, rents, and other profits, to raise money for such purchases. But previously to the late Municipal Reform Act (3 & 4 Wm. 4, c. 69), there were no restrictions imposed upon lay corporations (10 Rep. 30, b; Sid. 162; *Colechester, Mayor of, v. Lowton*, 1 Ves. & Bea. 226, 244), who might have alienated their lands, except for election purposes, as freely as any other class of persons; but by the 94th section of the Act above alluded to, they are now restrained from selling or mortgaging any real estates, or leasing them for a longer term than thirty-one years, and at reasonable rent, except in pursuance of some agreement entered into on or before the 5th of June, 1835; but when the council are desirous of selling, they should represent the case to the Lords of the Treasury, with the approbation of three of whom they may sell on such terms as such lords may approve of. But the council are nevertheless still empowered to grant building-leases for terms not exceeding seventy years, provided the lessee contract to erect buildings thereon of the yearly value of the land. (Sec. 90.) If, however, such corporate body be seised as such, and not as charitable trustees, of any lands to which an advowson or right of presentation to a benefice is appurtenant, or of an advowson in gross, &c. such advowson or presentation is directed to be sold under the direction of the Ecclesiastical Commissioners; the produce vested in the public funds, and the yearly interest carried to the account of the borough fund. (Sec. 139.)

With respect to leases granted by ecclesiastical and eleemosynary corporations, it seems that, by the common law, they were, in many cases, only binding on the parties by whom they were made, and not upon their successors. (4 Com. Dig. tit. xxxii. ch. v. pl. 32.) And the statute 32 Hen. 8, c. 28, made all such leases for term of years, or life, good and effectual against the lessors and their successors; yet, by subsequent enactments (1 Eliz. c. 19; 13 Eliz. c. 20; 14 Eliz. c. 11; 18 Eliz. c. 11; 1 Jac. c. 3), all ecclesiastical or eleemosynary corporations were restrained from alienating the lands for more than the term of twenty-one years, or three lives; upon which leases the accustomed rent, or more, must be yearly reserved thereupon. (2 Blac. Com. 321.) But notwithstanding that the duration of the leases must not exceed three lives, or twenty-one years, they may nevertheless be granted for a more limited period. (1 Jus. 44, b; 4 Com. Dig. tit. xxxii. chap. v. pl. 40.) Houses in corporation or market towns may, however, under the statute

14 Eliz. c. 11, s. 17, in some instances be let for forty years; provided they be not the mansion-houses of the lessors, and have not more than ten acres of ground belonging to them; and provided the lessee be bound to keep them in repair; and they may also be alienated in fee-simple for lands of equal value in recompense. But when there is an old lease in being, no concurrent one shall be made unless the old one shall expire within three years. (2 Blac. Com. 321.) And no lease, by the equity of the statute, shall be made without impeachment of waste; and all bonds and covenants tending to frustrate the provisions of the 13th and 18th of Eliz. are void. (Co. Litt. 45; 2 Blac. Com. 321; 4 Com. Dig. tit. xxxii. ch. v. pl. 53.)

Observations on the construction of these restrictive statutes.—"Concerning these restrictive statutes," Sir W. Blackstone remarks (2 Bl. Com. 321), "there are two observations to be made. First, they do not by any construction enable any persons to make any such leases as they were by the common law disabled to make. Therefore a parson or vicar, though he is restrained from making longer leases than for twenty-one years, or three lives, even with the consent of the patron and ordinary, yet he is not able to make any lease at all, so as to bind his successor, without such consent. Secondly, that though leases contrary to these Acts are declared void, yet they are good against the lessor during his life, if he be a sole corporation; and they are also good against an aggregate corporation so long as the head of it lives, who is presumed to be the most concerned in interest; for the Act was intended for the benefit of the successor only, and no man shall take advantage of his own wrong." The learned commentator then proceeds to remark that there is yet another restriction with regard to college leases by statute 18 Eliz. c. 6, which directs that one-third of the whole rent then paid should for the future be reserved in wheat or malt, reserving a quarter of wheat for each 6s. 8d., or a quarter of malt for every 5s.; or that the lessee should pay for the same according to the price that wheat and malt should be sold for in the market next adjoining to the respective colleges on the market day before the rent becomes due."

Alterations effected by stat. 6 & 7 Wm. 4, c. 20.—The Act 6 & 7 Wm. 4, c. 20, has made some important enactments as to the renewal of ecclesiastical leases, by which it is provided that from the 1st of March 1836 no ecclesiastical person shall grant any new lease of any land or tithes, parcel of his ecclesiastical possessions, by way of renewal of any lease granted for more than two lives, until one of the persons for whose life such lease was made shall die, and then only for the surviving lives or life; and such new life or lives as with the life or lives of the survivor or survivors shall make up the number of lives, not exceeding three, for which such lease shall have been made; and where any lease shall have been granted for forty years, no ecclesiastical person shall grant any new lease by way of renewal until fourteen years of such lease shall have expired; or where for thirty years, until ten years shall have expired; or where for twenty-one years, until seven years shall have expired; and when any such lease shall have been granted for years, it shall not be renewed for life or lives. (Sections 1, 9.) It is also provided that, wherever any ecclesiastical person shall grant any renewed lease, it shall contain a recital of a lease for lives of the names of the *cestuys que vie*, stating which are dead, &c.; and if a lease for years, for what term of years the last preceding lease was granted; and every recital is to be deemed evidence of the truth of the matter recited; and a penalty is imposed on persons introducing recitals into such leases, knowing them to be false. But by a subsequent enactment, passed in the same session, it was enacted that leases granted under the provisions of the former Act are not void on account of their not containing such recitals as are in that Act mentioned. The same Act then proceeds to state, that where a practice has existed for ten years past to renew such leases for forty, thirty, or twenty-one years, at shorter periods than fourteen, ten, or seven years, the lease may be renewed conformably to such practice; provided that such practice shall be proved to the satisfaction of the bishop. (Sec. 4.) This Act is not to prevent ecclesiastical persons from exchanging any life or lives in their lease, with the approbation of the king (now queen), archbishop, or bishop, as the ease may be (sec. 5); neither does it prevent grants under Acts of Parliament (sec. 6); nor leases for the same term as the

preceding leases (sec. 7); nor will it render illegal leases valid (sec. 8); neither does it extend to Ireland. (Sec. 9.)

(To be continued.)

Public Sales.

By Messrs. HOGGART and NORTON, at the Mart.
A freehold property, known as Spring Hill House, at Plaistow, Kent, gardens, orchard, and 20 acres of land—3,500l.

By Messrs. SHUTTLEWORTH and SONS.
A house, called Stone House, in Martha-street, Cambridge-heath; workshop and stonemasons' yard; also a cottage: held for 37 years, at 13l. 8s. per annum—sold for 90l.

By Messrs. MUSGROVE and GADSDEN, at the Mart.
A residence, situated at the east end of the Shrubland-road, Queen's-road, Dalston, let at 55l.; held for 95 years at 5l. per annum—540l.

A freehold residence in Mare-street, Hackney, let at 60l. per annum—870l.

Three freehold houses, Nos. 8, 9, and 10, Morning-lane, Homerton, let at 51l. per annum, rates and taxes, 4l. 7s.—460l.

A freehold cottage, with garden and paddock of about three acres, situate in Handpost-lane, near Epping, Essex—470l.

A copyhold property, known as Montague House, at Brook-green, Hammersmith, with stabling, gardens, &c. let at 100l. per annum—1,580l.

A freehold residence, known as Bowes Farm Cottage, in the Green Lanes, Southgate, with stabling, gardens, &c.—990l.

A villa residence, No. 11, Grove-villas, Highbury-grove; held for 97½ years, at 10l. 10s. let at 80l.—890l.

A residence, No. 5, Canonbury Park, Islington; held for 91 years, at 8l. per annum, let at 58l.—695l.

A ditto, No. 6—660l.

Three cottage residences, Nos. 8, 9, and 10, Clarence-terrace, Islington; held for 94 years, at 15l. let at 60l.—570l.

A cottage residence, No. 11, Clarence-terrace; held for 94 years, at 5l. per annum, let at 30l. per annum—280l.

A house and shop, No. 4, Albion-place, Islington; held for 98 years from March 1843, at 15l. per annum—500l.

A ditto, No. 5—400l.

By Messrs. WINSTANLEY, at the Mart.
A freehold house, No. 2, New Grove, Mile-end, with stabling, garden, and small paddock; also a plot of freehold building ground—1,840l.

A plot of freehold building ground, 57 feet deep by a frontage of 24 feet, situated on the south side of Watling-street, between Nos. 31 and 24, subject to the payment of 3l. 6s. 8d. per annum—1,330l.

A cottage residence, with stabling, garden, and paddock, also a messuage adjoining; held for 104 years, at 50l. per annum—200l.

An improved rent of 23l. 10s. arising from a double cottage, situate at the corner of the Dulwich and Fenge roads; held for 104 years—205l.

A ditto of 35l. secured on a cottage, situate adjoining the Dulwich Picture Gallery; held for 104 years—315l.

Two houses, Nos. 12 and 13, St. James's-walk, Clerkenwell, and a plot of ground; held for 60 years, at 20l. per annum—840l.

A residence, No. 34, New Bridge-street, Blackfriars; also back house, No. 14, Water-lane; held for 41½ years, at 32l. per annum—2,400l.

A villa residence, known as Welfield House, situate on the summit of Streatham Common, Surrey, stabling, gardens, pleasure-grounds, and park-like land, ornamented with forest timber and plantations; the whole comprising about 31 acres; held for 55½ years, at a ground-rent of 147l. per annum; the land tax is redeemed—4,000l.

Three freehold houses, Nos. 19, 20, and 21, Pierpoint-row, Islington-green—1,100l.

By Messrs. LOVELL and BREMRIDGE.
A leasehold house and shop, in David-street, Marylebone, let on lease at 52l. 10s. per annum, and held for 42 years at a ground-rent of 5l. 5s.—530l.

A freehold house, Old Kent-road, let at 30l. per annum—530l.

A land-tax of 16l. 13s. 4d. secured upon freehold property in Whitechapel—410l.

By Mr. ROBERTS.
Twenty-six plots of freehold building-ground, situate on the new road called Albert-road, Mile-end, produced from 30l. to 134l. a lot—sum total, 1,472l.

A freehold house, No. 1, King-street, Homerton—210l.

A ditto, No. 2—200l.

A ditto, No. 3—215l.

A house and shop, No. 1, Hertford-terrace, Haggerstone, held for 92½ years, at 5l.—270l.

Two ditto, Nos. 3 and 4—560l.

Two ditto, Nos. 6 and 7—560l.

Two ditto, Nos. 8 and 9—560l.

Two ditto, Nos. 10 and 11—560l.

Four houses, Nos. 23 to 26, Woodland-street, Dalston; held for 55 years, at 20l.—400l.

A house, No. 35, Holly-street; held for 73 years, at 5l. per annum—550l.

Two ditto, Nos. 37 and 38—570l.

Two ditto, Nos. 39 and 40—570l.

Two ditto, Nos. 41 and 42—560l.

Two cottage residences, Nos. 1 and 2, Laurel-street, Dalston; held for 73 years, at 8l. per annum—560l.

Three houses, Nos. 3, 4, and 5, York-street, Kingsland-road; held for 80 years, from June, 1839, at 9l. per annum—580l.

By DANIEL SMITH and SON, at the Mart.
A leasehold estate in Cumberland-market and Cumberland-street East, producing a rental of 250l.—2,530l.

An enclosure of meadow land, 4a. 0r. 10p. lying in the Goswell, near Windsor—550l.

An enclosure of meadow land, 4a. 2r. 11p. adjoining the last lot—610l.

A freehold residence at Cookham, Berks, near the church—670l.

A walled garden, adjoining the last lot—160l.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	96	96½	95½	96½	96½	96½
Three per Cents. Reduced	96	96½	96½	96½	95½	95½
New Three & a-quarter per Cts	98½	98½	98½	98½	98½	98½
Long Annuities	101	101	101	101	101	101
Bank Stock	209½	209½	209½	209½	209½	209½
India Stock	300½	300½	300½	300½	300½	300½
India Bonds, prem.	33	33	33	33	33	33
Exchequer Bills, prem.	30	31	31	31	30	27

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Spanish Five per Cents.	26½	26½	26½	26½	26½	26½
Spanish Three per Cents.	30½	30½	30½	30½	30½	30½
Russian	112½	112½	112½	112½	110	108
Peruvian	39	39½	39	39½	39½	39
Portuguese	55½	55½	55½	55	55	55½
Mexican	30½	30½	30½	30½	30½	30½
Deferred	10½	10½	10½	10½	10½	10½
Dutch Two-and-a-Half per Cents.	60	60	60	60	60	60½
Four per Cents.	94½	94½	94½	94½	94½	92
Danish	88	88½	88½	88½	88½	87½
Colombian	17½	17½	17½	17½	17	17
Chilian	99½	99½	99½	99½	99½	99½
Buenos Ayres	39½	39½	40½	41½	41½	41
Braslian	83½	83½	83½	84	83	82
Belgian	97	97½	97½	97	97½	97½

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.
The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Tuesday, April 21.
Bromley, W. scrivener, div. next week. Turquand, London.—Gill, W. poultryer, div. next week. Turquand, London.—Harding, W. turner, last exam. passed.—Hull, J. victualler, div. next week. Pennell, London.—Hulse, R. chemist, div. next week. Alsager, London.—Idenden, W. J. tailor, annulled.—Musgrove, R. woollen draper, div. next week. Belcher, London.—Newton, A. L. merchant, div. next week. Pennell, London.—Reis and Co. soap manufacturers, last exam. passed.—Rothschild, B. L. M. diamond merchant, last exam. May 19.—Shaw, J. victualler, last exam. sine die.—Waddell, J. ship broker, div. next week. Pennell, London.—Ward, W. auctioneer, div. next week. Alsager, London.—Williams, E. draper, last exam. passed. Wilson, J. cabinet maker, last exam. passed.

Wednesday, April 22.
Bonner, C. scrivener, div. next week.—Calthrop, J. ironmaster, div. next week. Belcher, London.—Durnall, J. ironmonger, fur. div. next week. Groom, London.—Durnall, W. ironmonger, fur. div. next week. Edwards, London.—Jenkins, J. currier, div. next week. Whitmore, London.—Pulvertoft, T. ironmaster, joint div. and sep. P. exam. June 4. Belcher, London.—Suer, A. S. grocer, last exam. June 4.

Thursday, April 23.
Sewell, J. grocer, last exam. June 2.

Friday, April 24.
Alexander and Co. hardwaremen, fur. joint div. next week. Groom, London.—Griffith and Pearson, tailors, last exam. May 29.—Jameson, A. surgeon, final div. next week. Pennell, London.—Lawrence, S. dealer in watches, last exam. passed.—Lovegrove, J. barge builder, last exam. sine die.—Martin, A. (widow) draper, last exam. May 22.—Mills, W. glove manufacturer, assignees, May 23.—Olden, G. grocer, final div. next week. Belcher, London.—Pratt and Bodie, builders, last exam. May 22.—Redford, T. baker, assignees, May 29.—Scholfield, J. cutler, last exam. passed.—Stone, W. laceman, last exam. June 6.—Vanderplank, B. wine warehouseman, last exam. May 8.

Saturday, April 25.
Ashley and Ashley, bankers, fin. joint div. next week. Green, London.—Calvey, B. draper, div. next week. Green, London.

DIVIDENDS.
Bankrupts' Estates.
Official Assignees are given, to whom apply for the Dividends.

Binney and Co. merchants, second joint, 6d.—Hope, Leeds.—Cullen, S. chemist, first, 3s. Whitmore, Birmingham.—Fargyn, W. victualler, 8d. Follett, London.—Humphrey and Co. shipwrights, second, 1d. and first and second, 3s. 6d. and 6d. to new proofs. Freeman, Leeds.—Jacobs, M. I. tailor, first, 2s. 7d. Fraser, Manchester.—Kent, J. brewer, final, 5d. Follett, London.—King, J. mercer, third, 6d. and first, second, and third, 3s. 4d., 8d., and 6d. to new proofs. Freeman, Leeds.—Knight and Knight, merchants, final, 11-16ths of 1d. Pott, Manchester.—Taylor, W. J. grocer, 3s. 7d. Bell, London.—Webb, C. G. woolstapler, third, 7d. Graham, London.—Wood and Co. tea dealers, first, 1s. 6d. Graham, London.

Insolvents' Estates.
Cook, J. sen. builder, Ipswich, 14s. 5d.

ASSIGNMENTS
To Trustees for the benefit of Creditors.

Gazette, April 24.
Barnardall, C. grocer, Nottingham April 16. Trust A. Bennett, grocer, Nottingham. Sol. Wadsworth, Nottingham.—Clifton, E. wine merchant, Tokenhouse-yard, April 13. Trust E. Laforet, wine merchant, College-hill. Sol. Kirkman, Laurence Pountney-lane.—Gibbs, W. miller and baker, Holbeach, Lincolnshire, April 15. Trusts E. Marriott, farmer, T. Downham, farmer, and T. Thompson, farmer, all of Holbeach. Sols. Johnson and Co. Holbeach.—Phillips, T. cheesemonger, Commercial-rd. April 15. Trusts E. Ronalds, Upper Thames-st. and James Lunham, High-st. Southwark, wholesale cheesemongers. Sol. Goddard, King-st. Chapside.—Yellowley, H. draper, Newcastle-upon-Tyne, April 13. Trust H. W. Castle, warehouseman, Love-lane. Sols. Sole and Turner, Aldermanbury.

Gazette, April 25.
Bleasly, F. and Pigott, J. T. millwrights, Oldham, April 4. Trusts P. Fryer and J. Fickles, iron merchants, Manchester, and J. Rhodes, timber merchant, Oldham. Sol. Parry, Manchester.—Cottingham, R. miller, North Stoke, Lincolnshire, April 2. Trusts T. Dickinson, farmer, Great Ponton, and R. Briggs, saddler, Horncastle. Sol. Thompson, Grantham.—Dencker, A. dealer in fancy articles, South Audley-st. April 23. Trusts S. Wood, foreign warehouseman, St. Paul's-church-yard, and J. Evans, toy merchant, Newcastle-st. Sols. Farrington and Ladbury, King-st. Chapside.—Holt, S. upholsterer, Tottenham-court-road, Jan. 5. Trusts T. Hutchinson, Broad-st. and W. Morrison, Star-court, Broad-st. warehousemen. Sol. Spiller, Gray's-inn-square.—Humphris, J. miller, North Corney, April 4. Trusts W. Hewer, North-leach, J. Newman, North Corney, and W. Walker, Compton Abdale, farmers, and W. Stephens, farmer, Kireabridge. Sol. Stiles, North-leach.—Jones, H. laceman, Newington-caneway, April 9. Trusts M. Bance, Watling-st. and T. Watts, Russia-row, Milk-st. warehousemen. Sols. Reed and Langford, Friday-st.—Simpson, E. and Hopes, J. stonemasons, Stowmarket, March 18. Trusts J. G. Hart, gent. Stowmarket, and B. O. King, merchant, Stowmarket. Sol. Archer, Stowmarket.—Williams, T. draper, Maesteg, Glamorganshire, April 16. Trusts W. Plummer, lime merchant, and J. Culverwell, haberdasher, both of Bristol. Sol. Clarke, Bristol.—Wells, A. J. and Carter, T. tool dealers, Liverpool, April 15. Trust J. Tapson, accountant, Liverpool. Sol. Jones, Liverpool.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.
Gazette, April 24.

BENLEY, BENJAMIN, printer, formerly of Woking, Surrey, but now of Poolholm, Monmouthshire, out of business, May 5, at one, June 5, at eleven, Bristol, Com. Stevenson; Acraman, off. ass.; Nicholas, Monmouth, and Briggs, Bristol, sols. Date of fiat, April 6. Bankrupt's own petition.

BONE, ROBERT, grocer, flour dealer, and dealer in provisions, Silver-st. Durham, May 4, at eleven, June 12, at one, Newcastle, Com. Ellison; Wakley, off. ass.; Crosby and Compton, Church-court, Thompson, Durham, and Hoyle, Newcastle, sols. Date of fiat, April 17. Bankrupt's own petition.

BUCKWORTH, THOMAS, mercer and draper, Nottingham, May 8 and June 13, at eleven, Birmingham, Com. Balguy; Valpy, off. ass.; Sale and Worthington, Manchester, and Mottram and Knowles, Birmingham, sols. Date of fiat, April 11. E. and J. Jackson, warehousemen, Manchester, pet. crs.

BUTTREY, JAMES, commission agent, Manchester, May 6 and June 10, at twelve, Manchester; Pott, off. ass.; Gregory and Co. Bedford-row, and Hampson and Son, Manchester, sols. Date of fiat, April 10. Bankrupt's own petition.

CHAMBERLAIN, WILLIAM, grocer and draper, East Dereham, Norfolk, May 5 and June 5, at twelve, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Storey, Gray's-inn-place, and Gillman, Norwich, sols. Date of fiat, April 21. Bankrupt's own petition.

CLIFFORD, EDWARD, victualler and wheelwright, Minster, Isle of Sheppy, May 3, at eleven, May 30, at half-past eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Bassfield and Venour, Gray's-inn-sq. sols. Date of fiat, April 16. Bankrupt's own petition.

DEACON, THOMAS ELISHA, and DAY, FREDERICK, common brewers and maltsters, Hemel Hempstead, May 7 and June 11, at eleven, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Graham, Castle-st. Holborn, sol. Date of fiat, April 21. G. G. and T. Richardson, hop merchants, Duke-st. Southwark, pet. crs.

JACKSON, THOMAS, worsted spinner, Salterhebble, Halifax, May 5 and 28, at eleven, Leeds, Com. Burge; Hope, off. ass.; Jacques and Co. Ely-place, Leeds, and Macaulay, Halifax, and Courtenay, Leeds, sols. Date of fiat, April 17. W. Emma, Halifax, on behalf of the Halifax Joint Stock Banking Company, pet. crs.

KLETT, PHILLIP, cheesemonger, 26, South-st. Manchester, April 30, at two, May 30, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Spiller, Cannon-st. sol. Date of fiat, April 6. E. and I. Rogers, provision merchants, Grey Eagle-st. Spitalfields, pet. crs.

MILLER, WILLIAM, manufacturer and commission agent, Manchester, May 7 and 28, at twelve, Manchester; Hobson, off. ass.; Gregory and Co. Bedford-row, and Cooper, Manchester, sols. Date of fiat, April 15. T. S. Marshall, cotton spinner, Stockport, pet. crs.

WILLIAMS, THOMAS, merchant, Fenchurch-st. May 1, at eleven, June 5, at one, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Felle, Great Winchester-st. sol. Date of fiat, April 30. W. A. Urquhart, merchant, Great Tower-st. pet. crs.

WILSON, WILLIAM HENRY, and VAUSE, RICHARD, merchants, Kingston-upon-Hull, May 27, at eleven, Hull, Com. Burge; Knyaston, off. ass.; Hick, Gray's-inn, and Holden and Son, Hull, sols. Date of fiat, April 18, Bankrupt's own petition.

Gazette, April 25.

BIRCHALL, ALFRED, share broker, Manchester, May 14 and June 11, at twelve, Manchester; Hobson, off. ass.; Reed and Langford, Friday-st. and Sale and Co. Manchester, sols. Date of fiat, April 30. J. O'Neill, share broker, Manchester, pet. crs.

BOND, CHARLES JOHN, tailor, Tranquil-vale, Blackheath, May 8 and June 13, at one, Basinghall-st. Com. Fane; Whitmore, off. ass.; Eagleheart, Great Knight Rider-st. sol. Date of fiat, April 23. Bankrupt's own petition.

CRAWFORD, THOMAS, stock and share broker, Liverpool, May 7, at eleven, May 30, at twelve, Liverpool, Com. Phillips; Morgan, off. ass.; Gregory and Co. Bedford-row, and Green, Liverpool, sols. Date of fiat, April 21. Bankrupt's own petition.

HAMPSON, JAMES, iron founder and machine maker, Manchester, May 14 and June 11, at twelve, Manchester; Hobson, off. ass.; Coppock, Cleveland-row, and Coppock and Woolam, Stockport, sols. Date of fiat, April 17. G. Dawes, iron merchant, Manchester, pet. crs.

HILL, EDWARD, hoiler, Stourport, Worcestershire, May 11 and June 8, at one, Birmingham, Com. Daniel; Bitzleton, off. ass.; Pitchard and Ingram, Stourport, and Rawlins, Birmingham, sols. Date of fiat, April 21. T. S. Cartwright, merchant, Bewdley, pet. crs.

HUGHES, OWEN, linen draper, Holyhead, Carnarvonshire, May 15 and May 29, at twelve, Liverpool, Com. Phillips; Caznove, off. ass.; Sweeting and Byrne, Southampton-bldgs, Roberts, Carnarvon, and Curry and Co. Liverpool, sols. Date of fiat, March 28. C. Swallow, and T. Broad-bent, merchants, Manchester, pet. crs.

LAWES, JAMES, grocer and tea dealer, 53, Broad-st. Golden-sq. May 12, at two, June 9, at half-past one, Basinghall-st. Com. Holroyd; Edwards, off. ass. ass.; Burn, Great Carter-lane, sol. Date of fiat, April 24. Bankrupt's own petition.

LEATHER, GEORGE, and WARDLE, CHARLES WETHERELL, earthenware manufacturers, Holbeck, Leeds, May 14 and June 18, at eleven, Leeds; Young, off. ass.; Sudlow and Co. Chancery-lane, and Shackleton, Leeds, sols. Date of fiat, April 21. Bankrupt's own petition.

PARSONS, JOHN, edge tool manufacturer, Wolverhampton, May 8 and June 13, at eleven, Birmingham, Com. Balguy; Christie, off. ass.; Motteram and Knowles, Birmingham, sols. Date of fiat, April 21. Bankrupt's own petition.

PERRY, WILLIAM, iron founder, Wolverhampton, May 9 and June 6, at eleven, Birmingham, Com. Daniell; Whitmore, off. ass.; Bennett and Thorne, Wolverhampton, sols. Date of fiat, April 15. G. L. Underhill, ironmonger, Wolverhampton, pet. crs.

PULLING, CHARLES, potato salesman, Hay's-wharf, Tooley-st. and 11, Trinity-sq. Southwark, May 12, half-past two, June 9, at two, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Maples and Co. Frederick's-place, sols. Date of fiat, April 13. J. Low and J. Buchan, merchants, Perth, pet. crs.

WALDUCK, HANNAH, chemist and druggist, 8, Nelson-sq. Blackfriars-rd. May 5, at two, June 9, at eleven, Basinghall-st. Com. Fane; Alsager, off. ass.; Bevan, Old Jewry, sol. Date of fiat, April 24. Bankrupt's own petition.

ERRATUM.—The following bankruptcy was inserted, in error, as "William" Walker and Benjamin Williamson; it should have been "James" Walker and Benjamin Williamson. We again insert it, in a correct form, as it ought to have appeared last week:—

Gazette, April 21.

WALKER, JAMES, and WILLIAMSON, BENJAMIN, share brokers and share dealers, May 5 and 26, at eleven, Leeds, Com. West; Freeman, off. ass.; Wiglesworth and Co. Gray's-inn, and Smith and Co. Leeds, sols. Date of fiat, April 17. Bankrupt's own petition.

Meetings at Basinghall-street.

Gazette, April 24.

Ablett, F. J. and W. H. drapers, 301, High Holborn, May 19, at one, div.—**Baker, C. J. and Eastwood, E. J.** warehousemen, City, May 19, at two, div.—**Bunn, J.** builder, Norwich, May 18, at one, aud.—**Butterfield, M. and T. A.** linen drapers, and silk mercers, Royston, Hertfordshire, May 19, at half past two, joint div.—**Clark, J.** merchant, Crescent, Minorities, May 19, at eleven, div.—**Dalton, J.** grocer, Wandsworth, May 18, at one, aud.—**Denning, I.** watchmaker, and jeweller, Tichbourne-st. May 19, at half-past eleven, div.—**Hipwood, J. H.** merchant, Cornhill, May 19, at eleven, aud.—**Hooper, T. W.** chymist and druggist, Hyde-park-gardens, May 19, at 11, div.—**Latham, S. M.** banker, Dover, at the banking-house of bankrupt, Dover, proof of debts.—**Lenormand, V. S. U.** milliner, Regent-st. May 18, at one, aud.—**Martin, J.** fringe manufacturer, Wood-st. Cheap-side, May 18, at eleven, div.—**Oakley, A.** seedsman, Southampton, May 18, at one, aud.—**Oakley, T.** farmer, St. Alban's, May 21, at twelve, aud.—**Smyrk, E.** fringe manufacturer, Hill-st. May 19, at one, aud.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Baker and Eastwood, warehousemen, London, May 19, at two.—**Burrows, W.** builder, Grove-st. Hampstead-rd. May 20, at eleven.—**Brewster, W. F.** chymist, Bath, May 18, at one.—**Clark, J.** merchant, Crescent, Minorities, May 19, at eleven.—**Coker, J.** timber dealer, Narford, May 20, at twelve.—**Harris, W. J.** tailor, High-st. Southwark, May 16, at two.—**Macleod, M.** cloth factor, Basinghall-st. May 15, at one.—**Reis and Co.** soap manufacturers, Fenchurch-street, and Wandsworth, May 19, at half-past one.—**Sanderson, W. W.** baker, Great Russell-st. May 15, at eleven.—**Williams, E.** draper, Bishopsgate-st. May 15, at eleven.—**Woodhams, J.** plumber, Portland-town, May 16, at two.

Gazette, April 28.

Danieler, R. draper, Portsea, May 20, at eleven, final div.—**Blacklocks, R.** innkeeper, Lydd, May 20, at eleven, aud.—**Buchanan, W.** merchant, Old Jewry-chambers, May 20, at half-past one, aud.—**Bunn, J.** builder, Norwich, May 21, at one, div.—**Caswell, T. and Tindall, J. T.** leather sellers, shoe dealers, and curriers, Northampton and Sheffield, May 22, at twelve, joint div.—**Ellis, T.** wine merchant, Great St. Helens, May 20, at twelve, aud.—**Freeman, R.** builder, the Crescent, Wisbeach St. Peter's, Isle of Ely, May 20, at one, div.—**Harrison, S.** provision merchant, Poole, May 20, at half-past twelve, aud.—**Holland, J.** draper and grocer, Buxted, Sussex, May 19, at two, div.—**Nunn, J.** haberdasher, Baker-st. May 21, at twelve, aud.—**Page, J.** builder, Devonshire-terrace, Fulham-rd. May 21, at eleven, div.—**Rudcliffe, A.** sen. and jun. patent glaziers and artists' diamond manufacturers, 61, Hermitage-place, St. John-st.-rd. May 21, at one joint div.—**Roberts, J.** clothier, Kidderminster, May 22, at eleven, aud.—**Simpkin, G.** tailor, Faversham, May 22, at eleven, aud.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Blacklocks, R. innkeeper, Lydd, May 20, at eleven.—**Castle, T.** horse dealer, Newbury, May 21, at eleven.—**Emmins, J.** builder, Notting-hill, May 21, at half-past eleven.—**Little, G.** corn chandler, Liverpool-st. May 19, at twelve.—**Stevens, J.** builder, Clement's-inn, May 19, at eleven.—**Tubb, T.** cowkeeper, Palace-row, May 19, at half-past one.

Meetings in the Country.

Gazette, April 24.

Acton, J. farmer, Lichfield, May 16, at eleven, Birmingham, aud.—**Bell, W. H.** seed crusher, Kingston-upon-Hill, May 16, at eleven, Leeds, aud.—**Watts, W.** May 21, at eleven, second div.—**Binks, J. D.** innkeeper, Worksop, May 16, at eleven, Leeds, aud.—**Boulton, R.** innkeeper, Ellerburn, May 16, at eleven, Leeds, aud.—**Collinson, W.** East Buttrick, Lincolnshire, shipwright and carpenter, May 16, at eleven, Leeds, aud.—**May 21, at eleven, second div.**—**Denbigh, J.** wool merchant, Bradford, May 16, at eleven, Leeds, aud.—**Giles, T.** joiner, Leeds, May 16, at eleven,

Leeds, aud.—**Green, T. W.** bookseller and printer, Leeds, May 16, at eleven, Leeds, aud. and May 21, at eleven, second div.—**James, G.** draper, Leamington priors, Warwickshire, May 16, at eleven, Birmingham, div.—**Law, J. and Hudson, E.** cotton spinners and manufacturers, Ramsden-wood, near Todmorden, Lancashire, and **Hudson, E.** grocer, Gale, near Littleborough, Lancashire, May 9, at twelve, Manchester (adj. April 8), final joint and sep. divs.—**Lindon, J.** merchant, Plymouth, May 21, at one, Exeter, aud. and May 25, at eleven, final div.—**Longbottom and Bentley**, wool merchants, Rochdale, May 7, at eleven, Manchester (adj. April 7), last exam.—**Middleton, G.** wine and spirit merchant, Nottingham, May 16, at eleven, Birmingham, div.—**Newman, W. H.** horse dealer, May 7, at one, Bristol, proof of a debt.—**Teale, J.** cabinet maker, Leeds, May 16, at eleven, Leeds, aud.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Duke, J. plaster merchant, Newark-upon-Trent, May 18, at eleven, Birmingham.—**Harding, T.** schoolmaster, Lichfield, May 16, at eleven, Birmingham.—**Lockwood, W.** worsted spinner, Birstal, May 21, at eleven, Leeds.

Gazette, April 28.

Banning, J. stationer and dealer in musical instruments, Liverpool, May 19, at twelve, Liverpool, div.—**Brook, J.** innkeeper, May 22, at eleven, Liverpool, aud.—**Campion, R.** and **J. bankers and copartners**, Whitby, Yorkshire, May 19, at eleven, Leeds, third div.—**Edwards, R.** woollen draper and tailor, Huddersfield, Yorkshire, May 23, at eleven, Leeds, aud. and May 28, at eleven, first div.—**Evans, W.** Miller, Borthwen, Llangellyn, Merionethshire, May 19, at twelve, Liverpool, div.—**Hewitt and Co.** bankers, Nantwich, May 19, at eleven, Liverpool, aud.—**Hodgson, T.** bookseller, Liverpool, May 19, at half-past eleven, Liverpool, aud.—**Holroyd and Holroyd**, cotton spinners, Halifax, May 30, at eleven, Leeds, aud.—**Knight, T.** and **M. T.** upholsterers and furniture brokers, 9, 10, and 11, Northumberland-passages, St. Peter and St. Paul, Bath, May 21, at eleven, joint and sep. auds. and May 26, at eleven, Bristol, joint and sep. divs.—**Lake, H.** printer, Cheltenham, May 21, at twelve, Bristol, aud.—**Owen, P.** miller, Liverpool, May 22, at eleven, Liverpool, aud.—**Pemberton, J.** soap boiler, Knostrop, Leeds, May 19, at eleven, Leeds, second and final div.—**Thomas, J.** marble mason, Bristol, May 21, at twelve, Bristol, aud.—**Walker, J.** jun. butcher, Leeds, May 18, at eleven, Leeds, aud. and May 9, at eleven, first div.—**Wilks, W.** builder and stone mason, May 18, at 11, Leeds, aud. and May 19, at eleven, first div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Gillard, G. grocer, Plymouth, May 20, at eleven, Exeter.—**Goodridge, R.** baker, Exeter, May 21, at one, Exeter.—**Metford, J.** wine merchant, Bath, May 22, at twelve, Bristol.—**Sleddon, T.** cotton spinner and cotton broker, New Mills and Liverpool, May 20, at eleven, Liverpool.—**Wilkinson and Wilkinson**, worsted stuff manufacturers, May 19, at eleven, Leeds.—**Williams, T.** victualler, Bristol, May 22, at eleven, Bristol.

Partnerships Dissolved.

Gazette, April 21.

Adams, J. W. and Hill, T. stock brokers, Manchester, April 17.—**Ashcroft, J. and Mackay, A. F. and D.** Liverpool, April 20. Debts by J. Ashcroft.—**Balman, E. and Sparks, H. P. G.** general merchants, Monte Video, June 30. Debts paid by Balman.—**Dayte, W. and Young, W. C.** attorneys, Stockton, April 8.—**Blake, F. and Timplin, G.** attorneys, King-s-rd. Bedford-row, March 24.—**Bliss, J. and W. farmers**, Norton, April 17. Debts paid by J. Bliss.—**Campbell, D. and Greaves, G.** horse and cart owners, Liverpool, April 29.—**Carr, W. and Goodall, D.** trimming sellers, Glasshouse-st. Regent-st. April 17. Debts paid by Goodall.—**Cook, G. W. F. and Humphreys, E.** attorneys, St. Swinith's-lane, April 17. Debts paid by Cook.—**Corless, G. Casson, H. Dalby, S. and Corless, W.** worsted spinners, Bradford, so far as regards G. Corless, April 16.—**Cotton, C. and Sayle, G.** surgeons, King's Lynn, April 15.—**Coulstring, J. F. and Isaacs, D. C.** wire workers, Bristol, March 23. Debts paid by Coulstring.—**Dewhurst, T. and Hewitt, S.** sawyers, Bradford, April 17. Debts paid by Hewitt.—**Dixon, T. and Hall, J.** surgeons, Preston, April 1.—**Greaves, J. R. Nicol, J. M. and Laurie, J.** Liverpool, so far as regards Laurie, April 16.—**Greenwell, R. Sacker, B. and Brown, R. J.** coal fitters, Sunderland, Jan. 1. Debts paid by Brown.—**Greenwood, J. and Denny, A.** joiners, Bury, April 1. Debts paid by Denny.—**Hearn, R. and Blackburn, T. D.** linen drapers, Taunton, Aug. 29.—**Hill, S. and Owens, H.** boiler makers, Bolton-le-Moors, Feb. 21. Debts paid by Hill.—**Jeffreys, C. and Nelson, S.** music sellers, Soho-sq. July 31.—**Kent, A. and Perrott, J.** chemical preparators, Bisow, Cornwall, Jan. 19.—**Lambert, W. and Curnels, T.** New Brentford, April 15.—**Lega, E. and Bellamy, A.** wine merchants, Quadrant, Dec. 11. Debts paid by Bellamy.—**Kowden, T. and Weightman, C.** cabinet warehousemen, Edgeware-rd. April 9.—**Magor, J. P. and S. and Davey, W. and R.** brewers, Redruth, so far as regards W. Davey, March 24.—**Millar, J. and C. Calico printers**, Manchester, March 3.—**Morley, W. and Sorrell, E.** Manchester and shawl warehousemen, Bread-st. April 17. Debts paid by Morley.—**Northey, G. and S. L.** lime merchants, Tavistock and New Quay, April 15.—**Penrose, R. Starbuck, D. and Sheppard, J.** jun. Abergawed Colliery, Glamorganshire, so far as regards Sheppard, Sept. 29 last. Debts paid by the remaining partners.—**Stones, R. and Hodgson, T.** brassfounders, Hull, April 11.—**Smith, C. H. and Hinks, J.** the sinkers, Birmingham, April 20. Debts paid by Hinks.—**Sneyd, T. and Hill, J.** earthenware manufacturers, Hanley, April 16. Debts paid by Sneyd.—**Summers, J. B. and T. farmers and tanners**, Low Newton, April 18.—**Vaughan, P. and Bevan, G. R.** attorneys, Brecon, April 11.—**Watson, T. and Osborne, J.** woolstaplers, Leeds, April 11.

Gazette, April 24.

Buchanan, J. and Ede, F. merchants, Calcutta, Dec. 31.—**Callender, G. Ralph, J. and Risk, T.** merchants, Liverpool, March 31.—**Catterall, J. and J.** cotton manufacturers, Preston and Kirkham, April 4. Debts paid by J. Catterall, mercer, Preston.—**Chapman, E. Day, C. and Chapman, W.** coal merchants, Wapping and New London-st. so far as regards W. Chapman, Feb. 28.—**Cort, W. and Gillespie, G.** snuff manufacturers, Liverpool, April 21. Debts paid by Cort.—**Crabtree, J. and Cockcroft, J. M.** medical practitioners, Rossendale, April 20. Debts paid by Crabtree.—**Cross, J. N. and Willey, E. W.** tobacconists, Exeter, April 17. Debts paid by Cross.—**Gross, J. and Thompson, E. G.** grocers, Woodbridge, April 6.—**Dawbarn, S. and Davis, J.**

tailors, Liverpool, April 20.—**Dawkins, J. W. and T.** watch case spring makers, St. John-st.-rd. Dec. 25.—**Ereans, S. and Goodbrand, J.** cotton spinners, Aspull, April 9. Debts paid by Ereans.—**Hair, T. H. C. H., and G. S.** lamp black manufacturers, Scotswood, so far as regards T. H. and G. S. Hair, April 22. Debts to be paid at the office.—**Harris, R. P. and E. corn factors**, London, April 22. Debts paid by R. P. Harris.—**Hoyle, J. and Gotthard, J.** type founders, Sheffield, April 22. Debts paid by Hoyle.—**Jackson, W. and Burrows, W.** linen drapers, Nottingham, April 16.—**Jones, J. and Paul, J. A.** printers, West Smithfield, April 22.—**King, H. Turner, J. Peach, R. sen. and King, W. R.** ironmongers, Hull, so far as regards Turner, April 20.—**Livesey, T. and Rodgett, W.** cotton spinners, Blackburn, April 18.—**Robinson, W. and Dodson, T. G.** attorneys, Lancaster, April 15.—**Shaw, M. W. S. and Barter, R.** coal merchants, Lower East Smithfield, April 23. Debts paid by Shaw.—**Thames, D. and E. attorneys**, Brecon, March 16.—**Turner, J. jun. and Holmes, W.** woolstaplers, Halifax, March 24.—**Vampole, H. and Rhodes, J.** coach builders, Bradford, April 22. Debts paid by Vampole.—**Walker, J. and Bower, W.** letter cutters, Sheffield, April 23. Debts paid by Walker.—**Wallace, J. and H. stationers**, Manchester, April 21. Debts paid by J. Wallace.—**Webster, R. C. M., and H. R.** wire age manufacturers, Deptford, Feb. 28. Debts paid by R. C. M. Webster.—**West, E. and H. and Hollingworth, F.** manufacturing chemists, Derby, April 18. Debts paid by E. and H. West.—**Woollasson, R. and Cufield, A.** surgeons, Tottenham, March 25.

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, April 17.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Boxon, F. solicitor, Bucklersbury, April 30, at half-past twelve.—**Bremner, A.** merchant's clerk, Bromley-st. Stepney, April 24, at half-past two.—**Brookman, W.** auctioneer, Ebenezer-ter. Whitechapel, April 25, at two.—**Chapman, T.** coach builder, Bridge-road, Hammersmith, April 30, at twelve.—**Cornish, G.** tailor, Grange-rd. Bermondsey, April 25, at two.—**Ellis, J. H.** out of employ, Godalming, April 24, at half-past two.—**Goodman, T.** out of business, Deptford, April 30, at eleven.—**Higgins, A.** out of business, Beldere-place, Southwark-bridge-road, April 25, at two.—**Jay, W. H.** shoemaker, Poplar, April 25, at two.—**Knight, N.** whitesmith, Brown's-ct. Edgeware-rd. April 30, at twelve.—**Laurent, J. E.** out of employ, St. Martin's-lane, April 24, at twelve.—**Rayner, B.** comedian, Stafford-st. Lioness-grove, April 25, at two.—**Thompson, J.** brushmaker, Maidenhead, April 25, at half-past two.

PETITIONS TO BE HEARD IN THE COUNTRY.

Barker, J. innkeeper, Exeter, April 30, at one, Exeter.—**Bennett, W.** high constable, Broadway, May 4, at one, Birmingham.—**Chapman, J.** ropemaker, Lockhampton, near Cheltenham, May 1, at eleven, Bristol.—**Cook, M.** master of a steam boat, North Shields, April 30, at half-past eleven, Newcastle.—**Cotsworth, J.** bricklayer, Manchester, April 29, at twelve, Manchester.—**Evans, G.** out of business, Cheltenham, May 15, at one, Bristol.—**Robinson, J.** jun. coal tenant, April 30, at eleven, Bristol.—**Sedwick, Birmingham, A. F. C.** cigar dealer, Leeds, May 5, at half-past one, Leeds.—**Thorn, J.** jun. butcher, Alnwick, May 5, at half-past one, Newcastle.—**Wood, C. baker, St. Mary Magdalene**, April 29, at eleven, Exeter.

Gazette, April 24.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Bott, A. schoolmistress, Thornton-leath, near Croydon, May 7, at eleven.—**Grimes, G. J.** chemical light maker, Mitcham-common, April 21, at one.—**Hill, J.** farmer, Bury, May 6, at eleven.—**Hughes, A.** boarding-house keeper, Edwars-sq. Kensington, May 6, at eleven.—**Jennens, S.** warehouseman to a parchment-maker, Belvedere-place, Blue Anchor-rd. Bermondsey, May 6, at eleven.—**McDonald, J.** gent. York-rd. Lambeth, April 30, at twelve.—**Simmons, E.** butcher, Hatfield Peversell, May 17, at eleven.—**Wileon, J.** carman, Whitecross-st. Southwark, May 7, at eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Ashworth, J. small shopkeeper, Halifax, May 7, at eleven, Leeds.—**Blake, C.** clerk, Potter Newton, near Leeds, April 28, at eleven, Leeds.—**Cawson, G.** butcher, Manchester, May 8, at twelve, Manchester.—**Cockell, G. G.** carpenter, Bath, May 5, at eleven, Bristol.—**Crosby, J.** grocer, West Derby, May 4, at eleven, Liverpool.—**Done, J.** innkeeper, Bradford, April 28, at eleven, Leeds.—**Jordan, H.** boat builder, Hull, May 6, at eleven, Hull.—**Maddock, W.** coal merchant, Liverpool, April 28, at eleven, Liverpool.—**Moore, J.** seedsman, Manchester, May 4, at twelve, Manchester.—**Myers, J.** cloth manufacturer, Yeaton, April 28, at eleven, Leeds.—**Nichols, J.** joiner, Wakefield, April 28, at eleven, Leeds.—**Smithies, B.** manufacturer of woollens, Halifax, April 28, at eleven, Leeds.—**Sourry, S.** tailor, Wakefield, May 7, at eleven, Leeds.—**Thompson, A.** joiner, Sherburn, May 4, at one, Newcastle.—**Watley, R.** New Radford, May 1, at eleven, Sheffield.—**Waterton, J.** saddler, South Kirkby, April 28, at eleven, Leeds.—**Wakler, J.** farmer, Birstal, May 7, at eleven, Leeds.

From the Gazette of Friday, May 1.

Bankrupts.

Pitche, J. W. tailor, Sackville-st. Piccadilly.—**Wadsworth, G. B.** apothecary, Broad-st. Golden-square, Westminster.—**Hambridge, C.** coach smith, curtain-rd. Shoreditch.—**Smith, E. B. and Mathews, J. A. T.** glass makers, Dover.—**Harlow, J.** tobacconist, Leicester-sq.—**Timewell, W. T.** dealer and chapman, Charlotte-ct. Blackfriars-rd.—**Barter, G.** currier, Church-st. Southwark.—**Sheffield, W. and J.** grocers, Acton-place, Bagnigge-wells-rd.—**Gandy, T.** grocer, Lower-rd. Islington.—**Edmonds, C. J.** apothecary, Blunisham, Huntingdonshire.—**Bradshaw, W.** cattle salesman, Greeting, Northamptonshire.—**Hanson, T.** builder, Leeds.—**Marsden, R.** linen draper, Brynmawr, Brecknock.—**Few, E.** cabinet maker, Manchester.—**Rodgett, S.** iron founder, Blackburn, Lancashire.—**Harrison, J.** ship-chandler, Kingston-upon-Hull.—**Allen, E. T.** apothecary, Castlegate, Yorkshire.—**Molman, P.** draper, Shrewsbury, Shropshire.—**Harrison, T.** victualler, Birmingham.

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JUDGMENT.
March 26.—The LORD CHANCELLOR.—It is unnecessary to advert to the facts of the case, except in so far as they may tend to explain the grounds on which I form my judgment. When the relations of guardian and ward subsist between two persons, and a gift, or any thing in the nature of a gift, proceeds from the ward towards the guardian after the ward becomes of full age, Courts of equity are in the habit of reserving and treating such transactions between them with the greatest jealousy. Lord Eldon, in the case of *Hatch v. Hatch* (9 Ves. 292), observes, that from the great strictness with which Courts of equity treat transactions of this kind, it is almost impossible that they can be maintained, unless the party claiming the benefit of them satisfies the Court that in the particular transaction the guardian has not misapplied his natural influence. Lord Hardwick and several other learned judges have laid down the same doctrines in cases that have been before them. It is not necessary in such cases that the relation of guardian, as nominated by the parent or appointed by the Court of Chancery, should actually subsist towards the young persons, it is quite enough if they have lived with, or ~~under~~ under the control, care, or influence of, a near relative. In such a case, the principle on which the Court acts between guardian and ward is equally applicable. The point to be considered, then, in the present case, is the relative situation of the parties, and the course of conduct pursued towards each other. The young lady, it appears, was entitled to certain property when she came of age, amounting to £1,100*l.* in money, and the moiety of a freehold property, which produced 149*l.* a year. This property was vested in trustees. She had been left an orphan at nine years of age by the death of her mother. She was then sent to school by the trustees, and from that time until she attained the age of seventeen she invariably passed her holidays with her uncle and aunt, who resided in Thirsk, in the county of York. The uncle was a tradesman in that town, and this young person continued to reside with him from her attaining seventeen, until the period of her marriage, in the year 1841, the uncle receiving from the trustees a yearly allowance for her support and maintenance. In addition to this fact of residence, there is evidence that, from the time she went to her uncle's, up to the time of her marriage, she was under the control and influence of her uncle, and that she invariably submitted to and acquiesced in that control. The case, therefore, falls as strictly within the rule of the court as the actual relation of guardian and ward had subsisted between the parties. What then is the nature of the transaction itself? Two months after the young lady came of age, and obtained possession of her property, Daniel, her uncle, asked her to join him in a promissory note for 500*l.* in order to guarantee a balance then due by him to his bankers, and to secure further advances; so that, as a consequence, the note must be paid by her in the event of his insolvency. It is said by the counsel for the bankers, that this is a very indelicate act on the part of Daniel; but that it was not invalid. I think that it was not only very indelicate act, but a very improper act. Daniel, the uncle of the young lady, was the person to whom she would naturally look for advice in the event of her requiring it. If any other person had made to her a similar proposition, namely, to join in a promissory note for 500*l.* without any consideration, and she had appealed to her uncle for advice in the matter, he would have been his duty, as a cautious and prudent man, to have explained to her the nature and consequences of such a transaction, and to have dissuaded her from the act, because her property might

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ultimately become liable for the payment of the note. If such is the advice the uncle ought to have given her in the case of a third person, how can he now, after having induced her to do such an act for himself, expect that it can be maintained? Hawkswell, the manager of the bank, states that he explained to her the nature of the transaction, and that he thought she understood it. Although a person conversant with business and with bills of exchange might have understood the nature of the transaction as a continuing guarantee for the balance due to the bankers, I do not think that a young lady like the plaintiff was capable of understanding it to its full extent. That is the impression on my mind, and it is the duty of those who seek the benefit of the transaction to satisfy me that she did understand it. I am not satisfied. It was the duty of the parties to have explained the precise nature of the transaction, and that she might, at some time, be liable to pay the 500*l.*; and unless that was done, the transaction cannot be sustained. It has been stated, in the course of the argument, that the young lady refused to go to the bank to sign the note in question, and that Hawkswell, therefore, obtained the signature at Daniel's house, because she did not like it to be supposed that she was becoming security for her uncle. I think it much more probable that the true reason of her refusing to go to the bank was, that Daniel did not wish it, lest it should be discovered that she had become security for him.

It has been urged that the note is a continuing guarantee. From the view I take of the case, that point is not one of importance; but I do not think that it is a continuing guarantee for all advances to be made by the bank to Daniel.

It is said that there has been long-continued acquiescence on the part of the plaintiff. It ought to be recollected, however, that there has been no application made during several years for payment, and, independently of that, the influence and control of the uncle continued throughout the whole period, from the time of the signature of the note till the plaintiff's marriage in 1841, being more than four years. There is nothing, therefore, in the assertion that the plaintiff has acquiesced in a transaction upon which it does not appear that she had received any further information. The case is precisely the same as that of *Hatch v. Hatch*, to which I have already referred. It has been said that the defendants, the bankers, knew nothing of the position of the parties, or the circumstances under which the acceptances had been procured. I admit that the managers of the banking company at York are free from blame, but they are bound by the acts of the agent at Thirsk, who was the intimate friend of Daniel, and who it is clearly proved knew the circumstances of Daniel, and who was also aware of the position of his niece. No one can venture to say that if the transaction had been one merely between Daniel and Hawkswell, the latter would not have been bound by it, and at the same time have bound his employers. If that is so, the acts of Hawkswell with respect to the plaintiff, in the same manner, bind the banker, because he acted as their agent. I entertained little doubt on the question when the case was opened to me, and the more I look at the facts, the more I become confirmed in opinion that the decision of the Master of the Rolls is a correct one, and that the plaintiff must have the relief she asks.

Appeal dismissed with costs.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Wednesday and Thursday, Jan. 14 and 15.

JONES V. MORGAN.

Partnership—Contribution—Practice—Parties—Defendant.

A bill was filed for contribution by one of a number of partners, against some others only of the partnership, stating that the partnership had been wound up and the debts paid, and the only reason for its present existence was for the purpose of contribution. The bill, by its statement, shewed that two of the defendants, and several of the absent parties, had paid up much more than the price of their shares, by an allegation that all the absent parties had either died insolvent, and that the plaintiff was unable to procure administration to them, or were now wholly insolvent, and out of the jurisdiction; but the bill did not pray process against them when, &c. The bill stated that the plaintiff, as partner, had been compelled to pay a call upon him more in proportion than that paid by the defendants, and that the defendants were the only persons who were at all capable of contributing towards payment to the plaintiff of such excess. The bill then prayed for a contribution, but not any partnership account. To this the defendants demurred for want of equity and want of parties, but the demurrer was overruled.

It appeared from the bill that Abram Combe, late of Edinburgh in Scotland, since deceased, having the intention of forming a company, to be called "The Orbiston Company," contracted from General John Hamilton an estate consisting of 280 acres of land, called "The Orbiston Estate," at the price of 19,995*l.*

for the said intended company. That he constituted himself agent and trustee for the said intended company, and as such contracted to borrow 12,000*l.* part of such purchase-money, from the Scottish Union Insurance Company; 3,000*l.* from Archibald Ainslie, and to secure 4,995*l.* the remainder of the said purchase, by a bond to be executed by him as such trustee, on behalf of, and obligatory upon, the said intended company. That in further pursuance of his design he drew up certain articles of agreement, intitled "Articles of agreement of the Orbiston Company, March 18th, 1825." The articles of agreement stated the objects of the society, which were for the education of children upon the principles of Mr. Robert Owen. The second article was, "That the stock of the company shall not exceed 50,000*l.* divided into two hundred shares of 250*l.* each." Seventh, "That the trustee chosen by the company shall have power to borrow money upon security of the company's property to the extent of 100*l.* on each share, being the exact cost of the land, and to expend the sum subscribed in the way most congenial with the wishes of the subscribers, in the erection of dwelling-houses, workshops, manufactories, and in furnishing utensils and machinery, or in payment of any just claim due by the company." Eighth, "That the stock shall be advanced by instalments of 10*l.* per share quarterly, commencing the first on the 15th August, 1825; and the second on the 15th November, and so on, quarterly, until 100*l.* on each share shall be paid up." Twelfth, "That the trustees shall find security, to the satisfaction of the company, for the proper discharge of his duties; and if he shall expend or incur debts on the company's account beyond the sums actually subscribed, it shall be considered that he has exceeded his powers, and that he and his securities are responsible for the same; or if a meeting of the subscribers shall authorize such excess of expenditure, then the said subscribers, or those who concur, shall be liable for the same, it being a fundamental principle of the company to avoid every species of speculation which could possibly make the individual members liable for more than the sum which they actually subscribe." The will also stated the deed of conveyance from General Hamilton to Abram Combe, upon trust for the said company, dated the 13th May, 1825; and that the said Abram Combe, in order to raise the said sum of 12,000*l.* and 3,000*l.* granted as such trustee a heritable bond to the said insurance company for 12,000*l.*; a similar bond to the said Archibald Ainslie for 3,000*l.*; and for the remainder of the purchase money a like heritable bond to General Hamilton for 4,995*l.*; all of which were dated 11th May, 1825; that between the 15th March, 1825, and the 17th Oct. 1825, the following persons became partners and shareholders, together with the plaintiff, in the said company, for the number of shares respectively subscribed, viz. Archibald James Hamilton, since deceased, 50 shares; Hannah Mary Rathbone, since deceased, 10 shares; John Minter Morgan, a defendant, 10 shares; Edward Cowper, a defendant, 1 share; the said Abram Combe, since deceased, 10 shares; John Grant, out of the jurisdiction, 2 shares; Daniel Reid, of Edinburgh, a bankrupt, whose estate had been fully administered, 1 share; George Small, of Edinburgh, aforesaid, a bankrupt, whose estate had long since been fully administered, 2 shares; William Combe, out of the jurisdiction, 2 shares; Joseph Applegarth, out of the jurisdiction, 2 shares; John Gray, of Edinburgh, a bankrupt, whose estate had been fully administered, 4 shares; William Falla, deceased, 1 share; Robert O'Brien, who died in Canada, utterly insolvent; and Alexander Majoribanks, a bankrupt, whose estate had been fully administered now residing out of the jurisdiction 1 share; and plaintiff 2 shares. That at a general meeting of the said Orbiston Company on the 17th of October, 1825, it was declared that the amount of the said shares should be reduced from 250*l.* to 200*l.* each. The bill then stated in what manner the several parties became partners in the company. With respect to Hannah Mary Rathbone, it stated that William Rathbone her son, being duly constituted her agent in all matters connected with the said Orbiston Company, wrote and sent a letter, dated 3rd July, 1825, to the said Abram Combe, wherein he said, "My mother desires me now to say, that as far as she understands the nature of the proposals, she prefers taking stock to the extent of 1,000*l.* to lending that amount, provided it will equally serve to promote the views of the company; and I shall also venture to add, and provided she is secure from any other claim upon her than the amount which she is desirous to invest in this plan, I beg to enclose on her account 100*l.* for the first call."

In another letter from the said William Rathbone to Abram Combe, dated November 10, 1825, he said, "My mother is so much in earnest respecting the great experiment, that she is desirous to be a stockholder in the concern; she is aware that not only the amount of her stock, but that she herself is responsible; but feels confidence, that even should the sanguine expectations of success be frustrated, yet that any responsibility beyond the amount invested is merely nominal."

The undertaking was commenced, but in the year

1828 it utterly failed. All the property and effects of the company were sold, and all the debts thereof paid, with the exception of the sum of 3,876*l.* 9*s.* 9*d.* part of which remained due upon the said bond for 4,995*l.* given to the said General John Hamilton, which he had assigned, and which had ultimately become vested in Messrs. Smith, Payne and Co. bankers; and the residue remained due upon the said bond for 3,000*l.* given to the said Archibald Ainslie.

It appeared from the bill that Arch. Jas. Hamilton, whose subscription for fifty shares amounted to 5,000*l.* had paid for the purposes of the company 15,455*l.*; that Abram Combe, whose subscription for twenty shares amounted to 2,000*l.* had paid for the purposes of the company 2,536*l.*; that Hannah M. Rathbone, whose subscription for ten shares amounted to 1,000*l.* had paid for the purposes of the company 2,800*l.*; that John M. Morgan, whose subscription for ten shares amounted to 1,000*l.* had paid for the purposes of the company 2,600*l.*; that William Falla, whose subscription for one share amounted to 100*l.* had only paid the sum of 70*l.*; that Edward Cowper, whose subscription for one share amounted to 100*l.* had only paid the sum of 20*l.*; and that the plaintiff, Henry Jones, whose subscription for two shares amounted to 200*l.* had previously to the 17th August, 1832, only paid the sum of 128*l.* 9*s.* 9*d.* The bill then stated two several actions commenced in the Scotch courts against the partners in the said Orbiston Company. One by Messrs. Smith, Payne, & Co. for the sum of 4,000*l.* the balance due upon the said bond for 4,995*l.*; the other by Archibald Ainslie, for the sum of 1,073*l.*; the balance then due upon the said bond for 3,000*l.* That at the time when such actions were brought the estate of the said Arch. Jas. Hamilton, which was then vested in one Thos. Mansfield, for the benefit of his creditors, was indebted to plaintiff in consequence of a loan from plaintiff in the sum of 4,156*l.* 1*s.* 9*d.* That at the time of such actions brought the plaintiff, being a foreigner, and forth of Scotland, the pursuers raised letters of arrestment *jurisdictionis fundenda causa* against him, and thereupon caused fence and arrest of all sums of money due to him by the said Thomas Mansfield as such trustee. The bill then stated that there being no defence to the actions verdicts were taken by consent in Smith's action for 4,000*l.* and 475*l.* costs, and in Ainslie's action for 1,073*l.*; that by an arrangement come to between the said Messrs. Smith and Co. plaintiff, and the said Thomas Mansfield, Messrs. Smith and Co. in consideration of 3,000*l.* paid by Mansfield, assigned their said debt to him for the plaintiff, and the said Arch. Ainslie, in consideration of 750*l.* paid by Mansfield, assigned his said debt to Mansfield for plaintiff. The bill stated that the said debts which were due upon the said bonds to Messrs. Smith, Payne, and Co. and the said Arch. Ainslie were then vested in the said Thomas Mansfield, in trust for the plaintiff. That the plaintiff had, in manner aforesaid, paid to and on account of the stock and debts of the said Orbiston Company, sums of money amounting together to 3,876*l.* 9*s.* 9*d.* and the further sum of 575*l.* on account of the costs of the said proceedings against him by the said Messrs. Smith and Co. and Arch. Ainslie, amounting together to 4,451*l.* 9*s.* 9*d.* That at the time when the plaintiff made such payments respectively, the plaintiff and all the other partners of the said Orbiston Company were liable in Scotland to pay the debts of the said company, towards which such payments were applied, and that the plaintiff had not, nor would any of the other partners have had any defence against the claims of the said creditors. That all the partners in the said Orbiston Company ought to have paid and satisfied all the debts and liabilities of the said company, rateably, according to the number of shares which they respectively held in the said company; and that each of the said partners in the said company as are capable of paying, and of being compelled to pay the debts of the said company, or so much thereof as have not been paid by others, ought to have paid such debts or so much thereof as last aforesaid, rateably according to the shares which they respectively held in the said company. That the following persons are the only persons who ever were partners in the said company, that is to say, the said Archibald Jas. Hamilton, Abram Combe, Hannah M. Rathbone, J. M. Morgan, plaintiff; the said John Grant, William Combe, George Small, Daniel Reid, Robert Foster, William Fulk, Thomas Jessop, Robert O'Brien, Wm. Brown, G. Brown, James King, John Gray, Alexander Majoribanks the younger, Joseph Applegarth, and Edward Cooper. That the said Archibald James Hamilton, Abram Combe, and Robert O'Brien are respectively dead; and that neither of them ever had any property within the jurisdiction of the Court, and there is not any just representative of either of them within the jurisdiction of the Court; that they respectively died insolvent, without leaving any property whatever, and plaintiff, cannot, by any means, procure the appointment of a personal representative of either of them in England, or recover any contribution from the estate of either of them either in this country or elsewhere, by reason of there being no property whatever of either of them.

That the said John Grant, William Combe, George Small, Daniel Reid, Robert Foster, Thomas Jessop, William Brown, George Brown, James King, John Gray, Alexander Majoribanks the younger, and Joseph Applegarth, all respectively reside out of the jurisdiction of the honourable Court, and are all in utterly insolvent circumstances, and have no property whatever, and plaintiff cannot, by any means, recover any contribution against them; or their, or either of their, assignees or curators, by reason of there being no property or estates whatever of either of them. That he knows not, and is unable to discover, who are or is the assignees or assignee, or curators or curator, of the estate of the said Daniel Reid, George Small, John Gray and Alexander Majoribanks, or any or either of them. That the said Hannah Mary Rathbone died on the 10th Aug. 1839, having made her last will and testament, and thereof appointed William Rathbone and Richard Rathbone, defendants hereto, the sole executors thereof, who proved the said will in the proper ecclesiastical court on the 26th Sept. 1839, and her said executors have received assets more than sufficient to pay all her funeral and testamentary expenses, debts, and liabilities, including what is due to plaintiff in respect of the matters aforesaid. That the said John Hamilton is dead, but he never resided nor had any property whatever in England, and there is no personal representative of him, and plaintiff is unable to procure the appointment of a personal representative of the said John Hamilton in England, and he has left no property whatever. That the said William Falls died on the 4th Aug. 1839, having made his will, whereof he appointed his wife, Elizabeth Falls, and Russell Blackbird, and W. R. Hunter, defendants hereto, executors; all of whom, except his said wife, duly proved the same, and have possessed themselves of the personal estate of their testator more than sufficient for satisfaction of all his debts and liabilities, including what is due to plaintiff in respect of the matters aforesaid. That the said John M. Morgan is a person of considerable wealth. That the said Hannah M. Rathbone was a partner for profit and loss to the extent of ten shares in the said company; and the said John M. Morgan was a partner for profit and loss to the extent of ten shares in the said company; and the said Edward Cowper and William Falls were respectively partners for profit and loss to the extent of two shares, and no more, in the said company; that the said William Rathbone and Richard Rathbone, and Theodore Minoribanks, in respect to the estate of the said H. M. Rathbone, and the said R. Blackbird and W. R. Hunter in respect of the estate of the said W. Falls, and the said Edward Cowper and the said John M. Morgan are the only persons from whom it is possible for plaintiff to recover any contribution towards the payments made by him on account of the said company. That the aggregate of the payments which have been made by the said H. M. Rathbone, John M. Morgan, Edward Cowper, and Wm. Falls, and the plaintiff, on account of the said company, is 9,643. 9s. 9d.; and the same ought to have been borne between them in the proportions following:—five twelfth parts thereof, amounting to 4,143. 2s. 4½d. by the estate of the said Hannah M. Rathbone; other five twelfth parts thereof, amounting to 4,143. 2s. 4½d. by the said John M. Morgan; one twenty-fourth part thereof, amounting to 414. 6s. 2½d. by the estate of the said Wm. Falls; one twenty-fourth part thereof, amounting to 414. 6s. 2½d. by the said Edward Cowper; and the remaining one twelfth part, amounting to 828. 12s. 5½d. by plaintiff; whereas, in fact, the said H. M. Rathbone has paid and borne only 2,600l. of such debts, being 1,343. 2s. 4½d. less than her just proportion thereof with reference to plaintiff; and the said J. M. Morgan has paid and borne only 2,600l. of such debts, being 1,343. 2s. 4½d. less than his just proportion thereof with reference to plaintiff; and the said Wm. Falls has paid and borne only 70l. being 344l. 6s. 2½d. less than his just proportion; and the said Edward Cowper has paid and borne 90l. only, being 394l. 6s. 2½d. less than his just proportion; and plaintiff has paid and borne 4,453. 9s. 9d. of such debts, being 3,624l. 17s. 3½d. more than his just proportion thereof with reference to the said J. M. Morgan and E. Cowper, and the estates of the said Hannah M. Rathbone and William Falls; and that the said J. M. Morgan, Edward Cowper, and the representatives of the said H. M. Rathbone and Wm. Falls ought respectively to pay and contribute to plaintiff, rateably with plaintiff, towards the excess of payments by plaintiff on account of the debts of the said company beyond his proportionate share thereof with reference to them. The bill then charged the same accordingly, and that an account ought to be taken of the amounts which plaintiff and the said defendants ought respectively, as between themselves, to have borne and paid on account of the liabilities of the said company, having regard to the inability of the said plaintiff to obtain any contribution whatever from any of the other partners in the said company, and that they ought to contribute and pay to plaintiff the just proportion of the excess of plaintiff's payments in proportion to the number of shares in the said company held by the said H. M. Rathbone,

Wm. Falls, Edward Cowper, and J. M. Morgan, to plaintiff respectively. The bill then charged that all the real and personal estate whatever of the said Orbiston Company had been sold and disposed of and conveyed and made over to the purchasers thereof, and every debt due to the said company, except such as were irrecoverable, had been collected, and all the proceeds of such sales and disposition of money received in respect of such debts, had been exhausted in paying the debts and liabilities of the said company, and that there remained no property whatsoever of the said company. That the said company was dissolved several years ago, and all the accounts of the property of the said company. And its affairs had been adjusted and settled between the partners, except the liabilities of such partners to contribution. And the said company no longer exists, except for the purposes of contribution among such of the members thereof as are capable of making contribution. The bill then prayed that the said Wm. Rathbone, Rich. Rathbone, and T. W. Rathbone, in respect to the estate of the said H. M. Rathbone, and the said Russell Blackbird and W. R. Hunter, in respect of the estate of the said Wm. Falls, and the said Edw. Cowper, and John M. Morgan and John Grant, might be decreed respectively, to contribute and pay to plaintiff towards the excess of his said payments, as compared with theirs, a rateable proportion of such excess, having regard to the number of shares of the said Hannah M. Rathbone, J. M. Morgan, Edw. Cowper, Wm. Falls, John Grant, and plaintiff in the said Orbiston Company; and that an account might be taken of the amounts which plaintiff and the said defendants ought respectively, as between themselves, to have borne and paid on account of the liabilities of the said company, having regard to the insolvency of the other members of the said company, and the inability of plaintiff to obtain any contribution whatever from any of the other partners therein; and that the said defendants might be decreed to contribute and pay to plaintiff such just proportion of the excess of plaintiff's payments, in proportion to the number of shares in the said company held by the said H. M. Rathbone, J. M. Morgan, Wm. Falls, Edw. Cowper, and John Grant, and plaintiff. To this bill the defendants Edw. Cowper, J. M. Morgan, and the executors of Hannah M. Rathbone, put in separate demurrers for want of equity and want of parties.

Roll and Giffard, in support of the demurrer by the representatives of Mrs. Rathbone.—Our grounds of objection to the bill are threefold. In the first place, it is clear, upon the face of the bill, that Mrs. Rathbone stipulated with the company, that though she was aware, as a shareholder, of her liability to the public to an unlimited extent, yet as among the shareholders themselves she was not to be so, but only to the amount of 1,000l. Secondly, the plaintiff's statement of a debt which he alleges was owing to the firm of Messrs. Smith, Payne, and Co.; and having stated that the company were so indebted, he says that he paid that debt, and that it was assigned over to a trustee for him, in whom it is now vested; and also that previous to his paying that debt, Messrs. Smith and Co. had released Mrs. Rathbone from the payment of that debt. Thirdly, the greatest injustice might be the consequence, unless the representatives of each shareholder who, upon taking the accounts, might be entitled to receive any thing, were before the Court. We admit it as a principle of law, that although where a defendant is a mere accounting party, you may, by alleging bankruptcy or insolvency (as in this bill), dispense with the necessity of having him before the Court; yet, where he is not simply an accounting party, but may, upon the accounts being taken, have something to receive, no such allegations can obviate the necessity of having him here. Moreover, the object of taking the accounts being to ascertain what is due from and to each individual, the absent party has a right to come into this court to see what, if any thing, is due to him. *Hills v. Nash* (10 Jur. 148) is an authority in our favour.

James, Parker, and Bunt, for J. M. Morgan's demurrer, contended, that as there might be partnership debts outstanding, the only proper decree would be to wind up the partnership accounts, which could not be done in the absence of the parties. That it was for the plaintiff to shew Majoribanks ought not to be made a party, as it was perfectly consistent with the record that he has something to receive. As to Arch. James Hamilton, he having paid too much, it was not possible for him to have died without property, and therefore limited administration ought to have been taken out to him. All that the bill states ought not to be taken as true; for supposing a party stated in a bill that A died, leaving a son, but that there was no heir-at-law, could that be taken as true? In the same manner it cannot be taken as true that administration cannot be obtained, for the Court knows the contrary. Another objection to the will is, that process is not prayed against the parties out of the jurisdiction of the Court when they shall come within the jurisdiction.

Cases cited: *Munoz v. De Tastet* (1 Bea. 109); *Taylor v. Fisher* (4 L. J., N. S. Ch. 95). *Stewart and Wilcock*, contra.—To bring yourself

within the above cases, you are bound to shew that the persons out of the jurisdiction are necessary parties [The VICE-CHANCELLOR.—You had better confine your observations to the third point; I do not think that any thing turns upon the others.] This is a simple bill for contribution; the frame of the bill is only similar to an action against a shareholder for contribution. The case of *Wright v. Hunter* (5 Ves. 792) is an authority that this Court will, upon the doctrine of contribution, allow a bill to be filed for whatever an action would lie. In the bill for that purpose, it would only be necessary to allege an inequality of payments, stating the amount paid by the several parties, and how it happened that the plaintiff paid more than the individual in question; and if the bill were simply for contribution, and not for an account, it would be necessary only to make the solvent persons parties to the suit.

The VICE-CHANCELLOR.—If the allegations set forth in the bill are such as shew that it is a case simply for contribution, I have nothing upon a demurrer to do with the possibility of there being something receivable by other persons not now before the Court; for, as the bill stands, I must, for the purposes of the demurrer, take it as a bill only for contribution, and not for an account. My opinion is, that it is nothing beyond a bill for contribution merely. *Demurrer overruled.*

ROLLS COURT.

Tuesday, Feb. 17.

THOMAS V. GWYNNE.

Practice—*Infant*—*Person to convey an estate*—*Stat.* 1 Wm. 4, c. 60, s. 8.

Piggott applied to the Court in this case, already so often before it, to direct some person to convey the estate, part of the subject-matter of the suit, under the 1 Wm. 4, c. 60, s. 8. The suit was a creditors' suit; and by a decree therein, the estate was ordered to be conveyed by John Thomas, infant tenant in tail thereof, according to a deed approved of by the Master, but he had been kept out of sight, so that the process of the Court could not be duly served. This application was therefore rendered necessary, The MASTER of the ROLLS granted the order.

January 26 and March 2.

DONOVAN v. NEEDHAM.

Bequest payable at a future time—*Interest*—*Maintenance*—*Portion to children*.

No interest is payable on a legacy given to a person payable at a future time.

An exception to the rule is made in the case of a legacy by a parent to a child, in which case interest is given for maintenance of the child, on the principle that the parent did not mean to leave the child without the means of subsistence.

But if the parent has provided for the maintenance of the child out of another fund, the interest is not given on the legacy.

By his will, of the 5th of March, 1836, James Donovan gave the estate of Buckham Hill, in Sussex, to his son George, in tail male, with remainders in tail as therein mentioned; and he also gave him 20,000l. 3l. per cent. Consols, to be paid on his attaining twenty-one; and if he died before he attained twenty-one, the 20,000l. Consols was to go to the next in remainder who should take an estate tail. The testator then gave all the residue of his real and personal estate to his trustees in trust, after payment of 2,000l. to his wife, and the 20,000l. Consols to George, for his younger children equally, to be paid to them, if sons, at twenty-one; or if daughters, at twenty-one or marriage, and to be vested on their attaining twenty-one; or if daughters, on attaining twenty-one or marriage, with benefit of survivorship. If there should be no younger children entitled to take them, the whole was to go to George. The testator then directed his trustees, "during the minorities of his said children, to pay such sums as they should think proper for education, maintenance, &c. of his said children, and for placing them in such professions or business as might be advisable." By a codicil, he gave George a further legacy of 15,000l. on the same terms as the 20,000l.

The testator, at his death, left George and three younger children, all infants, him surviving, and the question was, whether George was or not entitled to interest on his legacies for his maintenance. At the hearing of the cause on further directions, the Court was of opinion that George was entitled to his legacies at twenty-one, but to no interest in the mean time. George having attained 21, presented a petition to have his legacies paid to him; and he also presented a petition of rehearing so far as the order made on further directions declared he was not entitled to interest on the legacies, and made them part of the common fund out of which the maintenance of all the children was to arise.

Kindersley and *H. Clarke* contended that George was entitled to interest on his legacies at 4l. per cent. from the death of the testator.

Turner and *Randell*, for the younger children, contended that the provision for maintenance was general

for all the children out of the testator's residuary estate, and that George's legacies formed part thereof till he attained twenty-one; and they cited *Crickett v. Dalby* (3 Ves. 10), *Wynch v. Wynch* (1 Cox, 433), *Hearle v. Greenbank* (3 Atk. 768, 716).

Roupell and Heathfield, for the trustees.

March 2nd.—The MASTER of the ROLLS, after stating the facts, said that, at the hearing of the cause on further directions, he was of opinion that the defendant, George Donovan, was entitled to have his legacies paid him on his attaining twenty-one; but was not entitled to the dividends or interest thereof in the meantime, but only to maintenance out of the estate like the other children. The case now came before the Court on a petition of rehearing, and it had been contended that George ought to be held to be entitled to interest from the death of the testator, or at least from one year after that event. The rule laid down by Lord Hardwicke, in *Hearle v. Greenbank*, was, that no interest was to be allowed on a legacy payable at a future day. The general rule was that; but a legacy payable at a future time given by a father to a child was an exception, for interest in such a case was allowed, but that was for maintenance, on the presumption that the father did not mean to leave the child unprovided for till the legacy was paid. In *Wynch v. Wynch*, Lord Kenyon had stated the rule to be, that where a legacy was given by a father to a child, whether vested or not, it carried interest, if no maintenance was provided; but if there was, then the rule was the same as in the case of a stranger. After the best attention he could give the case, he could not distinguish it from the former cases; and there was nothing to shew that the legacies given to George were to be separated from the rest of the personal estate till the time of payment. The testator spoke of all his children in the maintenance clause, and did not designate any fund out of which each might be maintained, nor did there appear any intimation that George was to be supported out of his own legacies. He must dismiss the petition with costs.

February 16 and 17, and March 3.

GIBSON v. NICHOL.

Bill to redeem mortgage—Cost of parties—Insolvent estate—Provisional assignee of Insolvent Court—Trustees for creditors of a paise incumbrancer—Disclaiming interest.

The provisional assignee of the Insolvent Court who has been made a party to a redemption suit, but has disclaimed all interest in the mortgaged estate, which is incumbered beyond its value, is not entitled to his costs; nor are the assignees in trust for the creditors of a paise incumbrancer entitled to their costs, though they disclaim all interest in the property.

The bill in this case was filed by the plaintiffs, mortgagees of the freight of the ship *Triton*, the property of John Nichol, the younger, one of the defendants, to redeem Aaron Smith, who was both a prior and a subsequent mortgagee. When the cause came on to be heard, a question was raised at the bar as to the priorities of the several incumbrances; but it being alleged that the pleadings were not framed so as to bring that point in issue between the parties, the Court considered the objection valid, and declared the plaintiffs entitled only to a decree to redeem, and for the common mortgagee's account. This the plaintiffs declined taking; and the case therefore was reduced to a question of costs on the dismissal of the bill. There were several incumbrancers subsequent to the plaintiffs, of whom John Nichol, the elder, and Mr. Dobson were two. The latter had assigned all his property to Benjamin Dixon and John Fowler, in trust for the benefit of his creditors. John Nichol, the younger, having become insolvent, his interest in the mortgaged property became vested in Mr. Sturgis, the provisional assignee of the Insolvent Court, who, together with Messrs. Dixon and Fowler, had been made parties to the suit, but had disclaimed all interest, the incumbrances on the property far exceeding the value, and they now asked to have their costs.

Follett, for Mr. Sturgis, the assignee of John Nichol, the younger, said that this case differed from the other cases on the subject; for in the latter, the assignee had claimed an interest, whereas in this case he disclaimed all interest. He cited *Silcock v. Roydon* (2 Y. & C. C.C. 376); and *Apted v. Tickner*, and *Smart v. Sturgis*, before Vice-Chancellor Knight Bruce; and *Gabriel v. Sturgis*, before Vice-Chancellor Wigram.

Webster, for Messrs. Dixon and Fowler, the assignees of Dodson, contended that the rule was, that a defendant disclaiming was entitled to his costs, if continued to the hearing. [The MASTER of the ROLLS.—The question is, whether a defendant disclaiming may not have some duty to perform, or some act to do, to work out the rights of the parties?] These trustees had power to abandon the trust, and they did abandon it; and they ought either to be dismissed with their costs, or the cause should be set down on the disclaimer. He cited *Applby v. Duke* (1 Hare, 303); *Cash v. Belcher* (1 Hare, 310); *Tipping v. Pover* (1 Hare, 405); *Williams v. Longfellow* (3 Atk. 582, 591); *Clarke v. Wilmot* (1 Phill. 276.)

Turner, Rousfield, Rolt, Stevens and Batten, for other parties.

The MASTER of the ROLLS said he would communicate with Vice-Chancellor Wigram before he decided.

March 3.—The MASTER of the ROLLS said he would allow his costs to Aaron Smith, the first mortgagee, but to no one else.

Wednesday, March 11.

RE BLAKE AND YOUNG.

Practice—General orders—Indorsement of memorandum—Construction.

The Twelfth General Order of the 26th of August, 1841, amended by the General Orders of the 11th of April, 1842, which requires the time to be stated for doing any act ordered or decreed, does not apply to any orders or decrees but those made in a suit, notwithstanding the words "every order or decree" therein used.

In pursuance of an order to tax a solicitor's bill, it was taxed at a certain sum, and a balance of 195l. 3s. 8d. was found to be due from the solicitors. A four-day order was then obtained for payment of this balance by the solicitor, or in default thereof, that he should be committed to the Queen's prison. The Twelfth General Order of the 26th of August, 1841, amended by the General Orders of the 11th of April, 1842, requires an indorsement on the order or decree served upon the party of a memorandum, apprising him of the consequences of disobedience to the order; but in this case no such memorandum had been indorsed.

Elderton now moved for a tipstaff, and at the same time took occasion to mention to the Court the omission of the indorsement on the four-day order. The words "every order, &c." at the beginning of the general order, were very stringent, and seemed to comprehend every case. There was no use in indorsing such a memorandum to a solicitor, but it was right to call the attention of the Court to it. [The MASTER of the ROLLS.—These general orders apply to a cause; it is any party to a cause that is intended; here it is not in a cause at all.] No, it is only on taxation of a solicitor's bill. [The MASTER of the ROLLS.—How would the indorsement give information of what you are going to do? It would rather intimate something different. What you want is a tipstaff, and the order speaks of an attachment. I can do nothing, and any thing I might order would not protect you. You must not let me be surety to your client; you must take the risk.] The four-day order has been duly served, and the only thing is the indorsement.

The MASTER of the ROLLS granted an order to bring the party to the bar of the Court for contempt in not paying the balance due, and expressed his opinion that the General Order did not apply to a case like the present.

YORK v. WHITE.

Practice—Dismissing bill, or staying proceedings after decree.

A consent motion in a creditors' suit to dismiss the bill, or stay proceedings thereon after a decree has been made, will not be granted, because the decree has the same operation in favour of creditors as a judgment.

Moore, in this case, moved to dismiss the bill, with consent of the parties to this suit, under these circumstances:—The suit was a simple contract creditors' suit, instituted by the plaintiff, in 1835, against the executrix and heir-at-law of the testator, and the usual decree was made therein. The plaintiff proved his debt, but no other creditors came in, though they had been advertised for in the usual way, but only once, and there were no assets available for the purposes of the decree, the specialty creditors having completely exhausted them. There was, therefore, no further prosecution of the suit, either by the plaintiff, or his executrix after his death; and it was now revived merely to have it disposed of in some way or other, and the costs of the heir-at-law were undertaken to be paid. The question then was, whether to move to dismiss the bill with the consent of all parties, or to stay proceedings; and it was submitted the latter was preferable. [The MASTER of the ROLLS.—What good will that do you?] The order to stay proceedings may be entered on the judgment roll as a satisfaction to purchasers of the real estate.

The MASTER of the ROLLS.—A decree has been made, and advertisements issued in pursuance thereof, and only one debt, the plaintiff's, has been proved. The advertisements being only partial, what can I do? Nothing. The suit has been revived for the express purpose of having something done; and I think the better course would be to bring it to a hearing in the usual way. I can make no order on this motion.

Friday, March 13.

MALDEN v. Fyson.

Practice—Specific performance—Title—Dismissal of bill—Costs.

When the purchaser files his bill for a specific performance, and a good title is not shewn, the practice is to dismiss the bill, without costs.

The defendant in this case, not having shewn a

good title, was asked by the plaintiff to rescind the contract, and pay expenses, which he refused to do. The plaintiff then filed his bill for specific performance; and, it being plain that no good title could be made, he then offered to come to terms, and dismiss with costs, but the defendant would not consent, and a reference to the Master was therefore necessary. The Master found that no good title was shewn, nor indeed any title, as there was no attempt to produce any documents. The cause now came on upon further directions, and the only thing to be done was to dismiss.

Blaxam, accordingly, in the absence of *Turner*, on behalf of the plaintiff, asked the Court to dismiss with costs. There was a deposit which ought to be returned, and with interest, as in *Lord Anson v. Hodges* (5 Sim. 227), though that was a case in which the vendor was plaintiff. The plaintiff would also gladly take a reference to the Master to ascertain the measure of his damages; but that, of course, could only be granted with consent.

Kindersley, for the defendant, said the practice of the Court in such cases was to dismiss the bill, without costs, and leave the plaintiff to bring his action; and the plaintiff is then in the same situation as if there had been no bill. It was so much a matter of course for the Court to do so, that he had not thought it necessary to take any note of the cases. In *Thomas v. Dering* (1 Keen, 729, 11 Jur. 211, 427), all that was done was to dismiss the bill, but without costs.

The MASTER of the ROLLS.—You come here because the defendant has not done his duty; and the only purpose of your coming can't be accomplished through the fault of the defendant. I must dismiss simply, without costs. The old cases are of no value; but if you have any ground for relief on the new cases, I will let you mention it again.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Tuesday, April 28.

WILLIAMS v. BLAND.

Vendor and purchaser—Probate of will.

Where a contract had been made for the sale of personal property, and an objection was raised to the title in consequence of a will, by which the property was given, being proved in a Diocesan Court, instead of the Prerogative Court, a bill for specific performance filed by the purchaser was dismissed, but without costs and without prejudice to an action, the plaintiff declining to accept the title, and the defendant declining to prove the will as required.

This was a suit instituted by a purchaser, for the purpose of compelling the specific performance of an agreement for the sale to him of two curtesies for 500l. each upon the lands and tolls in respect of the drainage and navigation under an Act passed in the 7th year of the reign of George the Third, entitled, "An Act for the more effectual draining of the lands lying in the level of Ancholme, in the county of Lincoln, and making the river Ancholme navigable from the river Humber, at or near a place called Ferryby Sluice, in the county of Lincoln, to the town of Glemford Briggs, and for continuing the said navigation up or near to the said river, from thence to Bishopcleeve, in the said county of Lincoln." The contract for the sale of the two curtesies was made in October, 1844, through the agent of the defendant. On the 11th of November, 1844, an abstract of the title was delivered to the plaintiff, and by that abstract it appeared that the original mortgages were made to Sir John Webb on the 6th of April, 1793, and that by indentures dated the 15th of March, 1794, the securities were assigned by Sir John Webb to Thomas Goulton, his executors, administrators, and assigns. T. Goulton, by his will, dated the 2nd of December, 1811, gave the residue of his property (including therein the two sums of 500l. each), one third part thereof unto his cousin, Richard Goulton, one other third part thereof unto his cousin, James Goulton, and one other third part thereof unto William Hesledon and George Nelson, upon the trusts therein mentioned, and appointed the said Rich. Goulton and Jas. Goulton executors of his will. Upon the death of Thos. Goulton, the said Rich. Goulton and James Goulton, in the month of Aug. 1812, duly proved the said will in the Prerogative Court of the Archbishop of Canterbury. Richard Goulton survived his co-executor James Goulton, and by his will, dated the 7th day of July, 1831, gave all the residue and remainder of his personal estate and effects unto his two sons, Thomas Goulton and William Goulton, in equal shares, and appointed them joint executors of his will; and they, on the 3rd of Jan. 1832, proved the same will in the Consistory Court of the Bishop of Lincoln. By an indenture dated the 1st of February, 1840, the said Thomas Goulton and William Goulton assigned the said taxes and tolls (subject to such equity of redemption as the same were then subject to) to the defendant, Luke Bland, his executors and assigns. The principal objection raised to the title by the plaintiff was upon the representation to Richard Goulton, and his executors were required to prove his will in the Prerogative Court of the Archbishop of Canterbury.

Beaman and Himsley, for the plaintiff, cited *Fowler v. Richards* (5 Russ. 39); *Jernegan v. Baxter* (5 Sim. 568); and *Twyford v. Trail* (7 Sim. 92).

Russell and Taylor, for the defendant.

The VICE-CHANCELLOR said that he considered the question raised too doubtful to force the title upon the purchaser.

The following decree was then made:—The plaintiff admitting that the only objection to the title is that the will of Thomas Goulton has not been proved in the Prerogative Court of the Archbishop of Canterbury, and that administration *de bonis non* has not been granted by the Prerogative Court, and the plaintiff declining to accept the title, and the defendant declining to prove the will, dismiss the bill, but without costs and without prejudice to an action.

Wednesday, April 29.

ASHTON v. DALTON.

Equitable mortgage—Construction of memorandum accompanying deposit of title-deeds.

Prima facie a deposit of title-deeds creates an equitable mortgage upon the whole property comprised in them, and it lies upon those who contend the contrary to prove it.

This suit was instituted for the purpose of establishing an equitable mortgage, and for an account of the moneys due to the plaintiff in respect of it, and for a sale of the property to discharge the claim. On the 13th of August, 1827, Philip Peacock, being indebted to John Ashton, deposited with him the title deeds of certain property of which the said P. Peacock was then seized in fee, and which consisted of three several messuages or tenements, buildings and premises, in the parish of St. Mary, in the town of Huntingdon; and on that occasion the following memorandum was signed by P. Peacock:—"I do hereby agree that the writings of my own dwelling-house, with the title-deeds therunto belonging, remain in the possession of Mr. John Ashton, St. Ives, draper, till such time as my account due to him for goods does not exceed the sum of one hundred pounds, at which time they shall be restored to me free from any expense. Witness my hand, this 13th day of August, 1827, Philip Peacock." It was alleged by the bill that during the life of P. Peacock the amount was not reduced to 100l. and at the time of his death, P. Peacock was indebted to Ashton in the sum of 274l. 9s. 9d. John Ashton, by his will, dated the 19th of September, 1833, gave all his real and personal property to Elizabeth Ashton (the plaintiff), and appointed her executrix. Ashton died on the 10th of October, 1833. P. Peacock died in Sept. 1827, having, by his will, dated the 8th of April, 1825, appointed as to pass real estate, appointed his wife, Susanna Peacock (deceased), sole executrix of his will, and leaving James Pigram Peacock his oldest son and heir-at-law. Susanna Peacock having renounced probate of the will, letters of administration, with the will annexed, were, on the 11th of September, 1838, granted to Samuel Edward Cooch, a creditor. J. P. Peacock, by his will, dated the 22nd of August, 1833, gave all his messuages or tenements and hereditaments, with the appurtenances, unto his wife Marianna (afterwards married to Samuel Dalton), and, after her decease, to his son, James Pigram Peacock. The principal question discussed in the suit was as to the extent of the security, the title-deeds relating to three houses, and the memorandum accompanying the deposit mentioning the mortgagor's own dwelling-house only.

Russell and W. Milne, for the plaintiff.

Wigram and Pitman, for the defendants, contended that the memorandum created a lien upon the deeds only, and that the intention of the parties was to give a lien upon the dwelling-house mentioned in the memorandum, and not upon the other property.

The VICE-CHANCELLOR said, that *prima facie* a deposit of title-deeds created an equitable mortgage upon the whole property comprised in them, and that it laid on those who contended the contrary to prove it. He must look at the whole document, and there the term "writings" must be held to include the title-deeds in question. The intention of the parties could not be disappointed by the loose form of the instrument. The lien, therefore, extended to the whole of the lands included in the title-deeds; and if, before the death of Philip Peacock, the debt was reduced below 100l. there was no lien; but if, at his death, it exceeded 100l. the lien extended to the whole property.

VICE-CHANCELLOR WIGRAM'S COURT.

April 17 and 23.

STINTON v. TAYLOR.

Replication—Dismiss—Time—Vacation—Costs.

In March 1846, a motion was made to dismiss for want of replication, when the plaintiff was ordered to file a replication within a month; and in default, the bill should stand dismissed without further order. The time for filing the replication under the above order expired on the 8th of April, but the Easter Vacation, which began on the 4th of April, intervened, and the plaintiff did not file his replication until the first day

after the Vacation, which was on the 16th of April. On the 17th of April the defendant served the plaintiff with a warrant to tax his costs as of his bill dismissed under the order.

Palmer now moved for leave that the plaintiff might now file his replication as of the 8th of April, on the ground that the offices were shut during the Vacation, except for very special proceedings.

Jervis, for the defendant, opposed the motion, and submitted that the office was open all the year round for the purpose of filing replications.

The VICE-CHANCELLOR.—Your application should be for an order to restore the bill, which is at present, under the previous order, out of court. You must amend your notice of motion to that effect; you may then file your replication, consenting that publication shall pass in due course, as if the replication had been filed on the 8th of April, and the plaintiff must pay all the costs of the proceedings to tax on the dismissal and of this motion.

Wednesday, April 29.

WHITCOMBE v. DEAKIN.

Foreclosure—Judgment creditor—Disclaimer—Costs. In order to entitle a party disclaiming to his costs, in a foreclosure suit, he must, on the first notice of the proceedings, inform the plaintiff of his disclaimer.

This was a suit for foreclosure of a mortgage. A judgment creditor of the mortgagor was made a defendant, who, by his answer, admitted the judgment, and that it still remained unsatisfied, and, save as aforesaid, he did not know whether he had any lien on the lands in mortgage, and denied any charge thereon, and disclaimed all interest in the property.

Romilly and Erskine appeared for the plaintiff.

Rogers, for the mortgagor.

Speed, for the judgment creditor, asked for his costs, and cited *Gabriel v. Sturgis* (6 Law T. 452).

Romilly objected to the LAW TIMES being read as an authority, as the names of the reporters were not published.

Speed replied that they were regularly published; and the Court allowed the case cited to be read.

The VICE-CHANCELLOR.—The order for costs now asked might have the effect (if the mortgage property should prove deficient) of making the mortgagor pay out of his own pocket the costs of persons who had had dealings with the mortgagor long after the creation of the mortgage security, a result manifestly unjust; I shall, in this case, make the common decree, and, with regard to persons placed in the position of Mr. Speed's client, they ought, on receiving a bill that was filed against them, at once inform the plaintiff they disclaimed all interest; and if, notwithstanding such information, the plaintiff still retained them parties before the Court, they would, at the

Common Law Courts.

COURT OF QUEEN'S BENCH.

Saturday, April 25.

HUMPHREYS v. MARSH.

Possession of Tenements Act—Trespass or case.

Where parties have broken and entered a house under the authority of a warrant issued by justices, in pursuance of 1 & 2 Vict. c. 74, s. 1, trespass, and not case, is the proper remedy.

Trespass for breaking and entering the plaintiff's house and ejecting him therefrom.

Plea—1st, Not guilty; 2nd, a justification under stat. 1 & 2 Vict. c. 74; 3rd, a denial that the house was the house of the plaintiff; and 4th, *liberum tenementum*.

The case was tried before the Lord Chief Baron at Shrewsbury, when a verdict was found for the plaintiff, damages 100l. It appeared that the defendants, of whom one was the plaintiff's landlord, and the others bailiffs, had entered the house in question under the authority of a warrant issued by two justices in pursuance of the above statute.

Whateley, Q.C. on Saturday, April 18, moved for a rule to shew cause why the verdict should not be entered for the defendant of not guilty, on the ground that the action was misconceived; or why a new trial should not be had, on the ground that the verdict was against evidence, and the damages excessive. First, case, and not trespass, was the proper form of action. The third section of the statute expressly provides that trespass may be brought against the person who obtains the warrant, where the warrant is not executed; but here it was executed, and the general rule applies. The warrant of the magistrates is a protection to all parties entering under it. (*Mould v. Williams*, 5 Q.B. 469; *Brittain v. Kinnaird*, 1 Brod. & B.) [He also moved on the grounds that the verdict was against evidence and the damages excessive.]

Patteson, J.—The statute gives an action of trespass against the person who obtains the warrant; he is liable, if he does not execute it; *a fortiori* he must be liable, if he does.

Lord DENMAN, C.J.—There is nothing in the

point of law; but as to the rest we will see the learned judge.

Lord DENMAN, C.J. now stated that the learned judge was of opinion that there ought to be no rule.

Rule refused.

Friday, May 1, 1846.

TAYLOR v. BROOKE.

Award—Costs.

The proper mode to object in an action upon an award that the award is bad, is by plea of no award, but a special plea, setting out the reason is only bad upon special demurrer as an argumentative traverse. An award of a gross sum for costs of two actions, the reference and the award, is bad.

Action upon an award.

Plea, setting out that the award was bad, for awarding a gross sum for the costs of the actions, the reference, and the award, except the costs of the agreement of reference, which were assessed at a specific sum. Demurrer for that the pleader does not traverse, or confess and avoid.

H. Hill, in support of demurrer.—*Dresser v. Stamford*, decided in the Court of Exchequer last Term, shews that no award is the proper mode of pleading (*supra*, 6, 192; *Gibborne v. Hart*, 5 M. & W. 50).

Addison.—It is not specially demurred to upon any ground open to raise this objection. Then the award is bad. The costs are awarded in a gross sum, which is wrong, and there is no authority to award the costs of the reference. *Robinson v. Henderson* (6 M. & S. 276); *Moore v. Darley* (1 C. B. 445); were cited.

Lord DENMAN, C.J.—The arbitrator had no right to lump the sums together. It is not distinguishable from *Robinson v. Henderson*.

Judgment for defendant.

ROGERS v. GRAZEBROOKE.

A mortgage of the residue of a term less one day, from a day named, gives a right of entry from that day, although there are provisions and covenants for the mortgagor's quiet occupation until default.

Doe dem. Lightfoot (8 M. & W. 559), recognized and confirmed.

Trespass, for entering certain messuages and tenements.

Plea, in substance, that the defendants took under a lease of R. Hunt, a bankrupt, whose assignees they were.

Replication. That prior to the bankruptcy of R. Hunt, he had demised, by way of mortgage, to them, with powers of entry, which they had exercised, and so had become possessed of the premises in question before the defendants entered.

Rejoinder. The defendants set out the demise on oyer, and alleged that the 5th day of March, 1841, when the plaintiff's right of possession accrued, had not arrived. To this there was a demurrer. In another plea the defendants themselves set out the lease. The plaintiffs replied that they had entered under the demise, to which the defendants demurred. There were several special grounds of demurrer, which were given up, and the substantial point raised by the pleadings was, whether a right of entry accrued under the mortgage, prior to the 6th day of March, A.D. 1841.

Martin, Q.C. (with whom was *Bovill*) in support of plaintiff's demurrer.—The demise by R. Hunt to the plaintiff was, from March 6, 1840, for the whole of the residue of his then term, except one day, in absolute terms, "subject, nevertheless, to the provisions, agreements, and declarations contained therein." There is a proviso that, on payment on or before March 6, A.D. 1841, of 500l. and interest to the plaintiff, that the said demise should cease, and be void. In default of payment, powers of sale are given after three months' notice, and a covenant by R. Hunt that the plaintiff might enter and occupy. If this were *res integra*, it would be easily shewn that this is an absolute demise, and the subsequent provisions and covenants do not affect the mortgagee's right of entry. But it is already decided both in this court and in the Court of Exchequer. (*Doe v. Lightfoot*, 8 M. & W. 559; *Doe v. Day*, 2 Q.B. 147.)

Peacock, contra.—The cases are with the defendant. (*Wheeler v. Montefiore*, 2 Q.B. 133; *Wilkinson v. Hall*, 3 B., N.C. 508; *Doe dem. Lyster v. Goldwin*, 2 Q.B. 143.)

Martin, in reply.—*Wheeler v. Montefiore* is distinguishable, for there the plaintiff never had entered or taken possession, and the distinction is commented upon in *Doe v. Day*, 2 Q.B. 143.

Lord DENMAN, C.J.—I think *Wheeler v. Montefiore* is distinguishable, and that it may be supported upon the reasons given in *Doe v. Day*. This case is not distinguishable from *Doe v. Lightfoot*.

Patteson, J.—I cannot distinguish this in any way from *Doe v. Lightfoot*.

Williams, J. and *Wightman*, J. concurred.

Judgment for plaintiff.

WOOD v. HEWITT.

Fixtures.

To determine whether a particular chattel is a fixture or not, the particular circumstances must in each case be considered. And where it appeared in evidence

that a mill-hatch, which worked in a groove or fender which was attached to a kind of sill, had, together with the fender, been repaired for some years by the plaintiff, the Court refused a new trial, for an alleged misdirection, the judge having left the question as to the fender to the jury.

Cockburn, Q. C. and M. Smith, shewed cause against a rule for a new trial. It was trespass for removing a fender, being portion of a mill-hatch. One of the issues raised was, as to the property in the fender. It was shewn that the plaintiff, or those through whom he claimed, had repaired the fender on several occasions during forty-one years. It moved in a kind of groove or sill, which was fixed to the soil. There was conflicting evidence as to the right to the soil. The rule had been obtained on the ground that the jury should have been told that if it was the defendant's soil, the fender was his also as a fixture. This could not have been correct, for it is a question of fact, not of law.

Crowder, Q. C. Greenwood, and Cornish, contra, cited *Liford's case* (11 Co. Rep. 46); *R. v. Otley* (1 B. & Ad. 141). The verdict was also against the evidence.

Lord DENMAN, C. J.—It does not necessarily follow that this was a fixture so as not to be the property of the plaintiff. These questions are rarely as to things which are absolutely fixtures; but they are severable or not, according to circumstances. It is a matter of evidence as to how the chattel was intended to be used. Suppose a stone basin left upon the ground for some time; it would become imbedded in the earth, and so in one sense a fixture; but not in the legal sense of being attached to the freehold. I think, however, that the verdict, on the whole, was against evidence. *New trial on payment of costs.*

Saturday, May 2.

REG. V. CHATHAM.

Order of removal—Examination.

The examinations in support of an order of removal to Chatham stated relief given by the officers of Chatham to the pauper in "Gillingham." Held, that it sufficiently appeared that the relief was given out of the parish of Chatham.

—Upon appeal against an order of removal, the Court of Quarter Sessions confirmed the order, subject to a case. The examinations upon which the order of removal was made contained evidence that the overseers of the parish of Chatham had relieved the pauper whilst residing in "Gillingham," but no other or further description of that place was given. The appellants contended that that evidence was insufficient to support the order; and that was the question submitted to this Court.

Henry and Gladys (being called upon by the Court), in support of the objection.—The evidence is insufficient without some statement to shew that Gillingham is not a part of Chatham. Nothing ought to be left to inference in these examinations; and for all that appears, Gillingham may be a hamlet of Chatham.

Gunning, contra, was not called upon.

Lord DENMAN, C. J.—There is nothing in the objection. *Order confirmed.*

Jan. 28 and May 4.

BARNES V. SHORE.

Prohibition—Toleration Acts.

None of the Toleration Acts exempt persons in holy orders from their liability in the Ecclesiastical Courts for breaches of discipline, but only exempt them from penalties for nonconformity; therefore a writ of prohibition will not lie to stay proceedings in the Court of Arches against a priest in holy orders for publicly reading prayers on Sunday, and performing ecclesiastical duties and divine services according to the rites and ceremonies of the Church of England in an unconsecrated chapel, without the license of the bishop of the diocese, and against his nonconformity.

This was a motion for a prohibition to stay further proceedings in the Arches Court of Canterbury against the Rev. James Shore. The facts shortly were, that Mr. Shore, a priest in holy orders, had, some time since, received a license from the Bishop of Exeter to preach in a chapel at Bridgetown, in the parish of Berry Pomeroy. Upon the induction of a new incumbent, the secretary of the Bishop of Exeter stated, that unless a new nomination was obtained, the license would be withdrawn. The chapel was closed in September, 1843. In March, 1844, by the directions of the Duke of Somerset, the chapel was certified in the Archdeacon's Court of Totness as a place of religious worship under the 52 Geo. 3, c. 155, and Mr. Shore resumed his duties as minister of the chapel, conducting the service as before, according to the forms of the Church of England.

On March 13th, 1844, the Bishop of Exeter revoked and annulled his license, and monishing him to cease from officiating in the chapel, and prohibiting him from doing it in future. To this Mr. Shore replied, that "as he had previously withdrawn from his Lordship's jurisdiction, and the chapel was duly registered in the Archdeacon's Court, he was at a loss to conceive on what grounds his Lordship proceeded." Mr. Barnes answered, that the document was addressed to him, "as a clergyman who had been per-

forming duty in the diocese" under the circumstances detailed, and that it "was a prohibition from officiating in Bridgetown Chapel."

On the 16th of March Mr. Shore took the oaths prescribed by the 52 Geo. 3, c. 155, before a magistrate of the borough of Totness, in which borough the chapel was situated, and Mr. Shore resided. In answer to the above letter of the 16th instant, he informed Mr. Barnes "that he no longer regarded himself as a minister of the Establishment," and that he had withdrawn, because he could not "conscientiously submit to the discipline of the Church as administered by the Bishop."

On July 12th, 1844, the Bishop of Exeter issued a commission under the Church Discipline Act (3 & 4 Vict. c. 86.) Proceedings were taken under this commission. Mr. Shore appeared under protest. The Commissioners decided that there was a *prima facie* case against Mr. Shore, and he was cited in the Arches Court. He appeared under protest, but the protest being overruled, he appeared absolutely. Articles were brought in against him, charging him with officiating as a priest in a consecrated place without the Bishop's license.

On May 31, 1845, Mr. Shore put in a responsive allegation, in which, after stating the facts as above detailed, as to the registry of the chapel, he alleged that he had on conscientious grounds seceded from, and ceased to conform to, the Church of England, and was, at the time of the citation, and still, a "Protestant dissenting minister in holy orders, and a preacher and teacher of a congregation of Protestant dissenters assembling and accustomed to assemble for religious worship," in the said chapel, and claimed exemption under the Toleration Act. Mr. Shore also stated, that although he had availed himself of some of the forms set forth in the Book of Common Prayer, yet that he had made variations therein as not conforming to the Church of England. This allegation the Court rejected, as not setting up a valid defence, holding that the Toleration Acts did not apply to him. The rule nisi for a prohibition was obtained on November 11.

The Attorney-General, Dr. Addams, and M. Smith shewed cause (Jan. 28).—This is an offence against the Ecclesiastical Courts. In Ayliff's Paragon, 208, amongst other causes for deprivation and degradation, nonconformity and the use of other rites and ceremonies are mentioned. The Acts which will be relied upon by Mr. Shore really do not apply to the present question. They contend that a person may continue to be in orders, that he may disobey the lawful commands of his bishop; but that, if he can only clothe himself with the character of a minister of a dissenting congregation, the Toleration Act applies to his case, and that no proceeding can be had against him. We admit this as to proceedings against him for nonconformity; but say that he is liable in respect of other offences, as disobedience to the bishop, he still continuing a priest in holy orders, the Acts must be considered. The chapel has been duly certified,—he has taken the oaths under 52 Geo. 3; and therefore he claims the benefit of the Toleration Act; 1 W. & M. c. 18. By 52 Geo. 3, c. 155, s. 4, which exempts certain persons from the penalties of previous Acts, no provision is made as to taking the oaths, but under sec. 5, they must be taken. By sec. 13, the ecclesiastical jurisdiction of the archbishops and bishops is especially reserved. The 19 Geo. 3, c. 44, specifies the oaths and declarations to be taken.

There are two heads of nonconformity in those Acts; 1. Absence from the Parish Church; 2. Attending Conventicles. The first statute referred to in 1 & 2 Wm. & M. c. 18, is 1 Eliz. c. 2, s. 14; then comes 23 Eliz. c. 1, s. 5; 29 Eliz. c. 6. These refer to non-attendance at church; and in 29 Eliz. c. 6, is the first mention of the term conformity; for it fixes a monthly penalty "until the offender conform." Conformity, therefore, meant open attendance at the parish church. This is further shewn by 35 Eliz. c. 1, ss. 1 and 4. Nonconformity, therefore, to which the Toleration Act applies, is absence from church. At common law, persons absenting themselves from church, without license of the ordinary, were liable to ecclesiastical censure. None of the Acts inflicting penalties for nonconformity took away the ecclesiastical jurisdiction existing independently of them; indeed, it was expressly retained by 32 Geo. 3. By observing the provisions of 32 Geo. 3, c. 155, exemption from 17 Car. 2, c. 2, is obtained, but that does not relate to ecclesiastical penalties. Nor does 13 & 14 Car. 2, c. 1, apply. It is not a proceeding against Mr. Shore for nonconformity, but for disobedience as a priest to the lawful orders of his bishop. Sec. 8 of the Toleration Act applies to a peculiar class of nonconformists, those already in orders, or pretending to orders, who were to be exempted from 13 Eliz. c. 19; 17 Car. 2, c. 2, and 13 and 14 Car. 2, provided they took the oaths and subscribed the declaration, and also subscribed the Articles under 13 Eliz. c. 12, that is the 39 Articles, except the 34th, 35th, 36th, and a portion of the 20th. Mr. Shore has not complied with that section, having only taken the oaths, and subscribed the declaration.

Then can a person in holy orders, at his pleasure, divest himself of his obedience to the bishop? Can he have two characters? It is clear he acted as minister of a dissenting congregation. In the case of *Trevel v. Keith* (2 Atkyns, 498), this point was decided by Lord Chancellor Hardwicke, who held that it did not extend to clergymen of the Church of England, infringing the discipline of their church. So, also, Dr. Nisbald held in *Carr v. Marsh* (2 Phil. 203). *Button v. Standish* (6 Mod. 188); and *Law* (1 Skinner, 101), were also cited.

The Solicitor-General, Manning, Serjt. and Dr. Twiss, in support of the rule. The question is of vast importance—whether a person once in holy orders, who afterwards conscientiously ceases to be a member of the church in his opinions, is to be liable in Ecclesiastical Courts for becoming a dissenter? There is no question here of the *bond fides* of the dissent. It must be contended that a clergyman may not change his opinions, or enter a dissenting place of worship, without being liable to punishment. In other words, for a clergyman there is no liberty of conscience, or no freedom of opinion. Can this be seriously contended? Under the Toleration Act he is protected. Mr. Shore says he was a minister of the Church of England, but ceased to be so before the commission of the alleged offence; being a dissenter from conscience and conviction he officiated, as he was entitled to do by law—for the chapel was duly licensed and registered. He did not perform the service according to the Church of England. He is, in fact, prosecuted for his change of faith, as shewn by the allegations. The Toleration Act would then become a dead letter to all clergymen. Mr. Shore is to be punished for acting according to his conscience, and to be restrained from doing so for the future. He is a dissenter, and *Trevel v. Keith* does not apply. The statutes of Charles relate to nonconformity as contrary to law, and Mr. Shore's within the meaning of that nonconformity. Mr. Shore made the declaration under the Act. He is a Protestant dissenter, under sec. 4, of the Toleration Act, and there is no law or authority to compel a clergyman to abstain from the exercise of his conscientious duty. At the Restoration, the clergy were much persecuted, six or seven thousand imprisoned during the reign of Charles II. and the Toleration Act was passed to relieve the clergy as well as the laity; and it did so, in fact. [PATTERSON, J.—Do you mean to say that a clergyman by his voluntary act can cease to be a clergyman?] The change of faith is involuntary. [PATTERSON, J.—If, then, he again changed he would become a clergyman again.] That question does not arise here, and would be determined by ecclesiastical consideration. [WIGHTMAN, J.—What is the date at which he ceased to be a clergyman? It is the time when he became a dissenter by overtaking the change in his opinions, which was by taking the oaths, and acting as a minister of another congregation. No particular notification of the change is required. Was it intended that the Toleration Act should leave ecclesiastical persons subject to punishment for conduct in accordance with its provisions? The meaning attempted to be put upon nonconformity is too limited. Irving was a minister in holy orders, preaching without the bishop's license. Blackstone's appeal of the statutes as to nonconformity shows that Mr. Shore is really within them in the present instance; (see vol. iv. 61).

If the argument on the other side be correct, Mr. Shore might be punished in the Ecclesiastical Court for not attending church. In the cases cited, the plea of secession was not set up, nor indeed did it exist. (See Burn's Ecclesiastical, 2, 218). A full report is given of the opinion of Lord Mansfield in *Evans v. Chamberlain of London* (see 6 Bro. P. C. 181); and he there shows, that punishment for religious opinions is contrary to the common law of England, and can only exist by virtue of some positive enactment. He says, "Bare nonconformity is no sin by the common law; and all positive laws inflicting any pains and penalties for nonconformity to the established rites and modes, are repealed by the Act of Toleration, and dissenters are hereby exempted from all ecclesiastical censures." It is sought to fix Mr. Shore with a sin, as well as to admonish him. The writ of prohibition will be granted, where the suit includes more than is properly cognizable in the Ecclesiastical Court. *Evans v. Gwyn* (5 Q.B. 844). It is part and parcel of the law of the land, that no man should be punished for his belief. Further, it is a mistake to say Mr. Shore a minister in holy orders, and priest of the United Church of England and Ireland. Every priest, by his ordination, becomes a priest of the United Church of Christ, and there is no difference whether this character is obtained by ordination at Exeter or Treves. Mr. Shore, therefore, has two characters, that of priest in holy orders of the Church of England, and a minister of the Church of Christ. The former character is indelible, but the latter is not, and has been put an end to by the effect of Mr. Shore's dissent, and so becoming entitled to the benefit of the Toleration Act. If Mr. Shore is protected from the Ecclesiastical Courts for breaches of church discipline, then every Roman Catholic priest who takes upon himself any of the duties and penalties

of a minister, in a diocese without the permission of the bishop of the diocese, will be liable to be sued in the Ecclesiastical Court. *Cur. adv. vult.*

On Monday, May 4, the Court delivered judgment as follows:—

JUDGMENT.

LORD DENMAN, C. J.—This was a rule for a writ of prohibition to the Archdeacon of Canterbury, against proceeding in a suit instituted by R. Barnes, gentleman, against the Rev. S. Shore, in the Court of the Bishop of Exeter, and removed by letters of request into the Archdeacon Court, for officiating in an unconsecrated chapel in Bridgetown, in the diocese of Exeter, without the licence, and against the monition of the bishop. Mr. Shore had been admitted to priest's orders some years ago by a former Bishop of Exeter, and had officiated in the same chapel with the licence of the present bishop for some years, but that licence had been withdrawn, and the chapel had been registered under the 52 Geo. 3, c. 156, as a dissenting chapel; Mr. Shore officiated in it, professing so to do as a dissenting minister. Mr. Shore being a priest in holy orders, the general jurisdiction of the bishop of the diocese in which he acts is undoubtedly established. In regard to this point, the cases of *Trebeck v. Keith* (2 Atkyns), and *Carr v. Marsh* (2 Phill.) sufficiently establish this position without a minute examination of the canons on the subject. And in the last edition of Burn's Ecclesiastical Law (vol. 1, p. 306), a case is stated from Serjeant Hill's manuscripts of *Keate v. The Bishop of London*, where this Court discharged a rule preventing Mr. Keate being sued in the Ecclesiastical Court for officiating without the bishop's licence. The question is not whether the charge brought against Mr. Shore can or cannot be substantiated, or if it can be substantiated what penalty he may have incurred. The only question is, whether, by any Act of Parliament Mr. Shore is, under the circumstances, exempted from the jurisdiction of his bishop. It appears that he put in a defensive allegation stating the facts, and claiming exemption as a dissenter, which allegation the learned Judge of the Court of Arches refused to receive, and such refusal raises the question for our consideration. The statute mainly relied on is the 52 Geo. 3, and that statute provides for certifying and registering places of religious worship, and it then provides, by section 4, in substance, that every person who shall preach or officiate in places of meeting duly certified according to that Act, or who shall resort to such place, shall be exempt from all such pains and penalties under any Act of Parliament relating to religious worship, as any person who shall have taken the oaths prescribed by and under the 1 Wm. & M. c. 18, s. 1, entitled "A Toleration Act," &c., and as fully and effectually as if all such pains and penalties, and the several Acts enforcing the same, were recited in this Act, and such exemption as aforesaid were severally and separately enacted in relation thereto. This clause manifestly does not touch the present case; it only exempts from penalties under certain Acts of Parliament. The present suit is not founded on, and has no relation to, any penalty, under any Act of Parliament, or to any Act of Parliament at all, but it is a suit in the Ecclesiastical Court, founded upon the common law of the land. There is a clause in 1 Wm. & M. which prohibits proceedings in the Ecclesiastical Court under the circumstances there stated; but the 52 Geo. 3 does not incorporate that clause, nor allude to it. The 13th section of the 52 Geo. 3 was referred to on the argument, as saving the jurisdiction of the bishop; but it refers principally to places licensed by the bishop, and does not bear on the present question. From an attentive consideration of all the clauses of the 52 Geo. 3, it is quite plain it does not exempt any person from a suit in the Ecclesiastical Court to which he would otherwise be liable. But the statute clearly exempts from the penalties of the Acts of Parliament then in force as to public worship all persons dissenting from the Church of England who shall take the oaths mentioned in the first section of that Act, that is to say, the oaths of allegiance and supremacy, and make the declaration mentioned in the 13 Car. 2. The 4th section further enacted, "Nor shall any of the said persons be presented in any Ecclesiastical Court for or by reason of their nonconformity to the Church of England." The 8th section also exempts persons dissenting from the Church of England in holy orders, or pretending to holy orders, preachers and teachers of congregations of Protestant dissenters who shall take such oaths, and make such declarations, from the penalties of the several Acts of Parliament, but is silent as to any proceedings in any Ecclesiastical Court. The only clause, therefore, in any Act of Parliament that exempts any persons from proceedings in the Ecclesiastical Courts, is the 4th sec. of the 1 Wm. & M. and that only exempts from proceedings for, or by reason of, nonconformity to the Church of England. In order to avail himself of this clause, Mr. Shore must show first he is such a person dissenting, and has so taken the oaths and made the declaration of transubstantiation; secondly, that he is now sued in the Ecclesiastical Court, for, or by reason of, his nonconformity to the Church of England.

As to the first, some question may be made as to whether the proper oaths have been taken, but it is hardly necessary to inquire closely into that point, for no distinct rule appears to be laid down, as to who may be clearly a person dissenting from the Church of England. But it should seem that as dissent is matter of opinion, any one who says he does dissent is entitled to be considered as dissenting, and any one is clearly entitled to be so considered as a dissenter, as well persons in holy orders, as other people who are laymen; Mr. Shore, therefore, may be entitled to insist on being treated as a dissenter on his mere assertion, if he says so, without any formal act of separation being rendered necessary either by him or against him. But he cannot so divest himself of the character of a priest in holy orders, with which he has been invested by the authority of the Church of England, when ordained by one of its bishops, and when he promised obedience to the Church of England. From that character, and from that vow and promise, he cannot be released otherwise than by the same authority that conferred the one, and enjoined the other. The 76th canon provides, in express terms, "That no man being ordained as a minister, shall from henceforth voluntarily relinquish the same, or afterwards use himself in the course of his life as a layman, under pain of excommunication, and the churchwardens shall present him." Therefore, although he may, as a dissenter, be exempted by the 4th sec. of Wm. & M. from being sued in the Ecclesiastical Court for mere nonconformity to the Church of England, he is not exempt by that, or any other act from canonical obedience to the bishops as a priest, in regard to anything he may do according to the rites and ceremonies of the Church of England. This brings the whole question to the second or last point, whether he is sued in the present case, for nonconformity to the Church of England, for a breach of discipline as a priest of that church. Now, the 7th Article exhibited in the Archdeacon Court makes that matter perfectly clear, for it charges that Mr. Shore, on Sunday, the 28th of July, did take upon himself publicly to read the prayers, preach, and administer the Holy Sacrament of the Lord's Supper, and perform ecclesiastical duties and divine services according to the rites and ceremonies of the Church of England, in an unconsecrated chapel, in the diocese of Exeter, without licence or authority so to do, and contrary to, and in spite of, the injunction and monition of the bishop. No one can fail to see that this is not a charge for not conforming to the Church of England. The previous article charges that he was a priest in holy orders, ordained by a former Bishop of Exeter; and the 7th charges that, being such priest, he performed services and duties proper to such places according to the rites and ceremonies of the Church of England, but in a place and under circumstances that made such performance a breach of discipline of that Church, and that he is sued for such breach of discipline. Whether the facts can be proved, that will establish the charge, it is not for us to inquire; Mr. Shore has denied the charge, and the Ecclesiastical Court will doubtless make a proper inquiry into the truth of it. It is sufficient, for the purposes of this motion for a prohibition, to see that the charge is one peculiarly and exclusively of ecclesiastical jurisdiction, and that no Act of Parliament exempts a person situate as Mr. Shore is from that jurisdiction, in respect of such charge. We therefore think that the rule must be discharged.

Rule for prohibition discharged.

Tuesday, May 5.

WRIGHT v. CHATTERIS.

Action for non-completion of a purchase—General and special damage—Award—Entering verdict.

An action for the non-completion of a purchase (the declaration alleging, by way of special damage, the expense of negotiating the purchase, and of investigating the title) was referred to arbitration; and the arbitrator awarded several sums under different heads; amongst others, for investigating the title, 30l.; but added that in that 30l. he included the preparation of an assignment after objection made to the title, and also journeys for the purpose of taking, as well as the taking, of counsel's opinion on the course to be pursued by the plaintiff with respect to a suit in equity, and a contemplated action of ejectment. Held, that the plaintiff was not entitled to recover any of the charges in and about negotiating the purchase, nor any part of the 30l. awarded in respect of the last-mentioned expenses; and that the residue being less than the money paid into court, the defendant was entitled to the verdict. This was an action for the non-completion of a purchase, which had been referred to arbitration, and the arbitrator had awarded various sums as reasonable sums to be paid by the defendant to the plaintiff on various accounts, which were arranged by him under different heads; amongst others were the following: For a journey to negotiate the purchase, &c. 5l.; for the expenses of investigating the title, 30l.; "but which said sum is made up as follows:" including sums for the preparation of an assignment of the property, with a view to the purchase, but after objection to the title; and for a journey from Exeter to London,

and for taking counsel's opinion as to a contemplated action of ejectment, and also as to certain proceedings in equity. The declaration in this action charged as special damage the expenses of investigating the title, and also those of negotiating the purchase; and the defendant had paid into court 25l. 15s. A rule nisi having been obtained on the part of the defendant to enter the verdict for him pursuant to the award, *Watson, Q. C.* and *Hughes*, now shewed cause. They contended that as to all the charges which came within the head of "Investigation of the title," they were clearly recoverable, according to the case of *Hodges v. The Earl of Lichfield* (1 Scott, 449); that the arbitrator had found that those expenses amounted to 30l.; and that as only 25l. had been paid into court, the plaintiff was entitled to the verdict.

Crowder, Q. C. (with whom was *Taprell*), contra.—It is not disputed that the plaintiff has a right to recover all expenses which are properly included under the head of "Investigation of title;" but the arbitrator has included in the 30l. some items which are not allowable. First, the expense of preparing the assignment is not recoverable; it is not laid as special damage; and a similar claim was abandoned in *Hodges v. The Earl of Lichfield*. The same observation applies to the expense of the journey to London, and of taking counsel's opinion as to the course to be pursued. With regard to the charges for negotiating the purchase, it is hardly contended that they can be supported, although they are laid in the declaration as special damage. In that respect, the declaration in *Hodges v. The Earl of Lichfield* was the same, and there *Tindal, C. J.* said, "I think the preliminary expenses ought not to be allowed; they were incurred by the plaintiff for his own information, and at a time when the existence of a contract was matter of uncertainty." [He was then stopped by the Court.]

LORD DENMAN, C. J.—I think Mr. Crowder has sufficiently reduced the amount. *Rule absolute.*

Wednesday, May 6.

REG. v. LORD MAYOR OF LONDON.

Entering a respiting appeal.

Pashley moved for a mandamus to enter continuances and hear an appeal against an order of removal of paupers from St. Botolph to Stockport. Order was made Nov. 25, and forthwith sent to the respondent parish. At the next general quarter sessions for the city, the appeal was entered and respited under 9 Geo. 1. Notice of appeal was given for the next sessions. At the hearing at the April sessions, it was objected that the general session had no jurisdiction to respite, because more than thirty-five days had elapsed after the sending of the order to the appellants and before the sessions. *Rule granted.*

SANDERS v. GUARDIANS OF ST. NEOTS.

Poor Law Guardians—Necessaries—Ratification.

It was stated (*supra*, 61) that *Gunning* had obtained a rule nisi to set aside the verdict for the plaintiff and for a new trial in this case. The Court, however, took time to consider. It was an action against a guardian for work and labour, and materials, for having supplied some iron gates to the workhouse. There was no contract under seal proved, but it appeared that the defendant had frequently seen these gates after they were put up, and the jury further found expressly that they were necessaries. On April 25,

LORD DENMAN, C. J. said—We have seen our brother Parke, who is not dissatisfied with the verdict. The objection to the want of the seal is met, the jury having found that they were necessaries, and that the defendants had adopted the contract. *Rule refused.*

BUSINESS OF THE WEEK.

Thursday, April 30.

REG. v. GREGORY.—Criminal information for publishing in the *Satirist* newspaper four separate libels upon the Duke of Brunswick. The defendant was now called up for judgment.—*Cockburn, Q. C.* and *Peacock*, were heard in mitigation, and *Telford, Serjt.* and *Wordsworth*, in aggravation of punishment.

Sentence, eight months' imprisonment, two for each libel.

DON dem. LORD EGBERTON v. COURTNEY.

Cur. adv. vult.

DON dem.—v. MOORE.

Part heard.

Cur. adv. vult.

Friday, May 1.

GILES v. GILES.—Demurrer to plea. *Bull, Q. C.* in support of demurrer. *M. Smith*, contra. The question was, whether certain conditions were conditions precedent or independent. *Cur. adv. vult.*

CATTLIN v. FIELD.—Demurrer to plea. *Pearson*, in support of demurrer. *H. Hill*, contra. *Cur. adv. vult.*

Saturday, May 2.

REG. v. THE MAYOR, &c. OF DOVER.

Monday, May 4.

HOLYORD v. BAILEY. Judgment arrested.

R. v. J. HALL. *Rule refused.*

GILBERT v. WHITMARSH. *Rule absolute for new trial.*

BODMER v. BUTTERWORTH.—Verdict on not guilty for defendant, upon the specification for the plaintiff.

REG. v. FELHAM. Judgment arrested.

REG. v. MOLESWORTH. *Rule refused.*

DON dem. DAYMAN v. MOORE.—*Crowder, Q. C.* and *M. Smith*, were heard in support of rule. *Cur. adv. vult.*

DON dem. MOLESWORTH v. BLEMMAN.—*Crowder, Q. C.*

and Butt, Q.C. were heard against the rule. *Greenwood and Merivale*, contra. *Cur. ad. vult.*

Tuesday, May 5.

WRIGHT v. THE QUEEN.

Stands over, that precedents may be searched for.
Ex parte FREEMAN.—Warren moved for a criminal information. *Rule nisi.*

REG. v. THE MAYOR, &c. OF PORTSMOUTH.—*Crowder, Q.C. and Rawlinson* shewed cause against a rule nisi for a *mandamus* commanding the Mayor, &c. of Portsmouth to summon a jury to assess the amount of compensation due to Messrs. Cockey, shipbuilders at Portsmouth, for damage occasioned to them by the execution of an Act of Parliament (2 & 3 Vict. c. lxxii.), for enlarging the town quay and improving a portion of the harbour. *Butt, Q.C. contra*, was stopped by the COURT, who thought that the case was not so clear as to justify them in refusing the applicant permission to bring it more fully before them, and that it ought to be argued on the return. *Rule absolute.*

Wednesday, May 6.

REG. v. MAYOR AND TOWNS COUNCIL OF WARWICK.—*Certiorari* to remove three orders for payment of money from the borough fund.

Absolute as to two, refused as to the third.

This will appear next week.

COURT OF COMMON PLEAS.

Thursday, April 30.

ROSS v. HILL.

Pleading—Bailments.

In all cases of bailment, the promise implied by law is properly described in pleading as a promise "safely and securely" to perform the thing promised, even where the promise implied extends only to the exercise of ordinary care and diligence.

Therefore, where A hired B, a hackney cabman, to convey him and his portmanteau a certain distance, and the portmanteau was lost, the declaration properly charged the cabman upon a promise "safely and securely to carry and convey the plaintiff and his said luggage."

Assumpsit.—The declaration stated that the defendant was the proprietor of a certain hackney carriage, which, at the time of the making the promise, was under the care and management of the servant of the defendant, and was then standing and plying for hire at the terminus of the Great Western Railway; and that thereupon and after the passing of a certain Act, &c. (The Metropolitan Hackney Carriage Act), &c. in consideration that the plaintiff would hire the defendant to carry and convey (*inter alia*) the plaintiff and his luggage, &c. from, &c. to &c. for hire and award to the defendant in that behalf, the defendant, as and being such proprietor as aforesaid, promised the plaintiff to carry and convey the plaintiff and his luggage safely and securely from the said, &c. to, &c.

Breach.—That the defendant did not safely and securely carry and convey the plaintiff and his said luggage, but, on the contrary thereon, so carelessly and negligently behaved and conducted himself, to wit, by his servant, that by and through the mere carelessness, negligence, and misconduct of the defendant, to wit, by his servant, and not otherwise, &c. the luggage was lost.

Plea.—*Non assumpsit.*

At the trial, at the sittings in London after Michaelmas Term, it appeared that the plaintiff had hired the defendant's cab to convey him from the Great Western Railway to Southwark Bridge-road, and that in the course of the ride the plaintiff's portmanteau, which had been placed upon the roof of the cab, was lost. There was no express contract between the parties as to the luggage. It was objected upon the part of the defendant that the contract was laid too broadly, as the declaration sought to render the defendant liable, not merely for gross negligence, but at all events, and to fix upon him the chargeability of a common carrier, who is an insurer, whereas a cabman is not. *Tindal, C.J.* left it to the jury to say whether there had been reasonable care upon the part of the defendant, and reserved leave to the defendant to move to enter a nonsuit. The jury having found for the plaintiff, and a rule having been obtained pursuant to leave reserved,

Byles, Serjt. now shewed cause.—It is objected that the defendant is charged as a common carrier, and as an insurer at all events, whereas in fact a cab-owner is not so; and that the declaration should have been, that the defendant undertook to use due and proper care. It is not now contended that the defendant was a common carrier, but he was a bailee for reward, and the words here used have been used in all the precedents in the law to charge a bailee. The words "safely and securely to carry" or "to keep" or to do anything which a bailee is bound to do, are always used to designate the liability even of a gratuitous bailee, who is bound to use only the merest reasonable care. There are three kinds of bailments, in each of which a different degree of care is demanded: 1st, a bailment for the benefit of the bailor; 2nd, for the benefit of the bailee; 3rd, for mutual benefit; but whatever the nature of the bailment, these words are rightly used. In *Harris v. Costar* (1 Car. & P. 636), which was an action by a passenger against a coachman for injury sustained, the declaration charged the defendant's duty to be "safely to carry." The same objection was taken as here, and *Best, C.J.* said, "Safely means that he

will take due care. The declaration is in the common form." In *Coggs v. Bernard* (Ld. Raym. 909), *Holt, C.J.* says, "Nay, suppose the bailee undertakes safely and securely to keep the goods, in express words; yet even that would not charge him with all sorts of neglects; for if such a promise were put into writing, it would not charge so far even then." That was a case of gratuitous bailment, and the words were "*salvo et secure.*" So *Clift's Entries*, 40; *Rastell's Entries*, 3 b.; *ib.* 8; *ib.* 9, 209 b.; *Brown's Entries*, 80; *Brownlow Redivivus*, 16. So also are the precedents in 2 *Chitty on Pleadings*, 246, 408; *Register Brevium*, 108, 110; *Beauchamp v. Poveley* (1 M. and Rob. 38); *Dudley v. Smith* (1 Camp, 167); *Carins v. Robins* (8 M. & W. 258); *Hutton v. Osborne* (Selwyn's N. P. 420). *Erle, J.* referred to *Bourne v. Gutcliffe* (3 Scott, N.R. 1). If the words "safely and securely" mean at all events, they are too wide to charge even a common carrier, for his is not an absolute liability. In his case, the words must be subject to all the exceptions which the law imports, that is, those of the acts of God and the King's enemies.

Dowling, Serjt. (with him *Atkinson*), in support of the rule.—There is no evidence of any express promise, or of any custom in the trade. The plaintiff's duty should have been charged only "to use reasonable care." In *Coggs v. Bernard*, *Holt, C.J.* says of bailees for reward, that they are only to do the best they can. The precedents do not shew that this is the proper mode of declaring when the objection is taken as to the variance. *Coggs v. Bernard*, for instance, was in arrest of judgment. In the case from *Clift's entries*, 40, the party charged was a common waterman; and in *Bacon Ab. "Carriers," A.* it is said that lightermen are common carriers. *Rastell's Entries*, 8, was a case long before 6 Anne c. 3; at that time, therefore, the owners of houses were liable for damage done by fires breaking out in their houses, at all events. (*Viner's Ab. "Action for Fire," B.*; see also *Tubervil v. Stamp*, 1 Salk. 13.) It is quite consistent with all that appears in the other cases, that there may have been an express contract. *Coggs v. Bernard*, moreover, was a case of executory consideration, and good after verdict. Here the objection was taken at the trial that there was a variance between the contract proved and that declared on. Unless this is the correct description of the implied liability of a bailee for reward, the plaintiff must fail. The words "safely and securely" are not sufficient to describe the chargeability annexed to every different kind of bailment from that of a common carrier downwards. It is said, indeed, in *Southcote's case*, 4 Rep. 84, a, that "a general bailment and a bailment to be safely kept is all one;" but that is expressly overruled in *Coggs v. Bernard*, and therefore every species of bailment must be described in its own way. According to true pleading principles, a contract must be described according to its legal effect. The cases from *Rastell's Entries* were probably the support of what was said in *Southcote's case*, and are impliedly overruled with it. (See also *Kettle v. Bromsals*, *Willes*, 118.) There are precedents in *Chitty*, both ways (2 *Chitty on Pleadings*, 248), and that would be a reason for going back from precedent to principle.

TINDAL, C.J.—In this case the question is, whether the promise laid in the declaration is the promise made by the party, either expressly or impliedly. It was clearly not an express promise, from the circumstances of the case, the position of the parties, and the nature of the thing. Then it is to be considered, whether it is a promise implied by law. If the words "safely and securely to carry and convey" are to be taken in their strictest meaning, then this is not a promise which the law would raise; but taking the rest of the declaration with them, are not the words capable of a more limited sense? I think that they are. In the first place, there is a long series of precedents in which the duty of the party has been laid in this way, and we cannot suppose that in all the cases there has been an express agreement. The law, therefore, has sanctioned this mode of expression either in the old form of *case*, or the more modern form of *assumpsit*. Thus, this mode is employed in the case of the action for fire, and for the improper carriage of goods, which have been cited from *Rastell*, in which cases the law requires only reasonable and proper care. In these and similar cases it is impossible to suppose that any express agreement existed. From the general observance, then, we are to consider that the words are used not in the strictest and most absolute sense, but with reference to the position of the parties. Here the promise to carry safely and securely means with reference to the degree of care and caution which the law requires in such cases. If, upon such a declaration, it had appeared at the trial that the defendant was a common carrier, then the words would have meant more than they now do; if it had turned out to be a gratuitous engagement by the defendant of his own free will, then a still smaller degree of care would be demandable. The way in which the words are to be construed in this or that particular case, is with reference to the duty imposed by law. I cannot help thinking that this is the effect of *Coggs v. Bernard*. The declaration there contained

a promise like this, "*salvo et secure elecare.*" yet the only objection taken was, that there was no consideration; not, that no evidence could support such a contract. Further, in many cases cited, the breach has been, that the party did not use due and reasonable care. That shews that the pleaders had in view the real amount of liability. I think, therefore, that the promise is properly laid.

COLTMAN, J.—I am of the same opinion. *Harris v. Costar* is expressly in point. The judicial construction of the words limits their meaning to an undertaking to use that degree of caution which the law throws upon the party.

CRESSWELL, J.—Reason and authority are in favour of the plaintiff. These words have nowhere been taken to import an absolute insurance. Even a common carrier is not an insurer at all events, but is exempt from being chargeable for the acts of God or the King's enemies. The language of *Holt, C.J.* in *Coggs v. Bernard*, goes not only to the law of the case, but to the form of the declaration, which was in principle exactly similar to this.

ERLE, J.—The defendant contends that the declaration means to impute an absolute promise for safe conveyance. But it is rather a promise to convey with due attention to safety. That degree of attention will vary according to the nature of the bailment. The words "due and reasonable care" would not be any more definite than the words here employed. It would be as much a question of evidence what the due and reasonable care required in any case amounted to, as what the promise to convey safely and securely in any particular case imported. *Rule discharged.*

Monday, May 4.

HOPKINSON v. FINNEY.

Practice—Costs.

Where the indorsement upon a writ of summons claims more for costs than is really due, the proper course of the defendant is to pay the whole, and then procure a taxation. Therefore, where a defendant paid less than the sum indorsed, and in consequence the plaintiff's attorney proceeded in the action, although it afterwards turned out that the defendant had paid more than the plaintiff's attorney was actually entitled to, the Court refused to compel the plaintiff's attorney to pay the costs of the defendant subsequent to the date of the payment.

Byles, Serjt. moved for a rule, calling upon the plaintiff's attorney to shew cause why he should not pay to the defendant, or his attorney, the costs of the latter in this cause incurred since February 6. The writ was served on the 30th of January, with an indorsement claiming 16l. 16s. for debt, and 2l. for costs. On the 6th of February, the defendant called at the office of the plaintiff's attorney, and paid him the whole amount of the debt, but only 1l. 14s. for the costs, contending that no more was due. The plaintiff's attorney proceeded to deliver declaration and particulars of demand. A summons was taken out before Maule, J. to set aside the declaration, and that summons was dismissed, with costs 20s. upon the ground of its being made too late. The defendant then obtained an order to refer it to the Master, to ascertain whether any thing was due to the plaintiff for debt or costs, and the Master reported that he found that the sum paid upon the 6th of February exceeded the sum then due by 1s. 8d. An application had been made to the plaintiff's attorney, to indemnify the defendant for the costs incurred. The plaintiff's attorney refunded the 1s. 8d. overpaid, but refused to pay any part of the defendant's subsequent costs. On these grounds, the present application was made.

By the COURT.—The defendant ought to have paid all that was indorsed upon the writ, and then to have obtained an order to tax the plaintiff's costs in the usual way. As he failed to do that, he is not entitled to our assistance. *Rule refused.*

WILKINS v. NOKES.

Evidence—Admissions.

An answer in Chancery filed by a solicitor for a client cannot be used as evidence of any fact stated in the answer against the solicitor filing it.

Assumpsit.—Indorsement against the maker of a promissory note payable twelve months after date.

Plea 3. "That after the making of the said note, and before the indorsement thereof to the plaintiff, and before the said promissory note became due and payable, to wit, &c. the defendant paid to one J. S. then being the holder of the said promissory note, and the said J. S. then accepted and received from the defendant, &c. in full satisfaction and discharge of the said principal money and interest, &c. and that the plaintiff, at the time of the indorsement to him by the said J. S. &c. had full notice and knowledge of the premises.—*Verification.*"

Replication.—"That the defendant did not before the indorsement, &c. pay to the said J. S. nor did the said J. S. accept or receive, &c. *modo et forma.*—*Issue thereon.*"

At the trial, before Maule, J. at the second sittings in Middlesex in the present Term, after the plaintiff had closed his case, it was opened for the defendant that proceedings had been taken in a suit

in *Chancery, Nokes v. J. S.* and that in that suit the present plaintiff was the solicitor. The defendant proposed to establish his third plea by the answer in *Chancery of J. S.* Two letters were put in from the present plaintiff to J. S. the first informing him that he was going to file his answer, the latter informing him that the answer had been filed. The answer itself was then tendered, objected to, and rejected. A verdict was found for the plaintiff; and

Byles, Serjt. now moved for a new trial, upon the ground of the improper rejection of evidence. He submitted that the evidence was admissible. It would plainly have been so had the replication traversed that the plaintiff had notice instead of denying the agreement between J. S. and the defendant. But in reality the notice is in issue; because if there were no such agreement, there could be no notice of it. Whatsoever is necessarily implied in the thing traversed is itself traversed. [TINDAL, C.J.—There might be notice of a matter altogether false. CRESSWELL, J.—The replication means this—"Prove your agreement, and then I will admit that I had notice." Then this was evidence of the payment. The indorsee stands upon the title of the indorser. [ERLE, J.—He does not take under, but from him.] This is a declaration made by Wilkins himself, who is the solicitor in the suit. [CRESSWELL, J.—Does he vouch for the truth of what his client says?] If J. S. had made this statement in Wilkins' presence, it would have been evidence against Wilkins. [CRESSWELL, J.—That is because you thereby give evidence not of what the speaker says, but of what the conduct of the hearer is. Is an attorney to be affected by every affidavit which he files for his client in the course of a cause? TINDAL, C.J.—It seems to me to be no stronger than if Wilkins, the attorney, had said that his client had said something about the matter in dispute. You must prove the fact itself by something more than such evidence.] *Rule refused.*

BUSINESS OF THE WEEK.

Thursday, April 30.

POTTS and OTHERS, Assignees, v. EYTON and ANOTHER.—*Channell*, Serjt. showed cause. *Sir Thos. Wilde*, Serjt. (with him Crowder, Q.C. and Archbold), in support of the rule. *Cur. adv. vult.*

MOXLEY v. RICHARDSON.—*Byles*, Serjt. moved for a new trial upon an affidavit which had been used in support of an unsuccessful application to the judge at *Nisi Prius* to postpone the trial. Upon payment into court on or before May 4th of the amount of the verdict. *Rule to show cause.*

HARRIS v. ROBINSON.—Upon the application of *Byles*, Serjt. this rule was reopened.

DOE v. ROE.—*Dowling*, Serjt. moved for judgment against the casual ejector. Four of the tenants, since the commencement of this Term, had acknowledged the receipt before the Term of the rent and notice. Three had been served by putting the notice and demand on the door, and the wives of the tenants had since acknowledged the receipt. Judgment as to all but the three last; as to them, rule refused.

Friday, May 1.

SPECIAL PAPER.

GIBBS and ANOTHER v. FLIGHT and ANOTHER.—*Sir T. Wilde*, Serjt. (with him *Channell*, Serjt. and *Cowling*), for the plaintiffs. *Talfourd*, Serjt. (with him *Atkinson*), for the defendants. *Cur. adv. vult.*

THE CITY OF LONDON v. PARKINSON and OTHERS.—*Sir T. Wilde*, Serjt. moved for a reference to the Master for the purpose of appointing elisors, on the ground of the affidavits and oaths being interested. *Rule absolute.*

Saturday, May 2.

FRANCIS v. BEUCHER.—Argument concluded. *Cur. adv. vult.*

BARNES and ANOTHER v. ATTWOOD.—*Talfourd*, Serjt. moved for a rule to shew cause why the rule for a special jury in this case should not be discharged; or why, if the plaintiff should obtain a verdict with which the presiding judge should be satisfied, the plaintiff should not have judgment as of this Term. *Rule to shew cause.*

SOMERS v. HODDER.—*C. Jones*, Serjt. moved for a rule to shew cause why the rule of Court of April 21st should not be set aside, and why the defendant should not pay the costs of this application. The rule of Court was founded on a judge's order that the plaintiff should amend the issue delivered to the defendant, "and that the plaintiff do pay to the defendant, &c. 13s. 4d. costs." The copy of the order served upon the plaintiff, previous to making the order a rule of Court, was "that the plaintiff to pay," &c. There was, besides, an affidavit that the issue had never been tendered for amendment. *Rule refused.*

PARKHURST v. GOSBIE.—*C. Jones*, Serjt. moved for a rule calling upon the judge of the Sheriff's Court of the City of London to shew cause why he should not furnish to the defendant in this case a copy of his notes of a trial between the same parties held before him on the 16th of June, 1842. He produced an affidavit that the notes were material to the defendant for the purposes of his defence. *Rule refused.*

Monday, May 4.

RE v. HEMSWORTH.—In the case of *Hemsworth v. Brian*, *Talfourd*, Serjt. shewed cause against a rule obtained by *Byles*, Serjt. for discharging the bail in this case, on the ground that there had been vexatious delay in filing the interrogatories which the defendant was under a recognisance to answer. The Court thought that any irregularity or delay had been caused by the defendant himself. *Rule discharged, with costs.*

RE v. HEMSWORTH.—In the case of *Hemsworth v. Brian*, *Talfourd*, Serjt. moved for a rule to shew cause why the prosecutor should not be at liberty to amend the interrogatories filed in this court upon an attachment against the defendant. *Rule to shew cause.*

STEVENS v. FROST (from the Special Paper).—This was an action of detinue to which the defendant had pleaded not guilty. The plaintiff had demurred, and the defendant having delivered no paper books, the plaintiff had delivered

them for him. The Court had, upon a previous day in Term, directed that notice should be given to the defendant that the case would be called on to-day. Notice having been given accordingly, and no one now appearing for the defendant, and *Manning*, Serjt. for the plaintiff, the Court gave

judgment for the plaintiff. *Doe v. Roe*.—*Channell*, Serjt. moved for judgment against the casual ejector. There were several tenants, who had been regularly served. One piece of ground and one house had been deserted by the late tenants, and the declaration and notice had been affixed to the gates leading to the former, and to the door of the latter. As there appeared an unity of title, the Court granted a

rule absolute. *Stroud v. Watts*.—*Byles*, Serjt. moved for a rule to shew cause why the certificate indorsed upon the writ of trial herein should not be set aside, and why the Master's allocatur should not be set aside, and why the Master should not review his taxation. The writ of trial was executed before the Under Sheriff, but the indorsement upon the writ (3 & 4 Vict. c. 24, s. 2) purported to be made by the High Sheriff. 3 & 4 Wm. 4, c. 42, s. 18; and *Reg. v. Dym* (1 Car. & K. 730) were referred to. *Rule to shew cause.*

Brown v. De Winton.—*Channell*, Serjt. shewed cause against, and *Byles*, Serjt. supported, a rule for judgment as in case of a nonsuit obtained by the latter.

Rule discharged upon a peremptory undertaking to try at sittings after Trinity Term.

Norton v. Raphael.—*Dowling*, Serjt. shewed cause against, and *Byles*, Serjt. supported, a rule obtained by the latter for judgment as in case of a nonsuit.

Rule discharged upon a stet process. *Forsyth v. Allan*.—*Byles*, Serjt. shewed cause against, and *Manning*, Serjt. supported, the rule for a new trial. The only question was as to the weight of the evidence.

Rule discharged. *Cranwell v. Cooper*.—*Byles*, Serjt. moved for a new trial, upon the ground that the verdict was against evidence. *Cur. adv. vult.*

McDowall v. Spackman.—*Byles*, Serjt. moved for a rule, calling upon the defendant to shew cause why he should not pay to the plaintiff 35l. the amount of an award. *Rule to shew cause.*

Roberts v. Grunisen.—*Talfourd*, Serjt. (with him *Parnell*) shewed cause against the rule for a new trial. *Byles*, Serjt. in support of the rule.

Argument adjourned.

Tuesday, May 5.

Boydell and Another v. Harkness.—*Byles*, Serjt. moved for a new trial, upon the ground that the verdict was against evidence, and in arrest of judgment. The action was upon a bill of exchange, drawn payable at London, and the declaration averred only a general presentment to the acceptor. *Gibb v. Mather* (6 Blag. 214); *Lyon v. Holt* (5 M. & W. 250), were cited. Upon the latter point only, *Rule to shew cause.*

Boyle v. Chapman.—*Byles*, Serjt. shewed cause. *Channell*, Serjt. in support of the rule. It was ultimately agreed between the parties that the rule should be made absolute, upon payment of costs, and upon payment of the costs attending the first summons at chambers in this case. The costs of the second attendance at chambers to be costs in the cause. *Rule accordingly.*

Jarvis v. Sheridan.—*Byles*, Serjt. shewed cause. *Channell*, Serjt. (with him *Bovill*) in support of the rule. The only question was one of fact, viz. whether the absence of the plaintiff's witnesses at the trial, and the consequent nonsuit, was to be owing to misconduct on the part of the defendant's attorney that he ought to pay the costs of the nonsuit and of this application; and that the plaintiff ought to be at liberty to try again.

Rule discharged with costs. Upon payment of the costs of the last trial and of this rule, the plaintiff to be at liberty to try again.

Ricketts and Others v. Alcock and Others.—*Channell*, Serjt. moved for leave to sign judgment against such of the defendants as had been served with notice to appear to the *sci. fa.* herein, and had not appeared.

Rule absolute.

Roberts v. Grunisen.—Argument concluded.

Woolley v. Smith.—*Byles*, Serjt. moved for a rule to discharge the defendant out of custody, under 6 Geo. 4, c. 16, s. 126. It was contended that the sum for which the verdict was recovered was a debt provable under the *stat.* against the defendant, and that the defendant having obtained his certificate was entitled to relief. *Rule to shew cause.*

Jeffries v. Jablouski.—*Dowling*, Serjt. moved to set aside the issue delivered in this case for irregularity. The sum sought to be recovered was less than 20l. and the issue delivered with a view to trial before the sheriffs adopted the form prescribed by *Reg. Gen. H. T. 4 Wm. 4*, without filling up the blanks that appear in the form. *Rule to shew cause.*

Kays v. Hazwood.—*Byles*, Serjt. moved for a new trial, upon the ground of misdirection. First, the judge ought to have told the jury that as there appeared to be a written special agreement, there was no evidence to support the declaration, which consisted only of common counts. Secondly, he ought to have told the jury that the agreement amounted either to proof of payment, or to proof of accord and satisfaction. *Cur. adv. vult.*

Bennett v. Deacon.—*Talfourd*, Serjt. shewed cause, and *Byles*, Serjt. supported the rule obtained for a new trial upon the ground of misdirection. The only question was, whether a certain communication was or was not privileged. All the Court declared that they were unable to distinguish this case from that of *Corhead v. Richards* (not yet reported), and as the same authorities were cited and the case just mentioned was so recent, it was useless to discuss it at length. Accordingly, as in *Corhead v. Richards*, *Tindal*, C.J. and *Erle*, J. thought the communication privileged. *Coltman* and *Cresswell*, JJ. were of an opposite opinion. The Court being divided, *Rule discharged.*

Wednesday, May 6.

Reg. v. Hemsworth, in the case of *Hemsworth v. Brian*.—*Byles*, Serjt. moved to open this rule, which was disposed of the other day, and that a defect in the title of the affidavits used in shewing cause might be corrected. The object of the motion was, that the affidavits might be put into such a state that a charge of perjury might be founded upon them. The rule upon a previous day had been dissolved of without reference to the particular affidavits. *Rule refused.*

Huxtable v. Crooner.—*Kingslake*, Serjt. moved to set

aside the execution issued in this case, and to enter a suggestion upon the roll under 46 Geo. 3, c. 66, s. 40. The 1st and 12th sections of the Act were referred to, and the following cases: *Burbridge v. Marvin* (12 M. & W. 8); *Barney v. Todd* (3 H. Blac. 366); *Gordon v. Lloyd* (4 Dowl. 157).

Rule to shew cause. *Hensman v. Cole*.—*Manning*, Serjt. shewed cause against a rule obtained by *Channell*, Serjt. for judgment as in case of a nonsuit.

Rule discharged upon a peremptory undertaking. *Skelton v. Alcock*.—*Channell*, Serjt. shewed cause. *Byles*, Serjt. supported the rule for a new trial, upon the ground of the improper admission and the improper rejection of evidence. Upon reference to the notes of the Under Sheriff, and by affidavits, it now appeared, that the evidence said to be rejected had been actually received, and that no objection had been pressed at the trial against the evidence now said to have been improperly received. *Rule discharged.*

Rich v. Basterfield.—*Talfourd*, Serjt. (with him *Pearcock*) shewed cause. *Byles*, Serjt. (with him *Wordsworth*) in support of the rule. *Cur. adv. vult.*

COURT OF EXCHEQUER.

SLATER v. DANGERFIELD.

Construction of will.

The testator devised as follows: "Also I give and devise unto my grandson, G. D. all those freehold messuages, on, &c. to hold the same for and during the term of his natural life, and from and after his decease I give and devise the same unto and for the use of all and every the lawful issue of my said grandson G. D. their heirs and assigns for ever, equally, and as tenants, and not as joint tenants, when and as he or they shall attain his or their age of twenty-one years."

Held, that G. D. took an estate for life.

This was argued some Terms back, and the judgment stood over until the end of last Term, when it was delivered by Mr. Baron Parke. All the facts and the cases relied on on both sides are very fully set out in the judgment.

JUDGMENT.

PARKE, B.—This was an action for the title-deeds of an estate at Barking, and the only question is, whether the plaintiffs are the parties entitled to the land to which the deeds relate. The question arises under the will of Henry Taylor, which bears date the 23rd August, 1823, which, so far as it is material to set it out, is as follows:—"Also, I give and devise unto my grandson, George Dangerfield, all those freehold messuages or tenements which I purchased of J. Hawkins Haytler, and the outhouses, offices, gardens, and warehouses thereto belonging, situate in the High-street of Barking aforesaid, and now in the occupation of William Bowers, Joshua Molleroyd, and William Reid; and also all that freehold piece and parcel of arable land which I purchased of John Sanders, called Little Paradise Marsh, containing by estimation four acres or thereabouts, with the appurtenances thereunto belonging, situate in Barking aforesaid, and now in their occupation as under-tenants and assigns;" with an *habendum* "to hold the same unto his said grandson, George Dangerfield, for and during the term of his natural life, and from and immediately after his decease, I give and devise the same unto and the use of all and every the lawful issue of his said grandson, George Dangerfield, their heirs and assigns for ever, equally as tenants in common, and not as joint tenants, when and as he or they shall attain his or their age of twenty-one years." In the said will was also contained a devise and bequest of the residue and remainder of the real and personal estate of the said testator, to the effect following, that is to say:—"Also I give and bequeath all my stock and utensils in trade, household furniture, plate, linen and china, and all other my real and personal estate and effects whatsoever and wheresoever, not hereinbefore by me otherwise disposed of, unto my said daughter Sarah, the wife of the said George Dangerfield, and for her sole separate use, benefit, and disposal, independent of and without being subject and liable to the debts, management, or engagements of her present, or any future husband that she may marry, in manner hereinbefore mentioned." Henry Taylor died seized soon after the date of his will, and on his death George Dangerfield, the devisee, entered, and being seized, he, on the 18th Jan. 1844, by an indenture of disentailure, continued the property in question to certain uses, under which the defendants have claimed to be entitled to the lands, and obtain possession of the deed in question. In July 1844, George Dangerfield died, never having had any issue. Sarah Dangerfield, the residuary devisee, died in 1837, and all her rights to the lands in question under the residuary devise, became vested in the plaintiffs. This action is brought for the conversion by the defendant of the deeds in question; and it is admitted that the verdict shall be entered for the plaintiffs, if under the circumstances they are entitled to the lands devised by George Dangerfield. The point therefore to be decided is, what estate George Dangerfield took. If he took an estate tail, then by the deed of disentailure the rights of all persons in remainder, including the plaintiff's own claims under Sarah Dangerfield, the residuary devisee, are barred, and the present action cannot be sustained. But if he took for life

only, with remainder to his children as purchaser, then as he never had any issue in the estate, the plaintiffs as claiming under the residuary devise are entitled to possession, and will be entitled to recover in this action. The question, therefore, is one of those which are of very frequent occurrence; namely, whether the word "issue" is to be treated as a word of limitation or a word of purchase. The general rule in these cases is clear and well established; the word "issue" in a will *prima facie*, means the same thing as heirs of the body, and is to be considered as a word of limitation; but such *prima facie* construction will give way if there be on the face of the will sufficient to show that the word was intended to have had a less extensive meaning, and to have applied generally to children, or to descendants of a particular class, or at a particular time. Though, however, the rule thus stated is perfectly clear, yet its application is often very difficult; the question in each particular case is, what are the circumstances that in each case are to be considered sufficient to indicate that the word has been used in the restricted sense? Indeed the rule itself is one not more applicable to the word "issue" than it is to the words "heirs of the body," or indeed to any other word which can be suggested. In all cases the *prima facie* import of the words used by a testator is liable to be controlled or modified by the context; when it was once established that a devise to a man and his "issue," means the same thing as a devise to him and the "heirs of his body," it might have appeared reasonable to hold all the rules of construction applicable to the latter words, were applicable to the former also. Considering the great importance of adhering to general rules in the interpretation of wills, with the view of attaining to as much certainty and uniformity of decision as the subject admits, the Courts have been less reluctant to narrow the *prima facie* meaning of the word "issue" than the words "heirs of the body," and have done so in some cases so nearly resembling the present as to be incapable of being distinguished from it on any satisfactory ground. But we, without deciding what the construction would have been if the words "heirs of the body" had been used, feel ourselves bound to take the same course, and to hold that the grandson, George Dangerfield, took an estate for life. The case of *Greenwood v. Rothwell* (6 Mann. & Grainger, 628) is precisely in point; that was a devise to J. G. for his life, and after his death to all and every the issue of his body as tenants in common, and the heirs of such issue: under this devise the Court of Common Pleas decided that J. G. took an estate for life. That case is a distinct authority for holding that where there is a devise to one for life, and remainder to his issue as tenants in common, and remainder to the heirs general, the issue to take as purchasers in fee. It would be impossible to decide in the case before us that the grandson took an estate tail, without at the same time overruling the case of *Greenwood v. Rothwell*, but all the circumstances there, indicating that the word "issue" is a word of purchase and not of limitation, occur also in the case before us, with the further circumstance that in the present case the parties to take under the description of "issue," are only to take when and as they attain the age of twenty-one years, which brings the case very closely within the principle of *Merrett v. James* (1 Brod. & B. 484), where the gift over in case of the issue dying under twenty-one, was held of itself insufficient to shew that the word "issue" was used in its limited, and not in its general sense. Whether the decision in that case was quite satisfactory is not now in question, but it would be a strange thing where in the present case we find that where the qualification which in *Greenwood v. Rothwell* was sufficient to induce the Court to treat the word "issue" as a word of purchase, and also the words in *Merrett v. James* were construed to have the same effect, to hold that both these cases ought to be disregarded, and that acting upon some supposed rule of law, the more extended and legitimate meaning of the word "issue" must be adhered to. But it is not merely these two cases we should have to encounter, in deciding that the grandson took an estate tail; such a decision would be in direct opposition to the case of *Lees v. Morey* (1 Y. & Col. 589), in this Court. That was a devise to U. J. for life with a remainder to his lawful issue and their respective heirs, in such shares as U. J. should appoint, but in case U. J. should not marry, to U. J. when he should attain twenty-one, then to the testator's son to hold, and his heirs. The Court, after great deliberation, held the word "issue" there to be a word of purchase, and that U. J. took for life only. This decision proceeded on the ground that the issue were intended in default of appointment to take as tenants in common, and to take an estate in fee, but only in the event of their attaining twenty-one, and such circumstances were held sufficient to show that "issue" is used in its restricted, and not in its *prima facie* general meaning—descendants extending through all time. The Court, in those and similar cases, construed a devise over in default of issue as clearly meaning a devise over on a general failure of issue, and proceeding on that construction of a devise over,

it was a very natural corollary that a general devise to issue must have been also intended to embrace all the issue, so as to make the objects of the devise over co-extensive with those, on failure of which the devise over was to take effect; and this might very fairly justify the Court in disregarding the circumstances, which, but for the devise over, would have had the effect of narrowing the *prima facie* effect of the word "issue." All the other cases relied on by the defendant would, on examination, be found either to have turned the words "heirs of the body" into the word "issue," or else to have wanted some circumstances which, in *Merrett v. James*, *Lees v. Morey*, and *Greenwood v. Rothwell*, were held to make the word "issue" a word of purchase, and not a word of limitation. Upon these authorities we feel bound to hold that the grandson, George Dangerfield, took for life only, and that, on his death, without having had issue, the residuary devise took effect. It may be right to advert to one matter contended for upon the argument at the Bar, namely, that in this case there was in fact a devise over, inasmuch as the residuary clause will carry all the interest not previously given to the issue; but this is founded altogether on fallacy. A gift over in the cases where it has been relied on, has always been a gift expressly in default of issue, and it is important in helping the Court to come to a decision: it depends entirely on the circumstances. That it is to take effect only in the failure of general issue, where the language has always been such as fairly to warrant the Court in saying that the devise over was to take effect only on the general failure of issue, and so reasoning backwards, to infer that in an original devise the word "issue" meant issue to all general issue, may be matter of doubt; but it is quite clear that none of the reasons on which in those cases the judges have proceeded, can be applied to a general residuary devise of all not previously disposed of. It can make no difference whether the interests in real estates are undisposed of, and are to be carried by the law to the heirs, or disposed of by the testator and the devisee. It remains only to advert to a point rather suggested than seriously argued; namely, that even taking George Dangerfield to have been tenant for life only, yet that the deed of disentailment had the same effect as a fine or recovery would formerly have had, in divesting a subsequent contingent estate, and so creating a tortious fee; but the answer given by the plaintiffs' counsel was conclusive. The deed would have had no such operation at common law, and its effect under the statute depends entirely upon its having been executed by a tenant in tail; and as we are of opinion that George Dangerfield was not tenant in tail, his deed can have no statutory operation. We are therefore of opinion, for the reasons we have already stated, that George Dangerfield took an estate for the term of his life only; and that on his death without having issue, the plaintiffs claiming under the residuary devise became entitled to the rents in question; consequently, they are entitled to our judgment in this action.

Judgment for the plaintiff.

WARD v. ROBINS.

In an action on the case for obstructing a water-course, the declaration set out a right to enjoy the water by means of a certain weir, which it alleged ought to have been kept at a certain height; and the breach was, that the defendant pulled down the said weir and placed it at a lower height, whereby the plaintiff was interrupted in his said right. To this the defendant pleaded a special plea, that he was the occupier of the close adjoining the said weir for the time being for twenty-one years next before the commencement of the suit, and now has the right, from time to time, as occasion may require, to lower the said weir, for the purpose of irrigating the said close for the beneficial enjoyment of the same. Held, on special demurrer, that the said plea was not bad as amounting to the general issue, on the ground that as the plea was framed on Lord Tenterden's Act, stating a title under that Act by prior and subsequent enjoyment together, it is not inconsistent with the plaintiff's alleged right at the time, and therefore was not an argumentative traverse, but was good by way of confession and avoidance.

This case was argued some time since, and as the facts of the case and the point decided appear so fully from the judgment of Parke, B. it is unnecessary to set them out here.

JUDGMENT.

PARKE, B.—This was an action on the case for obstructing a water-course. The plaintiff declares that he ought to have had and enjoyed, and still of right ought to have and enjoy, the benefit and advantage of a stream of water in the county aforesaid, which of right ought to have run and flowed by means of a weir, which weir ought to be kept at a certain height for the purpose of supplying the mill with water. The breach is, that the defendant, at a certain time, pulled down the weir, and placed and fixed the same at a much lower height than it ought to have been. And there is a special plea, as to the supposed pulling down the weir, and placing and fixing the same at such lower height, as in the declara-

tion mentioned, and keeping it continually so placed, except as before at the said divers times that the defendant was the occupier of the said close, called Careless Close, adjoining the water-course, and as the occupier at the time being, of the said Close for a period of twenty-one years next before the commencement of this suit, now has the right, and without interruption had, from time to time, as occasion required, of removing part of the weir, and placing and fixing the same at a lower height than the rest of the said water, and keeping and continuing the said part of the said weir at such lower height as aforesaid, and thereby had the right of irrigating the said close for the beneficial enjoyment thereof. There is a demurrer to this plea, on the ground that it is an argumentative denial of so much of that part of the declaration to which it is pleaded, that the water of such stream or watercourse ought to have run and flowed by means of the said weir. We who heard the argument in this case, namely, my brothers Rolfe, Platt, and myself, have considered it, and are of opinion the plea is good. We came to the conclusion that the plea is not bad as an argumentative traverse, on the ground of the objection stated on special demurrer, on account of the peculiar nature of the right given by Lord Tenterden's Act, the twenty year enjoyment by the occupier. Such enjoyment, in order to give a right under that statute, must be up to the time of the commencement of the suit, not up to the time of the act complained of, consequently the enjoyment of twenty years or more before that act is only what may be termed an inchoate title, which may be concluded or not by an enjoyment subsequent, accordingly as the enjoyment is one not continued to the commencement of the suit. This apparent absurdity arises from a strict construction of the section that has already been fully considered by this Court in the case of *Wright v. Willis* (1 M. & W. 77), and the literal interpretation adhered to, the Court intimating its opinion that the mischief of such a construction was rather apparent; and the decision in that case was fully allowed and acted upon by the Court of Queen's Bench in the case of *Richard v. Fly* (3 Nev. & Per. 67). The plea, therefore, which states an inchoate right at the time of the act complained of, and that such an incomplete right exist under the statute, gives an implied colourable title to the plaintiff at the time of the act complained of. It confesses a right at that time to have the weir at a certain height, but avoids that right by shewing that the defendant is then in such a position as that by matter subsequent he had such a right to pull down any part of the weir. Had the plea (as it might have done if the facts warranted it) stated a complete right in the defendant at the time of the act complained of, by known existing grant or prescription, it would certainly have been an argumentative traverse, as such being inconsistent with the plaintiff's right at the time to have the weir at the height claimed, it would have been bad without a special traverse of the plaintiff's right. But as the plea is founded on Lord Tenterden's Act only, no title under that Act can be absolutely good at the time of the Act, however old the possession might have been; but the stating a title under that Act by prior and subsequent enjoyment together, is not inconsistent with the plaintiff's alleged right at the time, and therefore is not an argumentative traverse, but is good by way of confession and avoidance. Our judgment is therefore for the defendant.

Judgment for the defendant.

LOAD and ANOTHER, v. GREEN and OTHERS, assignees of John Banister, a bankrupt.

In an action of trover against the assignees of a bankrupt, to recover certain goods, it appeared, that the bankrupt had, on the 1st of July, fraudulently bought the said goods of the plaintiff without any intention of ever paying for the same; immediately after the delivery of the goods he became bankrupt, and a fiat issuing against him, his assignees (the defendants) on the 8th of July, finding the goods on the premises of the bankrupt, seized the same as being in his order and disposition, under 6 Geo. 4, c. 16, s. 74: Held, that the assignees were not entitled to the goods, as they were obtained by a fraudulent purchase of the bankrupt, and that the plaintiff had a right to disaffirm the sale, recover the property in the goods in themselves, and recover their value in an action of trover against the assignees.

This was an action of trover, brought to recover the value of certain silk and other goods. The defendant pleaded two pleas; first, not guilty; and secondly that the plaintiffs were not possessed of the said goods.

At the trial it appeared that the goods in question had been fraudulently purchased of the plaintiff by one John Banister (just before his bankruptcy), without any intention of paying for them. The goods were delivered to Banister, on the 4th of July, and on the 8th of the same month the defendants, as his assignees, seized the goods on his premises. The bankruptcy, it appeared, took place immediately after the delivery of the goods. The question was, whether the defendants, as assignees, had acquired a pro-

party in the goods, as being within the order and disposition of the bankrupt, under 6 Geo. 4, c. 16, sec. 72, or whether the fraud which had been practised by the bankrupt prevented any property passing to him. A verdict was directed to be entered for the plaintiff, damages 107l. 6s. 6d. with leave for the defendants to move to enter a nonsuit or a verdict.

Humphrey obtained a rule nisi accordingly, against which

Martin, Q. C. and *Wordsworth*, shewed cause, citing *Miller v. Demetz* (1 M. & R. 479); *Ex parte Carlwio* (2 Mont. & Ayr. 39); *Noble v. Adams* (7 Taunt. 59); *Ferguson v. Carrington* (3 C. & P. 457); *Milwood v. Forbes* (4 Esp. 171); *Tooke v. Hollinsworth* (5 Term R. 215); *Sinclair v. Stevenson* (2 Bing. 514).

Humphrey and *Aspland*, contra, cited *Parker v. Parfick* (5 Term R. 175); *Wright v. Lawes* (4 Esp. 82). *Cv. adv. vult.*

The judgment of the Court was, on the subsequent Term, delivered by

PARKER, B.—This case was argued before the Lord Chief Baron, my brothers, Alderson, Platt, and myself during the last Term. It was an action of trover against the defendants who were assignees of the bankrupt to recover goods obtained from them by a fraudulent purchase from the plaintiff, without intending to pay for them. If the plaintiff has a right to recover in the suit by avoiding the contract on the ground of fraud, it would be upon the principle of the case of *Noble v. Adams* (7 Taunt. 59). The purchase took place on the 1st of July; the delivery of the goods on the 4th; the flat, under which the defendants were chosen assignees, issued on the 8th. The petitioning creditor's debt was contracted on the 4th of June; the act of bankruptcy took place on the 23rd of June; the assignees took possession of the goods, and having refused to deliver them up, the plaintiff brought this action. If the act of bankruptcy is taken to be on the 23rd of June, no further question can arise, but the defence of the assignees rests on the ground that they are entitled to the goods as having been in the possession of the bankrupt, the apparent owner, with the consent and full knowledge of the true owner, under the 72nd sec. of the 6 Geo. 4, c. 16. But to come within that section, the goods must have been in the bankrupt's possession at the time of the act of bankruptcy, or at the time of committing the act of bankruptcy; and if they did not come to him until afterwards, the statute does not apply. (*Lyon v. Wilson*, and *Others*, 2 Bing. 334.) If, however, our decision were to proceed on this ground, and we were of opinion that if the act of bankruptcy

subsequent to the delivery, the assignees would have been bound to yield to the request of the defendant's counsel, and grant a rule for a new trial on the payment of costs, as at the trial we learned Judge had not his attention sufficiently called to the alleged act of bankruptcy on the 23rd of June. Our opinion, however, is that, assuming that the act of bankruptcy took place after the 4th of July, and that the goods must have been delivered, the assignees are not entitled; as the goods were obtained by a fraudulent purchase, and the plaintiff had a right to disaffirm it, reinvest the property in the goods, and to recover their value in an action of trover against the bankrupt; as the assignees took, by virtue of the assignment, and such interest only as that which the bankrupt had, the plaintiff had a right to recover the value of the goods in the hands of the assignees in the same form of action on a conversion by them, unless the assignees are entitled to these goods under the 72nd section. The question is, whether there was a case of apparent ownership at the time of the bankruptcy, with the consent of the true owner, within the meaning of the repealed Act, the 21 James, and the existing Act, that of the 6 Geo. 4, c. 16, s. 72: we think there was not. None of the cases cited and relied upon by the counsel on the behalf of the defendants decided that where goods are obtained by fraud before the act of bankruptcy, and are in the bankrupt's possession at that time, they pass to the assignees under the clause relating to apparent ownership. In *Milward v. Forbes* (4 Esp. 178), Lord Ellenborough's judgment proceeded on the ground that the property actually passed to the bankrupt by the sale under the circumstances of that case; and in *Sinclair v. Stevenson* (2 Bing. 514), the jury negatived fraud, and they also found, incorrectly, as it would seem, the transaction to be usurious; and though the Chief Justice, Lord Wynford, appears to have expressed an opinion that if goods were obtained by means of fraud, and were left in the bankrupt's possession by the true owner for a long time before the act of bankruptcy, the assignees would be entitled to them on the ground of apparent ownership; that dictum was extra-judicial, and the Court did not decide the case on that ground. In *Halswell v. Esat* (3 Term R. 231), the case was decided on the ground that the property actually passed to the bankrupt, and not only by apparent ownership. Not being bound by the decisions, we must consider whether the case falls within the principle of the 21 Jac.; the meaning of this section is well explained by Mr. Baron Richards in *Joy v.*

Campbell (Scho. & Lef. 336). In construing the analogous Irish Act, his Lordship says it refers to chattels which are in the order and disposition of any person who is not the owner, and to whom they did not properly belong, and who ought not to have had them, and who had been permitted by the owner unconsciously to have such order and disposition, the object was to prevent deceit by a trader by goods being left in his possession to which he was not entitled; but in the construction of the Act the nature of the possession of the property must be considered, and the words must be construed to mean possession of the goods, and with the consent of the true owner. In order, therefore, to bring this case within the statute, there must be a real owner distinct from the apparent owner, and the real owner must consent to the apparent ownership of another as such. In this case, the plaintiff did not consent to the apparent ownership, as such he never contemplated permitting the bankrupt to obtain credit by means of possession and ownership of property which really did not belong to him, but intended to part with the property itself, and divest himself altogether of all right thereto; and though in consequence of the bankrupt's fraud upon him he had a right to annul the contract, the right did not exist until after the bankruptcy. Consequently, at the time of the act of bankruptcy on which the title of the assignees depends, the bankrupt was not the apparent owner, but the real owner; therefore the statute does not apply. It is to be understood these observations are not meant to affect that class of cases in which the real owner of goods gets into possession only by the interest of the bankrupt, as where he releases the bankrupt under such circumstances that the bankrupt would of necessity carry with him the reputation of absolute ownership. These cases proceed upon the principle that the true ownership and the apparent ownership of the bankrupt are contrary to truth, because it is the result of the consent which the plaintiff gave whether it would, in this particular case, fall within the statute, as where there was a delivery in fraud long before the action brought, and he omitted within a reasonable time to avail himself of the right to rescind the contract, is no question in the present case; for the act of bankruptcy follows the sale and delivery within a short time, and it was mainly on that ground the opinion of Lord Wynford proceeded in the case referred to. The judgment must, therefore, be for the plaintiff, and the rule must be discharged.

Rule discharged.

Wednesday, April 29.

COLLINS v. HOPWOOD.

Excise Act—Qui tam action—Jurisdiction of Courts at Westminster.

Who may sue for penalties for delivering sacks of coal deficient in weight, under 1 & 2 Wm. 4, c. 76, when the number of sacks deficient, in respect of one transaction, exceeds five.

This was a demurrer to a declaration. The declaration stated that the defendant was a seller of coal; carrying on his business at a certain wharf within 25 miles of the General Post-office of the City of London, and that he sold to the plaintiff, at the said wharf, two tons of coal, to be delivered to him in sacks; that he then sent from the said wharf to the house of the plaintiff in Broad-street, Westminster, in the county of Middlesex, a quantity of coal in twenty sacks, as and for the said two tons of coal, with a ticket stating that each sack contained 224 pounds of coal, as required by the Act; that the plaintiff thereupon required the carman to weigh seventeen of such sacks, and procured the attendance of a credible and indifferent person to be present at the weighing; that the said seventeen sacks were accordingly weighed, and each of such sacks contained less than 224 pounds weight of coal, contrary to the form of the statute in such case made and provided, whereby, and by force of the statute in such case made, and provided, the defendant forfeited, for his said offence, the sum of five pounds for every such sack of coal so found deficient as aforesaid, then and there amounting, in the whole, to eighty-five pounds.

Demurrer, for that the penalties for which the declaration proceeds are under the provisions of 1 & 2 Wm. 4, c. 76, which imposes these penalties, recoverable only before a justice of the peace, and that an action of debt does not lie.

Scotland, in support of the demurrer contended, that the proceedings should have been before a justice of the peace, as the penalties in respect of each sack could not exceed 5l. and the statute provided that all penalties not exceeding 25l. should be recoverable before a justice of the peace. Even if the whole forfeiture was to be regarded as one penalty, the party must go before a justice, because the statute authorized the mitigation of the penalty, which could only be done by a justice of the peace.

Cases cited: *Cates qui tam v. Knight* (3 T.R. 442); *Reece qui tam v. Poole* (4 B. & C. 158).

Prideaux, contra, was not called upon.

By the Court.—The plaintiff is entitled to judgment. This is one penalty, the number of sacks delivered regulating the possible amount of forfeiture, which may exceed the sum over which the magistrate

has jurisdiction. *Reece qui tam v. Poole* is, in principle, a direct authority in favour of the plaintiff.

Judgment for the plaintiff, with leave to defendant to plead over on payment of costs.

Friday, May 1.

REG. v. WOODBRUFFE.

Liability of a person having adulterated tobacco in his possession, under stat. 5 & 6 Vict. c. 93.

In this case an information had been laid against the defendant for having in his possession a quantity of manufactured cut tobacco, with which sugar and other saccharine matter was mixed, the proceedings being taken under the provisions of the stat. 7 & 8 Geo. 4, c. 53. The information having been dismissed by the justices of petty sessions of the borough of Yarmouth, the excise officer appealed to the quarter sessions, who dismissed the appeal, subject to a special case stated by the justices of quarter sessions, for the opinion of the Court of Exchequer. Two questions were raised by the special case for the decision of the Court—1st. As to the validity of the notices of appeal, and of trial of the appeal; and, 2nd. Whether the defendant could be convicted under the stat. 5 & 6 Vict. c. 93, s. 3, of having in his possession adulterated tobacco; it appearing that the defendant, although having such tobacco actually in his possession, was not aware that it was adulterated in the manner prohibited by the Act.

Jas. Wilde, for the Crown, contended, 1st. That the notices of appeal and trial were regular and sufficient, according to the statutes 7 & 8 Geo. 4, c. 53, ss. 82, 83, and 4 & 5 Wm. 4, c. 51, ss. 22, 23. 2ndly, He argued on the merits that the very object of the Legislature in passing the stat. 5 & 6 Vict. c. 93, is to prevent possession of adulterated tobacco by intentionally stringent enactments, and to throw upon the party charged with this particular offence the onus of shewing that the tobacco in his possession is not so adulterated as charged. He argued that the last-mentioned Act was passed for the protection of the public, and that consequently the Court would give its provisions full effect, notwithstanding any private hardship which might be caused by so doing; and, lastly, he observed, that from the facts stated in the special case it was clear that the defendant had the tobacco in his possession knowingly, and therefore it lay upon him to prove in answer to the information that it was not adulterated. He cited, *The Attorney-General v. Lockwood* (9 M. & W. 568); *Rees v. Marsh* (4 Dowl. & Ry. 261); and referred to the recent proceedings in *The Attorney-General v. Smith*, in which the defendants (distillers) were convicted of an infraction of the Excise Laws.

Crompton, for the defendant, argued that the notices were irregular, and that great hardship and injustice would be occasioned by a strict construction and application of the stat. 5 & 6 Vict. c. 93. He cited *Bateman's Excise Laws*, 123.

Wilde, in reply, was stopped by the Court.

POLLOCK, C.B.—A reference to the stat. 4 & 5 Wm. 4, c. 51, s. 22, 23, will shew that the objections raised to the validity of the notices are unavailing. Then as to the more important question, viz. whether the defendant in the present case has been guilty of a violation of the Excise Laws—he knew that he was in possession of this tobacco—then, by the Act, persons dealing in this article are required to use proper caution, and are made responsible if it be of a specified description, that is to say, adulterated by an admixture of sugar or saccharine matter. The defendant was bound to examine the tobacco, before he suffered it to come into his possession, or he might have protected himself against the consequences of its proving to be adulterated by requiring a guarantee from the vendor. The 3rd section of the stat. 5 & 6 Vict. c. 93, is very stringent, and applies even where the party in possession of adulterated tobacco was not aware when it came into his possession, or subsequently that it was so adulterated. The offence has been fully brought home to the defendant.

The rest of the Court concurred.

Order of Sessions quashed, and defendant convicted in the mitigated penalty of 50l.

Saturday, May 2.

COOPER v. FALKNER.

Motion to enter a nonsuit.

This was an action on a banker's cheque, and there was only one count in the declaration which was in the usual form. At the trial the plaintiff had a verdict. Damages, 386l.

Crowder, Q.C. now moved (pursuant to leave reserved) to enter a nonsuit; he stated that the question would turn on the Stamp Act. It appeared that at the trial a document was tendered in evidence, which, in form, resembled an ordinary banker's cheque, drawn on Messrs. John Brown and Company; it was objected to on the ground that there were no bankers in London trading under the firm of John Brown and Co. and, therefore, it did not come within the exemption in favour of bankers in the Stamp Act (55 Geo. 3, c. 184, and 9 Geo. 4, c. 49, s. 18), but required a stamp. It was then sought on the part of the plaintiff to shew that John Brown and Co. acted as bankers, although not

registered at Somerset House under 7 & 8 Vict. c. 39, s. 21. The evidence, however, only went to show that similar cheques had been taken to the office of Brown and Co., and had been paid "over the counter." On the other hand, a witness was called on the part of the defendant, who stated that Brown and Co. were bill brokers, and not bankers, but that he had bought cheques of them, two or three at a time; and had drawn on them, paying in money to meet each transaction: he, however, kept no account with them, or had any pass-book, and the whole mode of dealing was alleged to be fraudulent; for when the cheques were paid away they were crossed, so as to render it necessary to pay them through a banker, and so a day's credit was obtained. [POLLOCK, C.B.—Do not many of the foreign agents pay cheques drawn on them in this way—any agents for instance?] No doubt; but they keep funds of the party so drawing, and act in all respects as bankers. The question really is, did Brown and Co. act as bankers so as to come within the exemption in the Stamp Act?

Cases cited: *Castleman v. Ray* (2 Bos. & Pul. 383.) Rule nisi.

RAMSBOTTOM V. DUCKWORTH.

Motion to enter a verdict for the plaintiff.

This was an action of replevin for taking certain goods of the plaintiff. The defendant avowed the taking as for a church-rate made in a certain chapelry, of which he was the chapel-warden. At the trial a verdict was directed for the defendant, with leave for the plaintiff to move to enter a verdict for 3l. 3s., which was the value of the goods taken.

Martin, Q.C., now moved accordingly on several grounds. 1st. That the rate under which the defendant justified the taking was bad, as being made on the landowners only in the chapelry, and not the whole of the property in the chapelry. (See 1 Burn's Justice, 648, and *Ambrose v. Hutton*, 1 H. Bl. 644.) 2nd. That the proceedings were wrong, as it was not stated on the face of the plea, that the examination of the persons upon whose complaint the rate was ordered to be paid by the justices (under 53 Geo. 3, c. 127, s. 7) was upon oath, but only that they were "duly" examined. This, it was contended, was not sufficient; and *Re Gray* (2 Dowl. & Low. 539) was cited. It was also objected that there was a variance between the statement of the person to whom the debt was due and the proof; and also that it was not alleged that the warrant (which was directed to the constable of Eaglesfield) was executed by him.

Rule nisi.

WALLER V. BLACKLOCK.

Motion to review the Master's taxation.

In this case it appeared issue had been joined, and the cause entered for trial at the Summer Assizes for 1844, but was made a *remand*. In 1845 the defendant made an application to a judge at chambers to be allowed to amend one of his pleas, which was pleaded only to a part of the declaration, and to be allowed to plead it generally to the whole declaration. This was opposed by the plaintiff, but the learned judge allowed the amendment on payment of the costs of, and occasioned by, such amendment. These were accordingly paid, and the amendment made the cause went down for trial, when a verdict was found for the defendant on the amended plea, which went to the whole cause of action, but the issues on the other pleas were for the plaintiff. On the taxation of costs, the Master allowed the defendant the general costs of the trial, but refused to allow him his costs at the previous assizes, when the cause was made a *remand*, but, on the other hand, allowed the plaintiff all his costs at that assize.

Cocking now moved for a rule, calling on the Master to review his taxation, and contended that there was nothing in this case to take it out of the rule, that where a cause is made a *remand*, the party ultimately succeeding is entitled to the costs of preparing to go to trial at the assizes at which the cause is made a *remand*, as well as those of the trial.

Rule nisi.

ELLIS V. HOZIER.

New trial.

This was an action before the Sheriff of Middlesex; verdict for the plaintiff; damages, 10l. 10s.

H. Wilde now moved to enter a verdict for the defendant, or for a nonsuit, on the ground of misdirection. The action was brought by the master of a club for the arrears of a subscription alleged to be due from the defendant as a member thereof. The only evidence against the defendant was that of a man named Sainsbury, who stated, that in 1841, a person of the same name as the defendant had been elected a member of the club; this the learned Under Sheriff ruled was sufficient to entitle the master of the club to recover the arrears of subscription. It was now submitted that there was not sufficient evidence that the defendant was the person who was so elected; also, that the master could not sue by himself for the arrears of subscriptions of the members; and also on the construction of the rules of the club, which had been put in at the trial.

Rule nisi.

Wednesday, May 6.

PARKER V. PERRY.

A notice of declaration describing the declaration as in debt where the writ was issued on promises is irregular, and the Court, on motion, will set aside such notice. Regularity of affidavit taken before a country commissioner, one of a firm acting as defendant's attorneys.

Atherton showed cause against a rule obtained by Greaves, to set aside the notice of declaration given by the plaintiff in the above case; it appeared that the writ was on promises, whereas the notice described the declaration as being in debt. Atherton contended, first, that the affidavit on which the rule nisi had been moved, could not properly be used, inasmuch as it had been sworn in the country before a commissioner who was a member of the firm, acting as attorneys for the defendant in the matter of this application; as to this he referred to *Kidd v. Davis* (5 Dowl. P. C. 568); secondly, he argued that the application ought to have been to set aside the declaration, and not merely the notice of declaration; he cited *Robinson v. Errington* (9 Dowl. P. C. 107) to show that the application to set aside the notice and the declaration would have been justified.

Greaves, in support of his rule, observed that the defendant could make no other application than the present, because he could not ascertain whether the declaration was correct or not, except by taking it out of the office where it had been filed, which would, if it proved to be correct, amount to a waiver of the irregularity in the notice; he cited *Beaumont v. Dean*, (4 Dowl. 354.)

By the COURT.—The first objection which has been taken by Mr. Atherton is answered by the fact, that the attorney's name is not on the record at the present stage of this cause, and it does not sufficiently appear, that the party before whom the affidavit was sworn, acted for defendant at the commencement of the cause. (*Doe v. Roe*, 5 Dowl. P. C. 409.) As to the second point, the plaintiff's course is clear; if the declaration is right, he must give a new notice; if wrong, he must give a new notice, and declare in the proper form of action.

Rule absolute.

BUSINESS OF THE WEEK.

Thursday, April 30.

SLACK V. FRANCIS.—E. James moved for a nonsuit, on the ground that there was no sufficient evidence of a conversation.—The Court said there was ample evidence in the case upon which the jury might act. Rule refused.

KNIGHT V. THE MARQUIS OF WATERFORD.

Part heard.

Friday, May 1.

KNIGHT V. THE MARQUIS OF WATERFORD.—Watson, Q.C., Addison, and Mendenhall were heard in support of the rule obtained in this case. Cur. adv. vult.

WOOD V. COWLING.—Jervis, Q.C. moved for a new trial. Cur. adv. vult.

FAKNER C. GIBBS.—Paine moved to set aside the issue which had been delivered herein, on ground of irregularity. Rule nisi.

The Court rose at one to take Crown cases with the other judges.

Monday, May 4.

MONEYPENNY V. DEERING.

Argument resumed, and continued to the end of the day, when it was again adjourned.

Tuesday, May 5.

BOYLE V. BRANDON.—This was an action for seduction. Pleas: 1, the general issue; 2, accord and satisfaction; 3, leave and license. The jury found for the defendant on all the issues thus raised; but Kennedy having obtained a rule nisi for a new trial, on the ground of misdirection as to the first issue, Watson, Q.C. consented, on behalf of the defendant, that the verdict should be entered for the plaintiff upon this issue, and for the defendant upon the two other issues. Kennedy subsequently obtained a rule, calling on the defendant to show cause why the Master should not tax the plaintiff's costs on the first issue, as the general costs of the cause, and why the defendant should not pay such taxed costs without deducting his costs on the two other issues. Watson, Q.C. now showed cause against the above-mentioned rule, citing *Goodman v. Lane* (1 M. & W. 156); *Cox v. Raisin* (7 Dowl. 203); *Jervis's Rules*, 366, 367; and Kennedy having thereupon admitted that he could not support his rule, it was discharged. Rule discharged.

CUTLER V. PELLETIER.—Hindmarsh now showed cause against a rule obtained by Fitzherbert, calling on the plaintiff to show cause why he should not be at liberty to sign judgment for 50l. debt, 1s. damages, and 40s. costs, and why the cause should not be referred back to the arbitrator, or why the verdict should not be set aside, or such other order made, as to the Court should seem fit. The Court, without calling upon Fitzherbert, made the rule absolute for entering judgment for 50l. The costs of the cause to follow the award. Rule absolute.

MONEYPENNY V. DEERING.—The arguments in this special case, which was sent by Vice-Chancellor Wigram for the opinion of this Court, and which was part heard on Wednesday, April 29, were this day concluded. Cur. adv. vult.

HAIGH V. PAVIS.—Rule nisi for a nonsuit, or for a new trial, on the ground of misdirection.

Wednesday, May 6.

BEADLE V. MURRAY.—M. Chambers, Q.C. moved on behalf of the plaintiff in the above action to bring back the venue to London, on affidavits stating the plaintiff's belief that an impartial trial could not be had in Hertfordshire, the defendant being a magistrate of that county, and possessed of considerable property therein, as well as local influence, and some of the principal witnesses belonging to the rural police force for the above mentioned county. The Court, however, thought that the affidavit in support of the motion

did not disclose a sufficient ground for their intention to the manner required by the plaintiff, and refused to act.

BLUNDELL V. YATES.—Stammers showed cause upon the rule nisi for a new trial in this case, which had been obtained by Charnock (April 17). The question was whether evidence adduced for the defendant was sufficient to establish his plea of set-off. Rule nisi.

O'BRIEN V. CLEMENT.—Lord moved for a rule nisi to set aside an order of Platt, D. made in this case, and not to be reconsidered. The action was for a libel published in a newspaper, and the order of the learned Judge was, in defendant should be at liberty to plead the two issues;—1st, not guilty; 2nd, as to part of the libel, apology in the declaration set forth under stat. 6 & 7 Vict. c. 2, together with payment into Court. Rule nisi.

LEE V. DREW.—Thomas showed cause against a new trial in this case. The action was against the master of a bill of exchange, to whom it appeared that great dishonour had been given by the drawer; the being, however, no evidence to show that the drawer had given notice by order or request of the plaintiff, the Court, on calling upon Pigott to support his rule, held, that the rule was clearly insufficient. Rule nisi.

WEDGATE V. HILL.—Humphrey, Q.C. showed cause against a rule obtained by Butt, Q.C. calling on the plaintiff to give security for costs, or for a stay of proceedings until default of his so doing. The case involved no point of slightest interest. Humphrey cited *Dingle v. Andrew* (Dowl. 596).—Butt in support of his rule. Rule discharged.

COLGRAVE V. SUMMERTON.—Pigott showed cause upon the rule obtained by Huddleston in this case (April 2). Rule absolute.

FILBY V. HODGSON.—In this case Humphrey, Q.C. moved for a new trial on the ground of misdirection. The verdict had been for the defendant, and the question arising turned on the sufficiency of evidence as to reputed relationship. The Court now intimated that there would be time to show cause. Rule to show cause.

HOLFORD V. BODY.—Crawford, Q.C. showed cause against a rule obtained by Jervis, Q.C. to set aside the award in the above case, or for a reference back to the arbitrator in so far as he might state matters of law for the opinion of the Court. The Court made the rule absolute, with power to the arbitrator to enlarge the time for making his award. Rule absolute.

CASTLEMAN V. CAPPER.—Crawford, Q.C. and Glyn, showed cause (May 1 and May 5) against a rule which had been obtained by Jervis, Q.C. for a new trial in this case, on the ground that the verdict was against evidence and misdirection. The action was on a policy of marine insurance, and the question was, whether a construction of the loss of the vessel insured had or had not been proved by the plaintiff. The argument turned on sources on the materiality to have been proved by either party, and about which there seemed considerable uncertainty, and the Court, on the hearing Jervis, Q.C. and Martin, Q.C. (James Wile, with them), in support of the rule, made it absolute. The Chief Baron, who presided at the trial, expressing in due satisfaction with the verdict. Rule absolute.

RAIL COURT.

Thursday, April 30, 1846.

(Before Mr. Justice WIGHTMAN.)

REG. V. THE INHABITANTS OF NORSFRET, SALOP. Motion to quash certiorari which has issued upon an affidavit, which omitted in the first the words "before me."

Phillimore moved for a rule to quash the writ of certiorari herein, on the ground that in the first of the affidavit upon which the writ was obtained, the words "before me" were omitted.—Reg. v. Blenheim (1 New Sess. Ca. 370). Rule nisi.

REG. V. THE JUSTICES OF CHESTER.

Mandamus to justices to hear an appeal—Service of notice of appeal.

Townsend moved for a mandamus, directing the above justices to enter continuances, and hear an appeal against an order of bastardy. This was an appeal under the 7 & 8 Vict. c. 101, s. 4, and upon the trial the appellant proved the service of his notice, by showing that it was left at the usual place of residence of the respondent. The justices, however, held this to be insufficient, and that the service of the notice ought to have been personal.—Reg. v. The Justices of the North Riding (1 New Sess. Ca. 574). Rule nisi.

Friday, May 1.

(Before Mr. Justice COLERIDGE.)

REG. V. THE JUSTICES OF WORCESTERSHIRE. It is no excuse for not serving the notice of recognizance, under the 8 & 9 Vict. c. 10, s. 3, until many days after the recognizance has been entered into, that the party could not be found to be served personally, as the notice may be left at the party's dwelling-house, and sent by post.

Beadon moved for a rule for a mandamus, directing the above justices to enter continuances, and hear the appeal of one James Lowe, against an order in bastardy. The order in question was made on the 10th of March, 1846, whereupon notice of appeal was duly given. On the following 14th the appellant entered into the recognizance, as required by the 8 & 9 Vict. c. 10, s. 3, and gave the notice (as required by the same section), to one William Hayon, on Monday, the 16th, to be by him served on the mother. Hayon attempted to serve her with it personally on the 19th, 21st, 23rd, and 28th, following, but met finding her home he was unsuccessful; on the 21st, however, he met her, and then delivered it to her. On the appeal

pending on for trial, it was objected, on the part of the respondent, that the notice of recognizance was not served in time, the 3rd section of the above enactment requiring that "the party entering into any such recognizance shall forthwith give or send a notice in writing of his having so entered into such recognizance to the woman in whose favour the said order shall have been made." * * * Provided that the sending of such notice or notices by the post shall be taken to be sufficient." The justices being of opinion that the notice had not been given, dismissed the appeal. It was now contended that the justices were wrong, inasmuch as the word "forthwith" must be taken to mean *within a reasonable time*, and that in the present case all due diligence had been used to serve the woman with the notice. (*Reg. v. The Justices of Worcestershire*, 7 Dowl. 789.)

COLERIDGE, J.—I think that the justices in this case acted perfectly right. The section says that the notice is to be served *forthwith*: that is, without any delay which the circumstances do not justify; and here the delay is attempted to be excused on the ground that the woman could not be found in order to be personally served before the 31st March, but the section says expressly, that it is not necessary to serve the party personally, and here there is really nothing to shew why the woman was not served according to the statute, by sending the notice to her through the post, and they might therefore have served it by leaving it at the dwelling-house on the 16th. It is a general rule, that, where no particular mode of service is pointed out, a notice may always be served at the party's dwelling-house, and they might have done so in the present case; this, however, they do not do, but delay the service until they can effect it personally, which is not until the 31st.

Saturday, May 2.

THE QUEEN v. THE RECORDER OF KING'S LYNN.
Is an order of removal, if it be clearly shewn that the justices received the complaint within their jurisdiction, and nothing appears to the contrary, it will be intended (without any express allegation) that they also made their adjudication within their jurisdiction.

An adjudication which states it to have been made upon due proof upon oath as otherwise is good, as it will be intended that the words "as otherwise" mean legal proof.

The whole of the adjudication should be read together, so that one part may explain and support another.

Palmer shewed cause against a rule calling upon the recorder of King's Lynn to shew cause why a *certiorari* should not issue requiring him to return an order of quarter sessions, together with an order of removal confirmed by the same, in order that the said orders might be quashed. The order of removal against which the objection existed was in the ordinary form, and commenced as follows:—

"Upon complaint of the churchwardens and overseers of the poor of the parish of St. Margaret, in the borough of King's Lynn, aforesaid, unto us whose names and seals are hereunto set, two of her Majesty's justices of the peace in and for the said borough * * * We, the said justices, upon due proof made thereof, as well upon the examination of the said Sarah Wray, of Sarah Harrison, and of James Hubbard upon oath, as otherwise upon due consideration had of the premises, do adjudge the same to be true. And we do likewise adjudge that the lawful settlement of them, Sarah Wray and the said children, is in the township of Bowling, in the parish of Bradford, in the county of York," &c.

This rule was obtained on the three following grounds—1st, because it does not appear that the justices acted within their jurisdiction; 2nd, because, from the words "as well upon oath as otherwise," it might have been that the justices made their adjudication upon evidence not taken upon oath; 3rd, because it does not appear that the adjudication of the place of settlement was made upon oath.

To the first objection it was answered, that it sufficiently appeared, particularly from the name in the margin, and the whole context, that the justices (who were justices for the borough) were acting within their jurisdiction. (*R. v. Casterton*, 14 L.J., M.C. 5; *R. v. Stockton-upon-Tees*, 14 L.J., M.C. 28; *R. v. Austen*, 8 Mod. 309.) To the second objection, that the words "as otherwise" must be taken to mean "otherwise upon oath," for which there is the express authority of the judgment of the Court in *Rev. v. Luffe* (8 East, 193), in which Lord Ellenborough said, in speaking of an order described to have been made upon the oath of the said Mary Taylor as otherwise, "it is true that it is not said 'as otherwise upon oath,' but as no evidence can properly be given otherwise than upon oath, it is not going further in making an intendment to support this order than has been done in other cases, to say that such other evidence must also be taken to have been given upon oath." (*Rev. v. Fawcington*, 2 T.R. 471; *Rev. v. Kempton* (Covp. 241, Nolan, 4th edit. 233; *Rev. v. Brith*, 8 East, 636). To the third objection, that the adjudication of the place of settlement, when taken in connection with the stamping part of the order, evidently appears to have

been made upon evidence taken upon oath. (*Rev. v. Crisp*, 7 East, 389.)

Dundas, Q.C. and Metcalf, contra, contended, first, that it did not sufficiently appear that the justices, at the time they made their order, were acting within the borough of King's Lynn, for, from anything appearing to the contrary, they may have gone out of the borough, and have made the order. (*R. v. Casterton*, *supra*; *R. v. Stockton*, *supra*; 2nd, that the natural position of the words shews that the meaning of the order is, that the evidence was taken upon oath and by other means. (*R. v. Buckinghamshire*, 14 L.J. M.C. 45); 3rd, that the sentence commencing the adjudication of the place of settlement being distinct from the foregoing part of the order, it does not appear to have been taken upon any evidence whatever.

Carrow, *amicus curie*, mentioned the case of *R. v. Rotherham* (3 Q.B. 776).

COLERIDGE, J.—I think this rule ought to be discharged. With regard to the two last points, they are quite settled by the various authorities that have been quoted. As to the first point, the same objection was taken in *The Queen and Rotherham*, and although it is said that this objection was not much relied upon in that case, I am satisfied that it was fully argued. It appears that the form of the order in the present case is that which has been in use for a great many years, and is the same given in Burn's Justice by Doyley and Williams, which is certainly, therefore, entitled to great weight, and is like the form in the *Rotherham* case, in which Lord Denman, in giving judgment, said, "Upon the first point (the form of the original order) the Court gave sufficient answers to the various objections which were urged in the course of the argument, which we do not consider it needful to repeat. We shall now only add that we certainly should not be induced upon slight grounds to overturn a form of proceeding which we have reason to believe has been established by the usage of very near a century." As regards the second objection, unless this case can be distinguished from *Luffe's* case, that is an authority which I shall abide by; but it is said that this is not distinguishable from *The Queen and Buckinghamshire*, and that according to that case the second objection is clearly sustainable. Now it is clear to me that *Luffe's* case had been cited in *The Queen and Buckinghamshire*, with the judgment of Lord Ellenborough, my brother Wightman would not have overruled it. It must be remembered, in considering this objection, that it must greatly depend upon the doctrine of intendment, and it is certainly more reasonable to intend that the words "as otherwise" mean upon legal proof, than that they meant he reverse. I have heard nothing which shews that *The King and Luffe* is not a good authority, and I think it is precisely in point. Then as to the third objection. It must be borne in mind that this is the same form which has been in use for centuries, and although it is said that in some very late forms, this one is varied, yet this arises more from the greater nicety in modern times than from any legal necessity; and the whole order ought to be looked at, and then it will be apparent that the adjudication of the place of settlement is made upon the evidence which is referred to in the former part of the order. No one can then doubt that as to the complaint, it is made to two justices of the borough, and that it is taken within the borough; but it is said, what was to prevent the justices, after having received the complaint within the borough, from going out of it to make their adjudication? Why, to suppose that they may have done so, would be to intend something which we ought not to intend, and for which there is no foundation. The proper inference is, that the parties having come within the borough to make complaint, the adjudication was made there also; and no place in particular being mentioned as the place where it was made, the fair inference is, that the whole was made at the only place mentioned in the order. The rule, therefore, must be discharged.

Rule discharged with costs.

REG. v. THE JUSTICES OF MIDDLESEX.

Mandamus to justices to enter continuances and hear an appeal where the appeal had been dismissed by the Sessions in consequence of the appellants having mistaken the name of one of the removing justices who had signed his name very illegibly.

Chambers, Q.C. shewed cause against a rule for a *mandamus* directing the above justices to enter continuances, and hear an appeal between the parishes of St. Pancras and Hackney against an order of removal. The appellant parish, owing to the illegible manner in which one of the justices had subscribed his name, had made a mistake in describing the order, upon which the Sessions refused to hear the appeal.

Crowder and Prendergast, contra.

Rule absolute.

Monday, May 4.

(Before Mr. Justice WIGHTMAN.)

THOMAS v. JACOBS AND ANOTHER.

Rule to set aside service of a writ of summons, on the ground of the original not being shewn on demand. Pigott moved for a rule calling upon the plaintiff to shew cause why the service of the writ of summons

as to Jacobs should not be set aside, the defendant having, on being served, made two requests to see the original, which were not complied with. (*Thomas vs Pearce*, 2 B. & C. 761.) Rule nisi.

Tuesday, May 5.

Bankrupt—Commitment for not answering satisfactorily—Sufficiency of warrant.

Allen, Serjt.—moved for a writ of *habeas corpus* to bring up into this Court a bankrupt who had been committed to prison by the bankrupt commissioner of the Leeds district. He was committed for not giving satisfactory answers; and the objection to the warrant was, that it did not specify which of the answers were unsatisfactory. He also insisted that the learned commissioner was wrong in holding, as a matter of fact, that the answers were unsatisfactory.

COLERIDGE, J.—This rule must be discharged. The case is distinguishable from the case cited. There the warrant, after setting out the questions and answers, stated, "several of which answers not being satisfactory," &c. and the Court held that it was bad for uncertainty; but here the objection does not arise, for the warrant refers to all the answers generally as not being satisfactory, and not merely to certain of them; and the case is like the case of *Ex parte Dauncey*, 4 Q. B. 671, where such a warrant was held to be good. Then, with regard to the fact, if I could see clearly that the answers were satisfactory, I might feel myself called upon to discharge the bankrupt, but in cases of this description, a judge would be slow to set his own judgment against that of the commissioner, who had the bankrupt before him, and had better means, from all the circumstances, of forming a correct judgment; but I must say, I think the commissioner was right in this case; for however satisfactory some of the answers may appear when viewed by themselves, I must say that the examination appears to me, when viewed as a whole, to be altogether entirely unsatisfactory.

Rule refused.

R. v. GRUNDY AND THREE OTHERS.

Pashley moved for a *mandamus* against a person of the name of Grundy, and three others, to compel them to produce to the applicants, the justice's warrant under which they are appointed overseers of the poor of the township of Kirkby Lonsdale, in the county of Westmorland. The applicants were ratepayers of the township, and the object they had in view was to question the legality and sufficiency of the appointment, and by that means to quash it. The main objection was, that Grundy was not a substantial householder, and they had reason to believe that this fatal objection to the validity of his appointment appeared upon the face of the document. It was important to the applicant that this document should not be kept back, and very desirable that this Court should enforce its production, instead of allowing the parties, by refusing to produce it, practically to oust the Court of its jurisdiction. (*R. v. Great Farrington* (9 B. & C. 541). The importance of having this matter discussed was shewn by a very recent case in the Queen's Bench, *R. v. Bradford, in Wiltshire*, where a question was raised, though not determined, as to the validity of an order of removal thirty years old, made by parties whose appointment to the office of overseers of the poor was, upon the face of it, illegal and void. As it was impossible to say which of the four overseers might have the custody of the appointment, it was submitted that the rule ought to be against all four. It appeared from Burn's Justice, title Poor, p. 33, that the appointment might be removed, and that the Court would look at its validity. (*R. v. Justices of Staffordshire*, 6 N.E. 84, 89; *R. v. Chapman*, 1 Wilson, 305; *R. v. Sherry*, 3 T.R.; *R. v. Hull*, 7 Dow. 690; *R. v. Dawson*, 2 Dow. N.S. 20).

Cur. adv. vult.

DOE dem. HAXBY v. PRESTON AND ANOTHER.

This was a rule to set aside an award of R. M. Matthew, esq. Barrister-at-law.

Addon shewed cause, and on opening the case proposed to read a copy of the arbitrator's notes, verified by the affidavit of his clerk.

Martin, Q.C. (*Rev* with him) would not object to this being read if the judge thought it right; but the copy, in strictness, could not be evidence, and he submitted that an arbitrator ought not to be called upon to produce his notes; and if this was so, they certainly ought not to be obtained through the medium of the clerk.

COLERIDGE, J.—Arbitrators, and especially when they are gentlemen at the bar, very properly refuse to make any affidavit, and you must not obtain that indirectly from the clerk which you cannot get directly from the master. I cannot allow the notes to be read.

The case was then proceeded with without the notes.

Cur. adv. vult.

Wednesday, May 6.

(Before Mr. Justice COLERIDGE.)

ROWBOTTOM v. BULL.

A judicial reproof of the practice of drawing tricky demurrers and frivolous pleas.

Hawkins showed cause against a rule to set aside a declaration as frivolous.

Butt, Q.C. contra. *Cur. adv. vult.*
In this case Mr. Justice COLERIDGE made the following forcible observations in condemnation of counsel leading themselves to assist parties in false or frivolous pleading:—"I do marvel that gentlemen who would kick an attorney out of their chambers if he desired any thing wrong in an ordinary way, will, nevertheless, consent to draw tricky demurrers and frivolous pleas. The practice degrades the counsel and special pleader, and makes them ministers of gross injustice, and parties to the frauds of other persons."

AUSTER V. HOLLAND.

Where a trustee under a deed of separation refuses to bring an action to recover the annuity to the wife, secured by such deed, and an indemnity is offered, the Court will not, at the instance of the defendant, set aside the proceedings in an action brought against him in the name of such trustee, even though it is sworn that such action is brought against the wish and consent of such trustee.

Lush showed cause against a rule to set aside the writ of summons, and all subsequent proceedings, on the ground that the action had been commenced without the sanction of the plaintiff, and against her express wish. It appeared that the defendant and his wife having agreed to separate, a deed was executed whereby the defendant covenanted with the plaintiff, as trustee, to pay her, for his wife's use, the annual sum of 40l. by monthly payments. Five of those payments being in arrear, the defendant was frequently applied to for them, and not being paid, the present plaintiff was requested to sue for them, and an indemnity was offered her; she, however, declined to do so, whereupon this action was commenced in her name. The present motion was made at the instance of the defendant. It was now argued, that under the circumstances, the action was rightly brought in the trustee's name, it being the only means whereby the annuity could be recovered, she having herself refused to bring the action, and an indemnity having been offered to her. (*Chambers v. Donaldson*, 9 East, 471, per Lord Ellenborough; *Spicer v. Todd*, 2 Cramp. & Jer.)

Gray was called upon to support his rule, and contended, that in such a case as this, which he urged was distinguishable from those quoted (particularly as no collusion was shown to exist between the plaintiff and the defendant), the trustee had a discretion to exercise which the Court would not control. (*Robson v. Euton*, 1 T. R. 62.) That a payment in such an action so brought against the consent of the plaintiff, would be no answer in an action subsequently brought by the same plaintiff for the same amount. (*Hubbard v. Phillips*, 14 L. J. Ex. 103.) That the only remedy to compel the trustee to sue is in equity.

Coleridge, J.—I am of opinion that this rule ought to be discharged. It is an application to set aside the proceedings in an action brought at the instance of the wife to recover the amount due under a deed of separation, and the ground of the motion is, that the action is commenced without the sanction of the plaintiff, who is the trustee for the wife under the deed. It is suggested that there is collusion between the plaintiff and the defendant, and I think that the facts of the case, rather than the statements in the affidavits, shew that this is really so, because the defendant knows that unless the plaintiff sues he cannot be sued at all, and therefore comes himself to take advantage of her disinclination to proceed, and she, on her part, knowing that she is the proper person to sue; and having had an indemnity offered to her, gives no reason why she will not interfere, but merely declines, so that it is pretty clear that she has either some feeling for the defendant or some against his wife, which induces her to abstain from taking those steps which are required of her. There is really no hardship upon her in this action being brought against her consent, because it appears that she has been offered an indemnity which she does not accept, nor does she even come to this court to complain of the action. If she really objects to the proceeding, she knows that the rule is to apply to this Court, and therefore if the action is not really brought with her good will, it certainly must be taken to be carried on with her sanction. *Rule discharged with costs.*

BUSINESS OF THE WEEK.

Thursday, April 30.

REG. V. THE COMMISSIONERS OF EXCISE.—*Martin, Q.C. moved*, on the part of Mr. Barrow, for a mandamus, directing the above commissioners to grant (under the circumstances) their permit for the removal of spirits.

Rule nisi.

WILDE V. HOWARD.—*T. W. Saunders moved* for leave to enter an appearance on a return to a *distringas* of nulla bona. *Application granted.*

Friday, May 1.

EX PARTE FRANCIS WARD.—*Allen, Serjt. moved* for a writ of *habeas corpus*, to discharge the applicant out of the custody of the gaoler of York goal, to which he had been committed by virtue of a warrant of Mr. Commissioner West, of Leeds. *Cur. adv. vult.*

Saturday, May 2.

REG. V. THE JUSTICES OF SUDBURY.—*Pashley moved* for

a rule calling upon the respondent parish in this case to pay the costs of the mandamus argued last Term. *Rule nisi.*

REG. V. THE SHERIFF OF BUCKINGHAMSHIRE.—(*Butler v. Croxson*.)—*Archbold showed cause* against a rule for an attachment against the sheriff herein. *Gray, contra.*

To be referred to the Master prothonotary to the attachment going.

EX PARTE HOCKIN.—*T. C. Foster moved* to strike this gentleman off the roll of attorneys, at his own request. *Application granted.*

Monday, May 4.

JEFFRIES V. MAY.—*Crompton showed cause* against a rule herein for changing the venue from Middlesex to Bristol. *T. W. Saunders, contra.* *Rule discharged.*

BOULTON V. FRITCHARD.—*T. W. Saunders showed cause* against a rule for judgment as in case of a nonsuit. *Warren, contra.*

Rule discharged upon a peremptory undertaking.

TOTTENHAM V. SHEPHERD.—*Pigott showed cause* against a rule, calling upon a Mr. Robert Swann, an attorney, to pay a sum of 7l. pursuant to his undertaking. *Joyce, contra.*

Rule absolute, with costs.

Tuesday, May 5.

LEWIS V. ARUNDEL. *Rule refused.*
BUTTERWORTH V. WILLIAMS.—*Jerris, P. P. moved* to amend the judgment roll, by inserting the true date of the *fi. fa.* and *ca. sa.* *Rule nisi.*

THE BARON DE BODE V. THE QUEEN.—*Manning, Serjt. (Ansley with him), moved* for a rule calling upon the Attorney-General to shew cause why he should not enter up judgment against the Baron de Bode. It was wished to question the judgment of this Court, and this could not be done unless the judgment was entered up. *Rule nisi.*

R. V. FAIRHURST.—*Cooling moved* to admit the prisoner to bail. *Cur. adv. vult.*

RE JAMES.—*Hawkins produced* the additional affidavits required herein for the purpose of admitting the prisoner to bail in a case of rape.

Rule for a certiorari, and rule nisi to admit to bail.

GRIFFITHS V. THOMAS AND EVANS.—*Rule nisi* for the Master to review his taxation. *Butt, Q.C. and Gray, shewed cause.*—*Martin, Q.C. and R. V. Williams, contra.* *Cur. adv. vult.*

RE VAUGHAN HUGHES, a prisoner in Montgomery goal. He was committed by a magistrate's warrant, under 58 Geo. 3, c. 48, for unlawfully having salmon in his possession within the fence days. There were several objections to the warrant; first, the complaint was before two justices, whilst the commitment was by one only; secondly, the warrant did not shew that any fence days were fixed; thirdly, it did not shew any information or summons; fourthly, it did not allege that this was the first offence, and, if it were not, the punishment awarded, which was two months' imprisonment only, was illegal, as being shorter than the statute allowed; and, lastly, it did not shew who the informer was, although he was entitled to half the penalty. *Rule nisi.*

Wednesday, May 6.

LOUTREUIL V. PHILLIPS.—*Hoggins showed cause* against a rule herein, for security of costs. *Bail, contra.*

Rule absolute.

HOBKINSON V. LEMARE.—*Miller showed cause* against a rule for setting aside the *scias* herein. *Gordon, Q.C. contra.* *Rule discharged.*

REG. V. THE MANCHESTER, BURY, AND ROSENDALE RAILWAY COMPANY.—*Archbold showed cause* against a rule for quashing the writ of mandamus herein, for not being drawn up in conformity with the Statute in that behalf made. *Rule absolute.*

Archbold then moved for a rule to amend. *Granted.*

REG. V. WELLSMAN.—*Couch showed cause* against a rule for an attachment for not obeying a rule of Court. *Cole, contra.*

Rule absolute, with costs; the attachment to lie in the office for a fortnight.

Bankrupt and Insolvent Courts.

COURT OF REVIEW.

April 12 and 20.

EX PARTE LANE re LONDON.

Joint and separate estate.—Statute of Frauds.

Where A was a creditor of B, and B and C entered into partnership, and, by verbal agreement among the parties, A was treated as the creditor of B and C, such an agreement was held not to be affected by the Statute of Frauds, and B and C having subsequently become bankrupts, A was permitted to prove against the joint estate.

In this case a debt was due to the petitioner, Miss Lane, from her uncle Mr. William Lendon the elder, a currier, at Exeter. In 1838 a partnership was entered into between William Lendon the elder, and his son William Lendon the younger, but no articles of partnership were executed on that occasion. There was an alteration in the banker's books of the name of the account, but the terms of the partnership were only agreed upon in vague conversations between the partners. The debt due to Miss Lane was alleged by the petition to have been subsequently treated as a debt due from the partnership, and the present petition was for liberty to prove on account of the debt against the joint estate of the Lendons, who had become bankrupt. The petitioner, and Mr. Lendon the younger were examined *videlicet* at some length. *Snoadson, Terrell, Russell, Bacon, and Kingslake, for the different parties.*

The following cases were cited: *Thomson v. Percival*, *Ex parte Clover* (2 Bro. C. C. 595); *Ex parte Parker* (2 Mont. Dea. & De Gex, 511); *Ex parte Kodie* (2 D. & C. 321); *Devaynes v. Noble* (1 Mer. 591).

The CHIEF JUDGE.—If A is creditor of B, and B and C propose to enter, or have entered, into partnership together, and address themselves to A, the credi-

tor of B, and say "we wish that this debt, due to us from B alone, shall be a debt from B and C together," and A accedes to that, although no writing passes, the agreement is valid and effectual, and is not impeachable or affected by the Statute of Frauds. The effect of it is for a valuable consideration to extinguish the debt, and for a valuable consideration to substitute for it the second. Of course the very words I wish I have referred need not be used. If there is sufficient evidence, under the circumstances of the case, that the intention of the parties was so, that it is as effectual as if the most formal expressions had been used. The question of fact, then, before me is, whether the circumstances of this case, as they may be in evidence, are sufficient to satisfy the Court, simply of fact, that the intention of Mr. Lendon, the uncle, and of Mr. Lendon, the son, and of Miss Lane who stood in the position I have mentioned, was so, however vague and inaccurate to the ear of the lawyer may sound the expression of a trade debt, yet that it is not so with the world in general. It is a familiar notion, a familiar mode of expression, where money has been lent to a trader for the purpose of his trade, and which is known to be used by him in that manner. I am of opinion, upon the evidence, that the impression of Miss Lane, the creditor, and of Mr. Lendon the elder, the debtor, was of that description with reference to the debt that was due from him to her in the year 1838, when he admitted his son in partnership. I think it very probable, treating the debt in the way that I have mentioned, that such consideration the trade as changed by the admission of the son into that business, and that it was considered that the trade was indebted, and still indebted to Miss Lane for the money. I am of opinion that the understanding was communicated to Miss Lane by the uncle and cousin, or one of them, with the assent of both, and that Miss Lane distinctly acceded to that. I am of opinion, that from themselves, if transactions between them proceeded upon that basis, and the evidence satisfies me, placing myself in the position of a jury, that is, considering myself as a judge of fact, that it was in effect agreed between the three, that the separate debt of the father should become the joint debt of the father and the son. I am of opinion that the pecuniary transactions, since the commencement of the partnership, were more daily, if possible, but more certainly upon the same footing. The conclusion at which I arrive in this, that, if any, sum as at the time of the bankruptcy was due to Miss Lane upon this account was a joint debt of both the bankrupts. Let the costs be paid out of the joint estate.

COMMISSIONERS' COURT.

Saturday, April 25.

(Before Mr. Commissioner GUTHRIE.)

Re—*Practice.—Small Debts Act.*

The application for a summons under the Small Debts Act must be personally signed by the creditor; it will not be sufficient if signed by his attorney.

An attorney had applied for a summons under the Small Debts Act, the application being signed by himself as plaintiff's attorney. The summons having been refused by the registrar, the attorney was applied to the Court, stating that he was the attorney upon the record for the plaintiff.

His HONOUR said that, referring to the language of the statute, it expressly directed that the summons should be "upon the application of such creditor by any petition or note in writing, according to the form in the schedule (B.) annexed." And the form in the schedule is, "Be pleased to summon C. D. D., to answer touching the debts due to me, by the judgment (or order) of the Court of on my behalf." This clearly shewed that the application should be by the creditor personally.

Thursday, April 23.

(Before Mr. Commissioner DEANE.)

Re F. F. COOPER.

An insolvent, who has petitioned the Court for the Relief of Insolvent Debtors, is entitled to a *pass* stands in this Court for debts in his schedule contracted since the date of his petition to the Insolvency Court.

Seemingly, that where an insolvent has applied to another tribunal, this Court will not receive his petition on account of debts contracted previously to such application.

Insolvent, in July, 1844, had been taken into execution for a debt under 20l. and had petitioned the Insolvent Court, under 1 & 2 Vict. c. 110; he was admitted to bail, and a day appointed for the hearing of the petition. In August, and before the day so appointed, he applied to a judge in Chambers, under 7 & 8 Vict. c. 96, and obtained an order for his discharge. At the hearing of the petition he did not appear. Afterwards he petitioned the Court of Bankruptcy under 7 & 8 Vict. c. 96, s. 2.

On the part of the opposing creditors, it was objected that the petitioner having already petitioned the Insolvent Court, under which petition his estate

was treated in the provisional assignee, was not entitled to claim the protection of this Court.

On the part of the petitioner, it was contended that he, insolvent, had taken himself out of the jurisdiction of the Insolvent Court, by obtaining his discharge under 1 & 6 Vict. c. 96. At all events, many of the debts in his schedule had accrued since he had obtained the insolvent Court.

His Honour (after consulting Mr. Commissioner HOLBORN) said, that the schedule containing many debts that had been incurred subsequently to the date of the petition to the Insolvent Debtors' Court, in 1844, the petitioner had obtained a *locus standi* in this Court.

COUNTRY COMMISSIONERS' COURTS.

BRISTOL DISTRICT BANKRUPTCY COURT.

(Before Mr. Commissioner STEPHENSON.)
Friday, April 10.

Re DANIEL STANTON.

Contract—Stoppage in transitu—Part delivery—Practice.

The bankrupt had bought five hogheads of sugar; three were delivered before the bankruptcy, the other two had been stopped in transitu. Held, that proof as to the three hogheads delivered should be received, but that the right of the vendor to the property retained being questionable, the dividend was ordered to be retained until the right to the property was established in a Court of law.

In this case a proof was tendered on behalf of Messrs. Daniell and Co. under the following circumstances. The bankrupt, who was a grocer at Bristol, had, shortly before his bankruptcy, purchased five hogheads of sugar of Messrs. Daniell. Three of the hogheads had been weighed off, and delivered before the bankruptcy; the sold note had the mark "A," denoting that the hogheads sold bore the same mark, and the delivery note had the same mark with the figures 154—155. Messrs. Daniell now claimed to prove for the value of the three hogheads actually delivered, reserving the right of stoppage in transitu as to the other two.

Palmer objected to the reception of the proof, on the ground that the contract was entire, and that the whole of the goods not having been delivered, Messrs. Daniell could not elect to retain the two hogheads, and prove for the other three. I take it to be the rule of law, that where goods are specifically marked, a delivery of part is a delivery of the whole. (3 B. & Ad. 507; *Hammond v. Anderson*, 1 New Rep. 70; *Cranshaw v. Bland*, 1 New Rep. 378.) It is quite clear that here there was a sufficient specification of the goods to pass the property of the whole. The two hogheads which were not delivered remained on the premises of the vendor at the risk of the purchaser. The delivery of the three was a delivery of the whole, in order to complete the purchase. But it may be urged that the two were not weighed off. In principle this is immaterial. (9 A. & E. 904.) The bankrupt was told by the vendor what hogheads he was to have, and what was their supposed weight. The weighing of them afterwards was only necessary in order to ascertain their value with certainty. Now, how would the case have stood on the 5th Jan. (the date of the act of bankruptcy)? What action could have been sustained by the vendors? Could an action for goods sold and delivered have been maintained? They say no. As against the vendor, the individuality of the goods was ascertained. But all the conditions must be performed. Keeping back the two hogheads would invalidate the contract. Perhaps a special action might have lain. Let us suppose that they have a lien upon the two hogheads. Then they stand in the place of a mortgagee; keeping back two of the hogheads is holding a security, and then they seek to prove for the remainder. This is contrary to the principle of the Bankrupt Law. (*Archbold's Bankruptcy*, 174.)

Knap.—They have no right to object to our proving for the whole, because if they are damaged they have the right to an action of trover. He cited *Hanson and Another, assignees, &c. v. Meyer* (6 East, 614), and *Tanner and Others, assignees, &c. v. Scovell* (14 L.J. N.S. Ex. 321), to show that the right to stoppage in transitu continued as to the two hogheads.

Palmer, in reply.—In the cases cited on the other side, there was no individuality, by which the particular goods could be known. I relied throughout my argument upon the fact that the goods in this case were specifically marked.

Judgment deferred.

April 20.—His Honour this day delivered his judgment. The facts of the case, as they have been proved before me, are as follows.—Messrs. Daniell and Sons sold to the bankrupt, on the 24th December last, five hogheads of sugar at 52s. per cwt. to be paid for by bill at three months, and a sold note accordingly was given to the bankrupt, accompanied by an order to Messrs. Bush to weigh off these five hogheads then in their warehouse, and in such sold

note and order these hogheads were referred to by certain marks and figures by which they were distinguished and identified. The bankrupt required three hogheads to be weighed off and delivered to him, which was accordingly done. The other two hogheads were not weighed, nor required to be so, but remained in Messrs. Bush's warehouse until after the bankruptcy, when Messrs. Daniell and Sons claimed them under a right to stop them in transitu. The bankrupt has not paid for any of the hogheads, nor given any bill for them. An invoice has been produced dated 23rd December, 1845, in which the weight as well as the price of the five hogheads is stated. At the foot of this invoice is a request that the bankrupt would oblige Mr. Daniell with a bill on account for 180l. at three months. This request is dated the 6th January, 1846, and is admitted to have been sent to the bankrupt by one of Messrs. Daniell's clerks. Messrs. Daniell and Sons now seek to prove for the price of the three hogheads delivered to the bankrupt, calculated according to the weight at which they were ascertained to be previous to such delivery, and according to the rate agreed upon. To this proof the assignees object on the ground that Messrs. Daniell and Sons had lost their right of stoppage in transitu over the remaining two hogheads, which, therefore, belong to the bankrupt's estate, and that, consequently, they cannot be allowed to prove, without first giving up this property to the assignees. The right of stoppage in transitu in this case is certainly a doubtful question, and may materially depend as well upon the effect to be given to the request of the 6th January last, as upon other circumstances which may exist in this case, but to which no reference has been made, and which might be proper to be ascertained, for instance, the transfer (if any) of the hogheads into the name of the bankrupt in Messrs. Bush's books, and the payment of the warehouse rent by the bankrupt or by Messrs. Daniell, and the custom of the trade in transactions of this kind. But it appears to me that I am not called upon, in reference to the proposed proof, to give any opinion whether the *transitu* with respect to the two remaining hogheads had determined or not; for the whole five hogheads having been sold according to weight, and the three hogheads in respect to which the proof is sought to be made, having been weighed and delivered, there can be no doubt, I apprehend, that as to such three hogheads the contract has been completed, so as to give the vendors a claim for the price according to the weight ascertained. It cannot be considered that the redemption by the vendors of these two hogheads amounted to a repudiation by them of the whole contract. The case of *Wentworth v. Oathwaite* (10 Mees. & W. 453) is decisive of this point; nor do I understand that it is otherwise interpreted by the assignees, and therefore the claim of the assignees to the two hogheads retained cannot, in my opinion, form any objection to the right of proof for the price of the other three hogheads, but is rather a ground for reserving the dividend thereon until the claim has been settled by a Court of more competent jurisdiction for such purpose. This was the course pursued in the cases of *Ex parte Dobson* (1 Mont. & Ayr. 666) and *Ex parte Atkyns* (1 Gl. & J. 391); and although the property in respect of which the proof is sought to be made in *Wentworth v. Oathwaite* formed part of the goods comprised in the original contract, yet that circumstance does not, I think, form any ground of distinction, the three hogheads in question having been completely separated from the other property comprised in the contract, and having become the subject-matter of a distinct price. It was, in the course of the argument on the part of the assignees, contended that Messrs. Daniell and Sons' claim on the two hogheads should be regarded in the nature of a security, which at all events should, according to the usual practice in bankruptcy, be first realized before this proof is allowed. But, supposing that a stoppage in transitu has the effect of restoring to the vendor his lien for the price of the goods, instead of rescinding the contract, *quoad* the property retained (a point which seems not to have been finally decided: see *Wentworth v. Oathwaite*, before cited), yet I cannot think that such a lien can be treated as a security to which the practice in bankruptcy is applicable, so as to prejudice his immediate claim to the proof in question. This proof must therefore, I think, be admitted; but as the right of the vendor to the property retained by them is fairly questionable, and which it is, I presume, the intention of the assignees to dispute, I shall direct the dividend to be retained until the right to the property is decided.

NEWCASTLE-UPON-TYNE DISTRICT COURT OF BANKRUPTCY.

Thursday, April 30.

(Before Mr. Commissioner ELLISON.)

Re MATTHEW COOK, an Insolvent.

Where an insolvent has taken upon himself the distribution of his effects, he cannot claim the protection of the Court, which will not interfere where there is no estate.

The insolvent came up this day for his interim

order for protection, and was opposed by William Chater, attorney, on behalf of his principal creditor, and supported by Harle, attorney.

It appeared that the insolvent had, since the month of September last, paid debts to the amount of upwards of 400l. to different creditors, and now only stated himself, in his petition, to be possessed of twenty-five shillings. W. Chater submitted that the insolvent was not entitled to the protection of the Act, because, admitting the statements in his petition and balance sheet to be correct, he had taken upon himself the distribution of his effects, instead of coming to the Court for that purpose. The Acts of Parliament under which the present application was made clearly contemplated a person possessing property capable of division among his creditors; if an insolvent asked to be protected from the just demands of his creditors, it was only reasonable to require that, in return for such protection, he should vest his property in the hands of the Court, to be fairly administered among his creditors. Now the insolvent had paid all his creditors in full, to the exclusion of two. He particularly referred to the language of the petition annexed to the Act, where the terms "property" and "estate available for the benefit of his creditors" were used; terms which it would be absurd to apply to a man who did not possess a fund adequate to the payment of the Court expenses.

Harle.—We are not to assume that the statement contained in the balance sheet is untrue. If true, it is clear that the insolvent has parted with the whole of his property, and that, too, in favour of bond fide creditors. Cases had occurred in the court where protection was granted, although there was no estate. In this case he trusted the Court would recollect that the petition was filed in March, and that the insolvent was now in custody.

His Honour, however, was clearly of opinion that where there was no estate the insolvent was not entitled to the benefit of the Act; and in future, in such cases, he would not permit a petition to be filed; and in cases like the present, where there was no trifling estate, and where it was clear there would be no fund to divide among the creditors, he would receive the petition, but when the insolvent came up for his final order, the case would be adjourned *sine die*.

Harle applied to have the petition dismissed.

His Honour consented. Petition dismissed.

Circuit Reports.

NORFOLK SPRING CIRCUIT.

Aylesbury.
CROWN SIDE.
REG. & LINES.

Uttering forged bill.—What necessary to support indictment for.

In an indictment for uttering, &c. a forged bill, with intent to defraud A. B., it was proved that the bill in question, and several others, were all drawn on A. B. by the prisoner, and indorsed by him, and that they had all been paid into his bankers, and placed to the credit of his account; but by whom, or when they had been so paid in, did not appear. Held, that there was no case to go to the jury; it being necessary to prove some act of the prisoner done in the county, which amounted to an uttering, disposing, or putting off.

The prisoner was indicted for that he, having in his possession a certain bill of exchange for 13l. 10s. the acceptance whereof was forged, knowingly uttered, put off, and disposed of the same on the 14th of July, 1843, with intent to defraud Veere Woodman.

Gunning, Power, and Wells, for the prosecution, proved that the prisoner of late years kept an account at the Aylesbury branch of the London and County Joint Stock Bank, the chief office of which is situate at 71, Lombard-street. The prosecutor had had frequent dealings with the prisoner, both being farmers, and their accounts used to be settled by the prisoner giving to the prosecutor his acceptance for the balance found to be due from him, such being, with but one exception, the result of their transactions. That exception arose on the 29th Sept. 1843, when the balance was 5l. in favour of the prisoner, who proposed, instead of payment, that the prosecutor should give him a bill for that sum and 8l. 12s. in order that he might meet a demand for 13l. 12s. which was then coming due. The prosecutor assented to this proposition, and the bill was given; but the prisoner omitting to take it up at maturity, the prosecutor was compelled to do so. No further transactions would appear, according to the statement of the prosecutor, to have taken place between him and the prisoner after that period; but in the year 1845, he received an application from a Mr. Griffiths for payment of a bill for 20l. alleged to have been accepted by him for that amount in favour of the prisoner. This he at once declared to be a forgery, and on inquiring he ascertained that that instrument had been discounted for Lines by the party then holding it. In the course of last year this bill was put in action, and the cause came on for trial in Michaelmas Term in London, when contradictory evidence having been

came into as to the genuineness of the acceptance, the jury decided in favour of the plaintiff, and the prosecutor paid 1011. for debt and costs therein. About the time of this payment it came to the knowledge of the prosecutor that there were other acceptances of his in existence, which he declared to be forgeries, and, on inquiry, it was discovered that during the years 1842 and 1843 the prisoner had been credited by the bank with eleven bills for various sums, all drawn by him on, and purporting to be accepted by, the prosecutor, and made payable at 71, Lombard-street, but on the subject of which, as he now swears, he had never been applied to. Many of those bills were renewable, and had all been provided for by the prisoner, either by fresh bills, or by reference to his balance at their maturity; and among them was that which formed the subject of the present indictment, and fell due just about the time when he obtained a real bill for the same amount exactly under the circumstances above detailed. In order to bring home to the prisoner the charge laid in the indictment, the manager of the Branch Bank was called; but all he stated was, that that particular bill, as well as all the others, had been paid in to the credit of the prisoner by some one or other, and at some time or other; but by whom, or when, he could not take upon himself to swear. Whenever they fell due, however, intimation had always been given to the prisoner; and on two occasions letters had been written to the prosecutor: while it was clear that the body of the bills was in the prisoner's hand, as well as the indorsement.

This being the case for the prosecution, *Byles*, Serjt. (with him *Prendergast* and *O'Malley*) submitted that the prisoner was entitled to an acquittal. No case had been proved against him which called for an answer even. It was necessary to prove some act of uttering, disposing, or putting off by him; and there was nothing to shew that he had ever dealt with any but one bill, and that was the real acceptance of the prosecutor; and certainly nothing to shew that he had any knowledge that this particular bill for 131. 12s. had ever been paid into his account at the bank. Here there was no proof of uttering, even by an agent of the prisoner. It might be by the prisoner himself, or by an agent; and if by the latter, there would be a question whether he was authorized previously or subsequently.

Prendergast, on the same side, cited *R. v. Davis* and *Hale* (R. & R. 113.)

O'Malley contended that the facts that this bill bore the indorsement of the prisoner, and was drawn by him, amounted to nothing. They did not go to shew either that the acceptance was forged, or that the bill so drawn, accepted, and indorsed, had been uttered or disposed of in any way or to any person by the prisoner. The circumstances might be suspicious perhaps; but there was no actual proof of any act done by the prisoner in the county of Bucks, which could be construed to be either an uttering, putting off, or disposing of the act in question, which, for the purposes of this argument, must be taken to be a forgery.

Gunning and *Wells* contra.—If this had been a single bill entirely unconnected with any other, it might be said that the case was not proved; but there was abundant proof in the case to shew that the prisoner was the man who dealt with this and all the other forgeries, and he must be taken to have cognizance of them, especially as he alone derived any advantage from them.

MAULE J.—I am at a loss to see what it is that amounts to an act of disposing of this bill. What do you say it is which amounts to that?

Gunning.—The disposing or uttering might be effected through the post; and there is strong ground for comment, in the fact that the prisoner knew that the bill was in the bank, for he must be taken to have done so, when he promised a real bill for the exact amount, and did actually pay that in to his account at the bank, in order to retire the forged one. If he did not pay that bill into the bank, seeing that he was the drawer and indorser, and the only man who could have any interest in the matter, it is difficult to say what proof is enough to raise such a presumption.

Byles, Serjt. having replied,

MAULE J. intimated that in his opinion there was no evidence to go to the jury to shew that the prisoner had uttered, disposed, or put off the bill in question, in the county of Bucks. In order to prove such a charge, it was necessary for the prosecution to adduce evidence of some act done in the county which, in the eye of the law, amounted to an uttering, disposing, or putting off; but nothing had been shewn beyond the forgery, which must be assumed for the purpose of this objection; and the fact that the bill so forged had found its way into the account of the prosecutor at the bank. It by no means, however, appeared by whom this and the other bills had been paid into the bank. That might have been by the prosecutor, in ignorance that the bills were forged. Also, he was not guilty. If he knew that fact, the case was proved; but there was no proof that, even if he did know them to be forgeries, he paid them in to the bank. That might have been done by a variety of

ways, and unless the particular method was proved to the jury, how were they to say that the payment had been made in this or that way? But in order to arrive at a verdict of guilty, the jury were required to say what it was in the conduct of the prisoner which constituted the offence and act of uttering in the sense of this indictment. Under these circumstances, therefore, he would recommend the jury to say not guilty.

The jury accordingly returned a verdict of
Not guilty.

THE LEGISLATOR.

Summary.

MR. WATSON has again brought under the notice of the House of Commons that most gigantic of jobs, the Chancery Compensation Fees. The motion for a committee of inquiry was lost by a very small majority, the prevalent feeling being that the deed was done and could not be undone, and that, however monstrous it was in its origin, it is too late now to correct the mischief. But Mr. WATSON has, by his motion, effected this good service to the Profession and the public. He elicited from the House, and emphatically from Sir ROBERT PEEL and Sir JAMES GRAMHAM, an expression of hostility to the entire system of fees in our law courts, and the Premier promised that if Mr. WATSON would take the matter in hand, and move a committee, he should have the cordial aid of the Government. We hope that the honourable and learned member will accept the challenge. There is no man better qualified than himself to undertake the task. In his hands it will be well done. He is no amateur reformer, but will bring practical experience to the work, and thus whatever emanates from an inquiry so directed, will have the confidence of the Profession, without which, changes in the law can never be accomplished with advantage. The subject is one of too great importance to be thus dismissed. At so late a period of the week we cannot give it the notice it demands, and therefore we shall take an early opportunity of returning to it.

The *Times*, in a powerful article on the subject of the Fees in the Law Courts, introduces the following very truthful remarks, for which the Profession will thank the writer. Usually, the *Times* is less just to the Lawyers:—

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Monday, May 4.

Rating of Tenements Bill.—"To provide that the owners of tenements of small annual value shall be assessed to the rate for the relief of the poor and the highway rate, in place of the occupiers."

Wednesday, May 6.

Viscount Hardinge's Annuity Bill.—"To settle an annuity on Viscount Hardinge and the two next surviving heirs male of the body of the said Viscount Hardinge to whom the title of Viscount Hardinge shall descend, in consideration of his great and brilliant services."

Lord Gough's Annuity Bill.—"To settle an annuity on Lord Gough and the two next surviving heirs male of the body of the said Lord Gough to whom the title of Lord Gough shall descend, in consideration of his great and brilliant services."

BILLS READ A SECOND TIME.

Monday, May 4.

Poor Removal.

Wednesday, May 6.

Corresponding Societies and Lecture Rooms.

BILLS READ A THIRD TIME AND PASSED.

Tuesday, May 5.

Poling Places, Ireland.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Monday, May 4.

Earl of Blenniton's Estate
Waterford Harbour
Exeter Great Western Railway.

Tuesday, May 5.

Bury Improvement, No. 2
South Yorkshire Coal Railway and Canal
Goole and Doncaster Railway
Furness Railway Extension
Irish Great Western Railway.

Wednesday, May 6.

Ballyhannon Harbour and Docks
Midland Railway Bill
Solly's Estate
Warwickshire and London Railway.

Thursday, May 7.

Bristol and Birmingham Railway, South Line
London, Salisbury, and Yeovil Junction Railway
Midland Great Western Railway.

BILLS READ A SECOND TIME.

Friday, May 1.

Lough Swilly and Lough Foyle Draining and Embanking.

Monday, May 4.

Taw Vale Railway Extension
Eastern Counties Railway Stations' enlargement
Eastern Counties and Thames Junction Railway Branches
North Gravesend Railway
Eastern Counties Railway, Tottenham and Pinner Junction
Thames Haven Dock and Railway
Morayshire Railway
Manchester, Bolton, and Bury Canal and Railway
Oxford, Coventry, and Burton on Trent Railway
Portbury Pier and Railway, No. 2
Edinburgh and Leith Waterworks
Trent Valley Midlands and Grand Junction Railway.

Tuesday, May 5.

Derbyshire, Staffordshire, and Worcestershire Railway
Birkenhead and Llandogwelll Railway
Birkenhead Small Docks

Wednesday, May 6.

St. Alban's, Hatfield, and Hartford Junction Railway
Newcastle, Edinburgh, and Glasgow Junction Railway
Cambridge Improvement
Manchester, Bolton, and Bury Canal and Railway
Lancaster and Preston Junction Railway
Ipswich, Norwich, and Yarmouth Railway
Thetford, Bury St. Edmund's, and Newmarket Railway
Bristol and Birmingham Railway
Birmingham and Oxford Junction Railway
Ditto Birmingham Extension

BILLS READ A THIRD TIME AND PASSED.

Monday, May 4.

Scottish Grand Junction Railway

Tuesday, May 5.

Clyde Dock and Harbour
Stafford New Gas
Helenburg Harbour
Helenburg Extension and Police
Glasgow Union Arcade.

Thursday, May 7.

SESSIONAL PRINTED PAPERS.

Murders—Returns
Valuation, Ireland—Returns
Fire Insurances—Accounts
Land Reclaimed, Ireland—Returns
County Treasurers, Ireland—Accounts
Education, Ireland—Annual Report of Commissioners
Lecture Rooms—Returns
Glase—Returns
Diocesan Returns—Paper
Merchant Seamen—Account
Factories—Paper
Railway Bills Classification—Twelfth Report of Committee
Cured Provisions—Account
Ecclesiastical Commission—Copies of Orders in Council
Poor Removal—Returns
Bill—Railway Companies
Loan Fund Board, Ireland—Returns
Chancery and Exchequer—Returns
Wigan Election—Minutes of Evidence
Exchequer—Account
East India, Customs at Calcutta—Account
Court of Chancery—Returns
Bridport Election—Minutes of Evidence
Tea—Copies of Memorials
Canada—Paper
Hong-Kong—Returns
Commissioner's Estimates
East India—Returns
Robert Rieley—Returns
Cattle—Account
Wheat, &c.—Account.

HOUSE OF LORDS.

DEODANDS' ABOLITION BILL, AND DEATH BY ACCIDENTS' COMPENSATION BILL.

FRIDAY, May 1.—Lord CAMPBELL moved the order of the day for going into committee upon these bills.—Lord DENMAN, Lord BROUGHAM, and the LORD CHANCELLOR having expressed their approval of the Bills, they passed through committee, and were reported to the House.

DISSOLUTION OF RAILWAYS.

MONDAY, May 4.—The Earl of DALHOUSIE, on moving the reception of the report on the Railway Dissolution Bill, said it was his intention, in order to meet the objections of certain noble lords, to insert a clause enabling the minority against the dissolution of a company to have the option of purchasing the plans and sections at a valuation to be made at their own cost. He could not, however, accede to the further proposition, of prohibiting persons who had become possessed of scrip since the 31st of March from exercising the right of voting. After a short discussion, in which Earl GREY, Lord REDBULL, Lord KINNAIRD, and the Earl of RADNOR took part, the report was received.

DEODANDS' ABOLITION, AND DEATH BY ACCIDENTS' COMPENSATION BILLS.

THURSDAY, May 7.—Lord CAMPBELL moved the third reading of these two bills. The noble and learned lord said he was sorry to announce that a disastrous rumour had reached his ears, that when these bills went elsewhere, although they had both been passed unanimously by their lordships, they were likely to meet with the fate they experienced last session. He would only say that the principle of these bills was approved both by the law lords and the

judges of England. All the law lords in that house had most deliberately considered them, and he supposed they were quite competent to form a sound judgment. Notwithstanding all this, he was told they were immediately to be thrown out of the other house, that deadends were still to be continued, and that if deaths took place by gross negligence, there was to be no compensation. He could only invite the attention of her Majesty's government to the subject, and express his earnest desire that the noble duke opposite (the Duke of Wellington) would draw the attention of her Majesty's ministers in the other house to these bills, hoping it would be borne in mind that this was the only civilized country in the world where, under such circumstances, the law afforded no relief.—The Duke of WELLINGTON said his noble and learned friend had spoken to him some time ago on the subjects of these bills, and he concurred in the measures which he proposed.—The LORD CHANCELLOR: My noble and learned friend should not be quite so credulous in believing the rumours which have reached him. Perhaps they may have been circulated only for the purpose of teasing my noble and learned friend.—Lord DENMAN said the Deadends Bill proposed to remedy an old and absurd law. But that law was the only security for preventing people from producing death by negligence, which was a pretty strong argument in favour of the Compensation Bill. He believed that when these measures came to be well considered, the other House would be convinced both of their merits and their necessity.—Lord CAMPBELL: There is one objection to these bills which I have heard. It has been said, "Suppose the Lord Chancellor were to meet with an untimely end by a railway accident, which we all pray may never occur, how would the jury estimate the loss to his family? What would be considered the tenure of his office? What would be considered a fair compensation to be awarded to his family for their loss?" I have that regard for my noble and learned friend that I hope his valuable life will never be exposed to any such peril. And a railway company would be extremely sorry if my noble friend were to break a limb through any negligence of theirs, because then he might bring an action and recover; but they would not care one farthing if his invaluable life were at once extinguished, because they would then say, "the law affords no remedy against us whatever." For the sake, therefore, of my noble and learned friend, though I hope he will never require the security, I do trust these bills will meet with that support in another place which they have so unanimously received in this House.—The LORD CHANCELLOR: There is a much more difficult case for compensation to provide for than the one which my noble and learned friend had the kindness to suggest. It relates to himself. He would any jury, in the case of accident to him, be able to estimate the value of his hopes? The bills were then read a third time and passed.

HOUSE OF COMMONS.

LEGAL EDUCATION.

TUESDAY, May 5.—Mr. WYKE moved, "That it be an instruction to the committee on legal education (Ireland) to extend their inquiry and consideration to the state, improvement, and extension of legal education in England." Ordered.

ADMINISTRATION OF CRIMINAL JUSTICE BILL.

WEDNESDAY, May 6.—The House went into committee upon this bill. A few verbal amendments were moved and agreed to on clauses 1 and 2. Mr. LAW then moved the addition of the following clause "Power to award hard labour, and the costs of the prosecution in all cases): "And whereas it is expedient to give to criminal courts the power to award hard labour as a portion of the punishment inflicted on offenders convicted before them, and also to give to such courts the power of allowing reasonable costs in all cases prosecuted or tried before them; therefore, be it enacted, that it shall be lawful for the court before which any offender shall be convicted of any misdemeanor, to sentence (if such court shall see fit) such offender to be kept to hard labour, either in the common gaol or house of correction, for the whole or any part of the term for which such court is now by law authorized to direct such offender to be imprisoned, and to direct (if it shall see fit) the costs of the prosecutor, and witnesses for the prosecution, in all cases of misdemeanor, to be paid in the same manner, and under the same regulations, as the costs in certain cases of misdemeanor are directed to be paid by the statute passed in the seventh year of the reign of his late Majesty King George the Fourth, intitled, 'An Act for improving the Administration of Criminal Justice in England.'—Sir J. GRAHAM admitted that this clause was a very important one; but he could not help looking with real jealousy at the enlargement of power which it reposed; and feared he should resist it, unless he heard from the hon. and learned gentleman some cogent reasons connected with his administration of justice, inserting it in the bill.—Mr. LAW said that it was difficult at a moment to mention the precise cases in which the hardships he complained of had arisen from its granting the power to criminal courts of award-

ing costs. The 7 Geo. 4, c. 64, s. 23, applied to certain cases of misdemeanor only, and his object was to extend it to all cases, at the discretion of the court. He had known cases of assault of the most aggravated nature, to which, owing to the nature of the indictment, the 7 Geo. 4 did not apply. An experience of twenty years in the administration of criminal justice convinced him of the necessity of the clause.—Sir J. GRAHAM, feeling the very great importance of the clause, requested his hon. and learned friend to withdraw it, and give notice of it upon the bringing up of the report. The bill had come down from the other House sanctioned by the high authority of Lord Chief Justice Denman, who had not seen this clause, and until he (Sir J. Graham) had had an opportunity of considering the matter, he should not wish to offer a decided opinion in reference to it.—Mr. LAW complied with the request, and withdrew the clause, promising to move it on the bringing up of the report.—The clause was then, after some discussion, withdrawn, and the report ordered to be received this day fortnight.

FEES IN COURTS OF LAW AND EQUITY.—COMPENSATIONS.

THURSDAY, May 7.—Mr. WATSON moved for a select committee to inquire into the nature and extent of the taxation of suitors by the collection of fees in the courts of law and equity, and the application of such fees, and the compensations paid to retired officers of those courts, and into the propriety of continuing them; and particularly to inquire into the orders for compensation made by the Lord Chancellor to the persons filling the offices of clerk of the enrolments, comptrollers of hawkers, riding clerk, six clerks, sworn clerks, waiting clerks, and others, under the Act 5 & 6 Vict. c. 103; and to inquire into the nature, duties, and emoluments of those officers before the passing of that Act, and their right to compensation during life and for seven years after the death of such persons.—The ATTORNEY-GENERAL contended that the motion, if agreed to, would be an interference with vested rights.—Sir J. GRAHAM was of opinion that the whole system of fees in courts of justice required examination, and would not oppose an investigation into the general question, without reference to the special cases alluded to by the motion of the hon. member.—After considerable discussion, Mr. C. BULLER said that no less than 300,000l. per annum was received in the various courts of law and equity in the shape of fees, and as there were great facilities for abuse, the necessity for inquiry became the more indispensable. Although opposed to the system of fees, he thought the course of compensation suggested and acted upon by the Lord Chancellor was right in principle. The system of fees was, however, a public scandal, and an inquiry ought to be entered upon with a view to put an end to it.—Mr. BARING, though he expressed his acquiescence in the principle of granting compensation in such cases as those under discussion, yet objected to the lavish rate at which it had been granted in the present instance, and, on that ground, supported the motion.—Mr. B. ESCOTT contended for the repeal of the law which awarded these compensations, as a law inimical to the public interests. He expressed himself favourably to Mr. Watson's motion.—Mr. ROMILLY held that the award of Parliament ought to be held inviolate; but expressed himself favourable to the part of the motion referring to the system of fee-taking in court.—Sir R. PEEL said, that from the period when he first filled the office of Secretary of State, he had felt these fees to be a serious evil. Even when Secretary for Ireland the fact was impressed upon him that there was no hope of being able to effect reforms in the courts of law unless the Government was prepared to act liberally towards those officers. He had, on the part of the Government, no objection to an inquiry with regard to the future; but he must oppose the motion of the hon. member, to whom he would suggest the propriety of bringing forward a motion as respects the future with the assent of the Government. The motion could not be in better hands, and it should have his (Sir R. Peel's) cordial support; but the question before the House would imply a censure upon the Lord Chancellor, who was only acting in accordance with an Act of Parliament.—Mr. WATSON replied, and the House divided, when the motion was lost by a majority of 80 to 65.

NEW STATUTES

Of the Sessions 9 Victoria.

[In this record of actual Legislation, only the statutes and parts of statutes of peculiar importance to the Profession are given *verbatim*. Of the rest, the title, or a brief analysis only, is preserved here.]

CAP. I.

An Act for the further Amendment of the Acts for the Extension and Promotion of Public Works in Ireland. (March 5, 1846.)

CAP. II.

An Act to authorize Grand Juries in Ireland, at the Spring Assizes of the present Year, to appoint

extraordinary Presentment Sessions; to empower such Sessions to make Presentment for County Works, and to provide Funds for the Execution of such Works; and also to provide for the more prompt Payment of Contractors for Works under Grand Jury Presentments in Ireland. (March 5, 1846.)

CAP. III.

An Act to encourage the Sea Fisheries of Ireland, by promoting and aiding with Grants of Public Money the Construction of Piers, Harbours, and other Works. (March 5, 1846.)

CAP. IV.

An Act to amend the Acts for promoting the Drainage of Lands, and Improvement of Navigation and Water Power in connection with such Drainage, in Ireland; and to afford Facilities for increased Employment for the Labouring Classes in Works of Drainage during the present Year. (March 5, 1846.)

CAP. V.

An Act to amend an Act for regulating the Construction and Use of Buildings in the Metropolis and its Neighbourhood. (March 24, 1846.)

The first section of this amendment Act authorizes the appointment of an additional referee. Sec. 2 provides that two official referees may act. Sec. 3, that official referees may act as surveyors, with the permission of the Secretary of State, and the existing disqualifications may be relaxed; and where any official referee shall have any interest in the property in question, or have been concerned therein, special referees may be appointed. By sec. 4, the office of official referee is to be vacated by such officer acting as surveyor, either alone or with any partner, or by an agent or otherwise in or about the property. Sec. 5 fixes the salary of the official referees at such sum, not exceeding 2,000l. per annum, as her Majesty shall appoint. Sec. 6 provides that contributions should be paid to the Consolidated Fund, and the salaries paid thereout.

CAP. VI.

An Act to make provision, until the first day of September, 1847, for the Treatment of Poor Persons afflicted with Fever in Ireland. (March 24, 1846.)

CAP. VII.

An Act to apply the Sum of Eight Millions out of the Consolidated Fund to the Service of the Year 1846. (March 30, 1846.)

CAP. VIII.

An Act to make further provisions as to Unclaimed Stock and Dividends of the South Sea Company. (March 30, 1846.)

CAP. IX.

An Act for amending the Act for rendering effective the Services of the Chelsea Out Pensioners, and extending it to the Out Pensioners of Greenwich Hospital. (April 2, 1846.)

CAP. X.

An Act for regulating the Payment of the Out Pensioners of Greenwich and Chelsea Hospitals. (April 2, 1846.)

CAP. XI.

An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their quarters. (April 2, 1846.)

CAP. XII.

An Act for the Regulation of her Majesty's Royal Marine Forces while on shore. (April 2, 1846.)

The public interest, however, will gain by a discussion which has directed attention to the exorbitant expense of obtaining justice in our courts of law and equity. It is usual to lay the blame entirely on the shoulders of the profession, and naturally enough, since the attorney's bill contains, besides his own charges, all the fees he has advanced on his client's account. The suitor looks only at the sum total, and confounds the whole together; but if he will read the items, he will find that not a few of them are tribute paid to the officers of the court. We are not prepared to say that all charges upon the administration of justice ought to be abolished, but it is clear that the fees at present exacted are beyond all measure exorbitant. It is quite enough to look at the large incomes that have been derived from them by a whole host of Masters and Registrars and Clerks, to form a pretty just estimate of the tax imposed upon the suitor. This tax, it must not be forgotten, still continues. In abolishing some offices and reducing the emoluments of all, the fees, it is needful to observe, are neither abolished nor reduced. They will still be paid, and, under the present system, must be paid, to form a fund for the payment of the salaries. The public, therefore, has gained nothing by the recent alterations, of which we have heard so much. That

relief is still to come, and Sir Robert Peel pledged himself last night that it shall come. The only wonder is, that since the Prime Minister has been, as he says, impressed with the magnitude of the abuse from the first hour of his official life, he has delayed the remedy so long.

THE MAGISTRATE.

Summary.

THE public mind is evidently moving on the subject of the Criminal Law and its administration. Scarcely a week passes without indication of the hold it has taken upon the sympathies of the philanthropic as well as the thoughts of the philosopher. The great meeting in Exeter Hall proclaimed the state of opinion on the subject of Capital Punishments; and although much was said that smacked more of sentiment than of reason, still there was a great deal of good sense in many of the arguments, and it is certain that this relic of barbarism will ere long be swept from the statute-book. The kindred topic of a provision for discharged prisoners is not suffered to sleep. In many of the cities and boroughs, the inhabitants are bestirring themselves to action. A change in the manner of trying petty larcenies is loudly demanded. Government has given its sanction to the principle of providing an appeal in criminal cases. Ere long we shall find a call for the adoption of the humane Scotch practice of assigning counsel for the defence of poor prisoners. The reform of prison discipline is in actual progress. The punishment of transportation is looked at with a doubtful eye, and its reform is occupying many thoughts. Altogether, there is a prospect of vast improvements in the administration of justice when the more urgent commercial questions are disposed of. A Codification of the Criminal Law must, however, be the first step.

At the request of many correspondents, we have procured a copy of the indictment successfully preferred against the *shons* lawyer Latham, at Birmingham, and for which we are indebted to the courtesy of the Clerk of the Peace of that borough. It is as follows:—

ROBERTA V. LATHAM.

(Copy Indictment.)

Borough of } The jurors for our lady the Queen, Birmingham. } upon their oath present that heretofore and before the time of the committing of the offence in this count mentioned, divers goods and chattels of one Peter Booth had been seized and taken by one Robert Prince, for and as a distress, on account of certain rent then due from the said Peter Booth to the said Robert Prince; to wit, at the borough aforesaid; and that Thomas Latham, late of the borough aforesaid, labourer, afterwards, to wit, on the tenth day of February, in the ninth year of the reign of our sovereign lady Victoria, the now Queen, at the borough aforesaid, with force and arms unlawfully did falsely pretend to the said Peter Booth that he, the said Thomas Latham, was an attorney, and that he, the said Thomas Latham, could cause the said goods to be restored to the said Peter Booth; whereas, in truth and in fact, the said Thomas Latham was not an attorney, and could not cause the said goods to be restored to the said Peter Booth, as he, the said Thomas Latham, then and there well knew. And that the said Thomas Latham, on the day and year aforesaid, at the borough aforesaid, by the said false pretence unlawfully did obtain from the said Peter Booth certain moneys, to wit, one piece of the current coin of the realm called a half-crown, one piece of the current coin of the realm called a shilling, one piece of the current coin of the realm called a sixpence, one piece of the current moneys of the realm called a penny, and two pieces of the current moneys of the realm called halfpence, of the moneys of the said Peter Booth, with intent to cheat and defraud the said Peter Booth thereof, against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

And count.—And the jurors aforesaid, upon their oath aforesaid, do further present that heretofore, to wit, on the day and year aforesaid, at the borough aforesaid, the said Thomas Latham, with force and arms, unlawfully did falsely pretend to the said Peter Booth, that he, the said Thomas Latham, was an attorney, whereas, in truth and in fact, the said

Thomas Latham was not an attorney, as he, the said Thomas Latham, then and there well knew, and that the said Thomas Latham, on the day and year aforesaid, at the borough aforesaid, by the said last-mentioned false pretence, unlawfully did obtain from the said Peter Booth certain other moneys, to wit, one piece of the current coin of the realm called a half-crown, one piece of the current coin of the realm called a shilling, one piece of the current coin of the realm called a sixpence, one piece of the current moneys of the realm called a penny, and two pieces of the current moneys of the realm called halfpence, of the moneys of the said Peter Booth, with intent to cheat and defraud the said Peter Booth thereof, against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

3rd Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that heretofore and before the committing of the offence in this count mentioned, divers goods and chattels of the said Peter Booth had been seized and taken by the said Robert Prince, for and as a distress on account of certain rent then due from the said Peter Booth to the said Robert Prince, to wit, at the borough aforesaid; and that the said Thomas Latham, on the day and year aforesaid, at the borough aforesaid, with force and arms unlawfully did falsely pretend to the said Peter Booth, that he, the said Thomas Latham, was an attorney; and that he, the said Thomas Latham, could cause the said goods to be restored to the said Peter Booth, whereas, in truth and in fact, the said Thomas Latham was not an attorney, and could not cause the said goods to be restored to the said Peter Booth, as he, the said Thomas Latham, then and there well knew; and that the said Thomas Latham, on the day and year aforesaid, at the borough aforesaid, by the said last-mentioned false pretence, unlawfully did obtain from the said Peter Booth certain other moneys, to wit, one piece of the current coin of the realm called a half-sovereign, and one piece of the current coin of the realm called a crown, of the moneys of the said Peter Booth, with intent to cheat and defraud the said Peter Booth thereof, against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

4th Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that heretofore, to wit, on the day and year aforesaid, at the borough aforesaid, the said Thomas Latham, with force and arms, unlawfully did falsely pretend to the said Peter Booth that he, the said Thomas Latham, was an attorney, whereas, in truth and in fact, the said Thomas Latham was not an attorney, as he, the said Thomas Latham, then and there well knew; and that he, the said Thomas Latham, on the day and year aforesaid, at the borough aforesaid, by the said last-mentioned false pretence, unlawfully did obtain from the said Peter Booth certain other moneys, to wit, one piece of the current coin of the realm called a half-sovereign, and one piece of the current coin of the realm called a crown, of the moneys of the said Peter Booth, with intent to cheat and defraud the said Peter Booth thereof, against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

5th Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Thomas Latham, on the first day of February, in the year aforesaid, at the borough aforesaid, unlawfully did falsely pretend to one Martha Collins, that he, the said Thomas Latham, was an attorney authorized to practise in the Mayor's Court of Record for the trial of civil actions in the borough of Birmingham, whereas, in truth and in fact, the said Thomas Latham was not an attorney authorized to practise in the said Mayor's Court of Record for the trial of civil actions in the said borough of Birmingham; and whereas, in truth and in fact, the said Thomas Latham was not an attorney at all, as he, the said Thomas Latham, then and there well knew; and that the said Thomas Latham, on the day and year aforesaid, at the borough aforesaid, by the said last-mentioned false pretence, unlawfully did obtain from the said Martha Collins certain other moneys, to wit, one piece of the current coin of this realm called a crown, one piece of the current coin of the realm called a half-crown, one piece of the current coin of the realm called a shilling, one piece of the current coin of the realm called a sixpence, one piece of the current moneys of the realm called a penny, and one piece of the current moneys of the realm called a halfpenny, of the moneys of John Collins, with intent then and there to cheat and defraud the said John Collins thereof, against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

Witnesses—
MARGARET BOOTH,
PETER BOOTH,
MARTHA COLLINS,
THOMAS ASSINDER.

True Bill.

REFORMATION OF JUVENILE OFFENDERS.—BIRMINGHAM, Wednesday.—At a meeting of the Town Council this morning, the Mayor introduced to the notice of the meeting the important question as to the best means to be adopted with reference to the reformation of juvenile offenders, and the following resolution was unanimously passed, and a petition was drawn up for presentation to Parliament embodying the sentiments contained therein:—"That in the opinion of this council the well-being of the community requires that the attention of her Majesty's Government and of the Legislature, should be directed to reconsider and amend the criminal law, so far as it relates to juvenile offenders; that it appears to this council that much advantage would accrue not only to the unfortunate individuals themselves, but to the public generally, by the adoption of a system by which the reformation of offenders might be made more incident with their punishment; and that such a system would be most satisfactorily carried into effect by the formation of establishments at the various gaols, especially appropriated for the purpose. But until some general measure can be adopted throughout the kingdom, it appears to this council that densely populated districts much good might immediately arise by the institution of houses of reformation, at which criminals of various ages, detached from prison without money, with injured character, and without homes or friends, might obtain by honest labour temporary support, and imbibe principles of morality and religion, the effect of which would grant their fellow-subjects in sanctioning their admission among them, and induce the friends of humanity to provide situations, which under their reformed character the individuals might fill with advantage to themselves, and with the chance of doing some reparation to the society which they had previously injured."

HERTFORDSHIRE.—COUNTY AND LIVERY JURISDICTIONS.—The deputy chairman of the Court of Quarter Session, Mr. T. Mills, has given notice that he will move, at an adjourned session, on the 15th inst. the following resolution:—"That it be referred to Lord Dacre and the Marquis of Salisbury to consider and propose terms for merging the jurisdiction of the Liberty of St. Alban in that of the county of Hertford, and the clauses of any Act of Parliament which it may be necessary to obtain for that purpose." A similar notice of motion has been given for the adjourned St. Alban Session; so that we may safely hope that the design will be carried out with unanimity, and that the legislature will not refuse to assent to a measure which is felt to be necessary by the parties connected with the administration of justice in this county.—*Hertford Mercury*.

THE LAWYER.

Summary.

DEAD ended yesterday, but the system of rest will scarcely enable us to bring up the arrears of the judgments. Another double number this week has, however, cleared the way. We have to direct the attention of our reader to some very severe, but we must admit, very just, observations of Mr. Justice COLERIDGE, in the Bail Court, of Wednesday, upon the practice of Counsel and Pleaders lending themselves to the arts of puff-blowing attorneys, by drawing, and thereby sanctioning, tricky demurrers and frivolous pleas.

THE LEGAL SKILL OF MR. O'CONNELL.—It had fallen to his lot, at an assizes in Cork, to be retained for a man on trial for an aggravated case of highway robbery. By an able cross-examination he was enabled to procure the man's acquittal. The following year, at the assizes for the same town, he found himself again retained for the same individual, then on a trial for burglary, committed with great violence, very little short of a deliberate attempt to murder. On this occasion, the result of Mr. O'Connell's efforts was a disagreement of the jury, and, therefore, no verdict. The government witnesses having been entirely discredited during the cross-examination, the case was pursued no farther, and the prisoner was discharged. Again, in the succeeding year, he found in the criminal dock; this time of a charge of piracy! He had run away with a collier, and was having found means of disposing of a portion of his cargo, and afterwards supplying himself with arms, he actually commenced cruising to his own account, levying contributions from ships which he chanced to fall in with. Having "done his bit," while engaged in this profitable occupation, he was brought into Cork, and there met his fate. Again Mr. O'Connell saved him, by getting him out of the jurisdiction of the Court.—*The Cork City Gazette*, committed within the jurisdiction of the Court.

therefore, cognizable only before an Admiralty rt. When the fellow saw his successful counsel ing the dock where he stood, to leave the place, stretched over to speak to him, and, raising his and hands most piously and fervently to heaven, ried out, "Oh, may the Lord spare you—to me!" *femoir of O'Connell.*

PROMOTIONS, APPOINTMENTS, ETC.

of the Peace for Counties, Cities, and Boroughs will be regularly forwarding the names and addresses of new Magistrates who may qualify.]

The Queen has been graciously pleased to appoint **Peel, Esq.** now attached to her Majesty's station in Spain, to be Secretary to her Majesty's rations in Switzerland.

The Queen has been pleased to appoint **Lord Harris** as Lieutenant-Governor of the island of Trinidad. **WHITEHALL, May 2.**—The Queen has been used to constitute and appoint the most Honour-able **John Marquis of Bute, K.T.** to be her Majesty's Commissioner to the General Assembly of the arch of Scotland.

The Lord Chancellor has appointed **Harry Edgell**, Esq., of Trowbridge, in the county of Wilts, to be Master Extraordinary in the High Court of equity.

MEMBER RETURNED TO SERVE IN THIS PRESENT PARLIAMENT.

WALKER DISTRICT OF BURGESS.—The Right Hon. **Henry Pelham Pelham Clinton**, commonly called Earl of Lincoln, in the room of **William Baird**, Esq., who has accepted the office of Steward of her Majesty's Chiltern Hundreds.

COMMISSIONS SIGNED BY LORDS-LIEUTENANT. COUNTY OF BARNET.—**Charles Gordon**, Duke of Richmond; **Charles, Earl of Marsh**; **Francis William, Earl of Seafield**; **John Charles, Viscount Reidhaven**; **William Gordon, bart.**; **Sir James Milne Innes, bart.**; **Francis Gordon Campbell, esq.**; **Andrew Swart, esq.**; **Arthur Abercromby, esq.**; **Thomas Abercromby Duff, esq.**; **Henry Lumden, esq.**; **James William Harvey, esq.**; **George Abercromby Young, esq.**; **Alexander Grant, esq.**; **Captain Lauchlin Duff Gordon, esq. jun.**; **John Gordon, esq. jun.**; **George Samuel Abercromby, esq. jun.**; **James Duff, esq. M.P.**, to be Deputy Lieutenants.

TOWER HAMLETS.—**Charles Salisbury Butler, Esq.**; **James Wisnik, esq.**; **Jacob Emanuel Goodwin, esq.**, to be Deputy Lieutenants.

COUNTY OF KINCARDINE.—**Anthony MacTier, Esq.**; **George Thomas, esq.**, to be Deputy lieutenants.

COUNTY OF GLOUCESTER, CITY AND COUNTY OF THE CITY OF GLOUCESTER, AND CITY AND COUNTY OF THE CITY OF BRISTOL.—**Robert Ancey Robinson, esq.**; **Sydenham Teast, esq.** to be Deputy Lieutenants.

UNIVERSITY OF CAMBRIDGE.—The following gentlemen have been called to the bar by the Hon. Society of the Inner Temple:—**R. Mackintosh Eastwood, Esq., M.A.**, of Caius College, Cambridge; **R. Matthews Heron, of Trinity College, Dublin**; **J. Sheehan, Esq., M.A.**, of Trinity College, Cambridge; **T. Lawrence Yeoman, Esq., M.A.**, of Trinity College, Cambridge; **W. Everett, Esq., M.A.**, of New College, Oxford; **J. Riley, Esq., M.A.**, of Trinity College, Cambridge; and **J. Darling, Esq., M.A.**, of Christ Church College, Oxford.

LINCOLN'S INN, May 6.—The undermentioned gentlemen were this day called to the bar, and sworn a before several of the benchers of the Hon. Society of Lincoln's Inn:—**Francis H. Deane, Esq., M.A.**; **Berdmore Compton, Esq., M.A.**; **Charles Cardwell, Esq., M.A.**; **Edward Kent Karalake, Esq., M.A.**; **Charles Watkins William Henry Wynne, Esq., M.A.**; and **Henry C. Burgess, Esq., M.A.**

GRAY'S INN.—The undermentioned gentlemen were on Wednesday called to the degree of Barrister-at-Law by the Honourable Society of Gray's Inn, viz. **James John Wilkinson, Esq.**, and **Benjamin Way, Esq., B.A.**

COURT PAPERS.

EXCHEQUER OF PLEAS.

Sittings at Nisi Prius in Middlesex and London, before the Right Honourable Sir Frederick Pollock, Knt. Lord Chief Baron of her Majesty's Court of Exchequer, in and after Trinity Term, 1846.

IN TERM.—In Middlesex: 1st Sitting, Monday, May 25th; 2nd Sitting, Monday, June 1st; 3rd Sitting, Monday, June 8th. In London: Friday, May 29th; 2nd Sitting, Friday, June, 5th; and by adjournment, if necessary, Saturday, June 6th.

AFTER TERM.—Saturday, June 13th; Monday, June 15th (to adjourn only).

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment, from day to day, until the causes entered for the respective Middlesex sittings are disposed of. The Court will sit, during and after Term, at ten o'clock.

PROCEEDINGS OF LAW SOCIETIES.

ARTICLED CLERKS' SOCIETY.

The gentlemen who, so creditably to themselves, proposed the formation of this very useful society, of which the plan was suggested by a correspondent some time since, have, in pursuance of their object, addressed the following letter to the Lord Chancellor and the Master of the Rolls, who have promptly transmitted the replies which we subjoin. The suggestion of the Master of the Rolls will, we hope, be adopted by the attorneys, who should give their cordial aid by contribution and advice to this endeavour of their clerks to obtain the most efficient means, for that best of all education, self-improvement:—

MY LORDS,—We, the undersigned committee of articulated clerks to attorneys and solicitors in England and Wales, having met together for the purpose of considering the propriety and necessity of establishing a general Law Students' Society, and having resolved that such a society would be a great boon to the Profession to which we have the honour of belonging, it was determined that our first steps should be to obtain the sanction of your lordships. We have, therefore, taken the liberty of addressing to your lordships the following observations, under the full conviction that as your lordships have ever lent your powerful influence towards the promotion of all wise and judicious reforms in the law, and of all measures tending to raise the Legal Profession in efficiency and public estimation, your lordships will not deem it an intrusion on your valuable time when we humbly state that we entertain the highest sense of the importance of the society in question; but that, on the contrary, your lordships will grant us your sanction, and render us all proper encouragement.

Our objects may be briefly stated to be educative and protective. We humbly think that nothing will tend so much to secure the honour, respectability, and efficiency of our Profession as carefully watching the education of its rising members. It was to promote this (as your lordships are well aware) that the examination preparatory to the admission of attorneys and solicitors was established, a measure which, in our humble opinion, has already been of great advantage, and which bids fair for much greater hereafter. Your lordships' attention may not have been called to the fact that there is no institution existing, either in the metropolis or elsewhere, receiving the general support of the Profession, calculated to assist the articulated clerk in his studies or to aid him in his preparation for the examination, and that consequently the clerk at the commencement of his articles (for want of that advice and assistance which such an institution might afford) has to struggle with so many difficulties that he too frequently abandons himself to despair of ever acquiring a sound and comprehensive knowledge of his profession, and aims solely at getting up sufficient knowledge to enable him to pass. Knowledge acquired merely for the occasion, and which, not being engrafted firmly in his mind, and made, as it were, a part of himself, is more speedily lost than attained; or, as is frequently the case, he fails, not owing so much to his want of inclination or ability, as of that assistance and stimulus which the generality of youth so much require. We would also request your lordships' attention to the fact that, although amongst articulated clerks are to be found youths at least equal in ability to those of any other profession, and although their number is so great, yet few ever attain to eminence or distinction in their Profession, caused, as we would humbly submit to your lordships, by the absence of an institution such as we now propose. Another consequence is, that the Profession and the public are much exposed to the malpractices of artful and designing men, who, having but a superficial acquaintance with the law, make it an instrument of oppression. Thus the public are injured and the Profession disgraced. The remedy, we humbly suggest, is to be found in the establishment of an institution which will raise the qualified practitioners above the attacks of these individuals, and draw so wide a line of demarcation in respect to character and competency between the two classes, that none in intrusting the care of their fortunes and interests need ever err.

We have viewed with great interest the late proceedings of the benchers of the Middle Temple on behalf of candidates for the bar, and we humbly think that the time is now arrived when the articulated clerks should put forth their claims to the consideration and assistance of the attorneys, and other members of the Legal Profession, upon the subject of education. The present appears, for this reason, to be a very happy crisis, and if we delay urging this subject now, we shall suffer such an opportunity to pass unimproved as may not occur again for many years.

The character of the society will not, of course, be collegiate, but institutional. It is intended to be a valuable auxiliary to the office or chambers; and whilst at the institution the theory and principles of the law are principally learned, the practice at the

office or chambers will be rendered more interesting and instructive. It is hoped that theory and practice will be thus happily combined; and that whilst the institution may be as a study, the practice at the office may bear the same relation to the lawyer as the experiments of the laboratory to the chemist.

We have not at present entered minutely into the detail of our scheme, further than was necessary to satisfy ourselves and to convince your lordships of its importance and practicability; and we have thought that, as so much would depend upon the sanction of your lordships to the principle of the measure, it would be better to apply for that in the first instance. Your lordships will already have collected the general character of the proposed institution; but we would more particularly state, that the specific objects which we have at present contemplated are,—the formation of an institution where suitable lectures would be delivered; the formation of a library—and we would here state to your lordships that there is not a public law library in London accessible to the general body of articulated clerks; also the formation of classes, under competent tutors and professors, for private instruction; the institution of periodical examinations, and the award of prizes, honours, and distinctions, to those who most distinguish themselves. Another object would be (as before stated) protective; namely, for the general conservation of the political and social interests of the articulated clerks, as occasion might hereafter be found to arise. Although the majority of those undersigned have but a short time to serve under articles, and are therefore unlikely to reap any of the proposed advantages, yet we are so fully convinced that the scheme we have suggested would effect a more important reform in our department of the Profession than has ever yet taken place, that we have resolved to devote our time and energies towards the accomplishment of our object; and we very earnestly and respectfully solicit your lordships to take the subject into your consideration, and kindly to give your sanction to its principle, which we feel no doubt would insure us abundant success. We fear that the importance and number of your lordships' engagements will prevent your lordships from giving us advice or directions in aid of our proceedings; but it is needless to say with how much respect and gratitude any such suggestions would be received by us.

In conclusion, we would state to your lordships that we represent a very numerous body of articulated clerks, equally desirous with ourselves for success. With great respect, we have the honour to remain your lordships' most obedient, humble servants,

W. W. WILSON,
EDW. TURNER PATER,
Geo. MARRIAGE, jun.
S. SANDERS,
T. COOKE.

London, 13th March, 1846.
To the Right Hon. the Lord Lyndhurst,
Lord High Chancellor of Great Britain.
To the Right Hon. the Lord Langdale,
Master of the Rolls.

Copies of the above letter were forwarded to each of the above noble and learned lords, and the following answers have been received from their lordships' respective secretaries:—

(Copy.)

George Street, 28th April, 1846.

GENTLEMEN,—I am directed by the Lord Chancellor to acknowledge the receipt of your letter to his lordship, and to state, with reference to the scheme proposed in it, that the Lord Chancellor's engagements prevent his entering into the details of the scheme, or offering any suggestions respecting them; but that, so far as he has had time to examine it, there does not appear any objection to the plan proposed for increasing the professional knowledge of the members of the intended society. I have the honour to be, Gentlemen, your very obedient servant,

H. J. PERRY.

SIR,—On receiving your letter of the 8th inst. I laid it before the Master of the Rolls, and his lordship directed me to offer the following observations in reply.

His lordship is satisfied that much may be done to encourage and promote the instruction and education of articulated clerks, and it would give him very great satisfaction to hear of a well-considered and practicable plan being established for that purpose; but he thinks that such a plan cannot be formed and carried into execution without the advice and assistance of experienced attorneys and solicitors, who may be able to direct attention to the most advantageous course of study, and concur in the application of the time which may be required for pursuing it. I am, Sir, your very obedient servant,

G. W. SANDERS.

Rolls, 15th April, 1846.

LEGAL INTELLIGENCE.

The case of **M. Charles Leclerc**, the barrister, who has excited so much interest in Paris, has at length been brought to a close in the *Cour Royale*, by his

being sentenced to be struck off the rolls. It should be remembered that M. Charles Ledru, after having prosecuted a priest named Contrafatto, and obtained against him some twenty years ago a condemnation to twenty years' hard labour, published some time since a letter, stating his belief that he had been deceived by false evidence, and that Contrafatto was not guilty.

Mr. Justice COLERIDGE.—We regret to state that Mr. Justice Coleridge, who has been suffering from indisposition for a short time past, is again unable to attend his official duties. The learned judge presided in the Bail Court yesterday, but by the advice of his medical attendants left town this morning for Brighton.—*Standard of Thursday.*

In the Lord Mayor's Court, on Monday, an action of some importance to traders within the City was decided by a jury; the City Recorder presiding. Mr. Sturt, the defendant, carries on the business of a warehouseman at Wood-street; and he was sued by the City Chamberlain for the penalty of 5*l.* for carrying on business without having taken up his freedom. It was admitted that Mr. Sturt dealt in cotton, linen, woollen, and other manufactured goods, which were purchased from manufacturers in Manchester, Scotland, and other places; that he received them in bales, which were opened and exposed to parties wishing to purchase them; that these goods were purchased on the usual terms—a credit of two months, or a discount of 2½ per cent. for cash. Sir Thomas Wilde, for the City, contended that this traffic was essentially a "retail" trade, which rendered the person carrying it on liable to a penalty for not taking up his freedom. The Solicitor-General, for the defendant, asserted that the business was a "wholesale" one, and exempt, in consequence, from such penalty. The Recorder put it to the jury, as traders in the city of London, and as men of experience, to say whether the defendant came within the province of a wholesale dealer or not. He considered that the corporation bye-law which regulated the case did not apply to wholesale dealings; and that a warehouseman did not carry on an art, mystery, or handicraft, within the meaning of the bye-law or Act. The jury, after consulting together for half an hour, returned a verdict for the defendant.

CORRESPONDENCE.

THE SOLICITORS' INSURANCE OFFICE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The letter of the Wiltshire Shareholder, shewing what he had actually done to advance the interests of this society, induced me to call at the offices in Chancery-lane this morning, to inquire how it was going on. I there saw a paper containing an abstract of the business already transacted, and as I am sure it will interest all your readers as much as it pleased and surprised me, I send you a copy of it.

PROPOSALS RECEIVED.

Total number, 48.	
Amount	£29,647 19 0
Accepted, 29	16,049 19 0
In progress, 12 ..	10,199 0 0
Declined, 5	2,699 0 0
Withdrawn, 1	200 0 0
In suspense, 21 ..	500 0 0
Paid upon 21	10,949 19 0

This is astonishing—I should think unprecedented—in an Insurance Office that has been at work only one month! and fully justifies the sanguine expectations of its first supporters, and proves the excellence of the principles upon which it is founded.

Most cordially do I join my brother shareholder of Wiltshire in congratulating the Profession upon the prospects of this, our own Insurance Office, and in thanking you for the skill and labour you have devoted to the designing and carrying out this singularly successful enterprise.

I hope all the shareholders will follow the example set by your correspondent, and effect an insurance on the life of himself or some member of his family, which is the immediate intention of, Sir,

Your reader from the first,
A KENTISH SHAREHOLDER.

8th May, 1846.

CONVEYANCING.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Your admirable article on Conveyancing, in last Saturday's paper, must I think have met with the approbation of all who perused it. I, as one of the gentlemen whose cause you advocate, most heartily thank you for it. At the same time I hope that you will not let the matter drop, but that you will endeavour to effect something at this crisis (so important as it is to the Profession at large) without delay. Could you not devise some method of combining the Profession for united action? I feel

assured that the case is urgent, and so I hope you will excuse my troubling you.

I am, Sir, &c.

Kent, May 4, 1846. A CONVEYANCER.
P.S. I inclose my name and address.

RIGHT TO FURNISH ADDITIONAL ABSTRACT ON TRANSFER OF MORTGAGE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—It has been mooted in the provinces, whether, on a transfer of a mortgage, it is the right of the mortgagee's solicitor to furnish an abstract, of and from the mortgage-deed, to the solicitor of the new or intended mortgagee, or whether it is the right of the mortgagor's solicitor to do so, from the copy draft mortgage, taken (as is usual) by him on effecting the mortgage.

AN ORIGINAL SUBSCRIBER.
[We believe it to be the privilege of the mortgagee's solicitor, but we shall be glad of the opinion of others, if we are wrong in this.]

PARLIAMENTARY COUNSEL.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As a junior member of the bar, I congratulate my fellow juniors upon the recent retirement of so many of their seniors from the Common Law Courts. Their names may be seen in the new Law List, under the head "Parliamentary Counsel." That they have so retired is the only reason I can discover for such a list being published; but there the list is, and henceforth, therefore, I suppose, that as a member of the Chancery bar does not come into the Common Law Courts, except upon special occasions, so as a general rule, the "Parliamentary Counsel" will be satisfied with Parliamentary fees, without the higher standing and position to be acquired by the slower and less painful practice of the Common Law Courts. If this be not so, then the list should be struck out, lest other simple-minded men like myself should make the same mistake.

A JUNIOR BARRISTER.

SELECTIONS FROM CORRESPONDENCE.

"A. B. C." asks information as to the following point of practice from the experienced of the Profession:—

Will you, or some of your correspondents, advise a country solicitor, what search may be made under the following circumstances? The estate of a testator, who died upwards of forty-five years ago, was paid into court in what is supposed to have been an administration suit. Forty years ago a solicitor in the country, concerned for several legatees, went up to town with them, and they then received a part of their money. The solicitor died in the same year, and no steps whatever appear to have been taken since in the cause. His office papers are not now to be found. The legatees, executors, and parties named in the will are dead, without the residue of the fund having been paid out of court. The parties can only guess at the name of a cause from the names of the legatees, executors, &c.

What search can the remaining relatives make after their money? Is there any means of finding it out through the Accountant-General's books? What becomes of money paid into court and neglected to be drawn out?

"DELTA" asks an opinion on the following points of professional etiquette:—

May I trouble you, or some of your able correspondents, for an opinion on the following point in professional etiquette:—Mr. A. is the attorney of the mortgagor, B. that of the mortgagee. A. sends his clerk twenty miles with the principal and interest payable on the mortgage, requesting him to retain the deeds on receiving the money. B. refuses, telling A.'s clerk, "that he perceives the object of A. is to deprive him of the fees to which he considers himself 'entitled,' but he shall advise his client not to receive the money until the release has been perused and presented for signature."

A.'s client is thus put to the expense of a useless journey. Was A. guilty of a breach of professional etiquette in tendering the money before preparing the release (the object being to save his client the expense of an abstract, without which, or the deeds, he was unable to draw release); or did B. not adopt a most unjustifiable and unprofessional course in refusing to deliver up the deeds; his only reason as he stated, being, that he was thus deprived of his fee for abstract? By an opinion from you, to which both parties must bow, you will greatly oblige.

A "SOLICITOR" submits the following:—

By the statute 4 Vict. c. 21, being the Act for rendering a release as effectual for the conveyance of freehold estates as a lease and release, by the same parties, it is required that every deed to operate by virtue of that Act shall be expressed to be made in pursuance of it. I am not aware that there was any other legislation on this subject until the passing of the 7 & 8 Vict. c. 76, which is entitled "An Act to

simplify the transfer of Property." The latter statute enables every person to convey by deed, without livery of seisin, enrolment, or prior lease, all freehold land as he might previously have conveyed by lease and release, and declaring that every conveyance should take effect as if it had been made by lease and release. This statute does not appear to render a direct reference to its terms necessary in deeds to which it may apply. By the 6 & 7 Vict. c. 106, the statute to which I have last alluded was repealed, as to so much of it as abolished mortgages remainders, as from the commencement, and as to the residue as from the 1st Oct. 1845. In the month of March, 1845, a deed was executed which contained the usual operative words of a release, but not the word "convey." It however purporting to be a conveyance or transfer of freehold land, and was stamped with lease and release stamps, but made no reference to any statute. An objection has been raised to the efficacy of the deed in question, on the ground of the absence of such a reference as above mentioned. I shall be obliged if you or some of your correspondents will state whether the objection is well founded.

"B. M." submits the following query:—

Can any of your readers inform me what is charged by solicitors for preparing the transfer of Railway Debentures, and otherwise completing same?

Heirs-at-Law, Next of Kin, &c. Wanted.

[This is part of a complete list now being advertised in the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. Reference, with the date and place of each advertisement, cannot be stated here without subjecting the property to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where particulars are preserved, and which will be forwarded to any applicant. To prevent impertinent enquiries, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps inclosed.]

13. NEXT OF KIN OF JAMES SCOTT, of Newmarket, Edgeware-road, died Feb. 1839.
14. HEIR-AT-LAW OF SAMUEL POSTER, died at Brompton many years ago, possessing property at Brompton.
15. NEXT OF KIN OF WILLIAM ANDREW PEARCE, late of MARY WARRINGTON, widow, LECT. BORN 1804, formerly in marine service, Robert Turner, formerly of Bombay, marine, J. F. NALAN, Esq., ensign of his Majesty's 65th regiment, ALBERT BOYD, and Captain JOHN SAMSON.
16. HEIR-AT-LAW OF ISRAEL JAMES HEDDER, of Dean-street, in the parish of St. Paul, died Feb. 1835.
17. NEXT OF KIN OF SAMUEL PEARCE, of Clifton, Oxford-street, died Sept. 1834.
18. NEXT OF KIN AND HEIRS-AT-LAW IN GAVESHEAD SUSANNAH SARGENT, late of St. Margaret's, London, died August, 1835.
19. NEXT OF KIN OF ANN SCARSBROOK (late PEARCE), wife and afterwards widow of JAMES SCARSBROOK, Turville, Bucks, labourer.
20. WILL-WANTED.—Of Lieut.-Col. JAMES LAY, deceased.
21. CHILDREN OF Mrs. ESTHER HILL, formerly of Brompton, who resided at Clapham, Surrey, about the year 1772, or their descendants.
22. NEXT OF KIN OF SARAH SOPHIA SPANISH MARRAT, late of Cowley-road, Kennington, Surrey, widow (whose maiden name was BRANDON), died May 14, 1836.
23. NEXT OF KIN OF WILLIAM PICKERING, late of Great Driffield, East Riding of York, farmer and miller, died at Driffield, Sept. 1835.
24. NEXT OF KIN OF ANN EVERETT, late of Adam-street, Portman-square, died in Jan. 1834; the wife of ANTHONY EVERETT, of Adam-street, carpenter, and before marriage she was ANN TOLSON, spinster, and lived in Bryanston-square.
25. NEXT OF KIN OF ANN PAGE, formerly of New Street, and afterwards of Gower-street, London, widow, died Aug. 6, 1821.
26. NEXT OF KIN OF CHRISTOPHER GREENWOOD MARRAT, late of Bridge-houses, near Doncaster, York, miller, died March 17, 1834.
27. PROOF OF DEATH OF WILLIAM BUTLER, of Great Yarmouth, seaman on board Her Majesty's ship *Tromp* and *Tisiphone*, and merchant ship *Spartan*, and others: finally quitted his wife at Yarmouth, in 1804, and was seen on board some ship at Rio Janeiro in 1811.
28. NEXT OF KIN of the following, who died in India: Capt. JAMES OWEN, country sea service; JAMES COATES, conductor; SAMUEL BUTLER, master; ALBERT; Capt. GEORGE CHALON; Lieut. JAMES ALTHUR, in marine service; Capt. GROVE GREENWALD, in marine service; and MARTIN FRENCH, Esq., in marine service.
29. NEXT OF KIN OF FRANCES COOPER, late of Leicester, spinster, died March 2, 1815.
30. NEXT OF KIN OF JOHN KENTISH, late of Pall Mall-street, Marylebone, Middlesex, victualler, died Nov. 1822.

To Readers and Correspondents.

We cannot insert, or notice in any way, any communications that are sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER. QUERRIES, Birmingham.—The best, we believe, in the most recent work on the subject, "Synon's Law of Statements."

NOTICE TO SUBSCRIBERS.

volumes of the LAW TIMES, neatly, strongly, and uniformly bound, for 5s. 6d. each, with the name and address of the owner on the cover, *s. extra*, if sent to the office. If the numbers are binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

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F. B.—For Scale for Estate Advertisements, see JOURNAL PROPERTY.

NOTICE.

THE LAW DIGEST will be completed next week, and ready for binding with the last volume, which may now be forwarded to the Publisher as usual. Such of our subscribers as desire to have their volume made complete by including this comprehensive and carefully compiled Index of the Law, are requested to instruct the Publisher to that effect when they forward their numbers for binding.

NOTICE.

The subscription for the current half-year is now due, and subscribers desirous of availing themselves of the great reduction allowed for pre-payment, should forward the same in the course of the ensuing week. The prepaid subscription is 11. 5s. for the half-year, and 21. 7s. for the year, being a reduction respectively of 25 and 30 per cent.

Post-office Orders must be made payable to Mr. JOHN CROCKFORD, Publisher of the Law Times.

THE LAW TIMES.

SATURDAY, MAY 9. 1846.

CHARITABLE TRUSTS.

THE great importance of this measure to the interests of the Profession and of the public alike, demands a more particular notice than was enabled to give to it last week.

Few, perhaps, are aware of the enormous amount of property devoted to charitable purposes. From the report of the commissioners, it appears that the landed estates alone extend to 442,915 acres; this, at the lowest computation, is worth upwards of forty-four millions. This does not include the land covered with buildings. The house property has been valued at twelve millions. Besides these, there is at least an equal amount of personal estate, mortgages, and rent-charges. The same authority estimates the entire property devoted to charitable purposes in England and Wales, at "from seventy-five to one hundred millions."

This vast property is administered by about 50,000 trustees. The reports of the commissioners shew how mismanaged is the greater portion of it. But those reports do not disclose a tithe of the abuses familiar to all who have lived in places where charities exist and watched their proceedings. It is no exaggeration to assert, that one half of the whole is not made to yield its fair annual value; that of the income received not one half reaches its proper destination; that many of the purposes to which the residue is really applied are useless, and not a few of them injurious. Frequently are they made to subserve the uses of party

or sect; to buy parliamentary or municipal elections, or to make places and swell bills for the convenience of private interests.

That such is the fact will need no proof with professional readers, whose duties must continually compel them to witness instances of the abuses of charitable trusts. At present, the only remedy is in the Court of Chancery. The cost and the delay of such a proceeding are generally worse than the evil it is sought to cure. Hence the infrequency of applications for the interference of that Court even where abuses are notorious. In this, as in all like cases, everybody's business is nobody's. The interest of no individual is sufficient to induce him to litigate for the common good, and so the abuse continues untouched.

And even when the Court of Chancery is invoked, its powers are practically limited. It holds itself bound by the expressed will of the donor, however circumstances may have changed, and however it is little fitted for the existing condition of society. The cases in which it will depart from the words, to carry out the spirit, are very few. Hence the charities are not made to yield the greatest, but permitted to produce the smallest, amount of public benefit.

Again, there are many hundreds of charities of too small value to afford the cost of a Chancery suit. These are, of course, abandoned in despair, to be plundered with impunity.

These evils have been, for many years, crying aloud for redress. The newspapers and periodicals have blamed the cowardice or the laziness of successive governments for neglecting to apply a remedy to so manifest a mischief. At length, Lord LYNCHURST has undertaken the task, and instead of being met in a spirit of captious hostility, seeing the opposition he is sure to invoke from the numerous and powerful interests having a personal stake in the maintenance of existing abuses, his endeavour ought to be, by the disinterested of the Profession and the public, received with respect, and examined, with a view to its improvement and greater efficiency for its object, and not with purpose to destroy it.

It is in this spirit that we enter upon its examination.

The objects sought are twofold: first, to secure the proper management of charitable trusts; second, to provide a more simple, speedy, and inexpensive means for redressing wrongs, and directing the application of the property to the purposes which shall be most in accordance with the spirit of the donation; that is, in such manner as, from a survey of the circumstances of the donor, it is probable he would have applied his gift had he lived at this time.

Lord LYNCHURST's Bill appears to aim much more at the first object than at the second. It empowers the Lord Chancellor to appoint three commissioners of charities and two inspectors; the former to hold during good behaviour, the latter to be removable by the Lord Chancellor. They are to appoint and remove necessary subordinates.

These officers are invested with various powers; first, generally over all charities; second, over charities not worth 100*l.* a year; third, over charities vested in municipal corporations.

Their powers, with respect to all charitable property are, on the application of the trustees, to direct its mortgage, sale, or exchange; to grant building and other leases, authorize the compromise of claims, direct how the accounts shall be kept and audited, and receive every year statements of the receipts and expenditure; inquire into the receipt and application of the revenues; require accounts, vouchers, and returns, and summon before them any trustees or officers and examine them on oath. They are to report to the Crown triennially the revenue and expenditure of all charities; and to state whether any or what of them have ceased to be beneficial, or have become injurious, and what of them require to be reformed

or regulated. Sections 49 and 50 direct the registration of all deeds affecting charities.

To these powers there can be no honest objection. They afford sufficient security against mal-appropriation of funds, and impose a mighty check upon jobbing of all kinds. Active commissioners would be vigilant to permit of no leases unless the full value were reserved, and to sanction no sales or exchanges that were not at least as much for the good of the charity as of the other party. But we find no provision in the Bill empowering the commissioners to direct the regulation, or reform, or the better application, of charities reported to them requiring reform, or as having ceased to be beneficial, or having become injurious.

Their powers in reference to charities whose income does not exceed 100*l.* per annum are much more extensive. Here they may act judicially. Whenever they suspect mismanagement, the commissioners may proceed to the *locus in quo*, examine witnesses upon oath, and award judgment; may order payment of money retained by any officer; remove trustees and officers found guilty of abuse, breach of trust, or neglect; appoint new trustees and make regulations for the future management of the charity; they may appoint trustees where there are none; and direct a new application of the charity when the original purpose has failed. From their decision there is no appeal; but they are empowered to rehear the case within two months and revise their own judgment.

Lastly, as to the charities formerly vested in municipal corporations, they are empowered, on application by ten householders, to appoint trustees where none have been yet appointed, and where there are trustees, on a like application, alleging that the trust is not fairly administered, to appoint such an additional number of trustees as they may deem necessary to secure impartiality. They are to fill up all future vacancies of trustees, subject to an appeal to the Lord Chancellor.

Such are the main features of this important measure; and, upon a calm and candid review of them, it must be confessed that it is more easy to complain of their stringency, and to object to the large powers given to the commissioners, than to suggest means that will accomplish the end without them. Power to investigate abuses and to enforce proper management, must be lodged somewhere; if it be left, as before, to the Court of Chancery, the existing impediments will survive. If it be delegated to any other authority, none seems more fitted for its exercise than the commissioners, who will be directly responsible to the Crown, and consequently to Parliament and the country, for the proper discharge of their duties. However, we pause here, purposing next week to review the scheme above described, with intent to point out such practical objections and improvements as have been suggested by our own experience and the communications of correspondents.

THE LAW LIST.

We hasten to correct a very extraordinary—shall we term it error, or injustice?—which has made its appearance in the *Law List* of the present year, for the first time.

Among the lists of Counsel practising in the various courts there has been introduced one with the title of "A List of Counsel usually practising in Parliamentary Committees," and containing some thirty names.

From this it might be supposed that only the Counsel there named undertook that branch of business.

But the fact is, that *all* Counsel, without exception, take briefs before Parliamentary Committees. There is no exclusive list. There are only two or three whose principal business it is. All the rest practise more in the courts than in the committees.

Therefore the framers of the *Law List* had

no more right to insert an exclusive list of Parliamentary Counsel than of Queen's Bench Counsel.

We do not believe that the Editor, who has been hitherto remarkable for fairness in the conduct of that valuable manual for the Profession, would have ventured of himself to frame the partial list he has published, or that he would have given it a place, had he observed its injustice. It is plain that the list must have been imposed upon him by some party interested in its publication.

We hasten, however, so far as we can, to correct the error, by assuring the Profession that the Parliamentary Counsel named in the *Law List* have no more claim to the title than all other Counsel, and that the publication is altogether unauthorized either by custom or by the fact.

LEGAL EDUCATION.

It will be seen by the report of the parliamentary debates on subjects affecting the law and lawyers, that Mr. WYSE has obtained the sanction of the House of Commons to the extension of the inquiry of the committee appointed to investigate the state of Legal Education in Ireland, to a similar inquiry into Legal Education in England. The question has thus assumed an aspect of more importance than ever. The attention of our readers will often hereafter be directed to the proceedings of this committee.

It will be observed, also, from a correspondence that appears among the "Proceedings of Law Societies," that the Articled Clerks are making an effort, by combination, to procure for themselves more opportunities for the advancement of their studies than they can command at present. The attempt is highly creditable to them, for it indicates a resolve to keep pace with the general progress of the community. The lawyers must advance with the age, or they will be trodden down. Such a society as that projected by the Articled Clerks would tend vastly to exalt the general character, and consequently the social position and influence, of the entire Profession. It is, therefore, a matter of interest to the masters as well as to the clerks. We hope that the efforts of the one will have the cordial concurrence and aid of the other.

LAW DIGEST, OR INDEX LEGUM.

THE fourth number of this elaborate work is now ready, and the fifth, completing it, will be published next week, so that subscribers will soon be enabled to bind it with their last volume of the *LAW TIMES*, to which it is intended to be an appendix, where all the law of the previous half year may be found with speed and certainty.

RAILWAY LITIGATION.

THE argument as to the Liability of Allottees, which has appeared in recent numbers of the *LAW TIMES*, has called forth many commentaries, some assenting, others dissenting, but the majority being largely in accordance with the views we have endeavoured to maintain. It is from no disrespect to these correspondents that we refrain from an attempt to answer objections and remove doubts, but because enough has been already advanced upon both sides of the question to enable the reader to form a fair judgment upon the point at issue.

But these communications have been accompanied by many other queries relative to the vast ocean of Railway Litigation. Gladly would we have extended to the various difficulties and doubts that have been suggested to us the same minute investigation as was devoted to the subject of the Liability of Allottees; but their number makes the task impossible, and the complication of many of them would perplex the astutest lawyer of the age. Without, therefore, pretending to reply to the numerous questions that have been forwarded, we propose to notice some of the most practically important, with a view to the guidance rather of action than of opinion.

But before we enter upon these, we must introduce to the notice of the readers of the *LAW TIMES* a very sensible pamphlet upon *Railway Litigation*, just published by Mr. T. T. A'BECKERT, the eminent solicitor of Golden Square. (a) His suggestions are those of the experienced man of business, so superior to the crude notions of the amateur legislator. He brings the knowledge acquired in the office and learned from cases of actual occurrence to the solution of the great problem, now occupying the thoughts of statesmen, how the difficulties into which the events of last autumn have plunged the country may be dispersed with the least damage to all the parties involved. To Mr. A'BECKERT belongs the honour of having lifted the first potential voice against the injustice, so shamefully sanctioned by the press, of relieving the allottee by the ruin of the Provisional Committee-man; not unfrequently the most innocent party in the affair. Mr. A'BECKERT wields a vigorous pen. His pamphlet is by no means dry and technical. He treats his subject after a fashion pleasing and intelligible to every reader. He states the precise evils calling for a remedy, and, moreover, as so few writers care to do, he prescribes the manner of the cure. As there is novelty in both, we will describe them with some minuteness.

His comment upon the Railway Dissolution Bill are temperate. He complains only that such a measure should be necessary. It argues great defects in the existing law. That a company should be unable to effect its own dissolution, when convinced that its objects cannot be realized, is a discovery that has taken the public by surprise. It appears, indeed, that the entire law of Joint Stock Companies is in a barbarous state, the wants of society having far outrun the slow progress of legislation.

He fears that in the re-action many really good projects will perish with the bad ones. To avoid this, he makes the following excellent proposition:—

To enable the really valuable projects to withstand the panic which has taken possession of the public mind, I would permit the directors of the companies that have passed the ordeal of a committee, to proceed with their Bills, introducing a clause allowing the majority of the shareholders to suspend all operations under the Act for intervals of six months, but so that the whole time for completing the works should not, in the aggregate, be prolonged more than three years beyond the time ordinarily allowed by the Legislature for completing railway undertakings. The shareholders in schemes that had already received the sanction of Parliament, and were thus privileged, would, in all probability, before long, acknowledge that their interests had been materially served by the preservation of the project, the *bona fides* of which a Parliamentary investigation would, to a certain extent, have guaranteed, and the shares in which would doubtless be eagerly sought for on the taking place of the reaction in favour of railway enterprise, which its intrinsic importance will certainly one day produce.

Turning to the sufferers by the panic, Mr. A'BECKERT boldly asserts the moral and the legal duty of allottees to contribute their proportion of the expenses incurred on the faith of their applications, and the injustice of throwing all the expenses upon the members of provisional committees, not a few of whom took no part in the projects, but merely lent their names, in the belief that they were thus advancing works calculated to be of great public benefit. He calls upon the legislature to adjust, in a fair and rational spirit, the general loss; he shews how this may be done; he asserts that thus only can the demon of litigation be laid, and a stop put to the "dishonesty, misery, and ruin that have for months been running riot through the land." Mr. A'BECKERT's remarks are so full of right feeling and truth, though opposed to the current of popularity, that we extract them *verbatim*:—

That unhappy class the provisional committee-men, have been and are the most fearful sufferers by this national calamity. Among them are, doubtless, many very foolish and very dishonest persons, but they have in their body others of the highest honour and possessing the finest intelligence, whose only fault has been that of trusting to the national character as a protection against the persecutions that have befallen them.

(a) "Railway Litigation, and how to check it; with Remarks on the Proposed Railway Relief Bill, and suggestions for regulating the future conduct of Railway Enterprises." By THOMAS TURNER A'BECKERT, Attorney-at-Law. London, 1846. E. Wilson.

What were the circumstances under which they were tempted to come forward?

At a time when the desire to invest money in the formation of railways appeared universal, they consented to put themselves forward as the directors of schemes which they were made to believe were of national importance, and would prove advantageous to the subscribers. The public poured in their applications for shares, on the faith whereof were incurred considerable expenses necessary to be at once paid if the object was to be attained which the applicants professed to have in view. These expenses the directors are now called upon to bear alone, while the applicants for shares stand by exulting in their difficulties, and systematically disregarding promises written in language the most comprehensive and explicit, and accompanied with references to third parties as guarantees for their honour and pecuniary responsibility. Was it to be expected that, in a country boasting of its national honour, a whole community would thus disgrace itself? As between man and man, the transaction would stamp with infamy the faulting party, and exclude him for ever from respectable society.

This shameless endeavour of the allottees, aided by the press, to throw the entire burden of an own breach of contract upon the committee-men, have deceived, does, in Mr. A'BECKERT's opinion, call for the interference of the legislature, and he proceeds to point out a practical mode of accomplishing the object. "I propose," he says.

That provisional committee-men shall be bound to treat those projects on which the parliamentary deposit has not been paid as dissolved partnerships, and on submitting the accounts thereof to the inspection of a public officer, and obtaining a certificate to their fairness, the right shall be conferred of enforcing payment from each allottee of his proportion of loss. If the directors, in their original scheme reserved an interest for private purposes, which a finding they could not accomplish, they shew themselves to have thrown upon the public, they ought themselves to bear its burden; and I would, therefore, require that as a condition precedent to the obtaining any relief, they should deposit with the Registrar of Joint Stock Companies their original allotment book verified by the oath of their secretary, and that his claim for contribution should be limited to those to whom allotments were made upon the first distribution.

I would also make it compulsory upon the directors to do justice to a class of persons who, as well as others ought to be protected. Those who, on receiving their allotments, paid their deposits, the whole of which are now retained to make up for the deficiencies of others, leaving the sufferers to seek redress either by suing the directors for a return of all the money, or filing a bill in equity for an account and contribution. I believe conscientiously they are not entitled to the first, while the mode of obtaining the last is too expensive, and too thickly surrounded with difficulties to be ventured upon. I would, therefore, give to every allottee who had paid his deposit, the right to recover from the directors, by the order of a commissioner of bankrupts, the difference between the amount the allottees had actually paid, and that which, on the verification of the accounts by the public officer, would appear to have been their due proportion.

If these suggestions were adopted, justice would be done to all who had acted *bona fide*, and the difficulties in enforcing the performance of an undertaking, which in honour and conscience ought to be carried out, would be at an end, and the seeds destroyed of a crop of litigation which will otherwise overrun the land.

We are glad to find that the opinion of a sensible and experienced lawyer as Mr. A'BECKERT confirms our own, as to the legal liability of allottees, and he appears to have taken very nearly the same views as we had done of the real purport of the famous cases of *Nockels v. Crosby* and *Compagnie v. Saunders*.

We cannot refrain from taking another significant passage upon this subject:—

The allottee community may abuse provisional committee-men till the vocabulary of Billingsgate is exhausted; they may denounce with Ciceroian eloquence the swindling and fraudulent character of the scheme they requested to be parties to; but, after all, their argument may be put in these words, "I proposed to belong to the affair when I fancied I might have made a pound or two by being concerned in it; but as I find, if I keep my engagement, the account will be the other way, I shall break my word."

The injustice of allowing the repudiating allottee to triumph, as they now do, over the unfortunate provisional committee-men is, positively speaking, when we bear in mind that, upon the former class, is chargeable the dreadful responsibility of having for a time paralysed the commercial energies of the country.

and degraded its character. It was they who brought into existence all that there was of evil in the late railway movement. Had it not been for their false pretences, the spirit of enterprise would have been kept within its proper limits; but they, and they alone, turned it from its useful course, and converted a fertilizing river into a sweeping inundation. Their proceedings were as petty and cowardly in conception as they have proved pernicious in practice. They had all the vice of a gambler without his boldness. They played for a stake they never intended to produce if the east of the die should prove against them. Affecting a desire to take a part in a great national work, they systematically undermined it, and made what might have been a noble monument of a nation's power a heap of ruins.

I know that this is not the popular view of the question. I know that the allottees are encouraged by the press in a systematic resistance to the claims made upon them. If the demand be written authoritatively, they are advised not to be bullied; if it be accompanied by an appeal to their sense of justice, they are warned against being wheedled; if the sum be a trifling amount, the applicant is ridiculed for his mendicant spirit; if at all formidable, he is denounced for his audacity. Surely the time will come when reason will exert her influence, and justice maintain her sway, and shall no longer be tempted to exclaim, with Marc Antony—

"Oh, Judgment, thou art fled to brutish beasts,
And men have lost their reason."

Fervently—I may say passionately—do I hope that the moral sense of the people will arouse itself, and that the time will quickly arrive when the real authors of a national calamity will be recognized, and no longer be abetted in bullying their victims, but compelled to stand forward and do them justice.

But Mr. A'BECKETT does not rest here. He suggests a method for preventing a recurrence of the mischief. He proposes that some rules of law should be laid down to secure a defined liability, capable of ready enforcement, in those engaged in railway enterprises. We have not space left for an entire description of the plan, but it embraces strict registration of all names *before announcement*, and a *bond-fide* taking up of all the shares before proceeding to Parliament. Ample safeguards are suggested for directors and allottees, to secure from both their fair proportions of the expenses necessarily incurred.

Such a pamphlet, from such a quarter, cannot but have great weight with the government; with the Profession, and with the public. Earnestly do we hope that many, if not all, of its suggestions will be embodied in the Bill now before the Parliament. They are eminently practical, and it gives us the more pleasure to make it known in quarters where its propositions can be carried into effect, because if passed, it would be a set-off against the stains which we are reluctantly compelled to admit have been cast upon it by many of its members, who have exhibited in the use they made of the recent railway mania, and the advantage they have taken of their victims, what Mr. A'BECKETT too truly terms "matchless impudence, combined with extraordinary rascality."

But this clever pamphlet has detained us so long, that the intended notes upon some of the most urgent questions arising out of Railway Litigation must be postponed until next week. E.W.C.

A COURSE OF LECTURES ON THE LAW OF CONTRACTS.

By PROFESSOR CARR.

Delivered at the University College.

LECTURE XIV.

I have treated hitherto of cases where there has been a warranty of a specific chattel. The same principles, with some variations, regulate the rights of parties under executory contracts, and the same language has been applied to them.

If I undertake to supply goods of a certain specified quality, and the goods I do supply are of an inferior quality, this has been frequently described as a contract wherein I bargained that the goods shall be of the quality specified, and commit a breach of faith. It would, perhaps, be more correct to look upon this as a breach of a contract, wherein I engage to do a certain specified thing, and fail to do it. (*Fugman v. Hopkins*, 4 M. & G. 369.)

A good deal of confusion has arisen in many of the cases on this subject, from the unfortunate use made of the word "warranty." Two things have been confounded together. A warranty is an ex-

press or implied statement of some thing which the party undertakes shall be part of the contract, and though part of the contract, yet collateral to the express object of it. But in many of the cases, some of which have been referred to, the circumstance of a party selling a particular thing by its proper description has been called a warranty. But it would be better to distinguish such cases as a non-compliance with a contract which he has engaged to fulfil: as, if a man offer to buy peas of another, and he sends him beans, he does not perform the contract; but that is not a warranty; there is no warranty that he shall sell him peas: the contract is for the sale of peas, and if he sends him any thing else in their stead, it is a non-performance of it. So, if a man were to order copper "for sheathing ships," that is, a particular copper prepared in a particular manner; if the seller sends him a different sort, in that case he does not comply with the contract. This is not properly classed under the head of warranty. The distinction is illustrated by the following case:—Suppose a party offered to sell me a horse of such a description as would suit my carriage, he could not fix on me the liability to pay for it, unless it were a horse fit for the purposes I wanted it for. But if I describe it as a particular bay horse, in that case the contract is performed by his sending me that horse; and, even if it were part of the contract (a collateral part) that it should be fit for the purpose, that may be a warranty; and, though I may have a ground of action if it is broken, yet still it would be a performance of the contract. If this view is right, it would be more correct to consider a warranty as a collateral undertaking in the sale of a specific chattel, and a breach of warranty to be considered as a breach of an incidental undertaking.

Any non-compliance with the terms of an executory contract is to be considered as a non-performance of the substance of the original contract. This distinction appears to me to throw light on the differences that exist between the two cases. If this view is marked out, it would be found, probably, that a warranty exists only where the property passes to a purchaser by the bargain itself. Where the property is not passed to the purchaser by the bargain itself, the undertaking that the goods shall be of a given quality must be deemed to be not collateral to the bargain, but a part of the substance of the original contract. One main difference between the two cases is, that in the case of an executory contract, if the undertaking or warranty is broken, the purchaser is at liberty, even after he has received the goods, to return them to the seller, and afterwards delivered according to sample, would not be bound to receive the bulk if it does not correspond with the sample; nor, after having received what was tendered and delivered as being in accordance with the sample, will he be precluded by a simple receipt from returning the article within a reasonable time, for the purpose of examination and comparison. (*Stephens v. Wilkinson*, 2 B. & Ad. 320.) Where goods are ordered for a particular purpose, the seller impliedly undertakes that they shall be fit for that purpose. This is an instance of what is termed an implied warranty. If beer be sold, to be consumed at Gibraltar, the sale is an affirmation that it is fit to go so far. If the purchaser says, "I want copper for sheathing a vessel," and the merchant says "I will supply you well," this constitutes a contract, and amounts to a warranty that it shall be fit for sheathing (according to the language of the earlier cases). It appears that without any express engagement on the part of the merchant, a knowledge of the purpose to which the copper was to be applied would make him responsible for its being reasonably fit for the purpose. (*Jones v. Bright*, 5 Bing. 533), and two other cases in 4 B. & C. 108, and 4 Taunt. 847.

Where goods are ordered of a manufacturer, a warranty is always implied that they shall be of a merchantable quality. (*Laing v. Fidgeon*, 4 Campb. 169.) The difference between the sale of a specific chattel and an order for such a quantity of goods or for articles to be manufactured, I apprehend, to consist in this:—In the sale of a specific chattel, the purchaser has the power of examining it before he makes the bargain; if his examination is unskilful or careless, the blame lies with him. *Caveat emptor*. But when goods are ordered, the power of examination does not rest with the purchaser; the individual articles sent are selected by the purchaser. It is but reasonable,

therefore, that on him should be thrown a responsibility corresponding with the examination endorsed of the purchaser, or the implied understanding between the parties. In all these cases the rule I have mentioned applies. In such executory contracts, where an article, for instance, is ordered from a manufacturer who expressly or impliedly contracted that it should be of a certain quality, or fit for a certain purpose, and the article sent is such as never could have been accepted by the party ordering it, and he does not return it so as to make him answerable for it, in this and similar cases the latter may return it as soon as he discovers the defect, provided he has done nothing in the meantime more than was necessary to give it a fair trial. (*Brown v. Edgington*, 2 M. & G. 279.) We have had a good deal to consider with respect to delivery, but I have not yet inquired into the question in what does delivery consist? Delivery, in its simplest form, consists in that which has been termed by Lord Kenyon "actual transmutation from hand to hand." (*7 T. R. 71*.) I go into a shop and buy goods; the tradesman hands me the goods across the counter and I take them; there the delivery is complete. The case that approximates nearest to actual transmutation from hand to hand is where goods are left by a tradesman or his servant at the house of the buyer, supposing the goods to be the same and in effect identical. The third kind of delivery is where goods pass through the hands of a carrier or other agent; thus, I order goods in London, to be sent to my house in York; the goods are sent by the carrier; here the act of leaving the goods with the carrier is a delivery to me. In order to understand clearly what constitutes a delivery, it may be useful to inquire into the nature of possession. According to the theory of our law, possession appears to signify properly what was called by Lord Tenterden "the corporeal power" over the thing. (5 B. & Ald. 140.) As long as my goods are in my house, I have the corporeal power over them; I am in a condition, in point of fact, to deal with them as I please, to exercise all the rights that belong to me as owner. In this case the goods are, in every sense of the word, in my possession, and they cannot, in any sense, be said to be in the possession of another. If I send the goods to your house to be taken care of for me, the corporeal power over them is transferred from me to you; nevertheless, I have not lost, nor have you acquired as against me, the right to deal with the goods as owner; though the corporeal power is with you, I still retain the legal control. Where the corporeal power is thus severed from the legal control, possession is sometimes, and for some purposes, attributed to the person that has the legal control; at other times, and for other purposes, it is attributed to the person who has the corporeal power. Hence, it appears that the term "possession" is ambiguous. This is indeed evident from the phrase frequently used that "the possession of the agent is the possession of the principal." By this is meant that the agent has the corporeal power over the thing (the possession in one sense), but this is only in behalf of the principal, in whom is vested the possession in the other and more important sense, namely, the legal control. Lord Kenyon says—"In the case of a carrier there is a mixed possession: actual possession in the carrier, and an implied possession in the owner." And Buller, J. says—"The carrier is considered in law as the servant of the owner, and the possession of the servant is the possession of the owner." The person who has the legal control without any corporeal power is not in possession, in the strict and primary sense of the word; but inasmuch as he has all the rights which result from possession, he is in law deemed to be in possession, and his condition with respect to the goods is therefore sometimes termed possession in law, or possession implied by law, whereby it is distinguished from possession in fact, which exists whenever there is the corporeal power. Sometimes it is termed a constructive possession, or virtual possession, as distinguished from the actual possession. Where goods are delivered by transmutation from hand to hand, or, by being left at the house of the buyer, there is at once a total change of possession; at the moment of delivery the corporeal power, as well as the legal control, is at once transferred from the seller to the buyer. Where goods are sent by a carrier, the change of possession is not so immediate; after they have left the hands of the seller, there is an interval before the

goods come into the hands of the buyer; during that interval the goods are not in the actual possession of either party. But at the moment when the goods pass from the hands of the seller to the hands of the carrier, the legal control over the goods is lost by the seller, and acquired by the buyer; the seller cannot countermand the delivery; the carrier holds the goods on behalf of the purchaser; they are constructively in his possession; in other words, the delivery to the carrier is a delivery to the buyer. It appears to have been considered at one time that the delivery to the carrier was not a delivery to the buyer, unless the buyer had either expressly or impliedly authorised the goods being sent by the carrier in question, so as to constitute him his agent. (2 Wms. Saund. 47.) On the one hand, it is clear that if the seller sends the goods by an agent of his own, he may at any time while the goods are in the hands of his agent countermand the order which he has given him; the goods are not yet delivered by the seller; as long as they are in the hands of the servant of the seller, they are in the possession of the seller himself; he may exercise any legal control that he is justified in using over them as his own goods. On the other hand, it is equally clear that if the seller puts the goods into the hands of an agent of the buyer, he can exercise no further power over them. (*Vale v. Bayle*, 1 Cowp. 294.) In the earlier cases the question frequently arose whether the carrier was or was not the agent of the buyer. (*Dawes v. Peck*, 8 T. K. 330.) This investigation was a very unsatisfactory one, and only decided by a *petitio principii*. Now, however, it is clearly settled (at least where it is a part of the bargain that the goods shall be sent by the carrier at all) that unless the carrier is the special agent of the seller, it is immaterial whether he may or may not have been employed by the buyer—immaterial, even, whether his existence is known to the buyer. Delivery to the carrier, inasmuch as it puts the goods out of the control of the seller, is delivery to the buyer. (*Dutton v. Solomonson*, 3 B. & P. 582; *Brown v. Hodgson*, 2 Campb. 38; *Copeland v. Lewis*, 2 Stark. 33.) Where goods had been shipped by order and on account of S. and Co. of Hamburg, it was held, these goods having been damaged, S. and Co. were the parties to bring the action, the goods having become theirs, and not the person who shipped them. (*King v. Meredith*, 2 Camp. 839.) The case of *King v. Meredith* shews that it is immaterial whether the carrier is employed by one party or the other. There is also the case of *Fragano v. Long* (4 B. & C. 219). *Fragano*, a merchant at Naples, sent to *Mason's* at Liverpool, an order for hardware, to be dispatched on insurance being effected; terms to be three months' credit after arrival. *Mason* marked the oak with *Fragano's* name, and sent it by canal to Liverpool, where it was shipped to Naples. Here, but for the order of *Fragano*, the goods would never have left *Mason's* warehouse; they were marked with *Fragano's* name, so that there could be no doubt about their individuality. And that case fell within the general rule, that where goods are to be delivered at a distance for the seller, they are in law delivered to the buyer as soon as they are sent off. So it was held in the case of *King v. Meredith*, that the goods were the property of the purchaser as soon as they were sent off; the goods were sent properly, and the carrier had substituted water for spirits, nevertheless the purchaser was bound to pay, they having been delivered to the carrier in the proper state. So in *Fragano v. Long*, the action being against the carrier for negligence, it was held the proper person to bring the action was *Fragano*, the person to whom they were sent. (*Alexander v. Gardner*, 1 Bing. N.C.), and also the very instructive case of *Richardson v. Dunn* (2 Q.B. 218). The marginal note of that case is, "Defendant, by letter, requested that plaintiff, a coal merchant at Stockton, would send to him at Southampton, as early, and as low, as possible, from 200 to 300 tons of coals, either by the *Navigator* or other vessel. Plaintiff, by letter, consented. The *Navigator* could not be obtained, and would not have carried 200 tons. Plaintiff, on 31st December, shipped 152 tons for Southampton by another vessel, and by letter of the same date informed the defendant that he had done so, stating, also, that he had drawn at two months for the price, payable in London. He also inclosed an invoice, and asked if he should engage another ship to make up the quantity. Defendant returned no answer. On January 6th the ship with the coals was lost. Plaintiff,

according to the notice in his letter, drew a bill on the defendant, which was paid into a banker's at Stockton on January 4th, reached Southampton about a week after December 31st, and was presented to defendant for acceptance. Defendant, who had heard that the ship was lost, refused to accept. Held, that defendant was liable for the price of the 152 tons, as goods sold and delivered; for that if he meant to repudiate the past delivery by another ship than the *Navigator*, he should have stated so in answer to the plaintiff's letter; that he was not entitled to defer such answer till the arrival of the bill; and consequently, that if plaintiff had improperly departed from the terms of the contract, defendant had waived the right of objecting." He sent an order for a cargo to be sent in a particular vessel; the person who receives the order finds it impossible to send the cargo in that vessel; he sends a smaller cargo in another vessel; that was not a compliance with the order. In this case notice was given to him of the loss of the vessel, and also a bill for the price had been drawn on him. Now, a week elapsed, after he knew the order had been complied with, before he heard of the loss of the vessel; and it being soon after the loss of the vessel, he objected to the mode of compliance. The Court said, "Had the coals arrived and been accepted by the defendant, no doubt he must have paid for them; had he in terms assented to the mode in which the plaintiff had proceeded to execute the order, the same consequence would have followed. And it was contended for the plaintiff that defendant's conduct amounted to an acquiescence in what the plaintiff had done. The letter of the plaintiff inclosed the invoice, and informed him that a bill had been drawn; it therefore became his duty, it was said, without any delay, to inform the plaintiff that he dissented from this mode of executing his order, that no more coals were to be sent, and that he would not accept the bill. Silence for a week, and until he knew of the loss, was tantamount to assent. For the defendant, it was said that he was not bound to answer the letter, or express any opinion, until the bill arrived. We cannot agree to this; the fact of the bill having been drawn on him was, we think, an additional reason for a prompt communication." To the general rule an exception is hinted by *Halroyd, J.* namely, where a charge is made by the seller for the carriage. I apprehend that any such charge would not of itself operate to prevent the delivery in point of law; it might be evidence, but it would only be evidence that the carrier was the agent, or, in the words of Lord Mansfield, that "he had taken upon himself actually to deliver the goods to the buyer." The following case is cited: (*Chaplin*, 3 Q. B. 483.) The traveller of a trading firm in London (the Messrs. Moores), gives a verbal order for goods to a manufacturer at Paisley; the goods are sent by the railroad; was this a delivery? Two questions appear to be raised by the case, but not decided. You will observe, first, that the order was given by word of mouth, and that nothing else took place to make the contract binding within the Statute of Frauds. Secondly, that though the goods were ordered by the traveller of a London house, nothing whatever was said about their being sent. On the second point it was said by *Patteson, J.* "If the consignee had selected a particular carrier, it would have made a difference; perhaps, if they had ordered that the goods should be sent 'by some carrier,' the delivery to any carrier might have constituted a delivery to the consignee. But I do not see how the mere order can have the effect contended for. I do not see how delivery by a consignee, of his own accord, to a carrier, can be a delivery to the consignee." From this it would seem to follow, that, supposing the order to be in writing, and to be assented to in writing, if this order is silent about the sending of the goods, the party giving the order cannot bring an action for the non-delivery, without having gone to the manufacturer, ready to take the goods; that is to say, it will not be implied to be any part of the order that the goods are to be sent by the one or the other. If it is no part of the bargain, the other party cannot enforce it, and the only way of getting the goods would be to go and ask for them. *Williams, J.*, says, "I cannot find any instance in which the right has been held to pass to the consignee, where he has not expressly directed the sending by some particular conveyance, or at least the sending by some conveyance or other." Mr. Justice Wightman says, "It has in no case been held that the property passed to the

consignee, by the consignee's mere delivery to carrier, the consignee having given no order relative for the sending." Supposing that to be the point on which the Court proceeds, it would appear that if a particular carrier is named by the purchaser there is no doubt a delivery to him is a delivery to the purchaser, and if they are required to be by a carrier, the delivery to any ordinary common carrier will, under the circumstances, be a delivery to the purchaser; but that if goods are merely ordered and not ordered to be sent, then the sending is a delivery to the purchaser. Supposing the Court to have gone on that ground, that would seem to be the result. The judgment of Lord Denman is silent on this point, and turns entirely on the other point, which was only incidentally, if at all, noted by the rest of the Court. The argument was that there was no written memorandum within the Statute; the delivery to the carrier was certainly an acceptance by the purchaser within the Statute; there was therefore no valid contract within the Statute of Frauds; the mere sending of the goods without any contract valid in law did not take the property in question. According to Lord Denman's view, it would be immaterial whether carrier had been pointed out to the purchaser or not. Lord Denman likened this to a case in which goods are sent merely for approval, and there is held by Parke, B. no property would pass until they received and adopted the goods. It is, as if goods sent without being ordered, sent under expectation of sale; these cannot be deemed to be sold until they are received till the other party has acquiesced in buying the purchaser. (*Swain v. Shepherd*, 1 M. & S. 223.) The same principle is involved in the sale of goods at sea, of goods in the custody of a warehouseman, and of goods altogether in the possession of a buyer. The things sold at the time of the sale altogether out of the corporeal power of the seller; that he has to do is to make a transfer of the legal control from himself to the buyer; and that with respect to a ship at sea, it must go through the form required by the Registration Act. As soon as this is done, the delivery is complete. (*Allen v. Maling*, 2 T. R. 462; *Mason v. Moore*, 17 L. 67.) It was said by one of the judges, not having what other delivery there could have been—"I am bound to say that the possession depended upon the property." In these cases we must suppose sale such as that of a specific amount of goods, whereof the identity and individuality are complete. If, instead of selling you all the timber now lying on my land (which was the case in *Mason v. Moore*), I have sold so many loads, at so much per ton, there would have been no delivery till the goods were sent. (*Kingsmill v. Southern*, 9 L. & C. 895.) The reason of this is, that the possession depends on the property, and the property does not pass till the thing is individualised. And this is, perhaps, the reason why we sometimes find delivery and transfer of property used as convertible terms. It is so in this case of *Swain v. Shepherd* (1 M. & S. 900), where the term *transfer* was used, where *delivery* would have been used with more propriety. So, with respect to goods in a warehouse. I am a warehouseman, and have the goods of a merchant in my possession; he sells them goods to you; he gives me an order to deliver them to you. If the delivery was such as he describes, that is the same as if the delivery had been made directly to the merchant himself. But if more frequently happens that you, the buyer, leave the goods in my warehouse; in this case, although the goods are still in my keeping, they are deemed to be delivered to you. You may accept my duty to deliver to you, and it becomes my duty to deliver accordingly; and if I give a consent to hold them on your behalf, still, as you have accepted the order to hold the goods, the disposal of them is with you an accepting the order to deliver them to you—I execute this disposal that is made in your favour from that time homeward. It is material to observe that the assent or knowledge of the warehouseman is material; until he has given his assent, and has taken on himself to hold on behalf of the buyer, he continues to be on behalf of the seller, and would be justified in obeying any subsequent order of his. (*Knowles v. Horsfall*, 5 B. & A. 134.) So that until his assent is obtained the purchaser does not acquire the control over the goods; until he assents, his possession is the possession of the seller (meaning any sending as accepting the delivery order); on his assenting, the possession becomes the possession of the buyer. In such a case the warehouseman

mes a trustee for the purchaser, and there is an actual delivery to the purchaser as much as if goods had been delivered into his own hands. *Wall v. Burn*, 3 B. & C. 423; *Harmen v. Ames*, 2 Campb. 243; *Tinsley v. Turner*, 2 Bing. 3. 161.)

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

Mrs. the wife of E. E. P. Kelsey, esq. of the Close Salisbury, on the 4th inst. of a daughter.

MARRIAGES.

THEY, the Right Hon. James Stuart, Judge Advocate General, and M. P. for Bute, youngest son of the late Lord Harcourt, to the Hon. Jane Lawley, only daughter of Mr. and Lady Wenlock, at St. George's Church, Hanover-square.

Mrs. Charles, jun. esq. to Elizabeth, eldest daughter of a late Randall Norris, esq. of the Inner Temple, on the 14th ult. at Warrsade, Herts.

DEATHS.

ES, David, esq. Barrister-at-Law, on the 1st inst. at his ambers in Lincoln's-inn, aged 55.

AMES, Henry Lloyd, esq. Solicitor, on the 26th ult. at Andover, aged 43.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY

ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

BY WILLIAM HUGHES, Esq. Barrister-at-Law.
(Continued from p. 103.)

12. *Traitors and Felons.*

By attainder for treason or other felony, the traitor becomes incapable of holding any description of landed property whatever (Perk. s. 26; Stat. Shep. Touch. 232); but if he previously conveys it away, such conveyance will be good as against all persons but the Crown; for notwithstanding that it has been said (see Prest. Shep. Touch. 232) that such conveyance is not good as against the lord of whom the land is held, the latter doctrine is wholly unfounded in principle; hence Mr. Preston, with his usual learning and accuracy, remarks (Prest. Shep. Touch. 232; 3 Prest. Abs. 2), "The title of the lord is a title by escheat, and so can be no escheat in this case, since there is no actual tenant by the alienation. If," he adds, "an attainted person be disqualified to alien as against the lord, this disability is because he is *radically mortuus*; for treason there is a forfeiture of the inheritance; in felony there is not any such forfeiture." (See also Vin. Abr. Attainder (B), Forfeiture (P); Bac. Abr. Forfeiture (A); Com. Dig. Forfeiture (B).) To remedy also the extreme law respecting *forfeiture* (which, corrupting the hereditary blood of the offender, rendered his general heirs incapable of inheriting or transmitting their own property by bequest in all cases where they were obliged to derive their title through the attainted person, whether through himself only, or a more remote ancestor), an Act of Parliament was passed by which corruption of blood was confined to the crimes of treason, petit treason, and murder (54 Geo. 3, c. 45). And by a subsequent statute (3 & 4 Wm. 4, s. 106, s. 10), it is enacted, that when any person from whom the descent of any land is to be traced shall have any relation who having been attainted shall die before such descent shall have taken place, then such attainted shall not prevent any person from inheriting such land, who would have been capable of inheriting the same, by tracing his descent through such relation, if he had not been attainted, unless such lands shall have escheated in consequence of such attainder before the 1st of January, 1834.

Previously, indeed, to either of the last above-mentioned statutes, an heir in tail might have derived his pedigree through an attainted person; for, notwithstanding a tenant in tail forfeits all lands of which he is seized in tail at the time of the crime committed, or at any time afterwards, yet he does not forfeit that which he never had; viz. the right of succession by the next heir in tail, unless the attainted person be or become owner in point of estate or right. (3 Prest. 393; Bro. Des. pl. 1; Bro. Forfeiture, pl. 37; *Mantell v. Mantell*, Cro. Eliz. 28; *Sheffield v. Ratcliff*, Godb. 305, Hob. 347.)

Upon the whole, therefore, it seems that an actual conveyance after the commission, but before conviction of the crime, will intercept the title of the lord; but in case attainder should follow, such conveyance would be inoperative against

the Crown (Co. Litt. 42; Prest. Shep. Touch. 232, n. 131; 3 Prest. Abs. 392; Vin. Abr. Attainder (B), Forfeiture (P); Com. Dig. Forfeiture (B); Bac. Abr. Forfeiture (A).) The lord's title by escheat would, however, overreach a devise by will, because a devise does not take effect until the death of the testator, whereas a deed takes effect immediately upon its execution.

13. *Aliens.*

Aliens are incapable of holding lands in this country, which upon office found become forfeited to the Crown; and it seems that the title of the Crown will prevail over that of a *bona fide* purchaser, to whom the alien may previously to such office found have sold and conveyed the property. (2 Blac. Com. 274; Vin. Abr. Alien (A); Com. Dig. Alien (C); Shep. Touch. 232; Co. Litt. 2, 8, 42.) But the conveyance of an alien will be good against all other persons except the Crown; and it has also been held that an alien tenant in tail may suffer a recovery which will be effectual as against him and his issue, and the persons in remainder or reversion; because until office found the alien is seized of the freehold, and if the tenant to the *precipe* has the freehold at the time when the recovery is suffered, it will be sufficient, though it be defeated afterwards (4 Leon. 84; Prest. Shep. Touch. 232; Golds. 82; 1 Prest. Convey. 257; 5 Com. Dig. xxxvi. ch. 2, pl. 11, 12); but under the Fine and Recovery Substitution Act (3 & 4 Wm. 4, c. 74), an alien is incapacitated from being the protector of a settlement of entailed property. (Sec. .)

14. *Mortgagees.*

A mortgagee, unless under a power or trust for sale, cannot, before the equity of redemption is barred, either by lapse of time or foreclosure, sell the mortgaged lands so as to defeat the mortgagor's equity of redemption; neither does a fine levied, or a recovery suffered by a mortgagee in possession, bar either the mortgagor or persons claiming under him (*Weldon v. Dux Ebor*, 1 Vern. 132; Patch on Mortgages, 118); unless in the latter instance the mortgagor were to come in upon the voucher. (Cro. Jac. 593; *Stanhope v. Tucker*, Pre. Cha. 435.) Nor will a lease made by a mortgagee in possession be binding upon the equity of redemption, unless there was an absolute necessity for it, (2 Com. Dig. tit. xv. ch. 2, pl. 19; *Hungerford v. Clay*, 9 Mod. 1); and then only at improved rack-rent. (*Weldon v. Ralston*, 1 Cha. Cas. 172.) But where the mortgage-deed contains a power or trust enabling the mortgagee to sell the mortgaged premises, he may undoubtedly do so (*Corder v. Morgan*, 18 Ves. 344; *Clay v. Sharpe and Others*, ib. 846, n.); and the mortgagee's receipts shall be a sufficient discharge to purchasers, the mortgagee may confer a good title without the mortgagor's concurring in the sale. Whether on failure of heirs of the mortgagor the equity of redemption will become absolute in the mortgagee, or escheat to the lord, seems to have been a disputed question; but the better opinion seems to be, that neither would be entitled in case the mortgagor should leave any personal representatives; because, as the mortgagor may demand payment of the money from the personal representatives, the Court would order a reconveyance to them, and would, if necessary, consider the estate reconveyed as coming in lieu of the personality, and as assets to answer even simple-contract creditors. (*Burgess v. Wheate*, 1 Blacks. 123; 1 Eden, 177.)

Sale by a mortgagee in possession without a trust or power of sale, when valid.—Where a mortgagee has been in the uninterrupted possession of the mortgaged lands for twenty years and upwards, he may convey away his estate so as to bind the equity of redemption. Mortgagees, it is true, were not within the old Statute of Limitations (21 Jac. 1, c. 16); but yet courts of equity long since determined that by analogy to that statute, twenty years should be the time to bar the mortgagor of his equity of redemption (*Jenner v. Tracey*, and *Belch v. Harvey*, 3 P. Wms. 287, n.; *White v. Ewer*, 2 Vent. 340; *Anon*, 8 Atk. 313; 2 Fonbl. Eq. 264, 265; 1 Eq. Ca. Abr. 313, n. a; *Pearson v. Pullen*, 1 Cha. Cas. 102; *Cloddy v. Symonds*, 1 Vern. 397; *Sanders v. Hord*, 1 Cha. Rep. 79; *Chapman v. Bowyer*, ib. 110; *Frazer v. Moore*, Bunb. 54; *Corbet v. Barker*, 1 Anstr. 138; *Hovenden v. Amesley (Lord)*, 2 Scho. & Lef. 636; *Hodde v. Hesley*, 1 Ves. & Bea. 539; 1 Mad. Pract. 519, 2nd edit.; 1 Redes. Tr. 174, n. w); which rule of equity has been confirmed by the recent Statute of Limita-

tions, 3 & 4 Wm. 4, c. 27, by the 20th section of which is enacted, that the mortgagor shall be barred at the end of twenty years from the time when the mortgagee took possession, and from the last written acknowledgment of the mortgagor's title. But this will not operate as a bar to parties under the disabilities of coverture, infancy, lunacy, or absence beyond the seas, who are allowed ten years after the removal of their disabilities to assert their rights. (Sec. 16.) But when the time once begins to run, it will continue to run on unimpeded by any succeeding disabilities (sec. 18; see also *Corval v. Sykes*, 1 Cha. Rep. 1931; *Floyd v. Mansel*, Gilb. Eq. Rep. 185; *Knowles v. Spence*, Eq. Ca. Abr. 315; *St. John v. Turner*, 2 Vern. 418); nor will any claim be allowed after forty years. (Sec. 17.) Imprisonment, which was formerly ranked as a disability, is omitted in the recent Statute of Limitations; and, therefore, simply as such, can no longer be treated as a disability. And neither Scotland, Ireland, nor the islands of Man, Guernsey, Jersey, Alderney, or Sark, or any of the adjacent islands (forming part of her Majesty's dominions), are to be deemed beyond the seas. And where a party has absconded beyond the seas to avoid or retard justice, he will not in such case be allowed to avail himself of this disability. (*Jenner v. Tracey*, and *Belch v. Harvey*, 3 P. Wms. 287; Patch on Mortgages, 284; 2 Mad. Pract. 519, 2nd edit.)

15. *Trustees.*

It is a rule of equity that no act of a trustee shall prejudice his *cestui que trust* (*Lechmere v. Carlisle*, Earl of, 3 P. Wms. 211, 215); but it contains one exception, viz. where the trustee is in the actual possession of the trust estate, and conveys it to a purchaser or mortgagee, who has notice of the trust, for a valuable consideration; in which case such purchaser or mortgagee, as the case may be, will be entitled to hold the estate against the *cestui que trust* (*Finch v. Earl of Winchelsea*, 1 P. Wms. 279; *Burgess v. Wheate*, 1 Ed. 195; *Nullard's case*, 2 Freem. 43; *Mansel v. Mansel*, 2 P. Wms. 681; *Willoughby v. Willoughby*, 1 T. R. 171; *Dunbar v. Tredennick*, 2 Bal. & B. 318; *Parkes v. White*, 11 Ves. 209), for by such conveyance the purchaser acquires the legal estate, and having by the purchase acquired an equal equity with the *cestui que trust*, the legal estate will be suffered to prevail. 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off. ass.; Gregor and Co. Bedford-row, and Whitworth, Manchester, *ass.* Date of fiat, April 25. Bankrupt's own petition.

GANDY, THOMAS, grocer and tea-dealer, Lower-road, Islington, May 7, at half-past two, June 11, at half-past one, Basinghall-st. Com. Shepherd; Graham, off. ass.; Rae, Warwick-court, sol. Date of fiat, April 28. Bankrupt's own petition.

HAMBRIDGE, CHARLES, coach smith and wheelwright, Curran-road, Shoreditch, and Milner-mews, Harrington-st. Paddington, May 13, at eleven, June 16, at twelve, Basinghall-st. Com. Evans; Bell, off. ass.; Carter and Gregory, Lord Mayor's Court-office, Old Jewry, sol. Date of fiat, April 29. Bankrupt's own petition.

HANSON, THOMAS, builder and contractor, Leeds, May 21 and June 13, at eleven, Leeds, Com. West; Freeman, off. ass.; Rushworth, Staple-inn, and Sanderson, Leeds, sol. Date of fiat, April 27. Bankrupt's own petition.

HARLOW, JOHN, tobacconist, 9, Leicester-square, May 12, at twelve, June 13, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Bagster, Sise-lane, sol. Date of fiat, April 13. Bankrupt's own petition.

HARRISON, THOMAS, victualler, Birmingham, May 13 and June 6, at eleven, Birmingham, Com. Daniell; Whitmore, off. ass.; Hodgson, Birmingham, and Vincent and Co. Temple, sol. Date of fiat, April 23. W. G. Mayhew, wine merchant, Birmingham, pet. cr.

HARRISON, JOHN, ship chandler, Kingston-upon-Hull, May 13 and June 3, at eleven, Town-hall, Hull, Com. Barge; Kynaston, off. ass.; Messrs. Allen, Carlisle-st. and Johnson, Hull, sol. Date of fiat, April 21. R. Jackson, merchant, Hull, pet. cr.

MARSDEN, RICHARD, linen and woollen draper, hatter, and hosier, Brynmawr, Becknocks-shire, May 18, at twelve, June 12, at eleven, Bristol, Com. Stephen; Hutton, off. ass.; Mawson, Manchester, and Messrs. Bevan, Bristol, sol. Date of fiat, April 14. M. Mawson and R. Nichols, merchants, Manchester, pet. crs.

MOTTRAM, PRYCE, draper and mercer, Shrewsbury, May 12, at half-past ten, June 16, at twelve, Birmingham, Com. Balue; Valpy, off. ass.; Gordon, Shrewsbury, and James, Birmingham, sol. Date of fiat, April 24. G. Armsby, dissenting minister, Shrewsbury, pet. cr.

PITCH, JOHN WILLIAM, tailor, Sackville-st. Piccadilly, May 12, at half-past eleven, June 12, at half-past twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Davies and Son, Warwick-st. Regent-st. sol. Date of fiat, April 30. M. Milroy, sen. and jun. trimming sellers, Regent-st. pet. crs.

RODGERT, SAMUEL, iron founder and machine maker, Blackburn, May 13 and June 16, at twelve, Manchester, Pott, off. ass.; Milne and Co. Temple, and Wilding and Co. Blackburn, sol. Date of fiat, April 27. R. Rimmer, ironmonger, Blackburn, pet. cr.

SHEPHERD, WILLIAM AND JOHN, grocers, Lower Acton-place, Bagnigge Wells-road, May 12, at eleven, June 12, at twelve, Basinghall-st. Com. Goulburn; Green, off. ass.; Lawrence and Flew, Bucklersbury, sol. Date of fiat, April 30. Bankrupt's own petition.

SHEPHERD, WILLIAM, grocer, Bagnigge Wells-road, trading with John Shepherd, grocer, of the same place, under the firm of W. and J. Shepherd, as a trader indebted with the said John Shepherd, May 12, at eleven, June 12, at twelve, Basinghall-st. Com. Goulburn; Green, off. ass.; Hill and Matthews, St. Mary Axe, sol. Date of fiat, April 22. A. Conway, J. Phelps, and T. Hayward, grocers, Maiden-lane, pet. crs.

SMITH, EDWIN BUCKFAY, and MATHEWS, JAMES ALEXANDER THOMAS, glass and lead merchants, Great Dover-road, Newington, May 7, at half-past twelve, June 16, at one, Basinghall-st. Com. Evans; Johnson, off. ass.; Wadson, Austin-friars, sol. Date of fiat, April 28. P. A. H. J., and J. N. Walker, and S. Parker, lead merchants, Abchurch-lane, pet. crs.

TINWELLY, WILLIAM, assayer and antimony refiner, 35, Charlotte-st. Blackfriars-road, and Hill-st. Southwark, May 9, at half-past two, May 30, at half-past one, Basinghall-st. Com. Goulburn; Follett, off. ass.; Stevens, Queen-st. sol. Date of fiat, April 28. Bankrupt's own petition.

WADSWORTH, GODFREY BINGLEY, apothecary, 29, Broad-st. Golden-sq. May 7, at half-past one, June 16, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Lane, Aylest-st. sol. Date of fiat, April 28. Bankrupt's own petition.

Gazette, May 5.

BROOK, WILLIAM, stuff merchant, Manchester, and Goldsmith-st. London, May 18 and June 15, at twelve, Manchester; Fraser, off. ass.; Hammond, Furnival's-inn, and Messrs. Bennett, Manchester, sol. Date of fiat, April 16. W. Brook, gent. Manchester, pet. cr.

DAILEY, JOHN, and INSKIP, ALFRED, leather manufacturers, Long-lane, Bermondsey, May 15, at eleven, June 16, at twelve, Basinghall-st. Com. Fonblaque; Belcher, off. ass.; Loughborough, Austin-friars, sol. Date of fiat, May 2. C. Coling, currier, Bartholomew-close, pet. cr.

MILLER, JOSEPH, painter, plumber, and glazier, Whittlebury-st. Hampstead-road, May 12, at half-past twelve, June 16, at one, Basinghall-st. Com. Fane; Whitmore, off. ass.; Lacey and Co. New Bridge-st. sol. Date of fiat, May 4. Bankrupt's own petition.

STAPLES, EDWARD JOSEPH, surgeon, Bristol, May 18, at half-past twelve, June 18, at eleven, Bristol, Com. Stephen; Miller, off. ass.; Stevens and Co. Gray's-inn-sq. and Perkins, Bristol, sol. Date of fiat, April 29. Bankrupt's own petition.

TAYLOR, JOHN, commission agent and woollen cloth merchant, Golear, Huddersfield, May 19 and June 16, at eleven, Com. West; Freeman, off. ass.; Meggison and Co. King's-road, and Sykes, Huddersfield, sol. Date of fiat, April 23. E. Chadwick, E. Dyson, and W. Chersham, fancy cloth manufacturers Huddersfield, pet. crs.

TAYLOR, JOSEPH, merchant, Liverpool, May 19, and June 12, at twelve, Liverpool, Com. Ludlow; Turner, off. ass.; Gregory and Co. Bedford-row, and Hogerson and Radcliffe, Liverpool, sol. Date of fiat, April 28. Bankrupt's own petition.

THOMPSON, WILLIAM, wine and spirit merchant, 15, Cooper's-row, Crutched Friars, and 2, Fowke's-buildings, Great Tower-st. May 19, at half-past twelve, June 16, at twelve, Basinghall-st. Com. Holroyd; Groom, off. ass.; Alau and Nicol, Queen-st. Cheap-side, sol. Date of fiat, April 26. Bankrupt's own petition.

UPFORD, JOHN GEORGE, common brewer, Highbury-brew-

ery, Holloway, May 12, at half-past twelve, June 13, at half-past eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Peachey, Salisbury-sq. sol. Date of fiat, April 13. H. Mayor, hop and oil merchant, Anchor-wharf, Upper Thames-st. pet. cr.

VALLE, JULES, silk, cotton, and woollen printer, and commission agent, Faulkner-st. Manchester, and Arnfield and Mottram, Chester, May 12 and June 16, at twelve, Basinghall-st. Com. Fane; Alsager, off. ass.; Reed and Langford, Friday-st. sol. Date of fiat, May 2. R. Field, warehouseman, Bread-st. pet. cr.

WADE, SAMUEL MOSLEY, guano merchant, and sharebroker, Liverpool, May 15 and June 9, at eleven, Liverpool, Com. Phillips; Morgan, off. ass.; Johnson and Co. King's Bench-walk, and Bremner, Liverpool, sol. Date of fiat, April 24. Bankrupt's own petition.

WALTERS, HENRY, licensed victualler, Bristol, May 22, at twelve, June 18, at eleven, Bristol, Com. Stevenson; Acraman, off. ass.; Hassett, Bristol, sol. Date of fiat, April 28. Bankrupt's own petition.

WESTON, JAMES, hatter, 18, Bishopgate-st. Within, May 12 and June 16, at eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Wilkinson, Nicholas-lane, sol. Date of fiat, April 20. E. Hawkins, hat manufacturer, Church-st. Blackfriars-rd. pet. cr.

WILLIS, JOSEPH, eatinghouse keeper, 1, Bucklersbury, May 15, at one, June 20, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Smith, Golden-sq. sol. Date of fiat, May 1. J. Thorne, brewer, Earl-st. Westminster, pet. cr.

Meetings at Basinghall-street.

Gazette, May 1.

Alderton, W. S. steel-pen manufacturer, Chancery-lane, May 20, at half-past twelve, and—**Amos, T.** builder, 114, Kingsland-rd. May 22, at eleven, div.—**Collins, C.** yarn agent, Kidderminster and King William-st. May 19, at eleven (adj. April 3), last exam.—**Friker, H.** innkeeper, Southampton, May 25, at eleven, and—**Haddon, W. J.** brewer, Tottenham, May 19, at one (adj. April 17), last exam.—**Hardy, G.** innkeeper, St. Ives, May 25, at eleven, div.—**Hutchinson, R.** leather seller and leather merchant, 4, Jewry-st. Aldgate, May 21, at two, div.—**Ingis, A.** draper, Portsea, May 26, at twelve, fur. div.—**Jones, F.** wine and spirit merchant, 11 and 12, Guildhall-st. Canterbury, May 21, at half-past eleven, div.—**Littlewood, J.** hosier and glover, 23, New Bond-street, May 21, at half-past one, and div.—**Needham, the Hon. F. H.** dressing-case maker, New Bond-st. May 8, at eleven (adj. March 20), last exam.—**Palmer, B. W.** wine and brandy merchant, innkeeper, and coach proprietor, Daventry, Northamptonshire, May 31, at twelve, div.—**Poile, C.** merchant, Rye, May 22, at twelve, and—**Rothschild, B. L. M.** diamond merchant, Great Queen-st. May 19, at half-past one (adj. April 21), last exam.—**Welch, J.** licensed victualler and cattle dealer, Coach and Horses, Ring-cross, Holloway, and Chalgrove, Bedfordshire, May 31, at half-past twelve, div.—**Williams, W.** victualler, 16, High-st. St. Giles, May 21, at one, div.—**White, W.** tailor and draper, Aylesbury, Buckinghamshire, May 31, at eleven, and div.—**Woollam, J.** silk throwster, St. Alban's, May 28, at half-past ten, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Briden, W. E. surgeon, Great Coram-st. May 25, at half-past twelve.—**Cross, S. M.** corn merchant, Greenwich, May 26, at eleven.—**Docker, R.** oilman, Pall-mall, May 25, at twelve.—**Lawrence, S.** dealer in watches, Bedford-st. May 25, at half-past eleven.—**Poile, C.** merchant; Rye, May 22, at twelve.—**Robson, C. O.** plasterer, Finsbury-st. May 23, at two.

Gazette, May 5.

Docker, R. oilman, Pall-mall, May 25, at one, and—**Gunn, R.** corn dealer, Clare, May 27, at eleven.—**Robson, C. O.** plasterer, Finsbury-st. May 23, at two.—**Sanderson, W. W.** baker, Great Russell-st. May 29, at half-past one, and—**Sanderson, T. F.** brewer, Burton-upon-Trent, May 27, at eleven, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Childs, R. tailor, Queen Anne-st. May 27, at twelve.—**Evill and Dowglass**, cloth manufacturers, Vigo-st. May 29, at half-past eleven, as to Dowglass.—**Spedding, R. G.** zinc manufacturers, Queen-st. and Bush-lane, May 28, at eleven.—**Turner, R. C.** carpenter, Houndsditch, May 27, at half-past eleven.—**Urwin, W.** fellmonger, Watford, May 26, at one.—**Ward, H.** paper manufacturer, Wiford-mill and Ludgate-st. May 28, at one.

Meetings in the Country.

Gazette, May 1.

Allen, A. and **W.** drapers and shipowners, South Shields, May 29, at half-past one, Newcastle, final joint div.—**Bourne, H.** brewer, Wigton, May 25, at eleven, Newcastle, and—**Dixon, J.** innkeeper and coach proprietor, Deepcar, Ecclefield, Yorkshire, May 23, at eleven, Leeds, and, and May 28, at eleven, first div.—**Fordyce, W.** bookseller, printseller, and sharebroker, Newcastle-upon-Tyne, May 25, at half-past ten, Newcastle, and, and May 28, at half-past eleven, first div.—**Harrington, J.** and **Patkinson, W.** calico printers, Woodbank, St. Cuthbert, Cumberland, May 29, at half-past twelve, Newcastle, final joint div.—**Hilditch, W.** grocer, St. Asaph, May 28, at eleven, Liverpool, and—**Jeffreys, H. C.** miller, Much Wenlock, May 22, at eleven, Birmingham, and—**Leadbeater, J.** manufacturer of shirtings, Manchester, May 11, at twelve, Manchester (adj. March 9), last exam.—**Lupton, T.** and **W. B.** flax spinners and copartners, Leeds, May 23, at eleven, Leeds, joint and sep. of T. Lupton, and May 28, at eleven, first joint div. and first sep. of T. Lupton.—**Mallie, J.** cotton spinner, Stanfield-lodge, Sowerby, Halifax, May 23, at eleven, Leeds, and, and May 28, at eleven, final div.—**Owen, P.** miller, Liverpool, May 28, at eleven, Liverpool, div.—**Perceval, W.** grocer and baker, Leicester, May 22, at eleven, Birmingham, and—**Pilling and Watson**, wine merchants, Gateshead, May 29, at half-past eleven, Newcastle, and—**Roberts, J.** and **Hughes, H.** linen drapers and mercers, Deansgate, Manchester, May 22, at twelve, Manchester, and, and May 29, at twelve, div.—**Ross and Burton**, flour dealers, Newcastle, May 25, at eleven, Newcastle, and of J. Ross.—**Saith and Smith**, ironmongers, Bishop's Auckland, May 29, at eleven, Newcastle, and—**Todd and Todd**, factors, Birmingham, May 25, at twelve, Birmingham, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Baughfield, T. ironmonger, Lincoln, May 28, at eleven, Leeds.—**Cronther, E. W.** woollen cloth manufacturer, Huddersfield, May 25, at eleven, Leeds.—**Edwards, R.** woollen draper, Huddersfield, May 28, at eleven, Leeds.—**Johnson, J.** druggist, Nantwich, May 22, at twelve, Liverpool.—**Lupton, T.** flax spinner, Leeds, May 28, at eleven, Leeds.—**Pilling and Watson**, wine merchants, Gateshead, May 29, at twelve, Newcastle, as to Pilling.—**Robinson, T.** grocer, Swansea, May 26, at half-past twelve, Bristol.—**Ross and Burton**, flour dealers, Newcastle, May 25, at eleven, Newcastle.—**Schultz and Carr**, stock brokers, Liverpool, May 26, at eleven, Liverpool.—**Saith and Smith**, ironmongers, Bishop Auckland, May 29, at half-past ten, Newcastle.—**Wood, J. R.** varnish maker, Manchester, May 25, at twelve, Manchester.

Gazette, May 5.

Bartley, W. scrivener, Liverpool and Egremont, May 26, at twelve, Liverpool, and—**Bell, W. H.** seed crusher, Kingston-upon-Hull, May 27, at eleven, Town-hall, Hull, and div.—**Blunt, H.** victualler, Woolton, May 27, at eleven, Liverpool, and—**Clough, J.** chemist, Huddersfield, May 30, at eleven, Leeds, and—**Dardier, G.** merchant and factor, Liverpool, May 27, at twelve, and—**Edwards, T.** surgeon, Llanfainfrid, May 28, at eleven, Liverpool, and—**Fairclough, G. F.** money scrivener and banker, Liverpool, May 26, at eleven, Liverpool, div.—**Falkner, J. B.** sharebroker, Liverpool, May 26, at twelve, Liverpool, and—**Golborne and Dobbs**, wine merchants, Liverpool, May 13, at eleven, Liverpool, proof of a debt.—**Haigh, J.** clothier, Almondsbury, May 30, at eleven, Leeds, and—**Jones, W.** linen draper, Uxk, Monmouthshire, May 25, at eleven, Bristol, and, and May 26, at eleven, div.—**Littler, S.** draper, Liverpool, May 29, at eleven, Liverpool, and—**Nathe, A.** and **Moore, S.** merchants, Liverpool, May 26, at twelve, Liverpool, div.—**Parsons, W.** brewer, Temple-st. Bristol, May 28, at eleven, Bristol, and, and May 29, at eleven, div.—**Patterson and Malonek**, merchants, Liverpool, May 26, at eleven, Liverpool, and—**Pemberton, J. H.** Middleton, W. and Felton, G. merchants, Liverpool, May 26, at half-past eleven, Liverpool, sep. div. Pemberton.—**Phillips, T. A.** oil merchant, Huddersfield, May 25, at eleven, Leeds (by adjt.), last exam.—**Roberts, J.** miller, farmer, and cattle salesman, Plasyn Derwen, Denbighshire, May 26, at twelve, Bristol, and, and May 27, at one, first div.—**Sanderson, J.** merchant, Liverpool, May 27, at twelve, Liverpool, and—**Sill, J.** and **Watson, W.** merchants, copartners and brokers, Liverpool, May 28, at one, Liverpool, final div.—**Threllfall, J.** banker, grocer, and wine and spirit merchant, Liverpool, May 26, at twelve, Liverpool, div.—**Walker, F. T.** merchant, Liverpool, May 26, at half-past eleven, Liverpool, and—**Watson, S.** stone mason, Burnham, May 25, at twelve, Bristol, and—**Webster, J.** and **Harrison, J.** merchants, Liverpool, May 26, at twelve, Liverpool, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Brady, C. commission agent, Aston, May 27, at one, Birmingham.—**Littler, S.** draper, Liverpool, May 29, at eleven, Liverpool.—**Roberts, J.** farmer, Plasyn Derwen, May 26, at eleven, Liverpool.—**Smith, M.** ironfounder, Birmingham, May 27, at one, Birmingham.

Partnerships Dissolved.

Gazette, April 28.

Appleton, J. G. and **Jones, J.** drysalts, Manchester and Collyhurst, April 24. Debts paid by Appleton.—**Ashworth, J. Lord, R.** and **Gibson, J.** cotton spinners, Howgill mill, near Gisburn, Feb. 9. Debts paid by Lord and Gibson.—**Beverley, W.** and **Simpson, R. W.** wool merchants, Leeds, April 1. Debts paid by Simpson.—**Booker, W.** and **R. A.** stock and commission agents, 20, Crown, W. and **Lawrence, W. B.** general merchants, Chester, April 13.—**Boers, M. E.** and **Collas, J. F.** wholesale shoemakers, Castle-st. Southwark, April 27. Debts paid by Boers.—**Burns, I.** and **Clarke, W. B.** surgeons, Whitehaven, April 24.—**Campbell, J. Macfar, J. Ryan, T. T.** **Hudson, C. J.** and **Jones, M. J.** merchants, Mexico and Vera Cruz, so far as regards Ryan, Dec. 31, 1845.—**Cook, T.** and **W. Linen** drapers, Croyd, April 25.—**Crompton, R. Price, M.** and **Crompton, T.** brick makers, Shrigley, Cheshire, so far as regards R. Crompton. April 25. Debts paid by the remaining partners.—**Digby, J. J.** and **H. millers, Colchester**, Sept. 29.—**Dickinson, W. B.** and **Colchester, E.** surgeons, West Bromwich, March 25. Debts paid by Dickinson.—**Halbaird, G.** Wellings, J. and **Newman, B.** japanners, Birmingham, April 25. Debts paid by Halbaird and Wellings.—**Hartley, G.** and **Warwick, T.** engravers, Newgate-st. Jan. 20. Debts paid by Hartley.—**Haynes, W.** and **Brown, D.** lace manufacturers, Nottingham, April 15.—**Hoole, W.** **Lockyer, J.** and **Parker, E.** ironmongers, St. James's-walk, Clerkenwell, so far as regards Parker, April 22. Debts paid by the remaining partners.—**Lawford, J.** and **S. woolstaplers, Biratol**, April 25. Debts paid by J. Lawford.—**Lowitt, J.** and **T. cabinet makers, Hull**, April 23.—**Mangnall, W.** and **W. and Simpson, W.** paper manufacturers, Holywell, April 23. Debts paid by Messrs. Mangnall.—**Nickolls, J.** and **Shiptley, W. G.** corn chandlers, Market-row, Oxford-st. Jan. 3.—**Packer, J.** sen. and jun. watch makers, Newbury, Oct. 30.—**Peace, S. J.** and **H. manufacturers, Sheffield**, April 22. Debts paid by J. Peace.—**Pearson, J.** and **Walmley, C.** druggists, Okeham, April 25. Debts paid by Walmley.—**Perry, G.** jun. and **Gill, F.** cheesemongers, Dowgate-hill, April 25.—**Ricketts, F.** **Enthoven, H. J.** and **James, T.** merchants, Moorgate-st. Trereife, and Bristol, so far as regards Enthoven, April 28.—**Ricketts, F.** **Enthoven, H. J.** **Turner, E.** **Mason, J. O.** and **James, T.** bankers, Truro, Penzance, Falmouth, and St. Colomb, so far as regards Turner and Mason, April 25.—**Rodgett, J.** and **Sparrow, J.** and **T. cotton spinners, Blackburn**, so far as regards Rodgett, Dec. 31.—**Shepherd, W.** and **Sutton, F. T.** patent stereotype founders, Earl-st. Blackfriars, April 25.—**Simpson, E.** and **Hopson, J.** stone masons, Stowmarket, April 13.—**Stoddard, W.** and **Watkins, H.** cabinet makers, Brighton, March 25. Debts paid by Watkins.—**Thomas, C., F.** and **G.** commission merchants, Bristol, April 14. Debts paid by C. F. Thomas.—**Thring, R.** and **Dickers, J.** wine merchants, Ramsey, Feb. 14.—**Williams, W.** and **Edwards, J.** joiners, Liverpool, March 2.—**Witcombe, J.** and **Palmer, E.** builders, Upper North-st. Caledonian-road, Islington, April 23.—**Witty, W.** and **Storj, J.** sen. brick manufacturers, Cottingham and Hesle, March 3. Debts paid by Storj.—**Wyde, J.** and **G. chymists, Manchester**, April 18. Debts paid by J. Wyde.

Gazette, May 1.

Ashford, T. and Cooke, G. F. bone button manufacturers, Manchester, April 27. Debts paid by Ashford.—**Ashworth, James and John**, stone dealers, Rochdale, so far as regards James Ashworth, April 28. Debts paid by the remaining partners.—**Baechus, T. J. and Kilham, J.** bottle merchants, Manor-place, Walworth, April 29. Debts paid by Kilham.—**Bracken, J.** sen. and jun. and R. paper manufacturers, Halifax, so far as Bracken, sen. April 25. Debts paid by the remaining partners.—**Cameron, C. F. Cazenove, E. and Tuntion, G. E.** stock brokers, Liverpool, May 1.—**Cass, J. and Francis, W.** maltsters, Ware and Hertford, Sept. 29.—**Crosley, E. G. and C. S. share** brokers, Bradford, April 29.—**Cuff, J. H.** sen. and jun. veterinary surgeons, Smithfield-market, April 8. Debts paid by Cuff, jun.—**Hallen, S. and H.** earthenware manufacturers, Dec. 25, 1843.—**Hayes, C. P. and Langton, R.** commission merchants, Liverpool, April 27. Debts paid by Langton.—**Heughan, R. and Thompson, D.** linen drapers, Newcastle, April 29.—**Hibbert, J. T., and S. and Alcock, J.** sen. cotton manufacturers, Manchester, so far as regards J. Alcock, sen. April 14.—**Holdsworth, J. and Fitch, J. B.** publicans, Vauxhall, April 29. Debts paid by Holdsworth.—**King, J. and T.** leather sellers, Henrietta-st. Manchester-sq. March 28.—**Lockwood, J. and G. L.** linen drapers, Wakefield, Feb. 9.—**Lucas, H. and Jenner, O.** beer merchants, Chelsea, April 30.—**Mathwin, F. F. and Rochester, J.** brewers, North Shields, April 23.—**Mitchell, S. and Schofield, E. B.** stock brokers, Sheffield, April 27.—**Newton, H. and S.** bricklayers, Dec. 31. Debts paid by S. Newton.—**Parker, A. Lifiton, J. Nick, J. D. Reeves, H. and Nolloth, J.** coal merchants, Exmouth, April 24.—**Pascall, S. and Richards, F.** haberdashers, Church-st. Hackney, April 30. Debts paid by Richards.—**Rose, H. L. and Noble, H. T.** bottle merchants, Salisbury-wharf, Strand, April 29.—**Smith, J. and Erichsen, E.** general agents, Fenchurch-st. April 30. Debts by Erichsen.—**Wrigley, T. and C. J. and Binns, J.** cotton warp makers, Woodhouse-mills, near Huddersfield, April 27. Debts paid by T. Wrigley.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, April 28.

Baker, W. out of business, Compton-st. Clerkenwell, May 14, at eleven.—**Brewer, W.** grocer, Silver-st. Kensington Gravel-pits, May 14, at half-past eleven.—**Bolland, J. C.** baker, Rosemary-lane, May 14, at half-past eleven.—**Burgess, J.** plumber, Rochefort, May 5, at one.—**Buxton, S.** mine agent, Bishopgate-st. May 14, at twelve.—**Chubb, J.** clock enameller, Coppice-row, Clerkenwell, May 14, at eleven.—**Elworthy, J.** meat maker, Wivenhoe, May 5, at half-past eleven.—**Gibbs, J.** victualler and boot-maker, Great Yarmouth, April 30, at two.—**Guyther, W.** out of business, Butcher-hall-lane, May 14, at eleven.—**Hopkins, G. L.** out of business, Little Saffron-hill, May 5, at half-past twelve.—**Palmer, W. J.** hair dresser, Newcastle-st. Strand, May 5, at half-past eleven.—**Predley, W.** out of business, Woodcote-pl. Norwood, May 14, at half-past eleven.—**Piper, W. A.** victualler, Billericay, April 30, at two.—**Rivers, C.** single woman, Bury-st. St. James's, May 5, at half-past twelve.—**Slade, J. M. D.** Portes, May 5, at twelve.—**Stocqueler, J. H.** author, York-st. Covent-garden, May 14, at eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Barker, T. spindle maker, Manchester, May 9, at twelve.—**Manchester, Gough, T.** traveller, Portishead, Somersetshire, May 8, at eleven.—**Bristol, John, T.** currier, New-bridge, Glamorganshire, May 14, at eleven.—**Bristol, Mason, W.** coachman, Great Malvern, May 16, at half-past ten.—**Birmingham, Sherman, R.** stone mason, Sefton, May 4, at eleven.—**Hull, Smitten, R.** stone mason, Sefton, May 4, at eleven.—**Liverpool, Wolf, I.** cap manufacturer, Manchester and Liverpool, May 1, at eleven.—**Liverpool, Wofner, E. J.** officer of exche, Brynairai, May 15, at eleven.—**Bristol.**

MEETINGS AT BASINGHALL-STREET.

Knight, J. Fetcham, May 8, at two, to choose ass.

Gazette, May 1.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Birdseye, J. C. cellarman, George-street, Piccadilly, May 12, at half-past twelve.—**Crofts, D.** jun. tailor, John-st. Eitroy-sq. May 18, at half-past eleven.—**Foxton, W.** upholsterer, Belgrave-st. King's-cross, May 14, at twelve.—**Gale, T.** baker, Chelsea market, Chelsea, May 12, at half-past eleven.—**Harris, J.** cheesemonger, Brick-lane, John's-row, May 12, at one.—**Hude, D.** plumber, Milton-street, Cripplegate, May 12, at eleven.—**Harris, S.** travelling cutler, Great Sutton-st. May 12, at half-past one.—**Jarman, J.** spirit merchant, Melldreth, May 12, at eleven.—**Karstadt, E.** clerk, East-st. Red Lion-sq. May 21, at eleven.—**Lee, W.** out of business, Hove, near Brighton, May 14, at twelve.—**Mold, W.** schoolmaster, Paulston-st. Chelsea, May 12, at eleven.—**Ross, D.** upholsterer, Regent's-place West, Regent's-sq. May 4, at one.—**Warrell, W.** butcher, Watford, May 14, at twelve.

PETITIONS TO BE HEARD IN THE COUNTRY.

Berry, B. dyer, Huddersfield, May 14, at eleven.—**Leeds, Besley, T.** baker, Tiverton, May 14, at one.—**Exeter, Cantling, J.** sheriff's officer, Alskew, May 14, at eleven.—**Leeds, Connor, P.** late beer seller, Birkenhead, May 13, at eleven.—**Liverpool, Garside, J.** woollen manufacturer, Dean Stainland, May 14, at eleven.—**Leeds, Haigh, J.** waste dealer, Pudsey, May 5, at eleven.—**Leeds, Hallton, W.** silk manufacturer, Macclesfield, May 15, at twelve.—**Manchester, Kirkman, P.** out of business, Ainsworth, May 11, at twelve.—**Manchester, Lovatt, G.** stone mason, Nottingham, May 8, at eleven.—**Birmingham, Lumb, S.** auctioneer, Leeds, May 5, at eleven.—**Leeds, Nice, J. P.** out of business, Edge-hill, near Liverpool, May 8, at eleven.—**Liverpool, Parker, T.** stone mason, Staveley, near Chesterfield, May 14, at twelve.—**Manchester, Slack, M.** straw bonnet manufacturer, Leeds, May 5, at eleven.—**Leeds, Spirey, W.** shoe maker, Cowick, near Snaith, May 14, at eleven.—**Leeds, Steel, R.** dyer, Seaton in Holderness, May 14, at eleven.—**Hull, Stell, R.** draper's assistant, Hull, May 13, at eleven.—**Hull, Whitehead, J.** beer retailer, Huddersfield, May 14, at eleven.—**Leeds, Wilterson, G.** plumber, Lincoln, May 13, at eleven.—**Hull, Wood, A.** waterman, Thorn's-lane, near Wakefield, May 14, at eleven.—**Leeds.**

From the Gazette of Friday, May 8.

Bankrupts.

Freeman, T. fringe manufacturer, Wood-st. Cheapside.—**Fearnby, J.** worsted stuff manufacturer, Windsor-terrace, City-road.—**Clarke, C.** draper, Goswell-road.—**Taylor, J. J.** tobacconist, Tooley-street, Southwark.—**Whitelaw, J.** and T. builders, Litchfield-st. Soho.—**Abrams, J. D.** tailor, York.—**Shann, S.** cloth finisher, Leeds.—**Ordern, S.** cotton factor, Manchester.—**Gill, W.** corn merchant, Warrington, Lancashire.—**Parker, C.** linen draper, Liverpool.—**Clarke, B.** grocer, Stroud.—**Foale, R.** victualler, Kingsbridge, Devonshire.—**Knowles, S.** brewer, Exeter.

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

April 30 and July 29, 1845; April 23, 1846.

*Re MARTIN, Ex parte SANDAU.**Form of warrant of commitment in bankruptcy—Jurisdiction—Costs—Practice in Bankruptcy.*

The petition of appeal in this case of Mr. Van Sandau was, that the order of the chief judge of the Court of Review, by which Mr. Van Sandau had been ordered to pay certain costs and was restrained from proceeding in an action against Messrs. Turner and Hensman, might be discharged or varied. The principal question turned upon the form of the order of the Court of Review. The action at law had been allowed to proceed to the trial of a demurrer, and the rest of the motion stood over. The judgment of the Queen's Bench upon the demurrer had been in favour of the plaintiff. That decision had been made upon a point of pleading, by reason of the absence of certain averments in the demurrer, and the real questions still remained undecided.

Bagshawe and *Roll*, for the petitioner, Mr. Van Sandau, then argued that the warrant on which the petitioner had been committed was a simple sending to prison, without any finding as a substantive fact that a contempt had been committed; that such an order was irregular, and ought to be set aside. That the Order of the 3rd February, 1844, directed that the petitioner should stand committed, &c. until further order, and that he should pay the costs, charges, and expenses of Messrs. Turner and Hensman; that the direction to pay costs, charges, and expenses was contrary to the principles of the Court when exercising a criminal jurisdiction. The party subjected to punishment for a contempt of Court cannot be fined for the benefit of a third party. Even if the other parts of the order could be sustained, that part of it which directs Mr. Van Sandau to pay charges, and expenses, is wrong.

The LORD CHANCELLOR.—The usual course is to commit the party for contempt, and when he comes to ask for his discharge, then the Court imposes terms.

Bagshawe.—*Green v. Elgie*. The warrant was signed by G. Rose, J. but there was no seal to the warrant.

The LORD CHANCELLOR.—Do they affix the seal of the Court to an order of an individual judge? One judge may also act as an individual judge, and not as the Court of Review. "By the Court" is the usual way, with the seal of the Court affixed. Does the Act say under the seal of the Court?

Bagshawe.—No. There is another conclusive objection: the Act says the Court must sit in public; this was not done in public, for Sir Geo. Rose was sitting in his private room while the Court of Review was at the same time sitting in public.

The LORD CHANCELLOR.—If the original order is vicious, all the consequential orders are bad.

Roll.—The judgment of the Court of Queen's Bench decides none of the points in question. He cited *Leathem v. Charnock's* case, and *Long Wellesley's* case.

VOL. VII. No. 163.

Swanston, Kenyon Parker, and Simon, for the respondents.—The respondents had informed the Court by supplemental petition of what had been done at law.

Bagshawe objected that the supplemental petition, which prayed that it might come on for hearing at the same time with the petition, and that Mr. Van Sandau might be restrained from proceeding with his action, could not be heard as an original petition. The Court of Review could alone hear original petitions in bankruptcy. (*Ex parte Penson*; *Ex parte Lowe*, 1 Deacon & Chitty; *Ex parte Langston*, 1 Rose, 26; *Re Gardner*, 1 V. & B. 45, 1 Rose, 377.) There was nothing in the prayer of the petition which shewed it to be supplemental.

Swanston.—We now come to restrain further proceedings for damages. We could not, in the present state of the proceedings, go to the Court of Review.

The LORD CHANCELLOR.—If I had disposed of no part of the case, could this have come on by original petition? I have disposed of part of the case entirely: am I not in the same position as if the petition had not originally contained that part of which I have disposed? It is as if that part of the petition was struck out; the rest remains to be disposed of. What right does that give to present a cross-petition? It was assumed the Court of Queen's Bench would decide the question of law on the first order. The rest of the case is before me. The respondents' petition must be dismissed, with costs.

Swanston then proceeded to argue the case of the respondents on the original petition, and contended that there was a sufficient constructive adjudication of contempt in the warrant of commitment. In the case of a commitment in this court for the breach of an injunction, there is no adjudication.

The LORD CHANCELLOR.—What is a contempt may admit of various conclusions. If the order be to pay money on a certain day, it is sufficient that the money is not paid. The Court does not adjudge that the money is not paid, the thing speaks for itself. But that does not apply to a committal for contempt. The practice of this Court may have been too loose; because this Court does not allow the interference of any other jurisdiction. In the Courts of Queen's Bench, Common Pleas, and Exchequer, on a committal for contempt, you must very be careful, because the jurisdiction is not final.

Swanston.—The Court of Review has jurisdiction to grant injunction. (*Ex parte Lund*, 6 Ves. 781; *Ex parte Stevens*, 11 Ves. 24; *Re Cockerell*, 16 Ves. 451; *Ex parte Reffey*, 19 Ves. 468; *Re Elgie*; *Dicus v. Lord Brougham*, 6 Carrington & Payne; *Ex parte Hardy*, Buch. 24; *Ex parte Cowan*, 3 Barnes & Alderson; *Ex parte Higgins*, 1 Glyn & Jameson, 122; *Ex parte Glossop*, 3 Glyn & Jameson, 268; *Kirkpatrick v. Dennet*, 1 Simon & Stuart, 408; *Flower v. Herbert*, 2 Ves. sen. 326.)

Bagshawe, in reply.

At the conclusion of the argument,

The LORD CHANCELLOR suggested that the action for trespass by Mr. Van Sandau against Messrs. Turner and Hensman should be abandoned, and on that being done, consented to decide the whole question at issue between the parties, including the right to bring an action, and the costs of the various proceedings. That suggestion having been acceded to by the parties, the question was argued on the 29th of July, 1845, by one counsel of the common law bar on each side.

Humfrey, for Messrs. Turner and Hensman, contended that, under the circumstances, no action of trespass would lie, and that, therefore, his clients were not bound to pay any of the expenses of the proceedings by Mr. Van Sandau, after the demurrer. An important feature in the case was, that Mr. Van Sandau had put himself voluntarily into custody. He was not taken by the officer, he went and surrendered himself; and being in custody upon such a surrender, he could not treat even the officer who took him as a trespasser, much less the persons upon whose petition the Court of Bankruptcy made the order for his commitment. The person, however, who put the Court in motion was not the person to be proceeded against, although it was clearly proved that the Court had been wrong in presuming the order on which the warrant issued, or in issuing a warrant that had turned out to be bad in point of form. That question was set at rest by the case of *West v. Small* (3 Mee. & Wel. 314). The case of *Green v. Elgie* (14 Law J.) was also a decision on the subject.

The LORD CHANCELLOR.—What has been done by Messrs. Turner and Hensman with respect to the warrant, or the execution of the warrant?

Humfrey.—Nothing. They had paid the fees of the court in the same manner as every sailor is compelled to pay, but in other respects they did nothing. The warrant was signed by the judge and handed to the registrar, who passed it to the messenger. For any thing that appeared, Messrs. Turner and Hensman never read it nor saw it. The case of *Hodger v. Harding*, before Lord Denman, was also a much stronger one than the present; and the case of *Watson v. Bowdell* (4 Law T. 87) was stronger still. On the authority of these cases, he contended that the

attorneys were not responsible for putting the Court in motion, and that when the Court was put in motion, they were not responsible for any thing that took place upon or after the execution of the warrant, unless malice was brought home to them; and that the surrender of Mr. Van Sandau being a voluntary one, without hostile caption, he had no *locus standi*, and no right to complain of any of the proceedings. Messrs. Turner and Hensman were, therefore, not liable for any of the costs except those of the demurrer, for which, as a piece of pleading declared to be bad by the Court of Queen's Bench, they must pay those costs; but that is independent of the general costs.

Cleasby, for Mr. Van Sandau.—The point of voluntary surrender failed the other side altogether, even on their own statement. The order was made for the discharge of Mr. Van Sandau on the payment of costs to Turner and Hensman, and he was therefore taken into custody and retained in it at their suit and instigation. The only question was, whether the action for trespass commenced by Van Sandau on the payment of costs was a degree of active interference which he conceived would fully justify such an action, independent of all the other points of the case. The matter of *Green v. Elgie* did not bear out the position of the other side, that the person who put the Court in motion was not liable for the consequences of that proceeding. No case had been produced, no case could be produced, in which it was laid down that the person who put the Court in motion was not liable when it turned out that the proceedings of the Court could not be sustained. The case of *Barker v. Braham* (3 Wilson, 368) was an authority on that point that could not be disputed. In the present case, Messrs. Turner and Hensman bespoke the order, and paid for it, and paid also for the warrant, and then charged these payments in the bill of costs to Mr. Van Sandau.

The LORD CHANCELLOR.—I wish to know clearly how that was.

Bagshawe stated that, according to his recollection of what took place before Sir George Rose, there never had been the most remote idea of considering the imprisonment under the warrant as any thing but a hostile proceeding.

The LORD CHANCELLOR.—I take the facts to be in this form; that Messrs. Turner and Hensman took the objection that Mr. Van Sandau was in custody, and that being so, they objected to his discharge until the costs were paid.

Bagshawe.—That was so. There was no question that all was done at their instigation, and that Mr. Van Sandau was not allowed to go at large until he paid a deposit for the costs.

Cleasby.—The case of *Codrington v. Lloyd* (8 Adol. & Ellis, 448) is an authority quite inconsistent with the principle contended for on the other side, that the person who put the Court in motion, and failed, he was as much responsible for his acts, unless on the proof of malice. On the contrary, when a person puts the proceedings of the Court in motion, and fails, was responsible for it as if the process on which he acted had never had legal existence. The case of the commitment by a magistrate had no application to the question under consideration; because, if the magistrate proceeded wrongfully, the sufferer had his remedy against him personally, but in the case of Mr. Van Sandau, the illegal act had been done through the means of a judge of a court of record. The only person to be proceeded against was the person who put the Court in motion; and in an action of trespass he was clearly liable, and was bound to pay the costs.

Humfrey, in reply.—If the action of trespass had been brought against the person so acting, he might have been liable; but that person so acting was the tipstaff, and Messrs. Turner and Hensman had nothing to do with it. The imprisonment was the act of the Court.

The LORD CHANCELLOR.—The present is a more favourable case than *Westwood v. Small*. The question decided there was, that if the magistrate does an act not authorised, the party on whose complaint the act was done is not liable if he does nothing actively. Here the party applies for an order for a warrant, the Court does the act, the warrant is void. The question is, what Turner and Hensman did under that void warrant. The question in this case will be, whether I am satisfied the party wrongly acting in assisting the execution of a void warrant is a trespasser.

April 23, 1846.—The LORD CHANCELLOR.—I shall this morning give judgment on the whole of the points at issue. An arrangement has been entered into between the parties to the petition, that all the matters and differences between them, including also the action at law for damages, should be left to my decision, as a means of putting a stop to all future litigation, and finally arranging all their disputes. The first point, then, for the consideration of the Court under these circumstances, is the validity of the order of commitment of the 4th of February, 1844. Although I consider the form of order used by Lord Cottenham in *Charlton's* case to be more proper and correct, yet I cannot take it on myself, in the face of so many precedents of the other form, to discharge

the order made against Mr. Van Sandau as insufficient and invalid. The second objection to the order is, that it directs the payment of the costs of application for the commitment. It certainly is not usual in cases of commitment for contempt to direct that the person committed should pay the costs. Undoubtedly the ordinary course is to confine the order to a mere commitment, and when the party applies to be discharged, the Court has the opportunity of considering if it is proper to direct payment of costs as the price and condition of liberation from confinement. In the present case, however, the Court of Review has full jurisdiction over the subject-matter of the petition, and there is no doubt it has a right to adjudicate on the question of costs in respect to the order of commitment, by the general authority with which it is invested. The third objection taken by Mr. Van Sandau is, that the order has not been confined to the mere payment of the costs of the application, but that it also includes all charges and expenses. I am of opinion that the order cannot be extended quite so far as that, and in that respect I must, therefore, direct it to be varied, by striking out the words "charges and expenses." If Mr. Van Sandau insists on a taxation of the costs, then there must be a new order; but if he does not, then the order in other respects will stand confirmed. The next point of objection is the order of the 8th of February, 1844. That order is founded on an application to vary the minutes of the former order. As the minutes are no longer in operation, and the order has been passed, there is no reason now to disturb the order, or those of the 2nd and 17th of the same month. I now come to the consideration of the form of the warrant under which Mr. Van Sandau was arrested on the 19th of February. It appears that, by some mistake, the original warrant was not sealed with the seal of the Court, but with the seal of the judge who presided. This is a violation of the 31st of the rules and orders in Bankruptcy of the 11th of January, 1842, which require that the processes of the Court should issue under the seal of the Court. Without, therefore, entering into any elaborate examination of the various other objections urged against the warrant, I am of opinion that the defect in the seal rendered that warrant invalid. When Mr. Van Sandau applied to have the warrant discharged on the ground of its invalidity, the Court made two orders, both dated on the 21st of February. One of these orders was a conditional one, the other absolute. Considering that Mr. Van Sandau has been apprehended on an insufficient warrant, the conditional order must be of course discharged, the other order remaining, as a matter of course. The consequence of discharging the conditional order will be, that Mr. Van Sandau must receive back the costs of that order. The only remaining question related to the action pending in the Court of Queen's Bench. I think that in the action Mr. Van Sandau would have been entitled to a verdict against Messrs. Turner and Hensman on the issue joined in a plea of not guilty; but, looking at the circumstances of the case, and advertent to the fact that the action could only have been maintained in consequence of a mere defect in the course of proceeding, I think that very moderate damages ought to satisfy the justice of the case. Looking at all these circumstances, I feel bound to assess the damages at the sum of 10l. on the whole of the record. With respect to the costs of that action, I direct them to be taxed by the taxing-master of the Court of Bankruptcy in the same way as they would have been taxed by the taxing-officer of the Court of Queen's Bench.

ROLLS COURT.

Monday, March 16.

GLENDINNING v. GLENDINNING.

Will—Construction—Description.

The word "money" may comprehend stock, &c. in the public funds, and need not be confined to money properly so called. Therefore, where a testator left his wife the interest of his money and the use of his goods for life, and at her death bequeathed several legacies, and, lastly, gave the remainder of his property to his brothers and sisters, it was held that the wife took a life interest in stock in the funds, &c.

James Glendinning by his will bequeathed to his wife the interest of his money and the use of his goods for her life, and at her death his will was that 200l. should be given to the Lord's poor of Salem Chapel-court, Wardour-street, Soho, &c. The residue and remainder of his property he gave to be equally divided among his brothers and sisters; his wardrobe to be divided among his brothers. The testator died in 1843, and it being supposed that the widow was only entitled to the interest of the money (about 50l.) in hand at his death and to the use of the furniture in the house, the rest of the property was claimed by the brothers and sisters. Mrs. Glendinning accordingly renounced probate, having, as was supposed, little or no interest, and a brother and sister of the testator took out administration, and proceeded to divide the property, chiefly consisting of stock in the funds. The widow being better advised as to her rights, filed the present bill, and the accounts being ordered to be

taken, the Master made his report, and the question now was as to the rights of the parties.

C. P. Cooper (with him Shebbeare) contended that Mrs. Glendinning was entitled to a life interest in the stock, &c. and that the residue of the testator's property was only given over at her death, and was only then payable in the same manner as the pecuniary legacies. (*Rogers v. Thomas*, 2 Keen, 8; *Dowson v. Gaskoin*, 2 Keen, 14; *Kendall v. Kendall*, 4 Russ. 360.)

Kindersley (with him Campbell), contra, contended that "money," *per se*, only carried money, and not investments, unless in a case where there was no residuary gift, and that the use of the goods meant merely the use of the furniture. The gift of the money and the use of the goods were immediate, and so also was that of the residue. It was said the money was of very little amount; but that is no more an argument than if it were great, and the state of the property at the date of the will is never referred to in aid of the construction. (*Gosden v. Dotterill*, 1 Myl. & K. 56.)

Cooper, in reply, was not heard.

THE MASTER OF THE ROLLS.—It is necessary to give such a meaning to the words of the will as will make the context consistent. The testator meant to dispose of the whole of his property, and he uses the words "money," "goods," "wardrobe," and the general word "property." He gives the interest of his money, not the money itself, and the use of his goods, to his wife for life, and at her death he gave certain legacies. The remainder of his property he bequeaths to his brothers and sisters. What does he mean by the remainder of his property? Is it the remainder at the death of his wife or at his own? After that he gives his wardrobe; and, therefore, it was not to be in the remainder, and the wife was not to have it. It is quite clear and consistent in ordinary language to talk of money in the funds, and even in many other cases you find "money" used to express far more than mere money, as in the Roman law, the word "pecunia" passed property of all kinds. I think the widow takes a life estate in the whole property.

Feb. 6, and March 27.

EARL OF MORNINGTON v. SMITH.

Practice—114th of the New Orders—Dismissing bill for want of prosecution—Undertaking to file replication—Time.

After the expiration of the time under the 114th of the New Orders, the defendant is entitled to the order to dismiss, unless the plaintiff shews that he has used due diligence, or files, or will undertake to file, a replication, and, in the latter case, only a short time will be allowed.

Chandless, in this case, applied on the 26th of February last, on the part of the defendant, Smith, for an order to dismiss the plaintiff's bill as against him, for want of prosecution, the time allowed under the 114th Order having expired.

Blozam opposed the motion, but had nothing to offer by way of excuse.

THE MASTER OF THE ROLLS.—The time having expired, the defendant is entitled to the order as to himself, and the question is, have you used proper diligence? You may have time to shew cause, but the plaintiff cannot be allowed to delay by playing with another defendant under his control. Have you any thing to say, or will you let the motion stand over for the purpose of explaining the delay? You may do so, or you may file, or undertake to file, a replication.

Blozam asked that the question should stand over till the next seal, for the purpose of filing an affidavit to explain.

Chandless now moved again to dismiss, and stated that the affidavit put in did not much help the plaintiff's case. It was filed by Stephen Lancaster Lucena, the new solicitor, and it was merely to the effect that no answer could as yet be got from the defendant Cutts.

THE MASTER OF THE ROLLS.—That will not do.

Blozam.—Then we will undertake to file a replication in the usual time.

THE MASTER OF THE ROLLS.—A short time only can be allowed to file a replication.—I give you a fortnight.

FORD v. BRYANT.

Practice—Examination of witness—Breach of trust—Notice.

A decree for an account having been made in an administration suit, instituted by certain residuary legatees against the executor, &c. a claim was carried in before the Master by another residuary legatee, a defendant, on a bond executed by the testator in the cause in his lifetime, and settled for the benefit of this defendant; but the bond having been assigned by the husband of this defendant to a third party, to satisfy the creditors of the husband, he obtained part-payment thereof from the executor of the testator, who swore he had no notice of the other claim. Application was then made to the Court for leave to examine the executor upon interrogatories before the Master on the question of notice, and the application was refused, because the object was to charge the executor with a breach of trust, and that

could only be done by proceedings regularly instituted for that purpose, and not before the Master under a decree for an account in an administration suit.

This was a motion on behalf of the defendants, Mrs. Holder and her children, who claimed to be beneficially interested in a bond executed by the testator in the cause, for liberty to examine Samuel Bryant, the executor and a co-defendant on interrogatories before the Master. The plaintiffs, as well as some of the defendants, it appeared, were residuary legatees under the will of John Kekewich, the testator in the cause, who died on the 3rd of March, 1843; and a suit having been instituted for the administration of his estate, a decree was made that the accounts should be taken, the debts ascertained, &c. in the usual way. The testator, it appeared, had executed a bond for 2,000l. payable after his death, in favour of his daughter Esther, the wife of John Rose Holder, and this bond had, on the 4th of February, 1830, been assigned to trustees on trust for Mrs. Holder's separate use for life, and then for the children. The bond, however, had subsequently got into the hands of Mr. Holder, by some means or other, on the occasion, as was alleged, of the appointment of new trustees, and he assigned it to Charles Townend, on trust to discharge the debts due to him (Holder's) creditors; and Townend having bought them all up for the sum of 850l. that sum was repaid him by Bryant, the executor, out of the moneys in from the testator's estate on the bond; so that when the trustees of the settlement took in a charge for 2,000l. before the Master, under the decree, as against the testator's estate, they were told that Bryant had already paid 850l. to another claimant; and though the assignment to him was subsequent to the settlement, his claim was nevertheless preferable, because Bryant had no notice of the settlement. The claim was accordingly dismissed, the whole question turning upon Bryant's having notice of the settlement when he paid the 850l. to Townend; and application was now made to the Court on behalf of the parties beneficially interested under the settlement for leave to examine Bryant on interrogatories as to this point, the Master having refused to examine him.

Stinton, for the motion, contended that it was necessary to make a special application, and that a simple order was not enough. [THE MASTER OF THE ROLLS.—What do you want to examine him for?] To ascertain whether he had notice of the settlement at the time he made the payment. [THE MASTER OF THE ROLLS.—And then to charge him with a breach of trust, and so come down upon him to repay the 850l.] Our case is that of a creditor, and we are desirous of establishing our claim. The bond got into the hands of Mr. Holder on a change of trustee, but how we do not know; and we think the settlement must have come to the knowledge of Bryant. As to the necessity of a special application, the following cases may be cited:—*Simmons v. Galtby* (13 Ves. 262); *Franklyn v. Colquhoun* (16 Ves. 218); *Purcell v. Macnamara* (17 Ves. 434).

Bagshawe, for the executor, —Mr. Bryant swears he had no notice of the settlement, and that he had notice from Townend of the assignment of the bond to him, and that he paid Townend accordingly the sum of 850l. in respect of the debts bought up after the assignment. The trustees of the settlement are not parties, and the application is made only by Mrs. Holder and her children, the *cestui que trust*; and what is now sought by this motion is to try the question in a way in which there is no means of binding the trustees; the proceedings ought to be by bill.

Toller, for the plaintiffs.

THE MASTER OF THE ROLLS.—This is the case of a bill filed by residuary legatees against the executor and other residuary legatees; and a decree has been made for an account, but nothing more. Now, in the course of the proceedings in the Master's office, the trustees of the settlement came in and alleged a claim for a debt to them of 2,000l. but the executor said it was not due, for he paid 850l. part thereof, and the question is, whether that payment is to be allowed. The testator, about the time of the marriage of his daughter, gave her a bond for 2,000l. payable after his death, and this bond was assigned to trustees for the benefit of her and her children. The bond afterwards got into the possession of Holder, how it is not known, and he assigned it to Townend for the purpose of discharging his debts. Bryant being applied to by Townend, on the death of the testator, to pay it, did accordingly pay it, as to what to the extent of 850l. That is the case, as to what occurred in the Master's office. But it is said Bryant paid it, knowing it ought to go to the trustees of the settlement, and this motion is made by the *cestui que trust* under the settlement, who are also residuary legatees, for leave to examine the executor on interrogatories as to whether he had notice or not. It is expressly denied by Bryant and Townend that they had notice; and the question is, whether in this case Bryant is to be charged when notice of the settlement has not been brought home to him. A defendant may sometimes be examined by a co-defendant, but in such a case as this, involving a breach of trust, any proceeding that is taken must be by bill. The question is as to notice, and that must be determined in a

regular suit; it is not the course of proceeding in this Court to act otherwise in the case of a breach of trust, as this is. I refuse the motion, with costs.

Stimson asked that the costs should be costs in the cause.

The MASTER of the ROLLS.—No; they must come out of their own part of the residue.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

March 20 and 21.

GEORGE GURNEY.

Power of appointment, fraudulent exercise of.

Issues directed to ascertain the due execution of a deed of appointment, and whether it was executed with a fraudulent intention, the child in whose favour the appointment was made having survived its birth but a few months, and the deed not having been produced until the life interest in the property had ceased, and many years after the alleged execution of the deed.

Dorothy Wakeham, by her will, dated the 10th of November, 1804, bequeathed to trustees the sum of 500l. Three per Cent. Consolidated Bank Annuities, upon trust to receive and apply the dividends thereof for the benefit of Thomas Wakeham Richardson during the term of his natural life, and from and immediately after his decease, upon trust to transfer and make over the said Bank Annuities unto, between, or amongst all and every his child and children equally, if more than one, share and share alike; and if there should be but one such child, then the whole to such one child; the shares of sons to be transferred at their respective ages of twenty-one years, and of daughters at their respective ages of twenty-one years, or days of marriage, which should first happen after the death of the said Thomas Wakeham Richardson, and to be and be considered as vested interests at those ages or times respectively, and be transmissible as such to the representatives of the same children, notwithstanding their deaths afterwards in the lifetime of the said T. W. Richardson; and after bequeathing certain life interests, and giving special directions concerning certain portions of her property, and the investment of the residue of her personal estate, the testatrix directed that her trustees should, after the marriage of Louisa Elizabeth Brett, with the consent of John Brett, her father, if she should marry in his lifetime, or the decease of the said John Brett, which should first happen, permit and suffer the said L. E. Brett and her assigns during her life, to have, receive, and take one moiety of the interest, dividends, and proceeds of all such stocks and funds, for her and their own use and benefit; and after her decease, should assign the said moiety unto, between, and amongst all and every or such one or more of the children of the said L. E. Brett, at such age or ages, day or days, and times, and in such parts, shares, and proportions, with such maintenance in the meantime until the assignment or transfer thereof respectively, and in such manner and form as she should at any time or times, by any deed or deeds, writing or writings, with or without power of revocation, to be by her sealed and delivered in the presence of and attested by two or more credible witnesses, or by her last will and testament (executed as thereby required), should direct or appoint; and, subject to such direction or appointment, should assign the same unto, between, and among the said children in equal shares, at the same respective ages and times as the said testatrix had thereinbefore declared in her bequest in favour of the children of the said T. W. Richardson; and such shares to vest at the same ages and times as the shares of the said children of the said T. W. Richardson in the Bank Annuities thereinbefore bequeathed in trust for them. The testatrix died on the 15th of July, 1815, leaving surviving her Louisa Elizabeth Brett, who, on the 19th of May, 1817, was married to Mr. George Gee, a solicitor, and the plaintiff in this cause. John Brett, the father, died on the 23rd of June, 1816; John Brett Gee, the only issue of this marriage, was born on the 8th of February, 1818. By a deed dated the 6th of March, 1818, under the hand and seal of Mrs. Gee, she, after reciting the power of appointment, directed and appointed all the moiety of the stocks or funds (to the dividends of which she was entitled for her life) unto and to the sole use and benefit of her son, John Brett Gee, his executors, administrators, and assigns; and she declared that it should be lawful for her at any time or times thereafter, by any writing or writings under her hand and seal, to revoke, alter, or make void the same deed. The deed purported to have been executed in the presence of Captain Overend, who died in 1825, and the plaintiff; it was written on unstamped paper, and was not stamped until 1845. John Brett Gee died on the 22nd of July, 1818, leaving the plaintiff his sole next of kin. Mrs. Gee died on the 15th of February, 1842, without having revoked or altered the deed of the 6th of March, 1818. In 1845 the plaintiff took out letters of administration to his son, John Brett Gee, and as his representative he filed this bill, claiming to be entitled to the moiety appointed by Mrs. Gee in favour of

John Brett Gee by the deed of the 6th of March, 1818. The deed not having been produced until after Mrs. Gee's death, a doubt was raised as to its authenticity, and also whether the deed, if authentic, had not, under the circumstances of the case, been executed with a fraudulent intention.

Russell and Speed, for the plaintiff.

Hodgson and Chandless, for the principal defendants.

W. M. James, for the trustees.

Cole, for another defendant.

The following cases were cited:—*Lord Hinchinbrooke v. Seymour* (1 Bro. Ch. Ca. 395); *M'Queen v. Farquhar* (11 Ves. 479); *Wright v. Lanson* (2 Mee. & Wels. 739); *Rutledge v. Rutledge* (in the House of Lords); *Jackson v. Butcher* (before the Vice-Chancellor of England); and *Edgeworth v. Edgeworth* (1 Beattie).

The VICE-CHANCELLOR.—Whether I should have thought this deed essentially and necessarily bad, if there had been a clause for maintenance in the will, or if any issue of the child dying under twenty-one, and leaving issue, would have taken, it is not requisite or material that I should give any opinion. There is not any clause for maintenance, and, as I read the will, in the absence of any appointment, neither the child dying under twenty-one leaving issue, nor any issue of that child, could have taken. Bearing in mind these circumstances, whether necessary or unnecessary, but bearing in mind their existence, I cannot venture to say that this deed is necessarily and essentially bad. It may possibly be good. But there are circumstances belonging to the case which render it absolutely impossible for me to act for or against the deed, without the assistance of a jury. The issues must be, as I apprehend, four in number. First, whether the deed was executed by Mrs. Gee in the lifetime of the infant appointee? Secondly, whether the deed was, as to the sealing and delivery thereof by Mrs. Gee, attested by two credible witnesses in the lifetime of the infant? Thirdly, whether the deed was fairly obtained from Mrs. Gee? And, fourthly, whether the deed was executed by Mrs. Gee with a fraudulent intention? I cannot act for or against the deed without that trial, unless either of the parties will confess these issues. As they do not, I must have them tried. The plaintiff is to be the plaintiff at law, and at his request let him be examined for himself, and the defendant may cross-examine him. All the exhibits must be in court at the trial, to be produced, saving just exceptions.

Thursday, April 30.

JONES v. CRESWICK.

Practice—Master's certificate.

Where the Master had granted a certificate for a commission to examine witnesses, a motion that the certificate might be discharged or taken off the file was held to be regular.

This was a motion that certain orders for a commission to examine witnesses might be discharged, and that the certificate of the Master made in the causes, on which the said orders were grounded, might be discharged or taken off the file. The principal question discussed was as to the regularity of the motion in seeking to take the Master's certificate off the file instead of excepting to it.

Swanton and F. Bayley, in support of the motion, cited *Paxton v. Douglas* (16 Ves. 244); *Chennell v. Martin* (4 Sim. 340); *Jones v. Powell* (1 Sim. 387); *Chalk v. Thompson* (4 Sim. 350); *Kemp v. Wade* (2 Keen, 686); *Stubbs v. Molinoux* (4 Bea. 546); *Chaffin v. Wills* (1 Dick. 377); and *Wispenny v. Courtney* (5 Sim. 554).

Russell and Chandless contended that the proper mode of proceeding against the Master's certificate was by exception. They cited *Moore v. Langford* (6 Sim. 323).

The VICE-CHANCELLOR.—The authority of Lord Hardwicke, as it is to be collected from Mr. Dickens's printed report and his manuscript note-book, and from the report-book of the day, renders it not necessary for me to decide the proper form of proceeding, but affords me sufficient apology or support in following my own opinion, which agrees with that of his lordship.

Common Law Courts.

COURT OF QUEEN'S BENCH.

February 11 and 14, and April 27.

SOLOMON B. LAWSON.

Libel—Pleading.

A letter published in the papers not specifically referring to the plaintiff, or any particular individual, cannot be declared on as a libel upon the plaintiff, by the help of averments, alleging facts which tend to show that the matter complained of in the letter really was something done in the course of the plaintiff's trade and occupation.

Where a second letter is published upon the same subject, but not containing anything libellous taken by itself, but which may be libellous taken with the first, a count which only sets out the first letter in substance, and avers that the second was written of and

concerning, amongst other things, the first letter, is bad in arrest of judgment.

This was an action for libel for the publication of the two letters set out at length in the judgment. A verdict was found for the plaintiff. In Easter Term last (5 Law T. 49), *Shee*, Serjt. had obtained a rule nisi in arrest of judgment, against which

M. Chambers, Q.C. Bull, Q.C. and James, shewed cause (February 11).—The jury having found a verdict for the plaintiff, if it be possible to apply the libel stated to the plaintiff, then the Court will uphold the verdict. It is not sufficient for the defendant to show that it may not apply to the plaintiff, but that it cannot. The second letter, when examined, is a substantive libel, and the first only introductory matter as far as the second count is concerned. The following cases were cited:—*Gutsole v. Mathers* (1 M. & W. 495); *Fleetwood v. Kerr* (Cro. Jac. 557); *Goldstein v. Foss* (6 B. & C. 154); *Fisher v. Clement* (10 B. & C. 472); *Hughes v. Rees* (4 M. & W. 204); *Sweetapple v. Jesse* (5 B. & Ad. 27); *Stephen on Pleading*; *Com. Dig. Plead. E. 18, 19*, *Defamation*, D. 26, 27; *Gompertz v. Levy* (9 A. & E. 283); *Cooke v. Cox* (3 M. & S. 110); *Starkie on Libel*, 1, 387.)

Shee, Serjt. and *Peacock* (February 14), in support of the rule, argued that the letters as set out could not possibly refer to the plaintiff, referring to many of the same authorities, and also to *Cro. Jac.* 126; *R. v. Aldert* (Sayer, 280); *R. v. Horne* (Cowp. 682; *Roll's Abridgment*, 1, 81). They also contended that the second letter was so far connected with the first, that, without it, it would not be understood, and that, therefore, the first letter should have been set out in terms, and not merely in substance. (*Zenobia v. Astell*, 6 T. R. 162.)

Cur. adv. vult.

On Monday, the 27th of April, the Court delivered

JUDGMENT.

Lord DENMAN, C.J.—This was an action for libel. The declaration contains two counts. A general verdict was found for the plaintiff, and a motion was made in arrest of judgment. The first count states that the plaintiff was a merchant carrying on business at St. Helena, and that he was employed by captains of vessels touching at the island to supply those vessels with water; and it specified the manner in which that was done, and that the captain of a vessel called the *Moffatt* applied to the plaintiff for water, and was supplied out of a wooden tank, and the defendant published a libel in the form of a letter, which is as follows:—

“TO THE EDITOR OF THE TIMES.

“SIR,—The following shocking occurrence deserves to be made known, as it may be the means of saving the lives of passengers from India. The ship *Moffatt* arrived from Bombay on Saturday, and the passengers landed in almost a dying state. It appears from a statement made by two of the sufferers, who are officers in the army, and are come home on sick leave, that they were all tolerably well up to their arrival at St. Helena, where, as is customary, they took on board fresh water; and in a few days after leaving that island, they were all seized with violent pains and vomiting, which continued daily up to their arrival in England; their gums became black, and the under part of the tongue black. No one, not even the doctor, who equally suffered with the captain and his wife, could account for it; but there is no doubt but their illness was caused by the water, and it appears the water is run into a copper tank at St. Helena, from which the casks are filled alongside. There is no doubt, therefore, that the poison is imbibed from this copper tank, and it behoves the authorities immediately to order its removal, and replace it with an iron one. I saw the two young officers this day, suffering the most dreadful agony. I should be glad to hear from the passengers of other ships from India whether they have been like sufferers by the St. Helena water, in order that a proper representation may be laid before Government, which there is no doubt the captain and owners of the *Moffatt* will feel it necessary to do. I find in your paper to-day not less than thirty-seven vessels announced as having put into St. Helena.”

Meaning and intending that the plaintiff had been guilty of selling, conveying, and supplying bad and unwholesome water to the ship *Moffatt*; and the objection to this count is, that although the imputation, if applied to the plaintiff and his trade, would be clearly actionable, yet there is no imputation upon the plaintiff or any other individual whatsoever. In the course of the argument many cases were cited for the purpose of shewing the object and use of the preliminary allegation and the proper office of the innuendo. We do not, however, feel it necessary to enter into a detailed examination of those cases, because it was properly admitted in argument that the introductory averment does explain the terms employed, and that no innuendo was necessary, except the last above set out, and that really involves the whole question, if that be contained in the alleged libel; yet if it is capable of receiving the interpretation put on it by that innuendo, there is no fault in the count for not having the explanatory averment to fix and point

it out; but, generally, if the words written or spoken cannot apply to the individual plaintiff, no previous averment or subsequent innuendo can help to give the words the application they have not, and that is the reason why the words should be set out, as observed by Lord Abinger, in giving the judgment of the Court in the case of *Gulsole v. Mathers* (1 M. & W. 495). "It ought to appear," he says, "on the face of the declaration, by the words or signs themselves, that they are sufficient to support such averments or innuendos as may be necessary to apply to the subject that they may bear the interpretation put upon them, and present the injury which is charged to have resulted from them." Supposing the words to be, "a murderer was committed in A's house last night," and there was no introduction to mean that A had committed the said murder, it would not be helped by the finding of the jury; but the Court must see that the words do not and cannot mean it, and would arrest the judgment. The question, therefore, is, whether the alleged libel has any reference to any individual. In the commencement it is said, "The statement is made by two of the sufferers on board the *Moffatt*, that they had taken in water at St. Helena; the sickness begins after that, and there is no doubt the illness was occasioned by the water; and it appears that the water is run into a copper tank at St. Helena, from which the casks are filled alongside. There is no doubt, therefore, that the poison is imbibed in the copper tank, and it behoves the authorities immediately to order its removal, and replace it with an iron one." The obvious impression on reading this statement is, that the tank was on shore to which the ships came to be filled, and also that the authorities, meaning something opposed to an individual, are called upon to interfere, and that the tank belongs to the authorities. Supposing, however—which is, perhaps, assuming a good deal—that the tank may be on board a vessel fitted up to supply others with water, and that the authorities are called upon to put down a nuisance belonging to some individual, still the question is, what individual is meant? None is pointed out; there is nothing to shew that the plaintiff even had a schooner with tanks to supply ships with water at St. Helena; it is uncertain what number of persons may be at St. Helena similarly situated, to all of whom the observation would equally apply, and to none in particular; we think, therefore, there is nothing in the letter to warrant the innuendo applying the misconduct to the plaintiff, and that the count cannot be sustained.

The second count sets out in substance the letter already observed upon, and then the following letter, in his *verbis*—

"SAINT HELENA WATER.

"TO THE EDITOR OF THE TIMES.

"SIR,—I beg leave to correct an error I was led into regarding the passengers by the ship *Moffatt*, from Bombay, being poisoned by the water supplied at St. Helena from a copper tank. I stated the tank belonged to Government. This is an error. The copper tank is fitted up in a small schooner belonging to Mr. Solomon, which runs alongside the ships as they arrive, to supply them with water. Captains of ships homeward bound will therefore do well to be warned of the fatal consequences that may result from taking in water that has probably been lying some days in a copper tank, the evil effects of which they can ascertain by inquiring of the captain, doctor, or owner of the *Moffatt*. The doctors pronounce it to be a decided case of poison."

The question upon that second count is, whether the two letters together constitute the libel, or whether the second letter, *per se*, could be considered the libel, and the first only introductory matter. Upon the former supposition we are not aware that it was attempted to support the count, nor do we think it was possible to do so in the face of such numerous and unvarying authorities. In addition to the cases already cited, we may briefly advert to some others. In *Cook v. Cox* (3 M. & Sel. 110), judgment was arrested in an action for slander because the words themselves were not set out. In *Wood v. Brown* (6 Taunton), the declaration was held bad on general demurrer, for not setting out the libel; and lastly, not to waste time by unnecessary citation, in *Wright v. Clements* (3 B. & Ald. 503), judgment was arrested for the like defect, the libel being set out as here, "in substance as follows, that is to say." The learned judges there distinguished substance from the tenor, observing that "tenor" had acquired a technical sense, and implies the libel is set out in *hæc verba*, and Mr. Justice Holroyd compares the case of libel to that of an indictment for forgery, in which it is well known the forged instrument must be described as it is, as it would be still but for the recent statute, 2 & 3 W. 4, c. 123. Then are the two letters identical, and is the first by the reference made part and parcel of the second? Now the second letter is averred to be published, *inter alia*, of and concerning the first. The second letter begins by correcting an error the writer was led into in his former statement, which can only mean the statement in the first letter; the error is then said to be in stating that the tank belonged to the government. But what tank? It must be the tank to which such mis-

chievous consequences are attributed in the first letter; it then asserts that the tank is fitted up in the schooner of the plaintiff, and it cautions captains homeward bound against taking in water which has probably been long lying in the copper tank, and again reverts to the effect on the *Moffatt*, but not in the same terms. In the first letter the symptoms are minutely described to lead to the conclusion that the copper tank produced the sickness, none of which particulars are to be found in the second, although it ends with the doctor's pronouncing it a decided case of poison. It was asked by the learned counsel for the defendant, whether, if a justification had been attempted, it would have been sufficient to confine it to the second letter; this perhaps may be considered as an illustration rather than an advancement of the argument, because the answer must depend on this, whether the second letter can be considered as independent of the first, as a substantive libel, which is the whole question. Without pronouncing any opinion whether in any particular case of libel it be sufficient to state the substance as opposed to the tenor of any writing, although introductory only, we think the second letter is so far connected and identified with it, that the first ought to have been set out, and that for the want of that the second count is bad, and judgment therefore must be arrested.

Judgment arrested. (a).

Nor. 9, and May 4.
GILLET v. WHITMARSH.
Variance.

To an action upon a promissory note for 150l. by payee against the maker, the defendant pleaded that one T. W. was indebted to the plaintiff in 3,000l. and that it was agreed, between the plaintiff, T. W. and defendant, that plaintiff should accept 1,500l. in satisfaction, and that he should not enforce his debt against T. W.; that the note was given in part payment of the 1,500l. and that plaintiff afterwards procured against T. W.'s estate, so that the consideration had failed. At the trial the agreement proved was, that on payment of 350l. down, the giving of this note for 150l. and a bond of the defendant and another for 1,000l. T. W. should be released.

Held, upon motion for new trial, a fatal variance. Held also, upon motion non obstante veredicto, that the plea was good.

Assumpsit upon promissory note for 150l. by payee against maker. The substance of the plea is stated in the marginal note and the judgment. The jury found for the defendant. A rule had been obtained for a new trial, or for judgment non obstante veredicto, against which

Nor. 9.—The Solicitor-General and Lush shewed cause.—The proof was that the 1,500l. was to be paid, 1,000l. by bond, 350l. in cash, and 150l. by this note. The substantial defence is, that, as a part of the agreement, the note should be given, and the jury have found it was. As to the motion non obstante, the plea is not the payment of a less sum in satisfaction of a greater, but that the consideration has failed. This proof may be given, whether the agreement was a writing or not, and the allegation of it being in writing is unnecessary. (*Wells v. Hopkins*, 5 M. & W. 7.) Then the proof of the debt against the estate caused a diminution of the estate, and was contrary to the conditions upon which the defendant had become liable as surety.

Attorney-General and Hoggins, contra.—There was no proof of the agreement as stated, nor did the plaintiff claim contrary to it. The proof against the estate was not a breach. The agreement is not alleged to have been in writing, which is necessary to alter the terms of a negotiable instrument. (*Adams v. Wordley*, 1 M. & W. 374; *Abbott v. Hendricks*, 1 M. & G. 791).

Cur. adv. vult.

JUDGMENT.

Lord DENMAN, C.J.—The declaration states, that the defendants, together with one Thomas Whitmarsh, who had become a bankrupt, gave a promissory note, dated in 1842, for payment to the plaintiff or order, twelve months after date, of 150l. with interest. To this the defendant, Whitmarsh, pleaded that one Thomas Whitmarsh was indebted to the plaintiff in 3,000l. and upwards; and that it was agreed between the plaintiff and the defendant, and the said Thomas Whitmarsh, that the plaintiff should accept 1,500l. in satisfaction of the debt. In consideration of the premises, and that the plaintiff would accept 1,500l. in satisfaction, the defendant made the promissory note mentioned in the declaration, and delivered it to the plaintiff in part payment of the said sum of 1,500l. and that it was agreed that the plaintiff should not enforce, claim, or demand payment of the original debt, and that the defendant made the note upon those terms, and for no other consideration; that Thomas Whitmarsh, after the note was made, and before it became due, became bankrupt, and that the plaintiff, in violation of the agreement, proved under the commission for the original debt of 1,500l. and that the note thereby became void. The plaintiff replied *de injuria*, and upon the trial the jury found a

(a) See the cases of *Griffiths v. Lewis*, and *Alfred v. Furlow*, which will appear next week.

verdict for the defendant; but a motion was made for a new trial, on the ground that the evidence did not support the plea as to the terms on which the note was stated to have been given; and we are of opinion that it did not, and the rule should be absolute for a new trial. The plea states the agreement to have been that the plaintiff should accept 1,500l. in satisfaction of his claim; that the defendant should give a promissory note in part payment of the 1,500l.; and that the plaintiff should not enforce, or attempt to enforce, or in any way claim or demand, payment of the original debt of 3,000l. The evidence, however, was, that on his giving 350l. down, 150l. by this note, and the bond of himself and another for 1,000l., Thomas Whitmarsh should be released. A bond executed in November, after the note was given, was confirmatory of the evidence that such were the terms of the arrangement. There was, therefore, a most material variance between the agreement stated by the plea, and the agreement stated at the trial. The agreement stated by the plea was, that the plaintiff would accept 1,500l. in satisfaction of his claim, and that the defendant gave the note in part payment, and that the plaintiff would not enforce, or attempt to enforce, payment; but the agreement proved was, that upon payment of 350l. down, 150l. by promissory note, and 1,000l. by bond, Thomas Whitmarsh should be discharged, making it his release of the bankrupt. In furtherance of these conditions, and subsequent to the making of the note, 350l. were paid down, a bond for 1,000l. was given as well as this note—a most material variance indeed. The rule was for a new trial, or judgment for the plaintiff non obstante veredicto, but we think that the plea is not supported by the evidence; but though not bad upon the face of it, yet, upon the facts stated, it does not afford a defence to the action. The rule must, therefore, be made absolute for a new trial.

REG. v. JESSE HALL.
Criminal Information.

The Court will not interfere by granting a criminal information where the attacks complained of have been caused by the intemperate language in publication by the party complaining, although such publication arose from inquiries made in pursuance of his duty. Therefore where a clergyman had, in the course of inquiries as to certain charities in his parish, published pamphlets reflecting in no measured language upon the character of his opponents, the Court discharged a rule that he had obtained for a criminal information, in respect of certain attacks made upon him, by way of recrimination, but they intimated that if the attacks were renewed, a criminal information would be granted.

In Hilary Term the Solicitor-General shewed cause against a rule obtained on behalf of Dr. Molesworth, the rector of Rochdale, for a criminal information against the defendant for publishing a libel against him. The affidavits in answer shewed that in fact the applicant had brought the attack upon himself by publishing pamphlets impugning the character and conduct of influential dissenters in the parish. The Court then called upon the

Attorney-General to support the rule.—It was then shewn that the original dispute had been about the administration of some charitable funds which it was the duty of Dr. Molesworth to inquire into, and it was contended that even admitting that there had been strong language used, there was no justification for the defendant's conduct. A suit in equity, and a private Act of Parliament had grown out of these disputes.

JUDGMENT.

May 7.—DENMAN, C. J.—This was a rule to leave to file a criminal information for a libel, obtained on the part of the Rev. Dr. Molesworth, rector of Rochdale. The matters complained of were of a gross nature, and undoubtedly calculated to impair the usefulness of a clergyman in his sacred office; but the cause shewn against the rule was substantially this, that he had in a great measure brought this attack on himself by his own conduct, having published cheap pamphlets of a controversial nature very seriously reflecting, and in no measured terms, on the character and motives of persons respected in station and high in authority, within his parish; openly challenging public discussion, and naturally leading to recrimination. When the Solicitor-General had convinced the Court that such facts existed, and Mr. Attorney proceeded to prove, by affidavits, that Dr. Molesworth had acted from laudable motives in commencing those inquiries, and that the state of parties in the parish was such as to make it inexpedient for those who held office in the parish which the defendant might be said to represent to obtain any triumph over them. On the first point he was entirely successful. We make no doubt that some interference with the affairs of the charity in question was absolutely necessary, and that the clergyman, in attempting to place them on a better footing, was fully exercising the duties of his office. But although we think this, we cannot measure the degree of impropriety in whatever he did, nor ought we to bestow extraordinary authority to him who, in the perfor-

ance of very delicate functions, may have been led into expressions such as are shown in the publications in question. If that be so, that construction ought to have restrained the reverend gentleman from receding to such bitter and reproachful language; and we think it right to discharge this rule without any costs. We trust no such consequence as the Attorney-General described will follow, and we desire to avoid giving any triumph to either party. The conduct of those who have been acting against the reverend defendant does not receive justification, and they will very much misapprehend us if they infer that on any renewal of similar conduct we should consider our hands tied by the present judgment from any interference in the matter.

Rule discharged, without costs.

Wednesday, May 6.

REG. V. MAYOR AND CORPORATION OF WARWICK.
Municipal Corporations Act—Borough funds.

A municipal corporation has no power to order payment out of the borough fund of expenses incurred in petitioning the Court of Chancery to interfere with the management of funds, and the appointment of trustees to property, which is not vested in the corporation, although the surplus of the rents and profits of the estates, after payment of certain charges therein, is applicable to the purposes of the borough.

Nor have they power to make an order for the payment of interest upon a bond, not bearing interest, given for compensation upon the loss of office, although the party entitled may have consented, upon payment of interest upon the amount secured, to wait for payment. The Court granted a rule for a *certiorari* to remove orders for the payment out of the borough fund of 100l. in respect of the first mentioned claim, and 8l. in respect of the second.

But they refused the rule for removing an order for payment of the expense of relining a pew in the church, which had been for a very long period occupied by the corporation, and which had been for a long time repaired by them.

The Attorney-General, Whitehurst, Q.C. and Hayes, shewed cause against a rule nisi obtained by the Solicitor-General for a *certiorari* to remove certain resolutions and orders made by the town council of Warwick. The 1st order was for payment, out of the borough fund, of 100l. to Mr. Tibbits, being a part of his bill of 800l. for costs and expenses incurred in certain Chancery proceedings taken under the direction of the corporation, in respect of certain estates called the Estates of Henry the Eighth, and the appointment of trustees thereto. (See the main facts, 6 Law T. 41.) The course adopted by the corporation was quite correct; for, notwithstanding they failed through a technical error, the Lord Chancellor ordered their costs to be paid. The proceedings were necessary by the corporation, for the surplus of these funds was applicable to borough purposes, and for several years they were unable to make a borough rate, because the trustees would give no information upon the subject. They acted throughout under the opinion of counsel. And as the estates belonged to the corporation, and the surplus was applicable to the borough purposes, they were justified in incurring *bond fide* expenses for the benefit and protection of the borough. This is the general rule as to the right of trustees to be repaid costs, and applies, whether the proceedings are ultimately successful or not. Attorney-General v. Norwich (1 Keen, 700). See, also, 2 Mylne & Cr. 406; Reg. v. Dartmouth (10 A. & E. 490.) [PATTESON, J.—What power is there given by the statute to pay legal expenses so incurred?] It must be taken under the general words of the 72nd section. 2nd. The next order is for the payment of 8l. for interest to Mr. Tibbits upon a sum of money due to him upon a compensation bond from the corporation. It would have been very inconvenient to the corporation to pay the amount of the bond; and upon Mr. Tibbits consenting to postpone suing the corporation upon the bond, interest was ordered to be paid thereon. It was competent for them, in the exercise of their discretion, to do this. 3rd. The last order is quite proper. The pew in question has been occupied by the corporation for a very long period, and has been repaired by them as long back as 1723. It appears that the new lining was necessary, and, but for it, repairs would have been necessary to the woodwork, and would have been much more expensive.

The Solicitor-General and Mellor, contra.—The history of the rise and fall of the parties in this borough is quite immaterial. The question is simply whether the town council had power to make these orders. Is it not a misapplication of the borough funds, which a rate-payer and burgess is entitled to question by *certiorari*? (1 Viet. c. 78, s. 44.) It is quite a mistake to suppose that these estates are in any way the property of the corporation. The corporation, as a corporation, never were entitled to them, and were not even *cestui que trusts*. The original grant, and the various schemes approved of in Chancery, all shew this. The trustees are now appointed by the Lord Chancellor, and they are to apply the surplus, if any, for charitable purposes, according to the original grant, "for good and useful purposes;"

or, as it is now construed under the direction of the Court of Chancery, for the lighting, paving, and the police of the borough. The corporation had the superintendence originally, but not as a corporation; and by the 92nd section of the Municipal Corporation Act, all corporate property was transferred to the borough fund, subject only to certain payments of salaries, &c. This bill can in no way be brought within any of the objects mentioned in the 92nd section, unless it be held to be expenses necessarily incurred in carrying into operation that Act. But the very object was to obtain control over the borough funds, for different persons than those intended and appointed according to law. The 2nd order is also bad, for it is contrary to all principles as to charges upon inhabitants. By postponing the payment of the bond, the burden is thrown upon future rate payers, and there is no power under the statute to do this. The bond is not made to bear interest, but is for a gross sum only. The 3rd order, as to the pew, is also bad. The corporation cannot prescribe for the pew as of right (*Byerly v. Windus*, 5 B. & C. 1), and it cannot be necessary to be kept up. It may be that the majority, or all of the corporation are dissenters. There is no objection to the form of this rule. The *certiorari* may go, although the orders are only resolutions in the corporation minutes. (Reg. v. Litchfield, 4 Q. B. 893.)

Lord DENMAN, C.J.—I am of opinion that the order for the payment of the 100l. must be set aside. The expenses were incurred in respect of property which the corporation were not in any way possessed of or entitled to, and they cannot make an order upon the borough fund for the payment of such expenses. The second order as to the 8l. must also be set aside. The statute gives no authority to pay interest upon a compensation bond. The bond is to be given; if the creditor chooses to postpone his claim for payment, he may of course do so, but the town council cannot do so, for it would in effect be transferring the burden to other parties. The third order as to the pew may, I think, be supported. It may be conceded that it is not strictly their property, and that it is not absolutely necessary to the due performance of their duties. But the long habit and practice of using it is sufficient to authorize this expenditure for its maintenance.

PATTESON, J.—This 100l. was spent in order to get back into the hands of the corporation, if possible, what the law had taken away from them. The funds appear to be applicable to charitable purposes, and whether or not the trustees were rightfully appointed is not a matter of interest to the corporation. It is not a purpose for which money can be expended under the 92nd section. The order for the interest is also bad. There is no authority to make such order under the statute. Besides, the alleged postponement of payment is not obtained, for the parole agreement of Mr. Tibbits would not bar him from proceeding on the bond. The objection to the repair of the pew is not, I think, maintainable; giving the 92nd section a liberal construction, it might be said to be money expended for the maintenance of a corporation "building," for it is in their actual possession, although it may be they have no strict legal title to it.

WILLIAMS, J. and WIGHTMAN, J. concurred.
Certiorari, to remove the two orders, granted.

Thursday, May 7.

PAXTON V. THE GREAT NORTH OF ENGLAND RAILWAY COMPANY.

Motion to set aside an award—When to be made—Practice.

An application to set aside an award, published in Term time, must be made within four days from its publication, in all cases where the reference is of a cause only by order of *Nisi Prius*. Upon the reference of a cause at *Nisi Prius*, the arbitrator awarded that the verdict entered for the plaintiff should stand, "unless the Court should order otherwise;" he then stated various questions for the opinion of the Court, and awarded that if the Court should be of a certain opinion, the verdict should be for the defendant on certain issues. The award was published on the 16th of November, 1844, and on the 25th of January, 1845, application was made to set aside the award, or to enter the verdict for the defendants upon the facts stated in the award:

Held, that the application to enter the verdict was in effect an application to set aside the award; and that it should have been made within four days from the publication of the award.

Debt, for work and labour, hire of goods and chattels, goods sold, money paid, and on an account stated. Pleas, except as to 1,300l. 1st. Never indebted; 2nd. Payment; 3rd. Set off, and, as to 1,300l. payment into Court.

The cause came on to be tried at Durham on the 18th Aug. 1842, before Lord Denman, C.J. when a verdict was found, by consent, for the plaintiff, damages 950,000l. subject to the award of Robert Ingham, esq. to whom "all matters in difference in this cause were referred." On the 13th November, 1844, the arbitrator made his award; which, after the usual introduction, proceeded thus:—"I do award that, unless the Court of Queen's

Bench shall otherwise order, the verdict already entered for the plaintiff in this cause shall stand, but that the same shall be reduced to 432l. 6s. 9d. debt, and 1s. damages, and 40s. costs; and I determine for the plaintiff every issue joined in this cause, &c. And whereas I have been required by the plaintiff and the defendants, &c. to state certain points of law for the opinion of the Court of Queen's Bench, &c. I therefore proceed to state them accordingly. (The award then raised various questions of law, and concluded thus:—) And I do further award that if the Court shall be of opinion that any of the items which I have admitted to the credit of the said plaintiff or the said defendants respectively ought to be disallowed, or that any of the items which I have disallowed to the plaintiff and the defendants respectively ought to be admitted, and if the balance resulting from such corrected items in favour of the plaintiff shall exceed, or shall, save as after mentioned, fall short of the sum of 432l. 6s. 9d. at which sum I have assessed the debt due to the plaintiff as aforesaid, then I do award that the verdict already entered for the plaintiff shall stand, but that the same shall be reduced to such amount of debt as in the opinion of the Court shall be due to the plaintiff, with 1s. damages, instead of the amount of debt which I have awarded; but if the Court shall be of opinion, upon the point first raised, that this action is not maintainable for more than the sum paid into Court; or if the balance adjudged to be due to the plaintiff upon such corrected items shall be reduced by a sum larger than or equal to the said sum of 432l. 6s. 9d. then I do award that the general verdict entered for the plaintiff shall be set aside, and that a verdict shall be entered for the plaintiff on the first, and for the defendants on the second and third issues." (Dated 13th November 1844.)—On the 16th November the defendants received notice of the award; and on the 15th January, 1845, they moved for and obtained a rule calling on the plaintiff to shew cause why the award should not be set aside on various grounds:

1st. That the arbitrator had not sufficiently raised the questions which he was requested to raise by the parties.

2nd. That the award is inconsistent in awarding that the verdict is to be entered for the plaintiff on the first issue, notwithstanding the Court may be of opinion that the action is not maintainable for more than the money paid into Court; or why the verdict entered for the plaintiff should not be set aside, and a verdict entered for the defendants on the second and third issues, on the ground that it appears by the award that there was no order in writing for the doing of the work, &c.; and further, that there was no certificate of the engineer of the company for or in respect of the same in pursuance of the contract, &c.; or why the verdict should not be entered for the defendants on all the issues, or on the second and third issues, on the ground that the action being in debt on *indebitatus* counts is not maintainable for more than the money paid into Court by reason of there having been a contract under seal between the parties, &c. and that the plaintiff ought to have declared upon the deed specially. On the same day the plaintiff obtained a cross rule, calling on the defendants to shew cause why all the issues should not be found for the plaintiff, and a verdict entered for the sum of 1,244l. 8s. 7d. with costs, &c. as allowed to the plaintiff by the award of the arbitrator.

Martin, Q. C. and Rew now shewed cause against the former rule for setting aside the award. There is a preliminary objection which is fatal to this application. The defendants have not complied with the rule of practice which requires a party, who seeks to set aside an award where the award is in the place of a verdict, and the arbitrator in the position of the jury, to come to the court within four days after its publication. All the authorities were very minutely examined by Coleridge, J. in *Allenby v. Proudlock* (4 Dowd. 54), and that is the rule of practice which was there laid down.

Sir F. Kelly, S. G. and Addison, contra.—The limitation of time is a matter in the discretion of the Court; and although in an ordinary case the Court will apply the usual rule, it will always consider the circumstances of each case, to see whether the rule is properly applicable to it. [Lord DENMAN, C. J. referred to *Martin v. Burge* (4 Ad. & Ell. 974); where Littledale, J. alluding to an objection there made, that the application to set aside the award had not been made within the first four days of the Term after the award was published, said: "For many years after I came to the bar, no objection of this kind was heard of. I do not think there is any such rule on the subject as the plaintiff would insist upon." That, at all events, confirms the view that there is no binding rule on the subject; and here, in the first place, the award was not made in vacation; so that if the principle upon which the rule rests is that the award is to be treated as standing in the place of a verdict, then the limitation of four days clearly cannot be insisted on: for as to actions tried in Term, the motion for a new trial may be made within four days from the return of the *distinguis*. In *Allenby v. Proudlock*, Coleridge, J. expressly decides that the limitation of the first four days in the Term after publication is

confined to cases in which the arbitrator and the award stand in the place of the jury and the verdict; if so, it will not apply here; because this award necessitates an application to the Court. It is a special case raising questions for the consideration of the Court, and it is bad upon the face of it. In *M'Arthur v. Campbell* (5 B. & Ad. 518) no mention is made of any such rule as that now contended for; but, on the contrary, Parke, J. said, in answer to an observation, that the limitation imposed by the stat. 9 & 10 Wm. 3, c. 15, s. 2, did not apply to that case, "The Court adopts the provision of that statute as a rule in other cases;" and that statute gives the whole of the Term after publication of the award within which to move. Lastly, in this case, the rule is not merely to set aside the award, but to enter the verdict for the defendants, which would in effect be so far to confirm the award. [PATTERSON, J.—In *Anderson v. Fuller* (4 Mee. & W. 470) the Court of Exchequer expressly decided that when an arbitrator had awarded a certain sum, subject to be reduced to a smaller sum by the judgment of the Court upon facts stated, an application to enter a verdict for the smaller sum was an application to set aside the award.] That case is not applicable; because here the award altogether depends upon the opinion which the Court may form upon the facts stated. The plaintiff could not sign judgment upon this award as it stands. [PATTERSON, J.—Why not? It is an absolute award in favour of the plaintiff, unless you apply to set it aside. Lord DENMAN, C. J.—The plaintiff might go to the Master after the proper time for your application had elapsed, and sign judgment.] Supposing the rule had been drawn up merely for entering the verdict, could this objection have been taken then? The award is made in the country, the defendants had no notice of it until the 16th of November; and, if the publication dates from that time, it would have been impossible for them to have prepared their affidavits and moved the Court within four days.

Lord DENMAN, C. J.—It is quite clear that some rule of limitation must be laid down. It is a part of the practice of the Court, which has been followed from a general persuasion of its existence, and from the year 1836, when Mr. Justice Littleton made the observation already referred to (in *Martin v. Burge*, 4 Ad. & Ell. 974), the rule has been to require applications like the present to be made within four days from the publication of the award. Mr. Justice Coleridge laid down the same rule in *Allenby v. Proudlock* (4 Dowl. 54); and *Anderson v. Fuller* (4 Mee. & W. 470) is a distinct authority to show that the rule of practice applies to a case like this. Mr. Addison argued that that case does not apply; because here the plaintiff could not enter up final judgment upon the award as it stands; but, first, that objection would be as good ten years hence as now; and secondly, the award is absolutely in favour of the plaintiff, though in a subsequent part it directs that, in case this Court should be of a certain opinion, the defendant should then have the verdict. As to the difficulty of preparing affidavits in time, that would apply to the rule limiting the time within which new trials may be moved in causes tried during Term; but there must be some general rule of limitation; we cannot examine into the particular circumstances of every case. Of course the real publication is the notice to the parties that the award is made, as was decided in *M'Arthur v. Campbell*, in this Court, and also in the Common Pleas (a).

PATTERSON, J.—*Anderson v. Fuller* is quite in point. Here the arbitrator awards that the verdict entered for the plaintiff shall stand, "unless this Court shall otherwise order;" then whose business is it to apply to the Court to order otherwise? Clearly not the plaintiff's; for he might endorse the *postea* with the amount awarded, and sign final judgment. The application, therefore, is in effect to set aside the award, and must be made within the time limited by the practice of the Court. That time is four days from the publication of the award, where a cause is referred by order of Nisi Prius; except where the order refers, not only the cause, but all matters in difference. Here, however, the reference was of the cause only; and the stricter rule therefore applies. I do not mean to say that if the parties had come to the Court on the 24th day of November, 1844, and had assigned special reasons for asking an extension of the time fixed by the practice of the Court, we might not have entertained that application, as we sometimes grant similar indulgence on special grounds in the case of moving to set aside a verdict; but here no reason whatever is given. (b)

Rule discharged without costs.

Ex parte THE OVERSEERS OF HEYOP.

Mandamus to justices and county treasurer to pay expenses incurred in maintaining lunatic pauper under invalid order.

Pashley moved for a rule calling on the justices of Radnorshire and the treasurer of that county to shew cause why they should not pay to the overseers of Heyop the sum of 50l. 12s. expended by them in

support of a lunatic pauper, in obedience to an order of justices, since decided by this Court to be invalid. (6 Law T. 392; 2 New Sess. Cas. 270.) On the 13th Nov. 1843, an order was made by two justices of the county of Radnor, removing J. P. Wood, an insane pauper, to a licensed house at Shrewsbury, in the county of Salop; and on the 30th of the same month the same justices made an order upon the overseers of Heyop, in the county of Radnor, adjudging the settlement of the said pauper to be in that parish, and directing them to pay to the keeper of that licensed house a weekly sum from the date of the previous order. That order was appealed against, confirmed by the Sessions, subject to a case, and upon that case quashed by this Court. The case turns upon the 9 Geo. 4, c. 40, ss. 38, 41, and 42, upon which it is submitted, first, that until the settlement of an insane pauper is determined the liability to maintain him in an asylum is thrown upon the county (*R. v. The Justices of Kent*, 2 Q.B. 686); and, secondly, that after an order adjudging the settlement had been quashed, the settlement was undetermined. (*R. v. Pisle*, 4 Q.B. 711.) The settlement of this pauper has not been ascertained; and under sec. 42, two justices may at any time adjudge the settlement, and order the parish to repay the county the expenses of the last year, and to pay all future expenses. It is very doubtful whether the overseers of Heyop could maintain an action for money had and received against the county; and that being so, the Court will grant a *mandamus*. (*R. v. The Hull and Selby Railway Company*, 6 Q.B. 70; *R. v. The Nottingham Old Waterworks Company*, 6 Ad. & Ell. 355.) [Lord DENMAN, C. J.—The county treasurer could not pay any sum which he was not ordered by the justices to pay.] Probably not; therefore the *mandamus* must be directed to the justices also. Application was made to them at the sessions, but they thought they had no jurisdiction.

Rule nisi.

REG. v. THE INHABITANTS OF NORBURY.

Jurat of an affidavit—Omission of the words, "before me."

The Court quashed a writ of certiorari, on the ground that the words "before me" were omitted from the jurat of the affidavit upon which the writ had been obtained.

Phillimore, on a former day in this Term (April 30), obtained a rule, calling on the prosecutor to shew cause why the writ of certiorari herein should not be quashed, on the ground that the jurat of the affidavit, on which the writ had issued, did not contain the words "before me."

Neale now shewed cause.—First, this rule must be discharged, because one of the affidavits upon which it is drawn up is so uncertain, that there could be no assignment of perjury upon it; and the Court may have granted the rule partly upon that affidavit. [Lord DENMAN, C. J.—Do you know of any instance in which one had affidavit has been held to invalidate a rule, though there are several other good affidavits disclosing ground enough for the rule?] It is impossible for the Court to say upon which of the affidavits the rule was granted. Secondly, the objection taken to the jurat of the affidavit on which the writ was obtained rests upon the case of *R. v. Bloxham* (1 Bitt. & Sym. M. C. 123; 1 New S. C. 370); but some doubt has been thrown upon that decision by a case of *Empey v. King* (14 L.J. Exch. N. S.); where that Court refused to treat as a nullity an affidavit sworn before Mr. Baron Alderson, which contained the same defect, the omission of the words "before me."

Phillimore.—The words in that case were "sworn at my chambers;" and that was stated to be the usual form.

Neale.—The jurat has been held to be no necessary part of an indictment for perjury (*R. v. Embden*, 9 East, 437; and in *Ex parte Smith* (2 Dowl. 607), the names of the deponents being omitted in the jurat, Patterson, J. said: "As that appears to be only an omission of my clerk, let a new jurat be written, and I will sign it." At most, therefore, the defect is only an irregularity, and is cured by lapse of time. (Reg. Gen. H. T. 2 Wm. 4, r. 33.) In *R. v. Bloxham*, eight months only had elapsed; but here two years had passed since the writ was obtained.

Phillimore, contra, was not called upon.

Lord DENMAN, C. J.—It is not possible for us to overrule *R. v. Bloxham*, to which we have given all the authority we can give to any case; and the case in the Court of Exchequer is not inconsistent with it. In *Ex parte Smith*, my brother Patterson, seeing and knowing that the party had been regularly sworn, permitted a statement to that effect to be made; but in doing even that he now doubts whether he was right. Here, however, the authority to take the affidavit does not appear; it does not even appear that the party was legally sworn at all.

PATTERSON, J.—Eight months would cure an irregularity as well as two years; and, therefore, we cannot discharge this rule without overruling *R. v. Bloxham*. That case is clearly in point, and I am not prepared to overrule it.

Rule absolute.

Friday, May 8.

HILMAN v. CHITTY.

Affidavits sworn in a previous stage of the cause may be used upon a subsequent application in the same cause.

Gray was proceeding to shew cause against a rule obtained by Ball, calling upon the plaintiff to stay proceedings in this action, upon the ground that the defendant had obtained a collusive and fraudulent settlement of the action. He proposed to use affidavits which had been sworn in a former stage of the cause, but not filed, and dated prior to the present rule; to which

Ball objected, on the ground that they had not been filed.

Lord DENMAN, C. J. after consulting the Masters.—The affidavits may be used. Perjury could be assigned upon them.

The rule was afterwards made absolute.

Ex parte SIMONS.

Attachment—Orders under 1 & 2 Vict. c. 114. The affidavits for an attachment for disobedience is a rule of Court, by which payment of a sum of money was ordered to be made to A B, or his attorney, shewed that the attorney had applied for payment without success, and that he believed it remained unpaid, but did not expressly negative payment to A B.—Held sufficient.

An attachments will issue for disobedience to rule of Court under 1 & 2 Vict. c. 110.

The right to move for an attachment is not waived by acceptance of a bill for the amount due, which is subsequently dishonoured.

Lush shewed cause against a rule nisi for attachment for disobedience to a rule of Court, relating to payment of a sum of money to A B, or his attorney. The affidavits are not sufficient, as they do not negative payment to A B. (*Potter v. Back*, 5 D.P.C. 876.) The application is too late. The rule of Court was made at the beginning of Michaelmas Term (*Re v. Stretch*, 4 D.P.C. 30.) It appears, also, that the applicant has taken an acceptance for the amount of the debt. It is true that it is unpaid, but he may have indorsed it away. It is also submitted that, since execution can issue upon these rules of Court, the remedy by attachment will not also be allowed.

V. Williams, contra.

Lord DENMAN, C. J. after consulting the Masters, overruled the objections, and said, the greater indulgence which has been given is no reason for the maintenance of the contempt.

Rule absolute, without any order as to the bill being given up.

MARCHANT v. LLOYD.

I O U—Sheriff's notes.

Quere, is an I O U any evidence of money lent? Quere, per WILLIAMS, J.—Whether the Court will allow affidavits to be filed as to what passed at a trial before the under-sheriff, to correct alleged omission of the sheriff, when he does, in fact, send his notes? But, in the absence of affidavits, the Court can look only to the notes.

Petersdorff shewed cause against a rule obtained by Pigott, to set aside a verdict for the defendant, and for a nonsuit. It was an action for money lent, and upon an account stated. An I O U was produced at the trial, and the objection was, that this was no evidence of money lent, and the particulars of demand excluded any reference to the account stated. The under-sheriff's notes, however, only stated leave for nonsuit, because I O U should have been specially declared on. An I O U is evidence of money lent. (*Douglas v. Holme*, 12 A. & E. 641.) [Lord DENMAN, C. J.—That case only decided that where an I O U bearing no name is produced, it may be presumed to have been given to the party who produces it.] At any rate, the point does not arise here; for the only question upon the sheriff's notes is, whether the I O U should have been specially declared on, which it clearly cannot be.

Pigott, contra.—An I O U is not evidence of money lent any more than of work and labour done. He cited *Story v. Atkins* (Strange, 721) and many early cases as to promissory notes, and their effect before the statute of Anne. In *Holme v. Douglas* there was an account stated, as it appears from the brief.

Lord DENMAN, C. J.—The point does not arise here, as to the effect of an I O U. For aught that appears upon the sheriff's notes, it may have been received as evidence upon the account stated.

WILLIAMS, J.—Is there any authority for saying that this Court will receive affidavits to amend or add to the sheriff's notes?

Rule discharged.

WISE v. NEWTON.

Attorney's bill—Costs of taxation.

Newton, in person, moved for a rule nisi to review the taxation of the plaintiff's bill. After taxation, more than one-sixth had been struck off in respect of badness done while the plaintiff was uncertificated. The Master had, however, allowed the plaintiff the costs of taxation. (*White v. Milner*, 2 H. Bl. 357; *Newton v. Harland*, 9 D.P.C. 641) The defendant also claimed to set off against the plaintiff's bill fees which were due to the defendant, and which were alleged to have been received by the plaintiff from his clients.

(a) *Musellbrook v. Dunkin* (9 Bing. 605).

(b) No other judge was present during this day.

PATTESON, J.—*Newton v. Harland* is enough to entitle you to a rule nisi. Upon the other point, the rule will not be granted. It is quite clear that a barrister's fees are not the subject of an action, and therefore, not the subject of set-off.

Rule accordingly.

EVERSHED v. GROUND AND HARDY.

Writ of error—Waiver.

Where one of two defendants, after making a motion for new trial, withdrew the motion, upon finding that, in consequence of a motion by the other defendant, the plaintiff had consented to reduce the damages, the Court held that he could not subsequently bring a writ of error for an error in the jury process and findings.

Willes showed cause against a rule obtained by *Humfrey, Q. C.* to set aside the allowance of a writ of error in this case. A rule nisi for a new trial had been granted, at the motion of one of the defendants, unless the damages were reduced, which had been consented to by the counsel for the plaintiff. Subsequently *Willes* made a motion for a new trial on behalf of the other defendant; but on learning that the above consent had been given, the application was withdrawn. Subsequently this writ of error had been ruled out for an error in the jury process. It was contended, that there was clearly no waiver of the right to bring the writ of error.

Humfrey, Q. C. contra.

By the COURT.—The rule must be absolute.

Rule absolute.

Monday, May 11.

PRICKETT v. GREATER.

Articles of the peace—Bond fides of committing magistrate—Notice of action.

A warrant of commitment for not finding sureties of the peace is bad, if it does not state the time for which sureties are to be found.

Semble, Willes v. Bridger, 2 B. & Ald. 278, is a binding authority that such warrant would be good, although it did not state the amount for which sureties are to be found.

A justice of the peace who commits upon an illegal warrant is liable in an action for false imprisonment, whether he acted bond fide or not.

A notice of action which states the imprisonment to have been in the common goal at M. and that a writ of summons will be issued for that imprisonment, is a sufficient notice of the cause of action.

This was an action of trespass for false imprisonment, under a warrant of commitment for not finding sureties of the peace. The alleged defects in the warrant were, that it omitted to state the sum for which sureties were to be found and the time. At the trial, the learned judge, Mr. Baron Platt, left it to the jury to say whether the defendant, as a magistrate, had acted bond fide. A motion for a new trial had been obtained by *Godson* for a misdirection. A point upon the warrant and notice had also been reserved for the defendant.

Whately, Q. C. and Greaves (May 9), in shewing cause, contended that the warrant was good, being according to old precedents, citing 20 Edw. 4 (fol. 40, b); *Lambard's Eirenarcha* (p. 85); *Dalton* (c. 118); *West's Symbolography*; *Fitzherbert's Justice*; *Willes v. Richards* (2 B. & Ald. 279); *Foster's case* (5 Par. Rep. 59). It was also contended that the defendant had acted as a judge of record, and was therefore not liable. It was contended that the notice was insufficient for not shewing what action would be brought, or where the imprisonment had taken place.

Godson, Q. C. and Carrington (May 11), in support of the rule.—Should time be mentioned in the warrant? If not, it will, or at least may, amount to imprisonment for life. Yet in *Res v. Barnes* (1 T. R. 696), it was doubted whether even the Court of Queen's Bench could bind for more than one year. And as they have no discretion to alter the terms imposed by justices, it is essential that these should be distinct. (*Res v. Holloway*, 2 D. P. C. 125.) All the recent authorities and forms require that the time and sums should be specified. (*Re Downey*, 15 L. J. 129, M. C.; *Archbold*, Just. 2, 455.) Old authorities and precedents are not to be followed when they clash with general principles, and are inconsistent with liberty. By old precedents general warrants were supported, and even the use of the torture. No less than three lord chief justices, five lord chancellors, within a very short period, issued warrants for torture, and the last order is in the autograph of William the Third (10 State Trials, 753). But looking at these very authorities, they will not support this covenant. The 20th Edw. 4 has no bearing upon the subject. *Lambard's Eirenarcha* is a warrant of the reign of James the First, which does not appear to have been followed, and which could not now be supported. *Dalton* is only a citation of *Lambard*. *West's Symbolography* refers to a commitment after conviction for having threatened the life of the Master of the Rolls. In *Willes v. Bridger* (2 B. & Ald.) the point was not taken. Then the notice is perfectly good; it is as follows:—

"Sir,—You having, on or about the 14th day of March last, as one of her Majesty's justices of the peace in and for the said borough of Monmouth, caused me to be apprehended and unlawfully committed to a certain common goal or prison in the borough of Monmouth aforesaid, and to be there imprisoned, and kept and detained in prison there, without any reasonable or probable cause whatsoever, for a long space of time, to wit, from the said 14th day of March last to the 9th day of August then and next following, I do, therefore, according to the form of the statute in such case made and provided, hereby give you notice that I shall, at or soon after the expiration of one calendar month from the time of your being served with this notice, cause a writ of summons to be sued out of her Majesty's Court of Queen's Bench at Westminster, against you, at my suit, for the said imprisonment, and shall proceed against you thereupon according to law. Dated this 4th day of December, 1843.—J. PRICKETT."

The place of imprisonment is defined,—the common goal at Monmouth; the time during which the plaintiff was kept there; the form of action, if it be necessary, is sufficiently pointed out by the writ of summons "for the said imprisonment." (*Martins v. Uppecher*, 3 Q. B. 663; *Jackson v. Fytche*, 14 M. & W. 381.) The Court intimated that it was unnecessary to argue as to the liability of the magistrate.

Lord DENMAN, C. J.—I am of opinion that this is a power which, as it is large, so it ought to be scrupulously exercised. We are not bound to respect ancient precedents when they appear to be contrary to all principle and illegal, as has been observed in the cases of torture and general warrants. If, however, we find in later times that the question has been fully considered and decided, such decision is deserving of all respect. *Willes v. Bridger* is such a decision that it is not necessary to state the amount. But in this warrant the time is altogether undefined. No precedent of such a warrant in recent times can be found, and it is plain that a commitment upon such a warrant may be for life. It is impossible for us not to see that such a security could not be required by any circumstances; and if the person is poor, and be unable to obtain sureties, he must of necessity under this warrant be detained for life. When a limited time is fixed, at the expiration of that time, if there is the same ground for apprehension, he might be committed again; but a warrant like this is plainly unnecessary, and may lead to most violent and unjust oppression; it is therefore bad. The notice is sufficient. The nature of the plaintiff's complaint fully appears; it is for an imprisonment, and the place and time are also specified. Nor is there any difference, as suggested by Mr. Greaves, between "imprisoned" and "caused to be imprisoned." We are all agreed that bond fides will not justify a magistrate who commits an illegal act. We came to that opinion recently, after a very full consideration. Indeed it is manifest that this is so; for otherwise hardly any of the numerous actions that have been brought would have ever been heard of.

PATTESON and WILLIAMS, JJ. concurred.

Rule absolute for new trial.

DOE dem. BOWLEY v. BARNES.

Overseers—Ejectment.

In an action of ejectment brought by parish officers, proof that they have acted as parish officers is sufficient, without proof of their actual appointment.

Ejectment by parish officers. Verdict for lessors of the plaintiff, with leave to the defendant to enter a nonsuit, if the Court should think that proof of their appointment was necessary in addition to proof of their having acted. A rule nisi had been obtained accordingly, against which

Whitehurst, Q. C. and Flowers, shewed cause.—The general rule is, that proof of persons acting in an official capacity is sufficient. In *Berrymann v. Wise* (4 T. R. 366) proof that the plaintiff libelled was an attorney was held not necessary, as he had acted as an attorney, and Buller, J. then referred to the instances of peace-officers, constables, and justices. [*Lord DENMAN, C. J.*—That case is distinguishable, because the defendant had libelled the plaintiff as an attorney, and could not, therefore, turn round and say he was not.] There are numerous other authorities. (*Cannell v. Curtis*, 2 B. N. C. 228; *Buller v. Ford*, C. & M. 662; *McGahy v. Alston*, 2 M. & W. 206.) Even in criminal cases, proof of acting as a constable is sufficient to make a party who resists liable. (*Res v. Gordon*, 1 Leach, 315.) So also as to persons acting as commissioners for taking affidavits. (*Marshall v. Lamb*, 5 Q. B. 115.) The 59 Geo. 3, c. 12, does not render proof of appointment necessary.

Humfrey, Q. C. contra.—This is an action to recover possession of land, which the lessors of the plaintiff are only entitled to by virtue of their office. If, therefore, it be held that their own acts can give them title, the prior decisions will be very much extended. This has never been decided. The cases cited are distinguishable. In *Berrymann v. Wise*, and *Cannell v. Curtis*, the libel was of the plaintiff in a particular character. In *Ward v. Clarke* (12 M. & W. 747), it was held that overseers claiming under

the statute must describe themselves as overseers. That might be traversed, but in ejectment there is no mode of doing this. The lessors of the plaintiff ought, therefore, to prove it. [*PATTESON, J.*—In *Doe dem. James v. Brown* (5 B. & Ald. 243), it was held that an assignment of a lease taken in execution made under the seal of office of the sheriff by A. B., acting as under-sheriff, was proved without proof of the appointment of the under-sheriff.]

Lord DENMAN, C. J.—It is impossible to distinguish this case from that of the assignee under the execution. In each there was only proof of the official person acting. There are numerous cases collected in Phillips on Evidence which illustrate the general rule; and the criminal cases which have been referred to are very strong.

PATTESON, J.—The established principle is, that proof of a person acting as a public officer is sufficient evidence that he filled that office. The present case is not distinguishable from that which I have referred to of the assignee under an execution.

WILLIAMS, J.—It is too late now to contend for any distinction between the cases, where the party is stopped by his own admissions from disputing the character of the person who has acted in an official situation. The general principle, as already mentioned, is now fully established. Rule discharged.

BUSINESS OF THE WEEK.

Thursday, May 7.

REG. v. THE COLLECTOR OF CUSTOMS AT LIVERPOOL. *Sir F. Thesiger, A. G. Sir F. Kelly, S. G. and Pollock*, shewed cause against a rule nisi for a mandamus to compel the collector of customs at Liverpool to register at that port a vessel called the *Equador*, belonging to the Pacific Steam Navigation Company. The question was, whether the directors of the company (some of the shares being held by foreigners), were entitled to have the vessel registered in their name of incorporation, under the 13th sect. of stat. 8 & 9 Vict. c. 89, without making the declaration required by another section of the statute, to the effect that we foreigners had any interest or share in the vessel.—*Jervis, Q. C. and Phipson, contra.*—The Court thought that the case ought to be solemnly argued upon a return.

Rule absolute.

REG. v. HUNT AND OTHERS.—Indictment for perjury. The prisoners being brought up for judgment, *Shier, Serjt.* moved for a new trial, on the ground that the verdict was against evidence.

Cur. adv. vult.

(The prisoners to be again brought up on the second day of next Term.)

DOE dem. DALY v. DALY.—Ejectment by husband against wife. *Peterdoff* shewed cause against a rule nisi to enter the verdict for the defendant.—*Bramwell contra.*

Cur. adv. vult.

Re CARTER.—Application to strike an attorney off the roll, which had been referred to the Master, whose report was read. *Merivale*, in support of the application.—*Butt, Q. C. contra.* was not called upon.—The Court thought that no sufficient ground had been shewn for granting the application. It was a dispute as to money transactions between two parties, in which neither was free from suspicion.

Rule refused, but the costs of the applicant to be paid.

SANDERSON v. MITCHAM.—*Jervis, Q. C.* shewed cause against a rule to set aside a nonsuit, and for a new trial, obtained on the ground that the plaintiff's absence at the trial was occasioned by understanding that the cause would not come on till the day after that on which it was disposed of.—*Chilton, Q. C. contra.*

Rule absolute, on payment of costs.

ALEXANDER v. WILLIAMS.—The question raised upon this rule is whether, after a learned judge has granted a certificate for immediate execution, the plaintiff may immediately tax his costs and sign judgment, or whether he must not allow four days to elapse before signing judgment. *Watson, Q. C.* shewed cause. *Leach*, in support of the rule.

Cur. adv. vult.

REG. v. THE LORD OF THE MANOR OF STRICKLAND, IN THE BARONY OF KENDAL.—*Cowling* shewed cause against a rule nisi for a mandamus to the lord and steward of the above-named manor, to admit one Joseph Ward to a customary tenement, parcel of the manor. The question was whether the deed, upon which the applicant claimed to be admitted, was an operative instrument according to the custom of the manor. *G. Hayes, contra.* was not called upon. By the COURT.—The writ ought to go. It will set up a *prima facie* title, which ought to be answered.

Rule absolute.

Re THE ARBITRATION BETWEEN LANCASTER AND TOPPING.—*Cowling* moved for a rule, calling upon *Topping* to shew cause why he should not bring in the submission and other documents necessary to make the order of reference a rule of Court, and why the award should not be set aside. The award was made by an umpire, who had been selected by the arbitrators thus: each arbitrator had named one person, and then they had tossed up, which should be the umpire. [*Lord DENMAN, C. J.*—If both were properly qualified, is that any ground for setting aside the award?] *Re Hodson and Drewry* (7 Dowd 509) is in point.

Rule nisi.

Saturday, May 9.

PRICKETT v. GREATER.

Part heard.

Friday, May 8.

DAVIES v. VERNON.—The Solicitor-General (with whom was *V. Lee*) objected to the form in which the question in this case had been referred to the Master. Power was given to him to decide, whereas it should only have been to report.

Order of reference modified accordingly.

FORD v. HUNTER.—The Attorney-General shewed cause against a rule obtained by *Watson, Q. C.* for reversal of outlawry upon final judgment.

Rule to be absolute upon payment of debt and costs.

WOOD v. EARL OF PORTLAND.—The Solicitor-General applied that the Master should be allowed to examine witnesses *vide vocem*.

Leave accordingly.

St. KATHARINE'S DOCK COMPANY v. HIGGS.—The Solicitor-General and *Willes* shewed cause against a rule to set aside a *scire facias*, and stay proceedings thereon, as having been issued against good faith. *Dundas, Q. C. and Ogle, contra.* See *supra* (6 Law T. 296).

Rule absolute to stay execution until the decision of the Court of Error.

DOZ dem. PENNINGTON v. TANIERS.—Peacock (with him *Cresswell*) shewed cause against a rule for enlarging peremptory undertaking. *Hurstone*, contra. *Rule enlarged.*

REG. v. WATKINS AND OTHERS.—*Wordsworth* (with him *Baddley*) moved for judgment against the defendants, found guilty of a nuisance at the last Maidstone assizes. *Shee*, Serjt. contra. The only question was as to terms.

Judgment respited, the notice to be bond remedied.

In **v. PAGET**, *Whigham* made the

Rule absolute, no cause shown.

DE FOINVILLE v. DE BOINVILLE.—*Müller* moved to discharge this rule, no one appearing in support.

Rule discharged.

v. HAMESLEY.—*Otter* moved in two cases against the same defendant for a *procedendo*. The debt was sworn to be under 40s. and no declaration had been filed when the causes had been removed by *re. fa. lo.* out of the County Court of Northumberland. Both parties resided within the jurisdiction. *Rule nisi.*

Re CURLING.—*M. Chambers*, Q.C. moved to re-open this rule. *Jervis*, Q.C. (with him *Burney*), required a certain sum to be paid into court.

Referred to one of the Masters.

HILL v. HAYWARD.—*Talford*, Serjt. shewed cause. *Allen*, Serjt. and *Pigott*, contra. *Rule for new trial discharged.*

REG. v. THE TITHE COMMISSIONERS OF ENGLAND AND WALES.—*J. Addison* moved for a *mandamus* to the Tithe Commissioners, to notify an award of an assistant commissioner, 6 & 7 Wm. 4, c. 71, s. 45. *Rule nisi.*

REG. v. SMITH.—*V. Williams* moved for an information, in the nature of a *quo warranto*, against the defendant, a Burgess of Carmarthen, upon affidavit of his non-residency, according to 5 & 6 Wm. 4, c. 76, s. 9. *Rule nisi.*

TOULSON v. FISHER.—*F. Robinson* shewed cause against a rule for enlarging a peremptory undertaking. *Pashley*, contra. *Undertaking enlarged.*

Monday, May 11.

HASSELL v. FLEMING.—*Whitehurst*, Q.C. and *Macaulay*, shewed cause. *Humfrey*, Q.C. and *Milner*, contra.

Rule absolute for a new trial.

LOWE v. PENNA.—After reading the notes, the Court adjourned.

COURT OF COMMON PLEAS.

Thursday, May 7.

WRIGHT AND OTHERS v. EGAN.

A variance between the actual date of a judgment and the date assigned to it under a *videlicet*, in a declaration in debt on the judgment, is immaterial.

Debt on a judgment. The declaration was in the usual form, commencing, "For that whereas the plaintiff, heretofore, to wit, on the 6th day of May, A.D. 1844, in the Court of our lady the Queen, &c. by the consideration and judgment of the said Court, recovered," &c.

Plea.—*Nul tiel record.*

The replication took issue upon the plea, and notice of trial having been given,

Dowling, Serjt. now produced the record, and prayed the judgment of the Court. It appeared that the date assigned to the judgment in the declaration was not the actual date as it was set forth in the record. But it was submitted that the date was rightly laid under a "to wit," and was immaterial.

By the COURT.—The judgment declared on and the judgment produced are for precisely the same sum. The descriptions of the plaintiff and defendant and of the Court also agree. We think this will support the issue. *Judgment for the plaintiff.*

HARRIS v. ROBINSON.

Practice.

R. G. E. T. 2 Wm. 4, s. 1, is repealed as to the time for entering an appearance, by stat. 2 Wm. 4, c. 39, s. 11.

In this case the writ of summons had been served upon the 6th of April. Good Friday fell on the 10th, and Easter-day on the 12th of the same month. The plaintiff entered an appearance *sec. stat.* on Thursday, the 16th. Early in the present Term, *C. Jones*, Serjt. obtained a rule to shew cause why the appearance, and all subsequent proceedings, should not be set aside. He referred to **R. G. E. T. 2 Wm. 4, s. 1.** "The days between Thursday next before and the Wednesday next after Easter-day shall not be reckoned or included in any rules or notices, or other proceedings, except notices of trial or notices of inquiry in any of the courts of law at Westminster."

Byles, Serjt. now shewed cause.—The stat. 2 Wm. 4, c. 39, was passed on the 23rd of May, 1832, and came into operation the first day of the following Michaelmas Term. It enacts in section 11, "That if any writ of summons shall be served or executed on any day, whether in Term or Vacation, all necessary proceedings to judgment and execution may be had thereon, without delay, at the expiration of eight days from the service or execution thereof, on whatever day the last of such eight days may happen to fall, whether in Term or Vacation." Then comes a proviso in case of the last day falling upon Sunday, Christmas Day, or a public fast or thanksgiving, and then a proviso that, "if the last of such eight days shall happen to fall on any day between the Thursday before and the Wednesday after Easter-day, then, and in every such case, the Wednesday after Easter-day shall be considered the last of such eight days." This enactment repeals the rule of court which was made before it was passed. Our eight

days were out on the 14th, and we were entitled to enter an appearance on Thursday the 16th.

C. Jones, Serjt.—The rule of court has the force of a statute, and cannot be repealed but by an express enactment. [TINDAL, C.J.—You cannot make the rule of court stronger than an Act of Parliament, and yet *leges posteriores priores contrarias abrogant.*] He then referred to *Harrison v. Tait* (4 Bing. N.C. 443). [ERLE, J.—That case is only with reference to replications. It does not affect the statute as to the service of the writ.] *Rule discharged with costs.*

Friday, May 8.

STROUD v. WATTS.
Practice—Writ of inquiry.

Where a writ of inquiry is executed before the under-sheriff, a certificate, indorsed upon the writ, under 3 & 4 Vict. c. 24, s. 1, is rightly signed in the name of the sheriff.

This was an action for malicious prosecution, in which the defendant suffered judgment to go by default. The writ of inquiry was executed before the under-sheriff of Wilts, and the jury assessed the damages at 11.1s. The return of the inquisition was made in the usual form, in the name of the sheriffs, and indorsed upon the writ was the following certificate:—"I certify that the grievance within complained of was wilful and malicious." This also was signed in the name of the sheriff. Upon a former day *Byles*, Serjt. had obtained a rule to shew cause why this certificate should not be set aside, together with the Master's allocatur thereon, and why the Master should not review his taxation. The ground upon which the rule was moved for was, that as the power to certify is given by 3 & 4 Vict. c. 24, s. 1, only to the judge or presiding officer before whom the verdict shall be obtained, the certificate, if given at all, should have been given by the under-sheriff, and in his own name.

Sir Thomas Wilde, Serjt. now shewed cause.—This is the certificate of the presiding officer at the inquiry. The sheriff presides by his deputy, whose only authority is as the sheriff's representative. The case falls within the exact words of the Act; for the return of the inquisition is in the name of the sheriff, and therefore, in contemplation of law, he was the person who held the inquisition. There would be an incongruity on the record, if the name of the sheriff were annexed to the return, and that of the under-sheriff to the certificate. [CRESSWELL, J. referred to *Reg. v. Dunn* (1 Car. & K. 730.)] That was an indictment for perjury alleged to have been committed on a writ of trial, and which stated the trial to have taken place before the high sheriff. It was proved that the writ of trial was executed before an assessor, but it was held that the allegation was supported. It is true that there the *postea* stated that the trial took place before the sheriff, and the *postea* was received as conclusive evidence of the fact, but still that case is an authority in my favour. A writ of inquiry is well executed by the sheriff by his under-sheriff; and yet, in what capacity ought the under-sheriff to make his return? In his personal name, or in his official name? His correct official name is that of the sheriff. It is clear, from Bacon's Abridgment, Sheriff, H. Pl. 3, that the under-sheriff may not do any thing in his own name.

Byles, Serjt. in support of the rule.—This case depends not only on the construction of Lord Denman's Act, but also upon that of the Writ of Trial Act, 3 & 4 Wm. 4, c. 42, ss. 17, 18. There the sheriff or judge, and the sheriff or his deputy, are spoken of in such a manner as to shew that the legislature recognized the judicial capacity of the under-sheriff. In the 18th section the sheriff's deputy has conferred on him the power to certify to stay execution, and the same person has, by Lord Denman's Act, the power to certify to give the plaintiff costs when the verdict is to a less amount than 40s. Then as the apparent incongruity. The writ of *habeas corpus juratorum*, in any cause in this court, is tested in the name of the Lord Chief Justice, yet the certificate under 3 & 4 Vict. c. 24, is in the name of whatever judge tries the cause. *Reg. v. Dunn* has no application. There it was necessary that the indictment should tally with the record, but the certificate is no part of the record. The words "judge or presiding officer" mean the person who actually presides at the trial; the Act does not say the person in whose name the judge acts.

TINDAL, C.J.—I think this certificate sufficient. The return to the inquisition must be made in the name of the sheriff. This is clear from *Clowden*, 62a, and rests upon the statute 12 Edw. 2, c. 5. Then, if the inquisition is taken before the sheriff, and the return to it is made by the sheriff, he is the proper person to certify. There is no reason why the under-sheriff should sign his own name rather than that of the person whose authority he exercises. If any abuse should happen by the certificate being granted by the person who does not actually preside, that may form matter for a separate application to the Court. As this was a speculative application, the rule will be discharged with costs.

The rest of the Court concurring,

Rule discharged with costs.

CAPES v. JONES.

Court of Requests—Practice.

Where a Court of Requests Act contains a general prohibitory clause, together with clauses allowing the defendant his ordinary costs of suit, in the event of any action being brought against him in one of the superior courts for a sum recoverable in the Court of Requests, unless the judge shall give a certificate, the defendant may take advantage of the Act, either by plea, or at the trial, or after verdict, by suggestion on the roll, and that, even though the case has been tried before the under-sheriff.

Dowling, Serjt. had obtained a rule for the plaintiff to shew cause why he should not carry in and file the roll, and why the defendant should not be at liberty to enter a suggestion thereon, to deprive the plaintiff of costs, and to allow the defendant his costs under the Tower Hamlets Court of Requests Act (10 Geo. 2, c. 30), on the ground that the sum recovered was under 40s. It appeared from the affidavits that the verdict was for 11. 7s. 6d. and that the defendant resided within the jurisdiction of the Act. The case had been tried before the under-sheriff, upon a writ of trial taken out by the plaintiff himself. The material sections of the Act are the 7th, 8th, and 21st. Section 7 enacts, that if, in any action brought in any of the King's courts or elsewhere, and the jurisdiction of the said Court of Requests, shall appear to the judge of the court that the debt to be recovered does not amount to 40s. and the defendant shall duly move by sufficient testimony to be allowed by any judge or judges of the court by which such action shall depend, that the defendant reside within the district of the court, the judge shall not allow the plaintiff any costs, but shall award that the plaintiff shall pay ordinary costs to the defendant. Section 8 gives to a judge the power to allow to plaintiff his costs, by certifying that there was a probable or reasonable cause of action for 40s. or more. Section 21 prohibits the bringing any action in any other court for a sum recoverable in the Court of Requests.

Talford, Serjt. now shewed cause. This case is not now open to the defendant. Where there is a general prohibitory clause, as in sec. 21, the proper course is to plead it. (*Tidd's Practice*, 473.) In *Taylor v. Blair* (3 T. R. 452), it was held, that where a Court of Requests Act said that a defendant might plead the Act, it meant that the defendant must plead it. If not taken advantage of by plea, then the defendant should ask to have the plaintiff nonsuited at the trial. In *Ashey v. Kirby*, (9 M. & W. 536), this question did not arise, although there it seems to have been assumed in argument that the proper course under this Act was to enter a suggestion. In this case, moreover, as the trial was had before the under-sheriff, it was impossible to obtain the certificate provided for by section 8. (*Jones v. Barnes*, 2 M. & W. 312.) It might have been, that if a judge had tried the case, he would have certified, and the Court ought not now to subject us to a suggestion, when we had no power to bring ourselves within the exception provided by the Act. He referred also to *Parker v. Eiding* (1 East, 352); *Green v. Bolton* (4 Bing. N.C. 309).

Dowling, Serjt. in support of the rule.—None of the cases are to the effect that where a Court of Requests Act contains other clauses as well as the general prohibitory clause, a defendant is to be relieved from availing himself of them. Sections 7 & 8 contemplate a trial upon the merits; the jury ascertain that the amount is less than 40s.; then, unless the judge interferes, under sec. 8, the defendant becomes entitled to his costs. The Courts will not treat any clause as surplusage, if an effect can be given to it. Here it is quite consistent that the defendant may avail himself of either clause. It would, in fact, be more beneficial to the plaintiff that the defendant should not plead to the jurisdiction under sec. 21. Should he do so, the plaintiff would have the additional costs either of an issue found against him or of a discontinuance. [CRESSWELL, J.—Inasmuch as sec. 8 gives the power to certify, does not that section, with sec. 7, mean that the judge who tries the case, whoever he may be, should have the power to certify? or, as it has been decided that the under-sheriff is not a judge, within the meaning of sec. 8, would not these sections be confined in their application to a writ of trial subject to be controlled by certificate?] The fact of the power to obtain the certificate being lost by the subsequent statute, cannot deprive the defendant of his right to the certificate. (*Shaw v. Oates*, 4 Dowd. 720; *Forbes v. Simmons*, 9 Dowd. 37; *Ashey v. Kirby*, 9 M. & W. 536; *Marsh*, 8 Dowd. 1.) Here the person who obtained the order to try before the sheriff was the plaintiff; he thereby chose to waive his own advantage, and he cannot now build an argument in his own favour upon that fact.

TINDAL, C.J.—In this case there are two clauses to be reconciled. The 21st section prohibits any action for a debt recoverable in the Tower Hamlets Court of Requests being brought in any of the superior Courts. There can be no doubt that, if there were only this prohibitory clause, the defendant would be bound to take advantage of the Act, either by plea or at the trial. But there are also the 7th

and 8th sections, the 7th giving the power to enter a suggestion. But then, as the 7th and 8th are to be read together, and as the proviso in the 8th section is wholly inoperative in cases tried before the sheriff under the Writ of Trial Act, the question is raised whether the remedy offered by the statute be not impracticable. That question has been decided in three cases.—*Shaw v. Qates*, *Bishop v. Marsh*, and *Forbes v. Simmons*. They show that the defendant may still have the power of entering a suggestion. We cannot, therefore, upset the authorities upon this point. I may remark further, that, in this case, it is the plaintiff's own fault that he has lost the remedy of a judge's certificate, for it was in consequence of his own application that the case went before the sheriff.

COLTMAN, J.—The clauses may well stand together. It appears that, by the subsequent statute, in cases of this kind, the advantage of the certificate is lost. That the plaintiff should bring under the notice of the judge when application is made for a writ of trial.

CRESSWELL, J.—I was at first struck by the remark that the verdict was obtained before a tribunal without the power of certifying. But to this there are two answers: first, that it was the plaintiff's own choice to go before such a tribunal; secondly, that had the application even proceeded from the defendant, the plaintiff might, by offering this very objection, have obtained a consent that the undersheriff should have the power to certify.

ERLE, J.—The prohibitory clause does not prevent the effect of the previous clause. But I think it much to be wished that, in cases of this nature, the undersheriff should have the power to certify.

Rule absolute.

HODGES v. TOPPIS and ANOTHER.

Practice—Pauper.

Where notice of trial was given, and the cause was called on, but it was found that, through the negligence of the attorney, it had not been regularly entered, and therefore could not be tried, the Court gave the defendant his costs of the day against the plaintiff, who was a pauper.

Chanell, Serjt. had obtained a rule, calling upon the plaintiff, a pauper, to shew cause why he should not pay to the plaintiff costs of the day for not proceeding to trial, under 1 Reg. Gen. H. T. 2 Wm. 4, s. 110, which orders that, "Where a pauper omits to proceed to trial, pursuant to notice or an undertaking, he may be called upon by a rule to shew cause why he should not pay costs, though he has not been disappointed." Notice of trial had been regularly given, the cause was in the list, and was called on, when it was discovered that the cause had not been regularly entered, and therefore could not be tried.

Dowling, Serjt. now shewed cause, upon an affidavit that the management of the cause had been entrusted by the attorney to his clerk; that, upon the last day for entering the cause, the clerk had been detained until late upon a summons before a judge at chambers; that he then, by mistake, took out a writ of *distringas* *juratores* instead of a *habeas corpus juratorum*, and that he did not discover his error until it was too late to procure the proper jury panel to annex to the record. It was submitted that the payment of costs by a pauper who had sworn that he was not worth *s*l. was a thing impossible, and that here the delay had been purely accidental and not vexatious.

Chanell, Serjt. in support of the rule.—By the rule of 2 Wm. 4, s. 110, a pauper is substantially in the same position as any other suitor with regard to costs of the day. [**CRESSWELL, J.**—In other cases you would have a rule absolute at once. Here, by the terms of the new rule, you can only have a rule to shew cause.] This case is not put as one of vexatious conduct upon the part of the plaintiff, but as conduct that puts the defendant to great inconvenience and expense, which he ought not to be made to suffer. The cases of *Doe dem. Lindsay v. Edwards* (2 Dowl. 468., and *Gore v. Morpheu* (8 Dowl. 137) shew that a very strong case must be made out by the pauper to exempt himself from the payment of costs. Here the excuse is not sufficient.

TINDAL, C. J.—I think that this is a default which calls upon the plaintiff to pay the costs. He has made a gross mistake, and put the defendant to very considerable expense.

Rule absolute.

JEFFERIS v. YABLONSKI.

Practice—Irregularity.

In the issue delivered after a judge's order for trial before the sheriff under 3 & 4 Wm. 4, c. 42, s. 17, the omission of counsel's signature to the pleadings, or of the date of the return of the writ, is immaterial; but the omission of the teste of the writ is a defect which the Court will require the plaintiff to amend with costs. In neither case will the issue be set aside for irregularity.

In this case the issue had been delivered, after a judge's order had been obtained, for trial before the sheriff under the Writ of Trial Act (3 & 4 Wm. 4, c. 42, s. 17). The issue was in the form directed by the rule of H. T. 4 Wm. 4, but it left a blank for the teste of the writ of trial, and also for the date of the return. The signature of one of the serjeants which

had been affixed to the pleas was also omitted in the transcript. On a former day **Dowling, Serjt.** had obtained a rule to set aside the issue for irregularity, against which

Byles, Serjt. now shewed cause.—The rule which orders all pleas to be signed, is that of E. T. 18 Car. 2. No provision is there made for entering the counsel's name upon the issue. It is quite unnecessary that the name of the serjeant who signed the plea should go into the Rolls of the Court. In practice the signature to any of the pleadings is quite as often omitted as inserted. If the plea had really not been signed, the rule of practice would not have been complied with, and the plaintiff might have taken advantage of the irregularity. Then, as to the other points, this is not the proper mode of proceeding. *Ikin v. Plover* (5 Dowl. 594) was a case very similar to this. There the Court refused to set aside the issue, and said that the proper course was to apply to a judge at chambers to amend it at the plaintiff's costs. Here they should have gone before a judge at chambers and asked for an amendment. [**TINDAL, C. J.**—You are the person in whose favour the amendment would be.] He referred also to *Hart v. Daily* (2 Dowl. 357.).

Dowling, Serjt. in support of the rule.—In *Archbold's Practice*, 8th edit. p. 281, it is said, "The issue is supposed to be a transcript of the record containing an entry of all the pleadings, with the order in which they were pleaded, with their dates, and counsel's signature, if any, and concluding with an award of the venire." If the plea be not signed it may be set aside; the signature is an essential part of the plea, and to transcribe it without the signature is not to transcribe it entire. [**CRESSWELL, J.**—Suppose the plea not to be signed, and yet the plaintiff to reply.] That would be a waiver of the irregularity, but the plaintiff is bound to shew that there was no signature, and that the defect was waived. In *Dennett v. Hardy* (2 D. & L. 484), one of the objections was, that the dates were not introduced, and **Pattison, J.** said, "There is no doubt that if a judge's order had been first obtained, and the plaintiff had sued out the writ, and afterwards delivered the issue with wrong dates, he must have amended it. I am rather inclined to think that the order for the writ of trial ought first to be obtained, and if it be, the dates could then be inserted, and looking at the form given by the rule, it seems to me that that ought to be done." [**CRESSWELL, J.** referred to *Watts v. Ball* (1 Scott, N.R. 173.).] There the parties asked leave to amend. Whatever would be a defect in the writ of trial is a defect in the issue. The rule of Court of H. T. 4 Wm. 4, furnishes a specific form, and that form ought to be followed. *Peel v. Ward* (5 Dowl. 169); *Blissett v. Tenant* (Arnold 6). *Dennett v. Hardy* shews that in Term this application should be made to the Court. [**ERLE, J.**—In the jury process in the form of the issue delivered in the superior courts, the practice is to leave blanks for the date.]

TINDAL, C. J.—In this case, the first objection taken is, that the name of the serjeant who signed the pleas is omitted in the issue. That does not appear to me a valid objection. In the form given by the Reg. Gen. H. T. 4 Wm. 4, No. 1, the direction given is, "Copy the declaration from these words to the end, and the plea and subsequent pleadings to the joinder of issue." It is entirely silent about inserting the name of counsel or serjeant. The rule of 18 Car. 2 required the names of counsel to all pleas, but as there is a direct order as to the form of the issue, it is fair to say that the silence of the new rule justifies the want of the insertion of the name upon the record. On principle, I see no ground of objection. The whole advantage to be derived from the signature of a serjeant has been sufficiently obtained already, when it was affixed to the pleas. With respect to the second objection, viz. that the teste of the writ of trial is left blank, when we are the form of the issue provided by the rule, I think that it is necessary that that blank should be filled up. But I do not think the last objection, that the return of the writ is not stated, valid. The trial may be adjourned, or put off by consent, and it may be impossible for the plaintiff to know, at the time that the issue is delivered, at what time the writ will be returnable. The question, then, meets us, how is this rule to be disposed of? Now, I think, the rule asks too much. The defendant should have taken the course pointed out by the cases, and have required the plaintiff to amend. He ought not to have burdened the matter with unnecessary costs. The rule, therefore, should be discharged without costs, the plaintiff consenting to amend by inserting the teste of the writ of trial.

COLTMAN, J.—There would be no difficulty in the plaintiff's inserting the date of the teste, even though the writ had not actually issued, because he would be well aware what day he could issue the writ of trial. That date, therefore, ought to be stated. That seems to me the application of *Pattison, J.*'s *obiter dictum*.

CRESSWELL, J.—We ought not to treat this as an irregular, but as a defective issue. Still the defendant is entitled to put the plaintiff to the costs of making the issue right.

ERLE, J.—The rule of Court says, that the forms given shall be employed, or forms "to the like effect."

That expression gives considerable latitude; and then comes a proviso that the Court, or a judge, may give leave to amend. I think that proviso had in view the injury resulting from parties being put to heavy costs for mere inaccuracies.

Rule discharged without costs: the plaintiff to amend by inserting the teste upon payment of costs.

BUSINESS OF THE WEEK.

Thursday, May 7.

CRANWELL v. COOPER.—*Rule to shew cause.*
ROBINSON v. WHITE.—*Sir T. Wilde, Serjt.* shewed cause. *Telford, Serjt.* in support of the rule.

Rule discharged with costs.
STAVERS v. WRIGHT.—*Allen, Serjt.* applied for leave to enter up judgment upon a warrant of attorney more than a year old.

Rule absolute.
GAMBON v. WINCH.—*Gaselee, Serjt.* shewed cause against a rule obtained by *G. Jones, Serjt.* for judgment as in case of a nonsuit.

Rule discharged upon a peremptory undertaking.
GAMBLE v. KURTZ.—In this case there were cross-rules. *Chanell and Byles, Serjts.* (with them *Cowling*), argued on behalf of the plaintiff. *Telford, Serjt.* (with him *Webster*) on behalf of the defendant.

Cur. ads. vult.
JAMES v. JASBERRY.—*C. Jones, Serjt.* moved for a rule calling upon the Sheriff of Middlesex and his officers, to shew cause why it should not be referred to the Master to tax the costs of the levy under the *f. fa.* in this case, and why the sheriff or his officer should not pay to *J. Butcher* such sum as the Master should direct, and why the sheriff or his officer should not pay the costs of taxation. The motion was made upon a suggestion of misappropriation by the sheriff's officer and the plaintiff's attorney in fraud of *Butcher*, the defendant's landlord.

Rule to shew cause.

Friday, May 8.
EDGAR v. BULL.—*Storks, Serjt.* shewed cause against a rule obtained by *Manning, Serjt.* for judgment as in case of a nonsuit.

Rule discharged upon a peremptory undertaking.
LEVI v. SPIKE.—*LARGE v. BERTT.* No cause being shewn—*Telford, Serjt.* in support of the rules.

Rule absolute.
HUGHES v. ASH.—*Byles, Serjt.* shewed cause. *C. Jones, Serjt.* in support of the rule. The rule had been obtained for a nonsuit or a new trial upon several grounds. The only one discussed was, whether the parole evidence on the behalf of the plaintiff was such as to render it necessary for him to put in a written document. The document was unstamped, but it was admitted that a stamp was necessary.

Rule absolute for a new trial.
MCDOWALL v. SPACKMAN.—No cause being shewn—*Byles, Serjt.* in support of the rule.

Rule absolute.
HUTCHES v. CROCKER.—*C. Jones, Serjt.* consented to the enlargement of *Kinglake, Serjt.*'s rule.

Rule enlarged.
WOOLLEY v. SMITH.—*Chanell, Serjt.* moved to enlarge the rule until the first day in next Term. *Byles, Serjt.* assented.

Rule enlarged accordingly.
WALLIS v. BROWN and ANOTHER.—*Allen, Serjt.* moved to set aside the appearance, entered for the defendant, and all subsequent proceedings, upon the ground of irregularity. The defendant, it was said, had merely received an intimation from the plaintiff that there was a writ against him. No copy was served, and no original shewn him.

Rule to shew cause.

COURT OF EXCHEQUER.

Thursday, May 7.

THE ATTORNEY-GENERAL v. BROWN.

An information was filed by the Attorney-General against the defendant for an encroachment on a royal forest. This was demurred to, and the Attorney-General elected to amend. The rule to amend was drawn up by the officer of the Court in the usual form, as to be made on "payment of costs." The Crown officers, however, disputed the liability of the Crown to pay costs, amended the information, and served the defendant with a rule to plead to the amended information, whereupon the defendant obtained time to plead: Held, on a motion calling on the Attorney-General to shew cause why judgment should not be signed against the Crown, unless the conditions on which the rule was drawn up by the officer of the Court were complied with, that the obtaining time to plead was a step taken in the cause, and operated as a waiver of the claim for costs. *Quære, whether the Crown is exempt from paying costs of an amendment under these circumstances.*

This was an information of intrusion, filed against the defendant at the suit of the Crown, for an encroachment on the royal forest at Waltham, and it appeared that there had been a demurrer to the original information on the ground of duplicity. When the case came on to be argued, the Attorney-General elected to amend, and whereupon a rule was drawn up in the usual form by the officer of the Court, that the amendment was to be made on payment of costs. The Crown officers, however, refused to pay any costs, on the ground that there was no precedent of a case in which the Crown had paid costs under similar circumstances. They then amended the information, and served the defendant with a rule to plead to the amended information. Upon which, the defendant applied for a fortnight's time to plead, which was given him. A rule having been obtained, calling on the Attorney-General to shew cause why judgment should not be signed against the Crown, on the ground that the conditions on which the amendment had been allowed by the Court had not been complied with, as to the payment of costs.

The *Attorney-General* now shewed cause, and contended, first, that the Court had no power to enforce costs as a condition of an amendment as against the Crown; and, secondly, that it was not necessary, in this case, to discuss the question, as the defendant had, by asking for and obtaining time to plead to the amended information, waived the claim to costs.

Willes, contra, contended that the course taken by the Crown officers was a very ingenious but undignified mode of avoiding the payment of costs. The question, however, of whether the Crown is liable to pay the costs of the amendment before it was made, was still open.

PARKE, B.—The question now is, whether, by your asking for time to plead, you have not admitted that the amendment was properly made. I think your course should have been to have treated it as a nullity, and if they had signed judgment, have come here to set it aside, which would have raised the question.

POLLOCK, C.B.—When you got information that they would not pay costs, you should have applied to stay the proceedings until the costs were paid.

Willes.—But all parties fully understood that the question of costs was not waived; indeed the Crown officers gave notice that they should move the Court to strike out the words "on payment of costs;" and with regard to the suggestion of the Lord Chief Baron, the application for time to plead was made in vacation, when this Court was not sitting, and there was, therefore, no means of enforcing the payment of the costs.

POLLOCK, C.B.—Then you should have applied to a judge at chambers to stay the proceedings, and he would have enforced the rule of Court.

By the COURT.—This rule must be discharged, and on the ground that after the amendment was made by the Crown, the defendant, well knowing that the Crown meant to dispute the question of the payment of costs, took a step in the cause by asking for time to plead to the amended information. This was a waiver of the claim to costs, and therefore the defendant must plead to the amended information, or the Crown will be entitled to sign judgment. With regard to the general question, of whether the Crown can claim an exemption to the payment of costs, on an amendment of this kind, it is not necessary to decide that question in this case. *Rule discharged.*

THE ATTORNEY-GENERAL v. HALLET.

Motion to set aside a judgment.

Willes moved to set aside the judgment, which had been signed in this case, on the ground that it was irregular, and also against good faith; he stated that the time for pleading in this case expired on the 4th (Monday), and on the previous Saturday the defendant's attorney had applied to the Crown solicitors for a fortnight's time to plead, to which they replied that they themselves had no objection to give that time, but that the more regular course was to instruct counsel to move the Court for that purpose; and that if that course was taken, they (the Crown solicitors) would instruct the Attorney-General to consent to such application; counsel was instructed accordingly on the Monday; but, owing to the absence of the Attorney-General, he was unable to move, and on Wednesday the judgment had been signed for want of a plea, and without any notice to the defendant. This, it was submitted, was quite against good faith. The judgment, also, was quite irregular, as the information had been filed on a Sunday. *Rule nisi.*

DIXON F. SLEDGON.

Practice.

On a motion to set aside a judge's order given by the defendant to confess judgment, on the ground that the attestation was insufficient:—*Held*, that the order of the judges relative thereto, reported in 14 M. & W. 335, is a mere recommendation, and not a rule of Court, and could not be binding on the profession.

This was a rule calling on the plaintiff to shew cause why the judge's order to sign judgment herein, given by the defendant, should not be set aside, with all subsequent proceedings. It appeared by the affidavits on which the rule was moved for, that the defendant had, by a judge's order, consented to a judgment being signed against him unless he paid the debt and costs by a certain time; and on his making default the judgment was signed and execution issued. In June 1845, an order was promulgated by the judges of this court (14 M. & W. 335) relative to the best means to prevent parties from fraudulently obtaining judges' orders for signing judgment, wherein they "recommended," amongst other things, "that where the defendant has not appeared, or has appeared in person, no such order be made unless the defendant attends the judge, and gives his consent in person, or unless his written consent be attested by an attorney acting on his behalf." In this case, the consent was a written one, and was attested by an attorney, a Mr. Reddish, of Liverpool, to whom the consent had been sent by the plaintiff's attorney to take to the defendant to get signed. It also appeared that when the consent was so taken to the defendant to be signed, Reddish desired him to name some attorney to attend on his behalf, to attest his signature, but he stated that he knew no attorney in that town, and requested Reddish to act as his attorney in the matter, which he did, and explained the effect of what the defendant was signing to him. The question was, whether this attestation was sufficient, or whether, as the consent to a judgment by a judge's order now stood in the place of a *cognovit*, the attestation did not require the same particularity as to the attorney attesting being a person attending exclusively on behalf of the defendant.

Martin, Q. C. now shewed cause, and contended that the order of the judges, which had been referred to when the rule was moved for, was in fact not an "order," but merely a recommendation. [*PARKE, B.*—There is no rule, but merely an arrangement between us that we will not grant these orders unless we are satisfied that the defendant is aware of what he is doing, and to carry out that resolution we recommended certain precautions to be taken. The question here is, whether an order which has been made by one of us, without one of these recommendations having been strictly carried out, is bad? It is now submitted that such an order would not be bad, for what is relied on, on the other side, is not a rule of Court, but merely a recommendation, not binding on the Court. But even if it were, in this case it is contended that the recommendations have been complied with, for Reddish cannot be said to be either "attorney or agent" for the plaintiff, so as to bring him within the class of cases relating to *cognovits*, he having been employed merely to do this one act, to obtain the signature of the defendant.

Jervis, Q. C. (*Birnie* with him), contra, submitted that although the order referred to was not strictly a rule of Court, as not being signed, yet still it was a regulation by which the Court would be bound, and that if so, it was clear that the attestation by an attorney who was then acting for the plaintiff in the matter was not sufficient, but that the same strictness must be observed as in cases of *cognovits*; as to this latter point, he cited *Mason v. Kepple* (5 M. & W. 513); *Pigot v. Swaine* (2 Dowl. and Low. 87).

By the COURT.—The order relied on by the defendant was a mere recommendation of the judges, and not a rule of Court; it cannot be binding on parties who are not in any way bound to be aware of its existence; none of the Profession would know any thing of it unless they practised at Judges' Chambers. Therefore it would be most unreasonable to say that an attorney practising in the country is to be bound by it. It is not, therefore, necessary to decide the point whether this attestation would have been good had this been a rule of Court. The rule must be discharged. *Rule discharged.*

There was another point as to the plaintiff having levied for too much under his execution, on which the Court suggested a compromise. *Rule accordingly.*

Friday, May 8.

O'BRIEN v. CLEMENT.

Mode of pleading an apology and payment into court, in an action for a libel under stat. 6 & 7 Vict. c. 96.

In this case *Jervis, Q. C.* and *Clark*, shewed cause against a rule which had been obtained (May 6) by *Lush*, for rescinding an order made by *Platt, B.* at chambers. The action was for a libel, and the order of the learned judge was, that the defendant should be at liberty to plead,—first, not guilty, to the whole declaration; secondly, as to part of the declaration, an apology and payment of a sum of money into court in amends of the alleged injury. The question was, whether these pleas could properly be pleaded together in the above manner, or whether the general issue should not have been pleaded to the whole declaration, except that portion to which the second plea was intended to apply. It was argued that the order of *Platt, B.* was right, on the ground that the stat. 6 & 7 Vict. c. 96, s. 2, was cumulative, and that no analogy could be shewn between this case and that of pleading in an action of trespass, which was referred to in support of the rule. The Court, however, held it to be clear that the plea of not guilty should have been pleaded to the whole declaration, minus that part to which payment was pleaded; and that otherwise there would be this inconsistency, that the plea of payment would admit the defendant's guilt, which was altogether denied and put in issue by the first plea. The defendant, therefore, had leave to amend his pleadings, in accordance with the opinion entertained by the Court, as above mentioned.

Rule absolute, with leave to the defendant to amend.

BUSINESS OF THE WEEK.

Thursday, May 7.

BEVINGTON v. GRIFFITH.—*Crompton* shewed cause against a rule for an attachment. *Watson, Q. C.* contra. The question turned entirely on the facts.

Rule absolute. The attachment to lie in the office until the second day of next Term.

HARTNELL v. CURLING.—This was a rule for a new trial on the ground of surprise. *Lush* and *Simons* shewed cause. *Shee, Serjt.* contra. *Rule absolute on terms.*

Friday, May 8.

MORRIS v. PHILLIPS.—*Sir T. Phillips* shewed cause against a rule obtained by *Beadon* to enlarge the peremptory

undertaking to try, which had been given by the plaintiff in the above case. By the affidavits in support of the rule, it appeared that two out of the three defendants were insolvent, but it further appeared, that at the time when the peremptory undertaking was given, these two defendants were uncertificated bankrupts. The Court, therefore, thought that the plaintiff's affidavit did not disclose a sufficient ground for not proceeding to trial pursuant to the undertaking; and after hearing *Beadon* in support of his rule, discharged the rule. *Rule discharged.*

HUNT v. SIGGERS.—*Thomas* shewed cause against a rule for a new trial obtained by *Parry*, on the ground that the verdict was against evidence, and that evidence had been improperly received. *Rule absolute, on payment of costs.*

ABRAHAM v. PUCKERIDGE.—*Thomas* shewed cause against the rule for a new trial, obtained by *Crowl* in the above case, on the ground that there was no evidence to go to the jury. *Rule absolute, on payment of costs.*

SWIFT v. HAWKINS.—*Hurlstone* moved in this case for a nonsuit, and for a rule to stay execution. The defendant was in covenant for 256*l.* principal and interest, and the motion for the nonsuit proceeded on the ground that the deed had not received its proper construction at the trial. In support of his application to stay execution, he cited *Vansandau v. Anon.* (1 B. & Ald. 214); *Pye v. Thorne* (1 Taunt. 387); but the Court declined to exercise their equitable jurisdiction to stay execution. As to the first point, they granted a *Rule to shew cause.*

DEES v. THE GREAT NORTH OF ENGLAND RAILWAY COMPANY.—*Addison* shewed cause against the rule obtained by *Borill* in this case. *Cur. adv. ul.*

BOLD v. WAINWRIGHT.—*Jervis* and *Cowling* shewed cause against the rule obtained by *Byles, Serjt.* to set aside the verdict in this case, and enter it for defendant, or for nonsuit. The question was, whether there was sufficient evidence of notice of dishonour of a bill of exchange, as cited: *Campbell v. Webster* (15 L. J. C. P. 4). The Court held that there was no *scintilla* of evidence of notice, and accordingly made the rule for a nonsuit absolute, and the plaintiff should elect to enter a verdict for the defendant on the third issue, in reference to which issue the above question arose. *Rule absolute.*

EXCHEQUER CHAMBER.

BUSINESS OF THE WEEK.

The Court of Exchequer Chamber sat in Error (from the Court of Queen's Bench) on Saturday, May 8, and the Monday and Tuesday following. The following cases were argued, but no judgment was delivered; they will be reported as soon as the judgments are given by the Court.

Saturday, May 9.

BYNNE v. THE QUEEN.—*Hugh Hill* was heard for the defendant, and *Webster*, in reply, on the part of the plaintiff in Error. *Cur. adv. ul.*

YORK AND NORTH MIDLAND RAILWAY COMPANY v. THE QUEEN.—*Martin, Q. C.* for the plaintiff, and *Knox, Q. C.* for the defendant in Error, were respectively heard. *Cur. adv. ul.*

STEWART v. TODD.—*Butt, Q. C.* for the plaintiff in Error; *Peacock*, for the defendant in Error. *Fort heard.*

Monday, May 11.

STEWART v. TODD.—*Peacock* concluded his argument in this case for the defendant in Error. *Butt, Q. C.* in reply. *Cur. adv. ul.*

KEIR v. LEEHAN.—*Bliss*, for the plaintiff in Error. *Martin, Q. C.* for the defendant in Error. *Cur. adv. ul.*

Tuesday, May 12.

WEDLAKE v. GARDNER.—*Hill, Q. C.* for the plaintiff, and *Watson, Q. C.* for the defendant in Error, were respectively heard by the Court. *Cur. adv. ul.*

BAIL COURT.

Thursday, May 7.

(Before Mr. Justice WIGHTMAN.)

RICKARD v. KINCH.

When a cause is referred to arbitration, and either of the parties desires to set aside the award, he must move within the same time as he would for a new trial, unless there are special circumstances which prevent his so doing, or unless all matters in difference are also referred.

Greenwood moved to set aside an award made in this cause. The action had been referred by an order of *Nisi Prius* at the last Devon assizes, a verdict by consent having been taken, subject to the award. The award itself was made on the 13th of April, and the defendant obtained a copy of it on the 16th.

WIGHTMAN, J.—Are you not too late with this motion? You should have moved within the time limited for moving for a new trial; this is merely a reference of the cause, and not of all matters in difference?

Greenwood.—Of the cause only; but if a party is compelled to come within the four days, it inflicts a great hardship upon him, as he has in general to consult counsel as to the award, and to prepare affidavits and instruct his London agent.

WIGHTMAN, J.—If you have any special circumstances justifying the delay, that would be a reason for relaxing the rule; but in this case you shew none. The rule is well understood; it is a regular, settled practice. *Rule refused.*

RE FORD.

Although an outlaw will be permitted to come into Court for the purpose of seeking relief against fraud or oppression, he cannot be heard for the purpose of obtaining any personal advantage in the ordinary way.

The Attorney-General and *Petersdorff* shewed cause against a rule for compelling Mr. Ford, an attorney of this Court, to deliver a bill of his costs.

and that it be referred to taxation. It was now shown that the applicant was an outlaw, and therefore had no *locus standi* in Court for any purpose of obtaining a benefit to himself.

Watson, Q. C. contra.

WIGHTMAN, J. thought that this case was within the ruling in the very late case of *Davis v. Trevanion*, and that although an outlaw could come to the Court to ask for relief against fraud or oppression, he could not do so for the purpose of seeking a benefit for himself in the ordinary way.

Rule discharged.

Friday, May 8.

LANE v. NEWMAN.

When a summons has been heard by a judge at chambers, who has disposed of it on the ground of the application not having been made in time, the Court will not review his decision, such a question being entirely one within his own discretion.

Corrie showed cause against a rule for setting aside a writ of summons, affidavit of service, and appearance, for irregularity. A similar application had been made to Mr. Justice Cresswell, at chambers, who discharged the summons, on the ground that the party had not taken advantage of the irregularity in due time. It was now contended that, on the authority of *Tadman v. Wood* (4 Ad. & Ell. 1011), which decides that "whether an application made before a single judge at chambers to set aside process for irregularity be made early enough is a question for his discretion, and the Court will not review his decision," this motion could not be sustained.

Lush, contra, contended that this case was distinguishable from that quoted, and that if the latter were to be taken as an authority, the whole practice of the Court would be contradicted.

WIGHTMAN, J.—I feel myself bound by the case quoted, by which it appears that whether a proceeding is taken in or out of time is a question for the opinion of the judge, and is not to be subject to be reviewed. I think that case is quite in point in this one, and the rule must therefore be discharged.

Rule discharged.

VERNON v. POUNNETT.

In order to obtain a *distringas* to proceed to outlawry, a copy of the writ of summons should be left at the defendant's last known place of abode, or with some person (if any known) who is likely to forward it to him.

Wordsworth having, on a former day, obtained a *distringas*, in order to proceed to outlawry on an affidavit which showed that the defendant had no residence in this country, and disclosing an application made to his late attorney for information respecting him, and the Master having refused to draw up the rule on the ground that the affidavit should have shown that a copy of the writ had been left at the defendant's last place of residence, or with some one who would probably transmit it to him, now applied to the Court with the view of obtaining a direction to the Master to draw up the rule notwithstanding such an objection, and he contended that the practice of the Courts in no respect required a copy to be left, where it was shown that the defendant had left the country; that he had obtained the opinion of the Masters of the Exchequer, which he conceived bore him out in this view. The question submitted was this:

"**DISTRINGAS FOR OUTLAWRY.**

"Is it necessary, by the practice, to leave a copy of the writ? I cannot find any authority for such course being observed, and in many instances where a man has quitted his house, shut it up, and gone abroad, the leaving of a copy is impossible."

The answer was as follows:—

"The attention of the officers does not appear to have been directed to this question, but we think if there be a house or place where a copy of the writ could be left with any reasonable prospect of its reaching the defendant, that ought to be done; and if the house be shut up, or there be any other good reason for not leaving a copy of the writ, explanation of that should appear on the affidavit."

"E. B."

WIGHTMAN, J. after conferring with Master Bunce, said he understood from him that the practice of the Court was precisely the same as that reported by the Exchequer Masters, and that, where it is known that there is a person who, if the copy of the writ were given to him, would be likely to forward it to the defendant, it should be left with him accordingly; and that as in this case it appeared that there was an attorney who had been concerned for the defendant, the copy ought properly to be left with him before applying for the *distringas*.

Application refused.

BUSINESS OF THE DAY.

Thursday, May 7.

THE QUEEN v. THE COMMISSIONERS ACTING UNDER THE DUBLIN IMPROVEMENT ACT.—*Whateley, Q.C.* moved for a rule for a *mandamus*, commanding the above commissioners to proceed to try a case involving the right of a Mr. Muscull to compensation for premises. *Rule nisi.*

DON v. RABBITTS v. WELSH.—*M. Smith* moved for a rule to amend the declaration herein by enlarging the damages from ten to twenty years. *Rule nisi.*

CARPENTER v. VICK.—*Keating* showed cause against a rule for a new trial herein. *Practitioner, contra.*

*Rule absolute, unless the plaintiff will consent to a *volte face* process.*

CLARK v. HUGHES.—*Miller and Phillips* showed cause against a rule for a new trial herein. *Watson, Q.C. contra.*

Rule discharged.

Ex parte BULL.—*Crompton and Addison* showed cause against a rule for discharging the applicant out of custody from the York Gaol, to which he had been committed by one of the District Bankrupt Commissioners of Leeds. *Allen, Serjt. contra.*

Cur. adv. vult.

Friday, May 8.

REG. v. THE TOWN COUNCIL OF BATH.—*Phinn* appeared on behalf of the Town Council, to consent to the quashing of the order herein. *T. W. Saunders, contra.*

Order quashed.

NEWMAN v. JOHNSON.—*Udall* showed cause against a rule for a new trial herein. *Thomas, contra.*

Rule absolute on payment of costs.

BOWNE v. WILLIAMS.—*Stammers* showed cause for a new trial. *Petersdorff and Crouch, contra.*

Rule absolute on payment of costs.

ROGERS v. VANDERCOMBE.—*M. Smith* showed cause against a rule to enlarge a peremptory undertaking herein. *Crowder, Q.C. contra.*

Cur. adv. vult.

SAUNDERS AND OTHERS v. JONES.—*Keating* showed cause against a rule to set aside the execution of the writ of inquiry, on the ground of insufficiency of the notice of continuance. *Gray, contra.*

Rule absolute.

ADAMS v. TIMBERLEY.—*V. Lee* showed cause against a rule to set aside the nonsuit, and for a new trial herein. *Allen, Serjt. contra.*

Rule absolute on payment of costs.

COOPER v. LANGFORD.—*V. Lee* moved for a new trial in this case, which was tried before the under-sheriff of Hampshire, when a verdict was returned for the plaintiff.

Rule nisi.

BOSCOR v. CLARK.—*Fry* showed cause against a rule for a new trial herein. *Crompton, contra.*

Rule absolute.

REG. v. BLATHWAYTE AND ANOTHER, JUSTICES OF GLOUCESTERSHIRE.—*Symons* moved for a rule to quash the writ of *certiorari* herein.

Rule refused.

Ex parte RAMSDEN.—*Crompton, Addison, and Robinson*, showed cause in this case, which was a rule *nisi* for a *habeas corpus*, in order that the applicant might be discharged out of York Gaol, to which he had been committed by the Commissioner of Bankrupts of the Leeds district. *Allen, Serjt. and Gray, contra.*

Rule absolute.

Ex parte BULL.—In this case, which was somewhat similar, his lordship directed the rule to be absolute.

Bankrupt and Insolvent Courts.

COURT OF REVIEW.

Wednesday, May 6.

Ex parte BARTON, re CHARLES.

Proof.—*Railway shares*—7 & 8 Vict. c. 110.

A shareholder, who claimed against a bankrupt's estate on account of the purchase and sale of shares in a railway company, which had been provisionally registered only, admitted to prove against the estate.

This was a petition for liberty to prove against the estate of Henry Charles, for the sum of 350l. The petitioner was a shareholder, and on the 14th of October, 1845, he effected a purchase for the bankrupt, according to his written instructions, of fifty shares in the Boston, Newark, and Sheffield Railway Company, which had been provisionally registered. On the 4th of November, the petitioner requested the bankrupt to pay the purchase-money for the shares, which request not being complied with, he, on the 7th of November, sold the shares at a loss. A fiat issued against the bankrupt on the 8th of December, and upon the petitioner's application to prove being rejected by the commissioner, the present petition was presented.

Russell and Chomley, for the petitioner.

Bacon and Roll, for the assignees, contended that there was no contract upon which the petitioner could properly claim a right to prove. The company had been only provisionally registered, and therefore no debt was contracted with regard to these shares. They cited 7 & 8 Vict. c. 110, ss. 23, 25, 26.

Russell, in reply, cited *Young v. Smith* (10 Jurist, 52).

THE CHIEF JUDGE.—The question in this case is on the proof for a small sum claimed under a transaction which is alleged to be illegal by reason of the provisions of a statute passed in the year 1844—a statute the interpretation of which, in several respects, seems fairly open to considerable difference of opinion. The burden of establishing the alleged illegality lies upon those who assert it. The only decision upon the point which has been produced is a decision in January in this year, being the unanimous decision of the Court of Exchequer, consisting at the time of three judges, in favour of the legality of such a transaction as this is. Upon a mere question of construction under such an Act of Parliament as this is, ought I, or not, whatever my own doubts may be, to follow this as an exposition of law until the law shall receive any different exposition? I am of opinion that, without expressing—indeed, without forming—any judgment of my own upon the true construction of this Act, the better mode of performing my duty will be to abide by that decision. I give no opinion of my own; I think it a very difficult and doubtful question. I do not know on what grounds the learned commissioner proceeded. The party must be at liberty to go before the commissioner and establish such proof as he may be ad-

vised, and that statute is not to be considered a ground of objection as rendering the transaction illegal.

Nisi Prius.

Tuesday, May 12.

(Before Chief Baron POLLOCK.)

ATTORNEY-GENERAL v. OSBORN.

Information for penalties—Substitution of imprisonment for the penalties after previous conviction—Construction of 8 & 9 Vict. c. 87, s. 105.

The defendant having been convicted by the jury on an information for penalties, which charged him with being concerned in the illegal unshipment of twelve hogsheads of foreign brandy, without payment of duty,

Theiger, A. G. begged, before the jury were discharged, to draw the attention of his lordship to the 105th section of the recent statute, 8 & 9 Vict. c. 87, whereby it is enacted that "when any verdict shall pass against any person in any of her Majesty's courts of record for any offence for which any pecuniary penalty shall have been inflicted by this or any Act relating to the customs, and such person shall have before been duly convicted, either by verdict in any of her Majesty's courts of record or otherwise, of any such offence, it shall and may be lawful for the judge or judges of the said court in which such person shall be so convicted, to order and adjudge that such person shall, in lieu of any penalty, be imprisoned in any house of correction, for any period not less than six, nor more than twelve calendar months; and the governor or keeper of any house of correction is hereby required to receive any person committed under any such order or judgment." This being a novel enactment, it was very doubtful how to apply it; for it was difficult to say whether the question of the prisoner's conviction was one for the jury or the judge at Nisi Prius. If the jury was the proper tribunal, then, he apprehended, that it was a matter for proof, and that, as in previous convictions for felony, the jury ought to try the matter now. He therefore tendered such proof.

Pigott, for the defendant, objected to the course proposed by the Attorney-General. The defendant was quite unprepared on this information to meet any such question. It was not competent to the Crown to go into evidence of any previous conviction under the Customs Acts, because it was not charged. It was not on the record, and therefore the defendant had no notice of it; and being a question of fact, he ought to have the opportunity of traversing and rebutting it.

The Attorney-General.—My learned friend forgets that it is to be after verdict, and could not, therefore, be on the record.

Pigott.—It might be charged as previous convictions of felony are under the statute, and there no evidence is given till after the verdict of guilty has been given by the jury.

Jervis, Q.C.—That is under the very directions of that statute, which provides that the indictment shall contain the charge, but that the question shall not be submitted to the jury till the principal charge of the indictment shall have been found against the prisoner.

POLLOCK, C.B.—I certainly do not think this is a question for the jury; but I will consult the other judges before I decide the question.

His Lordship then retired for a few minutes, and on his return said—The opinion of the learned judges and my own is, that I have no authority under the 105th section of the 8 & 9 Vict. c. 87, to do any thing here. It is clear that the section does not raise any question for a jury, for it simply says, that when a verdict shall pass on an information for penalties against any person who shall have been previously convicted of a similar offence, the judge or judges of the court shall and may substitute a sentence of imprisonment for the verdict of the jury. The proper course is, then, that the verdict should go into the Court of Exchequer, when the Attorney-General may suggest that the defendant has been previously convicted, and pray for an order under this section. That suggestion will probably be traversed or confessed, and then the question will be raised for the decision of the Court. I see that the 89th section enacts, that

"where any person shall have been convicted before any two justices of the peace of any offence for which any penalty shall have been inflicted by this or any other Act or Acts relating to the customs, it shall and may be lawful for the said justices, if they shall think fit, to order and adjudge that such person shall, in default of paying such penalty, be imprisoned for the first of such offences in any of her Majesty's gaols within their jurisdiction for a period of not less than six, nor more than nine, calendar months; and if such party shall have been before convicted of any offence against this or any other Act or Acts relating to the Customs, it shall and may be lawful for the said justices, if they shall think fit, to order and adjudge that such person be imprisoned in any house of correction, and there kept to hard labour for any period not less than six, nor more than twelve, calendar months." Thus, no doubt, the justices have

the power to make the order, but they act finally, and the judge at Nisi Prius does not. He gives no judgment whatever on the questions raised by the information—it is for the Court alone to do so. Under these circumstances, and for these reasons, I think that the question not being for the jury, and I having no power to give any judgment here on this question, it must be raised before the full Court.

THE LEGISLATOR.

Summary.

THE week has been very barren of legislative proceedings important to Lawyers. The Railways Dissolution Bill has gone down to the Commons. Lord BROUGHAM's new Conveyancing Bill is noticed, and, in part, presented in a leading article. Lord CAMPBELL pushes on his Registration of Deeds Bill, and the Charitable Trusts Bill is strenuously supported by the Government, although it is expected to be defeated in the Commons.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, May 8.
Railway Companies' Dissolution.

Monday, May 11.
Explosive Substances—"for preventing malicious injuries to persons and property by fire, or by explosive or destructive substances."

Thursday, May 14.
Broommakers—"to declare certain ropeworks not within the operation of the Factory Acts."
Service of Heirs, Scotland—"to alter and amend the Law and Practice in Scotland as to Service of Heirs."
Crown Charters, Scotland—"to alter and amend the practice in Scotland with regard to Crown Charters and Precepts from Chancery."

BILLS READ A SECOND TIME.

Friday, May 8.
Viscount Hardinge's Annuity
Lord Gough's Annuity.

Tuesday, May 12.
Railway Companies' Dissolution.

Thursday, May 14.
Explosive Substances.

BILLS READ A THIRD TIME AND PASSED.

Friday, May 8.
Election Notices, Ireland.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Monday, May 11.
Caledonian Extension Railway
Bromsgrove Improvement
London and South Western Railway
Warwickshire and London Railway
Norfolk Railway Extensions
Midland Railway.

Tuesday, May 12.
West Lancashire Railway.

Wednesday, May 13.
West Riding Union Railway
Vidgen's Estate
Vidgen's Estate
Midland Railway.

BILLS READ A SECOND TIME.

Friday, May 8.
Northern and Southern Connecting Railway
Dumfriesshire Roads
Somerset Small Debts Court.

Monday, May 11.
London and Birmingham (Coventry) Railway
Goole and Doncaster Railway
South Yorkshire Coal Railway and Canal
Belfast and County Down Railway
Earl of Blesington's Estate
Bury Improvement
Dublin, Dundrum, and Enniskerry Railway
Exeter Great Western Railway
Newcastle and Darlington Junction Railway.

Tuesday, May 12.
Irish Great Western Railway
Wexford, Carlow, and Dublin Junction Railway (by order).

Wednesday, May 13.
Charing Cross Bridge Company (by order)
Dublin Cemeteries (by order)
Furness Railway Extensions
London, Salisbury, and Yeovil Junction Railway
Solly's Estate
Warwickshire and London Railway
Ditto, Hampton and Ashchurch Lane.
Thursday, May 14.
Dublin Cemeteries.

BILLS READ A THIRD TIME AND PASSED.

Friday, May 8.
Burnley Improvement and Waterworks.

Monday, May 11.
Southport Improvement.

Wednesday, May 13.
Edinburgh, Leith, and Grantham Railway.

Thursday, May 14.
Bilston Gas Light and Coke
Earl of Russell Small Debts.

SESSIONAL PRINTED PAPERS,
Barnes of Clewville—Returns

Balcary Bay—Report, by Capt. Moorsom
Gaols—Reports and Schedules
Post Office, India—Returns
Coals, Clinders, and Culin—Account
New Zealand—Copies of Correspondence
Glasgow Harbour Mineral Railway Bill, and Glasgow Harbour Grand Junction Terminus Bill—Minutes of Evidence
Bills—Chelsea Bridge and Embankment
Battersea Park
Railway Companies' Dissolution
Rating of Tenements
Salmon Fisheries, amended
Explosive Substances
Scinde—Returns
Boots, &c.—Return
Cheese—Account
Cotton Manufactures—Account
Salt—Return
Metropolitan Buildings Act—Return
Railway Bills Classification—Thirtieth Report of Committee
Dietrich, Scotland—Papers of 1793
Customs—Returns
Depositions, Ireland—Paper
Sugar—Account
Jamaica—Paper
Public Records—Seventh Report of Deputy Keeper.

Bills in Progress.

DEATH BY ACCIDENTS COMPENSATION.

"An Act for Compensating the Families of Persons Killed by Accidents."

Sect. 1. An action to be maintainable against any person causing death through neglect, &c. notwithstanding the death of the person injured.—Whereas no action at law is now maintainable against a person who, by his wrongful act, neglect, or default, may have caused the death of another person, and it is oftentimes right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him; be it therefore enacted, that whosoever any person shall, by his wrongful act, neglect or default, have caused the death of another person, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action against such first-mentioned person in any of Her Majesty's Courts of Record at Westminster, and recover damages in respect thereof, then and in every such case the person so causing such death shall be liable to an action for damages resulting therefrom, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to the offence of manslaughter.

2. Action to be for the sole benefit of the heirs to the personal property, according to the Statute of Distributions.—Every such action shall be for the sole benefit of such person or persons as are entitled to the personal effects of the deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties for whom and for whose benefit the action shall be brought: provided always, that all such actions shall be brought and proceeded in and damages recovered in the same way and manner as if the deceased party himself had brought it, and shall be brought by the executor or administrator of such deceased person, and he or she shall be compelled to proceed, upon application of the person so entitled or any of them, and on being indemnified for costs; and that in case there shall be no executor or administrator, then any of the parties entitled as aforesaid shall be at liberty to proceed in bringing and prosecuting such action as aforesaid; and in either case the damages recovered shall be considered as part of the personal estate of the deceased, and paid and divided accordingly; and that every plaintiff in whose favour a verdict shall be given in any action under this Act shall be entitled to his full costs of suit, unless the damages found by the jury shall be less than forty shillings.

3. Provision that not more than one action shall lie.—Provided always, and be it enacted, that not more than one action shall lie for and in respect of the same subject-matter of complaint; and if two or more actions in respect thereof shall at any time be brought, it shall be lawful for the Court or a judge to order that the same be consolidated, and also to direct in whose name the action, after consolidation, shall proceed, as well as to make such other orders therein as to them or him shall seem fit.

4. Particular of the person, &c. claiming to be delivered.—In every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

5. Construction of Act.—The following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded from the context or by the nature of the subject-matter; that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender.

6. Operation of Act.—This Act shall come into operation from and immediately after the passing thereof.

DEODANDS ABOLITION.

"An Act to Abolish Deodands."

Deodands and forfeiture of chattels moving to causing death abolished from and after 1st September, 1846.—Whereas the law respecting the forfeiture of chattels which have moved to or caused the death of man, and respecting deodands is unreasonable and inconvenient: be it enacted, that from and after the first day of September, one thousand eight hundred and forty-six, there shall be no forfeiture of any chattel for or in respect of the same being moved to or caused the death of man; and no person's jury sworn to inquire, upon the sight of any dead body, how the deceased came by his death, shall find any forfeiture of any chattel which may have moved to or caused the death of the deceased, or any deodand whatsoever; and it shall not be necessary in any indictment or inquisition for homicide to allege the value of the instrument which caused the death of the deceased, or to allege that the same was of no value.

RAILWAY COMPANIES.—Mr. Hudson's bill, relating to railway companies, which is appointed to be read a second time on Thursday next, was printed Saturday. It is entitled a Bill "for Facilitating the Winding-up of the Affairs of Companies formed by making Railways, and which shall not have obtained the authority of Parliament." The preamble of the measure, which contains 13 clauses, declares that many companies formed for making railways, and many companies projected for the like purpose, and which have been provisionally registered under the Act of the 7th and 8th years of her Majesty, for the registration, incorporation, and regulation of joint-stock companies, have failed to apply to Parliament, or having so applied have failed, or may fail, during the present session, to obtain the authority of Parliament for their respective undertakings, and that it is expedient that facilities should be given to the shareholders of such companies to enforce the winding up of the affairs. In order to accomplish so desirable an object, it is proposed, that where any company formed or projected for the purpose of making any railway, and registered on or before the 1st of November last, under the recited act, shall not have obtained the authority of Parliament at the end of the present session, it shall be lawful for any five or more shareholders, entitled in the whole to at least 3,000*l.* in the capital stock or proposed capital stock of the company, to require the directors to cause the affairs to be wound up under the provisions of this Act, and any person acting in the management of a company shall, for the purposes of this Act, be included under the term "directors." In default of a meeting being called according to the requisition, then the shareholders may convene a meeting; that after the requisition to call a meeting, the directors are not to continue to act in the payment of money, &c. The holders of scrip, or the banker's receipts for deposits paid, are to be considered as shareholders, whether they shall or shall not have signed the Parliamentary contract. The meeting so called to have power to adjourn, and to elect a committee of shareholders to wind up the affairs of the company. After the payment of debts and expenses, the surplus to be divided rateably among the parties entitled. After the appointment of the committee, the books, &c. to be delivered up; and on refusal, or for falsifying such books, the party to be deemed guilty of a misdemeanor. It is proposed by the remaining clauses (the last being a mere formal matter), that a fiat in bankruptcy may be obtained under the Act for winding up the affairs of joint-stock companies unable to meet their pecuniary engagements, and the affairs of companies brought to a final close.

HOUSE OF LORDS.

REGISTRATION OF DEEDS BILL.

MONDAY, May 11.—Lord CAMPBELL gave notice that he should postpone the General Registration of Deeds Bill until after the Corn Bill was disposed of by their lordships. He trusted it would then receive the support of those noble lords who were opposed to the Corn Bill, for it would compensate them for any supposed loss they were apprehensive of sustaining from the effects of that measure.

CHARITABLE TRUSTS BILL.

The LORD CHANCELLOR said the second reading of the Charitable Trusts Bill had been fixed for Thursday next, but as he understood that many right reverend prelates would be unable to attend on that day, and as he would be very unwilling to proceed with the bill in their absence, he begged to postpone the motion for the second reading until Monday next.

BETTER PROTECTION OF PUBLIC OFFICERS.

TUESDAY, May 12.—Lord BROUGHAM laid on the table a bill for the better protection of magistrates, bailiffs, constables, officers of the army and navy, and other public officers, acting under the

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authority of Acts of Parliament, from legal proceedings which might be instituted against them. The bill was read a first time, and ordered to be printed.

OATHS AND PENALTIES.

LORD CAMPBELL complained that the bill before their lordships on the subject of penalties was not accompanied by another in reference to oaths. The noble lord said that the subject of oaths and civil disabilities had been discussed in that house two years ago, and that two bills having reference to the two subjects which he had mentioned ought to have been introduced at the same time. The question of oaths was, in fact, more pressing than that of penalties; and he hoped that at all events a bill would be introduced, and before they went into committee upon the other bill on Friday. The LORD CHANCELLOR said he should certainly propose to go into committee with the bill upon the table on Friday; and he would not bring in the other bill to which his noble and learned friend had referred, until that one had gone through committee. He repeated the offer, however, which he had before made to his noble and learned friend, namely, that if he himself would bring in a bill to-morrow, he would hand over the whole matter to him. LORD CAMPBELL thought that the house and the public were not well used in both parts of the measure not being introduced at the same time. How much that would weigh in his mind hereafter remained to be considered.

ROYAL ASSENT.

THURSDAY, May 14.—The Royal assent was given by commission to the following bills:—the Exchequer Bills (18,380,000*l.*) Bill, the Indemnity Bill, the Insolvent Debtors' Act Continuance Bill, the Great Western Railway Amendment Bill, and several private bills. The Commissioners were the Lord Chancellor, the Duke of Buccleugh, and the Earl of Haddington.

THE MAGISTRATE.

Summary.

THE newspapers are again fiercely attacking the clerical Magistrates, their plea being, a recent instance of wrong judgment or injustice on the part of one of the body. Putting aside the question whether it is desirable that clergymen should be Magistrates, it is manifestly very unfair to charge upon all the errors of one. We have seen a good deal of their mode of administering justice in the country, and we have always found them at least as capable and as gentle in the discharge of the duties of their office as laymen, generally much more so. Besides, in the rural districts, they are the best, often the only, residents competent to the post.

RATING OF LITERARY INSTITUTIONS.

WE frankly confess that writing hastily upon *Reg v. Jones*, we expressed an opinion as to the effect of the certificate which further reflection has induced us to think wrong. We then said (*supra*, 70), that the certificate, if unappealed against, would be conclusive of the facts found by it, viz. that the society was in accordance with the Act, and entitled to exemption. The letter of an intelligent correspondent in the following week (*supra*, 96), pointed out an essential difference between the cases which had been present in our mind, and a certificate of this kind, viz. that here it was an order *ex parte*, there, it was in the nature of a judicial inquiry in which both parties had been heard. We think that, although some of the dicta (see *Mould v. Williams*, 5 Q. B. 474) put the effect of the decision upon the jurisdiction to inquire—and here the barrister no doubt is to inquire; yet the true ground is, that it is *res judicata*—and every judicial decision implies that both sides have been, or might have been, heard. *Welch v. Nash* (8 East, 394), cited by our correspondent, is a clear authority that where the conditions precedent to the exercise of jurisdiction under a statute do not exist, then an order made under the statute may be impeached in a collateral proceeding; in fact, that such an order being *coram non jure*, is void. (See *Marshalsea Case*, 10 Co. Rep. 68, *b.*; *Carratt v. Morley*, 1 Q. B. 18.) *Davison v. Gill* (1 East, 62) may also be referred to as bearing most pertinently upon this question. An order had been made by justices under 13 Geo. 3, c. 78, s. 19, for stopping up an old footway, and setting out a new one, but not in the form required by the statute. The statute, however, expressly enacted that orders made and unappealed

against, should be binding and conclusive on all parties whatsoever, and the time for appeal had passed. The Court, however, unanimously held the order void, as not made in accordance with the powers given. "The justices have a limited power," said Lord Kenyon, "given them under the Act of Parliament, and it must appear that this order was made by virtue of that power."

This leads us to a further and an equally conclusive reason against the finality of the certificate. By the first section, the obtaining the certificate is made an essential condition, but only as one condition amongst others. The right to rate is clear; the right to exemption must therefore be clearly made out. The protection or exemption by a subsequent statute, or even proviso, is to be proved by the party claiming it (see *Thibault v. Gibson*, 12 M. & W. 88); and the right to exemption here is, "provided that such society shall be supported wholly or in part, &c., and shall not, and by its laws may not, &c.; and provided it obtain the certificate." These are all essential conditions to the exemption. And sec. 2 seems further to make it an essential condition that the three copies of the rules, &c. shall have been submitted to the barrister. The consequence, therefore, of *Reg. v. Jones*, and the errors in the form of the certificate, is, that probably there is scarcely a society which could maintain its claim to exemption.

With reference to the objection as to the misrecital of the statute (*supra*, 95), we regret that a case was not granted for the opinion of the Queen's Bench. No doubt, *Rex v. Biers* (1 Ad. & El. 327) is a conclusive authority that such description would be bad in an indictment. There judgment was arrested because the offence was alleged to have been committed against a statute passed "in the second and third years of the reign of his present Majesty," although it was so described in a statute which amended it. In *Gibbs v. Pike* (8 M. & W. 223), a similar misdescription in a declaration was held bad upon special demurrer. (See also *Beck v. Beverley*, 12 M. & W. 845.)

In *Ramsay v. Tuffnell* (2 Bing. 255), judgment was also arrested in an action against a sheriff for extortion, the statute being described as passed in a session begun in the 29th of Elizabeth, instead of the 28th. The authorities being thus strong, we are inclined to think the objection good, if the description of the statute formed a necessary part of the certificate. There are authorities, indeed, to shew that, if recited unnecessarily, it must be recited correctly (see *Partridge v. Strange*, Plowd. 84, cited 1 A. & E. 331); and in *Boyce v. Whittaker* (Doug. 97), Lord Mansfield said, that if a recital of a statute was introduced unnecessarily, he would "hold the party to half a letter." Still, the point is one open to discussion. It is possible a distinction might be drawn between indictments or actions upon statutes (most of the decisions have been in cases of that kind), and a certificate of this nature; and as the objection manifestly did not touch the merits, we think that, if pressed by the counsel at the sessions, the magistrates should have reserved the point. Their refusal to do so, coupled with the other objections to certificates granted, which will so much mar the benefit intended to be conferred by the statute, renders the interference of the Legislature most desirable. Much as we dislike, on principle, *ex post facto* legislation, yet, if gamblers have been saved by such interference from the consequences of breaches of the known law, and if an express statute was passed to deprive parties of rights to costs which they had gained, by an oversight of the Legislature (see 4 & 5 Vict. c. 28; *Roadknight v. Green*, 1 D. N. S. 65, 910), surely the societies instituted for the purposes of literature, science, and the fine arts, deserve protection from the consequences of the errors of the Government officer, the appointed expounder of the statute? Let Mr. Wyse, Mr. Hawes, or some other active friend to education and literature, introduce an amended bill with retrospective operation immediately, and the Government must give it their support. E. W.

TREATMENT OF FRAUDULENT DEBTORS.

It will be seen from the subjoined official circular and inclosure, issued from the Home-office, that prison discipline and prison diet will henceforth be rigidly enforced with respect to debtors committed for *bona fide* frauds against creditors:—

"Sir—Secretary Sir James Graham directs me to inclose you a copy of certain regulations which have been drawn up by his directions, for the treatment of

debtors committed pursuant to the first section of the Act of the 8 & 9 Vict. c. 127.

"Debtors committed under the special provisions of this Act are not imprisoned for safe custody alone, but as a punishment, either for fraudulent or dishonest conduct, or for the wilful disobedience of a law. Sir James Graham, therefore, is of opinion that a different mode of treatment to that subjected to the case of those imprisoned for debt sanctioned in the Act, and he requests that you will under ordinary proceedings, which he has approved, for the sanction and adoption of the authorities of the borough, who are empowered by law, the approval of the Secretary of State, to frame rules for the government of the common gaols within their jurisdiction to which such debtors may be committed. (Signed) "H. MANNERS SUTTON.

"To the Mayor," &c.

(COPY.—INCLOSURE.)

Rules for the classification and treatment of debtors committed under the 8 & 9 Vict. cap. 127, and also for the classification and treatment of debtors committed by commissioners of bankruptcy, for frauds under the bankrupt laws, and debtors committed for frauds by Insolvent Debtors' Courts.

1. They shall, as far as the construction of the prison will allow thereof, be separated from other debtors, but they shall not be placed in separate confinement, or with any class of criminal prisoners.
2. They shall not be permitted to maintain themselves, but shall be restricted to the following prison diet:—

MALES.

Monday, Wednesday, and Friday.—Breakfast, one pint of oatmeal gruel, eight ounces of bread; dinner, one pint of soup, eight ounces of bread.

Sunday, Tuesday, Thursday, and Saturday.—Dinner, three ounces of cooked meat, without bone, half a pound of potatoes, six ounces of bread.

Supper same as breakfast.

FEMALES.

Monday, Wednesday, and Friday.—Breakfast, one pint of oatmeal gruel, six ounces of bread; dinner, one pint of soup, six ounces of bread.

Sunday, Tuesday, Thursday, and Saturday.—Dinner, three ounces of cooked meat, without bone, half a pound of potatoes, six ounces of bread.

Supper same as breakfast.

When under the care of the surgeon, they shall be allowed such diet as he may direct.

3. They shall not procure or receive any tobacco, wine, beer, or fermented liquor, except by order of the surgeon, on the ground of ill-health.

4. They shall be permitted to see their relations and friends only once in the course of each week, but they may see their legal advisers at all reasonable hours, and in private if required.

5. In all other respects the rules for the government of debtors in general shall be applicable to debtors committed under the 8 & 9 Vict. cap. 127.

The following directions have been issued to the Irish magistracy upon the subject of their duties in the investigation of criminal charges:—

INSTRUCTIONS—CIRCULAR.

In all cases in which information is given to a magistrate of any felony, the magistrate should in the first place ascertain, by hearing the statement of the informant, and putting such questions as may be necessary for the purpose, that the facts to which the witness is to depose are relevant to the charge. He should then administer an oath or affirmation (as the case may be) to the witness, and proceed to commit his information to writing, taking care to insert every material statement, and to take the information as nearly as possible in the words of the witness. It is to be particularly observed that the oath or affirmation should in all cases be administered before any part of the information be committed to writing, so that every statement which is to appear on record as the evidence of the witness may be given under the sanction of an oath, or that which the law accepts as equivalent to an oath. It is irregular to take down the examination of the witness in writing in the first instance, and afterwards merely to swear him to the truth of it, as if it were an affidavit. When sufficient ground has been laid by sworn informations, the magistrate will issue his warrant for the apprehension of the party accused; and when he is in custody the magistrate will proceed, without any needless delay, to institute the necessary inquiries preliminary to his full committal or discharge. For this purpose the witness, or witnesses, on whose information the warrant was issued, should be produced separately or together, according to the discretion of the magistrate, before the prisoner. Each witness should be sworn in the prisoner's presence, and the information should be read over distinctly in the hearing of both the witness and of the prisoner. The prisoner should be informed that he is at liberty to put to the witnesses any questions he may think proper; and if he avails himself of this right, the answers to his questions should be committed to writing, and added to the original information. If any additional

witnesses to important facts connected with the charge come forward to swear informations, their depositions should be taken in the presence and hearing of the prisoner, who should, as before, be informed that he has a right to question the witness, and to have his answers; and any statements made in reply to such questions should be embodied in the information.

ELECTION OF CORONER FOR DEVON.—The candidates for the office of coroner of Devon, in which a vacancy had occurred by the death of the late J. Partridge, esq. were F. Leigh, esq. of Cullompton, solicitor, and R. Comins, esq. of Tiverton, solicitor; and great local excitement upon the subject prevailed. On Monday, however, this was terminated by an announcement from Mr. Leigh's committee, that Mr. Comins had resigned the contest, and therefore no polling would take place.

THE LAWYER.

Summary.

The Terms follow so quickly upon the heels of one another, that we have not leisure to bring up the arrears of one before the business of another crowds upon our columns. We have endeavoured in this number to work up many of the written judgments delivered during the last term, and we hope next week to complete them; but many of those that were in type, and much other matter of present interest, are unavoidably postponed, to make way for the Court Papers, the Conveyancing Bill, &c. Of legal news, there is nothing calling for particular notice, and brevity of comment is compelled by more urgent claims.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been graciously pleased to direct letters patent to be passed under the Great Seal, constituting and appointing Thomas Flower, Ellis, esq. barrister-at-law, and Thomas Bros, esq. barrister-at-law, her Majesty's commissioners for inquiring into criminal laws now in force in the Channel Islands.

The Queen has also been graciously pleased to appoint Charles Clark, esq. barrister-at-law, to be secretary to the said commission.

The Queen has been pleased to appoint the Rev. Augustus William Hanson to be chaplain for her Majesty's forts and settlements on the Gold Coast.

The Queen has also been pleased to appoint William Whaley Billyard, esq. to be chairman of Quarter Sessions, acting as civil and criminal judge for the colony of North Australia.

Office of Metropolitan Buildings, 6, Adelphi Terrace, Strand, April 16.

Sir James Graham, bart. has appointed Ambrose Poynter, esq. architect, of Park-street, Westminster, to be one of the official referees of Metropolitan buildings, in the room of James White Higgins, esq. resigned; and John Shaw, esq. architect and surveyor of Christ's Hospital, has also been appointed an official referee of Metropolitan buildings.

LINCOLN'S INN.—In addition to those gentlemen who were called to the Bar by the Hon. Society of Lincoln's Inn on the 6th instant, the undermentioned have been called in the course of the Term which terminated May 8th, viz. Mr. Francis K. Lengthall, Mr. John Coppin, M.A., Mr. William Austin, M.A., Mr. Montague Bernard, B.C.L., and Mr. Reginald R. Walpole, M.A.

MIDDLE TEMPLE, May 9.—The undermentioned members of the Hon. Society of the Middle Temple have been called to the Bar, and they were this evening sworn in before several of the Benchers:—Mr. J. C. Jones, Mr. W. H. Doyle, Mr. E. Boscawen, Mr. G. Rosse, Mr. A. Gunning, Mr. W. H. Claridge, Mr. W. F. B. Staples, Mr. J. G. B. Hudson, Mr. D. M. Logie, Mr. J. H. L. Wingfield, Mr. H. W. Morris, Mr. D. R. Blaine, Mr. F. Nalder, M. J. Bower, and Mr. E. K. Rodwell.

John Soane, esq. of Waltham Abbey, qualified at the last sessions at Chelmsford as a magistrate for the county of Essex.

COURT PAPERS.

CHANCERY SITTINGS.

Trinity Term, 1846.

Before the MASTER OF THE ROLLS.

Friday May 22—Motions
Saturday 23—Petitions, unopposed first

Monday 25 } Pleas, Demurrers, Causes, Further Di-
Tuesday 26 } rections, and Exceptions
Wednesday 27 }
Thursday 28 }
Friday 29 }
Saturday 30 }
Monday June 1 } Pleas, Demurrers, Causes, Further Di-
Tuesday 2 } rections, and Exceptions
Wednesday 3 }
Thursday 4 } Motions
Friday 5 }
Saturday 6 }
Monday 8 } Pleas, Demurrers, Causes, Further Di-
Tuesday 9 } rections, and Exceptions
Wednesday 10 }
Thursday 11—Petitions, unopposed first
Friday 12—Motions

Note.—Short causes, consent causes, and consent petitions, every Saturday, at the sitting of the Court.

Consent petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

COURT OF QUEEN'S BENCH.

Sittings appointed to be held in Middlesex and London, before the Right Hon. THOMAS LORD DENMAN, in and after Trinity Term, 1846.

IN TERM.—MIDDLESEX.

1st sitting, Monday, May 25, and two following days, at eleven o'clock.
2nd sitting, Thursday, May 28, and subsequent days, at eleven o'clock.

3rd sitting, Wednesday, June 10, at half-past nine o'clock precisely, for undefended Causes only.
Sitting after Term, Saturday, June 13.

A list of such remanets as appear fit to be tried in Term will be printed immediately, but on the statement of either side that a cause is too long to be tried in Term, it will be withdrawn from such list, provided the other side have two days' notice of the application at the Marshal's to postpone, and do not oppose the application on good grounds. The usual number of completed and new causes will be put into the list day by day in their usual order.

IN TERM.—LONDON.

Sitting at 12 o'clock on Thursday, June 11, for undefended causes and such as the Judge considers fit to be taken.

AFTER TERM.

Monday, June 15, to adjourn.

COURT OF COMMON PLEAS.

Sittings appointed in Middlesex and London, before the Right Hon. Sir NICHOLAS CONYNGHAM TINDAL, Knt. in and after Trinity Term, 1846.

IN TERM.

MIDDLESEX. LONDON.
Wednesday, May 27. Friday, May 29.
Wednesday, June 3. Friday, June 5.

AFTER TERM.

MIDDLESEX. LONDON.
Saturday, June 13. Monday, June 15.

N.B. The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sittings days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sittings days. On Monday, the 15th June, in London, no causes will be tried, but the Court will adjourn to a future day.

COMMON LAW SITTINGS.

Trinity Term, 1846.

COURT OF QUEEN'S BENCH.

CROWN PAPER, Trinity Term, 1846.

Wednesday, May 27.

Middlesex—Reg. v. The Inhabitants of Mile End Old Town
Yorkshire—Reg. v. The Inhabitants of Northwram
Devon—Reg. v. The Inhabitants of Newton Ferrers
Surrey—Reg. v. The Churchwardens of St. Mary, Lambeth
Leicestershire—Reg. v. The Inhabitants of Ratcliffe Caley
Lincolnshire—Reg. v. The Trustees for improving, &c. of the River Welland
Huntingdonshire—Reg. v. The Inhabitants of Molesworth
Devon—Reg. v. The Inhabitants of Holme
Bucks—Reg. v. The Churchwardens, &c. of Aylesbury, with Walton
Middlesex—Reg. v. The Inhabitants of St. Giles-in-the-Fields.

Surrey—Reg. v. Thomas Pocock
Middlesex—Reg. v. The Inhabitants of St. Clement Danes
Staffordshire—Reg. v. Thomas Pratt

Northumberland—Reg. v. The Newcastle-upon-Tyne and Carlisle Railway Company
Middlesex—Reg. v. The Inhabitants of St. Anne, Westminster

Worcestershire—Reg. v. The Birmingham and Gloucester Railway Company
Devon—Reg. v. James Griffin

New Sarum—Reg. v. The Inhabitants of St. Martin
Middlesex—Reg. v. A. R. Hamilton v. Reg. in Error
Reg. v. The London, Westminster, and Vauxhall Iron Steamboat Company

Northumberland—Reg. v. The Inhabitants of Walbottle
Middlesex—Reg. v. The Inhabitants of Watford, Herts
Bucks—Reg. v. The Inhabitants of Little Marlow

Surrey—Reg. v. The Inhabitants of Crondall
Cornwall—Reg. v. The Commissioners of Stamps and Taxes
Middlesex—Reg. v. The Inhabitants of St. Paul, Covent-garden

London—Charles Wright v. The Queen in Error.
Dorset—Reg. v. The Churchwardens, &c. of Anderson
Cumberland—Reg. v. The Churchwardens, &c. of Holme St. Cuthberts

Middlesex—Reg. v. Edward Westbrook and Others
Carnarvon—Reg. v. The Churchwardens of Bangor
Middlesex—Reg. v. The Inhabitants of St. Anne, Westminster

Same v. Same
Worcester—Reg. v. The Inhabitants of St. Peter, Droitwich

London—Reg. v. Henry Bateman
Devon—Reg. v. The Inhabitants of East Stonehouse
Reg. v. The Inhabitants of Widecombe in the Moor
England—Reg. v. The South Eastern Railway Company
Ely—Reg. v. The Inhabitants of Ely, Cambs.
Lancashire—Reg. v. The Inhabitants of Blackburn
Carnarvon—Reg. v. The Churchwardens of Bangor
Kent—Reg. v. Henry Everest.

Saturday, June 6.
Bucks—Reg. v. The Great Western Railway Company
Same v. Same.

COURT OF COMMON PLEAS. DEMURRER PAPER, Trinity Term, 1846.

Wednesday, May 27.

Benham v. Earl of Mornington
Easton v. Peplow
Smith v. Shirley
Gayard v. Sutton
Turner v. W. Brown
Tinnisswood v. Pattison
Tuckwell v. Morris
Carr v. Maude
Dormay v. Borradaile
Fitzgerald and Another v. Lane and Another
Reynolds and Others v. Fenton
Messent v. Reynolds
Doe dem. Bloomfield v. Eyre
Hutton and Another v. Thompson
Toll and Another v. Stewart
Thatcher v. England, knt.
Hayward v. Bennett
Pannell v. Mill, bart.
Rogers v. Richards
Ablett v. Clarke
Stevens and Another v. Desborough
Smart and Another v. Sanders and Others
Toomer v. Gingell
Wightman v. Green
Boyson and Another v. Gibson and Others
Pownall and Another v. Newark
Williams v. Capper
Sieving and Another v. Dutton
Baker and Another v. Palmer
Mills v. Acres
Barry and Another v. Mesham and Another
Doe (Phillips) v. Rollings.

REMANET PAPER, Trinity Term, 1846.

Enlarged Rules.

To 1st day—Woolley and Another v. Smith
To 2nd day—Tolson v. Bishop of Carlisle and Others.

NEW TRIAL PAPER, Trinity Term, 1846.

Easter Term, 1846.

Middlesex—Gamble v. Kurtz
Cranwell v. Cooper
London—Siggers v. Paynter and Another
Boydell and Another v. Harkness
Beds—Coulthas v. Bowers, clerk
Somerset—Doe (Harrison) v. Hampton
Doe (Garsford and Others) v. Stone
Kent—Elaton v. Gascoyne
Surrey—Gibbons v. Alison
Essex—Doe (Bailey and Others) v. Foster
Piggott v. Eastern Counties Railway Company
Gally v. Round
Yorkshire—Tempest and Another v. Kilner
Bowlby v. Bell
Liverpool—Tootal v. Johnstone.

Cur. adv. vult.

Patteson and Others v. Holland and Others, to stand over till the sci. fa. in Queen's Bench is determined
Doe (Woodall and Others) v. Woodall and Another
Benson v. Chapman
Holden v. Liverpool New Gas and Coke Company
Powles v. Page
Beard v. Egerton and Others
Doe (Atkinson) v. Fawcett and Others
Cooper v. Shepherd
Pott and Others, assignees, v. Eytton and Another
Gibbs and Another v. Flight and Another
Pryce v. Belcher
Roberts v. Grunison
Rich v. Basterfield
Gamble v. Kurtz, plaintiff's rule.

NEW RULES FOR THE EXAMINATION OF PERSONS APPLYING TO BE ADMITTED AS ATTORNEYS.

Easter Term, 1846.

Whereas by section 15 of the statute 6 & 7 Vict. c. 93, it was enacted, "That it shall be lawful for the judges of the Courts of Queen's Bench, Common Pleas, and Exchequer, or any one or more of them, and he and they is and are hereby authorized and required before he or they shall issue a fiat for the admission of any person to be an attorney, to examine and inquire by such ways and means as he or they shall think proper touching the articles and services and the fitness and capacity of such person to act as an attorney; and if the judge or judges as aforesaid shall be satisfied by such examination, or by the certificate of such examiners as hereinafter mentioned that such person is duly qualified and fit and competent to act as an attorney; then and not otherwise the said judge or judges shall and he and they is and are hereby authorized and required to administer or cause to be administered to such person the oath hereinafter directed to be taken by attorneys and solicitors in addition to the oath of allegiance, and after such oaths taken to cause him to be admitted an attorney of such Court;" and by section 16 of the said statute it was enacted, "For the purpose of facilitating the inquiry touching the due service under articles as aforesaid, and the fitness and capacity of any person to act as an attorney: That it shall be lawful for the judge

of the Courts of Queen's Bench, Common Pleas, and Exchequer (or any eight or more of them, of whom the chiefs of the said Courts shall be three), from time to time to nominate and appoint such persons to be examiners for the purposes aforesaid, and to make such rules and regulations for conducting such examination as such judges shall think proper." And whereas, in order to carry the said statute more fully into effect, it is expedient annually to appoint examiners, subject to the control of the judges in manner hereinafter mentioned: It is ordered that the several Masters for the time being for the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, together with sixteen attorneys or solicitors, be appointed by a rule of Court in every year to be examiners for one year, any five of whom (one whereof to be one of the said Masters) shall be competent to conduct the examination, and that subject to such appeal as hereinafter mentioned, no person who shall not have been previously admitted a solicitor of the High Court of Chancery shall be admitted to be sworn an attorney of any of the Courts, except on production of a certificate signed by the major part of such examiners actually present at and conducting his examination, testifying his fitness and capacity to act as an attorney; such certificate to be in force only to the end of the Term next but one following the date thereof, unless such time shall be specially extended by the order of a judge.

2. It is further ordered that the examiners so to be appointed shall conduct the said examinations under regulations to be first submitted to and approved by the judges.

3. And it is further ordered, that in case any person shall be dissatisfied with the refusal of the examiners to grant such certificate, he shall be at liberty to apply for admission by petition in writing to the judges, to be delivered to the clerk of the Lord Chief Justice of the Court of Queen's Bench, upon which no fee or gratuity shall be received; which application shall be heard in Serjeants' Inn Hall by not less than three of the judges.

4. And whereas the hall or building of the Incorporated Law Society of the United Kingdom, in Chancery-lane, will be a fit and convenient place for holding the said examinations, and the said society have consented to allow the same to be used for that purpose; it is further ordered, that until further order such examinations be there held on such days as the said examiners, or any five of them, shall appoint; and that any person not previously admitted an attorney of any of the three courts, and desirous of being admitted, shall, in addition to the notices already required, give a Term's notice to the said examiners of his intention to apply for examination, by leaving the same with the secretary of the said society, at their said hall; which notice shall also state his place or places of residence or service for the last preceding twelve months; and in case of application to be admitted, on a refusal of the certificate, shall give ten days' notice, to be served in like manner, of the day appointed for hearing the same.

5. And it is further ordered, that six days at the least before the commencement of the Term next preceding that in which any person not before admitted shall propose to be admitted an attorney of either of the courts, he shall cause to be delivered at the Master's office, instead of affixing the same on the walls of the courts, the usual written notices, which shall state, in addition to the particulars now required, his place or places of abode or service for the last preceding twelve months; and the Master shall reduce all such notices as in this rule first mentioned into an alphabetical table or tables, under convenient heads, and affix the same, on the first day of Term, in some conspicuous place within or near to and on the outside of each court. And such person shall also, for the space of one full Term, previous to the Term in which he shall apply to be admitted, enter or cause to be entered, in two books kept for that purpose, one at the chambers of the Lord Chief Justice of the court in which he applies to be admitted, and the other at the chambers of the other judges of such court, his name and place or places of abode, and also the name or names and place or places of abode of the attorney or attorneys to whom he shall have been articulated. And it is further ordered, that a printed copy of the list of admissions be stuck up in the Queen's Bench, Common Pleas, and Exchequer offices, and at the judges' hall or chambers of each court in Roll's Garden.

DENMAN.	T. COLTMAN.
N. C. TINDAL.	R. M. ROLFE.
FRED. POLLOCK.	WM. WIGHTMAN.
J. PARKE.	C. CRESSWELL.
E. H. ALDERSON.	W. EARLE.
J. PATTESON.	T. J. PLATT.
J. WILLIAMS.	

REGULATIONS.

Approved by the Judges in Easter Term, 1846,
For the examination of persons applied to be admitted as attorneys of the Courts of Queen's Bench, Common Pleas, or Exchequer, pursuant to the rule of Court made in Easter Term, 1846.

Whereas by a rule of the Courts of Queen's Bench, Common Pleas, and Exchequer, made in Easter Term, 1846, it was ordered, that the several Masters for the time being of the said courts respectively, together with sixteen attorneys or solicitors, should be appointed by a rule of Court in every year to be examiners for one year, of persons applying to be admitted attorneys of the said courts, five of whom (one whereof to be one of the said Masters) should be competent to conduct the examination, and that subject to such appeal as thereinafter mentioned, no person not previously admitted a solicitor of the High Court of Chancery should be admitted to be sworn an attorney of any of the said courts, except on production of a certificate signed by the major part of such examiners actually present at and conducting his examination, testifying his fitness and capacity to act as an attorney; such certificate to be in force only to the end of the Term next but one following the date thereof, unless such time should be specially extended by order of a judge. And it was further ordered, that the examiners so to be appointed should conduct the said examinations under regulations to be first submitted to and approved by the judges; and that until further order such examinations should be held in the hall or building of the Incorporated Law Society of the United Kingdom, in Chancery-lane, on such days as the said examiners, or any five of them, should appoint; and that any person not previously admitted of any of the three courts, and desirous of being admitted, should give a Term's notice of his intention to apply for examination, by leaving the same with the secretary of the said society at their said hall.

In pursuance of the said rule, the following regulations for conducting the said examinations have been submitted to and approved by the judges of the said courts.

1. That every person applying to be admitted an attorney of any of the said courts, pursuant to the said rules, shall within the first seven days of the Term in which he is desirous of being admitted, leave or cause to be left with the secretary of the said Incorporated Law Society, his articles of clerkship duly stamped, and also any assignment which may have been made thereof, together with answers to the several questions hereunto annexed, signed by the applicant and also by the attorney or attorneys with whom he shall have served his clerkship.

2. That in case the applicant shall show sufficient cause, to the satisfaction of the examiners, why the first regulation cannot be fully complied with, it shall be in the power of the said examiners, upon sufficient proof being given of the same, to dispense with any part of the first regulation that they may think fit and reasonable.

3. That every person applying for admission shall also, if required, sign or leave, or cause to be left with the secretary of the said society, answers in writing to such other written or printed questions as shall be proposed by the said examiners touching his said service and conduct, and shall also, if required, attend the said examiners personally for the purpose of giving further explanations touching the same; and shall also, if required, procure the attorney or attorneys with whom he shall have served his clerkship as aforesaid, to answer either personally or in writing any questions touching such service or conduct, or shall make proof to the satisfaction of the said examiners of his inability to procure the same.

4. That every person so applying shall also attend the said examiners at the hall of the said society, at such time or times as shall be appointed for that purpose, pursuant to the said rule as the said examiners shall appoint, and shall answer such questions as the said examiners shall then and there put to him by written or printed papers, touching the fitness and capacity to act as an attorney.

5. That upon compliance with the aforesaid regulations, and if the major part of the said examiners actually present at and conducting the said examination (one of them being one of the said masters), shall be satisfied as to the fitness and capacity of the person so applying to act as an attorney, the said examiners so present, or the major part of them, shall certify the same under their hands in the following form, viz. :—

In pursuance of the rules made in Easter Term, 1846, of the Courts of Queen's Bench, Common Pleas, and Exchequer, we being the major part of the examiners actually present at and conducting the examination of A B of &c. Do hereby certify that we have examined the said A B, as required by the said rules, and we do testify that the said A B is fit and capable to act as an attorney of the said courts.

Questions as to due service of articles of clerkship, to be answered by the clerk.

1. What was your age on the date of your articles?
2. Have you served the whole term of your articles at the office where the attorney or attorneys to whom you were articulated or assigned, carried on his or their business? and if not state the reason.
3. Have you at any time during the term of your articles been absent without permission of the attorney or attorneys to whom you were articulated or

assigned? and if so, state the length and occasions of such absence.

4. Have you during the period of your articles, been engaged or concerned in any profession, business, or employment, other than your professional employment as clerk to the attorney or attorneys to whom you were articulated or assigned?

5. Have you since the expiration of your articles been engaged or concerned, and for how long time, in any and what profession, trade, business or employment, other than the profession of an attorney or solicitor?

To be answered by the attorney, agent, barrister, or special pleader with whom you may have served any part of your time under your articles.

1. Has A B served the whole term of his articles at the office where you carry on your business? and if not, state the reason.

2. Has the said A B at any time during the term of his articles been absent without your permission and if so, state the length and occasions of such absence.

3. Has the said A B during the period of his articles been engaged or concerned in any profession, business, or employment, other than his professional employment as your articulated clerk?

4. Has the said A B, during the whole term of his clerkship, with the exceptions above mentioned, been faithfully and diligently employed in your professional business of an attorney or solicitor?

5. Has the said A B, since the expiration of his articles, been engaged or concerned, and for how long time, in any and what profession, trade, business, or employment, other than the profession of an attorney or solicitor?

And I do hereby certify, that the said A B hath duly and faithfully served under his articles of clerkship (or assignment, as the case may be), bearing date, &c. for the term therein expressed, and that he is a fit and proper person to be admitted as an attorney.

DENMAN.	J. WILLIAMS.
N. C. TINDAL.	T. COLTMAN.
FRED. POLLOCK.	R. M. ROLFE.
J. PARKE.	WM. WIGHTMAN.
E. H. ALDERSON.	C. CRESSWELL.
J. PATTESON.	

LEGAL INTELLIGENCE.

The English bar is composed of above 3,000 barristers, exclusive of 28 serjeants at law. There are 74 Queen's counsel, including the Attorney and Solicitor-General.

BANKRUPTCY LAW IN RUSSIA.—The Emperor of Russia has published a ukase, bearing date 20th of April, bearing very severely on fraudulent bankrupts, who are to be exiled for life to Siberia.

IRISH LEGAL INTELLIGENCE.

The following order has been issued in reference to the relief of the poor upon estates under the Court of Chancery :—

5th May, 1846.—Whereas the several receivers and guardians of the estates and properties of the several persons who are minors of this hon. Court are not at liberty to subscribe or contribute any portion of the rents of such estates or properties towards the relief of the poor now suffering thereon, or in the adjacent districts, from want of food, by reason of the failure of the potato crop, or from other sufficient causes, without a special order in each matter, upon petition duly obtained; and it is expedient that such receivers and guardians should be at liberty so to contribute, without incurring the expense and delay necessarily consequent upon a special application to the Court in each case for such purpose. It is this day ordered by the Right Hon. the Lord High Chancellor of Ireland, by and with the advice and assistance of the Right Hon. the Master of the Rolls, that from and after the date of this order, and until the 1st day of October next, in every case in which application has been, or shall be made, by or on behalf of any committee duly appointed pursuant to the provisions of the Act of Parliament in this behalf, to any such guardian or receiver as aforesaid, for a contribution or subscription in aid of their funds, every such guardian and receiver shall and do forthwith submit such application by a statement, verified by his affidavit to the Master in the matter of such minor or minors, who shall thereupon, without delay, by a certificate to be signed by him, authorize such receiver or guardian to contribute such sum as he shall deem expedient; having regard in each case to the nature, circumstances, and net annual income of such estate or property over and above all annual outgoings whatsoever; such sum, however, not in any case to exceed the sum of seven pounds sterling per cent. of such net annual income; and such receiver or guardian shall thereupon pay or advance such sum as said Master shall so certify, to the person or persons duly authorized by such committee to receive same. Provided, however, that in every case in which the said

so certified by the Master shall exceed the sum of 100l. sterling, such certificate shall not be acted on until confirmed by an order of the Court upon petition. And it is further ordered that every such receiver or guardian be at liberty to take the credit in his account for such sum or sums as he shall pay or advance, in pursuance of such certificate or order, together with a sum of 3l. sterling for the costs of obtaining such certificate, in case same shall not require confirmation, or for such sum as shall be specified in the order confirming same.

(Signed)

EDWARD B. SUGDEN, C.

T. B. C. SMITH, M.R.

Dated 5th May, 1846.

The Lord Chancellor doth hereby order that the provisions of the general order of the Court of Chancery, bearing date this day, be extended to all matters of idiotcy and lunacy.

(Signed)

EDWARD B. SUGDEN.

PARLIAMENTARY PAPERS.

ACCIDENTS ON RAILWAYS.—It appears from a report of the officers of the Board of Trade, that the number of accidents attended with personal injury or danger to the public, arising from causes beyond the control of passengers, were, during 1844, 10 killed and 74 injured; owing to their own negligence or misconduct, 7 killed, 9 injured. Personal injury to servants of the companies, not involving danger to the public, 33 killed and 28 injured. To others, not servants, but trespassers, 34 killed and 17 injured. In 1845, accidents to passengers, over which they themselves could exercise no control, 10 killed and 101 injured; owing to their own negligence or misconduct, 9 killed and 110 injured. Injuries to servants of the companies, not involving danger to the public, 36 killed and 24 injured. Others, not servants of the companies, but trespassers, 45 killed and 2 injured. During a period of 4 years and 11 months, 121 accidents occurred which were beyond the control of the passengers; 66 persons were killed; 324 were injured, but not fatally; total killed and injured, 390. The number of persons carried was 12,491,192. The average, therefore, of persons killed to the total number carried is 1 in 1,825,664; and of persons not fatally injured, 1 in 371,896; and of the total number injured, 1 in 308,959. The proportion which the number of passengers killed bears to the total number carried is:—in 1840, 1 in 274,085; in 1841, 1 in 852,073; 1842, 1 in 4,271,689; 1843, 1 in 8,524,175; 1844, 1 in 3,036,305; and in the first six months of 1845, 1 in 8,360,275.

INCREASE AND DIMINUTION OF SALARIES, &c. (Public Offices).—The usual abstract of accounts of every increase and diminution which has taken place during the year 1845, in the number of persons and amount of salaries paid in public offices or departments, pursuant to Act 4 & 5 Wm. 4, c. 24. **INCREASE.**—2,035 additional persons employed in the Post-office—salaries 56,674l.; 102 persons in the Customs—salaries, 17,315l.; and 130 persons in other public offices, at an expense of 20,708l.; total, 2,267 additional persons employed, at salaries amounting, in the aggregate, to 94,489l. besides emoluments, 208l. There is also an increase upon retired allowances of 23,717l.; and in the expenses connected with certain departments, chiefly Customs, Excise and Foreign-office, of 11,464l. making the total of the items of increase for the year 129,879l. **DIMINUTION.**—On the other hand there has been a diminution in the number of persons employed in the Excise of 396; in Chelsea Hospital, 49; in the office of the Paymaster-General, 11; in the navy and victualling yards abroad, 4; in the Audit-office, 2; and the convict establishment, 1; total, 463. The expense saved was, in the Excise for salaries, 42,629l.; in Chelsea Hospital, for salaries, 5,084l.; in the Paymaster-General's Office, for salaries, 3,139l., and for expenses, 716l. Altogether the diminution was, for salaries, 52,970l.; for emoluments, 3,284l.; expenses, 1,620l.; and retired allowances, 9,879l.; making a total saving of 67,754l., which, deducted from the increase as stated above, leaves a net increase of annual charge to the amount of 62,124l.

CORN.—Return of the number of the importers of the foreign grain now in bond in Great Britain and Ireland, together with the quantities imported by each individual. The total number of importers returned is 617; the quantities in bond in the United Kingdom on 12th Feb. last being,—Wheat, 1,117,071 qrs.; barley, 8,912 qrs.; oats, 88,327 qrs.; peas, 4,805 qrs.; beans, 9,455 qrs.; Indian corn, 42,348 qrs.; wheaten flour, 703,961 cwt.; and oatmeal, 668 cwt.

FLAX, IRELAND.—Copies of such parts of the fifth annual report of the society for the promotion and improvement of the growth of flax in Ireland, as relate to the quantity of the flax crop in the season of 1845, the extension of the cultivation of flax, and the present condition of the linen trade in Ireland. Our space will not permit of our noticing this document at the length it deserves. It appears that the efforts of the society have met with decided success. The crop

of 1845 they consider to have been about one-fourth, or 28,000 tons, less than that of 1844. But the scarcity of the produce has so far enhanced the value (by an average of 12l. per ton), that the amount realized by the grower is expected to be very nearly the same as last year.

DISEASE (IRELAND).—Abstracts of the most serious representations made by the several medical superintendents of public institutions (fever hospitals, infirmaries, dispensaries, &c.) in the provinces of Ulster, Munster, Leinster, and Connaught. These statements, from almost every part of Ireland, display a melancholy uniformity. Disease originated or increased by the scarcity or unsoundness of food is, in the majority of instances, actually present to an extent not to be met by the resources of the locality. In other cases, with all the causes present, a similar state of things is seriously and immediately apprehended.

WHALE FISHERY.—A return, obtained on the application of Mr. Hastie (Paisley), was printed on Saturday, giving an account of ships employed in the whale fishery, and of the oil imported, for three years ending in 1845. There were 25 ships cleared out for the Greenland whale fishery in 1843, 36 in 1844, and 45 in 1845. The tonnage was respectively 6,972, 10,509, and 11,586. For the southern whale fishery 9 ships cleared out from the port of London in 1843, and 13 in 1844 (none in 1845), the tonnage of which was 3,096 and 4,004. The oil imported in 1843 from Greenland and Davis's Straits Fishery was 1,982 tons, and from the southern fishery 2,492 tons; in 1844, 2,321 and 2,262 tons; and in 1845, 4,342 and 1,534 tons from each of the two fisheries.

WINDOW DUTY.—A return of the amount of duty for each year since 1838: and also of the twelve towns paying the largest amount. (In continuation of No. 133, sess. 1845.) The annual amount of the revenue from this source was, in the year ending April 5, 1840, 1,486,023l.; 1841, 1,774,638l.; 1842, 1,775,151l.; 1843, 1,776,789l.; 1844, 1,786,514l.; and, in the year ending April 5, 1845, 1,812,035l. The six towns paying the largest amount are—Liverpool, Bath, Manchester, Brighton, Bristol, and Plymouth.

PROGRESS OF RAILWAY LEGISLATION IN THE HOUSE OF COMMONS.—From a Parliamentary paper just published, entitled "List of Petitions and Private Bills in Parliament, and proceedings thereupon, Session 1846," it appears that 562 petitions for railway Bills have been presented, and that in respect of 386 of such petitions Bills have been read the first time, of which 370 have been read the second time, and 7 the third time, viz. Brighton and Chichester (Steyning Branch); Brighton, Lewes, and Hastings Deviations, &c.; Direct London and Portsmouth; Eastern Union and Hadleigh Junction; London and York; Sheffield and Lincolnshire Junction; and South-Eastern, Tunbridge-wells to Rye. 14 Bills have been withdrawn, and proceedings appear to be suspended as to 43 Bills, and there are 130 petitions for Bills upon which no reports have been made.

PROCEEDINGS OF LAW SOCIETIES.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

General Meeting, May 6, 1846.

Mr. SEJNT. D'O'LYLY IN THE CHAIR.

The minutes of the last meeting (the 22nd of April last), were read and confirmed. The following members were ballotted for and elected: The Marquis of Clanricarde, K.P.; John Parker, esq. M.P.; William Cotton, esq. Bank Director; and Richard Austwick Westbrooke, esq. Solicitor.

The report of the Committee on the Law of Property on the following reference: "To consider of the propriety of establishing a general Register of Deeds and Instruments affecting real property," was ordered to be received.

Notice for Wednesday, the 20th Instant. The Report of the Committee on the Law of Property on the following reference will be presented: "To consider whether it be possible and expedient to adapt the machinery of the Public Funds to the transfer of real property."

THE LAW ASSOCIATION.—On Tuesday the annual general court of the members of the Law Association, which is established to grant relief to the widows and children of attorneys and solicitors, members, dying in distressed circumstances, and for other benevolent and charitable purposes, was held at the hall of the Incorporated Law Association, Chancery-lane, to receive the report of the directors for the past year, ending May 12; Mr. G. W. Kindersley, treasurer, in the chair. Mr. T. Murray, secretary, read the report, from which it appeared that to applicants of the second class (these being widows and children of those who were not members) 99l. 10s. had been given. The receipts amounted to 1,497l. 3s. 5d. including 123l. 18s. life subscriptions, 602l. 14s. an-

nual ditto, 595l. 15s. dividends upon stock, and 152l. 18s. 11d. a balance in hand; leaving, after paying all expenses, a balance in hand of 109l. 1s. 3d. the stock being 20,300l. in the Three per Cent. Transport was unanimously received, and ordered to be printed. The Lord High Chancellor was re-elected president, and the Vice-Chancellor of England, Vice-Chancellor Knight Bruce, Vice-Chancellor Wigram, and the Right Hon. Sir T. B. Bosanquet, vice-presidents. The other officers having been appointed, thanks were voted to the chairman, and the meeting broke up.

Peirs-at-Law, Next of Kin, &c.

[This is part of a complete list now being extracted from the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. Reference, with the date and place of each advertisement, cannot be stated here without subjecting the printer to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, wherein particulars are preserved, and which will be loaned to any applicant. To prevent impertinent calls, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount inclosed.]

31. JAMES CASIDAY, of his NEXT OF KIN.

32. JAMES SMITH, of JAMES NASH, supposed to be an individual, born about the year 1783; in the year 1810 he was supposed to have been under the care of Thomas Jarvis, of Longford, Middlesex, and to have gone abroad, either to the East or the Indies, in or about the year 1800. The said J. Nash, or J. Nash, is a legatee under the will of RICHARD LADBROKE THOMAS, one of the daughters of John Hubbard, of Upton-cum-Chavry, in the county of Bucks, esq., and was married to CHARLES WILKINS, esq., and, after his decease, to the Rev. WILLIAM THOMAS, of Fobbing, county of Essex, clerk, but he resided for many years previous to her decease, in Sept. 1834, at 13, Grafton-street, Fitzroy-square.

33. NEXT OF KIN OF MARY BRIGIT, late of the city of Oxford, spinster, died 12th Sept. 1834.

34. HEIR or HEIRESS AT LAW OF GEORGE EATON, formerly of Shaftsbury-terrace, Piccadilly, afterwards of Bonplac, Vauxhall-road, Middlesex, gent. died 11th Sept. 1838.

35. GEORGE WOOD, of Chepstow, near Bristol, gent.; ROBERT WOOD, merchant, Newcastle-on-Tyne; GEORGE WOOD, of Rothbury; DOBOTHY WOOD, of the same place; ELIZA FOWLER, of Gloucestershire; JOHN WOOD, of Johnstown Naas, or their representatives. Something to their advantage.

36. HEIR AT LAW OF the Rt. Hon. WILLIAM PERCE, Earl of ROCHFORD, died 12th Sept. 1830.

37. JOHN WELLS, late of the city of Worcester, barrister, or his personal representatives; legatees under the will of WILLIAM HAZLEWOOD, who resided at Holborn Salop, gentleman, died Oct. 1822, having bequeathed 200l. to the said John Wells, who afterwards had a New-court, Portpool-lane, in the parish of St. Anne, Holborn, Middlesex, and died there in June, 1832.

38. J. JACOB FRIEDRICH HABERMAYER, son of J. J. Friedrich Habermayer, of Stralsund, goldsmith; died in 1782, and went to sea in 1799, and has not been heard of since 1803, when he was seen in Philadelphia. He also HEINRICH LARS VOGELGANG, son of Major Carl von Vogelgang, born at Stralsund in 1770, went to sea in 1814, and has not since been heard of or their heirs.

39. NEXT OF KIN OF MOSES SHIFF, late of St. Anne's, Goodman's-fields, parish of St. Mark, Whitechapel, Gentleman (died Aug. 1819), or NEXT OF KIN of his widow (who died June 1831), or their representatives.

40. NEXT OF KIN OF CHARLES LUDER ARTHUR, a Gentleman (died Oct. 1835), resided formerly at Wotton under Edge, and subsequently at Clapham, Surrey, where he died. His father was a merchant of the City of London, and resided in Bush-lane, in the said city, about the year 1796, or their representatives.

41. DEER MISSING, dated 17th February, 1801, mention by the late SAMUEL HOLMES, Esq. of Richmond-place, Dublin.

42. ELIZA ORMAN, lived at 15, Hamilton-place, near King's Cross, in the summer of 1834, and was in the North-place in Feb. 1835, and has since gone by the name of ELIZA COZENS. Something to her advantage.

43. WESTON WRIGHT, or his representative. In the years 1808 and 1809 he was residing at Cape Town, Cape of Good Hope, and from which place he sailed in a small mate of a brig, and afterwards went to and was residing in the year 1813 in Buenos Ayres in South America, named residuary legatee in the will of THOMAS WESTON, Esq. of Clayhill, Enfield, Middlesex, who died 21st Nov. 1816.

44. CHARLES JONES, or his representatives. In the year 1810 or late a midshipman on board H. M. S. The Rattlesnake, and subsequently midshipman on board H. M. S. The Shark, and in the month of January, 1813, was discharged from the same ship at Port Royal, a legatee named in the will of THOMAS WESTON, Esq. of Clayhill, Enfield, Middlesex, who died 21st Nov. 1816.

45. HORATIO MANNING SPOONER, eldest son of the Rev. Robert Denny Rix Spooner, Vicar of Walsley, in the County of Lincoln, left his father about five years ago, and has not since been heard of. Something to his advantage.

46. RICHARD PONEY, alias POWNY, ANN PONEY, and MARY SATERS, legatees in the will of ELIZABETH PONEY, spinster, died 2nd Nov. 1836. Something to their advantage.

47. THE THREE NIECES, DAUGHTERS OF ROBERT OULT, testatrix's brother, then residing in Ireland, and the nieces of the testatrix, GRACE EDWARDS, late of Four-place, Camden-town, Middlesex, widow, died Nov. 1818, or their representatives.

48. LEGATEES OF ROBERT OWEN OWENS, late of Carnarvon, shopkeeper, died April 1838.

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

HONESTAS inquires whether a charge of 8s. per skin for parchment in a bill for conveyancing, is allowable. We believe it to be customary, and certainly it is not worth objecting to. It seems to us no more than a fair remuneration for the trouble of preparing the skin.

H. M. A. (Poole).—The great length of the *Charitable Trusts' Bill* prevents our inserting it at full. It would occupy an entire number of the *LAW TIMES*, or more.

The case from the Manchester Bankruptcy Court has been already decided so often, that it is unnecessary to repeat the point. New decisions will be always acceptable.

P. R. Q.'s letter on "The Certificate Duty" is anticipated. This is the time to urge the question.

ONE OF THE BODY.—We believe that the directors of the movement are about to adopt the course suggested.

T. H. F. and others, are unavoidably postponed.

N. W.—Thanks for the hint. But we can assure our correspondent that the *LAW TIMES* regards only the general interests of the Profession, and not the special interest of either town or country. The Bill was approved on its own merits exclusively.

E. G. (St. Albans).—The letter relates to the private and not the public conduct of an attorney, and is, therefore, inadmissible.

H. F. (Birkenhead).—We are obliged by the correction, but it is scarcely worth a special notice.

R. D. N.—The enclosed letter is very improper, but the writer's name is not given, so that exposure would not follow its publication.

NOTICE TO SUBSCRIBERS.

The volumes of the *LAW TIMES*, neatly, strongly, and uniformly bound, for 5s. 6d. each, with the name and address of the owner on the cover, 1s. extra, if sent to the office. If the numbers for binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

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N. B.—For Scale for Estate Advertisements, see *JOURNAL OF PROPERTY*.

NOTICE.

The *LAW DIGEST* being completed, the last and other volumes of the *LAW TIMES* may now be transmitted for binding, as usual. Charge, 5s. 6d. per volume. The numbers may be sent by post, taking care to leave the ends open.

The numbers comprising the first volume of the *VOLUMAR REPORTS of Real Property and Conveyancing Cases* may also be transmitted for binding in like manner.

NOTICE.

The subscription for the current half-year is now due, and subscribers desirous of availing themselves of the great reduction allowed for pre-payment, should forward the same in the course of the ensuing week. The prepaid subscription is 11. 5s. for the half-year, and 21. 7s. for the year, being a reduction respectively of 25 and 30 per cent.

Post-office Orders must be made payable to Mr. JOHN CROCKFORD, Publisher of the *Law Times*.

THE LAW TIMES.

SATURDAY, MAY 16, 1846.

CONVEYANCING.

An early copy of Lord BROUGHAM's Bill, intitled "An Act to facilitate the Conveyance of Property," is now before us.

We had hoped to present it entire to our readers, but its great length forbids. It extends to no less than forty-seven closely-printed folio pages, and would occupy a whole number of the *LAW TIMES*. We must, therefore, be content with a copy of the clauses of the Bill, and the table of forms contained in the

Schedule, with the instructions for their employment. From these the reader will be enabled to understand the scope of this sweeping measure; but for the short forms themselves, set, as they are, by the side of the present long forms for which they are to be substituted, reference must be made to the Bill itself. Should it become law, it must then appear among the New Statutes; but to occupy some fifteen or sixteen pages with it now would be an encroachment upon columns that at this season have too many other more urgent claims, from law decided and enacted, to dedicate much space to laws projected.

The clauses of the Bill are as follow:—

Sec. 1. 8 & 9 Vict. c. 119; 8 & 9 Vict. c. 124. Where the words of column I. of the schedule are employed the instrument to have same effect as if words in column II. were inserted.—Whereas an Act was passed in the ninth year of the reign of her present Majesty Queen Victoria, intituled An Act to facilitate the Conveyance of Real Property: and whereas another Act was passed in the same year, intituled An Act to facilitate the granting of certain Leases: And whereas it is expedient further to facilitate the conveyance of property: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that when and so often as any deed, will, or instrument in writing expressed to be made in pursuance of this Act, or referring thereto, shall contain any of the forms of words in column I. of the schedule hereto annexed, distinguished by any number prefixed thereto, such deed, will, or instrument in writing shall, whether the same number be inserted therein or not, be taken to have the same effect and be construed as if there had been inserted therein the form of words contained in column II. of the said schedule, and distinguished by the same number as is prefixed to the form of words so employed; and the like provisions shall apply to the said forms as altered by virtue of the directions contained in the schedule hereto.

2. Remuneration for instruments not to be by length only.—That in taxing any bill for preparing any deed, will, or instrument in writing expressed to be made in pursuance of this Act, or referring thereto, it shall be lawful for the taxing officer, and he is hereby required, in estimating the proper sum to be charged for such transaction, to consider, not only the length of such deed, will, or instrument in writing, but also the skill and labour employed and responsibility incurred in the preparation thereof.

3. Unnecessary expense occasioned by not using this Act may be disallowed.—That if the taxing officer, after this Act shall have come into operation, shall be of opinion that the expense attending the preparation of any deed, will, or instrument in writing referred to him for taxation has been unnecessarily increased by not employing the forms contained in the first column of the schedule hereto, or any of them, then such taxing officer may in his discretion disallow so much of the charge for such deed, will, or instrument in writing as has been thus unnecessarily incurred.

4. Power to make orders as to professional remuneration.—That it shall be lawful for the Lord High Chancellor of Great Britain and of Ireland respectively, or the lords commissioners or keepers of the great seal respectively, with the advice and assistance of the Master of the Rolls of England or Ireland respectively, from time to time, if they shall think proper, to make such orders and provisions as they may think proper respecting the mode of professional remuneration for any deed, will, or instrument in writing expressed to be made in pursuance of this Act or referring thereto.

5. Instruments not to fail in effect from clerical errors, &c.—That no deed, will, or instrument in writing, or part of any deed, will, or instrument in writing, expressed to be made in pursuance of this Act, or referring thereto, shall fail to take effect thereunder in consequence of any error in copying the forms contained in column I. of the said schedule; and that any deed, will, or instrument in writing, or any part thereof, which shall fail to take effect under this Act, shall, nevertheless, be as valid and effectual as if this Act had not been made.

6. Schedule, &c. to be part of the Act.—That the said schedule, and the directions and forms therein contained, shall be deemed and taken to be parts of this Act.

7. This Act to extend to rectified Acts.—That the provisions herein contained shall extend and be applied to all deeds made or to be made under the said rectified Acts, or either of them.

8. Commencement of Act.—That this Act shall commence and take effect from and after the first day of October, one thousand eight hundred and forty-six.

9. Act not to extend to Scotland.—That this Act shall not extend to Scotland.

Then follows the Schedule of Forms, preceded by directions for their use, and a table, which we also extract.

DIRECTIONS AS TO THE FORMS IN THE SCHEDULE.

1. Any form contained in column I. may be altered by substituting any word, number, names, words, or numbers for any word, number, letters, words, or numbers contained therein within brackets; and when any such substitution shall be made, the corresponding form in column II. shall be taken to be altered by making a similar substitution for the same, or the corresponding word, number, letters, words, or numbers contained therein within brackets, when and so often the same shall occur therein.

2. Any form contained in column I. may be altered by omitting any word, number, letters, words, or numbers contained therein within brackets; and when any such omission shall be made, the corresponding form in column II. shall be taken to be altered by omitting the same, or the corresponding word, number, letters, words, or numbers contained therein within brackets, when and so often as the same shall occur therein.

3. The words "he," "his," "him," and "himself," used in the forms in column II. in reference to trustees and executors, shall, where occasion requires, include and be applied to females.

[The forms contained in this schedule are, with few exceptions, adapted both to deeds and wills, and though classed under the head of Settlements for the sake of arrangement, are capable of being used in other cases. The parts of deeds or wills, such as the descriptions of persons and of circumstances, which are of too variable a nature to be annexed to the forms given without interfering with their use, are omitted. The words in italics running across the page are introduced for the purpose of representing these variable parts, so far as appears necessary to render the forms given intelligible, and are not intended in any way to restrict the manner or place in which the forms are to be introduced or used.]

TABLE OF THE FORMS CONTAINED IN THE SCHEDULE.

Settlements and Wills of Realty.

General limitations of uses and trusts, Nos. 1 to 4
General forms relating to appointments, 5 to 11
Limitation of rent-charge, 12, 13
Powers of distress and entry, 14, 15, 16
Limitations, 17, 18, 19
Trusts of pin money term, 20 to 25
Separate use clause, 22, 23
Ultimate trust and cesser of term, 24, 25
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Trusts and provisions as to portions, 27 to 28
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Commencements, 46, 47
Power of jointuring, 48 to 51
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Power of leasing for lives, 57 to 61
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Power to make partition, 81, 82
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Settlements and Wills of Personality.

Provisions for children, 105 to 107
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Ultimate trusts, 111, 112
Trusts for conversion and re-conversion, 113 to 115.

Settlements and Wills generally.

Power to appoint new trustees, 116 to 119
Trustees indemnity clause, 120
Trustees receipt clause, 121.

Settlements.

Covenant to settle future property, 122 to 126.

Wills.

Residuary devise of realty, 129
Charge of legacies upon realty, 130 to 132
Residuary bequest, 133
Trust for conversion, 131 to 135
Provision for annual payments, 136
Power to compromise, 137
Devise of mortgage estates, 138.

It will be sufficient to state that the plan pursued is precisely the same as in the Conveyancing Act of last session. The forms are contained in double columns. One on the right gives the form at present used, the other gives the short form intended to be substituted for it. But a specimen will best illustrate this

arrangement, and shew the abbreviations that are projected. We take two Trustee clauses :—

Power to appoint new Trustees.

Column I.—116. If a trustee dies, refuses or becomes incapable to act,

Column II.—116. If the said trustees hereby nominated, or any future trustees to be appointed as hereinafter is mentioned, or any of them, shall happen to die, or be desirous of being discharged from, or refuse or decline or become incapable to act in the trusts or powers reposed in or given as herein mentioned to such trustees or trustee, before the said trusts or powers shall be fully executed, performed, or discharged, or shall become incapable of taking effect, then and so often as the same shall happen,

Column I.—117. The surviving or continuing trustees, with the retiring trustee, if willing, may

Column II.—117. It shall be lawful for the surviving or continuing trustees or trustee for the time being, together with the trustee or trustees retiring from or declining to act in the aforesaid trusts, if willing to act in the exercise of this present power, but if not, then for such surviving or continuing trustees or trustee alone, or for the executors or administrators of the last surviving or continuing trustee for the time being, by any deed or deeds to be by them or him sealed and delivered in the presence of and attested by two or more credible witnesses, to

It will be observed that this bill contains an express provision that the taxing officer may disallow any charges for deeds, &c. occasioned by not employing the short forms. This is almost equivalent to making their use compulsory, for no conveyancer will venture to incur the cost of three or four skins, with their stamps, when, perchance, the consequence will be to throw the whole loss upon the solicitor.

But the Bill does not contemplate the injustice of sweeping away so much of the remuneration of the solicitors without compensation. It introduces a new form of payment, which, if it be adopted in a liberal spirit, will, we think, be an improvement in itself, and an acceptable change to the profession. The second section provides that the remuneration for instruments shall not be regulated by length only, but also by the skill and labour employed, and responsibility incurred in the preparation thereof; and the fourth section empowers the Lord Chancellor, with the aid of the Master of the Rolls, to make orders providing for the remuneration for conveyancing.

The principle of this change must be a subject for future consideration. Our present purpose is merely to apprise our readers precisely what is in contemplation so materially affecting their interests, in hope that they will be stirred to immediate action, with a view to averting any mischief that may lurk in it, or to obtain the best conditions from the Legislature, in return for the concessions they are called upon to make.

Three questions must especially engage their thoughts, and be the objects of their earnest endeavours.

First, they should determine forthwith what form of remuneration they would prefer, should payment according to length be abolished.

Secondly, they must insist upon the repeal of the certificate duty, as but an act of bare justice, to accompany a diminution of their fees, and,

Thirdly, they must require that the law should give to conveyancing the same protection as to the practice of other branches of the law, and that none but Solicitors or Barristers be allowed to practise it.

These demands are so obviously just, that they cannot be refused, if urged with earnestness, and backed by the united power of the Profession. But again we warn our readers not to commit themselves to indiscriminate hostility to changes which we are satisfied cannot be long averted. To do so, will be to waste their strength upon a conflict that will end in their defeat, without any compensation for their loss. By timely compromise we believe that the Profession may make terms which will render impending changes at least harmless, if not actually beneficial.

Earnestly do we hope, before another week has passed, to learn that something is being

done to meet the exigency of an occasion the most momentous to the Profession that has occurred since the *LAW TIMES* commenced its labours.

THE LAW LISTS.

It will be seen by an advertisement in another column, that the Publishers of the *Law List* have very properly resolved to withdraw the partial list of Parliamentary Counsel, complained of in our last. Since that notice of it, an instance has occurred that shews the unjust consequences of such a list. A friend of our own has lost a brief entirely through the attorney concluding, from his name not appearing there, that he did not practise before Parliament. Doubtless there have been other such cases. But we hope it will be now fully understood that all counsel undertake this branch of practice.

THE LAW DIGEST.

THE fifth number will be published on Wednesday, completing this useful General Index to the Law of the half-year, so that subscribers will now be enabled to send their last volume of the *LAW TIMES* to the binder. He should be instructed to place the Digest at the end of the volume, to which it is in the nature of an Appendix.

It will also be to be had in a wrapper, complete, for those who may desire to possess it in a distinct form.

VERULAM REPORTS.

THE first volume of the *Real Property and Conveyancing Cases* is now completed, and may be had bound.

The first volumes of *New Magistrates' Cases*, and of *Cox's Criminal Cases*, will be completed shortly.

Mr. SAUNDERS'S work on *The Practice of Summary Convictions* is in the press.

RAILWAY LITIGATION.

WE proceed to notice some of the more prominent questions that have arisen out of the recent railway liabilities.

Plaintiffs have asked what they should do to enforce their claims; defendants how they may avoid the actions that have been commenced against them. The answer to one is an answer to the other.

But first let us state, for the purpose of indignant reprobation, a fact which we have received upon authority we cannot question.

It is known that some newspapers and some newsagents have made out very heavy bills against the committees of different railways—such bills being at least fifty per cent. beyond the regular charges.

Now we have reason to believe that in some cases a nefarious bargain has been made between the creditor and his attorney, to this effect: that the creditor shall give to the attorney all his debts to collect in any manner the attorney pleases, and that for so doing the attorney is to give to his client a large share of the profits of the wholesale litigation intended to be based upon these debts!!

The consequences have been as might be anticipated from so infamous an arrangement. The plaintiff, having a direct pecuniary interest in the litigation, has encouraged the most reckless resort to it. For one debt of 100*l.* some fifty or sixty writs have been issued against so many members of the committee. To each defendant the apparently liberal offer is made, "if you will pay your share of the debt and the costs, we will drop the action against you." Each is thus made to pay, say 2*l.* towards the debt, and 3*l.* for his costs. The harvest so reaped by the plaintiff and his attorney is enormous. The plaintiff first receives 100*l.* for a debt upon which probably not one-half was justly due. Then upon this 150*l.* costs are received, 50*l.* of which goes to the plaintiff, and the other 100*l.* to the attorney!! If such be the profit upon a single debt of 100*l.* what must it be where the plaintiff and his attorney collect in this manner three or four hundred such debts?

We have heard of one case in which upwards of forty-five writs were issued for a debt of 24*l.*

There is little doubt but that the debt itself was paid three or four times over, and the costs recovered were of course nearly six-fold greater than the debt!

It is asked how this gigantic system of robbery, under the name of law, can be averted? That the Courts would set their faces against it—that they would seize upon any rule or any decision to frustrate the swindlers, there can be no doubt; and we believe that if some luckless defendant must muster courage to appeal to the judges, they will make, if they could not find, a rule for the occasion.

But there is a case that will go far to protect the oppressed, and punish the extortioners. It does not appear to be very generally known, or scarcely it would have been invoked in aid of some of the many defendants now suffering under the system of wholesale litigation we have described. It is the case of *Carne v. Legh* (6 B. & C. 124), and a substance is as follows.

A rule had been obtained by the defendant to stay proceedings without payment of costs, and that the plaintiffs should pay the costs of the application. The rule was obtained upon an affidavit that the plaintiff had commenced separate actions against the defendant and two other persons in the same demand, for which they were jointly liable; and that the debt and costs in one of the other actions had been paid. The plaintiff's affidavit stated that the actions were commenced to recover a debt due to the plaintiff from the Wheal Concord Mining Company; that they believed that the several defendants were partners in the concern, but they refused to admit that fact.

Per Curiam.—This being a joint debt, the plaintiffs were at liberty to sue all the debtors together, or any one separately, leaving him to plead in abatement; but they had no right to sue all the parties separately for one and the same demand. The rule must be made absolute.

Our readers are already aware, that in the case of many actions brought for the same debt, it has been suggested that the plea of *lis pendens* would be a bar in all but that first commenced; and this plea is now waiting for argument in the Common Pleas. But the opinions of the Profession are much divided as to its validity, and we are inclined to think that it will not be allowed. There can, however, be no harm in pleading it; for even if the decision be against it, the judgment is only that of *respondent ouster*.

But the case above cited suggests a different course. Where more than one writ has been issued for the same debt, the defendants should appoint one of their number to pay the debt and costs in his action, and immediately apply to the Court to stay proceedings in all the other actions. This would be ordered, according to the above case, without payment of costs, thus depriving the plaintiff and his attorney of their contemplated plunder. And we have little doubt that, in such a case, the Court would go further, and compel the plaintiff to discontinue, and pay the costs of all the other actions. At least the attempt should be made.

If the plaintiff's demand be not a fair one, and it is necessary to contest the claim, instead of paying, his position will not be improved. One action should be selected for speedy trial, and the rest might be delayed with ease; probably the Court would order a stay of proceedings in the others until the one was tried. At all events it is physically impossible that all could be tried at the same moment; and the trial of the one, whatever its result, would determine the rest. Should the plaintiff succeed, his judgment is a bar to the other actions, and the Court would treat it as a payment. Should he fail, he could not hope for a verdict in the others. Thus, if the defendants in these multifarious suits would act together, and not be frightened into settling apart from one another, it is almost impossible that the conspiracy to plunder them by multiplicity of actions can result in other than a serious loss to the speculators.

A more ingenious plan has been adopted by the attorneys for one of the most notorious of the way litigants, who is said to have upwards of a thousand actions now pending, besides some hundreds that have been settled. Instead of bringing a number of actions simultaneously, they have now issued a writ for the whole debt claimed (usually about double what is due) against one member of the committee. He is prevailed upon to settle by paying a small portion of it and the costs, and receives a guarantee not to proceed further against

m, except for sake of conformity. Another writ is en issued against another member of the committee r the balance; and so on, in like manner, until when me fifty or sixty writs having been thus issued, e claim is recovered by the plaintiff, and the attor- y has received the full costs on so many actions.

But even this ingenious scheme of plunder may s defeated by the same means as are above de- scribed. The various actions are still pending, al- ough each defendant has obtained a guarantee at it shall not proceed as against him. The plea lis pendens, if good, may be put in by the new efendant; or he may pay the debt, and perhaps ould be relieved from the costs, on satisfying the ourt that the plaintiff had already received costs om the other parties. Or, upon judgment ob- tained, or payment of the debt and costs by one, it is not unlikely that the Courts would compel the rmal discontinuance of the actions against the hers, and payment of the costs by the plaintiff, ven although he had already received costs from hem; for the Courts lean strongly against multi- plicity of suits, and would certainly strain a point o prevent and punish such a perversion of the law o the purposes of oppression and plunder, as now is aily practised; to the disgrace and dishonour of he Profession.

And if any such case can be clearly proved, ould it not be as well to make application to the ourt to strike from the rolls the attorney who has o acted? It would, at least, give a rebuke, and e very publicity would be a punishment.

Other questions arising out of this fertile theme ust be deferred for future consideration.

E. W. C.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

MARRIAGES.

ABRAHAM, the Rev. T. F. perpetual curate of Bickerstaffe, Lancashire, to Ellen, eldest daughter of Richard Bethell, esq. Q.C. on the 9th inst. at St. Michael's, Highgate.

DAMMELL, Edward, of Tonbridge, Kent, solicitor, to Sarah, second daughter of William Kipping, esq. Golden-green, Hadlow, on the 13th inst. at Hadlow.

LATHAM, Henry, esq. of the Chancery Registrar's Office, to Mary Frances, eldest daughter of Thomas Leach, esq. of Russell-square, on the 17th inst. at St. George's, Bloomsbury.

STARTS, William Frederick Browne, of the Middle Temple, esq. barrister-at-law, to Janet Helen Alexandrina, youngest daughter of the late Colonel Mackenzie, of St. Helier's, Jersey, on Tuesday, the 12th inst. at St. George's, Hanover-square.

DEATHS.

BERKELEY, Henry Comyns, esq. formerly of Lincoln's-inn, on the 6th inst. at Dunseldorf.

GLENNER, Lord, on Saturday last, at Baskimming House, Ayrshire, aged 90, perhaps better known by a title which he bore as a judge in the Court of Session, than by his subsequent designation of Sir Wm. Miller of Glenlee. He filed the office of a judge in the Court of Session from 1795 to 1846.

JOURNAL OF PROPERTY.

Public Sales.

By Messrs. DRIVER, at the Mart.

A parcel of freehold building ground, containing 4a. 1r. 6p. with a frontage to the roads leading from London to Addiscombe, and from Croydon to Woodside—930l.

Another parcel of ditto, adjoining the above, containing 4a. 6r. 10p. with a frontage to the road from Croydon to Woodside—610l.

Another parcel of ditto, adjoining Lot 3, containing 3a. 0r. 30p. with a frontage to the road from Croydon to Woodside—200l.

Another parcel of ditto, adjoining Lot 3, containing 5a. 2r. 34p. with a frontage to the road from Croydon to Woodside—600l.

Another parcel of ditto, containing 4a. 1r. 22p. with a frontage to the road from Croydon to Woodside, and another frontage to a proposed new road—850l.

Another parcel of ditto, adjoining lot 5, containing 7a. 3r. 8p. with a frontage to a proposed new road—820l.

A parcel of freehold meadow land, adjoining lot 6, containing 6a. 0r. 23p. and another small piece of ditto, abutting on the London and Brighton Railroad, containing 2a. 2r. 10p.—940l.

A parcel of freehold building ground, containing 7a. 0r. 20p. with a frontage to the road from Croydon to Woodside, and to a proposed new road—850l.

Another parcel of ditto, adjoining lot 6, containing 4a. 3r. 30p. with a frontage to a proposed new road—500l.

Another parcel of freehold land, adjoining lot 9, containing 6a. with frontage to a proposed new road; and another plot of freehold land, adjoining lots 9 and 7, containing 4a. 3r. 24p.—940l.

By Mr. F. CHINNOCK.

Sixty-five shares in the Antwerp Steam Navigation Company, sold at 4s. each.

By Messrs. SHUTTLEWORTH AND SONS.

A town mansion, No. 12, Sussex-place, Regent's-park; held for 75 years, at a ground rent of 65l. per annum—2,500l.

A freehold estate, called Palm Cottage, situated in the East India-road, Poplar—1,300l.

A house, No. 22, Commercial-road East; held for 52½ years, at 3l. per annum, let at 18l.—165l.

A similar residence, No. 23—155l.

A ditto, No. 24—155l. A ditto, No. 25—155l.

A house with shop, No. 26, Bedford-street; held for 52½ years, at 3l. per annum, let at 24l.—200l.

THE MANORIAL RIGHTS AND PROPERTY OF MANCHESTER.—We congratulate the community on the formal completion of the purchase of the rights and properties of the manor of Manchester, by the corporation, as trustees for the inhabitants of the town. The conveyances of the manorial rights, and the land and properties incident thereto, to the mayor, aldermen, and burgesses of Manchester, were executed on Tuesday last at Derby, by Sir Oswald Mosley, late the lord of the manor, in the presence of the town clerk. On Wednesday this fact was communicated by the mayor to the council, at their quarterly meeting, and the common seal of the corporation was ordered to be affixed to the conveyance, and to the mortgage of the property and assignment of the borough-rate, for securing the payment to Sir Oswald Mosley of 195,000l. the unpaid residue of the purchase-money. In referring to this subject in council, Mr. Alderman Kay spoke in justly high terms of commendation of the liberal and handsome conduct of Sir Oswald Mosley, throughout a protracted negotiation of fourteen months.—Manchester Guardian.

The following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

For the first 70 words 5s.

For every succeeding 30 words . 1s.

THE MONEY MARKET.						
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Three per Cents. Consols	96½	96½	95½	95½	96½	96½
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Bank Stock	205½	204½	205	205½	205½	205½
India Stock	263½	264½	264½	264	264	264
India Bonds, prem.	27	28	29	27	29	29
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Spanish Five per Cents.	25½	25	25½	24½	24½	24½
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Portuguese	55½	55½	55½	55	55	55½
Mexican	33½	33½	33½	33½	33½	33½
Dutch Two-and-a-Half per Cents.	16½	16½	16½	16½	16½	16½
Four per Cents.	92½	92½	92½	92½	92½	92½
Danish	88	88½	88½	88½	88½	87½
Colombian	17½	17½	17½	17½	17	17
Chilian	99½	99½	99½	99½	99½	99½
Buenos Ayres	39½	39½	40½	41½	41½	41
Brazilian	82½	82½	82½	82½	82½	82½
Belgian	96½	96½	96½	96	96½	96½

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, May 4.

Harris, I. clothier, last exam. June 1.—Ward, H. paper manufacturer, last exam. passed.—Willett, J. leather cutter, last exam. sine die.

Tuesday, May 5.

Brett, J. sheep salesman, last exam. June 12.—Chamberlaine, W. grocer, annulled.—Ellis, R. carpenter, last exam. sine die.—Giro, J. merchant, last exam. passed.—Innell and Co. varnish manufacturers, last exam. passed.—Thompson, J. grocer, last exam. passed.—Waldock, H. chemist, assignees, June 9.—Waters, C. H. dealer in paintings, last exam. passed.

Wednesday, May 6.

Brooke, J. miller, div. next week. Whitmore, London.—Cooper, J. painter, div. next week. Bell, London.—Jones, M. grocer, div. next week. Bell, London.—Prince, G. wine merchant, last exam. sine die.—Sporer, J. F. tailor (with J. Miley), joint and sep. of Sporer next week. Edwards, London.

Thursday, May 7.

Bradshaw, W. cattle salesman, assignees June 11.—Bryant, J. draper, last exam. June 23.—Cubitt, M. builder, last exam. June 4.—Herpert, F. warehouseman, div. next week. Johnson, London.—Morpheu, W. draper, last exam. June 18.

Friday, May 8.

Barratt, J. C. carver, last exam. passed.—Butcher, W. carpet dealer, div. next week. Groom, London.—Kinghorn, D. J. baker, last exam. passed.—Kirkup, J. coal merchant, last exam. May 27.—Needham, F. H. dressing-case maker, last exam. June 10.—Rogers, H. scrivener, div. next week. Edwards, London.—Tebbutt, J. auctioneer, last exam. passed.—Wace, R. merchant, joint div. next week. Groom, London.

Saturday, May 9.

Couchman, C. brickmaker, last exam. sine die.—Time-well, W. T. lead smelter, assignees May 30.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Ashton, T. J. tailor, fourth, 54d. Groom, London.—Barnes, G. innkeeper, first, 1s. 6d. to new proofs. Groom, London.—Chapman, T. dairyman, third, 13d. Groom, London.—Evans, J. ironmonger, first, 4s. 9d. Bird, Liverpool.—Fethergill and Co. lamp black manufacturers, sep. fin. 5s. Wakley, Newcastle.—Graham and Co. colico printers, 1s. 6d. Follett, London.—Payne, R. brass founder, second, 3s. Groom, London.—Stovin, C. coach proprietor, fin. 3d. Whitmore, Birmingham.—Todd, T. cotton dealer, second, 7½d. Fraser, Manchester.

Insolvents' Estates.

Best, R. esq. 1s. (in addition to 6s.).—Betts, C. general shopkeeper, Kenninghall, Norfolk, 9s.—Chambers, H. tailor, Ashton-under-Lyne, 6½d. Fraser, Manchester.—Cooper, T. currier, Thrapstone, 1s. 9½d.—Evans, J. farmer, Llandysall, 20s.—Weale, E. T. commander in the navy, on half-pay, Kingston-upon-Hull, 3s. 9d. (in addition to 3s.).

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, May 8.

Coleman, S. miller, Norton Lindsey, May 1. Trusts. J. Squires, miller, Milverton, and T. Davis, millwright, St. Nicholas. Sol. Newsam, Warwick.—Horn, J. builder, Dover, April 28. Trusts. M. Kennett, gent. J. Crundall, builder, and J. Fletcher, ironmonger, all of Dover. Sol. Bass, Dover.

Gazette, May 12.

Hobson, H. grocer, Connaught-ter. Edgeware-rd. May 8. Trusts. G. Hobson, architect, Connaught-ter. and W. Hopwood, accountant, Aldine-chambers, Paternoster-row. Sols. Fielder and Co. Duke-st. Grovesnor-sq.—Page, J. iron merchant, Walsall, April 27. Trust. H. Kirby, jeweller, Birmingham. Sol. Smith, Walsall.—Thrippleton, J. cloth maker, Leeds, March 25. Trust. S. Birchall, wool merchant, Leeds. Sol. Preston, Leeds.—Webster, A. milliner, Peterborough, April 29. Trusts. R. J. Head, draper, and E. Pearless, draper, both of Peterborough. Sol. Buckle, Peterborough.

ASSIGNMENT DIVIDEND.

Shaw, W. C. H., and J. S., fancy woollen manufacturers, Huddersfield, Dec. 28, 1843, first and fin. div. 6s. 8d. Apply to J. Frith, drysalter, Huddersfield.

Bankrupts.

Gazette, May 8.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

ABRAMS, JOHN DODSWORTH, tailor and draper, York, May 19 and June 16, at eleven, Leeds, Com. West; Young, off. ass.; Rushworth, Staple-inn, Jackman, York, and Harle, Leeds, sols. Date of fiat, April 30. J. Mason, gent. York, pet. cr.

CLARKE, CHRISTOPHER, draper, Goswell-rd. and Cranbourne-st. May 19, at two, June 19, at twelve, Basinghall-st. Com. Foulbancque; Pennell, off. ass.; Soles and Turner, Aldermanbury, sols. Date of fiat, April 30. W. Nevell and D. Jandain, warehousemen, Maiden-lane, pet. crs.

CLARKE, BENJAMIN, grocer, Stroud, Gloucestershire, May 19 and June 19, at eleven, Bristol, Com. Stevenson; Hutton, off. ass.; Kearsay, Stroud, sol. Date of fiat, May 2. Bankrupt's own petition.

FOALE, ROBERT, victualler and innkeeper, Kingsbridge, Devonshire, May 21 and June 17, at eleven, Exeter, Com. Bere; Hernaman, off. ass.; Weymouth, Kingsbridge, Weymouth and Co. Angel-ct. and Turner, Exeter, sols. Date of fiat, May 4. H. Crews, brewer, Plympton (executor of R. Foale), pet. cr.

FREEMAN, THOMAS, fringe and trimming manufacturer, 96, Wood-st. Cheap-side, May 15, at twelve, June 18, at eleven, Basinghall-st. Com. Shepherd; Graham, off. ass.; Guillaume, Bucklersbury, sol. Date of fiat, April 28, Bankrupt's own petition.

GILL, WILLIAM, corn merchant, Warrington, Lancashire, May 22 and June 12, at twelve, Manchester; Hobson, off. ass.; Gregory and Co. Bedford-row, and Nicholson and Sons, Warrington, sols. Date of fiat, May 2. Bankrupt's own petition.

KNOWLES, STEPHEN, common brewer, Exeter, May 20 and June 17, at eleven, Exeter, Com. Bere; Hirtzel, off. ass.; Stogdon, Exeter, and Keddell and Co. Lime-st. sols. Date of fiat, April 28. J. Stogdon, gent. Exeter, pet. cr.

ODDEN, SAMUEL, woollen and cotton factor, Manchester, May 20 and June 9, at twelve, Manchester, Pott, off. ass.; Johnson and Co. Temple, and Needham, Manchester, sols. Date of fiat, May 4. Bankrupt's own petition.

PARKES, CUTHBERT, linen draper, Liverpool, May 20 and June 16, at twelve, Liverpool, Com. Phillips; Casenove, off. ass.; Gregory and Co. Bedford-row, and Green, Liverpool, sols.

SHANN, SAMUEL, cloth finisher, Leeds, May 25 and June 15, at eleven, Leeds, Com. Burge; Kynaston, off. ass.; Strangways, Barnard's-inn, and Robinson, Leeds, sols. Date of fiat, May 4. J. Sissons, farmer, Sherburn, pet. cr.

TAYLOR, JOHN JOSEPH, tobaccoist, 268, Tooley-st. South-west, May 14, at two, June 18, at one, Basinghall-st. Com. Evans; Johnson, off. ass.; Welborne, Tooley-st. sol. Date of fiat, May 7. Bankrupt's own petition.

WHITELAW, JAMES and THOMAS, builders, Litchfield-st. Soho, and 25, Store-st. Bedford-sq. May 15, at two, June 13, at twelve, Basinghall-st. Com. Goulburn; Green, off. ass.; Smith, Farnival's-inn, sol. Date of fiat, May 5. Bankrupt's own petition.

Gazette, May 12.

ANDREWS, JOHN, commission agent and share broker, Hill-house, near Huddersfield, Yorkshire, May 25 and June 15, at eleven, Leeds, Com. Burge; Kynaston, off. ass.; Clarke, Chancery-lane, Hird, Huddersfield, and Sanderson, Leeds, sols. Date of fiat, May 4. Bankrupt's own petition.

BACON, JOHN, carpenter, joiner, and builder, York, May 26 and June 6, at eleven, Leeds, Com. West; Young, off. ass.; Brook, Featherstone-buildings, Hodgson, York, and Harle, Leeds, sols. Date of fiat, May 7. Bankrupt's own petition.

BADGER, WILLIAM, boot and shoe maker, Rotherham, Yorkshire, May 22 and June 12, at eleven, Sheffield, Com. West; Freeman, off. ass.; Tattersall, Great James-st.

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Tuesday, December 30.

COMBE V. CORPORATION OF LONDON.
Tolls—Production of accounts and papers.

This was an appeal from a decision of the Vice-Chancellor Knight Bruce, directing the production of various accounts, charters, and papers belonging to the corporation of the city of London, which were mentioned or referred to in the schedule to their answer. The facts of the case, which is important, as bearing upon the extent to which the production of documents of title may be compelled to be discovered, are these:—In October, 1835, the mayor and commonalty and citizens of London, John Henry Liguorish, and other persons describing themselves as members and rulers of the Fellowship or brotherhood of the porters of Billingsgate, in the said city, and William Rushton and John Eyras, describing themselves as members, or shifters, or paymasters of the said Fellowship, filed their bill in this Court against the present plaintiffs, who were partners and brewers in the Savoy, in St. Martin's-in-the-Fields, Westminster, which alleged that the mayor, commonalty, and citizens of London were in possession of divers royal charters, conferring on them great powers and privileges, and that they possess many valuable rights by prescription, which had been confirmed by Charter and Acts of Parliament, and contained the following statements:—"That the portage and carriage of all coals, corn and grain, and of all salt, and all kinds of apples, pears, plums, and of onions, and of roots to be eaten, and of all merchandizes measurable, arriving or brought into the city of London, upon or by the water, or by the river Thames, and going out of the said port, within the limits therein-mentioned, in any ship, boat, barge, or vessel, floating, loading, remaining, or being on what side soever of the river Thames; and upon any bank or shore of the same river, which shall happen there to remain and be delivered, or landed or carried outwards, or from the city, from the bridge of Staines to London Bridge, and from thence to a place called Yendall, now called Yantlett, towards the sea, have time out of mind belonged to, and still do belong to the said mayor, &c. or their grantees, and always have been, and now are exercised and used by certain porters, freemen of the said city, called corn and salt porters, &c.; that the said mayor, &c. or their grantees, the said corn and salt porters, have had and taken, and ought to have and take certain reasonable rates, or their wages payable in that behalf; that the said corn and salt porters were an ancient brotherhood or fraternity, under the control and regulation of the court of the lord mayor and aldermen, and afterwards, and now of the court of common council of the said city, and were regulated by an Act of the said common council passed in the 18th year of the reign of King James the First; that there is an ancient public office in the said city called the Commissioner's Office, where, and at other convenient and well-known places within the said city, the said porters have, from time immemorial, and do still attend

for the purpose of receiving orders in respect of the portage of corn and grain, &c. which should arrive or be brought in any ship, boat, barge, or vessel on the river Thames, within the said port of London, and to be unloaded, or carried, or removed out of such barge or vessel; that notice ought to be given to them, &c.; that the rate of wages of such parties has been from time to time varied, and that the present rate for carriage or portage of malt in sacks from any ship, &c. to any wharf or quay above London Bridge, and not carried above thirty yards from the camp-shott, is one penny for every sack of malt, and for the carriage or portage of malt, being loose or in bulk, and so carried, one penny farthing for every sack. The bill then alleged, that the present plaintiffs had landed by hired workmen, not being members of the said Fellowship, large quantities of malt at their wharf at the Savoy, which they had consumed in the way of their trade, and prayed for a declaration that the exclusive right of portage of all corn and grain landed from any vessel within the port of London is vested in the mayor and commonalty and citizens of the city of London, and for an account of the malt so taken. To this bill the plaintiffs put in their answer, and likewise filed a cross-bill for discovery of documents. The substance of their case, as alleged by their answer and cross-bill was this:—"That the right of portage claimed by the city and their grantees had no legal origin; that such claim commenced long since the time of legal memory, and that the exercise of it, so far as it had been exercised, was of modern origin; that in the time of Henry 3 the only port in London at which corn could be landed was Queenhithe, where, under an order of the ninth year of that reign, certain dues were exacted from all foreign vessels (or vessels not belonging to the citizens of London), for the use of the King; that this order did not affect citizens of London; that by the charter of the 31st of Henry 3, Queenhithe was granted to the mayor and commonalty of the city of London, and thereupon they employed porters to carry corn and grain landed from foreign vessels; but that prior to this grant the corporation did not exercise any right of portage either at Queenhithe or elsewhere; that in the time of Edward 4, as a place of resort for vessels, was superseded by Billingsgate; that Queenhithe and Billingsgate are public markets; that the right of portage, if it exists, is incidental to the market, and does not extend beyond the public markets, or to corn not used for sale, but for private consumption; that the custom of Queenhithe and Billingsgate as to carrying corn, grain, &c. are confined to such of those articles as are brought into the city, and do not extend to such as are loaded in Westminster or any other place without the limits of the city; but that the right of portage, as far as it extends, is incidental only to the measuring of corn and grain; and that where measuring is not required, there is no right of portage. The cross-bill and bill of discovery, after charging generally that the defendants had in their power divers and ancient deeds, charters, inquisitions, or finding upon inquisitions, books, accounts, and documents relating to the history of Queenhithe and Billingsgate, and to the ports, &c. thereof, and to the times and the means at and by which the same were granted to the corporation, and the customs, usages, and rights of the said ports, and the several other matters aforesaid, whereby it would appear that the claim of portage made by the bill commenced within legal memory, and that the right thereto (if any) was confined to the limits of the city of London; the bill charged more particularly that the defendants had in their possession the several orders made by King Henry 3 touching the port Queenhithe, and a commission of inquisition held in the 28th year of the same reign, touching the customs of Queenhithe, and the findings thereon, and also a certain grant or letters patent of the 31st of the same reign, by which he granted Queenhithe to the mayor and commonalty of the city of London and their successors, and an ordinance or statute of the 3rd year of Edward 4, respecting the market of Queenhithe, and a regulation for the resort of vessels to Queenhithe and Billingsgate, in a certain way or proportion, and also an Act of common council passed in the 18th year of the reign of King James 1, for the incorporation of the said Fellowship of porters, and also a charter granted to the corporation of London by King James 1, bearing date the 20th of September, 1609: which documents the defendants ought to produce, but had refused so to do.

The defendants, the mayor and commonalty and citizens of London, by their first answer, denied the principal allegations contained in the bill of discovery, relative to the claim in question. In answer to the charges as to deeds and documents, they said that they had set forth on their information and belief the purport, and in some instances a statement *verbatim*, of the following documents; namely, a charter of the 30th October, in the 30th Hen. 3, which, in the body of the answer, purported to be a covenant between the Earl of Cornwall of the one part, and John de Gisors, Mayor of London, of the other part, whereby the Earl granted to the mayor and commonalty Queenhithe, with its liberties and customs, in fee farm, ren-

dering the yearly rent therein mentioned; a charter of the 26th February, of the 31 Hen. 3, whereby the King confirmed the before-mentioned covenant; a finding on an inquisition of the 29 Edw. 1, before Elias Russell, Mayor of London, relating to the measuring, carriage, and portage of the corn brought to Queenhithe, stating the sums which the porters of corn were authorized to charge for carrying it to the bakers, brewers, and others of the city; an Act of common council of the 4 Edw. 4, relating to the landing of corn at Queenhithe and Billingsgate; a proclamation of 9 Eliz. relating to the same matter; a report of certain aldermen in the 8 Eliz. relating to the same matter; an Act of common council of the 18 Jac. 1, relating to the Fellowship porters. But, "save as aforesaid, the defendants averred that they did not know, and would not set forth as to their information or belief, whether the statements in the bill relative to the particular orders, charters, and documents mentioned in the bill were correct, or whether there were any other documents which would bear out those statements. And the defendants admitted the possession of divers royal charters and divers books belonging to the corporation, containing copies of or extracts from ancient deeds, charters, &c.; together with divers documents, evidences, and writings relating to the history of Queenhithe, as in the bill; but they denied that if the same were produced it would appear from them, or any of them, that the claim of portage made by the defendants commenced within legal memory, &c." On the contrary, these defendants say that the said royal charters and books, and the said documents, evidences and writings, contain and are the title-deeds and documents evidencing and shewing the title of these defendants and their grantees, the said Fellowship porters, to the exclusive right of portage of all corn, &c. and are intended to be used by these defendants as evidence in their behalf in the before-mentioned suit. And these defendants say, that they believe that, by such charters, &c. it does appear that they and their grantees have such exclusive rights. And these defendants say they have, in the schedule to this their answer annexed, and which they pray may be taken as part thereof, set forth a full and true list or particular of all and every the charters, &c. relating to the history of Queenhithe, &c. But these defendants submit and insist that they ought not to be compelled to produce the same, or any of them, inasmuch as these defendants say that the said complainants have no interest in the same, or any right to an inspection or production thereof." The schedule to the answer comprised the charter of the 30th of October, 30 Hen. 3; that of 26th of February, 31 Hen. 3; that of 20th of September, 6 Jac. 1; a copy of an entry in the hundred rolls deposited in the Chapter House, Westminster, of 3 Edward 1; a copy of an entry in the register of the proceedings in the Privy Council of the 29th of January, 1685, kept at Whitehall; and divers repertories and journals, and other corporation books, marked respectively with the letters A to F, inclusive.

The plaintiffs amended their bill by making more precise charges as to the possession of certain documents, accounts, &c.

JUDGMENT.

Dec. 20, 1845.—THE LORD CHANCELLOR.—This case came before me on motion to discharge an order of the Vice-Chancellor Knight Bruce for the production of documents mentioned or referred to in the answer of the defendants. It is not necessary to state the facts in detail, as they are fully set forth in the report of the proceedings before the Vice-Chancellor. The corporation of London claim to be entitled by prescription to measure all corn, grain, &c. brought by the river Thames, and landed at any point between Staines Bridge and Yantlett, and to receive certain ancient fees in respect of the performance of that duty. The plaintiff had landed certain quantities of malt at their wharf in Westminster, and the corporation filed a bill against them for an account of the malt so landed, claiming the accustomed fees. The plaintiff filed a cross-bill for a discovery, denying the right of the corporation; contending that if the right existed, it was to a much more limited extent than is claimed by them; that it was comparatively of modern origin; that the fees had been from time to time varied, and that there was no ground for the prescription claimed. The defendants having put in their answer, the plaintiffs moved for the production of the documents mentioned or referred to in such answer. When the motion came on for argument, the defendants objected to the production of such of the documents as had been produced under an order of the Chief Baron, Lord Abinger. Secondly, to the metage accounts kept by the meters, who were the servants of the corporation. Thirdly, to certain books and repertories enumerated in the first schedule to the answer. And lastly, to the charter of the 6th of James 1st, and the subsequent charter of Charles. With respect to the case and opinion, it is unnecessary for me to express any opinion; they were considered by the Vice-Chancellor to be protected, and the defendants do not of course complain of that part of the judgment. The first question for consideration relates to the books of account kept for the

corn meters. The plaintiff insists in his bill, among other things, that the rates of charge have varied, and they will appear after inspection of these books. The statement in the bill is, that the defendants had in their possession, custody, or power, divers accounts or books of account, in which entries have been made of all corn, &c. measured by the corn meters during a long period of years, together with, among other things, the fees and wages received for such measuring; and that if such books of accounts were produced, it would thereby appear that among other things the rate of fees and wages, and rewards claimed and received on account of the metage aforesaid, and the labour incidental thereto, have from time to time varied. The bill, therefore, charges the possession of these documents, and that they relate to the matters in dispute in this suit, namely, among other things, metage, and the fees and wages paid in respect of it. If they exhibit a variance in the amount of rates paid at different periods, it is obvious that such evidence would be material for the plaintiff at the hearing of the cause. The defendants, the corn meters, in their answer admit the possession of these books of account, and say, not positively, but to the best of their information and belief, that it will not appear from them that the fees and rates of charge have varied; and they further state that these accounts, or books of account, contain material evidence for the corporation, and that they are intended to be used in support of their claim; but the material question is, whether they do not also contain, by the alleged variance of charges, evidence for the plaintiff. This is denied only according to the information and belief of the defendants. In *Bannatine v. Leader* (10 Simons, 330) the Vice-Chancellor of England considered, and I think properly, that it was not sufficient, in a case of this kind, to swear merely to the defendant's belief.

It further appears from the answer, that the examination of the documents of the defendants, the corn meters, had been imperfect; for in another part they set out the names of certain places where the measurement had taken place out of the City of London, being, as they state, all that they had met with; but they add, that the accounts are numerous, and that there may be many others besides those they have mentioned. The number of the documents is not a sufficient excuse for an imperfect examination of them, as the Court would, upon a proper application, allow the necessary time to prepare a sufficient and satisfactory answer. The same objections apply to the answer of the corporation. With respect to the town clerk, it does not always very distinctly appear when he is meant to be included under the description of these defendants; but if he denies at all that the accounts will show that the payments have varied, he states that only according to information and belief, and there is sufficient also in his answer to show that if he has examined the accounts, the examination has been partial and imperfect. I am of opinion, therefore, that these accounts must be produced. The next question relates to the books and repertories mentioned in the first schedule. The defendants, the corporation, and their town clerk, say in their answer, that, save as therein mentioned, they deny that they have in their possession any book or books relating to the matters in the bill mentioned, except that there are, in the custody or power of the defendants, certain written books or repertories set forth in the first schedule, which contain entries of divers matters and things which the defendants believe form material evidence as to the exclusive right of metage, and which they intend to use in the support of their right. And, in a subsequent passage, they expressly admit that the books and repertories mentioned in the first schedule, contain copies, abstracts, or extracts from documents relating to the measuring of corn and grain by the meters; and they admit the possession of such books and repertories, but they deny that the plaintiff has any interest in them; and further, they deny, to the best of their knowledge, information, and belief, that if they were produced, it would appear by them that the right had commenced within the time of legal memory, or that they contain or would furnish evidence on behalf of the plaintiffs; on the contrary they say they are advised and believe the same are most material evidence in the support of their exclusive right against the plaintiff. There is in these passages a sufficient admission that the books and repertories set forth in the first schedule relate to the matter mentioned in the bill. The only question therefore is, whether any sufficient reason as is assigned why they should not be produced. When documents are charged and admitted to be in the defendant's possession relating to the matters in question, it must depend upon the sufficiency of the answer, whether the Court will order the production of them. The remaining question relates to the charters of the 6th James 1, and the charter of Charles 2. The charter of the 6th James 1, either the original or a copy, but as I read the answer, the original and the charters of Charles 2 are admitted by the defendants, the mayor, aldermen, and commonalty and the town clerk to be in their possession, and they clearly relate to the matters mentioned in the bill; that may be material in the plaintiff's case, for they tend to show that the right is

confined to corn, &c. imported for the purpose of sale. In one part of their answer the defendants say that the charter of the 6th of James 1 was not necessary to their case; but in a subsequent part they state that the charter of Charles 2, in which the charter of the 6th of James 1 was recited, forms part of the evidence of their title to the exclusive right of metage, but they nowhere, as far as I can discover, state that they do not afford evidence in support of the plaintiff's case. Beyond the facts which I have stated, there is nothing relied upon as a reason why the charter should not be produced. There is no ground, therefore, for discharging any part of the Vice-Chancellor's order, and the motion therefore must be refused with costs.

VICE-CHANCELLOR OF ENGLAND'S COURT.

RUSSELL v. NICHOLLS.

Ex parte FISHER.

Practice as to costs under the 120th Order of May 1845. The above Order directs that "where costs are to be taxed as between party and party, the Taxing Master may allow to the party entitled to receive such costs all such just and reasonable expenses as appear (among other things) to have been properly incurred in procuring the attendance of counsel in the Master's offices upon questions relating to pleadings or title." (Art 5.) Held, that the Taxing Master was right, upon a reference to him to tax costs as between party and party, in disallowing the costs of procuring the attendance of counsel before the Master for the purpose of resisting a discharge in an executor's account.

In this cause the original bill was filed by Elizabeth S. Russell, on behalf of her five infant children, against the executors of the will of John Russell and the other persons interested thereunder, for the purpose of having the accounts of the said testator's estate taken, and the trusts thereof duly administered. The usual decree was made on the 21st Feb. 1838. In the progress of taking the accounts before the Master, it appeared that the executors had paid to the respective payees three promissory notes, one for 2,000l. another for 240l. and another for 355l. drawn by the testator, and executed on the same day as that on which he executed his will, and for which the executors claimed a discharge. It then also came out, for the first time, that all these notes were in the custody and possession of the testator at the time of his decease, and were by his executors found among his papers by the executors, who handed them over to the payees. As it did not appear that there had been any consideration given for these notes, the plaintiff was advised that the payment of them ought not to be allowed in the discharge of the executors, until the whole matter had been fully investigated before the Master. She therefore obtained the attendance of counsel before the Master for the purpose of better investigating the matter, and the executors also on their behalf obtained the attendance of counsel. The investigation in the Master's office was carried on at different times, in the course of which many legal arguments were had on one side and the other, the Master at first being inclined to think that the executors could not be allowed their discharge in respect of those payments; but further evidence being adduced, he was of opinion that the executors were entitled to their discharge, stating, however, that the inquiry had been a very proper one, and that the circumstances connected with the making, delivery, and payment of the notes required some explanation. The cause coming on upon further directions, a decree was made thereon, whereby, among other things, it was referred to the Taxing Master in rotation, "to tax all parties the costs of these suits up to the present time, and their subsequent costs (the costs of the executors, as between solicitor and client), and the costs of all parties to the said petition heard in the said causes." The Taxing Master was of opinion that he was not empowered to allow in the costs incurred by the plaintiff, the charges for fees paid to counsel, or for briefs or copies of papers furnished to counsel on prosecuting the inquiry before the Master as to the delivery and payment of the said promissory notes by the executors. G. H. Fisher, who had married one of the infant plaintiffs, and as such was interested in the testator's estate, had carried on the latter part of the said inquiry before the Master, the plaintiff herself having declined to proceed with the investigation, and being dissatisfied with this taxation, presented this present petition, stating as before mentioned, and praying that the Taxing Master might be directed to review his taxation of the costs of the petitioner, and of the said Elizabeth S. Russell respectively, and that he might be directed to tax and allow the petitioner and the said plaintiff respectively, the said charges so disallowed from their respective costs in respect of the said inquiry before the said Master as to the said promissory notes, or so much and so many of the said charges as the said Taxing Master should be of opinion had been properly incurred by petitioner and plaintiff respectively.

Bethell and Bagshawe, in support of the petition, contended that, under the above Order of May 1845,

the Taxing Master ought to have allowed the costs, notwithstanding the form of the decree.

Willcock, Stuart, and other counsel for the other different parties, opposed the petition, on the ground that this was in reality a petition of rehearing; for so long as the decree remained in its present state, the Master was not empowered to tax costs, except as between party and party; and that the 120th Order did not meet the case; the 5th article applying only to questions of pleading and title.

Bagshawe, in reply.

The VICE-CHANCELLOR considered himself bound by the decree, which directed that a reference should be made to the Master in rotation to tax all parties their costs, and therefore the costs of the party whose behalf the present petition had been presented were to be taxed as between party and party. That if the taxation really did take place after the time at which the Orders of May 1845 came into operation, the taxation ought to be regulated by the 120th Order; and the taxation not having been completed until the 22nd January last, it came within those Orders. It has not been said that this is a question of pleading, but one relating to title, because the question is, whether the title to a certain sum is in the executors. His Honour, moreover, stated that he could not be induced to think that a question as to the allowing a discharge to an executor could be fairly considered one of title; for that if two professional men were talking together, and one said he had been attending the Master upon a question of title, could the other party suppose the question before the Master only in fact related to the allowance or disallowance of an executor's discharge? That he did conceive the true construction of the Order was one that, in the present case, would enable the Taxing Master to allow the costs of counsel's attending before the Master. Had the petitioner any special circumstances to entitle him to such costs, they ought to have been brought out at the hearing, in order that the Court might have decided upon those circumstances. His Honour thought that the Master was right and the petition wrong, and therefore *Dismissed it with costs.*

Monday, March 9.

SMITH v. SHERWOOD.

Partnership, — what amounts to a sufficient evidence of.

A bill is filed by A against two others, upon the ground of their being co-partners with him in a certain business. B and C filed their answer, denying the partnership, but stating that A was merely employed by them as their foreman; but as it was in contemplation of taking A into partnership with them, the accounts had been made out in the joint names of B, C, and A, the tools and utensils marked with their names. They admitted their having served A with notice to dissolve partnership, and admitted also specification of certain buildings and other work which was required by them, which specification described the work required to be done as being upon the property of B, C, and A. Held, that there was sufficient evidence of a partnership between B, C, and A.

From the statement in the bill, it appears that, in the month of December 1839, a verbal agreement was entered into by and between the plaintiff and the defendants, Robert Sherwood and Henry Sidney, for a partnership to carry on the business of engine-builders and ironfounders at Middlesborough, in the county of York, under the style of "Sidney, Sherwood, and Smith." It appeared by the terms of the agreement that the two defendants were to advance all the capital, and the plaintiff was to give his attention to the management of the business, and plaintiff and defendants were to be considered partners in equal shares. The bill went on to state the commencement of the said business, and that from the month of December 1839, all transactions relating thereto were carried on in the name of the said firm, and all bills of exchange and promissory notes and securities for money were made, signed, and accepted by or in the name of the said firm; and a certain cart, and all tools and utensils of or belonging to the said firm, were painted or marked with the words "Sidney, Sherwood, and Smith," or with the initials "S.S.S." The bill then stated that differences arose between the plaintiff and defendants, and that on the 16th March, 1841, the plaintiff received from the defendants a written notice, signed by the defendants, in the following words:—"To William Smith, of Middlesborough, in the county of York, ironfounder.—We, the undersigned Henry Sidney, of Middlesborough, in the county of York, ironfounder, and Robert Sherwood, of Stockton, in the county of Durham, ironfounder, do hereby give you notice, that we are desirous to dissolve and put an end to the copartnership heretofore subsisting between you and us, as ironfounders, at Middlesborough aforesaid; and we do hereby dissolve and put an end to the said copartnership accordingly. As witness our hands, this 16th day of March, 1841.—Henry Sidney. R. Sherwood." Various circumstances were charged in the bill tending to prove the partnership; and as evidence, among other things, it was shown that in July notice was given by the plaintiff and the defendants to builders and others in

the neighbourhood of the said partnership works that certain works were required to be done on behalf of the said partnership, and that a certain specification and plan of such works were signed by the plaintiff and defendants, the commencement of which was as follows:—"Specifications of the masonry and brickwork of the annexed plans of workshops purposed to be built at Middlesbrough, on the property and for the company of Messrs. Sidney, Sherwood, and Smith." The bill also prayed that the partnership accounts might be wound up, &c. In their answer the defendants denied that the plaintiff was a partner in the said concern, but stated that he was employed by them as their foreman, or manager; they further admitted that it was their intention to take him into partnership upon his bringing a certain sum of money into the concern, but that he, the plaintiff, had failed to do so. They admitted also that, for the purpose of enabling him the better to manage the concern, they had allowed him to hold himself out as a partner with them; and that, in anticipation of the said contemplated partnership, one cart, and no more, and the tools and utensils of or belonging to the said concern, were painted or marked with the words "Sidney, Sherwood, and Smith," or with the initials "S. S. S." The defendants also admitted that until, or shortly before, the 16th of March, 1841, the accounts of the said concern were made out in the names of "Sidney, Sherwood, and Smith," the intended style of the said contemplated partnership. They stated, moreover, that being advised, that, having in the manner aforesaid, allowed the plaintiff to hold himself out as a partner in the said concern, there was a necessity for putting an end in the regular way to such supposed partnership, they did, on the 16th of March, 1841, serve the plaintiff with the notice of dissolution in the bill stated; that such memorandum or specification as in the said bill mentioned was signed by the plaintiff and defendant Henry Sidney, on behalf, in fact, of defendants Sidney and Sherwood, and not of the said contemplated partnership, but admitted that such specification did commence in the words in the said bill in that behalf mentioned.

James Parker and Torrisano, for the plaintiff.

Wakefield and Bates, for the defendants, contended that it would be of no avail to send the matter to the Master, for there was no evidence as to the terms of the alleged partnership; and from the plaintiff's own shewing he had made no advance of any money in consideration of the intended partnership.

His HONOUR thought there was quite a sufficient proof of the existence of a partnership, and if there were any misunderstanding as to the terms, an inquiry must be directed.

ROLLS COURT.

ROWLEY v. ADAMS.

Practice—Staying proceedings—Appeal.

A party to a cause, not joining in an appeal from a decree made in it, has no claim to have proceedings stayed pending the appeal.

Wray moved, on behalf of William Wyatt, a party to this cause, but not to the appeal now pending before the House of Lords, to stay further proceedings on the decree till after the hearing of the appeal. The Court had directed the sale of certain real estates at Hornsey, of which Wm. Wyatt was devisee; and if the appeal should be decided in a particular way, the proceeds of the sale would be unnecessary. [The MASTER of the ROLLS.—You come upon this ground, that the appeal, if successful, may increase the fund, so that there will be no use for this.] Yes, it may be unnecessary; we have a strong case against the executors. But it is to be observed, we are not an appealing party; and it will be said, therefore, that we have no right to make this application.

Temple, Turner, and Kenyon Parker, for other parties.

Kindersley, for the executors, Adams and Marks, said that they appealed only for the purpose of bringing the whole case before the House of Lords.

The MASTER of the ROLLS.—I cannot grant the motion. You have no right to make it, as you are not an appealing party.

April 15, 23, and 30.

MELTON v. MELTON.

Practice—Payment of money out of court.

A young lady, who was deaf and dumb, was absolutely entitled at 21 to a sum of money out of court, and on attaining that age she presented a petition to have it paid out to her; the Court required to be satisfied, on affidavit, that she was fully aware of the nature of the proceedings, and gave her consent to the money being paid out.

Chandless stated that there was a sum of money in court to which Miss Melton, the petitioner in this case, was absolutely entitled under the will of her father on her attaining the age of 21. She had now attained that age, and presented this petition to have it paid out of court to her; and the order would have been of course in an ordinary case, but as the young lady had the misfortune to be both deaf and dumb,

the Court would probably require an affidavit as to her knowledge of the proceeding.

The MASTER of the ROLLS said he would certainly require to be satisfied that she knew the nature of the petition, and assented to the payment of the money out of court; but that being produced, she was as much entitled as any one else to payment.

April 23.—*Chandless* read an affidavit of the solicitor of the young lady, in which he stated that he had made out a short statement of the substance of the petition and the object of it, and that in his presence William Melton, the young lady's brother, held communications with her by signs on his fingers, and as he believed thereby conveyed to her the substance and meaning of the statement so prepared by him, and that she afterwards wrote and signed a paper writing to the effect that she well understood the petition and assented thereto.

The MASTER of the ROLLS said that was very satisfactory as far as it went, but it was not the best evidence, which was only to be had from Mr. William Melton himself. The young lady's signing the paper was also of weight.

April 30.—*Chandless* stated that he had Mr. Wm. Melton's affidavit, in which he distinctly declared that his sister well knew the communications he made to her.

The MASTER of the ROLLS was quite satisfied, and made the order.

Thursday, April 16.

HALDENBY v. STOPFORTH.

Practice—Executor—Costs.

The executor of an executor, who commits a breach of trust and becomes insolvent, is entitled to his costs.

Purvis, in this case, some considerable time ago, had asked for the costs of an executor of an executor who had committed a breach of trust and was insolvent, to be paid him out of the assets of the original testator which had been recovered, and

The MASTER of the ROLLS now intimated that he thought the executor entitled.

Thursday, April 23.

THOMAS v. SELBY.

Practice—Substituted service of subpoena.

Substituted service on a wife for her husband of a subpoena to appear and answer will not be ordered when the husband has deserted the wife, and it is not known where he is.

This was a suit for the administration of the estate of one Thomas Thomas; and the defendant, Mrs. Collins, the wife of Thomas Collins, claims to be entitled to a small sum under the testator's will. It appeared that in October, 1844, Thomas Collins had deserted his wife, and had not since been heard of. The plaintiff had accordingly moved for substituted service (see 6 Law T. 498) on the wife for the husband of a copy of the bill, and his application being refused, he now moved for substituted service on Mrs. Collins for her husband of a subpoena to appear and answer the bill, Mrs. Collins having answered separately.

Welford, for the motion, said that Thomas Collins himself had no claim, but Mrs. Collins had a claim for a small sum under the will; and as, therefore, it was not known where Collins was since October, 1844, this motion was made.

The MASTER of the ROLLS.—It is a curious case this in which to ask for substituted service on a person who does not know where the absent party is, or whether he is living or dead. How do you know he has intrusted her to manage his affairs? What is the connection?

Welford.—It amounts to a case of absconding.

The MASTER of the ROLLS.—Well, if you can make out your case on that ground, do.

Welford.—He left her before the institution of the suit.

The MASTER of the ROLLS.—That makes still stronger against your application; I cannot grant it.

April 24 and 30.

KIRKMAN v. BOOTH.

Practice—New orders—Dismissing for want of prosecution—Time—Negligence.

The answer of the defendant in this cause was put in on the 18th of December last, and on the 21st of March notice of motion for the production of papers was served by the plaintiff, and the order was made thereon on the 26th of the same month, but was not passed till the 20th of April. Notwithstanding this delay, however, in passing the order, and though the plaintiff had been kept before the Court for more than four months after putting in his answer, a motion to dismiss for want of prosecution was refused, but with costs, as against the plaintiff, and an expression of disapprobation of his negligence.

Bayley, in this case, moved to dismiss for want of prosecution. The defendant had put in his answer on the 18th of December last, and, therefore, by the New Orders, the defendant was at liberty to move to dismiss any time after the 12th of March. On the 21st of March the plaintiff served the defendant with notice of motion for the production of papers, and the order for production was made in pursuance thereof

on the 26th of March, but was not passed till the 20th of April, being drawn up on the 15th, but not taken away to be passed till the 17th of that month. Under these circumstances the defendant moved to dismiss.

Turner (with him *Roll*) said the bill was filed on the 26th of July, and after a delay in entering an appearance and obtaining six weeks further time to answer, the defendant at last put in his answer on the 18th of December. When the answer was filed it was laid before counsel, who advised the plaintiff to move for the production of papers therein mentioned, amounting to a large number, about 212 in all. Accordingly, the motion to produce was made, and the order obtained, and it is now passed. The present motion to dismiss, therefore, ought not to be granted.

The MASTER of the ROLLS.—Notwithstanding all that has been said, I cannot but consider the plaintiff guilty of negligence. He must, however, pay the costs of this motion. I can't but say that it is very wrong to keep the defendant before the Court for four months; still I can't refuse further time, though there has been some considerable delay; and the defendant not giving the papers without an order is something to be taken into account.

Roll.—We are to have an order of course to amend.

The MASTER of the ROLLS.—I don't know what may happen; what say you, Mr. Bayley, to an order to amend three weeks after production of papers?

Bayley.—I have no instructions to consent.

The MASTER of the ROLLS.—Then there will be no order on this motion, only that the plaintiff pay the costs.

Thursday, April 30.

SMITH v. SMITH.

Practice—Service of subpoena—Infant temporarily out of the jurisdiction.

Service on the mother and father-in-law of an infant, who usually resides with the mother and father-in-law, but is on a temporary visit out of the jurisdiction, not deemed good service on the infant, there being no reason to suppose the infant was purposely kept out of the way.

Rosina Smith, an infant, it appeared, usually resided with her mother, Mary Smith, and her father-in-law, George Smith, but was at present on a temporary visit with some friends at Leith, in Scotland, and being a party to the cause, and out of the jurisdiction,

Glasse now moved that service on Mr. and Mrs. Smith be deemed good service on the infant, and cited *Thomson v. Jones*.

The MASTER of the ROLLS did not see the necessity for making the motion, unless there was reason to suspect the child was purposely kept out of the way, and allowed the motion to stand over to ascertain that point.

RAMSBOTTOM v. FREEMAN.

Practice—Solicitor and client.

A solicitor undertaking to get the bill dismissed, as against a particular defendant in this cause, obtained from him a sum of money for that purpose; the client subsequently, and after the lapse of three years, makes inquiry at the registrar's office and elsewhere, and finding or believing that nothing was done by the solicitor, moved for the delivery up of papers, and the repayment of the money; counsel for the solicitor appeared, and stated that he had got bills of costs to be taxed against the client in this and other suits, but gave no reply to the charge made against him; the motion was allowed to stand over to see what the solicitor had to say.

Freeman, one of the defendants in this cause, appeared in person in support of a motion of which he had given notice, that Mr. Jervis, a solicitor, should be ordered to give up to him his papers, and to repay him the sum of £1. 16s. moneys advanced. It appeared from an affidavit which he had filed, and which he produced to the Court, that being a defendant in the cause, he had had communications with Jervis, who said he would get the bill dismissed as against him, but must have some money for that purpose. Accordingly he, the defendant, gave him the sum of £1. 16s. the chief part of which he was obliged to borrow; but though this had taken place some three years ago, he was still a defendant on the record. The affidavit further stated that the deponent had searched the registrar's office, and every place he could think of, but could not find the least trace of any step ever having been taken to effect the proposed object; and when he asked Jervis, he would give him no satisfaction, but merely told him he had not looked in the right place. All he wanted, he said, was to be satisfied that his business had been attended to, but he believed that Jervis had never done any thing at all. He therefore moved to have his money back, &c.

Wright, for Mr. Jervis, said he had got bills of costs to be taxed against Mr. Freeman in this and two other suits, and the only thing that could be done was to order taxation and delivery of papers, on an undertaking by Mr. Freeman to pay what should be found due. Mr. Jervis had made no affidavit, because this proceeding was irregular. Besides, Freeman was an insolvent, and he had not proved that his schedule was taken off the file.

The MASTER of the ROLLS said it was a very strange case; if no business had been done for the man, Jervis had no right to keep his money. The case must stand over to the next day of motions, to see whether Jervis had anything to say in explanation.

WATSON v. DAVIS.

Practice—Motion to dismiss two suits after decree in one—New Orders—Filing replication de novo—Time.

A decree was made in a cause, but was not drawn up; and then a new bill was filed for the same purpose; and after considerable delay, and the filing of a supplemental bill, a replication was filed so long ago as the 23rd of January, 1844, and no step was taken since. A motion being made to dismiss for want of prosecution, the plaintiff was ordered to pay the costs, to file in two days a replication de novo, which would bring the case within the New Orders, otherwise the bills to be dismissed.

Quære, Whether the practice is to file a replication de novo to bring the matter within the New Orders, a replication having been filed before they came into operation.

Kindersley, in this case, applied for an order to dismiss for want of prosecution. The plaintiff had filed a bill in 1838, and a decree was made in the suit, but it had never been drawn up; and then he filed a second bill, to which in 1841 the defendants put in their answer. Several obstructions then occurred to the prosecution of the suit, and in 1842 a supplemental suit became necessary. All this time the defendants Davis and Browne refrained from pressing the plaintiff, and they gave him to January, 1844, three years after they put in their answer, to put the suits in order. But the plaintiff still delaying, on the 19th of January, 1844, they gave notice of motion for the 25th of the same month to dismiss for want of prosecution, and then the plaintiff filed a replication on the 23rd before the motion was made. From that time to this nothing had been done, and on the part of the defendants this motion to dismiss the suits was now made.

C. Hall for the plaintiff, contended that as there had been a decree in one suit, it could not therefore be dismissed; and as to the other he could not account for the delay since the 23rd of January, 1844, but all the Court could do would be to order the plaintiff to file a replication de novo, in order to bring the case within the New Orders. It seemed to be the practice in cases in which a replication had been filed before the New Orders came into operation, to order it to be filed de novo to bring the case within them. (*Loell v. Blew*, 13 Sim. 492; *Glover v. Powell*, V.C.B.)

Kindersley, in reply, said the decree in the original suit had been made but not drawn up, and the case therefore stood on a different footing from the case of a suit and a decree regularly drawn up. He asked the costs of this application, and, if the order for filing a replication were made, that it should be to file it *instantly*.

The MASTER of the ROLLS ordered the plaintiff to pay the costs, and to file the replication in two days, otherwise the suits to be dismissed.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

May 2 and 4.

SHARP v. DAY.

Practice—Demurrer—Railway company.

Where a railway company had been projected, but no shares allotted, and the scheme had been abandoned, a demurrer for want of equity and for want of parties, to a bill filed by one of the provisional committee on behalf of himself and all other parties (except the defendants) interested as partners in the company, against some of the provisional committee, for the purpose of taking the accounts and winding up the affairs of the company, was overruled without costs, and without prejudice to any question in the cause.

This case was argued upon demurrers for want of equity and for want of parties. The bill was filed by the plaintiff, on behalf of himself and all other parties interested as partners in the company or partnership called the East Riding Junction Railway Company, except such of the partners as were named as defendants, against Day and others, and prayed an account of the moneys and property belonging to the company or partnership, which had come to the hands of the defendants, or the hands of any person by their order or for their use, in trust for the company or partnership, and of all moneys which, by virtue of the resolutions come to by the parties, had been paid to, or possessed by, the defendants, for the purpose of discharging the debts and liabilities of the company or partnership; and that an account might be taken of the debts and liabilities of the company or partnership now remaining unsatisfied; that the outstanding property of the company or partnership might be collected and applied under the direction of the Court, so far as it would extend, towards the

discharge of the debts and liabilities; and that, if necessary, a receiver might be appointed by the Court to carry into effect the above purposes; that the defendants might be restrained from collecting or recovering the property or moneys of the company or partnership, or any part thereof, or from interfering therewith, or from applying any moneys or property paid or subscribed, or hereafter to be so in consequence of the resolutions, otherwise than under the direction of the Court, in discharge of the debts of the company or partnership, and for the purposes for which such moneys had been subscribed; and that the defendants might be restrained from prosecuting an action at law against the plaintiff, or any other proceeding at law, touching the matters in the bill mentioned. The bill stated the projection of the company in October 1845, by the defendant Day and other persons; the issue of two prospectuses with the names of the defendants and other persons as the provisional committee; that the plaintiff, on the 9th of October, 1845, became a member of the provisional committee, the defendant Day then acting as secretary *pro tempore*, and without salary; but that no shares had ever been allotted. That in December 1845 the members of the provisional committee resolved, by a majority of eight, to bring the undertaking to a conclusion, and that the expenses which had been incurred should be defrayed by a contribution of 10l. by each member of the provisional committee, the same to be paid to the credit of Messrs. Carlile and English, as trustees of the audit committee, the defendants being and acting as members of such committee; that Messrs. Carlile and English never accepted or acted in the trust, the moneys paid being paid or transferred to the defendants in trust for the liquidation of the liabilities of the company; that a report was made on the 31st December, 1845, that the liabilities of the company amounted to 1,545l. and that the provisional committee then resolved that each of its members should contribute 30l. The bill then stated that at the date of the last-mentioned resolution the provisional committee consisted of eighty-three members, and that the result of the proposed contribution would be 2,490l.; that out of the moneys received in pursuance of the resolution, and of other property of the company, all the liabilities had been discharged except the sums of 220l. and 45l. the latter sum being claimed by the defendant Day; that the defendants had a balance in their hands more than sufficient to pay what was due; and that, under the circumstances, the plaintiff was justified in declining to contribute the sum of 30l. The bill went on to state that Day had brought an action against the plaintiff and obtained a verdict for 45l. but leave was given to move to enter a nonsuit; and that whatever was due to Day was payable out of moneys in the hands of the defendants, which ought to be treated as trust funds for the purposes of the company.

Wigram and Follett, for the demurrer.

Parry and Kenyon, for the bill.

The following cases (among others) were cited:—*Richardson v. Larpent* (2 Y. & C. C. 507); *Richardson v. Hastings* (7 Bea. 328); and *Bourne v. Freeth* (9 Barn. & Cres. 632).

The VICE-CHANCELLOR.—In this case the bill may, I think, be understood as alleging that the defendants are in possession of funds in effect as trustees, for purposes, for the fulfilment of which, the plaintiff and other persons, who are so numerous as to render the junction of them individually in a suit substantially incompatible with its prosecution, and on whose behalf and his own, he sues; and that the defendants have acted and intend to act in contravention of those purposes, and it prays relief upon that footing. Whatever I may think of the wisdom of instituting such a suit as, upon the face of the bill, this appears to be, and, assuming the professed objects of the bill to be the true objects, whatever I may consider to be the probable fruits of this litigation, I am apprehensive that if I allow these demurrers I shall be introducing a new rule, or, by making more strict, altering old rules now in use. There seems to be enough to enable it to be said that the bill is not born dead. Whether it is likely to enjoy a prosperous, a long, or an easy life, is a different question. It is not, however, without doubt that I hold it to be, at the present stage, sustainable; nor is the question of the applicability of the principle upon which I proceeded in *Richardson v. Larpent* the only ground of doubt that I have. But doubting, I must allow the plaintiff to call for answers. Let the demurrers be overruled without costs, and without prejudice to any question in the cause.

April 17, and May 8.

GOODWIN v. GOSNELL, re HILL.

Miscellaneous of Solicitor.

Pursuant to the order made in this case, which is reported *ante*, p. 26, Mr. George Price Hill, by his counsel shewed cause against his being struck off the rolls, and the judgment of the Court was given on the last day of the Term. The prosecution of the order made on the 9th of March had been, by the direction of the Court, entrusted to the solicitor to "the suitors' fund."

Wigram and Rogers for Mr. Hill.

Taylor for the suitors of the court.

The VICE-CHANCELLOR.—After what has already taken place in this case, it must be unnecessary for me to recapitulate minutely the facts. Mr. Hill, being a solicitor of the Court of Chancery, died, in the year 1836, permit, advise, and cause a client, an applicant in an obscure and humble condition of life, incapable altogether of forming a judgment as to the propriety or impropriety of the act, to sell a sum of Three per Cent. Consolidated Annuities, of which he was the sole trustee—trustee for a woman and child. The sale was not merely unnecessary and improper—it was manifestly wrong. It was a plain and open breach of trust. The proceeds were received by Mr. Hill. It is not alleged that Mr. Hill took, owned, or suggested the taking or asking for, any opinion or advice except his own, as to the correctness or incorrectness of the step which he took. This conduct on the part of a solicitor, however it may be attributed to a want of prudence, or to a want of knowledge as to both, yet if there was an absence of a desire to benefit himself—and of that intention it would probably, however flagrant the irregularity, be venial, and not wrong, yet not requisite, to say that he had placed himself under any other than a responsibility of merely; and I have endeavoured to bring myself to think it possible reasonably to take that view of the transaction—no light task when there are considered the nature of Mr. Hill's answer to the bill, the actual possession by himself of the money produced by the sale, the manner in which he avows or professes to have applied, used, and dealt with it, the greatly reduced sum to which he asserted it had become diminished, the amount and extraordinary nature of the charges claimed, and more than obtained by him, the man which he prepared and procured the trustee and the father of the infants to execute—an instrument open to serious misadventure;—these circumstances, in detail of which I spare myself, cannot be considered by the Court without feeling pain, without misgivings as to the propriety of continuing Mr. Hill in the honourable profession, the upright performance of the important duties belonging to which is of such high interest to society. I have, however, willingly paused on the facts which he avers, that at this period of the year 1836 he was only twenty-five years of age—the circumstance that he had lost his father in his boyhood—the restitution, though late, which he has been ordered to make, and which, I suppose, he has now made, and the amount of costs of all parties to the suit to which he has been most properly subjected, in my mind—and the same which, by his counsel, he has stated himself, now at least, to entertain of the nature of the transaction—and upon the hope that their opinion and advice, aided by the discussion which the case has received, and by the experience which, since the year 1836, Mr. Hill may be supposed to have acquired, will act in without their fruit and effects; pausing, I say, on these considerations, and upon this hope, I have succeeded in persuading myself that I may, without impropriety, abstain from proceeding further in this matter, if Mr. Hill will do what seems to me to be still necessary on his part, to evince a thoroughly just sense of what has occurred, and a hearty desire to make complete reparation—namely, that he will undertake to pay to the other parties to the suit the whole of the costs, charges, and expenses properly incurred in the cause, either preliminary or otherwise, in respect of the same, so far as he has not yet been ordered to pay the costs, and also the costs of the solicitor to "the suitors' fund" in the present case; these costs, charges, and expenses to be taxed, if required, in the usual way. If I am now to part with the case, let me repeat my earnest expectation—my earnest hope—let me add my expectation, that what has taken place in this case may not be without good effect, and that Mr. Hill will hereafter so conduct himself as to efface the recollection of the facts now before me. I trust that he will entertain a manifest and proper sense of what he owes to himself, to his family, and to the profession to which he belongs—a profession, the power of which for good or for ill, as far as the worldly interests of the mass of mankind are concerned, can scarcely be too strongly stated—a profession owning, I am happy to be able to say, so many who would do honour to any calling, and who are well aware that sincerity and integrity are the surest guides to prosperity and distinction, and who are true and just from higher motives and less worldly considerations. Let it be Mr. Hill's study and ambition to become deserving of being ascribed to that class of solicitors—a class meriting and receiving the countenance and protection, the respect and esteem of those in whose hands is placed the administration of justice, among not the least urgent of whose duties, on the other hand, it is to mark and to censure, to repress, and, if necessary, to extirpate from the courts such men as, by abusing the functions and privileges of so important a profession, become a scandal and a pestilence to society.

VICE-CHANCELLOR WIGRAM'S COURT.

April 30; May 1-6.

JONES v. JONES.

Will—Settlement—Renewal of leaseholds—Fines—Contribution.

Where the Court of Chancery is required to fix the mode of creating fines for the renewal of leaseholds, it will follow the general rule of the Court, of adjusting the burthen upon the parties according to their enjoyment, notwithstanding the testator may have pointed out a mode of creating funds necessary for that purpose.

William Jones, by his will, devised his freehold and copyhold hereditaments to Wright, Butler, and Croft, upon trust to settle the said hereditaments to the use of his great nephew, William Jones, for ninety-nine years, should he so long live, remainder to Edward Jones, for ninety-nine years should he so long live, with remainder to the first and every other son of Edward Jones, in tail male, remainder to the testator's right heirs; the settlement was also to contain a power to the trustees of the will to lease for twenty-one years, determinable on the life of the respective tenants for life; and the testator further bequeathed his leasehold estates for lives and years to the same trustees upon the same trusts as his freehold and copyhold hereditaments, so far as the same were capable of being applied; and he gave his trustees a power out of the rents, issues, and profits of the leasehold estates yearly, and every year to pay the rents, reservations, covenants, and agreements therein contained, or by mortgage of the leaseholds or by such other ways or means as should be advisable in that behalf forthwith to raise such sum as should be sufficient to defray the fine and fines and other charges of renewing the leases, or any future lease or leases to be granted for any life or lives, or any term of years when and as often as there shall be occasion, or as such leases have been usually renewed, and directed that they should from time to time renew the said several leases accordingly, and that the settlement to be made should contain clauses for the appointment of new trustees, and for the indemnity of trustees; and such further and other clauses, declarations, and agreements conformable to the spirit, true intent, and meaning of his will, such settlement to be made as the trustees or the survivor should think proper.

A settlement was made by the trustees according to the directions in the will. Wm. Jones, named in the will, attained the age of twenty-one years in 1819, and then entered into possession of the freehold, copyhold, and leasehold estates of the testator, and afterwards married, and had a son, the present plaintiff. The present bill was filed in Nov. 1845, against the tenant for life and the trustees of the testator's will, to have the settlement executed in pursuance of the will under the direction of the Court.

Walker and Chambers appeared for the plaintiff.

Tinsley and Campbell for the defendants.—There were several points raised as to the introduction of certain clauses which are usual in settlements, there being no directions in the will respecting them; they were, however, disposed of during the argument, by both parties agreeing that, whatever was the custom amongst conveyancers in similar settlements, the same course should be followed in the present settlement; and the only question reserved for the judgment of the Court was the mode of providing for the renewal of the leasehold property in respect to the fines required for that purpose.

The VICE-CHANCELLOR.—The only point in this case which remains for the Court to decide is, the mode of creating the fund required for the renewal fines upon the leasehold property belonging to the testator's estate, and the manner of adjusting the burthen of the renewals between the tenant in possession and the remainder-man. The cases of *White v. White* (9 Ves. 554); *Allan v. Backhouse* (2 Ves. & Beames, 72); and *Greenwood v. Evans* (4 Beav. 44), shew that there is no distinction on this point between leases for lives and years, and that the mode of proceeding in those cases has been recognized, and acted upon, in all subsequent decisions, and the general rule followed (in the absence of any express directions), when the question now raised has to be decided, is, to find the extent of the enjoyment the tenant for life had in the renewed term, from the time the old term would have expired (had there been no renewal,) to the time of his death, and then to direct the tenant for life to pay so much of the fine as would be proportionate to his time of enjoyment of the renewed term, and leave the remainder-man to pay the residue of the fine for the remainder of the term vesting in him, and to follow the same course in all subsequent renewals. And where the tenant for life pays the whole fine upon the renewal, he is entitled to have compound interest during his life for the amount he paid on account of the proportion payable by the remainder man, and simple interest upon the same from his death until his executors are repaid. Since the case of *White v. White*, that appears to be the rule followed in all subsequent cases in settling the mode of contribution. Perhaps the case of *Lord Montfort v. Cadogan* (17 Ves. 490), and other cases under settle-

ments, might be distinguished from cases under wills; but it is not necessary for me to decide the distinction between settlements and wills, for this case does not depend upon the general rule altogether, there being a direction given by the testator that the trustees shall, "out of the rents, issues, and profits of the leaseholds, yearly and every year, pay the rents, reservations, covenants, and agreements therein contained, or by mortgage of the leaseholds, or by such other ways or means as shall be advisable in that behalf, forthwith raise such sum as shall be sufficient to defray the fine and fines, and other charges of renewals of the leases; and any future leases, to be granted for any life or lives, for any term of years, when and as often as there shall be occasion, or as such leases have been usually renewed, and do and shall, from time to time, renew the said several leases accordingly." It is clear from this that the case before the Court does not depend altogether upon the general rule, inasmuch as the testator has given some instructions to the trustees; and where a testator has clearly expressed himself upon the point, the Court usually pays attention to it. I do not mean to decide whether these words would have authorized the trustees to proceed to a sale; the language is very general. If the testator had said, "Do it by sale and in no other mode," it would have been a strong argument that his intention was, that the estate should be settled in such a manner as it would in effect be finally eaten up in preserving itself. Suppose, however, he had said, "By sale or mortgage, or by the annual rents and profits," in that case, if the trustees sold, there would be a diminution of so many acres every time a fine was required, until at last the whole estate would be wasted away; whereas, if they raised the money out of the rents and profits, the burthen would be thrown on the party in possession. The just rule seemed to be to throw the burthen upon the parties according to their interest; notwithstanding, had the trustees in this case proceeded to a sale, it would have been very doubtful whether the Court would have interfered to restrain them, the language used by the testator is so general. Here the trustees have not used any discretion—they have thrown it all upon the Court. The justice of the case is to equalize the burthen amongst all parties according to their interests. If the whole was thrown upon the tenant for life, he would be contributing towards an object from which he might possibly obtain nothing substantial; on the other hand, if it were thrown upon the estate, it might operate unjustly by throwing the expense of the renewal upon the remainder-man, as the tenant for life might enjoy the estate during his life, and merely pay the interest of the debt, and then die leaving no assets to pay his proportion of the fine; all this inconvenience can only be avoided by pursuing the course pointed out by Lord Eldon in *White v. White*, which has been followed in the subsequent cases of *Greenwood v. Evans* and *Reeves v. Creswick* (3 Young & Collin, 715); and, deciding this case according to the general rule I have already stated, and where the fine is paid wholly by the tenant for life, he will be entitled to a lien upon the estate for the share of the remainder-man with interest; and where the fine is wholly paid by the remainder-man, the tenant for life shall be required to give security for the proportion of the fine due for the interest he takes in the renewed lease, and the amount of the security must be found upon a calculated value; and if he dies before the value has been exhausted, allowance can be made for the excess. In making this decision I am only following the course pointed out by Lord Eldon in *White v. White*, and followed in the subsequent decisions; and in doing so I make the contribution to the fines for renewal proportionate to the actual enjoyment of the estate. There must be a reference to the Master to find what proportion should be properly payable by tenant for life, and if he is not prepared with the amount, the Master must approve of a security.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Saturday, Feb. 14.

MILNER v. MYERS.

Pleading—Trespass—De injuria.

To an action of trespass, q. c. f. the defendant pleaded that the locus in quo was the soil and freehold of one B. of whom the plaintiff held as tenant from year to year, upon certain terms, and, inter alia, that B. or his on-coming tenant, at any time after the 1st of January preceding the 6th of April, when the plaintiff should have given or received notice to quit, should have full liberty to enter upon and plough the land; that notice to quit on the 6th of April, 1845, was given; that B. agreed to let to J. and J. agreed to take the said premises, as tenant from year to year, from and after the expiration of the plaintiff's tenancy; that J. thereupon became the on-coming tenant; and that defendant, as his servant, &c. after the 1st of January, entered to plough the land. Replication (admitting the seisin of B.), de injuria absque residuo cause.

Held, upon demurrer to the replication, 1st, that the plea set up an authority, derived from the plaintiff, and that therefore the replication was bad, according to the 3rd resolution in *Croger's case*. 2nd, that the plea was good, whether the agreement between B. and J. amounted to an actual demise or not, and whether it ought to have been stated to be in writing or not, because enough appeared to warrant the express allegation that J. was the on-coming tenant, which might have been traversed, and because the objections, if good at all, could only be taken on special demurrer.

Trespass, quare clausum fregit.

3rd Plea.—And for a further plea in this behalf, as to breaking and entering the said close, in which, &c. in the declaration mentioned, and breaking down, trampling on, consuming, and spoiling the grass there growing and being, as in the declaration mentioned, the defendant says that, before and at the said times when, &c. in the declaration mentioned, the said close in the declaration mentioned, and in which, &c. was a certain close of arable land, parcel of a certain farm, containing divers closes of arable, meadow, and pasture land, together with a certain farm-house, barn, and other buildings, which said farm and premises, before and at the said times when, &c. were the farm-house, barn, buildings, soil, and freehold of one Alex. Wm. Robt. Bosville; and the said farm and premises, before and at the said times when, &c. were held, occupied, and enjoyed by the plaintiff as tenant thereof to the said Alex. Wm. Robt. Bosville, to wit, as tenant thereof from year to year, upon and subject to certain terms and stipulations, and, amongst others, the following; that is to say, that the said Alex. Wm. Robt. Bosville, or his or their on-coming tenant, at any time after the 1st day of January preceding the 6th day of April, when the plaintiff should have given or received notice to quit the said farm and premises on such last-mentioned 6th day of April, should have full liberty to enter upon and to plough and cultivate all the arable land except the fallows or turnip-fallows of the preceding summer. And the defendant further says, that while the plaintiff so held, occupied, and enjoyed the said farm and premises as such tenant thereof to the said Alex. Wm. Robt. Bosville, and before any of the said times when, &c. in the declaration mentioned, and more than half a year before the expiration of the then current year of the said tenancy, to wit, on the 5th day of October, in the year of our Lord 1844, the said Alex. Wm. Robt. Bosville gave notice to the plaintiff that he, the plaintiff, should quit the said farm and premises, so held, occupied, and enjoyed by him as aforesaid, on a certain day, to wit, the 6th day of April, in the year of our Lord 1845, the said last-mentioned day being the day of the expiration of the then current year of the tenancy of the plaintiff. And the defendant further says, that afterwards, and before any of the said times when &c. in the declaration mentioned, to wit, on the 1st day of January, in the year of our Lord 1845, the said Alex. Wm. Robt. Bosville agreed to let to Wm. Jordan, and the said Wm. Jordan then agreed to take, the said farm and premises, to hold the same to the said Wm. Jordan, as tenant thereof, to wit, as tenant from year to year, from and after the expiration of the said tenancy of the plaintiff, that is to say, from the said 6th day of April, in the year of our Lord 1845; and the said Wm. Jordan thereupon became the on-coming tenant of the said Alex. Wm. Robert Bosville, of the said farm and premises, on the expiration of the said tenancy of the plaintiff; and the defendant further says, that the said close in which, &c. at the said times when, &c. was not, nor was any part thereof, fallow or turnip-fallow of the preceding summer; wherefore the defendant, being the servant of the said Wm. Jordan, and by his command, the said Wm. Jordan so then being such on-coming tenant as aforesaid, on the several times when, &c. in the declaration mentioned, the same respectively being after the 1st day of January preceding the 6th day of April, in the year of our Lord 1845, the said last-mentioned day being the day on which the plaintiff had been required to quit the said farm and premises by the said notice which the plaintiff had so received as aforesaid, entered upon the said close in which, &c. for the purpose of ploughing and cultivating the same, and in so doing necessarily and unavoidably did a little tread down, trample on, consume, and spoil the grass there growing and being, doing no unnecessary damage to the plaintiff in that behalf, and as he, the defendant lawfully might for the cause aforesaid; which are the said several alleged trespasses in the introductory part of this plea mentioned, and whereof the plaintiff hath above complained against the defendant, and this the defendant is ready to verify, &c.

Replication.—And the said plaintiff, as to the plea of the said defendant by him lastly above pleaded, saith, that admitting that the said close in the declaration mentioned, and in which, &c. was before and at the said time when, &c. in the declaration mentioned, parcel of a certain farm containing divers closes of arable, meadow, and pasture land, together with a certain farm-house, barn, and other buildings, which said farm and premises before and at the said times when, &c. were the farm-house, barn, build-

ings, soil, and freehold of the said Alex. Wm. Robert Bosville, in the said last plea mentioned, as therein is alleged: for replication nevertheless in this behalf the said plaintiff says that the said defendant, at the said times, when, &c. of his own wrong, and without the residue of the cause in his said last plea alleged, committed the said several trespasses in the introductory part of his said last plea mentioned, in manner and form as the said plaintiff hath above thereof in his said declaration complained against the said defendant; and this the said plaintiff prays may be inquired of by the country, &c.

Demurrer thereto; and joinder.

The following points were set down for argument on the part of the defendant:—The causes of demurrer are, that the plaintiff seeks, by the replication *de injuria*, to put in issue authority derived from the plaintiff and interest claimed by the defendant in the *locus in quo*. Also, that the replication is double and multifarious in the respects pointed out by the causes of demurrer.

The points of argument set down by the plaintiff were—That “*de injuria absque residuo cause*, admitting as it expressly does the freehold interest stated in the last plea, is a proper replication, notwithstanding it may put in issue several matters; that the several matters put in issue by the replication amount together only to matter of excuse; that the authority under which defendant justifies is not authority derived from the plaintiff, who is not even shewn to have been a party to the creation of tenancy on the terms mentioned, but the authority is immediately derived from Jordan, the on-coming tenant, and more remotely and ultimately derived from Bosville, the landlord; that no interest in the *locus in quo* is claimed by defendant; and that even if Jordan can be considered as claiming any interest under a mere agreement not in writing, such interest being future, and its evidence mere inducement to the liberty to enter, it may properly be put in issue by the replication.”

Plaintiff will also contend that the last plea is bad, for not shewing any actual demise to Jordan, or the creation of any tenancy, but only a mutual agreement between him and Bosville to take and let the farm; and also for not stating such agreement to be in writing.

This demurrer was argued in Trinity Vacation (Saturday, June 21).

Hugh Hill, in support of the demurrer.—This replication is bad according to the 2nd and 3rd resolutions in *Crogate's* case (8 Rep. 66, b), because the plea puts in issue an authority derived from the plaintiff, and also because it claims an interest in the *locus in quo*. Upon the latter objection the cases of *Edwards v. Pinniger*, recently decided (5 Law T. 195), and *Bowler v. Nicholson* (12 Ad. & Ell. 341), may be cited in support of the replication; but they are distinguishable. In the former case the defendants justified under a warrant issued in pursuance of 1 & 2 Vict. c. 74 (the Possession of Tenements Act); and in the latter, the interest claimed was not, as here, an interest in the land on which the subject-matter of complaint arises; but on the other objection the latter case is an authority for the defendant; and the words of Patteson, J. would apply to this case: “Then is the authority here derived immediately or immediately from the plaintiff? It is not to be supposed that in the case put, of entry to view waste, there is an express authority from the plaintiff; the authority would result from the parties being, respectively, tenant of a particular estate and reversioner. Here the authority arose out of a relation created by the act of parties, one of whom was the plaintiff; therefore the defendants justify under an ‘authority or power’ derived from the plaintiff himself. Consequently the replication is bad.” An objection, however, is taken to the plea; that it alleges an agreement only, and not a demise; but, first, the plea contains words of present demise (*Doe dem. Pearson v. Rice*, 8 Bing. 178); and the commencement and duration of the term distinctly appear; which distinguishes this from the case of *Goodtitle dem. Estwick v. Way* (1 T. R. 735). [COLERIDGE, J.—There is no statement of the rent. Has any agreement, wanting that, been held a lease?] At all events the plea is helped by the averment that Jordan was the “on-coming tenant.” Another objection to the plea is, that it should have been averred that the agreement was in writing; but a lease by parol to commence after the termination of an existing tenancy is good, if the whole time does not exceed three years from the making of it. (Bacon's Abr. tit. Leases, s.; Bulwer's Nt. Pri. 177). At all events these objections would only be available on special demurrer.

Raw, contra.—First, as to the plea, the defendant is bound by the statement in his plea, which is, that an agreement was entered into, not that a lease was granted. Things ought to be pleaded according to their legal effect (Stephen on Pleading, c. 2, s. 5, r. 6; *Moore v. The Earl of Plymouth*, 3 B. & Ald. 66); and the Court, therefore, will not look to the facts, to see whether a different statement might have been made. Then, if there were no actual demise, Jordan could not justify in his own right, though he might in the right of his landlord. Jordan is not even

shewn to be the “on-coming tenant;” because the contract, unless in writing, would be good for nothing; a parol agreement for a lease for a year cannot be enforced as an agreement, though it would be good as a lease, if the lessee had entered. (*Inman v. Stamp*, 1 Stark. 12; *Edge v. Strafford*, 1 Cr. & Jerv. 391.) Before verdict this is an objection upon general demurrer. (1 Wms. Saund. 276 a (n.); *Case v. Barber*, Sir T. Raym. 450, and T. Jones; and *Harden v. Clifton*, 1 Q.B. 522). Secondly, the replication is good, the plea sets up no authority derived from the plaintiff, as in *Bowler v. Nicholson*, where the plaintiff was the lessee, and the defendants were the servants of the lessor. In this case the tenant had no authority to give; and so in *Edwards v. Pinniger*, although the tenancy was involved in the plea, a replication *de injuria* was allowed. Neither does the plea claim any interest in the land, according to the 2nd Resolution in *Crogate's* case. This is a right of entry for a particular purpose; it is a mere privilege, not an interest in the land. *Doe dem. Strickland v. Spence* (6 East, 120); *Parker v. Staniland* (11 East, 362); but even if the Court should think that the plea shews a present demise to Jordan, still it does not set up such an interest as falls within the meaning of the 2nd Resolution in *Crogate's* case; for that must be “an interest in the realty or an interest in or title to chattels, averred in the plea, and existing prior to and independently of the act complained of, which interest or title would be in issue on the general replication;” as was said by Parke, J. in *Selby v. Bardons* (3 B. & Adol. 2, 13.)

Hugh Hill, in reply.—Every ambiguity is cured by pleading over; *Fletcher v. Pagon* (3 B. & C. 192), which disposes of the first objection to the plea; and the second objection could only be taken on special demurrer, for in a declaration it clearly would not be necessary to state that the agreement was in writing; and *Case v. Barber* is no authority, because it was decided before the stat. of 4 Anne, c. 16. Merely to aver that it was in writing would not be enough, if the plea is to shew a compliance with the Statute of Frauds; but it must shew a signature by the party to be charged; and who could that be in this case? *Laythorp v. Bryant* (2 Bing. N.C. 735) shews that a contract within that statute need not be signed by the party enforcing it, but it must by the party sought to be charged. But the replication is bad; for the defendant sets up an authority, to the granting of which the plaintiff is a party. *Cur. adv. vult.*

JUDGMENT.

Lord DENMAN, C.J. now delivered the judgment of the Court.—This was a declaration in trespass, *quare clausum fregit*; the defendant pleaded that one Bosville was seised in fee of the *locus in quo*; that the plaintiff held of him, as tenant from year to year, upon certain terms, and amongst others, that the said Bosville, the landlord, or his on-coming tenant, at any time after the 1st of January preceding the 6th of April, when the plaintiff should have given or received notice to quit, was to have full liberty to enter and plough the arable land held by the plaintiff. The plea then averred notice to quit on the 6th of April, 1845, and that Bosville on the 1st of January, 1845, agreed to let to William Jordan, and that William Jordan agreed to take as tenant from year to year from and after the expiration of the plaintiff's tenancy; that the said Jordan therefore became the on-coming tenant, and the defendant, as his servant and by his command, at several times when, &c. being after 1st Jan. 1845, entered to plough the land. The plaintiff (admitting the *locus in quo* to be the soil and freehold of Bosville), replied *de injuria* to the rest of the plea, and the defendant demurred to this replication on the ground that the plaintiff could not in that form put in issue an authority in law derived from the plaintiff; and we are of opinion the defendant is right, and entitled to our judgment. In this case the authority of the defendant arises out of the relation created by the act of parties, one of whom was the plaintiff; the defendant, therefore, entered under an authority that is proved to be derived from the plaintiff himself, and therefore the case comes within the third resolution in *Crogate's* case (8 Co. Rep. 66, b.) The plaintiff, by the terms under which he held the land, gave an authority under which alone the defendant would have power to enter. We therefore think the replication is bad, for the reason specially assigned on demurrer. It was said, on the part of the plaintiff, that the plea was bad for not stating an actual demise of the premises to Jordan, but only an agreement for a demise, which was not stated to be in writing. We do not think it necessary to consider whether the agreement between Bosville and Jordan did amount to an actual lease at the time of the entry or not, or whether it was necessary to be in writing, as we think enough was stated on the record to warrant the allegation expressly made that Jordan was the on-coming tenant; an allegation which might have been traversed; and if it were an objection available at all, we think it would have been on special, and not on general demurrer. On the whole, therefore, the judgment is for the defendant, and we apply the same judgment in five other cases in which the same person is plaintiff.

Judgment for defendant.

Wednesday, May 6.

REG. v. BRADFORD. (a)

Evidence of chargeability—Residence of pauper in parish—Relief by officer of district.

This was an appeal against an order of removal in which the Sessions had confirmed the order, subject to the opinion of the Court on a special case upon (*inter alia*) whether there was sufficient evidence of the chargeability of the pauper. The evidence of the chargeability was that of the relieving officer who had relieved the pauper, but it did not shew that the relief had been administered to the pauper in the parish to which he was said to be chargeable, nor when the pauper resided when the relief was administered. It was also objected, that it did not shew sufficiently that the relief was given by the relieving officer in respect of the parish, he being also relieving officer of the district.

Hodges and Fitzgerald, in support of the order.

Pashley, contra.—There is no power of removal unless the pauper is at the time chargeable to a parish, and if it be not stated that he is relieved in the parish, the relief would be evidence of his being settled in the parish, and no cause for his removal. *Reg. v. Bolton* (14 L. J. M. C. 127), and *Reg. v. Manchester* (1b. 126; 1 New Mag. Cas. 346), are distinguishable. The relief also is not shewn to have been given by the officer in respect of the respective parish.

By the COURT.—The objection is good.

Order of Sessions quashed.

REG. v. KIGHTLEY.

Stamp—Copies of documents.

The stamp is no part of the document to which it is affixed, and no description of it need, therefore, be sent with a copy of the document, under 4 & 5 W. 4, c. 76, s. 79.

On appeal, the Sessions had confirmed the order of removal, subject to the opinion of this Court as to whether the copies of examinations sent by a removing parish in support of an order for the removal of a pauper, for whom it was sought to set up a settlement by apprenticeship in the appellant parish, was sufficient if they contained a copy of the indenture, which was stated to have been produced before removing magistrates, duly stamped.

Pashley and Overend, in support of the order of Sessions.—The stamp is no part of the deed. It is only considered preliminary to the deed being put in evidence. The reception of evidence from a witness, in fact incompetent, is no objection to the order. *Reg. v. Allenam* (10 A. & E. 699; *Reg. v. East Knyle* (Burr. S. C. 151); *Reg. v. Silvester* (2 Q.B.), were also cited. The stamp is never set out on copy of a deed.

Hall and Ingham, contra.—It is essential to the acquisition of a settlement by apprenticeship, that the indenture be duly stamped. The appellants, therefore, ought to have full information as to the stamp. The allegation that it was duly stamped is nothing, for that is a conclusion of law. It may even have been stamped only just before the production, which would be insufficient in law.

Lord DENMAN, C.J.—I am very much inclined to support the principle which requires that all the examinations shall be sent by the respondent parish, but even the most general words must have some reasonable construction, and here I think that the stamp cannot be said to be part of the document. It is not necessary to make a perfect copy of the indenture. The indenture is operative without it, and if it is received, it may be presumed to have been received, and also that it was stamped at the right time. It is said that this will defeat the object of the Act, but this is not so if people will act with common prudence. When they hear that a deed is stamped, they may, if they doubt the correctness of the stamp, ask for it to be shewn to them. If so reasonable a request were refused, it would be a justification for appealing.

PATTESON, J.—I had some doubt upon this, but, in truth, the stamp is no part of the instrument.

WILLIAMS, J. and WIGHTMAN, J. concurred.

Order of Sessions confirmed.

REG. v. MOUSLEY, Clerk.

Quo warranto—Public and private office.
An office of a public nature created by Act of Parliament may be the subject of a writ of *quo warranto*, although, strictly speaking, there is no usurpation upon the Crown.

But the law as to private offices is not altered at all by the decision of *Reg. v. Darley*, and a *quo warranto* will not lie for the office of master of a hospital, founded by a private individual, and having no public duties or jurisdiction.

The duty of preaching a certain number of sermons is not such a public duty as will render the office a public office, nor does the granting of a charter, in accordance with the provisions of a will, or the passing of an Act of Parliament to give greater effect to it, alter the nature of the office.

This was a rule nisi for a *quo warranto* against the Rev. Mr. Mousley, as master of the hospital and

(a) This and the following case has been delayed by the accidental loss of the manuscript.

free-school of Sir John Port, knight, in Etwall and Repton, upon various grounds, which, from the course of the argument, it becomes unnecessary to particularize.

Sir John Port, knight, by his will, dated 9th March, 1556, willed and directed, that six of the poorest of Etwall parish should have weekly, for ever, 20 pence a piece over and beside such lodging as he, the said testator or his executors, should provide for them in an almshouse, which should be built in or near the churchyard of Etwall aforesaid. And the testator further willed and directed that the same sums of money so to be paid to the poor aforesaid should be had and received out of the lands, &c. limited to the performance of the said will. And the said testator, by his will, devised to Sir Thomas Gyfford, knight, Richard Harpur, esq., Thomas Brewster, vicar of Etwall, J. Harpur, and Simon Starkey, and to their heirs, certain estates, upon condition to find a person qualified as therein mentioned, freely to keep a grammar-school in Etwall aforesaid, or Repton, otherwise Reppington, from time to time for ever. And the said testator directed that his said executors should, by license from the Crown, amortise to the use of the said school, the said estate. And the said testator directed his said testator's issue male to have, &c. for ever; and if the said testator had no issue male, then his (the said testator's) executors during their time, and after their decease, his (said testator's) heirs, or such others as he should by deed appoint. By charter dated June 12, 1622, after reciting the will of Sir John Port, from which it appeared that a certain hospital, or reputed hospital, had been built at Etwall in which six poor people had been for many years maintained and relieved; and that a certain house or free school had been erected at Repton, and that the estates devised by the will of the said Sir John Port had been conveyed to the said Sir Thomas Gyfford, Richard Harpur, Thomas Brewster, John Harpur, and Simon Starkey, and their heirs, for the maintenance of the said poor people, and schoolmaster and usher; and it having then been ascertained that the funds arising from the said estates would then competently maintain one master of the said hospital, one schoolmaster, two ushers, twelve poor men, and four poor scholars, Henry, Earl of Huntingdon, Philip, Lord Stanhope, and Sir Thomas Gerard, knight, then the co-heirs of the said Sir John Port, petitioned the King that a corporation should be had of the said master, schoolmaster, ushers, poor men, and poor scholars; that there should be in the said parish of Etwall one hospital for the maintenance of poor people; that there should be in the parish of Repton one free grammar school for the instruction of youth in grammar and other learning; that the said hospital and free-school should consist of one master, one schoolmaster, two ushers, twelve poor men, and four poor scholars, and should have continuance for ever. And it was constituted and granted that they should be from time to time one body corporate in deed and in name, by the name of the master, schoolmaster, ushers, poor men, and poor scholars of the hospital and free school of Sir John Port, knight, in Etwall and Repton, alias Reppington, of the foundation of the said Sir John Port. That they should have perpetual succession; that they should have one common seal. And to the intent that the said revenues might be more regularly and carefully dispensed, there should be from time to time one or more governors or superintendent governors over the said hospital and school, and over the master of the said hospital, schoolmaster, ushers, poor men, and poor scholars, who should have power to correct and reform such abuses as should happen. And that the governor or governors, superintendent or superintendents of the said hospital and school, or the greater number of them, should have full power and authority at all times, at their will and pleasure, to make, constitute, and ordain, under the hands and seals of him and them, for the well governing and ordering the said master, schoolmaster, &c. That Sir John Harpur, knight, was appointed the first governor and superintendent of the said school and hospital; and after his decease, the said Henry Earl of Huntingdon, Philip Lord Stanhope, and Sir Thomas Gerard, and their heirs for ever, should be the governors and superintendents of the said hospital and school. That they should have the appointment of all future masters of the said hospital and masters of the school, poor men in the hospital, and poor scholars upon the foundation. And it was directed that it should be lawful for the said Earl of Huntingdon, Philip Lord Stanhope, and Sir Thomas Gerard, and their several heirs, or the greater number of them, to elect, nominate, and appoint any fit person or persons to be master of the said hospital, and schoolmaster and ushers of the said school; and to elect, nominate, and appoint, in their turns, nine of the twelve poor men of the said hospital, and three of the poor scholars of the school; and the three other men in the hospital were to be elected from time to time by the heirs of John Harpur, esq. which nomination and election have been from time to time made in pursuance of this authority. And by the said charter it was directed, that when it should happen that the said master, schoolmaster, ushers, poor men, and poor

scholars should depart this life, or from any of the places or offices in the said hospital or free school be removed, it should be lawful for the said Henry Earl of Huntingdon, Philip Lord Stanhope, Sir Thomas Gerard, and John Harpur, and their several heirs, to whom or to whose turn it should appertain, from time to time to nominate and place one other fit person instead of any one so dying or being removed, to elect and choose one fit person into every such place after it should become vacant into the place of the master of the hospital, schoolmaster, ushers, poor men and poor scholars, or any of them so becoming void, within thirteen weeks after he or they should have notice from the master of the hospital, schoolmaster, and ushers, for the time being, or any two of them, that any such place was void. Then follow the qualifications of the master of the hospital, schoolmaster, &c. and, amongst the rest, the following as to the master of the hospital. "That the master of the said hospital should be a master of arts, at least, of one of the universities of Oxford or Cambridge, and a preacher of God's holy word; that the said master should preach every Sunday once in the parish church of Etwall aforesaid (except he should procure some other able and fit person to preach there in his stead), and that he should twice every day in the week say common prayers in the said church at due and seasonable hours, to the said poor and others that would hear the same. That the said master of the said hospital shall be continually resident in Etwall, without absence above forty days in any one year, and that for the time of his absence he should procure his place to be supplied, as well with one sermon every Sunday, as with common prayers twice in every week day, to be said at the time aforesaid. That the said master of the said hospital should have for his salary or wages yearly 20l. to be paid as therein mentioned." By an Act of Parliament passed for extending the objects of the charity, the said will and charter were confirmed; and, amongst other provisions, the poor men and poor scholars upon the foundation were to be increased; exhibitions were to be granted; governors under disability were to act by their committees or guardians. The affairs of the charity were to be conducted (but without prejudice to the powers and privileges of the governors for the time being of the said hospital and school) by a court of managers. And in the last clause but one of this Act, the charter was to remain in force, except as far as varied or altered by such Act. The late Dr. William Sleath was head master of the school at Repton for about thirty years; and upon the death of the Rev. Mr. Chamberlayne (master of the hospital) Dr. Sleath was appointed master of the hospital in his stead; and he so continued to act until the year 1842, when he became indebted to the corporation. It was agreed by Lord Hastings and Lord Chesterfield that the Rev. Mr. Mousley, the vicar of Etwall, should be deputy-master of the hospital, and should receive the rents and perform the duties in the place of Dr. Sleath, and that the doctor's salary should go in part discharge of the debt due to the corporation; but it was distinctly understood that the Rev. Mr. Mousley should not be appointed master upon the death of the doctor, except he should be considered the most fitting person to fill the office. Dr. Sleath died in the latter end of October following; Lord Hastings was then in Scotland, and Lord Chesterfield in London, and they were each apprised of the fact, and requested to state whether they wished the Rev. W. Mousley to proceed with the duties of the office; when Lord Chesterfield replied, he wished him to do so, and he should have much pleasure in signing his appointment at a future day. Mr. Mousley (the father of the Rev. W. Mousley) afterwards, at Lord Hastings' request, saw him upon the subject of a new appointment, and told him of Lord Chesterfield's wishes upon the subject; Lord Hastings hesitated, but ultimately said, "Let your son go on until Lord Chesterfield and I shall meet, and I have no doubt we shall agree in the appointment." No form of appointment was prescribed by the charter. Sir John Gerard, the third governor recognized in the charter, was a Catholic, and in consequence of an impression that Sir John could not act, he was not applied to in the first instance; but seeing this hesitation on the part of Lord Hastings, and believing that his lordship had a friend he wished to appoint master of the hospital, whose habits and doctrines were very different from those of the vicar of Etwall, and being also advised that Sir John was competent to act, Mr. Mousley, the father, applied to Sir William Stanley, to request Sir John to concur in the appointment, which he did, and his appointment was signed accordingly. Lord Hastings lived for a year and a half after this period, but he took no steps to question this appointment; and the master signed leases and did every other act as fully as any former master had done in the meantime. John Jennings, clerk, vicar of Etwall, was appointed first master of the hospital under the charter, and all the subsequent masters of the hospital, seven in number, were vicars of Etwall, until Mr. Cockburne's incumbency in the year 1786, who, from distressed circumstances, could not reside upon his living, and then the subsequent masters of the hospital, when the office

became vacant, were appointed from the curates of Etwall. The Judges of Assize for the county of Derby, on the 12th of June, 1693, appointed upon a vacancy requiring to be filled up by them, Ellis Cunliffe, clerk, Vicar of Etwall, master of the said hospital. The appointments of masters of the hospital and masters of the school, as well as poor men and poor scholars, have almost invariably been concurred in by the Gerard family from the time of the charter to the present time; and those appointments have almost always been made separately by the governors in consequence of their residing so far apart; and the Gerard family very frequently appointed a deputy to act for them in their absence.

Peacock (May 23, 1845) shewed cause, and the Court desired the question whether a *quo warranto* would lie to be alone argued. Assuming that Mr. Mousley has usurped the office of master of the hospital, no right of prerogative of the Crown has been usurped thereby. In *Rex v. Shepherd* (4 T. R. 381), an application was made that an information in the nature of a *quo warranto* might be filed, calling on the defendants to shew by what authority they claimed the office of churchwardens of Newark-upon-Trent. Lord Kenyon, C. J. was at first disposed to allow the question to be discussed, whether such an information could be granted, where there was not an usurpation on the rights and prerogative of the Crown; but on a subsequent day, and after conference with the other judges, he said that the Court ought not to listen to the application, for that it was destitute of every legal principle; and he referred to *R. v. Daubeny* (2 Str. 1196), and in which the Court had decided similarly. In the case of *R. v. Ramsden* (3 A. & E. 456), it was held by Little and Paterson, J. J. dubitante Lord Denman, C. J. that a *quo warranto* information does not lie for the office of governor and director, elected annually by rated inhabitants, under a local Act for the government of the poor, and the maintenance of the nightly watch; and having power to make orders to regulate the poor and the watching; to determine how much money shall be raised for the poor and the watch (for which amount the inhabitants are to make rates, subject to a power in the governors to rectify omissions or mistakes, and to an appeal to the quarter sessions), to purchase and hold real and personal property, including all the money raised under the Act; to erect buildings; to borrow money on the credit of the rates, for the purposes of the Act; to appoint and remove treasurers, and salaried clerks, collectors, and other officers, who are to account to them; to appoint watchmen and beadle, who are to be sworn in as constables before a justice, and to be under their control; to name sixteen persons, from whom the justices are to select four overseers; and to sue and be sued in the name of one of themselves, or of their clerk. The opinion of the majority of the Court in the case of *R. v. Hanley* (3 A. & E. 463) was similar. This office does not exist for any public purpose; neither is it connected with any franchise of the Crown; there is no jurisdiction attached to it, no public trust to be fulfilled.

Whitehurst, Q. C. and Gale, contra.—The Court ought to grant the application, in order that the question whether a *quo warranto* will lie may be raised on the record. If it be refused, the decision will be final. In *R. v. Marsden* (3 Burr. 1812), Lord Mansfield, C. J. had some doubt whether a *quo warranto* would lie for usurping a fair or market. It was there put on the practice of the Court before the 9 Anne, c. 20, and it was ordered that search be made for precedents. The case of *R. v. Gregory* (4 T. R. 241 a.) shews that Lord Mansfield afterwards changed his opinion, and thought that in such a case it would lie. The cases *R. v. Willis* (5 T. R. 875), *R. v. M'Kay* (5 B. & C. 641) turn upon whether the right usurped was one that gave a claim to costs under the 9th Anne, c. 20, which shews that the question was that put by Lord Mansfield as to the previous practice of the Court. The 4 & 5 W. & M. c. 18, s. 5, does not restrain the issuing such an information, if the practice of the Court permit it. *R. v. Howell* (Cases temp. Lord Hardwicke, 247.) In the case of *R. v. Ogden* (10 B. & C. 230), this Court held that an information in the nature of a *quo warranto* could not be filed at the instance of an individual for usurping a franchise of a private nature, not connected with public government. But that was questioned in *R. v. Allwood* (4 B. & Ad. 481.) The two cases cited on the other side (*R. v. Ramsden*, and *R. v. Hanley*), are not cases of usurpation of a franchise erected by the Crown, to which the old writ, for which this information has been substituted, applied. Here the office exists by charter, and by Act of Parliament, which are based on the will of the founder. And there is the duty of preaching sermons, which is a duty imposed for the benefit of the public, and in which the public has an interest. The charter is more extensive than the will, and it is under the charter that the lands are now held. In *Wilkinson v. Malin* (2 C. & J. 636) it was held that a trust to apply certain funds "towards the repairs of the church of W. the payment of the fifteenths, and relief of the poor of W. buying of armour and setting forth soldiers, and repairing Sawbridge-bridge, within the parish of W."

was of a public nature. *R. v. White* (5 A. & E. 613); *R. v. Carmarthen* (2 Burr. 869), were also cited.

PATTERSON, J.—The question arises in the case of *Reg. v. Darley*, now in the House of Lords; this case, therefore, must stand over until that shall have been decided.

JUDGMENT.

On Monday, May 4, the judgment was delivered by PATTERSON, J.—This is a case which was argued in the absence of my Lord, before my brothers Coleridge, and Wightman, and myself, and which stood over in consequence of the dependency, before the House of Lords, of a case of *Reg. v. Darley*, relating to an office in Ireland, in which it was thought probable that some principles of law applicable to the present case might be laid down. I do not go over what the actual object of this motion was, because it appeared sufficiently upon the argument which took place at the time. It was an application for a *quo warranto*, calling upon the defendant to shew cause by what authority he exercised the office of master of a hospital that was founded many years ago by a private individual, and there having been a charter granted by the Crown, there had been of late years an Act of Parliament to increase the powers of the corporation under the charter, and to make some alterations with respect to the management of the hospital. The case of *Reg. v. Darley* has been decided, and undoubtedly extends the limits of the writ of *quo warranto*, beyond those which at one time were considered proper, inasmuch as it establishes that an office of a public nature, created by Act of Parliament, may be the subject of proceedings by writ of *quo warranto*, although, strictly speaking, there is no usurpation upon the Crown. That case certainly has established this point. There have been several decisions in this court in which the contrary was held, which must be considered undoubtedly as overruled. But that case leaves the law precisely as it was as to offices of a private nature. Here the office is that of master of a hospital founded by a private individual, by will, having no public duties or jurisdiction of any kind. This was so clear, that the counsel in argument were obliged to contend that the provision in the will, that the master should preach a certain number of sermons in the parish church, created a public duty; but it is obvious that the founder could not confer the right so to preach without the concurrence of the ecclesiastical authority, and the public had nothing to do with it, nor any right to enforce the performance of that duty. It is true a charter was obtained from the Crown, according to the will of the founder, in order to incorporate the members of that foundation; but that alone is immaterial, because the Crown neither acted in the foundation nor reserved to itself any control over it. An Act of Parliament was obtained in modern times to extend that foundation, and make some alterations which, by change of circumstances, had become desirable, but it did not create a new corporation, nor did it confer any jurisdiction of a public nature, nor enjoin any public duty of this sort. We are, therefore, clearly of opinion that the writ of *quo warranto* is not applicable to an office of this sort, and that the rule for granting it must be discharged.

Rule discharged.

Monday, May 4.

REG. V. CONYERS AND OTHERS.

Mandamus to verderers of the forest of Waltham to enrol a license to sport in the forest.

The Chief Justice in Eyre of the Forest of Waltham having granted to one E. J. W. a general license to sport over the whole of the forest, many parts of which were in the occupation of private proprietors, having therein a freehold interest in possession, provided that it was brought to the next forest Court to be enrolled, and the verderers of the forest at the next Court having refused to enrol it, this Court refused to issue a peremptory mandamus to compel the enrolment on the ground that the license was bad in part, so far as it assumed to authorize the grantee to sport over the lands of private proprietors; and that even if they could direct its enrolment, as to the royal lands within the forest, still the Chief Justice in Eyre having power to compel the verderers to do all lawful acts, this Court ought not to interfere.

Mandamus to Henry John Conyers and others, esquires, verderers of the Forest of Waltham, in the county of Essex, reciting that the Right Honourable Thomas Grenville, Warden, Chief Justice, and Justice in Eyre of all Royal Forests, Chases, Parks, and Warrens on the south side of the Trent, did, on the 1st September, 1843, by writing under his hand and the seal of his office, as Chief Justice in Eyre, bearing date, &c. directed to all the officers of the Forest of Waltham, and reciting, &c. will and require all and singular the officers of the said forest, &c. that they, and every of them, should permit and suffer the said Edward Jones Williams, at all seasonable times, with one person in his company, on, from, and after the 1st day of September to the 12th day of February in every year, and at no other times, to hunt, hawk, course, set, shoot and fish in the public waters of the said forest; and to kill and carry away in and from the said forest and the limits thereof, all and all manner of beast and fowl of forest (red and fallow

deer only excepted), and to keep and use all sorts of dogs, nets, and guns for that purpose, &c. provided that the said license was brought to the next Court to be held for the said forest, to be there enrolled amongst the records of the said Court; that a Court of Attachment of the said Forest of Waltham was held at Chigwell, in the said county of Essex, on the 11th day of Dec. 1843, before the defendants, then and still being verderers of the said forest, being the next Court held for the said forest after the granting of the said license; that at that Court the said E. J. Williams, by his attorney, brought the said license to be enrolled; and required the defendants to enrol the same, but that they neglected and refused to do so; and commanding the said defendants, at the next Court of Attachment of the said forest, to enrol, or cause to be enrolled, the said license.

Return: setting up in substance that the said E. J. W. was not at the time of granting the license, or since, seized or possessed of, or entitled to, the said forest, and the public waters thereof, or to the soil and land of or in the same, for any estate or interest whatever; that the license extended over lands and waters, in and over which the said E. J. W. had not any lordship, manor, reputed manor, forest, chase, park, or warren, or any estate, right, title, or interest whatsoever; but that it extended over various lands, within the said forest (specifying them), of which different persons named were seized for estates of freehold in possession, and of which they were the occupiers. That before the license had been brought for enrolment, the said E. J. W. had come upon the forest and killed beasts and fowls of the forest; that the defendants had not been required by the Warden, Chief Justice, and Justice in Eyre, or by any justices of the forest, or by any order of any Court of Justice Seat, or other Court, to enrol the said license; and that no appeal or application had been made to the said Warden, Chief Justice, or Justice in Eyre, or to any Court of Justice Seat, or other court of the forest, having appellate jurisdiction from the said Court of Attachment, or over the said verderers.

Demurrer thereto.

Watson, Q.C. (Bovill with him), was heard in support of the demurrer, in Hilary Term last (Jan. 24); and Marsh, contra, and Watson, Q.C. in reply, in last Easter Term (April 25); but it is not considered necessary to publish the arguments at length. The authorities referred to were the *Charta Forestæ*; Manwood (4th edit.), pp. 235, 865—77, 110, 115, 145, 188, 192, 332, 358, 384; *In itinere de Deane*, Sir W. Jones's R. 348; in *Itin. Windsor*, *Id.* 276, 277; 4 Inst. 290, 297; 3 Black. Com. 71; Com. Dig. tit. Ley. (A.); tit. Chase (P.) (Q.) (R.); Russell's case, 3 Leon. 218; Lord Lovelace's case, Carth. 77; 1 Chitt. on Pleading, 216. Cur. adv. vult.

JUDGMENT.

LORD DENMAN, C. J. now delivered the judgment of the Court.—This was a rule for a *mandamus* to the defendants, the verderers of Waltham Forest, commanding them to enrol a license granted to Edward J. Williams, to kill game in that forest. We have heard in this case a great deal of argument on points of curious learning, and two matters occur to us as raising objections to the issuing of a peremptory writ. The license was admitted to be bad in part, because it is in such general terms, that it gives to the grantee a right to sport over the lands of private proprietors in the forest, but was contended to be good with respect to the royal lands. The learned counsel argued that we ought to command the enrolment of the license as far as it is legal; but we feel an insuperable difficulty in directing the enrolment of a license to authorize unlawful acts; and though we were anxious to have furnished to us some authority on this point, none was found. The other objection is, that the verderers are officers of the court of the Chief Justice in Eyre, and he must have power to compel them to do what the law requires. This court is not to be used as an instrument for enforcing the process or authority of any other court; at least not without some urgent demand for such interference. There will, therefore, be judgment for the defendant.

Judgment for the defendant.

Monday, May 11.

DOE dem. MERRIGAN AND DALY v. DALY.

Ejectment by husband against wife.

There is no abstract rule of law prohibiting a husband from maintaining an action of ejectment against his wife. The Court, therefore, discharged a rule to set aside a verdict obtained upon that ground.

Ejectment.—The declaration contained two demises, one by the defendant's husband. At the trial a verdict was found for the lessor of the plaintiff; and a rule nisi had since been obtained on the part of the defendant for a nonsuit or new trial.

Petersdorff (on Thursday, May 7), shewed cause. The question is, whether ejectment can be brought by husband against wife; but after the wife has entered into the consent rule, she is estopped from raising that question; she has admitted herself a trespasser; and, therefore, the general rule that a husband cannot maintain an action against his wife will not apply. The Courts have, no doubt in many

cases, summarily interfered to stop actions brought by the wife without the authority of the husband, in their joint names, or in the name of the husband alone, until indemnity was given, on the ground that the husband was the only person who had any interest in the subject-matter (*Morgan v. Thomas*, 2 Cr. & Mee. 388; *Harrison v. Almond*, 4 Dowl. 321); and in this case the wife might have applied for leave to plead specially, or in abatement. Ejectment is an action of trespass in its nature (*Peggie's case*, 9 Rep. 78), and, therefore, accord and satisfaction has been held a good plea in ejectment; and ancient demesne also has often been pleaded by leave of the Court. *Alden's case* (5 Rep. 105, a.); so in *Phillips v. Bury*, (Carth. 180), the Court ordered that defendant might plead specially that he was rector of Exeter college; and in actions of tort the wife could not give in evidence her coverture without pleading it; and in this form of action there is this further objection, that the husband is not the plaintiff; John Doe is the only plaintiff. (*Doe dem. Fox v. Bromley*, 6 Dowl. & E. 292.) After the consent rule has been entered into, the only question is as to the title; and the husband must have title against his wife. There is, therefore, no ground for disturbing this verdict.

Bramwell, contra.—Though assumpsit remedies may exist, the defendant is not thereby prevented from insisting that the action is not maintainable. The application for a new trial is a convenient substitute for a bill of exceptions; and the objection here taken would have formed the ground of a bill of exception. If the argument used against this rule be correct, every husband in the kingdom may make his wife the defendant in an action of ejectment. [PATTERSON, J.—He would be a bold man who would swear that his wife was tenant in possession.] It would not be very difficult to obtain that affidavit; but the action of ejectment supposes the defendant to be a trespasser against the lessor of the plaintiff at the time when the action is brought (*Doe dem. Newby v. Jackson*, 1 R. & C. 448, 454, per Bayley, J.); and it will not lie, therefore, where there is a subsisting negotiation for a tenancy; nor against one who has been admitted under an agreement for the sale of the premises, without a demand of possession; for in *Doe dem. Lewis v. Beard* (13 East, 210), it was held that even considering such lawful possession as a tenancy at will, the defendant's confession of a lease (by entering into the common rule) is not a constructive determination of the will whereon to maintain ejectment. Then, how can the wife, though she remain on the premises against her husband's will, be treated as a trespasser? In *R. v. Smyth* (1 Moo. & Rob. 157), Lord Tenterden, C. J. said: "A wife certainly cannot commit a trespass on the property of her husband," but added (that being the case of an indictment of the wife and others for a forcible entry on the property of the husband), "I am by no means satisfied that, if she comes with strong hand, she may not be indictable for a forcible entry, which proceeds on the breach of the public peace." Reliance, however, is placed upon the fiction of law, which makes John Doe, and not the husband, the plaintiff in the action; but, first, in *actione juris semper subsistit æquitas*; the rule being, that no fiction shall extend to work an injury (3 Black. Com. 43); and, secondly, if the fiction is to be employed against the defendant, it may also be used in his favour, and then, but for the lease to John Doe, the possession of the wife would not be unlawful; and John Doe had never demanded possession. Lastly, if it be asked, what remedy the husband has against his wife, the answer is, as to the detention of chattels against his will, none; but as to realty, if she is liable to indictment for forcible entry, she must also be liable to an indictment for a forcible detainer. Cur. adv. vult.

JUDGMENT.

LORD DENMAN, C. J. now delivered the judgment of the Court.—This was a motion for a new trial on the ground that the verdict obtained for the plaintiff ought not to be maintained, because it was proved that the defendant was the wife of one of the lessors of the plaintiff. We do not see how this can annul the effect of the consent rule, which puts in issue nothing but her title. It is said, that there is such a common interest between the husband and wife in this property, created by the relation of marriage, that the wife cannot by law be guilty of a trespass upon it. We cannot accede to this doctrine, for the relation of husband and wife at least does not justify her in taking possession of the property, and holding it, to his exclusion. The technical difficulty which is here used for the purpose of preventing the husband from recovering possession of the property, the whole of which undoubtedly belonged to him, is successfully met by a technical answer; for John Doe, and not the husband, is the plaintiff on the record. Something was said as to the necessity of demanding possession; we have seen, my brother Wightman's notes, and there are no circumstances in the case that make that material, or at all interfere with our decision. The rule, therefore, will be discharged. Rule discharged.

COURT OF COMMON PLEAS.

April 21, May 7.

ZULUTKA v. MILLER.

Practice—Pleading—Issuability.

To an action upon a special agreement to construct a steam engine within a given time, whereby the plaintiff contracted to pay one-fourth part of the price immediately, one-fourth when the engine was half finished, and the other two instalments at different times, with a breach that the engine was not completed at the time agreed on, it is an issuable plea that, although the engine was half finished, the plaintiff did not nor would pay the second instalment.

Assumpsit.—The action was brought upon an agreement made between the plaintiff and the defendant, whereby it was agreed that the defendant should furnish for the plaintiff two double acting steam-engines, of the collective power of 250 horses, with every material part complete, and ready to be set to work, for 15,000*l.* and that the engines should be complete and ready to put on board in eight months from the date of the said agreement, and that the plaintiff should pay the said sum in the following manner; viz. one-fourth part on signing the agreement, one-fourth part when the engines were half finished, one-fourth part when the engines should be ready to be put on board, and one-fourth part when the engines were completed and fitted on board. The declaration averred payment by the plaintiff of one-fourth on the signing of the agreement, and alleged the plaintiff's readiness and willingness to perform the other part of the said agreement, with a breach that the engines were not complete and ready to be put on board within the eight months from the date of the agreement, or at any other time before the commencement of the suit. The defendant having obtained time to plead, upon the terms of pleading issuably, pleaded, that although after the making of the said agreement in the declaration mentioned, and within the space of eight months from the date of the said agreement and before the commencement of the suit, the said engines in the declaration mentioned, were by the defendant half finished, according to the terms and meaning of the said agreement, of which the plaintiff had notice, yet the plaintiff did not, nor would then, although requested by the defendant so to do, nor at any other time before the commencement of the suit, pay to the defendant the said one-fourth part of the said sum of 15,000*l.* or any part thereof, according to the terms and meaning of the said agreement, and from thenceforth wholly refused so to do, contrary to the terms and meaning of the said agreement. The plaintiff thereupon signed judgment as for want of a plea. The defendant had obtained a rule calling upon the plaintiff to shew cause why the judgment should not be set aside, against which, on April 21st,

Sir T. Wilde, Serjt. shewed cause.—The plea is not issuable. The effect of it would be, that if the fourth part of the price were not paid within an hour of the engines being half finished, that would be an absolute discharge of the defendant. To constitute a defence of this kind there must be a total failure of consideration. Where part that is to be done is done, there is a partial consideration, and the only remedy is by a cross action. (*Pordage v. Cole*, 1 Wms. Saunders, 319, 1.) Here there might be a perfect breach upon the part of the defendants, consistently with the plea, which would be sustained by proof that the engines were half finished a moment before the eight months expired. A plea is only issuable when it tenders an issue that would try the cause on the merits. This plea would not decide the merits, and may, therefore, be treated as a nullity. (*Carpenter v. Creswell*, 4 Bing. 409; *Stevens v. Curling*, 3 Bing. N.C. 355; *Maitlock v. Kinglake*, 10 A. & E. 50; *Mackay v. Wood*, 7 M. & W. 420.) In *Steele v. Harmer* 14 (M. & W. 136), Parke, B. says, "An issuable plea is one that puts the merits of the cause either on the facts or the law in issue, which will decide the action. A plea may ultimately turn out to be bad, but it is not therefore non-issuable; for if it were, a plea could not be issuable unless it were also a good one." This case is consistent with the general rule. A plea which does tender an issue in law or fact that goes to the merits, is an issuable plea. Even though a bad plea, yet if it appear an honest plea the party may be put to demur. The object of the condition of pleading issuably is to protect the plaintiff from a demurrer and from dilatory pleading. A plea had on demurrer is, therefore, not issuable, unless it raises a fair substantial question of law, really arising in the case, and which will decide the case. In *Staples v. Holdsworth* (4 Bing. N.C. 144), it was held that a defendant who was under terms could not plead the bankruptcy of one of the plaintiffs since action brought. The rule to be collected from *Humphreys v. Earl of Waldegrave* (6 M. & W. 622) is, that a plea is an issuable plea which tenders some matter upon which, if issue be taken, the case will be decided upon the merits. This is the leading principle of all the cases. The time granted is a departure from the established rule as to the time to plead in favour of the defendant, and to that indul-

gence is asured the condition that the defendant should honestly make his defence. The payment of the second instalment is no condition precedent to the defendant's obligation to complete his engagement. [ERLE, J.—Suppose the first instalment had not been paid. The plaintiff avers payment of the first instalment, and treats that as a condition precedent.] I think that averment unnecessary. But there is a difference between a partial and a total failure of consideration. [ERLE, J. referred to *Wilkins v. Reynolds* (2 B. & Ad. 883).] The foundation of that decision was that the acts were concurrent. That case does not impeach my position. The times for payment are here fixed by events, and it is the same as if particular times were appointed. He referred also to *Wilkinson v. Page* (7 Scott N.R. 961).

Channell, Serjt. in support of the rule.—*Steele v. Harmer* (14 M. & W. 136) is in my favour. If the defendant puts on record a plea which has for its object really and fairly to decide the question, either on the law or the facts, that is an issuable plea. It has been repeatedly held that a general demurrer is an issuable plea, and the same doctrine applies to a plea which leads naturally to a general demurrer. There is no more dilatoriness in one than in the other. This is the only plea upon the record, so that it will decide the case. *Wilkinson v. Page* (7 Scott, N. R. 961) shews that it is not necessary that the plea should go to the merits of the cause in the proper sense. [CRESSWELL, J.—Has it not been usually considered that an issuable plea must tender some issue; that is to say, either you must demur generally, and so tender an issue in law, or you must tender an issue in fact? ERLE, J.—If the plea is a good plea, a traverse of it will decide the matter. The question seems to me to come to this—would a demurrer to this be a frivolous demurrer? All I need establish is, that the plea shews a non-compliance with a condition precedent to that part of the contract which the plaintiff says is broken. The plaintiff's cause is based upon the assumption that time is of the essence of the contract. All he complains of is, that the work is not finished within the eight months. The defendant says that time is only of the essence of the contract upon the condition of the instalments being regularly paid. To treat this plea as a nullity would be going farther than any case that has yet been decided. Cur. adv. vult.

The judgment of the Court was now delivered by TINDAL, C. J. (after stating the facts and pleadings in the case).—Upon the present motion the question arises, whether the plea pleaded was an issuable plea. It was put in within the usual order for time to plead, and the plea objected to appears to have been pleaded with a view to raise the question whether the defendant was bound to complete and deliver the engines under the agreement, if the stipulated payments were not made by the plaintiff as the work proceeded. It is not necessary for us, in the present state of proceedings, to pronounce an opinion whether the plea in question is a good plea or not. It is not manifestly a bad plea; on the contrary, it may be thought to raise a fair question of doubt in a matter of law, the decision of which will determine the legal rights of the parties on the merits. It was said by the Court of Exchequer, in the late case of *Steele v. Harmer* (4 M. & W.) that an issuable plea is that which puts the merits of the case either on the facts or the law in issue, and which would decide the action. A plea may undoubtedly turn out to be bad, but it is not therefore non-issuable. This is in conformity with the case of *Mackay v. Wood* (7 M. & W.) where it was said by Mr. Baron Parke, that "that is to be considered as an issuable plea on which a decision on demurrer or by a jury would determine the action on the merits." We think the plea in this case does raise a question of law on those points, and that the defendant is entitled to have the deliberate judgment of the Court, or even of a Court of Error. The plea is calculated to bring the question to a decision on the merits without any unfair delay or embarrassment to the plaintiff. We think, therefore, we shall best meet the justice of the case by following the course adopted in the above cited case of *Steele v. Harmer*, and the rule will be made absolute, the costs to be costs in the cause. Rule accordingly.

May 5 and 7.

KEYS v. HARWOOD.

A entered into a written contract with B, for the board and lodging of A, and it was agreed thereby that B should take certain furniture of A in payment of the debt. Before the time during which the contract was to be performed had elapsed, the furniture was seized by a judgment creditor of A.—Held, that B might recover in an action of debt under the common count for board and lodging.

This was an action of debt containing the common counts for board, lodging, and necessaries, for money lent, and on the account stated. Pleas. 1. *Nunquam indebtedus*. 2. Payment. 3. Accord and satisfaction. The action was tried before Maule, J. at the second sittings for Middlesex in Easter Term, and a verdict found for the plaintiff for 29*l.* At the trial the defendant put in a written agreement, and then contended that this form of action was not sustainable;

or that the agreement amounted to conclusive proof of either the second or third plea.

Byles, Serjt. having moved for a new trial on the ground of misdirection, the Court took time to consult Maule, J. and then delivered the following judgment, in which all the important facts of the case appear:—

TINDAL, C. J.—The objection raised in this case before my brother Maule was, that the action was wrongly conceived in point of form, and that, instead of being framed as an action of debt for board and lodging, to be paid for on request, the plaintiff ought to have declared on a special agreement, stating that there had been made between the parties the written contract which was produced at the trial. By this agreement the plaintiff agreed to board and lodge the defendant and his family at the weekly sum therein mentioned, and in payment for the board and lodging agreed to take the furniture deposited on the premises, and valued at 28*l.* 10*s.* and undoubtedly if nothing had taken place after the contract was made, so as to prevent the possibility of its performance, the objection would have been sustainable, but after the contract was made, one of the creditors of the defendant recovered judgment against him, and seized and sold the furniture in question under an execution against the defendant. We consider the case, therefore, to be the same in effect as if the defendant had taken away the furniture and sold it himself, and the plaintiff is, in consequence, entitled to recover the value of the board and lodging by the ordinary action of debt, as if the special contract had never existed. This seems to be the principle laid down by Lord Tenterden in the case of *Baines v. Payne* (1 Chitty on Pleading, 357), and we therefore think the verdict ought not to be disturbed. Rule refused.

THE LEGISLATOR.

Summary.

THE Charitable Trusts Bill has been thrown out of the House of Lords by a majority of one. This is the more remarkable, as last year a measure almost similar to it, but a little more stringent, passed the same House unanimously, and was only prevented from becoming law by the pressure of other business in the Commons, where no serious opposition to it was contemplated. It is obvious that this change in its treatment is the result of the changed position of the government from which it has emanated, rather than of altered views of the utility of the measure itself. The speech of the Lord Chancellor abounded in forcible illustrations of the mischiefs the Bill was intended to meet, and his narratives of the abuses existing in various Charities were demonstrative of the necessity for some interference. Indeed, the abuses were not denied by any of the speakers; they differed only as to the remedy. Lord CAMPBELL thought that the Court of Chancery was the best tribunal for the purpose, but he forgot to inform us how small Charities were to meet the cost of setting that Court in motion. Lord LYNTHURST was more successful in shewing the evils to be overcome than the excellence of the instrument he had devised for the purpose, and on that weak point his adversaries seized. The result is, that the abuses are to thrive for another year at least, and they who objected to the measure, on the ground that it was not sufficiently stringent, will have to wait a long time before another opportunity will offer of carrying out their wishes. They should have modified this bill to their views, made it more efficient for its purpose, and removed some of its objectionable provisions, instead of rejecting it because it was not in all things framed to their fancies. But, perhaps, after all, it was against the authors of the measure, rather than against the measure itself, that the attack was made, and the defeat had other objects than its apparent one. No other Law Bills have made any progress, nor are they likely to advance during the present Session. There are rumours of an almost immediate dissolution.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, May 15.

County Rates Bill—"to provide for the more effectual making of county Rates by Justices in England and Wales."

Viscount Hardinge's Annuity
Convicts Bill—"for abolishing the office of superintendent
of convicts under sentence of transportation."

Monday, May 18.

Death by accidents compensation.

Wednesday, May 20.

Places of Worship, &c. Sites, Scotland—"to enable Christian congregations in Scotland to obtain sites for places of worship, manse, and school houses."

BILLS READ A THIRD TIME AND PASSED.

Friday, May 15.

Corn Importation Bill.

Wednesday, May 20.

Viscount Hardinge's Annuity
Lord Gough's Annuity
Explosive Substances

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Lancaster, Carlisle, and Lancaster, and Preston Junction
Railways Amalgamation Bill
Askew's Estate

Thursday, May 21.

British Guarantee Association

BILLS READ A SECOND TIME.

Friday, May 15.

Midland Railway
Chelsea Bridge and Thames Embankment
Bristol and Birmingham Railway (Bath Line).

Monday, May 18.

Caledonian Extension Railway
Midland Railway
Norfolk Railway Extensions
West Lancashire Railway
Warwickshire and London Railway
West Riding Union Railway (No. 2)
Midland Railway (Birmingham and Gloucester branches)
Liverpool and Bury Railway
London and South Western Railway.

Tuesday, May 19.

Charing Cross Bridge
Bromsgrove Improvement and Small Tenements (No. 2)
Waterford Harbour (No. 2).

Wednesday, May 20.

Lancaster and Carlisle and Lancaster and Preston Junction
Railways Amalgamation.

BILLS READ A THIRD TIME AND PASSED.

Friday, May 15.

Newcastle and Darlington Junction Railway
Birkenhead Improvement
Rotherham Gas
Rugby and Stamford Railway
Southampton Port and Harbour
Colchester, Stour Valley, Sudbury, and Halsted Railway.

Monday, May 18.

East Lincolnshire Railway
York and North Midland Railway (No. 1)
York and North Midland Railway (No. 2)
Sidmouth Market.
Stowmarket Navigation
Sligo Harbour Improvement
York and North Midland Railway

Tuesday, May 19.

Malton and Driffield Junction Railway
Bury Water-works
Kendal Union Gas and Water

Wednesday, May 20.

Eastern Union Railway
North British Railway

Thursday, May 21.

North Staffordshire Railway (Churnet Valley Line)
North Staffordshire Railway (Harecastle to Sandbach)
North Staffordshire Railway (Pottery Line)
Lincoln Waterworks (an Amendment to be proposed).

SESSIONAL PRINTED PAPERS.

Metropolitan Sewage Manure Company Bill—Report made
to the Government

Lancaster—Account

Railway Bills Classification—Fourteenth Report of Com-
mittee

W. Smith O'Brien, esq.—Copy of Warrant
Bills—Ropemakers

Viscount Hardinge's Annuity (No. 2)

Superintendent of Convicts

Death by Accidents Compensation.

Titles, Contents, and Indexes to Sessional Printed Papers of
Session 1845.

Poor Law Unions (Ireland)—Abstract Return

Constabulary (Ireland)—Return

Constabulary Force (Ireland)—Paper

Westminster Election—Return

Boothdale Borough—Copy of a Memorial

British Museum and National Gallery—Returns

Arms (Ireland)—Returns

Charitable Donations and Bequests (Ireland)—Returns

India (late Hostilities)—Further Papers

Poor Law Commissioners—12th Annual Report

(Session 1845) Naval Medical Supplemental Fund—Report

Steam Vessels (Navy)—Returns

East India and China—Returns

Chinese Labourers, &c.—Paper.

Bills in Progress.

COUNTY RATES.—By a Bill in the House of Commons (introduced by Mr. Frewen and Sir Howard Elphinstone) it is proposed to amend the law so as to provide more certain means of information for making county-rates, and for the more correctly and equitably making county-rates. After the passing of the bill justices are not to allow rates unless they are satisfied by evidence that all the property in the parish has been rated according to the full and fair value thereof. Within two years after the passing of the measure, justices of the peace are in the several

counties to make new rates or assessments, and also, within the period of every seven successive years, make a new rate, according to the returns ordered to be made by virtue of this Act.

HOUSE OF LORDS.

BURDENS AFFECTING REAL PROPERTY.

MONDAY, May 18.—Lord BEAUMONT brought up the report of the select committee appointed to inquire into the burdens affecting real property; and moved that the report and minutes of the proceedings before the committee be printed. Agreed to.

HOUSE OF COMMONS.

SMALL DEBTS ACTS.

MONDAY, May 18.—Mr. R. V. SMITH inquired whether the Government intended to introduce a general small debts Bill, as he understood they had stopped all the local Bills that were before the house. —Sir J. GRAHAM replied, that he had certainly notified to the parties promoting local Bills for the establishment of small debt courts, that they should suspend them till opportunity was afforded to the Government of introducing a general measure. The President of the Council was about to introduce into the other House a Bill, which would be the complement of the measure adopted last session, carrying it into general execution without further legislative interposition. The Bill would enable the Queen in Council to establish courts throughout England and Wales for the trial of causes for the recovery of debts under 20*l.* before a qualified judge, to regulate the procedure universally, and (as we understood) to establish a code of fees.

CHARITABLE TRUSTS BILL.

The LORD CHANCELLOR then moved the second reading of the Charitable Trusts Bill, and after expressing his surprise that a measure which had been before the House in two former sessions, and had only been dropped in consequence of the delay occasioned by other business, should now be the object of so much opposition, proceeded to state the grievances which it proposed to remedy. As the law now stood, the Court of Chancery was the sole tribunal which had power to inquire into the administration of charities; but though in some cases it was a proper tribunal, in others, and those the vast majority, it was the worst possible. It was only the large charities, in short, that could afford the expensive machinery of a Chancery suit, which, if applied to the poorer endowments, would swallow up all their funds. In any case of abuse, then, the smaller charities could not complain, because such a complaint would be their ruin; this was a state of things not to be endured, and the present Bill proposed to establish an independent tribunal, exercising a summary jurisdiction, and composed of commissioners who should have a right of calling on all charities for an account of their receipts and disbursements. Now it was this latter provision which had excited so much opposition, as the larger charities were unwilling to have their accounts examined, and declared, especially those of the city of London, that no abuses of administration had been committed, though it could be proved beyond a doubt, that abuses did exist, as in the case of the Mercers' Company, and others against which numerous informations had been filed. Nevertheless this opposition was so violent, that, rather than hazard the success of the whole measure, he had prepared a schedule, into which such of the charities as the House chose to exempt could be inserted in committee. The noble lord then adverted to the condition of the municipal charities, and stated that the present Bill proposed to vest all such trusteeships in the new commissioners; after which he sat down, calling on the House to permit the Bill to be read a second time, in spite of the opposition from without.—Lord COTTENHAM complained of the extraordinary course pursued by the Lord Chancellor with respect to this Bill; it had been before the House since February, and yet no notice had been given of the great alterations about to be proposed in it. It sounded very strange to exempt large companies from the operation of the measure, because they had been guilty of the very malversations which it aimed at preventing. After commenting on the way in which the amendments introduced last session had been treated, the noble lord went on to say that his objections to the Bill in its present form were quite independent of its applicability to charitable trusts. He had remarked that since 1841, the patronage of the Great Seal had enormously increased, while the business before the Court of Chancery had diminished. In its present state, he was quite certain that the machinery of the Court was sufficient, if properly applied, for the administration of all the charitable trusts of the kingdom, and that there was no need to increase the patronage of the Great Seal by a new set of commissioners. He also strongly objected to the inquisitorial powers granted to these commissioners, and, having pointed out the defects of the measure as applied to the different kinds of charities in the kingdom, declared his conviction that nothing could be more unjust or injurious to these cha-

rities than the present scheme, and concluded by moving that it should be read a second time that day six months.—Lord BROUGHAM had never heard of any court of justice so summary a condemnation as Lord Cottenham had pronounced against the Bill, and defended the Lord Chancellor from the charge of appointing commissioners for the sake of patronage. Lord Cottenham had avoided the sore subject of malversation, and founded his attacks on matters quite extraneous to the Bill, and yet it was certain that monstrous abuse of charitable funds had been practised and still existed.—Lord CAMPBELL was in favour of the centralization which would be introduced by the present measure, and thought it hard that, being the originator of the Bill in former sessions, he should now be ignorant of the amendments that he introduced in it until the second reading.—The Bishop of SALISBURY and Lord WHARTON expressed their intention of voting for the Bill. The House then divided on the question that the Bill be read a second time, when the numbers were—

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Majority against the Bill .. 1

THE BURDENS ON LAND.

OUR readers are doubtless aware that a Committee was appointed by the House of Lords in the first part of the present session to inquire into, and report upon, the peculiar burdens, if any, which land has to bear.

The twofold fruit of the Committee's labours is now before us in the shape of two reports, one adopted and presented to the House of Lords on Tuesday last, the other, prepared evidently with elaborate care and with considerable ability, but rejected upon a division by a majority of the Committee. The former may be considered as speaking the opinions of the Protectionist majority, the latter that of the Free Traders.

It is impossible for us to find room for even a summary of these important documents, of which that adopted extends to 12, and that rejected to 49 pages, but we subjoin the "Recommendations," with which each party concludes its report.

The following are the remedies suggested by the Protectionist majority:—

"1. The improvement of the law of real property, the simplification of title, and of the forms of conveyance, the establishment of some effective system for the registration of deeds.

"2. An extension of the measure of 1835, by relieving the counties and boroughs from the portion of expense to which they continue liable for criminal prosecutions as well as the maintenance and conveyance of prisoners. This measure, however, should be accompanied by an adoption on the part of the State of an effective control.

"3. The adoption of the liability of the owner of houses under the annual value of 10*l.* to the rates at which the same are assessed.

"4. Where establishments exist or may be required for the support of lunatics, and where there are obvious reasons, both of economy and of humanity, for centralizing the administration, and where, above all, the resources of the state can be made available, without any risk of aggravating or increasing the evil proposed to be remedied, the committee are not prepared to justify the imposition of the whole cost upon one description of property. The committee therefore submit, that the charge for the maintenance of pauper lunatics throughout the empire ought to be undertaken by the public.

"5. To a certain extent the observations made on lunatic asylums may be applied to some branches of the expenditure for the maintenance and relief of the poor. Mr. Cooke shews, from official documents, that the establishment charges, inclusive of salaries, amount to 17 per cent. on the total expenditure for the relief of the poor, and states that these charges might be provided for by the Government, without leading to any evil consequences in the administration of the Poor-law.

"6. A charge is periodically cast upon the land for the militia rate; this is not now levied, the militia being disembodied; but, considering the object of the militia to be general, and not confined to the interests of a particular class, the committee are of opinion that this charge should be provided for by Parliament, care being, however, taken, that if the public assume the responsibility of the charge, the Government should have authority to ensure the efficiency of the force.

"7. It is most desirable that the experiments for testing the process of malting barley for the purposes of fattening cattle should be repeated, with the co-operation of persons of acknowledged skill in agriculture.

"These measures appear to the committee to be necessary because they are just. They have confined their recommendations of change in the sources from which certain charges should be defrayed to matters in which every interest is equally concerned, and the expense of which ought to be shared by all.

"The committee considered themselves limited to an inquiry into the relative burdens on different descriptions of property within the kingdom: a more important consideration would probably be the proportion of burdens on the cultivators of land in this country as compared with those borne by the cultivators of foreign countries intended to be admitted into competition with them in the same market. On this subject some information has fallen from Messrs. Cramp and Banfield, who have been acquainted with the condition of farming in countries bordering on the Baltic and in the north of France, but the committee were of opinion their instructions precluded them from following up this description of inquiry.

"The committee have directed the minutes of evidence, with an appendix and index thereto, to be laid before your Lordships.

The "Recommendations" of the Free Trade section of the Committee are as follow:—

"1. The improvement of the law of real property, the simplification of titles and the forms of conveyance, the establishment of a general office for the registration of deeds; thus applying principles already adopted in Scotland, Ireland, and almost throughout the continent of Europe, whereby the security to landed property has been increased, and its value augmented several years' purchase.

"2. An extension of the measure of 1835, by relieving the counties and boroughs from the portion of expense to which they continue liable for criminal prosecutions. This measure, however, should be accompanied by an adoption, on the part of the state, of an effective control. The establishment of an office of public prosecutor, and the conduct of all prosecutions, is recommended in the strongest manner by the example of Scotland and of Ireland, as well as by the reason of the case.

"3. The revision of the stamp duties, not with a view to the reduction of revenue, but to a better apportionment of burdens—an adoption of an *ad valorem* scale of duty, relieving small properties from the present unjust and disproportionate charge, and making an equitable distribution of all duties on the sale and transmission of property, real and personal, whether during life or after decease, both on ordinary conveyances and in the shape of probate or legacy duties, so as to remedy all existing inequalities, and to repeal all undue and partial exemptions.

"4. The adoption of periodical and compulsory revaluations for the levy of all local rates, so as to avoid the injustice and inequality of the present most anomalous system. This is consistent with the recommendation of the commissioners on local rates, and with the evidence now taken.

"5. The consolidation of the present numerous rates, levied by multiplied and sometimes conflicting authorities. There now exist in law, if not in practice, 24 rates, and 54 species of officers for their imposition, levy, and administration. The number of these officers is now estimated at 180,204. The fact that many of these officers perform gratuitous service does not necessarily vary the case; it is far from being universally true that gratuitous service is always the cheapest.

"6. It has been explained by Mr. Blake, that the expense of erecting gaols, bridewells, shire halls, and similar buildings in Ireland is provided for by the public. Advances are made by the Treasury to meet these heavy branches of expenditure; these advances are made on the security of the county-rate, and are repayable, without interest, by easy instalments. There appears every reason why this system should be extended to Great Britain.

"7. Where new establishments are introduced, as in the last session, for the support of lunatics, and where there are obvious reasons, both of economy and of humanity, for centralising the administration, and where, above all, the resources of the State can be made available, without any risk of aggravating or increasing the evil proposed to be remedied, the committee are not prepared to justify the imposition of the whole cost upon one description of property. The committee therefore submit, whether the charge for the maintenance of lunatics in public asylums throughout the empire ought not to be undertaken by the public.

"8. More hesitation should undoubtedly be felt in respect to any part of the expenditure for the maintenance and relief of the poor; but, to a certain extent, the observations made on lunatic asylums may, with proper safeguards, be made applicable to other branches of medical relief.

"9. A charge is periodically cast upon the land for the militia rate; this is not now levied, the militia being disembodied; but, considering the object of the militia to be general, and not confined to the interests of a particular class, the committee are of opinion that this charge should be provided for by Parliament, care being, however, taken, that if the public assume the responsibility of the charge, the Government should have authority to insure the efficiency of the force.

"10. It is most desirable that the practical experiments for testing the chemical conclusions to which Professors Graham, Thomson, and Dr. Lyon Playfair have arrived should be repeated, under proper super-

intendence, but with the co-operation of persons of acknowledged skill in agriculture. Without impugning the scientific acquirements of the eminent men consulted by the Government, it is highly interesting that this question should be disposed of in a manner to leave no reasonable doubt on the decision which may ultimately be pronounced.

"These measures appear to the committee in themselves to be defensible, because they are just; but, at the same time, in making these suggestions, they are fully aware that the burdens imposed by law directly upon land in England, do not bear so high a proportion in England to the whole taxation of the country as is the case in many foreign states. So far as Prussia and parts of Germany are concerned, this fact may be deduced from the evidence of Mr. Banfield. The same results may be found in respect to France, the Netherlands, Denmark, Sweden, and other foreign states. This fact, however, ought not to vary the views which may be taken either of justice or policy; neither should it be inferred that the proportion of land-taxes borne by foreign countries enters into the cost of production, or raises the price of produce abroad, any more than similar taxation has been shown to do at home. The facts are, therefore, referred to as bearing upon the principle of apportionment between one class of the community and another, and not for the purpose of suggesting that the cost of raising corn and other agricultural produce is governed by one principle in England, and by another principle on the continent of Europe."

NEW PUNISHMENT.—In a Bill introduced into the House of Commons by Sir James Graham, "For preventing malicious injuries to persons and property by fire, or by explosive or destructive substances," it is proposed to be enacted that male offenders under the age of 18 years may be whipped. It is generally understood that it is the intention of the authorities gradually to introduce corporal punishment, with a view to repress crime among the juvenile class of offenders.

THE MAGISTRATE.

Summary.

We are glad to see the newspapers again directing attention to the important subject of an Appeal in Criminal Cases. It will be remembered that the present Solicitor-General had identified himself with this question, and by his powerful advocacy had forced a general acknowledgment of the justice of such a provision, or rather, we should say, of the monstrous injustice of its denial. His official cares have prevented Sir F. KELLY from pursuing the noble work he had commenced, and delicacy, perhaps, may have deterred others from seeming to take it out of his hands. But in the meanwhile the wrong continues; the innocent are punished, the guilty escape; errors of unlearned magistrates are irreversible, mistakes of learned judges are uncorrected, and the hasty verdicts of stupid or prejudiced juries are recorded, and cannot be erased. Where life and liberty are at stake there is no appeal; but if 20*l.* be in dispute, a new trial may be had. In Scotland there is an appeal for criminals; so in France, so, we believe, in Germany, and even in despotic Austria and Russia. But in free England, 20*l.* is more cared for than the life or the liberty of a man! It is time that we should wipe out this blot upon our jurisprudence. We commend the subject to the care of some younger member of the House, who may, if he please, thus identify his name with a cause which only needs an earnest advocate to secure a speedy triumph.

THE INCLOSURE COMMISSION.

Report of the Commissioners.—To the Right Hon. the Secretary of State for the Home Department.

We have the honour to forward to you, as one of her Majesty's Principal Secretaries of State, pursuant to the provisions of the Act passed in the 8th and 9th years of the reign of her present Majesty, c. 118, a general report of our proceedings, specifying such matters as are thereby directed; which report contains a schedule, as a form most easy of reference, by which will be seen the time each inclosure proceeding has occupied in its several stages, which has necessarily varied according to the circumstances of the different cases. The number of applications of all kinds to this office has been forty-six, of which forty-two have been for inclosures; of these thirty-one we are led to believe will require the previous authority

of Parliament, and eleven will not. There is one for the conversion of stinted into regulated pasture, one for the exchange of lands, and two to complete proceedings under local acts. 28,231 acres, 1 rood, 22 poles, is the quantity of land comprised in the applications, exclusively of those relating to local acts and exchange.

Our report of any opinion as to the expediency of or inexpediency of inclosure is necessarily confined to these cases with respect to which the proper assents have been given to the provisional order. We have in the schedule given precedence to all those cases which it is confidently expected will require the previous authority of Parliament; of these, taking first such as fall under the 14th section of the Act, in the order observed therein, and followed with those cases which do not require the previous authority of Parliament. In addition to this general statement in the schedule, we proceed now to report specially on these cases (No. 1 to No. 7 inclusive) requiring the previous authority of Parliament, to which the proper assents to the provisional orders have been given, the special grounds on which we think such inclosures expedient, and in those cases where no allotments are made for exercise and recreation or for the labouring poor, the grounds on which we have abstained from requiring such appropriation; and afterwards on case No. 8, which does not require the previous authority of Parliament, and the grounds on which we think such inclosure expedient.

An application has been made for the inclosure of Milton Common Fields, containing 2,090 acres, of which part is waste of a manor on which the tenants have rights of common. We consider this inclosure expedient on the grounds that the open arable land will be doubled in value by allotting, inclosing, and draining it, and the meadows and commons in a still greater degree, and the population fully employed; and besides the village green, of six acres, being allotted for exercise and recreation, 18 acres are allotted for the labouring poor, which, under the circumstances of this case, will be most beneficial to them.

Also for the inclosure of Worsthorne-common, containing 2,425 acres, on which rights are exercised at all times of the year, not being limited by number or stint. We consider this proposed inclosure expedient on the grounds that the value of the land will be increased by drainage and proper cultivation in a four-fold degree, and very great additional employment will be given to the population; that, in addition to allotments for labouring poor, the village green, which is surrounded by cottages, and in a miserable and dirty state, will be allotted to the churchwardens and overseers, improved, and kept in order.

Also for the inclosure of Newton Commons, containing 260 acres waste of a manor on which the tenants have rights of common. We consider this proposed inclosure expedient on the ground that the land is at present of very little value, but capable of very great improvement, and that it will lead to much increased employment of labour. In this case there is an allotment for labouring poor, which is desirable, as they are badly off for gardens; but we have not thought it expedient to allot any portion for exercise and recreation, on the ground that the land, from its locality, is ill suited for that purpose, and such alone as could be made use of is in strips and unfit for it, but of considerable importance to the farmhouses, as being calculated to form homesteads for them.

Also for the inclosure of Instow Marsh, 59*a.* 0*r.* 18*p.*, waste of a manor on which the tenants have rights of common. We think this inclosure expedient on the ground that the land will be greatly improved, especially by drainage, and that the old inclosed land, which also is in a wet state, will derive the benefit of the out-fall into the river Taw, which is secured by the provisional order, and that it will lead to an useful application of capital and labour.

Also for the inclosure of Areley-common, 59*a.* 3*r.* 14*p.*, waste of a manor on which the tenants have rights of common. We consider this proposed inclosure expedient on the ground that the land is now almost wholly unproductive, but susceptible of great improvement, and that it will benefit all classes. The allotment in this case of five acres to the labouring poor is made with a view to an exchange of part of it for land near the dwellings of a portion of the labouring poor, who reside chiefly in two different places.

Also for the inclosure of Salcombe-hill and North-east-hill, 209*a.* 3*r.* 12*p.*, waste of a manor on which the tenants have rights of common. We consider this proposed inclosure expedient on the grounds that the land is at present in a most neglected and unproductive state, though, for the most part, capable of being made as good as the old inclosures adjoining, and would lead to a very useful application of labour and capital.

Also for the inclosure of Corley Moor, containing 50*a.* 2*r.* 15*p.*, waste of a manor on which the tenants have rights of common. We consider this proposed inclosure expedient on the grounds that by drainage and cultivation the productive powers of the land would be much increased and all parties benefited. In this case no allotment for exercise and recreation, nor for the labouring poor, is required by the provi-

sional order. Our reasons for this are, that there is no part of the land convenient for exercise and recreation, whilst there are above two acres of land left untouched by this inclosure admirably adapted for this purpose, and because the poor, who live where they could reap benefit from garden allotments, are in possession of large gardens and other inclosures, originally, as it appears, a part of the common.

And application has also been made for the inclosure of Methwold and Southery Common, containing 135 acres, which does not require the previous authority of Parliament. In this case a notice was issued on the 27th of January instant that we intended to authorize the inclosure. We are of opinion that this proposed inclosure is expedient on the grounds that the land would be greatly improved, a proper road to it insured, and that it will afford profitable employment to the owners, who are chiefly labourers, and who are anxious for it.

We have, in accordance with that which we conceived to be the spirit of the Act, by inviting the parties interested to avail themselves on all occasions of the assistance of this office, endeavoured to carry on the proceedings of each proposed inclosure at the least possible expense, and with as little delay as has been compatible with the proper conduct of each case, and due regard to all rights, however small they may have been.

As regards the allotments for exercise and recreation, and for the labouring poor, inasmuch as the Inclosure Act requires, as to certain descriptions of land, that when allotments for such purposes are not to be made, the Inclosure Commissioners should state specifically their reasons for such a course being adopted, we conceived that the intentions of the Legislature could only be carried out in their true spirit by making generally such allotments a condition of the inclosure of land liable to such condition. We have, therefore, unless some cogent reason has been shewn for a departure from the rule, caused allotments to be set out for these purposes in the various cases of such inclosures, with respect to which a provisional order has been issued, and we have, in adopting such a rule, in some cases where the land does not appear convenient for such a purpose, taken into our consideration the probability of such allotment being exchanged for inclosed land more appropriate; as, if the inclosure had been permitted to proceed without any provision for recreation or garden ground, the opportunity for such provision would have passed away. In some of these cases there has been, in the first instance, an objection on the part of those interested in the land to the apportionment of any part of it for such purposes, they considering it unnecessary; we have, however, the satisfaction to state that in every such case, on further communication and fuller explanation, the views, as we believe, of the Legislature have been acquiesced in by those who had before seen them in a different light, and in a spirit which leads us to hope that, when the provisions relating to this matter and the grounds of them are perfectly understood, no reasonable proposition will meet with opposition.

The short time which has elapsed since the passing of the Act, and the ignorance as to its existence on the part of some, a misapprehension as to its provisions, and of the expenses attending inclosures under it, with regard to others, have, we doubt not, limited the number of cases to those on which we have now to report; but, as we find in these among the applicants for inclosure, persons of all classes, and enjoying a very disproportionate amount of interest, and in one case, to which the assents have been given, the rights enjoyed chiefly by labourers, and, in addition to this, that there is no case yet, as we have reason to believe, which will be abandoned for the want of the necessary assents to the provisional order, our conviction is that the country will generally avail itself of the provisions of the Act; and that conviction is confirmed by the spirit in which we have been met by those interested in the different cases of inclosure with which we have had to deal, even on those occasions when it became necessary to discuss points of difference, and to decide against the opinion of those with whom such discussion had taken place.

As far as we have been able to judge from the limited experience afforded us, we find the machinery of the Act generally adequate to carry out its objects, except where a question arises whether the soil, or a portion thereof, is not in the lord of the manor, or where the manor is claimed by adverse parties: and we would further observe, that when, according to the provisions of the Act, the allotment to the lord is set forth in the provisional order, which, by information subsequent to the assents, is shewn to have been improperly done, or should a claim as lord be advanced at this late period, and be substantiated, inasmuch as the Inclosure Commissioners have no power to issue a supplemental provisional order, they are not aware how that which may afterwards turn out to be an error in the provisional order can be remedied, which error was on their part inevitable, as, on the facts disclosed upon an investigation as complete as was possible, the provisional order was correct; nor are they aware how an inclosure, where such mistake has occurred, can proceed without a fresh application,

entailing an additional expense on the parties interested; and the same inconvenience may arise where other claims are unexpectedly shewn to exist at an equally late period.

Note.—We are not in a condition to state, with any great degree of accuracy, the expenses which will be incurred in respect of inclosures generally with which we are now proceeding up to the time, and inclusive of the proper assents being given to the provisional order; and it is probable that the cost of each to which such assents have already been given may not be a just criterion of other cases, as we have been enabled, with one exception, where it was occasioned by the request of the parties interested, to obtain the assents without employment of an assistant commissioner for the purpose, and in a manner perfectly satisfactory. The average of each proceeding in which these assents have been given, as far as this office is concerned, will be about 16l. up to the time of the return of such assents to us, which leaves the case ready either for Parliament to deal with, or for us to signify our intention of authorizing the inclosure.

An appendix is subjoined, and the report is signed,
LINCOLN.
W. BLAMIRE.
G. DABBY.

CENTRAL CRIMINAL COURT.

Monday, May 18.

JUVENILE OFFENDERS.—In the course of the day the grand jury came into court with the remainder of the bills.

The Foreman, addressing his lordship, said, he was requested by his brother jurymen to state that they were aware they had been engaged a longer time than usual at the present session; but they thought it right to say that they had devoted no more time to the consideration of each case than was necessary to afford to each party accused that right which the constitution gave him of not being put upon his trial without twelve men expressing their opinion, upon their oaths, that there was ground for such a course being taken; and he begged to state that no bill had been returned except with the consent of twelve of their body. The foreman went on to say that the grand jury had felt great difficulty in disposing of the cases of juvenile offenders. In many cases the parties were unwilling to prosecute them, although the evidence was conclusive, and the grand jury were placed in the position of violating the solemn obligation they were under by the oath they had taken, or else to send such offenders for trial before the petty jury. They had, however, in such cases felt it their duty to act upon the evidence, although it was repugnant to their moral feelings. He then handed the following presentation to the Court:—

"The grand jury respectfully present, at the close of their duties, the solemn conviction forced on them by their recent investigation, that there is something fundamentally defective in legislation, both as it regards the decrease of crime and the reclamation of criminals. The instances of a second conviction coming before them have been numerous, and it would appear to them as though our jurisprudence had it in view that a citizen once charged with guilt should never cease to be a criminal. Beggared by the unnecessary heavy expenses of his defence, and subjected during his confinement to association with characters the most depraved, and forced on the world at the close of his confinement without money or repute—the accused is made for the rest of life a criminal by profession. In the case of the young this is still more deplorable, and is complicated with grievances which the public share. The grand jury, among many similar instances, have had before them the case of Thomas Miller, No. 34, Middlesex, a child of eight years of age, for stealing lead to the value of —, with a former conviction; and the case of two boys of the age of 16, No. 119, Middlesex, for stealing to the value of 1s. with a former conviction against one of them for stealing to the value of 6d. The irrationality of moving the complicated and costly machinery of law for the legal punishment (and for such acts) of children, neglected and untaught, forcibly impressed itself on the minds of the grand jury; and while expressing their surprise and regret that the magistrates of police courts cannot make similar cases to these matters of summary jurisdiction, they would earnestly invite attention to the necessity of some general measure for removing children, charged with such trivial offences, after their release, from the depraving circumstances that must insure their repeated and continued appearance of our law courts in the character of criminals. The grand jury believe it is not out of the sphere of their duties to suggest the importance of doing something which, by diffusing information and improving the reasoning powers of our poorer population, may remove from our calendar numerous crimes which now owe their origin solely to ignorance; and they feel convinced, while an improved agency of this kind, using public means rather for the prevention than the detection and punishment of crime, merits support both as humane and efficient, it shall as strongly appeal to public consideration, on the ground of a judicious and great economy."

THE LAWYER.

Summary.

No incident of the week calls for notice. The Term just begun will be a busy one, and the reports will doubtless claim so large a space as to compel frequent, if not continuous, double numbers during the next five weeks; but of course we shall not trouble our readers with these unless they be actually required to keep pace with the business of the courts, which, we presume, they would wish to receive with speed, even though at the price of two or three extra sixpences. The *Law Digest* of the last half-year is now finished. Its completion will be judged from this: that the names alone of the cases digested occupy thirty-two columns. It is the only Digest ever made that includes all the reports; hence the number of us which a single half-year has produced, in this consists its utility to the practitioner. It is to him of the utmost importance that he should find all the cases that have been decided on any subject. Until the present attempt, he has never been able to do this, in every other Digest systematically excludes the reports published by rival publishers. It should be observed that this Digest is stamped, so that the numbers can be transmitted by post, and can be bound with the volumes of the *Law Times*, or separately.

QUESTIONS AT THE EXAMINATION.

Easter Term, 1846.

I. PRELIMINARY.

1. Where, and with whom, did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal law books which you have read and studied.
4. Have you attended any and what law lectures?

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. Within what time after the service of a writ of summons is it necessary to indorse thereon the day of the service, and if omitted, what is the effect?
6. In reckoning time, how is the calculation to be made?—for instance, a defendant obtaining a writ for eight days' time to plead on the first of the month, on what day must he deliver the plea?
7. Can a defendant be arrested under any and what circumstances upon *mesne process*, and what steps are necessary to be taken?
8. In what case can a defendant require the plaintiff to give security for costs? and what is the mode of proceeding to obtain it?
9. What are the different sorts of execution to enforce a judgment?
10. Within what time must application be made to set aside an award?
11. How can a witness not attending on his subpoena be made answerable for his neglect?
12. What is a *stet process*, and the effect of it?
13. What is the effect of a juror being withdrawn?
14. What is a judgment *non obstante veredicto*, and the effect of it?
15. What is the commencement of an action of ejectment?
16. In case a landlord wish to defend an action of ejectment brought against his tenant, how can he obtain liberty to do so?
17. Can a declaration in ejectment ever be served on the wife of a tenant, and under what circumstances?
18. How soon after issue joined can a defendant move for judgment, as in case of a nonsuit in a term cause and in a country cause respectively?
19. What cases can a judge of one of the superior courts direct to be tried before the sheriff?

III. CONVEYANCING.

20. Who is tenant in fee simple?
21. If a man purchase lands or tenements in fee simple, what words should he have in his purchase, and why? In what three kinds of hereditaments may a man have a fee simple?
22. By force of what statute is fee tail?
23. What is tenant in tail general; and what tenant in tail special?
24. What is a reversion?
25. If lands be given to a man and the heirs male of his body begotten, who shall, and who shall not inherit?
26. What is a tenancy for term of life? What, by common parlance, is he called who holds for the term of his own life; and what he who holds for term of another's life?

27. If A, tenant in fee simple, make a lease of lands to B, to have and to hold to B. for term of life, without mentioning for whose life it shall be, what shall it be deemed, and why?

28. What is tenancy for term of years? and what is the lessee when he enters by force of the lease?

29. Whence is "lease" derived?

30. What is a tenancy at will? Why is the lessee called tenant at will?

31. Of what two sorts are parceners? Why are they called parceners?

32. Who are joint tenants? Why are joint tenants so called? What quality have joint tenants which co-parceners have not?

33. Who are tenants in common; and why are they so called? By what three means may there be tenants in common? What is the essential difference between joint tenants and tenants in common? What property is common to them both?

34. Define and explain the nature and effect of attornment.

IV. EQUITY, AND PRACTICE OF THE COURTS.

35. State the principal heads under which the equity jurisdiction of the Court of Chancery may be described.

36. State some cases in which a court of equity will relieve against the defective execution of a deed.

37. Is there any, and what, advantage in the proceedings of a court of equity over those of a court of common law in questions of account, and state some of the principal cases in account in which recourse is ordinarily had to a court of equity?

38. The Court of Chancery prohibiting persons filling certain characters from becoming purchasers, name the principal of such characters, and upon what ground the prohibition is founded.

39. Enumerate some of the cases in which the Court of Chancery will grant an injunction, and what is the difference between a special and a common injunction, and what are the modes in which they are respectively obtained?

40. Explain the difference between the jurisdiction of the Court of Chancery and the ecclesiastical courts in the case of wills?

41. What is the difference between the remedies supplied by the Court of Chancery and the courts of common law in the case of non-performance of a contract or agreement. In what cases of contract will the Court of Chancery enforce a specific performance, and in what cases will it refuse to interfere?

42. State some of the cases in which a Court of Equity will support a voluntary conveyance: and again cases in which the Court will set such a conveyance aside; and when will the Court refuse to interfere?

43. Within what time must a defendant put in his answer to an original bill, an amended bill, and a supplemental bill, respectively; and is there any, and what distinction in this respect between a town and country cause?

44. Under what circumstances, and upon what terms, may a plaintiff and defendant respectively dismiss a bill before decree? and how may a bill be dismissed after decree?

45. How are orders and decrees of the court enforced, particularly where money is directed to be paid into court, or any other act is directed to be done within a limited time, and where money or costs are ordered generally to be paid to a person?

46. In what cases are the vacations not reckoned in the computation of times of procedure?

47. What is the effect of passing publication? when does it pass? how is it passed? and within what time after publication is the cause to be set down for hearing?

48. Name and give a short description of the several writs usually issued in the course of a suit?

49. Describe a traversing note, and the effect of it; and state how is issue joined.

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. What are the principal statutes now in force relating to bankrupts?

51. What are usually termed the requisites of a fiat?

52. What are the amounts now required for a petitioning creditor's debt?

53. When, and in what manner, was the power of committal conferred upon the courts of commissioners in bankruptcy, and in what cases is it exercisable?

54. What is the nature of the dealing required to constitute a trading within the meaning of the bankrupt laws?

55. What persons are deemed scrivener within the meaning of the bankrupt laws?

56. When does a trader who has ceased to trade render himself liable to the bankrupt laws?

57. Under what enactment, and in what manner, can a trader issue a fiat against himself?

58. Under what circumstances may a fiat be issued against an executor?

59. In what manner, and at what time, does the estate of a bankrupt become vested in his assignees?

60. State the alterations effected by the 2 & 3 Vict. c. 11, and the 2 & 3 Vict. c. 29, with regard to conveyances, contracts, and dealings by and with bankrupts.

61. What is the statute under which a fiat in bankruptcy may be issued against a joint-stock company? and what the acts of bankruptcy to warrant the fiat?

62. Before whom are affidavits used in our bankruptcy courts to be sworn as well in England as abroad?

63. In what manner are proceedings in bankruptcy made evidence without formal proof?

64. Does a covenant in a lease net to assign without the landlord's consent remain available against the assignees on the bankruptcy of the lessee? State the reasons for your answer.

VI. CRIMINAL LAW.

65. Which is the supreme court of criminal jurisdiction in this country? And who is the supreme coroner of the realm?

66. Will a writ of error lie for the improper admission of evidence on a trial for a misdemeanour?

67. Does the breach of an Act of Parliament constitute an offence at common law, *per se*?

68. A man has been convicted of misdemeanour, and been sentenced to imprisonment, which he has suffered in part: the record of his conviction is removed into a court of error, and by that court the judgment of the court below is reversed; upon the ground of error in the indictment, and he is thereupon discharged from prison: Can he be proceeded against *de novo* for the same offence?

69. Can there be accessories before the fact in murder, manslaughter, treason, or trespass, or in any, and which of them? and give the reason for the distinction.

70. What is the proper venue in an indictment for an offence committed in the district subject to the jurisdiction of the Central Criminal Court?

71. Is the common law offence of forgery, felony or misdemeanour? And is the offence altered in this respect by any statutes?

72. Is the writ of *certiorari* in criminal cases demandable of right by prosecutors or defendants, and how is it obtained? What officer is entitled to it as of right?

73. Where several defendants are indicted together, and on the application of one of them a writ of *certiorari* is obtained, does this in any way affect the other defendants?

74. What is the effect of a writ of *procedendo*?

75. What is the rule in criminal matters as to controverting the truth of facts alleged in a return to a writ of *habeas corpus*? and is there any difference in this respect in matters not criminal?

76. How many jurors is a prisoner entitled to challenge peremptorily in the respective cases of treason and felony?

77. Is there any mode of proceeding, other than by impeachment, presentment, or indictment, against persons accused of treason, felony, or misdemeanour? If so, state what it is, and to which of these offences it is applicable?

78. Is the joinder in an indictment of counts charging felony and counts charging misdemeanour allowable?

79. Is a defendant entitled to a copy of the indictment in felony or misdemeanour, or in either, before his trial?

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Lord Chancellor has appointed James Charles Calver, of Kenninghall, Norfolk, Gent. and John Marsh Burd, of Okehampton, Devonshire, gent. to be Masters Extraordinary in the High Court of Chancery.

COMMISSIONS SIGNED BY LORDS LIEUTENANTS.

CORNWALL.—Christopher Henry Thomas Hawkins, esq.; John Thomas Henry Peter, esq. to be Deputy Lieutenants.

COUNTY OF SOUTHAMPTON.—John Mills, esq.; Henry Compton, esq.; Thomas Pipon, esq.; and William Whitear Bulpett, esq. to be Deputy Lieutenants.

TOWN AND COUNTY OF THE TOWN OF SOUTHAMPTON.—George Atherley, jun. esq.; and Capt. Thomas Griffiths, to be Deputy Lieutenants.

COMMISSIONS SIGNED BY THE VICE-LIEUTENANT OF THE COUNTY OF HADDINGTON.

The Right Hon. the Earl of Dalhousie; the Earl of Gifford; the Hon. Francis Charteris; Sir Hew Dalrymple, bart.; Sir John Hall, bart.; Sir Robert Houston; James Maitland Balfour, esq.; George William Hope, esq.; George Sligo, esq.; James William Hunter, esq.; and James Sprot, esq. to be Deputy Lieutenants.

COURT PAPERS.

CHANCERY SITTINGS.

Trinity Term, 1846.

Before the LORD CHANCELLOR.

Friday	May 23	—Appeal Motions	
Saturday	24	—Petition day	
Monday	26	—35	
Tuesday	27	—36	Appeals
Wednesday	28	—37	
Thursday	29	—38	Appeal Motions
Friday	30	—39	Petition day. Unopposed Petitions and Appeals
Saturday	31	—40	
Monday	June 1	—41	Appeals
Tuesday	2	—42	
Wednesday	3	—43	
Thursday	4	—44	Appeal Motions
Friday	5	—45	Petition day. Unopposed Petitions and Appeals
Saturday	6	—46	
Monday	8	—47	Appeals
Tuesday	9	—48	
Wednesday	10	—49	
Thursday	11	—50	Petition day. Unopposed Petitions and Appeals
Friday	12	—51	Appeal Motions.

Such days as his Lordship is occupied in the House of Lords excepted.

Before the VICE-CHANCELLOR OF ENGLAND.

Friday	May 23	—Motions	
Saturday	24	—25	Petition day
Monday	26	—26	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday	27	—27	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday	28	—28	Motions
Thursday	29	—29	Petition day. Short Causes, Petitions, and Causes
Friday	30	—30	
Saturday	31	—31	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Monday	June 1	—32	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday	2	—33	Motions
Wednesday	3	—34	Petition day. Short Causes, Petitions, and Causes
Thursday	4	—35	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Friday	5	—36	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Saturday	6	—37	Petition day. Short Causes, Petitions, and Causes
Monday	8	—38	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday	9	—39	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday	10	—40	Petition day. Short Causes, Petitions, and Causes
Thursday	11	—41	Motions.
Friday	12	—42	Motions.

Before VICE-CHANCELLOR KNIGHT BRUCE.

Friday	May 23	—Motions and Causes	
Saturday	24	—25	Petition day. Petitions and Causes
Monday	26	—26	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday	27	—27	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday	28	—28	Bankrupt Petitions and ditto
Thursday	29	—29	Motions and Causes
Friday	30	—30	Petition day. Petitions and Causes
Saturday	31	—31	Short Causes and Causes
Monday	June 1	—32	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday	2	—33	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday	3	—34	Bankrupt Petitions and ditto
Thursday	4	—35	Motions and Causes
Friday	5	—36	Petition day. Petitions and Causes
Saturday	6	—37	Short Causes and Causes
Monday	8	—38	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday	9	—39	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday	10	—40	Bankrupt Petitions and ditto
Thursday	11	—41	Petition Day. Short Causes, Petitions, and Causes
Friday	12	—42	Motions and Causes.

Before VICE-CHANCELLOR WIGHAM.

Friday	May 23	—Motions and Causes	
Saturday	24	—25	Petitions day. Petitions and Causes
Monday	26	—26	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday	27	—27	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday	28	—28	Motions and ditto
Thursday	29	—29	Petition day. Pleas, Demurrers, &c.
Friday	30	—30	Short Causes, Petitions (unopposed first), and Causes
Saturday	31	—31	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Monday	June 1	—32	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday	2	—33	Motions and Causes
Wednesday	3	—34	Petition day. Pleas, Demurrers, &c.
Thursday	4	—35	Short Causes, Petitions (unopposed first), and Causes
Friday	5	—36	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Saturday	6	—37	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Monday	8	—38	Petition day. Short Causes, Petitions (unopposed first), and Causes
Tuesday	9	—39	Motions and Causes.
Wednesday	10	—40	Motions and Causes.
Thursday	11	—41	Motions and Causes.
Friday	12	—42	Motions and Causes.

CAUSE LISTS, TRINITY TERM, 1846.

COURT OF QUEEN'S BENCH.

New Trial Paper for Trinity Term, 1846.

Hilary Term, 1845.

London—Lowe v. Penn.

Easter Term, 1845.

Chester—Doe several dems. of Her Majesty and Another v. Archbishop of York

Devon—Barratt v. Oliver

Doe several dems. Molesworth, bart. and Others v. Sleeman and Another

Somerset—Lambert v. Lyddon

Northumberland—Blaxham v. Shaw

Durham—Ray v. Thompson

Reg. v. Great North of England Railway Compy.

Hansell v. Hutton

York—Doe dem. Lord Downe v. Thompson
Lord Viscount Downe v. Thompson
Phillips v. Bradley
Petch and Wife v. Lyon
James v. Brook

Lincoln—Saffery v. Wray, notes read
Salop—Stokes v. Boycott, in replevin
Monmouth—Williams v. Stiven
Glamorgan—Doe dem. Simpson v. John.

Easter Term, 1845.

Middlesex—Hopkins v. Richardson.

Trinity Term, 1845.

Middlesex—Rich v. Dix
London—Curling v. Shepherd
Sheringham v. Collins
Day (by her next friend) v. Edwards
Sedgwick v. Hammon.

Middlesex—Paul and Wife, extris. &c. v. Simpson
Mitchell v. King.

Michaelmas Term, 1845.

Middlesex—Wimberley v. Hunt
Baker v. Drew
Reg. v. Thornton
Same v. Gompertz
Gibbons v. Hunter
Goode v. Cochrane
Ford v. Beach
Jacobs v. Dawes
London—Buisson v. Staunton
Brown v. Harnot
Welsh and Another v. Reed
Murrieta v. Oldfield
Nicholl v. Gillan
Stafford—Skerritt v. Christie and Another
Biddlestone and Others v. Burdett, to state a case
Essex—Rogers v. Kenny
Doe dem. Goody v. Carter
Surrey—Gillett v. Bullivant
Youell v. Cross
Archer v. Smyth
Doe dem. Pennington and Others v. Barrell and Another

Northampton—Sutton, a pauper, v. Maeguire
Cardiff—Taylor v. Clay and Another
Doe dem. Lord v. Kingsbury
Carmarthen—Protheroe v. Jones
Chambers v. Thomas and Another, in replevin
Same v. Same
Same v. Same

Cardigan—Doe dem. Jenkins and Another v. Davies and Others

Brecon—Mayberry v. Mansfield
York—Smith v. Smith
Marshall v. Powell and Another
Spence, a pauper, v. Meynall and Another
Doe dem. Norton v. Norton
Bainbridge v. Bourne, the younger
Wilkinson v. Haygarth
Same v. Same
Bainbridge v. Lax and Others

Durham—Smith v. Hopper and Others
Reed v. Same
Hinde v. Raine and Another

Devon—Doe dem. Earl of Egremont and Another v. Sydenham, clerk
Mayor, &c. of Exeter v. Harvey and Another
Damerell v. Protheroe and Others
Schank v. Sweetland

Cornwall—Marshall v. Hicks
Somerset—Doe dem. Earl of Egremont and Another v. Williams and Another
Bristol—Addison v. Gibson.

Hilary Term, 1846.

Middlesex—Page v. Hatchett
Hunter v. Caldwell
Doe dem. Talbutt and Others v. Brent and Ors.
London—White and Another v. Burnbury
Bond and Another v. Nurse and Another
Turner v. Ambler
Reg. v. Kensington and Another.

Middlesex—Lovecock v. Franklin

Easter Term, 1846.

Middlesex—Pemberton v. Canham
Thompson v. Pettitt and Another
Vincent v. Dore, extris.

London—Curtis v. Pugh
De Freitas v. Littlewood and Another
Follett and Others v. M'Andrew
Tucker v. Clarkson
Reg. v. Benjamin Parker

Kent—Doe dem. Jacobs v. Phillips
Sussex—Standon v. Christmas
Kine v. Evershed

Surrey—Pemberton, D.D. v. Colls, D.D.
Samuel v. Green

Durham—Hills and Another v. Measard and Another
York—Mountain v. Groves and Another

Worth and Another v. Gresham and Another
Liverpool—Doe dem. Haywood v. Tinslay, to state a case
Chester—Irinson v. Oldfield
Davis v. Falk

Glamorgan—Doe dem. Groves v. Groves
Doe dem. Richards and Another v. Evans
Doe dem. Bennett v. Harry and Another

Carmarthen—Thomas v. Fredericks
Same v. Same

Lincoln—Chapman v. Rawson
Stafford—Whitmore and Others, assignees, &c. v. Leak
Hereford—Evans v. Horniatt

Gloucester—Garbett and Others v. Adams and Others
Doe dem. Dyke v. Dyke
Somerset—Farnell v. Smith and Another

Devon—Woolmer and Others v. Toby the younger.

For Judgment.

Willoughby v. Willoughby
Brooks v. Bockett
Same v. Same
Belcher v. Gummow
Rogers v. Brenton
Doe dem. Earl of Egremont v. Langdon
Mugrove v. Emerson
Cocher v. Musgrove
May v. Burdett

Hope v. Harman
Reg. v. The Corporation of Manchester
Dobson, kn. v. Blackmore
Doe dem. Earl of Egremont v. Courtenay
Doe dem. Dayman v. Moore
Farmer v. Moore
Inskip v. Harper.

COURT OF EXCHEQUER.

	<i>Banc.</i>	<i>Nisi Prius.</i>
Friday May 22	Peremptory Paper, after Motions	.....
Saturday 23	Do. before Motions	.....
Monday 25	.....	Midd. 1st sitting.
Tuesday 26	.....	.....
Wednesday 27	Special Paper	.....
Thursday 28	Circuits chosen	.....
Friday 29	.....	London 1st Sitting
Saturday 30	Crown Cases	.....
Monday June 1	Special Paper	Midd. 2nd sitting
Tuesday 2	Errors	.....
Wednesday 3	Special Paper	.....
Thursday 4	.....	.....
Friday 5	.....	London 2nd sitting.
Saturday 6	.....	Ditto by adjournment
Monday 8	Special paper	Midd. 3rd Sitting.
Tuesday 9	.....	.....
Wednesday 10	.....	.....
Thursday 11	.....	.....
Friday 12	.....	.....

NEW TRIAL PAPERS.

For Judgment.

Bristol—Kynaston and Others, v. Davis and Others

Hilary Term, 1845.

Middlesex—Thornett v. Haines

For Argument.

Middlesex—Bunnell v. Smith

Hilary Term, 1846.

London—Lamert v. Heath

Ackerman and Others v. Ehrensperger

Michaelmas Term, 1845.

Staffordshire—Foley v. Botfield

Moved after the 4th day of Hilary Term, 1846.

Middlesex—Masters v. Abitol

Easter Term, 1846.

Middlesex—Daniels v. Fielding

Grant v. Maddox

Harris v. Colley

Beamish v. Owens

Wotton v. Fructuoso

London—Goldreath v. Beagin

Fenwick v. Boyd

Laurie v. Douglas

Lay v. Thompson

Walstab v. Spottiswoode

Tilbey v. Hodgson

Hills v. Crosland

Engleheart v. Moore

Stafford—Bickley v. Boydell, the younger

Shrewsbury—Bradley v. Tonge

Garbett v. Garborough

Hereford—Wheeler v. Dallery

Monmouth—Mason v. Jenkins and Others

Aylesbury—Tarry (a pauper) v. Newman, esq.

Middlesex—Barnett v. Harries

Doe dem. Stace and Another v. Wheeler

Smith v. Jeffries

Jackson and Wife v. Smithson

Winchester—Pratt v. Betts

Salisbury—Mayor &c. of Poole v. Whitt

Northampton—Ashby and Others Executrix and Executors

v. Bates

Derby—Middleton v. Lester

Warwick—Tart v. Darby and Another

Geach and Others, Assignees, &c. v. Ingall, Ac-

tuary, &c.

Huntingdon v. Grand Junction Railway Com-

pany

York—Naylor and Another v. Scorch

Booth v. Millins

Whalley and Another v. Davison, jun.

Liverpool—Pilkington and Another v. Scott and Others

Jowett v. Spencer

Unwin v. Horner and Another

Hahn v. Dalton

Ormerod and Others v. Chadwick and Another

County Palatine of Lancaster.—Liverpool—Ramabottom

v. Duckworth and Another

Liverpool—Fletcher v. Marshall and Another

Maraden v. Newmarch and Another

Carnarvon—Jones v. Carter

Jones v. Foster

Owen v. Mann and Others

Jones v. Mann and Others

D. Hughes v. Mann and Others

Griffith v. Mann and Others

Beccumars—Hughes v. Hughes and Others

Chester—Pott and Others, Assignees, &c. v. Clegg, Exe-

cutor, &c.

Stanway v. Nickson

Kearsley v. Cole

Chamberlaine v. The Chester and Birkenhead Rail-

way Company

Swansea—Morris v. Barnes and Others, in replevin

City of Chester—Seller and Others v. Jones

Moved after the fourth day of Easter Term, 1846.

Middlesex—Swift v. Hawkins

London—Cooper, by P. O. v. Falkner

For Judgment.

Duncan v. Benson, demurrer

Heard June 2, 1846.

Cooke and Another v. Turner and Others, special case

Heard Feb. 13, 1846.

Ashley and Others v. Pratt and Others, do.

Heard April 27, 1846.

Money Penny v. Derring, special case by order of V.C. Wigram

Heard May 5, 1846.

For Argument.

Offor v. Windsor, demurrer

Griffiths v. Pike, do.

To stand over at the request of the parties until special case

acted.

The Dean and Chapter of Ely v. Cash, special case by order

of the Lord Chancellor.

To stand over to amend case.

Trail, esq. v. Bonney, special case by order of Mr. Barr

Alderson.

To stand over to amend pleadings.

Wallis and Others, Executrix and Executors, v. The Gas

Western Railway Company, demurrer.

Peacock, Executor, &c. v. Price, special case, by order of Mr.

Price.

The Mayor, Aldermen, and Burgesses of the Borough of

Salford v. Ackers, demurrer.

Braham v. Wilkins, do.

Henry v. Goldney, do.

Riddale and Another v. Morrell, do.

Steadman v. Hockley, do.

Peremptory paper.

To be called on the first day of the Term after the

motions, and to be proceeded with the next day, if necessary.

27th April, 1846—Benn v. Stockdale and Another

Stockdale and Another v. Benn

Benn v. Stockdale and Another v. Benn

the matter of the arbitration between

Robert Benn, and Thomas Smith

and John Stockdale—Mr. Jervis

6th May, 1846—Sherwood v. Clark—Mr. Martin

23rd April, 1846—Parker v. Haines—Mr. Serjt. Allen

23rd April, 1846—Parker v. Uxhill—Mr. Serjt. Allen

23rd April, 1846—Parker v. Middleton—Mr. Serjt. Allen

23rd April, 1846—Parker v. Harris—Mr. Serjt. Allen

23rd April, 1846—Price v. Richardson—Mr. E. V. Wigram

2nd May, 1846—Waller v. Blacklock and Others—Mr. W.

8th April, 1846—Balmer v. Richmond—Mr. O'Malley

2nd April, 1846—Doe dem. Stace and Another v. Wheeler

Mr. Peacock

2nd May, 1846—Ellis v. Hostler—Mr. Wilde

Nightingall v. Smith, special case by order of V. C. of Ex.

Yemas v. Pulteney, demurrer

Yemas v. Pollock, do.

Torre v. West, do.

Chantler and Wife v. Lindsey and Wife, do.

Bumle v. Phill and Another, do.

Doe dem. Lloyd and Others v. Jones, special case by order

Nisi Prius.

Doe dem. Lloyd and Others v. Done, do.

Hofford v. Crawshaw, demurrer

Rippe v. Burbridge and Another, do.

Sabberton v. Michell, do.

Price and Another, Executors, &c. v. Woodhouse and An-

other, do.

Stride v. Waddy, do.

Pilkington and Another v. Cooke, esq. do.

Carr v. Andrews, do.

Robinson v. Purdy, special case by order of V. C. Wigram

James and Another v. Crane and Another, special case by

order of Nisi Prius

Holloway and Others v. Page, demurrer

ENLARGED RULES to be taken in the

BAIL COURT.

Doe dem. Davies v. Roe

In the matter of Darby

In the matter of Wilson

Rose v. the Port Talbot Company

Doe dem. Pennington v. Taniere

Reg. v. The Recorder of York

Dovell v. Jere

Lane v. Horlock

Doe dem. Body v. Cox

Ex parte Overton in re Poers

Thomas v. Jacobs

Reg. v. The Justices of Ely, &c.

The above cases will be proceeded with after the first and

second sittings at Nisi Prius are concluded, by calling on

two cases on each day, immediately after the Bar has been

gone through for moving Rules Nisi.

BUSINESS IN THE COMMON PLEAS AT THE

COMMENCEMENT OF TRINITY TERM.

Causes for hearing on Demurrer.

Benham v. Earl of Mornington

Easton v. Peoples

Smith v. Shirley

Gazard v. Sutton

Turner v. Brown

Tinniswood v. Pattison

Tuckwell v. Morris

Carr v. Maude

Dorney v. Borrodalle

Eitzgerald and Anor. v. Lane

Reynolds and Ors. v. Fenton

Messent v. Reynolds

Doe dem. Bloofield v. Eyre

Hatton and Another v. Thomp-

son

Toil and Another v. Stewart

Gamble v. Kurts

Cranwell v. Cooper

Siggers v. Paynter

Boydell v. Harkness

Coulthas v. Bowers

Doe dem. Harrison v. Hamp-

ton

ATTORNEYS TO BE ADMITTED.

TRINITY TERM, 1846.

lams, Henry, Rydon House; Stoke Gabriel; and Weston-street, articulated to C. Michelmores, Totness; G. Henaman, 8, Basing-lane
 nderson, Weir, 1, Stafford-place, Pimlico, and Liverpool—C. Bardwell, Liverpool
 danna, Richard, Walsall—S. Smith, Walsall
 ahley, William Edward, 6, Elizabeth-street, Brompton; Newark-upon-Trent; and Brompton-terrace—J. W. Lee, Newark
 urton, William, 53, Gloucester-street, Queen-square; and Manchester—R. M. Whitlow, Manchester
 arton, Samuel Milner, 32, Gloucester-street, and Didbury—T. Higson, Manchester
 ower, Richard, 11, Serjeant's-inn, Fleet-street, and Southwick—R. Brown, Sunderland
 iddies, John Henry, 3, Portland-place, Camberwell—E. Barron, 30, Bloomsbury-square
 riggs, John Adolphus, 3, Arlington-street, Piccadilly—T. Briggs, Lincoln's-inn-fields
 outh, Charles, 9, Rodney-buildings, New Kent-road—F. Bowker, Winchester
 lackburn, Samuel Renter, Leeds—J. Blackburn, Leeds
 loodworth, Henry, 43, Southampton-buildings, and Kimbolton—T. Scriven, Northampton
 brown, Thomas Augustus, 16, Blandford-street, Portman-square, and Toubridge—W. Hestcup, Bungay
 ramwell, Thomas Vicars, 37, Brompton-row, Brompton, and Smith-street, Chelsea—W. Woolam, Stockport
 Brock, Benjamin, jun. 16, Featherstone-buildings, and Cecil-street—W. Jones, Carmarthen; R. Medcalf, Lincoln's-inn-fields; J. Woodcock, Lincoln's-inn-fields
 3att, Henry, 4, City-terrace, City-road; Windsor-terrace, City-road—J. C. Fouldriner, Scott's-yard, Bush-lane; B. C. Lattley, Dyers' Hall and Wandsworth
 Burrell, Peter Charles, Clement's Inn; Middleton-road, Kingaland; and Cranmer-road—P. A. Burrell, White Hart-court; S. A. Beck, Ironmongers' Hall
 Berry, Josiah, Truro—F. Braithwaite, Truro
 Barrett, Joseph Morton, Otley, Yorkshire—E. Barret, Otley
 Bramall, Henry J. Marmion, 7, Pantion-square—T. B. B. Stevens, Tamworth; N. Stevens, Gray's-inn-square
 Birch, Henry, 13, Church-street, Milbank—I. Last, Hadleigh
 Baldwin, Alexander, Clithero, and Settle—W. Foster, Settle
 Bowley, Thomas William, 32, Lincoln's Inn-fields, and Albany-street—R. Bowley, Bishop Wearmouth
 Clarke, William, 1, Favia-place, Dalston—T. Tilson, Coleman-street
 Chadwick, John Nurse, 3, Queen-square, and King's Lynn—B. R. Aldham, King's Lynn
 Chillwell, George, 60, Great Portland-street, and Warwick—C. Handley, Warwick
 Cowdry, Nathaniel, 9, Carlton-villas, and 52, Burton-crescent—C. Bayley, Frome, Selwood; C. Clark, Lincoln's-inn-fields
 Cheesman, John Goodger, Brighton—G. Dempster, Brighton; C. Chalk, Brighton
 Chew, Thomas Heath, Manchester—W. C. Chew, Manchester
 Clayton, Haviland, Percy-street, Bedford-square—M. B. Weddake, King's Bench-walk
 Coode, Edward, jun. 37, Queen-square, and St. Austell—E. Coode, 8, St. Austell
 Cockle, Henry, Deptford—J. Sandom, Deptford; W. Sandom, Deptford
 Cross, Thomas Plomer Lewis, 28, Surrey-street, Strand; and Barne's-terrace—W. H. Cross, Surrey-street
 Clark, George Haines, 26, Finsbury-place—G. Clark, Finsbury-place
 Church, Henry Francis, 9, Bedford-row—J. T. Church, Bedford-row
 Canning, Henry, 4, Featherstone-buildings, and Taunton—R. U. Bullen, late of Taunton
 Dacie, William, 3, Foxley-place, Camberwell New-road—W. S. Dacie, Throgmorton-street; St. G. Stephen, Farnival's Inn
 Dransfield, William, 32, Charlotte-terrace, Islington and Huddersfield—D. C. Battye, Huddersfield
 Dendy, Samuel Frederick, 16, Montague-street, Russell-square—S. Dendy, 3, Bream's-buildings
 Dashwood, Thomas, jun. 24, Upper Eaton-street, Belgrave-square, Colchill-street, and Sturminster, Newton Castle—T. Dashwood, sen. Sturminster, Newton Castle; W. Dean, Guildford-street
 Dickinson, W. Henry Allen, 5, Storey's-gate, Westminster—W. H. Allen, Clifford's Inn
 Dodd, Henry, The Riding, near Hexham; 7, King-street, Chesapeake; 4, New Milson-street; and 7, Wakefield-street, Brunswick-square—R. Gibson, Hexham
 Deere, John Morgan, 2, Frederick-place, Gray's-inn-road—A. S. Crowdy, Swindon; W. H. Smith, Bedford-row
 Dale, Robert, York—W. Smith, jun. York; W. Gray, York
 Duffield, William Ward, 9, Felix-terrace, Liverpool-road, and Gress Baddow—E. S. Chalk, Chelmsford
 Driffield, Charles Edward, 53, Frederick-street, Gray's-inn-road—W. W. Driffield, Prescott
 Dixon, Edward Adolphus, 45, Bernard-street, Russell-square, and Oxford—P. Walsh, jun. Oxford; G. Dayman, Oxford
 Dearborough, Lawrence, jun. Grove-hill, Camberwell—L. Dearborough, Sise-lane
 Dawbarn, Robert, jun. 15, Alfred-street, Bedford-square, and Wisbech, St. Peter—E. Jackson, Wisbech
 Dean, John Joseph, 16, Essex-street, Strand—W. Dean, Essex-street
 Dry, James, 1, Howard-street, Strand; and Notting-hill-square—R. F. Graham, Newbury
 Elders, Thomas William, York—G. Leeman, York
 Evans, Robert, 26, Middleton-street, North Everton, near Liverpool; and Birkenhead—D. Evans, Liverpool
 England, Charles, 16, Marchmont-street; and Wisbech—C. Metcalf, jun. Wisbech, St. Peter
 Fleetwood, Thomas Ferrier, 1, Queen-square, Bloomsbury—Henry Everett, Salisbury; G. B. Townsend, Salisbury
 Frankish, William, 15, New Ormond-street, and Kingston-upon-Hull—S. Lightfoot, Kingston-upon-Hull
 Faithfull, Edward Williams, Winchester; and 5, King's-road, Bedford-row—E. C. Faithfull, Winchester
 Falkner, John Stringer, 13, Camden Terrace, Camden-town; Bath; and Lothbury—F. Falkner, Bath

Fow'ar, James, Birche Green, Birmingham; and Great Ormond-street—G. P. Wragge, Birmingham
 Fox, Charles James, 104, Albany-street, Regent's-park, Canterbury and University-street—R. Sankey, Canterbury
 Flake, Edward Brown, 5, Montpelier-street, Brompton, Norwich, and Kensingland—R. Flake, Beccles; R. E. Burrough, Norwich
 Fraser, Edward John, 24, Sidmouth-street, Regent's-square, and Canonbury-street—L. Acland, Chancery-lane
 Gibson, Charles Reginald, 1, Park-terrace, Hackney, and Lewisham—John Widdows, Copthall-court; J. R. Gibson, Copthall-court
 Gidley, Robert Courtenay, 23, Earl-street, Blackfriars, and Albany-street, Hyde-park—J. H. Townsend, Honiton
 Greenacre, Charles Edward, East Dereham, and 19, Swinton-street, Gray's Inn-road—F. R. Reynolds, Great Yarmouth
 Hawkes, Henry, Birmingham—W. S. Harding, Birmingham
 Henderson, Henry Renny, 31, Bloomsbury-square—J. H. Henderson, Bloomsbury-square
 Hadow, Henry, 43, Upper Harley-street—W. Stephens, 30, Bedford-row
 Hodgson, John, 14, Store-street, Bedford-square, Wilmot-street, and Newcastle-upon-Tyne—H. W. Fenwick, Newcastle-upon-Tyne
 Harwood, Thomas Charles, Preston Cottage, Lower Norwood; 28, Tavistock-place, and Belgrave-street—G. R. Dodd, New Broad-street; G. Smith, Golden-square
 Harris, Joseph William, Rochdale—C. Prescott, late of Manchester
 Harris, Frederick, Aston, near Birmingham; and Grafton-street—H. M. Tyndall, Birmingham
 Jones, Thomas, 104, Albany-street, Regent's Park; Chorley, Moreton-terrace, and Upper Albany-street—J. Jones, Chorley; E. Dakin Staunton, Chorley
 Jones, John, 2, Camberwell-place, Upper Grange-road, Old Kent-road; and Ellesmere—George Salter, Ellesmere
 Jones, John, 37, Wakefield-street, Regent's-square; Newark, and Stamford—T. F. A. Burnaby, Newark-upon-Trent
 Kneucker, Francis Burdett, 41, Wilmington-square—G. Selby, St. John-street-road
 Long, George Henry, Windsor—W. Long, Windsor
 Lambert, Alfred, 15, Upper Stamford-street—J. Iliffe, Bedford-row
 Maberly, Thomas Henry, Colechester, and Albert-square—T. Maberly, Colchester
 Miles, Thomas, 31, Kenton-street, Brunswick-square—G. J. Nicholson, Raymond-buildings
 Meech, Francis Weston, 36, Burton-crescent, and Weymouth—G. Arden, Weymouth
 Mellor, William Jones, St. Ives—B. A. Greens, St. Ives
 Mackay, Christopher Bainsbridge, South Shields—C. Bainsbridge, South Shields
 Miles, Thomas, jun. 15, Great James-street, and Leicester—S. Miles, late of Leicester; R. Miles, Leicester
 Mason, Charles, 307, High Holborn; Crescent-street; and Uttongate—A. Welby, Uttongate
 Mantall, Alexander Houstoun, 59, Burton-crescent, and Farringdon—J. W. Wal, Devises
 Mote, Edward, 21, Penton-place, Pentonville—D. W. Wire, St. Swithin's-lane
 Nevill, Richard, 6, Princes-street, Bedford-square, and Tamworth—R. Nevill, Tamworth
 Newell, Robert Daniel, 13, Featherstone-buildings, and Shrewsbury—J. J. Peele, Shrewsbury
 Niblett, Isaac Goodluck, 11, Everett-street, and Bristol—J. K. Habersfield, Bristol
 Peter, John, 40, Grafton-street, Tottenham-court-road, and Callington—S. B. Serjeant, Callington
 Pidsley, John, 7, Little Ormond-street; Newton Abbot; and Great Ormond-street—P. Pearce, Newton Abbot
 Phillips, John William, 23, River-street, Middleton-square; Haverfordwest; and Chadwell-street—T. Gwynne, Haverfordwest
 Patteson, Henry, 6, South-square, Gray's-inn, and Greenwich—J. Taylor, Manchester
 Phipps, Thomas, 5, Montpelier-row, South Lambeth—J. H. F. Lewis, Essex-street
 Pinnock, George, 8, Everett-street, Brunswick-square; and Halfield Parade, near the City of Gloucester—J. R. Wemyss, Gloucester
 Peile, Rowland Babington, 26, Fitzroy-square—T. H. Peile, Great Winchester-street
 Paley, Cornwallis, Aldborough, and Langthorpe—T. Farmer, Ripon
 Piper, George Harry, 7, Great Quebec-street, Marylebone, and Ledbury—T. Jones, Ledbury
 Quick, Henry Brannan, 30, Gloucester-crescent, Regent's-park—J. Dyer, Ely-place
 Russell, James Ward, 2, Bedford-row, and York—J. Russell, York
 Ransom, Robert, jun. Sudbury, and 128, Upper Seymour-street—R. Ransom, sen. Sudbury
 Radcliffe, Thomas, 7, York-terrace, Camden-town, and Blackburn—J. Neville, Blackburn
 Robinson, Thomas, 10 Aldous-terrace, Barnesbury-park, and Rugeley—F. Crabb, Rugeley
 Robson, William Wealdens, jun. Bishop Wearmouth—G. W. Wright, Sunderland
 Rogers, Henry, 26, Osnaburgh-street, Regent's-park, and Sheffield—T. W. Rogers, Sheffield
 Sole, John Lavers Liscombe, Devonport, Albion-street, Pentonville, and Everett-street—E. Sole, Devonport
 Simonds, Francis, 5, Warwick-court, High Holborn, and Devises—A. Meek, Devises
 Smith, George Archer, 33, Devonshire-street, Queen-square, East Bedford, and Store-street—W. Newton, East Bedford
 Sanders, Robert Muriel, 20, Hart-street, Bloomsbury-square—R. B. Sanders, New Inn
 Sharp, James, 37, Burton-crescent and Southampton—J. C. Sharp, Southampton
 Smith, John Bridgeman, 23, Holles-street, Cavendish-square—H. S. Stokes, Truro
 Simpson, Robert John, 40, Commercial-road, Lambeth; and Newark-upon-Trent—W. W. Billyard, Budleigh, Salerton, Devon
 Swords, Thomas, jun. 39, Surrey-street, Strand—T. Swords, sen. Hertford; G. Debenham, Salters' Hall, St. Swithin's-lane
 Stedman, John, 56, Gower-street, Bedford-square; and Great James-street—W. Holmes, Great James-street
 Shuttleworth, Samuel, 96, Gloucester-place, Kentish Town; and South End, Hampstead—H. S. Westmacott, John-street, Bedford-row

Somerville, Stafford, Baxter, Doncaster—E. Baxter, Doncaster
 Slack, Edward Francis, Chippenham—J. Mareden, Wakefield; J. Phillips, Chippenham
 Stafford, William, jun. 13, Buckingham-street, Strand—W. Stafford, Buckingham-street
 Snell, Silas, Great Torrington, and 34, Stamford-street—H. A. Vallack, Great Torrington
 Stretton, George, Nottingham, and Everett-street—G. Freeth, Nottingham; G. Rawson, Nottingham
 Slaney, Robert, Newcastle-under-Lyme—F. Stalmer, Newcastle-under-Lyme
 Shafto, George Dalton, Durham—J. Burrell, Durham
 Simpson, Henry, Rutland-lodge, Effra-road, Brixton—E. Starry, 8, Wellington-street, Southwark
 Saville, Edward Bourchier, 60, Carey-street; and Middleton-square; and Barnstable—R. Bremridge, Barnstable
 Tweed, George Tash, 4, Alfred-place, Bedford-square—C. M. I. Pollock, Great George-street; H. H. Beckitt, Lincoln's-inn-fields
 Unwin, Frederick George, 31, Bartlett's-buildings, Holborn; and Sawbridgeworth—T. Unwin, Sawbridgeworth
 Wilkinson, Samuel, 67, Hatfield-street, Stamford-street—J. Foster, Walsall; T. H. Bower, Chancery-lane
 Wilkinson, Richard, 10, Rufford's-row, Islington and Kendal—R. Moser, Kendal
 Wilkin, Charles, 10, Spring-gardens—J. Wilkin, 217, Piccadilly
 Woodgate, William, 9, Woodland-terrace, Greenwich—W. T. Neve, Cranbrook
 Weston, William Henry, 89, Guildford-street, Russell-square—J. Meek, late of Basinghall-street, deceased; J. Fox, Basinghall-street
 Watts, Thomas David King, 23, Bloomsbury-street, Bedford-square, and Jersey—J. Maynard, 37, Coleman-street
 Westhall, Samuel Thomas Maling, New Inn—B. Holmes, New Inn
 Wilson, James, jun. 6, Crescent-place, New Bridge-street, and Liverpool—J. Malhaby, Liverpool
 Wilson, William Wilfred, 24, Store-street, Bedford-square—W. Beasom, Warrington
 Woodroffe, George Thomas, 7, Staple Inn, and Great Cornam-street—W. Woodroffe, Lincoln's Inn
 Walker, Robert Greave, 37, Surrey-street, Strand, and Tickhill—F. Newton, York
 Wheat, John James, 4, Liverpool-street; St. Pancras; and Norton Lees—John Wheat, Sheffield
 Whiting, William, 67, Middleton-square; Lambeth-terrace, Highgate-hill; Agincourt-court, Monmouth; and Uxell-street, Islington—W. H. Wright, Essex-street, Strand
 Weymouth, Thomas Wyse, 74, Gower-street, Bedford-square, and Kingsbridge—J. Weymouth, Kingsbridge
 Ward, Newman, 24, Portsea-place, Connaught-square—W. J. Norton, New-street, Bishopsgate-street
 Winfield, William, 6, Elysium-row, Fulham—C. Addis, Great Queen-street, Westminster
 Wilson, Benjamin, Millford-house, Edmonton—W. P. Bartlett, Nicholas-lane
 Wilde, John Thomas, Clifton; Lisle-street; and Henrietta-street—J. T. Woodhouse, Leominster
 Wilkinson, Joseph, Manchester, and York—T. Ward, York

LEGAL INTELLIGENCE.

TRINITY TERM.—Yesterday Trinity Term began. From an examination of the lists it seems that the arrears have been reduced since the commencement of the Easter Term. With the exception of one cause, the new trial paper of the Court of Queen's Bench goes no further back than Easter Term, 1845. There are 115 rules for new trials in the list, and twenty for the judgment of the Court. In the lists of the Courts of Common Pleas and the Exchequer the rules were obtained in the course of the present year. Several long pending matters in the list of new trials for the Court of Queen's Bench have been disposed of, and the expression that to obtain a rule for a new trial in that court was a delay of two years, in which time the money in dispute might be lost, or the parties escape, will, by the exertions of the learned judges, in a short time be inapplicable.

ADMISSION OF ATTORNEYS.—The number of applicants for admission on the list of attorneys in the ensuing Trinity Term is 147.

LEGAL EXAMINERS.—In pursuance of the new rule of the common law courts at Westminster, respecting the admission of attorneys, which we recently noticed, the undermentioned gentlemen, with the several masters for the time being of the above-mentioned courts, have been appointed examiners for Trinity and Michaelmas Terms next, to examine persons desirous of being admitted attorneys, namely,—Mr. Robert Riddell Bayley, Mr. Edward Smith Bigg, Mr. Thomas Clarke, Mr. John Coverdale, Mr. Alexander Grant, Mr. John Swarbrick Gregory, Mr. George Herbert Kinderley, Mr. Edward Lawford, Mr. William Lowe, Mr. John Metcalfe, Mr. Edward Leigh Pemberton, Mr. Edward Rowland Pickering, Mr. John James Pocock, Mr. John James J. Sudlow, Mr. Robert Whitmore, and Mr. Thomas Wing, attorneys-at-law.

WARRANT AGAINST MR. SMITH O'BRIEN.—The following is a copy "of the warrant under which William Smith O'Brien, esq. was committed to the custody of the Serjeant-at-Arms:"—"Jovis, 30 die Aprilis, 1846. Whereas the House of Commons has this day resolved that William Smith O'Brien, esq. a member of the said house, having been guilty of a contempt of the said house, be for his said offence committed to the custody of the Serjeant-at-Arms attending the said house, during the pleasure of the said house:—these are therefore to require you

forthwith to take into your custody the said William Smith O'Brien, and him safely to keep during the pleasure of the said house. And all mayors, sheriffs, under-sheriffs, bailiffs, constables, headboroughs, and officers of the said house are required to be aiding and assisting to you in the execution hereof. For which this shall be your sufficient warrant. Given under my hand, this 30th day of April, 1846.—Charles Shaw Lefevre, Speaker. To the Serjeant-at-Arms attending the House of Commons, or his deputy."

RETURN OF AN INNOCENT CONVICT.—Joseph Mason, late of Clifton, Yorkshire, who was at the York Lent Assizes, 1843, unjustly sentenced to twenty years' transportation, reached London on the afternoon of Wednesday week, and on the following day appeared at the Home-office, where sufficient money was given him to convey him to his native home, near the city of York, where he arrived on Saturday night. He was welcomed by his wife and children, and, as may naturally be supposed, both husband and wife were much affected after so long and so unjust a separation. Before Mason left London he waited upon his benefactor, Mr. R. H. Yorke, M.P. to express to that gentleman his gratitude for his unwearied exertions on his behalf. On Sunday a party of Mason's relatives arrived in York to welcome his return, and were delighted to find him in such good health and spirits. It is a remarkable fact, that previous to Mason leaving Norfolk Island, he personally witnessed the arrival of Thompson, alias "Blueskin," one of the real accomplices who attacked Mr. Carr's house, and for which he was sentenced by Mr. Justice Coleridge to the same punishment as that which Mason was ordered to undergo—namely, twenty years' transportation. Mason also brings important information, that "Blueskin" had made a deposition and confession to Mr. Naylor, the officiating clergyman at Norfolk Island, to the effect that he was an accomplice in the robbery at Goodmanham (so graphically described by Haythorne before Mr. Justice Coleridge, at York Castle, on the 7th of September last), and that the four men now at Norfolk Island undergoing punishment for that robbery are totally innocent of it. —*Doncaster Chronicle*.

PARLIAMENTARY PAPERS.

POOR REMOVAL.—Return specifying the number of families and persons removed by any local order, or other authority, to their place of settlement, from each manufacturing town in Yorkshire, Lancashire, and Cheshire, during the years 1841, 1842, and 1843; the date of such removal, the name of the parish to which removed, and the occupation or trade, and length of residence in the town from which such families and persons were so removed. The towns enumerated are, Congleton, Macclesfield, Sandbach, Ashton-under-Lyne, Great Bolton, Little Bolton, Bromley, Habergham Eaves, Padham, Colne, Chorley, Charlton-upon-Medlock, Ardwick, Hulme, Clitheroe, Wiswell, Pendleton, Lancaster, Manchester, Salford, Oldham, Preston, Rochdale, Todmorden (including Hebdenbridge), Warrington, Wigan, Bradford (including Bowling, Horton, and Manningham), Halifax, Rotherham, Sheffield, Wakefield, and part of the borough of Leeds. The aggregate number of families and persons removed from these places to their places of settlement were as under:—

	No. of Families	Persons comprised therein.
1841	718	2,254
1842	1,393	3,922
1843	1,745	5,168

In the three years, 3,856

DIOCESAN RETURNS.—Copy of the abstracts of the Diocesan Returns, made to her Majesty in council, for the year 1844, by the Archbishops and Bishops of England and Wales. The total number of resident incumbents is, it appears, 7,246. Of these, 6,332 are resident in parsonage houses; 929 in houses appointed by the Bishop's license; and 985 elsewhere, within the limits of the diocese, there being no parsonage house. The total number holding benefices, but not resident within them, is 3,454. Of these the number doing duty is 1,061. There are 1,768 cases of special exemption; and 1,594 of these are on the ground of the parties holding and residing in other benefices. Licenses of non-residence are held by 785 others on various grounds, the chief of which are, infirmity or illness of the incumbent or his family, or want of a parsonage house, or one considered fit to reside in; and no less than 901 returned as non-resident, without license or exemption. There is a third class of "miscellaneous cases," including vacancies and recent institutions, sequestrations and suspensions, and cases in which no returns have been made. The number of these is 427. The total is 11,127 benefices and incumbents. The total number of glebe-houses is 7,792. The number of curates serving benefices on which the incumbents are non-resident, is 2,409. Of these, 2,113 are licensed, 1,043 resident in the glebe-house, and 434 resident elsewhere in the parish. In 1,533 cases the annual sti-

pend is more than 50*l.* and less than 110*l.* In 152 cases it is under 50*l.* and in 37 it is the whole value of the benefice. The number of curates acting as assistants to incumbents resident on their benefices is 2,361, of which number 1,865 are licensed. The stipends range nearly as above.

METROPOLITAN BUILDINGS ACT.—A return of eighteen folio pages has been printed (procured by Mr. Forster, the member for Berwick-on-Tweed), showing the number of informations laid by the surveyors of districts under the Metropolitan Buildings Act. The informations laid under the Building Act of the 14 Geo. 3, c. 78, numbered 50 in 1844-5, and 11 in the present year. The informations laid under the Act 7 & 8 Vict. c. 84, in 1845 and 1846, were 61 in old districts, and 47 in new districts. The fees awarded by the special referees amounted to 61*l.* 8*s.* 6*d.* in old districts, and 29*l.* 18*s.* 6*d.* in new districts; and to the office of the Metropolitan Buildings in those districts 301*l.* 2*s.* 10*d.* of which 180*l.* 11*s.* 8*d.* was in old districts, and 120*l.* 11*s.* 2*d.* in new districts. In the year ending the 1st of January last there were 61 informations laid at the office of Metropolitan Buildings by the surveyors of districts under the 7 and 8 Vict. being districts under the 14 Geo. 3, c. 78, and 47 by the surveyors of new districts in that period under the same Act. The fees awarded by the official referees in the last-mentioned class were 29*l.* 18*s.* 6*d.* to district surveyors, and 120*l.* 11*s.* 2*d.* to the office of Metropolitan Buildings.

ENCLOSURE COMMISSION.—A return has been printed of all applications made for enclosures to the Enclosure Commissioners. It seems that 42 applications were made to the commissioners which were returned in the general annual report, and 27 have been received since the report was presented. The extent of the former applications was 27,249*a.* 1*r.* 9*p.*; and of the latter 23,352*a.* 3*r.* 4*p.* The dates and other particulars are given in the return, which was applied for by Viscount Clive.

WINDOW DUTY.—Captain Pechell (Brighton) has obtained an account (now printed) of the amount of the window duty paid in each of the last six years, as also of the twelve towns paying the largest amount of window duty. The following results appear in the first branch of the return, ending on the 5th April in each year:—In 1840, the duty was 1,486,023*l.*; in 1841, 1,774,638*l.*; in 1842, 1,775,151*l.*; in 1843, 1,776,789*l.*; in 1844, 1,786,514*l.*; and in 1845, 1,812,035*l.* The twelve towns mentioned are Bath, Birmingham, Brighton, Bristol, Cheltenham, Clifton, Leeds, Liverpool, Manchester, Newcastle-on-Tyne, Norwich, Plymouth, and York. The following sums appear for the year ending on the 5th April, opposite the towns stated:—21,722*l.*, 10,715*l.*, 16,191*l.*, 14,955*l.*, 7,208*l.*, 8,430*l.*, 7,999*l.*, 29,929*l.*, 20,394*l.*, 5,990*l.*, 6,571*l.*, and 11,484*l.* It will be seen that the largest amount was paid by Liverpool (the eighth town), 29,929*l.*; and the smallest by Newcastle (the tenth), of 5,990*l.*

PROCEEDINGS OF LAW SOCIETIES.

THE FORENSIC SOCIETY.

The anniversary dinner of this Society took place at the Albion Tavern, Aldersgate-street, on Wednesday last. The ATTORNEY-GENERAL presided, and was supported by Mr. Watson, Q.C. Mr. Stuart, Q.C. and other distinguished members of the Society. The Vice Chair was occupied by the Secretary, Mr. Brewer. About sixty members were present. Appropriate toasts were duly proposed and honoured, such as "the President," "the Forensic Judges," "the Forensic Silks," "the Forensic Authors," "the prosperity of the Forensic Society," "The Secretary," and so forth. The banquet was magnificent, and a most agreeable evening was passed by all present.

CORRESPONDENCE.

DEATH BY ACCIDENTS COMPENSATION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—My attention has been directed to the "Death by Accidents Compensation" Bill, which has just appeared in your columns, and which, in its present form, proposes to enact, that in cases of accidental death, the person causing it shall be liable to an action for damages, provided the deceased (had death not ensued) would have been entitled to maintain an action against such person. This provision is alleged to be necessary, on account of the abolition of deodands. There can be no doubt that the law of deodands has not operated well. Many cases have occurred in which parties have been fined unjustly; still, in a few instances, it had a salutary effect, acting as a check upon wantonness and neglect. Does the new bill remove the evil, and retain the check,

without expensiveness in its application? A case occurred in my jurisdiction in which a cart was compelled to drive an unruly horse, which caused his death; his master being the head farmer of the parish in which his relatives resided, not one of them would have dared to sue him for damages. And this, I apprehend, is the case in many parts of the country. I venture to suggest that it would be a much simpler and better plan for the jury serving on the inquest (after due notice given to the parties) to assess the damages. They would have the whole case before them, and would be likely to arrive at a correct conclusion, when the coroner might issue execution. Of course there would be a power of appeal for either party to the Court of Queen's Bench.

I am, Sir, yours, &c.
A BOROUGH COUNCIL.

SELECTIONS FROM CORRESPONDENCE.

R. transmits this reply to the question in a statute 7 & 8 Vict. c. 76:—

The only doubt which can exist of the effect of the conveyance made in March 1845, as stated, was under the 13th sec. of 7 & 8 Vict. c. 76, as to effect of the word "created" in reference to any estate, right, or interest existing prior to the day of January, 1845. The conveyance in question was doubtless grounded upon some estate created before that time; and if so, by the terms of the relation referred to, the deed cannot have the operation intended by the second section, which, indeed, has the principal feature of the Act. Such a construction, however, would have the effect of nullifying the Act, as a whole, beyond the exception in the thirteenth section; still that view of the Act might have been the cause of the repeal of it, which did place in the last session. Nevertheless, whilst it was in operation, so to speak, it was relied upon in practice, as appears by the case now in question. The rule, that every statute shall have operation if possible, and shall not be treated as nugatory if effect can be reasonably given to it; and it is conceived that the absence of the word "convey" is not, as it appears to be apprehended, material. By the interpretation clause, the word "conveyance" extends to a feoffment, grant, release, surrender, or other assurance of freehold land; and as the deed is stated to contain the usual operative words of release, the statute has thus been sufficiently complied with.

C. J. G. E. submits the following remarks on STAMPS ON LEASES.

It has recently occurred to me to have a question raised with regard to the stamps requisite upon a lease, and as the case is one that must be of daily occurrence, I think it may be serviceable to call attention to it through your columns.

A entered into an agreement to grant a lease to B, or his nominee, at a rent under 20*l.* and without premium.

B sold his interest to C, who afterwards agreed to take 180*l.* from D as a consideration for transferring to him the right to call for the lease, which B then requested A to grant to D.

I, as A's solicitor, accordingly prepared a draft by which A, by the direction of B, was to demise to D, whose solicitor, however, required that C should also be a consenting party; that the consideration paid to him should be stated; and that the lease (the costs of which, it should be observed, C had agreed to pay) should bear two *ad valorem* stamps, one in respect of the 180*l.* another in respect of the rent.

Upon my objecting to this, I was met by counsel's opinion, to the effect that such stamps were necessary, and the result was that C, rather than become involved in litigation, agreed to what was required of him.

The opinion which I have mentioned referred to the case of *Boone v. Mitchell* (1 B. & C. 18), in which, under similar circumstances, it was held that a lease, omitting all mention of the consideration paid by the lessee to the intermediate party, and bearing a stamp in respect of the rent only, was valid; but although in that case the Court said, "the Stamp Act requiring the consideration to be set out, and imposing an *ad valorem* duty on the consideration, applies only in the case of a consideration passing between the lessor and lessee;" yet counsel considered that, as the decision was capable of being supported on the ground that as the duty attached only on the consideration expressed to be paid, *non constat* that the parties and their solicitors were not liable to penalties for omitting to state the true consideration.

The fact of the premium going to C, and the rent to A, was the ground assigned for requiring the payment in my case of an *ad valorem* on the rent, as well as on the premium, notwithstanding the general terms of the enactment requiring, in case of a lease, in consideration of a premium with any yearly rent "under 20*l.*" an *ad valorem* stamp in respect of the premium only. The argument was, that there must be considered to be two separate transactions, viz. a sale of C's interest, and a lease to D, and that duty was consequently payable on each.

It is, I believe, the constant practice to omit all mention in a lease of the money that may have been paid by the lessee to any person other than the lessor; and it is, therefore, of great importance that if penalties are incurred by following such practice, the fact should be made known as widely as possible.

The view taken by some gentlemen, I understand, is, that in such a case the lease is not, within the meaning of the Stamp Act, "a lease granted in consideration of a sum of money by way of premium;" and that, even if the whole facts appeared on the face of it, a stamp in respect of the rent only would be sufficient. Of course, if this be so, the omission is not an omission to state the "true consideration" for the lease, so as to subject the parties to penalties. I find, however, that Mr. Coventry, in his work on the Stamp Laws (p. 382) expresses an opinion that the stamp on the premium is necessary.

Heirs-at-Law, Next of Kin, &c. Wanted.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent importunate curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount enclosed.]

- 49. GEORGE, JAMES, and WILLIAM LEVEN, of LEVIN, WILLIAM, JAMES, and GEORGE CHENEY, who were living in 1790, or their representatives; they were related to ANN LEVEN, a domestic in the service of Mr. Boddington, formerly a haberdashier in Newgate-street, London, about the year 1754; and also persons of the name of SPURRING and M'KEURTAN. Something to their advantage.
- 50. NEXT OF KIN OF HENRY BINCKES, late of Little Newport-street, Soho, leathercutter (died Oct. 1826), or their representatives.
- 51. NEXT OF KIN OF ANN SAMPSON, late of Harley-street, parish of Marylebone, widow (died March 28, 1833), or their representatives.
- 52. HEIR-AT-LAW OF WILLIAM MARSON, late of Work-sop, in the county of Nottingham, surgeon (died Sept. 1835).
- 53. NEXT OF KIN OF AARON SMITH, late of Artillery-passage, Spitalfields, parish of Christchurch, Middlesex, hairdresser.
- 54. NEXT OF KIN OF WILLIAM PICKERING, late of Great Driffield, in East Riding of York, tanner and maltster (died Sept. 1833), or their representatives.
- 55. NEXT OF KIN OF JOHN FAIR, late seaman in the merchant ship *Wanbeck* bachelor (died Sept. 18, 1836), or their representatives. Something to their advantage.
- 56. NEXT OF KIN OF JANE ANDERSON, formerly JANE RIOR LEAN, of Colney House, St. Alban's, Herts, spinster, who married Alexander Anderson, of Union-street, Bond-street, Middlesex, tailor, in July, 1814, or their representatives.
- 57. JAMES WATT and his CHILDREN, some time residing in Plym-outh, residuary legatees of Mrs. MARY M'LEAN, nee WATT, deceased, who was for many years servant in the family of Mr. C. Buchanan, of North Bar, Paisley. Something to their advantage.
- 58. NEXT OF KIN OF WELCH HAMILTON BUNBURY, late Lieut.-Col. in the 3rd Regt. of Infantry (died in London April 30, 1833), resided at Wandsworth, Surrey; Dover; and at Crocoveenan, in the parish of Tulloneen, in the county of Catherlaugh, Ireland.
- 59. THE PERSONAL REPRESENTATIVES OF NEXT OF KIN OF THOMAS KINKLADE, late of the parish of St. Peter-le-Poor, London. Something to their advantage.
- 60. NEXT OF KIN OF JOHN HILLIARD, late of Liverpool, joiner and builder (died March 29, 1836, aged about 60); was son of ROBERT HILLIARD, late of Liverpool, bricklayer, deceased. Something to their advantage.
- 61. ELIZABETH SCOTTOWE, CHARLES ROBINSON, THOMAS PITT ROBINSON, GEORGE BRITFITT SCOTTOWE, NICHOLAS WILLIAM SCOTTOWE (now deceased), ANN SCOTTOWE, ELIZABETH SCOTTOWE, THOMAS ROBINSON SCOTTOWE (since deceased), ELIZABETH COSLEY, CHARLES ROBINSON, and MARGARET SPENCER, wife of Mr. HENRY SPENCER, of Bath, haberdashier, or their representatives, legatees in will and codicil of MARK ROBINSON, late of the parish of Freshford, Somerset, Esquire, Vice-Admiral R.N. (died Feb. 23, 1834); and also such of the TESTATOR'S SERVANTS as were living with him at the time of his decease.
- 62. NEXT OF KIN OF WILLIAM SHIPPY, of Totteridge, in the county of Hertford, farmer, or their representatives, and of ANNA MARIA SHIPPY, widow, of Totteridge, aforesaid, and ANNA MARIA TONSON, of Totteridge, and afterwards of Hendon, Middlesex.
- 63. HEIR-AT-LAW OF THOMAS SPILLING, late of Earham, Norfolk, gentleman (died 31st June, 1839.)
- 64. RELATIONS OF NEXT OF KIN OF ANN SCALES, otherwise ANGELINA DE COSTON, formerly of 7, but late of 49, Chichester-place, Battlebridge, Middlesex, spinster, deceased. Something to their advantage.
- 65. NEXT OF KIN OF MARY BATHO, formerly MARY BURROUGHS, late of Whixall, in the parish of Pross, Salop, deceased, theretofore wife of Richard Batho, of the same place, yeoman, deceased, being the descendants of Thomas, Daniel, Nathaniel, William, and Richard Burroughs, brothers, and of Hannah (afterwards Hannah Davies), and Sarah (afterwards Sarah Cottan), sisters of the said Mary Batho. Something to their advantage.
- 66. NEXT OF KIN OF WILLIAM MELTON, late of the Baltic Coffee-house, Threadneedle-street, London, tavern-keeper.
- 67. NEXT OF KIN OF ELIZABETH SMITH, late of New-road, Brighton, spinster (died Aug. 1834).

- 68. HEIR-AT-LAW, CUSTOMARY HEIR, and NEXT OF KIN, of RICHARD CLEYVELLEY, formerly of the parish of St. Bartholomew, Hyde, near Winchester, but late of Little Surrey-street, Blackfriars-road, gentleman (died Sept. 1833), or their representatives.
- 69. NEXT OF KIN OF JOHN BAKER, late a seaman belonging to the merchant-ship *Begone*, who died at sea on 12th Jan. 1836, a widower. Something to their advantage.

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidences will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

"A SOLICITOR," is recommended to submit the case to the Stamp-office. He would be aided in any attempt to convict an uncertificated conveyancer.

E. V.—A solicitor is not personally liable, unless, by some act going beyond his mere duties as an agent, he makes himself so.

R. A. P. (Liverpool).—We do not remember to have seen the letter to which our correspondent alludes, unless it be the one to which an answer was given in the notices to correspondents some two or three weeks since.

"A READER."—The "Law Digest" may either be bound with the volume of the LAW TIMES, or preserved and bound in a distinct volume, when four or five series are completed. It is stamped, so that it can be transmitted by post.

"AN ORIGINAL SUBSCRIBER."—We think an articulated clerk might be an agent for an insurance office, without breach of the order.

R. G.—Thanks. The letter shall be transmitted to the parties.

W. R.'s complaint that advertisers do not reply to all who answer their applications, is a very common one. But he will see that an advertiser could not conveniently write to the fifty or sixty persons whose proposals he declines.

NOTICE TO SUBSCRIBERS.

The volumes of the LAW TIMES, neatly, strongly, and uniformly bound, for 5s. 6d. each, with the name and address of the owner on the cover, 1s. extra, if sent to the office. If the numbers for binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

The numbers comprising the first volume of the VERULAM REPORTS of Real Property and Conveyancing Cases may also be transmitted for binding in like manner.

NOTICE.

The LAW DIGEST is now completed. Being stamped, it may be sent by post, or may be had, sewn in a wrapper, price 5s. 6d.

NOTICE.

The subscription for the current half-year is now due, and subscribers desirous of availing themselves of the great reduction allowed for pre-payment, should forward the same in the course of the ensuing week. The prepaid subscription is 1l. 5s. for the half-year, and 2l. 7s. for the year, being a reduction respectively of 25 and 30 per cent.

Post-office Orders must be made payable to Mr. JOHN CROCKFORD, Publisher of the Law Times.

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For every additional Ten Words. 0 0 6

Advertisements from the Country should be accompanied with an order upon the Agent in Town, or a Post-office order (payable at 180 Strand) for the amount.

N.B.—For Scale for Estate Advertisements, see JOURNAL OF PROPERTY.

THE LAW TIMES.

SATURDAY, MAY 23, 1846.

COURT FEES.

THE emphatic condemnation of the fee system in the Courts of Law and Equity, elicited from the Premier and other influential speakers in the recent debate on Mr. WATSON'S motion for an inquiry into the Chancery Compen-

sation job, encourages the hope that ere long we shall witness a sweeping reform of a practice which only ancient custom could have induced the Profession and the public to endure without complaint or remonstrance. A cause may be imagined for the silent endurance of the public. The Court Fees come not directly out of the client's pocket: they are paid in the first instance by the attorney, and form a part of his bill of costs, not charged separately, under their proper designation, but blended with his own fees, so that the luckless client, when he casts his eye over the formidable total and the provoking items, believes that this alarming array of figures indicates the personal profits of his attorney, on whose absent head is accordingly vented the torrent of abuse that rises even to polite lips when suspicious of being the subject of an imposition.

Thus has the Profession endured a double martyrdom in this matter of Court Fees. They must pay them from their own pockets, and run the risk of their loss by means of a poor client. Having paid, they must put them into their bills, not as items of money paid, but as a part of the charge that includes their own profit; as clients are somewhat touchy in this respect, they are often compelled to curtail their own fair remuneration, because the united fees would try the client's temper too much; finally, upon them is visited the blame that belongs to the Court Fees, and they are abused for bills, one half of whose charges are not their own.

This grievous tax of the Court Fees not only produces this indirect mischief to the Profession, but it inflicts a direct injury. The burden of the fees materially affects the amount of business. The cost of "going to law," to use a popular phrase, results in great part from the taxes imposed upon the suitor by the Courts. But for this burden, law would be more often invoked for redress of wrong, and consequently there would be more business. Let us not be misunderstood. We are no lovers of litigation; we do not desire more lawsuits for the sake of increasing the profits of the lawyers. But at present it is notorious that the expense of obtaining redress of an injury from the law is in itself a greater injury than that complained of, and persons are compelled to submit to wrongs, because, by the taxes it imposes, the law virtually closes its door against the suitor who cannot command the golden key by which alone it can be opened. This is a positive injustice, which has long called loudly for redress. The claim is now recognized by our rulers, and only a determined effort is needed to secure its practical concession.

But by whom should the task be undertaken? By the public? True it is, that they are really as deeply interested in the result as the lawyers: but not so directly; and for indirect benefits men will not exert themselves. Every individual of the general public would probably admit that taxes on suitors were very improper, and ought to be abolished; but in the hope that it would never be his misfortune, at least, to be a suitor, he declines the trouble of an agitation against a wrong from which he trusts to escape. The lawyers only are, all of them, directly and greatly interested in procuring a redress of the grievance. Upon their shoulders falls the weight of the burden; to them attaches the discredit of the system; they would feel most immediately the benefits of its abolition. They are a body to some extent organized, and having within themselves easy means of co-operation, if inclined to use them.

To the lawyers now belongs the duty of taking up the challenge thrown down by the Government. They should strenuously urge the actual accomplishment of an object which all parties in the Legislature have pronounced to be so desirable. The hands of the ministry are too full of matters of more vital moment to undertake the task, but they promise cordial aid to those who will set themselves to the work. If the Profession will, through its various Law Societies, resolutely apply itself to the subject, early and complete success would be certain.

But here again the obstacle arises, which presents itself whenever the Profession has an object to attain in the Legislature. It is entirely wanting in a mouth-piece there. In reality returning three-fourths of the members, the Lawyers are themselves altogether unrepresented. They whose interests are more affected by legislation than those of any other class of the community—who are concerned directly in four-fifths of all the measures submitted to Parliament—whose opinions and suggestions would be of infinite worth, because the results of practical experience—are probably the only large and intelligent class of the community whose voice has no mouth-piece, whose mind has no influence, whose welfare has none to watch over it in the House of Commons. And yet do we read in newspapers of the Legislature being lawyer-ridden! It is true that there are many Lawyers in the House; but who are they? Either men of large practice, who make politics the path to preferment, and are too busy to play the part of representatives of any but themselves; or gentlemen who are lawyers only in name—who have been called to the Bar as a matter of form, without any purpose to practice, and necessarily unacquainted with the practical workings of the law, or the interests of the Profession to which they are attached by title alone.

A general election is nigh at hand. Earnestly do we exhort the Attorneys not to permit the opportunity to pass of placing in the House of Commons a representative of their own, in whom they could trust for industry, zeal, and practical knowledge of their interests. Perhaps they might not find one who would be willing of himself to bear the entire cost of an election. But a seat could be secured for a sum that might readily be raised for a purpose so manifestly advantageous.

But these remarks, though suggested by the immediate subject with which we started, only belong to it incidentally. The fee system is doomed; it is only for the Profession to exert themselves, and the judgment will be followed by a speedy execution.

SHAM LAWYERS.

NOTWITHSTANDING the transportation of the Sham Lawyer at Birmingham, and the conviction of Mr. BUCHANAN for practising in the Court of Quarter Sessions, not being an attorney, supported by the opinion of the judges during the last Term, we are informed that the race is daily multiplying, more especially in the inferior courts of the Metropolis. The Central Criminal Court, the Middlesex and Surrey Sessions, the Bankrupt and Insolvent Courts, and the Police Courts, are infested by them, to the serious damage of the regular practitioners, to the infinite annoyance of the courts themselves, and to the plunder and discomfiture of the suitors they impose upon.

And why is this wholesale trespassing upon the Profession permitted? Simply because, while all acknowledge the evil, no single man is willing to incur the trouble and cost of enforcing the remedy. It was in order to accomplish by union that which individuals could not be found to undertake, that the *Metropolitan and Provincial Legal Association* was established. For the first year it was well supported, and many were the services it performed to the Profession in the suppression of

abuses existing within and without its pale. But we lament to learn that, instead of its numbers increasing with this evidence of its utility, the subscriptions for the present year are insufficient to meet the ordinary expenses, and it is deprived of the power of continuing its task of protecting the Profession against sham lawyers who invade, and real lawyers who disgrace, it, for want of the necessary funds. It would, indeed, be a shame, were the Profession to permit the only society ever established for so excellent a purpose to become extinct, when every day makes more and more apparent the necessity for union, if it be only to provide the means for effectually resisting the daring and fast extending invasions of the sham lawyers.

At present the subscription to the society is one guinea per annum. We would suggest whether half-a-guinea would not be preferable, as likely to unite a much wider circle of members.

THE CRITIC.

New Books.

The Means of Dissettling and Dealing with Personal Funds settled upon Trusts involving Reversionary Interests in married Women, suggested and explained. By THOMAS SWINBURNE, M.A. of Lincoln's-inn, Barrister. London: Blenkarn.

THE practical importance of the question discussed in this pamphlet will be recognized by every lawyer. It is one of those legal difficulties which have baffled the astuteness of the conveyancer, who has in vain sought to effect an object often, undoubtedly, both just and desirable, and for which the interference of legislation is demanded by the wants of society. But until Parliament shall formally legalize a simple method of dissettling personal funds, when the purposes of the settlement are fulfilled, or altered circumstances require altered provisions, any endeavours to point a path by which the end may be safely attained under existing impediments, will be gratefully received by the Profession.

Such is the design of Mr. SWINBURNE'S pamphlet, as set forth at the opening:—

In the simple case of a fund settled on A for life, with remainder to B, a married woman, the Profession has for some time been advised that by A's surrendering his life interest to B she would become entitled to the entire immediate interest in the fund, which would accordingly become disposable by her husband, like any other immediately recoverable *chose in action*; but it would appear that, previously to the case which the writer is about to introduce to the reader, it had never been attempted to effect the dissettlement of a fund standing in any other than the particular position just mentioned; and the actual instances of dissettlement, even under these circumstances, appear to have been very few.

The author having been called upon to advise upon the means of making a title to a fund which stood settled upon trusts involving reversionary interests in a married woman, under circumstances more complex, and having, as he believes, discovered a means of effecting the desired object, has been induced to submit his plan to the consideration of the Profession.

A copy of the case, and the author's first opinion upon it, will best convey to the reader the precise point at issue, and the proposed mode of meeting it:—

CASE.

On the marriage of G. H. esq. with Miss M. W. W. a sum of 15,000*l.* (the property of Mr. H.) was vested in trustees upon trust, to pay unto, or permit Mr. H. to receive the interest and dividends for his life, and immediately after his decease, in case the said M. W. W. should survive him, upon trust to pay unto, or permit her to receive, the said interest and dividends during the then remainder of her life; and on the decease of the survivor of Mr. H. and his said intended wife, upon trust for the children of the marriage, as the parents or the survivors should appoint, &c. and in default of children, then, in case the said M. W. W. should survive her intended husband, upon trust for the said M. W. W. her executors, administrators, and assigns; but in case she should happen to die in the lifetime of the said G. H. upon trust for the said G. H. his executors, administrators, and assigns.

Mr. H. some time since, granted two annuities respectively determinable on his death, and assigned his life interest in the before-mentioned sum of 15,000*l.*

for securing the payment of the same. The surplus interest and dividends of the fund, after paying the annuities, amount to 160*l.* 1*s.* 8*d.* which (subject to some charges of arrangement) are paid to Mr. H.

Mr. and Mrs. H. have never had, and in the ordinary course of nature, cannot now expect to have, any child, and they are desirous of disposing of a part of this sum of 15,000*l.* or of borrowing money upon it. It has been suggested that, as the trusts involve reversionary interests in a married woman, this cannot be done; but there being the most urgent necessity that a sum of money should be immediately raised upon the surplus income and on the reversion,

Your opinion is requested whether there is any mode by which a good title could be made to a purchaser or mortgagee.

OPINION.

"I have never known or heard of a good title being made in case of a fund situated as this 15,000*l.* is, though the occasion must often have arisen, but I know no other reason why it cannot be done; for, upon principle, it appears to me, that if Mr. H. were to assign all his interest in the fund to a trustee, such trusts as Mrs. H. should appoint, and Mrs. H. were afterwards to appoint in favour of herself, her executors, or administrators, Mrs. H. would have an immediate absolute interest in the fund, subject to the annuities and the now next to impossible emergency of the birth of children; and that the fund subject would be brought within the disposition of Mr. H.; and if with the consent of the annuitants, it were to be transferred to Mr. H. and a trustee for the annuitants, or to a purchaser and such trustee, a reduction into possession would be effected, and all claim of Mrs. H. in the event of her surviving Mr. H. would be defeated. I have never known an instance of a settlement with such limitations being unobscured in this way, but the result appears to me inevitable."

This opinion was, it seems, approved by a distinguished conveyancer, to whom it was referred, before it was acted upon, the case of *Bar v. Bar* (2 Con. & Law, 605) appeared, and was supposed to affect the question. It was accordingly again returned for further consideration with reference to that decision.

The further opinion is here given at great length, and all the cases bearing on the question are reviewed, the author adhering to his original view as to the practicability of his plan. But for all this the reader is referred to the pamphlet.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 1*s.*]

BIRTHS.

PANTER, Mrs. the wife John Edward Panter, esq. barrister-at-law, on the 15th inst. at North-End-lodge, Fulham, Middlesex, of a daughter.
POLE, Mrs. the wife of William Edmund Pole, esq. barrister-at-law, on the 16th inst. at Wilton-place, Belgrave-square, of a daughter.
ROBINSON, Mrs. the wife of B. Coulson Robinson, esq. barrister-at-law, on the 15th inst. at 7, Barham-terrace, of a daughter.

MARRIAGES.

CONAN, Michael Edward, of the Middle Temple, esq. barrister-at-law, to Susan Frances, daughter of John Field, esq. of Upper Gower-street, on the 12th inst. at St. Peter's Church.
KNIGHT, Mr. James, of Burton-upon-Trent, solicitor, to Jane, second daughter of the late Mr. Robert Mason, of Marlborough-street, Leicester, on the 14th inst. at the New Jerusalem Church, Summer-lane, Birmingham.
LEFROY, J. H. esq. Captain in the Royal Artillery, to Emily Mary, eldest daughter of the Hon. J. B. Robinson, Chief Justice of Upper Canada, on the 16th ult. in the Cathedral of St. James, Toronto.
SPANKIE, Captain, 48th Regiment Bengal N.I. eldest son of the late Mr. Serjeant Spankie, to Clementina Louisa, third daughter of Mortlock Lacon, esq. on the 20th inst. at Great Yarmouth.

JOURNAL OF PROPERTY.

Public Sales.

By Mr. MOORE, at the Mart.

Two long leasehold houses, 5 and 6, Eagle-place, Mile-end-road, let at 32*l.* per annum, less the rates, held for 30 years, at 8*s.* per annum—370*l.*
A semi-detached eight roomed cottage residence, with offices and garden, situate on a slight eminence, at Mount Pleasant, Warwick-road, Clapton, near Stamford Hill; annual value, 45*l.*; term, 57 years; ground-rent, 3*l.*—395*l.*
A ditto, adjoining, somewhat larger, and otherwise of the same description—400*l.*
A ditto—405*l.*
A 10-roomed residence, with fore-court, coach-house, two-stall stable, large garden, and offices, pleasantly situate, 15, Upton-place, Stratford, Essex; let (without coach-house and stable) at 40*l.* per annum; held for 938 years, at 7*l.* per annum—600*l.*
A six-roomed freehold house, 12, Globe-road, Mile-end, the leading thoroughfare to Victoria Park; annual value, 12*l.*—185*l.*
A five-roomed freehold house, No. 8, Cannon-place, White-chapel-road, near Mile-end turnpike; annual value, 18*l.*—260*l.*

A six-roomed house, with garden, 3, Ellershop-street, Poplar; annual value, 22*l.*; lease direct from freeholder, 97 years; ground rent 2*l.* 3*s.* per annum—200*l.*

A ditto, No. 4—190*l.*

A ditto, No. 5—205*l.*

A ditto, No. 6—195*l.*

A ditto, No. 7, Grundy-street—195*l.*

A ditto, No. 8—200*l.*

A ditto, No. 9—195*l.*

A five-roomed ditto, No. 1, Thomas-street, annual value 18*l.*—145*l.*

A ditto—140*l.*

Seven five-roomed freehold houses, Iceland-road, near Clay-hall, Old Ford, let at 18*l.* per annum, vendor paying taxes. Land Tax redeemed—875*l.*

Five five-roomed houses (two with shops) Lechlade-place, Old Ford, producing a net rental of 72*l.* 6*s.* per annum—700*l.*

Two small houses, 29 and 30, Henry-street, St. George's East, let at 20*l.* 15*s.* per annum, vendor paying rates. Term 49 years; ground rent 5*l.*—85*l.*

SALE OF OATLANDS ESTATE.—On Tuesday, the valuable freehold property of Oatlands, which was for upwards of 40 years the favourite residence of his Royal Highness the Duke of York, and for some years in the occupation of Lord Francis Egerton, but which was latterly in the possession of Mr. Hughes Ball Hughes, was disposed of by auction, at the Auction Mart, by Mr. Driver. The estate comprised the mansion, park, pleasure grounds, several freehold farms, and villa residences, &c. consisting of 878 acres, the whole in the parish of Walton, being tithe free. The estate was divided into 64 lots. Of this 336 acres were apportioned for building sites, and as these abutted upon the line of the South Western Railway, the land fetched very high prices, averaging above 100*l.* an acre. The mansion, with its extensive lawn, pleasure grounds, and park, containing about 97 acres, went for 11,000*l.*; the farm, with 27 acres, was sold for 2,400*l.*; lot 20, Westbridge Lodge entrance, with 4 acres, produced 610*l.*; lot 38, the dairy, with 113 acres, was knocked down for 8,500*l.*; lot 40, a walled kitchen garden, 18 acres, was sold for 2,000*l.*; lot 42, about 11 acres, realised 1,810*l.*; and lot 46, with a lodge, and 2 acres, 440*l.* The whole property fetched 64,496*l.*, exclusive of the timber valued at about 6,142*l.* and upwards.

[We have received the particulars of this important sale, which, at a moment when the value of property under impending changes is so much questioned, will be found both interesting and useful; but press of matter compels us to postpone them until next week.]

The following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

For the first 70 words 5*s.*

For every succeeding 30 words . . . 1*s.*

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	95½	95½	95½	95½	95½	95½
Three per Cents. Reduced	95½	95½	95½	95½	95½	95½
New Three & a-quarter per Cts. Long Annuities	97½	97½	97½	97½	97½	97½
Bank Stock	205½	205½	205½	205½	205½	205½
India Stock	264½	264½	264½	265½	265½	266
India Bonds, prem.	29	29	29	29	29	29
Exchequer Bills, prem.	20	20	20	21	19	19
FOREIGN.						
Spanish Five per Cents.	24½	24½	24½	24½	24½	24½
Spanish Three per Cents.	36½	36½	37½	37½	37	37
Russian	110½	110½	110	110	110½	110½
Peruvian	39½	39½	39½	39½	39½	39½
Portuguese	56½	56½	56½	56½	56½	56½
Mexican	33½	33½	33½	33½	33½	33½
Deferred	16½	16½	16½	16½	16½	16½
Dutch Two-and-a-Half per Cents.	59½	59½	59½	59½	59½	59½
Four per Cents.	92½	92½	92½	91½	91½	91½
Danish	88	88½	88½	88½	88½	87½
Colombian	17½	17½	17½	17½	17	17
Chilian	99½	99½	99½	99½	99½	99½
Buenos Ayres	39½	39½	40½	41½	41½	41
Brazilian	82½	82½	82½	82½	82½	82½
Belgian	96½	96½	96½	96	96½	96½

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared to the Pound. The Assignees, when chosen, follow this statement.

Monday, May 11.

Clifton, R. brewer, last exam. June 29.—Cotsworth, T. builder, div. next week.—Doring, E. wool dealer, last exam. June 1.—Ellis, J. R. brewer, last exam. June 6.—Pike, J. M. victualler, div. next week. Turquand, London.

Tuesday, May 12.

Attwater, W. dyer, final div. next week. Belcher, Lon-

don.—Bartlett, T. J. M. bill broker, last exam. June 18.—Green and Green, stationers, div. of G. C. Green, next week. Edwards, London.—Hamilton, J. wine merchant, div. next week. Bell, London.—How, W. builder, last exam. passed.—Johns, J. cook, div. next week. Johnson, London.—Mell, J. C. merchant, div. next week. Alagar, London.—Newtons, L. warehouseman, last exam. June 23.—Pilling, C. potato salesman, assignees, May 23.—Sheffield, W. grocer, assignees, none chosen.

Thursday, May 14.

Spurill, J. wine merchant, last exam. June 11.—Taylor, J. J. tobacconist, assignees, June 18.

Friday, May 15.

Duffield and Co. ironmongers, last exam. passed.—Elkins, V. coachmaker, last exam. passed.—Maclean, M. cloth factor, div. next week. Groom, London.—Whitlaw and Co. builders, assignees, June 18.

Saturday, May 16.

Bradford, W. G. tailor, last exam. passed.—Penson, T. scrivener, last exam. Aug. 23.—Perkins, J. jeweller, last exam. sine die.—Pile, W. victualler, last exam. sine die.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Blackburn, I. engineer, 2*s.* 6*d.* Turquand, London.—Carey, F. hatter, 2*s.* 6*d.* Belcher, London.—Crosby, H. horse dealer, final, 6*d.* Wakley, Newcastle.—Gorris, H. upholsterer, second, 6*d.* Groom, London.—Golborne and Co. wine merchants, fourth joint, 1*s.* 6*d.*; sep. of D. 3*s.* Collett, Liverpool.—Henderson, J. horse dealer, 6*d.* Wakley, Newcastle.—Hill, J. currier, first, 1*s.* 6*d.* Valpy, Birmingham.—Hodgson, R. grocer, first and final, 1*s.* 4*d.* and 8*ths.* of 1*d.* Baker, Newcastle.—Kynnett, E. teacher of music, 3*d.* Belcher, London.—Marriage, J. jun. coal merchant, second, 6*d.* Whitmore, London.—Pellitt, R. livery stable keeper, first, 2*s.* 7*d.* Turquand, London.—Pearson, L. currier, second, 6*d.* Baker, Newcastle.—Sims, T. victualler, first, 2*s.* 10*d.* Turquand, London.—Staley, J. carpenter, second, 6*d.* Groom, London.—Smith, D. ironmaster, first, 2*s.* 3*d.* Acraman, Bristol.—Wade, B. tailor, first, 2*s.* 3*d.* Green, London.

Insolvents' Estates.

Bolt, P. W. chocolate manufacturer, New-street, Southwark-bridge-road, 9*d.*—Burrell, W. grocer, Barrington, 11*d.*—Carlson, W. in no business, Liverpool, 2*s.* 1*d.*—Clark, W. lead merchant, High-st. Bloomsbury, 6*d.*—Hall, J. tailor, Lincoln (with M. A. Hall) 11*d.*—Hall, M. A. tailor, Lincoln, 9*d.*—Kemp, W. tailor, Waltham, near Great Grimby, 9*d.*—Lisler, T. auctioneer, Thorne, Yorkshire, 2*s.* 9*d.*—Martin, J. farmer, Boswith, Essex, 2*s.* 7*d.*—Prest, T. innkeeper, Sherborne, 1*s.* 6*d.*—Quintin, G. F. S. clerk, Gt. George-st. Bermondsey, 6*s.* 4*d.*—Shipper, I. coach builder, Romford, 2*s.* 9*d.*—Spoke, J. labourer, Oswestry, 2*s.* 8*d.*—Tribbe, T. lieutenant in the Coast Guard Service, Yantlett Creek, Kent, 1*s.* 9*d.*

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, May 15.

Bourne, W. upholsterer, Aldgate, Jewry-st. and Commercial-rd. 2. Trusts, J. Esdaile, Upper Bedford-pl. Russell-sq. esq. W. Jones, cabinet maker, Castle-st. city-rd. and J. Barr, chairmaker, Curtain-rd. Sols. Vennings and Co. Tokenhouse-yd.—Field, G. saddler, Hith, May 7. Trusts, W. Tritton, draper, and W. Calster, grocer, Hythe. Sols. Brockman and Watts, Hythe.—Gent, W. tailor, Chorley, April 6. Trusts, G. T. Woodson, woollen cloth merchant, Leeds. R. Isherwood, chymist, Chorley, Sol. Clinning, Chorley.—Hanbury, C. and Dewsbury, J. engineers, Birmingham, May 9. Trust, W. Tateham, agent, Birmingham. Sol. Greatwood, Birmingham.—Hemming, W. needle maker, Redditch, May 9. Trust, W. Tateham, agent, Birmingham. Sol. Greatwood, Birmingham.—Hooper, T. butcher, Newnham, May 9. Trusts, J. Boughton, Westbury-upon-Severn, and G. Jones, Avre, farmers. Sol. Bullock, Newnham.—King, W. grocer and draper, Downham-market, May 1. Trusts, G. A. Ward, Downham-market, and G. Laws, Lynn Regis, merchants. Sol. Reed, Downham-market.—Lynne, W. carpenter, Weedon Beck, May 9. Trust, T. Atherton, timber merchant, Northampton. Sol. Pywell, Northampton.—Wookey, T. china dealer, Bristol, April 6. Trusts, J. Jones, woollen merchant, Bristol, and T. S. Bale, china manufacturer, Stoke-upon-Trent. Sol. Leman, Bristol.

Gazette, May 19.

Cundey, J. miller, Whittington, Derbyshire, April 23. Trusts, J. Hitch, Staveley, and W. Alsop, farmer, Chesterfield. Sol. Clarke, Chesterfield.—Fenton, J. hosier, Ockbrook, Derbyshire, April 29. Trusts, E. L. Simpson and E. Turner, silk throwsters, Derby. Sols. Simpson and Fear, Derby.—Gowland, J. watch maker, London-wall, April 23. Trusts, G. Muston, chronometer maker, Bristol, F. Shick, watch chain maker, Rahere-st. and A. Cohen, gent. Canoe-buoy. Sol. Taylor, Basinghall-st.—Kirkham, G. corn merchant, Poulton, Lancashire, May 7. Trusts, J. Singleton, gent. Bishopham with Norbeck, H. Fisher, gent. Poulton, and R. Parkinson, maltster, Poulton. Sol. Allen, Bartlett's buildings.—Little, W. Leeds, May 9. Trusts, W. Smith, grocer, and C. Smith, draper, Leeds. Sol. Middleton, Leeds.—Scales, G. G. jun. and J. Hawton, Near Newark, Scales, T. River-ter. Middlesex, and J. Milk-st. linen manufacturers, April 22. Trusts, W. Manvel, Bow-church-yd. J. Crocker, Gresham-st. linen factors, and G. Ingledew, engine manufacturer, Newark. Sols. Hardwick and Davidson, Weavers'-hall.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Wednesday, May 15.

ASHBROW, WILLIAM, druggist, Liverpool, May 26 and June 19, at twelve, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Gregory and Co. Bedford-row, sols. Date of fiat, May 11. Bankrupt's own petition.

BRIDGWOOD, JOHN, butcher, Forebridge, Staffordshire, May 25 and June 23, at one, Birmingham, Com. Daniell; Whitmore, off. ass.; Bennett and Bowen, Stafford, and Smith, Gray's-inn, sols. Date of fiat, May 11. Bankrupt's own petition.

ERICK, WILLIAM, baker, Hackney-rd. May 23 and June 27, at twelve, Basinghall-st. Com. Goulburn; Follett, off. ass.; Messrs. Hillearys, Fenchurch-st. sols. Date of fiat,

May 4. W. Podger and S. Kidd, millers, Isleworth, pet. crs.

HILL, SAMUEL, boiler maker, Bolton-le-Moors, Lancashire, May 27 and June 23, at twelve, Manchester; Fraser, off. ass.; Johnson and Co. Temple, and Blair, Manchester, sols. Date of fiat, May 7. J. F. Moore, iron merchant, Manchester, pet. cr.

LEWON, WILLIAM BUCKNELL, ironmonger, North-end, Croydon, May 29 and June 26, at one, Basinghall-st. Com. Fane; Whitmore, off. ass.; Lepard and Co. Cloak-lane, sols. Date of fiat, May 14. Bankrupt's own petition.

MILLS, RICHARD, and FOCKLE, GEORGE, hop and corn factors, Southwark and Corn Exchange, June 3, at two, June 26, at twelve, Basinghall-st. Com. Holroyd; Groom, off. ass.; Farnther and Fisher, Fenchurch-st. sols. Date of fiat, May 13. W. Nixon and W. Atkinson, corn factors, Crutched-friars, pet. crs.

SEX, GEORGE, job master and livery stable keeper, Stone-cutter-st. Farringdon-st. May 23, at half-past one, June 29, at eleven, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Collins and Co. Crescent-pl. Blackfriars, sols. Date of fiat, May 13. Bankrupt's own petition.

SNOWELL, THOMAS, tailor, 40, Ludgate-st. Ludgate-hill, May 23, at eleven, June 26, at one, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Lindo, King's Arms-rd. sol. Date of fiat, May 12. J. I. Brandon, gent. Artillery-pl. pet. cr.

SMITH, ROBERT, cabinet maker, 30, Sussex-st. Tottenham-court-rd. May 27, at eleven, June 26, at twelve, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Davies and Son, Warwick-st. sols. Date of fiat, May 11. T. Gase, innkeeper, Ranger's-lane, Atlebury, Norfolk, pet. cr.

VANHAAN, FRANK, scrivener, Brecon, May 28 and June 25, at eleven, Bristol, Com. Stephen; Hutton, off. ass.; Clark and Co. Lincoln's-inn-fields, and Savery and Co. Bristol, sols. Date of fiat, May 4. Bankrupt's own petition.

WHITBY, LUKE, builder, 11, Poultry, May 22, at one, June 26, at eleven, Basinghall-st. Com. Fane; Whitmore, off. ass.; Burnett, Fenchurch-st. sol. Date of fiat, May 13. Bankrupt's own petition.

WILLIAMS, CHARLES MURRY, ironmonger, Redcliffe-st. Bristol, June 4, at twelve, June 26, at eleven, Bristol, Com. Stephen; Hutton, off. ass.; White and Co. Bedford-row, and Messrs. Bevan, Bristol, sols. Date of fiat, May 9. Bankrupt's own petition.

Gazette, May 19.

BOTHAMS, THOMAS, licensed victualler, Nottingham, June 8 and 24, at one, Birmingham, Com. Daniell; Bittleson, off. ass.; Wells, Nottingham, James, Birmingham, and Sudlow and Co. Chancery-lane, sols. Date of fiat, May 13. Bankrupt's own petition.

COOK, JOHN, auctioneer, Cheltenham, June 5 and 26, at twelve, Bristol, Com. Stevenson; Acraman, off. ass.; Packwood, Cheltenham, sol. Date of fiat, May 11. Bankrupt's own petition.

CORRETT, JOHN FLETCHER, scrivener, Worcester, May 20 and June 20, at eleven, Birmingham; Christie, off. ass.; Mottram and Knowles, Birmingham, sols. Date of fiat, May 14. Bankrupt's own petition.

DETHICK, SAMUEL, and KAY, THOMAS RICHARD, common brewers and corn millers, Newton-beath, near Manchester, May 29 and June 23, at one, Manchester; Fraser, off. ass.; Norris and Co. Bartlett's-buildings, and Woods and Jackson, Rochdale, sols. Date of fiat, May 1. Bankrupt's own petition.

ELKINGTON, HENRY, chymist and druggist, 6, Maids-hill East, May 26 and June 26, at eleven, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Meyrick, Furnival's-inn, sol. Date of fiat, May 15. Bankrupt's own petition.

FRENCH, GEORGE DANIEL, cabinet maker and upholsterer, Stroud, Gloucestershire, June 4, at half-past one, June 30, at twelve, Bristol, Com. Stevenson; Miller, off. ass.; Cole, Tokenhouse-yard, sol. Date of fiat, May 8. J. Loader, cabinet maker, 23, Pavement, Finsbury, pet. cr.

GORDON, JAMES, jun. ship and insurance broker, 35, East India-chambers, Leadenhall-st. and 355, Albany-road, Camberwell, June 2, at half-past two, June 26, at one, Basinghall-st. Com. Holroyd; Groom, off. ass.; Ewbank, Gray's-inn, sol. Date of fiat, May 15. Bankrupt's own petition.

HANCE, JAMES JOHN, broker, Liverpool, May 29, at twelve, June 23, at eleven, Liverpool, Com. Phillips; Morgan, off. ass.; Cornthwaite and Co. Old Jewry-chambers, and Pemberton, Liverpool, sols. Date of fiat, May 8. B. R. Pemberton, merchant, Liverpool, pet. cr.

HARTLEY, THOMAS, and INGRAM, ROBERT, stock and share brokers, Leeds, May 26 and June 15, at eleven, Leeds, Com. Burge; Hope, off. ass.; Nelson and Co. Gresham-pl. and Nelson, Leeds, sols. Date of fiat, April 16. J. Young, stock broker, Leeds, pet. cr.

HAYWARD, JOHN RICHMOND, bookseller and stationer, Manchester, May 29 and June 23, at twelve, Manchester, Fraser, off. ass.; Johnson and Co. Temple, and Blair, Manchester, sols. Date of fiat, May 11. T. Holden, paper dealer, Manchester, pet. cr.

PERRY, ROBERT, draper, Brighton, May 30, at half-past twelve, June 20, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Sole and Co. Aldermanbury, sols. Date of fiat, May 14. W. Nevell and W. D. Jaundin, warehousemen, Gresham-st. pet. crs.

RUSSELL, JOHN, coal dealer, Kidderminster, Worcester-shire, May 30 and June 30, at half-past eleven, Birmingham, Com. Balguy; Valpy, off. ass.; Brinton, Kidderminster, sol. Date of fiat, May 13. Bankrupt's own petition.

STEVENS, THOMAS WILLIAM GREEN, hackney master, Bampton, Oxfordshire, May 28 at eleven, June 26, at half-past eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Close, St. Mildred's-court, and Rose, Bampton, sols. Date of fiat, May 7. J. Ward, maltster, J. Perkins, blacksmith, H. Taylor, baker, J. Seal, corn dealer, and J. Baxter, horse keeper, all of Bampton, Oxfordshire, pet. crs.

WALKER, THOMAS, tallow chandler and soap dealer, Leeds, June 4 and 23, at eleven, Leeds, Com. West; Freeman, off. ass.; Rushworths, Staple Inn, and Saunderson, Leeds, sols. Date of fiat, May 1. Bankrupt's own petition.

WHATELY, SAMUEL, grocer, 10, William-st. Lisson-green, May 29, at two, June 30, at eleven, Basinghall-st. Com. Fane; Whitmore, off. ass.; Simpson, 23, and G. Cooper, gate-st. sols. Date of fiat, May 15.

tea-dealers, Monument, 2, Southgate-st. St. James, WORMACOTT, WIL-

Bath, May 29, at two, June 30, at eleven, Bristol, Com. Stevenson; Hutton, off. ass.; Little, Bath, sol. Date of sat, May 14. T. and G. Butcher, Bath, grocers, pet. crs.

Meetings at Basinghall-street.

Gazette, May 15.

Baker, R. stonemason, Southampton, June 5, at one, aud.—Carter, P. W. and Jackson, J. woollen drapers, 20, Brewer-st. Golden-sq. June 12, at twelve, final sep. div. of Carter.—Dalton, J. grocer and cheesemonger, Wandsworth, June 8, at eleven, div.—Ellis, J. R. brassfounder, Houndsditch, June 8, at one, aud.—Emanuel, M. and H. goldsmiths and silversmiths, 5, Hanover-sq. June 10, at twelve, joint div.—Feakes, J. S. cordwainer, Cambridge, June 5, at twelve, div.—Frost, J. W. coffee dealer, Back-lane, Kingsland-green, Middlesex, June 5, at half-past twelve, div.—Griffith and Pearson, tailors, New Bond-st. May 29, at one (adj. April 24), last exam.—Hemblen, S. H. grocer and draper, Halesworth, June 9, at twelve, aud.—Key, J. oil and colourman and general merchant, Great Prescott-st. Goodman's-fields, June 5, at twelve, final div.—Knox, J. carpenter, Black-horse-yd. Bond-st. June 9, at half-past eleven, aud.—Langford, G. grocer and brewer, Southampton, May 28, at ten (adj. April 28), last exam.—Parkins, L. E. chymist and druggist, Bicester Market-end, Oxford, June 5, at half-past one, final div.—Pascoe, J. T. metal refiner, Mile-end Newtown and Heneage-st. June 5, at eleven, aud.—Prentice, G. fishmonger, Tollesbury, June 10, at eleven, aud.—Pursell, S. ironmonger, No. 420, Strand, June 12, at eleven, div.—Smart, J. watchmaker, King-st. Tower-hill, June 9, at one, aud.—Young, J. shipowner, Saleott, June 5, at half-past eleven, aud.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Baker, R. stonemason, Southampton, June 5, at one.—Ellis, J. R. brassfounder, Houndsditch, June 8, at one.—Hemblen, S. H. grocer, Halesworth, June 9, at twelve.—Johns, J. cook, Grosvenor-st. West, June 9, at twelve.—Kent, R. victualler, Aldenharn, June 12, at one.—Linnit, J. goldsmith, Argyle-place, June 9, at one.—Prentice, G. fishmonger, Tollesbury, June 10, at eleven.—Pursell, S. ironmonger, Strand, June 12, at eleven.—Todd and Todd, warehousemen, Bow Church-yd. and Liverpool, June 5, at eleven.—Vanderplank, B. woollen warehouseman, Love-lane, June 5, at half-past one.

Gazette, May 19.

Agate, M. grocer, Market-st. Hove, Sussex, June 12, at half-past one, fin. div.—Barratt, J. C. carver, Strand, June 9, at one, aud.—Blackmore, C. tailor, Cork-st. June 10, at two, proof of debts.—Childs, R. tailor, Queen Anne-st. June 10, at half-past eleven, aud.—Clarkson, T. sen. upholsterer's warehouseman, 10 A, Charles-st. Middlesex Hospital, June 12, at twelve, fin. div.—Collins, C. yarn agent, Kidderminster, King William-st. and Adelaide-pl. June 10, at eleven, aud.—Ebbey, W. silk dresser and manufacturer, Aldermanbury, June 11, at twelve, div.—Ensoll, R. draper, Broad-st. Bloomsbury, June 12, at half-past eleven, aud.—Foothead, H. H. wholesale milliner, 16, Fore-st. Cripplegate, June 11, at half-past twelve, div.—Haddam, W. J. brewer, Tottenham, June 10, at twelve, aud.—Harding, W. turner, Edward-st. Portman-sq. June 12, at eleven, aud.—Hawkins, J. butcher, Hurst, June 10, at twelve, aud.—Linnit, J. goldsmith and jeweller, Argyle-pl. Regent-st. June 9, at one, div.—Reis and Co. soap manufacturers, Fenchurch-st. and Wandsworth, June 9, at half-past eleven, joint aud.—Spaul, J. wine merchant, Beer-lane, June 11, at eleven, aud.—Tubb, T. cowkeeper, Palace-row, New-rd. June 12, at half-past eleven, aud.—Waller, T. B. and J. grocers, Ipswich, June 11, at half-past two, aud. and June 15, at half-past eleven, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Barratt, J. C. carver, Strand, June 9, at one.—Ensoll, R. draper, Broad-st. June 12, at half-past eleven.—Hawkins, J. butcher, Hurst, June 10, at twelve.—Kimpston, R. jeweller, Jewin-crescent, June 9, at eleven.—Martin, J. fringe manufacturer, June 15, at one.

Meetings in the Country.

Gazette, May 15.

Ashworth, T. and Keyworth, M. S. common brewers, Manchester, June 10, at twelve, Manchester, joint div. and sep. of Keyworth.—Broen, S. hat manufacturer, Denton, Lancashire, June 11, at twelve, Manchester, aud. and June 18, at twelve, first div.—Curtis, J. chandler, Birmingham, June 6, at twelve, Birmingham, aud. and June 8, at twelve, final div.—Gibson, J. veterinary surgeon, farrier, and smith, Manchester, June 9, at twelve, Manchester, aud. and June 16, at twelve, first div.—Hagood, W. merchant, Manchester, June 10, at twelve, Manchester, aud.—Last, G. general dealer, Sand-st. Birmingham, June 6, at twelve, Birmingham, aud. and June 8, at twelve, third and final div.—Littler, S. draper, Liverpool, June 9, at eleven, Liverpool, first div.—Parnell, T. laceman, Manchester, June 8, at twelve, Manchester, aud. and June 9, at twelve, div.—Robinson, T. grocer, Swansea, June 11, at twelve, Bristol, aud. and June 12, at eleven, div.—Sage and Booth, ironmasters, Sheffield and Rotherham, June 5, at eleven, Sheffield, aud.—Wright, J. calico printer, Wheldon, June 8, at twelve, Manchester (adj. April 1), last exam.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Boond, W. jun. stretcher, Manchester, June 10, at twelve.—Brook, J. innkeeper, Chester, June 9, at twelve, Liverpool.—Gibson, J. veterinary surgeon, Manchester, June 9, at twelve, Manchester.—Gregson, J. S. grocer, Manchester, June 11, at twelve, Manchester.—Hutchinson, S. stock broker, Bradford, June 9, at eleven, Leeds.—Lupton, W. B. flax spinner, Leeds, June 9, at eleven, Leeds.—Poultson, J. builder, Birkenhead, June 9, at half-past ten, Liverpool.—Radbone, J. June 10, at eleven, Birmingham.

Gazette, May 19.

Agars, R. woollen draper, Kingston-upon-Hull, June 10, at eleven, at one, and June 17, at eleven, first div.—Bulmer, R. and J. ship builders, South Shields, June 12, at half-past ten, Newcastle, div. of J. Bulmer.—Gibbons, J. and Sherwood, W. merchants, Liverpool, June 9, at twelve, Liverpool, div.—Heppell, T. timber merchant, Newcastle-upon-Tyne, June 9, at eleven, aud. and June 11, at twelve, div.—Leach, J. ironmonger, Newcastle, June 9, at twelve, Newcastle, aud.—Lees, W. merchant, Liverpool, June 9, at twelve, Liverpool, aud.—Lewtas, M. jun. merchant, Liverpool, June 9, at twelve, Liverpool, aud.—Lilly, J. farmer and cattle dealer, Brincliffe, Widdershill, and the Forest, Hanbury, both in Worcestershire, June 10, at one, Birmingham, aud. and final div.—Pearson, J. fellmonger and woolstapler,

Newcastle, June 9, at one, aud. and June 11, at one, Newcastle, div.—Roberts, I. grocer, Mold, June 9, at twelve, Liverpool, aud.—Sage, B. and Booth, T. ironmasters, ironfounders, machine makers, and coal masters, Park Ironworks, Sheffield, and Tinsley-park, Rotherham, both in Yorkshire, June 12, at eleven, Sheffield, first sep. div. of Sage and second sep. div. of Booth, and at twelve, third joint div.—Sedden and Jordan, millers, St. Helens, June 9, at twelve, Liverpool, aud.—Smith, E. S. and Stanley, J. merchants, Liverpool, June 9, at twelve, Liverpool, div.—Sugden, J. and Gamble, W. merchants, Liverpool, June 9, at twelve, Liverpool, div. of Sugden.—Taylor, J. coal fitter, Middleborough, June 11, at eleven, Newcastle, aud.—Tiddie, W. soap manufacturer, Liverpool, July 2, at eleven, Liverpool (adj. May 12, last exam.)

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Cullen, S. chymist, Nottingham, June 11, at one, Birmingham.—Heppell, T. timber merchant, June 9, at eleven, Newcastle.—Maid, W. victualler, Liverpool, June 9, at eleven, Liverpool.—Wright, J. scriviner, Tamworth, June 10, at one, Birmingham.

Partnerships Dissolved.

Gazette, May 12.

Adhead, C. and Goodband, J. commission agents, Leicester, Feb. 28.—Bellingham, R. and H. J. chymists, Strand, May 2. Debts paid by H. J. Bellingham.—Blogg, G. and Samuel, L. Bucklersbury, May 1. Debts paid by Blogg.—Boucher, J. and H. E. drapers, Birmingham, March 25. Debts paid by H. E. Boucher.—Brocklehurst, C. L. and T. and Hunter, W. M. linendrapers, Holmfirth, so far as regards C. L. Brocklehurst, May 5. Debts paid by the remaining partners.—Bull, T. and Nash, W. provision merchants, Minorities, May 12. Debts paid by Nash.—Darby, J. and Garland, W. warehousemen, Wood-st. May 4.—Gregory, G. Harding, W. and Whitcher, J. millers, Fisherton Anger and West Harnham, April 29. Debts paid by Gregory.—Hadfield, T. H. and Bailey, T. silk dyers, Barton-upon-Irwell, May 8. Debts paid by Hadfield.—Hedbin, J. and Parkinson, R. jun. share brokers, Leeds, May 7.—Huffam, T. and Westaway, D. T. tailors, City-road, May 8. Debts paid by Huffam.—Jones, G. and Walker, J. ironfounders, Birmingham, May 9. Debts paid by Jones.—Lomax, J. and Kay, S. cotton spinners, Rochdale, May 8. Debts paid by Lomax.—Long, R. F. and Job, W. H. saw-mill owners, Limehouse, May 8. Debts paid by Job.—Protheroe, F. and J. coopers, Bristol, Dec. 31. Debts paid by J. Protheroe.—Reed, E. and Roberts, E. A. and C. A. milliners, Liverpool, May 8. Debts paid by E. A. and C. A. Roberts.—Seewell, E. A. and J. wholesale toy merchants, Fore-st. May 7.—Simpton, W. and Boyes, G. stockbrokers, York, May 8.—Smart, T. W. W. and Hill, E. C. surgeons, Cranborne, May 7. Debts paid by Smart.—Smith, J. and Browne, J. W. attorneys, Swindon and Marlborough, May 7.—Watkins, G. W. and Gaudry, G. oil warehousemen, Oxford-st. May 9. Debts paid by Watkins.—Watson, J. and Jackson, T. corn millers, Leeds, April 14.—Wilson, W. and J. drapers, New Bond-st. Sept. 23. Debts paid by W. Wilson.

Gazette, May 15.

Bagnall, J. and Bowen, H. tea dealers, Bridgnorth, March 16. Debts paid by Bowen.—Baldson, S. and Crookes, J. jun. tailors, Grosvenor-st. May 14. Debts paid by Crookes, jun.—Bentley, W. H. and Haigh, W. shirt manufacturers, Carey-lane, May 14.—Beynon, J. and S. ironmongers, Llanelli, Jan. 26. Debts paid by S. Beynon.—Clegg, J. A. and McCreight, J. stock brokers, Liverpool, May 11.—Gould, R. and W. hatters, Ludgate-hill, May 27, 1840.—Greaves, J. and J. and Hartley, J. waste dealers, Leeds, May 11.—Haley, J. and J. and Oddy, B. ironfounders, Calverley, so far as regards Oddy, April 30. Debts paid by the remaining part.—Hanbury, C. and Dewberry, J. engineers, Birmingham, May 9.—Hanson, J. Smith, T. and Morton, W. D. fancy woollen manufacturers, Huddersfield, Oct. 1.—Harrison, J. and H. cheese factors, Walsall, May 6.—Hobday, J. and Cheetham, J. H. muslin manufacturers, Manchester and Whittle, May 14. Debts paid by Hobday.—Hunt, J. and G. brewers, Southampton, Dec. 5.—James, T. and Walters, J. T. printers, Rugby, April 20. Debts paid by James.—Hughes, S. J. and E. earthenware manufacturers, Cobridge and elsewhere, April 25. Debts paid by S. and E. Hughes.—Kennan, G. P. and Townend, R. H. hotel keepers, Crown-court, Cheapside, May 15.—Layfield, H. and Beesley, T. boiler makers, Burnley, May 12. Debts paid by Layfield.—McCarthy, J. and Robinson, N. bagatelle-board makers, Compton-st. Clerkenwell, May 6.—Marsden, W. I. and J. fancy cloth manufacturers, Doncaster and Elmley, May 9. Debts paid by Messrs. Marsden.—Matthews, W. and Hewitt, J. victuallers, Ship-yard, Temple-bar, May 8.—Mitton, T. and Neale, W. attorneys, Southampton-buildings, May 15.—Moore, T. and Mayson, J. surgeons, Wilmshurst, April 20. Debts paid by Moore.—Perryman, E. and Burnside, J. F. stationers, Swinburn-lane, March 30.—Petters, J. W. and Wormleighton, J. builders, Goswell-st. May 12.—Pickard, W. F. and Troughton, J. timber merchants, Liverpool, May 1.—Rome, J. and Goodwin, C. J. corn millers, Heath, March 30. Debts paid by Rome.—Stickney, W. and J. farmers, Holderness, April 6, 1844.—Stones, T. and W. builders, Blackburn, May 12. Debts paid by W. Stones.—Targett, C. and Butler, E. grocers, Wokingham, May 12.—White, J. G. and Low, J. ship brokers, Liverpool, April 29. Debts paid by White.

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, May 12.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Davies, W. cooper, Morpeth-st. Bethnal-green, May 19, at twelve.—Field, A. messenger in the Stationery-office, John's-place, Blackfriars-rd. May 23, at eleven.—Gibbons, J. cooper, Providence-place, Waltham-common, May 21, at twelve.—Hayward, A. J. tin plate worker, Green-st. Bethnal-green, May 21, at eleven.—Henderson, H. victualler, Ramsey, May 28, at half-past twelve.—Hunter, W. A. wharfinger, Smith-st. Stepney, May 21, at eleven.—Ledger, W. pig dealer, Chatham, May 21, at eleven.—Oliver, J. hatter, Redburn, May 19, at half-past eleven.—Rodwell, J. cabinet maker, Watford, May 21.—Rose, W. whitesmith, Cornwall-rd. Lambeth, May 21, at twelve.—Rowe, C. cabinet maker, Upper Ebury-st. May 26, at one.—Sterns, B. H. coach builder, Wimborne Minster, May 28, at eleven.—Toiboy, W. marine store dealer, May 21, at one.—Ward, J.

tailor, Church-place, Paddington-green, May 21, at eleven.—Western, H. W. accountant, Ironmonger-lane, May 21, at one.—White, R. boot maker, Drury-lane, May 21, at twelve.—Withersby, J. T. T. beer-shop keeper, Coventry, May 21, at eleven.

PETITIONS TO BE HEARD IN THE COUNTY.

Cholerton, M. upholsterer, Derby, May 22, at half-past ten, Birmingham.—Davis, T. waterman, Macclesfield, May 21, at eleven, Bristol.—Dodd, H. tailor, Weston, May 21, at eleven, Bristol.—Evans, B. in no business, Birmingham, May 29, at eleven, Bristol.—Frost, A. jeweller, Birmingham, May 21, at twelve, Birmingham.—Hawson, W. printer, Pendleton, May 22, at twelve, Manchester.—Hicks, J. cowkeeper, Bunny, May 18, at twelve, Birmingham.—Hobbs, R. out of business, Exeter, May 27, at eleven, Exeter.—Hobbs, W. gardener, Falmouth, May 21, at eleven, Exeter.—Jenkins, G. quarryman, Bristol, May 15, at eleven, Bristol.—Leach, E. paper dealer, Manchester, May 21, at twelve, Manchester.—Lockett, A. hawker, Macclesfield, May 22, at eleven, Birmingham.—Mann, J. hatter, Birmingham, May 22, at eleven, Birmingham.—Soler, W. shopman, Liverpool, May 19, at eleven, Liverpool.—T. dairymen, Exeter, May 21, at one, Exeter.—Sutton, J. miller, Bettws, May 21, at eleven, Bristol.—Taylor, J. farmer, May 25, at twelve, Manchester.

MEETINGS AT BASINGHALL-STREET.

Bartholomew, L. B. gent. Reading, May 22, at eleven, div.—M'Millan, W. carpenter, Lambeth-rd. May 22, at eleven, div.—Matthews, W. H. cheesemonger, Brompton, May 22, at eleven.—Morton, H. J. hatter, Brompton, May 22, at half-past eleven, div.—Patt, J. Reading, May 22, at twelve, div.—Quarrell, J. Sand Hoxton, May 22, at half-past eleven, div.—Sutton, J. official florist, Poplar, May 22, at twelve, div.

Gazette, May 12.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Campbell, J. carpenter, Arthur-st. King's-road, Coln, May 28, at eleven.—Chaffield, J. master mariner, Trowmouth, June 2, at eleven.—Coghill, J. surveyor, Lambdon, Bucks, May 16, at twelve.—Day, Rev. H. I. T. Mendlesham, Suffolk, June 9, at one.—Debbin, G. D. Drummond-st. Euston-sq. May 28, at eleven.—Ellis, J. foreman to a dealer in hams, Castle-st. Leicester, May 28, at eleven.—Furniss, G. oil and colourman, 30, 31, Maiden-lane, King's-cross, June 2, at eleven.—Rid, J. auctioneer, Leighton Buzzard, May 28, at eleven.—John R. commission agent, Old-st. May 28, at eleven.—Fryer, J. tambour worker, Coggeshall, May 28, at eleven.

PETITIONS TO BE HEARD IN THE COUNTY.

Coller, J. shoeling smith, Bath, May 26, at twelve, Bristol.—Cooper, W. commission agent, Nottingham, May 21, at half-past ten, Birmingham.—Jones, S. grocer, Croydon, May 20, at one, Liverpool.—Mowden, C. publican, Sandal, May 28, at eleven, Leeds.—Pagell, J. out of business, Cookley, Worcestershire, May 21, at eleven, Birmingham.—Saunders, J. grocer, Westbury, Wilt, May 21, at one, Bristol.—Starkley, H. lodging-house keeper, Huddersfield, May 29, at eleven, Leeds.—Waddington, J. beer seller, North Bierley, May 28, at eleven, Leeds.—Wilson, S. coach proprietor, Nottingham, May 30, at twelve, Birmingham.—Wilkinson, J. victualler, Bradford, May 21, at eleven, Leeds.—Williams, E. late horse dealer, St. George's, Wiltshire, May 28, at eleven, Bristol.

From the Gazette of Friday, May 21.

Bankrupts.

M'Dowell, W. printer, Pemberton-row, Gough-square.—Bacon, J. E. leather factor, Berners-st. G. Old Kent-st.—Markham, R. D. boarding-house-keeper, Kingsland.—Beddie, A. and Macnaghten, F. merchants, Nelson-st. Lambard-st.—White, W. builder, Bethnal-green.—Barr, J. draper, Paddington.—Thorn, A. oilman, High Holborn.—Perry, J. grocer, Harlow, Essex.—Arundell, M. miller, Crayford-st. Marylebone.—Knight, R. and J. jun. stationers, Budget-row, City.—Andrew, V. L. and W. map and deal merchants, 110, Fenchurch-st.—Page, E. E. stock-keeper, Norfolk.—Jones, G. hatter, Birmingham.—Alldermanby, W.—Robinson, A. draper, Chester-le-Strait, Durham.—Cooban, E. brewer, Liverpool.—Jones, G. hatter, Tenthack-park, Lancashire.—Harvey, T. H. merchant, Weymouth.—Rhodes, P. cotton spinner, Manchester.—Elworthy, J. ironfounder, Digbeth, Birmingham.—Taylor, W. shirt broker.

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Equity Courts.

LORD CHANCELLOR'S COURT.

Ex parte VAN SANDAU.

May 9.

Practice—Costs of Consequential Proceedings—Costs of Injunction.

Enforcing Payment of Costs in Bankruptcy.
In this matter the petition was again placed in the paper for the purpose of taking the decision of the Court on two points which had not been mentioned in the former judgment.

Bayshore and Holt said, that on deciding the injunction granted by the Court of Review to be invalid, the Lord Chancellor reserved the question of costs until after the trial of the action then pending by Mr. Van Sandau against Messrs. Turner and Hensman, inasmuch as the jury, in assessing damages, might take into their consideration the amount of those costs; and therefore his Lordship should be of opinion that Mr. Van Sandau was entitled to such costs, and they should also be awarded to him by the jury, he would be paid twice over. That was the first point now to be decided.

The second point was this: when it was agreed to leave the whole matter of the petition and the action to the decision of the Lord Chancellor, Mr. Swanton, on the part of his clients, consented, subject to the question whether any action at all would lie; and claimed to have that point argued before his lordship by two common law counsel. That argument was made by Mr. Humphrey and Mr. Cleasby, and it was now asked on the behalf of Mr. Van Sandau, that the costs of that argument should be considered costs in the action. On the same occasion affidavits were necessary to explain to the Court some facts with respect to the course of proceeding in bankruptcy, and the petitioner also asked that the costs of those affidavits should be allowed.

The LORD CHANCELLOR.—In assessing the damages I did not include any costs. I did not say I should give the petitioner the costs on the injunction. I simply reserved those costs.

Swanton and Sims contended that this was in substance a rehearing, and that although the decision of the chief judge had been overturned, still, as the whole matter arose out of a gross libel on the part of Mr. Van Sandau, he ought not to have his costs.

The LORD CHANCELLOR.—The question for my consideration is, what would the chief judge have done as to costs, had he refused the injunction?

Swanton.—It was an application to restrain an action for an act done in obedience to the order of the Court; and, in such case, had the application been refused, it would have been without costs. The costs of affidavits asked for by the petitioner are not within the principle of the judgment delivered a few days ago.

The LORD CHANCELLOR.—I do not consider this to be out of the order; a circumstance has occurred which

required inquiry, and I think these affidavits in explanation fall within the same principle.

Swanton then mentioned a cross-application on the petition of Messrs. Turner and Hensman, which asked that the minutes of the order may be amended, by directing that Mr. Van Sandau pay the costs of Messrs. Turner and Hensman in the court below, on the order of the 3rd February. The Court had given them the costs of the appeal on that order.

The LORD CHANCELLOR.—I varied the order; if I vary the order, how can I give the party supporting the order the costs of it? On the plaintiff obtaining a verdict in a court of law, the costs follow of course. I thought the plaintiff here entitled to a verdict, upon the ground of the informality of the order under which he had been imprisoned. Whoever has the carriage of an order of the Court is liable for the consequences. If the petitioner was arrested upon a warrant which is no warrant, the party having the carriage of it must be responsible.

Bayshore, in reply.

The LORD CHANCELLOR.—I am to consider the question of costs upon this order, as if the chief judge had refused the motion for an injunction. In the usual course Mr. Van Sandau would have been entitled to costs. The parties had requested me to determine all the questions between them, including the action at law, and to put an end to all further litigation. There were costs incurred by the argument of the common law counsel as to the petitioner's right to maintain the action; and some further affidavits were required; and I think Mr. Van Sandau is entitled to the costs of both, as having a decision in his favour upon the action. Then there are the costs of the appeal against the various orders; the respondents succeeded as to one order; one was varied, and another of the orders was rescinded. I shall give no costs on either side.

Bayshore asked that the costs should be taxed by the taxing officer of the Court of Queen's Bench, because, if they were taxed in bankruptcy, there was no summary means of enforcing payment by any order or form used in the Court of Bankruptcy.

The LORD CHANCELLOR.—The order for taxing costs is one made on appeal to me; if the costs are not paid you can make an application here upon the subject.

Bayshore asked that the cross-petition of Messrs. Turner and Hensman should be dismissed with costs.

The LORD CHANCELLOR.—No; I give no costs.

The following is the order made by his Lordship upon the whole matter, as decided by him, with the consent of the parties:—

Order.—That so much of the Order of the Court of Review of the 3d day of February, 1844, as directs the petitioner to pay to the said respondents their costs, charges, and expenses, be varied by expanding therefrom the words "charges and expenses," and in other respects I confirm the said order. That it be referred back to Mr. Visard, an officer of the Court of Bankruptcy, to re-tax the bill of costs of the respondents under the aforesaid order. Order, that the respondents do pay to the said petitioner what (if anything) after such taxation, shall be found due to the said petitioner from the said respondents. Order, that the order of the Court of Review, made in the above matter, or on the 21st day of February, 1844, whereby it is ordered, that upon the said petitioner depositing the sum of 200*l.*, as therein mentioned, the said petitioner should be discharged from the custody of the Keeper of the Queen's prison, in which he then was under the order of the Court of Review of the 4th day of February, 1844; and the parties to the said order or either of them were to be at liberty to apply to the Court touching the matters of the petition upon which the said order of the 3d day of February was founded, without petition be discharged. Order, that the costs of and occasioned thereby, which have been taxed and paid by the said petitioner to the said respondents; declare that the said petitioner is entitled to a verdict against the said respondents upon the issue joined upon the plea of not guilty in the action brought by the said petitioner against the said respondents in the Court of Queen's Bench; assess the damages in such action at 10*l.* on the whole record. Order, that the respondents do pay to the said petitioner the said sum of 10*l.* being the sum so assessed by me as and for damages accruing to the said petitioner as aforesaid. Direct the taxing master of the Court of Bankruptcy to tax the costs of the said action and of the argument on the said demurrer, in the same manner and form as they would be taxed in the Court of Queen's Bench. Order, that the said respondents do pay to the said petitioner such last-mentioned costs.

Thursday, May 29.

IMPORTANT JUDGMENT.

Re THE SUITORS OF THE COURT.

Re WHITING.

Master's Office—Practice.

This was a petition presented by thirty-two of the suitors of the Court, complaining of the course adopted by Master Lynch in the employment of the clerks in his office, which they alleged to be injurious to the Profession and a violation of the Act of Parliament

for the regulation of the Court of Chancery. The grievance was in substance that Master Lynch, under the pretence of employing the two clerks indiscriminately in the performance of the duties, was evading the Act of Parliament, which required that the person who performed the duties of chief clerk should be a person who had been for ten years a junior clerk, and it was insinuated that he did so in order to favour Mr. Wright, the junior clerk, who, although he was not qualified, did the duties of chief clerk, and was intended to receive the appointment when he had served the necessary period. The matter was argued at some length before the Lord Chancellor and the Master of the Rolls in June, last year, when Mr. Romilly and Mr. R. Palmer appeared for the petition, and Mr. Stuart (with Mr. Campbell) for Master Lynch. The argument was not then concluded, and it stood over for the vacation, on an understanding that some communication would take place between the Court and Mr. Lynch. That communication did take place, but Mr. Lynch persevered in the same course, and the question was again argued in November, before the Lord Chancellor and Lord Langdale, by the same counsel. The matter then stood over for consideration.

This morning the Lord Chancellor and the Master of the Rolls came into court, and gave their formal opinions, the Master of the Rolls reading an elaborate statement of his view of the question raised by the petition.

The MASTER of the ROLLS commenced by observing that he attended for the purpose of submitting to his lordship (the Lord Chancellor) his opinion on a case to which he had given his most earnest attention. It had been represented by certain solicitors of the Court, who in that character were important officers of the Court, that in the office of Master Lynch the business of suitors was not conducted in a manner consistent with the policy and intention of the Chancery Regulation Act (3 & 4 Wm. 4, c. 18), or with the accustomed practice and well-known duties of the clerks employed by the Master. The question was one of great public importance, as affecting the administration of justice, and the case was of such a nature that his lordship thought it ought to be considered purely on public grounds, and that all matters of a personal nature were to be entirely disregarded. It appeared that in the year 1843, on the death of the chief clerk of Master Lynch, a Mr. Wright was the junior clerk in the office, and Mr. Whiting had been employed as the assistant of Mr. Wright. Neither Mr. Wright nor Mr. Whiting had been admitted as a solicitor, nor had Mr. Wright been a junior clerk in the office of a Master for the period of ten years. Wright was not, therefore, qualified by law for the office of chief clerk, but Whiting had been employed for more than ten years as junior clerk in the office of Master Cross, and was qualified. Whiting was accordingly appointed chief clerk. In the year 1845, a petition was presented to the Court by certain solicitors, complaining that notwithstanding this appointment of Whiting to the office of chief clerk, he did not perform the duties of chief clerk, but that those duties were performed by Wright, the junior or copying clerk, who was not a person qualified by law to perform the duties of chief clerk, and praying the Court to make such order as the nature of the case seemed to require. The answer made to the complaint in that petition was, that there were no peculiar duties which could be exclusively called the duties of the chief clerk in the office of a Master, for the Master had a right so to distribute the duties of his office between his two clerks as to render their services most efficient and most conducive for the proper and speedy transaction of the business before him. The question to be determined was the correctness of the proposition laid down in the answer on the part of the Master. The Act 3 & 4 Wm. 4, c. 94, sec. 18, known as the Chancery Regulation Act, it was enacted that no person should be hereafter appointed to the office of chief clerk unless he had been admitted a solicitor of the court for not less than five years, or had been a junior or copying clerk in the Master's office for ten years. Considering the very peculiar and imperfect nature of the business transacted in the Master's office, the responsibility of the Master himself for the proper transaction of that business, and the urgent necessity for the avoidance of all interruption in the course of judicial inquiries, it certainly appeared reasonable, that if due vigilance and personal supervision were exercised by the Master, little danger could arise from the exercise of the discretion of the Master in apportioning the business of his office, and that it would be very inconvenient to restrain the Master from employing one clerk, being competent, to assist in the performance of duties not ordinarily belonging to him. In the case of sickness or accident, or great pressure of one kind of business, or in such an emergency as to require and justify a departure from ordinary rules, it was in the power of the Master, in the exercise of his discretion, using due vigilance, to employ the clerks in the manner in which he might upon due consideration think the emergency of the case required. If that had been the sort of distribution which had really taken place, and

which the argument against the petition referred to, it ought, with some qualification, to have been acceded to; but an authority to direct clerks to assist each other occasionally in the performance of each others' duties did not appear to his lordship to afford support to the proposition that neither clerk had any peculiar duties, or imply such an authority on the part of the Master to change the nature of the office of the two clerks, so as to transfer permanently or habitually the most important duties from the one to the other. Looking at the provisions of the Chancery Regulation Act, the Master appeared to have no such authority. That Act expressly recognized two clerks holding two different offices, and receiving a different measure of remuneration. A specific legal qualification was required for the person to be appointed to the office of chief clerk, but no such qualification was required for the junior or copying clerk. The appointment of the junior clerk was left to the discretion of the Master, under the presumption that he would take care to select a competent person for the performance of its duties. To the chief clerk there was given a salary of 1,000*l.* a year, with an express prohibition against receiving any fee or gratuity. To the junior clerk there was given a salary of 150*l.* a year, but with an allowance of copying money, at the rate of three-halfpence a folio. The amount of that copying money was uncertain, depending on the length of the documents in the office, of which copies, he was afraid to say, were not at all times required, but nevertheless allowed. The reason for the remarkable difference in the name, qualification, and mode of remuneration of the two clerks was not stated in the Act of Parliament, but it must be presumed they were founded upon the difference of the duties to be performed by the respective holders of the offices; neither could it have been intended to thus fetter the Master in his choice of a chief clerk by requiring a qualification, and yet permit him to delegate the performance of the duties in respect of which the qualification was imposed, to a person not possessing the qualification. Neither could it be intended that the Master should delegate to the junior clerk, who had an express interest in the copying money, the performance of the same duties which had previously been performed by the chief clerk, from whom all interest in fees and copying money was expressly taken away. Looking at the provisions of the Act of Parliament, his lordship could entertain no doubt that the Master had not a power to distribute the business of his office between the two clerks, or habitually to allot to the one who was not legally qualified, and who had an interest in copying money, those duties in respect of which the Legislature had thought fit to require that the person performing them should have a specific qualification, should not have an interest in the copying money, and in the absence of that interest should be kept free from the temptation of increasing the amount of copying money. The question, then, to be determined was, what were the duties of these offices? The Legislature had not attempted to define them; it had not even mentioned them; and therefore it had been contended at the bar that the Master had an undoubted right to determine what they should be, and how they were to be distributed. That would be much the same thing as conferring on the Master a power of allotting to the unqualified person the duties intended by the Legislature to be performed by the qualified person. The allegation of such unlimited power being invested in the Master appeared to be unfounded. Notwithstanding some varieties in the duties of the clerks, and notwithstanding the authority the Master had to exercise considerable discretion on the apportionment of the duties, there was no man of learning and experience in the business of the court who did not well and familiarly know the broad distinction between the general duties of the chief clerk and those of the copying or junior clerk. Any attempt to define these duties accurately might be difficult, and even if it succeeded it would probably tend rather to embarrass than to expedite the performance of the business of the office. The circumstances of the case did not appear to require that such an attempt should be made, but as an argument had been deduced from it, some investigation might not appear unnecessary. His lordship, in pursuance of that view, stated very minutely the original duties of the Master's clerks, taken from the earliest records of the court. He then cited the evidence before the parliamentary commission in the year 1826, and read the provisions of the Chancery Regulation Act of 1833, for the purpose of shewing that a broad distinction between the duties of the chief and junior clerk had been uniformly recognised, the duties of the chief clerk being, like those of the Master himself, of a character almost judicial while those of the junior clerk were purely ministerial, and even mechanical, so much so indeed, that one of the witnesses stated they might be performed by a boy from Christ's Hospital after a very brief instruction. His lordship also proved from the same documents and authorities that the Masters, in the performance of their duties and the regulation of their offices, were, and always had been, under the control and supervision of the Lord Chancellor. His lordship thought that there was not the slightest reason

for suggesting that the business of the office of Master Lynch was in the least degree neglected or ill conducted, or that there was any temptation offered to the junior clerk, in the nature of the duties assigned to him, to increase the amount of copying money. No complaint on that subject had indeed been made or ever hinted at in the course of the argument. The strict attention to the duties of his own office, for which Master Lynch was so honourably distinguished, and in support of which his lordship was happy to bear his own testimony, together with the virtue of Mr. Wright in the discharge of his duties, might have saved the office from the commission of any wrong; but the nature of the duties confided to Mr. Wright was such that the Legislature had been induced to exclude all temptation to wrong. The mischief attempted to be guarded against by the Legislature might be almost insensible, and might escape even the vigilant attention of such a Master as Mr. Lynch. If these mischiefs were even to arise, and were to exist to a considerable extent, no evidence of it might be capable of being produced; for unfortunately it was not the interest of any one practising the law to complain of the length of the documents; a long document being not only a source of profit to the clerk who drew it up, to the stationer who wrote it, and to the office who obtained the copying money, but to every one who received remuneration in connection with it. His lordship was much afraid that in such a case, the absence of complaint would not establish the absence of all ground of complaint; but assuming, as he probably ought to do, that mischief did not at present exist, still it was necessary to guard against its occurrence in the manner provided by the Legislature. The law at present was not obeyed, and the risk remained, which obedience to the law would remove. Under all these circumstances, his lordship was of opinion that the business of the office of Mr. Lynch was not distributed in conformity with the intentions of the Legislature. If that should ultimately be also the opinion of the Lord Chancellor, his lordship ventured to presume that Mr. Lynch would not require any special direction as to what ought to be done, or any other inducement to his adoption of the necessary proceedings for putting the business of his office on a safe foundation.

The LORD CHANCELLOR said he had requested the assistance of the Master of the Rolls upon the hearing of this petition, on the ground that his lordship was the head of the department to which the case referred. It was hardly necessary to say, that he entirely concurred in the very full and elaborate opinion which the Master of the Rolls had given on the occasion. In fact, he himself had expressed the same opinion to Master Lynch several months before, when the question was originally brought before the Court. The commissioners of 1740, in the time of Lord Hardwicke, and the commission of 1816, both drew a marked distinction between the two offices of chief and junior clerk, the chief commissioner in 1816, Sir W. Alexander, being himself a Master. They thought the junior clerk a person very inferior to the other, and not as a clerk or a minister of justice. When they came, however, to consider the office of chief clerk, they went into considerable detail as to the duties. The Legislature seemed to have taken the same view of the subject when they passed the 3 & 4 Wm. 4. It was probable, in framing the provisions of that Act, they had reviewed the report of the commission of 1816. In that Act, a marked distinction was drawn between the two clerks. It was quite inconsistent with the provisions of that Act that the Master should have the power of directing the duties of the senior clerk to be performed by a person not having the required qualifications. It was no answer to say that the person performing those duties would, from long experience, be competent to discharge them. The Legislature had thought it right, for the purpose of securing, so far as it could be secured by legislative enactment, a competent qualification for the proper discharge of the duties of the office to require a particular test, and that test must be adhered to. He did not mean to say, and he agreed with the Master of the Rolls, that no part of the ministerial duties of the chief clerk might, under the direction of the Master, be performed by the junior clerk. That would be to draw the rule too tightly. But, in fact and in substance, what was meant was this, that the spirit of the Act of Parliament must not be evaded. The Master was not justified by any contrivance or management to get rid of the qualification. It was because he thought that in this case there had been a departure from the spirit and principle of the Act of Parliament, that he thought he was bound to come to the conclusion that the Master had acted in this respect with irregularity. He agreed with the Master of the Rolls, that it was unnecessary at present to make any order on the subject. This intimation of opinion would be sufficient, he was sure, to induce Mr. Lynch, or any other Master, to perform his duty. But from all he had observed of Mr. Lynch, and of his personal conduct, no individual could by possibility perform the duties of the responsible office which he held with more assiduity, intelligence, and ability, than he did. He had already intimated, and he should take care to communicate to Mr. Lynch the opinion

of the Court on the subject of the petition, and he had no doubt that would render all further proceedings unnecessary.

Stuart, on the part of Mr. Lynch, admitted that an intimation such as the Lord Chancellor alluded to, had been given to him, but in consequence of some understanding that a difference of opinion prevailed on the subject, he had not changed the course of proceeding in his office. As, however, their lordships had now expressed an opinion adverse to that course, he had to suggest, on the part of Mr. Lynch, that their lordships, in conformity with the prayer of the petition, might make a formal order on the subject.

The LORD CHANCELLOR thought that Mr. Lynch had no right to complain of the manner in which the subject had been discussed and treated in that court. So far as the Master was concerned, every one had concurred in expressing a favourable opinion of the honourable manner in which he had performed the duties of his office. He had himself expressed to Master Lynch, in the first instance, the opinion which he had expressed to-day. He had never departed from that opinion, nor had he ever entertained a doubt about it. He believed that Master Lynch, from some other quarter, had been led to suppose that the question was not so clear as he (the Lord Chancellor) had always considered it. Certainly the Master had never received from him any intimation of the slightest doubt of his opinion. The construction of the Act of Parliament was so obvious as to render it hardly possible to evade its operation. The Court was thought it sufficient to intimate its opinion without doing any thing further.

A great number of solicitors attended the delivery of this judgment, as the question has produced much excitement among the Profession.

VICAR-CHANCELLOR OF ENGLAND'S COURT.

Monday, March 16.

ATTORNEY-GENERAL W. HODGSON.

Bequest for purposes of charity—Mortmain—Interdict in land.

C. F. by his will bequeathed unto his executors in trust for the establishment or institution of a charitable receptacle, if the same could be done, for a certain number of old men; but if no such institution could conveniently be established, he requested the same might be disposed of in charitable donations. Held, that the primary object being the acquisition of land, such bequest was void.

This question arose out of an information filed Feb. 3, 1846, at the relation of Thomas Geo. Grove, against Frederick Hodgson and Henry Pomeoy, executors of the will of Mary Flaherty. It stated that Christopher Flaherty made his will in 1804, wherein, after giving certain bequests, and appointing Thos. Wright and Henry Hudson executors, proceeded as follows:—"I also request that all my just debts and funeral expences may be defrayed, and the rest, residue, and remainder of my personal property and effects whatsoever and wheresoever, I give, devise, and bequeath, unto my said executors in trust for the establishment or institution of a charitable receptacle, if the same can be done, for twenty-seven poor old men of England, and the same number of Ireland, to be under the Roman Catholic Bishop of London, and the Roman Catholic Bishop of Dublin; but if no such institution can be conveniently established, I request that the same may be disposed of in charitable donations to persons of the above description of 6*l.* each, and whenever an opportunity offers, that it may be added to any contributions for a similar purpose; 30*l.* of which sum I give to each of my executors." That the said Christopher Flaherty departed this life shortly after the date of his said will, leaving Mary Flaherty, his daughter and only child, his sole next of kin, him surviving. That the said Thomas Wright and Henry Hudson duly renounced probate of the said will, and thereupon letters of administration of the personal estate and effects of the said Christopher Flaherty, with the will annexed, were granted to the said Mary Flaherty, who thereby became the sole legal personal representative of the said Christopher Flaherty, and as such got in the whole of the personal estate of the said C. Flaherty, to a very considerable amount, and thereout paid and satisfied the funeral and testamentary expences, and all the debts of the said testator, together with the whole of the legacies given by the said will; and after payment and satisfaction thereof, there remained in her hands a very considerable sum, the residue of the said testator's estate. That the said Mary Flaherty never applied any part of such residuary estate to the charitable purposes in the said will contained, but applied the whole of such surplus to her own use and benefit. That the said Mary Flaherty departed this life in November, 1845, having, by her will, appointed Frederick Hodgson and Henry Pomeoy her executors. The information charged that the said Mary Flaherty retained the whole of the residue, and applied the same to her own use, in fraud of the chari-

table intentions and direction of the said testator, and prayed that the bequest of the rest and residue might be declared to be a good and valid charitable bequest, and that the same might be established and carried out under the decree of the Court, and that the defendants might be directed and decreed to make good out of the assets of the said Mary Flaherty received by them, the full amount of the said residuary estate so retained by her as aforesaid, with interest. To this the defendants put in a general demurrer.

Bethell and Abraham, in support of the demurrer, contended, first, that the bequest was within the provisions of the Statute of Mortmain, and consequently void. Secondly, that after such a lapse of time from the testator's death, the Court would not interfere. Thirdly, that the bequest was of so uncertain a character that there could not be any decree made upon it. With respect to the first point, the word "receptacle" clearly denoted an intention of acquiring land and buildings. In one sense, a "receptacle" meant an almshouse; and the expression, "if no such institution can conveniently be established," was intended to mean a physical and not a legal disability; and, according to the decision of *Giblett v. Hobson* (3 My. & K. 530), where there is a possibility for the money to be laid out in land, the bequest is void. A clear intention is shown of acquiring freehold land and buildings. As to the second point, as this is not a case of trust, the lapse of time is, *prima facie*, a bar. The property was given to his executors, as trustees, but the testator's daughter, Mrs. Flaherty, was no trustee, and her possession being adverse entitles her to the property.

Cases cited: *Attorney-General v. Tyndall* (2 Eden, 207; cases in p. 211); *Attorney-General v. Parsons* (8 Ves. 186); *Henshaw v. Atkinson* (3 Madd. 306); *Blanford v. Thackerell* (2 Ves. jun. 338); *Attorney-General v. Rogers* (2 Ves. 714); *Mather v. Scott* (3 Kcc. 172); *Ingleby v. Dobson* (4 Russ. 342; *Shelford on Mortmain*, 173).

Stuart and Blunt, for the information, contended that to render a bequest void, there ought to be a clear and explicit direction to invest the money in land, which was not so in the present case; and that the word "receptacle" was capable of a much wider signification than that attempted to be assigned to it by the other side. The testator might have intended that a place should be hired which would be good. But even supposing he did intend that a place should be built, it might have been erected on land already in mortmain, which would have been legal. As it respected the lapse of time, Mrs. Flaherty was an executrix, and got possession of the property, which constituted her a trustee for those who claimed to be beneficially entitled under the will. The testator having left a discretionary power with the trustees, the Court will see that they exercise that discretion in behalf of the charitable institution. (*Johnson v. Swann*, 3 Mad. 457; *Attorney-General v. Williams*, 4 Bro. C. C. 526; 2 Cox, 387; *Attorney-General v. Stepany*, 10 Ves. 22.)

Bethell, in reply, referred to *Facciolati*, *voce* "Receptaculum," to prove that it signified land; and contended that there must be no option left in the trustees, for that in order to make such a bequest valid, there ought to be nothing which would give them a power to buy and build; and supposing an option might be exercised, it would be necessary for an inquiry to be had before the Master whether it could conveniently be done, and this would decide that the bequest was good.

The VICE-CHANCELLOR.—Upon this question, I must decide, as well as I am able, what it is the testator meant. That he was an illiterate person is quite clear, because, after giving to his trustees all the rest, residue, and remainder of his personal property and effects, he proceeds to declare the trusts; and then he says, "if no such institution can be conveniently established, I request that the same may be disposed of." He then mentions the disposition, and that they were to endeavour, when an opportunity should offer, that it might be added to his contributions for a similar purpose, "30l. of which sum," he having mentioned no sum before, except so far as the general corpus of his estate went. Now, although in point of law it might be said that the persons whom he appointed his executors and trustees were not entitled to receive their legacies, seeing they did not prove the will, yet the information states that the whole of the legacies were paid; and I mention this for the sake of shewing that notwithstanding they had renounced and declined to take out administration, they nevertheless continued trustees, not merely by operation of law, but by receiving their legacies. Indeed I was struck with the singularity that such a question should be allowed to sleep for forty years, and that no attempt should have been made by the trustees to enforce the bequest. Then the question is, what the testator really did mean? He gives the residue to his executors in trust, for the establishment of a charitable receptacle, if the same can be done, for twenty-seven poor old men of England, and the same number of Ireland. Now the word "receptacle," when applied to human beings, does not imply a dwelling-place; then there is a di-

rection to procure a dwelling place for fifty-four old people; and what is that but a direction that land shall be procured? Now there seems to be nothing in this case that points out hiring and taking first of all one tenement and then another, but there is to be one receptacle; and there is no direction to apply a portion of the property, as in the case before Sir John Leach (*Johnson v. Swann*, ante), but the whole corpus is to be immediately applied to the procurement of a receptacle for fifty-four people. Then he says "if it can be done." Of course he meant that; but he means not only the procurement of a dwelling place, but also the system of government: he refers to it as being intended to be under the management of two bishops. Again, when he says, "but if no such institution can be conveniently established," he does not apply it to the law, but to the difficulty of lodging so many, and of the manner in which the management of this institution shall be carried out. He then goes on to say, "if no such institution can be conveniently established, I request that the same may be disposed of in charitable donations to persons of the above description." It appears to me, therefore, that the primary and direct object was the acquisition of a dwelling place, and it is only upon the contingency of the affair not being established that he makes the disposition over. He was, upon this construction, merely pointing to the contingency, from want of convenience, which might frustrate his intention. Upon the whole I cannot but think that this is within the Statute of Mortmain, according to the rules established, and I must therefore allow the demurrer.

ROLLS COURT.

March 7 and 9.

MUGGERIDGE v. SLOWMAN.

Practice—New Orders of the 8th May, 1845—Reference of Exceptions *instanter*—Affidavit as to delay, &c.—Injunction cause.

The Court will in some cases, on an *ex parte* application of the plaintiff, order exceptions to an answer to be referred *instanter*, and without waiting for the expiration of the time limited by the 16th of the New Orders, Article 25; but the application must be supported by an affidavit as to the facts, stating that the plaintiff will be prejudiced unless the exceptions are immediately referred to the Master, and that the application is *bond fide*, and not intended to create delay.

This was an *ex parte* application to the Court, in a common injunction cause, for leave to refer exceptions which had been taken to the answer for insufficiency, immediately and without waiting for the expiration of the eight days after the filing of the exceptions, as directed by the 25th Article of the 16th of the New Orders of the 8th May, 1845. It appeared that the answer had been filed upon the 23rd of February last, and that exceptions thereto for insufficiency were filed on the 5th of March instant, and that notice of trial of an action at law was served on the 3rd for the 23rd of March instant; hence the necessity of the present application.

Rolls, for the motion, said it was absolutely necessary, for the purposes of justice, to have the exceptions referred *instanter*, as the trial at law was so near; but he did not produce any affidavit in support of the application.

The MASTER of the ROLLS said, he saw no objection to making the order sought, provided that a proper affidavit was produced, shewing that the plaintiff would be prejudiced by the delay that would arise from not being allowed to refer the exceptions till after the expiration of the eight days mentioned in the Order.

9th March. *Rolls* now produced an affidavit by the plaintiff's solicitor, stating the dates of the proceedings in the cause and the day of trial of the action; and that the plaintiff in the action, as the trustee and friend of a third party, was suing to recover the amount alleged to be due on a promissory note. There was no statement, however, in the affidavits that the application to the Court was *bond fide*, and not for the purpose of delay.

The MASTER of the ROLLS made the order, but, in doing so, he observed there could be no doubt that orders such as that then made might be made in proper cases; but that it ought to be stated by affidavit that the plaintiff would be prejudiced, if not allowed to refer the exceptions immediately, and that that proceeding was not taken for the purpose of delay. Though the Court would not, so soon after the New Orders coming into operation, be very strict, still it was not quite of course to grant applications like the present. The affidavit in this case was not in the best shape, and he would consider what would be a proper form for affidavits in reference to future applications.

April 15 and 30.

ATTORNEY-GENERAL v. ROOSE.

Practice—New Orders—Dismissal of information—Attorney-General—Privilege—Rehearing—Restoring cause to paper, An information by the Attorney-General without a

relator being dismissed at the hearing by reason of the plaintiff's default in appearing, will not be restored to the paper on a motion for that purpose, as if it had been merely struck out, the dismissal being, by the 117th of the New Orders, a decree.

By the 4th of the New Orders, an information is included in the term "bill," and, by the 117th, dismissal of a bill at the hearing, by reason of the plaintiff making default, is equivalent to a dismissal on the merits: *quare*, whether these orders apply to an information by the Attorney-General without a relator, and if not, whether such an information can be dismissed, first, generally, and if not, then, secondly, for want of prosecution.

Quere, whether the equity jurisdiction of the Exchequer being transferred to the Court of Chancery, the rights and privileges of the Crown are not also transferred, such as that there is no dismissal in the case of the Crown, but that the judgment should be "let the defendant go without a day," analogous to a nonsuit at law, though the 5 Vict. c. 5, directs the proceedings to be conducted as Chancery proceedings.

This was an information filed by the Attorney-General without a relator, against Lady Roose, the defendant, as representative of her late husband, Sir David Roose, for an account of moneys received by him, and for which he was accountable to the Board of Stamps and Taxes. An answer having been put in to the information, the plaintiff filed a replication thereto, and in due course it was the duty of the solicitor of the Board to set down the cause for hearing. The solicitor having neglected to do so within the proper time, the defendant set it down, and on the 16th of March served the solicitor with a subpoena to hear judgment; and on the 19th, no one appearing for the plaintiff when the cause was called on, an order was made dismissing the information. This, by the effect of the 4th and 117th of the New Orders, was equivalent to a dismissal on the merits, if an information by the Attorney-General could be so dismissed.

Maule moved to have the cause restored to the paper on the ground of surprise, and of its being struck out of the paper by accident; and he relied also on the prerogative of the Crown, in respect of which an information by the Attorney-General, without a relator, could not be dismissed.

Kindersley, for Lady Roose, said, that no one appearing for the Attorney-General, the Court had been asked to dismiss with costs, which was accordingly done; and now the application was to restore the cause to the paper as if merely struck out; whereas, an order being made to dismiss it is equivalent to a decree, and may be pleaded in bar to another suit.

The MASTER of the ROLLS said, he would allow the motion to stand over, to afford an opportunity of modifying it, and putting it in a different shape. It was, at present, adapted to an existent cause, but this cause was now non-existent, and the motion must be moulded accordingly. Besides, there must be an affidavit to show that no hardship or oppression was intended; the prerogative must be saved, but it must not be abused to the oppression of the subject.

Thursday, April 30.—An affidavit of the solicitor of the Board of Stamps and Taxes was produced, stating that when he was served with the subpoena he examined the paper of causes, and found this one so far down that it could not be expected to come on for some time; but that, subsequently, by reason of the transfer of several causes from the Rolls to the paper of Vice-Chancellor Knight Bruce, it came on to be heard, and that he was not aware of its coming on at the time it did; and that he, unlike other solicitors, was so much occupied in the public business, that accidents of this sort might readily happen. This affidavit being read, a motion was made to discharge the order of dismissal made on the 19th of March.

The Attorney-General (with him *Maule*) said that he had offered the defendant her costs if she would allow the cause to be restored, but as she had refused he must stand upon his strict rights. There is no precedent for the order of dismissal, and it cannot be made, and it must now be discharged. These informations were formerly brought in the Exchequer only, but by the 5 Vict. c. 5, the equity jurisdiction of the Exchequer was transferred to the Court of Chancery, and being now exercised here, must be so with all the rights and privileges the Crown formerly possessed, for there is nothing in the 5 Vict. c. 5, which takes away the rights of the Crown, and no general words bind or affect the prerogative. And if the rights of the Crown are not bound by the Act, *a fortiori* they are not bound by any Order or rule of Court, much less by one in general terms, and not expressly including the Crown. It is an undoubted principle that the Crown never pays costs, and it cannot be maintained that the Court could make a rule that the Crown shall pay costs. So the Queen is always present, and cannot be nonsuited, and no rule of Court could deprive her of that privilege. The New Orders, therefore, cannot affect the Crown. There is no instance of an information by the Attorney-General being dismissed for want of prosecution, but the contrary is the case; and the form of the judgment always is not dismissed, but "let the defendant go without a day." (1 Fowl.

Exch. Pract. 34; 2 Fowl. Mach. Pract. 33; *Attorney-General v. Hession*, 6 Price, 312; *Attorney-General v. Lord Burdley*, 6 Price, 32.) It may be said, then, is there no way of compelling a determination of a suit? Yes, there is, by entering a *nolle prosequi*. (*The King v. Robert Masters*, Parker, 50.) It is clear the Attorney-General cannot at least be nonsuited, and this order sought to be discharged is a nonvult. [THE MASTER OF THE ROLLS.—It turns on the New Orders, which you say do not apply. By the 4th, an information is comprehended in the term "bill;" and by the 117th, an order of dismissal by reason of the plaintiff's default at the hearing is equivalent to a dismissal on the merits, and is a bar to another suit.] The Order says it is to be dismissed with costs; shewing, therefore, that it is not intended to apply to the Crown, which pays no costs. [THE MASTER OF THE ROLLS.—This dismissal must be considered a decree for the defendant. You may have a re-hearing in the same manner as an ordinary subject, on the ground of surprise or other reasonable ground; but you now want to discharge this order, and to have the cause set down again.] A re-hearing would admit the validity of the decree, for which it is submitted there is no precedent; and as a nonsuit might take place at any stage of the proceedings, but not against the Crown, so an information could not be dismissed at any stage, and the matter must have been *res judicata* to bar another suit. (*Pickett v. Loggon*, 14 Ves. 232; *Brandling v. Ord*, 1 Atk. 571.) If there was any privilege in point of pleading in the Exchequer, the transfer of the equity jurisdiction to the Court of Chancery would not destroy it.

Kindersley, for the defendant.—The case of a nonsuit is not analogous to the proceedings in this court. In the common law courts they have a roll and a history of the proceedings from day to day; but here we join issue at once, and there is an end. The order of dismissal is tantamount to a decree on the merits; and to take this case out of the rule, authorities are produced to shew the practice of the Exchequer in such cases; but there is no Act providing that the practice in the Exchequer shall be the practice here. The Attorney-General must contend that the prerogative prevents dismissal here at all. [THE MASTER OF THE ROLLS.—He says there can be no dismissal generally; secondly, not for want of prosecution; and, thirdly, the New Orders don't apply.] There is no authority here to shew the practice is so; and in the case of *Attorney-General v. Dulwich College* (3 Beav. 255) the information of the Attorney-General was dismissed. As to an order "to go without a day," no one ever heard of such a thing in this Court. [THE MASTER OF THE ROLLS.—Put the case as high as you will, it does not preclude a re-hearing of it on sufficient grounds, for nobody, not the Attorney-General alone, can be allowed to be taken by surprise in this court. The order in the Dulwich College case may have been made without consideration.]

The Attorney-General, in reply, was unwilling to admit the validity of the decree by asking a re-hearing.

Kindersley now offered to accept costs, and let the cause be restored.

The MASTER OF THE ROLLS thought that was much the better course. He would, however, for the satisfaction of the Attorney-General, look into the practice of the Court as to the point of form raised, and ascertain whether the order should be in the form of dismissal, or "to go without a day."

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Friday, April 24.

WILSON v. STANHOPE.

Practice—Railway—Demurrer—Want of parties. Where a bill, filed by a shareholder on behalf of himself and all the other shareholders of a railway company, which had been amalgamated with another company, against the provisional committee, for an account, charged that the number of shareholders was so great, and their rights and liabilities so subject to change and fluctuation, by death or otherwise, that the plaintiff did not know, and was wholly unable to discover, the names of the other shareholders; and if he had been able to discover their names, it would not be possible, without the greatest inconvenience, to make them parties to the suit, and so to do would render it impossible to bring the suit to a hearing; and that the interests of the said shareholders, except the defendants, were identical with those of the plaintiff, &c.; a demurrer for want of parties was overruled, without prejudice to any question in the cause.

This case was argued upon a demurrer for want of equity and for want of parties, to a bill filed by Mr. R. H. H. Wilson, on behalf of himself and all other shareholders in a company provisionally registered, called the London and Manchester Direct Independent Railway Company (Remington's line) against the Hon. Leicester Stanhope, and others. The bill stated, that a scheme was projected and duly regis-

tered in April 1835; for carrying on a direct line of railway between London and Manchester, by means of a capital of 3,000,000*l.* in 60,000 shares of 50*l.* each; that other steps were taken as to borrowing and increase of capital; that the original provisional committee, in association with other defendants on the record, continued to act as the provisional committee; and that the plaintiff had, upon his application, thirty shares allotted to him, and paid his deposit, and signed the Parliamentary contract. The bill then stated that the scheme being at a premium, a rival line was started, under the name of "Rastrick's line," and that the defendants had improperly abandoned Remington's line in favour of Rastrick's line, contrary to the desire of the shareholders. The bill then charged, that the number of shareholders in the said London and Manchester Direct Independent Railway (Remington's line) was so great, and the rights and liabilities of the shareholders were so subject to change and fluctuation by death and otherwise, that, save as therein was stated, the plaintiff did not know, and was wholly unable, to discover the names of the other shareholders; and even if the plaintiff were able to discover their names, it would not be possible, without the greatest inconvenience, to make them parties to the suit, and so to do would render it impossible to bring the suit to a hearing; and also, that the interest of the said shareholders, except the said defendants, were identical with those of the plaintiff in respect of the matters therein stated, or in respect of the property of the said company, and the surplus thereof; and all the said shareholders, other than the said defendants, were fully represented by the plaintiff, and had a common interest in obtaining the relief thereby prayed. The bill then prayed an account of all costs properly incurred by the defendants in the formation of Remington's line; and that, when ascertained, they might be distributed rateably on each share; and that, as to all reserved shares, the defendants might be declared liable to those costs; that the defendants might be directed to pay the remainder of the money received for deposits, after paying the costs, to the plaintiffs, and retain it among themselves for their own propositions; and that an account might be taken of all dealings and transactions of the defendants relating to the company during the time they had acted as the managing committee or provisional directors; and that in taking such account the defendants might be charged with the full amount of the deposits which were or ought to have been payable upon the shares which were reserved and not allotted, and also of all moneys expended by them out of the company's assets in the purchase of shares in the same company, or of stocks or shares in any other company, and received by them by way of profit on the resale of any shares or stocks so purchased by them; also an account of all moneys received for the consideration of abandoning Remington's line in favour of Rastrick's line, and other accounts; and the bill also prayed other relief. The demurrer for want of equity and of parties now coming on.

Cooper and Goodere appeared for the demurring defendant, Stanhope.

Bacon and Colvins for the plaintiff.

The following cases were cited: *Richardson v. Larpent* (2 Y. & C. 507); *Cockburn v. Thompson* (16 Ves. 321); *Richardson v. Hastings* (7 Beav. 306); and *Heakes v. Stanhope* (8 Jurist, 351).

THE VICE-CHANCELLOR.—The failure of the demurrer for want of equity in this case is too manifest to require any remark. The only other ground alleged by way of demurrer is, the want of parties. The bill states various circumstances of alleged misconduct on the part of persons to whom the conduct of the whole scheme, and the steps towards the perfection of that scheme, were intrusted. It alleges that improper acts have been done, or acts of such a nature and to such an extent improper, as to render it impossible to pursue the scheme. It alleges, besides the matters of detail to which I have referred, that the names of the plaintiff and of the other shareholders on whose behalf the plaintiff sues, have been obtained by fraud and misrepresentation, and for a purpose which has wholly failed. The latter part of the record is thus: [His Honour here read the charge as to the parties before stated.] As to the non-ability to discover the names of the shareholders, I consider that so much of the charge I have read must, for the present argument, be rejected by reason of the late Act of Parliament referred to by Mr. Cooper for the registration of Joint Stock Companies. I think that the allegation of ignorance is one that must be rejected; but the allegation that a greater number remains, although there may possibly be cases in which that allegation would be too vague and loose, yet when it is considered as applying to such an amount as those in question here, it does appear to me not too wide or vague. But with regard to the latter part of those charges, I am of opinion that, upon this record, the principle upon which one of our greatest judges has laid down, and upon which he acted in the case of *Cockburn v. Thompson*, renders it necessary to overrule the demurrer for want of parties. It is not, however, necessary positively to decide that, because it is the rule of the Court, formerly practised, more generally

practised than it is at present or has been of late years, that upon a demurrer where the question is one of any difficulty, it is not necessary to pronounce a final or conclusive opinion; but that the Court sees that it is matter of difficult argument or of reasonable discussion, it may, and often does, overrule the demurrer, saving the benefit of the question raised by it till the hearing of the cause, or in other language, without prejudice to the question. That is the course I propose to take here—*to overrule the demurrer without prejudice to any question in the cause*; and I shall reserve the costs, unless the plaintiff can shew me that they ought to be taxed of now.

Bacon and Colvins, for the plaintiff, having expressed their willingness that the costs should be taxed, the order was so made, allowing the defendant six weeks within which he was to put in his answer.

VICE-CHANCELLOR WILKINS COURT.

March 22, and May 5.

FREEMAN v. TATHAM.

Trust—Reading answer—Practice.

Where a defendant admits, by his answer, the possession of property charged by the bill, and states the trust upon which he holds it, should the plaintiff read the admission in the answer to prove his case, he will be bound to read the trusts there stated in connection with the possession of property.

The defendant, Martha Tatham, had spent some time in Sion College, and allowed Sarah Freeman to reside with her, as a humble friend and companion. In Feb. 1831, during the time of Sarah Freeman's residence at Sion College, she transferred a small sum of money she had in the public funds into the joint name of the defendant, Martha Tatham, and her own; this transfer was unnotified by the defendant, and she did not even know of it at the time it was effected; Sarah Freeman shortly after informed her of it, and told her that she intended to apply the subsequent savings she should be able to make in the same mode of investment, and that the transfer she had just made, and all subsequent investments were, and would be, with the interest and desire that she, Sarah Freeman, should receive the dividends for herself during their joint lives, and if the defendant survived her, she was to have the entire and absolute benefit of all such Bank Annuities which had been so transferred and might be standing in their joint names, and Sarah Freeman, expressing her entire confidence that the defendant would fulfil every wish and direction which she might give to the defendant concerning the same.

Sarah Freeman continued to reside at Sion College, and at different times told the defendant that it was her wish after her death that the plaintiff should have the sum of 300*l.* If defendant considered her deserving of it, and if not, she should have the interest of 300*l.* for her life only, and that others of her relations, naming them, should have small legacies paid to them, and that the defendant should have the residue.

Sarah Freeman died intestate in the year 1839, without having made any further declaration of trust. At the death of Sarah Freeman, there was the sum of 673*l.* 10*s.* 5*d.* Bank Annuities standing in the joint names of herself and the defendant.

Sarah Freeman received the interest upon the Bank Annuities up to the time of her death. After the death of Sarah Freeman, the defendant transferred the sum of 350*l.* Bank Annuities into the names of the plaintiff, and three other defendants, and declared the trust to be for the plaintiff for life, and after her death to the defendant Martha Tatham, absolutely, according to the directions given her by Sarah Freeman, and also paid several small legacies to relations of Sarah Freeman, as she had directed her.

The plaintiff, as sister and next of kin of Sarah Freeman, in March, 1844, filed the present suit, to have an account of all the moneys transferred, and of the estate of Sarah Freeman, and to have it administered under the decree of the Court.

Wood and Prior, for the plaintiff, read only so much of the answer as admitted the investment, and the statement of Sarah Freeman to Martha Tatham of her object in doing so, and what shewed the amount standing in the joint names at the decease of Sarah Freeman, and declined to read any further part of the answer.

Romilly, for the defendant, insisted on reading the subsequent declarations of the wishes of Sarah Freeman in respect to the distribution of the fund as set out in the answer, and, in support of this, cited *Bartlett v. Gillon* (3 Russ. 167); *Davis v. Spawling* (1 Russ. & Mylne, 68); *Reede v. Whitechurch* (3 Sim. 553); *Nurse v. Buns* (5 Sim. 552); *Dummer v. Pitcher* (8 Mylne & Keen, 252); *Bambow v. Townsend* (1 Mylne & Keen, 506).

Wood, contra, cited *Thompson v. Lamb* (7 Ves. 588); *Conroy v. Hayward* (1 Young and Coll. in Ch. 33).

Romilly and *Nevison* for the defendants.—There is a strong distinction between the mode of dealing with the answer of an executor and a case similar to this.

uary, in the year of our Lord 1845, in a certain other discourse, the defendant then had, in the presence of and hearing of divers other good and worthy subjects of this realm, of and concerning the plaintiff in her aforesaid trade and business of a butcher, and of and concerning the plaintiff, as supposed by the defendant, having used improper and fraudulent weights in her said trade and business, and having defrauded and cheated in her said trade and business; and of and concerning the plaintiff having, as supposed by the defendant, having, by a son of her, the plaintiff, as her servant in that behalf, used improper and fraudulent weights in her said trade and business; and defrauded and cheated in her said trade and business; and of and concerning the plaintiff having, as supposed by the defendant, having used two weights to a steelyard by her used in her said trade and business; and of and concerning the plaintiff having, as supposed by the defendant, in her said trade and business, by a son of her, the plaintiff, as her servant in that behalf, fraudulently used two weights to a steelyard by her used in her said trade and business; and of and concerning himself, the defendant, he, the defendant, further contriving and intending as aforesaid, then and in the presence of and hearing of the last-mentioned subjects, falsely and maliciously spoke and published of and concerning the plaintiff in her aforesaid trade and business; and of and concerning the plaintiff, as supposed by the defendant, having used improper and fraudulent weights in her said trade and business; and having defrauded and cheated in her said trade and business; and of and concerning the plaintiff, as supposed by the defendant, having, by a son of her, the plaintiff, as her servant in that behalf, used improper and fraudulent weights in her said trade and business, and defrauded and cheated in her said trade and business; and of and concerning the plaintiff having, as supposed by the defendant, in her said trade and business, by a son of her, the plaintiff, as her servant, in that behalf fraudulently used two weights to a steelyard by her used in her said trade and business; and of and concerning himself, the defendant, these false, scandalous, malicious, and defamatory words, following, that is to say, You, Mistress Griffiths (meaning the plaintiff), have used them for years (meaning that the plaintiff had used improper weights; and defrauded and cheated in her said trade and business); and I (meaning himself, the defendant) have been told so.

And also in the last-mentioned discourse, in answer to a question then put by the plaintiff to the defendant, as to whether the defendant had told and said to one John Green that the plaintiff's son used two balls to the plaintiff's steelyard, these other false, scandalous, malicious, and defamatory words following (that is to say), To be sure I (meaning himself, the defendant) did (thereby meaning that the defendant had told and said to the said John Green that the plaintiff's son used two balls to the plaintiff's steelyard; and also thereby meaning that the plaintiff, by a son of her the plaintiff as her servant, in that behalf, had used improper and fraudulent weights in her said trade and business, and cheated and defrauded in her said trade and business); and I (meaning himself, the defendant) have been told so.

And also, in the last-mentioned discourse, the false, scandalous, malicious, and defamatory words following (that is to say), To be sure I (meaning himself, the defendant) did; you, Mistress Griffiths (meaning the plaintiff) have used them for years (thereby meaning that the plaintiff had used improper and fraudulent weights in her said trade and business); I have been told so.

And also, in the last-mentioned discourse, the false and scandalous, malicious and defamatory words following (that is to say): To be sure I did; you, Mistress Griffiths, have used them for years (thereby meaning that the plaintiff had defrauded and cheated, in her said trade and business); I (meaning himself, the defendant) have been told so.

And also, in the last-mentioned discourse, the false, scandalous, malicious, and defamatory words following (that is to say): You (meaning the plaintiff) have used them for years (thereby meaning that the plaintiff had used improper and fraudulent weights in her said trade and business).

And also, in the last-mentioned discourse, the false, scandalous, malicious, defamatory words following (that is to say) You (meaning the plaintiff) have used them for years (thereby meaning that the plaintiff had defrauded and cheated in her said trade and business).

And also, in the last-mentioned discourse, in answer to a question then put by the plaintiff to the defendant as to whether the defendant had told and said to one John Green, that the plaintiff's son used two balls to the plaintiff's steelyard, these other false, scandalous, malicious, and defamatory words following (that is to say): To be sure I (meaning himself, the defendant) did (thereby meaning that the defend-

ant had told to and said to the said John Green, that the plaintiff's son used two balls to the plaintiff's steelyard; and also thereby meaning that the plaintiff, in her said trade and business, had by a son of the plaintiff, as her agent and servant in that behalf, fraudulently used two weights to a steelyard by her used in her said trade and business); I (meaning himself, the defendant) will swear to it in any court; you, Mistress Griffiths, have used them for years (meaning that the plaintiff had, in her said trade and business, fraudulently used two weights to a steelyard by her used in her said trade and business); and I (meaning himself, the defendant) have been told so. And also in the last mentioned discourse these other false, scandalous, malicious, and defamatory words following (that is to say), To be sure I (meaning himself, the defendant) did; you, Mrs. Griffiths (meaning the plaintiff), have used them for years (thereby meaning that the plaintiff had, in her said trade and business, fraudulently used two weights to a steelyard by her used in her said trade and business); and I (meaning himself, the defendant) have been told so.

And also, in the last mentioned discourse the false, scandalous, malicious, and defamatory words following (that is to say), You, Mrs. Griffiths, have used them for years (thereby meaning that the plaintiff had, in her said trade and business, fraudulently used two weights to a steelyard by her used in her said trade and business); and I (meaning himself, the defendant) have been told so.

Phases.—1. General issue; 2. Justification. Repetition.—Joining issue on the 1st, and traversing the 2nd plea.

A verdict having been found for the plaintiff at the trial, the defendant had since obtained a rule nisi to arrest the judgment.

Feb. 14.—*Brownell* showed cause.—This declaration consists of two counts only; and the commencement of the 2nd count is at the words "afterwards, to wit, &c." in a certain other discourse." But the objection is, that the words, "You, Mistress Griffiths, have used them for years," in the 2nd count, are not actionable; that they do not necessarily refer to the use of two balls to the steelyard, and do not therefore support the innuendo. But, let those words are to be construed together with the other words used in the same discourse, which shew clearly to what the former refer; and, 2dly, even if those words, standing by themselves in a separate count, would not be actionable, the answer is, that all the words are part of one entire conversation, and constitute but one count. The defendant must contend that this declaration is to be divided into twelve, or thirteen different counts; but the ordinary commencement of a fresh count occurs only once. Then, if any of the words in one conversation are actionable, though others are not, the verdict may stand. (2 *Saund.* 171 d, note to *Hambleton v. Veere*); and if any innuendo is too large, it may be rejected as surplusage. (*Roberts v. Camden*, 9 East, 93; *Harvey v. French*, 2 Tyr. 585, 1 Cr. & M. 11; *Williams v. Stott*, 3 Tyr. 688, 1 Cr. & M. 675.) The 1st count is clearly free from objection.

Chambers, Q.C. and Lydekker, contra.—Even if this declaration contains only two counts, it does not state sufficient to warrant the verdict. None of the words themselves are necessarily actionable; they may have an innocent meaning; and to make them actionable there ought to be in the declaration specific averments of the existence of the facts to which the words refer, and that the words were spoken of and concerning those facts; and it is not enough to introduce the facts for the first time in the colloquium. There is no inducement in this declaration to justify the innuendo; and that defect applies to the whole declaration. (*Hawkes v. Hawkey*, 8 East, 427; *Day v. Robinson*, 1 Ad. & Ell. 554; *Goldstein v. Foss*, 6 B. & C. 154.) [PATTERSON, J.—Is there any authority for saying that the colloquium may not involve the allegation of some facts, or supposed facts, to which the words relate?] The cases cited shew that the colloquium cannot be forced to do the office of the inducement. Secondly, it is clear that the declaration consists of many counts, no words being introduced to connect the whole together as a single count; and then some of the words not being actionable by themselves, the judgment must be arrested; because the Court cannot tell upon which of the words the verdict was given. The whole of that which is called the second count by the other side is insufficient; for, where the words "You, Mrs. G. have used them for years," are explained as being uttered in answer to a question; the question is not set out, but the effect of it only; and the declaration is bad in that respect. (1 Chitt. on Pleading, 406; *Wright v. Clement*, 3 B. & Ald. 503; *Wood v. Brown*, 6 Taunt. 169; 1 Stark on Slander, 380; and the cases cited in *Solomon v. Lawson*, 7 Law T. 135.) *Curr. adv. vull.*

JUDGMENT.

Lord DENMAN, C.J. now delivered the judgment of the Court.—This case came before us on a motion in arrest of judgment in an action of slander. The declaration consists of two counts; in the first the alleged slanderous words, four times repeated, are, "Matthew Griffiths uses two balls to his mother's steelyard;" and the question is, whether those words

mean an honest and harmless use of balls to a steelyard, as that of two balls of the same size, for instance, or whether they impute a fraudulent and dishonest use of the balls. Now, in the first place, the plaintiff is averred to be a butcher, and to carry on that trade, and that the words were spoken with intent to impute to the plaintiff the use of false weights. Then follows a colloquium, stating very fully that the words were spoken of the plaintiff in her trade, and of one Matthew Griffiths, her son, and servant in her trade, and of her using, by her said servant, false weights in that trade. The innuendo being, "they meaning that the plaintiff, by her son and servant, used false weights in her said trade." And we have no doubt this innuendo does not exceed its proper functions and office, which is, when the words are susceptible of a harmless and less injurious meaning, as is obviously the case here, to point to that meaning which is injurious, and therefore actionable; and that being found by the jury, the verdict will be right. In the case of *Clegg v. Laffer* (10 Bing. 250), words which might fairly be understood as being innocent or harmless, or as imputing dishonesty to the plaintiff, had, the latter meaning attributed to them, an innuendo without any preliminary matter, when the Court of Common Pleas were of opinion that there was no valid objection to that innuendo. The second count, framed on another discourse, on another day, also contained very fully the allegation of colloquium introductory of the slanderous matter. The objection to this count is, that some of the words are not actionable even with the aid of the innuendo; and further, a doubt was suggested whether the count could properly be considered as one count, because the words are not stated to have been uttered in one continued sentence, but in several sentences; and they are stated to have been uttered in the same discourse; whether there may be a doubt or not as to some being actionable, it is clear that others are; the statement is, "in the said last-mentioned discourse" (the discourse to which the second count is confined), in answer to a question then put by the plaintiff to the defendant, as to whether the defendant had said to one John Green, that the plaintiff's son used two balls to the plaintiff's steelyard, the defendant spoke these words. "To be sure I did; I will swear it. You, Mrs. Griffiths, have used them for years." Now, it is to be observed, the already spoken words contained in this second count are already having been all spoken in the same discourse at the same time. And upon the question now under consideration, the effect of words having been uttered in the same discourse, we find the following remark in a note to *Hambleton v. Veere* (2 Wms. Sand. 120), which we consider to lay down the correct rule, and adopt accordingly. It is there observed that "there is another class of cases on this head respecting words for words, with regard to which it is laid down that, if an action be brought for speaking words all at one time, that is, all in one count, and there is a verdict for the plaintiff, though some of the words will not maintain the action, yet if any of the words will, the damages may be given entirely; for it shall be intended that the damages were given for the words which are actionable, and that the others were inserted only for aggravation. But if the action be brought for several words spoken at several times, and the action will not lie for the words spoken at one time, but will lie for the words spoken at another, and a verdict be found for all the words, and entire damages given, it is not good, and judgment will be arrested," which seems not to differ from the case where, upon a declaration containing good and also bad counts, a verdict is found for the plaintiff on the whole. The second count, however, in this case, must be considered as framed on one discourse, and is, for the reasons already assigned, good; the result, therefore, is, that the rule must be discharged.

Rule discharged.

ALFRED G. FARLOW.

Pleading.—Declaration for slander.—Arrest of judgment.

If a declaration for slander alleges the speaking of some words that are actionable, and some that are not, all spoken in one conversation at one time, and general damages are given, the Court will not arrest the judgment.

A declaration for slander alleged that the plaintiff carried on the business of buying and selling watches; that he had never been guilty or suspected of dishonesty in his trade, or of buying or receiving stolen goods, knowing them to have been stolen, &c.; yet the defendant, copying, &c. in a certain discourse, &c. of and concerning the plaintiff, and of and concerning the premises, &c. in the presence of, &c. spoke and published of and concerning, &c. the words following—"I have been robbed of about three dozen watches. A person has been buying things at my shop, and has taken them. You have bought some of them; you have bought two, one of 10s. and one of 2s. You know what shop. You have bought them that they cost me three times as much as you gave for them; and that they were not stolen, but were honestly bought by me." (The words were spoken in the presence of the plaintiff.)

Whereupon the said plaintiff then, in the presence of the said persons, said, &c. and produced certain winches to the said defendant; who, further contriving, &c. in the presence of the said persons, falsely, &c. replied, "Oh! no; these (meaning the winches so produced) are not my winches. You know that well enough." &c. (thereby meaning, &c. that the said plaintiff had been guilty of buying winches, well knowing the same to have been stolen by the person of whom the said plaintiff had bought them). On motion in arrest of judgment, Held, 1st, that the whole declaration was but one count; that all the slanderous words appeared to have been spoken in one continued discourse; and that the words "further contriving and intending" did not necessarily constitute a second count. And, That the earlier words were clearly actionable as imputing a felony; and that the latter words, if they required any explanation, by way of prefatory averment, which was doubtful, might be rejected.

Case.—The declaration stated that the said plaintiff, before and at the time of the committing by the said defendant of the grievances hereinafter mentioned, was a person of good name, fame, credit, and reputation, and deservedly enjoyed the esteem and good opinion of divers persons.

That, before and at the time of the committing of the grievance by the said defendant hereinafter mentioned, the said plaintiff used, exercised, followed, and carried on, and still doth use, exercise, follow, and carry on the trade and business of buying and selling, and then was a dealer in, fishing-tackle, and, amongst other things, a certain article of fishing-tackle called a winch, and hath always conducted himself, in and with reference to his said trade and business, with integrity, honesty, and fairness of dealing, and hath never been guilty, nor, till the committing of the grievances by the said defendant as hereinafter mentioned, been suspected to have been guilty of dishonesty, or of fraudulent or improper conduct, or of buying or receiving stolen goods, then knowing them to have been stolen or dishonestly come by, or of any such misconduct or offence as hereinafter stated to have been charged upon and imputed to him by the said defendant; by means of which premises the said plaintiff, until the speaking and publishing of the slanderous words by the said defendant as hereinafter mentioned, was deservedly held in credit and esteem by his neighbours, and particularly by those with whom he had any dealings in the way of his said trade and business and dealing, and enjoyed great reputation therein, and thereby daily acquired great profit, gains, and emoluments in his said trade and business to the comfortable support and maintenance of himself and family, and the increase of his fortune.

That the said defendant, before and at the time of the committing of the grievances hereinafter mentioned, used, exercised, followed, and carried on the trade and business of making and selling winches and other fishing-tackle. Yet the defendant, well knowing the premises, but contriving and wrongfully intending not only to bring the plaintiff into scandal and disgrace and infamy with his neighbours and acquaintance, and other of his fellow-subjects, but to injure and destroy his good name and fame and credit in his said trade and business, and to ruin and destroy the same, and cause his customers and employers therein to leave him, and cease to have any dealings with him, and to cause them to believe that he had been and was guilty of unlawfully buying goods, well knowing the same to have been stolen and dishonestly come by; and wrongfully and maliciously to expose and subject him to the penalties and punishment by law made against and inflicted upon persons in such case offending, heretofore, and before the commencement of this suit, to wit, on the 4th day of April, 1844, in a certain discourse which the said defendant then had with the said plaintiff of and concerning the said plaintiff, and of an concerning him with reference and in relation to his said trade and business, and of and concerning the premises, in the presence and hearing of John Trudgley and Samuel Mosley Bartlett, and divers other persons, good and worthy subjects of the realm, then in the presence and hearing of John Trudgley, Samuel Mosley Bartlett, and the said other subjects, falsely and maliciously spoke and published of and concerning the said plaintiff, and of and concerning him with reference and relating to his said trade and business, and the premises, the false, scandalous, malicious, and defamatory words following; that is to say, "I (meaning the said defendant) have been robbed of about three dozen of winches (meaning such articles of fishing-tackle as aforesaid). A person has been buying things at my shop, and has taken them (meaning the said winches). You (meaning the said plaintiff) have bought some of them. You (meaning the said plaintiff) have bought two, one at 3s. and one at 2s. You (meaning the said plaintiff) knew well when you bought them (meaning the said winches) that they cost me (meaning the said defendant) three times as much making as you (meaning the said plaintiff) gave for them, and that they could not have been come honestly by." Whereupon the said plaintiff then, in the presence and hearing of the

aforesaid persons, said to the said defendant, "I have bought half a dozen winches from a new maker the week before;" and then, in the presence and hearing of the persons aforesaid, produced and showed some of such last-mentioned winches to the said defendant, who, further contriving, and falsely and maliciously intending as aforesaid, thereupon, in the presence and hearing of the said persons aforesaid, falsely and maliciously replied to the said plaintiff in the false, scandalous, and malicious terms following; that is to say, "Oh, no; these (meaning the winches so produced and shown by the said plaintiff to the said defendant as last aforesaid mentioned) are not my winches. You (meaning the said plaintiff) know that well enough; these (the said defendant meaning and pointing to certain other winches of the said plaintiff then lying and being in the shop and in the presence of the persons aforesaid) are mine. I (meaning the said defendant) am sorry to say any thing against any tradesman, but will bring the man who stole my winches and let you (meaning the said plaintiff) see him, for he is in my (meaning the said defendant's) custody" (thereby meaning and insinuating, and wishing, and causing, and procuring it to be believed that the said plaintiff had been and was guilty of buying winches, well knowing the same to have been dishonestly come by, and to have been feloniously stolen by the person of from whom the said plaintiff had so bought them). By means of the committing of which said several grievances by the said defendant, the said plaintiff hath been and is greatly injured and prejudiced in his said good name, fame, credit, and reputation, and in his said trade and business, and brought into public scandal, infamy, and disgrace with and amongst all his neighbours and other persons, inasmuch that divers of those neighbours and persons to whom the innocence and integrity of the said plaintiff in the premises were unknown, have, by reason of the committing of the said grievance by the said defendant, thence hitherto suspected and believed, and still do suspect and believe, the said plaintiff to be a person guilty of the offences and misconduct before stated to have been charged upon and imputed to him by the said defendant, and, by reason of the committing of the said grievances by the said defendant, thence hitherto refused, and still do refuse, to have any dealings, transactions, acquaintance, or discourse with the said plaintiff, as they had been and were before used and accustomed to have, and otherwise would have had; and thereby also the said plaintiff hath lost and been deprived of divers gains and profits which would otherwise have accrued to him on and by his said trade and business.

Plea.—Not Guilty.

The cause came on for trial before Lord Denman, C.J. at Guildhall, on the 22nd Feb. 1845, when a verdict was found for the plaintiff, damages 40s. In the following Term a rule was obtained, on the part of the defendant, to shew cause why the judgment should not be arrested.

Watson, Q.C. and Warren (Saturday, Feb. 14) shewed cause.—First, this declaration sets out but one continued conversation, the whole being connected by the words "then and there;" and all the words used are actionable in themselves, as imputing a felony, or actionable, at all events, as spoken of the plaintiff in his trade. The Court will put a reasonable construction upon the words (*Clegg v. Laffer*, 10 Bing. 250, 3 M. & Scott, 727); and, so construed, they impute to the plaintiff that he had received the winches knowing them to be stolen. An innuendo cannot extend the meaning of the words (*R. v. Matthews*, 9 How. State Tri. 698, 699, 710), but here the innuendos are supported by the words. At all events, the words are actionable as spoken of a trader in his trade; and there is a sufficient prefatory averment that they were so spoken. The case of *Ayre v. Craven* (2 Ad. & Ell. 2) was different, and was decided upon the ground that the declaration did not sufficiently shew that the speaker had connected the imputation with the plaintiff's profession; but the rule is, as laid down by Bayley, J. in *Lumley v. Allday* (1 Cr. & J. 301, 1 Tyr. 224), that the words, to be actionable, must impute "the want of some general requisite, as honesty, capacity, fidelity, &c. or connect the imputation with the plaintiff's office, trade, or business." Com. Dig. (Action upon the Case for Defamation, D. 25) mentions insolvency as an actionable imputation upon a trader; but any imputation which affects his credit as a trader is also actionable (*Jones v. Littler*, 7 Mee. & W. 423), and honesty and integrity in his dealings are as necessary to a trader as solvency, or as morality to a clergyman, or ability and knowledge of law to a lawyer. Further, the Court must, after verdict, presume all matters which it was necessary for the plaintiff to prove in support of his declaration. (*Sweetapple v. Jesse*, 5 B. & Adol. 30.) Secondly, if the latter words be not actionable, without innuendo or colloquium, they may be rejected as surplusage (*Roberts v. Camden*, 9 East, 96; *Harwood v. Astley*, 1 New Rep. 47; and *Onslow v. Horne*, 3 Wils. 177); in which latter case, De Grey, C. J. (p. 185), said, "Words insufficient may be rejected, where they are laid to be spoken at one time with other words that are actionable, and judgment may be given on the words which are actionable."

Jervis, Q.C. and Bramwell, contra.—First, there are here clearly two distinct conversations; and as to the latter, the words are not actionable as laid; they are words of doubtful meaning, and require explanation by a prefatory averment. The want of a prefatory averment is not helped by a concluding innuendo (*Alexander v. Angel*, 1 C. & J. 143); because that would be to enlarge the meaning of words by an innuendo, as here by the innuendo "meaning and pointing to other winches then lying in the shop;" the effect of the innuendo is merely to apply the prefatory averment to the words used; it is bad if it introduces new facts, as was held in *Day v. Robinson* (1 Ad. & Ell. 554, 556). If this view be correct, then, as the damages are general, judgment must be arrested. Even as to the earlier words there ought to have been a prefatory averment of the existence of the facts, and that the words were spoken of and concerning the robbery, and of and concerning the plaintiff's purchase of the things stolen, and of and concerning the plaintiff's knowledge that they were stolen; otherwise the imperious meaning of the words is not properly brought before the Court. [Lord DENMAN, C.J.—That was the ground of our decision in *Hearne v. Stonell* (12 Ad. & Ell. 719).] It is also the rule laid down in *Chitt. on Pleading*, 400 (6th ed.), and in *Goldstein v. Foss* (6 B. & C. 154). Then are the words actionable without such prefatory averment? First, if actionable at all, they are so as imputing a felony; but they do not impute a felony; for goods may be dishonestly come by, and yet not stolen; they may be obtained on credit without any intention of paying the price. [COLERIDGE, J.—The phrase "dishonestly come by" is a very usual one in cases of receiving stolen goods.] Clearly in this case it is only an inference from the prices paid; and the Court will take care that the meaning of the words used is not unduly extended. (*Snag v. Gee*, 4 Rep. 16; *Heming v. Power*, 10 Mee. & W. 564.) Then, secondly, the plaintiff having treated the words as an imputation of felony, cannot support the action by treating them now as an imputation upon his conduct in his trade; but if he could, still the words are not actionable in that view of the case. It is not actionable to say of a tradesman that he has bought goods dishonestly come by, at a lower price than they could be made for; because that would not affect his trade further than any imputation upon his moral character might affect it. Upon this point they cited *Eyre v. Craven* (2 Ad. & Ell. 2); *Brayne v. Cooper* (5 Mee. & W. 249); *Alexander v. Angel* (1 Cr. & J. 143, 1 Tyr. 9).

Cur. adv. vult.

JUDGMENT.

Lord DENMAN, C.J. now delivered the judgment of the Court.—This was a motion to arrest the judgment in an action of slander. The question is, as in the case last disposed of, whether the words stated in the declaration may be considered as having been spoken at one and the same time, and as one continued discourse, or whether they are, from their nature and the manner in which they are stated, necessarily several. If so, it was contended that the latter part of the words, not being introduced by any prefatory matter or colloquium, are not actionable, and, therefore, the damages having been given on the whole declaration, judgment ought to be arrested, on the same principle that when damages are given on the whole declaration, and the declaration contains both good and bad counts, such must be the result. It becomes, therefore, material to ascertain whether the declaration in this case does, in truth, consist of one or more counts. We certainly find that, in an action for libel (*Hughes v. Rees*, 4 Mee. & W. 304), where the declaration set out several publications of different dates, each publication was considered by the Court of Exchequer to be a distinct count. In that case, as in this, there were the words "further contriving and intending," which are usually found at the commencement of a fresh count; but in the case cited the different dates of the alleged libels were adverted to by Lord Abinger, as being material; whereas, in this, the whole is described as one discourse of the plaintiff with the defendant, in the presence of two witnesses, who are named, and continued in the presence of those two witnesses, with the interruption only of remarks by the plaintiff, which are part of the same conversation; and the words "further contriving and intending," occurring as they do, when the defendant resumes the discourse after the plaintiff's interruption, by no means constitute what follows a fresh count. Supposing, therefore, which may be perhaps doubted, that the latter part of the words need some explanation in the shape of averment or colloquium, which was the objection urged on the part of the defendant, it only amounts to this; part of the words attributed to the defendant are not actionable, but the earlier part of the alleged slander plainly imputes to the plaintiff having received stolen goods, that is, certain winches, articles of fishing-tackle, knowing them to have been stolen. Therefore, on the words making that imputation, the verdict may be well sustained, although it may be that there are, if indeed such there be, other parts which do not impute any offence, and are therefore not actionable. We think, therefore, as all the words appear on the face of the declaration

to have been spoken at one time, the whole may be considered as one count, containing words both actionable and not actionable, and then the verdict may well stand on those which are, and this rule must be discharged.

Rule discharged.

Easter Term, 1845, and May 7, 1846.

PEARY v. FITZHOWE.

Nuisance—Abatement—Destroying house—License to use common.

The general rule that an individual may abate a nuisance by which he suffers injury, applies where the nuisance complained of is a house or other permanent building.

A person deprived of the enjoyment of a right of common by an unlawful erection or obstruction, may abate it. But such a right cannot be exercised when the house is in the actual occupation of any person, as such a proceeding would have a direct tendency to cause a breach of the peace.

A parol license to use a common will not bind a subsequent owner.

Trespass for breaking and entering the plaintiff's house, while occupied by himself and family, and demolishing it. The second count was for an expulsion of the plaintiff and his family. Pleas, justifying, under a right of common. As will be seen by the judgment, the substantial question raised upon the pleadings was, whether a house, being a private nuisance, may be pulled down by a person injured, while the persons are actually living in the house. The plaintiff replied, to one plea, that a prior tenant in fee of the messuage in respect of which the common was claimed by the defendant, had given the plaintiff permission to build the house in question. To this the defendants demurred.

Gunning, in Easter Term, 1845, argued in support of the demurrer, and of the validity of the pleas. As to the pleas, he cited *Penruddock's case* (9 Rep. 100); *Baten's case* (9 Rep. 55, a); *R. v. Rosewell* (2 Salk. 438); *R. v. Wilson* (8 T. R. 357); *R. v. Oakley* (4 B. & Ad. 307); *Turner v. Meymott* (1 Bing. 158); *Tamton v. Coslar* (7 T. R. 431); *Taylor v. Cole* (3 T. T. 292); *Year Book*, 9 H. 6, 19; 15 H. 7, 17; *Butcher v. Butcher* (7 B. & C. 399). As to the replication, he cited *Wallace v. Harrison* (4 M. & W. 558); *Wood v. Manley* (11 A. & E. 54); *Bridges v. Blanchard* (1 A. & E. 536; 4 A. & E. 176); *Cocker v. Cowper* (1 C. J. & R. 418).

O'Malley, contra, cited *Sadgrove v. Kirby* (6 T. R. 483); *Hillary v. Gay* (6 C. and P. 266); *Butcher v. Butcher* (7 B. C. 899).—He relied chiefly upon the absence of authority for the destruction of a house under these circumstances, and contended that it must be considered in analogy to distresses, which the law would not permit where the necessary or probable result was a breach of the peace. *Cur. adv. vult.*

On May 7, 1846, the judgment was delivered as follows:—

JUDGMENT.

LORD DENMAN, C.J.—This was an action of trespass, for breaking and entering the dwelling-house of the plaintiff, in which he and his family were inhabiting at the time, and pulling down and demolishing it; and a second count, for the expulsion of the plaintiff and his family. The defendant pleaded three pleas to the first count, justifying the pulling down and removing the house, because it was wrongfully erected on a place over which the defendant had a right of common, by reason of his occupation of a certain messuage and land. There were similar pleas of justification to the last count. To the three pleas to the first count the plaintiff replied, the house was the dwelling-house of the plaintiff and his family, who were actually present and inhabiting the same, and that the defendant, with force and arms, and with a strong hand and in a violent manner, broke and entered it. The plaintiff traversed the rights of common, as alleged in the first and second pleas to the last count; and to the third plea to the last count the plaintiff replied, that one Richard Howe was seized in fee of the messuage, on account of which the defendant claimed the right of common, and gave leave to the plaintiff to build his house, and that he did so in pursuance of such leave, and at considerable expense. To this replication the defendant demurred on several grounds specially stated. With respect to the replications to the first three pleas as to the first count, it is to be observed, the only additions they make to the statement in the declaration is, that the plaintiff, with a strong hand, and in a violent manner, broke and entered the house, and committed the trespasses. The question substantially turns upon the validity of the three pleas, for the replications do not state that the defendant used more force than was necessary, or that he came armed, or with a number of people, or used threats and menaces; and the allegation that the defendant, with a strong hand and in a violent manner, committed the trespass, does not really alter the case as stated in the declaration, and convert that into a trespass which would not otherwise have been a trespass. In order to determine the validity of the pleas, it is to be considered whether the defendant could lawfully pull down the plaintiff's dwelling-house, he and his family being in it at the time, because it had been

wrongfully erected upon a place over which the defendant had a right of common, and which right was wrongfully infringed by the erection of the house. There is no doubt, as a general rule, a person who is injured by a private nuisance may abate it (*Jenkins's Centuries*, 260; *Penruddock's case*, 5 Rep. 100, a; *Baten's case*, 9 Rep. 55, a; *James v. Hayward*, Sir Wm. Jones, 321). It is said, if a house be erected to the nuisance of another, it may be abated, but that no more is to be pulled down than is necessary. If part only of the house is a nuisance, that part of the house is to be pulled down. In *King v. Rosewell* (2 Salk. 458), which was much relied on in argument, the Court held, in conformity with the older authorities, that if a person builds a house so near that of another, if it stops his light, or shoots water upon his house, the person injured may enter upon the soil and pull it down. The case of a commoner falls within the general rule, that if there be any erection on a place over which he has a right which prevents him exercising it, he may abate it, and with no more force than is necessary to the exercise of his right. (*Mason v. Casar*, 2 Mod. 65; *Arlett v. Ellis*, 7 B. & C. 345.) No case has been found which establishes any distinction arising from the nature of the building which obstructs the exercise of the right, and therefore it may be admitted pulling down a house, provided no person be in it at the time, may be justified as much as pulling down a barn, or other place. In this case the declaration expressly alleged that the plaintiff and his family were in the house at the time when it was pulled down. The question is, whether that circumstance renders the pulling down unlawful. No express authority on this point is to be found, but it is said that the law respecting distresses, in which, as in abatement of a nuisance, the party injured seeks a remedy for the nuisance, affords an analogy by which we ought to be guided. The law certainly forbids the distraining of a horse on which a man is riding, or tools which he is using, on account of the imminent risk of a breach of the peace taking place, if such a distress be made. Surely the risk of a breach of the peace is much more imminent in the case of pulling down a house in which persons actually are at the time inhabiting. It is obvious that the act done under such circumstances is probably dangerous to human life, and calculated, in the highest degree, to excite violence and a breach of the peace. The law will not permit any man to pursue his remedy at such risks, and therefore we think it unnecessary for the plaintiff to shew there was an actual breach of the peace; the imminent risk of it is sufficiently proved by the averment in the declaration, that the plaintiff was in his own house at the time when the defendant committed the act complained of. It was argued, the plea contained no averment of notice to the plaintiff, or demand that he would himself abate the nuisance, but we do not now think it necessary to say any thing on that head, our opinion being, for the reasons above given, that the three pleas to the first count are insufficient, and that the plaintiff is entitled to judgment on the demurrer, and the replication to those pleas. With respect to the replication to the plea to the second count, the plaintiff, admitting the facts stated in the plea, says a former owner of a certain messuage gave the plaintiff leave to build the house. Several objections are made in this replication; the principal, that the former owner had no right to give such permission for it, in *alieno solo*, the license not being stated to be by deed, which would have bound the party who gave it. The cases of *Winter v. Brockwell* (8 East, 308) and *Harvey v. Reynolds* (12 Price, 724) were relied on on the part of the defendant. The latter case is most in point, and that was a case of one commoner giving license to another to make an encroachment on a common, which license was pleaded to an action on the case for a disturbance of the plaintiff's right of common. It is necessary to consider what the effects of a parol license would be where it is pleaded against the subsequent owner in fee. In *Winter v. Brockwell* and *Harvey v. Reynolds* the license was set up against the party who gave it; but we are not aware of any case where it has been held such leave and license would run with the land and bind the subsequent owner. On the contrary, it is laid down in *Shepherd's Touchstone*, 231, that a license from a lord cannot be created and annexed to an estate of inheritance or freehold without deed. In *Monk v. Butler* (Cro. Jac. 574) it was also held that a license to a commoner must be by deed; and the same opinion was expressed by the Court in *Hodgkin v. Robins* (2 Saund. 327, a). The right of common by the plaintiff, who afterwards takes as against the defendant, as for a freehold interest, if any, only could pass by deed. Upon this point, the case of *Hevlins v. Shipham* (5 B. & C. 222) is a leading authority, in which all the cases on the subject are considered, and in which it was so decided. We are therefore of opinion that the replication to the second plea to the last count is bad; and are then to consider whether the plea itself is good that justifies the putting out and removing the plaintiff and his family from the house, and also taking the goods and chattels out of it to a certain distance by the same right of common; and avers that for that

purpose the defendant pulled down the house, and in so doing necessarily and unavoidably expelled and put out the plaintiff, which justification is not good according to what we have already said, if an actual expulsion of them by force at the time is intended. The words "ejected, expelled, put out, and removed," may be said to be satisfied under some circumstances, if they prove that the house was destroyed in their absence, and by their being prevented from returning and re-entring, because in attempting to do so they found it existed no longer as a habitable house. But in the present case, looking to the language of the plea itself, this would be a forced explication; and the natural meaning of the word is, that the pulling down and expelling were contemporaneous; and if so, the same argument that has been held fatal to the first set of pleas would also prove this to be bad in law. Our judgment, therefore, is for the plaintiff.

Judgment for plaintiff.

RIO. v. DOWGLAS.

Under 13 Geo. 3, c. 63, and 4 Geo. 4, c. 71, The Court of Queen's Bench have power to award a mandamus to the Supreme Court of Judicature at Madras to take examinations, and the examinations duly taken and returned, according to the provisions of the statute, are admissible in evidence.

The mandamus is directed to the Court, and not to the judges individually; and a return by the Chief Justice and one puisne judge is sufficient, as they constitute a Court.

The writing upon parchment, meant by the statute, is a transcript of the examinations, not the examinations taken down at once upon parchment.

It appeared, from the certificates of the judges and sworn officers, that the witnesses were sworn; that the examinations were taken by the sworn officers in open court, and in writing, which were copied in parchment in the Crown Office, and carefully related with the examinations taken in court.—Held, that the requisites of the statute had been complied with, and the examinations were admissible.

This was an information filed *ex officio* by the Attorney-General, at the instance of the East India Company, against the defendant, a captain in the 49th Native Infantry in the service of the Company, and who for some time filled the office of British Resident at the Court of the Rajah of Tanjore, and at that of the state of Poodocottah, which is adjacent to the former. The information charged that the defendant, whilst occupying the situation above mentioned, received several gifts and presents, contrary to the prohibition upon that subject contained in the 33 Geo. 3, c. 52, which makes the act of soliciting or accepting any such present a misdemeanor punishable in the manner provided by the statute (a). At the trial at the sittings at Guildhall after Hilary Term, 1845, the jury returned a verdict of guilty. Very little parol testimony was given upon that occasion, and the bulk of the evidence consisted of a report, transmitted from the Supreme Court of Madras, of the evidence which had been taken before that Court in obedience to a writ of *mandamus* issued out of this court to that effect.

The Solicitor-General had obtained, pursuant to leave reserved to him at the trial, a rule nisi for setting aside the verdict, or for a new trial, or for writ of judgment. Against so much of the application as turned upon the inadmissibility of the evidence.

The Attorney-General, L. Wigram, Q.C. Palmer, and Forsyth, shewed cause at the sitting after Hilary Term. The question turned upon the construction of the several statutes, and especially upon the effect of the substitution of the present Supreme Court for the old Mayor's Court at Madras, which was in existence when the power to issue the *mandamus* was given by 13 Geo. 3, c. 63. The points are so fully stated in the judgment, that it is unnecessary to repeat them here. *De Blachford v. Preston* (8 T. R. 99); *East India Company* (5 Ves. Jun. 173); *Atter v. Palmer* (4 B. & Ad. 377); *Clay v. Stephens* (7 A. & E. 187); *Bennett v. Edwards* (6 Bing. 236), were cited.

The return to the writ was as follows:—
"And Sir Edward John Gambier, Knight, Chief Justice, and Sir John David Norton, Knight, Justice of the said court, have returned the said writ, together with the examinations and proofs taken, to be taken by virtue of the said writ, as follows:—
is to say: We, Sir Edward John Gambier, Chief Justice, and Sir John David Norton, Justice of her Majesty's Supreme Court of Judicature at Madras, do, in pursuance of the writ of *mandamus* hereto annexed, bearing date under the seal of her Majesty's Court of Queen's Bench in England, on the 20th day of June, in the sixth year of the reign of our said Queen Victoria, commanding us to cause to be taken all convenient speed, for the examinations, and receiving proofs, and to return the same, charged in an information, filed in the Court of Queen's Bench by her Majesty's Attorney-General, against Archibald Douglas, and to cause to be taken for the execution and return of the said information."

(a) See one of the counts set out, New Pract. Cas. 1845.

therein particularly mentioned: We hereby certify that after due public notice thereof given, we did hold a court at the court-house at Madras, on Monday the third day of April, one thousand eight hundred and forty-three, and continued, by several adjournments, from the said third day of April, one thousand eight hundred and forty-three, to Tuesday, the sixteenth day of May, one thousand eight hundred and forty-three, for the purposes in the said writ of *mandamus* mentioned: and we do further certify, that the several parchment writings are the examinations, reduced into writing by Charles Martin Teed, Esquire, the clerk of the Crown of the Supreme Court of Judicature, at Madras, and Frederick Orme, Esquire, the deputy clerk of the Crown of the said Supreme Court, which were, at the time and place aforesaid, openly and publicly taken, *videlicet*, before us upon the oaths of William Henry Bayley, Nathaniel William Kindersley, &c. under and by virtue of the said writ of *mandamus*: and we further certify that Charles Martin Teed is the clerk of the Crown, and Frederick Orme is the deputy clerk of the Court, and sworn officers of the Supreme Court. In witness whereof we have hereunto set our hands and seals this seventh day of July, one thousand eight hundred and forty-three.

EDWARD J. GAMBLE,

JOHN D. NORRON, Puisne Judge."

The certificate of the clerk of the Crown, and his deputy, was as follows:—

"We, Charles Martin Teed, clerk of the Crown, and Frederick Orme, deputy clerk of the Crown, respectively sworn officers of her Majesty's Supreme Court of Judicature at Madras, do hereby certify that we were present, as such clerk of the Crown and deputy clerk of the Crown, during the whole of the proceedings had and taken on the third day of April, one thousand eight hundred and forty-three, and continued by several adjournments from the said third day of April to Tuesday, the sixteenth day of May, one thousand eight hundred and forty-three, under and by virtue of a writ of *mandamus* hereunto annexed, issuing out of and under the seal of her Majesty's Court of Queen's Bench, in England, on the Crown side thereof, bearing date at Westminster, the twenty-fifth day of November, in the sixth year of the reign of her Majesty Queen Victoria, addressed to the chief justice and other judges of the Supreme Court of Judicature at Madras, in the East Indies, and to every of them, commanding them to hold a court with all convenient speed, for the examination of witnesses, and receiving proofs concerning the matters charged in an information filed in the said Court of Queen's Bench by her Majesty's Attorney-General, against Asahbhai Douglas, and to do such other acts for the execution and return of the said writ of *mandamus* as therein particularly mentioned. And we do further certify that the parchment writing hereunto annexed, marked Roll No. 1, contains a full and faithful particular and account of all the proceedings had and taken under and by virtue of such writ of *mandamus*. And we do further certify that the roll of parchments hereunto annexed, marked Roll No. 2, containing the several examinations of William Henry Bayley, Nathaniel William Kindersley, &c. are true and faithful copies of the *videlicet* examinations of the said William Henry Bayley, Nathaniel William Kindersley, &c.; who were severally produced, sworn, and examined as witnesses in pursuance of the said writ of *mandamus*, such parchment writing having been transcribed in the Crown Office from the original examinations of the said several witnesses taken by us, the said Charles Martin Teed and Frederick Orme, in open court, as such clerk of the Crown and deputy clerk of the Crown as aforesaid, the same having been carefully collated and compared by us, the said Charles Martin Teed and Frederick Orme, as such officers as aforesaid, with such originals, and that the said examinations are subscribed by the said William Henry Bayley, &c. respectively. And that the several paper writings hereunto annexed, marked A. No. 35 to No. 61, are the original orders of Court, and that the several Gazettes hereunto annexed are true and faithful copies of official advertisements of holding the Court, read by me, the said Charles Martin Teed, as such officer as aforesaid, in open Court, on the several days; and that the several paper writings hereunto annexed, marked respectively A., D., F., H., &c. and the five enclosures of the exhibit X. and the book which contains the exhibits, marked respectively A. No. 50, A. No. 53, and A. No. 54, are the original exhibits produced on the examinations of the said witnesses, and that the several papers, marked respectively R.A. No. 1, A. No. 2, &c. are the original exhibits in the native languages, with the translations thereof into the English language, made by the sworn interpreter of the said Supreme Court of Judicature, and produced on the examination of the said witnesses; and that the book which contains the exhibits, marked A. No. 6, to A. No. 29 inclusive, are translations made by the said sworn Court interpreter from the original exhibits thereof, and produced on the examination of Ramanao Bhabo, a witness for the prosecution; and that the several paper writings hereunto annexed, marked respectively No. 1 and No. 2, are the original exhibits, and the paper writing

marked No. 3 is a true copy of an exhibit put in on behalf of the defendant; and the said originals, translations, and copies were marked by us, the said Charles Martin Teed and Frederick Orme, as such officers as aforesaid, and when the same were put in for the prosecution and for the defendant. Dated this seventh day of July, one thousand eight hundred and forty-three.

"C. M. TEED, Clerk of the Crown.

"FREDERICK ORME, Deputy Clerk of the Crown."
The Solicitor-General and Peacock were heard in support of the rule. The statutes were also commented upon at length. *Rex v. Mayor of Kingston-upon-Hull* (8 Mod. 209); *R. v. Wildman* (2 Strange, 879), were cited. *Cur. adv. vult.*

JUDGMENT.

On Monday, April 27, the judgment was delivered. Lord DENMAN, C. J.—The case of the Queen v. Douglas turned upon the return to a writ of *mandamus* directed to the chief justice and other judges of the Supreme Court of Judicature at Madras, directing them to hold a court under the 13 Geo. 3, c. 63, for the examination of witnesses, and receiving proofs concerning the matters charged in the information against the defendant, which return is to be considered hereafter. The 40th section of that Act empowers this Court to award a writ of *mandamus* to the Supreme Court of Judicature at Fort William in Bengal, and to the judges of the Mayor's Court at Bombay, Madras, or Bracoolia, who are required to hold a court for the examination of witnesses and receiving proofs in indictments, and informations in this Court under the circumstances and in the manner which are there noticed. We must observe, with reference to the first objection which has been made to the reception of the examinations in this case, that the Mayor's Court at Madras, established by the statute of the 13 Geo. 3, c. 63, was, by the 87 Geo. 3, c. 142, abolished, and a court, called the Recorder's Court, substituted in its place, which Recorder's Court was, by the 39 & 40 Geo. 3, c. 79, itself also abolished, and the present Supreme Court of Judicature substituted for it, and assimilated in all respects to the Supreme Court of Fort William, in Bengal. By the 4 Geo. 4, c. 71, s. 17, the Supreme Courts of Judicature at Bombay and Madras respectively are required within their respective limits "to do, execute, perform, and fulfil all such acts, authorities, duties, matters, and things whatsoever as the Supreme Court of Fort William is empowered or directed to do, execute, perform, and fulfil." Since, therefore, the Supreme Court of Judicature of Fort William in Bengal is described in the 13 Geo. 3, c. 63, and as by the statute of the 4 Geo. 4, c. 71, the Supreme Court of Judicature at Madras is made in all respects equal to it in power, it was not denied that the Supreme Court of Judicature at Madras has competent power to obey the *mandamus*, if this Court has the power to award it. The objection, therefore, is, that the power of awarding a writ of *mandamus* having been given to this Court, during the existence of the Mayor's Court, specifically to that Court upon the extinction of that Court, the power of this Court is gone. The objection is founded upon the ground that none of the statutes which have abolished the Mayor's Court and established the other courts have continued to this Court the power of awarding a writ of *mandamus* to any other Court which may be substituted in its place, and of course not therefore to the Supreme Court of Judicature at Madras. We, however, see no reason for this objection. The present Supreme Court of Judicature at Madras being in terms put upon the same footing for all purposes with the Supreme Court of Fort William in Bengal, which is named in the 13 Geo. 3, c. 63, and to which a writ of *mandamus* is directed to be awarded. We think the present Court is for every purpose substituted for the Mayor's Court, which was in existence at the time of the passing of the 13 Geo. 3, c. 63, and, therefore, among other purposes, for receiving and obeying a writ of *mandamus* from this Court.

The next objection is, that the writ being directed to the chief justice and other judges of the Court, the return by any other than all the judges of the Court is imperfect and insufficient. It appears, upon the return, that it was executed by the chief justice and one judge. This objection proceeds upon the assumption that the writ is directed to certain individuals, by name, to whom a joint authority is entrusted, and by whom therefore, jointly, and jointly only, the duty could be legally performed. We think this assumption is unfounded, for the writ, in conformity with the 13 Geo. 3, c. 63, is directed to the judges commanding them to hold a Court, by which Court the examinations are to be taken, and we have no doubt that two out of the three judges might properly compose a Court, as it is a matter of every day's experience, that this, and every other superior Court is in the habit of exercising its jurisdiction when one or even more of its members may happen to be absent.

The next objection is, that the examinations are not admissible in evidence, because they have not been taken and returned according to the provisions of the 13 Geo. 3, cap. 63. The language of the 40th section of that Act, is in substance

as follows: "That such examinations shall be openly and publicly taken, *videlicet*, in the Court upon the respective oaths of witnesses, and of sworn interpreters, administered according to the forms of their several religions, and shall, by some sworn officer of the Court, be reduced to one or more writing or writings on parchment, in case any duplicate or duplicates shall be required, and shall be sent to this court closed up under the seals of two or more of the judges of the court." It may be observed here, with reference to the last objection, that two judges are hereby expressly empowered to act. "And one or more of the said judges shall deliver the same to the agent or agents of the parties requiring the same." Then follow some regulations, not material to be noticed. "And such depositions shall be allowed and read, and shall be deemed as good and competent evidence as if such witness had been sworn and examined, *videlicet*, in this Court. It must be admitted that the instructions as to the mode of taking the examinations are not very precise, and it may not be a matter of surprise that some doubts should have existed as to the mode of proceeding. It would appear probable, *a priori*, that the meaning was that the sworn officer of the Court was to take down, in writing, a statement of the evidence as it came from the mouths of the witnesses, and afterwards from such original statement reduce the same as it then upon stood into writing upon parchment, as an authentic copy of the examinations, to be transmitted to this Court. It remains to be considered whether that be the fair interpretation of that clause of the statute, and then whether that has been substantially complied with. Upon the construction of the statute, it is not contended, for that question was repeatedly put to the learned counsel in the course of the argument, that the words, as they came from the witnesses, should be written down by the sworn officer of the Court upon parchment at first, and that such parchment should be transmitted to this Court as the original examination, or that the examination should be upon parchment only, if duplicates were required. We agree with this, and we are of opinion that no objection of this kind could have been taken. If, then, the "writing on parchment" into which the examinations of the witnesses are required to be reduced, be not, as was conceded, the statements of the witnesses as they come from their mouths, it follows that the writing upon parchment meant by the statute must be a transcript of the examinations as they came from the mouths of the witnesses, which examinations may, in that sense, be called originals, and are not so called in the certificate of the sworn officers, as will appear when we come to look at it. Both are not required. We come now to the question whether, upon the return of the judges, including the certificate of the two sworn officers of the Court, the prescribed forms appear to have been sufficiently complied with. Upon examination of the certificate upon which the objection arises, it may be admitted that, as no far-fetched construction should be adopted for the purpose of explaining it, so it is entitled to a fair and liberal interpretation, the act having been done by sworn officers, and any attempt purposely to mislead and deceive the Court being scarcely upon any supposition possible. The certificate of the judges is very general. After reciting the holding of courts by adjournment, in pursuance of this writ of *mandamus*, it states that, "the said several parchment writings are the examinations as reduced to writing by the clerk and deputy clerk of the Crown," naming them, "which were at the time and place aforesaid openly and publicly taken, *videlicet*, before us upon the oaths of the witnesses," naming them. From this it should seem that the judges understood that the taking—*videlicet*, before the judges upon the oaths of the witnesses meant something previous to the examinations reduced into writing upon parchment, though from the nature of the thing, and the fair import of the word "taken," the first taking *videlicet* must have been in writing. The certificate of the sworn officers of the Court is more particular. After reciting some preliminary matters, they certify "that the roll of parchment hereunto annexed contains the several examinations of" A B, &c. the witnesses, "who were severally produced, sworn, and examined as witnesses; and that such parchment writings have been transcribed in the Crown-office from the original examinations taken by us in open court, and the same have been carefully collated and compared by us with such originals, and that such examinations were subscribed by the witnesses." Now, from this, without reference to the order in which they are stated, the following facts appear:—That the witnesses were sworn; that the examinations which are called originals were taken by the sworn officers in open court, and in writing, for the parchment writing is said to have been copied in the Crown-office from the original examinations; and though it does not appear by whom that copy was done in the Crown-office, that becomes immaterial, because it is stated that the sworn officers carefully collated and compared the same, that is, the parchment writing, which has been transcribed with the said originals, that is, the original examinations taken by the sworn officers

for the omission of the words "before me" was held immaterial where the affidavit purported to be signed by a judge. [PATTERSON, J.—How do the words "said justices" refer to any thing?]

Braceley, contra.—The objection to these examinations is not answered. The identity of day and name is nothing, not being sent together. (*Reg. v. Shipston-upon-Stower*, 6 Q.B. 119.) [Lord DENMAN, C.J.—It may be that the words mean nothing more than the justices had committed some one for peaching on the same day.] Or removed some other member of the pauper's family. There is nothing whatever to shew jurisdiction.

Lord DENMAN, C.J.—I think that jurisdiction is not shewn here. Each examination should be a complete and perfect document by itself. It is not shewn by the examination that the justices were justices having authority to take them. It is a very simple and easy rule that each should be perfect of itself. *Reg. v. Embden* has nothing to do with the question. There it was held that evidence was admissible to shew that the locality was within the jurisdiction. *Reg. v. Biorham* has been recently before us, and I think it right to add, I have no doubt as to the correctness of the decision.

PATTERSON, J. concurred.

WILLIAMS, J.—The statute says, copies of the examinations shall be sent. What is this, where the examination can only be made good by a reference to the next preceding, or one further removed? The cases as to the margin of an order or an indictment have nothing to do with this, for there the margin is part of the same document.

Order of Sessions quashed.

REG. v. INHABITANTS OF NORTH HOWMAN.

Exception hiring—Imperfect apprenticeship.
An agreement by which A and B, owners of silk-mills, Mrs C and D, for three years, to dress silk, with a stipulation that they shall be paid so much a pound for the first three months, and after that, so much a pound, provided they did a certain quantity each week, and proportionately more, if more was done; but with deductions for less than that quantity, is not an exceptive hiring.

The same agreement contained a further clause, that one Bagot should be paid so much a week for superintending and instructing them, as far as he was able, to make them competent workmen, he (Bagot) being answerable for their work.—Held, not an imperfect apprenticeship, but a hiring and service.

On appeal against an order of removal, the Sessions had confirmed the order, subject to a case which raised two questions for the Court, upon an agreement for hiring and service, whether it was an exceptive hiring, or whether it was an imperfect contract of apprenticeship.

Hall, with him Pashley, in support of the order.—1. Is it an imperfect contract of apprenticeship? It is an agreement between the owner of silk-mills and two persons, whom he hires for three years, and they agree to be hired for three years. They were to be paid, for dressing silk, so much a pound the first three months, and a higher rate afterwards, provided that if they dress above a certain quantity in the week, they shall be paid so much for every pound extra, and if they dress less, they are to lose so much a pound for the deficiency. Then occurs a clause that one Bagot, a party to the agreement, is to be paid by Bians and Wrigley (the masters) "six shillings per week for superintending and instructing them in the best manner he is capable to make them competent workmen, the said Bagot to be answerable for the work being done in a proper manner." It will be contended that this constitutes the agreement an imperfect apprenticeship. But the object of the parties is clearly not this, but a hiring and service, and that is what must be looked at, in the absence of any distinct contract of apprenticeship. Here there are no words savouring of apprenticeship, no covenant to teach; but the learning is merely incidental. (*Reg. v. Burbach*, 1 M. & S. 370; *Reg. v. O'Neill*, 3 B. & Ad. 493; *Reg. v. Nether Knutsford*, 7 B. & Ad. 726; *Reg. v. Tipton*, 9 B. & C. 888, were cited.)

2. Is it an exceptive hiring? To constitute an exceptive hiring there must be a period of the time included in the contract, during which there is no obligation on the part of the servant to serve. But here there is no exclusion of any time whatever. It is merely a provision as to payment for work—more or less according to the amount done. It is not like *Reg. v. Holbeck* (4 Q.B. 590), where the words themselves by which the services were contracted limited their duration.

The Solicitor-General (with him Pickering and Hardy, contra).—It is submitted that the question is to be decided by the agreement alone, not what the parties did under it; but the legal construction of a written document. The principle is, that where the contract is not for a continuous service, but upon such terms that there are, or may be, periods during which the master has not a right to the service; then it is an exceptive hiring. Here it is an agreement to perform a certain amount of work, for which a certain price is to be paid; but when that work is done, they might refuse to do more.—This must be the meaning

of payments for over-work. [PATTERSON, J.—There is a general contract to serve. No. A contract, provided they do a certain amount of work. (*Reg. v. Edmond*, 3 B. & Ad. 107, 82; *Reg. v. Gutchess*, 2 B. & C. 119; *Reg. v. Aldhams*, *ibid.* 112.)]

Lord DENMAN, C.J.—I must say that is my opinion. The only good rule is, to apply one's common sense to the construction of agreements of this kind; and, looking at this, I have not the least doubt but that it is not an exceptive hiring. I only regret that the Sessions allowed themselves to be persuaded to grant a case.

The Solicitor-General.—If not an exceptive hiring, it is an imperfect contract of apprenticeship. The clause as to Bagot clearly shews that it was intended that they should learn the trade. The increase of wages after the first three months also points to their incompetency at the commencement. [PATTERSON, J.—There is no contract by the master to teach.] So also in many of the cases that have been held imperfect apprenticeships. (*R. v. Combe*, 8 B. & C. 82.) It is immaterial whether the master himself contracts to teach, or that it is provided that some other person shall do so. (*Reg. v. Cradison*, 3 B. & Ad. 493, overruled; *Reg. v. Burbach*, 1 M. & S. 370; *Reg. v. Newton*, 1 A. & E. 238; *Reg. v. St. Margaret's, King's Lynn*, 6 B. & C. 97, were also cited.)

Lord DENMAN, C.J.—For the reason I have already given, I think it is a general hiring. As to contracts of hiring and service, and imperfect apprenticeship, the Court in former times no doubt brought difficulties upon themselves by laying down principles unnecessarily. Although two or more things are expressly contracted for, as a hiring and service, yet I do not see that because something is also to be learnt, that that constitutes an apprenticeship. The one does not necessarily exclude the other. Here there is a clear hiring for three years, and the stipulation for teaching by Bagot has no more effect than a stipulation as to wages. The object of the agreement is not apprenticeship.

PATTERSON, J.—I am of the same opinion as to the first point. Then as to the second, every agreement must be construed according to its terms, and therefore there are different decisions upon agreements of the same nature. But this is an express contract to hire, and an express contract to be hired for three years to dress silk. If it stopped here, there would be no question as to apprenticeship. Afterwards there is a clause that Bagot is to have 6s. a week for superintending their instructions, and he is to be answerable for their work. I do not see that this makes it a contract of apprenticeship. No action could have been maintained by them, either against Bagot or the masters, if they had not been taught. It will be found in all the cases where words have been held to mean apprenticeship, that there was a remedy for not being taught.

WILLIAMS, J. concurred.

Order of Sessions confirmed.

Friday, May 29.

CLUTTERBUCK v. HULKS.

Privilege from arrest.

Miller moved for a rule nisi upon the sheriff of Gloucester for the discharge of an attorney who had been arrested while attending the sheriff's court at Gloucester, being retained in several causes named in the affidavit.

Rule nisi.

SAFFERY v. WRAY.

Attorney's bill—Negligence.

The plaintiff had been retained by the defendant to bring an action for a false imprisonment against a constable and a person who had acted as a magistrate. The action was brought against the constable only, and not within the time limited by the statute. The constable pleaded not guilty, by statute, but the record was made up without the words "by statute" being inserted in the margin. The then plaintiff in consequence obtained a verdict at the trial, but which was subsequently set aside by the Court, as it appeared that the plea had contained the words "by statute" in the margin. The plaintiff's attorney, the now plaintiff, had thereupon consented to a nonsuit, and a moiety of the costs had been levied upon the now defendant.

Is an action by the attorney for his costs in that action, it was held, that he was not entitled to recover, on the ground of the gross negligence in the matter. Assumpsit upon an attorney's bill.—At the trial it was shewn by the defendant that he had retained the plaintiff to bring an action against a person who had acted as a magistrate and a constable, for causing the defendant to be imprisoned wrongfully. The plaintiff had brought the action against the constable only, and not within the time limited by statute, if the constable was entitled to that defence. The constable pleaded not guilty, by statute; but, by mistake, the agent of the now plaintiff had made up the record without the words "by statute." The now defendant had accordingly recovered a verdict; but the facts being brought before the Court, to prevent a new trial, the now plaintiff, as the attorney for the now defendant, consented to a nonsuit being entered, and the now

defendant had been ordered, to pay, a large portion of the costs of the nonsuit. For his own costs the now plaintiff had brought this action, and this defence being set up at the trial, Mr. Baron Platt had left it to the jury, that if the plaintiff knew the defendant in the former action was a constable, he had conducted that action with such gross negligence as not to be entitled to recover his costs. The jury found for the defendant as to these costs, and a rule nisi had been subsequently obtained by *Wildman*, for a misdirection, against which

Whitehurst, Q.C. and *Humfrey*, Q.C. now shewed cause, and contended that the facts clearly shewed gross negligence.

Wildman, contra.—The learned Baron was wrong in leaving it to the jury as he did, for the fact that the defendant in the former action was a constable was insufficient to entitle him to the protection of the statute, unless he was acting in the execution of his duty. [PATTERSON, J.—If, then, he was not protected, why did the now plaintiff consent to a nonsuit, which could only have been the prudent course, upon the supposition that he was entitled to the plea by statute?]

Lord DENMAN, C.J.—This case is clear. Admitting that there was no evidence at the trial why the constable was sued alone, or how the plea by statute was omitted, the present plaintiff, in consenting to a nonsuit confessed that he had done wrong, and it is clear that the now defendant gained no benefit from the plaintiff's management of the cause. PATTERSON and WIGHTMAN JJ. concurred.

Rule discharged.

BUSINESS OF THE WEEK.

Friday, May 29.

LOWE v. PENN.—*Jervis*, Q.C. *Byles*, Serjt. and *M. Smith*, shewed cause against the rule for a nonsuit or no trial. *Martin*, Q.C. and *Peacock*, contra. Cur. adv. vult.

WILSON v. LEWIS.—*Hopkins* moved for a rule nisi to set aside the judgment signed by plaintiff herein, as was suggested, because one or more of the pleas was non-issuable. Rule nisi.

HOUEL v. LE PIPER.—*Aspinall* moved for a discharge. Rule refused.

Monday, May 30.

HUSTLEY v. RUSSELL.—*Addison* moved for a rule nisi to set aside the judgment in this case, and restore it to the special paper, upon affidavits. Rule nisi.

BOLAM v. SHAW.—*Dundas*, Q.C. and *H. Hill*, shewed cause. *Knowles*, Q.C. contra. Cur. adv. vult.

WRAY v. THOMPSON.—*Watson*, Q.C. shewed cause. Admitted.

NICHOLS v. ATHERTON.—*Watson*, Q.C. moved for a rule nisi to set aside verdict for the defendant on the second and third issues, and enter it for the plaintiff, pursuant to leave reserved, on the ground that a letting by a lessor with the assent of the lessee for a term that includes and exceeds the unexpired interest of the lessee, is not a surrender by operation of law. (*Lyon v. Reed*, 15 M. & W. 385.) Rule nisi.

BROWN v. DEAKIN.—*Humfrey*, Q.C. moved for a rule to set aside verdict for the plaintiff, on the ground that the judge who tried the case had misdirected the jury, by telling them, that on a replication that "the plaintiff and the said other creditors did not agree in manner and form," &c. in the plea alleged, that allegation being that the defendant was "indebted to the plaintiff and divers other creditors respectively, and the plaintiff and the said other creditors agreed to accept" a composition, the defendant must show that all his creditors had agreed, &c. (*Good v. Cheeseman*, 3 B. & Ad. 328; *Reay v. Richardson*, 3 C. M. & R. 422.) Cur. adv. vult.

Tuesday, May 30.

REG. v. GREAT NORTH OF ENGLAND RAILWAY.—*Offer* (with him *Bovill*) shewed cause against a rule for arrest of judgment. Argument adjourned.

The Court rose at eleven, to attend the House of Lords.

COURT OF COMMON PLEAS.

Saturday, May 23.

ROBINSON v. BROWN AND ANOTHER, Executors.
Stay of proceedings.

Channell, Serjt. moved that upon payment into Court of 200l. together with costs and interest, by the defendant, proceedings might be stayed. The action was in debt on a bond, the testator of the defendants being one of two sureties for payment of certain sums from time to time to become due from their principal to the plaintiff. The condition of the bond, which was set out on oyer, was, "that if the above bounden G. B. (the principal) should from time to time pay all such sums of money as should be due, not exceeding in the whole 400l. or in case G. B. should make default, then, if the sureties, within one calendar month next after notice in writing requiring payment should have been given them, &c. should pay such sums as at the time of the demand should be due, not exceeding 200l. &c. then the bond should be void." The notice in writing had been given, but the payment had not been made within the calendar month. The question was, whether, under these circumstances, the defendants had lost the benefit of the condition, or whether they were within the stat. 4 Anne, c. 16, s. 13.

Talfourd, Serjt. was to have shewn cause in the first instance, but was stopped by

TINDAL, C.J.—This is a nice and subtle question, which we ought not to decide on motion. The point will eventually come before the Court in a less abrupt manner. Rule refused.

TOWSON v. THE BISHOP OF CHESTER.

Quare Impedit—Striking-out counts.

This was a *quare impedit*. The declaration contained six counts, setting out titles slightly varying from each other. There in one count a particular person, from whom title was deduced, was presented to be tenant-in-tail, in another tenant-in fee. The 4th, 5th, and 6th counts differed from each other only in making two persons, *dicti*, joint-tenants, and then separately sole tenants of the property with which the plaintiff's title was connected. In a former Term, Fullford, Serjt. had obtained a rule calling upon the plaintiff to show cause why he should not elect which count he would retain, and why the other counts should not be struck out as superfluous.

Fullford, Serjt. now showed cause.—This case is not within the Parliamentary rule, *Hilli v. Wain*, 4 r. 5, as to multiplicity of counts. That and the other new rules apply only to personal actions which may be tried in any of the superior Courts indifferently, not to those actions which are peculiar to any of the Courts as real actions are to this Court. (*Barnes v. Jackson*, 1 Bing. N.C. 645; 3 Dowl. 404, S.C.; *Miller v. Miller*, 3 Dowl. 408). Then, as to the general jurisdiction of the Court, independent of the rules, a number of counts is proper where there is any difficulty as to the title (*Duckmyr's case*, 8 Coke, 87, b.). The Court has never interfered in a *quare impedit*, to strike out a count where it set up a different title from the other counts. In *Fox v. Bishop of Chester* (2 B. & C. 636) there were two counts, and in *Shepherd v. Bishop of Chester* (6 Bing. 485) there were four counts. In *Gully v. Easter* (5 Bing. 170) the Court allowed an additional count to be inserted after trial and nonsuit; besides, this application is made too late. The defendant has applied for time to plead, and has obtained it upon the terms of pleading *assensu*. That counts pleading *assensu* to the declaration as it stands.

Tuford, Serjt. in support of the rule.—It is admitted that the defendant cannot avail himself of the New Rules. But the question is as to the general discretion of the Court. The plaintiff is bound to know his own title, and he has no right to burden the record and increase the expense and difficulty of the defendant by setting up several distinct, remote, and inconsistent titles. [MAULE, J.—A man may be able to show some good and some bad presentations. He must state the presentations to take advantage of them, and he must show the title of the presenters. I do not see that there will be more substantial issues in the case than if the plaintiff had contented himself with the longest count.]

TINDAL, C.J.—I do not sufficiently see my way to say that any of these counts ought to be struck out. The mischief we may do the plaintiff by depriving him of any part of his title is clear enough, but the evil on the other side is not so clear. I think we ought not to grant the application.

Rule discharged, without costs.

Monday, May 25.

WALBANCKE v. MASTERMAN.

An attorney is personally bound to remunerate the sheriff's officer employed to execute writs on behalf of his client.

This was an action of debt, for work and labour done and performed in and about certain journeys and attendances by the plaintiff for the defendant, at his request, and for money paid by the plaintiff to the use of the defendant.

Plea, nunquam indebitatus.

At the trial, before Erie, J. at the sittings in London, after last Easter Term, it appeared that the plaintiff was an officer of the sheriffs of London, and that the action was brought against the attorney in certain causes, to recover payment for business done about executing three warrants to arrest parties in the different causes. It was objected that the action was wrongly brought against the attorney, as the client was the person liable. *Newton v. Chambers* (1 D. & L. 870) was referred to on behalf of the plaintiff; and Erie, J. overruled the objection, but reserved leave to the defendant to move to enter a nonsuit, or a verdict for the defendant, if the Court should consider the action to have been brought against the wrong party. A verdict having been found for the plaintiff for 3l. 3s.

Byles, Serjt. now moved accordingly.—The action should have been brought against the client. This case is analogous to that of a witness subpoenaed to give evidence in a cause, or to the case of the messenger's bill in bankruptcy. (*Hartop v. Jukes*, 2 M. & S. 486; *Hart v. White*, 1 Holt, N.P. 386.) In *Rubbs v. Bridge* (3 M. & W. 114), Lord Abinger distinguishes the case of a witness, and similar cases where the client is liable, from the case of the marshal or other officer of the court, who is entitled to look to the attorney for payment. [MAULE, J.—Is not the sheriff's officer much more like an officer of the court than a witness? If so, that would bring it exactly within what Lord Abinger says. The inconvenience would be prodigious if the officer in every case were to look to the client for payment. The client himself would suffer by it. An attorney's bill is bad enough; but, according to your view, he might be per-

tered with bills from sheriff's officers, and I know not whom besides, and would have no means of deciding whether the claimer made out his case legal or not.] *Newton v. Chambers* is the only case quoted on the other side, and is distinguishable. [TINDAL, C.J.—The cases of *Townsend v. Carpenter* (R. & M. 114) and *Newton v. Chambers* (5 B. & C. 200) are precisely in point, and are in favour of the plaintiff.] [MAULE, J.—The facts too plain for argument; it requires no case. The attorney is the person who employs the sheriff's officer, and is properly responsible to him.]

Rule refused.

WATSON and ANOTHER v. BAYFORD.

Defence—Principles—Statements made in the presence of parties.

Case, for negligent driving.

Plea, not guilty.

The action was tried before Colman, J. at the sittings in Middlesex, after last Easter Term. Verdict for the plaintiff.

It appeared that, by the collision which formed the groundwork of the action, the defendant's coachman was thrown down between his horses, and dragged some little distance, until the horses were stopped by two policemen. Other persons then came up, and among them the driver of the carriage belonging to the plaintiffs; and it was proposed to give in evidence what had been said by the policemen in conversation with references to the accident, and the conduct and condition of the two drivers. This was objected to; but the judge received the evidence.

Byles, Serjt. now moved for a new trial upon the ground of the improper reception of evidence. He contended that the remarks of the policemen were hearsay evidence of the worst description, and would not have been admissible against the defendant's coachman, still less against the defendant himself, who was not present during any part of the transaction.

TINDAL, C.J.—These parties represented their respective principals. The remarks were made at the very time the accident took place; and as they were made in the presence of the coachman, he might have corrected anything that was misstated by the policemen.

CRESSWELL, J.—In cases of running down by vessels at sea, or in the river, what the masters have said at or soon after the accident is generally received in evidence against the owners. Therefore I think that anything which the coachman said at or near the time of the transaction is admissible. Then what the policeman says about him in his presence is on the same footing.

Byles, Serjt. obtained a rule on the ground that the verdict was against evidence; but on this point,

Rule refused.

Thursday, May 27.

BENHAM & EARL v. MORNINGTON.

Where a party seeks to avail himself of a defence furnished by a foreign law, the law must be directly and positively stated, and not merely by way of inference. Therefore, in an action of debt on a bond, a plea setting out certain facts, affirmatively and negatively, and concluding that "by reason of the premises the said supposed writing, obligatory by the laws of France, never was nor is obligatory on the defendant, but always was and is of no force or effect," is bad, on special demurrer, for 800l.

Plea, that the said supposed writing obligatory was made, and that at the time of making the same the defendant was resident and domiciled in parts beyond the seas, to wit at Calais, in the kingdom of France, and not otherwise or elsewhere; and the defendant further says, that the said writing obligatory was not taken, made, received, or passed by any public officer of the said kingdom of France, authorized by the laws of that kingdom so to do, nor was the said writing obligatory written throughout by the hand of the defendant; and although the defendant signed the said writing with his own hand, yet the defendant did not write with his own hand a certain formula or acknowledgment, termed in the French law a *bon*, or *approved*, in words at length, stating the debt or sum of money, purporting to be secured or acknowledged, nor was the defendant at the time of the making of the said writing obligatory a merchant, tradesman, artisan, ploughman, vinedresser, husbandman, or servant; and the defendant further says, that by reason of the premises, the said supposed writing obligatory by the laws of France never was nor is obligatory on the defendant, but always was, and is, of no force, effect, or validity. Verification.

Special demurrer, assigning, among other causes, that the plea was argumentative and inferential, and also that it was double.

Douglas, Serjt. (with him Barstow) in support of the demurrer.—There is here no sufficient statement of the foreign law. The facts do not disclose at all what the law is of which the defendant seeks to avail himself; the former part of the plea does not state the law at all; the latter only states it by way of inference. How is the Court to know that the inference is correct unless the law itself be disclosed? It would be impossible for the plaintiff to take issue on this

plea. [TINDAL, C.J.—The law must be stated. The issue ought to be upon a fact, not upon a state of law.]

The Court then called on the defendant. The plea shows that the defendant was resident abroad, and, therefore, that the French law applies. It is admitted that the Court will receive judicial notice of the foreign law, which is a principle at the trial, and a matter of fact. The law of France is a single sufficient; certain facts, affirmatively and negatively stated, and then that by reason of the premises the writing is invalid. The defendant's plea becomes the whole matter in a motion, and the defendant must show all the facts which he relies on, and also that the law of France applies. In *Woodhouse v. Schultze* (1 D. & L. 616) it was held that the defendant did not set out the French law, but that the Court recommended the plaintiff, who demurred, to plead by recital, which was done. In *Woodhouse v. Schultze* (3 A. & E. 771) the point was adjudged by the Lord Chief Justice, but not decided. The defendant's complaint is an allegation of matter of fact, and is not a defence; the several matters in the plea do not make up but one defence. The plaintiff, who replied *de injuria*. [CRESSWELL, J.—This is hardly analogous to an answer. It is probable that the bond is void *de jure*.] [TINDAL, C.J.—The allegation of *de injuria* contains the words *obscure* and *equivocal*, without such cause. In *Cooper v. Gombert* (1 M. & W. 23), the Court of Exchequer held that the *de injuria* was a good replication to a plea of *de jure*.]

Douglas, Serjt. in reply.—Although foreign law is matter of proof, yet it must be sufficiently alleged. In *M'Leod v. Schultze* the Court gave no opinion; they only suggested an amendment. Here the main objection is, that the law is only stated inferentially. We are left to suppose that the foreign law requires all the matters which the plea shows to have been wanting. Even if the law were adequately stated, the plea sets up three different defences.

TINDAL, C.J.—It seems to me that this plea is bad for one of the causes assigned, viz. that it is argumentative and inferential; whereas a plea ought to be direct and positive, and contain nothing by way of inference. (Co. Litt. 384.) The plea contains an answer to the declaration, except in the conclusion, "by reason of the premises, the said supposed writing obligatory by the laws of France was of no force, effect, or validity." That is not a direct affirmation of what the law is, and of the facts bringing the matter within the operation of the law. The plaintiff has a right to have the law set out, and the facts bringing the case within the law, in order that it may be necessary, he may demur, and get the opinion of the Court, whether facts are disclosed to which the law is shown to be applicable. Suppose the matter were to be made a question of evidence, and non-assumpsit pleaded only, we should not allow a witness to say that the defendant was neither this nor that, and that this or that had not been done, and therefore, that the foreign law, the obligation was invalid. No; he would have to begin by proving what the law was, which he could do by the *Code Napoleon*, or some other authority upon French law, and then he would bring the case within it. Here, from first to last, there is a series of negations, and then an allegation, that the law has not been complied with. If the law had been set out affirmatively, we might have found an exception, or something to show that it did not defeat the plaintiff's claim. I think, therefore, that the plea is an argumentative plea. In *M'Leod v. Schultze* the parties consented to amend, which prevents the case being a very strong authority. There the plea was entirely affirmative, and the opinion of Lord Abinger is expressed very doubtfully. He says, "We are inclined to think at present that the plea is sufficient." In *Woodhouse v. Schultze* the objection was never taken.

COLTMAN, J.—It would hardly have been sufficient for the purpose of raising this defence, to allege merely "that the bond was made, and that at the time of making the same, the defendant was domiciled in parts beyond the seas, to wit, &c. and not otherwise or elsewhere; and that by the laws of France the said bond was void." That plea would hardly be supportable. But unless that plea would be sufficient, I do not think the present would, for the plea is not improved by what has been stated. The defendant ought to have shown distinctly what the law of France is, and brought his case within its provisions. We cannot see whether the plea is double or not; we do not see accurately what the foreign law is.

CRESSWELL, J.—I also think the plea is insufficient. The foreign law is only noticed by us as matter of fact, but you cannot say in your pleadings, "by reason of the fact which I will prove when called upon, the obligation is not binding." And moreover, in your plea the fact upon which you rely. I understand from the argument upon the part of the defendant, that the plea does state what the foreign law is. But this is not a clear and distinct statement, but a matter of course such as the plaintiff is entitled to. It is a well-known correct, inferential mode of stating the law. I think

**Quoted in Woodhouse v. Schultze.*

Indemnity Insurance v. Subscribers containing more than a single apportionment to close the argument.

Judgment for the plaintiff.

Wednesday, May 27.

TURNER v. W. BROWN.

Pleading—Replication.

Then an action of debt for money had and received; the defendant pleaded that he had given, and that the plaintiff had accepted and received, in satisfaction of an indenture, granting an annuity to the plaintiff. Held, a good replication, that the annuity deed had not been enrolled under 53 Geo. 3, c. 141; and that an action having been brought upon the annuity deed, the defendant had pleaded the non-enrolment, and that the plaintiff had thereupon elected that the said indenture should be null and void, and had entered a discontinuance in the action.

Debt—For money had and received, &c.

Plea—That after the accruing of the said several debts and causes of action, &c. and before the commencement of this suit, to wit, &c. the defendant sealed with his seal, and as his act and deed delivered, a certain indenture in writing (describing it), and thereby, after reading, &c. the defendant did give, grant, and confirm unto the said plaintiff, his executors, administrators, and assigns, one annuity or clear yearly sum of, &c. to be yearly issuing and payable out of certain lands to the plaintiff; and which said writing obligatory the defendant then delivered to the plaintiff, and the plaintiff then accepted and received the same of and from the defendant in full satisfaction and discharge of all the said several debts and causes of action, &c. Verification.

Replication (in substance).—That the said indenture was made and entered into after the passing of the 53 Geo. 3, c. 141; that the said annuity in the said indenture mentioned was granted for a pecuniary consideration; that no memorial of the said indenture was enrolled in the High Court of Chancery within thirty days after the execution thereof according to the said statute; that afterwards, and before the commencement of this suit, a large sum of money of the said annuity, for two years and a half following the date of the indenture, became due; that payment was demanded; that the defendant neglected to pay; that the plaintiff sued the defendant upon the annuity deed (the proceedings from the writ of summons were set out); that the defendant pleaded that no memorial of the indenture was enrolled in the High Court of Chancery within thirty days after the execution thereof; that the said indenture, in the said several pleas of the defendant, and in the said declaration of the plaintiff mentioned, was one and the same, and void in consequence of the non-enrolment of the memorial; that the plaintiff, in consequence of the said plea, elected that the said indenture should be null and void, as pleaded by the said defendant, and accordingly discontinued the action. Verification.

Special demurrer, on the grounds, amongst others, that the annuity having been taken in satisfaction cannot be avoided by matter ex post facto; that the replication is an argumentative traverse of the record and satisfaction; that it is a departure from the replication; that it is double, &c.

Channell, Serjt. (with him Pearson) in support of the demurrer.—This action is brought to recover the consideration money paid for the annuity, upon the ground of a total failure of consideration. It is admitted that where the annuity is void for want of the enrolment of the memorial, the consideration money is money had and received to the use of the annuitant. But it is only money had and received from the time that the grantor has elected to avail himself of the defect. (Churchill v. Bertrand, 2 G. & D. 648.) The replication should have denied the acceptance in satisfaction, because when the deed was accepted there was no cause of action for money had and received; besides, the plea begins "that after the accruing of the causes of action, &c." This replication is an argumentative denial of the acceptance in satisfaction. Either the plaintiff should have traversed or new assigned. (Cooper v. Godmond, 9 Blig. 748; Sard v. Rhodes, 1 M. & W. 152.)

Telford, Serjt. (with him Oyle), for the plaintiff.—This action for money had and received will not lie until the annuity deed is avoided. (Griffiths v. Bryan, 6 B. & C. 651; Scawfield v. Goulden, 6 East, 244; Huggins v. Coates, 5 Q. B. 232.) [CRESSWELL, J.] Does not the plea show that the plaintiff accepted an annuity in satisfaction? Then comes the replication, and discloses that, though apparently an annuity, it failed to be really so. How does it appear at all in the pleadings that the consideration money of the annuity deed is the money here claimed as having been had and received to the plaintiff's use? The plea seems, to me, to import a satisfaction of some antecedent debt. That apparent satisfaction is shown by the replication to have been worth nothing, and the defendant having made the indenture null, the plaintiff is driven back to his original cause of action.

TINDAL, C.J.—Upon the best consideration that I can give to the matter, this plea exhibits no real satisfaction. The replication shows that, by the consent of the defendant, what was intended to be a deed was actually so at all. The defendant has no

right to say to the plaintiff, "You accepted a certain supposed annuity in satisfaction," when it is the defendant's own act that the annuity deed is null.

The rest of the Court concurring,

Judgment for the plaintiff.

GUYARD v. SUTTON.

Pleading—Covenant.

The covenant of the plaintiff cannot be pleaded in bar to an action on a promissory note given to her during marriage, but is matter of abatement only. Assumpsit by the payee against the maker of a promissory note.

Plea in bar.—That at the time of the making of the said promissory note the plaintiff was the wife of John Francis Guyard, and that the only consideration for making the said note, or for payment of the amount thereof, was the loan of 400l. of the money of the said J. F. G. which was advanced by the plaintiff to the defendant without J. F. G.'s authority, and against his will; and that the plaintiff took and received the said promissory note, and always held, and still holds, the same, without the authority and against the will of the said J. F. G.; and that the plaintiff never had, nor has she, any property or right to the said note, or to receive payment of the amount of the same, or any part thereof, and that there never was any other value or consideration for making the said note or payment by the defendant. Verification.

Special demurrer upon several grounds: among others, "that the said plea, by its commencement and conclusion, purports to be a plea in bar, whereas it discloses matter pleadable in abatement only;" that the latter part of the plea is too general and improper; that the plea is double, &c.

Channell, Serjt. in support of the demurrer.—The right to sue depends upon the party with whom the contract is made. The husband might have sued alone, or with the wife, still as upon the face of the note the contract is made with the plaintiff, she may sue. The plea ought to shew distinctly that the husband is alive. Here it is consistent with the plea that the husband may be dead, and then the right of action would survive to the wife. If this be so, it is an informal plea of coverture. The allegation, that the money was the husband's money, furnishes no material distinction. The plea is also double: the first part of the plea to the words "holds the same without the authority and against the will of the said J. F. G." is a good answer in bar of the action; the last part also furnishes a good answer to the declaration, although it is informally pleaded. (Gutere v. Madeley, 5 M. & W. 423.)

Telford, Serjt.—As to the last point there is here only one entire defence. It might be consistent with the former part of the plea, if it stood alone, that the wife was the meritorious cause of action, and had some kind of authority to receive payment. [TINDAL, C.J. referred to Bendie v. Wakeman (12 M. & W. 97).] [CRESSWELL, J.]—This is matter pleadable in abatement. You give the plaintiff a better writ: As she is mentioned in the note, can she not sue? Would not the action on the note survive to her? If so, you do not shew that she cannot sue at all, but that she should have sued with her husband. You give her a better writ.] Mason v. Morgan (2 A. & E. 39) shews that the husband may sue alone.

TINDAL, C.J.—It appears to me that this is matter pleadable in abatement only. If the husband had died, the wife might have brought an action. If, whilst the husband is living, the plea says that she is married, it is no more than saying that she should have sued with her husband. On the authority, therefore, of Bendie v. Wakeman, there must be judgment for the plaintiff on this demurrer.

Judgment for the plaintiff.

SMITH v. SHIRLEY.

Pleading—Trespass—Felony.

Where to an action of trespass for breaking and entering the dwelling-house, the defence set up is a reasonable suspicion of felony against the plaintiff, and an endeavour to arrest him lawfully made by the defendant, it must appear expressly that the entry was made by the defendant, acting upon his suspicion, and with a view to nothing else than the capture of the suspected party reasonably supposed to be there.

Trespass: 1st count, for breaking and entering the dwelling-house: 2nd count, for assaulting the plaintiff, and taking him to a police station.

The plea set up a justification to both counts under a reasonable suspicion that the plaintiff had committed felony. It set out that a robbery had been committed at a particular place and time, and then enumerated a great number of circumstances throwing suspicion upon the plaintiff. The plea then continued, "that the defendant, well knowing the premises, and having good and probable grounds of suspicion that the plaintiff was guilty of the said felonious stealing, taking, and carrying away of the said goods and chattels, did, at the said time, when, &c. peaceably and quietly enter the said dwelling-house of the plaintiff, the outer-door thereof being then opened to him from within by a certain person, to wit, the mother of the plaintiff, and did then enter the same with

acertain peace-officer, to wit, &c. and did then give the plaintiff into the charge and custody of the said peace-officer, for the purpose of his being, and until he could be carried before some justice of the peace as charged, &c. and the defendant then, and in a reasonable time from entering the said dwelling-house, left the same, and conveyed the plaintiff therefrom, &c."

The plea was demurred to upon several grounds, which it is unnecessary to report. The Court considered that the plea was bad as an answer to the first count, for notwithstanding that the defendant entered the house for the purpose of arresting the plaintiff, or that there was reason to suppose that the plaintiff was there, or that there was anything connecting the entry of the house necessarily with the suspicion against the plaintiff.

Telford, Serjt. in support of the demurrer.

Channell, Serjt. (with him Brownock) in support of the plea; prayed leave to amend.

Leave to amend accordingly.

BUSINESS OF THE WEEK.

Friday, May 29.

The Court delivered judgment in the three following cases:—

HOLDEN v. LIVERPOOL NEW GAS AND COKE COMPANY.

Rule discharged. Fowler, P. O. v. Pice. Foster to the plaintiff. Fort and Kitching, Assignees, v. EYTON and AYNARD.

Rule discharged.

HILL v. KITCHING.—*Manning, Serjt. moved, pursuant to leave reserved, to enter a nonsuit, or for a new trial, on the ground of the improper reception of evidence. It was an action brought by a broker to recover his brokerage for procuring charterers. It was objected that it appeared that the plaintiff was not duly licensed as a broker. Then the main witness for plaintiff was one Craswell, who, it appeared, was to have half the profits of plaintiff's commission. It was urged, in the first place, that, under the proviso in 6 & 7 Vict. c. 85, s. 1, this witness was incompetent; in the second place, that he ought to have been a joint plaintiff. Lastly, it was contended that the evidence established a custom for the commission to be dependent upon the earning of freight, and that here, no freight being earned, no brokerage was payable. Rule to shew cause.*

WOOLLEY v. SMITH.—*Channell, Serjt. shewed cause. Byles, Serjt. in support of the rule.*

Argument adjourned.

Saturday, May 30.

DUNNOL v. WYDOUSE.—*C. Jones, Serjt. moved that the plaintiff might be at liberty to enter an appearance for the defendant, sec. stat. The copy writ had been left with the defendant's shopman, who had denied his master to the plaintiff's attorney, according to his master's direction. The shopman had since delivered the copy to defendant. No indorsement had been made on the writ pursuant to R. G. M. T. Wm. 4, r. 2. Lush's Practice, p. 324, was referred to. Rule to shew cause.*

WOOLLEY v. SMITH.—*Argument concluded. Cur. adv. vult.*

Monday, May 28.

PATENT v. BELCON.—*The Court delivered judgment.*

The defendant to shew liberty to amend on payment of costs, otherwise judgment for the plaintiff.

CLARIDGE v. HAINES and OTHERS.—*Sir Thos. Wilde, Serjt. moved to amend an order of Eris, J. by allowing to the defendant his costs under the interpleader summons issued, and by ordering the claimant to pay to the plaintiff the costs assessed by and subsequent to the making of his claim. Pitches v. Edey (6 Scott, 568) was cited. Rule to shew cause.*

Re JOHN TURNER, a lunatic.—*Channell, Serjt. moved to discontinue with the concurrence of the lunatic to a deed to be executed by his wife, for barring the wife's right to dower, upon a sale of certain estates of which a sale had been ordered by the Court of Chancery. He cited 3 & 4 Wm. 4, c. 74, ss. 71, 72, 73, 91.*

RICKY v. CRESTWICK and ANOTHER.—*Channell, Serjt. moved for a new trial on the ground that the verdict was against evidence. Cur. adv. vult.*

WILSON and ANOTHER v. BARRETT.—*Byles, Serjt. moved for a new trial upon the ground that the verdict was against evidence. Rule to shew cause.*

SUTTON v. PAGE.—*Channell, Serjt. moved to set aside the demurrer to the replication to the second plea as frivolous. The declaration was upon a bill of exchange for 120l. The plea was, that the plaintiff and defendant had accounted together of and concerning the said cause of action in the declaration mentioned, and all other claims and demands then being between the plaintiff and defendant; and that upon such account 20l. was due, which had since been paid to the plaintiff. The plaintiff replied, traversing that part of the plea printed in inverted commas in the grounds. The defendant demurred specially on the ground that the traverse was too large. Rule to shew cause.*

CRESSWELL v. COOPER.—*Channell, Serjt. (with him Byles) shewed cause. Byles, Serjt. in support of the rule. Rule discharged.*

WATSON v. BENNIS.—*Sir Thos. Wilde, Serjt. moved for a rule to shew cause why the Master should not review his taxation. The plaintiff had, at the commencement of the suit, obtained a judge's order to hold the defendant to bail. The cause had been referred to a barrister, who, by the order of reference, was empowered to entertain the claim of the defendant to damages from the plaintiff for being maliciously held to bail. The last meeting before the arbitrator had been devoted solely to this inquiry. The arbitrator had found that neither party had cause of action against the other. By the order of reference, the costs were to abide the event. The Master had disallowed the plaintiff the costs of the last meeting. Rule to shew cause.*

COLDHAM v. SHOWLER.—*Byles, Serjt. moved for a new trial, upon the ground of misdirection. The action was on a special agreement by defendant to be answerable for performance, by defendant's daughter, of another agreement. The two agreements were on the face and back of the same paper; that upon which the action was brought was not written until after the other was signed, and referred to it. It was objected that this agreement was within the 6th sec. of the Statute of Frauds, and that it was void, as it did not sufficiently disclose the consideration. (Wain v. Wainwright,*

of the said which was for goods supplied to the company after the 7th of July.

Monday, May 20. **NEW TRIAL.** **GRANT & MADDOX.**
In an action by A., an operative singer, against the manager of a theatre for arrears of salary, the plaintiff relied on a written contract, by which the defendant engaged the plaintiff for three years certain, and agreed to pay her a certain sum per week in the first year, which was to be increased in the second and third years. Held, that evidence might be given on the part of the defendant to show that in a contract of this kind between theatrical people payment was only to be made to the actor on those nights on which the theatre was open.

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a general custom. It was never sought by this evidence to alter or vary the written contract, but merely to explain the meaning of the terms used in it. The rule of law is well laid down in *Roscoe on Evidence* (p. 13) as to parol evidence being admissible to explain mercantile contracts—"Where the parties have contracted in writing, in many instances parol evidence is admitted to prove a usage affecting the contract, on the ground that where such usage exists the parties must be taken to have made their contract subject to its operation; thus, in the construction of mercantile contracts, parol evidence is always admitted, to show the sense in which, according to the custom of merchants, such contracts are to be understood." Now the contract relied on, in this case, was in the nature of a mercantile one, and the evidence given was merely to show the usage, and comes within the principle of the case of *Smith v. Wilson* (3 B. & Ad. 728), where parol evidence was admitted, to show that in a lease of a rabbit warren, by the custom of the country, the word "thousand" means twelve hundred when applied to rabbits. Then it is said that there is a misdirection, because the learned judge told the jury, in a part of his summing up, that if they believed the defendant's witnesses, they had better find for the defendant; even if this were so, there would be no misdirection; but, taking the summing up altogether, it is contended that all the questions were substantially left. Cases cited: *R. v. Stoke-upon-Trent* (6 Q.B. 303); *Cochran v. Retberg* (3 Esp. 121); *Bold v. Rayner* (1 M. & W. 343); *Chevrard v. Augstein* (Peak. 43).

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of co-conspirators are evidence against those who conspire with them, and that a declaration accompanying an act is a part of the act itself. The rule was therefore refused.

BRAMISH v. OWENS.

Time is of the essence of a contract or agreement for the sale of land at law; and if the conveyance is not completed on or before the day specified in such contract, the vendor may recover back his deposit-money in an action for money had and received.

In this case the plaintiff contracted for the purchase of a certain landed estate from the defendant. It was agreed and stipulated by the written contract between the parties that the abstract of title should be delivered for the consideration of the plaintiff by a certain day; that the conveyance should be completed by the defendant, and the remainder of the purchase-money (in addition to the money actually paid by way of deposit) paid by the plaintiff on or before a certain other day named in the contract; and it was further agreed that, if the purchase should not be completed on or before such latter day through any cause, other than default of the defendant, the plaintiff should pay interest on the purchase-money at the rate of 5l. per cent. having, however, in this event, power to enter into possession of the premises. The deposit-money having been paid, and the abstract of title delivered by the defendant within the specified time, it was proved that the conveyance was not completed by reason of the refusal of certain parties interested to join in or consent to the conveyance. On this state of facts, the main question now brought before the Court by *Jervis, Q. C., Cropper, Q. C., and Bell*, in opposing the rule obtained by *Watson, Q. C.* to enter the verdict for the plaintiff non obstante verdicto on that count in the declaration, which was in the common form, for money had and received, was, whether such count could be maintained for recovery of the deposit-money under the circumstances stated, or, in other words, whether time can be regarded at law as of the essence of a contract for the sale of land. It was contended that the plaintiff could only be entitled to recover on the special agreement, and that money had and received would not lie, inasmuch as there had been no rescission of the contract, and no failure of consideration. It was argued that a contract for the sale of land can only be abandoned, and rescinded by a subsequent agreement in writing, under the Statute of Frauds, and that, in order to enable the plaintiff to treat the contract as rescinded and abandoned in the absence of any subsequent agreement to that effect in writing, it was incumbent on him to show that a reasonable time for preparing the conveyance and completing the purchase had elapsed prior to his so treating it. The following cases were cited on behalf of the defendant: *Clarke v. King* (Ry. & Mood. 394); *Marshall v. Lynn* (6 M. & W. 109); *Bell v. Howard* (9 Mod. 302); *Johnston v. McAllister* (Jones's Exch. R. (Irish) 503).

Watson, in support of his rule, cited *Hipwell v. Knight* (1 Yo. & Coll. 401.); *Metcalf v. Fowler* (6 M. & W. 830.)

By the COURT.—Time was clearly of the essence of this contract; the plaintiff was consequently entitled to recover the amount of his deposit as money had and received; the conveyance not having been completed on the day agreed upon. The rule to enter the verdict for the plaintiff for such amount must therefore be made absolute.

Wednesday, May 27.

THE MAYOR, &c. OF SALFORD v. ACKERS.
Construction of local Act—Mode of pleading where such Act contains a proviso co-extensive with its general clauses.

Crompton appeared to support the demurrer to the declaration in this case. The question entirely turned on the construction of the local Act 11 Geo. 4, c. 8, intitled "An Act for better cleansing, lighting, watching, regulating, and improving the town of Salford, in the county palatine of Lancaster." By the 46th and other subsequent sections of this Act, the commissioners appointed for carrying its provisions into execution, are, amongst other things, intrusted with general powers to light, pave, drain, &c. the streets. By the 82nd section, the commissioners may cause new pavements, &c. to be made at the charge of the owners or occupiers of houses, &c. but by the 83rd section it is provided, that, previously to so doing, they shall give notice to such occupiers, requiring them to make such pavements, &c. and in case any such owner or occupier shall neglect or refuse so to do for the space of six calendar months, that "then, and in such case, it shall be lawful for the said commissioners under this Act, and they are hereby required, to cause the same to be done, and to recover the costs, charges, and expenses thereof from such owner or occupier, in case of refusal to pay the same, in such manner as herein is mentioned;" that is, as appears by the latter part of the 83rd section, "by action at law in any of his Majesty's courts at Westminster, or Court of Common Pleas at Lancaster, or in any other court or courts whatsoever." The point raised by the demurrer was, that the declaration ought to have contained an aver-

said that notice had been given to the defendant under the said notice, and that the defendant had not complied with such notice, and that without such an averment, the declaration did not, reference being made to the Act of Parliament, show that any cause of action had accrued for the recovery of the costs and charges of giving, sending, &c. to the commission. *Crompton* argued that the giving of the notice was a condition precedent to the right of the commission (the plaintiff) to exercise the power vested in them by the Act, the duty of giving such notice being co-extensive with their power, and no commission is possible in which the commission could lawfully act without having given notice. In support of his argument, he cited *Partridge v. Cole* (2 Bland. R. 519); *Co. Litt. 308; 1000 b. 28; 228, 289; Com. Dig. Condition (A 2); Stanger v. Ruddy* (12 M. & W. 736); *Talbot v. Wilson* (12 M. & W. 800); *Com. Dig. Pleader (E 176); Englefield's case* (7 Rep. 75); *Steele v. Smith* (3 B. & Ald. 94); *2 Hale, P. C. 170*; the judgment of Lord Tenterden in *Forster v. Owens* (6 B. & C. 483); *Clayton v. Kynaston* (Saik. 573; *Flowd. R. 1049*); &c.

Watson, Q.C. for the plaintiffs, argued that the proviso, inserted in the Act, ought to have been pleaded, according to the rule, that where there is a general clause in an Act of Parliament, and afterwards a separate and distinct clause, which has the effect of taking out of the general clause something which would otherwise be included in it, a party relying upon the general clause may set out that clause only in his declaration, without noticing the separate and distinct clause which operates as an exception. He further argued that the proviso in the above-mentioned Act was as separate and distinct from the preceding sections under which the general powers are given, as if it had occurred in a subsequent statute, and remarked on the difficulty to which the plaintiffs would be exposed if an averment of notice was required as contended for. *Watson* was proceeding to comment on the cases cited in support of the defendant, when he was stopped by a strong intimation that the Court considered the declaration to be good. He therefore merely referred to 1 *Wm. Bland. (6th ed. 262, b. note 1)*, and *Jones v. Allen* (1 Dord. Rayn. 119).

The Court finally allowed *Crompton* time to consider whether he would amend, on the understanding that *Watson* should be heard in continuation, if the defendant declined to amend.

BUSINESS OF THE WEEK.

Friday, May 22.

WILLIAMS v. BUCKLOCK.—*Hoggins* showed cause against a writ obtained by *Crompton* on behalf of the defendant in this case, calling on the plaintiff to show cause why the Master should not review his taxation of costs. *Cur. adv. vult.*
ABRAHAM v. HARRISON.—This was an action of assumpsit for the due acceptance and payment of two bills of exchange. *Crompton* showed cause against the rule nisi obtained by *Watson* in this case to enter the verdict for the defendant, or for a new trial. *Cur. adv. vult.*

Saturday, May 23.

SHERWOOD v. CLARK.—*M. Chambers, Q.C.* and *Bovill* showed cause. *Martin, Q.C.* contra. *Cur. adv. vult.*
DANIELS v. FIELDING.—*Jervis, Q.C.* and *Humphrey, Q.C.* showed cause. *Martin, Q.C.* and *Cowling*, contra. *Cur. adv. vult.*

C. BRYAN v. BRIANT AND OTHERS.—*Greenwood* moved for leave to add a plea which had been struck out by Mr. Baron Rolfe at chambers, on the ground that it amounted to the general issue. This it was now contended it did not, but came within the principle of *McGregor v. Gregory* (11 M. & W. 267). *Rule nisi.*

Sunday, May 24.

ATTORNEY-GENERAL v. OSBORNE.—*M. Chambers* moved in this case for a new trial, on the ground of the improper rejection of evidence. The defendant had been a party in the conspiracy to defraud the Customs, shortly stated in the case of *The Attorney-General v. Sellers*, *supra*. *Rule refused.*

FRANKS v. PATER.—*Hoggins* moved for a new trial in this case, on the ground that the verdict was against evidence. *Rule to show cause.*

WILSON v. GRAY.—*Duncan* moved in this case for a new trial, on the ground that evidence had been improperly rejected. The Court granted the rule nisi for a new trial, on terms of bringing the money into court, and on payment of costs. *Rule to show cause.*

HARRIS v. COLLEY.—In this case the rule for a new trial was made absolute without argument. *Rule absolute.*

GOLDICUTT v. BRADY.—This was an action for breach of promise of marriage, in which a verdict had been found for the plaintiff, and *Watson, Q.C.* and *Lush*, now showed cause against the rule obtained by *Telford, Serjt.* for a new trial, on the ground of surprise. After some discussion respecting the sufficiency of the affidavits on which the rule was moved, the Court made the rule absolute, the defendant bringing the money into court, paying the costs, and accepting notice of trial for the following term. *Rule absolute.*

Monday, May 25.

SPECIAL CASE.

KIRSDALE v. MORRELL.—This case followed the decision in *Young v. Smith* (12 M. & W. 31), and was not argued. *Judgment for the plaintiff.*

WATKINS v. THE GREAT WESTERN RAILWAY COMPANY.—In this case, which was an action of debt on a railway bond, the Court, without hearing *Widdowson* in support of the defendant (*Hoggins*, contra), gave the defendants leave to stand on payment of the costs of the amendment, but not the costs of arguing the demurrer, otherwise. *Judgment for the plaintiff.*

PATTON v. PERIN.—This was a special case by order of Nisi Prius, and will be reported when judgment is given by the Court. *Smythes*, for the plaintiff. *Keeble*, for the defendant. *Cur. adv. vult.*

MAIL COURT.

Friday, May 22.

(Before Mr. Justice WRIGHTMAN).

BOOSEY v. DAVIDSON.

When a party is in an action for infringing a copyright, pleads and gives a notice under the 5 & 6 Vict. c. 45, s. 18, that the plaintiff was not the author, publisher, &c. he must state specifically who is the author, &c. and when and where the work was first published, &c. *Crompton* showed cause against a rule obtained in a former Term by *Bovill*, calling upon the defendant to show cause why the notice of objections, on which he relies, should not be amended, with costs. This was an action brought against the defendant for pirating the opera of *La Sonnambula*, which the plaintiff claims to have the sole right of publishing in this country. By the 5 & 6 Vict. c. 45, s. 16, it is enacted, "that in any action for printing any such book, &c. the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action, and if the nature of his defence be that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person whom he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when, and the place where, such book was first published, otherwise," &c. The notice given pursuant to this Act stated a great variety of objections; amongst others, that at the time of the committing of the supposed grievance, the plaintiff was not the proprietor of the said work, but one Bellini, or one Roscior, or some one to the defendant unknown. To this it was objected that the words "some one to the defendant unknown" were too general, and not in accordance with the Act, which requires the actual name of the party to be stated. Mr. Justice Wrightman, being of this opinion, directed these words to be struck out. Again, it was stated in another objection, that the said work was first published in Milan in the year 1801. To this it was objected that the month of the publication as well as the year should be stated. His lordship, however, thought this sufficient. Another objection was, that the work was not first published in the British dominions. To this it was objected that it was too general, and should have gone on to have stated when and where published, and by whom. His lordship being of this opinion, and that such a notice of objection was in direct contravention of the Act, ordered it to be struck out. There were in all thirteen objections stated in the notice, to very many of which exceptions were taken. Upon the entire notice his lordship observed, that it seemed to him that the Act imposed upon a defendant this obligation: that if he said the plaintiff was not the proprietor of the work, he should say who is; and that if he says that this is not the first publication, he should state when and where it was before published. His lordship recommended the respective counsel to go privately over the objections, and amend them conformably to these suggestions.

BURY v. PERIN.

When a cause is pending in the Common Pleas of Lancaster, and is tried before the Registrar, by virtue of a writ of trial issued out of that Court, a motion for a new trial may be made in any one of the common law courts in Westminster Hall.

Arnold moved for leave to enter a nonsuit, or for a new trial, in a case tried before the deputy Registrar of Liverpool, by virtue of a writ of trial issued out of the Court of Common Pleas of Lancaster. He had some doubt, however, as to whether or not he was correct in making the motion in this court, or should make it before Mr. Justice Patteson or Mr. Justice Coleridge, the judges who went the last northern circuit.

His lordship having consulted with the Master, and referred to *Smith v. Taylor* (1 Dowl. & L. 874), said that the motion was correctly made in this court, as indeed it would be in either of the common law courts.

Arnold then proceeded, but not being prepared with a copy of the Registrar's notes, his application was postponed.

Saturday, May 23.

NEWTON v. STEWART.

Motion to set aside a plea in abatement of non-joinder. *Ball* moved for a rule calling upon the defendant to show why the plea in abatement herein, and the affidavit in support thereof, should not be set aside, and why the defendant or his attorney should not pay the costs of all the proceedings subsequent to the plea,

with the costs of this application, unless the plaintiff should not be at liberty to sign judgment. In this case the defendant had pleaded in abatement the non-joinder of twenty-four other parties, and the plea stated that sixteen of the parties were within the jurisdiction of the Court, and eight were not. It also described some of these parties by the initials only of their Christian names, and the Christian names of one was altogether omitted. It was also alleged that the plea reciting the plea was false in fact. It was now contended that this plea was bad, because, first, a plea in abatement can only be available where all the parties are within the jurisdiction; secondly, the initials of the Christian names were used, the 3 & 4 Wm. 4, c. 44, s. 13, not applying to any amount of this nature; thirdly, the affidavit was false in fact. (*Wheatley v. Goldney*, 9 Dowl. 1019; *Lamb v. Smith*, in the Exchequer last Term.) *Rule nisi.*

Monday, May 25.

(Before Mr. Justice WILLIAMS.)

RE BRIMS.

Motion against an attorney, to whom a writ had been transmitted for service, requiring him to return it or an affidavit of service.

Lush moved for a rule calling upon a Mr. Byers, an attorney of this court, to return a writ of summons, and to pay the costs of this application. From the affidavit it appeared that a writ of summons had been transmitted to Mr. Byers for service in the country on the 25th of November last, which he acknowledged to have received; that since that period various letters had been sent to him requesting him to appear and that he had done, and one on the 25th of March last, peremptorily requiring him to return an affidavit of service or the writ itself, or say what he had done; that to these letters no reply had been returned. *Relaxatio.*

Tuesday, May 26.

DENTON v. MAITLAND AND OTHERS.

Where proceedings had been commenced in the Lord Mayor's Court against a provisionally registered railway company, and a large sum of money belonging to the company attached in the banker's hands; and where an action had subsequently been brought in one of the superior courts against some of the committee of the said railway company, the Court refused to stay the latter proceedings.

Lush moved for a rule, calling upon the plaintiff to show cause why this action should not be stayed, or the Foreign attachment withdrawn from the Lord Mayor's Court. It appeared that proceedings had been commenced in the Lord Mayor's Court against the Gloucester and Abergystwith Railway Company, and that a large sum of money, between 3,000 and 4,000*l.* of the company had been attached in the hands of the bankers. No further proceedings had taken place in the Lord Mayor's Court, but an action had subsequently been commenced by the same plaintiff against the defendants, who were three of the provisional committee of the said railway. It was now contended that, inasmuch as these two actions were against the same parties, the proceeding by two actions at once was vexatious, and that, if the plaintiff insisted upon continuing his action in this court, at least he ought to abandon his attachment of the money. (*Miles v. The Inhabitants of Bristol*, 3 B. & Ad. 945).

Maynard, who showed cause in the first instance, insisted that as the Court had no jurisdiction to stay the proceedings in an inferior Court, it would not interfere to stay the proceedings in the present action, unless they were clearly vexatious and oppressive; that the present action is against different parties to those in the Lord Mayor's Court, the defendants in the latter Court being the Company, and in this, individual committeemen; that the proceedings at present are merely against the guarantee, and that the company by appearing and putting in bail can obtain the money attached. (*Souter v. Dunsford*; *Maynard v. Hardy*, 4 Bing. N.C.; *Denton v. Maitland*); that the mere pendency of another action is no ground for setting the proceedings aside. (*Cumtong v. Hogarth*, 2 Dowl. & L.; *Ogle v. Smith*, 6 Trant.)

Lush, in reply, contended that the cases cited did not apply to this one; that the parties in both Courts are really the same; that as no real company exists, the plaintiff cannot ultimately obtain the sum they have attached, and that the being compelled to appear and put in bail would still be a great hardship.

WILLIAMS, J. thought, as the two proceedings did not appear to be against the same parties, or for the same object, and were altogether independent of each other, he was not called upon to interfere, particularly as there was no authority in point upon the subject. *Rule refused.*

BUSINESS OF THE WEEK.

Friday, May 23.

Dox dem. GORDON v. DODDST.—*Ogle* moved to dissolve the peremptory undertaking herein. *Rule nisi.*

REG. v. THE CORPORATION OF LETCHWORTH.—*Watson* moved to enlarge the time for making the return to the mandamus herein. *Rule granted.*

WILKINS v. OWENSON.—*Wooler* moved to enlarge the property undertaking herein. *Rule nisi.*
SMITH v. MITTON.—*Allen* moved for leave to enter a suggestion on the roll, under the Birmingham Town of Reclamation Act to disprove the plaintiff's case. *Rule nisi.*
MURPHY v. GRAY.—*Brett, Q.C.* moved to enlarge the property undertaking herein. *Rule nisi.*
ELLIS v. SMITH.—*T. W. Saunders* moved for judgment as a case of a consult herein. *Rule nisi.*

REG. v. LANGLEY.—*Whateley, Q.C.* moved to enlarge a writ third two servants to the 5th of June. *Rule nisi.*
SHAW v. RUSSELL.—*Addams* moved to set aside the rule for entering up judgment for the defendant herein, and to require the defendant to the special paper. *Rule nisi.*
DAY v. PERRE.—*Arnold* moved for a new trial, or for leave to enter a nonsuit herein. *Rule nisi.*
SHAW v. RUSSELL.—*T. W. Saunders* moved for judgment, as in case of a consult. *Rule nisi.*
LIMBORN v. THURNE.—*Brown* moved for a rule to review the Master's taxation herein. *Rule nisi.*
REG. v. FOSTER.—*Warren* moved to make absolute a rule for a criminal information, no case being shown, and the defendant when last seen saying that he was going abroad, and should not show cause against the rule. *Rule absolute.*

KIRBY v. LOVINGSTON.—*Miller* moved for judgment as in case of a consult. *Rule nisi.*
BOLTON v. FRITCHARD.—*Peacock* moved for a new trial in this case, which was tried before the Sheriff of Gloucestershire, and a verdict found for the defendant. *Rule nisi.*
REYNOLDS v. DE VERA.—*Dr. H.H.* moved for better judgment herein. *Rule nisi.*
RE PARTS MUSSELLWHITE.—*Whitmore* showed cause against a rule for a mandamus compelling the commissioners for the improvement of the town of Derby to proceed to assess, at the next quarter sessions, compensation for two houses taken to by them. *Whateley, Q.C.* contra. *Rule absolute, in order that a return may be made.*

WALKER v. THE LONDON AND BLACKWALL RAILWAY COMPANY.—*E. James* moved for a mandamus compelling the above company to pay two sums of 175*l.* and 48*l.* 10*s.* 10*d.* the costs of the applicant in respect of the assessment of damages. *Rule nisi.*
REG. v. THE TOWN COUNCIL OF NORWICH.—*Palmer* moved for an attachment against all the members of the above town council, for not making a return to a mandamus returned on the 15th of April last. *Rule nisi.*
ROBINSON v. WILLIAMS.—*Bell* moved to set aside the award herein. *Rule nisi.*
ASSOCIATED SHELWELL.—*Duncan* moved to discharge the rule absolute obtained herein on the last day of last term, on the ground of surprise and fraud. *Rule nisi.*
REG. v. THE LORDS AND STEWARDS OF THE MANOR OF WIMBORNE BECK, NORFOLK.—*Reynolds* moved for a mandamus compelling the above parties to accept a surrender. *Rule nisi.*
STOKES v. COTTELL.—*The Solicitor-General* moved to set aside the interlocutory judgment signed herein. *Rule nisi.*
BROWN v. EYRE.—*Horn* moved to set aside the appearance entered by the plaintiff *res. stat.* on the ground that the defendant had never been served with the writ of summons. *Rule nisi.*

Bankrupt and Insolvent Courts.

COURT OF REVIEW.

Wednesday, May 27.

RE PARTS NICHOLLS, re NICHOLLS.
Assigning fiat—1 & 2 Wm. 4, c. 56, ss. 46 and 55. *Where assignees have been appointed, the right of the public to the 20*l.* and 10*l.* payable under the 1 & 2 Wm. 4, c. 56, ss. 46 and 55, attaches; and although there be no assets, these sums should be paid before the fiat is annulled.*
*This was the petition of the bankrupt to have the fiat annulled with the consent of the creditors. Assignees had been chosen, but there were no assets. Upon application being made to the Commissioner for the ordinary certificate that the petitioner had surrendered and submitted to be examined, and that the consenting parties were the only creditors who had proved under the fiat, the Commissioner refused to give it, unless the fees of 20*l.* and 10*l.* required by the 1 & 2 Wm. 4, c. 56, ss. 46 and 55, were paid.*
Wright, for the petitioner, cited *Re parte Diamond, re Diamond* (1 De Gex, 143).
THE CHIEF JUDGE said, that as assignees had been chosen, the right of the public to the 20*l.* and the 10*l.* had attached. He had never knowingly or intentionally deprived the public of these fees, where assignees had been appointed; but he had never said no case would arise which would exempt the party from payment.

COMMISSIONERS' COURTS.

Thursday, May 28.

(Before Mr. Commissioner GOULDSBURN.)

Re BACON.

Where a creditor has opposed an insolvent successfully and subjected him to punishment, the same creditor cannot be again heard in opposition to him on grounds within his means of knowledge at the time of the first opposition.

The insolvent came up to claim a protecting order, under the 28th section of the statute 7 & 8 Vict. c. 96. *Cooke* appeared as counsel for the insolvent, and *Norton* for the opposing creditor, who, it appeared, had been heard in opposition to the insolvent, when he first came before the Court in March, 1845; he proceeded to urge several matters against the insolvent which had not been urged by him on any former occasion.

HIS HONOUR said, that the rule by which he should abide in all similar cases was, that when a creditor had once appeared to oppose an insolvent, and had obtained the judgment of the Court adversely to such insolvent, who had undergone the punishment contemplated by the statute in respect of the misconduct proved against him, namely, imprisonment for debt, or the liability to it, for such a period as the Court, under the circumstances, thought just and sufficient, the same creditor could not be again heard in opposition to him on grounds within the knowledge, or the means of knowledge, of such creditor at the time when he first opposed the debtor. A contrary course would lead to the greatest injustice and vexation towards a debtor, and the practical result would be, that he would be deprived of all the benefits contemplated by the Act. Looking at all the circumstances of the insolvency (as the statute directed), the justice of the case had been satisfied by the length of time the insolvent had been without the protection of the Court, viz. one year and two months, ten weeks of which he had suffered imprisonment.

The protecting order was then granted.

Ecclesiastical Courts.

ARCHDEACON COURT.

Friday, May 22.

CORNWALL and ANOTHER v. WOOD.

Church-rates.

Where a party is dissatisfied with the decision of the chairman of the vestry meeting, as to the majority, it is his duty to demand a poll, and the objection that the chairman had wrongly decided cannot be taken, if that duty be neglected.

This was a question as to the validity of a church-rate made in the vestry of the parish of Elstead, in Surrey, May 6, 1844. The cause was brought here by letters of request from the commissary of Surrey. The objections to the validity of the rate were twofold. First, that the rev. chairman, Mr. Bluck, was not properly elected, his nomination not having, as alleged, been seconded; and, secondly, that there was a majority against the rate of sixpence in the pound, though the chairman declared it to have been carried. It is stated that eleven parishioners held up their hands against the rate, and but five or six for it. No poll was demanded, nor any protest regularly entered into against it.

ADDAMS, Dr. appeared in support of the validity of the rate. A scheme had been got up by the defendant and a cheque to invalidate the rate in question. The parishioners would no doubt have found out that they had dug a pit into which they had fallen, and they must bear the consequences. Mr. Wood was summoned before the magistrates, and refused to pay the amount of the rate, which amounted to 2*l.* on the ground of its illegality. The bench of magistrates then dismissed the case, on the ground of want of jurisdiction. The Court was prayed by Dr. Addams to pronounce for the rate.

HOGGARD, Dr. appeared for Mr. Wood, the party proceeded against, and contended that the parishioner for whom he appeared did not oppose the rate in question for any vexatious or factional motives, but solely to have his right established, and not to be compelled to pay an illegal rate. The magistrates were clearly of opinion that there had been some irregularities, and that the rate was void *ab initio*. Elstead was a small rural parish, and the perpetual curate was not present, and the Vestry Act conferred the power (the incumbent not being present) of appointing a chairman. The first point to be adjudicated upon was if Mr. Bluck was duly seconded. The Rev. Mr. Bluck asserts that his nomination was seconded. There was an objection made by Mr. Wood to Mr. Bluck taking the chair, as he thought Captain Cornwall (the churchwarden) ought to have presided. The parties proceeded against Mr. Wood were bound to show that the rate was legally made; and did the parishioners agree in the rate? The show of hands was against the rate.

THE LEARNED JUDGE went over the facts, and pronounced for the rate with costs. The party proceeded against ought to have demanded a poll if he was dissatisfied with the decision of the chairman of the vestry.

THE LEGISLATOR.

Summary.

THE week has been barren of proceedings interesting to Lawyers. The report of the

Lords' Committee on the Disruption of Law and the coming Local Courts Bill are not elsewhere.

Special Statement.

PRIVATE BUSINESS TRANSACTIONS.

BILLS READ A FIRST TIME.

Friday, May 28.

Great Northern and Great Eastern Railway.

Dublin and Kingston, &c. Railway.

Monday, May 25.

Cullen's Estate.

Thomson's Charity Estate.

BILLS READ A SECOND TIME.

Friday, May 28.

Marquis of Donegal's Estate.

Monday, May 25.

Sir G. Dunbar's Estate.

Captain's Discharge.

Viduan's Estate.

Grand Junction Railway (Showhill Branch).

Thursday, May 26.

Midland Great Western of Ireland (Liffey Branch and Longford Derivation Railway).

BILLS READ A THIRD TIME AND PASSED.

Friday, May 28.

Buckinghamshire Railway (Oxford and Slough Stations).

Rye and Barrow Drainage.

Westminster Road.

Greenlaw Roads.

Port Ellen Harbour.

Cartholm Batts.

Gravesend and Milton Waterworks.

North British Railway.

Marquis of Donegal's Estate.

Monday, May 26.

Kendal Union Gas and Water.

Great Grimsby and Sheffield Junction Railway.

Great Western and Uxbridge Railway.

Great Western and Weymouth Railway.

Chard Canal Railway.

Manchester Markets.

Great North of England Railway (Boroughbridge Branch).

Ditto (Bedale Branch).

North Western Railway.

Warrington Waterworks.

Northumberland Docks.

Tuesday, May 26.

Bristol Waterworks (by Order).

Slamannan and Borrowstouness Railway (by Order).

Boston, Stamford, and Birmingham Railway (Stamford to Wharfedale).

Caledonian Insurance Company.

Hamilton New Gas.

Thursday, May 28.

BILLS READ A THIRD TIME.

London and South Western Railway; ditto South Western Railway, Hampton Court Branch; London and Brighton Railway, Wandsworth Branch; Golden Inclusion; Dundee and Arbroath Railway Extensions; Dundee and Perth Railway Amendment; Edinburgh and Northern Railway, Dunfermline Branch; City of London Coal Market and Improvement; Liverpool and Harrington Waterworks; Harlepool Gas and Waterworks; Great North of Scotland Railway.

SEASONAL PRINTED PAPERS.

Bankruptcy and Insolvency—A Proposal for the Amendment of the, by Mr. Manning.

Bills—Service of Heirs—Scotland.

Crown Officers, Scotland.

Corresponding Societies and Lecture Rooms, amended.

Places of Worship, &c. Sites, Scotland.

(2) Poor Removal—Further Return.

Cornwall and Lancaster Duchies—Account.

Miscellaneous Services—General Abstract.

Miscellaneous Estimates—Nos. 1—7.

Canada—Paper.

Public Income and Expenditure—Account.

East India—Paper.

Annuitants—Return.

Exchequer Bills, Public Works—Return.

Distress, Scotland—Return.

Ship Terrible—Report of Capt. Ramsay.

Mortmain—Return.

Railway Bills Classification—Fifteenth Report.

New Zealand—Copies of Despatches.

West India Colonies—Paper.

Railways and Canals Amalgamation—Second Report.

Public General Acts—Cap. 13, 14, 15, 16, and 17.

Experimental Squadron—Reports.

Bank of England—Return.

(Session 1845). Pensioners (Army), &c.—Return.

HOUSE OF COMMONS.

THE POOR REMOVAL BILL.

MONDAY, May 25.—In reply to a question from Captain PROBERT, Sir JAMES GRAHAM said that on early a day as possible would be fixed for the Poor Removal Bill; but although it was on the votes for Friday next, he could not give a pledge that it would be brought forward that day.

THE MAGISTRATE.

Summary.

No incident relating to the admission of the law demands special notice. The subject of Appeal in Criminal Cases still attracts occasional letters in the news-papers. We present one of these, because we think we can recognise the hand of the

writer; and if it be as we suspect, there is no man more competent from practical experience to exhibit the necessity for such an appeal. For some of the facts stated we can vouch from personal knowledge.

AN APPELLANT JURISDICTION IN CRIMINAL CASES.

TO THE EDITOR OF THE MORNING HERALD.

SIR,—A letter appears in the *Times* of this morning, advocating the adoption of an appellant jurisdiction in criminal cases, and reflecting somewhat on the Solicitor-General for not having, before this, introduced a bill on the subject, to do which he obtained leave of the House of Commons some time since. I am quite sure the Solicitor-General is not one to undertake a matter of this sort, and then abandon it from any difficulties in the way; and I have every reason to believe, Sir, that the bill in question will be shortly introduced for the consideration and decision of the legislature.

As the subject is a very important one, affecting as it does the administration of justice, perhaps you will allow me, through the medium of your valuable journal, to offer a few observations respecting it, in favour I ask the more readily, as I shall be expressing not only my own opinion, but the well known opinion of many of the ablest and most experienced practitioners of our criminal courts.

As the law is now administered, in all civil cases, there is an appellant jurisdiction from the *Nisi Prius* Court, by means of which any error or mistake committed in a trial there may be rectified. Thus, if the judge admits evidence he ought not to admit, or lays down that as law which is not so, or if the jury return a verdict under the influence of some prejudice, manifestly opposed to what the verdict ought to be, in either of these cases justice may be ultimately obtained to the party wronged by an application to an appellant court.

Now, no such appeal lies in criminal cases. It matters not what difficulties surround the trial, nor what are the circumstances under which it takes place, the decision arrived at by such trial is a final one, and cannot under any circumstances be set aside or shewn to be erroneous.

The question now agitated is, whether the same rule which exists in reference to civil cases ought to prevail with regard to criminal cases also.

Common sense would seem to decide this in the affirmative, as one can hardly doubt, that more ready means should be at hand, if possible, to correct a mistake, where that mistake may affect the lives of many parties, than where it can only affect some mere pecuniary interest. Every thing that can be urged against an appellant jurisdiction in criminal cases may be urged with equal force and propriety against the same jurisdiction in civil cases; and the legislature ought, therefore, to do away with an appellant jurisdiction altogether, or allow it in criminal as well as civil cases.

That this is an important matter, deserving of the most serious consideration, is proved by the facts, that it has been taken up by so justly eminent and experienced a lawyer as the Solicitor-General. In addition to this, I can take upon myself to say, that it is an opinion entertained by many of the most practical and experienced men at the bar, that great injustice has been done, and always will be done, for the want of an appellant jurisdiction in criminal cases.

Some cases are stated in the letter I have referred to as illustrating the necessity of such a tribunal. I will close this letter by giving the outlines of one which occurred to myself but a few months since. I was called upon to defend a man who was charged with uttering a bill of exchange, knowing the acceptance to be forged. My brief was put into my hands but a few minutes before the trial was called on, so that I was unable to make myself master of the facts of the case. The evidence against the prisoner was that he had passed a bill of exchange, the hand-writing of the acceptor—who was a relative of the prisoner, but too ill at the time of the trial to be brought into Court. Upon this evidence, together with some trifling suspicious circumstances, the jury convicted the prisoner, who was sentenced to be transported for ten years.

From some communications made to me after the trial I was led to doubt the man's guilt, and I therefore directed inquiries to be made of the acceptor as to what she knew about it.

These inquiries were made, and to my astonishment I learned some weeks after that the woman admitted her name had been written, by her authority, at the request of the prisoner for whose accommodation it was done, and who had promised to take up the bill when due; which, however, his circumstances had prevented him from doing.

What could be done? Here was a man who had once been in affluent circumstances sentenced to be transported for ten years, for an offence of which he was perfectly innocent. If it had been a civil case, the evil might have been remedied by an application to the superior court for a new trial. But it was a

criminal case, and no such redress was to be had, the law providing no means by which this unfortunate man could be saved from the dreadful and undeserved punishment to which he was sentenced. Deeply interested as I could not fail to be in the case, I applied to the Home Office for that redress which could not be had in any court; and my exertions were ultimately crowned with success, and the man was pardoned and discharged.

Such a case needs no comment; and if such are constantly occurring, which I know is the case, who will say that there ought not to be an appellate jurisdiction in criminal cases?

I am, Sir, your most obedient servant,
Temple, May 18. A BARRISTER.

THE LAWYER.

Summary.

THE flood of reports has compelled the omission of much that was in type, spite of a double number. It is confidently reported in Westminster Hall that the Court of Common Pleas is to be thrown open by the interference of Parliament. Should this be done, the great ability at present upon its Bench will attract to it a large amount of business; and then what is to become of the Registration Appeals? Simultaneously with such a change a new Court should be established for Crown Cases, Criminal Appeals (which cannot be much longer refused), and the Registration Appeals. One additional Judge would suffice to permit the formation of such a court from the *élite* of the present courts. The important case of *Walstab v. Spottiswoode* was argued yesterday, and will be resumed to-day.

The Lord Chancellor, assisted by the Master of the Rolls, has at length given judgment in the matter of the management of Master Lynch's office, fully assenting to the complaint of the Solicitors. The elaborate judgments of both will be found in their proper place. The report is the most accurate we could procure; the present importance of the subject to the Profession making its appearance this week desirable, without waiting for a more careful report. Its interest is, indeed, only temporary; we have not, therefore, occupied any space with the arguments, which were very long.

PROMOTIONS, APPOINTMENTS, ETC.

(Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.)

The Queen has been graciously pleased to appoint Sir George Baillie Hamilton, K.C.H. now Secretary to her Majesty's Legation at Berlin, to be her Majesty's Minister plenipotentiary to the Grand Duke of Tuscany.

The Queen has also been graciously pleased to appoint Henry Francis Howard, esq. now Secretary to her Majesty's Legation at the Hague, to be Secretary to her Majesty's Legation at Berlin.

The Queen has also been graciously pleased to appoint the Hon. Henry George Howard, now First paid Attaché to her Majesty's Embassy at Paris, to be Secretary to her Majesty's Legation at the Hague.

COMMISSIONS SIGNED BY THE LORD LIEUTENANT OF THE COUNTY OF STAFFORD.

Henry Hill, esq. to be Deputy Lieutenant; Henry Charles Vernon, esq. to be Deputy Lieutenant; James Loxdale, esq. to be Deputy Lieutenant.

MIDDLE TEMPLE, May 23.—The undermentioned members of the Hon. Society of the Middle Temple have been called to the bar, and were this day sworn in, viz.:—Mr. J. Cockerton, Mr. T. Jones, Mr. J. Needham, Mr. W. T. Kime, Mr. C. Bicknell, and Mr. H. Waller.

THE NEW MASTER IN CHANCERY (IRELAND).—The *Dublin Gazette* has the following:—"Her Majesty's letters patent have passed the great seal of Ireland, appointing William Brooke, esq. Q. C. to be one of the Masters in Chancery of the Court of Chancery in Ireland, in the room of John Sealy Townsend, esq. resigned. His Excellency the Lord Lieutenant has been pleased to appoint Thomas Dorrian, esq. a resident magistrate for the county of Roscommon, under the provisions of the Act 6 Wm. 4, c. 13, in the room of David Duff, esq. deceased."

Letters patent have passed the great seal, appointing Wm. Brooke, esq. Q. C. Master in Chancery, in the room of John Sealy Townsend, esq. resigned.

IRELAND—CALLED TO THE BAR.—Trinity Term opened yesterday. The only remarkable feature of the present, has been the issue of a *feaver* of subpoenas against railway share defaulters.

The following gentlemen were called to the bar by the Lord Chancellor. The first and second on the list took the oaths prescribed for Roman Catholics:—

David Richard Pigot, esq. eldest son of the Right Hon. David Pigot, Q. C. Dublin.

Charles Henry O'Neill, esq. eldest son of Felix O'Neill, of Drumberg Castle, county Antrim.

Charles O'Malley, esq. youngest son of St. Samuel O'Malley, Castlebar.

George James Norman D'Arcy, esq. eldest son of J. D'Arcy, of Hyde Park, county Westmeath.

Henry James Dudgeon, esq. eldest son of James Dudgeon, Fitzwilliam-street, Dublin.

John Carty, esq. eldest son of the Rev. James Carty, county Antrim.

John Hickson, esq. only son of George Blake Hickson, Q. C. Dublin.

John Murphy, esq. eldest son of Robert Murphy, of Marriion-square, Dublin.

Matthew Fox, esq. second son of the late John Fox of Moyally House, King's County.

John Maher, esq. was, on yesterday morning, in the Court of Queen's Bench, sworn in as Clerk of the Crown for the county of Louth, and county of the town of Drogheda.

THE MAGISTRACY.—The Lord Lieutenant has appointed Thomas de Ruxy, esq. to be a resident magistrate in the county of Roscommon, in the room of Captain Duff, deceased.

COURT PAPERS.

CHANCERY CAUSE LISTS.

BEFORE THE MASTER OF THE ROLLS.

Trinity Term, 1884.

(JUDGMENTS RESERVED.)

Earl Nelson v. Lord Beidport, *exors.*

Hulkes v. Beaudric, *cause*

Bainbridge v. Baddeley, *dem.*

Attorney-General v. Ironmongers' Company, *for. dir. and costs*

Fordyce v. Bridges, *cause*

Lancaster v. Evans, Same v. Morley, *for. dir. and costs*

Lindgren v. Lindgren, *ditto.*

PLAID AND DEMURRERS, part heard.

Tristram v. Roberts, *dem.*

Ryves v. The Duke of Wellington, *dem.*

McClelland v. Ootewarwa, *dem.*

Salmon v. Anderson, *dem.*

CAUSES.—Michaelmas Term.

Walton v. Potter

A. J. B. Hope v. Hope

A. J. Hope v. Same

H. J. Hope v. Same

Stand over until mentioned.—Richardson v. Horton

Same v. Taylor, Same v. Derby, *for. dir. and costs*

Attorney-General v. Beddingfield

S. O. to file special bill.—Hale v. Bazley, Same v. Same, *exors.*

Campbell v. Crook, *ditto*

Part heard.—Augerand v. Parry

Hodgkinson v. Cooper, and *exors.*

Hedges v. Harper, *for. dir. and costs*

Lockhart v. Hardy, Thomas v. Hardy, Newman v. Hardy

Hardy v. Lockhart, Lockhart v. Arundell, Lockhart v. Lee

Lockhart v. Hardy, Lockhart v. Crouch, *for. dir. & costs*

Churchman v. Capon, *ditto*

S. O. after report.—Richardson v. Horton, Same v. Taylor

Same v. Derby, *exors.*

Woodcock v. Tarbuck, and two petitions

1st Cause day.—Kinde v. Lord Ashburton, Same v. Pennell

S. O. to file interple. Harpess v. Hastings

Attorney-General v. Roope

1st Cause day.—Harris v. Farwell, one point only

Hargrave v. Hargrave

Sanderson v. Dobson

1st Cause day after Term.—Attorney-General v. Evans, Same v. Davies

1st Cause day.—Dowden v. Hook, Dowden v. Dowden

Martin v. Sedgwick, Same v. Cole

Wilson v. Sir W. Eden, Wilson v. John Eden

Brown v. Bulphit

Stone v. Stone

Madgwick v. Madgwick, *for. dir. and costs*

Jackson v. Jackson, *for. dir. and costs*

Attorney-General v. Maclean

1st Cause day.—Wedderburn v. Wedderburn, Same v. O'Brien

Douglas v. Same, *exors.*

Hodgkinson v. Wyatt, *exors. and for. dir. and costs*

Clark v. Clark

Beggs v. Barker, 2 causes

Stanton v. Scott, Same v. Power, Brown v. Stanton, *for. dir. and costs*

Whitaker v. Penley, *ditto*

Maire v. Williams

Best v. Davis, *exors.*

Bather v. Kenaley, Same v. Fraser

Meyer v. Montrose, *exors. and for. dir. and costs*

Jones v. Humphreys, *for. dir. and costs*

Attorney-General v. Hemon, *ditto*

De Montaigne v. Hales, *ditto*

Wood v. Pattison, Same v. Black, Same v. Dorey, *ditto*

Todd v. Wilson

Page v. Page

Ryall v. Hutton

Snaritt v. Bigge

Short v. Wooler, *ditto*

Attorney-Gen. v. Beddingfield, Hammond v. Chasely

Attorney-Gen. v. Beddingfield, Yerkes v. Chasely

Pennell v. Chasely

Reid v. Harper, 2 causes.
Carr v. Hudson, exons.
Bell v. Governor and Company of the Bank of England
Blackwood v. Coffin
Coffin v. Coffin.

JUDGES' SUMMER CIRCUITS, 1846.

North Wales—Lord Denman.
 South Wales—Rolle, B.
 Oxford—Tindal, C.J., Meade, J.
 Home—Parke, B., Colman, J.
 Norfolk—Alderson, B., Williams, J.
 Northern—Wightman, J., Creswell, J.
 Midland—Patteson, J., Coleridge, J.
 Western—Erie, J., Platt, B.
 Pollock, C.B. remains in town.

CIRCUITS OF THE COMMISSIONERS FOR THE RELIEF OF INSOLVENT DEBTORS.

AUTUMN CIRCUITS, 1846.

Northern Circuit.

HENRY REVELL RYNOLDS, Esq. Chief Commissioner.
 Yorkshire—at Sheffield, Wednesday, Oct. 31.
 Yorkshire—at Wakefield, Thursday, Oct. 22.
 Kingston-upon-Hull—at the Town of, Tuesday, Oct. 27.
 Yorkshire—at York, Thursday, Oct. 29.
 Yorkshire—at Richmond, Saturday, Oct. 31.
 Durham—at Durham, Monday, Nov. 2.
 Northumberland—at Newcastle-upon-Tyne, Wednesday, Nov. 4.
 Newcastle-upon-Tyne—at the Town of, the same day.
 Cumberland—at Carlisle, Friday, Nov. 6.
 Westmoreland—at Appleby, Monday, Nov. 9.
 Lancashire—at Kendal, Tuesday, Nov. 10.
 Lancashire—at Lancaster, Wednesday, Nov. 11.
 Lancashire—at Liverpool, Wednesday, Nov. 18.
 Lancashire—at Walspool, Saturday, Nov. 21.
 Merionethshire—at Dolgelly, Tuesday, Nov. 24.
 Carnarvonshire—at Carnarvon, Thursday, Nov. 26.
 Anglesey—at Beaumaris, Friday, Nov. 27.
 Denbighshire—at Ruthin, Monday, Nov. 28.
 Flintshire—at Mold, Tuesday, Dec. 1.
 Cheshire—at Chester, Wednesday, Dec. 2.
 Chester—at the City and County of the City of, on the same day.

Home Circuit.

JOHN GREATHED HARRIS, Esq. Commissioner.
 Kent—at Dover, Friday, Nov. 6.
 Canterbury—at the City and County of the City of, Saturday, Nov. 7.
 Kent—at Maidstone, Monday, Nov. 9.
 Sussex—at Lewes, Friday, Nov. 20.
 Hertfordshire—at Hertford, Tuesday, Dec. 1.

Southern Circuit.

WILLIAM JOHN LAW, Esq. Commissioner.
 Berkshire—at Reading, Wednesday, Oct. 28.
 Oxfordshire—at Oxford, Friday, Oct. 30.
 Worcestershire—at Worcester, Monday, Nov. 2.
 Herefordshire—at Hereford, Thursday, Nov. 5.
 Radnorshire—at Presteign, Wednesday, Nov. 8.
 Brecknockshire—at Brecon, Saturday, Nov. 7.
 Carmarthenshire—at Carmarthen, Monday, Nov. 9.
 Cardiganshire—at Cardigan, Wednesday, Nov. 11.
 Pembrokeshire—at Haverfordwest, Thursday, Nov. 12.
 Glamorganshire—at Swansea, Monday, Nov. 16.
 Glamorganshire—at Cardiff, Tuesday, Nov. 17.
 Monmouthshire—at Monmouth, Thursday, Nov. 19.
 Gloucestershire—at Gloucester, Friday, Nov. 20.
 Gloucester—at the City of, the same day.
 Bristol—at the City and County of the City of, Monday, Nov. 23.
 Somersetshire—at Bath, Wednesday, Nov. 25.
 Devonshire—at Plymouth, Saturday, Nov. 28.
 Cornwall—at Bodmin, Monday, Nov. 30.
 Devonshire—at the Castle of Exeter, Wednesday, Dec. 2.
 Exeter—at the City and County of the City of, the same day.
 Somersetshire—at Taunton, Friday, Dec. 4.
 Dorsetshire—at Dorchester, Monday, Dec. 7.
 Wiltshire—at Salisbury, Wednesday, Dec. 9.
 Southampton—at the Town and County of the Town of, Thursday, Dec. 10.
 Southampton—at Winchester, Friday, Dec. 11.

Midland Circuit.

DAVID POLLOCK, Esq. Commissioner.
 Essex—at Chelmsford, Monday, Oct. 19.
 Essex—at Colchester, Tuesday, Oct. 20.
 Suffolk—at Ipswich, Wednesday, Oct. 21.
 Norfolk—at Yarmouth, Friday, Oct. 23.
 Norfolk—at Norwich Castle, Saturday, Oct. 24.
 Norwich—at the City and County of the City of, on the same day.
 Norfolk—at Lynn, Tuesday, Oct. 27.
 Suffolk—at Bury St. Edmunds, Thursday, Oct. 29.
 Cambridgeshire—at Cambridge, Saturday, Oct. 31.
 Huntingdonshire—at Huntingdon, Wednesday, Nov. 4.
 Northamptonshire—at Peterborough, Thursday, Nov. 5.
 Rutlandshire—at Oakham, Friday, Nov. 6.
 Leicestershire—at Lincoln, Monday, Nov. 9.
 Leicestershire—at Nottingham, Wednesday, Nov. 11.
 Nottingham—at the Town and County of the Town of, on the same day.
 Derbyshire—at Derby, Thursday, Nov. 12.
 Lichfield—at the City and County of the City of, Saturday, Nov. 14.
 Staffordshire—at Stafford, Monday, Nov. 16.
 Shropshire—at Shrewsbury, Wednesday, Nov. 18.
 " at Oldbury, Friday, Nov. 20.
 Warwickshire—at Birmingham, Saturday, Nov. 21.
 " at Warwick, Tuesday, Nov. 24.
 " at Coventry, Thursday, Nov. 26.
 Leicestershire—at Leicester, Saturday, Nov. 28.
 Northamptonshire—at Northampton, Monday, Nov. 30.
 Bedfordshire—at Bedford, Wednesday, Dec. 2.
 Buckinghamshire—at Aylesbury, Friday, Dec. 4.

APPOINTMENT OF EXAMINERS.

Easter Term, 9 Vic. 1846.

It is ordered that the several Masters for the time being of the Courts of Queen's Bench, Common Pleas and Exchequer respectively, together with Robert

Riddell Bayley, Edward Smith Bagg, Thomas Clarke, John Coverdale, Alexander William Grant, John Swarbrick Gregory, George Herbert Kindeley, Edward Lawford, William Lowe, Thomas Metcalfe, Edward Leigh Pemberton, Edward Rowland Pickering, John Innes Pocock, John James Joseph Sudlow, Robert Whitmore, and Thomas Wing, gentlemen, attorneys-at-law, be and the same are hereby appointed examiners for Trinity and Michaelmas Terms next, to examine all such persons as shall desire to be admitted attorneys of all or either of the said Courts; and that any five of the said examiners (one of them being one of the said Masters) shall be competent to conduct the said examination, in pursuance of, and subject to the provisions of the rule of all the Courts made in this behalf in Easter Term, 1846.

BY THE COURT.

Approved by the Court of Queen's Bench.

Approved by the Court of Common Pleas.

Approved by the Court of Exchequer.

TRINITY TERM EXAMINATION.

The examiners appointed for the examination of persons applying to be admitted attorneys, have appointed Thursday, the 4th day of June, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery-lane, at ten o'clock precisely, to commence the examination. The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the judges, must be left with the secretary, on or before Thursday, the 28th instant.

Where the articles have not expired, but will expire during the Term, the candidate may be examined conditionally, but the articles must be left within the first seven days of Term, and answers up to that time.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity and Practice of the Courts. 5. Bankruptcy and Practice of the Courts. 6. Criminal Law and Proceedings before Justices of the Peace.

Each candidate is required to answer all the preliminary questions (No. 1.); and it is expected that he should answer in three or more of the heads of inquiry—Common Law and Equity being two thereof.

—Legal Observer.

ADMISSION OF SOLICITORS IN CHANCERY.

Secretary's Office, Rolls, May 15, 1846.

The Master of the Rolls has appointed Wednesday, June 10th, at the Rolls Court, Chancery-lane, at a quarter past three in the afternoon, for swearing solicitors.

Every person desirous of being sworn on the above day must leave his common law admission or his certificate of practice for the current year at the secretary's office, Rolls-yard, Chancery-lane, on or before Tuesday, June 9th.

NEW RULES OF THE COMMON LAW COURTS.

RENEWAL OF ATTORNEYS' CERTIFICATES.

Easter Term, 1846.

Whereas, by section 25 of the stat. 6 & 7 Vict. c. 73, it was enacted, that if any attorney shall neglect to procure an annual stamped certificate, authorizing him to practise as such within the time by law appointed for that purpose, then and in such case the registrar of attorneys and solicitors shall not afterwards grant a certificate to such attorney without the order of one of the Courts of Queen's Bench, Common Pleas, or Exchequer, or of one of the judges thereof, to issue such certificate.

And whereas, it is expedient that upon the application of an attorney, having neglected for the space of one whole year to procure or renew an annual stamped certificate, the judges should have means of inquiring as to the circumstances under which he has omitted to commence, or has discontinued to practise, and as to his conduct and employment during the term of such omission or discontinuance.

It is ordered that from and after the last day of Trinity Term next, every person who shall intend to apply on the last day of Term, or in vacation for such order, shall three days at the least previous to the first day of the Term, on the last day of which the application is intended to be made, or in case the application is to be made in vacation, shall, previous to the first day of the preceding Term, leave at the office of the masters of the court in which he intends to make the application, a notice in writing, containing his name and place of abode for the last preceding twelve months. And that before the said first day of Term, he shall enter, or cause to be entered, a like notice in two books kept for that purpose, one at the chambers of the Lord Chief Justice or Chief Baron, the other at the chambers of the other judges or barons, and shall, before the said

first day of Term, cause to be filed the affidavit upon which he seeks to obtain or renew his said certificate at the office of the masters aforesaid, and a copy thereof to be also left at the chamber of the Lord Chief Justice of the Court of Queen's Bench.

And it is further ordered, that the masters reduce such notices into alphabetical order, and add the same to the list of admissions, and the order for the granting the certificates shall be drawn up on reading such affidavit of such copy, having been left in compliance with this rule.

Denman.
 N. C. Tindal.
 Fred. Pollock.
 J. Parke.
 E. H. Alderson.
 J. Patteson.
 J. Williams.

T. Colman.
 R. M. Rolle.
 Wm. Wightman.
 C. Creswell.
 W. Erie.
 T. J. Platt.

LEGAL INTELLIGENCE.

ATTORNEYS' CERTIFICATES.—A Return of the number of certificates annually taken out by attorneys and solicitors practising in England and Wales, from the first day of Easter Term 1833 to the present time; and the gross annual amount of Stamp Duties paid during those periods upon such certificates:—

EASTER TERM.	Number.	Duties.
Easter Term 1833 to 1834	9,450	£81,188
Easter Term 1834 to 1835	9,480	81,650
Easter Term 1835 to 1836	9,713	83,554
Easter Term 1836 to 1837	9,719	84,030
Easter Term 1837 to 1838	9,735	84,248
Easter Term 1838 to 1839	9,873	85,586
Easter Term 1839 to 1840	9,909	86,224
Easter Term 1840 to 1841	10,033	86,994
Easter Term 1841 to 1842	10,073	87,854
Easter Term 1842 to 1843	9,998	87,352
Easter Term 1843 to 1844	10,184	89,376
Easter Term 1844 to the 8th March 1845	10,180	89,228
Stamps and Taxes, } 10 March, 1845. }		Tensdale Cookell.

CLERKS TO ATTORNEYS.—A Return of the number of Articles of Clerkship, and of Assignments thereof, filed in his late Majesty's Court of King's Bench, and her present Majesty's Court of Queen's Bench, in each year from the first day of Easter Term, 1833, to the 28th day of February, 1846; and distinguishing the University Graduates.

	No of Articles.	No. of Assignments.
From the first day of Easter Term 1833 to the 14th day of April 1834, including three University Graduates	685	100
Iditto, 1834 to 1835, including four University Graduates	577	158
Iditto, 1835 to 1836, including seven University Graduates	558	159
Iditto 1836 to 1837, including one University Graduate	518	146
Iditto, 1837 to 1838, including four University Graduates	463	171
Iditto, 1838 to 1839, including three University Graduates	400	168
Iditto, 1839 to 1840, including seven University Graduates	457	145
Iditto, 1840 to 1841, including six University Graduates	536	126
Iditto, 1841 to 1842, including five University Graduates	400	135
Iditto, 1842 to 1843, including five University Graduates	498	121
Iditto, 1843 to 1844, including six University Graduates	483	95
Iditto, 1844 to 28th February 1845, including four University Graduates	432	91
(Signed)	FORTUNATUS DWARRE, N. W. CROFT, R. GOODSON, JAMES BUNCE, C. R. TURNER.	

Mr. Justice Coleridge still remains at Brighton; he is improving in health, but it is not expected that his lordship will be able to resume his judicial duties during the present term.

JUDGES AND CORPORATION AT ST. PAUL'S.—Last Sunday being the first Sunday in Trinity Term, the Judges and the members of the civic corporation attended divine service at St. Paul's. The legal dignitaries, in accordance with general custom, were met at Temple-bar by the Lord Mayor and Sheriffs, and by them conducted to the cathedral. There were present Lord Chief Justice Denman, Lord Chief Baron Pollock, Baron Parke, Baron Alderson, Mr. Justice Patteson, Mr. Justice Coleridge, Baron Rolle, Mr. Justice Erie, Sergeant Manning, Sergeant Chadwick Jones, Sergeant Channell, the Common Serjeant, Mr. Commissioner Bullock, the Lord Mayor and his chaplain (the Rev. Charles Farebrother), Aldermen Sir Chapman Marshall, Sir Jas. Duke, M.P., Wood, Gibbs, Farncomb, Sir George Carroll, Moon,

Hughes, Sheriff Chaplin, Sheriff Laurie, Under Sheriff Wile, the Lord Bishop of Llandaff, Dean of St. Paul's, the Archdeacon of London, the Rev. J. E. Tyley, Canon Residentiary of St. Paul's; the Rev. Ernest Hawkins, B.D., Prebendary of St. Paul's; and other clergymen, habited in full canonicals. Complete cathedral service was performed, the prayers being chanted by the Rev. A. Beckwith, M.A., and the lessons read by the Rev. J. Povah, M.A. The sermon was preached by the Lord Bishop of Llandaff.

THE BIG WIGS.—A SCENE IN THE EXCHEQUER.—Friday was the first day of Term, and the Courts, according to a late alteration, were opened at 10 A.M. The Lord Chief Baron, with Mr. Baron Alderson, Mr. Baron Rolfe, and Mr. Baron Platt, took their seats shortly after that hour. Their lordships entered the Court in full-bottomed wigs; the Queen's Counsel also wore wigs of a similar description. After their lordships had gone through the bar, the peremptory paper was called on. Mr. Martin begged to be allowed to mention the case of *Stockdale and Benn*, and *Benn and Stockdale*, the learned counsel having on his ordinary wig at the time.

THE LORD CHIEF BARON.—Mr. Martin, I question whether you are visible to-day.

Martin said that he was about to state to their lordships, that he found it a considerable inconvenience to wear the heavy full-bottomed wig.

THE LORD CHIEF BARON.—I fear, Mr. Martin, that you must appear in costume.

Martin.—I really cannot wear these wigs, my Lord. I am sensible of the ill effects of it for a week after.

MR. BARON ALDERSON.—You should bear the inconvenience, on account of the increased dignity, Mr. Martin. (A laugh.) It may appear to you a custom more honoured in the breach than in the observance.

Martin.—It really does, my Lord.

MR. BARON ALDERSON.—But you cannot appear without having ordered your marriage garment. (A laugh.)

Chambers said that they had been misled by the judges in the Queen's Bench having come into court in the ordinary small wig.

Martin here bowed and retired.

SHAM ATTORNEYS.—Notwithstanding the sentences passed by the learned Recorder of this borough upon the two convicted sham attorneys Partridge and Latham, for fraudulently obtaining money from poor persons under false pretences, the one to six months' imprisonment, and the other to seven years' transportation, we find that another of these provoking pests has been detected in his nefarious practices.—*Birmingham Advertiser*.

MIDDLE TEMPLE.—The Honourable Society of the Middle Temple evinced their usual loyalty by giving an extra bottle of wine to each mess yesterday, in order to celebrate the birth of the young princess. The health of her Majesty and the recent addition to the members of the royal family was given with right good-will, and received with the heartiest enthusiasm by a very crowded hall.

Dublin, May 23.

IRELAND.—RUMOURS.—A report is current at the bar that Sir Edward Sugden will shortly retire from his present office, and leave Ireland. Whatever post he is destined to fill elsewhere, his loss in this country can scarcely be repaired; for a more upright, fearless, able, or painstaking judge never held the Great Seal in any part of the United Kingdom.—A new distribution of silk gowns is spoken of in the hall. Mr. Smyly, of the north-west circuit, and Messrs. Rolleston, Wall, and Christian, of the Leinster circuit, are the persons for whom the honour is said to be intended. The last-named gentleman (Mr. Christian) is a young barrister whose name has not been much before the public; but he is very well known in his profession as a lawyer of the highest promise, and likely ere long to attain very considerable eminence. With the names of the other three the public ear has long been familiar.

PARLIAMENTARY PAPERS.

SALARIES, &c. IN PUBLIC OFFICES.—On Thursday an abstract of accounts of every increase and diminution which has taken place within the year 1845 in all public offices or departments, pursuant to the Act 4 & 5 Wm. 4, c. 24, was issued. It appears that in 45 establishments the increase in the number of persons employed was 2,267, of which 2,035 were in the Post-office; in salaries, 94,489l. 10s. 6d.; in emoluments, 208l.; in retiring allowances 23,717l. 8s. 5d., and in expenses, 11,464l. 13s. 11d.—making a total of 129,879l. 12s. 10d. In the diminution list the number of persons in the year was 463, of which 396 were from the Excise. The salaries in the diminution class amounted to 52,970l. 7s. 3d.; the emoluments, 3,284l. 17s. 6d.; retired allowances, 9,879l. 3s.; and the expenses, 1,620l. 10s. 4d.—making a total of 69,754l. 18s. 1d. The increase in the year was considerably beyond the diminution; the former being 129,879l. 12s. 10d. and the latter 69,754l. 18s. 1d.

NATIONAL DEBT.—A Parliamentary paper has just been printed containing accounts relating to the National Debt and Savings-banks. It appears that savings-banks and friendly societies commenced on the 6th of August, 1817, from which period to the 20th of November last, the gross amount of sums received and credited with interest on account of savings-banks was 40,276,576l. 16s. 1d. and on account of friendly societies, 2,709,301l. 6s. 4d.—making a total of 51,985,878l. 2s. 5d. An account is given of the stock purchased and the money paid. On the 20th of November last the amount of stock standing in the names of the commissioners on account of savings-banks and friendly societies was 32,388,643l. 19s. 4d. besides Exchequer bills. Military savings-banks were established in September last, and on the 6th of January last the commissioners had purchased stock for them to 14,944l. 3s. 4d. having received 14,849l. 1s. 11d. as deposits from soldiers in a very short period.

BUTTER.—Return of the quantities of butter exported from the United Kingdom in the years 1830, 1835, 1846, and 1845. The following is a condensed view of the statement:—

	Cwts.
1830—To Portugal proper	24,973
Gibraltar	2,838
British North American Colonies	3,070
British West Indies	16,284
Brazil	16,606
To twenty-four other places	2,194
Total	65,955
1835—To Portugal proper	27,651
Gibraltar	1,745
British North American Colonies	3,221
British West Indies	17,958
Brazil	25,287
To twenty-four other places	4,085
Total	79,941
1840—To Portugal proper	4,514
Gibraltar	1,008
British North American Colonies	51
British West Indies	23,923
Brazil	17,556
To twenty-four other places	5,990
Total	52,972
1845—To Portugal Proper	9,353
Gibraltar	1,110
British North American Colonies	83
British West Indies	19,552
Brazil	15,423
To twenty-four other places	1,371
Total	46,592

The quantity exported to our Australian colonies was, in 1830, 55 cwts.; in 1835, 1,630 cwts.; in 1840, 4,698 cwts.; and in 1845, only 36 cwts.

EXCHEQUER-BILLS FOR PUBLIC WORKS.—A return has just been printed of the advances of Exchequer-bills, under the Act 57 Geo. 3, c. 34, and subsequent Acts, for public works during the four years ended the 31st of December last. The sums advanced amounted to 103,850l.; the interest paid, to 8,067l. 18s. 1d.; the principal repaid, to 14,311l. 18s. 10d.; and the principal unpaid, to 89,538l. 1s. 2d. The return was procured by Mr. Forster, the member for Berwick-on-Tweed.

PROCEEDINGS OF LAW SOCIETIES.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

The following interesting reports have been recently circulated by this society:—

COMMITTEE ON THE LAW OF PROPERTY.

The following references have been made to this committee:—1. To consider whether it may not be possible to obtain the benefit of some of the common forms used in conveyancing, by reference to Acts passed for that purpose. 2. To consider the practicability, by means of a legislative enactment, of incorporating the common forms used in ordinary deeds into legal instruments, by way of reference.

REPORT.

To discover some method by which the legal instruments now employed, in dealing with property, to express or carry into effect the intention of private persons may be shortened, without lessening the certainty and precision of their operation, has for some time been an object with those who have turned their attention to plans of legal reform. The labour, and consequent expense, which would be saved by such a method are indeed so considerable, that the desire to discover and introduce it is by no means surprising. In the immediate transactions out of which any instrument arises, a considerable amount of expense is indeed in most cases unavoidable. In one form or other, such payment must be made as shall be sufficient to insure that each instrument is properly

framed. And yet, even here, the expense caused by the extreme length of legal instruments, as at present constructed, is sometimes a just cause of complaint. But this original length continually begets a secondary length and cost, in the ratio of a geometrical progression. Abstracts must be furnished, attested copies may be required; or the instrument may form a part of a declaration, or a plea, or an answer, a report, or other judicial proceedings; or these and other analogous cases, the mere mechanical labour arising out of the length of the documents adds to the expense of what is to be done, without contributing to its being done better.

Now there are, as appears to this committee, several cases in which a complete cure may be found in the grievance by dispensing with the use of any internal ment at all; as, for instance, was done by the Act dispensing with the necessity of the *deed* for a *lease* in a lease and release. But such cases must be comparatively few. In the great majority of transactions there is no instrument need which could be dispensed with; and the only question is, how can the instruments employed be shortened without being made insecure?

For the better examination of this question, it seems desirable briefly to consider the parts of a deed usually consists. These parts appear reducible to two heads. We have first the recitals of the circumstances under which the instrument is made; and then we have the formal statements of the intention of the parties, and various covenants or declarations intended to express it with due precision, or secure its execution without the possibility of evasion.

Now it is clear that the recitals cannot be shortened otherwise than by the discretion of the draughtsman of the instrument containing them, because they vary indefinitely in each case. Although, indeed, the shortening of the instruments by which property is dealt with would doubtless materially contribute to shorten recitals. But it is otherwise with the operative part of the instrument, and the covenants or declarations connected with it. Here there have been suggested at least four distinct plans, by which the necessity for employing many of the long forms made usual at present may be removed in numerous cases of ordinary occurrence, while the benefit now sought to be obtained by their use shall be preserved.

Of these plans, the first which we would notice is the suggestion, that the liabilities or powers at present attached to or conferred upon the persons who fill certain characters, as—e.g. that of vendor or deed of purchase, or trustee in a marriage settlement—by the express covenants or declarations contained in the instrument, should be attached to or conferred upon them by legislative enactment, from the mere fact of their filling the particular character. This proposal has been sanctioned by the high authority of Mr. Butler, Mr. Tyrrell, and Mr. Humphreys. It has been adopted, in one instance, by the Act passed in the last session for simplifying the transfer of real property, namely, with respect to the receipts of trustees being in some cases sufficient discharges, and there are probably other cases in which it might be usefully employed. But as any extensive application of this plan to practice would obviously require much consideration, and the subject does not properly fall within the present references, it cannot be more than briefly noticed here.

A similar observation is applicable to the second of the plans to which we have alluded, namely, to the proposal that forms of ordinary instruments, and other common forms divested of all unnecessary parts, needless words or phrases, should be prepared by persons of known eminence as conveyancers, and put forth under the sanction of the legislature, or of some commission or body appointed by the Crown, as precedents, of which private individuals might avail themselves in the construction of legal instruments. Upon this proposal, however, which certainly possesses much to recommend it, and appears to have met with the approval of many persons of considerable experience in business, as well as of high legal authorities, some further remarks will be found in a subsequent part of this report.

The two remaining plans out of the four mentioned above, constitute the more immediate subject of this reference made to this committee. Both of these plans agree in one respect, namely, that they do not propose to strike out, or even materially to abridge, any part of the legal instruments now in use, but only to enable parties to get the benefit of the long forms adopted at present, by employing certain short forms to be provided for them. The difference between these plans will appear as we proceed.

The first of the two (in this report distinguished as the third plan) addresses itself to cases of a simple nature; such as (e.g.) a sale by an absolute owner of freehold property to another, or a simple settlement on marriage; or still more to the usual form of the lease of a dwelling-house; and it appears to us well adapted to facilitate such transactions. It proposes to provide certain short forms of instruments suited to each case, and to enact that the use of any such instrument shall have the same effect between the parties to it, as if an instrument containing certain other specified forms, being the usual

utory forms in the particular case, had been employed. The general character of the provisions by which the plan might be carried out, however, is so clearly shown in the bill introduced by Lord Campbell, in the session of 1843, by lessening the expense attending the transfer of feehold lands of small value, that it appears to us unnecessary to enter into details. We would observe, however, that the peculiar form of conveyance suggested in that bill, is no essential part of the scheme; not a property but an accident of it; and one which we think might be advantageously modified, by substituting for the tabular form of conveyance, those employed in a short deed, such as is to be found in Mr. Humphreys' work; or, indeed, such as are addressed by the Lord Chancellor, on the occasion of the discussion upon the bill in question. A bill so amended will be found in Appendix No. I. to this report. It may be remarked as an argument in favour of this proposal, that it is, in fact, the full embodiment of suggestions made by more than one generation of men of professional experience to the real property commissioners; while, so long ago as the 17th of Anne, it formed the principle of an Act (c. 30) for the registration of deeds in the East Riding of Yorkshire; which by the 8th Geo. 2 (c. 6) was extended to the other two Ridings of that county. But, as has been already intimated, the plan is not easily susceptible of application to any but simple cases, i.e. those where the covenants or declarations contained in the instrument apply to all the parties to it, or at least where no doubt can arise as to the parties to whom they do apply.

Now in actual business this kind of simplicity occurs less frequently than might at first be supposed. Let us take the case of a sale. One property is mortgaged, and the mortgagee has to join in the conveyance; another is liable to a charge for legacies, and the occurrence of the legacies is desirable; a third is in trust, and the *cestui que trust* has to be a party with the trustee in the conveyance; and while the legal estate passes by the act of the latter, the covenants for title are to be entered into by the former. How can set forms of deeds be provided meeting this variety of circumstances—this species of complexity?

And yet, it will be observed, that there may be nothing special in these cases; as there is not in those suggested by way of example. The forms employed may be just as much common forms as the covenants for title, in a deed of sale by one avised in fee-simple, to another and his heirs. But, according to the circumstances of each case, these forms have to be differently put together. The plan of the house may be indefinitely varied, but it is, after all, only the same kind of rooms differently disposed.

Nor can it be predicated of the cases just referred to, that they concern only large properties, where the expense entailed by a deed prepared so as to meet the special circumstances, upon the present plan, may be easily borne. It is in small properties belonging to persons engaged in business that complexities of the kind last noticed are perhaps the most likely to occur; and yet these properties, for the very same reason, are those which most frequently change hands; where the burden of long deeds is most heavily felt; and where security against evasion is often the most needed.

Now it is to meet this difficulty, that the last of the plans (in this report distinguished as the fourth plan) to which we have alluded, peculiarly addresses itself. It aims at giving to the parties concerned in these more complicated cases, the same sort of benefit, with nearly the same brevity, as would be attained in cases of a more simple character, by the use of short forms of deeds. And this it proposes to effect by the following method. Let a set of the most approved common forms, adapted to all ordinary cases, be selected and arranged under appropriate heads in one column of a schedule to an Act of Parliament. In another column let there be contained in the shape of marginal notes to the forms included in the first column, short forms of words, expressive in each case of the substance of the longer form; and let there be an enactment, that whenever a deed made with reference to the Act shall contain any covenant, statement, or declaration expressed in the words of any form contained in the first or marginal column of the schedule, or in words substantially to the same effect, the party using that short form shall be taken to have entered into the covenant, or made the declaration contained in the second column, in which the form employed is attached as a marginal note.

By thus taking to pieces the various parts of which a deed is composed, it will, we believe, be found possible, in all cases of ordinary occurrence, to enable the parties making the instrument to reconstruct it in such a shape as may suit their circumstances. We shall have attained the first condition necessary for giving to our forms that flexibility indispensable to render them practically useful, in such cases as those to which we have referred, namely, the power of selection. For thus any party will be at liberty to enter into such of the declarations or covenants embodied into an instrument as may suit his situation, without troubling himself about the rest. The legatee, for example, may join in the conveyance,

without dovetailing for the title. The trustee may limit his covenants to his own acts and incurances. The creditor may release the estate, and do no more; because each will be able to select from the general storehouse those forms only which are fitted to his case, and to combine his engagements to these.

But the power of selection given by the proposed plan goes beyond this. If the peculiar circumstances of the case require special provisions, such as not to be found in the forms contained in the schedule, it will be in the power of the parties to introduce these into the instrument; while yet, in the other parts, which may make up, perhaps, three-fourths of it, they may avail themselves of the short forms provided for them without danger of introducing into the deed any thing inconsistent with the special provisions embodied; and without the necessity of any declaration intended to modify the effect of the forms employed would have without it.

The flexibility attained by the power of selection given to the parties to the instrument, is not, however, in itself, enough to insure all that is required. Further provision is necessary to meet those minor changes, which have to be made in forms substantially the same, in order to adapt them to the circumstances under which they are used; as, for example, the change in the covenant for right to convey, necessary to adapt it, from the case of a vendor of an estate in possession, to that of a vendor of an estate in remainder; or the change in the simple covenant against incumbrances, introduced to adapt it to the case of a conveyance subject to a mortgage.

These variations seem to be reducible to two classes. First such as have their origin in the number of the parties to a covenant, and the nature of the interest conveyed; and, secondly, such as grow out of the species of property dealt with, and the form of conveyances suitable to it. Instances of the first class have been already given. As an instance of the second class we may mention the variation between a covenant relating to freeholds and one relating to leaseholds, dependent upon the use of the words "granted and released" in reference to the freehold, and "assigned" in reference to the leasehold.

Now, for the first of these classes of variation, we propose to make provision, by means of certain general directions, applicable to all the forms contained in the schedule, except there should be a special direction inconsistent with some general one attached to any particular form, when the particular and not the general direction would be to be followed. For instance, in the first example given, viz. the change in a covenant for title needed, to adapt it from the case of a vendor in possession to that of one in remainder, the requisite limitations would be produced by a general direction that "A covenant entered into under the Act, shall be taken to be co-extensive with, and to apply only to such estate or interest in the lands mentioned in the instrument, as the party entering into it shall purport to have thereby created or conveyed," at law, or in equity.

The second class of variations would be met by giving to certain words an extensive meaning; as, for instance, in the case alluded, the word "conveyed" would be made to include every mode of conveyance by which property can be transferred, so that it would equally apply, as a word of reference, to freehold or leasehold property.

The general directions before noticed, so far as they have been considered, which is at present only in relation to purchase-deeds, will be found in the Appendix No. II. to this report, which also contains provisions applicable to others of the second class of variations alluded to, besides the instance selected as an illustration.

It will be obvious, as will also appear from the example given in that appendix, that the forms to be embodied must be framed so as to contain no words which could interfere with the construction to be put upon them by virtue of the directions.

The parties who may make use of any of the forms provided for them should also, we think, have the power of altering or suspending the operation of the directions, whether general or special, by an express declaration of their intention.

By the provisions above mentioned, we believe that the necessity for a multiplication of forms differing only in some slight particulars may be avoided, while the qualifications introduced by these differences, and necessary to the expression of the substantial intentions of the parties, may be secured.

But the plan does not stop here. There are parts of some legal instruments of a purely formal character, which yet have been so long regarded as integral portions of such instruments, that he must be a bold man who should venture to admit them. Now the benefit of these formal parts, we think, may be, in many instances, secured without any direct reference to them in the deed. Thus the memorandum of the receipt of the purchase-money might be made to supply the place of a "receipt clause." The operative words might import an "habendum." For other instances of this nature we must refer to the Appendix No. II. where will likewise be found certain provisions intended to facilitate the connection of the forms with each other, and some other similar mat-

ters. In the Appendix No. II. will be found also a specimen of the covenants for title in a purchase-deed, constructed so as to show (by placing in parallel columns the short forms to be used, and the longer forms to be embodied by their use), what saving in the length of the instrument would be effected by the proposed change, and at the same time how explicit the short instrument would really be, should any occasion for such explicitness arise?

This specimen has been selected as the most fitting case to elucidate the nature of the proposed alterations in the construction of the legal instruments, of which an account has been given. But, to illustrate the variety of cases to which the plan would be applicable, we have added the draft of a deed of a more complicated character constructed upon it. The plan, it may be observed, is applicable to wills as well as to deeds, wherever common forms are now employed in their construction.

In an earlier part of this report we have alluded to a plan, the second of those noticed by us, in which it is proposed to shorten legal instruments by abridging the common forms now in use; and we now again refer to it for the purpose of pointing out what appears to us an important difference between that plan and those with the consideration of which we have been chiefly occupied, the third and fourth.

Two advantages would appear to belong to this plan of abridgment—1st, it would leave the whole contents of any instrument apparent upon its face; 2dly, The forms promulgated could be used separately, and just as far as the parties pleased, and thus they would possess the same facility of adaptation to the special circumstances of each case, which it is the object of the fourth of the above plans to secure as thereby proposed. But in one particular, and that by no means unimportant, the idea of embodying forms into legal instruments by way of reference, which constitutes the common basis of the third and fourth of the four plans mentioned above, appears to this committee to possess an advantage over any scheme for abbreviating the forms now in use. It is, that short as the instrument actually employed would be, it would be built upon the solid foundation of the existing forms, and would appropriate to itself all that completeness which time and practice have secured to these long-tried balancers of property.

The present common forms are the result of much thought and long experience, taught frequently by failure, to provide against the subtle deflections raised by men anxious to escape from inconvenient stipulations, or the doubts produced by judicial criticism as to the meaning and effect of the provisions inserted in different instruments. It is no doubt possible that these forms might, by a skilful hand, be greatly shortened, while their effect remained unimpaired. But if much change were made, is it not to be feared that some valuable defences might be sacrificed unawares? And, at all events, must not a considerable time elapse before men could feel the same confidence in the new forms which they now place in the old? Both the third and fourth plans would also have the great advantage of leaving entirely undisturbed the existing practice of conveyancing. Either of them may be tried as an experiment, to be adopted at the will of the practitioner, and to be censured by itself, with reference only to the Act or Acts on which it was founded.

It should be observed also, that upon the fourth plan mentioned in this report, the whole of the substantial intentions of the parties would appear upon the instrument, and indeed, to unprofessional eyes, with greater clearness than if the more complete legal expression of it were employed.

This committee therefore consider that this last plan is, upon the whole, the best adapted for carrying out the objects contemplated by the reference made to them, and as such they recommend it for adoption.

In conclusion, it seems desirable to advert to two objections likely to be raised to the plan suggested—1st, that it will interfere with the revenue from the stamp duties; and, that it will unduly lessen the remuneration of solicitors and counsel.

In regard to the last of these objections, this committee wish to express their opinion that nothing can be less likely to be really beneficial to the interests of the public than any measure which should tend to lower the character of the legal profession. While they can scarcely doubt that such would be the case were the scale of remuneration diminished below the proportion due, in a country disunited as England is, to the talent and exertion required from those engaged in the profession of the law. They would apply alike to the counsel and solicitor, the language used by the real property commissioners in reference to the latter; and urge, "that it is for the public good that both should be liberally remunerated for their services." It is not the fair reward of the work of the head that this committee wish to lessen, but the unnecessary multiplication of the labours of the hand. The use of forms of conveyances, substantially shorter than those at present employed may, indeed, involve the necessity—a result, be it observed, contemplated by the real property commissioners as likely to ensue from the changes recommended by them—of adopting some method of calculating legal

remuneration other than the mere length of legal instruments. What that method should be, this committee do not, however, consider themselves called upon at present to discuss; though they would suggest that the value of the property dealt with, coupled, perhaps, with some consideration of the nature of the instrument, might afford a suitable standard upon which a scale of charges, so far as these are the subjects of taxation, might be adjusted; such as, while it ensured to the legal practitioner a just remuneration, should throw the heaviest burdens upon those best calculated to bear them, and lessen the expense in all transactions of small amount.

A similar principle might perhaps be applied to the calculation of the stamp duty, at least in cases of settled property. But whether it would not be more beneficial to the community if the revenue now raised upon the alienation of property could be raised upon its transmission by devise or succession, is a question which they would suggest as not undeserving of serious consideration.

Since this report was agreed to, the committee have had the gratification of perceiving that the principle on which both the third and fourth plans are based, is fully admitted and recommended for adoption in leases of lands of a certain value, by her Majesty's commissioners of inquiry into the state of the law and practice in respect to the occupation of land in Ireland, which has just been presented to Parliament.

HEIRS-AT-LAW, NEXT OF KIN, &c. DECEASED.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent impertinent curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or (if by letter, postage stamps to that amount enclosed.)

70. NEPHEWS AND NIECES (children of his five sisters and brother living at the time of the decease of testator's widow, 16th April, 1836), and their issue, of Mr. SAMUEL COOK, of the town of Northampton, yeoman. (Died Nov. 1833.)
71. HEIR-AT-LAW OF MARY BRIGHT, late of Yeovil, Somerset, spinster. (Died April 1810.)
72. NEXT OF KIN OF JAMES SCOTT, late of Newnham-street, Edgware-road, Middlesex, gentleman (died Feb. 1833), or their representatives.
73. CHILD OF CHILDREN, or their representatives, of JAMES HITCH, of Westerfield, in the county of Suffolk, clerk (died March 1824), father of Alicia Susannah Hitch, formerly of the same place, but afterwards of the town of Cambridge.
74. NEXT OF KIN OF WILLIAM DOWKINS, otherwise THOMAS BOSWOOD, late steward belonging to the merchant ship *Sandwich* (died 13 Jan. 1835), a bachelor.
75. JOHN FINLAYSON, formerly of the city of Hereford, gardener, and Elizabeth his wife, formerly ELIZABETH STEWART, spinster, and CATHERINE STEWART, the sister of the said Elizabeth Finlayson, or their representative. *Something to their advantage.*
76. NEXT OF KIN OF RELATIONS OF SOPHIA SOAMES MORDAY, formerly of Newington-place, Kennington, Surrey, and late of Cowley-road, Kennington, widow (died March 11, 1836). *Something to advantage.*
77. FRANK THOMASSETT (son of Frank Thomassett, formerly of London, Esq. deceased), was seen about thirty years back on board a ship at Greenwich, was afterwards seen as a postboy, employed in driving post-carriages between Rochester and London. *Something to advantage.*
78. NEXT OF KIN OF HENRY THOMAS BOWWICK, late of Barton-place, Camden-town, Middlesex (died July 19, 1827), or their representatives.
79. NEXT OF KIN OF THOMAS WILLATTS, late of New Basinghall-street, London, gentleman (died Jan. 30, 1831), son of Thomas Willatts, late of the same place, deceased, and their representatives.
80. HEIR-AT-LAW OF ESTHER MARTIN, one of the daughters of JOHN MARTIN, formerly of Green-street, Grosvenor-square, Middlesex. *May be heard of.*
81. GRAND NEPHEWS AND GRAND NIECES OF JOSEPH SHERRARD, late of Lower-street, Deal, Kent, a purser in the royal navy (died 14th of April, 1826), by his will bequeathing property equally to be divided between them.
82. CHILDREN OF ELIZABETH WHITE, late of Southgate, Middlesex, deceased; of THOMAS FULLWOOD, late of Piton, Hertford, deceased; of CHARLOTTE SURREY, late of Codicote, county of Hertford, deceased; of JOHN FULLWOOD, late of Kent-road, Surrey, deceased; of MARY GREGORY, late of Hornsey, Middlesex, deceased; of DECEASED JACKSON, Kent-road, aforesaid; of ANN OAKLEY, now of Waterend, near Westhamstead, Hertford; and of ELIZABETH DEWARRELL, of Westhamstead.
83. NEXT OF KIN OF THOMAS MOORE (died Oct. 1798), formerly resided at Plymouth, Devon, or their representatives, and NEXT OF KIN of his widow, ANN MOORE. (Died April, 1829.)
84. NEXT OF KIN OF HENRY BAYLIS, otherwise HENRY BAYLIS BROWN, formerly of Dover, Kent, late master or commander of the brig or vessel *Elizabeth*, of London, which vessel, on or about August, 1831, was wrecked in the Southern Ocean, on her homeward voyage, and he and Mary, his wife, were lost on board thereof.
85. NEPHEWS AND NIECES OF FRANCIS DELCARR, formerly of Tinsell, but late of Ripon, Yorkshire, yeoman, died 7th June, 1835, bequeathing to them the residue of his property.

86. HEIRS AND NEXT OF KIN OF JOHN G. LEAKE, late of the city of New York, U. S. son of Robert Leake, of Lake, deceased, some time in or near Bedlington, in the county of Durham, in England, afterwards Commissary-General of Stores and Provisions for North America. *Something to advantage.*
87. HEIR-AT-LAW OF HENRY BRUCE BACKWITS, Esq. formerly residing at Pisa, in Italy, afterwards of the city of York. (Died February, 1834.)

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

A YOUNG STUDENT.—*Stewart's is the best of the two. But Stephens's should be preferred.*

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The numbers comprising the first volume of the VERULAM REPORTS of Real Property and Conveyancing Cases may also be transmitted for binding in like manner.

NOTICE.

The LAW DIGEST is now completed. Being stamped, it may be sent by post, or may be had, sewn in a wrapper, price 5s. 6d.

NOTICE.

The subscription for the current half-year is now due, and subscribers desirous of availing themselves of the great reduction allowed for pre-payment, should forward the same in the course of the ensuing week. The prepaid subscription is 11. 5s. for the half-year, and 21. 7s. for the year, being a reduction respectively of 25 and 30 per cent.

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THE LAW TIMES.

SATURDAY, MAY 30, 1846.

IMPENDING CHANGES.

By some exertion we were enabled to give to our readers last week the resolutions proposed and the resolutions carried in the Lords' Committee for inquiring into the burdens on land. As expressions of opinion, as an indication of coming changes, the importance of this document to the Profession cannot be over-estimated, and we invite their serious and immediate attention to it.

In commenting upon Lord BROUGHAM'S Conveyancing Bill, it appeared to be the wiser course to consider how the mischiefs it threatened might be mitigated, or turned into benefits, rather than, by ridicule and abuse of it, to lull our readers into a false security, and kindle a hope that a bill so strange in its provisions would never be permitted to become law. We stated then our conviction that the

landed interest was resolved upon redressing the costs of conveyancing, and that whatever it were accomplished by short forms, or any other new devices, the attempt would be made, so far as legislative interference could effect the purpose, and we, therefore, took the liberty of exhorting the lawyers everywhere to prepare for inevitable changes, and by mutual exertions to obtain equivalent advantages, as fair compensation in the shape of removal of existing evils, for any injury such measures as those threatened might be calculated to inflict upon them.

If any proof were wanting of the propriety of that suggestion, it would be found in the double report of the Lords' Committee. *His* are submitted to us the deliberate views of both the great parties in the state, and wherever they agree we may be well assured that no long time can elapse before those views will take a practical form. And it is remarkable that on all the matters affecting the law, and in which the interests of the Legal Profession are mainly involved, their unanimity is perfect.

BOTH parties agree in recommending the improvement of the law of real property, the simplification of title, and of the forms of conveyance, and the establishment of some effective system for the registration of deeds.

BOTH recommend the payment out of the public funds of the entire expenses of criminal prosecutions; and the minority suggests the appointment of a public prosecutor.

One party recommends a revision of the stamp duties, with a view to the "adoption of an *ad valorem* scale of duties, relieving small properties from the present unjust and disproportionate charge, and making an equitable distribution of all duties on the sale and transmission of property, real and personal, whether during life or after decease, both on ordinary conveyances and in the shape of probate or legacy duties, so as to remedy all existing inequalities, and to repeal all undue and partial exemptions."

These are recommendations that especially interest the Profession. Upon the most important of them both parties are agreed. It is plain that the legislature, or, we should rather say, the great majority, are bent upon effecting the following objects:—

1. A change in the law of real property.
2. The simplification of titles.
3. The abbreviation of the forms of conveyancing.
4. The establishment of the registration of deeds.

With such an unanimous expression of opinion in favour of these measures, and stimulated to carry opinion into practice by the pressure of circumstances that will compel attention to whatever may offer a chance of relieving land from some of its burdens, the most sanguine dare not hope to avoid the experiment being tried. It may not, perhaps it will not, be successful. Short forms may not unlikely be found impracticable in the working, and the changes in the law of real property may ultimately create more confusion, and consequently more cost, than the existing law. But the result may be otherwise, and, at least, there must be an interval during which the very trial will be attended with some injury to existing interests.

If, therefore, any doubt or hesitation existed before, there can be none now, with this report to convert suspicion into certainty. The indolent or the busy can no longer plead the remoteness of the danger as an excuse for continued neglect of a matter affecting so seriously the interests of the Profession. We repeat the exhortation to immediate and earnest deliberation, with a view to resolute action. We venture again to suggest the course that should be adopted. It is, not to offer an indiscriminating opposition to changes they cannot hope by any efforts to avert, but to seize the occasion to demand that measures of injury to them may be accompanied by measures of relief—that the justice so long denied shall be

conceded, and that, simultaneously with any change that may reduce their present profits, they be relieved from the burden of the certification; the fees of the courts be reduced, and that they be more effectually protected against the invasions of those who have not gone through the same ordeal as a qualification for the practice of the law, by prohibiting the practice of conveyancing by any but solicitors, and the punishment both of Sham Lawyers and Sham Conveyancers.

EDUCATION. —
— of 1891.

LOCAL COURTS.

It is said that a Bill for the establishment of Local Courts throughout the country will be introduced by the Government immediately after the Whitsuntide recess, and that an effort will be made to convert the project into a law during the present Session.

It will scarcely be necessary to repeat now all the arguments that have been urged against Local Courts in the *LAW TIMES*, in the course of the discussions that have taken place upon the various measures that have been produced to perish almost as soon as born. Enough to say, that reflection and experience have served but to strengthen the conviction that they will prove vastly more productive of evil than of benefit to the community, unless, indeed, the framers of the new Bill have succeeded in the invention of securities for good as well as cheap law, which have hitherto baffled the ingenuity of our legislators.

The ready reply to all objections to the practical working of Local Courts is, that there is a popular demand for them, as proved by the numerous Bills for the establishment of Small Debt Courts with which the Parliament is deluged. But the fact is, that these Bills do not emanate from public so much as from private motives. Trace any one of them to its origin, and it will be found to be the offspring of the busy brain of some attorney looking for a commission, or the joint speculation of three or four idle gentlemen desirous of being judges in a small way, aided by an attorney not unwilling to have the conduct of a private Bill. They summon meetings, and procure petitions, and get up a sort of little agitation, and that is called a public demand for a Local Court. It may be that the moving parties are really disinterested; that they labour at the reduction of their professional gains from a philanthropic desire that their clients shall have law for next to nothing. If so it be, their disinterestedness deserves honour, whatever be our opinion of their wisdom. The test, however, will be speedily applied. If the public advantage be the object sought, we shall find the promoters of the various private bills cheerfully abandoning their own partial measures, and zealously supporting the general measure of the Government. If, on the other hand, private motives have mingled with their patriotism, we shall see them opposing the Government scheme, although it is but an enlargement of their own.

The objections to Local Courts are so many, that a mere list of them would fill a couple of our columns. They present themselves at every stage of the process. The greatest of all is that which is by their supporters esteemed their foremost benefit;—the absence of legal advisers,—the prosecution of their suits by the parties in person. All experience has proved the vast advantages that result from the substitution of unprejudiced agents for angry foes in the conduct of a dispute. It prevents a world of litigation, and enables the true question at issue to be determined soberly, without the intervention of those personalities which would convert courts of justice into bear-gardens. And if the system has been found so advantageous in the higher courts, surely it would be equally beneficial in the lowest—nay, more so, because the class of suitors in the latter would be less restrained by good-breeding.

Is any proof of this required? Look at the existing Courts of Requests. What they are the new Local Courts will be, unless they admit the respectable practitioner, and that cannot be done without allowing to him a reasonable remuneration.

We write, assuming that the new measure, like its predecessors, will extend the jurisdiction of the Local Courts to claims of 10*l.* and not for debt only, but for damages in all kinds of actions, save such as involve a title to real property.

But we are not hostile to cheaper justice, or to the popular demand that it shall, to use the favourite phrase, be brought home to every man's door. We believe that the law may be, and ought to be, made very much more easy of access. But we protest against this proposed plan for accomplishing the object, as costly to the country, cumbrous, unsatisfactory to the suitor, injurious to the Profession, encouraging a race of pettifoggers and sham-lawyers. There are other means for securing the same end, and to which it would be wise to give a fair trial before plunging into a huge experiment which it would be as difficult to abolish as to put in action. The plan we have suggested inflicts no added burden upon the country; it introduces no new and untried machinery; it will preserve the character of our legal institutions, while bringing their benefits home to the whole community by reducing the cost of justice to the merest trifle. It is at once simple and efficient. It consists in a large reduction of Court fees; placing a lawyer in the chair at quarter sessions; and extending the jurisdiction of that ancient and familiar tribunal to all causes under 20*l.* save where a judge's order shall, on the application of the parties desirous of trial before a judge, otherwise direct. Here is all the machinery in existence for the most efficient Local Court that could be devised, and only requiring very trifling regulations to give entire satisfaction to the public, and to produce all the benefits expected from such Local Courts, without the evils which must inevitably result from them. So reasonable is this proposition, that if properly brought under the notice of the legislature it could hardly fail to have the preference. Will no member of the House of Commons fight the battle of the Law and the Lawyers against the reckless assaults of laymen, ignorant of the very nature of the work they have undertaken?

VERULAM PUBLICATIONS, &c.

No. 22 of *Real Property and Conveyancing Cases*, and No. 18 of *New Practice Cases*, will be ready by Saturday next.

The 13th and 14th numbers of Cox's *Criminal Law Cases* are in the press.

The first volume of the *Real Property and Conveyancing Cases* is now issued, bound; back numbers can be had to complete sets for binding.

MR. SAUNDERS'S *Treatise on The Practice of Summary Convictions*, with an appendix of forms, is in the press, and will be published in a few days.

All the forms necessary for the coming registrations are being printed for the Society. Where any quantities are required, the name of the county or town can be inserted by the printer, if the orders be sent immediately.

The members are entitled to all the 1,000 forms and law-books published by Messrs. KNIGHT, at the Society's prices.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 3*s.*]

BIRTHS.

DE MORGAN, Mrs. wife of Thomas De Morgan, esq. barrister-at-law, on the 23rd inst. at 13, Titchfield-terrace, Regent's-park, North, of a son.

POLLOCK, Lady, on the 23rd inst. at the Lord Chief Baron's, in Guildford-street, of a daughter.

SIMON, Mrs. the wife of John Simon, esq. barrister-at-law, on the 21st inst. at Faddenwick-place, H. in netmash, of a son.

MARRIAGES.

SEWTON, John Charles, esq. M.A. of Corpus Christi College, Cambridge, and of the Inner Temple, to Ellen, second daughter of R. H. Sewton, esq. of Endeavour-street, Twickenham-square, on the 27th inst. at St. Pancras Church.

STAPLES, William Frederick Browne, esq. barrister-at-law, second son of M. W. Staples, esq. of Crown-hill, Norwood, to Janet Helen Alexandrina, youngest daughter of the late Colonel Alexander Mackenzie, of Brixton-hill, Surrey, and formerly of her Majesty's 36th regiment, on the 12th inst. at St. George's, Hanover-square.

DEATHS.

CLAYTON, Ellen, the widow of the late S. Clayton, barrister-at-law, on the 26th inst. at 8, Hyde-park-place, aged 78.

DARBYSHIRE, T. Barrister-at-law, suddenly, in Dean-street, Manchester.

HIDVARD, Francis, esq. of the Inner Temple, barrister-at-law; Fellow of Clare-hall, Cambridge, on the 22nd inst. in consequence of a fall from his horse, in St. James's Park, on the previous afternoon.

HODGSON, Rev. Charles, A.M. rector of St. Tudye, one of her Majesty's justices of the peace, and formerly student of Christchurch, Oxford, on the 17th inst. at St. Tudye.

NEWKENT, J. esq. of the Middle Temple, on the 26th inst. aged 77.

PALMER, Mr. T. Ellis, solicitor, of Tunbridge Wells, at his father's residence in Brighton, aged 50.

NECROLOGY.

OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

SIR JOHN TREVELYAN, BART.

We have this day to record the decease of one of the oldest baronets in the empire—Sir John Trevelyan, who expired on the 23d inst. at his seat, Nettlecombe Court, Somerset, at the advanced age of 86. He was the son of the fourth baronet by the daughter of P. Symond, Esq. He succeeded to the title in 1828, having previously married the daughter of Sir T. S. Wilson, Bart. an eminent city merchant. He was a deputy-lieutenant for Northumberland, in which county, as well as in Somerset, he held estates, which, with the title, go to his son, Walter Calverly, born in 1797. The baronetcy was created in the reign of Charles the Second, being conferred by that monarch on a member of the family in return for the services rendered by them to the royal party in opposing the republican forces under Fairfax and Cromwell.

THE CRITIC.

New Books.

The Law Magazine; or Quarterly Review of Jurisprudence. No. 71. Bonnaing and Co.

This number is rich in material interesting to the Profession. It opens with an article on "Capital and Prison Punishments," in which the writer emphatically contradicts the assertions of the opponents of capital punishment, that crime has diminished with its abolition. We differ broadly from the writer in his conclusions, but we are inclined to agree with him that the fact is as he states, and that the argument founded upon the opposite assumption is a weak one, and, like all weak arguments, injure the cause they are adduced to support. The real ground of hostility to capital punishment is a far loftier one than the question whether it adds to, or diminishes by a fraction, the number of criminals. The case of the "Brazilian Slave Trade" is next reviewed, and is followed by a learned essay "On several dispositions of an equity of redemption." There is an account of the opening of Lincoln's-inn Hall; practical papers "On actions against justices and others fulfilling public duties;" and "On the joint and several liability of partners, one signing for several." "The Practice of the Court of Chancery" is a review of Mr. DANIELL'S book; and a most interesting abstract of a recently published work on "German Criminal Trials" concludes the longer papers. Notes on leading cases, short notes of new books, legal events of the quarter, &c. complete this number of the quarterly of the Profession.

The Law of Fire and Life Insurance, with the latest Decisions, and an Appendix. By GEORGE D. B. BRAUMONT, Esq. Barrister-at-Law. Second Edition. London, 1846. Stevens and Norton.

INSURANCE has become a subject of such universal interest, that a volume devoted to it will be a welcome addition to the Law Library. Mr. BRAUMONT has condensed all the most important principles and decisions into a treatise of no great bulk; so arranged that information upon any branch of the subject is readily found. Having defined the term, he describes, successively, the form of the policy, the duration of the insurance, the interest of the insured, the premium and date of commencement, the risk, misrepresentation, concealment, and warrant.

ties, adjustment of claims, and assignment of policies. The second part is devoted to the effect of assignments on other contracts; the third part to companies, agents, and proceedings on policies; and to the Mr. BEADMONT has appended some useful tables of annuities and reversions. As a specimen, perhaps, the most interesting and useful to our readers would be a portion of the chapter on the

ASSIGNMENT OF POLICIES.

Possession gives in a certain manner title to land: possession is alone sufficient to make a title to goods other than land: bills and notes, which by custom pass current from hand to hand, require no evidence of title other than possession. The custom (local or general) of merchants can make other contracts of third parties transferable, so that every possessor of the written evidence of the contract shall have title on a claim against the third parties who originally bound themselves by the contract. Thus, in the case of *Long v. Smith*, the Court, in determining that the possession of certain Neapolitan scrip gave no title to the stock or fund, declared, "the question is, whether these securities, from the course of dealing, have acquired in the city the character of bank-notes, bills of exchange, exchequer bills, dividend warrants, and other instruments, which form part of the circulation of the country."

By the custom of marine insurance, policies are transferable freely with the bills of lading. There is no custom recognised which makes policies of fire and life insurance pass currently to successive owners of the property insured, nor to other persons, by transfer of the possession of the policy. As a general rule, where the possession of property is in one party, and a recognized claim to it resides in another, such claim can only become a transferable interest by the possessor being a party to the transfer by some act or admission; his acceptance of notice of the transfer is sufficient for this purpose. On this general principle, several cases upon policies of life insurance have been determined. Equitable mortgagees can assign, and trover for detention of deed does not lie. (*Hobson v. Melland*, 2 Mood. & R. (N.P.) 342.) After when deposites only holds for safe custody without lien. (*Rowlin v. Deabrough*, 2 Mood. & R. (N.P.) 326.) On fire insurance no case of transfer of policies has come before the Courts within a recent period. Whether, with regard to both or either of these kinds of insurance, a custom will grow up, making policies of insurance to "run with" the property insured, as custom has made several covenants (originally only personal contracts) to "run with the land," is a fair subject of speculation.

NOTICE OF ASSIGNMENT OF POLICIES.—Now with regard to notice. The case of *Williams v. Thorpe* (2 Simons, 250) was, where the assignee of a bankrupt were the plaintiffs in the bill: a party to whom the bankrupt had assigned the policy on his life was defendant. Though it was shewn that "assigns" were mentioned in the policy, though the party taking the policy by the assignment had paid the premiums which fell due upon it in two successive years, and though it was proved by the evidence of Mr. Morgan, joint actuary of the office (the Equitable Insurance Company), that it was not the practice of the office to require notice of the assignment of policies, but to give effect to the assignment when proved upon the coming in of the claim on the determination of the risk; yet the Court decreed that notice was necessary under the general law of assignment of debts. The policy was ordered to be given up accordingly, as being in the reputed ownership of the bankrupt. This decision was followed up in a case which came before the Court subsequently, at an interval of three years, viz. in the case *Ex parte Colville, re Severn* (Jan. 10, 1851, 1 Montag. & Park. 110). (See *Dearle v. Hall*, 3 Russ. 1; and *West v. Reed*, V. C. Wigram, Feb. 11, 1843.) The authorities are very carefully collected in this case.

With regard to the practice of the offices requiring notice of assignments, the period differs; in one office forty-two days, in another three months is allowed, in another the assignment is to be mentioned to the office as soon as possible. With regard to the form of notice, this is not fixed (see *Ex parte Stright*, 1 Mont. 502); it must, however, be expressed, and not implied. Whether verbal notice were sufficient in any case, is a fact for the jury. (*Edwards v. Scott*, 2 Mann. & Gr. (C.P.) 963.) But secret assignment is not admissible as a conversion. (*Nutting ex parte*, 2 Mont. D. & G. (B.) 302. See *Bennett v. Leader*, 10 Sim. (Ch.) 230.) Payment of the premium by the assignee is not notice by itself, as is shewn in the case of *Williams v. Thorpe*. There is no case shewing the precise limit of time within which it is considered requisite that notice should be given in the absence of any rules of the particular office on this point. In the case of *Ex parte Colville* more than six months appear to have elapsed; in the case of *Wm. Hams v. Thorpe*, there was an interval of fifteen months between the assignment of the policy and the claim of the assignee of the bankrupt arising by the issuing of the commission. Perhaps, in the absence

of a definite rule as to any office, the Courts would fix the time by taking the average duration of the commission of the practice of the different offices. This period being fixed, where there are two or more conflicting claims, on neither of which notice has been given to the office, the time for giving such notice being expired as to none or as to all, the first in date will have the preference.

After a commission of bankruptcy (or declaration of insolvency) has issued, it will be too late to give the notice to the insurance office, though with their consent, if the regular period within which, according to the rules of the office, notice should have been given, has expired. The commission issuing will prevent notice being given to complete the assignment, the regular period for notice not having expired. This principle, if not decided by the two cases above cited, is in conformity with the rule in bankruptcy against relation back to the date of the deed where enrolment is subsequent to commission. (See *Parry v. Brown*, 1 Jones, 196; 1 Vent. 346; *Kemp v. Gandy*, Carth. 178. See 13 Mod. 3.)

An execution taken out against the "goods and chattels," does not include choses in action, of which are policies of insurance; therefore, whether execution be in itself notice of transfer cannot be made a question. The "Bona" passes under the assignment in bankruptcy in a case where a settlement was made, previous to the bankruptcy, in trustees for wife and children. (*Parke v. Bell*, 9 Sim. 388.) As to who is agent to be affected with notice, the usual agents or officers of the company receiving the articles of agreement for policies will be those to take the notice.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY

ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.

(Continued from p. 128.)

16. *Cestuis que trust.*

Equitable estates.—Equitable estates are to be enjoyed, by the *cestuis que trust*, in the same condition as legal estates, and they are to be entitled to the same benefits of ownership as if the estates were actually executed in them (*Courthope v. Heyman*, Carth. 25; *Wyndham v. Tanfield*, 1 Ch. Rep. 29; *Goring v. Bickersstaff*, 1 Ch. Cas. 8; *Cornbury v. Middleton*, ib. 211; *Burgess v. Wheate*, 1 Eden, 195); and the *cestuis que trust* may, without the intervention of the trustees, or the possibility of their preventing them from exercising their ownership, act as if no trusteeship existed. (*Phillips v. Brydges*, 3 Ves. 127.) And the assignee of a *cestui que trust* may call upon the trustee to convey to him, and on his refusal so to do, may file a bill against him to compel a conveyance, and that even without making the assignor a party. (*Goodson v. Blison*, 3 Russ. 583.)

17. *Persons who have already departed with their estates.*

Under certain circumstances, parties who have departed with their estates, so that no interest whatever, either legal or equitable, remains vested in them, may yet retain a disposing power; as in the instance I have before alluded to, of a subsequent conveyance to a *bond fide* purchaser for valuable consideration, by a person who has previously made a voluntary settlement of the same identical property; in which case, the subsequent disposition will be effectual, and, as such, defeat the prior voluntary conveyance. Again, a tenant in tail who has levied a fine, though he has by that means departed with all his estate in the entailed lands, yet, both he and his issue will still, to a certain extent, retain a conveying power, which, previously to the late Fine and Recovery Substitution Act (3 & 4 Wm. 4, c. 74), might have been exercised, by either himself or his issue, being vouched in a common recovery for the purpose of barring the estates in remainder or reversion (*Baumont's case*, 9 Rep. 138; *Baker v. Willis*, Cro. Car. 476); and the same object may now be accomplished by an assurance under the Fine and Recovery Substitution Act above alluded to. The same observations are also applicable to a tenant in tail, who since the passing of the last-mentioned Act has converted his estate tail into a base fee; in which case, though no estate whatever remains in him, he must yet convey as if seised in fee. Nor does a tenant for life, who is the protector of a settlement, by conveying away his life-estate, cease to be the protector; consequently, he may give or

withhold his consent to the alienation of the estate in tail just as he could have done before.

18. *Donees of Powers.*

The right of parties to sell under powers must depend in every case upon the particular terms expressed in the instrument by which they are created. A general power of appointment without any restriction will confer an absolute power of disposition over the property it embraces, whether the donee does or does not take an actual estate in it. If he takes an estate, then the power will be agent pendant or appurtenant to such estate, but if no estate be limited to him, then the power will be collateral, or in gross. If no particular form be prescribed, then any mode of assurance capable of passing the property will be a valid execution of the power (*Daniel v. Upley*, Latch, 9, 39, 134; *Hosling's (Dane)* case, 3 Keb. 511; *Saunders v. Owen*, 2 Salk. 467; *Dighton v. Thomlinson*, 1 P. Wms. 149; *Dyer v. Aveler*, ib. 165; *Wykham v. Wykham*, 11 East, 458); but if any particular form be prescribed, then the terms thereby imposed must be strictly complied with (*Hawkins v. Kemp*, 3 East, 410; see also *Digge's case*, 1 Rep. 173; *Bath and Montague's case*, 2 Freem. 193; 3 Ch. Cas. 55; *Birde v. Stride*, Bridg. 21; *Thayer v. Thayer*, Palmer, 112; *Blockville v. Ascol*, 2 Eq. Ca. Abr. side note, 659; *Kibbett v. Lee*, Hob. 312; *Dormer v. Thurland*, 2 P. Wms. 506; *Mansel v. Mansel*, Wilms. 36; *Darlington (Earl of) v. Pulteney*, Cow. 260; confirmed in *Long v. Lady Cowen*, 5 T. R. 567; 6 Bro. P. C. 666, Toml. 175); consequently, if the power is to be executed by a deed attested by two witnesses, it will be invalid if executed by one only; and if the conveyance is to be made with the consent of a particular person, such consent is essential to the valid execution of the power; and if the power is restricted to a limited interest, an appointment for any larger estate would be ineffectual.

19. *Executors and Administrators.*

Executors and administrators have an absolute power of disposition over the testator's or intestate's goods and chattels, whether real or personal, and may therefore sell all such beneficial interests in terms of years as come to them in their representative capacity; consequently, a purchaser is not bound to see to the application of the purchase-money, even if the term be charged with a particular debt, or even if it be specifically bequeathed, because terms of years are subject to the payment of all debts in the first instance. (*Essex v. Corbett*, 1 P. Wms. 148; *Nugent v. Offord*, 1 Atk. 669.) Where there are several executors who all prove the will, they have a joint and several interest in all the testator's personal estate (*Dy. 33*; 1 Eq. Ca. Abr. 319); therefore a disposition by one of them only for a term is good. But it is otherwise in the case of administrators, who having a joint authority, one of them cannot convey alone, so as to bind his co-administrators. (*Hudson v. Hudson*, 1 Atk. 460.)

20. *Sheriff.*

The sheriff may seize lands or terms for years (*Palmer's case*, 4 Co. 74; *Atkinson's Sheriff's Law*, 325), and it is impossible to suggest any possession of a certain term that is not the subject-matter of a *fiat facias* (*Taylor v. Chis*, 3 Will. 294; *Westmoreland v. Smith*, 1 Man. & Ry. 186; *Sturges v. Bosman*, 1 B. & A. 230; *Dee v. James v. Brown*, 8 Taunt. 679); consequently, a term acquired by marriage may be taken in execution for the husband's debt. But notwithstanding that a sheriff may sell any certain term in lands, it appears doubtful whether, by the Statute of Frauds (29 Car. 2, c. 3), he can sell an estate *perpetuo*, and the better opinion seems to be that he cannot do so. (*Comb*, 291.)

What species of conveyances will be considered as simply voluntary.—The statute 21 Eliz. c. 6, has declared all conveyances to be void against purchasers for valuable consideration (1 Man. Ry. 273; *Wheeler v. Fisher*, 2 Atk. 618; *White v. Sanson*, 5 ib. 412; *Hill v. Bishop of Exeter*, 2 Taunt. 82; 98); consequently, it is immaterial whether the purchaser has or has not notice of the settlement (*Palmer v. Roderick*, 19 Ves. 90; *Ruckle v. Mitchell*, ib. 110; *Metcalf v. Palmer*, 1 Ves. & Bea. 94); the estate receiving the same construction in courts of equity as in courts of law, and comprehending copyhold as well as freehold property. (*Barry v. Bellifall*, 5 B. & A. 131; *Currie v. Nield*, 1 M. & Cr. 580.) So where a power is exercised under

voluntary settlement, and that power is afterwards exercised for a valuable consideration, the purchaser will have the benefit of it. (*Hart v. Middlehurst*, 3 Atk. 377; 1 Mad. Prac. 232, 2nd edit.; see also *White v. Simons*, 3 Atk. 412; *Hill v. Bishop of Exeter*, 2 Taunt. 82, 83.) But the settlor will not be allowed to defeat the settlement by a subsequent conveyance, upon a mere nominal consideration (*De v. Roullege*, Cow. 705; *Metcalf v. Petherick*, 1 Ves. & Bea. 84), unless he had reserved to himself a power of revocation by the prior settlement, but which, if he were to do, he would render the settlement testamentary, and all the legal consequences of a will would attach upon it.

Distinction between voluntary conveyances and a purchase taken in the name of wife and children.—Care must be taken to distinguish between a voluntary conveyance and one taken in the name of the purchaser's wife and children, the latter of which is not considered to be within the meaning of the Act of Fraudulent Conveyances (27 Eliz. c. 4), and therefore cannot be defeated by a subsequent conveyance to a bona fide purchaser for valuable consideration. (*Lady Gorges' case*, Cro. Car. 550, cited; *Booth v. Templar*, 3 Bro. C. C. 148; *Doe v. Manning*, 9 East, 59; *Doe v. Hopkins*, lb. 70; *Hill v. Bishop of Exeter*, 2 Taunt. 69; *Gully v. Bishop of Exeter*, 10 B. & C. 601.) Cases of this kind differ from the ordinary cases of conveyances taken in the names of third persons, in which, if no trusts are declared, the party to whom the estate is conveyed will hold in trust for the party advancing the money (*Gawcotte v. Thwing*, 1 Vern. 366; *Benger v. Benger*, 1 P. Wms. 780; *Ryall v. Ryall*, 1 Atk. 50; *Dyer v. Dyer*, 1 Cox, 92); because the husband and father is under a moral obligation to provide for the wife and children. (*Lloyd v. Lloyd*, 1 P. Wms. 607; *Buck v. Andrews*, 2 Vern. 57, 128; *Kingdom v. Brydges*, lb. 67; see also *Ryder v. Ryder*, 10 Ves. 361.) In the case also of a purchase in the name of a child, whether such child be legitimate or illegitimate (if it be not otherwise provided for), it will be deemed an advancement for the child, and not a resulting trust for the father; unless some contemporaneous declaration can be proved, or some act is done to manifest an intention that the child should take as a trustee; and this must be done at the time of the conveyance, for a subsequent act or disposition will not divest the gift (*Mumma v. Mumma*, 2 Vern. 19; *Dyer v. Dyer*, Wat. Cop. 216; *Crabb v. Crabbe*, 1 M. & K. 511); nor will the presumption in favour of the child be rebutted, although the conveyance should be made in the joint names of the child and of the father (*Savage v. Savage*, 1 Cha. Cas. 27), or of the child and a stranger. (*Lampugh v. Lampugh*, 1 P. Wms. 111; see also *Gray (Lord) v. Gray (Lady)*, Finch, 338; *Elliot v. Elliot*, 2 Cha. Cas. 66; *Mumma v. Mumma*, 2 Vern. 19.) Nor will it be material whether the purchase be of an estate in possession or reversion. (*Finch v. Finch*, 14 Ves. 56; *Dyer v. Dyer*, 2 Cox, 92; *Murree v. Franklin*, 1 Swans. 13.) A purchase made by a grandfather in the name of a grandchild will also be good if the father be dead (*Howard v. Bower*, 2 Cha. Cas. 96), but not otherwise; as the beneficial interest the child will take will depend upon whether or not the purchaser stands in loco parentis to him; which a grandfather, in the lifetime of the father, does not. (*Lloyd v. Read*, 1 P. Wms. 607; 1 Rep. Ca. Abs. 382.) It has indeed been said that the presumption is not strong where the purchase is made in the name of a daughter as a son, because daughters are not so often provided for by a settlement of lands as sons; but this distinction is not sustainable. (See 2 Mad. Prac. 117, second edit.; *Lady Gorges' case*, 3 Cro. 550; *Bedwell v. Prome*, mentioned 3 Abz. 95.) In both instances, however, it will be requisite that the child should be unadvised; yet a partial advancement (Rep. temp. Finch, 326), or, it seems, any advancement, if the father considers the child unadvised (*Ridgway v. Ridgway*, 3 B. Rids. R. Ca. 106), will be insufficient to induce a trust in favour of the father; nor will a reservation of a life estate be sufficient to prevent the child from taking. (*Lampugh v. Lampugh*, 1 P. Wms. 111.)

What acts of the father will repel the presumption of the intended purchase in favour of the child.—In some of the earlier cases it was considered that, notwithstanding the father should himself take possession, and exercise acts of ownership over the purchased property, those circumstances would afford no evidence of a trust for him (*Lampugh v. Lampugh*, 1 P. Wms. 111; *Mumma v.*

Mumma, 2 Vern. 19; *Taylor v. Taylor*, 1 Atk. 306; *Bedwell v. Prome*, 3 Atk. 490; *Bedington v. Ridgway*, 3 B. Rids. P. C. 106; see also *Elliot v. Elliot*, 2 Cha. Cas. 231); and in that case it must be intended that those acts were done in the character of guardian for the child (1 P. Wms. 113); but it has been held that, where the father received the rents and profits after the child was of age (*Lloyd v. Read*, 1 P. Wms. 608); or where the child was of age when the purchase was effected (2 Mad. Prac. 117; *See graterie, M. S.*), the son would only be a trustee for him, as he also would be if the father and another person paid the purchase money. But, at the same time, it appears that the laying out of money by the father in improving the property is not exercising such an act of ownership as will convert the son into a trustee. (*Shales v. Shales*, 2 Freem. 265.)

Practical remarks.—Upon the whole, therefore, it may be laid down as a general rule, that whenever a child takes for his own benefit, and not as a trustee for the father, it will not be in the power of the latter to defeat his child's claim by alienating the property even to a bona fide purchaser for valuable consideration. (*Lady Gorges' case*, Cro. Car. 550, cited in *Kingdom v. Brydges*, 2 Vern. 67; *Buck v. Andrews*, lb. 120.) But if the father was a trader, the purchase will not be protected (6 Geo. 4, c. 16, s. 75); unless he was solvent at the time it was made; yet, if solvent, then his subsequent insolvency will not invalidate the settlement. (*Sagittary v. Hyde*, 2 Vern. 44; *Russell v. Hammond*, 1 Atk. 15; *Holloway v. Mithard*, 1 Mad. Rep. 113; *Butterbee v. Furrington*, 1 Swans. 106.)

As to what persons will be considered as purchasers within the meaning of the statute 27 Eliz. c. 4.—It is not necessary, in order to enable a purchaser to obtain the protection of this statute, that the legal estate should have been conveyed to him for an equitable interest. Entitling a party by contract to clothe it with the legal title, makes such a party a purchaser in the eye of a court of equity (*Buckle v. Mitchell*, 18 Ves. 100); hence the purchaser of an equitable estate for a valuable consideration will be no more affected by a voluntary settlement, even with notice, than a purchaser of a legal estate; and in a very recent case (*Lister v. Twiss*, March 12 and 23, 1846, 7 Law T. 8), although not long since a contrary doctrine prevailed (*Ker v. Dorrien*, 9 Bing. 76), it was held, that where title-deeds are deposited, by way of security, with a banker, the latter will be considered a purchaser within the meaning of this Act, and, consequently, as such, entitled to avoid the settlement. But creditors, even by specialty, were not considered as purchasers within the 27th of Elizabeth; and although under a prior statute (13 Eliz. c. 5) a voluntary conveyance was void against creditors, it was, nevertheless, formerly considered, that in order to impeach a settlement under the latter statute, the husband must be proved to have been indebted at the time. (*East-India Company v. Owen*, Glib. Rep. 37; *Walker v. Burrows*, 1 Atk. 98; *Stephens v. Oline*, 2 Bro. C. C. 90; *Lusk v. Wilkinson*, 5 Ves. 384.) But this rule was relaxed in favour of the creditors in the more recent case of *Richardson v. Smallwood* (18 Ves. 55); see also *Townsend v. Wintacott* (2 Bosc. 340), in which it was held, that in order to make void a deed as fraudulent against creditors, it was not necessary to prove that the party was insolvent at the time, if it appeared that the intention was to delay the creditors.

(To be continued.)

INCREASED VALUE OF LAND.—In 1823, land in Belvoir-street was sold for 8s. per yard; and on Tuesday last, the narrow strip of land between the New Chapel and Wellington Rooms, in the same street, was sold by Mr. Windram for 25s. per yard.—*Leicester Advertiser*.

PRICE OF LAND IN SOMERSETSHIRE.—Monkton-Combe estate, consisting of about 77 acres, with the farm-house and buildings attached, let to the present tenant at 150l. per annum, was sold by auction, by Messrs. English and Son, at their rooms, Milcom-street, on Wednesday week, for the sum of 5,261l., being at the nearly unprecedented rate of upwards of 30 years' purchase. Some ground-rents, belonging to the same estate, realized excellent prices, but not in the same ratio as the land.—*Bath Chronicle*.

COTTAGE PROPERTY, BRAINTREE.—On Thursday last, at the George Inn, Braintree, Mr. Newman, by direction of the trustees of Mr. S. Boyton, deceased, sold upwards of fifty cottages, or occupations, situate in Braintree; part freehold and part copyhold, the admission fine to the latter being only a double quit-rent, which did not exceed 5d. for the

largest lot, and in most of them only 1d. Part of the estates were also land-tax redeemed.

Lot.	Amount	Purchaser
1. Five copyhold.	£32 2 9	Mr. G. Laver
2. Four ditto	19 17 6	Mr. Goodday
3. Five ditto	24 16 4	Mr. Marshall
4. Four ditto	24 16 0	Mr. C. Westbrook
5. Two ditto	21 0 0	Mr. Dawson
6. Two ditto	18 0 0	Mr. Harrington
7. Three ditto	18 12 0	Mr. D. Brown
8. Two ditto	10 0 0	Mr. Bryant
9. Two ditto	9 13 4	Mr. J. Pugin
10. Three ditto	22 8 0	Mr. G. Craig, esq.
11. Ten copyhold.	48 11 6	Mr. C. Valey, esq.
12. Three ditto	16 8 0	Mr. Chessman
13. Two ditto	10 8 0	Mr. Cunningham, esq.
14. Four ditto	24 12 0	Mr. W. Purney

The sale was numerously and respectfully attended, the competition was good, and the produce of the cottages exceeded considerably the sum anticipated by the parties interested.—*Essex Herald*.

Public Sales.

By Messrs. DRIVER, at the Mart.

The above celebrated and magnificent property, the favourite residence of his late Royal Highness the Duke of York, containing 600 acres, was on Tuesday the 19th inst. brought to the hammer, by Messrs. Driver, at the Auction Mart, London. The estate was most judiciously divided into 64 lots, the greater portion of which were disposed of for the erection of villas, when after a most spirited competition between an unusually numerous and anxious company, the lots were sold at the following high prices, except the three first lots which were bought in.

The Mansion House, Offices, Pleasure Grounds, &c. containing 57a. 0a. 39p.—1,000l.

The Mansions of Ryland, Weybridge, and Walton Leigh—8,000l.

The Otlands Farm, with delightful Residence, containing 27a. 0p. 39p.—3,000l.

A valuable Plot of Building Ground, 6a.—200l.

A ditto, 6a.—250l.

A ditto, 6a.—210l.

A ditto, 7a.—200l.

A ditto, 10a.—250l.

A ditto, 12a.—250l.

A ditto, 12a.—300l.

A ditto, 12a.—310l.

A ditto, 12a.—300l.

A ditto, 12a. 1p.—300l.

A desirable cottage residence, and another cottage and garden adjoining, containing together 3r. 39p.—450l.

The White House; a desirable villa residence, &c. containing 1a. 0p. 39p.—1,100l.

A valuable plot of building ground, containing 2a. 1r. 39p.—750l.

A ditto, 2a. 49p.

A ditto, 2a. 3r. 50p.

A ditto, 2a.—500l.

A ditto, 2a. 3r.—500l.

A ditto, at Weybridge Lodge entrance, containing 2a. 61p.

A ditto of building ground, containing 2a. 3r.—500l.

A ditto, 4a.—400l.

A ditto, 6a. 3r.—510l.

A ditto, 6a. 3r.—470l.

A ditto, 7a.—450l.

A ditto at Weybridge, containing 2a. 3r. 39p.—470l.

A ditto of building ground, containing 12a.—500l.

A ditto, 10a.—570l.

A ditto, 9a.—570l.

A ditto, 2a.—550l.

A ditto, 4a. 3r. 39p.—200l.

A ditto, 4a.—180l.

A ditto, 6a.—250l.

A ditto, 6a. 1r. 39p.—300l.

A ditto, 6a.—400l.

A ditto, 6a.—500l.

A valuable and compact freehold farm, called "The Dairy," comprising most rich and productive arable and meadow land, containing 112a.—2,000l.

A valuable freehold villa residence, with meadow land, and sundry cottages, near Weybridge, containing 5a. 2r. 15p.—1,400l.

A very valuable parcel of walled kitchen garden and rich meadow land, containing 12a. 1r. 39p.—2,000l.

A valuable plot of arable and meadow land, with cottages and garden thereon, containing 44a. 1r.—3,500l.

A valuable building site, adjoining Walton Lodge entrance and the Otlands's drive, containing 11a. 2r.—1,010l.

A ditto, 2a.—770l.

A ditto, 6a.—650l.

A ditto, 2a. 3r.—810l.

A very valuable building site, adjoining Sir Henry Fletcher's park, containing 2a. 3r.—440l.

A ditto, 4a.—340l.

A ditto, 3a.—350l.

A ditto, 2a. 3r.—230l.

A ditto, 5a.—300l.

A ditto, 2a.—300l.

A ditto, 7a.—400l.

A ditto, with an extensive double frontage, and large piece of water therein, containing 12a. 2r.—700l.

A ditto, with frontage to the Otlands drive, containing 7a. 3r.—600l.

A valuable parcel of building land, with cottages thereon, containing 2a.—510l.

A valuable plot of building ground, containing 4a. 1r. 15p.—250l.

A freehold estate in Weybridge, consisting of a very desirable parcel of building ground, with cottages thereon, containing 2a. 3r. 39p.—200l.

A freehold estate near the church in Weybridge called "Purcell," containing 12a. 3r. 39p.—1,100l.

A valuable freehold estate, part of Child's Farm, with a most villa residence thereon, and sundry buildings, containing 27a. 3r. 39p.—2,510l.

A valuable and compact farm, with farm-house and other buildings thereon, containing 46a. 2r. 34p.—2,850l.
A valuable parcel of freehold meadow land, &c., containing 8a. 3r. 15p.—850l.
A valuable and compact freehold farm, containing 54a. 2r. 7p.—3,500l.
A very valuable parcel of meadow land, called the Thames Meadow, containing 25a. 1r. 5p.—1,540l.
Ditto, ditto, ditto, containing 14a. 1r. 25p.—900l.
By Messrs. WINSTANLEY, at the Mart.
Extensive premises, Nos. 1 and 2, Blucote-buildings, and Nos. 16 and 17, Bull and Mouth-street, City, held for 27½ years, at a ground-rent of 120l. per annum—1,850l.
Two houses, Nos. 10 and 11, Alfred-place, Camberwell, held for 30½ years, at 13l. 7s. per annum, let at 52l. the land-tax is redeemed—3,600l.
A house, No. 1, Colonnade, Camberwell, held for 21 years, at 2l. per annum, let at 34l.—2,400l.
A similar residence—230l.
A ditto—215l.
A ditto—295l.

The following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:
For the first 70 words 5s.
For every succeeding 30 words . 1s.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	96½	96½	95½	96½	96½	96½
Three per Cents. Reduced	95½	95½	95½	95½	95½	95½
New Three-and-a-quarter per Cts	96½	97	97½	97	97½	97½
Long Annuities	101	101	101	101	101	101
Bank Stock	205½	205½	205½	205½	205½	205½
India Stock	265½	265½	265½	265½	265½	265½
India Bonds, prem.	28	28	27	27	27	27
Exchequer Bills, prem.	19	18	17	18	19	19

FOREIGN.

Spanish Five per Cents.	24½	24½	24½	24½	24½	24½
Spanish Three per Cents.	37½	37½	37½	37½	37½	37½
Russian	110½	110½	110	110	110½	110½
Peruvian	39½	39½	39½	39½	39½	39½
Portuguese	56½	56½	56½	56½	56½	56½
Mexican	33½	33½	33½	33½	33½	33½
Deferred	16½	16½	16½	16½	16½	16½
Dutch Two-and-a-half per Cents.	50½	50½	50½	50½	50½	50½
Four per Cents.	92½	92½	92½	92½	91½	91½
Danish	88	88	88½	88½	88½	87½
Colombian	17½	17½	17½	17½	17½	17½
Chilian	90½	90½	90½	90½	90½	90½
Buenos Ayres	39½	39½	40½	41½	41½	41½
Brazilian	82½	82½	82½	82½	82½	82½
Belgian	96½	96½	96½	96	96½	96½

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, May 18.

Hare, J. draper, last exam. June 18.—Martin, J. fringe manufacturer, div. next week. Graham, London.—Rebeck, B. oilman, last exam. July 2.

Tuesday, May 19.

Ablett and Ablett, drapers, joint and sep. div. next week. Johnson, London.—Arcott, R. grocer, last exam. Aug. 7.—Baker and Co. warehousemen, joint and sep. div. next week. Johnson, London.—Barwise, J. last exam. passed.—Butterfield and Co. drapers, joint div. next week. Groom, London.—Clark, J. merchant, div. next week. Johnson, London.—Collins, C. yarn agent, last exam. June 19.—Dennings, I. watchmaker, div. next week. Whitmore, London.—Fearley, J. worsted stuff manufacturer, assignees, June 19.—Felthouse, G. plumber, last exam. June 23.—Gatehouse and Co. timber merchants, last exam. July 3.—Hadden, W. J. brewer, last exam. June 5.—Holland, J. draper, div. next week. Pennell, London.—Hooper, T. W. chemist, div. next week. Whitmore, London.—Rothschild, B. L. M. diamond merchant, last exam. June 5.—Withers, J. cattle dealer, last exam. June 16.

Wednesday, May 20.

Banister, R. draper, fin. div. next week. Green, London.—Bullock, B. H. wine merchant, assignees, June 13.—Freeman, B. builder, div. next week.—Hearn, R. commission agent, assignees, June 18.

Thursday, May 21.

Dunn, J. builder, div. next week. Graham, London.—Dutt, J. carpenter, last exam. June 23.—Haye and Co. woollendrapers, last exam. July 9.—Hutchinson, R. leather seller, div. next week. Follett, London.—Jones, F. wine merchant, div. next week. Follett, London.—Littlewood, J. hosier, div. next week. Follett, London.—Matthews, T. draper, last exam. passed.—Page, J. builder, div. next week. Pennell, London.—Palmer, B. W. wine merchant, div. next week. Follett, London.—Radcliffe and Radcliffe, glaziers' diamond manufacturers, joint div. next week. Graham, London.—Savery, F. baker, assignees, June 26.—Watkinson, H. carpenter, last exam. passed.—Welch, J. victualler, div. next week. Follett, London.—White, W. tailor, div. next week. Follett, London.—Williams, W. victualler, div. next week. Follett, London.

Friday, May 22.

Amos, T. builder, div. next week. Groom, London.—Foley, E. victualler, last exam. July 10.—Cassell and Co. leather sellers, joint div. next week. Graham, London.—Moir, B. stationer, outlawed.—Wells and Co. coal merchants, assignees, June 10.

Saturday, May 23.
Dykes, E. S. basket maker, last exam. passed.—Forsyth, T. surgeon, last exam. passed.—Mills, W. glove manufacturer, last exam. June 4.—Rogers, W. draper, last exam. passed.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Collier, J. W. victualler, first, 3s. 10d. Whitmore, London.—Froeschlen and Price, tailors, first, 2s. Graham, London.—Gill, W. poultryer, first, 1s. 11d. Turquand, London.—Hall, W. grocer, third, 4d. Baker, Newcastle.—Hartshorne and Co. iron manufacturers, first, 7½d. Christie, Birmingham.—Leader, J. M. coach maker, second, 1s. 6d. Graham, London.—McEntire, R. agent, first, 2s. 9d. Graham, London.—Nell, W. brewer, second, 4s. Fraser, Manchester.—Newhouse, R. plumber, final, 5s. Young, Leeds.—Spiers, W. printer, first, 4s. 4d. Turquand, London.—Thompson and Mills, merchants, first, 9d. Baker, Newcastle.—Todd, J. ship builder, second, 2d. and 2-3rds of 1d. Baker, Newcastle.—Watson, B. L. manufacturer of flags, first, 1s. 2½d. Graham, London.—Williams, C. currier, second, 1d. and 2-11ths of 1d. Baker, Newcastle.—Wright, J. cabinet maker, first and final, 3½d. Christie, Birmingham.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, May 22.

Lydall, R. grocer, Skinner-st. Somers-town, May 4. Trust. R. Corser, tea dealer, Leadenhall-st. Sol. M'Duff, Castle-st.—Scribner, J. T. corn chandler, Church-st. Whitechapel, May 8. Trusts. T. Palmer and W. Shott, corn factors, Corn Exchange, Mark-lane. Sols. Young and Son, Mark-lane.—Tams, J. manufacturer of earthenware, Stoke-upon-Trent, May 4. Trusts. H. B. Perry, flint grinder, Hanley, and E. Cole, commission agent, Burslem. Sol. Stevenson, Shelton.—Troughton, E. T. manufacturer of earthenware, Tunstall, April 28. Trusts. J. L. Warren, esq. Conall-hall, Staffordshire, W. Malpas, flint grinder, Tunstall, G. F. Bowes, china manufacturer, Wolstanton, and H. Clive, lime merchant, Tunstall. Sol. Stevenson, Shelton.

Gazette, May 26.

Ford, W. grocer, Huddersfield, April 11. Trusts. J. Labrey, tea dealer, J. Robinson, grocer, and J. Gatliff, share broker, all of Huddersfield. Sol. Tindale, Huddersfield.—Freeman, E. grocer, Debenham, Suffolk, May 11. Trusts. R. Edwards, draper, Sudbury, and W. D. Freeman, stationer, Framlingham. Sol. Powell, Debenham.—Garnett, G. grocer, Gravesend, May 21. Trust. J. A. Wells, wholesale cheesemonger, St. Martin's-lane. Sol. Dods, St. Martin's-lane.—Guthorn, J. K. butcher, Royston, May 20. Trusts. W. T. Nash, auctioneer, Royston, and J. Tilley, farmer, Basingbourne. Sol. Wortham, Royston.—Keen, J. cattle dealer, Barking, May 2. Trust. J. Mumford, corn chandler, Ilford. Sol. Griffin, Ilford.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, May 22.

ARMISTEAD, MARY, milliner and baby linen warehousewoman, 10, Crawford-st. Marylebone, June 2, at eleven, June 30, at twelve, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Philip, Great St. Helens, and Lower King-st. Bloomsbury, sol. Date of fiat, May 19. Bankrupt's own petition.

BACON, JOHN EDWARD, leather factor, Upper Russell-st. Bernersday, and 14, Maitmore-st. New Peckham, June 4, and July 4, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Stenning, Long-lane, Bernersday, sol. Date of fiat, May 20. Bankrupt's own petition.

BEATTIE, ALEXANDER, and MACVAGHETER, FRANCIS, merchants, Nicholas-lane, Lombard-st. June 10, at eleven, June 6, at twelve, Basinghall-st. Com. Shepherd; Graham, off. ass.; Baxendale and Co. Great Winchester-st. sol. Date of fiat, May 22. J. S. Stafford, esq. Barton Seagrave, Northamptonshire, pet. cr.

BERRY, JOHN, draper, Church-st. Paddington, June 4, at eleven, June 4, at twelve, Basinghall-st. Com. Goulburn; Green, off. ass.; Ashley, Shoreditch, sol. Date of fiat, May 18. Bankrupt's own petition.

COOBAN, EDMONDSON, common brewer, Liverpool, June 9, and June 20, at twelve, Liverpool, Com. Ludlow; Turner, off. ass.; Cornthwaite and Co. Old Jewry-chambers, and Pemberton, Liverpool, sol. Date of fiat, May 8. T. Timmins, jun. maltster, Ruyton Eleven Towns, Shropshire, pet. cr.

EDWARDS, JAMES, iron founder, Digbeth, Birmingham, June 6 and July 4, at twelve, Birmingham, Com. Daniel; Whitmore, off. ass.; Hodgson, Birmingham, and Vincent and Co. Temple, sol. Date of fiat, May 18. T. C. Wilcox, linen draper, Birmingham, pet. cr.

HARVEY, THOMAS HITT, cement and drain tile merchant, Melcombe Regis, Weymouth, Dorsetshire, June 3, at eleven, June 25, at one, Exeter, Com. Bere; Hirtzel, off. ass.; Stone and Symonds, Dorchester, Stogden, Exeter, and Danglefield, Chancery-lane, sol. Date of fiat, April 28. R. and H. Williams, bankers, Dorchester, pet. crs.

HAYNES, JOSEPH, woollen warehouseman, dealer in fancy wollen cloth, 18, Aldermanbury, June 2, at two, July 9, at one, Basinghall-st. Com. Evans; Johnson, off. ass.; Norton and Son, New-st. Bishopsgate, sol. Date of fiat, May 15. R. Hurren, slopeller, Wormwood, pet. cr.

JONES, GEORGE, builder, 27, Essex-st. Texteth-park, Lancashire, June 2, and June 30, at eleven, Liverpool, Com. Phillips; Cazenove, off. ass.; Berkeley, Lincoln's-inn-fields, and Jones, Liverpool, sol. Date of fiat, May 15. J. Pepper, pilot, Liverpool, pet. cr.

KNIGHT, R., and A. jun. wholesale stationers, 10, Budget-row, City, May 28, at two, July 8, at twelve, Basinghall-st. Com. Evans; Bell, off. ass.; Wilkinson, Nicholas-lane, sol. Date of fiat, May 19. W. M'Murray, stationer, Garsick-hill, pet. cr.

LEAMAN, ANDREW VALENTINE, and ANDREW, WILLIAM, wholesale mahogany, rosewood, and deal merchants, 110, Fenchurch-st. May 26, at half-past one, July 8, at one, Basinghall-st. Com. Evans; Bell, off. ass.; Tilson and Co. Coleman-st. sol. Date of fiat, May 15. C. Shadcock, jun. and G. Tilson, merchants, Lime-st.-sq. pet. crs.

M'DOWALL, WALTER, printer, Pemberton-row, Gough-sq. June 6, at twelve, July 3, at half-past twelve, Basinghall-

st. Com. Fane; Whitmore, off. ass.; Holme and Co. New-inn, sol. Date of fiat, May 30. J. Hodge, T. Spalding, H. Spalding, and J. Hodge, jun. stationers, Drury-lane, pet. crs.

MARKHAM, ROBERT DALLINGER, boarding-house keeper, Bridport-hall, Silver-st. and 1, Parade, Edmonston, June 1, at two, July 6, at half-past eleven, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Wells, Bell-yd. Deodest-commons, sol. Date of fiat, May 18. Bankrupt's own petition.

PAGE, ROBERT HOWARD, innkeeper, Great Yarmouth, June 2, at half-past one, July 9, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Brislley, Pancras-lane, sol. Date of fiat, May 11. E. R. Swaine and J. Bood, distillers, Bartholomew-close, pet. crs.

PERRY, JAMES, grocer and linen draper, Harlow, Essex, June 9 and July 8, at eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Jones, Sise-lane, sol. Date of fiat, May 20. J. F. Pawson, and J. Stone, warehousemen, St. Paul's Church-yd. pet. crs.

RADDES, FRED, cotton spinner, Manchester, June 8 and 24, at twelve, Manchester; Fraser, off. ass.; Gregory and Co. Bedford-row, and Hampson and Son, Manchester, sol. Date of fiat, May 18. Bankrupt's own petition.

ROBINSON, ANN, linen and woollen draper and publican, Chester-le-st. Durham, May 29, at half-past one, July 7, at one, Newcastle, Com. Ellison; Baker, off. ass.; Bell and Co. Bow Church-yd. and Messrs. Chater, Newcastle, sol. Date of fiat, May 11. Bankrupt's own petition.

TAYLOR, WILLIAM, share broker and brewer, Worcester, June 4 and July 4, at twelve, Birmingham, Com. Daniel; Bittleston, off. ass.; Mottram and Knowles, Birmingham, and Smith and Co. Bedford-row, sol. Date of fiat, May 20. Bankrupt's own petition.

THORN, ALEXANDER, oilman and Italian warehouseman, 223, High Holborn, June 2, at eleven, June 30, at twelve, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Philip, Great St. Helens, and Lower King-st. Bloomsbury, sol. Date of fiat, May 19. Bankrupt's own petition.

WHITE, WILLIAM, builder and brickmaker, Morpeth-st. Bethnal-green, May 29, at two, June 25, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Manning, Craven-st. Strand, sol. Date of fiat, May 11. J. Marchant, ironfounder, Maudstone, pet. cr.

Gazette, May 26.

AVERY, JOSEPH, dealer in plate and jewellery, 28, Manchester-st. Manchester-sq. June 5, at eleven, July 11, at twelve, Basinghall-st. Com. Goulburn; Follett, off. ass.; Stafford, Buckingham-st. sol. Date of fiat, May 22. Bankrupt's own petition.

BEATON, JOHN, tailor, 120, Upper-st. Islington, June 4, at two, July 9, at eleven, Basinghall-st. Com. Evans; Bell, off. ass.; Rae, Warwick-court, sol. Date of fiat, May 21. Bankrupt's own petition.

BOULTON, THOMAS, money scrivener, Pickering, Yorkshire, June 8 and July 2, at eleven, Leeds, Com. Burge; Higgs, off. ass.; Hawkins and Co. New Bowell-court, Kendal, Pickering, and Dunning and Stawman, Leeds, sol. Date of fiat, May 23. Bankrupt's own petition.

BRACE, EDWARD HAZWOOD, and ALLEN, JAMES, warehousemen, Milk-st. Cheap-side, June 3, at half-past one, July 7, at eleven, Basinghall-st. Com. Ponblanque; Pennell, off. ass.; Reed and Langford, Finsbury-st. and Sale and Co. Manchester, sol. Date of fiat, May 18. J. C. Milne, merchant, Manchester, pet. cr.

BURTON, ARTHUR, coal merchant, Basinghall-wharf, Finsbury, June 10, at half-past two, July 2, at twelve, Basinghall-st. Com. Holroyd; Groom, off. ass.; Fitch, Bridge-st. sol. Date of fiat, May 21. Bankrupt's own petition.

CAPLETON, RICHARD CARLILE, tea dealer and grocer, High-st. Cheltenham, June 12 and July 7, at twelve, Bristol, Com. Stevenson; Miller, off. ass.; Paterson, Souverie-st. and Roberts, Kyrabham, Somersetshire, sol. Date of fiat, May 18. Bankrupt's own petition.

CLARKSON, JONATHAN, grocer's shopman, King's-road, Chelsea, June 1, at half-past two, July 2, at one, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Archbutt, King's-rd. Chelsea, sol. Date of fiat, May 22. Bankrupt's own petition.

COOPER, WILLIAM, hardwareman and haberdasher, Bury St. Edmund's, June 4, at twelve, July 11, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Gaddard, King-st. Cheap-side, sol. Date of fiat, May 14. R. Curry, tobacco manufacturer, Shoemaker-row, and G. E. Goodbehere, hardwareman, St. Martin's-lane, pet. crs.

CUMMINGS, GEORGE GORDON, tea broker and glass manufacturer, Mining-lane, Great Tower-st. and Gateshead, Durham, June 6 and July 7, at eleven, Basinghall-st. Com. Fane; Alsager, off. ass.; Ruck, Mining-lane, sol. Date of fiat, May 18. G. Geddes, colonial broker, Great Tower-st. pet. cr.

DANSON, WILLIAM, builder, Birkenhead, Cheshire, June 9 and 20, at eleven, Liverpool, Com. Ludlow; Bird, off. ass.; Cornthwaite and Co. Old Jewry-chambers, and Pemberton, Liverpool, sol. Date of fiat, May 23. Bankrupt's own petition.

DAVIS, JOSEPH, dentist, 123, Pall-mall, and 27, Ludgate-st. June 6, at half-past two, and July 3, at one, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Beart, Beckenham-st. sol. Date of fiat, May 18. Bankrupt's own petition.

GOLDTHORP, JOSEPH, grocer and provision dealer, Manchester, June 12 and July 2, at twelve, Manchester; Robinson, off. ass.; Jaques and Edwards, Ely-place, and Bath, Manchester, sol. Date of fiat, May 18. W. Kitchin, butter merchant, Manchester, pet. cr.

HEBBICK, JOHN DOUGLAS, grocer, Colchester, Essex, June 8 and July 7, at one, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Milne and Co. Temple, and Smythies and Goody, Colchester, sol. Date of fiat, May 20. C. Fincham, G. Matson, and J. Potts, tea dealers, Martin's-lane, pet. crs.

HIS, STEPHEN, worsted and cotton manufacturer, Oubase, Lancashire, June 9 and July 3, at twelve, Manchester; Hobson, off. ass.; Hawkins and Co. New Bowell-court, Parry, Manchester, and Wells, Bradford, sol. Date of fiat, May 21. D. Illingworth, worsted spinner, Bradford, pet. cr.

MALLAT, WILLIAM, milliner, Chorlton-upon-Medlock, Manchester, June 9 and July 2, at twelve, Manchester; Hobson, off. ass.; Sibley, Wharston-st. and Smedley, Manchester, sol. Date of fiat, May 22. Bankrupt's own petition.

NELSON, ROBERT, hotel keeper, licensed victualler, and trader, Great Portland-st. June 2, at two, and July 2, at

eleven, Basinghall-st. Com. Fonblaque; Pennell, off. ass.; **Watson** and Broughtons, Falcon-square, sols. Date of fiat, May 22. Bankrupt's own petition.

WATSON, J. J., oilman and British wine dealer, Union-st. Bath, June 3 and July 7, at twelve, Basinghall-st. Com. Fonblaque; Pennell, off. ass.; Berkeley, Lincoln's-inn-fields, sol. Date of fiat, May 13. G. Bishop and B. Pell, distillers, Finsbury, pet. crs.

WATKINS, JOHN, and TEMPEST, WILLIAM HOLDER, share brokers, share dealers, and copartners in trade, Leeds, June 8 and July 2, at eleven, Leeds, Com. Burge; Hope, off. ass.; Sudlow and Co. Chancery-lane, and Middleton, Leeds, sols. Date of fiat, May 18. Bankrupt's own petition.

WATTS, WILLIAM, builder and carpenter, Cheltenham, June 9 and July 7, at half-past twelve, Bristol, Com. Gervenson; Hutton, off. ass.; Packwood, Cheltenham, and Sabine, Bristol, sols. Date of fiat, May 21. Bankrupt's own petition.

WATKINSON, JAMES, grocer, Manchester, June 16 and 30, at twelve, Manchester; Pott, off. ass.; Hammond, Farnival's-inn, and Messrs. Bennett, Manchester, sols. Date of fiat, May 22. Bankrupt's own petition.

Meetings at Basinghall-street.

Gazette, May 22.

Bell, W. merchant and underwriter, Fenchurch-st. City, June 12, at one, and June 16, at twelve, further div. **Blacklocks**, R. innkeeper and carrier, Lydd, Kent, June 12, at twelve, div. **Dickinson**, G. Adams, T. and Macfarlane, M. B. calico printers, Cheapside, June 12, at one, joint div. and sep. of **Graham**, **Innell** and **Cookes**, varnish manufacturers Little Queen-st. June 19, at eleven, and **Martin**, A. linen draper, Sturminster Newton, June 16, at eleven, and **Morphy**, W. linen draper, Sevenoaks, June 28, at twelve, and **Ross**, A. and **Ogilvie**, J. army agents and bankers, Argyll-st. Middlesex, June 12, at eleven, and June 17, at twelve, further joint div. **Withers**, J. dealer in sheep, Bushey, June 16, at one, and **Wolton**, J. C. ironmonger, Halesdend, Essex, June 15, at one, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Buchanan, W. merchant, Old Jewry-chambers, June 16, at half-past one. **Emanuel** and **Emanuel**, goldsmiths, Bevis Marks, June 16, at one. **Hipwood**, J. H. merchant, Cornhill, June 17, at eleven. **Innell** and **Cookes**, varnish manufacturers, Little Queen-st. June 19, at eleven. **Smyrk**, B. fringe manufacturer, Hill-st. June 17, at eleven.

Gazette, May 26.

Blacket, and **Earlth**, jun. warehousemen, Gresham-st. June 18, at eleven, and **Blyth**, J. grocer and cheesemonger, Chelmsford, May 30, at one (adj. March 21); last exam. **Bucknell**, S. carman, Hendon, June 18, at eleven, and **Burnett**, E. merchant, Lime-st. city, June 16, at two, first div. **Earp**, G. B. ship broker, City, June 17, at eleven, and **Ennoll**, R. draper, Broad-st. Bloomsbury, June 16, at half-past eleven, div. **Glavin**, W. army clothier and agent, Villiers-st. Strand, June 16, at half-past twelve, div. **Harries**, J. butcher, Leadenhall-market, June 16, at eleven, and **Kinghorn**, D. J. baker, Crawford-st. June 17, at twelve, and **Metcalfe**, T. carpenter, Princes-st. May 30, at twelve (adj. March 27); last exam. **Moir**, G. bootmaker, John's-row, June 16, at half-past one, and **Starbuck**, R. shipwright, Gravesend, June 18, at eleven, div. **Tebbutt**, J. auctioneer, Cambridge, June 17, at half-past eleven, and **Thompson**, J. grocer, Norwich, June 17, at eleven, and **Todd**, T. cowkeeper and milkman, Palace-row, New-road, June 16, at half-past eleven, div. **Scholefield**, J. cutler, Cheapside, June 17, at eleven, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Clark, J. J. builder, Hounslow, Twickenham, and Westbury-upon-Trym, June 17, at twelve. **Dalton**, J. grocer, Wandsworth, June 18, at twelve. **Duffield** and **Duffield**, braziers, Slough, June 17, at twelve. **Howe**, W. linen draper, Boxford, June 16, at twelve. **Martin**, A. widow and linen draper, Sturminster Newton, June 16, at eleven. **Thompson**, J. grocer, Norwich, June 17, at eleven. **Tud-denham**, J. builder, Bayswater, June 16, at eleven.

Meetings in the Country.

Gazette, May 22.

Better, E. iron merchant, Carrington, Basford, Nottinghamshire, June 28, at eleven, Sheffield; first and final div. **Bassden**, J. cotton spinner and manufacturer, Bolton-le-Moors, Lancashire, June 16, at twelve, Manchester, to and on June 17, at twelve, second div. **Neilson**, W. merchant, Liverpool, June 12, at twelve, Liverpool, and **Ogle**, J. esq. Pickwick, Wiltshire, and **Walton**, W. merchant, Liverpool, June 12, at twelve, Liverpool, and relative to the ship Vanguard, and joint div. **Owen**, J. and S. merchants, Sheffield, June 19, at eleven, Sheffield, and div. **Stanton**, D. grocer, Bristol, June 8, at eleven, Bristol, proof of debts. **Segden**, J. and D. fancy cloth manufacturers, Springfield, in Kirkburton, and Huddersfield, both in Yorkshire, June 16, at eleven, Leeds, second and final div. **Wilkinson**, C. M. cotton spirit, and beer merchant, Ulverston, Lancashire, June 15, at twelve, Manchester, and June 16, at twelve, first div. **Wingfield**, W. common brewer, Marnborough, Nottingham, Yorkshire, June 19, at eleven, Sheffield, and **Wren**, T. sharebroker, auctioneer, and furniture broker, Preston, June 16, at eleven, Manchester, and June 17, at twelve, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Brown and **Preston**, jun. cotton spinners, Manchester, June 15, at twelve, Manchester, as to **Brown**, **Eubank**, C. sharebroker, Manchester, June 18, at twelve, Manchester. **Widdows**, G. J. sharebroker, Liverpool, June 16, at eleven, Liverpool. **Kelly**, M. provision dealer, Liverpool, June 15, at eleven, Liverpool. **Newall**, W. sheep salesman, Acton, June 16, at eleven, Liverpool.

Gazette, May 26.

Allen, E. T. apothecary, York, June 20, at eleven, Leeds, and **Bundell**, J. pawnbroker, Wigan, June 10, at twelve, Manchester (adj. April 26); last exam. **Briggs**, R. cotton manufacturer, Ulverston, June 8, at twelve, Manchester, proof of debts. **Broadhead** and **Habers**, stockbrokers, Leeds, June 20, at eleven, Leeds, sep. auds. **Buttry**, J. commission agent, Manchester, June 16, at twelve, Manchester (adj. May 6); to choose assignees. **Clark**, B. corn factor, Leeds, June 20, at eleven, Leeds, and **Cousen** and Co. worsted spinners, Bradford, June 22, at eleven, Leeds, and **Edmond** and **Edmond**, merchants, Liverpool and Bombay, June 18, at eleven, Manchester (by order of the

Court of Review of May 26), last exam. of W. Edmond. **Hepworth** and **Hepworth**, cotton warp dyers, Halifax, June 22, at eleven, Leeds, and **Jenkins**, W. W. brassfounder, Birmingham, June 19, at ten, Birmingham, and **Lathbury**, J. mercer and draper, Barton-upon-Trent, Staffordshire, June 19, at ten, Birmingham, and **Leyburn**, J. provision shopkeeper, Bradford, June 20, at eleven, Leeds, and **Mellanby**, J. broker and coal fitter, Hartlepool, June 18, at eleven, Newcastle, and **Phillips**, T. A. oil merchant, Huddersfield, June 22, at eleven, Leeds, first and final div. **Pickles**, R. linen manufacturer, Barnsley, June 20, at eleven, Leeds, and **Schonsaar**, G. and H. merchants, Ferryby, Kingston-upon-Hull, Sculceates, Yorkshire, and the island of Mauritius, June 17, at eleven, Hull, sep. auds. and divs. **Smith**, J. wine and spirit merchant, Warwick, June 20, at eleven, Birmingham, and **Sykes**, J. hosier, Doncaster, June 20, at eleven, Leeds, and **Ward**, F. rag merchant, Batley, June 20, at eleven, Leeds, and **Watkins**, H. D. and **Innes**, J. lead merchants, Manchester, June 23, at twelve, Manchester, and second and final joint div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Arkel, J. miller, Stow on the Wold, June 12, at twelve, Bristol. **Clark**, B. corn factor, Leeds, June 18, at eleven, Leeds. **Corrall**, J. shipowner, Boston, June 26, at ten, Birmingham. **Freeman**, J., M. D. Cheltenham, June 19, at eleven, Bristol. **Melanby**, J. broker, Hartlepool, June 18, at half-past eleven, Newcastle. **Morley**, H. R. merchant, Hull, June 17, at eleven, Hull.

Partnerships Dissolved.

Gazette, May 19.

Bodley, W. C. and C. ironfounders, Exeter, April 28. **Brooks**, J. sen. and jun. and J. M. calico printers, Manchester and Crawshaw-booth, and flax spinners, Bolton, so far as regards J. Brook, May 7. Debts paid by the remaining partners. **Davidson**, R. and **Weatherhead**, G. blacksmiths, North Shields, May 9. **Darison**, J. and **Stand**, W. and J. stone merchants, Calverley, May 13. **Fentem**, R. and **W. grocers**, Oldham, May 12. Debts paid by W. Fentem. **Foster**, W. and **Monsfield**, J. E. grocers, Francis-place, Hoxton, May 7. Debts paid by Mansfield. **Lery**, A. S. and **Vaughan**, J. C. wholesale merchants, Botolph-lane, May 1. **Morwood**, G. B. and A. J. R. and **Leferts**, M. merchants, New York, Dec. 31. **Muschamp**, W. and J. B. and **Weighill**, T. jun. linen drapers, Sunderland, April 18, 1842. Debts paid by W. Muschamp and T. Weighill, jun. **Russell**, B. and **Rambolton**, R. joiners, Salford, Nov. 7. **Souden**, W. and **Edwards**, J. cabinet makers, Manchester, May 13. Debts paid by Souden. **Smith**, H. and **Marshall**, D. general agents, Star-court, Broad-st. May 14. **Thirkhill**, W. and **Leach**, W. plumbers, Huddersfield, May 15. Debts paid by Thirkhill. **Thorne**, T. and **Hooper**, H. Newfoundland merchants, Bristol, May 16. **Westbrook**, J. C. and **Brown**, J. printers, Northampton, May 18. **Wilson**, J. W. and **Erskine**, J. F. commission agents, Liverpool, May 17. **Wise**, H. and **Restarick**, J. plumbers, Walford, May 12. **Wyatt**, A. and H. yeomen, Catherington, Sept. 29, 1844.

Gazette, May 22.

Bennett, H. sen. and **Reuchotham**, J. silk throwsters, Macclesfield, March 21. Debts paid by Rowbotham. **Benson**, J. and G. carriers, Grantham, May 18. **Brathwaite**, G. I. and R. drysalers, Kendal, Jan. 1. Debts paid by I. Brathwaite. **Brown**, J. and **Fryett**, H. auctioneers, Gravesend, May 19. **Carver**, S. and **Cox**, J. engravers, Buckingham-st. Jan. 11. **Driver**, E. and **Clarke**, C. bakers, Union-street, Somers-town, May 20. Debts paid by Clarke. **Fleming**, W. H. and **Tate**, W. brewers, Camberwell-green, Dec. 31. Debts paid by Fleming. **Forster**, T. H. and **Kennett**, G. B. chymists, Haymarket, May 22. **Hall**, W. and **Parnell**, J. maltsters, St. George's and Portbury, Sept. 29. **Hutton**, E. and **Smith**, J. iron chest manufacturers, Smeethway, May 18. Debts paid by Hutton. **Hayward**, J. and **Broughall**, J. attorneys, Oswestry, Dec. 31, 1844. Debts paid by Hayward. **Herte**, M. and **Lowenthal**, S. merchants, Bradford, April 30. Debts paid by Lowenthal. **Hollingsworth**, J. and **Greathouse**, J. lace manufacturers, Melbourne, May 18. Debts paid by Hollingsworth. **Howe**, A. **Simpson**, W. and R. **Hibbert**, J. and **Simpson**, H. cotton spinners, Lumford-mill, near Bakewell, so far as regards Howe, April 20. **Hubbard**, C. J. and W. brewers, Stockwell, Jan. 31, 1844. **Lattay**, A. H. H. and P. P. surgeons, Baker-st. and Harley-st. May 19. **Morland**, B. and **Padgen**, T. iron founders, Wenlock-basin, May 19. **Parker**, C. and **Perceval**, J. iron founders, Newton, May 18. Debts paid by Parker. **Phillips**, H. and **Whittem**, J. S. agricultural agents, Coventry, Dec. 31. **Simpson**, A. and **Muller**, W. hat manufacturers, Farnham-place, Gravel-lane, May 20. Debts paid by Simpson. **Taylor**, S. and **Shouler**, J. B. drapers, Leicester, May 15. **Ward**, W. jun. and **Grocock**, D. W. and E. hosiers, Leicester, May 1.

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, May 19.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Cable, G. baker, Chelmsford, May 26, at half-past twelve. **Farley**, T. H. clerk, Richmond-st. Walworth, May 22, at one. **Glover**, J. Kennington-oval, May 26, at one. **Hamilton**, R. governors, Waltham-row, May 26, at half-past twelve. **Meaton**, H. tobacconist, Warwick-st. Vauxhall-bridge-rd. May 22, at half-past twelve. **Metcalfe**, T. wedding manufacturer, Bethnal-green-rd. May 22, at one. **Payett**, T. carman, Milner's-mews, Faddington, May 26, at one. **Salmon**, C. farmer, Royston, May 26, at half-past eleven. **Watts**, G. tobacconist, Marlborough-terrace, Old Kent-rd. May 22, at eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Cawson, G. butcher, Manchester, May 28, at twelve, Manchester. **Coster**, J. W. physician, Bristol, May 29, at twelve, Bristol. **Cross**, J. Great Harwood, May 28, at twelve, Manchester. **Diddle**, J. Bristol, June 9, at eleven, Bristol. **Fanthrop**, J. S. waiter, Manchester, May 28, at twelve, Manchester. **Heaney**, G. farmer, Stone, May 27, at twelve, Birmingham. **Jones**, J. Liverpool, May 23, at twelve, Liverpool. **Langham**, W. cabinet maker, Leamington Priory, May 26, at one, Birmingham. **Nutalls**, C. coal miner, Barlborough, May 26, at twelve, Manchester. **Rees**, D.

sen. farmer, Llanthysaint, May 29, at twelve, Bristol. **Saughman**, J. Liverpool, May 26, at eleven, Liverpool. **Scott**, B. gardener, Bath, June 5, at eleven, Bristol. **Tiddeley**, J. butcher, May 26, at twelve, Liverpool.

MEETINGS AT BASINGHALL-STREET.

Barclay, J. clerk, Clapham, June 9, at twelve, Liverpool.

MEETINGS IN THE COUNTRY.

Bertinchamp, G. J. June 9, at twelve, Liverpool.

Gazette, May 22.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Armstrong, J. hatter, Brighton, June 4, at eleven. **Braine**, R. P. clerk, Charlotte-row, Walworth, June 4, at eleven. **Boddington**, H. agent, Bishop's-terrace, Walcott-square, June 11, at eleven. **Dod**, C. Vernon-sq. Pentonville, June 11, at twelve. **Elson**, G. chymist, Culmstock-place, Bridge-road, Battersea, June 4, at twelve. **Furniss**, G. oilman, Belle-isle, Maiden-lane, Islington, June 2, at eleven. **Green**, J. house agent, Whitecross-st. Cripplegate, June 11, at eleven. **Hutson**, J. bricklayer, Pleasant-cottages, Loughborough New-park, Brixton, June 11, at eleven. **Lloyd**, R. coffee-house-keeper, Rochester, June 11, at twelve. **Manning**, T. York-st. Crawford-st. May 30, at three. **Payne**, C. shopman, Bermondsey-st. June 11, at half-past eleven. **Rielft**, W. carpenter, King's-rd. Fulham, June 11, at eleven. **Rouse**, A. W. chymist, Bethnal-green-rd. June 11, at eleven. **Sharpe**, J. A. Lincoln's-inn-fields, May 23, at half-past eleven. **Shribbs**, W. carpenter, Ipswich, June 11, at eleven. **Sommer**, H. stage coachman, Angel-court, St. Martin's-le-Grand, June 11, at eleven. **Storg**, J. S. jun. clerk, Norton-st. Portland-pl. May 26, at eleven. **Stratton**, J. pork butcher, Devonshire-st. Lisson-grove, June 4, at eleven. **Style**, H. watchmaker, Goulden-terrace, Islington, June 4, at eleven. **Tvererton**, J. H. fancy card board box manufacturer, Wiltam's-buildings, Old-street-rd. June 11, at half-past eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Bailey, T. S. butcher, Hampton-in-Arden, May 27, at one, Birmingham. **Bentley**, W. carpenter, Birstall, May 26, at eleven, Leeds. **Bigwood**, S. late victualler, Bristol, June 4, at twelve, Bristol. **Booth**, J. victualler, Liverpool, May 28, at eleven, Liverpool. **Causefield**, G. innkeeper, Bradford, May 26, at eleven, Leeds. **Clough**, W. beer seller, Leeds, June 4, at twelve, Leeds. **Dale**, J. excavator, Idle, June 4, at eleven, Leeds. **Fenther**, J. worsted spinner, Haworth, June 4, at eleven, Leeds. **Green**, J. house agent, Leeds, May 26, at eleven, Leeds. **Hayle**, J. manufacturing chemist, Halifax, June 4, at eleven, Leeds. **Leonard**, J. farmer, Magor, Monmouthshire, June 11, at eleven, Bristol. **Meredith**, J. carrier, Hay, Breconshire, June 15, at twelve, Bristol. **Mills**, E. baker, Walcot, June 15, at eleven, Bristol. **Newberry**, W. sen. permit writer, Devonport, June 2, at eleven, Exeter. **Pear**, T. fruiterer, Bradford, June 4, at eleven, Leeds. **Robinson**, W. joiner, York, May 26, at eleven, Leeds. **Shattoke**, J. attorney, Bath, June 11, at eleven, Bristol. **White**, W. T. grocer's assistant, Bradford, May 26, at eleven, Leeds. **Withell**, P. farmer, Goodmansham, Yorkshire, June 3, at eleven, Hull. **Westoby**, G. boot maker, Hull, June 3, at eleven, Hull.

MEETINGS IN THE COUNTRY.

Greaves, S. June 15, at twelve, Liverpool, and June 16, at twelve.

From the Gazette of Friday, May 29.

Bankrupts.

Rolfe, F. tailor, Great Marlborough-street. **Darnbrough**, W. tailor, Richmond, Surrey. **Boyd**, J. and J. hop merchants, Southwark. **Locks**, W. timber merchant, Lombard-street, Curtain-road, Shoreditch. **Ellerman**, C. F. commission merchant, Philpot-lane, City. **Freeman**, G. grocer, Croydon. **Jeffries**, T. victualler, Aberystwyth, Cardigan-shire. **Bird**, M. milliner, Cheltenham. **Davies**, R. draper, Abbey Tintern, Monmouthshire. **Coswell**, G. S. and **Croaser**, W. merchants, Newcastle-upon-Tyne. **Baldock**, W. grocer, Nottingham. **White**, W. tailor, Tavistock. **Reed**, N. J. brewer, Marlborough, Wiltshire. **Suger**, T. corn merchant, Kingston-upon-Hull.

ADVERTISEMENTS.

FREEMASONS' AND GENERAL LIFE ASSURANCE, LOAN, ANNUITY, AND REVERSIONARY INTEREST COMPANY.

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Sales by Auction.

Emotional Sales (established in the year 1806) of Reversions, Life Interests, Annuities, Policies of Assurance, Advancements, Next Presentations, Rent Charges in Fee of Tithes, Post-obit Bonds, Testaments, Debentures, Ground Rents, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and all Public Undertakings.

MESSRS. SHUTTLEWORTH and SONS respectfully inform the public, that upwards of 40 years' experience having proved the classification of this species of property to be extremely advantageous and economical to vendors, and equally satisfactory and convenient to purchasers, the **PERIODICAL SALES** of reversionary interests, policies of insurance, testaments, debentures, advancements, next presentations, all securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through 1846, as follows:—

Friday, June 5	Friday, October 2
Friday, July 3	Friday, November 6
Friday, August 7	Friday, December 4
Friday, September 4	

Particulars may be had Ten days previous to each sale, at the Royal Hotel, Manchester; the Adelphi Hotel, Liverpool; the Royal Hotel, Birmingham; the Angel, Oxford; the Eagle and Child, Cambridge; at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 59, Fenchurch-street.

Periodical Sale established 1806.—Important and highly saleable Reversionary Interest in a Manufactory, No. 9977. 6s. 3d. the accumulations of 3,000l. per annum, Life Interest in 18,132l. sterling, and 2,555l. 5s. Consols, Reversions, Shares in the Galvanised Iron Company, a Bond of His late Royal Highness the Duke of York for 7804 17s. 6d. Policies in the Equitable, Mutual, Atlas, and London Life Association.

MESSRS. SHUTTLEWORTH and SONS are instructed to include in their next Periodical Sale of Reversionary Interests, &c. appointed to take place at the Mart, on FRIDAY, JUNE 5, at Twelve, the valuable **REVERSIONARY INTEREST** of a gentleman in No. 9977. 6s. 3d. in a moiety of the sum of 99,077l. 6s. 3d. and the accumulations of 3,000l. per annum during the life of a lunatic, aged 47; the life interest of a gentleman in the sum of 18,132l. sterling; reversionary interests in 4,570l. and 915l. 7d. Consols; the contingent reversion to the sum of 1,300l. and 825l. 1s. 3d. against 61; the life interest in a rental of 42l. per annum, derived from six leasehold houses in Vine-street, Minorce; the ditto, with dividends, arising from the sum of 2,650l. 5s. Three per Cent. Consolidated Bank Annuities, life 73; the ditto in the *Whitbread* brewery for the sum of 1,300l. life 30 against 61; a policy of assurance for the sum of 1,000l. effected with the *Promoter Life Assurance Company*, 2nd of April, 1837, lives 47 and 45; a ditto for the sum of 600l. with accumulations, effected with the *Equitable Assurance Society*, Dec. 1817, life 56; a ditto for the sum of 2,500l. and 1,000l. effected with the *London Life Association*; a ditto for the sum of 4,000l. effected with the *Norwich Union Society*; a Bond of His Royal Highness the late Duke of York, for the sum of 7804 17s. 6d. with interest at 5 per cent. 100 Shares of 100s. each, paid in full, in the Patent Galvanised Iron Company, at present paying a dividend of 6l. per cent. The reversionary interest to one-eighth of 2,600l. Three per Cent. Consols; also to one-eighth part of the proceeds of ten freehold houses, situate in Church-street, Edmonton, let at rents amounting to 143l. per annum; an annuity of 17l. 15s. 6d. secured upon funded property, life 59. Policy for the sum of 1,000l. with a bonus thereon of 279l. making together the sum of 1,279l. effected with the *Mutual Assurance Society*, life 53, annual premium, 34l. 6s. 8d.; a ditto for 1,000l. in the same office, effected 6th Feb. 1835, life 53, annual premium 34l. 17s. 6d.; a ditto for the sum of 1,000l. with a bonus thereon of 104l. making together the sum of 1,104l. effected with the *Atlas Assurance*, life 54, annual premium 33l. 1s. 8d. a ditto for 400l. effected with the *London Life Association*, age 47, reduced premium 41. 10s. 9d.; a ditto for 1,000l. in the same office, life 48, reduced premium 104. 5s. 6d.; a ditto for 1,000l. effected in the same office, life 49, reduced premium 41. 10s. 9d.; and a ditto for 400l. effected on the same life, in the same office, reduced premium 41. 10s. 9d.—Further particulars may be obtained of Mr. Bockett, solicitor, 68, Lincoln's-inn-fields; Mr. J. W. Russell, solicitor, Mint-yard, Canterbury; Messrs. Vallance and Vallance, solicitors, 20, New-street, Strand; Mr. Goddell, solicitor, 6, Lincoln's-inn-fields; Messrs. C. Beckett and Simpson, solicitors, Golden-square; Mr. J. C. Pountney, solicitor, 1, Scott's-yard, Bush-lane; of Mr. Lake, solicitor, 10, New-square, Lincoln's-inn; Mr. G. Clark, solicitor, 23, Finsbury-place; of Mr. Fawcett, solicitor, Jewin-street; at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 59, Fenchurch-street.

Sales by Auction.

CHESHIRE.—About eight miles from the City of Chester. —Valuable Freehold Estates for investment, consisting of the Manor of Manley; an excellent Residence, with numerous Farms, the whole containing 1,100 acres of productive Land, exonerated from Land-tax.

M. R. W. W. SIMPSON has received instructions from the proprietor to offer for SALE by AUCTION, at the Royal Hotel, Chester, on WEDNESDAY, JUNE 17, at Two o'clock in the afternoon, in twelve lots, exceedingly valuable FREEHOLD ESTATES (exonerated from land-tax), consisting of a most desirable and substantially-built residence, recently enlarged and improved, lawns, pleasure-grounds, walled gardens, &c. and several conveniently arranged farms, with superior agricultural buildings attached, public-houses, cottages, &c. The property is desirably situate in the townships of Manley and Kingswood, in the parish of Frodham, and distant about eight miles from the city of Chester. It contains collectively 1,100 acres of productive arable, pasture, and wood land, at present in the occupation (excepting the residence and about 151 acres in hand) of highly respectable tenants, at rents amounting, with the estimated value of the property in hand, to 1,900l. per annum. Upon the property are most valuable quarries, with an abundant supply of white stone for building purposes. It abounds with game, and is within easy distances of three packs of hounds.

Particulars, with plans annexed, may be obtained of G. J. NICHOLSON, Esq., Solicitor, 5, Raymond-buildings, Gray's-inn; at the place of sale; and of Mr. W. W. SIMPSON, 18, Bucklersbury, London.

Mr. Simpson annexes some observations made by him at Norwich last month, when he brought to auction the North Cove Hall estates, in Suffolk, as appeared in the *New York Chronicle* and other newspapers:—

"The attendance at this sale was exceedingly numerous, and to a great extent represented the individual and collective respectability, as well as opulence, of the sister counties. Mr. Simpson, previous to opening the sale, ventured to address his audience at some length on the all-absorbing subject of the contemplated (and, he hoped, certain) abolition of the corn-laws. He acknowledged that, till within the last year, he had been a thorough-going protectionist. After a three years' test, however, of Sir Robert Peel's measures, added to his extensive experience up to the present period, in the letting and sales of landed property, he was now free and proud to confess that sliding and other scales had fallen from his eyes; the result of which was, that he was now a thorough-going anti-protectionist, from an honest and firm conviction that rents which had been set on fair and liberal principles (within the last seven years) of 'Live and let live,' would be permanent: and he fearlessly stated that the year's purchases on such rentals had risen within the last six months, and in all probability would continue to rise until the settlement of the great question in respect to free-trade in corn, &c. For the truthfulness of these statements, Mr. Simpson referred to recent lettings and sales, which have been published, not only by himself, but by other auctioneers and land agents. The consumption and demand of an increasing population (in the ratio of about 1,000 per day), the capital, skill, industry and enterprise of Englishmen, in addition to the easy and inexpensive transit of their produce to the first markets in Europe, would form such a counterpoise as would enable us to compete successfully with the miserably uncultivated lands and minds of exotic growth. Instead, therefore, of the motto of 'agitate, agitate,' let us, said he, substitute that of 'cultivate, cultivate;' and let landlords assist improving tenants, by making advances (in the nature of improvements in drainage, &c. &c.) of the additional capital which may be required, on that charging for the same at the rate of four per cent. on the expenditure which shall be judiciously laid out. Hence the tenant farmer will reap an additional benefit of at least ten per cent. and a permanent improvement of the value of the farm (quasi landlord) will supervene. Mr. Simpson stated that in his humble opinion, Sir Robert Peel was (at least) one of the greatest, most talented, and fearlessly honest ministers that had ever lived in the tide of times."

Insurance Companies.

UNITED KINGDOM LIFE ASSURANCE COMPANY,
5, WATERLOO-PLACE, FILL-MALL, LONDON.
Established by Act of Parliament in 1834.
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The Company, established by Act of Parliament, affords the most perfect security in a large paid-up Capital, and in the great success which has attended it since its commencement in 1834.

Its Annual Income being upwards of £22,000.

In 1841 the Company added a Bonus of 31 per cent. per annum on the sum insured to all policies of the participating class from the time they were effected.

The Bonus added to policies from March, 1834, to the 31st Dec. 1840, is as follows:—

Sum Assured.	Time Assured.	Sum added to Policy
£5,000	6 Yrs. 10 Months.	£663 6s. 8d.
5,000	6 Years	600 0 0
5,000	4 Years	400 0 0
5,000	2 Years	200 0 0

The Premiums nevertheless are on the most moderate scale, and only one-half need be paid for the first Five Years, where the Insurance is for Life.

Every information will be afforded on application to the Resident Directors, EDWARD BOYD, Esq. and E. LENNOX BOYD, Esq. of No. 5, Waterloo-place, FILL-MALL, London.

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Whilst perfect security is thus given, the number and character of the Shareholders (consisting of nearly 500 Members of the Legal Profession), will command a large amount of business, and consequent advantages will arise to the Assured.

Tables of Premiums have been prepared expressly for this Office, by F. G. P. NIXON, Esq. F.L.C., calculated on the nearest approximation to the real law of mortality.

These Tables will be found to afford peculiar encouragement to the assurance of young lives. They embrace participating and non-participating rates.

In the participating class, the Assured will be entitled to have four-fifths of the profits divided amongst them periodically, either by way of addition to the amount assured, or by distribution of premiums, as the parties may elect. No deduction will be made from such profits for interest of capital, or for a guarantee fund.

The Premiums may be paid half-yearly or annually, or by a single payment.

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CHARLES JOHN GILL, Secretary.

57, Chancery-lane.

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That persons who are willing to forego participation in the profits, can insure at a lower rate than that charged to members.

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Age when Insured. Sum Insured. Annual Premium for first 5 years. Reduction made on the 5th Premium.

Age when Insured.	Sum Insured.	Annual Premium for first 5 years.	Reduction made on the 5th Premium.
20	100	£7 12 5	£7 6 8
30	100	3 7 11	1 13 11
40	100	10 7 1	6 15 6
50	100	16 19 7	8 9 9
60	1000	26 19 2	30 9 7
70	2000	67 18 4	38 10 8
80	5000	194 15 10	97 7 11

ROBERT STEVEN, Secretary.

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THE REPORTS

Equity Courts.

LORD CHANCELLOR'S COURT.

April 30 and May 2.

GRAY & LIVERPOOL AND BURY RAILWAY COMPANY.

Construction of clause in Railway Act, providing for compensation to a particular person whose property was likely to be affected by the railway. Where the language of a clause in a private Act of Parliament is obscure, and the point involved is, whether a railway company is entitled to take possession of a particular property, and upon what terms the Court of Chancery will direct the point of construction to be tried at law.

This was a motion, by way of appeal from the decision of the Master of the Rolls, on the behalf of Messrs. John and William Gray, for an injunction to restrain the above railway company from proceeding in the construction of the railway over certain lands belonging to them. The plaintiffs were the owners of cotton mills and lands thereto adjoining, situate at Darcey Lever, in the county of Lancaster, and the company originally proposed to carry their line through the buildings and lands connected with the mills, so as to intersect them. This, however, was opposed by the plaintiffs before the parliamentary committee on the bill, and an agreement was come to which was embodied in the Railway Act. The protection of the plaintiffs was provided for by the 92nd clause of the Company's Act, after reciting that the plaintiffs were the owners and occupiers of certain mills, lands, and buildings, situate at Darcey Lever, through which the line of railway, as delineated on the plans and sections referred to in the Act passed, it was enacted, "that it should not be lawful for the company, without the consent of the plaintiffs, to construct the railway nearer to the said mill lands and buildings, or any of them, than the south-end of Lever-bridge." And the 93rd section enacted, "that the company should not, in, or during the construction or progress of the railway, or works, divert or obstruct, or in any way injure, the gates belonging to the plaintiffs, connected with their works at Darcey Lever, under a penalty of 750*l.* for each day of the occurrence of such diversion, obstruction, or injury, above the damage sustained, nor obstruct the carrying on of the plaintiffs' works under a like penalty."

The railway company, without asking the consent of the plaintiffs, had entered upon certain land belonging to the plaintiffs, adjoining to the land on which the mills and buildings connected therewith were situated, and had marked out a line running from west to east, from the south-east end of Lever-bridge, parallel to the line originally marked out in their plans, but removed from the line a distance exceeding the space between the south-east end of the bridge and that point of their original line which was nearest to the bridge. The plaintiffs contended that the company could not, without their consent, take any part of the land belonging to them situate at Darcey Lever, though not immediately connected with the mills, or essential to the carrying on their works. The company, on the other hand, insisted that if such was the right construction of the Act, the making of the railway at all would depend on the caprice of individuals, because the whole of the land between the deviation lines at this part of the railway belonged to the plaintiffs; that the primary object of the legislature was, that a line should at all events be constructed, but that it should not be constructed so as to interfere with the full enjoyment of the plaintiffs' mills; that the land proposed to be taken was

separated from the mills by a public road, and was not necessary for carrying on the plaintiffs' works; that the construction put on the Act by the company was a reasonable one; whereas that contended for by the plaintiffs was repugnant to the general object of the Act, which intended to authorize the construction of a railway at all events.

Before the argument for the defendants was concluded, the Master of the Rolls said he did not doubt that the legislature and the parties themselves, when the Act was passed, contemplated a future agreement. The company had not attempted to come to any terms with the plaintiffs, but, standing on what they conceived to be their strict right, had entered upon the land, and marked out a line according to their own construction of the Act. And his lordship having suggested a compromise, the case stood over.

No compromise having been effected, the Master of the Rolls gave judgment, and remarked on the hardship to which individuals were sometimes exposed by the imperial power exercised by Parliament in taking away from their private property, at a price, and for an object in which they had no voice. By the exercise of this power they were deprived of that to which they had, perhaps, attached their fortunes, and in the enjoyment of which they felt the greatest interest, and by the loss or violation of which their situation in life might be entirely altered. The exercise of this imperial power was solicited only because it would contribute so much to the public good as to make it for the general benefit that the rights of private property should be violated. And Parliament were in all cases bound to consider whether the public good did make it necessary to violate private property. This Court had always looked on undertakings of this sort on these principles; and unless the parties obtaining these powers from Parliament were able to show that they could complete the whole of the undertaking, they had not been allowed to execute any part of it. The hardship on individuals had of late been the subject of more anxious consideration, probably owing to the frequency and the vastness of the works which had occasioned that consideration. It was a rule, that where property did not possess any peculiar value, Parliament would apply that which had become an ordinary rule in such cases. But if the property was valuable, and to which the owner might be considered to be particularly attached, Parliament would encourage agreements between the parties, if willing to come into them. And if that could not be done immediately, would refer the parties to an agreement to be entered into between themselves at a future time, and such, it appeared to his lordship, had been the case here. In the last year certain parties were soliciting Parliament for leave to make a railway which passed through lands occupied by the plaintiffs in this cause. The plaintiffs conceived that the property was of peculiar value, which was not to be determined in the mode adopted in ordinary cases, and they opposed the bill. It appeared from the evidence that the opposition was successful, and that unless some arrangement could have been entered into the bill would not have passed. And in that state of things an attempt was made for a compromise and agreement. Unhappily for all parties that was not successful; possibly both parties were in such a state of mind that they could not come to any agreement after communicating with each other. After having failed to come to an agreement or any terms specified at that time, this clause was, by consent, inserted in the Act. Now the clause was this; it recited that John Gray and Wm. Gray were the owners and occupiers of certain mills, lands, and buildings, situate at Darcey Lever, through which the line of railway, as delineated on the plans and sections, passed; and it enacted that it should not be lawful for the company, without the consent of John and William Gray, or the owner and owners for the time being, of the said mills, lands, and buildings to construct the railway nearer to the said mills, lands, and buildings, or any of them than the south-east end of Lever-bridge, delineated on the said plans, and there-in marked "One." The company were not to construct the railway nearer to the mills, lands, and buildings, not nearer to any specified part thereof, but not nearer to the mills, lands, and buildings than the east end of the Lever-bridge. Now the collective description or names, mills, lands, and buildings, included the whole of the premises of which John and William Gray were the owners and occupiers. But they were the owners and occupiers of the whole of the property in question. The words themselves did not seem to be attended with difficulty. The Master Gray contended that the company must not come nearer to the estate, that is, to any part of it, without their consent, than the south-east end of Lever-bridge. They must stop there. But it was contended that that could not be the construction, and the real question between the parties was, whether there was anything to overcome the natural construction of these words. It was said that this construction would make the construction of the railway depend on the will of these individuals, and that could not be, because it was intended that a railway should be constructed. But it was to be constructed sub-

ject to the provisions of the Act, including, amongst others, this clause. It was said that a restricted meaning must be given to the words "mills, lands, and buildings." Why? It was said they must mean either those employed in the factory, or those which were, strictly, cut by the original line of railway; that some or other restrictive meaning must be given to them. But his lordship did not find anything in the Act to warrant that construction. And he thought it was intended, that, provided an agreement could be made, the railway should be constructed but not otherwise. Another argument was, that supposing there must be a railway, it was to be constructed on a parallel line, and at a certain distance from the original line; but there was nothing in the Act to show that. If any one of these constructions had been meant, it might have been clearly expressed. There would have been no difficulty in expressing any one of them. And if any one of them was the meaning of the parties, why was it not clearly stated? The observations of Lord Cottenham bore upon this subject, and he must consider his opinion of great weight, because he never had shown the least disposition to press hard the construction of these Acts against railway companies. On the contrary, he had always shown a disposition to uphold them in the possession of the powers given to them by Parliament. Lord Cottenham said that "you must look to the agreement between the parties, and not to the consequences of it." So here there might be very exorbitant terms demanded, but he had nothing to do with that. But taking the words of the clause as the expression of the agreement between the parties, he thought it was that they should not enter upon the lands, coming nearer than the south-east end of the bridge. He thought the agreement could not be altered without the aid of Parliament. He did not see how he could put a construction on the Act that these persons should be compelled to give up their land for the price offered. He regretted the course the parties had taken, and he could not but think that if there had been a communication with a sincere view to an agreement after the Act passed, it might have been effected. It happened in this case that these gentlemen possessed the whole track of land between the utmost boundaries of deviation; and it was a peculiarity here, that by their refusal to come to an agreement they would stop the construction of the railway. But was that not known to the parties at the time the clause was agreed to? Was it not then seen that if there should be no agreement there could be no railway? His lordship thought it was the duty of the company, as to all those things which depended on agreement, to have settled them before they began to cut. And he was of opinion, that upon the true construction of the clause in question, the railway company could not make the railway through the plaintiffs' land except by agreement with the plaintiffs, and that, therefore, he must grant the injunction.

From that order the defendants, the Railway Company, appealed to the Lord Chancellor, and the arguments turned upon the construction of the clause, and the apparent consistency of its literal construction with the intention of the legislature to grant powers to the company to make a railway.

The Solicitor-General, Roll, and R. Palmer, for the appeal.

Bethell, James Parker and Bacon, supported the injunction.

The LORD CHANCELLOR, after hearing the arguments, directed an action to be brought by the plaintiffs against the company, that the legal construction of the clause might be tried in a court of law.

VICE-CHANCELLOR OF ENGLAND'S COURT.

HARRIS v. DAVISON.

Judgment—Sec. 1 & 2 Vict. c. 110—Annuity—Leasehold estates.

A judgment had been registered against a party entitled to an annuity, which was secured by a covenant and an assignment of certain leaseholds.—Held, that the judgment operated as a charge upon the annuity and the interest of the annuitant in the leaseholds, under the 13th section of the above statute.

By an indenture bearing date the 26th May, 1835, for certain considerations therein stated, William Davison covenanted with one Jane Lock, that he the said William Davison should pay unto the said Jane Lock, during her natural life, an annuity of 20*l.* by quarterly payments; the first payment thereof was to commence on the 24th day of June then next. And it was thereby further witnessed, that for the considerations therein mentioned, he the said W. Davison did bargain, sell, and assign unto the said Jane Lock, certain leasehold property therein mentioned, to hold the same unto the said Jane Lock for the term of eighty-eight years, granted by an indenture therein mentioned, upon trust, for securing to her the payment of the said annuity, and the performance of the covenants on the part of the said W. Davison therein contained. The indenture contained also certain powers, in case the said annuity falling into arrear, to sell the leaseholds and purchase a government annuity

of 20l. out of the moneys arising from such sale. On the 23rd April, 1839, a judgment at law for 41l. was, by the said John Harris, entered up against Jane Lock, and the same was signed and entered up of record in the Court of Common Pleas, and registered.

John Harris filed his amended bill in June, 1842, praying that it might be declared that the judgment so obtained by the plaintiff operated as a charge upon the said annuity, and the arrears thereof, and the estate and interest of the said Jane Lock, in the aforesaid hereditaments and premises comprised in the aforesaid indenture of the 26th May, 1835, for the payment thereof, and for an account and sale.

Bethell and Wilcock for the plaintiff.

Campbell, for the defendant, Jane Lock, contended that the annuity was not within the terms of the 1 & 2 Vict. c. 110. The annuity was a mere personal annuity secured by a covenant with an assignment of the leasehold, for the purpose of enabling the plaintiff to sell and buy a government annuity; but that it formed no interest in land. The first question was, whether it was within the scope of the 11th section, which empowered the sheriff to deliver execution of "all such lands, tenements, rectories, tithes, and hereditaments, including lands and hereditaments of copyhold or customary tenure as the person against whom execution is so issued, or any person in trust for him, shall have been seised or possessed," &c. This annuity does not fall in with any of these; it is more like a rent to which distress is incident; and no power of distress is given here. Nothing is included in the Act that is not expressed, and everything therein mentioned is freehold. "Leaseholds" are not expressed therein. "Copyholds" would not have been included, unless they had been actually mentioned. The recital of the Act expresses the intention of the Legislature. "Whereas, it is expedient to give judgment creditors more effectual remedies against the real and personal estate of their debtors than they possess under the existing law." This is worked out by the 16th sec. as to *eligibility*, by sec. 12 as to *money*, and by sec. 13 as to *realty*. Now, under the old law, the sheriff could not have sold the annuity, it being a chose in action. This obligation did not pass by the mere delivery of the deed, and the intention of the 12th sec. was to affect such obligations by execution only, and not by judgment. Judgment was intended to bind lands; but personality was only to be affected by execution. The words in sec. 12 are the same as those made use of in the Statute of Frauds, with the addition of "any estate or interest whatever," which means, however, no more than "in any manner or wise," as in the Statute of Frauds. The words in the last mentioned statute have received their judicial meaning in the case of *Scott v. Scholey* (8 East, 467), where it was determined that an equitable interest in a term could not be taken in execution, which construction must be held to extend to this Act. This interest is certainly of an anomalous character, but it is not included in the 1 & 2 Vict. c. 110.

THE VICE-CHANCELLOR.—I think it is. In the first place, the words in sec. 13 are much the same as those in sec. 11. And the statute being remedial, ought to receive a liberal construction, because the main purport is to give an effectual remedy against the property in compensation for depriving the creditor of his power of screwing out his debt by means of personal constraint. The intention is not the punishment of the debtor, but the payment of the debt. The language of the 13th sec. is even more copious than that of the 11th, and its effect is, that a judgment already entered operates as a charge upon all lands, tenements, rectories, advowsons, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure. Indeed, I cannot conceive a set of words more expressly framed to set forth lands of any description, though it may be a question whether lands held in ancient demesne are comprehended. The Act contemplates that recourse may be had to a Court of Equity to perfect the charge, for it says, "every judgment creditor shall have such and the same remedies in a Court of Equity against the hereditaments" (that is, the word "hereditaments" describing every species of property) "so charged by virtue of this Act, or any part thereof, as he would be entitled to in case the person against whom such judgment would have been so entered had power to charge the same hereditaments, and had by writing under his hand agreed to charge the same with the amount of such judgment debt and interest thereon." Now was it not competent for Jane Lock, by writing, to constitute herself a trustee of the term assigned in trust for the purpose of procuring payment? Was it not such an interest in land as she had power to charge? Doubtless she might, by an agreement in writing, have given the plaintiff the benefit of such power; and a judgment was obtained in the same manner, and the plaintiff is entitled to his relief by means of carrying the trust into execution for the purpose of paying the amount due.

ROLLS COURT.

Friday, May 8.

BIDDULPH v. LORD CAMOYS.

Practice—New orders—Lunatic—Guardian—Husband and wife.

A lunatic, not so found by inquisition, and his wife, residing out of the jurisdiction, were served with subpoena to appear and answer in a suit in which the lunatic was interested in right of his wife: on motion for leave to enter an appearance for them, and that the solicitor appearing for the wife should be appointed guardian to the lunatic, the Court required an affidavit that the husband and wife had the same interest.

Cooke moved for leave to enter an appearance in this suit, for Edward Henry Dayrell and Lucy his wife, who are residing out of the jurisdiction of the Court. On the 23rd of January last, an order was made, directing the service of a subpoena to appear and answer under the 32nd Order of May, there being an affidavit that the lunatic was a necessary party to the suit, and the Court observing that such an order could do no harm, as no farther step could be taken without a fresh application. On the 10th March the subpoena was accordingly served, the requisites of the order of the 23rd of January (see 6 Law T. 429) being complied with. Notice of motion to appoint a solicitor, under the 32nd Order of May, guardian of the lunatic was also given for this day; and it was asked to allow the appearance to be entered in the terms of the motion, and that the solicitor appearing for the wife should be the guardian.

The MASTER of the ROLLS.—Does it appear that the husband and wife have the same interest?

Cooke.—Yes, it is stated in the bill.

The MASTER of the ROLLS.—That won't do; there must be an affidavit that the husband has no interest adverse to the wife.

Cooke.—An affidavit to that effect shall be produced.

ELDERTON v. LACK.

Practice—Enlarging publication.

Interrogatories had been prepared and left with the examiner on the 24th of April, and the day for passing publication was the 2nd of May; the Master refused to enlarge publication to allow time to take the evidence, but a month was allowed for that purpose, on payment of costs.

Elderton, on the part of the plaintiff, in this case, on the 30th of April last, moved to enlarge publication till the 1st of August next, and the motion was allowed to stand over till this day, that an application might be made to the Master, a special application not being necessary. The Master refused, and the motion was now renewed. Instructions had been given on the 10th of March last for preparing interrogatories, which it was sworn were left with the examiner on the 24th of April. But publication being to pass in due course on the 2nd inst. enlargement became necessary.

Lee (with him *Heathfield*).—The replication in this case, which is a cross cause (there being another cause in Vice-Chancellor Knight Bruce's Court) was filed on the 13th of March, 1845; and though they could have examined witnesses in the other cause, the interrogatories are not brought in here till the 24th of April. The opposition to the motion is entirely on account of the delay in preparing the interrogatories. (*Pascall v. Scott*, 1 Phil. 110; *Ward v. Eyles*, Mosely, 377.) We do not wish to shut out the evidence. Let them pay the costs, and enlarge till the second day of next Term.

The MASTER of the ROLLS.—Mr. Lee's view is just. You, Mr. Elderton, must pay the costs, and let publication be enlarged for a month. Then take any step you think right.

WILES v. COOPER.

Practice—New order—Dismissal of bill—Time—Easter vacation—Replication.

The times of vacation are to be reckoned in the computation of the times allowed for filing replications, except in cases coming under the directions of the 41st article of the 16th Order, and the 4th article of the 14th Order applies to filing replications in such cases only.

In this case the answer was filed on the 14th of February, and became sufficient on the 28th of March; and the time for filing a replication, therefore, by the 37th article of the 16th Order, expired on the 25th of April. No replication was filed within the time, and on the 27th of April a notice of motion to dismiss for want of prosecution was served on the plaintiff, which now came on to be heard. Meantime, however, but after the 25th, the plaintiff obtained an order to amend.

Miller, for the motion, said it was contended by the other side that the Easter vacation intervening, the time from the 4th to the 14th of April was not to be reckoned; but by the 4th article of the 16th Order, that was only so in cases coming under the 41st article of the 16th Order.

Shebbeare, contra, admitted that if the Easter va-

cation was to be reckoned, the plaintiff was late; but he contended that the 41st article of the 16th Order only applied to the second clause of the 4th article of the 14th Order. The motion to dismiss in that case is too soon, and we are in time in obtaining the order to amend.

The MASTER of the ROLLS.—Easter vacation is not excluded from the time for replications generally, but only in the cases coming under the directions of the 41st article of the 16th Order, both clauses of the former article being qualified by the final words. There will be no order, therefore, but that the plaintiff pay the costs.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Friday, May 22.

TANNER v. MOORE.

Pleading—Assumpsit—Executed or executory—Consideration.

A declaration in assumpsit stated that, in consideration of J. T. (the plaintiff's testator) agreeing to stay proceedings against J. B. M. if J. B. M. should die in his father's lifetime, the defendant promised, within six months after the father's death, to pay to the plaintiff's testator 165l. The agreement, given in evidence, was in this form: "I, &c. (the defendant) in consideration of natural love and affection, and in consideration of J. T. having agreed to stay all further proceedings at law against J. B. M. if J. B. M. shall die in the lifetime of his father, will, within six months after his father's death, pay to the said J. T. 165l." Held, that this agreement was founded upon a continuing consideration, and that, therefore, it supported the declaration.

Assumpsit, by plaintiff, as executor of John Tanner. The declaration stated, that in consideration of John Tanner agreeing to stay an action, and all proceedings at law against one John Bailey Moore, the defendant promised and agreed, that if the said John B. Moore should die in the lifetime of his father, he, the defendant, would, within six calendar months after the death of the father of the said J. B. M. pay to the said John Tanner the sum of 165l. It then alleged the death of the said J. B. M. in the lifetime of his father, the death of the father, and that, although more than six months had elapsed from the death of the father, yet the defendant had not paid the said sum of 165l. either to the said John Tanner in his lifetime, or to the plaintiff as executor.

Plea—Non assumpsit.

At the trial the following agreement was given in evidence by the plaintiff:—"Tanner v. Moore.—I, the undersigned Wm. B. Moore, the attorney and brother for the above defendant, in consideration of natural love and affection, and in consideration of the plaintiff's having agreed to stay all further proceedings at law against him, hereby promise and agree, that if the said John B. Moore shall die in the lifetime of his father, I will, within six months after the death of his father, pay to the said plaintiff 165l." A verdict was found for the plaintiff, leave being reserved to move to enter a nonsuit.

Crowder, Q. C. in a former Term obtained a rule accordingly; against which

Greenwood, in last Easter Term (Tuesday, May 5), shewed cause.—The consideration stated in this declaration is proved. The agreement shews a continuing consideration, which may be alleged as either executed or executory. (*Payne v. Wilson*, 7 B. & C. 423.) An agreement to stay proceedings *perpetuum* is not a good consideration for a promise; but an agreement to stay generally, or for a reasonable time, is. (Com. Dig. Action on the Case on *Assumpsit*, B. 1, 12, and cases there cited, where it is said that indefinite forbearance shall be intended perpetual forbearance.) Now, this was an agreement to stay proceedings at all events until six months after the death of the father, and the term "having agreed" may be construed to mean "having agreed, agreeing, and still continuing to agree," as the word *αποδεχόμενος* is translated in the note to Clarke's Homer (Iliad 1); it is, therefore, such an agreement as will support this declaration. (*Butcher v. Stewart*, 11 M. & W. 857; *Thornton v. Jenyns*, 1 Man. & G. 166.)

Crowder, Q. C. and *Merivale*, contra.—This declaration is founded upon an executory consideration, otherwise it would be bad for want of an averment of request. [*WIGHTMAN*, J.—Suppose this case: that in consideration of the plaintiff having agreed to pay a weekly sum for a long time, the defendant promised to pay a round sum on a certain event, would it be necessary to allege that consideration to be "on request?" Yes. [*WIGHTMAN*, J.—Is it not a continuing consideration? No; the agreement is the consideration; that is complete when made, though the performance may be incomplete. [*WIGHTMAN*, J.—Then you contend that you need not aver performance? Certainly; the usual allegation of mutual promises contains no averment of the performance. [*PATTON*, J.—The old form of alleging mutual promises was in the

past tense.] Yes; "in consideration that A B, at the request of C D, had promised." The *having agreed* to release a third person is no consideration; if the agreement had been in consideration of staying proceedings, instead of in consideration of a past agreement to stay, it would have been otherwise. If an executed consideration is spent, it is no consideration for a future promise. That is the rule to be collected from all the cases cited, and especially *Thornton v. Jennings* (1 M. & G. 166); but when the promise is one which the law will imply from the consideration, as that a tenant will cultivate in a husbandlike manner, a past consideration is sufficient; but even then it must be alleged on request. [Lord DENMAN, C.J. referred to *Shenton v. James* (5 Q. B. 199), and *Patterson, J. to Goodman v. Chase*, 1 B. & Ald. 207.] All the cases are collected in a note to *Osborne v. Rogers* (1 Wm. Saund. 264). But here the promise is not one which would be implied by law from the consideration. (*Roscorla v. Thomas*, 3 Q. B. 234.) The passage in Com. Dig. is no authority for the plaintiff; in *Butcher v. Stewart* (11 M. & W. 857), the words were, "having released,"—not, "having agreed to release;" and the release would be a continuing consideration, though an agreement to release is not. *Payne v. Wilson*; *Wain v. Warblers* (5 East, 10), and *Saunders v. Wakefield* (4 B. & A. 595), are also quite distinguishable from the present case. (*Raikes v. Todd*, 6 Ad. & E. 846.) *Cur. adv. vult.*

JUDGMENT.

DENMAN, C. J.—In this case the declaration ran that in consideration of the plaintiff agreeing to stay proceedings in an action on a note, the defendant promised to pay part in a short time. The written guarantee that was produced, appeared to be in consideration of the plaintiff having agreed to stay the proceedings, and a rule for a nonsuit was obtained on that ground. The case of *Roscorla v. Thomas* (3 Q. B. 234), was strongly relied on. The declaration ran thus: "In consideration that the plaintiff, at the request of the defendant, had bought of defendant a certain horse, the defendant promised the plaintiff that the horse was sound, &c., and we held that the consideration being executed would not, though laid with a request, support even an express promise, if, as in that case, it were one which would not be implied by law. The case of *Lenon v. James* (5 Q. B. 199) was also cited; but there the question was whether the instrument was a promissory note, which depended upon this, whether the money written on it was payable at all events; and we thought that the consideration really was that which was stated on the face of the instrument, and that it was not necessarily a continuing agreement. *Butcher v. Stewart* (11 M. & W. 857) was also cited. That case goes further than the present, for there the declaration ran "in consideration that the plaintiff would procure the release of the said Robert Stewart out of custody under the said writ the defendant promised;" and the agreement proved was in "consideration of your having released," but the Court thought that it might be construed as a prospective engagement, and might be read; "I hereby engage, &c. in consideration of your having thus released." Here the declaration says "in consideration of the plaintiff agreeing to stay." Now that expression necessarily implies a continuing agreement till the action is stayed. The words of the instrument, "having agreed," necessarily imply the same; for it would be absurd to suppose the defendant bound himself to pay the money in consideration of the plaintiff merely having, at a past time, agreed to stay the proceedings. Unless the agreement was continuing at the time of the insertion of the words, and until the action was actually stayed, any other construction would not give the right meaning of fixed expressions; and our opinion, therefore, in this case is, that the rule must be discharged.

Rule discharged.

FANCOURT v. THORN.

Gray moved for a nonsuit, on the ground that the following instrument, stamped with a note-stamp, ought also to have been stamped either as an equitable mortgage or agreement:—"On demand I promise to pay, or order, the sum of £ ; and I have lodged with the said , the counterparts of leases signed by , for ground-rent, let by me to them respectively as a collateral security." He cited *Wise v. Charlton* (4 Ad. & Ell. 786); *Chitty on Bills*, and *Byles on Bills*; *Coote's Law of Mortgage*, 200; *Robertson v. Showler* (14 L. J. N. S. Exch. 120; 13 M. & W. 609); *Powell v. Edmunds* (12 East, 16); *Wharton v. Walton* (14 L. J. N. S. Q. B.). *Cur. adv. vult.*

On Monday following, the Court granted a Rule nisi; cause to be shewn this Term.

May 22 and 26.

LOWE v. PENN.

Patent.—Steam propellers.

Is an invention for propelling vessels new, which differs from those formerly known and used only in the reduction of a complete screw to an uncertain aliquot part or fraction?

This case, after having stood over for a long time

pending negotiations, was argued upon the first day of this Term.

Jervis, Q. C. Byles, Serjt. and M. Smith were heard against the rule, and *Martin, Q. C. and Peacock* in support.

The arguments were purely of a scientific nature, and constant reference was made to the models.

Cur. adv. vult.

JUDGMENT.

Lord DENMAN, C.J.—This was an action for infringing a patent. A verdict having been found for the plaintiff, a motion has been made for a new trial, partly on the ground that there was no infringement of the patent by the defendant, but also and principally that the patent itself is void, because the alleged invention is not new. That invention is, by the specification and the description of the drawings, both of which are referred to for the purpose, stated to consist in a mode of propelling vessels by means of one or more curved blades, set or fixed on a revolving shaft below the water line of the vessel, and running from stem to stern of the vessel; and it is added, that each of the curved blades is a portion of a curve, which, if continued, would produce a screw. On behalf of the plaintiff it was not contended that every part of it was new; but the invention consists in a new combination of those parts, the essential part of that invention being that the blades must be curved, and each a portion of a curve which, if continued, would produce a screw. First, as to the point of infringement, we think it to be indisputably clear that most of the component parts had been in use or known before the date of the plaintiff's patent. This was established by proof of the earlier patents of Shorter, Trevethick, and Commereau. In these, or some of them, the position of the machine, that is to say, the aperture being in the dead wood, the direction of the shaft, with reference to the keel and stuffing-box and curved blades, was the same; except, indeed, that those curved blades did not form each a portion of a curve, which if continued would produce a screw. That, at least, was not shewn; and that, as we have already observed, is the characteristic distinction of the alleged invention of the plaintiff, on which reliance is mainly placed. The question, therefore, as to the infringement comes shortly to this; whether, in the defendant's machine, curved blades of that particular description have been used or not? because, if they be not curved, but plain or flat blades, it is obvious that by no number of revolutions would they, or by any possibility could they, produce a screw. We are quite aware that there was evidence that the blades in the defendant's machine were curved; but the models which were produced before the jury, and the blades, which were pronounced to be curved, have been exhibited to us, and upon actual, and we may add, a most attentive consideration, we were wholly unable to discover the slightest tendency to curvature, or that the blades were otherwise than perfectly flat, like the plates of a smoke-jack; a specimen of which was also exhibited. Moreover, it does seem to us highly improbable that the defendant, who was contending and attempting to prove that he had not infringed the patent, should produce models of such a shape as necessarily to destroy the case which he was attempting to set up. On the other point, however, whether the alleged invention be new, some of the observations already made have a material bearing. It appears in the patents of Trevethick and Commereau already referred to, a screw of one or more turns was in use, and in the description of his drawing to which reference is made by the plaintiff, in support of his specification, the use of a complete screw is mentioned. Would, then, the reduction of a complete screw to an uncertain aliquot part or fraction of it be an invention? We say uncertain, because the precise section or portion of a screw which is to produce the desired effect is not defined. "One or more curved blades" is the language of the specification; without any attempt to define, or even to approximate to the precise number which is best for use. In the case of *Heath v. Unwin* (13 M. & W.) cited at the bar, the patent was for an improved manufacture of steel by the use of a metallic substance, called carbonate of manganese in that stage, and that other materials mentioned were to be used along with from one to three per cent. of their weight of carbonate of manganese. The defendant had, by the use of other materials, to him unexpectedly produced that substance, but in a less quantity than one per cent. of weight of the steel in the crucible. That was so found by the jury, and the Court referred to the finding in their judgment; and if that be material, it seems to shew the quantity of carbonate of manganese to be used in the process of that patent is material also. In the present case, as has been observed, there is no attempt to specify the precise amount to be subtractable from a complete screw that had been before in use. It does not appear this latter point was pressed at the trial (I am not quite sure that it was not),—if indeed it was presented at all. It seems, however, to raise sufficient doubt to require the distinction to be raised, and to furnish a reason for the case undergoing a revision; in addition to that already mentioned as to the proof not being satisfactory to shew an infringement of the

patent, even if it be valid in point of law. Upon the whole, we are of opinion, that the rule must be made absolute for a new trial.

Wednesday, May 27.

REG. v. NEWTON FERRARS.

Order of removal.—Jurisdiction.—Certiorari.

An order of removal purported to remove the paupers from Stoke Damerel, in the county of Devon, and to be made by two justices in and for the borough of Devonport, not shewing in any way that Stoke Damerel was within their jurisdiction: Held, upon certiorari, that the order of removal was bad.

A judge's order for a writ of certiorari to remove an order of Sessions confirming an order of removal, may be granted *ex parte* in the first instance, though a case has not been granted, and the writ issue in vacation.

Re v. Chipping Sodbury (3 N. & M. 164) is not correct.

The Sessions had, on appeal, confirmed an order for the removal of a pauper, and had refused a case for the opinion of this Court thereon. On the first day of the vacation after the third Term from the day of confirming the order, Williams, J. granted a fiat absolute in the first instance, for a writ of certiorari to remove into this court the order of Sessions and the original order of removal. Subsequently a rule nisi for quashing both orders was obtained, against which cause was now shewn by

Greenwood and Merivale.—First. The fiat for the writ of certiorari ought to have been granted nisi only, as no case had been granted by the Sessions, and it was to issue in vacation. *R. v. Chipping Sodbury* (3 N. & M. 104; *Corner's Practice*). It is admitted that in Archbold's Practice, p. 166, a different rule is laid down, but the reasonable practice is that suggested now. If an opportunity for shewing cause had been given, it would have been objected that notice had not been given to the justices who made the original order. This objection is in time, because the rule nisi to quash was the first notice of the certiorari which the respondents had. It is objected that the order of Sessions is bad, because it purports to confirm an order made by two magistrates of the borough of Devonport, for the removal of a pauper from "the parish of Stoke Damerel, in the county of Devon," and does not shew that the parish of Stoke Damerel is within the borough of Devonport. If this objection be good, an order of Sessions must shew everything that gives jurisdiction; but if the original order be sufficiently identified, the Court will presume the rest.

Rowe, contra.—The fiat for the certiorari has properly issued. The rule is, that the judge in Term or out of Term must exercise his discretion as to whether or not an opportunity shall be given for shewing cause against a rule for a certiorari. If there was an irregularity, the proper mode of objecting is by a distinct rule for quashing *quia improvide emanavit*.

Lord DENMAN, C. J.—We will not trouble you further upon that point. If the case of *R. v. Chipping Sodbury* has been correctly reported, it was wrongly decided.

Rowe.—Thirdly, the order of Sessions is bad. The Court will, in such an instrument, presume every thing that is not manifestly contradicted or repugnant. Here the order of Sessions describes the original order as one made by justices of Devonport, who remove from a parish in the county of Devon. That is an obvious anomaly.

By the COURT.—That is our opinion.

Rule absolute. (a)

REG. v. THE CHURCHWARDENS OF ST. MARY, LAMBETH.

Church building Acts.—Rates.

Under the 58 Geo. 3, c. 45, and 58 Geo. 3, c. 134, rates may be imposed for the payment of interest upon loans under these Acts, although the aggregate amount of the previous rates exceeds five shillings in the pound.

Demurrer to the return to a mandamus to the churchwardens of St. Mary, Lambeth, to make a rate in the nature of a church-rate under 58 Geo. 3, c. 45, and 59 Geo. 3, c. 134, to pay interest due upon loans under these Acts. The return set out the loans between 1822 and 1826, and a number of successive rates subsequently made, and then alleged, in the words of sec. 25 of the latter Act, that these rates amounted to more than five shillings in the pound upon the annual value of the property in the parish. It appeared that this course had been rendered necessary, because the magistrates had, since 1842, refused to enforce the rates actually made, because of the supposed effect of this section. The Court called on *Lush* to support the return, but without hearing the other side.

The COURT gave judgment, that the clause in question had no such meaning; and that it did even refer to money lent, as this was, under the previous

(a) The original order was also objected to as not shewing jurisdiction. The words were: "being two of her Majesty's justices of the peace, having jurisdiction within and for the borough of Devonport. The Court gave no decision upon this point."

Act for building a church; for the payment of which, and interest thereon (when borrowed at interest), the statute gave the church-rates as a security.

Judgment for the demurrer.

REG. v. JUSTICES OF SURREY.
Costs—Parish officers.

There is no absolute rule binding the Court to give costs to the successful party, although it is not usual to do so where the subsequent proceedings have arisen from the mistake of the judge or inferior court. Upon appeal, the Sessions had confirmed the order upon a frivolous objection to the notice of appeal; and a rule nisi for a mandamus to enter continuances and hear the appeal was subsequently obtained. The parish officers of the respondent parish instructed counsel to oppose the rule; but it was made absolute, and the appeal was subsequently heard and the order quashed. Held, that the appellants were entitled to move the Court calling upon the parish officers to pay the costs of the mandamus; and, under the circumstances, the Court made the rule absolute.

Baldwin shewed cause against a rule calling on the parish officers of Oxley to pay the costs of an application for a mandamus, to enter continuances and hear an appeal. (See the facts *supra*, vol. 6.) The parish officers had no doubt opposed the rule for a mandamus in vain, and the justices did not appear. [Lord DENMAN, C. J. Why should they not pay the costs?] They only supported the decision of a competent Court in their favour, and ought not to pay costs. It is like a rule for a new trial for misdirection. Under 1 Wm. 4. c. 21, s. 6, also, the costs are discretionary with the Court, and the Court will not inflict them in cases of this kind. (*Reg. v. The Sheriff of Middlesex*, 5 Q. B. 365.)

Pashley, in support of the rule.—There are two other decisions which bear upon this question. In *Reg. v. Justices of West Riding* (6 Q. B. 1), the Court did not doubt their power to give costs; and so also in *Reg. v. Newbury* (1 Q. B. 751); which last case shows that a substantive motion is the proper course. If ever there was a case in which costs ought to be inflicted, it is this, where the objection was of a most frivolous and absurd character. Yet not only did the parish officers appear, but the rule was enlarged from one Term to another. Inflicting costs will put a wholesome restraint upon frivolous objections at Sessions.

Lord DENMAN, C. J.—There is a general rule, that costs of intermediate proceedings follow the event of the cause; but there is also a general rule in the opposite direction, that costs are not granted where the mistake has been the mistake of the Court. For my part, I do not think that we are at liberty to give up any portion of our jurisdiction; and although the practice should be certain, still we are not bound to observe either of these rules in every case. I think this was a most frivolous objection, and one which the justices should not have allowed. Then the parties think proper to defend and endeavour to keep possession of what they had thus gained. I think, in the exercise of our discretion, it is a most proper case for granting costs against them.

PATTESON, J.—The general rule is, that costs go to the successful party, and ought so to do. There may be a strong case for an exception, but this is nothing of the kind. Here the officers contested the rule of their own accord. It is said, that it is like a verdict being set aside for misdirection, but it is to be recollected that not in every case of a mistake by the judge or Court are costs withheld, for the Court of Error gives costs. So here the Sessions were no doubt wrong, but costs ought to be given.

WILLIAMS, J.—The resistance to the mandamus was at all events an unnecessary act, for if proper attention had been directed to the objection, the officers must have seen that there was nothing in it.

Rule absolute.

GORDON v. LAURIE.

Arrest—Duty of officer—32 Geo. 2, c. 28.

It is the duty of a sheriff's officer, under 32 Geo. 2, c. 28, s. 1, expressly to request his prisoner to nominate some convenient place to which he may be taken.

M. Chambers, Q.C. moved to set aside the verdict, and enter a nonsuit for a new trial. It was an action under 32 Geo. 2, c. 28, s. 1, for conveying the plaintiff to goal within twenty-four hours, without his consent, though he did not refuse to be carried to some other convenient house. The facts were proved mainly by the plaintiff's broker. It appeared he was arrested on January 29th, in the morning, and at his own request was taken to the officer's house or office, while some negotiation was going on with the plaintiff in the action. In the evening he asked the officer to allow him to remain there until he could arrange matters. The officer said he must go, as they were going to close the house. The plaintiff then asked if there was any private house or sponging-house, and was told they were all given up. The plaintiff wrote a letter while there, to the execution creditor, in which he said, "If you will not arrange, I intend to go to Whitecross-street Prison." Something also passed about the arrest being illegal, and heavy damages. It was left to the jury to say whether he went to prison for his own purposes; and

that if he was misinformed as to his rights, he did not go voluntarily. To this it was objected, that the officer was not to be liable in this action for mere misinformation; and that also it appeared clear that the statute had been complied with; a place had been nominated by the plaintiff, but it was not fit or convenient. He was bound to know his legal rights, and the officer was not bound to ask him where he would go. (*Simpson v. Renton*, 5 B. & Ad. 35; *Dewhurst v. Pearson*, 1 C. & M. 366; *Pitt v. Middlesex (sheriff)*, 4 M. & P. 726, 1 D. P. C. 201, were referred to.)

PATTESON, J.—I think all was rightly left to the jury by the Lord Chief Justice, according to the law as laid down in *Simpson v. Renton* (5 B. & Ad. 35), which expressly decided that it is the duty of the officer to request him to nominate some place. Here this was not done. The plaintiff saying "May I not be taken to some sponging-house?" is not nominating it within the Act. The question as to his voluntarily going was left to the jury, and decided in the negative. In *Silk v. Humphrey* (4 Ad. & E. 960), the facts stated in the plea were held to be equivalent to a refusal.

WILLIAMS, J. concurred.

Lord DENMAN, C. J.—The rule that a person is bound to know his legal rights cannot possibly apply here. It has been expressly decided that the officer must inform him and put the question. To these cases we adhere.

Rule refused.

Thursday, May 26.

GODCHILD v. PRITCHARD.

Practice—Summons at chambers.

An application at chambers refused for insufficient materials cannot be made upon amended materials, either at chambers or to the Court.

An application for particulars must be upon affidavit that none or insufficient particulars have been delivered.

Miller moved for a rule calling upon the plaintiff to give particulars.—The declaration contained counts for work and labour, money paid, and account stated. It appeared that he had applied to Williams, J. at chambers, but without any affidavit that particulars had not been delivered. It was then asserted that particulars had been delivered, and the summons was dismissed. A second summons was then taken out, and an affidavit produced, and Williams, J. refused it, because they did not come right at first. An affidavit was now produced. [PATTESON, J.—You have been a second time at chambers.]

Lord DENMAN, C. J.—You ought to have gone properly prepared at first. We cannot interfere now.

PATTESON, J.—It is a well-understood practice that such an application ought to be accompanied by an affidavit.

Rule refused.

Friday, May 29.

ROBINSON v. HAWKESFORD.

There is no time fixed by law within which a cheque must be presented so as to charge the drawer, where no loss or damage has been sustained by him from the delay.

This was a special case, in which the simple point raised was whether the drawer of a cheque was discharged from his liability upon the cheque by the delay of a fortnight in the presentment, all other circumstances remaining the same, and he having suffered no injury by the delay. The Court called upon

Cooking, on behalf of the defendant.—He cited *Alexander v. Burchfield* (8 Sc. N. R. 555); *Moule v. Brown* (4 B. N. C. 266); *Serie v. Norton* (2 M. & R.).

Atherton, contra, was not heard.

By the COURT.—Where any loss may have occurred from the delay, then we may consider the question as stated here; but upon the bare question now argued, we have no doubt whatever that a delay in the presentment does not discharge the drawer of the cheque.

Judgment for the plaintiff.

SPRINGETT v. MORRELL.

Pleading—Reply.

Replevin—Avovery for rent in arrear.

Pleas in bar—First, as to 14s. 6d. parcel of the rent—*viens in arrears*, concluding to the country; secondly, as to 22l. 6s. the residue of the said rent, a tender before the distress.—*Verification.*

Demurrer, assigning for cause that the pleas in bar improperly divided the avowry, which only shewed one answer to the grievances complained of by the declaration, and could not be divided in the manner attempted; that each of the pleas by itself raised an immaterial issue, and was no answer to any part of the avowry, and that two issues were tendered where only one was necessary.

Aspinwall, for the demurrer, was heard, and the Court then put it to *Bramwell*, contra, whether he would amend, which he elected to do, the Court having expressed a strong opinion.

Authorities cited:—*Voisin v. Jenkin* (3 A. & E.); *John v. Jenkin* (1 C. & M.); *Comm. Dig. tit. Pleading*, K. 30; *Cliff's Entries*; *Chitty on Pleading*.

Amendment accordingly.

Note.—In this case the mode of pleading adopted,

and which the Court seemed to think bail, was in the form given by Mr. Chitty, who supports it by a reference to *Comyn's Digest*, and also to *Cliff's Entries*, where the same form is to be found.

Saturday, May 30.

REG. v. THE INHABITANTS OF HOLME.

Settlement by apprenticeship—Notice of binding, what sufficient under 56 Geo. 3, c. 139, s. 2.—What examinations to be sent with order of removal. A notice of the intended binding of a poor person as an apprentice, under 56 Geo. 3, c. 139, s. 2, is sufficient, if sent to one only of the overseers of the parish in which the master lives.

If upon the application to justices for an order of removal, evidence is tendered on the part of the parish to which the proposed removal is to take place, and the justices hear it, but it is not taken down in writing, or transmitted with the order to the appellant parish, that is no ground of objection to the order of removal.

Upon appeal against an order of removal, the order was confirmed, subject to a case, which submitted the following questions to the Court:—1. Whether a notice of the intention to bind a poor person apprentice, under the provisions of 56 Geo. 3, c. 139, s. 2, is sufficient, if directed to all the overseers of the parish in which the master lives, but sent to one of them only. 2. Whether it was a sufficient ground of objection to the order that the examinations of three persons, whose evidence had been offered before the justices on the part of the appellant parish, and received by them, had not been taken down in writing and sent to the appellants with the order of removal.

Greenwood, in support of the order of Sessions.—1. Where notice is required to be given to overseers, notice to one is generally sufficient (*R. v. Warwickshire Justices*, 6 Ad. & Ell. 763; 3 Nolaan, P. L. 527, n.; and *R. v. Staffordshire Justices*, 4 Ad. & Ell. 483); and the words at the termination of sec. 2 of 56 Geo. 3, c. 139, "unless one of each overseer shall attend and admit such notice," make no difference. 2. It is not to be disputed, that all the examinations upon which the order is made must be sent to the appellant parish. (*R. v. Outwell*, 9 Ad. & Ell. 386; *R. v. Black Cartleton*, 10 Ad. & Ell. 679.) Even copies of documents are to be sent, but this rule is confined to evidence taken down by the magistrates. It does not mean that every idle word which a witness might utter is to be taken down and sent. If the magistrates in any case neglect their duty, and refuse to take evidence which they ought to take, then the remedy is against them by mandamus; but here the evidence was offered on the part of the appellants, and they were clearly not bound to take the least notice of it.

Merivale, contra.—1. Generally, notice to one overseer is sufficient; but this is a particular case; and the proper construction of the Act is, that notice must be given to all, "unless one shall attend and admit the notice." The object is to insure the protection to the apprentice; and great care is taken that the notice shall reach some of the overseers. (*R. v. Threlkeld*, 4 B. & Adol. 229.)

By the COURT.—There is no doubt that the service of the notice is good; and, as to the other point, it cannot be said that the order was made upon the examinations, which were not sent. If the evidence had been offered by the removing parish, perhaps, in that case, the justices would have no discretion; but here some evidence was tendered to the justices by the opposite party, not on which, but notwithstanding which, the order was made.

Order confirmed.

REG. v. SAFFRON WALDEN.

Settlement by estate—Residence within ten miles—Measurement of distance.

Stat. 4 & 5 Wm. 4, c. 76, s. 68, in order to gain a settlement by estate, renders necessary a residence within ten miles of the estate: Held, that the distance is to be calculated by the length of a straight line drawn from one point to the other.

On appeal against an order of removal, founded upon evidence of a settlement by estate, gained since the passing of stat. 4 & 5 Wm. 4, c. 76, the Court of Quarter Sessions confirmed the order, subject to a case; which stated that the house in which the pauper dwelt was situate in one parish, and more than ten miles from the estate situate in another, in respect of which the settlement was claimed, if the distance were to be measured by the nearest mode of access, but within ten miles if the distance were to be measured from the boundary of one parish to the boundary of the other, or by a straight line drawn from one point to the other. The proper mode of measurement was submitted to the Court.

M. Chambers, Q.C. and Wordsworth, in support of the order of Sessions, contended that the proper mode of calculating the distance was from boundary to boundary, or by drawing a straight line between the estate and the place of residence. The latter was the mode prescribed by statute as to the parliamentary franchise, and is spoken of as reasonable by one of the Court in *Leigh v. Hind* (9 B. & C. 774); though in that case a different mode of calculation was

adopted, because the question there arose on the construction of a covenant in restraint of trade. If the distance were to be calculated by the nearest mode of access, the distance would be constantly shifting; one day the estate would give a settlement, and the next day not. Further, in a case of doubt, the Court will lean in favour of the settlement.

Marsh, contra.—Admitting that the boundary of the parish, in which the estate is situate, is the *terminus à quo*, the question is, what is the *terminus ad quem*, and how is the distance to be measured? The statute is clear, that the party must inhabit within ten miles; and a party inhabits at the house where he lives. If the distance is to be measured to the boundary of the county, the estate and the place of residence might be fifty miles distant; and then the object of the statute, which is, that the settlement should only be gained where the estate is under the personal control of the owner, would be defeated. Then as to the mode of measurement, that by the nearest mode of access is the most reasonable; it does not follow that it should be by a public road; but the ordinary meaning of the words of the Act is, a distance of ten miles by the nearest possible mode of access. No person could go in a straight line from one place to the other without trespassing. The distance between two livings, held by one incumbent, has been declared by legislative construction to mean the distance according to the nearest mode of access; and *Leigh v. Hind* (9 B. and C. 774), is in favour of the appellant.

Lord DENMAN, C.J.—There are statutes which prescribe one mode of calculation, and others which prescribe another mode; and there is a case in which it was suggested by the learned judge, that the natural mode was to measure the distance as the crow flies; but the object of the contract there being to prevent any interference with the trade of one of the parties, a different mode was adopted. We are left, therefore, very much at large to decide this question; and no materials are presented to us, except the Act of Parliament. Under these circumstances, we are bound to lay down a fixed and arbitrary rule; and the rule, which, in the abstract, we think most reasonable is, that the measurement should be made by a horizontal line drawn from one point to the other; which we assume can be done. By laying down that rule, difficulties will be avoided, the settlement will not be constantly shifting, gained as yesterday and lost as yesterday, as the road may be lengthened or shortened.

PATTESON, J.—We must lay down an arbitrary rule. The words of the statute are "ten miles;" and I think it is the more reasonable construction to say that that means ten miles as the crow flies.

WILLIAMS, J.—What can the statute mean but an actual distance of ten miles from the one place to the other? As to the danger of trespasses being committed, we are spared that consideration in this case; because the distance calculated in that way is expressly found in the case. *Order confirmed.*

Monday, June 1.

Re HAMMOND.

Masters and Servants Act.

Under the Masters and Servants Act, 4 Geo. 4, c. 36, s. 3, an instrument, purporting to be at the same time a warrant of commitment and a conviction, must set forth the evidence as in a conviction.

Per PATTESON, J.—It must also adjudge imprisonment.

This was a motion to quash a commitment under the Masters and Servants Act, returned upon *habes corpus*, on the ground that it did not set forth the evidence. It recited the complaint and adjudication upon it, and did therefore commit, and called upon the officer therein named to apprehend, and the jailer to receive.

Bodkin (with him Huddleston), against the commitment.—This is in fact a conviction, not a mere commitment or order. (*Re Gray*, 1 N.S.C. 354; *R. v. Richards*, 5 Q.B. 296; *R. v. Cheshire Justices*, 5 B. & Ad. 439, were cited.)

Pashley, contra.—This is not a conviction nor an order, but only a commitment. Convictions are records, and ought to be on parchment. Every ingredient necessary to make this valid is here,—jurisdiction, offence, fact of conviction. (*Daniel v. Philips*, 1 C. M. & R. 668.) This is a warrant. A commitment is not a record. (*Whalley v. Jones*, 5 East, 250; *Cooper v. Jones*, 3 M. & S. 283; *Wood v. Fenwick*, 10 M. & W. 298; *Canadian prisoners' case*, 9 A. & E. 731.) A conviction may be produced at any time. (*Re Reynolds*, 1 D. & L. 846; *Re Fletcher*, ib. 796.) It would be absurd if he should be discharged to-day for this being bad, and not have an action against the jailer because a good conviction is produced.

Lord DENMAN, C.J.—We must deal with this as we find it. There is nothing to show that the original was not on parchment, and we shall presume that it was. We cannot take notice of the means that may exist for producing good convictions at another time, when the question is whether this instrument is a sufficient warrant for detaining. It professes to be at one and the same time a commitment and a statement of a conviction. As the latter, it is bad in point

of law, because it does not set out the evidence upon which it is founded. The prisoner, therefore, is entitled to his liberty.

PATTESON, J.—I am of the same opinion. This is also bad, because, after professing to convict, it does not adjudge an imprisonment, but calls upon the officer to apprehend, and the jailer to receive.

WILLIAMS, J. concurred.

Conviction quashed.

Re TURNER.

Masters and Servants Act.

An information under the Masters and Servants Act, for absence and neglect thereby to fulfil the contract, must aver that it was without the consent of the master, or without legal excuse within his knowledge. The information ought to show the nature of the contract, for it is not every contract of service that is within the statute, and non constat that there may not be an exception.

Quære, whether a contract binding a servant to work for the master absolutely for eleven months, in certain mines, on receiving a certain remuneration by the piece for his work, but not binding the master to find him a certain amount of work in each week, nor to find him any work in case of accidental or unavoidable damage or obstruction to any engine, gearing, or machinery, or to the said mines, or any of them, or to the workings thereof, is a valid contract, so as to bring him within the Act?

Bodkin (with him Huddleston) moved as in the preceding case. 1. The information (which was framed as above) did not disclose any legal offence. (*Paley on Convictions*, p. 108; *R. v. Corden*, 2 Burr. 2279; *R. v. Jukes*, 8 T. R. 536; *R. v. Jarvis*, 1 Burr. 149; *Ex parte Aldridge*, 2 B. & C. 600; *Fletcher v. Callhopp*, 16 L. J. 49, M.C.; *Newman v. Earl of Hardwicke*, 9 A. & E. 124.) 2. It does not show the nature of the contract. It might be not within the statute. (*Harding v. Ryde*, 9 B. & C. 603.) 3. As to the validity of the contract, 1 Smith, L. Cas. 182; *Hitchcock v. Coker* (6 A. & E.); *Horne v. Greaves* (7 Bing. 743), and other cases were cited.

Cesling, Edward James, and Fry.—As to the first point, the following cases were cited: *R. v. Chandler* (1 Ld. Raym. 581); *R. v. Speed* (5 Ld. Raym. 583); *R. v. Cripps* (2 Strange, 711; Bac. Abr. Indictment, H. 3); *R. v. Marsh* (2 B. & C. 772); *Mann v. Dover* (3 B. & Ad. 103). As to the second point, it is the same as the first, and involved in it. The contract is valid. (*Williamson v. Taylor*, 5 Q. B. 175; *Young v. Timmins*, 1 C. & J. 341; *Morris v. Smith*, 3 Dougl. 277; *Sykes v. Dixon*, 9 A. & E. 693; *Aspin v. Austin*, 5 Q. B. 671.)

Bodkin and Huddleston replied.

Lord DENMAN, C.J.—The question really is, does the information disclose any offence? for if not, the magistrate had no authority to commit. It never could have been the intention of the legislature that mere absence should be an offence under this Act. It therefore is necessary that the absence should be shown to have been without the consent of the master, which was a fact to which the master could speak, or at all events, without lawful excuse to the knowledge of the master, or the person authorized to complain. As to the second point, it was quite obvious that the magistrate ought to be enabled to see whether the contract contained any exceptions that withdrew the alleged misconduct from the operation of the statute. It ought, therefore, to be set out. As to the third point, I, for one, should be very slow to deliver an opinion that would have the effect of relieving persons from being amenable to the law into which they so voluntarily and deliberately enter.

PATTESON, J. and WILLIAMS, J. concurred.

Tuesday, June 2.

PENNYELL and OTHERS v. RHODES and ANOTHER. Stat. 5 & 6 Vict. c. 122, ss. 11–17.—Act of Bankruptcy—Compounding for debt.

Proceedings being taken against a debtor under stat. 5 & 6 Vict. c. 122, ss. 11–12, by obtaining a summons from the Court of Bankruptcy, upon a debt of 149l. 4s. the debtor filed an admission that he was indebted to the creditor in the sum of 149l. Held, that the omission of the 4s. being obviously accidental, and not implying a denial that the 4s. was due, did not prevent that admission from constituting an act of bankruptcy.

On the fourteenth day after the filing of that admission (an action having been in the mean time commenced), an agreement was entered into between the debtor and creditor, whereby the latter agreed to accept six bills of exchange and a judge's order for the payment of the amount of the debt by weekly instalments. The bills were handed by the debtor to the creditor's attorney at the time, but were immediately restored by him, because, as a matter of professional etiquette, he wished to receive them through the hands of the debtor's attorney; and on the next day but one the judge's order, containing the terms agreed upon, was obtained, and the bills were sent by the debtor's to the creditor's attorney: Held, that the agreement entered into on the 14th day, was a "compounding" of the debt within the meaning of the stat. 5 & 6 Vict.

c. 122, s. 14; and that therefore no act of bankruptcy was committed, although the fulfilment of the terms of the agreement was not complete until some days after the 14th.

This was a feigned issue to try the right of the plaintiffs, as the assignees of one James Bradshaw, to certain goods which had been seized in execution by the defendants. The verdict was taken for the plaintiffs by consent, subject to the opinion of this Court upon a special case. The case stated the following facts: the fiat against James Bradshaw issued on the 27th March, 1844; and the bankrupt was indebted to the defendants in the sum of 149l. 4s. from the 6th Feb. to the 3rd March in the same year, and thence hitherto, save as therein after mentioned. The defendants proceeded under stat. 5 & 6 Vict. c. 122, for the recovery of that debt; and on the 8th February, 1844, obtained a summons from the Court of Bankruptcy, containing the usual endorsement of the notice to the party summoned; whereupon, on the 15th February following, the bankrupt signed the following admission, which was on the same day filed in the Court of Bankruptcy:—"I, the undersigned, James Bradshaw, of &c. in the county of Middlesex, do hereby confess that I am indebted to Messrs. Rhodes and Cruicknell, of &c. in the sum of 149l." No further or other admission, deposition, or other proceeding whatever, was had, made, or entered into, and no further or other step was taken in the said Court of Bankruptcy by the said bankrupt, until the fiat issued; and there was no enlargement of the time for complying with the above-mentioned summons, or for any purpose whatever. On the 8th Feb. an action was commenced by Messrs. Rhodes and Cruicknell against the bankrupt, to recover their debt; and on the 17th, notice of declaration was served. On the 21st a letter was written by the bankrupt's solicitor, proposing to pay the debt by weekly instalments of 50l. each; but that proposal was declined. On the 29th Feb. a meeting took place between Mr. Rhodes and the bankrupt; at which the bankrupt offered a judge's order for the amount due from him to Messrs. Rhodes and Cruicknell, payable by instalments of 50l. per week, and also to deposit with Messrs. R. and C. six bills of exchange, which the bankrupt then produced. Nothing was said about the odd money; all the costs were to be paid down, but the amount was not mentioned. The bankrupt delivered the six bills of exchange to Mr. Adams, who consulted with his client, Mr. Rhodes, as to their value; and Mr. Rhodes, then, in the presence of his solicitor, Mr. Adams and of the bankrupt, agreed to accept the deposit of the bills, and acceded to the terms proposed. The bankrupt asked Mr. Adams whether the bankruptcy proceedings would be stayed; and he replied, that of course the bankruptcy proceedings went for nothing. The bankrupt gave the six bills to Mr. Adams for the purpose of his keeping them for his clients, Messrs. Rhodes and Cruicknell; but Mr. Adams delivered the six bills of exchange back to the bankrupt, and said that, as a matter of professional etiquette, he wished that the bills should be delivered to him through Messrs. Davies, the attorneys of the bankrupt; but no time was mentioned when the bills were to be sent by Messrs. Davies to Mr. Adams. On the same day the bankrupt took the bills to his attorneys, and a letter was written containing the above terms. On the 1st of March following, a summons was taken out by the bankrupt's attorneys to obtain a judge's order in pursuance of the said agreement; and on the 2nd of March the order was drawn up and sent to Messrs. R. and C. or their attorneys, the six bills being sent in a letter to their attorneys on the same day. In pursuance of that agreement two instalments were paid; but upon default in payment of others, final judgment was signed, and execution issued on the 23rd March. The question for the opinion of this Court was, whether the facts above stated disclose an act of bankruptcy by the said bankrupt committed before the levying of the said execution, so as to render the same invalid as against the plaintiffs, in which case the verdict was to stand for them. If not, the defendants to have their execution satisfied thereon, and a nonsuit entered.

Friday, May 29.—*Watson, Q.C.* for the defendants, contended that no act of bankruptcy had been committed; and

The COURT, being of that opinion, gave judgment for the defendants, in the absence of *Willes* for the plaintiffs, as he was engaged in another court.

Willes was now heard accordingly for the plaintiffs.—1st. An Act of bankruptcy was committed by the bankrupt, under s. 15 of 5 & 6 Vict. c. 122, which provides that a trader signing an admission for part only of a demand, and not making a deposition that he believes he has a good defence to the residue, if he shall not within fourteen days next after the filing of such admission, pay, secure, or compound for the same; and, as to the residue shall not, within fourteen days after personal service of the summons, pay, secure, or compound for the same, or enter into a bond to pay any sum recovered with costs, shall be deemed to have committed an Act of bankruptcy on the 15th day after service of the summons. The present case

falls within that section; because the admission is of 1491; whereas the demand upon which the summons issued was of 1491. 4s. [PATTERSON, J.—The statute must mean an admission of *part*, as *part*; implying, therefore, a denial of the residue. It cannot apply to a case when clearly the intention is to admit the whole; but 4s. is accidentally omitted. 2nd. Treating this as an admission of the whole demand, an act of bankruptcy was committed under s. 14 of the same Act, because the bankrupt did not within fourteen days after the filing of the admission, "pay or tender, and offer to pay to such creditor the amount of such demand, or secure, or compound for the same to the satisfaction of the creditor." The 29th Feb. was the 14th day; and the agreement then entered into was neither a *paying, securing, or compounding* for the debt. It could not be a securing, because the bills were not delivered until the 2nd of March; nor was it a *compounding*, because that word must be taken in its ordinary mercantile sense, which is that of giving and receiving a part for the whole of a debt. He cited *Ex parte Gooddy* (1 M.D. & D. 677); *Ex parte Brown* (16 Ves. 472); *Ex parte Musgrave* (3 M.D. & D.); and Smith's Compendium of Mercantile Law.

By the COURT.—We have heard nothing to alter our original impression. The language of the statute is very simple; and we think that the facts stated in the case do not disclose an act of bankruptcy. 1st. The admission of the debt was clearly intended to apply to the whole demand; and the omission of the 4s. was accidental. This is a case, therefore, not coming within sec. 15; the obvious meaning of which is, that if a trader admit part only of the demand, with the intention of denying the residue, then, unless he fulfil the requisites of that section, he shall be deemed to have committed an act of bankruptcy. 2ndly. There is no ground for limiting the meaning of the word "compound," as Mr. Willes suggests. It is sufficient that on the 29th a bargain was entered into between the bankrupt and the creditor, with which the latter was satisfied. It may be that that arrangement could not properly be called a securing of the debt, because the bills, from a very proper adherence to professional etiquette, on the part of the creditor's attorney, were not delivered at the time; but the bargain was a binding one at that time, though all the steps for completing it could not then be taken.

Judgment for defendants.

Wednesday, June 3.

REG. D. INHABITANTS OF ST. GILES'S IN THE FIELDS.

Police magistrates—Order of removal—Complaint of chargeability.

An order of removal, in reciting the complaint of chargeability must shew that the paupers were actually chargeable.

Therefore, an order reciting "that whereas complaint hath been made that J. J. and E. J. are lately come into the said parish, endeavouring to settle there, contrary to law, and it appears unto me, the said police magistrate, &c. and I do adjudge that they are become chargeable to the said parish," &c. was held bad.

Quære, does an order made under 2 & 3 Vict. c. 71, by a police magistrate, sufficiently shew jurisdiction, by describing him as "one of her Majesty's justices of the peace in and for the county of Middlesex; one of the police magistrates of the metropolis, sitting at the Police Court, Great Marlborough-street?"

Upon appeal the Sessions had quashed the order of removal, subject to a case.

Prendergast and Howarth, in support of the order.—There are three fatal objections to the order upon the face of it, for defective allegations of jurisdiction. It is made by a single police magistrate, under 2 & 3 Vict. c. 71, and he is not described so as to shew that he had jurisdiction. (a) Then it does not state that any complaint had been made that the paupers were chargeable. The statement is as follows:—"Whereas complaint hath been made to me, one of her Majesty's justices of the peace in and for the county of Middlesex (one of the police magistrates of the metropolis, sitting at the police court, Great Marlborough-street, in the parish of St. James's, Westminster, within the metropolitan police district), by the churchwardens, &c. that James Jenkins and Elizabeth Jenkins are lately come into the said parish, endeavouring to settle there contrary to law; and it appears unto me, the said police magistrate of the metropolis, and I do adjudge, that they are become chargeable to the said parish; and upon examination, &c." The chargeability is a condition precedent to the jurisdiction. Then it does not say that the adjudication of chargeability does not shew the evidence was taken on oath, or indeed at all. (*R. v. Great Bedwin*, Burr. S.C. 163; *R. v. Angell*, Cas. Hardw. 124.)

M. Chambers, contra, was directed by the Court to consider the second objection.—True, the ordinary forms shew that the complaint contained a statement

of chargeability, but the 13 & 14 Car. 2, c. 12, does not require this; by that we are to be governed. There are also cases to the same effect. (*Re Weston Rivers*, and *St. Peter*, 2 Salk. 492; *Res v. South Marston*, 1 Strange, 189; *Res v. Inskip* (5 M. & S. 299), was to the same effect. [PATTERSON, J.—The Court decided that on the ground that the facts stated amounted to a statement of a legal chargeability; it may be taken by implication that they were chargeable, for they were adjudged to be so.]

Lord DENMAN, C. J.—The statute of Charles does not regulate this; for by the terms of that statute no express adjudication is necessary. But that is, and always has been, held an essential part of the order. And it must shew that the complaint stated the paupers to be chargeable. It has always been the practice to do so. The early cases are of no weight whatever; for it is evident that the Court endeavoured to get rid of the objections without considering their legal value.

PATTERSON, J.—Even upon the statute it seems necessary by implication. But now it is clear that they must be shewn to have been actually chargeable.

WILLIAMS, J.—This has been the invariable practice, and considered the origin of the jurisdiction as much as an information is the foundation of a conviction. *Res v. Inskip* was, I dare say, right; but it was because the facts amounted to chargeability.

Order of Sessions confirmed.

REG. V. POCCOCK.

Exemption from rates.

The buildings occupied by the Normal School belonging to the British and Foreign School Society is not within the 6 & 7 Vict. c. 36, so as to be exempted from rates.

The sixth section gives two periods within which a rated inhabitant may appeal; first, four months after the first assessment after the filing of the certificate, or four months after the first assessment after exemption claimed by the society.

Semble, that the society is not at any time protected by the certificate alone, but must also shew that it is within the other provisions of the first section.

This was a rule for quashing an order of the Surrey Sessions confirming, on appeal, a certificate granted by the barrister, under 6 & 7 Vict. c. 36, exempting the Normal School belonging to the British and Foreign School Society from rates.

Martin, Q.C. (with whom were Wallinger and J. Clarke), in support of the order.—Upon this case there are two points; first, whether this is, within the definition of the Act, "a building belonging to a society instituted for the purposes of science, literature, or the fine arts exclusively; and a question as to the period within which the appeal was made. The case finds all the other essentials mentioned in the first and second sections; and if the barrister can give this certificate, the order must be confirmed. The building is used as a Normal school, attached to the British and Foreign School Society. The primary object is to instruct persons in the science of teaching, and prepare them to act as teachers in branch schools. This is done by means of lectures, and other modes. To it is attached, also, an adult and children's school, to which a small sum is paid by those who frequent it; but the case finds that there is no profit. The object of this Act was to exempt mechanics' institutes, and other societies for the purpose of spreading literature and knowledge, from rates. It was not designed for bodies like the Royal Academy and Royal Institution, which two societies were exempt, without the Act. Proper teachers are most especially needed, and the science of teaching is quite a distinct pursuit and object of education. [PATTERSON, J.—Why might it not apply to any school, then?] That would not be a society, and would be carried on for profit. Secondly, the appeal was not in time. The certificate was obtained and filed on Sept. 9, and the first assessment was Oct. 1. Notice was given to the collector in November, and to the trustees, who make this rate, on Feb. 6. The appeal was not entered till the Easter Sessions. The statute gives six months time to appeal after the first rate, after the filing, or after the first rate after such exemption claimed. This does not give two periods for the choice of the inhabitants, but means, that the certificate being filed shall operate as notice; then the time to appeal must date from that; but if it be not filed, then from the period of the exemption claimed. [PATTERSON, J.—Suppose the certificate obtained and filed, but the society continued to pay rates, then by the lapse of a few months they would obtain exemption and bar appeal; can this be so?] It is not necessary to decide what the effect of that would be; here it was filed. The filing is not the act of the society, but of the clerk of the peace. The exemption claimed means if a delay takes place in the filing.

M. Chambers, Q.C. and Hayes, contra.—This is not a society instituted for literature, science, or the fine arts exclusively. The society contemplates, as is shown by its rules, the advancement of education generally among the lower classes. It is to provide schools, and incidentally it trains teachers, for which purpose this Normal School was founded. It might equally be said

that any school to which a few persons subscribed, and put in masters, would be exempt. Amongst the objects of this society is instruction in reading, and writing, and needlework; under what head would these fall? Then the appeal is in time. The statute gives two periods, either to date from the filing, or from exemption claimed. The barrister only decides *ex parte* upon production of the rules, and if the society lies by for a short time and exemption is not claimed, there would be no power to appeal.

Lord DENMAN, C. J.—I think the statute gives two periods for an appeal against the certificate of the barrister: first, after the filing of the certificate at the Sessions; and secondly, as the inhabitants might not know of the certificate being obtained, or whether the society could act upon it, after the exemption actually claimed. This appeal, therefore, was made in time. As to the main question, whether this is within the terms of the Act, it is impossible to attempt to give an operation to the Act without lamenting the loose and unsatisfactory way in which it is drawn. It is scarcely possible to mention any institution as to which great doubt might not be raised whether it was within the Act or not. The object is to exempt from a general liability, and the words must therefore be plain. The title is to exempt "scientific and other literary societies." I am inclined to think they point rather to societies which have the least claim to such exemption—those composed of opulent and learned men, meeting to discuss matters for advancing the knowledge of mankind generally; and not to associations of poor men of the humbler classes desirous of improving their minds, such as mechanics' institutes, which ought to be exempt from rates, and would have been, if the attention of the legislature had been drawn to the words of the statute. Even as to mechanics' institutes some difficulty might be felt, but, in the present case, I feel still greater difficulty, and must say that I think it is not within the Act. It is not a society exclusively for literature, science, or the fine arts, although quite as useful, and as much entitled to exemption. I cannot help observing further that the statute does not make the certificate of the barrister final, or empower him to declare that the society is to be exempt; it only makes the obtaining of the certificate a *sine qua non*, with the additional difficulty of shewing that it is in other respects within the Act. I do not give any decisive opinion upon that, but trust that the deficiencies of the statute will speedily be remedied.

PATTERSON, J. and WILLIAMS, J. concurred.

Order of Sessions quashed.

BUSINESS OF THE WEEK.

Tuesday, May 26.

HARROLD v. WHITAKER.	<i>Judgment for plaintiff.</i>
DOLBY v. REMINGTON.	<i>Prohibition granted.</i>
MAY v. BURDETT.	<i>Rule discharged.</i>
WAKEFIELD v. BROWN.	<i>Judgment for plaintiff.</i>
BAILEY v. WALFORD.	<i>Judgment for plaintiff.</i>
PITCH v. LYON.	<i>Rule discharged.</i>

Thursday, May 28.

REG. v. BLUCK.—Martin, Q.C. and Bramwell showed cause. The Solicitor-General and Greaves, contra.

Cur. adv. vult.

PITCH and WIFE v. LYONS.—Pashley and Blyn showed cause. Knowles, Q.C. and H. Hill, contra.

Cur. adv. vult.

REG. v. DOUGLASS.—The Court intimated to the Attorney-General, that the Crown must elect upon which counts they would proceed, and then they would give judgment.

Friday, May 29.

PENNELL v. RHODES.—Watson, Q.C. (with whom was C. Saunders), was heard for the defendant. Judgment for defendant, to be opened if the plaintiff's counsel wish to argue it.

MAPLE v. GREEN.—Baines, Q.C. moved for a rule to set aside verdict for misdirection.

Decision postponed, to consult Mr. Justice Wright.

SHARPE v. WATTS.—Special demurrer, of a purely technical nature. Bramwell, for defendant. Peterdory, for plaintiff. Judgment for plaintiff.

Tuesday, June 2.

WHITAKER v. RICHARDS.	<i>Judgment for the plaintiff.</i>
FROST v. LOYD.	<i>Judgment for the plaintiff.</i>
WILKINSON v. GUSTON.	<i>Judgment for the plaintiff.</i>

These cases will be reported next week.

Saturday, May 26.

REG. v. MILE-END.—This was a question as to the rateability of the East London Water-works Company, raised upon a case stated by the Middlesex Quarter Sessions; but the Court being of opinion that the case did not sufficiently raise the points for the decision of the Court, directed the whole matter to be

Referred to Mr. Smirke to state a case.

HILL, Q.C. (with him Pigott), for the company. Sir F. Kelly, S.G. (with him Bodkin and Hodges), for the parish.

REG. v. WELLAND NAVIGATION (Trustees).—Memorandum to repair and maintain a certain part of the channel of the river. Return and demurrer thereto. Sir F. Kelly, S.G. (with him Webster), in support of the demurrer. Williams, Q.C. contra.

Leave to amend within a week, and the case then to be brought on again.

COURT OF COMMON PLEAS.

May 26 and 28.

BOYDELL v. HARKNESS.

Where an action is brought, venue London, against the indorser upon a bill of exchange, drawn payable in London, it is sufficient, after pleading over, if the declaration allege a general presentment.

(a) This point was not decided, but Patterson J. observed, that in the 10th section, as well as in the form given by the Act, the same description was used.

Semble, it would also be sufficient upon special demurrer.

This was an action of *assumpsit* upon a bill of exchange, drawn by Leonard Simpson on J. Powilston, whereby the said "L. S. required the said J. P. to pay to the order of the said L. S. in London, 1981, value received, three months after the date thereof," indorsed by L. S. to the defendant, and by the defendant to T. R. and by T. R. to the plaintiff. The declaration went on to aver "that the said J. Powilston did not pay the same, although the same was presented to him for payment on the day when it became due," and then concluded in the ordinary form. The only plea was a denial of the notice of dishonour, the issue upon which was found for the plaintiff. The venue in the action was London.

In last Term, *Byles*, Serjt. had obtained a rule to shew cause why the judgment should not be arrested, on the ground that the declaration, as it shewed that the bill was drawn payable in London, ought to have averred, not a general presentment, but a presentment in London. *Gibb v. Mather* (8 Bing. 214), *Lyon v. Holt* (5 M. & W. 250), were mentioned.

Dowling, Serjt. now shewed cause.—The allegation of presentment is, at all events, good after verdict. There is sufficient to shew a presentment to the payee, which must be taken to have been such a presentment as is required by the previous part of the declaration. No other place besides London is mentioned in the declaration. This form is in accordance with the Rules of Court, T. T. 1 Wm. 4, and H. T. 4 Wm. 4. According to the former of these (see the last form but one in the Schedule and Directions, 1), our declaration would have averred "that the bill was then and there presented to the said J. P.," but by Rule H. T. 4 Wm. 4, pl. 8, "The name of a county shall in all cases be stated in the margin of a declaration, and no venue shall be stated in the body of the declaration, or in any subsequent pleading." It was not intended by the rule to relieve the plaintiff from the necessity of proving every thing which he had to prove before. If the presentation had been traversed, the plaintiff would have been bound to shew presentment in London. Supposing such a traverse, and issue found for the plaintiff, the Court would not have allowed this objection after verdict. *A fortiori*, the objection cannot be made when presentation is admitted. The presentment would have to be proved to have taken place in London, but a strict allegation of it is unnecessary. (*Parks v. Edge*, 1 Cr. & M. 429.)

Byles, Serjt. in support of the rule.—First. This declaration would have been bad before stat. 1 & 2 Geo. 4, c. 78. (*Rame v. Young*, 2 B. & B. 165; *Saunders v. Bowes*, 14 East, 500.) Secondly. Statute 1 and 2 Geo. 4, c. 78, relates only to acceptances. Here the bill was drawn specially payable at a particular place. Thirdly. The defect would be fatal even upon general demurrer. It is not cured by verdict, because there is no issue, and therefore no verdict, upon this particular part of the declaration. [MAULE, J.—It is not so much that there has been a verdict as that the defendant has pleaded over. Where matter defective on special demurrer is good after verdict, it is supposed that the judge has directed the jury with a view to that sense of the pleading which will sustain the action. If there be a general demurrer, the party treats the declaration as a thing requiring no answer; if he pleads over, he takes it in a sense that requires an answer. So in *Hobson v. Middleton* (6 B. & C. 295), Bayley, J. says, "That after pleading over, an equivocal expression is to be taken in that sense which will support the previous pleading." That applies only where the part defective is pleaded over to. The law upon the effect of pleading over is laid down in 1 Wms. Saunders, 228. *Butt's* case (7 Rep. 25), and *Dr. Bonham's* case (8 Rep. 120), are authorities to shew that pleading over merely cures matters of form. See also 1 Chitty on Pleading, 7th ed. 704. [COLTMAN, J.—What would you say, if "then and there" had been inserted with the allegation of presentment?] Even that would not do. This is not merely an equivocal expression: it is an absolute defect. It is a mere accident that the venue is London, and, with reference to this point, cannot place the parties in a better position than if the venue had been some other county. This is within the proviso of the Rule H. T. 4 Wm. 4, pl. 8, "provided that in cases where local description is now required, such description shall be given."

TINDAL, C.J.—It appears to me that this case is decided by the new rule last referred to. It must now be taken as if the venue inserted in the margin were continued throughout the declaration; just as if it had been in the old form, "afterwards on such a day the bill was then and there presented, &c." I think that would have sufficiently averred a presentment in London.

COLTMAN, J.—It is unnecessary to advert to the effect of pleading over. It would have been quite sufficient in the declaration to allege that the bill was presented in London; then comes the rule, and prohibits the insertion of that special venue as unnecessary.

MAULE, J.—I think the venue in the margin suf-

ficiently applies to the presentment. The Rule of Court referred to is—"The name of a county shall in all cases be stated in the margin of a declaration, and shall be taken to be the venue intended by the plaintiff." That makes it absolutely necessary to state the name of the county in the margin; and then it goes on—"no venue shall be stated in the body of the declaration, or in any subsequent pleading." Now, what is venue? It is the place where a material fact stated in the pleadings is alleged to have taken place, and was formerly important to determine from what place the jurors were to be summoned. The rule does require that the place where a material fact takes place should be stated, because it requires the county to be named in the margin, and that place is to be taken to be the place where the plaintiff alleges every matter of fact to have happened. If it is immaterial to prove that the fact took place in London, the plaintiff need not prove it; if material, he must prove it. This declaration, therefore, does contain an allegation that presentment was made in London, and that allegation, being material, if traversed, must have been proved.

CRESSWELL, J.—This case is determined by the Rule of Court. Before the rule, every material and traversable fact must have had a venue. Then the rule says, you are to read the margin in the body of the declaration. You are to construe the declaration as if the venue were inserted. Rule discharged.

DOE DEM. GAISFORD V. STONE.

At the trial of an ejectment a deed was put in which was a mortgage of the premises from S. to the lessor of the plaintiff. Indorsed upon the deed was a memorandum of further charge of later date, signed only by the defendant, in which he described himself as the purchaser of the equity of redemption of the within-mentioned premises: Held, that he could not, after this, set up in defence a prior mortgage to a different party.

At the trial of this ejectment, before Erie, J. at the last assizes for the county of Somerset, the following deeds were proved and put in:—Aug. 28th, 1828. A mortgage of the premises by Robert Saunders to Alfred Prothero. May 5th, 1829. Mortgage in fee by Saunders to the lessor of the plaintiff. An indorsement upon the last-mentioned deed, dated May 21st, 1842, and signed by the defendant in the following words: "Memorandum, that by indenture of surcharge, bearing date the 5th day of May inst. the within-mentioned premises were charged by me, William Stone, the purchaser of the equity of redemption thereof, with the payment of the further sum of 300l. and interest from the said 5th day of May." Erie, J. directed a verdict for the plaintiff. In last Term, Channell, Serjt. had obtained a rule, pursuant to leave reserved, for entering the verdict for the defendant, on the ground that the title was shewn to be in Alfred Prothero, and not in the lessor of the plaintiff.

Manning, Serjt. (with him Bailey) shewed cause.—According to the relation of mortgagor and mortgagee, it does not lie in the mouth of the defendant to say that, at the time of the mortgage to the lessor of the plaintiff, Saunders was not in possession. The defendant, by his memorandum, precludes himself from setting up any better title than Saunders himself could, and Saunders would be estopped from setting up a title in somebody else, at the date of the deed of May 5th, 1829. He referred also to *Slatterie v. Pooley* (6 M. & W. 664).

The COURT called on Channell, Serjt. (with him Fitzherbert) in support of the rule.—The lessor of the plaintiff was no party to the memorandum, and there would therefore be no estoppel for want of mutuality. Neither can the memorandum operate as a declaration by the defendant against his own interests, as in *Slatterie v. Pooley*. He admits, indeed, that he came in under Robert Saunders; but that may have been as a purchaser of the equity of redemption under a mortgage prior to that made to the lessor of the plaintiff. He would then be bound, as the owner of the equity of redemption, to ascertain who are the mortgagees, and pay them off in their order. Besides, as a declaration, the memorandum is imperfect, as it refers to some indenture not produced.

By the COURT.—By the indorsement the defendant acknowledges that he has no better title than what he derives from Saunders. He refers to the deed upon which his memorandum is indorsed, and speaks of the within-mentioned premises. What right has he to set up any title which Saunders could not?

Thursday, May 28.
DOE V. ROE.

Practice—Ejectment.

Talfourd, Serjt. moved for judgment against the casual ejector. The affidavit of service of the declaration and notice in ejectment did not set out the full Christian names of the tenant in possession, upon whom it was served, but only his initials and his surname. It was submitted that in certain cases it would be almost impossible to ascertain the full Christian names of the tenant upon whom it was necessary to serve.

Rule absolute.

Friday, May 29.

REYNOLDS V. FENTON.
Pleading—Foreign judgment.

To an action upon a foreign judgment, it is not sufficient to plead "that the defendant was not served with process, nor had any notice of process, nor did he appear in Court to answer in the said suit;" without shewing distinctly that by the law in force in the foreign court, proceedings in an action brought there, of necessity commence with process.

Assumpsit, setting out a judgment or decree recovered against the defendant in the Tribunal of Commerce, in Brussels, in the kingdom of Belgium, and in consideration thereof a promise by defendant to pay.

Plea. That although the said judgment or decree in the declaration mentioned, was obtained by the plaintiff against the defendant, he, the defendant, was not at any time served with any process issuing out of the said Tribunal of Commerce in and of the said city of Brussels, in the said kingdom of Belgium, in the declaration mentioned at the suit of the plaintiff, for the causes of action for which the said judgment was recovered, nor had he at any time notice of any such process, nor did he, the said defendant, at any time appear in the said Court to answer the plaintiff in the said suit or action on which the said judgment or decree was so obtained, as in the said declaration mentioned.

Verification. General demurrer.

Channell, Serjt., in support of the demurrer. The plea is bad for not shewing that the defendant was not resident or domiciled in Belgium. (*Douglas v. Forrest*, 4 Bing. 686; *Smith v. Nicolls*, 5 Bing. N.C. 208; *Cowan v. Braidwood*, 1 M. & G. 882). He may have had an agent at Brussels, or he may have waived the service; or the Tribunal of Commerce may be a mere Court of Appeal, and the defendant may have been summoned to the inferior Court. *Ferguson v. Mahon* (11 A. & E. 179) was probably decided before *Cowan v. Braidwood* was reported, and cannot be sustained. It does not appear that by Belgian law a suit commences necessarily with process. The mere absence of a writ as the commencement of a suit is not contrary to natural justice. (*Buchanan v. Rucker*, 1 Camp. 62.)

Talfourd, Serjt., for the defendant.—The term "process" is not confined in its meaning to a mere written document; it will denote any method by which the proceedings in an action are commenced. This plea is identical with the plea in *Ferguson v. Mahon* (11 A. & E. 179), and was framed upon it; *primâ facie*, it furnishes a good defence to the action. If the necessity of process were waived, or there were any other excuse for its absence, that should be replied. The law, as laid down by Lord Ellenborough in *Buchanan v. Rucker* (1 Camp. 62), was afterwards upheld by the full Court (9 East, 192). A person who seeks to enforce a foreign judgment, must shew either that the party was summoned, or that there was some excuse for the defect. (*Cavan v. Stewart*, 1 Stark. N. P. 525; *Bequet v. Mac Carthy*, 2 B. & Ad. 951). [MAULE, J.—Your plea states merely that you had no notice of process; it is consistent with that, that in Brussels proceedings commence with a verbal summons from the plaintiff to the defendant. You do not even say that you had no notice of the proceedings. *Primâ facie*, the plea must be taken to mean that. This objection is on general demurrer. We cannot say that the issue of process is necessary to natural justice. Your plea might perhaps have sufficed, if it had said that the Court had no jurisdiction, except in cases where process issued.]

By the COURT.—You had better amend.

Talfourd, Serjt. prayed leave to amend accordingly. The defendant to amend, otherwise judgment for the plaintiff.

MESSENT V. REYNOLDS.

Pleading—Implied covenants.

Where the declaration in an action states an agreement, "whereby the defendant agrees to let to the plaintiff certain premises, subject to the same conditions as are mentioned in a certain memorandum of agreement made between the defendant and A B," without shewing what the memorandum is; the Court cannot infer an absolute covenant for quiet enjoyment from the defendant to the plaintiff.

This was a special case stated by agreement for the opinion of the Court. It set out a declaration in an action by the plaintiff against the defendant, whereby it appeared that, by a memorandum of agreement, "the defendant agreed to let to the plaintiff a certain house and premises, situate, &c. subject to the same conditions as were mentioned in a certain other memorandum of agreement, made between the defendant and one John Flight, for the term of eight years;" it then stated the plaintiff's entry, mutual promises, and "that the defendant promised, undertook, and agreed that the plaintiff should peaceably and quietly use, occupy, possess, and enjoy during the term;" it then proceeded to shew an eviction of the plaintiff, not by Flight, but by some party having title paramount. The plea was *non assumpsit*, and the question raised for the Court was, whether the agreement between the plaintiff and the defendant raised such a promise

as was set up, and whether the plaintiff was entitled to recover.

Talfourd, Serjt. for the plaintiff.—No doubt this agreement amounted to a lease. If it contained the word *demise*, that would have imported a warranty; but there is no magic in the word itself, and any words of present demise, such as these, will import the same. The plaintiff assumes that he is able to demise for eight years, subject to a certain agreement. If that agreement contained anything to prevent such a promise as this being implied, the defendant should have shown that. It is true that in *Granger v. Collins* (6 M. & W. 458) the Court held that this kind of warranty was not implied from the mere relation of landlord and tenant. But the distinction between that case and this is, that here the agreement is specially stated. [CRESSWELL, J.—Is this agreement anything more than evidence of the creation of the relation between landlord and tenant?]

Channell, Serjt. (with him *Hoggins*) for the defendant.—The plea of *non assumpsit* drives the plaintiff to prove not merely the agreement, but also the covenant for peaceable and quiet enjoyment. The agreement to which the defendant's agreement is subject not being set out, we may infer its contents to be unfavourable to the plaintiff's case. (*Jackson v. Cobbin*, 8 M. & W. 790.) They were then stopped by the Court.

TINDAL, C. J.—The plaintiff is not entitled to recover. He wishes the Court to say, that in the defendant's agreement there is implied an absolute covenant for quiet enjoyment. No doubt in a lease such a covenant is implied by law in the word *demise*. I do not, however, rest on the point that here that word is not used. At all events, there ought to appear to be an absolute demise of the term in respect of which the covenant is to be implied. Here the letting is subject to conditions; and how are we to say that it is not a conditional term? Those conditions may have been broken, and the eviction may have been the proper and natural consequence of the breach. I think the inference drawn by the plaintiff cannot be supported in law, and that there is no promise such as is alleged in the declaration.

COLTMAN, J. concurred.

MAULE, J.—The declaration does not even lay the promise to have been that the defendant should quietly enjoy, subject to the conditions in the other memorandum. Those conditions may have been to pay 500*l.* on a certain day, which may not have been paid. The objection goes entirely to the merits of the case. It is clear that the defendant did not represent himself as seized in fee, but that he really was and represented himself to be a person having title under *Flight*, and willing to hand over his estate with all its conditions. The assumption in the declaration is, that the defendant pretended to have the power to grant absolutely what he only grants conditionally.

CRESSWELL, J.—There is no evidence of an express promise, but it is said the law will imply one. How can we assent to that, when the conditions annexed to the letting are not set out, and we know not what they are? Even if the word "*let*" would be equivalent to a demise under seal, which I by no means admit, yet when there are certain unknown conditions to the letting, the plaintiff cannot assume an absolute unconditional covenant.

Judgment for the defendant.

Monday, June 1.

SUTTON v. PAGE.

To a declaration by the *indorsee* against the acceptor of a bill of exchange, the defendant pleaded, "that the plaintiff and defendant accounted together of and concerning the said causes of action in the declaration mentioned, and all other claims and demands then being between the plaintiff and the defendant," and then went on to allege a payment of what upon the accounting appeared to be due. The plaintiff replied, "that the plaintiff and defendant did not account together of and concerning the causes of action in the declaration mentioned, and of all other claims and demands then being between the plaintiff and the defendant *modo ac formâ*."—Held, that the replication was good on special demurrer.

Assumpsit.—*Indorsee* against acceptor of a bill of exchange for 120*l.* 6*s.*

Plea.—That after the accruing of the causes of action, &c. and before the commencement of the suit, the plaintiff and defendant accounted together of and concerning the said causes of action in the declaration mentioned, and all other claims and demands then being between the plaintiff and the defendant, and then amounting to a certain large sum, to wit, 1,000*l.*; and that, on the said accounting, a certain small sum, to wit, the sum of 40*l.* and no more, was found to be due from the defendant to the plaintiff. The plea then went on to aver payment of the sum of 40*l.* so found to be due.

Replication.—That the plaintiff and the defendant did not account together of and concerning the causes of action in the declaration mentioned, and of all other claims and demands then being between the plaintiff and the defendant *modo ac formâ*.

Special demurrer, on the grounds that the traverse taken in *improper* and too large; that the lease ten-

dered is immaterial; that the issue is taken on matters of inducement; that the traverse should have been in the disjunctive, &c.

On a former day, **Channell, Serjt.** had obtained a rule to set aside the demurrer as frivolous, against which **Gaselee, Serjt.** was to have shown cause, but it was agreed that the case should be argued upon the validity of the demurrer itself.

Gaselee, Serjt.—The traverse in the replication is too large. It puts the defendant upon proof that the parties accounted concerning all matters in dispute, whereas it is sufficient if they accounted concerning the bill of exchange, and one other cause of action. It is no answer to say that the replication merely follows the plea, for in *Palmer v. Ekins* (2 Strange, 818) it is said: "It is no answer to say, that the defendant has traversed in the words of the declaration; for unless it be materially alleged, he is not to follow it." (Stephens on Pleading, 282; *Goram v. Sweeting*, cum notis, 2 Sandd. 207, a, last ed.; *Basen v. Arrol*, 6 M. & W. 559; Com. Dig. Pleader, G. 15.) Besides, the issue is immaterial. If the plaintiff accepted the 40*l.* it is no matter whether they accounted. The proper traverse would have been to deny the taking of the 40*l.* in satisfaction.

Channell, Serjt., was not called on.

TINDAL, C. J.—The plea, as it appears to me, consists of two matters of fact; the accounting and the payment of the balance. Unless the plea contained both these, it would furnish no answer to the action. The plaintiff has a right to take issue upon either of these;—upon the accounting, for instance, as he does here. The defendant says, "We accounted together concerning the bill of exchange, and all other claims and demands." The plaintiff follows him, and denies that any such accounting took place. But then the defendant objects, "You have followed me too closely; you were bound to confine your answer either to the bill of exchange, or to that and some other subject of account." To this there is a very short answer: if the plaintiff had so replied, the other party would speedily have turned round upon him, and said, "There were other claims between us, and the accounting respecting them reduced the debt to the small sum which I have stated in my plea." I think, however, that the issue is properly taken. All the cases cited are where the traverse is to an allegation in the declaration, not to its full extent material. That has nothing to do with a distinct allegation in the plea, upon which the defendant chooses to stake his defence.

The rest of the Court concurring.

Judgment for the plaintiff.

Tuesday, June 2.

HAMMOND v. COLLS.

Practice—Amendment.

Where judgment had been given for the defendant upon a demurrer to a replication twelve months ago, the Court refused to allow the plaintiff to amend upon payment of costs.

This was an action of trespass. The declaration contained five counts. The eighth plea was pleaded to the first and second counts, and the tenth plea to the third and fourth counts of the declaration. The replication to each of these pleas was demurred to specially, and after argument the replication to the tenth plea was held to be good, but judgment was given for the defendant upon his demurrer to the replication to the eighth plea, on the ground that the traverse in the replication was too large. These demurrers were argued and judgment given in *Trinity Term*, 1846. (See *Hammond v. Colls*, 14 Law J. N.S. C.P. 288.)

Manning, Serjt. now moved for a rule to show cause why the plaintiff should not be at liberty to amend his replication to the eighth plea upon payment of costs, or why he should not be allowed to insert another count in his declaration. He mentioned that under certain circumstances the Courts had allowed amendments, even after writ of error brought.

TINDAL, C. J.—We do not allow additional counts to be inserted two Terms after service of declaration. We ought not to permit an amendment in the pleadings a year after the subject-matter has been disposed of.

Rule refused.

DOE. dem. BAILEY AND OTHERS v. FOSTER.

A memorandum between A B and C D, "that provided a licence can be obtained from the lord of the manor, A B will grant, and C D will accept, a lease of certain premises for 21 years, and pay the rent, &c. and that until such lease shall be executed, the said yearly rent shall be payable and recoverable, by distress or otherwise, in like manner as if the lease had been executed," is not a lease but an agreement merely.

Where a party is let into possession under such an agreement, a notice to quit, given by an agent, in the name of A B, E F, G H, and J K, is a good notice.

This was an ejectment to recover certain copyhold property, in the parish of St Mary, Walthamstow, in the county of Essex. The declaration contained four demises:—1. That of Bailey and Allan, churchwardens, and Collard and Jensen, overseers of St.

Mary, Walthamstow. 2. That of James Pistor (previous copyholder). 3. That of Webber and Budd. 4. That of Stoker and Bailey. The defendant had been let into possession of the premises under the following memorandum:—"June 23, 1842—Memorandum of agreement between H. F. Gadsden, as agent for, and on behalf of, Webber and Budd, churchwardens of the parish, &c. of the one part, and John Foster, of the other part, the said H. F. G. provided a licence can be obtained from the lord of the manor, but without any right for Foster to require the consent or sanction of the poor-law guardians, agrees to grant and execute, or cause to be granted and executed, a lease of all that, &c. (describing the premises), to hold to the said Foster, for the term of 21 years, from Midsummer-day next, at and under the clear yearly rent of 30*l.* payable quarterly, such lease to contain the usual covenants, &c. and Foster agrees to accept the lease and sign a counterpart, and to pay for the same, &c. and until such lease and counterpart shall be executed, it is agreed that the said yearly rent shall be payable or recoverable, by distress or otherwise, in the same manner as if the lease or counterpart had been executed." This memorandum was signed by the defendant.

On the 24th December, 1844, a notice to quit, requiring the defendant to give up possession of the premises at Midsummer-day next, but not saying to whom possession was to be given, was served upon the defendant, and purported to proceed from Messrs. Hindman and Howard (attorneys) "as agents for and on behalf of Webber and Budd, late churchwardens, &c. and Stoker and Bailey, present churchwardens, and Wigram and Taylor, present overseers, &c." A verdict was found for the plaintiff at the trial, subject to several objections, and a rule had been obtained by **Byles, Serjt.** for a nonsuit or a verdict for the defendant, against which,

Channell, Serjt. (with him *Booth*) shewed cause.—All the demises but the third were now abandoned, and the objections thereupon remaining to be argued were, first, that the memorandum of June 23, 1842, was an actual lease, and being merely stamped with an agreement stamp was inadmissible in evidence; secondly, as to the sufficiency of the notice to quit; thirdly, that the demise was improperly laid.

On the part of the plaintiff, the following cases were referred to: *Doe dem. Coore v. Clare* (3 T. R. 739); *Hayward v. Hansell* (6 A. & E. 265); *Bicknell v. Hood* (5 M. & W. 104); *Hope v. Booth* (1 B. & Ad. 498); *Doe dem. Jackson v. Hiley* (10 B. & C. 885); *Doe dem. Higgs v. Terry* (4 A. & E. 274); *Gouldsworth v. Knights* (11 M. & W. 337).

Byles, Serjt. (with him *Ogle*), for the defendant, and in support of the rule, referred to *Bacon's Abridgment, Leases, K.*; *Pincro v. Judson* (6 Bing. 210).

TINDAL, C. J.—The plaintiff is entitled to recover on the third demise. This is not a lease, but an agreement merely. There seems to have been some doubt who were the lessors, and Webber and Budd agree subordinately to receive the rent, in case a lease cannot be obtained. Webber and Budd being churchwardens, and having let the defendant into possession, their right never shifted, and the tenant ought to have obeyed the notice to quit which was given him. The defendant has shewn no other party in whom the legal estate vested.

COLTMAN, J.—The parties had some difficulty about a future lease, and in the mean time agree to take the best terms they can get. They therefore consent to a tenancy so long as they can agree. Whatever title Webber and Budd had at the time they have now, because there has been no legal transfer of their legal estate. Their title by estoppel is as good as ever.

MAULE, J.—The notice to quit was quite good, although persons joined in it who had nothing to do with it.

CRESSWELL, J. concurred. *Rule discharged.*

Thursday, April 16.

HOLDEN v. THE LIVERPOOL NEW GAS AND COKE COMPANY.

Where a gas company were in the habit of supplying gas to a private residence, and there were inside the house a pipe and a stop-cock, by means of which all the gas could be prevented from escaping, the tenant left the house, giving notice to the company that no more gas would be required, but omitting to turn off the stop-cock; the company took no steps to prevent the gas from entering the house, and an explosion took place: Held, that the defendants were not liable in this case for negligence for the damage occasioned to the owner of the house by the explosion, as it was the duty of the tenant to have turned off the stop-cock.

In this case a rule had been obtained for setting aside the nonsuit, against which, in *Hilary Term* last, **Channell, Serjt.** (Crompton with him), shewed cause; and Sir Thomas Wilde (J. Henderson with him) supported the rule.

The case is fully stated in the subjoined judgment, which was now delivered by **TINDAL, C. J.**

JUDGMENT.

TINDAL, C. J. now delivered the judgment of the Court. The plaintiff in this case having been non-

sited upon a trial that came before my brother Cross-well at the Liverpool assizes, a rule to show cause was granted why such nonsuit should not be set aside and a new trial had, on the ground of misdirection. The declaration stated that the plaintiff was possessed of a house, and that the defendants were possessed of large quantities of dangerous gas, and that the defendants took so little and such bad care of the gas, that it passed into the house of the plaintiff, and exploded and damaged the plaintiff's house. The defendants pleaded the general issue, "not guilty," and the learned judge ruled, on the evidence brought forward, that the injury was not occasioned by the neglect of any duty cast by law upon them, the defendants. We think, on the facts proved at the trial, such direction was right. The plaintiff was the owner of a house which had been let out to successive tenants, the last of whom had been in possession for about two years, the house having been supplied with gas by the defendants during the whole time of his tenancy by means of pipes and fixings, which were put up and fixed within the house at the expense of the plaintiff—the landlord—and all of which were his property. The last tenant had quitted the house about ten days before the explosion took place. Previously to his quitting, he gave notice to the company that no further supply would be wanted by him, and requested them to remove the lamp from the dining-room, which was his property. The plaintiff left the house in the care of a servant on the 29th of March, and there was no appearance of the pipe having been left improperly, and there was no such of gas in the house. No explanation was given as to the mode in which the escape of the gas, or the explosion which took place on the 8th of April, was occasioned; but it might fairly be inferred that the inside pipe between the gas-meter and the burner had been cut by some wrong-doer, who had entered the house during the time it was empty, and during the interval between the days. The mode by which the gas was conveyed to the house was a tube or pipe, which communicated with the main in the street, and which passed through the outer walls into the meter, and from thence supplied two lamps in the house, which were fitted up with proper stop-cocks fitted to each. There was a stop-cock to each between the inside of the wall and the meter, of which the tenant had the key, and he could stop the gas entering the house altogether, if such stoppage was required; but the company had no stop-cock to the gas at the outside of the meter. On the part of the plaintiff, it was contended that it was the duty of the defendants, on notice by any tenant of the house that the supply of gas was no longer wanted, to turn off the gas completely from the house; that they had no right to introduce the gas into the house after such notice, and that if an outer stop-cock in the street was absolutely necessary for the purpose, it was their duty to have provided such stop-cock accordingly; and if such duty was cast by law on the defendants, the direction of the learned judge was undoubtedly wrong, as no such stop-cock was provided. On looking at the Act under which this company was formed, no such direction appears to have been given to the company by the legislature, though it appeared in evidence that a different company had been formed in the same town, and that such company had used an outer stop-cock in the same way, but they had no authority, as it appears to us, to do so; and as the legislature is silent on this point, the common law would impose no precise duty on the defendants, or any other duty than that which is expressed in the doctrine generally held, the duty of using proper and sufficient care in the supply of gas. Now, looking to the liability of the defendants in this point of view, it appears to us that the injury sustained by the plaintiff is not solely attributable to the want of due care on the part of the defendants, but that the plaintiff has, by his own voluntary act, been contributory to it himself. The plaintiff knew that the pipe which brought the gas into the house still remained as before, with the stop-cock in the inside of the house, which would prevent the gas from being supplied to the house, if properly turned off; and the house being without a tenant, was under his own charge and care. We think, therefore, the plaintiff was himself wanting in ordinary care, in not seeing that the stop-cock in the inside was closed, which would effectually have prevented the gas from escaping; and this defence appears, as we think, open to the defendants, under the general issue, on the decision in the case of *Bridge v. The Grand Junction Railway* (3 M. & W. 344). We, therefore, think the nonsuit right, and the rule for setting it aside must be discharged.

Rule discharged.

Wednesday, June 3.

HUTTON v. THOMPSON.

On an action of debt on a judgment, a plea that a *fi. fa.* had issued on the judgment, indorsed to levy part of the sum recovered, and that that writ had been executed, and the money received under it paid over to the plaintiff, is bad on general demurrer. Plea.—The issuing of a *fi. fa.* indorsed to levy 15*l.* and a levy of the same, and payment over to the plaintiff.

General demurrer.

Manning, Serjt. was to have argued in support of the demurrer; but the Court, having intimated a strong opinion that the plea was bad, called on Channell, Serjt. who abandoned the argument.

MAULE, J.—You are trying to make this mere indorsement on the *fi. fa.* as effective as a release under seal.

TINDAL, C. J.—The plea is clearly bad.

Judgment for the plaintiff.

BUSINESS OF THE WEEK.

Thursday, May 28.

EVANS v. WATSON.—Byles, Serjt. moved for a rule, calling upon the plaintiff to show cause why the Master should not review his taxation, on the ground that he had improperly allowed the expenses of a witness, summoned from abroad, at the rate of 7*s.* a day, for 300 days. *Widdis v. Brasier* (3 Dowl. 499) was referred to.

Rule to show cause.

TILT v. LOANES.—Sir Theo. Wilde, Serjt. moved to put off the trial, upon affidavits that material witnesses were abroad.

Application granted.

WALLIS v. BROWN and ANOTHER.—Byles, Serjt. showed cause against the rule obtained by Allen, Serjt. for setting aside the appearance entered for one of the defendants. The question turned entirely upon the credit due to the different affidavits.

Rule discharged.

SUMMERS v. OSMEN.—Dewling, Serjt. moved for a rule, calling upon the plaintiff to show cause why the Master should not review his taxation, on the ground that the Master ought to have allowed the defendant the costs of making a judge's order, which the plaintiff had failed to obey, a rule of Court.

Rule to show cause.

SABENT v. WRIGHT.—Allen, Serjt. moved to enter up judgment upon a warrant of attorney, more than a year old.

Rule absolute.

SIGGARS v. PAYNTER and ANOTHER.—Channell, Serjt. (with him J. Brown), showed cause. Talford, Serjt. in support of the rule.

Rule absolute for a new trial, upon payment of costs.

ELSTON v. GASCORNE.—Shee, Serjt. was to have shown cause. Channell, Serjt. (with him Wordsworth), to have supported the rule for a new trial. In consequence of an intimation annexed to his report by the judge who tried the case.

Rule discharged.

GIBSONS v. ALIBON.—Channell, Serjt. (with him Bovill), showed cause. Shee, Serjt. (with him Petersdorf), in support of the rule for a new trial. The action was case for maliciously holding to bail. The judge who tried the cause, though he thought that want of reasonable and probable cause was not proved, had declined to decide that point, and had left both that question and the question of malice for the jury. After argument upon the facts, the Court now thought that the judge ought to have held, and to have told the jury, that there was no reasonable or probable cause for holding the plaintiff to bail.

Rule absolute.

Friday, May 29.

SPECIAL PAPER.

TUCKWELL v. MORRIS.—Channell, Serjt. appearing for the plaintiff, and no one appearing for the defendant.

Judgment for the plaintiff.

CARE v. MAUDE.—Talford, Serjt. for the plaintiff. Channell, Serjt. for the defendant, admitted that he could not support the demurrer.

Judgment for the plaintiff.

ROBERTS v. JUSTINE.—Talford, Serjt. for the plaintiff. No one appearing for the defendant.

Judgment for the plaintiff.

DORMAY v. BORRADAILE.—Channell, Serjt. (with him F. Lee and Campbell), for the plaintiff. Sir Theo. Wilde, Serjt. (with him R. Palmer), for the defendant. Cur. adv. vult.

REG. v. HEMSWORTH.—Talford, Serjt. moved that it might be referred to the Master, to examine the defendant upon the interrogatories, and to report to the Court.

Rule absolute.

Saturday, May 30.

DAVIES v. LOWNDSE.—Talford, Serjt. moved to respite the jury process in this writ of right until next Term.

Application granted.

TOWERS v. TURNER.—Channell, Serjt. moved for a rule calling upon the plaintiff to show cause why the judge's order for a writ of trial, and all subsequent proceedings, should not be set aside, and why a repleader should not be awarded. There were several issues, but the order for a writ of trial, and the writ of trial itself, commanded the sheriff to try the issue. The cause had been tried before the under-sheriff, and at the trial the defendant appeared by counsel. One of the pleas was a plea of payment of 10*l.* in full satisfaction and discharge. The plaintiff replied that "the defendant did not pay the sum of money made *ad form.* as in the said plea mentioned." A repleader was desired, because the replication was not "that the defendant did not pay the sum of money in the said plea mentioned *modo ad form.*"

Rule refused.

PRICE ET UXOR v. JAMES.—Channell, Serjt. moved for a rule for the plaintiff to show cause why the rule for a new trial should not be discharged. The rule for a new trial, upon payment of costs, had been made absolute last Term, but there had been no service of the rule, and no appointment to tax costs.

Rule to show cause.

COUTLAS v. BOWES, Clerk.—Talford and Channell, Serjts. (with them O'Malley and Wells), showed cause against the rule for a new trial. Sir Theo. Wilde and Byles, Serjts. (with them Prendergast), supported the rule.

Argument adjourned.

Monday, June 1.

ELY v. SMITH.—Byles, Serjt. moved for a rule to show cause why the judgment of *non pros.* signed herein, and all subsequent proceedings, should not be set aside at the cost of the defendant. The writ had been served and appearance entered in last vacation; and it was contended that the plaintiffs had the whole of the present Term in which to declare. Stat. 13 Car. 2, at 2, c. 2, s. 2, and *Foster v. Prynes* (6 M. & W. 664), were quoted.

Rule to show cause.

COUTLAS v. BOWES.—Argument concluded.

Cur. adv. vult.

DONALDSON, Clerk, v. HANSON.—Dewling, Serjt. (with him M. Smith), showed cause. Channell, Serjt. (with him Fitzherbert), in support of the rule.

Cur. adv. vult.

DONALDSON, Clerk, and OTHERS v. FORSTER.—Channell,

Serjt. (with him Bovill), showed cause. Byles, Serjt. (with him Ogle), in support of the rule. Argument adjourned.

Tuesday, June 2.

Re BULL.—Allen, Serjt. moved for a rule calling upon one of the Commissioners of the District Court of Bankruptcy at Leeds, and upon the gaoler of York Castle, to show cause why the bankrupt should not be discharged from custody. The application was substantively the same with that made in the Bail Court in the same case in last Term (*LAW T.* Vol. VII. p. 117), and met with the same result.

Rule refused.

DONALDSON, Clerk, v. FORSTER.—Argument concluded. (Reported in another part of this paper.)

Rule discharged.

PIGGOT v. EASTERN COUNTIES RAILWAY COMPANY.—Channell, Serjt. (with him Bovill) showed cause. Shee, Serjt. in support of the rule. It was an action on the case for negligence, whereby some stacks of the plaintiff had been set on fire by sparks from the steam-engines of the defendant. Evidence had been received, that on occasions different from that upon which the negligence was said to have taken place, large sparks had been thrown by the engines to a considerable distance. It was objected, upon moving for a new trial, that this was evidence of misconduct upon the part of the defendants at different occasions from that which furnished the present action, and therefore inadmissible. Upon this point, and upon the ground that the verdict was against evidence, the rule was granted. The judge who tried the case now reported that the evidence had been given to show that the steam-engines were capable of throwing sparks to the distance at which the stacks stood from the railway. The case was argued on the other point. Rule discharged.

Wednesday, June 3.

Rule to show cause.

DONALDSON, Clerk, v. EYER.—Channell, Serjt. (with him Wilde), for the plaintiff. Talford, Serjt. (with him Bovill), for the defendant.

Cur. adv. vult.

JOLI and ANOTHER v. STEWART.—All the paper books having been delivered by the plaintiff, and the defendant not having paid for his copies, Manning, Serjt. prayed the judgment of the Court.

Judgment for the plaintiff.

HATWARD v. BENNETT.—Byles, Serjt. for the plaintiff. Talford and Channell, Serjts. for the defendant.

Cur. adv. vult.

REVES v. GROOM.—Talford, Serjt. moved to set aside the appearance entered for the defendant, and all subsequent proceedings, on the ground that the defendant had not been served with process.

Rule to show cause.

Thursday, June 4.

SMITH and ANOTHER, Executors, v. EARL OF CHARLEVILLE.—Channell, Serjt. moved for leave to sign judgment in the *sci. fa.* hercin. He mentioned that the affidavits were entitled as this motion is, and not in the original action which had been brought by the testator.

Application granted.

SAME v. EARL OF MORNINGTON.—Channell, Serjt. made a similar motion to the above.

Application granted.

FRANCIS v. DODSWORTH.—Manning, Serjt. moved for a rule to show cause why the demurrer or rejoinder to the replication herein should not be set aside for duplicity.

Rule to show cause.

GALLY v. ROUND.—Shee, Serjt. (with him Bramwell) was to have shown cause. Byles, Serjt. (with him Leach) to have supported the rule. After reading the report of the judge who tried the case.

Rule discharged.

TEMPEST v. KILLNER.—Talford, Serjt. (with him Cleaveley) for the plaintiff, consented to have the verdict reduced to 2*5*l.** Byles, Serjt. (with him Altherton) for the defendant.

Rule accordingly.

BOWLEY v. BELL.—Byles, Serjt. (with him Archbold), showed cause. Channell, Serjt. (with him Altherton), in support of the rule.

Cur. adv. vult.

REVELL v. WETHERELL.—Byles, Serjt. asked for judgment upon a plea of *non tiel* record to an action on a judgment. The judgment was recovered upon May 14, 1845, the date assigned to it in the declaration; but the record had been entered as of Easter Term, contrary to rule H. T. 11 Geo. 1, whereby it is ordered that issues are to be entered on record of the Term in which they are joined. Issue in this case was joined in Hilary Term 1845. The Court ordered the record to be amended, and gave

Judgment for the plaintiff.

COURT OF EXCHEQUER.

KNIGHT v. THE MARQUIS OF WATERFORD. Construction of 2 & 3 W. 4, c. 100—*Tithes*—What is a *modus* within the meaning of the words "*DE MODO DECIMANDI*."

This was an action of debt for not settling out tithes, and came before the Court on a motion for a new trial on the ground of misdirection.

At the trial it appeared that the plaintiff was the rector of the parish of Ford, in which parish there were certain lands belonging to the defendant and his ancestors.

The action was brought to recover triple the value of tithes claimed to be due to the plaintiff in respect of those lands.

The defence set up was, that a *modus* of 40*l.* had been from time immemorial, and still was, payable by the lord of the manor of Ford to the person in lieu of tithes, and that the tithes were paid to the lord.

The payment of this *modus* was proved for 63 years, and also that the lord had enjoyed the tithes during that time, whereupon the learned judge directed the jury that the case fell within 3 & 4 Wm. 4, c. 100, and the jury found for the defendant. Sir F. Kelly, S.G., Sir Theo. Wilde, Q.S., Knowles, Q.C., and Crompton, showed cause, citing *Pigot v. Heron* (Cro. El. 596, 1 Moor. 483); *Dykes v. Thompson* (1 Wood. 513, 1 Eagle & Y. 692); *Phillips v. Prytherick* (4 Wood's Decr. 73, 3 E. & G. 1273); *Pigot v. Simpson* (Cro. El. 763); *Stamford v. Donbar* (13 M. & W. 892). Watson, Q.C., Addison, and Manisty, appeared to support the rule. The arguments appear so fully in the judgment, that it is unnecessary to set them out here.

Cur. adv. vult.

JUDGMENT.

The LORD CHIEF BARON.—In this case, which was heard before my brothers, Parke, Alderson, Rolfe, and myself, on Thursday and Friday last, the principal question was elaborately argued by the learned counsel on both sides. That question was, whether the prescription or right under which the defendant insisted on his non-liability to tithes in kind to the plaintiff, the rector, was a *modus* exemption, or discharge of tithes under the 2 & 3 Wm. 4, c. 100, s. 2, and rendered, therefore, valid by user for two incumbencies, and three years for a third, and such further time as would make sixty-three years under the provisions of that Act. We are all of opinion that it was not a *modus* exemption or discharge, and consequently that there must be a new trial. The jury found that the defendant and his ancestors had, during the term mentioned in that statute immediately preceding the commencement of the statute, held and enjoyed the lands in respect of the title for which the action was brought, freed and discharged of title by reason of a payment to the lord of the manor of Ford of an annual sum of 40*l.* payable as and for payable, &c from time immemorial in lieu and compensation of all manner of tithes within the said manor; and that it was part of the same custom that the lord, in consideration of the payment of 40*l.* should leave to him, his heirs, and assigns, a tenth of all titheable matters in the said manor, or any part thereof; and upon this finding, with reference to which the opinion of my brother Rolfe was given on the trial, the question arises, whether it be within the statute or not. The right they have claimed, if it has existed beyond time of legal memory, would (subject to an objection which will be afterwards noticed) be valid upon the principle laid down in the cases of *Pigott v. Heron* (Croke, *Eliz.* 519; Moore, 483); *Pigott v. Simpson* (Croke, *Eliz.* 763); *Philips v. Prytherick* (3 *Eagle* and Young, 1273); and *Dykes v. Thomson* (Eagle and Young, 692); and though in the first-mentioned case of *Pigott v. Heron*, according to the report in Croke, the Court appears to have treated the prescription as consisting of two parts: the first, a *modus* by the lord for himself and his tenants, to bar the parson from demanding tithes in specie; and the second, a prescriptive right in the lord to have the tenth thereof, &c. not as tithes, but a temporal right, analogous to a rent service of his tenants; yet the judges of the court, in the subsequent case of *Pigott v. Simpson* (Croke, *Eliz.* 763) and Lord Coke's statement in the *Bishop of Winchester's* case (2 *Coke*, 45 and 46), put the decision upon a different ground, and treated the prescription as giving the lord a title, by the special matter to title as such, as appurtenant to his manor, with a right to sue for them in the spiritual Court, and this appears to us to be the true principle of this decision. The prescription gives a title to the lord to the tithes themselves lying in the manor, and the only payment to the rector is the principle or prescriptive rent (as it is termed in *Dykes v. Thomson*), given as the, or compensation for the, parcel of tithes; and this view of the case was evidently taken by the House of Lords on the appeal from the decree of my brother Alderson, reported in 11th *Clark* and Fennelly, their Lordships having treated the claims of the defendant, not, as properly speaking, a *modus*, but a claim of title to a parcel of tithes as against the parson, and therefore they reversed the decree; a court of equity not lending its assistance in a case of dispute of title to the tithes; this being, therefore, a prescription title to a parcel of tithes, and the immemorial payment, a prescriptive rent for them, the Act appears to all of us not to apply; the pension is not a *modus* according to the legal definition of that term, *De modo Decimandi*, 13th *Coke*, page 12. It is not given in satisfaction of tithes, for the occupier has always been liable to pay tithe, and has paid them either by render or retain, though not the rector; a *modus* and a liability to pay tithe in kind for the same land cannot co-exist; they are perfectly inconsistent; nor do we think that this is a *modus* in the sense of that term, as used in the Act, for we see no reason to believe that the framers of the statute used it in any other than its proper sense; and this appears by section 1, which provides that if a *modus* has been paid for thirty years, it may be defeated by shewing the payment of tithes in kind, that is, the payment to any one; and the word must be used in the same sense in the subsequent part of the clause, so that a *modus* in the sense given by the Act is as inconsistent with the render of tithe, as it is according to its proper legal acceptance; and it is clear that this is not an exemption "or discharge," the lands of which the title is claimed in this suit being liable to the payment of tithe according to the alleged prescription.

In truth, there is a contest between the lord and the rector as to the tithe to a parcel of tithes admitted to be due from the occupier to some one; the statute never was meant to apply to disputed tithes, to the ownership of tithes, or to make a bad tithe to a parcel of tithes good. It was enacted, in cases of the occupier who had not paid tithe in kind at all, but been totally exempt, or had paid something in lieu of it, for a long period, and relief is given by shortening the time of prescription, and thus facilitating the proof

of his title to exemption, or to pay tithe otherwise than in kind. We all, therefore, think that there must be a new trial, when the question to be decided on the whole evidence will be, whether the payment of 40*l.* a year was immemorial or not. If it should be proved to be such, the question will arise whether the prescription for the lord and his assigns to take the tithes be good, a point which has not been fully argued before us, and upon which we do not feel called upon to give any opinion in the present stage of the proceedings. Therefore, the rule for a new trial must be made absolute.

Rule absolute.

BROWN v. WILKINSON.

In an action against the owner of a ship for an injury to another vessel by collision, the measure of damages recovered may be commensurate with the value of the ship doing the injury at the moment the injury is caused.

This was an action brought by the plaintiff to recover compensation from the defendant, as owner of a certain vessel which had come in collision with a ship of the plaintiff, and had done her considerable injury. The defendant having suffered judgment by default, a writ of inquiry to assess damages was executed before the Secondary, when a verdict was given for the plaintiff for 259*l.* which was the full amount of the injury done. Upon this a rule was obtained by *Fish*, calling on the plaintiff to shew cause why the verdict should not be set aside, and a new inquiry had, or a verdict entered for nominal damages, on the ground that the damages were excessive. The grounds for this motion were, that the 53 *Geo.* 3, c. 159, limited the damages to be recovered to the value of the ship inflicting the injury, and the freight then accruing due to her owners. Now in this case, the vessel doing the injury had, at the time she inflicted the injury on the plaintiff's ship, given herself a death-blow, and had immediately sunk; it was therefore contended, that her value at that time was to be the amount of damages, and as she had received her death-blow, it could be but nominal.

Watson, Q. C. and *James*, now (Feb. 11) shewed cause, and contended that the measure of damages was to be taken at the time of the collision, and not afterwards; that it must be taken, in fact, at a time when, being a floating body capable of motion, and governed by the defendant's agents, she committed the tortious act for which compensation was sought; they also contended that as the defendant had suffered judgment by default, he could not now raise this defence, but should have done so by a *prope* plea.

Martin, Q. C. and *Firsh*, contra.

Cur. adv. vult.

JUDGMENT.

PARKE, B. now delivered the judgment of the Court.—In this case, the plaintiff sued the defendant, as the registered owner of a certain brig, for negligence and improper navigation of his vessel, by which the plaintiff's vessel was injured. The Court gave judgment by default; at the inquisition, the jury assessed the damages at 251*l.* Mr. *Fish* moved, in Michaelmas Term last, for a new inquiry on the ground that by the same strike that did the damage to the plaintiff's vessel, the defendant received her death wound, and soon after sunk. The defendant contended that his vessel was of no value at the time of the plaintiff's loss, and that by the 53 *Geo.* 3, c. 159, s. 3, the damages ought to have been merely nominal. In this (*Hilary*) Term cause was shewn by Mr. *Watson*, who submitted that the rule should be discharged, and the case was fully argued. It was contended that the object of the statute, the 59 *Geo.* 3, c. 159, s. 3, was to give to British shipping all the protection in navigation from loss that foreign states extend to theirs. This protection goes to the extent of permitting the owner, at the end of a voyage, to give up the vessel in its then state, with a full satisfaction to the parties, and if it be lost the owner is altogether exempt from the benefit of insurance beyond the surplus. Supposing the act to have been framed on this principle, and to have this effect, we ought to know the time it happened, the defendant's vessel having been totally lost immediately after the defendant was really exempt from all liability. If this argument were well founded, the consequence would be, the defendant ought to plead; at the same time the total loss is matter of defence to the action, although the judgment by default admits all liability to pay some damages. But the argument cannot be supported. It may indeed be true the legislature, by giving relief by a series of statutes on the subject, ending with the 53 *Geo.* 3, had the former statutes in view, and proceeded in their spirit, but they have not introduced the liability in the provisions of this statute. There is not a word in the statutes protecting shipowners from all liability if the ship is lost, whatever the result be, or to take away the benefit to any parties of insurance under any circumstances whatever; all that they have done is to restrict the liability of the shipowner to the value of the ship and freight at the time, but no more. The Act specifies the value shall go to the extent to which the owner

is to be liable in case of single loss, and restricts the liability to that value simply when there are several losses; it gives the right to the parties who can present a description of their value to have it apportioned among the several claimants. The statute, in the event of one loss only, does not give the shipowner a right to file a bill, and to go to a court of equity to decide on the value of the ship, but it leaves the amount of damages sustained to be settled by a court of law, and hence in the present case the defendant must be liable to some amount, and must shew only some amount or some value of ownership. At what time the value was to be established, if the matter was *res integra*, is a question that is not one of much doubt; the Court of Queen's Bench have already decided that the value was not to be calculated at the time of the commencement of the voyage, but at the time of the loss; and in so doing, they have not adverted to the circumstances that arise from several losses. Then the statute in this section clearly contemplates some value to be paid into court; and if there are several losses at the time, and what loss as to value, is to be given. This section is not considered by the Court in *W— v. Dixon* (2 *B. & Ald.* 2), and probably if it had been adverted to, it would have said that is the value at the commencement of the voyage, which is that which naturally would be the amount of the shipowner's insurance, and which would be the same whatever the number of accidents there might be during the voyage, and that would have been the value contemplated by the statute. From the practice in the Court of Admiralty, no light can be thrown on this question, for that Court has another and different jurisdiction. But with regard to the question whether the value is to be taken as the measure of liability, as the point has been decided by the case referred to, we pause before we overrule that authority. It is not, however, necessary for this Court to do so; for we think, according to the true meaning of that decision, that the value at the time of the loss to which the damages are restrained, is the value at the moment the loss commenced by the collision with the defendant's ship, when the injury is inflicted, and that cannot be reduced by the consideration that the defendant's vessel is about to founder, at which time it really is of no value. It would be to exempt the defendant altogether, which the statute does not contemplate under any circumstances. Now, in this case, it is immaterial whether we take this value, or the value of the defendant's vessel at the commencement of the voyage, as the limit of the damages to be given; for the present, we think that the verdict given is correct, and that the rule must be discharged.

Rule discharged.

Friday, May 29.

LAW v. THOMPSON.

*Where plaintiff's particulars of demand claimed a sum of money to be due for plaintiff's services as clerk to the defendant; and by his amended particulars the plaintiff claimed the amount as due for his services, "after the rate of 200*l.* per annum;" and at the trial the evidence shewed a sum to be owing from the defendant to the plaintiff for services performed by the latter, such services to be paid for by a certain per-centage on the defendant's business: Held, that there was a material variance between the particulars and the case established by the evidence, and that the plaintiff ought to have been nonsuited.*

Joseph Browne shewed cause against a rule which had been obtained by *Jervis*, Q. C. to enter a nonsuit in the above case—the rule having been moved on the ground that the plaintiff's particulars of demand were not supported by the evidence. The action was in *assumpsit*, and by his particulars the plaintiff claimed the sum of 450*l.* for his services as clerk to the defendant from August 1837, to Oct. 1839, inclusive. The defendant applied for further particulars, and in his amended particulars the plaintiff added the words, "after the rate of 200*l.* per annum." The pleas were, *non assumpsit*, the Statute of Limitations, and a set-off; and by the plea of the Statute of Limitations, the plaintiff's claim was reduced to the sum of 100*l.* for which amount the verdict was given; but the evidence established a claim on the part of the plaintiff for commission, to be estimated by a certain per-centage on the amount of business done by the defendant in each year.

Joseph Browne.—There is no doubt that in this case the plaintiff was bound by the wording of the amended particulars, but the question is, whether or not the defendant was misled by them. [*ALDERSON*, B.—A salary is totally different from a payment by commission at so much per cent.] It is submitted that the defendant was not damaged by the incorrect mode of stating the claim. [*ALDERSON*, B.—The principle on which you make your claim is wrongly set forth; the contract between the parties for a payment by way of salary would be quite different from a contract to pay a per-centage.] If the defendant has been misled by the plaintiff's particulars, the proper course is for him to bring that fact under the notice of the Court by affidavit; here no such affidavit is produced. (*Hurst v. Watkins*, 1 *Camp.* 66; — *v. Bower*, *ib.* 69, note.) If it appeared to the Court, either by affidavit or from the nature of the misstatement, that the defendant was, or must necessarily have been,

misled, the Court would, no doubt, hold that the plaintiff was bound by his particulars. (*Lambirth v. Roff*, 8 Bing. 411.) At all events, the rule should be for a new trial, with leave to the plaintiff to amend his particulars.

Jervis, Q.C. and Crompton, in support of the rule.—In *Mahon v. Ward* (Law T. Jan. 1846), there was no substantial variance; here there is. It is not indispensable that there should be an affidavit by defendant that he was misled. Many cases occur in which the judge would nonsuit; but in which the defendant, knowing, as he must do, what the contract really was, could not have been misled.

PLATT, B.—Suppose a declaration with two counts for goods sold and delivered, and for freight, and suppose the particulars are for goods sold and delivered only, that would not be sufficient. Here the defence prepared would be materially influenced by the particulars, because the Statute of Limitations would apply differently according to the nature of the contract between the parties; that is, whether the plaintiff's claim be for a salary or for commission. (*Holland v. Hopkins*, 2 B. & P. 243.)

POLLOCK, C.B.—In this case there is a substantial variance between the case set up at the trial and the plaintiff's particulars; a payment by way of commission is very different from a payment by way of salary. I think the plaintiff ought to have been nonsuited; but as the jury have found a verdict for the plaintiff, which is stronger than an affidavit of merits would have been, there should be a new trial, on payment of costs by the plaintiff.

ALDERSON, B.—In determining whether the particulars in any case are sufficient, we must consider not merely whether the defendant has, in fact, been misled, but whether they were calculated to mislead him; that is, whether a reasonable man would, under the circumstances, be probably deceived by the particulars—that is the true test.

ROLF, B.—I concur. The question is this, are the particulars calculated to mislead? It has often been held, that particulars were sufficient, which, although wrong, were not calculated to mislead.

PLATT, B. concurred.

Rule absolute for a new trial, on payment of costs by the plaintiff. The plaintiff to be at liberty to amend within a week after taxation.

Saturday, May 30.

BEST v. ROBINSON.

In an action for goods sold and delivered, the particulars delivered were for goods bargained and sold: Held no variance.

This was an action for goods sold and delivered, money lent, and on account stated. The particulars were for goods bargained and sold. A verdict having been found for the plaintiff.

Pearson moved for a nonsuit, or a new trial, on the ground of a variance between the declaration and particulars of demand, and contended that the plaintiff had no right to give evidence of goods sold and delivered under a particular for goods bargained and sold.

ALDERSON, B.—This is no variance; goods sold and delivered are necessarily bargained and sold; no child could be deceived as to what he had to meet under this declaration and particular.

By the COURT—

Rule refused.

Tuesday, June 2.

ENGLEMAST v. MOORE.

It is necessary in an attorney's bill that the court in which the business is alleged to have been done should be stated.

This was an action of debt on an attorney's bill.

Plea—That no bill was delivered.

Replication, as to a portion of the amount claimed—that a bill was delivered; and as to the residue, a personal delivery of the bill to the defendant.

The rule was moved on the ground that the court in which the business had been done was not specified.

Jervis, Q.C. and Simon, having shewn cause,

Martin, Q.C. and Hugh Hill, in support of the rule for a nonsuit.—The plaintiff was bound to deliver a bill of costs shewing clearly the nature of the transaction in respect of which the business was transacted for which the claim was made; it must be such that the party charged may know, on looking at the bill, whether the charges made in it are correct or not. This must be so, because those charges are different in the different courts; and unless this information be given in the bill, the defendant could not judge as to the propriety of referring the bill to taxation, or whether, if referred, a sixth would be taken off or not. They referred to the remarks of Lord Denman, C. J. in *Martindale v. Faulkner* (10 Jurist, 161), and the statutes 2 Geo. 2, c. 23, s. 23; 6 Vict. c. 73, ss. 7, 37, 42.

By the COURT.—The bill ought to contain a statement of the court in which the business was done, not necessarily in the heading of the bill, but in some part of it. The object of the statute is, to allow the plaintiff a month for consideration, as to whether he had better refer the bill then to taxation or not. Unless the name of the court is stated, it would be impossible for the defendant to know whether, on taxa-

tion, a sixth would be taken off; it is therefore necessary that the information required should be given.

Rule absolute.

Wednesday, June 3.

SPECIAL PAPER.

HENRY v. GOLDNEY.

A plea in abatement is bad which states that the debt sued for was contracted by the defendant jointly with A B, and that an action for the recovery of the same debt is pending against the said A B.

This was an action brought against the defendant, who was one of the provisional directors of a railway company, for money alleged to be due from him to the plaintiff.

Plea, in abatement.—That the debt was contracted by the defendant jointly with one A B, and that an action for recovery of the same debt had been commenced, and is now pending against the said A B. *Demurrer.*

Crompton, in support of the demurrer, was stopped by the Court, who called on

Bramwell, who appeared in support of the plea.—If the Court hold this plea to be bad, the decision will tend to encourage a multiplicity of actions on joint contracts, and will put it in the plaintiff's power to cause great vexation and embarrassment to the contract of parties; the rule of law, *nemo debet bis vexari pro eadem causa*, applies emphatically to such a case. [*ALDERSON, B.*—How so? That maxim would apply if this defendant were sued jointly with the other party in the action previously commenced; but it does not apply where the two actions are against different parties. *POLLOCK, C.B.*—You ought to have pleaded the nonjoinder in abatement first, and when the plaintiff had issued his writ, and declared against both the contract of parties, you might have pleaded the pendency of the former action, which would have been good.] If this plea is held to be bad, an absurdity will be occasioned by the stat. 3 & 4 Wm. 4, c. 42, s. 8. That section enacts, that "no plea in abatement for the nonjoinder of any person as a co-defendant shall be allowed in any court of common law, unless it shall be stated in such plea that such person is resident within the jurisdiction of the court, and unless the place of residence of such person shall be stated with convenient certainty in an affidavit verifying such plea." Now, if an action were brought against one of several joint contractors, of whom one was abroad, the party sued could not plead in abatement, by reason of the above enactment, and the plaintiff might consequently bring separate actions against the other parties residing within the jurisdiction of the Court. The observations of *Alderson, B.* in *King v. Hoare* (13 M. & W. 494, 498), are strong in my favour. There it was held that a judgment (without satisfaction) recovered against one of two joint debtors, is a bar to an action against the other; there the learned baron intimated that a creditor cannot, in the case of a joint contract, have several suits against the different parties to such contract. [*ALDERSON, B.*—Why cannot the defendant here plead in abatement? If he did so, the plaintiff would probably discontinue the first action.] He must in the first place apply to the Court for a rule to discontinue. [*POLLOCK, C.B.*—Yes; but that is grantable *ex debito justitiæ*.] In an action in form, *ex delicto*, it is submitted that a plea framed like the present would be good, and there the defendant could not plead in abatement. [*POLLOCK, C.B.*—You may sue each of several joint-stock proprietors, but a judgment recovered against one would be an answer to a second action.] *Boyce v. Baileiff*, (1 Camp. 58, 2 Cas.); *Boyce v. Douglas* (cited ib. s.); *Earl of Bedford v. Bishop of Exeter* (Hobart, 137); and the judgment of *Holt, C.J.* in 1 Shower, 75, are authorities in support of this plea. [*ALDERSON, B.*—This plea of the pendency of another action depends on the principle that a man shall not be twice vexed for the same cause of action, but that does not apply where the two actions are against different persons.] This plea may be supported on another ground, viz. that the plaintiff seeks to recover a chose in action; and if the plea were not allowed, the plaintiff might recover this chose in action from each of several parties. The absurdity involved in this would be apparent if the claim were for a specific chattel, or for land. The main argument, however, for the defendant is, that before the Act of Wm. 4, above-mentioned, only one action could be brought on a joint contract, and if an action had been brought against each co-contractor there would have been an adequate remedy, whether this plea were held to be good or not; whereas, since the statute, this plea would afford the only defence where one of the contracting parties was out of the jurisdiction. The remedy by *audita querela* would be altogether ineffectual, because the parties might all be taken in execution at the same time.

POLLOCK, C.B.—This plea is bad. The same party is not, in this case, twice vexed for the same cause of action, and the maxim which has been so much relied upon does not apply; when a contract is joint and several, each of the contracting parties may be sued upon it, but then the debt or damages can be only once recovered by the plaintiff. All the defendants, except that one against whom execution was

first issued, would have relief in some shape or other. Torts are, in their nature, joint and several; and Lord Ellenborough's dictum, as cited from *Campb. R.* is extra-judicial and incorrect. This dictum, it is true, has been adopted by Mr. Chitty, in his work on Pleadings, but it is not supported by any authority. Here the party first sued should have pleaded in abatement. As he omitted to do this, it remained for the present defendant to plead in abatement. Prior to the statute 3 & 4 Wm. 4, c. 42, only one action against all jointly could have been brought if the parties had taken the proper steps. That Act was framed without reference to the rules of pleading, and the object of the 8th section was to prevent the injustice and embarrassment which were so frequently occasioned to a party suing, by reason of his nonjoinder of all the contracting parties. This Act has nothing to do with the present question, and, independently of its provisions, I hold this plea to be bad.

ALDERSON, B.—The defendant ought to have pleaded in abatement; and, on the other party being made a co-defendant, a plea should have been pleaded of the pendency of the action previously commenced against him. This would have been a good defence as to both the defendants.

ROLF, B.—*King v. Hoare* has no bearing on this case; that was decided on the principle that the prior action had proceeded to judgment. The rule *transit in rem judicatam* was held to be applicable.

PLATT, B.—If there were execution against one of the defendants only, he could of course sue his co-defendants for contribution. It is quite true that the law, according to the cases cited, will not permit a double vexation, but here the defendants in the two actions are different persons. There must be judgment for the plaintiff. *Judgment for the plaintiff.*

STEADMAN v. HOCKLEY.

A certificated conveyancer has no lien on deeds sent to him, and in respect of which business is to be done by him.

This was an action of *debt*, to which the defendant pleaded that he was a conveyancer duly certificated under the statute, and entitled to fees as such—that the deeds sued for were delivered to him for business to be done respectively by him—that he did this business, and that a sum of money was due and owing from the plaintiff to him for and in respect of such work and labour, and that defendant was entitled to hold the deeds for the money so due and owing. To this plea the plaintiff demurred specially; the plea did not set out any agreement between the parties, or any custom by virtue of which a lien could be claimed; the question therefore was, whether the common law recognized the lien contended for set up by the defendant.

Bovill, in support of the demurrer, remarked on the inconvenience which would result if such a lien as that set up by the plea were allowed; he cited *Scarf v. Morgan* (4 M. & W. 270, 282); *Saunders v. Bell* (3 Cr. & M. 304); *Eyre v. Shelley* (6 M. & W. 269, 274).

Udall, in support of the plea, referred to *Holles v. Clavidge* (4 Taunt. 807), and contended that a right to lien existed wherever an article was bailed, under circumstances bringing it within the 5th Act of Parliament mentioned in *Coggs v. Barnard* (Lord Raym. 909). Unless from the nature of the thing bailed there would be something inconsistent with a lien. He also cited *Jackson v. Cummins* (5 M. & W. 342); *Poucher v. Norman* (5 D. & R. 648); *Ex parte Grove* (3 B. N. C. 304); *Phillips v. Robinson* (4 Bing. 106); *Leeds v. Hancock* (4 C. & P. 152).

The Court, however, without hearing *Bovill* in reply, gave judgment for the plaintiff.

Judgment for the plaintiff.

BUSINESS OF THE WEEK.

Saturday, May 30.

O'BRIEN v. BRYANT.—This was a rule of *Greenwood's* calling on the plaintiff to shew cause why the defendant should not have leave to plead a plea that had been disallowed by Mr. Baron Platt at chambers, on the ground that it amounted to the general issue. It was, in substance, that the defendant had not spoken the word "black-leg" with regard to the plaintiff in the sense alleged in the declaration. *Lush* now appeared to shew cause, but said that he could not distinguish this case from the one cited by Mr. Greenwood of *M'Gregor v. Gregory* (11 M. & W. 387), and therefore he must be content to submit to the rule being made absolute.

Rule absolute.

HEAD v. SAYER.—*V. Lee* moved to set aside the judgment herein on the ground of irregularity.

Rule nisi.

CLARK v. LEVI.—*Ogle* moved for leave to plead the bankruptcy of the plaintiff. This had been refused by Mr. Baron Platt at chambers, on the ground that it was not an issuable plea. He cited *Wallis v. Hallett* (5 Bing. N.C. 485).

Rule nisi.

WALSTON v. SPOTTISWOODE.—*Martin, Q.C. v. Lee*, and *Peacock*, were heard for the defendant.

Cur. adv. vult.

Monday, June 1.

DEAN and CHAPTER of ELY v. CASE.—*Martin, Q.C.* (*Woolidge*, with him) was heard for the plaintiffs; *Watson, Q.C.* (*Bagle*, with him) contr.

Cur. adv. vult.

MAYOR of SALFORD v. ACKERS.—*Crompton* was heard in reply.

Cur. adv. vult.

BERTON v. WOOD.—*Humphrey, Q.C.* moved to set aside a *distringas* on the ground that the writ on which it issued was four months old, and consequently a nullity.

Rule nisi.

BRENNAN v. WILKINS.—Crowder, Q. C. in support of the defendant; *Wills*, contra. *Cur. ado. vult.*

Thursday, May 28.

MORRIS v. CORPENTON.—T. W. Saunders moved for a rule to rescind the order of Mr. Baron Alderson directing the defendant to be held to bail, and for the defendant's discharge from the custody of the Sheriff of Herefordshire, on the ground that the order had been improperly obtained. *Rule nisi.*

FENWICK v. BOYD.—Watson, Q. C. showed cause; *Unthank*, contra. *Cur. ado. vult.*

LOUISE v. DOUGLASS.—Martin, Q. C. and Hill, showed cause. *Jervis*, Q. C. and Greenwood, contra. *Cur. ado. vult.*

Friday, May 29.

LAVINIA v. DOUGLASS. *Rule discharged.*

WALSTAN v. SPOTTISWOODE. *Part heard.*

Tuesday, June 2.

M'LAREN v. BERRY.—It was arranged that this case should be heard by Rolfe, B. at chambers.

In the matter of **GEORGE SALTER.**—Jones moved for a rule, calling on George Salter, an attorney, to shew cause why he should not account to the Overton Friendly Society, in Denbighshire, for money received by him on behalf of the society, by whom he had been employed as attorney. *Rule to shew cause.*

NEW TRIAL PAPER.

FILBY v. HODGSON.—This case was tried before Pollock, C.B. at the last sittings in London. The question turned entirely on the evidence given at the trial as to reputed ownership of certain goods. There was no point involved in it of any interest, and the Court thought that the rule for a new trial, on the ground of misdirection, should be discharged. *Humphrey*, Q.C. and *Cleahy*, in support of the rule. *Martin*, Q.C. and *Dowdell*, contra. *Rule discharged.*

HILLS v. CHOMELAND.—This was an action of trespass, but involved no point of the slightest interest to the professional reader.

*Rule absolute for a new trial, unless the plaintiff consents to enter a *stat processus* within a week.*

BISSELY v. BOYDELL. *Part heard.*

Wednesday, June 3.

SPECIAL PAPER.

The judgment in *Heale v. Baldwin*; *Rosburgh v. Blunt*; *Rosburgh v. Broke*; and *Rosburgh v. Thomson*, followed that in *Henner v. Goldney*, above reported. There was no argument, the point being the same in each case.

TORRE v. WAT.—The judgment in this case followed that in *Allport v. Nutt* (14 L.J. N.S.; C.P. 272; S.C. 3 Dowl. & L. 233). *Hayes*, for the demurrer. *Cowling*, contra. *Judgment for the defendant.*

CHARLTON v. LINDSEY. *Part heard.*

GRAHAM v. SPALDING.—This case was not argued. *Judgment for the plaintiff.*

RAIL COURT.

Thursday, May 28.

(Before Mr. Justice WIGHTMAN.)

BEALE v. SHARP.

Where a defendant absconds to avoid his creditors generally, the Court will (upon the proper calls and appointments being made) grant a *distringas* to compel an appearance, though it does not appear that the defendant has absconded himself to avoid the plaintiff in particular.

Miller moved for a writ of *distringas* to compel an appearance under the following circumstances. The usual calls and appointments had been made, and the writ left with the wife of the defendant, who stated that, nine weeks before, her husband had absconded with a considerable sum of money to avoid his creditors, to whom he was much indebted. It was now submitted, that notwithstanding there was no direct evidence that the defendant kept out of the way to avoid the process of the plaintiff in particular; yet, as he was keeping from home with the view of evading his creditors generally, it amounts to the same thing. (*Channing v. Cross*, 9 Dowl. 118; *Archer v. Brindley*, 9 Dowl. 38.) *Application granted.*

Saturday, May 30.

BURROWS v. GABRIEL AND OTHERS.

A party attending for the purpose of serving a writ of summons saw a person whom he understood to be a servant, and gave her the copy, intending afterwards to apply for a *distringas*, and did not, therefore, in doing the writ within the three days, as required by the rule of Court. It afterwards appearing, that the person to whom the copy writ was so delivered was the defendant, the Court granted leave to enter an appearance without such indorsement.

Charnock moved for a *distringas* to compel an appearance, in respect of two of these defendants, and for leave to enter an appearance for the third. It appeared, that the defendants in this case were three females, and that many attempts were made to serve them with process; and that on the 21st of March, a copy of the writ of summons was left with a person at the house of the defendants, who appeared to be a servant. It was subsequently discovered that this person was Ann Gabriel, one of the defendants; as regarded her, therefore, the leave of the Court was sought, under the circumstances, to enter an appearance, notwithstanding the writ had not been indorsed as to the service within three days, as required by the R. G. M. S.W. 4, s. 3, and for a *distringas* against the other two defendants. (*Brook v. Edridge*, 3 Dowl. 642.)

*Application granted to enter an appearance, and for a *distringas*.*

Monday, June 1.

CLUTTERBUCK v. HULLS.

An attorney of the Courts at Westminster was arrested as he was returning from the County Court, where he had been professionally engaged. On an application for his discharge, upon an affidavit, stating that he was a certificated attorney, duly admitted in the superior courts, but not stating that he had signed any roll of attorneys in the County Court. Held, that in the absence of any proof to the contrary, it sufficiently appeared that he was entitled to practise in such court, and being therefore privileged, was ordered to be discharged.

F.V. Lee showed cause against a rule for discharging the defendant out of the custody of the sheriff of Gloucestershire. It appeared that the defendant, being a certificated attorney, and duly admitted in the Courts at Westminster, was arrested as he was leaving the County Court of Gloucestershire, where he had been professionally engaged as an attorney in several actions. The affidavit upon which the motion was made stated the fact of his being duly on the roll of attorneys of the Queen's Bench, but did not state that he had signed the roll of attorneys of the County Court pursuant to the 6 & 7 Vic. c. 73, s. 27. It was now contended, that the defendant not having sworn that he had signed the roll in the County Court, had not shewn himself entitled to practise there, and was therefore not privileged.

Miller, contra, argued that the defendant had sufficiently shewn that he was an attorney authorized to practise in the County Court; that it was not to be inferred that there is any roll of attorneys in that Court (as he believed there was none); and that being a duly admitted attorney in the superior Courts, it should be presumed that he had done all that was requisite to practise in the County Court, particularly as he was actually practising there, and that the privilege from arrest, in the present instance, is that of the client and not of the attorney. *Cur. ado. vult.*

JUDGMENT.

Mr. Justice WIGHTMAN now delivered judgment as follows:—It seems to me that the defendant is entitled to his discharge on the ground of privilege; for without discussing whether it is or is not necessary to warrant an attorney in practising in the County Court, that he should have signed the roll (my impression being that it is not necessary), I think that enough is shewn by his affidavit to justify his discharge, for it is said that he was an attorney of the Courts at Westminster, and that he was acting as an attorney in the County Court, and it was for the other side, therefore, to have shewn that he was not entitled so to practise, and this particularly, as the privilege is not so much that of the attorney as of the client. The rule, therefore, will be absolute for the defendant's discharge. *Rule absolute.*

Tuesday, June 2.

ROGERS v. VANDERCOMBE.

When a plaintiff is under terms to try peremptorily at a particular sitting, and fails to do so, the Court has power to enlarge such undertaking, and will do so upon good cause shewn.

M. Smith shewed cause against a rule to discharge a rule for judgment, and to enlarge a peremptory undertaking. The facts were these; the plaintiff having neglected to try within the usual period, a rule was obtained for judgment, as in case of a nonsuit, which rule was discharged upon a peremptory undertaking to try at the sittings after last Hilary Term. Shortly before the cause would have come on, the plaintiff made an application for its postponement, on the ground of the absence of a material witness; it was then, however, discovered, that a material defect existed in the record, whereupon the cause was struck out. In Easter Term a rule absolute was obtained for judgment, as in case of a nonsuit, for not proceeding to trial pursuant to the peremptory undertaking; and then the plaintiff moved for and obtained the present rule. It was now contended, that the Court has no functions to grant the plaintiff any further indulgence, for that by the 14 Geo. 2, c. 17, which regulates these motions, it is enacted, that if, after time has been granted the plaintiff for the trial of his issue, "he shall neglect to try such issue within the time or times so allowed him, and in every such case, the said judge or judges shall proceed to give such judgment as aforesaid;" and that the plaintiff having neglected to comply with the terms of his peremptory undertaking, the judgment against him must be absolute. (*Ward v. Turner*, 5 Dowl. 22, 2 Dowl. & L. 640.)

Crowder, Q.C. argued that the term "neglect," in the latter part of the section, must be construed as in the former part, and must be taken to mean wilful neglect; that here there was no neglect—the plaintiff intending to try, but being unable to do so on account of a defect in the record, independently of which the plaintiff was prepared to shew at the trial a good ground of postponement. (*Lumley v. Dubourg*, 5 Dowl. & L. 80.) *Cur. ado. vult.*

His lordship this day gave judgment, holding that the word "neglect," in the latter part of the 1st section of the 14 Geo. 2, c. 17, should be construed with the same latitude as the same word in the former

part, and must be taken to mean intentional neglect; and that, as in the present case it appeared that the plaintiff had really intended to try his cause, he was entitled to the indulgence which he sought on payment of the costs incurred.

Rule absolute; the plaintiff peremptorily to go to trial at the adjourned sittings after Term, and to pay the costs of the day, including the summoning and returning of the special jury, and of this application.

BUSINESS OF THE WEEK.

Thursday, May 28.

HOMER v. BARNETT.—Wordsworth moved to set aside the copy and service of the writ of summons, it having been served more than 200 yards from the borders of the county into which it issued. *Rule nisi.*

In the matter of the arbitration of **BRECH v. THOMAS v. F. Williams** moved to set aside the award herein. *Rule nisi.*

Ex parte The late SHERIFF OF BRECON.—*M. Smith* moved to set aside the attachment against this party with costs, or for a stay of all proceedings. *Rule nisi.*

REAR v. BRINSON AND ANOTHER.—*Petersdorf* moved, on the return of the *certiorari* herein, to quash the order of petty sessions. *Rule nisi.*

Friday, May 29.

REG. v. EATON AND ANOTHER.—*Couch* moved to re-open a rule and make it absolute, the terms of the rule in the cause enabling him to do so on default of payment of a sum of money. *Rule opened and made absolute.*

REG. v. THE TOWN COUNCIL OF LICHFIELD.—*Whitmore*, Q.C. shewed cause against a rule for enlarging the time for the return to the *writ mandamus* herein. *Whitmore*, contra. *Rule enlarged upon terms.*

CLUTTERBUCK v. HULLS.—*F. V. Lee* shewed cause against discharging the defendant out of custody. *Miller*, contra. *Cur. ado. vult.*

HARTLEY v. MILBURN.—*Unthank* shewed cause. *T. W. Saunders*, contra. *Rule discharged upon a peremptory undertaking.*

Saturday, May 30.

DAVIS v. JONES AND ANOTHER.—*Jervis*, Q.C. moved for a rule calling upon the defendant, Catherine Jones, to pay the amount of the sheriff's possession money. *Rule nisi.*

WOOD v. NEW.—*O'Brien* moved for a rule to amend the judgment roll by inserting the Christian name of the defendant. *Rule nisi.*

BRADSHAW v. ALLANDER.—*Prendergast* moved for a new trial herein (which was tried before the judge of the Sheriff's Court, when a verdict was found for the defendant), on the ground of the verdict being against evidence, and for misdirection. *Rule nisi.*

LIFSCOMBE v. TURNER.—*T. W. Saunders* shewed cause against a rule for reviewing the Master's taxation. *Brown*, contra. *Cur. ado. vult.*

Monday, June 1.

EGG v. WHITE.—*Parry* moved for a rule to discharge the peremptory undertaking in this case, and for leave to enter a *stat processus*, the defendant having become bankrupt since the giving of the undertaking. *Rule nisi.*

Wednesday, June 2.

WHITWELL v. WAYTE.—*Buill* moved to set aside a *distringas* to compel appearance, on the ground that the writ of summons had never come to the defendant's hands, was not left at his dwelling-house, and that he had no knowledge of its having issued. *Rule nisi.*

REG. v. THE COMMISSIONERS OF EXCHES.—*Martin*, Q.C. moved to discharge the rule for a *writ mandamus* obtained herein last term, and for a fresh rule, some error having been made in the former application. *Rule nisi.*

DEER v. RAPERDEN.—*Crowder*, Q.C. moved to dispend the plaintiff (for vexatious proceedings), and for the costs of the day, in not trying his action pursuant to notice. *Rule nisi.*

REG. v. CHORLEY.—*Moody* moved for a *certiorari* to remove an indictment, found at the last Tanaton Assizes, for obstructing a footway, in order that it may be tried on the civil side at the Assizes, to the end that there may be a special jury and a view. *Writ granted.*

CHRISTIAN v. SPILSBURY.—*Gray* moved for a rule to set aside the appearance entered *ex. abs.* and all subsequent proceedings, on the ground that the defendant was not served with process. *Rule nisi.*

REG. v. THE THAMES HAVEN DOCK AND RAILWAY COMPANY.—*Lush* moved for a *writ mandamus* commanding the above company to pay over a sum of money, recovered for damages, and, if necessary, to make a call on the shareholders for the amount. *Rule nisi.*

REG. v. HOARE.—*Greenwood* moved for a *certiorari* to remove from the Dorset Sessions an indictment found there against the defendant for giving false answers, under the 5 & 6 Wm. 4, c. 76, s. 34 (the Municipal Corporation Act), at the municipal election for Bridport. *Writ granted.*

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

Thursday, May 14.

(Before Mr. Commissioner EVANS.)

Re THOMAS KNIGHT.

A commissioner may not properly adjourn the hearing of a disputed adjudication beyond the time allowed by the statute.

Thomas Knight appeared on the fifth day after service of the adjudication, under a fiat in bankruptcy issued against him, to shew cause against its validity, on the ground that an act of bankruptcy was not sufficiently proved. The objection was allowed.

Turner, for the petitioning creditor, proposed to prove other acts of bankruptcy, and asked for adjournment of the hearing, in order to enable him to produce witnesses, citing 5 & 6 Vict. c. 122, s. 23.

Cook, for the bankrupt, objected that the Commissioner had no power to adjourn the hearing, the five days allowed by the statute having elapsed.

His Honour said that the circumstances of the case would justify the adjournment asked, but he doubted his power to grant it. He would, however, take the opinion of his brother commissioners upon the point.

Having done this,—

His Honour said that there was a difference of opinion as to their power of adjourning a disputed adjudication to a period beyond the five days appointed by the statute. If the argument were to continue to midnight, the point would press for decision; but the adjournment being asked for another day, he doubted his power to grant it, and must therefore annul the adjudication.

THE LEGISLATOR.

Summary.

LEGISLATORS have been keeping holiday like all the rest of this busy world.

Imperial Parliament.

PRIVATE BUSINESS TRANSACTED.

Friday, May 29.

BILLS READ A SECOND TIME.

Northern and Southern Connecting Railway
Somerset Small Debts Court
Metropolitan Sewage Meters Company
Asher's Estate Bill
Great Leicester and Munster Railway (No. 1) Carlow to Kilmenny, Bill
Great Leicester and Munster Railway (No. 2) Kilmenny to Clonmel, Bill
British Guarantee Association

Friday, May 29.

BILLS READ A THIRD TIME.

Birkenhead Small Debts
Wakefield, Pontefract, and Goole Railway
Glasgow, Barrhead, and Neilston Direct Railway
Glasgow, Barrhead, and Neilston Direct Railway
Glasgow, Barrhead, and Neilston Direct Railway
Glasgow, Barrhead, and Neilston Direct Railway
Edinburgh and Northern Railway, Strathern Deviation
Edinburgh and Northern Railway
York and North Midland Railway, Leeds Extension
Midland Railway, Erewash Valley Extension
Midland Railway, Claycross to Newark
Midland Railway, Kewstake Valley Branches
Harrogate Gas
Lancashire and North Yorkshire Railway
Aberdeen and Forfar Railway.

REPORT OF THE LORDS COMMITTEE ON THE BURDENS ON LAND.

THE resolutions with which the Committee have summed up their report have been already presented to our readers. They allude briefly to diverse plans which had been suggested for diminishing the cost of conveyancing. We now extract from the body of the report itself the paragraphs relating to Law Reforms recommended, as they have an immediate interest for the readers of the LAW TIMES.

BURDEN OF TITHE COMMUTATION.

The committee are of opinion that the tithe commutation rent-charge operates as a burden on the land which is subject to it; inasmuch as a certain amount measured in produce must be paid, whatever may be the nature of the cultivation or the return made by it. The value of the crops, without reference to the natural qualities of the soil, being taken into consideration in fixing the basis on which the commutation rests, lands, which by artificial means were rendered highly productive during the seven years on which the commutation is based, have become in consequence permanently liable to a heavy rent-charge. Mr. Weall in his evidence states, that the high farming introduced at great expense in the parishes of Beddington and Wallington had raised the tithes during the years preceding the Commutation Act from 8s. 6d. per acre to 7s. and 8s. per acre. Mr. Bennett remarks, that the heaviest wheat-lands have the heaviest tithes upon them; thus imposing the heaviest charge where cultivation is the most expensive. Mr. Cramp says, the tithe in the parish in which he resides amounts to 17s. 6d. per acre; and Mr. Blamire, in answers 2,544 and 2,525, confirms the evidence of preceding witnesses, that the rent-charge amounts, in some cases, to more than one-half the rent; that one-third is not an unusual proportion; and that there are some rare cases where the rent-charge is equal in amount to the whole rent. On the supposition of a continued reduction in the amount of proceeds derived from capital invested in the cultivation of the land, it is self-evident that titheable land would be abandoned sooner than land which is tithe-free; and though the landowner has no claim whatever to the property of the tithe-owner, the tithe itself would in that case have the effect of diverting capital from its cultivation. The committee, therefore, submit to the consideration of the House the fact that, 4,000,000l. levied under the Tithe Commutation Act becomes

payable out of the proceeds of the land before any portion of them is available or applicable to the profits of the capital invested in its cultivation. It is further important to consider the effect of this charge on the land in the case of a serious fall in the price of agricultural produce. Under the old law, the value of the tithe would correspond with that of the crop; but under the law of commutation it would take several years before the land would be relieved in the amount of its tithe.

INEQUALITY OF STAMP DUTIES.

The stamp duties levied under the head of deeds and instruments in 1844, amounted to 1,644,366l.; but a portion of this sum being derived from other sources, ought to be deducted before the burden affecting real property in that respect can be correctly estimated.

The committee, moreover, wish to direct particular attention to the important evidence given by Messrs. Senior, Stewart, and Baxter, on the unequal pressure imposed by the various Stamp Acts on dealings with real property. The last-named witness, Mr. Baxter, says, the stamp upon a 50l. sale (calculating a certain length of conveyance), would amount to twelve and a half per cent.; on a 100l. sale to five per cent.; on a 300l. sale to two and a half per cent.; on a 500l. sale to 1l. 14s. 3d. per 100l.; and above that sum one per cent.

COST OF CONVEYANCING.

The transfer, moreover, of real property is subjected by law to other difficulties, expenses, and inequalities, of a similar character. According to the evidence of the same witness, the expenses, including stamps, upon a sale of 50l. value, amount to no less than thirty per cent.; upon a sale of 100l. value, to fifteen per cent.; upon a sale of 600l. value, to seven and a half per cent.; upon 1,500l. five per cent. The committee are convinced that the marketable value of real property is seriously diminished by the tedious and expensive process attending its transfer. Nor is it only in the transfer of real property that the pressure of this burden is felt. It is a work of time to raise money on landed security, and the law expenses incident to the transaction are a considerable addition to the interest on the sum borrowed. The transfer of the debt or mortgage is also attended with serious expenses to the mortgagor; the process of discharging the land from one loan, and subjecting it to another, being both heavy burdens upon the proprietor. Mr. Baxter gives the following evidence on the expenses attending mortgages:—"A mortgage for 50l. would cost, in stamps and law expenses, thirty per cent.; a mortgage for 100l. would cost twenty per cent.; a mortgage for 450l. would cost seven per cent.; a mortgage for 1,500l. would cost three per cent.; a mortgage for 12,500l. would cost one per cent.; for 25,000l. it would cost 15s. per 100l.; and for 100,000l. it would cost 12s. per 100l."

LEGACY AND PROBATE DUTY.

Freeholds are exempt from legacy and probate duty. The committee have not been able to ascertain the exact amount of legacy and probate duty paid by leasehold property; but they feel it their duty to draw attention to the fact, that leaseholds are not only liable to the stamp duties on dealings with the property *inter vivos*, but also to the probate and legacy duty. Nor can the committee avoid reminding the House, that legacy duty is paid in every case where the testator has devised his lands to be sold; and, according to the evidence of Mr. Baxter, a solicitor of very great practice, nine wills out of ten in the middle ranks of life convert the whole land into personality for the purpose of division. The evidence of Mr. Presley tends to confirm the previous evidence of Mr. Baxter, that a considerable portion of the legacy duty is raised on freeholds devised to be sold for the purpose of division. The witness states that Mr. Trevor, the controller of the legacy duty, estimates it (the portion raised on freeholds devised to be sold), at five-twelfths of the amount. Assuming the legacy duty to be 1,200,000l. he estimates the proportion of duty arising from real estate at 500,000l. "I think," the witness continues, "he has put it too high. I do not think that more than a fourth, or scarcely a fourth, of the 1,200,000l. legacy duty arises from land." The witness, however, does not include leasehold property in his calculation; which, being liable to both probate and legacy duty, must be added to the above-mentioned estimate, before we arrive at the full portion of the legacy duty arising out of the proceeds of the land.

LAW OF SETTLEMENT, REMOVAL AND RATING.

The agricultural witnesses complain also of the restriction in the choice of labourers imposed on the farmer by the law of settlement; and Mr. Coppock, the clerk of the Stockport Union, bears evidence to the hardships and expenses occasioned by the present state of that law.

The question having been raised as to the principle adopted in rating railways to the poor-rate, the committee have examined Mr. Coope and Mr. B. Russell on the subject; and it appears from their evidence that the uniform principle of assessing all fixed property at the net rent or clear amount at which it can be let, has not been departed from. Railways are

rated as improved land, on the net rent a company of carriers would give for the occupation of the same; and, as the rents of a railway would depend materially on the profits derived from the carrying trade on it, the profits are taken as a guide to arrive at the net rent. Mills are rated on the same principle, namely, the rent for which the mill, with its appurtenances, would let. Considering the changes occasioned by the creation of real property, as well as those taking place in the relative value of different descriptions of real property, the committee need scarcely point out the advantage as well as justice of periodical and uniform valuations.

SHORT FORMS AND REGISTRATION OF DEEDS.

The committee earnestly request the attention of the House to the important evidence of Mr. Stewart, on the evils proceeding from the length of deeds connected with real property; and while the committee acknowledge the benefit of the act passed last session respecting outstanding terms and short deeds, they are at the same time anxious to impress on the House the necessity of a thorough revision of the whole subject of conveyancing, and the disuse of the present prolix, expensive, and vexatious system.

The committee have received evidence on the advantages of a registration of deeds in Scotland and Ireland, and on the great facilities afforded by means of similar institutions to dealings with real property in foreign states. The committee, however, limit themselves to the expression of their opinion, that a registry of title to all real property is essential to the success of any attempt to simplify the system of conveyancing.

Such a report from such a quarter cannot fail to lead to early and considerable changes materially affecting the interests of the Profession.

ARREST IN EXECUTION.—In the proposal by Mr. Serjeant Manning to the Lord Chancellor for the amendment of the law of bankruptcy, and insolvency, the question of retaining arrest in execution is considered. The learned serjeant is of opinion that it is "inexpedient" in its present form. He says, "The propriety of allowing arrest in execution at the mere will of the judgment creditor has been so often discussed, that I do not trouble your Lordship with a repetition of the arguments which have been used upon the subject. It appears to be an inconvenient mode of getting at the property of the debtor, where there is property, and it often operates as a great hardship and oppression where there is none. It is true that it not unfrequently happens that the assets of an insolvent debtor are too artfully covered to be capable of being brought within the reach of any process against property, or of being affected by any legislative provision for transferring the property of the debtor to an assignee; and it is equally true that coercion by imprisonment of the person is at present the only mode by which such assets can be effectually reached. Imprisonment, however, often fails in producing the necessary discovery, whereas the inducement which now exists for concealing property, in the belief that it may hereafter be safely produced and enjoyed without disturbance under the false name of after-acquired property, would, it is conceived, be in a great degree removed by the establishment of a continued modified liability on the part of the debtor. Imprisonment for debt can have only two legitimate objects in view—the protection of the creditors against the malversations of the debtor, and the protection of the public against a recurrence of misconduct on the part of the debtor and others. It is conceived that, upon the adoption of the enactments now suggested, the dangerous power of imprisonment at the sole discretion of the creditor may be safely abolished, without regard to the formal distinction which now prevails between debts secured by judgment or other matter of record, and debts which are not so secured. Debtors who have misconducted themselves, and those who, upon reasonable grounds, are suspected of an intention to defraud their creditors, will be secured both for the preservative and for the penal jurisdiction of the court, and means will be afforded, as well to protect creditors against the dissipation, alienation, or concealment of that which is in truth their property, as to punish the misconduct by which their losses have been occasioned." Mr. Serjeant Manning is of opinion that arrest upon process of execution upon judgments in civil actions should be permitted only where such judgments are founded upon a malicious, wilful, or fraudulent act or omission, injurious to the person, to the reputation, to the property, or to some domestic relation of the plaintiff. These views are opposed to those of Mr. Commissioner Law, as expressed in his *Report on the Law of Bankruptcy and Insolvency*, wherein he describes a debtor as a "wrong doer." Mr. Serjeant Manning speaks of that report as an able one, and containing valuable information, of which he had availed himself. The question of "arrest in execution" is one of some importance, and should be well-considered before it is interfered with. In strict morality a debtor is a "wrong doer," but by brand-

ing him with the epithet, he may descend to something worse, whereas, by affording him a measure of hope, he might, by honest exertions, recover his position.

THE MAGISTRATE.

Summary.

No subject relating to the administration of the law has been mooted since our last, save a few cases on points of secondary interest, which will be found among the reports.

EXEMPTION OF LITERARY INSTITUTIONS FROM RATES.

Our readers will perceive that the construction of this statute has again been under the consideration of the Court of Queen's Bench, and another society, which had been supposed by Mr. Tidd Pratt to be entitled to exemption under the statute, declared not to be within its provisions. We do not feel inclined to quarrel with this decision, although the object of the British and Foreign School Society, or rather of the Normal school then more particularly considered, is a much nearer approach to the purposes of literature and science than those of the Religious Tract Society. But the decision may be fully supported upon the words of the Act, which require that the society shall be "instituted" for purposes, &c.; for it is clear that the Normal schools were not the sole objects of the society, which, as its name imports, is directed much more to assist the spread of education by grants of money and subscriptions, than to forward the science of education, for which it was, though unsuccessfully, contended, that the Normal school was supported. As, however, all the judges concurred in expressing their great regret that the statute was so vaguely and imperfectly expressed; and Lord Denman flinted that it was even doubtful whether Mechanics' Institutes, which unquestionably were most in the view of the framers of the Act, are within it, we do trust that the Government will, of their own accord, bring in a Bill to amend and explain the Act; or, if they will not do it, that the subject will be forced upon them by some active member of the House of Commons. Where are the friends of education and well-wishers to the improvement of the humble classes of society?

Besides, however, this special decision, the Court came to an important conclusion as to the power of appeal given by the 6th section. They admitted that the words were very obscure, but held that there were two periods, at the option of the appellant, viz. either within four months of the first assessment after the filing of the certificate, or within four months of the first rate made after the society distinctly claimed exemption; although what would constitute a claim of exemption is nowhere defined by the statute.

It seems to us somewhat remarkable that, among the proposed interpretations of the words, "such exemption claimed," it was not suggested that it referred to the power given to a society to go to the Sessions, in case the barrister refused the certificate, and get their rules filed by the Sessions (sec. 5). We do not mean to say that this is clearly the meaning, but it is a meaning, and we apprehend that although there would be, this anomaly of an appeal from the Sessions to the Sessions, yet as the proceedings at Sessions under that section would be *ex parte* so far as the society, that the inhabitants would not be bound to acquiesce in such exemption. We certainly should have wished to have seen the decision of the Court upon this point, but it was not once mentioned.

It will be seen, also, from the judgment of the Lord Chief Justice, and Mr Justice Patteson expressed himself to the same effect, that the Act apparently does not give power to the barrister to decide what is within the statute absolutely, and that the certificate is only one, among several conditions, which must be fulfilled, and that the absence of any one of these would render the certificate useless. It was mentioned by Mr. M. Chambers that the very point was now pending before the Court in an action of trespass (see *supra*, 145).

All these difficulties and doubts upon what was intended to be a boon to the middle and lower classes of society, and an encouragement to intellectual pursuits, imperatively shew the necessity of a speedy amendment of the law, which should

include, in justice, a ratification of the certificates already granted under certain provisos and qualifications.

E. W.

REMOVAL.—EXAMINATIONS.

We wish to draw particular attention to the case of *Reg. v. Ratcliffe Caley*, reported in our last week's number (*supra*, 782). It shews that each examination for an order of removal should be complete in itself, and with all the requisites of jurisdiction, and that it will not suffice to take several upon the same sheet of paper, although the heading of each after the first is, touching the above-named settlement, and is dated on the same day, and at the same place, and signed by two persons of the same name, if it does not also shew that it was taken before a competent authority, in other words, that they were justices, &c.

E. W.

CRIMINAL STATISTICS.

STATISTICAL SOCIETY, April 20.—T. Tooke, Esq., V. P. in the chair.—The paper read was "On the Criminal Courts of the Metropolis, and their Operation," by J. Fletcher, Esq. Resuming the subject of criminal statistics at the point of the excess of juvenile offenders, made manifest by papers read before the society by the Rev. W. Russell, Mr. Fletcher gave an outline of the history, organization, cost, and operation of the police courts and higher criminal courts of the metropolis; endeavouring to discover whether, in their early treatment of early offences, some means might not be found to stem or to divert the tide of crime at its outset. The coroners' courts are the most ancient existing courts of police; and next to these in antiquity are the Lord Mayor's and that of the aldermen respectively. Beyond the limits of the City there were no justices of the peace but those included in the usual commissions of the several counties, until about fifty years ago. The Government then established the Bow-street Police-office, in which stipendiary magistrates were appointed to sit; seven other offices were created in 1792; and the Thames Police-office in 1800. Two other establishments in the eastern and western suburbs of the metropolis, each with two domiciles, have recently been added; and these eleven, with the two City courts of the Mansion-house and Guildhall, form the existing police tribunals. The annual expense of the whole metropolitan establishment, including 4,000*l.* for the superannuation of magistrates and officers, amounts to about 45,000*l.* of which nearly 10,000*l.* is defrayed by fines and fees, leaving 35,000*l.* to be discharged out of the public purse. The two city offices may be stated to cost about 6,500*l.* of which about 650*l.* is met by fees. Of about 48,000 persons, whose cases are in each year summarily disposed of at the metropolitan police-offices without the City, 20,000 are discharged, 15,800 fined, 1,300 imprisoned for periods not exceeding seven days, 3,000 above seven and not exceeding fourteen days, 5,000 above fourteen days and not exceeding a month, 2,000 not exceeding two months, 850 not exceeding three months, and only about 50 for higher terms, not exceeding six months. About 5,000 are annually committed for trial in the superior courts. The general or quarter sessions of the peace, held by the magistrates of each county and bailiwick, comprising different parts of the metropolis, were in full and uninterrupted operation, until 1834, when the Old Bailey Session, forming the court of gaol delivery for the City of London and county of Middlesex, was converted into the present Central Criminal Court for the whole of the metropolis and its neighbourhood in whatever county included. Such are the advantages of this court, which disposes equally of the most trifling and the most serious cases committed for trial, that it has absorbed a great portion of the business which formerly went to the sessions; and it was even debated in the Commons Police Committee of 1838, whether it would not be better to abolish the latter altogether, and divide their functions between the magistrates of police and the Central Criminal Court, to which six-sevenths of the criminal business is actually brought, while the parts of Surrey, Kent, and Essex within its jurisdiction are already wholly relinquished to its powers by the magistrates of those counties. To dispense with the second trials at the higher courts of juvenile offenders for petty larcenous crimes, at a great expense to the public in money, time, and annoyance, and to the further initiation of the young culprits in every degrading subterfuge, Mr. Fletcher suggested, not the abolition of the trial by jury in such cases, but rather its extension, in a modified form, into the police courts themselves, in like manner as it now exists in the County Court of Middlesex, since its extension, in 1836, to the recovery of debts not exceeding 10*l.* Thus, with a small jury of assessors serving for the day, the police magistrate might safely be intrusted with the disposal, at once, of the very petty cases which form more than one-half of the present business of the Central Criminal Court, which

would thus be enabled to absorb the remainder of the criminal business of the Westminster and Middlesex Sessions of the Peace, without any express alteration in its constitution. These courts would thus cease to entail a heavy expense, while the police magistrates and police courts, whose daily influence upon the thoughts, feelings, and manners of the population is incalculable, would at once gain the support of a higher public opinion, which they merit, and the assistance of intelligent men of the middle classes, well qualified to deal with such cases as it is proposed to leave to them, and whom the sitting magistrates would array, on each occasion requiring their assistance, precisely as a judge arrays the jury of a superior court.

THE LAWYER.

Summary.

We are assured that the Common Pleas is positively to be thrown open by legislative enactment during the present Session, the existing Serjeants to be compensated with patents of precedence. The effect will be still more to scatter about the leaders at the Bar, and to make suitors far more dependent upon their juniors, inasmuch as it will be impossible for them to rely upon the leader's presence when the cause comes on; and it will be impossible for certain men to confine themselves to particular Courts, because on their Circuits they must take the causes from any Court, and those they conduct on the Circuit they must fight also at Westminster. The first effect will be to flood the Common Pleas with business, not only because it has an excellent Bench, but because there will be an impression, that as it has little business, a case will be sure of a speedier hearing. For the same reason the Exchequer, as being now the most crowded court, will be for a time suddenly avoided. We throw out this hint, that the practitioner may take it into his calculation when he issues a writ. It will be seen that the Exchequer has disallowed the plea of *lis pendens*, in the case of an action for the same debt brought against several persons, liable jointly and severally, intimating that the proper course for the defendants to pursue was that we had ventured to recommend, namely, that judgment should be permitted to go against one of the defendants, and then that the rest should instantly plead that judgment in bar to their actions; and the Judges remarked that this may be done even *purs darrein continuance*. To bring up the heavy arrears of business before the long vacation, the Queen's Bench will sit for ten days, and the Exchequer for three weeks after term.

So heavy are the reports, that we are obliged again to omit a variety of leading articles, and every other matter that would bear postponement, and most probably we shall find it necessary next week to have another double number. Many long judgments have been given, and many more are expected daily.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

COMMISSIONS SIGNED BY THE LORD LIEUTENANT OF THE COUNTY OF NORTHAMPTON.

The Earl of Euston; the Marquis of Chandos; the Earl of Pomfret; the Baron Henley; the Hon. Richard Watson; William Bruce Stopford, esq.; William Cartwright, esq.; Rainald Knightley, esq.; John Michael Severne, esq.; Richard Aubrey Cartwright, esq.; William Wiles, esq.; George Payne, esq.; William Smyth, esq.; Henry Neville, esq. to be Deputy Lieutenants.

COURT PAPERS.

CHANCERY CAUSE LISTS.

Before the LORD CHANCELLOR.

Day to	Strickland v. Strickland	Appeals
be	Same v. Boyston	
fixed	Same v. Strickland	
To fix a day—	Vandeleur v. Blagrove	
	Coone v. Lowndes	
	Minor v. Minor, 2 appeals, supp. suit	

Dalton v. Hayter, appeal
 Attorney-gen. v. Masters and Wardens of Bristol, appeal
 Younghusband v. Giaborne
 Whitworth v. Gangan
 Bush v. Shipman
 Black v. Chaytor
 Mitford v. Reynolds, exons. by order
 Johnson v. Reynolds, fur. dirs. by order
 Thwaites v. Foreman
 Watts v. Lord Eglington
 Curson v. Belworthy
 Watson v. Parker
 Dietrichson v. Cabburn
 Bellamy v. Sabine
 Attorney-general v. Malkin, cause by order
 Johnson v. Child
 Kidd v. North
 Dord v. Whitwick
 Moleworth v. Howard
 Carmichael v. Carmichael
 Hawkins v. Howell
 Heming v. Swinnerton
 Trail v. Bull
 Youde v. Jones
 Wrightson v. Macauley
 Lawrence v. Bowles, cause by order
 Gompertz v. Gompertz, 3 causes, appeal
 Morris v. Howes
 Horaman v. Abbey
 Thomas v. Blackman
 Bonds v. Slyman
 Cooper v. Pitcher
 Salkeld v. Johnson, on eqy. read.
 Booth v. Creswick
 Forbes v. Leeming
 Andrews v. Lockwood
 Stocker v. Dawson, 4 causes, appeal
 May 27—Sharp v. Day, 2 appeals on demurrers.

Before the VICE-CHANCELLOR OF ENGLAND.

Mainwaring v. Dickenson, exons. as to answer
 Bell v. Earl of Moxborough, dem.
 Sanders v. Kelsey, dem.
 Colombine v. Chichester, 2 dems.
 Moore v. Mitchell, 2 dems.
 25th May—Attorney-general v. Earl of Devon, part heard
 Johnson v. Forrester, fur. dirs.
 Henderson v. Eason, exons. and fur. dirs. and petition
 Terry v. Wachter
 Simpson v. Holt, fur. dirs. and costs
 Garrod v. Moor
 Smale v. Bickford
 Bickford v. Bickford
 Peacock v. Kernot
 Morrison v. Watkins
 Wright v. Barnwell, exons. and fur. dirs.
 Greenway v. Buchanan
 Walton v. Morritt
 Dobson v. Lyle, fur. dirs. and costs
 Parker v. Hawkes, exons.
 Davison v. Bagley
 Peany v. Turner
 Giffard v. Withington
 Daniell v. Hill
 Insole v. Featherstonhaugh
 Lane v. Durant, exons. and fur. dirs.
 Pocock v. Johnson
 Cope v. Lewis
 Evans v. Hunter
 Attorney-gen. v. Trevelyan
 Sturt v. Cooke
 Hundell v. Gladstone, 4 causes, fur. dirs.
 Hodgkinson v. Barrow, fur. dirs. and costs
 Colbourn v. Colling
 Langton v. Langton, 2 causes
 Gower v. Bennett, fur. dirs.
 Hickson v. Smith, at defendant's request
 Palmer v. Pattison, fur. dirs. and costs
 Minter v. Wraith, fur. dirs. and cause
 Mason v. Wakeman, exons.
 Hemmings v. Spiers, exons.
 Chambers v. Waters, exons.
 Lord Beresford v. Archbp. of Armagh, fur. dirs. and costs.
 Smith v. Robinson
 Foster v. Vernon, fur. dirs. and costs
 Johnstone v. Lamb, ditto
 Vale v. Sherwood, 7 causes, ditto
 Haffenden v. Wood, exons.
 Branscomb v. Branscomb, fur. dirs. and costs
 Stamms v. Halliday, 3 causes, fur. dirs.
 Ditto v. Battye, by order
 Gray v. Gray, 3 causes, fur. dirs.
 Dorville v. Wolff, fur. dirs. and costs
 Richards v. Patterson, ditto
 Short—Roach v. Downer, ditto
 Beaton v. Beaton
 Woodman v. Madgen, fur. dirs. and costs
 Attorney-gen. v. Pearson, exons. and fur. dirs.
 Short—Craddock v. Piper, fur. dirs. and costs
 Dawson v. Chappell, ditto
 Andrew v. Moore, ditto
 Wait v. Horton, ditto
 Montagu v. Cator, fur. dirs. and costs
 Groom v. Stinton, 4 causes
 Elliott v. Elliott
 Ford v. Wastell
 Short—Corbett v. Limbrick, fur. dirs. and costs
 Baxter v. Abbott, fur. dirs. and costs
 Woods v. Woods, 5 causes
 Webb v. Gower
 Bagshaw v. M'Neill
 De Beauvoir v. De Beauvoir, fur. dirs. and costs
 Seale v. Warder, rehearing
 Turner v. Simcock, fur. dirs. and costs
 Booth v. Lightfoot, ditto
 Waugh v. Waugh
 Tufnel v. Drever
 Ladow v. Guilleband, fur. dirs. and costs
 Farris v. Loosmore, 2 causes
 Hurst v. Kemp
 Ashton v. Higginbottom, 2 causes
 Bourne v. Hassell, ditto
 Maitland v. Rodger, ditto

Howell v. Saer, ditto
 Teague v. Woodfall
 Att.-gen. v. East India Company
 Plowden v. Thorpe
 Warne v. Golding
 White v. Thorndell
 Major v. Major
 Pinky v. Remmett
 Bailey v. Fardell, fur. dirs. and costs
 East India Company v. Cooper's Company
 Baker v. Bayldon
 De Visne v. Graham, 2 causes
 Short—Hollings v. Kirby, 3 causes
 Roberts v. Cardell, exons.
 Cook v. Tynney
 Baker v. Walton
 De Sola v. Meanard
 Campbell v. London and Brighton Railway Company
 Whittead v. Jackson, fur. dirs. and costs
 Short—Langton v. Manby
 Stephens v. Green, 2 causes
 Jessop v. Jessop
 McDermot v. Wilcox, 2 causes
 Flight v. Bushby
 Blair v. Bromley
 Burt v. Burnham
 Robertson v. Lockie
 Nicholson v. Locke, 2 causes
 Warwick v. Richardson, exons.
 Morgan v. Kingdon, fur. dirs. and costs
 Marshall v. Marshall, ditto
 Dolland v. Reed
 Lewis v. Hinton, fur. dirs. and costs
 Duncombe v. Levy
 Wilson v. Williams
 Dell v. Dell
 Burnett v. Mackenby
 Robotham v. Amphet, exon.
 Short—Poole v. Troughton
 Fraser v. Jones
 Short—Brown v. Colven
 Halford v. Staines
 Rippin v. Dolman
 Goldsmid v. Drewe, fur. dirs. and costs
 Pepper v. Decker
 Foulding v. Newborn
 Ditto v. Shirrif.

Before VICE-CHANCELLOR KNIGHT BRUCE.

Curry v. Curry, plea
 Michaelmas Term—Dodsworth v. Lord Kinnaird, at request
 of defendant. Ditto, Same v. Same
 23rd May—Taylor v. Taylor
 Middleton v. Wolf
 22nd May—Rowe v. Hardy
 Haaswell v. Denton, fur. dirs. and costs
 17th July—Caton v. Ridoout
 Att.-gen. v. Mayor of Newcastle-upon-Tyne
 22nd May—Boileau v. Rudlin
 Hawthorne v. James, fur. dirs. and costs
 Wykes v. Higginson, fur. dirs. and costs
 Thomas v. Floud, exons.
 Ditto v. ditto, fur. dirs. and costs
 Topham v. Buxton
 Attorney-General v. Harvey
 Monney v. Mitchell
 Smith v. Webster, fur. dirs. and costs
 Davies v. Salisbury
 Morley v. Bridges
 Baker v. Smith; Ditto v. Baker, fur. dirs. and costs
 Lacy v. Iogle
 Goodrick v. Exall
 Malins v. Price
 Oldfield v. Taritt, fur. dirs. and costs.
 Brent v. Brown
 Chaplin v. Garvick
 Ditto v. Chambers
 Hamond v. Swayne, fur. dirs. and costs
 Morehouse v. Newton
 Sowden v. Marriott
 Collis v. Collis
 Denman v. Mead
 Ditto v. Harding
 Ulph v. Darlington
 Haigh v. Dixon, fur. dirs. and costs
 Richards v. Haynes
 Jones v. Jones
 Fuller v. Fuller
 Roper v. Yallop
 Hales v. Plowden
 Hales v. Darrell, 5 causes, fur. dirs. and costs
 Scott v. Fenning
 Langdon v. James
 Attorney-Gen. v. Pearson
 Attorney-Gen. v. Berry
 Short—Ireland v. Cox, fur. dirs. and costs
 Helliwell v. Briggs, 2 causes
 Hanbury v. Ward
 Quirrell v. Binnimore, fur. dirs. and costs
 Lashman v. Lashman ditto
 Butcher v. Rich ditto
 Caledonian In. Co. v. Gibb

Before VICE-CHANCELLOR WIGRAM.

Hole v. Pearce
 To fix a day.—Phillips v. Meinertzhagen
 S. O., Beadman v. Beadman, fur. dirs.
 After T., Ward v. Key
 Lancaster v. Jackson
 S. O., Thomas v. Reynolds, exons.
 May 22—Preston v. Wilson
 Stinton v. Avern
 Gibson v. Ings
 Sharland v. Mildon, two causes
 Garth v. Maclean
 Shafto v. Shafto
 May 23—Rodgers v. Nowell, part heard
 Cotterell v. Homer
 May 23—Fyson v. Adams
 Allen v. Knight, part heard
 Ward v. Ward; Ditto v. Whitmore
 Alsager v. Miller
 Lashbury v. Perks
 May 22—Paterson v. Wilson; Ditto v. Belcher

Lander v. Kendall
 Jones v. Thomas
 Bailey v. Lambert
 Flight v. Marriott
 Lowes v. Lowes, fur. dirs. and costs
 York v. Pole
 Ditto v. Collins
 Bower v. Scott
 Western v. Wood, exons. 2 sets
 Techemaker v. Eccles
 Sayers v. Lacom, exons.
 Ditto v. ditto, fur. dirs.
 Edye v. Hunter
 Jackson v. Pickering, fur. dirs.
 Hutchinson v. ditto, 2 causes
 Joynson v. Twigg
 White v. Van Sandan
 Ditto v. Hedges
 Mellon v. Stanley, fur. dirs.
 Ditto v. ditto, cause
 Walker v. Sharpe
 Sweeting v. Holland, fur. dirs. and costs
 Burch v. Western exons.
 Short—Harrison v. Harrison, fur. dirs. and costs
 ditto v. ditto
 Clark v. Appleton, fur. dirs. and costs
 Ditto v. Clark ditto
 McMahon v. Burchell, ditto

SUMMER CIRCUITS OF THE JUDGES.

NORFOLK CIRCUIT.

Yesterday, the Right Hon. Sir Edward Hall Alderson, Knight, one of the Barons of the Exchequer, and the Hon. Sir John Williams, Knight, one of the Justices of the Queen's Bench, the judges appointed to proceed on this circuit, finally appointed the days for holding the assizes in and for the several counties comprised in the circuit, viz. for

BUCKINGHAMSHIRE.—Friday, July 10, at Backingham.

BEDFORDSHIRE.—Tuesday, July 14, at Bedford.

HUNTINGDONSHIRE.—Friday, July 17, at Huntingdon.

CAMBRIDGESHIRE.—Saturday, July 18, at the County Courts, Cambridge.

NORFOLK.—Wednesday, July 22, at the Castle at Norwich.

NORWICH AND CITY.—Wednesday, July 22, at the Guildhall.

SUFFOLK.—Tuesday, July 28, at Ipswich.

The days for holding the assizes in the Northern, Western, Midland, Oxford, Home, and North and South Wales circuits, have not yet been finally appointed.

COURT OF QUEEN'S BENCH.

Trinity Term.—9th Victoria.

June 2, 1846.

This Court will, on Saturday, the 13th; Monday, the 15th; Saturday, the 20th; and Monday, the 22nd day of June inst. and the five next following days, hold sittings, and will proceed in disposing of the business in the special paper and new trial paper, and in giving judgment in cases then pending.

By THE COURT.

APPLICATIONS FOR RENEWAL OF CERTIFICATES.

On the Last Day of Trinity Term, 1846.

Andrew, William, 41, Moorgate-street.
 Bassett, Thomas Pritchard, formerly Thomas Pritchard Popkin, 30, Pierpoint-row, Islington; Nelson-square; and Brussels.
 Bent, Edward Stanley, Salford; Manchester.
 Beaumont, Bradley, 4, North-place, Commercial-road, Peckham.
 Davis, Isaac, 24, St. James's-square.
 Florence, James, 18, Charing-cross; and Paris.
 Houseman, William, Queen's-square, Bloomsbury.
 Hardy, Edward Webb, 219, High Holborn; Washington-cottage, Camberwell; Wolsington-place, Lambeth.
 Hull, Warner, Uxbridge.
 Powell, Horatio Nelson, Cheltenham.
 Poole, David, 21, Trevor-square, Brompton; High Seas; Hobart Town.
 Pitman, Thomas, Charlotte-street, Portland-place.
 Pedder, James, Liverpool.
 Stanley, John, 2, Westmoreland-place, City-road; Newport; Salop.
 Smith, Edward George, Merthyr Tydvil.
 Short, Charles Samuel, Asar-cottage, Clapham-road; Charrington-st. St. Paneras; Ebury-street, Fimlico.
 Vawdry, William David, 5, Vernon-place, Baginbidge Wells-road.
 Warren, Daniel, 32, Park-street, Dorset-square; Great Russell-st. Covent-garden; Tor Mahon, Highwicks; and York-street, Covent-garden.

PROCLAMATIONS OF OUTLAWRY.—At the Sheriffs' Court, Red Lion-square, on Thursday, Hemp, the officer, made proclamation of outlawry in the following cases:—Francis Twysden, at the suit of Robert Bryant; Thomas Gotobed, at the suit of Robert Lewis and another; William Bailey, at the suit of C. W. de Bernardy; W. F. Byng, at the suit of John Jones; J. L. Wellesley, at the suit of Oliver Richards; W. T. D. Lholyd, at the suit of D. E. Columbine (two actions); Lady Frances Twysden, at the suit of W. Davies; John Twysden, at the suit of the same; Charles Craven, at the suit of W. H. H. Reed; W. B. Metcalfe, at the suit of W. Reeve and

another; James Menzies, at the suit of B. Sams; Charles Stewart, at the suit of J. B. Byron; William Jones Burdett, at the suit of C. Barnett; Sir Henry Floyd, Bart., at the suit of A. Smith and others; Thomas Sharp, at the suit of Peter Plague and others; Charles Hope Wernicke, at the suit of R. Warren; William Mullinger Higgins, at the suit of T. Gray; George Rutherford, at the suit of Samuel Reynolds; G. A. Young, at the suit of O. Roberts; Thomas Flower, at the suit of W. Green; J. W. Gudge, at the suit of W. Townshend; Henry Lacy, at the suit of W. Lillywhite; Henry Kenney, clerk, at the suit of the Queen; William Conyngham Burton, at the suit of C. Curlewis; Drummond Baring, at the suit of the same; J. R. Udney, at the suit of O. Roberts; George Linley, at the suit of C. W. De Bernardy; and the Rev. James Staughton, Money Kyrle, at the suit of W. Thompson.

LEGAL INTELLIGENCE.

LEGAL DINNERS.—The annual grand meetings of the Societies of the Inner and Middle Temples have taken place. That of the latter society was held last evening, when the benchers and several of the judges, members of the society, mustered in strong force and partook of a grand entertainment in the hall, which, as usual on extra occasions, was densely thronged by members of the bar and "commoners" of the society, who, as usual at the annual great grand banquet, did honour upon the occasion to the Queen, in extra allowance of old port. On the 3rd instant, the periodic great grand dinner of the benchers of the Inner Temple took place in the hall of that society, and was attended by most of the judges, of whom there were the Lord Chief Baron, Mr. Baron Parke, Mr. Baron Alderson, Mr. Justice Patteson, Mr. Justice Williams, Mr. Justice Erle, Mr. Justice Cresswell, Mr. Baron Platt, the Master of the Rolls, &c.

MUNIFICENT BEQUESTS.—The late Samuel Barber, esq. of Walsall has bequeathed the following sums of money to the under-mentioned institutions:—To the General Hospital, Birmingham, 500l.; Queen Mary's School, Walsall, 500l.; Deaf and Dumb Institution, Edgbaston, 500l.; the British and Foreign Bible Society, 500l.; the Church Missionary Society, 500l.; the Church Pastoral Aid Society, 500l.; St. Peter's Church, Walsall, 200l.; the parish church of Cannock, 100l.; the Blue and National School, Walsall, 100l.—*Wolverhampton Chronicle.*

IRISH CHANCERY APPOINTMENTS.—This day the Lord Chancellor appointed his son, Mr. Henry Sugden, to the office of assistant-registrar of the Court of Chancery, in the room of Mr. O'Keefe, promoted to the office of registrar, rendered vacant by the death of Mr. Francis Prendergast. His lordship has also appointed his son-in-law, Mr. Reilly, as his private secretary, in room of Mr. Henry Sugden. The former office is permanent, the latter depends on the continuance of Sir Edward Sugden himself in the chancellorship.

Heirs-at-Law, Next of Kin, &c. Wanted.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent impertinent curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount included.]

88. NEXT OF KIN OF CHARLES MACKINNON, formerly of York-place, Portman-square, Middlesex, and late of Grosvenor-place (died 20th October, 1833), or their representatives.
89. RICHARD WILKES, formerly a labourer at Brighton, or his executor or administrator.
90. HEIR-AT-LAW OF ROBERT HENSHAW, late of the parish of St. David, Exeter, Esq. (died 16th Aug. 1781).
91. HEIR-AT-LAW OF THOMAS SPILLING, late of Earsham, Norfolk, gentleman (died 31st June, 1839).
92. NEXT OF KIN OF SARAH DENNIS, late of Church-street, Lambeth, Surrey, widow (died July, 1835), or their representatives.
93. NEXT OF KIN OF WILLIAM MELTON, late of the Baltic Coffee-house, Threadneedle-street, London, tavern-keeper (died 17th July, 1832).
94. NEXT OF KIN OF AMELIA ROGERS, late of Penzance, Cornwall, spinster (died 31st January, 1833), or their representatives.
95. RELATIONS BY CONSANGUINITY OF Mr. JOHN AND Mrs. FRANCES WEST, formerly of Stocks-market, in the City of London, not possessed of any real or personal estate of the value of 20l. entitled to a distribution of annuities of 5l. per annum.
96. RELATIONS OR NEXT OF KIN OF RICHARD WATKINS, late of Pool-terrace, Bath-street, City-road, Middlesex, common carrier (died 17th Aug. 1833). *Something to their advantage.*
97. NEXT OF KIN OF THE Rev. JAMES COLT, late of Leominster, Herefordshire, clerk (died 30th Aug. 1832), or their representatives.
98. CHILDREN OF JAMES DUNCAN AND ELIZABETH, his wife, formerly ELIZABETH DUNBAR, spinster, niece of James Dunbar, formerly of Lynn, Norfolk, merchant, or their representatives.

99. REPRESENTATIVES OF NEXT OF KIN OF Mr. WILLIAM STOKES, late of Marylebone, carpenter, resided there in the year 1789, 90, or 91. *Something to their advantage.*
100. CHILDREN OF WILLIAM KENNETT, ELIZABETH BROADLEY, and MARY SPICER, brother and sisters of JOSEPH KENNETT, late of Folkstone, Kent, gentleman (died March, 1799), living at the time of his death, and at the time of the death of his son, JAMES KENNETT (died 18th December, 1833), or their representatives.
101. HEIR OF HEIRS-AT-LAW, OR NEXT OF KIN OF ELIZABETH BURROWS, late of Liverpool, widow (died 22nd December, 1835).
102. NEXT OF KIN OF JOHN COCHRANE, late of Cambridge-street, Edgware-road, Middlesex, Esq. (died April 1835), or their representatives.
103. NEXT OF KIN OF MARGARET DOUGLAS COCHRANE, late of Harley-street, Cavendish-square, Middlesex, widow (died Sept. 1834), or their representatives.
104. RELATIONS OR NEXT OF KIN OF RICHARD GIDEON HAND, late of Grosvenor-row, Chelsea, Middlesex, gentleman (died 21st Feb. 1836). *Something to their advantage.*
105. HEIRS AND NEXT OF KIN OF THE Rev. ALEXANDER M'GREGOR, Minister of Balquhider, in Perthshire.
106. CHILDREN OF EACH OF THE NEPHEWS AND NIECES OF CHARLES FULLWOOD, late of Luton, Bedfordshire, gentleman (died Feb. 1832); the CHILDREN OF ELIZABETH WHITE, late of Southgate, Middlesex, deceased; THOMAS FULLWOOD, late of Perton, Herts, deceased; CHARLOTTE SURREY, late of Codicote, Herts, deceased; JOHN FULLWOOD, late of Kent-road, Surrey, deceased; MARY GREGORY, late of Hornsea, Middlesex, deceased; and DECIEMUS JACKSON, of Kent-road, aforesaid, brothers and sisters of the said CHARLES FULLWOOD, and children of ANN OAKLEY, of Wallend, near Westhamstead, Herts, and ELIZABETH DEVERELL, of Westhamstead, the two nieces of the said Charles Fullwood's first wife, or their representatives (testator died Feb. 1832).
107. NEXT OF KIN OF ELIZABETH TURNLOCK, late of Stafford, widow (died 1832), or their representatives.
108. LEGATEES OF THOMAS HENSHAW, late of Blackley, county of Lancaster, Esq. (died 1810), to receive balance due on their legacies.
109. DEATH AND INTERMENT OF HENRY LYDDELL, Esq. who resided in Bedford-row, in the year 1758, and also of Colonel JOHN FITZWILLIAM, who, at that date resided in South-street. *A reward.*
110. JAMES GERARD, alias MORRIS, entitled to an annuity under will of James Crauford, Esq. *(To be continued weekly.)*

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

LEX.—We are not aware of any special rule requiring two witnesses; there may be. If there is a doubt, the safest course is to have them.

LEX (Berwick).—Mr. Saunders's "Practice of Summary Convictions" will contain a number of forms and other matter not in the body of the treatise as it appeared in the LAW TIMES.

A SUBSCRIBER.—Forms of notices of claim and objection may be had at members' prices, with the name of the county or town printed, if a number be required, and the order be sent at once.

NOTICE TO SUBSCRIBERS.

The volumes of the LAW TIMES, neatly, strongly, and uniformly bound, for 5s. 6d. each, with the name and address of the owner on the cover, 1s. extra, if sent to the office. If the numbers for binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

The numbers comprising the first volume of the VERULAM REPORTS of Real Property and Conveyancing Cases may also be transmitted for binding in like manner.

NOTICE.

The LAW DIGEST is now completed. Being stamped, it may be sent by post, or may be had, sewn in a wrapper, price 5s. 6d.

NOTICE.

The subscription for the current half-year is now due, and subscribers desirous of availing themselves of the great reduction allowed for pre-payment, should forward the same in the course of the ensuing week. The prepaid subscription is 1l. 5s. for the half-year, and 2l. 7s. for the year, being a reduction respectively of 25 and 30 per cent.

Post-office Orders must be made payable to Mr. JOHN CROCKFORD, Publisher of the Law Times.

TO READERS.

The Publisher will be obliged for information as to the whereabouts of one Mr. Richard Jackson, lately of Hull, solicitor. He has taken the Law Times up to within a few weeks, when it was stopped in consequence of a letter being returned indorsed "Left Hull." Immediate application was made to the postmaster to ascertain to whom he had been in the habit of delivering the papers addressed to Mr. Jackson. His reply is, that "all newspapers, as well as letters, arriving here, addressed to R. Jackson, esq. solicitor, Hull, are delivered at Miss Marshall's, Parliament-street, in this town, where he had an office for a long time, and at his request they were so delivered. I have this morning sent in there, and am informed a person calls there and redirects them, but his address cannot be given." As this is a very gross case, the Publisher will feel much obliged to any reader who could, in confidence, inform him where this Mr. Richard Jackson is to be found.

There is also a Mr. H. S. Pyke, who was formerly at Kendal, and afterwards at Newport, but is now, it is said, managing clerk in the office of some attorney in the country, information as to whose present residence would be esteemed a favour.

The Law Times has been sent for some time addressed to Mr. E. Bretherton, solicitor, Post-office, Old Swan, near Liverpool. Can any reader oblige with a line, stating if there be such a person, and where he is to be found?

SCALE OF CHARGES FOR ADVERTISEMENTS.

Under 50 Words..... 20 5 0
For every additional Ten Words.. 0 0 6

Advertisements from the Country should be accompanied with an order upon the Agent in Town, or a Post-office order (payable at 180 Strand) for the amount.

N.B.—For Scale for Estate Advertisements, see JOURNAL OF PROPERTY.

THE LAW TIMES.

SATURDAY, JUNE 6, 1846.

CONVEYANCING.

THE reader must excuse the repeated return to this subject, on the score of its great and urgent importance to the future well-being of the Profession. Events are rapidly forcing on a change, and upon the manner in which it is met so much will depend, that timely forethought, while yet there is leisure for deliberation, may mitigate whatever of ill it may threaten, or even convert it into a good.

The summary of the recommendations of the Lords' Committee on the Burdens on Land, has been already submitted to the readers of the LAW TIMES. To-day we present to them extracts from the Report itself of all those passages in which questions are mooted affecting the law and the lawyers. From these it will be seen that the recommendations of the Lords are no hasty, inconsiderate suggestions, but the result of inquiry, and put forward with a positive view to their being carried into practice.

Another document published here last week, and which must have been read with interest, not only on account of its subject, but for the ability with which it was framed, is scarcely less ominous than the Report of the House of Lords. We allude to the Report of the Society for the Amendment of the Law, upon the practicability and propriety of abbreviating the verbiage of conveyancing, by the enactment of shorter forms, that shall have in law the same meaning. The Society now embraces almost all the distinguished lawyers of every party, and a considerable portion of the most influential of our statesmen. Whatever comes so recommended will be likely to receive the support of a Government always glad to have its labours relieved by the gratuitous aid of a body in whom it may place confidence, and it commands strength enough in Parliament to make opposition ineffectual. That Report was strongly in favour of short forms; but as strongly did it recommend that there should be no diminution of the rate of remuneration for legal bu-

business done, and for this purpose that the mode of payment for conveyancing should be changed, and instead of a scale measured by number of words, the amount of skill and labour required should regulate the fees.

It is to this that we are anxious to direct the particular and early attention of the Profession. Seeing that there is little or no hope of retaining the present mode of payment, let them devise some other that shall equally secure to them that fair remuneration which is their right.

The Society, and its Short Forms Bill now before Parliament, propose a payment according to services. But the practical difficulty arises, how are these to be measured? It would rarely happen that all parties would set the same value upon the labour of one. There would be difficulties in permitting a man to be a judge of his own worth, and to charge accordingly; and the outcry among clients would be even greater than it is now, were a bill of costs to consist of so indefinite an item. For the purposes of business, it is essential that some sort of scale should be fixed by which, as the standard, a test may be applied in case of dispute. None has ever been suggested which would do absolute justice. In practice the costs never can be precisely measured by the labour bestowed. They are, and they will ever be, regulated, to a considerable extent, by the value of the property conveyed.

And it is the recollection of this tacitly established rule that induces us to recommend its adoption avowedly as the scale of costs in conveyancing. We mean not that it shall be sternly applied in all cases, whatever their peculiar features; but that the value of the property conveyed shall be the primary scale by which the solicitor shall be paid for the labour bestowed, where the case presents no extraordinary features. But where it can be shown that the title or the conveyance itself required unusual labour, then he should be entitled to demand such further fees for that extra work as the Master, on taxation, may think fit to allow.

We believe that some such plan as this would not only prove equally advantageous to the Profession with the present one of payment according to number of words, but that it would certainly give great satisfaction to clients. It may be averred, in opposition to it, that in fact the labour is not proportioned to the value, and that title and conveyance are as troublesome for a small as for a large property. This is true; but where a strictly accurate test is impossible, it is worth consideration whether that which we suggest is not, upon the whole, the best that could be devised, especially as it is the one now practically adopted in half the cases that occur, few solicitors making the same charges for a property of 100*l.* as for one of 1,000*l.* even although equal labour be bestowed upon both.

At all events, something should be done to prepare for coming changes. Mere dogged opposition will not long suffice to avert them. They must be met with counter-proposals and practical amendments, and thus they may be rendered harmless. But immense exertions among the Profession are necessary to insure a respectful hearing for their remonstrances.

SHAM LAWYERS.

HERE is an effusion of one of this pestiferous tribe, resident, we believe, in Blackburn. It is printed in *red ink*, to look as frightful as possible:—

SIR,—I am instructed by Mr. Geo. Whiston to seize all your goods and chattels, and to apply to you for a debt of 6*l.* due to him for goods, &c. Fall not at your peril. And if the same, together with all lawful costs and charges, be not paid to me, or to my client, within one hour from this date, an action will be commenced against you for the recovery of the same, under the provisions of the late Act of Victoria, chapter 127, and dated August 9, 1848, intitled, "An Act for the better Securing the Payment of Small Debts."

And for your information I hereby quote from the penal clause the following:—"Any debtor refusing to disclose every transaction respecting his property or the sale or disposal thereof, or having made away with his property for the purpose of defrauding his creditors, or of contracting more debts than he was able to pay, or who being in receipt of wages or salary, or other income, and shall refuse or neglect to pay such instalments as shall be fixed by the Court, for every such offence, and in respect of each and every such instalment, he shall be liable to forty days' imprisonment in the common gaol."

N.B. No imprisonment, under this Act, goes to extinguish any debt nor any instalment fixed by the Court, and by a late order of the Home Secretary, fraudulent debtors are limited to prison diet, and allowed to see their friends only once a week.

King Street, Blackburn. PETER WELLS.

VERULAM PUBLICATIONS.

As the season is approaching when the Registration forms will be wanted, the usual notice is given that persons requiring considerable quantities may have the name of their county, city, or borough printed in the forms, if they will send their orders immediately.

Mr. SAUNDERS'S *Practice of Summary Conveyances* will be published on Saturday next. It is the first of the projected series of books of Practice to be published for the Society.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 6*s.*]

MARRIAGES.

CROSS, Edward Wilson, esq. of Doctors'-commons, and Torrington-square, London, to Sarah Mary, youngest daughter of William Day, esq. of St. Noel's, on the 2nd inst. at St. Noel's.

COOK, J. esq. solicitor, Hall, to Charlotte, eldest daughter of W. Perkins, esq. late of her Majesty's Customs, at that port.

FOULDER, Charles, esq. of the Temple, to Anne Kelsick, second daughter of the late Thomas Hall Vaughan, esq. and sister of Alfred Vaughan, esq. of Pillongley-lodge, Warwickshire, on the 28th ult. at Pillongley Church.

DEATHS.

DUDLEY, Jane Castell, only daughter of Mr. Cress Dudley, solicitor, Oxford, on Friday, the 29th ult. at the residence of her aunt, Mrs. Castell, Wilcot-house, near Witney.

JONES, Lieut. col. Ireland, of Veranda, near Swansea, an active magistrate, and deputy lieutenant for the county of Glamorgan, on the 29th ult. at Cheltenham, aged 69.

PRENDERGAST, Francis, esq. registrar of the Court of Chancery in Ireland, on Sunday, the 21st ult. in St. Stephen's-green, Dublin, aged 76.

SILVA, Emanuel, esq. one of her Majesty's Justices of the Peace, for the county of Surrey, on the 29th ult. at Newington-place, aged 76.

WARD, George Robert Michael, M.A. late Fellow of Trinity College, and Deputy Steward of the University of Oxford, barrister, on the 23rd ult. aged 46.

NECROLOGY

OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

LORD WODEHOUSE.

Lord Wodehouse expired suddenly on Friday last, at Kimberley Park, Norfolk. The health of the noble lord had been on the decline for some months back, but his speedy dissolution was not at all anticipated. For the last two years the noble lord had partially abstained from public affairs. The deceased John Wodehouse, Baron Wodehouse of Kimberley, county Norfolk, in the peerage of Great Britain, and a baronet, was the eldest son of John first Lord Wodehouse by Sophie, only daughter and heir of Mr. Charles Berkeley, brother of John fifth Lord Berkeley, of Stratton, which title is now extinct. He was born 11th Jan. 1771, and married 18th Nov. 1796, Miss Charlotte Laura Norris, only daughter and heir of Mr. John Norris, of Wilton Park, Norfolk, who died about two years back. By his marriage he had issue six sons and five daughters, several of whom survive their noble parent. The deceased lord was lord lieutenant of the county of Norfolk, and vice admiral of that coast, and also colonel of the East Norfolk militia. He is succeeded in the hereditary title, and extensive family estates in Norfolk by his grandson, Mr. John Wodehouse (now, of course, Lord Wodehouse), eldest son of the late Hon. Henry Wodehouse, by Anne, only daughter of Mr. T. T. Gordon, now in his 21st year. The late lord, previous to his succeeding his father in the family honours in 1834, represented the county of Norfolk in several successive parliaments. The Wodehouse family were of great antiquity in Norfolk. They derived their descent through a succession of knights from the time of Henry I. John Wodehouse was gentleman of the privy chamber to Henry IV., and particularly distinguished himself at the battle of Agincourt, for which the king granted him an augmentation to his arms, and to which the family motto alludes; he died in 1430. His descendant, Sir Thomas Wodehouse,

was made knight of the Bath at the marriage of Prince Arthur, eldest son of Henry VII. His great grandson, Sir Roger, was knighted by Queen Elizabeth, 1576; and his son, Sir Philip, was knighted by the Earl of Essex, at Calais, for his valour, and made a baronet 1611; he died 1623. His son, Sir Philip, an accomplished and learned man, died 1681; and his grandson, Sir John, died 1754, leaving the late Sir Armine Wodehouse, who died in 1777, having represented the county of Norfolk in five parliaments. His left issue the late Lord Wodehouse, father of the nobleman whose demise we have the duty of recording, who was elevated to the peerage in 1797. The late lord was cousin of Mr. E. Wodehouse, M.P. for East Norfolk.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY

ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.

(Continued from p. 197.)

II. AS TO THE PURCHASER.

1. Of voidable purchases.
2. Persons capable of purchasing, and yet incapable of holding.
3. Persons totally disabled from purchasing.

THERE are a certain class of persons who, although capable both of buying and holding lands, are nevertheless enabled, at some future time, to annul the purchase: others there are, who, though capable of purchasing, are incapable of holding; and some there are, who are incapable of either holding or purchasing. Under the first class we may rank married women, infants, and persons of unsound mind. Under the second, aliens, attainted persons, corporations (whether lay or ecclesiastical), and, until recently, persons professing the Roman Catholic religion. And under the third, trustees, solicitors of vendors, commissioners, assignees, or the solicitor under a commission or fiat in bankruptcy: the committee of a lunatic, auctioneers, creditors who have been consulted as to the mode of sale, the governors of a charity, commissioners under inclosure acts, executors and administrators, all of whom are, except under certain restrictions which will be mentioned hereafter, incapable of becoming the purchasers of property they have anything to do with in those respective characters.

1. Of voidable purchases.

Married women.—A married woman may purchase an estate without her husband's consent, and the conveyance is good during the coverture, unless he, as he undoubtedly may, thinks proper to annul it. (Co. Litt. 3; 2 Blac. Com. 293; *Bartholme v. Jordan*, Doug. 452; *Garband v. Allen*, 1 Ld. Raym. 224; *Francis v. Wizzell*, 1 Mad. Rep. 258.) But after the husband's death, the wife, in case she survive him, may avoid the sale, whether he has assented to it or not, as may also his heirs; and this whether she dies before or after her husband, unless in the latter event she should do any act to express her consent or agreement.

Infants.—An infant, if he purchases during his minority, may waive any contract or conveyance made in pursuance of it when he comes to full age; or if he does not then actually agree to it, and dis without affirming it, his heirs may waive it. (Co. Litt. 2*b*; 2 Blac. Com. 292; *Ketley's case*, Cro. Jac. 320; 1 Roll. Abr. 731; *Holmes v. Bagg*, 3 Taunt. 366.) But still the purchase is not totally void, as it is in the power of the infant either to confirm or rescind it upon attaining his majority, and if once confirmed by him, it cannot afterwards be annulled. This confirmation may either be expressly done by an avowed confirmation, or by the performance of certain acts from which such confirmation may reasonably be implied (*Franklin v. Thornbury*, 1 Vern. 132); as, for example, by retaining possession of the purchased lands, or receiving the rents and profits; or by cutting down timber, or exercising other acts of ownership over the property. (*Smith v. Lowe*, 1 Atk. 489.)

Lunatics and Idiots.—The acts of a lunatic or non compos may, as we have already seen, be set aside, either by himself on recovering his senses, or by his committee, or his heirs, after his death (as to which, see ante).

2. Persons capable of purchasing, yet incapable of holding.

Aliens.—An alien is not disabled from purchasing

lands, but he is incapable of holding them afterwards, because, upon office found, they become forfeited to the Crown. (2 Blac. Com. 293.) The only exception to this rule is, a lease of a dwelling-house and buildings for the purpose of habitation and trade (7 Rep. 17), which an alien friend will be entitled to hold for those purposes. But he cannot protect himself as to the possession of any other real property, by purchasing in the name of a trustee. The only means by which he can be enabled to hold real property in any part of the United Kingdom, is, by being made a denizen, or becoming naturalized, which will enable him to retain the possession of all lands acquired by him subsequently to those events. (Co. Litt. 2, b.) It was, indeed, not long since the prevailing opinion that the naturalization of an alien enabled him to hold lands acquired previously (Goulds, 29 pl. 4), though by becoming a denizen he would only be entitled to hold lands acquired afterwards; but more recent decisions have established that there is no such distinction, and that a naturalized alien is no more than a denizen capable of holding previously acquired lands. (See Mr. Radall's note to Hawk. Abr. Co. Litt. 17, n 38.)

Attainted persons.—Persons attainted of treason, felony, or *præsumptio*, are incapable of holding lands from the time of the offence committed (Co. Litt. 42; 2 Blac. Com. 290.) Hence, although they may purchase, it will be for the benefit of the Crown, or the lord of the fee, according to the nature of the crime. (Co. Litt. 2; 15 East, 463.)

Corporations.—Corporations, whether lay or ecclesiastical, aggregate or sole, are, without an express license to alien in mortmain disabled from holding any lands they may have purchased in their corporate capacity; which lands will become forfeited to the lord of the fee; and in case he fails to avail himself of the forfeiture within the prescribed time, the lands will go to the Crown. Hence the inhabitants or parishioners of any place are disabled from holding any lands purchased by them under those characters. (Co. Litt. 3 A.) The only exception to this rule seems to be the case of guardians and overseers of the poor purchasing lands for the purpose of a workhouse, which they are expressly enabled to do by Act of Parliament. (3 & 4 Wm. 4, c. 76.)

Roman Catholics.—Until within the last few years, persons professing the Roman Catholic religion who neglected to take the oath as prescribed by the stat. 31 Geo. 3, c. 32, were disqualified from holding lands, except for the benefit of their Protestant next of kin (stat. 43 Geo. 3, c. 40.); but by statute 10 Geo. 4, c. 7, s. 23, a Roman Catholic subject is enabled to hold any real or personal estate, without being required to take any other oaths than may be required to be taken by any other of her Majesty's subjects.

3. Persons totally disabled from purchasing.

The total disability to purchase arises from two causes. First, that the parties whom it embraces cannot be both buyers and sellers; and, secondly, with a view to prevent fraud, which persons situated in certain relations might otherwise be tempted to be guilty of. Hence a trustee is not permitted to become a purchaser from himself of the whole or any portion of the trust property (*Herne v. Meers*, 1 Vern. 465; *Ayliffe v. Murray*, 2 Atk. 59; *Fox v. Mackreth*, 2 Bro. C. C. 400; *Coles v. Tregothie*, 9 Ves. 234; *Ex parte Bennett*, 10 Ves. 3; *Morse v. Royall*, 12 ib. 372) even at a sale by public auction (*Whelpdale v. Cookson*, 1 Ves. sen. 9; *Lister v. Lister*, 9 Ves. 631; *Sanderson v. Walker*, 13 ib. 602; *Downes v. Glazebrook*, 3 Mer. 207); which disability extends also to his solicitor. (*Downes v. Glazebrook*, *supra*; *White v. Fussil*, before V. C. Leach, June 29, 1818, referred to in 2 Mad. Pract. p. 110, 2nd edit.) But after a trustee is discharged from his trust he will no longer be disabled from purchasing of his *cestui que trust*; but then he purchases subject to the liability of having the sale set aside, if the *cestui que trust* were to say within a reasonable time that they were dissatisfied with the purchase, and can also shew that it would be for their advantage that this should be done. But, at the same time, if the trustee's conduct was fair and honourable, or rather, if there had been no unfairness on his part, he would be entitled to a return of his purchase-money, and all reasonable costs incurred by him in the course of the transaction. (*Campbell v. Walker*, 5 Ves. 678; see also *Ayliffe v. Murray*, 2 Atk. 58; *Crowe v. Ballard*, 3 Bro. C. C. 117; 1 Ves. 215.) And upon the whole it seems, that, notwithstanding a trustee

cannot purchase of himself, he is allowed to purchase from his *cestui que trust*, provided there is a distinct and clear contract ascertained to be such after a jealous and scrupulous examination of all the circumstances, and there is no fraud, no concealment, no advantage taken by the trustee of information acquired by him in the character of trustee. (*Coles v. Tregothie*, 9 Ves. 246; *Morse v. Royall*, 12 Ves. 373.) And where an estate is vested in trustees upon trust for sale, and the trustee is desirous of becoming a purchaser, he may file a bill for the purpose of carrying the trusts into execution under the direction of the Court, and upon the sale apply to the Court for leave to become the purchaser upon offering to give more than any other person. (*Campbell v. Walker*, 5 Ves. 681.) With respect to a trustee for creditors purchasing any of the trust property on his own account, it appears doubtful whether the purchase could be sustained, unless with the concurrence of every one of the creditors; for though it has been said that if a majority of the creditors agree, it will be sufficient, (*Whelpdale v. Cookson*, 1 Ves. sen. 9), the correctness of this dictum is very questionable. (*Ex parte Budge*, 1 Mad. Rep.)

Solicitor or Attorney.—With respect to an attorney's purchasing of his client, the rule is, that, strictly speaking he is unable to do so as long as that relation subsists between them, yet when that relationship is dissolved, this disability will be removed. Where sales of this kind have been impeached, there has been some fraud or concealment on the part of the attorney; as, for example, he has purchased in the name of a third party, or by some means or other has contrived to conceal the fact of his being the actual purchaser; and when this is the case it would afford sufficient ground for rescinding the sale. In a recent case indeed where a solicitor purchased from his client in the name of a trustee, although at a price at which the vendor himself had authorized it to be sold, yet as the solicitor concealed the fact that he himself was the purchaser, the sale was set aside as fraudulent, notwithstanding there had been a possession of upwards of forty years under the conveyance; *Trevelyan v. Charter* (Rolls, January, 1835, afterwards affirmed in the House of Lords). And whenever an attorney or solicitor purchases from a late client, he should see that the latter employs some other attorney; otherwise, by mixing together the supposed character of attorney and purchaser, he will throw upon himself the onus of proving that he has given his client all that reasonable advice against himself, he would have given him against any other person. (*Gibson v. Jayes*, 5 Ves. 266; *Wood v. Downes*, 18 Ves. 120; *Montesquieu v. Sandys*, ib. 302; *Pane v. Allen* (Lord), 2 Dow. 289.)

Commissioners and assignees of bankrupts, &c.—Commissioners, assignees, and solicitors, under a commission or fiat in bankruptcy, are, as I have already remarked, disabled from purchasing the bankrupt's property, as are also the assignees of an insolvent debtor. (*Ex parte Reynolds*, 5 Ves. 707; *Ex parte Hughes*, 6 ib. 617; *Ex parte Lacey*, ib. 652; *Ex parte James*, 8 ib. 337; *Ex parte Bennet*, 10 ib. 381; *Ex parte Morgan*, 12 ib. 6. *Ex parte Andrews*, 2 Rose, 410; see also Hen. Bl. Law, 216); neither are the committee of a lunatic permitted to purchase the lunatic's estate, (*Wright v. Proud*, 13 Ves. 156); nor can auctioneers purchase the estate they are employed to sell (*Whelpdale v. Cookson* 1 Ves. sen. 9; *Lister v. Lister*, 6 Ves. 631; *Sanderson v. Walker* 13, ib. 602). Executors or administrators are also disabled from purchasing the estate or effects of their testator intestate (*Hall v. Hallett*, 1 Cox, 134; *Burden v. Burden* 1 Ves. & Bea. 170). This disqualification does not, however, extend to a residuary legatee (*Hooper v. Goodwin*, Cooper, 95), nor to the next of kin, nor to the heir at law of a testator who has devised away his real estate.

Mortgagee.—Whatever opinions may formerly have prevailed, it is now clearly settled that the relation of mortgagor and mortgagee does not preclude the latter from purchasing the equity of redemption (*Skinner v. Stacey*, 1 Wils. 80; *Goodtitle v. Pope*, 7 T. R. 185; *Ex parte Marsh*, 1 Mad. Rep. 48). The cases in which transactions of this kind have been seemingly impugned, have been those in which the mortgagee has been a trustee for sale (*Downes v. Glazebrook*, 3 Mer. 200), who could not of course sell to himself; or where he has taken some undue advantage of his situation. (*Gubbins v. Creed*, 2 Sch. & Lef. 214; *Webb v. Rorke*, ib. 660; *Hicks v. Cooke*, 4 Dow. 10, 28).

CHAPTER III.

ON THE PREPARATION AND DELIVERY OF THE ABSTRACT.

I. PRELIMINARY OBSERVATIONS.

II. PRACTICAL DIRECTIONS FOR PREPARING THE ABSTRACT.

1. *Heading of the abstract.*
2. *Root or origin of the title.*
3. *When a double abstract will be necessary.*
4. *How the various documents should be set out.*
5. *Deeds, how to be abstracted.*
6. *Attendant terms.*
7. *Copyhold assurances.*
8. *Wills.*
9. *Fines and recoveries.*
10. *Commission of fiat in bankruptcy.*
11. *Insolvency.*
12. *Judgments.*
13. *Decrees.*
14. *Descents.*
15. *Administration.*
16. *Matters of fact.*
17. *Cancellation, alteration, or erasure of documents.*

I. PRELIMINARY OBSERVATIONS.

AFTER the contract is duly signed, the next step for the vendor's solicitor to take is to deliver an abstract to the purchaser, or his solicitor, either at, or within the time appointed by the contract or conditions of sale; and this the former should take care to do, as an omission of this kind would avoid the contract at law (*Colonel v. Briggs*, 1 Salk. 112; *Lock v. Wright*, 8 Mod. 40; *Powell v. Pillett*, Gilb. Rep. 188; *Hamilton (Duchess of) v. Hamilton (Duke of)*, Grounds and Radiments of Law and Equity, 4; *Berry v. Young*, 2 Esp. N. P. C. 640), and in equity also, if time is made part of the essence of the contract. (*Butcher v. Hinton*, 1 Cha. Cas. 302; *Keen v. Stukeley*, Gilb. Rep. 155; *Pope v. Roots*, 7 Bro. P. C. 184; *Feversham (Earl of) v. Watson*, Rep. temp. Finch, 445; 2 Freem. 35; *Halton v. Long*, ib. 12; *Lloyd v. Collett*, 4 Ves. 689 (n); *Radcliffe v. Warrington*, 12 ib. 326; *Hudson v. Bartram*, 3 Mad. Rep. 440; *Bochin v. Wood*, Jac. & Walk. 419; *Wiskv v. Cottle*, 1 Turn. 78; *Lechmere v. Brasier*, 2 Jac. & Walk. 239; *Levy v. Lindo*, 3 Mer. 84; see also 1 Mad. Prac. 416, 2nd edition; 1 Foulbl. Eq. 394.) Even where no precise time is stipulated for the delivery of the abstract, it will be necessary that it should be delivered within a convenient time; but what limit is to be so considered is involved in considerable doubt. To avoid any questions, therefore, from arising about the matter, the vendor's solicitor should in every instance use due diligence in forwarding the abstract; for a delay on his part, to say the least of it, will afford a pretext for the same line of conduct on the part of the purchaser, which may often, as I have already remarked (see ante, 4, 5), cause great inconvenience to the vendor.

And as, on the one hand, the vendor's solicitor should be careful to deliver the abstract in proper time, so, on the other, the purchaser's solicitor should be equally active; and when a time is appointed for the delivery, the latter should make a point of demanding it on or before the time. It is not solely incumbent on the vendor to move by making a tender of the abstract; something also is incumbent on the purchaser to ask for it (*Guest v. Homfray*, 5 Ves. 283); and any laches on the part of the latter to do this may afford sufficient ground for rescinding the contract; and that even where no time is appointed for the delivery of the abstract, if the purchaser's solicitor permits a considerable time to elapse without asking for it.

Abstract by whom to be prepared.—In ancient days the practice seems to have been to deliver over the title-deeds themselves to the purchaser, and the abstract was prepared from such deeds by his solicitor, and at his own expense. This practice has, however, been long since done away with (1 Prest. Abs. 34), and the established rule now is for the vendor to defray the cost of the abstract, which is prepared by his own solicitor. The abstract only and not the title-deeds, is delivered to the purchaser's solicitor, who afterwards is allowed access to such title-deeds in order to examine them with the abstract, which latter expense is borne by the purchaser. Formerly, also, it seems to have been customary for counsel to compare the title-deeds with the abstract; but this practice is now disused: a duty of that kind being considered as falling more properly within the province of solicitors than counsel. In former times, also, it was by no means an unfrequent practice to employ counsel to prepare

the abstract; but this is not done now, that task devolving wholly upon the solicitor; and a very important task it is; as it requires not only the strictest attention, but also an acquaintance with the laws of real property, and the nature and operation of the various assurances by which it may be transmitted from one person to another.

(To be continued.)

Public Sales.

By Mr. F. SINGLE, at the Mart.

An estate, consisting of 38 houses, free of ground-rent, being Nos. 1 to 16, Mile-end-terrace, and 22 small houses, forming the whole of Elizabeth Ann-place, Princes-place, and Providence-row; held for 63 years from Lady-day, 1805, and let at rentals amounting to upwards of £300. per annum—2,988l.

Twenty-one houses, Nos. 21 to 26, Melina-place, Nos. 9 to 11, Ade-street, and Nos. 21 to 23, George-street, Cambridge-street; held for 58 years, at £2. per annum—3,450l.

A corner baker's shop and two residences adjoining, Nos. 4, 5, and 6, Hally-street, Dalston; held for 77 years from December, 1844, ground-rent 5l. each house—620l.

Two similar houses, Nos. 2 and 3—570l.

A house, No. 1, Hally-street, held for 76 years, from June 1843, at a ground-rent of 5l.—600l.

Two houses, Nos. 1 and 2, Bay-street, Dalston, held from Christmas, 1841, first two years peppercorn; residue of term 2l. a house—640l.

Two estates of freehold building-land, close to the station at Brentwood, on the Eastern Counties Railway at Brentwood, Essex, in 34 lots, produced from 14l. to 98l. a lot; sum total, 1,243l.

Fifteen plots of freehold building-land, in Snakes-lane, Woodford, Essex, produced from 11l. to 30l. a lot—sum total, 267l.

Forty-two acres of freehold building-ground, together with a residence, situate near the Oatcake Inn, Hants, in nineteen lots, produced from 19l. to 360l.—sum total, 1,098l.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	96½	96½	96½	96½	96½	96½
Three per Cents. Reduced	96½	96½	96½	96½	96½	96½
New Three & a-quarter per Cts	96½	96½	96½	96½	96½	96½
Long Annuities	104	104	104	104	104	104
Bank Stock	205½	205½	205½	205½	205½	205½
India Stock	365½	365½	365½	365½	365½	365½
India Bonds, prem.	28	28	28	28	28	28
Eschequer Bills, prem.	20	21	21	20	20	20

FOREIGN.

Spanish Five per Cents.	24½	24½	24½	24½	24½	24½
Spanish Three per Cents.	37½	37½	37½	37½	37½	37½
Russian	110½	110½	110½	110½	110½	110½
Portuguese	39½	39½	39½	39½	39½	39½
Portuguese	56½	56½	56½	56½	56½	56½
Mexican	30½	30½	30½	30½	30½	30½
Dutch Two-and-a-half per Cents.	59½	59½	59½	59½	59½	59½
Four per Cents.	92½	92½	92½	92½	92½	92½
Danish	88	88½	88½	88½	88½	88½
Colombian	17½	17½	17½	17½	17½	17½
Chilian	99½	99½	99½	99½	99½	99½
Buenos Ayres	39½	39½	40½	41½	41½	41
Braslian	82½	82½	82½	82½	82½	82½
Belgian	96½	96½	96½	96½	96½	96½

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, May 25.

Humphreys, W. hotel keeper, last exam. passed.

Tuesday, May 26.

Aburrow, W. druggist, assignees, June 19.—Ingles, A. draper, div. next week. Johnson, London.—Stearman, W. carpenter, last exam. June 17.

Thursday, May 28.

Biggs, J. undertaker, last exam. June 25.—Billings, B. victualler, last exam. June 26.—Brailsford, R. brewer, last exam. June 30.—Hardy, G. innkeeper, div. next week. Johnson, London.—Langford, G. grocer, last exam. Nov. 27.—Langley, H. C. apothecary, last exam. passed.—Rolph and Rolph, builders, div. next week. Bell, London.—Sankay, E. surgeon, last exam. passed.—Stevens, T. W. G. hackneyman, assignees, June 30.—Woodham, J. silk throwster, div. next week. Pennell, London.

Friday, May 29.

Griffiths and Pearson, tailors, last exam. passed.—Redford, T. baker, last exam. passed.—Stephenson, R. apothecary, last exam. passed.—Weatherhog and Co. farmers, last exam. passed.

Saturday, May 30.

Chford, E. victualler, last exam. passed.—Kieft, P. cheesemonger, last exam. passed.—Timewell, W. T. lead smelter, last exam. June 30.

DIVIDENDS.

Bankrupt's Estates.

Official Assignees are given, to whom apply for the Dividends.

Blyth, J. grocer, 26. 6d. Follett, London.—Bromley, W. scrivener, first, 11d. Turquand, London.—Clarke and Co. bankers, first sep. of Clarke and Phillips, 10s. Christie, Birmingham.—Clayton, E. victualler, 10s. Follett, London.—Green, T. W. bookseller, third, 3s. 6d. Yeang, Leeds.—Grove, G. miller, second and fin. 6d. Acraman, Bristol.—Guy and Smith, linen drapers, joint, 1s. 3d. Follett, Lon-

don.—Hardy and Hardy, grocers, fin. 19s. 8d. Turquand, London.—Hindes and Co. stock brokers, first joint, 30s.; sep. Hindes, 6s. Kynaston, Leeds.—Jackson, J. grocer, first and fin. 1s. 5d. Hope, Leeds.—Salkeld and Co. ship owners, joint, 5d.; sep. Salkeld, 2s. Follett, London.—Stanton, D. grocer, first, 7s. Acraman, Bristol.—Thompson, J. and J. stockbrokers, first sep. Jas. Thompson, 10d. Kynaston, Leeds.—Watt, F. linen factor, first, 8s. Green, London.—Winton and Co. warehousemen, second Webber, 4s. Turquand, London.

Insolvents' Estates.

Buebridge, T. general shopkeeper, St. Peter's, Kent, 9d.—Ginsman, J. painter, Twickenham-common, 2s. 2½d.—Green, J. baker, Nottingham, 4s. 3d.—Plaw, T. retailer of beer, Green-st. Paddington, 8½d.—Slade, C. china dealer, Walker-st. Berwick-st. 8½d.—Stephenson, J. glass stainer, Bath, 1s.—Vouder, S. victualler, King-st. Southwark, 10½d.—Webb, T. H. J. printer, Curtain-rd. 7½d.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, May 29.

Albinson, J. ironfounder, Manchester, April 27. Trust. P. Tanner, Manchester. Sol. Taylor, Manchester.—Parsons, F. draper, Peterborough, April 23. Trusts. R. Groucock, lace manufacturer, Bow Church-yd. and H. Head, draper, Peterborough. Sols. Reed and Langford, Friday-st.—Scott, J. tavern keeper, Fendall's Hotel, Westminster. April 9. Trusts. C. Howard, wine merchant, Great Tower-street, and J. Themans, tobacconist, St. George's-st. Sol. Clarke, George-st. Mansion-house.—Schufe, F. G. warehouseman, Friday-st. May 14. Trusts. M. Woolbert, lace-warehouseman, Lawrence-lane, and J. Morley, lace manufacturer, Nottingham. Sols. Reed and Langford, Friday-st.

Gazette, June 3.

Clarke, G. brewer, Dunstable, May 25. Trusts. J. Mellor, auctioneer, J. Osborn, maltster, and S. Burges, tailor, Dunstable. Sol. Cartwright, Dunstable.—Dawson, R. sharebroker, Liverpool, May 21. Trusts. H. W. Banner, accountant, and A. Rawson, sharebroker, Liverpool. Sol. Orred, Liverpool.—Morris, J. draper, South Molton-st. May 16. Trust. J. Hinchcliffe, warehouseman, Wood-st. Sols. Sole and Turner, Aldermanbury.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, May 29.

BALDOCK, WILLIAM, grocer and flour dealer, Nottingham, June 16 and July 14, at half-past ten, Birmingham, Com. Balguy; Christie, off. ass.; Brown, Nottingham, sol. Date of fiat, May 21. J. Goodson, corn miller, Nottingham, pet. cr.

BIRD, MARIA, milliner, Cheltenham, June 11 and July 9, at one, Bristol, Com. Stephen; Acraman, off. ass.; Winterbottom, Cheltenham, sol. Date of fiat, May 18. C. Brown, mercer, Cheltenham, pet. cr.

BOYD, J. and J. hop, seed, and guano merchants, Wellington-chambers, Southwark, June 18, at two, July 10, at eleven, Basinghall-st. Com. Shepherd; Graham, off. ass.; Phillips, Sise-lane, sol. Date of fiat, May 25. G. Sparks, sack maker, Swan-st. Minorities, pet. cr.

COXWELL, GEORGE SAMUEL, and CROSS, WILLIAM, merchants, ship and insurance brokers, and commission agents, Newcastle-upon-Tyne, June 5, at half-past ten, July 9, at one, Newcastle, Com. Ellison; Wakley, off. ass.; Hewison, Newcastle, and Capen and Smart, Newcastle, sol. Date of fiat, May 23. M. Thompson, Newcastle, pet. cr.

DARNBROUGH, WILLIAM, tailor and draper, Richmond, Surrey, June 5, at half-past ten, July 9, at twelve, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Kinder and Sorrell, Jewry-st. sol. Date of fiat, May 25. J. and D. Parker, warehousemen, Minorities, pet. crs.

DAVIES, ROBERT, draper and shopkeeper, Abbey Tintern, Monmouthshire, June 12, at one, July 10, at eleven, Bristol, Com. Stephen; Hutton, off. ass.; Messrs. Bevan, Bristol, sol. Date of fiat, May 18. T. P. Town, grocer, Chesham, pet. cr.

ELLEMAN, CHARLES FREDERICK, agent and commission merchant, 23, Philpot-lane, June 12, at two, July 10, at half-past eleven, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Amory and Co. Throgmorton-st. sol. Date of fiat, May 26. Bankrupt's own petition.

FREEMAN, GEORGE, grocer and general dealer, Croydon, June 5, at eleven, July 11, at one, Basinghall-st. Com. Goulburn; Green, off. ass.; Allen and Nicol, Queen-st. sol. Date of fiat, May 23. T. How, tea dealer, High-st. Southwark, pet. cr.

JEFFRIES, THOMAS, victualler and jeweller, Aberystwyth, Cardiganshire, June 9 and July 7, at one, Bristol, Com. Stephen; Miller, off. ass.; Harrison, Birmingham, and Chaplin, Gray's-inn-sq. sol. Date of fiat, May 19. Bankrupt's own petition.

LOCKES, WILLIAM, timber merchant, 1, Leonard-st. Curtain-rd. June 16, at half-past two, July 10, at twelve, Basinghall-st. Com. Holroyd; Groom, off. ass.; Taylor, Moor-gate-st. sol. Date of fiat, May 26. Bankrupt's own petition.

REED, NEHEMIAH JOHN, licensed common brewer and maltster, Marlborough, Wiltshire, June 11, at eleven, July 10, at twelve, Bristol, Com. Stephen; Hutton, off. ass.; Bennett and Paul, Sise-lane, sol. Date of fiat, May 27. Bankrupt's own petition.

ROLFE, FRANCIS, tailor, Great Marlborough-st. June 6, at one, July 10, at eleven, Basinghall-st. Com. Fane; Alsager, off. ass.; Messrs. A. Beckett, Golden-sq. sol. Date of fiat, May 23. M. A. Bidgood, T. Jones, and A. Wilson, woollen drapers, Vigo-st. pet. crs.

SUGER, THOMAS, corn merchant, Kingston-upon-Hull, June 10 and July 1, at eleven, Hull, Com. Burge; Kynaston, off. ass.; Hicks, Gray's-inn, and Holden and Son, Hull, sol. Date of fiat, May 20. W. Graburn, gent. Barton-upon-Humber, pet. cr.

WHITE, WILLIAM, tailor, Tavistock, Devonshire, June 10 and July 1, at eleven, Exeter, Com. Bere; Hernaman, off. ass.; Stogdon, Exeter, and Daw, Exeter, sol. Date of fiat, May 14. C. Willeford, solicitor, Tavistock, pet. cr.

Gazette, June 3.

AIRS, CHARLES, innkeeper, Newport, Isle of Wight, Southampton, June 11, at one, July 13, at eleven, Basinghall-st. Com. Shepherd; Graham, off. ass.; Wilde and Co. College-hill, sol. Date of fiat, May 15. R. R. Swaine and J. Boord, distillers, Bartholomew-close, pet. crs.

BIRCH, ANTHONY, grocer, Birmingham, Warwickshire, June 10, at one, July 10, at half-past ten, Birmingham, Com. Balguy; Valpy, off. ass.; Hill and Matthews, St. Mary-axe, and Bray, Birmingham, sol. Date of fiat, May 19. R. Valpy, official assignee, Birmingham, pet. cr.

BIRD, JAMES, timber-merchant, 13, Club-row, Bethnal-green, June 11, at twelve, July 14, at eleven, Basinghall-st. Com. Evans; Bell, off. ass.; Taylor, Moor-gate-st. sol. Date of fiat, May 26. G. Davis, upholsterer, 40, Skinner-st. Bishopsgate, pet. cr.

BOWER, HANDLE, cotton spinner and manufacturer, Hayrod and Black Rock-mills, near Staleybridge, Lancashire, June 17 and July 6, at twelve, Manchester; Pott, off. ass.; Abbott, Henrietta-st. and Atkinson and Co. Manchester, sol. Date of fiat, May 27. Bankrupt's own petition.

CHAPMAN, MATTHEW, painter, glazier, and paper-hanger, Devonport, Devonshire, June 16, at eleven, July 16, at one, Exeter, Com. Bere; Hernaman, off. ass.; Little, Devonport, Sols and Turner, Aldermanbury, and Stogdon, Exeter, sol. Date of fiat, May 25. J. Williams, esq. Devonport, pet. cr.

CLARK, EDWARD, builder, Mortimer-rd. Kingland-rd. June 12, at eleven, July 14, at half-past eleven, Basinghall-st. Com. Fane; Alsager, off. ass.; (no solicitor stated). Date of fiat, May 23. T. Archer and T. J. Taverner, paper stainers, Old-st. pet. crs.

FENWICK, BENJAMIN, linen draper, Newcastle-upon-Tyne, June 12, at eleven, July 29, at one, Newcastle, Com. Ellison; Baker, off. ass.; Kent, Newcastle, and Nichols and Doyle, Bedford-row, sol. Date of fiat, May 27. R. Orton, gent. Gatehead, pet. cr.

HARRIS, CHARLES, tailor, Sheffield, Yorkshire, June 19 and July 3, at eleven, Sheffield, Com. West; Freeman, off. ass.; Pike, Old Burlington-st. and Binney, Sheffield, sol. Date of fiat, May 25. W. and H. Cobbitt, woollen drapers, Sackville-st. Piccadilly, pet. crs.

HAYES, JOHN, manufacturing chemist, Newton, Manchester, June 18 and July 3, at twelve, Manchester; Hobson, off. ass.; Austen and Hobson, Gray's-inn, and Webster, Manchester, sol. Date of fiat, May 18. J. M. Vergé, carver and gilder, Macclesfield, pet. cr.

NIELD, JOHN, woollen manufacturer, dyer, and printer, June 13, at eleven, July 6, at twelve, Manchester; Fraser, off. ass.; Fox, Finsbury-circus, and Worthington and Co. Manchester, sol. Date of fiat, May 20. Bankrupt's own petition.

ROBERTS, THOMAS, and HAZARD, JOHN TIDCOMBE, paper agents and stationers, College-hill, City, June 12 and July 10, at eleven, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Woolten, Bucklersbury, sol. Date of fiat, May 25. H. Woodfall, paper maker, Foot's Cray, Kent, pet. cr.

SHAW, HENRY, china and glass dealer, Gerrard-st. Islington, Southampton-row, Russell-cs. and Sloane-st. Chelsea, June 9, at half-past one, July 14, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Venning and Co. Tokenhouse-yard, sol. Date of fiat, May 23. F. Lowe, gent. 32, Spital-cs. pet. cr.

STEELE, GEORGE, grocer and flour dealer, Claypath, Durham, June 12 and July 28, at one, Newcastle, Com. Ellison; Wakley, off. ass.; Smith, Durham, Harle, Newcastle, and Rogers, Lincoln's-inn-fields, sol. Date of fiat, May 26. Bankrupt's own petition.

THOMPSON, DAVID, bleacher, Stanley Spring Bleach Works, Walmersea, Com. Shuttleworth, Bury, Lancashire, June 13 and July 8, at twelve, Manchester; Hobson, off. ass.; Minton and Co. Temple and Venable, Manchester, sol. Date of fiat, May 26. Bankrupt's own petition.

Meetings at Basinghall-street.

Gazette, May 29.

Barlow, G. iron and coal merchant, Stepney-green, June 22, at eleven, div.—Blackler, R. H. and Earle, C. jun. warehousemen, Gresham-st. City, June 22, at twelve, div.—Bromley, W. scrivener, Gray's-inn, June 12, at eleven, last exam.—Bucknell, S. carman, Hendon, Middlesex, June 22, at one, div.—Carter, P. W. and Jackson, J. woollen drapers, 20, Brewer-st. Golden-sq. June 19, at twelve, further joint div.—Chrisp, J. wine and spirit broker, Great Tower-st. City, June 19, at two, div.—Clayton, E. licensed victualler, Coach and Horses, Edgware-rd. June 19, at one, div.—Dow, J. A. draper, Romford, Essex, June 19, at twelve, div.—Harrison, S. provision and commission merchant, Poole, June 19, at one, div.—Hutton, J. draper, Ringwood, Southampton, June 22, at half-past eleven, div.—Johnson, T. sen. and W. and Mann, C. bankers, Romford, Essex, June 19, at eleven, div.—Munkhouse, E. S. G. and Gorman, M. A. merchants, June 20, at twelve, final joint and sep. divs.—Needham, F. H. dressing case maker, New Bond-st. June 10, at one (adj. May 8), last exam.—Reis, L. Power, J. and Kewig, G. merchants and soap and candle manufacturers, Fenchurch-st. and Wandsworth, June 19, at half-past eleven, joint div. and sep. of Reis and Kewig.—Rogers, W. draper, Lewes, Sussex, June 19, at two, aud. and div.—Self, C. plumber, Sun-st. June 19, at half-past one, aud.—Stenden, T. brewer and beer seller, Pudding-lane, Maidstone, Kent, June 19, at half-past twelve, div.—Wilson, J. cabinet maker, Woolwich and Chelsea, June 19, at eleven, aud.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Brunswick, M. merchant, Lime-st. June 19, at twelve.—Humphreys, W. hotel keeper, Haymarket, June 22, at eleven.—Matthews, T. draper, Aldgate, June 25, at eleven.—Rogers, W. draper, Lewes, June 19, at two.

Gazette, June 3.

Aslett, W. grocer and baker, South Stoneham, Southampton, June 25, at eleven, aud. June 29, at twelve, fin. div.—Balls, J. livery stable keeper, Holloway-rd. Islington, June 23, at twelve, fin. div.—Biggs, J. undertaker, Houndditch, June 25, at eleven, aud.—Bond, W. H. ale and beer merchant, Bow-lane, Chesham, June 25, at eleven, aud. June 29, at half-past twelve, div.—Brailsford, R. brewer, Enfield, June 30, at eleven, aud.—Bryant, J. draper and grocer, Mayfield, June 23, at two, aud.—Chandler, B. ironmonger, Stanmore, Middlesex, June 26, at twelve, div.—Clark, J. J. builder, Hounslow, Twickenham, and Westbury-upon-Trym, June 24, at twelve, aud.—Clifton, R. maltster, Brandon, June 29, at half-past eleven, aud.—Collins, W. tailor, Rugby, June 24, at half-past twelve, aud.—Davis, G. saddler and harness maker, 100, Borough High-st. Southwark, June 23, at half-past one, div.—Day, F. scrivener, Hemel Hempstead, June 23, at one, aud.—Duffield and Duffield, ironmongers, Slough, June 24, at one, aud.—Dutt, J. carpenter, Upper-st. Islington, June 23, at twelve,

and.—*Fricker*, H. innkeeper, Star hotel, Southampton, June 25, at one, div.—*Humphreys*, W. hotel keeper, Strand, June 25, at eleven, and.—*Imray*, J. stationer, Old Fish-street-hill, and chart seller, Minories, June 23, at half-past twelve, div.—*Langford*, G. grocer, Southampton, June 24, at twelve, and.—*Morr*, R. and *Blake*, W. coal merchants and warehousemen, Norwich, June 26, at one div.—*Morpheus*, W. linen draper and farmer, Sevenoaks, Kent, June 23, at eleven, div.—*Nichols*, T. carman and cowkeeper, Dowgate-hill, City, June 25, at twelve, div.—*Redford*, T. baker, Croydon-common, June 27, at eleven, and.—*Rothschild*, B. L. M. diamond-merchant, great Queen-street, June 23, at twelve, and.—*Speller*, E. tea dealer, Berner-st. June 25, at eleven, and.—*Syer*, A. S. grocer, Sudbury, Suffolk, June 25, at one, div.—*Thompson*, J. grocer and tea dealer, June 23, at eleven, div.—*Ward*, H. paper manufacturer, Widford-mill, near Burford, Oxfordshire and Gloucestershire, and 31, Ludgate-st. city, June 21, and. div.—*Whitmore*, J. proprietor of the *Illustrated Weekly Times*, 194, Strand, June 25, at two, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Blackman, T. farmer, Beddenham, June 23, at twelve.—*Langley*, H. C. apothecary, Hackney-road, June 23, at half-past twelve.—*Nunn*, J. haberdasher, Baker-st. June 29, at half-past twelve.—*Sankey*, E. surgeon, Canterbury, June 26, at half-past eleven.

Meetings in the Country.

Gazette, May 29.

Allen, E. T. apothecary, York, June 25, at eleven, Leeds, div.—*Baxter*, E. W. ironmonger, Coventry, June 20, at twelve, Birmingham, and.—*Broadhead*, D. and *Halvor*, J. stock and share brokers, Leeds, June 26, at eleven, Leeds, first sep. divs.—*Clark*, B. contractor, Leeds, June 26, at eleven, Leeds, first div.—*Cousen*, J. and *L. Bingley*, Yorkshire, and *Cousen*, J. R., Bradford, worsted spinners, June 23, at eleven, Leeds, first div.—*Gore*, J. G. innkeeper, Cheltenham, June 30, at eleven, Bristol, and.—*Harding*, T. schoolmaster, Lichfield, June 23, at eleven, Birmingham, and.—*Hutchinson*, S. stock and share broker, Bradford, June 20, at eleven, Leeds, and. June 26, at eleven, div.—*Inall*, W. auctioneer, land agent, and money scrivener, Shipston-on-Stour, Worcestershire, June 20, at twelve, Birmingham, and. div.—*Patchett*, T. worsted manufacturer, Brighouse, Halifax, June 20, at eleven, Leeds, and. June 25, at eleven, div.—*Penkey*, R. jun. grocer, East Stonehouse, Devonshire, June 23, at eleven, and. June 25, at one div.—*Pickles*, R. linen manufacturer, Yorkshire, June 23, at eleven, Leeds, div.—*Smith*, W. H. hop merchant, Manchester, June 19, at eleven, Birmingham (adj. Aug. 8, 1842), last exam.—*Sugden*, J. and *D. fancy cloth manufacturers*, Springfield, Kirkburton, and Huddersfield, Yorkshire, June 23, at eleven, Leeds, second and final div. of *J. Ward*, F. rag merchant, Batley, Yorkshire, June 26, at eleven, Leeds, first div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Athell, J. miller, Stowe-on-the-Wold, June 19, at twelve, Bristol.—*Broadhead* and *Halvor*, stock brokers, Leeds, June 23, at eleven, Leeds.—*Desmoult*, A. M. stock broker, Leeds, June 23, at eleven, Leeds.—*Cross*, W. coal merchant, Weymouth and Melcombe Regis, June 25, at one, Exeter.—*Duckham*, G. butcher, Merthyr, June 25, at eleven, Bristol.—*Lord*, A. dyer, Colyhurst, June 23, at twelve, Manchester.—*Maguire*, T. draper, Birmingham, June 24, at twelve, Birmingham.—*Morris*, J. auctioneer, Manchester, June 24, at twelve, Manchester.—*Phillips*, T. A. oil merchant, Huddersfield, June 23, at eleven, Leeds.—*Roe*, H. goldsmith, Liverpool, June 22, at eleven, Liverpool.

Gazette, June 2.

Archer, S. woollen manufacturer, Rochdale, Lancashire, June 23, at twelve, Manchester, and. June 25, at twelve, first div.—*Bird*, J. draper, North Shields, June 12, at one, Newcastle (adj. May 25), last exam.—*Brooks and Brooks*, curriers, Glastonbury, June 26, at half-past twelve, Bristol, and.—*Burton and Burton*, chymists, Hull, June 24, at eleven, Hull, and.—*Grosvenor*, W. ironfounder, Eagle Foundry, Shelton, and *Hanley*, both in Stoke-upon-Trent, Staffordshire, June 24, at twelve, Birmingham, and. div.—*Kelly*, W. brewer, Chester, June 23, at twelve, Liverpool, and.—*Smith*, T. and *G. ironmongers and plumbers*, Bishop Auckland, Durham, June 25, at half-past ten, Newcastle, div.—*Stuttard*, J. cotton spinner, Manchester, June 15, at twelve, Manchester (adj. April 14), last exam.—*Taylor*, J. merchant, Liverpool, June 23, at eleven, and. June 25, at eleven, first div.—*Wood*, B. jun. wine and spirit merchant, Leeds, June 23, at eleven, Leeds, and. June 25, at eleven, first div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Creddon, T. stock broker, Liverpool, June 23, at eleven, Liverpool.—*Grosvenor*, W. Stoke-upon-Trent, ironfounder, June 24, at one, Birmingham.—*Stephenson*, C. worsted manufacturer, Colne, June 25, at twelve, Manchester.—*West and Tennant*, stock brokers, Leeds, June 25, at eleven, Leeds.

Partnerships Dissolved.

Gazette, May 26.

Atherton, J. *Frazer*, W. and *Holt*, G. E. tailors, Liverpool, May 1. Debts paid by *Atherton* and *Holt*.—*Ayrton*, H. and *Horrocks*, J. share brokers, Bolton-le-Moors, May 23.—*Broom*, J. and *A. and Cullen*, T. G. warehousemen, Wood-street (not dated). Debts paid by Messrs. Broom.—*Bradshaw*, G. and *S. and Blinckhorn*, V. engravers to calico printers, Pendleton, so far as regards *Blinckhorn*, May 22. Debts paid by the remaining partners.—*Cullum*, A. and *Ling*, A. milliners, Woodbridge, March 17.—*Ebrall*, S. and *E. gunmakers*, Shrewsbury, May 20.—*Grandridge*, M. and *J. clog makers*, Rochdale, May 22. Debts paid by *J. Grandridge*.—*Grant*, G. *Gladstone*, R. *Kelso*, A. *Hay*, A. *Wyllie*, J. and *Matheson*, F. commission merchants, Calcutta, so far as regards *Hay*, April 6.—*Hewes*, S. and *Jones*, R. grocers, Bath-pl. New-road, March 25. Debts paid by *Hewes*.—*Hinds*, R. and *J. wine coopers*, Charles-st. Mile-end, Newtown, May 22. Debts paid by *R. Hinds*.—*King*, J. and *D. P. attorneys*, Buckingham, May 1. Debts paid by *D. P. King*.—*Rhodes*, John and *James*, and *C. T. cotton spinners*, Rochdale, so far as regards *C. T. Rhodes*, May 23.—*Rigby*, T. and *W. plasterers*, Rochdale, May 19. Debts paid by *Rigby*.—*Simpson*, S. and *Tilby*, H. I. cheese-mongers, Oxford-st. and Duke-st. May 22.—*Smith*, T. J. and *B. mousline de laine manufac-*

turers, Colne, so far as regards *T. Smith*, May 23. Debts paid by the remaining partners.—*Stanton*, J. and *P. H. Milner*, T. *Bilton*, W. H. *Leonard*, W. S. *Bell*, W. *Ingledeu*, H. *Forbes*, J. and *Green*, G. copperas manufacturers, Newcastle, March 25.—*Thompson*, W. and *Storey*, F. grocers, Hartlepool, May 21. Debts paid by *Storey*.—*Walton*, J. and *Shaw*, J. cotton spinners, Oldham, May 22.

Gazette, May 29.

Abbott, B. J. and *Walton*, J. C. accountants, Coleman-st. May 26.—*Anderson*, W. H. and *Smith*, J. H. accountants, Eldon-st. Finsbury-circ. April 2.—*Backett*, W. and *Doyck*, J. E. oil purifiers, Stoney-st. Borough-market, May 15.—*Banks*, J. *Danby*, T. and *Hymmer*, J. corn millers, Snaith, Jan. 1.—*Brown*, S. and *Pratt*, B. cabinet makers, Leicester, May 26. Debts paid by *Brown*.—*Broadhead*, J. and *Watson*, H. worsted stuff manufs. Halifax, Feb. 14.—*Brown*, T. jun. and *Whitaker*, F. J. commission agents, Manchester, May 26.—*Buckley*, J. *Heap*, T. and *Walmesley*, J. roller makers, Oldham, May 27. Debts paid by *Heap* and *Walmesley*.—*Capas*, T. and *Chaffell*, A. builders, Balsall-heath, and elsewhere, May 28. Debts paid by *Capas*.—*Colchester*, F. M., C. M. and *A. L. hatters*, Gloucester, Feb. 18.—*Edwards*, W. J. and *Ery*, W. G. May 4. Debts paid by *Edwards*.—*Gregory*, H. and *Rogers*, W. dealers in porter, Newport, May 27. Debts paid by *Gregory*.—*Haigh*, W. and *J. colliery proprietors*, Prestwich-cum-Oldham, May 26.—*Hereman*, S. and *Shepherd*, J. gardeners, Eltham, May 27. Debts paid by *Hereman*.—*Hill*, T. and *Lloyd*, H. ironmongers, Liverpool, May 27.—*Hosella*, J. and *Thomas*, W. linen drapers, Cardiff, May 26. Debts paid by *Hosella*.—*Houghton*, H. and *Masey*, J. warehousemen, Friday-april 11. Debts by *Houghton*.—*Hurst*, S. *Fowler*, W. and *McCollin*, W. smiths, Hull, May 25.—*Jeffers*, M. and *Abbay*, T. share brokers, Leeds, Dec. 31.—*Jones*, R. and *T. builders*, Ebury-st. and Lower Belgrave-st. May 27.—*Pierce*, R. and *Harrison*, E. bricklayers, Liverpool, May 23. Debts paid by *Pierce*.—*Parratt*, T. W. and *C. engravers*, Bradford, May 27. Debts paid by *C. Parratt*.—*Rowlandson*, M. and *Torlock*, B. soda water manufacturers, Baker's-row, Whitechapel, May 27.—*Shaw*, G. W. and *J. cotton spinners*, Saddleworth, May 1. Debts paid by *G. and W. Shaw*.—*Shepherd*, W. *Bates*, J. and *Foster*, J. woolstaplers, Bradford, May 26. Debts paid by *Bates*.—*Smyth*, J. A. T. *Ridson*, J. and *Werdinsey*, A. de. carriage dealers, Brook-st. New-road, so far as regards *Smyth*, May 25.—*Sowood*, T. and *Cheetham*, J. engravers, Manchester, Jan. 30, 1845. Debts paid by either partner. *Stocks*, W. and *Hudson*, R. B. share brokers, Huddersfield, May 12.—*Stott*, J. and *Greenhalgh*, J. cotton spinners, Oldham, May 18. Debts paid by *Stott*.—*Stott*, J. and *Vickers*, T. leather dressers, Newton-leath, near Manchester, March 25. Debts paid by *Stott*.—*Symons*, J. and *Barnes*, J. tailors, Hadlow, Dec. 1. Debts paid by *Barnes*.—*Tomlinson*, J. *Warr*, J. *Critchley*, T. and *Asbury*, J. M. cotton spinners, Bolton-le-Moors, Dec. 28, 1841.—*Tomlinson*, J. *Critchley*, T. and *Asbury*, J. M. cotton spinners, Bolton-le-Moors, Nov. 1.—*Waterhouse*, J. and *Sulton*, R. calico printers, Salford, May 25.—*Weikersheim*, B. *Brandeis*, J. and *Webb*, W. cobalt and nickel refiners, Birmingham, as regards *Weikersheim*, May 23. Debts paid by the remaining partners.—*Wheelock*, S. and *Jones*, W. merchants, Market Drayton, May 28.—*Weikersheim*, B. and *Brandeis*, J. merchants, Liverpool, May 23. Debts paid by *Brandeis*.

Insolvents

Petitioning the Courts of Bankruptcy.
Gazette, May 26.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Backhouse, J. victualler, Ipswich, June 11, at one.—*Marshall*, G. sen. carpenter, May 30, at eleven.—*Patterson*, A. professor of music, Blackheath, May 30, at eleven.—*Smith*, J. carman, Battersea, June 11, at one.

PETITIONS TO BE HEARD IN THE COUNTRY.

Hamling, J. jun. out of business, Plymouth, June 3, at eleven, Exeter.—*Sandford*, J. O. debt collector, Hulme, June 8, at twelve, Manchester.—*Smith*, E. shoemaker, Walsell, June 4, at twelve, Birmingham.—*Stott*, E. butcher, Liverpool, June 2, at eleven, Liverpool.

MEETINGS AT BASINGHALL-STREET.

Chambers, G. clerk, Rosomon-buildings, Islington, June 18, at half-past eleven.—*Dollman*, E. chemist, Stratford, June 18, at half-past eleven.

Gazette, May 29.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Broad, C. cheese-monger, High-st. Hoxton, June 9, at eleven.—*Camp*, W. general dealer, Hertford, June 9, at eleven.—*Cripps*, T. painter, Queen's-road, Notting-hill, June 10, at eleven.—*Gaithorpe*, S. T. W. late surveying clerk, Portland-place North, June 11, at eleven.—*Green*, W. H. Bedford, June 10, at eleven.—*Ground*, E. B. in the employ of the London City Mission Society, June 9, at eleven.—*Hills*, S. out of business, South Bersted, May 30, at half-past two.—*Sedrick*, W. pig dealer, Stanmore, June 9, at half-past twelve.

PETITIONS TO BE HEARD IN THE COUNTRY.

Barlow, R. bootmaker, Whitley, June 2, at eleven, Leeds.—*Cavrods*, R. beer seller, Bradford, June 2, at eleven, Leeds.—*Dixon*, T. traveller, Leeds, June 11, at eleven, Leeds.—*Duck*, J. out of business, Derby, June 11, at ten, Birmingham.—*Gorton*, T. labourer, Oswaltwistle, June 9, at one, Manchester.—*Hudson*, H. cloth manufacturer, Guiseley, June 2, at eleven, Leeds.—*Jameson*, C. cork cutter, Birmingham, June 4, at twelve, Birmingham.—*Jaeger*, J. stuff manufacturer, Clayton Heights, June 11, at eleven, Liverpool.—*Ledger*, T. late dealer in tobacco, June 5, at eleven, Liverpool.—*Lloyd*, E. plumber, Ellesmere, June 16, at ten, Birmingham.—*Newey*, W. bricklayer, Birmingham, June 16, at ten, Birmingham.—*Pate*, R. butcher, Birkenhead, June 9, at eleven, Liverpool.—*Reed*, S. rag merchant, Baley, June 2, at eleven, Leeds.—*Richards*, M. beer retailer, Bristol, June 9, at twelve, Bristol.—*Smith*, M. bricklayer, Liverpool, June 9, at eleven, Liverpool.—*Ward*, J. beer-house keeper, Calverley, June 25, at eleven, Liverpool.—*Willis*, C. victualler, late of Liverpool, June 25, at eleven, Liverpool.—*Willis*, H. out of business, Gedling and West Bridgford, June 15, at twelve, Birmingham.—*Woodward*, W. jun. brazier, Nottingham, June 23, at ten, Birmingham.—*Zanowski*, R. S. dealer in steel pens, Exeter, June 4, at one, Exeter.

From the Gazette of Friday, June 5.

Bankrupts.

Clark, E. builder, Mortimer-rd. Kingsland.—*Hopkins*, C. G. M. J. tailor, Portman-st. Portman-sq.—*Mitchell*, W. furniture dealer, Finsbury-place, South.—*Smithson*, W. M. printer and publisher, Canterbury.—*Boddington*, J. corn dealer, Manchester.—*Sheel*, R. grocer, Wilsted-st. Somers'-town.—*Paine*, J. D. publisher, Hatcham, Surrey.—*Shawson*, P. and *Young*, T. B. druggists, Louth, Lincolnshire.—*Stelling*, H. wool comber, Well, Yorkshire.—*Nortcliffe*, W. dyer and stover, Milk-st. Manchester.—*Beatham*, J. gun maker, Richmond, Yorkshire.—*Bleakley*, R. bricklayer, Liverpool.—*Conlen*, J. woollen draper, Cheltenham.—*Solomon*, J. outfitter, Exeter.

ADVERTISEMENTS.

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Thursday, May 7.

TAULOCK v. ROBEY.

Account on bill for redemption—Mortgagee and mortgagee—Parties—Form of decree—Practice.

Where upon a bill filed for redemption of mortgaged premises, the personal representatives of the original mortgagee who had first taken possession of the mortgaged premises was not made party to the suit, no account can be obtained of the rents, &c. during the possession of such original mortgagee.

The decree upon a bill for redemption directed the Master to take an account of what was due on the mortgage, and an account of the rents which had been received by the mortgagee in possession: Held that such a decree does not authorize the Master to charge the mortgagee with an occupation rent on the mortgaged premises which had been in his own possession.

Practice on dismissal of bill pending an interlocutory motion.

This was an appeal from the decision of the Vice-Chancellor of England, who had disallowed exceptions to the Master's report, which had been taken by the plaintiff. The plaintiff also moved by way of appeal for an enlargement of the time fixed by the decree for payment of the mortgage-money. The report which had been excepted to was made in May 1844; on the 19th of Nov. 1844, the exceptions were disallowed, and on the 28th of Nov. the plaintiff gave notice of motion for an enlargement of the time for paying the mortgage-money which had been appointed for the 30th of November. It was asked that the time might be enlarged for six months. On the 2nd of December the defendant obtained an order of course to dismiss the plaintiff's bill, because the mortgage-money found by the report to be due had not been paid. The order of dismissal was obtained without notice, and it had been contended that, pending a motion to enlarge the time for payment, such order of dismissal could not properly be made.

Roe and Miller supported the appeal.

Wakefield and Randell objected that the appeal could not be heard, inasmuch as, the bill having been dismissed, there was no such cause in court. There was no instance in which the time for payment of mortgage-money had been enlarged on decree for redemption; and Lord Eldon had expressly decided against it in the case of *Novosielski v. Wakefield* (17 Ves. 417). On that principle the Vice-Chancellor had refused the motion in March 1845, and until May 1846 there is no appeal. The order to pay the mortgage-money on a certain day, contained in a decree to redeem, operates as a decree of foreclosure absolute against the plaintiff in the event of nonpayment of the money.

The LORD CHANCELLOR.—Are there any special circumstances? You must open the whole question. Roe and Miller then opened the merits.—The mortgage was made in 1774 to the defendant's father,

for securing the principal sum of 99l. 12s. 8d. In 1781, the mortgagee entered into possession, and continued in the personal possession of the premises until his death in the year 1817. The annual value of the property was about 12l. and the bill alleged that by charging the mortgagee with that yearly amount, he had been overpaid, all principal and interest, at the time of his death by the sum of 93l. The mortgagee devised the mortgaged premises to his son, the present defendant, who was also his executor, but the bill did not make him a party to the suit, or charge him as such executor. The defendant had remained in possession from the death of his father, and the decree having directed an inquiry as to what was due to the defendant on the mortgage, and an account of the rents of the mortgaged premises, the Master had reported that 372l. 5s. 11d. was due to the defendant on the mortgage for principal, interest, and costs. That was by charging the estate with the original debt of 99l. 12s. 8d. and interest from 1774, and without charging the defendant with any rent. It was admitted that, without the presence of the representative of Robey the elder, in that character, the account as against his estate could not be taken; but it was contended, on the part of the plaintiff, that, in order to ascertain what is due upon the mortgage, as directed by the decree, the Master should have charged the defendant with the value of the mortgaged premises since he had been himself in possession, namely from 1817. Even in that way, the defendant would have been shown to have received 138l. more than the principal and interest since the death of Robey, the father. The Master held that he was not authorized by the decree to charge the defendant with an occupation-rent, but the Master also found, at the plaintiff's request, the circumstances as to the dates of the mortgage, the entry, and death of the defendant's father, and that if he had been charged with a rent up to the time of his death, which would have amounted to 432l. the balance against him would have been 93l. This report had been excepted to by the plaintiff, because the defendant had not been charged with any rent, but the Vice-Chancellor overruled the exception. The exceptions had been overruled on the 19th of November, 1844, and the plaintiff had given notice of his intention to appeal from that decision before the 2nd of December, when the order to dismiss the bill was obtained, and the plaintiff's petition of appeal was answered on the 12th of the same December. The motion to enlarge the time for payment of the mortgage-money was then pending, and was heard on the 3rd of March, 1845. The motion was then refused.

The LORD CHANCELLOR.—The Vice-Chancellor having refused to enlarge the time, the order dismissing the bill stands.

Roe.—The present motion is to discharge the order of the Vice-Chancellor refusing the motion, to discharge the order for dismissing the bill, and that the time for payment of the mortgage-money may be enlarged. They cited *Garland v. Littlewood* (1 Beavan, 527); *Green v. Baddely* (7 Beavan, 274); *Bennett v. Mathews* (5 Jurist, 174); *O'Connell v. Macnamara* (3 Dru. & Warren, 411); *Hamilton v. Houghton* (2 Bligh, 169); *Quarrell v. Beckford* (1 Maddock, 269); *Wilson v. Metcalf* (1 Russell, 530).

Wakefield and Randell, for the defendant, were not heard.

The LORD CHANCELLOR.—The exceptions were heard on the 19th of November, and the appeal petition was not answered till the 12th of December. Why did not the plaintiff apply to the Court to stay proceedings?

Miller.—The motion to discharge the order to dismiss the bill, and to enlarge the time for payment, was then pending.

The LORD CHANCELLOR.—Then you did apply to the Court, and it decided against you. The Master is correct in his report, in point of law, for the report is consistent with the decree which directs the Master to take an account of what is due upon the mortgage for principal and interest, and of the rents received by the defendant. But the Master has also introduced into his report other facts which may lead to other conclusions; but those conclusions are not consistent with the decree.

Saturday, May 23.

Re DYCE SOMBER, a Lunatic.

Practice in lunacy—Allowances of election expenses incurred by the lunatic—Inquiries.

A petition was presented by the committee of the estate, which, amongst other things, prayed that a reference to the Commissioner might be directed with respect to an electioneering account sent in by Mr. Coppock, who had been the lunatic's agent at his election for Sudbury. The petition stated that the money had been expended on the lunatic's behalf in a contested election for the borough of Sudbury, in which Mr. Dyce Somber had been returned to Parliament, but that return had been questioned, and on petition, the lunatic was unseated.

Taney and Lloyd, for the petition.—It appeared from a memorandum found amongst the lunatic's papers, that he had paid no less a sum than

3,000l. on account of that election and petition, and the committee did not feel justified in making or recommending any further payment without inquiry.

J. H. Palmer, for Mr. Coppock, opposed the reference. The payments made during a contested election are of such a nature that it was almost impossible to produce vouchers for them, or to give evidence that the commissioner would deem to be technically satisfactory.

The LORD CHANCELLOR.—It is impossible for me to direct a payment of a claim of that nature out of the estate of a lunatic, without a previous inquiry. The commissioner will decide upon the statements and evidence brought before him as to the propriety of the expenditure. The inquiry must be as to the state of the accounts between Mr. Coppock and the lunatic, for the purpose of ascertaining whether any, and what, sums are due to Mr. Coppock from the lunatic, or from Mr. Coppock to the lunatic, and such account must include the money already paid.

Wednesday, May 27.

Re THE RECTOR OF LAMBETH.

Land taken by a railway company, in which an ecclesiastical corporation sole has a reversionary interest, must, under the Lands Clauses Consolidation Act, 8 Viet. c. 18, s. 74, be paid into court, and the interest must be accumulated until the reversion falls into possession. The incumbent is not entitled to receive any part of the interest.

Kent supported a petition by the rector of Lambeth, which prayed that a sum of upwards of 2,000l. which had been apportioned as the share of the rector in some property taken by the South-Eastern Railway, might be invested, and the dividends ordered to be paid to the rector. It appeared that property had been granted on leases for long terms of years, of which thirty-one are still unexpired. The Lands Clauses Consolidation Act, 8 Viet. c. 18, s. 74, directs that "where any purchase-money or compensation, paid into the bank under the provisions of this or the special Act, shall have been paid in respect of any lease for a life or lives, or years, or for a life or lives and years, or any estate in lands less than the whole fee-simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery, in England, or the Court of Exchequer, in Ireland, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or a share thereto, as may be." Under that clause the rector asked that the money received from the railway company, in respect of his reversionary interest, might be invested, and the dividends ordered to be paid to the rector of Lambeth for the time being.

Cockrell, for the Archbishop of Canterbury, did not oppose the prayer of the petition, but submitted to any order the Court might make.

Anderson, for the railway company.

The LORD CHANCELLOR, after considering the clause, held that he had no power to order the immediate payment of the dividends to the rector, which must be accumulated for the benefit of the rectory of Lambeth at the expiration of the lease.

His lordship remarked that it seemed to be somewhat hard upon the rector, and suggested that an application might be made to the Ecclesiastical Commissioners on the subject.

May 7 and June 2.

YOUNGHUBAND v. GIBBORNE.

Restriction on alienation—Trust—What interests pass to assignees in bankruptcy or insolvency.

A fund given to trustees, for the maintenance, support, and clothing of an adult male person, the manner and means of such application being in the trustees' discretion, but the whole fund being applicable, forms a beneficial interest in the fund for the cestui que trust, which will pass to his assignees under the Insolvent Act. The cases of *Twopeny v. Peyton* and *Godden v. Crowhurst*, doubted.

By the will of Francis Duckinfield, certain real estates were given to trustees, upon trust to raise yearly during the life of his brother, John William Astley, an annuity of 400l.; and the testator directed that the annuity should be held by his said trustees "upon trust for the personal support, clothing, and maintenance of his said brother, so as not to be subject or liable to the claims of any person or persons to whom he should charge, anticipate, or otherwise incur the same, nor to his creditors under a commission of bankruptcy, or any Act for the relief of insolvent debtors, or to his own control, contracts, debts, or engagements." The annuity was to be paid to his brother from time to time, when and after the same should become due, until he should attempt to charge, anticipate, or otherwise incur the same, or until any other person or persons might claim the same; and from and after such attempt or claim, the same was to be applied by his said trustees, or some

person under their direction, for or towards the personal support, clothing, and maintenance of his said brother, and for no other purpose whatsoever.

In May 1842 John William Astley was discharged as an insolvent debtor, and the plaintiff, as his assignee, instituted a suit in this court for the purpose of obtaining the annuity. The cause was heard before Vice-Chancellor Knight Bruce, who held that this was a trust for the benefit of J. W. Astley, and, as such, passed to his assignee. From that decree the insolvent appealed.

Hallett supported the decree, and contended that no continuing interest in property could be so given to an adult person as to prevent it passing to his assignees under a bankruptcy or insolvency. He cited and referred to *Tullett v. Armstrong* (4 Myl. & Craig); *Brandon v. Robinson* (18 Ves. 429); *Foley v. Davidson* (1 Bro. C. C. 203); *Lear v. Leggett* (2 Simons, and 1 Russell & Mylne); *Pym v. Lockyer* (12 Sim. 394); *Green v. Spicer* (1 Russ. & Myl.); *Piercy v. Roberts* (1 Myl. & Keen); *Lord v. Buns* (2 Young & Collyer C. C. 98); *Rippon v. Norton* (2 Beavan, 63); *Page v. Way* (3 Beavan, 20); *Kearsley v. Woodcock* (3 Hare, 185).

Wakefield and Beales, for the insolvent, contended that this was not a beneficial interest in the insolvent, as no money was to be paid to him, but simply a discretionary trust to maintain him. It was distinguishable from the cases which proceeded upon the principle that the insolvent or bankrupt had in substance an absolute beneficial interest. His interest in the annuity was forfeited by his insolvency to the trustees, who were to make another provision for him. They cited *Dommelt v. Bedford* (6 Term Reports, 684); *Shee v. Hale* (13 Ves. 404); *Godden v. Crouhurst* (10 Sim. 642); *Twopeny v. Peyton* (10 Sim. 487).

Hallett, in reply.

The LORD CHANCELLOR.—There is no dispute about the general rule. A party may give his property to another person, so as to go over in the event of his attempting to alienate, or of his bankruptcy or insolvency, but he cannot give a continuing estate to such person to subsist after his bankruptcy or insolvency. That would be to alter the legal incidents of property. The general principle is not controverted. In this case the testator has given his trustees authority to pay 400l. a year into the hands of the legatee, and he has declared that if he should attempt to charge, anticipate, or otherwise incumber the same, or become bankrupt or insolvent, the same should be applied by the trustees, or by some person under their direction, for or towards the personal support, clothing, and maintenance of the legatee, and for no other purpose. The legatee is entitled to the whole fund; it is to be applied for no other purpose or object, except for his benefit. I am of opinion that, under such circumstances, the legatee has an absolute interest in the annuity which passes to his assignees. I agree with the Vice-Chancellor, that if this case is not distinguishable from *Twopeny v. Peyton*, and *Godden v. Crouhurst* (10 Simons), then I also dissent from those cases. The legatee here has the whole benefit, and he being insolvent, that benefit must pass to his assignees. The decision of the Vice-Chancellor must be affirmed. As the Vice-Chancellor suggested that the case was a proper one for appeal, the costs of all parties will come out of the estate.

ROLLS COURT.

Friday, May 8.

FRISTEL v. KING'S COLLEGE, CAMBRIDGE.
Practice—Dissolving injunction—Alleged fraud—Usury—Motion to dissolve after replication and before publication.

A fellow of a college having by assignment mortgaged the stipend to which he was entitled in respect of the fellowship, and, in a suit to obtain payment, an order having been obtained by the plaintiff before answer filed, directing no further payments thereof to be made to any one till further order, the defendant, the fellow, put in his answer charging fraud, and alleging the stipend to be unassignable, and a replication being filed, he obtained an enlargement of publication, and then moved to discharge the order. The Court refused to consider the question as to whether the stipend was assignable, on an interlocutory motion; and the defendant being precluded from bringing forward his evidence by the enlargement of publication, the motion, though founded on the allegations of fraud, &c. in the answer, was refused, the costs to be costs in the cause.

This was a suit instituted by the plaintiff to obtain payment of 300l. and interest due upon a mortgage made to him on the 28th December, 1842, by the Rev. Lionel Buller, senior fellow of King's College, Cambridge, then residing out of the jurisdiction. The bill having been filed, the plaintiff moved for an injunction on the 10th of February, 1845 (see 4 Law T. 391), to restrain the bursars of the college from paying to Mr. Buller the annual stipend to which he was entitled in respect of his fellowship, and the motion was allowed to stand over till the 3rd of March following, when an order was made directing that no

payments should be made to any one till further order. Mr. Buller having returned to England in December last, put in his answer to the bill, and thereby alleged that the transaction was fraudulent and usurious, for he had never intended nor proposed to the plaintiff to assign the emoluments of his fellowship, which he believed to be unassignable, but only to raise money on a deposit of certain articles of value, and upon a policy of assurance. He had given his bill also for the entire sum. The plaintiff, however, on their meeting to complete the loan, placed before him three deeds of assignment, one of the articles of value, another of the policy, and a third of the emoluments of the fellowship, which latter he at first refused to sign; but the plaintiff refusing to proceed with the business on any other terms, he, being in great distress for money, and being taken by surprise, did at last sign it. The transaction was therefore fraudulent. And, after all, he only got part of the loan in money, the rest being paid him in the form of a quantity of wine and brandy, which he believed were of much less value than the price charged. The transaction was therefore usurious. To this answer the plaintiff filed a replication, and the cause being thus at issue, both parties proceeded, or were in a condition to proceed, to take evidence. In this state of things Mr. Buller got publication enlarged, and now moved, on the allegations in his answer, to discharge the order of the 3rd March, 1845.

Tinney (with him Doria), for the motion.—As to the usurious and fraudulent nature of the transaction, the defendant swears he only got a part of the loan in money, and the other part of it was paid in articles of little value, so that interest at 5 per cent. is being paid for 300l. when the sum advanced is less than that sum. But the question is, whether the fellowship be capable of being assigned? [The MASTER of the ROLLS.—Can that question be discussed on an interlocutory motion? If you argue it, it must be on the conviction that it is perfectly absurd to maintain the proposition that the emoluments of the fellowship are assignable.] There are two principles applicable to the present case; first, that no office, or profits of an office connected with duties to be performed, can be assigned; and secondly, an office cannot be deputed where duties are to be assigned. The property of the college is vested in the corporation, though it is distributed to individuals; but it cannot be said to be the property of any one, but of all. A suit was instituted against this very college, and a motion made on the 16th of August, 1830, for an injunction, and a receiver was refused. They cited *Oliver v. Emsome* (1 Dyer, 1 b); *Maud's case* (4 Coke, 110); *Barwick v. Reade* (1 H. Bl. 627); *Flarty v. Odum* (3 T. R. 681); *Davis v. Duke of Marlborough* (1 Swanst. 79); *2 Swanst. 108*; *Cooper v. Reilly* (2 Sim. 560); *Dean and Canons of Windsor* (2 Beav. 544); *Hodgkinson v. Wyatt* (1 Q.B. Rep. 14); *Com. Dig. Office, C. D.*; *2 Rol. 93*.

Turner (with him Hall), for the college.

Kindersley (with him Glasse) was about to oppose the motion, when

The MASTER of the ROLLS said he would not trouble him on the question of the assignment. After stating the facts, he observed that there had a cause before the Vice-Chancellor of England in 1830, the facts of which have not now been stated the Court, and besides, the statutes of the college would have to be examined, and yet counsel for the plaintiff had not even seen the case referred to. At the time of making the order, he did not decide this important question, nor would he on the present occasion, except that he ought not to take it for granted that the assignment was invalid. It was a matter of great importance to the college, and also to all persons having dealings with it. The argument involves this state of things, that a fellow may make a mortgage, and then turn round and say the emoluments are not assignable. Then, as it leads to that consequence, the public may be seriously aggrieved by it. A great deal of important matter had been brought forward, and much, to his certain knowledge, had not been brought forward. He would, therefore, not make the order to discharge on that ground. As to the fraud, he would hear the other side.

Kindersley.—The replication was filed in February last, and the defendant has now got publication enlarged; and then he comes and moves on the allegations of fraud in his answer, while we are stopped from using our evidence till publication passes, and have not the means of discussing the questions at issue. The matter would have been tried now, if publication had not been enlarged.

Tinney, in reply.—It is, if continued, almost a final order as against us, for Mr. Buller has nothing to live upon.

The MASTER of the ROLLS.—On that subject I ought not to interfere. If, after putting in his answer, Mr. Buller had applied to the Court, such order as was proper in the case would have been then made; but a replication being filed, each party thereupon undertakes to prove his case; and the evidence would have been now ready on both sides; but the defendant having enlarged publication, the plaintiff is prevented from producing his proof; and then it is

desired that I should grant the order on the evidence in the answer. I cannot do so. I refuse the motion; costs to be costs in the cause. If more than the sum due is accumulated, Mr. Buller may take the difference.

Kindersley said there was not near enough for principal and interest of the original debt, and there were costs besides.

Friday, May 22.

KINDER v. LORD ASHBURTON.

Practice—Enlarging publication—Delay in executing commission to take evidence—Vague statements in affidavits.

Issue being joined in a cause in April 1843, a commission to take evidence was not sued out by the defendants till the year 1845, in the month of October of which year publication was enlarged to Hilary Term then next, then to March, then to the beginning of this present Trinity Term, and it was now sought to enlarge it to the end of the Term. The evidence was being taken in Mexico by the agents of the defendant, and it was stated on affidavit to be difficult to obtain it, as well from the nature of the evidence itself as the course of proceeding usual in Mexico; and on the oath of the defendants that there "was a reasonably near prospect" of the commission being returned by the end of the Term, the motion was granted.

This was a motion to enlarge publication in this cause till the end of the present term, in order that, if possible, a commission which had been sued out to take evidence in the republic of Mexico might be returned, and be made available by the defendants. The cause was at issue in 1843, and in March 1845, the commission was sent out by the defendants' agents here to their agents in Mexico, with instructions to proceed as fast as possible. Nothing more was done till May, when a duplicate of the commission was sent out, but nothing was said as to despatch. Other communications passed from time to time, but at first there was nothing said as to expedition; but ultimately a letter was written by the agents here, pressing the agents there to make haste, and informing them of the danger of delay, if no satisfactory explanation of it could be given. A letter was then sent by the agents in Mexico, stating that the delay arose from the difficulty of obtaining documents which it was necessary to obtain for the purposes of the commission; that all the documents which they had succeeded in obtaining previously had been translated, and that the taking of the evidence had been interrupted by the want of two documents, which then, however, had been found, and were ready to be translated. That was in January last, and nothing had been shewn to be done since. This was the fourth application to enlarge publication, there having been an enlargement from October last to Hilary Term, then to March, then to the first day of the present Trinity Term, and now it was asked to enlarge still further till the end of the Term.

Glasse (with him Lloyd) produced affidavits to shew how difficult it was to execute such a commission, as well from the nature of the documents as from the course of proceedings in Mexico. They also produced an affidavit by the defendants, in which they stated they had "a reasonably near prospect" of the return of the commission by the end of the term. On those grounds they asked for the order.

Turner (with him Heathfield) opposed the motion.—The delay had been great, and there was no peremptory urgency manifested in the letters to the agents in Mexico. [The MASTER of the ROLLS.—Were they to send an agent with a pistol?] There was too much indication of making excuses, and of suggesting to the agents there to do so. The plaintiff had his copies of documents in six days, and the defendants have not yet finished. [The MASTER of the ROLLS.—He was fortunate, but that is no reason why they should obtain theirs in so short a time.] Under the circumstances, the most cogent evidence of diligence must be given.

The MASTER of the ROLLS.—Time, and very often a great deal of it, is necessary in the administration of justice; and Courts cannot act without a large allowance of it. The mere passing of time is not objectionable, if that be all; but the neglect of time is, for then there is unnecessary delay, and that is a grievance and a thing to be avoided. There is, however, a worse grievance, and that is, the exclusion of evidence that may be obtained. The resistance to this motion is grounded on this, that the defendants cannot give a reason for the delay of their agents in Mexico. What is said here is, that the agents of the defendants have urgently pressed the agents in Mexico to get the evidence, told them the danger of delay, and that, if no satisfactory account of it could be given, the consequences would be most unfavourable; and this is turned against them, and it is said they were thereby suggesting excuses to be made by the agents in Mexico. In one sense they were, but what else could they do? Well, again, it is said the statement of the defendants in their affidavit is vague—"a reasonably near," &c.—and so it is; and if the agents were here, and were making the statement, it would not be satisfactory; but what more can the defendants say? Having a reasonably near prospect

of the commission being returned by the end of the term, they ask to enlarge publication. It is a reasonable request, and I shall enlarge accordingly, but the defendants must pay the costs.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Monday, April 27.

EYRE v. GREEN.

Construction—Jointure—Contribution.

A B by his marriage settlement covenanted to settle his estates in O. and B. or such part thereof as should be of the annual value of 900l. to the use of himself for life, and after his death to the use and intent that his wife C. should yearly receive for her jointure 800l. to be chargeable upon the hereditaments, so to be settled as aforesaid. No settlement was made by A B in pursuance of this covenant, but by his will he gave his estates in O. and B. to his wife and her assigns for life. By indentures executed after the date of the will, A B revoked his will as to the estates in O. and these, therefore, descended upon his heir-at-law. Held, that the estates in O. were not exclusively liable to satisfy the covenant in the marriage settlement, but that the estates in B. were liable to contribute.

By an indenture dated the 19th of December, 1803, being the settlement made on the marriage of William Hodges and Catherine his wife, after reciting (among other things) that he was seised in remainder in tail male expectant on the decease of his father, of the capital messuage of Boulney and other hereditaments in the counties of Oxford and Berks, the said William Hodges covenanted with E. F. Green, C. Green, J. Eyre, and W. Eyre, their heirs and assigns, well and effectually to grant and settle such estates, or so much and such part thereof as should be of the clear annual value of 900l. and upwards, clear of all incumbrances, to the use of himself for life, and after his death to the use, intent, and purpose, that the said Catherine and her assigns should yearly receive for her life, for her jointure, and in bar of dower, one annual sum, or clear yearly rent-charge of 800l. to be chargeable upon and yearly issuing and payable out of the said hereditaments, of the annual value of 900l. so to be conveyed as aforesaid, with usual powers of distress and entry, and subject thereto to the use of the said trustees for 100 years, upon trust for securing the said annuity with remainder to the use of the said William Hodges. No settlement or conveyance was ever made in pursuance of the covenant contained in the last-mentioned indenture. By the will of the said William Hodges, dated the 9th of May, 1806, after confirming the said settlement made on his marriage, he gave and devised to E. F. Green and C. Green, and their heirs, the said capital messuage called "Boulney Court," and all his farms, lands, and hereditaments in the county of Oxford, and his farms, lands, and hereditaments in the county of Warwick, in the county of Berks, or elsewhere in Great Britain, with their appurtenances, unto his wife Catherine, and her assigns, during her life, with divers remainders over. At the time of making his will, the testator was seised of a copyhold estate in Berkshire, and of freehold hereditaments in Oxfordshire, subject to a term of 2,000 years, created by Anthony Hodges, deceased, for securing 8,000l. and interest, and of freehold hereditaments in Oxfordshire, not subject to the term. By an indenture dated the 31st of May, 1806, the testator mortgaged his freehold estates in Oxfordshire not subject to the term of 2,000 years, to the said E. F. Green and C. Green, their heirs and assigns, for securing 3,000l. and interest; and by another indenture, dated the 25th of October, 1811, the same hereditaments were charged with the further sum of 2,000l. and interest. By indentures of lease and release, dated respectively the 4th and 5th of December, 1811, the testator granted and released unto and to the use of C. Green and G. Green, and their heirs and assigns, the said capital messuage, and all the hereditaments in Oxfordshire, upon trust for sale; and in the meantime to mortgage the same; and out of the money to pay certain sums, and to stand possessed of the surplus thereof, in trust for the testator, his executors or administrators, as personal estate, and as to such of the hereditaments as should not be sold, upon trust, for the testator, his heirs and assigns. And it was by the same indenture declared, that the said trustees should receive the rents of the said hereditaments, and the money to arise by the sale of the timber, and thereout pay the interest on the said sum of 8,000l.; and, in the next place, should pay to his wife Catherine an annuity of 750l. quarterly, for her sole and separate use. The testator died in January, 1813, without having revoked or altered his said will, except as the same was revoked or altered by the said indentures. In a cause of *Hodges v. Green*, it was declared that the indentures of the 4th and 5th of December, 1811, operated as a revocation of the will as to the Oxfordshire estates, which, therefore, descended, subject to the incumbrances affecting the same, to F. R. Hodges, the heir-at-law of the testa-

tor. The Berkshire estates, therefore, only passed by the will. By a decree made in this cause, dated the 5th of June, 1845, it was referred to the Master to inquire (among other things) whether the Oxfordshire and Berkshire estates, or either, and which of them, or any, and what part thereof, were subject to any incumbrance, other than the mortgages before-mentioned. By his report, dated the 21st of February, 1846, the Master, after stating the facts before-mentioned, found that the Oxfordshire estates, which descended to the heir-at-law, were exclusively liable to satisfy the covenant contained in the indenture of the 19th of December, 1803, and that the same were not subject to any other incumbrances than the said mortgages, if the same, or any, or either of them, were then subsisting, and the said annuity of 800l. To this report exceptions were taken, on the ground (among other things) that the Master ought to have found that the Berkshire estates were subject and liable to satisfy the said covenant, and to the payment of the said annuity of 800l., or some part thereof.

Bazalgette and Follett for the exceptions.

Russell and W. M. James, for Mrs. Hodges, supported the Master's report.

Swanston, F. Bayley, Wigram, and Smythe, for other parties.

The following cases were cited: *Grigby v. Powell* (5 Sim. 290; 3 Clark & Fin. 103); *Knight v. Calthorpe* (1 Vern. 347); *Weyland v. Weyland* (2 Atk. 632); and *Middleton v. Pryor* (Amb. 390, and Appendix J.).

THE VICE-CHANCELLOR.—My opinion is, that as Berkshire is mentioned in the settlement, and as the Berkshire property was entirely copyhold, the Berkshire property, for every purpose of the agreement, stands upon the same footing as if it had been freehold. I need not trouble you, therefore, as far as that point goes. It might have been very different if it had been both freehold and copyhold. The first question with which I have to deal is, I think, that which would equally have arisen had any other person than the wife been a devisee, or had she not been a devisee. It is contended that, in such a case, the whole of this obligation would, as between the devisee and the heir, fall exclusively on the heir by analogy to the case of ordinary specialty debts. How would it have been in the case of a rent-charge? In the case of a legal rent charge affecting the whole estate, the devisee and the heir must have contributed rateably, notwithstanding any personal liability on the part of the testator to pay, provided it appeared, from the nature of the transaction, that the real estate was intended to be the first fund to pay. In the same manner, if the rent charge had been equitable, I apprehend the same consequence would follow. Here the case stands thus, that instead of being a legal or equitable rent-charge affecting the whole estate, the whole estate is subject to a covenant upon the part of the testator that he will—~~pay~~ ^{provide} ~~for~~ ^{for} ~~the~~ ^{the} ~~purpose~~ ^{purpose} ~~of~~ ^{of} ~~the~~ ^{the} ~~estate~~ ^{estate} ~~to~~ ^{to} ~~the~~ ^{the} ~~value~~ ^{value} ~~of~~ ^{of} ~~900l.~~ ^{900l.} ~~a~~ ^a ~~year~~ ^{year} ~~for~~ ^{for} ~~the~~ ^{the} ~~purpose~~ ^{purpose} ~~of~~ ^{of} ~~being~~ ^{being} ~~settled~~ ^{settled} ~~in~~ ⁱⁿ ~~a~~ ^a ~~particular~~ ^{particular} ~~manner~~ ^{manner}, but only for limited purposes, or purposes which leave him the valuable beneficial interest—in fact, only for the purpose of a rent-charge for life. Not having fulfilled the covenant, he then devises a portion of the estate, and leaves the rest to the settlement. My opinion is, that whether the covenant was or was not, or whether the devisee is or is not liable to an action upon this covenant, the whole estate was liable to the fulfilment of it; and that out of the whole estate a portion devoted to this particular purpose was to be selected by the devisee and the heir, who, together, represent the whole property. I am of opinion, therefore, supposing any other person than the wife had been devisee there must have been an apportionment of this rent-charge over the whole estate. The next question is, whether the circumstance of the wife being a devisee makes any difference. I am of opinion that the will exhibits an intention that the rent-charge of 800l. a year, and the whole settlement in fact, should continue in force as far as it could continue in force, consistently with the circumstance that the will gives to the wife for life the whole estate, out of the rents of which this future jointure was to come. There, therefore, was not at any moment any intention of satisfaction. I think the will left the jointure as it was. The jointure was left, therefore, as it was at the testator's death, and being left in its original state, it charged every portion of the property, and that brings the case round to one of apportionment; a decision which I consider entirely consistent with *Grigby v. Powell*; therefore let that be the declaration, that the 800l. a year to the wife equally charges every portion of the property, and that therefore the Berkshire estate is liable to contribute. With that declaration send it back to the Master, without either allowing or overruling the exceptions.

Saturday, May 9.

LAWTON v. RIBSDALE.

Practice—Vacation—15th Order of May, 1837.

Quere, whether the 15th Order of May, 1837, as to applications before another judge than the one, before whom the cause is, applies to the interval between Easter and Trinity Terms.

In this suit, which had been set down before the Vice-Chancellor of England, a motion for an injunction to stay trial was made in this Court, as the Vice-Chancellor of England was not sitting, it being the day after Easter Term.

A. H. Welch for the plaintiff, mentioned the 15th Order of 5th May, 1837, which provided that in the interval between the close of the sittings after any Term, and the commencement of the sittings before, or at the beginning of the next ensuing Term, applications for special orders may be made to any judge of the Court, &c.

The VICE-CHANCELLOR said that his impression was, that this vacation was not one to which this rule applied, but that he would grant the injunction, if it were thought desirable to take it, subject to the risk of having it discharged on the ground of his not having jurisdiction.

VICE-CHANCELLOR WIGRAM'S COURT.

Friday, May 22.

BELCHAM v. HARRISON.

Practice—Form of exceptions.

Rogers moved for leave to amend the form of exceptions to an answer. In framing the exceptions, he did not state *verbatim* the answer excepted to in the usual manner; he merely referred to it by excepting to the answer put in to the interrogatory No. 20 in the bill. The defendant had submitted to the exception in this form, and put in a further answer, which not being sufficient, it was referred to the Master, who declared the form of the exception improper, and refused to proceed upon it without an order of the Court; whereupon the present motion was made.

Romilly, for the defendant, opposed the motion.

The VICE-CHANCELLOR.—I shall not give any opinion upon the point, or make any order whatever in the matter.

May 29 and June 4.

SHARLAND v. MILDON.

Parties—Executor of son tort.

An agent of an executor of son tort is liable to be sued as executor of son tort, when he acts in collecting the assets of the testator with a knowledge that his principal has not had probate or administration granted.

This was a suit for the administration of the estate of George Sharland, and, amongst other matters, sought to make one of the defendants, named John Hewish, liable for some of the assets which had passed through his hands and was subsequently lost. George Sharland, by his will, dated in August 1835, devised all his real estates to trustees upon trust for his wife for life, remainder to his daughter, the plaintiff, in fee, and appointed his daughter sole executrix of his will; and afterwards died without revoking. The will was afterwards contested in the Ecclesiastical Court, and the widow intended to take out administration, and in the meantime she collected some of the assets of the testator, and was assisted in doing so by the defendant, John Hewish, who resided in the house with her. Administration, however, was not ultimately granted to the widow of Geo. Sharland, but was granted to other parties, whereupon the present suit was instituted by the plaintiff, Georgiana Sharland, an infant and daughter of the testator, by Thos. Maunder, as her next friend, against the defendants, the trustees of the will, the heirs-at-law of the testator, and John Hewish, as executor of son tort, and the administrators, to have the estate of Geo. Sharland administered under the decree of the Court.

The widow had died before the filing of the bill, and it was known that some of the assets which Hewish had received and paid to the widow, had been lost; the object of the suit, as against him, was to fix him as an executor of son tort. The heirs-at-law disclaimed all interest in the lands, and the bill was dismissed, with costs, as against them.

Hewish, by his answer, admitted having received some of the assets of the testator, but said he merely acted by the direction of the widow, and as her agent, and that he had immediately paid whatever assets he received to the widow, and that he had not at the time of filing the bill any assets belonging to the testator in his possession.

Wm. M. James applied, on the hearing, on behalf of defendant Hewish, to have the bill dismissed as against him, with costs, on the allegations stated in his answer, and contended that he had merely acted as the friend of the family in assisting the widow, on the death of her husband, to collect his assets, and that all he did was under her direction, and that he could not be looked upon otherwise than as a mere agent or servant, for he resided in the house with the widow; and if he was to be charged for those acts, so might a common carrier or messenger be charged as executor of son tort for property which had passed through their hands.

Greene, for the plaintiff, contended that it was groundless in the defendant to set up a defence as mere agent; no doubt he did act as agent, but it was

with the full knowledge that the widow had not got administration granted to her, and had no legal authority to protect him for meddling with the estate. The character of agent, servant, or carrier, did not apply in such a case, for persons acting in such characters are not expected to know the authority of the party for whom they act; consequently, in this case, if any of the assets received by Hewish have been lost, he must be held responsible, as executor *de son tort*, and therefore the bill cannot be dismissed as against him.

THE VICE-CHANCELLOR.—In this case the widow of the deceased party intended to take out administration, but before doing so she employed Hewish, who knew the debts belonged to the testator; he received them and paid them over to the widow, who did not afterwards take out administration, but another party did; thus the widow at all events might be sued as executor *de son tort*. The question is as to Hewish. The case of *Padget v. Priest* (2 Term Rep. 97) appears to have decided that if Hewish had not paid over what he had received, he, having the money in his hands, might have been sued as executor *de son tort*. It is not clear from that case what was the exact ground upon which the case was decided; according to the marginal note, that was the point decided. Buller, Justice, doubts if the party had been a mere servant, whether he would have been liable. The case is one of great hardship to Hewish, and I wished to see if I could not treat him as executor *de son tort*. It seems to be established, that if he had received and not paid over, he would be liable; if so, it seems to follow he cannot discharge himself except by paying over the money as received to the executor. It is hard to find a ground for it, for he might have done the act in a merely ministerial character, as in the case of a servant by the direction of his master. The result of my search amongst the cases is, that the receipt of an agent is the receipt of a principal does not apply in the case of a wrongdoer; this appears from the cases of *Stevens v. Elwall* (4 Maule & Sel. 259), *Snowden v. Davis* (1 Taunt. 359), *Padget v. Priest*, which I have already mentioned. Hewish must, therefore, remain a party to the suit. It is the hardest case I ever knew, but he is a wrong doer, and knew he was so.

Tuesday, June 2.

MAUSER C. JENNER.

Practice—Examination of witnesses—Commission—New interrogatories.

Lloyd moved, as of course, for leave to exhibit new interrogatories before commissioners, and to re-examine old witnesses upon new interrogatories not referring to the old matter; he stated the order might have been got as of course at the Rolls, but the form of the order would have prevented him examining the old witnesses on the new interrogatories. In support of the application, he cited *Turner v. Trelawney* (9 Sim. 463).

THE VICE-CHANCELLOR.—In that case the terms of the order gave him leave. When you first mentioned it, I thought I could not make the order without notice; I have since consulted another judge of the court, who gives great attention to the practice, and he agreed with me that there was nothing to prevent the commissioners receiving the new interrogatories; but when you make such an application to the Court, you must give notice.

Common Law Courts.

COURT OF QUEEN'S BENCH.

January 26, and May 4.

BODMER v. BUTTERWORTH.

Patent.

This case turned wholly upon the wording of the patent and specification, and the construction of the machines of the plaintiff and defendant. Models were produced in court, and indeed without them the argument would hardly be intelligible. No point of law was involved in the points at issue.

Byles, Serjt., and Cowling (Jan. 26), showed cause, and *Watson, Q.C.* and *Fosbrooke*, were heard in support of the rule. *Cur. adv. vult.*

On May 4, the Court gave judgment as follows:—

JUDGMENT.

LORD DENMAN, C.J.—This was an action for the infringement of a patent for improvements in machinery for carding, drawing, roving, and spinning cotton and wool; and upon the trial a verdict was found for the defendant on a plea of not guilty, and also that the plaintiff did not give a true and adequate specification of his invention, as required by the statute; but liberty was reserved to the plaintiff to move to enter the verdict for him upon one or both of those pleas. That motion having been made accordingly, and the case argued before us, we are of opinion that there are no sufficient grounds for disturbing the verdict that has been entered. The plaintiff claimed the application of surface motion, in combination with certain other processes. It was proved that the use of surface motion was old, and formed no part of the

plaintiff's invention. Whatever there was of novelty in the plaintiff's invention consisted in the application of that, in combination with other processes, to certain machines called stretchers and drawing machines, used in the manufacture of cotton, but were applicable also to the manufacture of wool. The machine of the defendant was said not to be an infringement of the plaintiff's. It was for the carding of wool only; and though surface motion was used, it was not used in combination with the other processes claimed by the plaintiff. The novel parts of the manufacture, which are the most important and useful parts of the plaintiff's invention, appear to be, collecting the proceeds of several machines into one receiver; and this was no part of the defendant's machine, which is said to shew no further resemblance to the plaintiff's than in coiling and uncoiling by surface motion the proceeds of cards divided into several strips or bands upon one roller. Such a coiling and uncoiling by surface motion is said, on the part of the plaintiff, to be an infringement of his invention; but the specification does not support the claim in that respect—it describes a very different combination of processes. The question depends on the plaintiff's claim and specification, and that which had been done by the defendant, as stated in the evidence; and the result of our opinion is, that whatever there is of novelty in the plaintiff's invention, as described in the specification, has not been infringed by the defendant, and that the verdict for him should stand upon the first count. With respect to the verdict on the issue, denying the specification, we think it should be entered for the plaintiff, as he has specified his invention, though the defendant has not infringed it.

Verdict enlarged accordingly.

Tuesday, June 2.

WHITAKER v. RICHARDS.

Assumpsit by sub-lessor against sub-lessee—Breach of agreement to repair—Demurrer.

A declaration in assumpsit by sub-lessor against sub-lessee made prout of the original lease for twenty-one years, as being executed by the plaintiff and the original landlord; it set out also a covenant to repair contained in the lease; and alleged that the defendant had agreed to take the premises for two years, and to perform the covenants of the lease in like manner as the plaintiff was bound to perform them.

Breach: That the defendant had not performed the covenants in like manner as the plaintiff was bound to perform them, in this, that he had not, during the continuance of the several terms of two years and twenty-one years, sufficiently repaired, &c. but on the contrary had suffered them to become ruinous, &c. On special demurrer to that breach.

Held, that whether the defendant's liability under the agreement was confined to keeping the premises in the same state of repair in which they were taken his term commenced or not, the breach was sufficient, because it was so limited.

Per Lord Denman, C.J.—The defendant's liability under the agreement was as extensive as the plaintiff's under the lease.

The lease, being set out on oyer, appeared not to be executed by the plaintiff.

Held, that the special demurrer being confined to the breach, it was not open to the defendant to take any objection on that ground.

Held also, that no allegation of the defendant's entry on the premises was necessary; but that if it had been necessary, the want of it could not have been objected to upon this demurrer.

Assumpsit.—The declaration stated that the plaintiff agreed to let, and the defendant agreed to take, for two years wanting one day, the residue of a term of twenty-one years, wanting one day, certain premises, then in the occupation of the plaintiff, under a lease from one Jones, and to observe and keep all the covenants of that lease (except certain painting, which was to be done by the plaintiff), in like manner as the plaintiff was bound to keep them. The declaration made prout of the lease from Jones to the plaintiff (describing it as executed by both parties; and set out *inter alia* covenants to repair, and not to underlet: one of the breaches was, that the defendant did not, nor would, perform all the covenants of the said lease, in like manner as the plaintiff was bound to perform them, except as above excepted, in this, that the defendant would not sufficiently repair, &c. but on the contrary, during the continuance of the several terms of two years and twenty-one years, wanting one day, that is, from the 29th day of September, 1843, to the 28th day of September, 1845, suffered and permitted the premises to become, and they were, ruinous and out of repair.

Demurrer to that breach.

The defendant craved oyer of the deed, which appeared not to have been executed by the plaintiff.

Bernie, in support of the demurrer.—1st. This breach is ambiguous, in alleging that the defendant did not keep the covenants in like manner as the plaintiff was bound to keep them. 2ndly. Upon oyer it appears that the lease was not executed by the plaintiff, and therefore he was not bound to keep any of the covenants

as covenants. This also raises the ground of variance; for the deed set out on oyer differs from the deed pleaded. (*Smith v. Yeomans*, 1 Saund. 316 a). 3rdly. The breach is more extensive than the promise; for under this breach the defendant would not be at liberty to shew in what state the premises were when he entered; and the liability of the defendant depends upon the state of the premises when he entered in 1843, as the liability of the plaintiff to Jones depends upon the state of the premises when he entered. It is also too large, because it does not contain the exception of painting, which is contained in the promise. 4thly. The declaration is bad for want of an allegation of entry by the defendant, and of permission to underlet.

Peacock, contra.—1. The breach is free from ambiguity; the material part of it being that which says that the defendant, "on the contrary, suffered and permitted the premises to fall into decay." 2. The non-execution of the deed by the plaintiff is quite immaterial; because it is alleged that he held under a lease from Jones upon those terms; and was, therefore, bound to observe them. (*Burnett v. Lynch*, 5 B. & C. 589.) [PATTERSON, J.—But you make prout of a lease sealed by both the plaintiff and Jones, and on oyer you produce one sealed only by Jones.] It would perhaps have been more correct to say, "one part of which indenture, sealed with the seal of the said J. J. the plaintiff now brings into court;" but it is immaterial; the prout may be rejected as surplusage; and this is not one of the grounds of special demurrer. 3. The breach is sufficient. The defendant has agreed to perform the original covenant to repair; and it would be no answer to say that the premises were out of repair when he entered. He should have looked to that before he made the promise. At all events, if it would be an answer to say that the plaintiff had broken the covenant before the defendant took the lease; here there is a general averment of performance, which, upon general demurrer, is tantamount to an averment of the performance of every condition precedent (*Kemble v. Mills*, 1 M. & G. 757; *Practor v. Sargent*, 2 M. & G. 20); and this is not made a point of special demurrer. If the plaintiff's observance of the covenant during his time be a condition subsequent, then his non-performance of it ought to be pleaded. So with regard to the exception of painting; if the defendant means to rely upon that, he ought to plead that the premises are out of repair, because the plaintiff has not painted according to his agreement. 4. No entry is necessary in order to render the defendant liable upon his express covenants. (*Williams v. Bosanquet*, 1 Brod. & B. 236.)

Bernie, in reply.—This breach does not give the legal effect of the instrument. (*Moore v. The Earl of Plymouth*, 3 B. & Ald. 66.) The defendant's covenant to repair must be construed with reference to the state of the premises at the time of the lease to him. (*Walker v. Hallon*, 10 Mees. & W. 249, 256, 258; *Piney v. Watts*, 2 M. & W. 601; *Burdett v. Wilkes*, 7 Ad. & Ell. 136; *Anon*. Slip T. Jones, 1845.)

Lord DENMAN, C.J.—This declaration is framed upon a somewhat peculiar agreement; and my opinion, if it were necessary to give it, would be, that the under-lessee did mean to make himself liable for all breaches of covenant, existing in his time, whether originally committed by him or by the first lessee, and to become in all respects the representative of the first lessee; but here I think that the breach is sufficiently limited to the most narrow construction, and therefore no harm can be done. It is true that there are the general words that the defendant did not perform the covenants "in like manner as the plaintiff was bound to perform them;" but they are explained afterwards by the more precise allegation, that during the continuance of the term of two years, as well as of the term of twenty-one years, the defendant suffered the premises to become ruinous. As to the other points, they arise upon other parts of the declaration which are not demurred to, and not upon the breach which is. The first is, that the deed, when set out on oyer, appears not to be executed by the plaintiff; but I don't apprehend that the defendant can take advantage of that objection in the present state of the paper books. When, however, it is said that this shews that the plaintiff is not bound by any covenants of the lease, I cannot accede to that proposition; my view of it is, that the expression contained in the prout of the instrument is only a description of it; and that the covenants which the defendant would be bound to perform are those which would have been broken by the plaintiff's non-performance, if he had executed the instrument. As to the entry, it is quite clear that the defendant need not enter at all; he has, for a good consideration, entered into an express contract, and by that he is bound. If any thing turned upon the exception as to painting, that matter ought unquestionably to come from the defendant.

PATTERSON, J.—The demurrer being expressly confined to one breach, I do not think it is competent to the defendant to take those other objections, as to the non-execution of the deed and the non-entry; but if it were, the latter is disposed of by *Williams v. Bosanquet*. As to the other, it would, I think, have

been more correct to have made profert of "one part of the indenture, sealed with the seal of the said John Jones." The more important question is, as to the breach demurred to. Now the covenant is, to perform the covenants of the lease in like manner as the plaintiff is bound to perform them, save and except painting; and it is said that this is capable of two meanings. First, it may mean that as soon as the term of two years, for which the premises are taken, commences, the defendant is bound to do every thing which the plaintiff would have been bound to do, if he had not underlet; so that he might be obliged to put them in better repair than when he received them, and in that case the breach would not be too large. But, secondly, if the true construction is that he is only bound to keep the premises in repair and to perform the covenants of the lease, so far as the state of the premises, when he received them, would permit, it is said then the breach is too large; but supposing that were the true construction, and that the defendant had suffered the premises to go further out of repair, I do not see how the breach could be laid otherwise than it is here. It seems to me, that if that breach were put in issue, the question would then properly arise on the facts, what was the true construction of the agreement?

WILLIAMS, J.—If the extent of the defendant's liability were now in question, I should have required further time to consider whether it was not limited to acts of omission during the time he held the premises; but I agree with the rest of the Court, that this breach is clear of doubt on that subject.

Judgment for the plaintiff.

FRASER v. LOYD.

Obstruction of officers appointed by court-leet to examine weights and measures—Statement of presentment.

In reply, the avowry justified under a presentment in a court-leet against the plaintiff for obstructing the officers of the court appointed to examine weights and measures, in the execution of their duty: Held, that the presentment, and therefore the avowry, was bad, for not specifying more particularly the obstruction complained of.

Reply.—The avowry justified under a presentment made at a court-leet for the manor of Clerkenwell, &c. whereby it was presented that the plaintiff had obstructed certain persons, being officers of the court appointed to examine weights and measures, in the execution of their office. Demurrer thereto.

Cleasby (being called upon by the Court), in support of the avowry.—This is the usual form of presentment, and is founded on a precedent in the appendix to Scriven on Copyhold, 423. It is not necessary or proper to set out evidence; but you must allege the fact done for which the fine is imposed, and the obstruction is the fact. He referred to *Moore v. Wickers* (Andr. 47, 191), and *Witcock v. Windsor* (3 B. & Adol. 43). [**LORD DENMAN, C.J.**—What do you say, Mr. Peacock, to *Moore v. Wickers*?

Peacock, in support of the demurrer.—*Moore v. Wickers* is an authority for the plaintiff. The presentment in that case did state that the defendant obstructed the officers from entering his shop. [He was then stopped.]

LORD DENMAN, C.J.—It is satisfactory to find that there is authority, though none was needed. It is clearly necessary to state some particulars of the obstruction, which may be effected by force or by various other means.

PATTESON, J.—Enough certainly ought to be stated to let the Court see whether the fact committed was an obstruction.

WILLIAMS, J. concurring.

Judgment for the plaintiff.

Cleasby applied for leave to amend.

LORD DENMAN, C.J.—Before we grant that, we had better look to the other objections.

WILKINSON v. GUSTON.

Declaration for improperly discharging a servant—Commencement of the service—Effect of the word "from"—Allegation of "readiness and offer."

A declaration for improperly discharging a servant alleged the contract to be to serve "from" a certain day under a videlicet, and the discharge to have taken place on the day above mentioned, also under a videlicet: Held, on demurrer, that although the word "from" may be construed to exclude the first day, it does not necessarily exclude it; and that upon the face of this declaration it appeared to be the intention of the parties to the contract that it should be included; consequently, that there was no inconsistency in the above dates.

The declaration averred that the plaintiff had always been ready and willing, and had offered to continue in the defendant's service.

Held, that this averment was not double.

The declaration alleged that the defendant had discharged the plaintiff "without any notice" in that behalf.

Held sufficient, on special demurrer.

Assumpsit.—The declaration stated, that heretofore, to wit, on the 15th day of October, A.D. 1844, in consideration that the plaintiff, at the request of

the defendant, would serve the defendant in the capacity of secretary from a certain day, to wit, the day and year aforesaid, the plaintiff promised to retain and employ him in that capacity, &c. And although the plaintiff afterwards, to wit, on the day and year aforesaid, did enter into the service of the defendant in the capacity and on the terms aforesaid; and although the plaintiff had always been ready and willing, and tendered and offered to continue in the said service of the said defendant, yet the defendant, not regarding his promise, would not continue the plaintiff in his said service, &c. but, on the contrary thereof, refused to suffer him to continue, and then, to wit, on the day and year aforesaid, discharged him from his said service, without any notice in that behalf, &c.

Special demurrer thereto.

Pashley, in support of the demurrer.—First. The declaration does not shew that the discharge took place after the commencement of the service. The service is alleged to commence from the 15th of Oct. and the discharge is laid on the same day. Those are inconsistent dates, because the word "from" is exclusive of the first day; for which he cited *Clayton's case* (5 Co. Rep. 1; Hob. 139); *Thomas v. Popham* (Dyer, 218 b.; Sir F. Moore, 40); *Dowling v. Foxhall* (1 Bell & Beattie, Ir. R.); *Halson's case* (Latch. 183); *Viner's Ab. Time*, pl. 16; *Lester v. Garland* (15 Ves. 248); *Pugh v. The Duke of Leeds* (Cowp. 714); *Webb v. Fairmaner* (3 Mes. & W. 473); *Gorst v. Lowndes* (11 Sim. 434); 4 Kent's Com. 95. [WILLIAMS, J. mentioned *R. v. Goringay* (3 T. R. 513), and *Hardy v. Ryle* (9 B. & C. 603).] And these allegations of date, though under videlicet, are material, and must be taken to be true. (*Ring v. Rosborough*, 2 Cr. & J. 418; 2 Tyr. 468; *Harris v. Manille*, 3 T. R. 307; *Edge v. Pemberton*, 12 M. & W. 187.) Secondly, the averment that the plaintiff was ready and willing, and that he also offered to continue in the service, is bad for duplicity, according to the judgment of Maule, J. in *Jackson v. Alloway* (7 Seott N.R. 875). Thirdly, the allegation that the defendant was discharged without notice is insufficient; it ought to have been without notice from either of the parties.

Peacock, contra.—The authorities cited only shew that the word "from" may be exclusive of the day of the date of the document, if there is nothing in it to lead to a contrary inference; but on the face of this declaration, it appears clearly that the plaintiff had entered into the service on the terms of the contract; there is an express allegation of that fact, which dispenses of the objection first taken; but even if that did not appear, the objection could only apply to the first day of the refusal to employ, not to any subsequent days; and the declaration is, "from thence hitherto has refused to retain and employ the plaintiff."

[**PATTESON, J.**—Would the declaration be good, if the discharge were laid on a day previous to the commencement of the service?]
Yes, for the continuance of the contract to employ after the service had commenced.

[**PATTESON, J.**—Should it not then have been that the defendant refused to take the plaintiff into his service,—not that he refused to continue him in his service?]
The words used are sufficient,—that the defendant wrongfully discharged him, and hath wholly neglected and refused any longer to retain and employ him. 2nd. The mere readiness to continue in the service would not be enough; the plaintiff must offer so to do; and the allegation of both therefore is not double. In *Jackson v. Alloway* (6 M. & G. 492) no tender was necessary; because the contract was to deliver goods at a particular place. 3rd. If the plaintiff had given notice to put an end to the contract, the defendant ought to plead it; but the supposition is rebutted by the averment of readiness and willingness. (*Kingsbury v. Collins*, 4 Blag.)

*Pashley, in reply, as to the averment of readiness and willingness, cited *Boyd v. Lett* (1 C. B. 222), and *Lord Huntingtower v. Gardiner* (1 B. & C. 297, 301); *Hilton v. Swann* (5 Blag. N.C. 413, 7 Scott, 398), to shew that before verdict an ambiguity is not to be taken in favour of the party pleading.*

LORD DENMAN, C.J.—First, the objection as to the allegation of notice is quite unfounded; it is inconsistent with the averment of readiness and willingness to suppose that the plaintiff could have given notice to determine the contract. Secondly, the question, whether the word "from" is exclusive, depends upon all the circumstances of each case; that is the doctrine of the American, as it is of all the best English authorities; and here, taking the plaintiff's statement as entire, we find a contract under which he could enter the service on the day named; and we may at least presume that he means to state that, which would be a cause of action. Thirdly, as to the averment of readiness and offering to continue making the declaration double, it is certain that an offer was necessary; and that the issue would be upon that.

PATTESON, J.—This demurrer is founded upon the notion that "from" must be exclusive; but that is not so; and if not, I do not see why we are to infer that the meaning of the parties was to make it exclusive, when there are averments of facts leading to the contrary inference. The parties have acted upon it as an agreement, which did not exclude

the first day; and if the facts are proved as stated, the evidence would shew that intention beyond all doubt. I therefore think that, in this case, "from" is not to be construed as excluding the day of the date of the agreement, though I agree that *prima facie* it would be so. I entirely agree as to the other objections.

WILLIAMS, J. concurring.

Judgment for the plaintiff.

Wednesday, June 3.

REG. v. ST. ANNE'S, WESTMINSTER.

Hiring and service—Statement of settlement.

Where the examination set up a settlement by hiring and service, by an employment for several continuous years, it must be shewn that at the commencement of the year during which residence is alleged, the pauper was unmarried, and without child or children, just as when service for one year only is relied upon.

In or about the year 1832, is an insufficient statement for a settlement by hiring and service.

The Sessions had on appeal confirmed an order for the removal of a pauper from the parish of St. Pancras, Middlesex, to the parish of St. Anne's, Westminster, subject to the opinion of this Court on the question, along with others, whether the evidence sufficiently disclosed a settlement. The pauper stated, that in or about the year 1832, she had been hired as a yearly servant by a Mr. Walker, and all other circumstances that could have made out a complete settlement if the statement "in or about the year 1832," was good. She also stated a service with a Mr. Stroud, in St. Anne's, for five years commencing in 1827, as a yearly servant; that at the time when she was hired, she was an unmarried woman, without child or children, and that she resided in the house of her master for the last forty days of such service.

Franderghast and Howarth, in support of the order of Sessions.

Pashley, contra.—As the 66th section of the 5 & 6 Wm. 4, c. 76, enacts that "no person under any contract of hiring and service, not completed at the time of the passing of this Act (the 14th of August, 1834), shall acquire, or be deemed or adjudged to have acquired, any settlement by reason of such hiring and service, or of any residence under the same," this statement of a settlement is within the decision in *R. v. St. Paul's, Covent Garden* (1 N. S. C. 617), and bad for not being shewn to be complete before the 14th of August, 1834. As to the second settlement, no residence is stated under the contract for the first year of the service; the condition prescribed by the statute must be fulfilled to give a settlement on the contract implied from protracted service (*R. v. Barton-upon-Irwell* (2 M. & S. 129); and as there is no statement of the pauper being unmarried and without child or children at the time of the commencement of the last year for which only inhabiting is stated, there is no settlement made out.

By the COURT.—That is our view. A new contract is implied from each year of service, and therefore the same ingredients of a settlement must appear as at the commencement of the service. The point in the other settlement is not to be distinguished from that in *R. v. St. Paul's, Covent Garden*.

Rule absolute.

REG. v. GRIFFIN.

Conviction—3 Geo. 4, c. 23—52 Geo. 3, c. 93.

The 3 Geo. 4, c. 23, does not apply to cases where the prior statute prescribes preliminary proceedings; as, for instance, to 52 Geo. 3, c. 93, as to the taking game with dogs, or without a certificate.

The Sessions, on appeal against a conviction for taking game with gun and dog, confirmed the conviction, subject to a case in which the two questions were, whether the conviction which, under 52 Geo. 3, c. 93, s. 15, was good, there being no real information and complaint; and also whether, as the information had been laid before a single commissioner, not a justice by whom only the summons was issued, though the conviction was signed by five commissioners, of whom two were justices, was good.

Greenwood shewed cause.—The conviction is verbatim the form in the schedule of the Act. The defect secondly objected to is cured by 3 Geo. 4, c. 23, s. 2. Commissioners under the 52 Geo. 3, being "other persons," within the meaning of that Act.

Merivale and Cornish.—As to the first point, it is submitted there must be a statement of complaint and summons, to render the 3 Geo. 4, c. 23, applicable. (*R. v. Hale*, 13 East, 139; *R. v. Neale*, 5 East, 417.) As to the second point, the words of 52 Geo. 3, c. 13, s. 15, are, "it shall be lawful for any two commissioners, &c." but a single justice is to have the same power as two commissioners. It could not have been the intention that the 3 Geo. 4, c. 23, should affect any preliminary proceedings, expressly prescribed by statute. Commissioners of taxes are not officers *ejusdem generis* with justices, deputy lieutenants, and those expressly named in the 3 Geo. 4, c. 23, and were therefore not contemplated by other persons. (*Kitchen v. Shaw*, 6 A. & E. 729; *James v. Gurdon*, 2 Q. B. 600.)

Lord DENMAN, C. J.—I think the 3 Geo. 4. does not apply to the 52 Geo. 3.

PATTERSON, J.—Mr Merivale is quite right. There is an express provision in the 52 Geo. 3, c. 93, by which the preliminary proceedings are prescribed. The 3 Geo. 4, c. 23, was only intended to apply to cases in which the statute had not made any such express provision. *Rule absolute.*

Thursday, June 4.

REG. v. THE JUSTICES OF RADNORSHIRE.

Maintenance of lunatic pauper—Liability of county. Two justices of Radnorshire having removed a lunatic pauper to an asylum in another county on one day, made another order on a subsequent day adjudging his settlement in parish H. in their own county, and requiring the overseers to pay a weekly sum for his future, and a certain sum for his past, maintenance. That order having been quashed by this Court, an application was made for a mandamus to compel the county treasurer to repay to the parish the money which had been paid by them under that order: Held, that this Court had no power to grant the application.

Pashley, in last Easter Term, obtained a rule calling on the county treasurer and justices of the county of Radnor to shew cause why a writ of mandamus should not issue, commanding them to pay to the overseers of the parish of Heyop, in that county, a sum of money expended by them for the maintenance, medicine, clothing, and care of an insane pauper, in a licensed house at Shrewsbury, in the county of Salop, in obedience to an order of justices. It appeared, upon the affidavits, that that order was made on the 30th Nov. 1844, by two justices of the county of Radnor, and that it recited a previous order made by the same two justices on the 13th of the same month, for the removal of the pauper to the licensed house at Shrewsbury. The order of the 30th November was appealed against, and confirmed by the Sessions, but quashed by this Court in last Hilary Vacation (Feb. 3), upon a case reserved. (*R. v. Heyop*, 12 New Sess. C. 270; 1 Bitt. & Sym. 497.)

E. V. Williams now shewed cause.—This application rests entirely upon the supposition that the county is primarily liable to bear these expenses; but that is not so. It is true that the stat. 9 Geo. 4, c. 40, s. 41, provides that, where the settlement cannot be ascertained, the justices who order the removal of the pauper to an asylum may also direct the payment of the necessary expenses of maintenance, &c. by the county treasurer; but that is from the necessity of the thing; and the justices have, in this case, made no such order.

Pashley.—No substantial answer has been given to this application. The legislature has at all events provided that the county is to be liable until the settlement is ascertained; and here the settlement has not been ascertained, for an order quashed in the 14th it had never been made. Then the money paid by the parish was, in effect, money paid for the county; and the real difficulty is, that if an action for money had and received would lie, the Court would not grant a mandamus, but as that is doubtful, the Court will interfere.

Cases referred to: *R. v. Darton* (12 Ad. & Ell. 78); *R. v. The Justices of Kent* (2 Q.B. 686); *Lindon v. Hooper* (Comp. 419); *R. v. Pixley* (4 Q.B. 711); *Wing v. Mill* (1 B. & Ald. 104); *Tomlinson v. Benthill* (5 B. & C. 738).

By the COURT.—We cannot find any authority for granting this application. The only power given by the statute to charge the county with these expenses is in the 41st section, which empowers justices to order the county treasurer to pay them, when they cannot ascertain the settlement of the pauper removed; but in this case the magistrates have omitted to make that order, and we have no power to supply that omission. *Rule discharged with costs.*

REG. v. THE RECORDER AND JUSTICES OF LONDON.

Appeal against order of removal—Entry and respite. Justices are bound to enter and respite an appeal against an order of removal at the sessions next after the order made, if no notice has been given to the respondents, and a notice given in time for the second sessions is sufficient.

A rule nisi had been obtained for a mandamus to compel the recorder and justices of London to enter continuances and hear an appeal against an order of removal under the following circumstances:—On the 25th November, 1845, the order was made, and on the following day notice thereof given to the appellants. The removal took place on the 22nd December, and at the January sessions an appeal was entered and respited. On the 21st March notice of appeal was given, and at the April sessions the appeal came on to be heard. The objection was then taken that the notice ought to have been given for the January sessions, and the appeal then tried, and the Sessions being of that opinion, refused to hear the appeal.

Payne now shewed cause.—The question as to notice of appeal is one which the statute 9 Geo. 1, c. 7, leaves entirely to the discretion of the justices, and this Court, therefore, will not interfere. (*R. v. The*

Justices of Cornwall, 6 Ad. & Ell. 894; *R. v. The Justices of Lancashire*, 4 Q.B. 910; *R. v. Staffordshire*, 7 East, 549.)

Pashley, contra, was not called upon.

By the COURT.—The case last cited has always been considered as having settled the practice under the stat. 9 Geo. 1, c. 7; and the Poor-Law Amendment Act has made no difference in this respect. If the appeal is made to the next sessions after the order, the justices are bound by that practice to receive and adjourn it, if no notice of the appeal has been given to the respondents; and then a notice given for the next sessions is in time. The justices, therefore, in this case ought to have heard the appeal, and the rule for a mandamus must be absolute. *Rule absolute.*

Friday, June 5.

CHAMBERLAIN v. HAMMOND.

Consideration—Sale by private contract—Solicitor's liability.

The declaration stated that certain premises had been put up for sale upon certain conditions, and after setting them out, alleged that, in consideration, the plaintiff had then agreed to purchase the same, and to perform the conditions so far as the same related to sales by private contract, and pay the deposit into the hands of the defendant; the defendant then, by a memorandum, in writing, then signed by the defendant, agreed, on behalf of the vendors, that the vendors should perform the conditions of sale: Held, on general demurrer, that the consideration was not past, and that there was a sufficient consideration for the promise by the defendant, and that he was liable upon a breach for non-delivery of an abstract.

Special assumpsit.—The declaration was framed as above, and upon the demurrers to one of the pleas, and to one of the replications, upon technical points, the question was, whether the declaration was good, it being objected that it shewed no consideration for the defendant's promise; that the promise stated was not a personal liability of the defendant, but a promise as agent for the vendors.

Bovill, in support of the declaration, was proceeding to argue, upon the authority of *Thornton v. Jenyns* (1 M. & G. 166), that the transaction was shewn to be a continuing one, and not a past and executed consideration; but *Willes*, for the defendant, admitted that this was so. As to the other points, it was then argued that there was a consideration, for the deposit was paid into the defendant's hands; and, according to one of the conditions, the purchaser was to pay him one guinea for the agreement. It was not a contract signed by him as agent; and it is quite competent for a person to agree that another shall do something. (*Appleton v. Binks*, 5 East, 148; *Kennedy v. Gougeon*, 3 D. & R. 503; *Norton v. Heron*, 1 C. & P. 648.)

Willes, contra.—The declaration is framed in a very unusual manner, and the following points are laid: and although it is alleged the plaintiff had agreed to purchase, it is not stated that he agreed with the defendant. It is clear that the defendant was only the solicitor in the transaction, and received no benefit, nor is there any consideration for the promise. [Lord DENMAN, C. J.—It is not clear that the defendant was not himself the vendor.] It is not stated that he was. The omission to allege the promise to the defendant to pay the deposit to him would be cured, if there was any promise implied by law, but not otherwise. (*Price v. Easton*, 4 B. & Ad. 435.) Then it is a contract by him as agent. (*Spittle v. Lavender*, 2 B. & B. 450; *Wilson v. Barthrop*, 2 M. & W. 868; *Downman v. Jones*, 14 L. J.)

Bovill, in reply, distinguished *Spittle v. Lavender* by the circumstance that there the principal immediately ratified the act of the agent. He was then stopped.

Lord DENMAN, C. J.—There are certainly some words in the declaration that appear to limit the promise as the act of an agent, but no very clear rule can be laid down from the cases, and we must be guided by the whole of the allegations taken together. The defendant here expressly promises that the vendors shall perform the conditions, and there is nothing repugnant in supposing that this was his express intention.

PATTERSON, J.—It does not appear here who was the vendor, or whether the defendant himself was not. It is said that he promised that the vendors should perform, &c. but the conditions only mention one vendor.

WILLIAMS, J. concurred.

Judgment for plaintiff.

SCADDING v. EYLES.

Attorney's bill.

Stating an account does not bar a client from taxing his solicitor's bill.

A plea to the work and labour, &c. "claimed" in the declaration, is a sufficient confession of the cause of action.

Demurrer to pleas to an attorney's bill, that the work and labour, &c. "claimed" to be due in the declaration, were in respect of business done by the plaintiff as attorney, solicitor, &c. and no taxed bill had been delivered. To the account stated there was

a similar plea: that the account was stated, of and concerning such work, &c.

Peacock, in support of the demurrer.—There is no sufficient evidence of the cause of action. Claimed to be due, is like "if any," which has been held bad. (*Margetts v. Bays*, 4 A. & E. 489; *Gould v. Insbury*, 1 C. M. & R. 254.) The stating the account itself a debt, and then this plea is bad. (*Heoper v. Tull*, 1 Doug.)

Lush, contra.—Such a construction would defeat the whole object of the statute; and as to the other objection, "claimed" is the same as "supposed," and that has been held a sufficient confession.

By the COURT.—There must be judgment for the defendant. *Judgment for the defendant.*

v.

Lush moved for a rule nisi to set aside a plea and sign judgment. It was an action upon a judgment of the Queen's Bench, and therefore the venue was Middlesex, and the plea was that the judgment-rolls were not in Middlesex, but in the city of London. *Rule nisi.*

Saturday, June 6.

R. v. THE CHURCHWARDENS AND OVERSEERS OF AYLESBURY.

Rating—County Rate—Grand Junction Canal Act, Construction of.

By 34 Geo. 3, c. 24, s. 19 (the Grand Junction Canal Act), it was directed that the company should be rated for their lands and buildings in the same proportion as adjacent lands, "to all parliamentary and parochial taxes and assessments."

Held, 1. That county rates, being paid out of the Poor Rates, were parochial taxes within the meaning of that section, and to be rated accordingly; 2. That that section was not repealed either by the 54 Geo. 3, c. 103 (an Act confined to the county of Bucks), or by the 55 Geo. 3, c. 51, the general County Rates Act.

The company of proprietors of the Grand Junction Canal were assessed to a county rate upon the improved value given to their land by its being used as a canal; against that rate they appealed; and the Quarter Sessions for the county of Bucks confirmed the rate, subject to a case; which referred to the 34 Geo. 3, c. 24, s. 19: By that clause it is enacted that the company shall from time to time be rated to all parliamentary and parochial taxes and assessments, for their lands, &c. in the proportion as other lands, &c. lying near the canal are or shall be rated. The case also referred to other Acts of Parliament, which are sufficiently noticed in the argument.

M. Chambers, Q.C. and *T. Scadding*, in support of the order of Sessions.—This rate is perfectly valid for several reasons. First, the nineteenth clause of the Canal Act, exempting the canal from liability on its improved value, is repealed by 54 Geo. 3, c. 103, and 55 Geo. 3, c. 51. The former is a local Act, applying only to the county of Bucks, but the latter section of it expressly requires the company to make the county rate upon the full and fair annual value; and so by the 55 Geo. 3, c. 51, a general Act for the more easy assessing, collecting, and levying of county rates, justices in general are empowered to order a fair and equal county rate to be made, and for that purpose to assess every parochial, separately and equally, according to a certain general rate, &c. of the full and fair annual value of the messuages, &c. rateable to the relief of the poor. (Sec. 1.) They are also authorised to require churchwardens and overseers to make returns of the total amount of the full and fair annual value of the rateable property within the parish, "without regard, nevertheless, to the actual amounts assessed on the property therein, except in such parishes, &c. only where such property is assessed to the full and fair estimated annual productive value." (Sec. 2.) These provisions are so completely inconsistent with the 19th section of the Canal Act, that they must be held to repeal it. Secondly, assuming that the 19th clause is still in force, a county rate is not within it. It is not a parliamentary tax. For Alderson, B. in *Palmer v. Barlt* (14 M. & W. 439), where all the cases are cited and commented upon in Mr. Peacock's argument. *R. v. The Grand Junction Canal Company* (1 B. & Ald. 286) was decided upon this very clause; but the question there arose upon a poor rate, which is clearly a parochial tax. (*The Solicitor-General*.—So is security rate.) No; a parochial tax is one imposed by a parish for parish purposes alone; but this is a rate for county purposes. In order to relieve the company from contributing their share to the county rates, the exemption must be clear and express; for the rule is, that if the words are doubtful, they are to be construed in favour of the public, and against the private right. (*Barrett v. The Great Eastern and Dartington Railway Company*, 2 M. & G. 134.) They also cited *R. v. Town of Don* (4 M. & G. 134); *Chaffield v. Ruston* (3 B. & C. 865); *R. v. Wislow* (5 Ad. & Ell. 260).

The Solicitor-General (Gordon with him).—*R. v. The Grand Junction Canal Company* (1 B. & Ald. 286) is precisely in point, because the county rate is a "parochial tax" as much as the poor rate. The county rate is always paid out of the poor rate; and, indeed, there is no other mode of collecting it. Both

the Real Act and the general Act relating to the county rates incorporate the provisions of 12 Geo. 3, c. 29; and that statute provides no machinery for collecting the county rate separately from the poor rate. [Chambers, Q.C. referred to the 13th section of 55 Geo. 3, c. 61, which recites that it would be inconvenient and oppressive to many townships that the sum assessed on them for a county rate should be paid out of the poor rate.] [PATTERSON, J.—That is, where there is no poor rate applying separately to the particular place.] Exactly, if there be no poor rate, then a different machinery is provided. The legislature has throughout contemplated a complete identity between the two rates; as also appears from the subsequent statutes, 7 & 8 Vict. c. 83, and 8 & 9 Vict. c. 111. [PATTERSON, J.—Those words in the 2nd section of 55 Geo. 3, c. 61, "without regard to the actual amounts assessed," &c. refer to the proportion as between different parishes, not to the amount of individual assessments.] He was then stopped.

LORD DENMAN, C. J.—The poor rate is the fund out of which the county rate is paid; and when a Canal Act prescribes a particular mode of rating, it must be taken that that is a fair mode; Parliament has found that it is so. The words of the two Acts referred to may be general enough to impose a different mode of rating; and if they had been followed by the phrase "any thing in any former Act to the contrary notwithstanding," the question would have been different; but that is not so. The object of those Acts was to facilitate the collection of county rates, and to make them more equal as between different parishes; but not to affect the rating of individual occupiers as between each other in the same parish. Then the county rate being substantially the same as the poor rate, the decision of this Court soon after the Canal Act passed is quite applicable; and the rate upon the larger amount is bad.

PATTERSON and WILLIAMS, JJ. concurred.

Rate to be amended accordingly.

REG. v. THE INHABITANTS OF ST. MARTIN.

Union of two parishes—Settlement gained in one before the union.

Where two parishes have been united into one for all but ecclesiastical purposes, a settlement gained in either, before the union, continues after it as a settlement in the united parish.

On appeal against an order of removal, the Sessions quashed the order, subject to a case, from which the following facts appeared:—

The parishes of St. John the Baptist and St. Benet, Shrotonbury, were, by a local Act, united into one parish, except for ecclesiastical purposes.

The pauper was born in the parish of St. John the Baptist, before the union, and, subsequently thereto, was removed from the parish of St. Martin to the parish of St. John.

It was agreed between the parties, for the purpose of saving the question intended to be submitted to the Court, that in case the pauper might legally be removed to the parish in which he was born, or to the united parishes, the present order of removal was to be quashed, otherwise to be quashed.

JUNE 3.—KINGSLAKE, SERJ. and V. LEE, in support of the order of Sessions.—It is to be contended, on part of the appellants, that, the two parishes being now united into one, the effect was that the settlements previously gained in either of them were lost and destroyed. By the Act 4 Wm. 4, c. 23 (local and personal), the parishes were united into one, except for ecclesiastical matters; and by sec. 6, that nothing in that Act should prevent or hinder officers of parishes from collecting and levying rates due before passing of Act, for such purposes, but for such purposes only parishes were to remain distinct. Therefore the parish in which the settlement was gained is extinguished; it is now part of a district in which the pauper did not gain a settlement. In support of this were cited *Rea v. Layton on the Hill* (5 B. & Al. 775); *Reg. v. Oakmore*, lb.; *Reg. v. Tipton* (3 Q. B. 215). These cases are the converse of the present case. There the townships forming parts of a parish were separated from each other for the purpose of maintaining their poor. Here two parishes were united into one; but the effect is the same in both cases, viz. to destroy the parish or district in which the settlement was gained. These cases were again before the Court in *Reg. v. Hummington* (5 Q. B. 273) and *Reg. v. Acton* (1 New Mag. Cas. 420; 2 New S. C. 183, and 15 L. J. N. S. M. C. 21); and the decision of the former case was recognized and acted upon.

JUNE 6.—CROWDER, Q.C. contra, was stopped by the Court.

LORD DENMAN, C. J.—We are of opinion that the settlement gained in St. John the Baptist was not extinguished by the operation of the Act. We felt great regret in being obliged to decide *Reg. v. Tipton* as we did; but we felt we could decide in no other way. There the settlement had been gained in a district divided into several independent districts, no one of which could be held liable to maintain the paupers who had gained their settlements in the whole parish. Here there is no difficulty in holding that persons who

had gained settlements in either of the united parishes are entitled to be supported by the united parish.

PATTERSON, J. and WILLIAMS, J. concurred.

Order of Sessions quashed.

ARTHUR ROWAN HAMILTON v. THE QUEEN.

Indictment for obtaining by false pretences a valuable security—Sufficiency of.

An indictment charged that the defendant did, on a certain day, falsely pretend to one A B that he was then a captain in the 5th dragoon guards, with intent to cheat and defraud the said A B; and that by means of the said false pretence he obtained from the said A B a valuable security, to wit, a certain cheque for 500l. and of the value of 500l.: Held, upon error brought, that the indictment was good.

Error upon an indictment which charged that, on a day named, the defendant did falsely pretend to Capt. James Wood that he, the defendant, was then a captain in the 5th dragoon guards, with intent to cheat and defraud the said Capt. James Wood; negating that the defendant was a captain in the 5th dragoon guards at the time when he so falsely pretended, and alleging that by means of the said false pretence the defendant obtained a certain valuable security, to wit, a cheque, &c. for the sum of 500l. and of the value of 500l., &c.

Ballantine, for the plaintiff in error, submitted, 1st, That the indictment did not sufficiently connect the false pretence and the obtaining of the security as cause and effect; that the pretence itself was not one in any way calculated to produce the result stated; and that therefore an express allegation ought to be inserted of the mode in which the false pretence operated, and that the false pretence was made for the purpose of procuring the thing actually obtained; citing *R. v. Young* (3 T. R. 98); *R. v. Wakeling* (Russ. & Ry. 504); *R. v. Wackell* (2 East's P. C. 830); *R. v. Airey* (1b. 30); *R. v. Perrot* 2 M. & S. 379; *R. v. Tully* (9 Car. & P. 227); *R. v. Wickham* (10 Ad. & Ell. 35); *R. v. Reed* (7 Car. & P. 848). [PATTERSON, J.—That last case is not to be found amongst the Crown cases reserved.] 2ndly, That the pretence was not shewn to be false by a sufficient allegation. (*R. v. Perrot*.) The pretence laid is, that he was then a captain, &c.; that is, on the day on which the pretence was made, and if he were a captain on any part of the day, the representation would be true; but the indictment, in negating that statement, confines the negation to a particular part of the day, viz. the moment when the statement was made. (*Stead v. Poyer*, 14 L. J. N. S. C. P. 241.) Lastly, The indictment does not shew that any money remained due and unsatisfied on the cheque.

C. Clark (with whom was Bodkin) for the Crown, was requested to direct his attention to the last point. *R. v. Blake and Tye*, 13 L. J., N. S. Q. B. 255, was an indictment for conspiring to cause certain goods imported, to be carried away, without payment of duties; and the Court held, that the gist of the indictment being the conspiracy, it was necessary to shew what the goods were, or what duties were payable in respect of them; and so in the present case, the false pretence is the gist of the indictment, and the value of the thing obtained is not material; but if it be, then it is here expressly alleged that the cheque was a valuable security, and the value of it is stated. He also cited *R. v. Crossley* (2 Moo. & R. 17). He was then stopped.

LORD DENMAN, C. J.—None of the objections can be sustained. 1st. It is not necessary to allege that the false pretence was made for the purpose of obtaining the security which was obtained; the indictment under this statute is proved by evidence that the defendant did, in fact, make a false pretence, and did thereby gain any chattel, money, or valuable security. As to the means by which the thing is obtained, although we cannot see directly how the pretence made would operate to induce the prosecutor to part with his money, still it is easy to suppose that there might be circumstances which would give that effect to the statement. One of the errors assigned is, that the pretence is not sufficient in law; but it is difficult to say that any false pretence, whereby chattel, money, or valuable security was obtained, would not be sufficient. The next objection is, that the pretence is not shewn to be false by sufficient allegations; but I don't know why the mere statement that it was false would not be sufficient. At all events, here it is directly negated; and as to the word "then" introduced into the indictment, it is clear that it refers to the point of time at which the false pretence was made. Lastly, it is alleged that the thing obtained was a valuable security; in this respect the words of the statute are followed, and that is enough. We do not overrule *R. v. Read*, because that is no decision. That case certainly was not brought before the judges as stated in the report.

PATTERSON, J. and WILLIAMS, J. concurring.

Judgment for the Crown.

Monday, June 8.

AMELET v. BRUCK.

Stamp—Bill of exchange—Material alteration. This was an action on a bill of exchange drawn in

Paris upon, and afterwards accepted by, the defendant in London. The bill declared on was a bill for 122l. 2s. At the trial of the cause which took place a few days ago before Mr. Justice Wightman, the bill was put in evidence. It was unstamped. "It was in the French language, and the sum was stated thus:—"Cent vingt quatre livres sterling, deux pence" (124l. 0s. 2d.); but a line had been drawn through the word *quatre*, and the acceptance made in London was written in English thus:—"Accepted for one hundred and twenty-two pounds two shillings." It was submitted that this alteration vitiated the bill by making it a fresh bill, which must be considered an English bill, and therefore required a stamp; and that if it did not, then that the variance between the bill as declared on and that which was proved in evidence was fatal to the maintenance of the action. The jury returned a verdict for the plaintiff, subject to those objections.

Humphrey, Q.C. now moved for a rule to set aside the verdict, and enter a nonsuit, and he particularly pressed the point, that the alteration made in England amounted to the drawing of a fresh bill, and therefore something which required a stamp.

Authorities cited: Chitty on Bills; *Knight v. Clements* (8 Ad. & Ell. 8); *Taylor v. Booth* (1 Car. & P.) Rule nisi; not to go into the new trial paper.

Wednesday, June 10.

REG. v. THE BISHOP OF CHESTER.

Right to pews.

The Attorney-General and Phipson shewed cause against a rule obtained by the Solicitor-General for a mandamus to the Bishop of Chester to assign Mr. Trairs two pews in the church of Blackley, in Manchester, lately rebuilt. It appears that this is a chapel not supported nor built at the expense of the inhabitants. The pews are claimed by prescription, and the new church is stated to be "nearly" upon the site of the old one. This is too vague; and the affidavits on the other side state that no part of the new church is upon the old site.

The Solicitor-General, contra.

By the COURT.—The affidavits are too vague. "Nearly" fixes nothing.

Rule discharged with costs.

REG. v. THE VICAR OF WAKEFIELD.

Church-rates—Polling.

The vicar presiding at a poll for church-rates may, if he pleases, call in an assessor to assist him in deciding upon the objections taken to the votes.

Where, however, he decided them himself, believing that he could afterwards have their legality examined by persons called scrutators, and this mistake was also made by the opposite parties, the Court refused a mandamus to adjourn the poll and reconsider the votes so given.

M. D. Hill, Q.C. and Atherton, shewed cause against a rule for a mandamus to the Vicar of Wakefield to enter adjournments and hold a poll for a church-rate. It appeared that a poll had been demanded upon a church-rate, and taken. The vicar presided, and it lasted from August 18 to September 2. Attorneys were employed on both sides, and numerous objections taken. The vicar took a note of these, but admitted or refused the votes according to his own views, thinking, as did also both parties, that there were some officers or scrutators who could subsequently examine the votes. At the close of the poll, he declared the majority in favour of the rate to be 150, and sealed up the books for the future scrutiny. However it was then discovered that there was no legal power to review the decision, and this mandamus was applied for. It was now opposed, on the ground that all parties had concurred in the mistake; and if the rate were bad, it could be contested in other ways.

Baines, Q.C. and Hall, in support of the rule. By the COURT.—We hope we shall not be understood as entertaining any doubt of our right to revise all common-law proceedings in the nature of an election, and to see that they are fairly conducted, and the conclusion properly arrived at. We feel no doubt but that we have such power. The question, therefore, is, whether this is a case for exercising it. Now, it is impossible not to see that the vicar believed that there was some power, which he called a scrutator, to which the questions of law raised at the poll might be referred; and he was not singular in that opinion, because the parties with adverse interests, who appeared before him, thought the same thing. The mistake, therefore, has been one of all parties. Then it appears that the vicar was quite faithful to his purpose, for, after declaring the result, he sealed up the poll-books, and reserved them for the inspection of the scrutator. Now it is very true that, in the first instance, he might have called in an assessor, some person more learned in the law than himself, and have been guided by that person; but that is not what he did. He decided upon every vote as presented, subject indeed to the future opinion of a supposed authority which did not exist. Now he is called upon to decide the same votes over again. He is fully entitled to answer, "I have decided;" and there is no reason to suppose that he would decide differ-

ently. The reason is, because he thought a scrutator might be appointed. The objection must apply to certain votes, the number of which is limited; and in each case the fact of the objection being taken must be made out from minutes or parol evidence, which will be subjected to comment and to controversy. The inconvenience, therefore, would be very great, because the delay where there are 150 such votes, at the least, would seem to be almost interminable. Taking all things together, and bearing in mind that other opportunities will arise for impeaching the rate if it be bad, as suggested, we are of opinion that we ought not to call on the vicar to institute the scrutiny which is now prayed for, and this rule, therefore, must be discharged.

Rule discharged.

IRVING P. NIXON.

Particulars of demand—Step in the cause.

Newton moved for a rule to set aside a notice of trial of continuance, as having been given before particulars of demand had been delivered under a judge's order.

Rule nisi.

REG. V. SCHLESINGER.

Perjury—Trial before the Secondary.

Shee, Serjt. moved for judgment upon the defendant, when

The *Attorney-General* moved for a new trial or an acquittal. The perjury is assigned as upon a trial before the sheriffs of London, but it was proved to have been committed, if at all, upon a trial before the Secondary. The alleged perjury was a statement upon cross-examination, that he thought so and so. Perjury may be so assigned upon evidence given in chief, but not when given upon cross-examination.

Rule nisi.

REG. V. EAST LANCASHIRE RAILWAY COMPANY.

Second application.

A rule had been obtained for a *mandamus* to assess damages to the interest of A B in certain lands, by the making of the railway. The *mandamus* was to assess damages for interest in the land, and also for the severance, and for future damage. For this variance the *mandamus* was quashed.

Archbold had obtained a rule to amend the former rule for a *mandamus*, inserting the other words. Against which

Gray shewed cause.—This is, in fact, a second application, and will not be allowed. (*R. v. Barton*, 9 D. P. C. 1021; *R. v. Great Western Railway*, 1 D. & L. 874.)

Archbold, contra.—If this amendment is not allowed, there is no remedy. The several causes of damage were mentioned, and it was intended that the rule should have been so drawn up. [Lord DENMAN, C.J.—Was the brief so indorsed handed to the Master?] That is not positively stated; but if not, it was the mistake of counsel.

Lord DENMAN, C.J.—It is a misfortune, but it does not appear to have been the mistake of the officer; and we cannot set an example of allowing second applications.

Rule discharged.

BUSINESS OF THE WEEK.

Thursday, June 4.

JUBB v. THE HULL DOCK COMPANY. *Part heard.*

Friday, June 5.

WESTLEY v. ———. *Special case.* *Altherton*, in support of the defendant. *Bramwell*, contra.

Judgment for defendant.

LAWTON v. HICKFORD.—*Demurrer* raising the question whether railways are within 7 & 8 Vict. c. 110, s. 1, impeaching *Young v. Smith*. *Pashley*, in support of *demurrer*. *Cole*, contra. *Cur. ado. vult.*

Saturday, June 6.

R. v. WALBOTTLE will be reported next week.

Monday, June 8.

HILTON v. LORD GRANVILLE.—A rule for a new trial having been obtained in this case, the trial was now postponed upon the motion of *Wilde*, Serjt. to Dec. 10, in order that time might be given for an application to the Court of Chancery.—Sir F. Kelly, S. G. and *Ellis*, contra.

REG. V. THE GREAT NORTH OF ENGLAND RAILWAY COMPANY. *Cur. ado. vult.*

Tuesday, June 9.

JUBB v. THE HULL DOCK COMPANY. *Cur. ado. vult.*

R. v. THE JUSTICES OF DEVON.—*Rule nisi* for a *mandamus*, commanding the defendants to pay a coroner's fee for holding an inquest. *Crowder*, Q. C. and *M. Smith*, shewed cause; Sir F. Kelly, S. G. and *Greenwood*, contra. The Court thought the question one of so much doubt and importance, that it ought to be discussed on the return to the writ. Therefore, *Rule absolute.*

Re—an Attorney.—*Pashley* moved for a rule to shew cause why an attorney should not pay a sum of money, or answer the matters of an affidavit. *Rule nisi.*

Wednesday, June 10.

LAMBERT v. LYDDON.—*Crowder*, Q. C. and *M. Smith*, shewed cause against a rule for new trial obtained by *Rogers*, Q. C. upon affidavits. *Rogers* and *Carrow*, contra. *Rule absolute.*

REG. V. LEWIS.—*Shee*, Serjt. moved for rule for new trial as against evidence. *Rule refused.*

COURT OF COMMON PLEAS.

April 24, and May 22.

BEARD v. EGERTON.

1. A person who has learnt an invention abroad, and imported it into this country, where it was not understood or known before, is the first and true inventor within the statute; and that, even though the person

be not a meritorious importer, but a mere clerk, servant, or agent to whom the communication is made.

2. There is nothing to prevent an alien from receiving a grant of patent if the Crown thinks proper, either in his own name or that of another.

3. The previous assignment, publication, or exercise of a new invention in a foreign country does not affect the validity of an English patent.

Case by the plaintiff, as assignee of one Miles Berry, against the defendant, for the infringement of a patent.

Plea 5. That before the making of the letters patent, &c. to wit, &c. one L. Daguerre had invented the said new or improved method of, &c. in the declaration mentioned, and the said L. D. and one J. N. before the making of the said letters patent, and at the time of their employing the said M. B. and communicating the said invention to him as hereinafter mentioned, and from thence until and at the time of making the said letters patent, had knowledge of the said invention and of the nature thereof, and in what manner the same was to be performed, and used and exercised and practised the same in a certain foreign country, to wit, &c. and the defendants further say, that the said L. D. and J. N. were and are aliens born in foreign parts, out of the allegiance of our lady the Queen, and within the allegiance of a foreign state, to wit, &c. and were at and during all the times aforesaid, resident and domiciled in the last-mentioned kingdom, and that they being, so resident and domiciled as aforesaid, and such aliens as aforesaid, and so using and practising the said invention as aforesaid, before the making of the said letters patent, to wit, &c. retained and employed the said M. B. as their agent to procure such letters patent as in the declaration mentioned to be granted by our lady the Queen, to him the said M. B. in his own name, but upon trust for the use and benefit of the said L. D. and J. N. and not of the said M. B. and the said M. B. then accepted of such retainer and employment, and in order to enable him to obtain the said letters patent for the purpose aforesaid, they, the said L. D. and J. N. before the making of the said letters patent, to wit, &c. communicated to the said M. B. the nature and particulars of the said invention, and in what manner, &c.; and he then and thereby, and by no other means, first became and was possessed of the knowledge thereof, and thereupon, to wit, &c. the said M. B. brought and introduced the knowledge of the said invention, and of the manner, &c. into the United Kingdom, &c. and was the first person who had or received or brought in or into the said United Kingdom the knowledge of the said invention, and of the manner, &c.; and that the said M. B. was not otherwise the true and first inventor of the said invention in the declaration mentioned, than by having such communication made to him as aforesaid, and by so becoming possessed of the knowledge of the said invention as aforesaid, and by his being the first person in the United Kingdom, &c. who acquired or brought in or into the same the knowledge of the said invention, and of the manner, &c.; and that the said invention having been so communicated to him as aforesaid, he, the said M. B. being a subject of our lady the Queen, afterwards, to wit, &c. in pursuance of his said retainer and employment, and, as such agent of the said L. D. and J. N. as aforesaid, obtained the said letters patent upon trust for the use and benefit of the said L. D. and J. N. so then being such aliens and resident and domiciled as aforesaid, and not for the use or benefit of him, the said M. B.; and until the making of the said assignment, he, the said M. B. always held the said letters patent for the benefit of the said L. D. and J. N. so being such aliens and domiciled as aforesaid, and no otherwise. Wherefore the said letters patent were and are void.—*Verification.*

The 6th plea, after referring to the facts contained in the 5th plea, as to the invention and the retainer of M. B. by L. D. and J. N. and the procurement of the letters patent by him, went on to aver that before M. B. applied for or obtained the said letters patent, a certain agreement was duly made between the Secretary of State for the Home Department in the kingdom of France of the one part, and L. D. and J. N. of the other part. The said agreement was then set forth, and was in effect an assignment to the Secretary of State on behalf of the French Government of a certain process of one Mons. N. sea. with its improvements by the said L. D. and also the last process of the said L. D. for fixing the images of the camera obscura, including therein the said invention in the said letters patent mentioned; the plea then shewed performance of all the terms of the said agreement. It concluded "that by reason of the premises, the King of the French became, and was, and thence hitherto hath been, and still is entitled, by the laws of his said kingdom, by himself and his agents, and his subjects, of the said kingdom, to use, exercise, vend, and publish, the said invention, as well in the said kingdom of France, as in the United Kingdom, &c. and in any other country or place where the said King should think proper to permit or authorize the same, without the hindrance, or molestation by, or licence from, the said L. D. and J. N. or either of them, or

any of their agents, or the assigns of them and their agents, wherefore the said letters patent were, and are void, and of no effect.—*Verification.*

The 7th plea, after referring to the matters in the 6th plea, until that part of it which shewed the performance of the agreement, concluded, "That by reason of the premises, the King of the French, by the laws of the said kingdom, became, and was entitled, in right of his crown, to publish, bestow, and dedicate the said invention, and the right of using, practising, vend, vinding the same, and to grant such licence, permission, and authority, as hereinafter mentioned to have been done by him, and so remained and continued until, and at the several times hereinafter mentioned, that the said King of the French being so possessed, after the making of the said agreement and assignment, and long before the making of the said assignment from the said M. B. to the plaintiff, or the committing, &c. to wit, &c. in the said kingdom of France, openly published and made known the said invention, and the manner of performing the same to the people of France, for the use and benefit of that people, and of all other nations and people in the world; and openly and publicly bestowed and dedicated the said invention, and the right of using, practising, and vending the same, as a free gift and benefaction upon, to, and for the use of all mankind, without limitation or restriction, and gave, published, and granted, his full, free, and royal licence, permission, and authority, to all persons whatsoever in every nation, to use, practise, and vend the said invention at their free will and pleasure, whereby, according to the laws of the said kingdom of France, the defendants then became, and were, and ever since have been, entitled to use, exercise, and vend the said invention, in any country or places, at their free will and pleasure, without the leave or licence of the said L. D. and J. N. or either of them, or of any of their agents. Wherefore the defendants at the said times when, &c. committed the said supposed grievances, &c.—*Verification.*

Plea 10. That the title and description of the said invention in the declaration mentioned, was and is expressed in the said letters patent in the words following, and in no other manner, that is to say:—"A new or improved method of obtaining the spontaneous reproduction of all the images resolved in the focus of the camera obscura." Wherefore the said letters patent were and are void in law.—*Verification.*

All these pleas were specially demurred to, but it is unnecessary to set out the grounds of demurrer.

Sir Thos. Wilde, Serjt. (with him Webster and Ogilby), for the plaintiff, referred to the following authorities:—*Bloxam v. Blee* (6 B. & C. 149); 7 & 8 Vict. c. 40, s. 4; *Edgeberry v. Stephens* (3 Salk. 447); 5 Geo. 2, c. 8; 21 Jac. 1, c. 3, ss. 5, 6.

Channell, Serjt. (with him Groves and J. Brown), for the defendant, cited, in addition, *Boulton v. Bull* (9 M. & B. 482); *Chappell v. Purday* (14 M. & B. 348); *The Clockworkers of Spanish-Quarter*, 252; 6 & 6 Wm. 4, c. 62; 3 Inst. 186; *Morris v. Porter* (1 D. & L. 737); *Stocker v. Warner* (1 C. B. 186).

The arguments will fully appear by the judgment of the Court, which was delivered by TINDAL, C. J. May 22.

JUDGMENT.

(After stating the pleadings.) The plaintiff demurred specially to the 6th plea, but we think it unnecessary to advert to the causes assigned by him on demurrer, as we think the plea is bad in substance. The defendants contended that upon the facts disclosed in this plea the letters patent are void, and upon one of two grounds; namely, either that Berry was not the true and first inventor within the meaning of the statute of James, or that a patent taken out in England, by an Englishman, in his own name in trust for an employer residing abroad, is void in law. As to the first objection on the part of the defendant, we think that a person who has learned an invention abroad and imported it into this country, where it was not understood or known before, is the first and true inventor within the statute. The cases decided before the statute prove that grants by the Crown to persons who had brought any new trade or patent into the country were good at common law. See the case of *Monopolies*, and that of the *Clockworkers of Spanish-Quarter*; and the exception contained in the sixth section of the statute in favour of grants and privileges, for the sole working of any new manufacture within the realm, was made in affirmance of the common law, introducing no other alteration than the restriction in point of time for which such patent might extend. *Edgeberry v. Stephens* (3 Salk. 447), decided long after the statute was passed, was an express authority that the statute was intended to encourage new devices useful to the kingdom; and whether learned by travel or by study is the same thing. The argument on the part of the defendant has been, that Berry was not the person who imported this invention into England within the meaning of the statute; and it was argued that, to come within the statute, the person who claims the use of the patent should be the meritorious importer, and not a mere clerk, or servant, or agent, to whom the communication was made for any special purpose, as

for the purpose of enabling him to take out a patent for the benefit of a foreigner. No authority was cited for such a distinction. So far as the public are concerned or interested, no such distinction is necessary. Berry is an Englishman, to whom the knowledge is communicated by a foreigner residing abroad; and Berry first brings the invention into England, and makes it public; and so far as relates to the interest of Berry, he has all the merit of being the first inventor. If he was guilty of any breach of faith in his mode of obtaining the communication, or in the mode of using it in England, he may or may not be made responsible to his employers abroad for such misconduct. This seems to have no bearing at all on the question as between him and a stranger, or upon the question whether the patent is void or valid. Indeed it implies on the plea itself that no fraud was committed on his employers, for it is expressly stated that he was directed to take out the patent in his own name, in trust for them, and that in fact he has so done, and has held it for a certain time for their benefit. The invalidity of the patent must, therefore, depend if at all on the second ground of objection, namely, that it was taken out by Berry in his own name, but in trust for aliens residing abroad. Now, in support of this objection also, no authority whatever was cited. In the case of *Blazam v. Elsee* (6 B. & C. 169) the point was raised at Nisi Prius, whether a patent could be taken out in trust for an alien enemy, but it became unnecessary to decide that question when the case came before the Court. The case before us does not state that Daguerre and J. N. are alien enemies; indeed we may take judicial notice that there is no war between France and England. We see no rule or principle which should prevent an alien, if the Crown thought proper, from receiving such a grant, either in his own name, or in the name of another. In the case of *Chappell v. Purday* (14 M. & W.), the Court, in their judgment (at page 318), assume it to be clear in point of law that a foreigner may hold a patent if the Crown chooses to grant it to him. We think, for these reasons, the fifth plea cannot be supported. To the sixth plea there is also a special demurrer; without advertent to the causes assigned, it is sufficient to state that we think this plea also is bad in substance. The only additional fact besides those stated in the former plea is, that before the granting of the letters patent, the inventors in France had assigned the invention to the King of the French, who became entitled to make it public in France. The plea contained no statement that he had actually published it in France; but even supposing the plea to have stated it had been published and succeeded in France, we cannot think it would have made any difference as to the validity of a patent taken out in England; but the plea contains no answer to the allegation in the declaration, that Berry was the first and true inventor, within this realm, of an invention which others, at the time of the making of the letters patent, did not use, and this allegation contains all that is necessary to support the validity of the letters patent in respect of the grant to Berry. One argument advanced by the defendant was, that the original inventors in France, having, for a valuable consideration, parted with their discovery to a person in France, could not come to England and take out a patent here. No authority was cited in support of this argument, and it is contrary to common experience; for it is well known that some persons have patents for the same invention at the same time in both countries. There is nothing in the agreement under which the invention was sold in France to restrain the original inventors from applying for a patent in England. Such a condition might, and probably would have been inserted, if such had been the intention of the parties; and at all events, whatever may have been the case as between the parties to the agreement, it is not in the power of the defendants, who are perfect strangers to it, to set up such an objection under this plea, which rests upon the ground of the letters patent being absolutely void. We think, for these reasons, that the sixth plea must be overruled. We have come to the same conclusion as to the seventh plea, which differs from the others only in this respect, that it alleges that the King of the French did openly publish and make known the said invention to the people of France, for the use and benefit of that nation, and of all other nations and people in the world, as a free gift and benefaction for the use of all mankind; and the plea then proceeds to allege, not that the letters patent are void as in the former pleas, but that the defendants thereby became entitled to use the invention in any country without the leave or license of the plaintiff; but we think it a sufficient answer to say the letters patent were not void, but, on the contrary, were valid, for the reasons given in our judgment on the two former pleas; whence it follows, as a necessary consequence in law, that the invention cannot be used in this country in direct violation of a valid grant of the Crown, without license of the grantees. As to the tenth plea, it is sufficient to remark, that we think the objection, as to the title of the patent, is answered by reference to the decided case of *Nichols v. Hapman* (7 M. & G. 337), and *Neilson v. Harford* (8 M. & W. 804). We think, therefore, the judgment

of the Court must be given on the several pleas above-mentioned for the plaintiff.

Judgment for the plaintiff.

Wednesday, June 3.

TINNISWOOD v. PARRISON.

Jurisdiction of the County Court.

The County Court cannot hold pleas in matters where the freehold may come in question; and, therefore, where in replevin there is an assuery or cognizance upon which the freehold may come in question, the Court is immediately ousted of its jurisdiction, and does not recover it by the plaintiff taking issue upon a mere collateral matter.

This was a writ of false judgment from the County Court of York. The action was replevin for taking certain cattle, goods, and chattels, to wit, one heifer and two cows, in a certain place called Bootham Stray, within the jurisdiction of the County Court. The defendant in the original suit (the plaintiff in error) made cognizance, as bailiff of the mayor, aldermen, and citizens of the City of York; he averred that the said place in which, &c. now is, and at the said time when, &c. was the close, soil, and freehold of the mayor, aldermen, and citizens of York, and justified the taking as a distress for cattle damage feasant.

The plaintiff below (the defendant in error), pleaded in bar, that the defendant was not the bailiff of the mayor, aldermen, and citizens of the City of York, and that he did not, as bailiff of the said mayor, aldermen, and citizens, &c. and by their command in that behalf, take the said cattle, goods, and chattels, modo ac formâ. Upon that plea, issue was joined, and a verdict found for the plaintiff below (the defendant in error), damages 5*l*. Upon that judgment the present writ of false judgment was brought, and it was assigned as error that the freehold of the said place in which, &c. having been brought in question by the said plea, and the said cognizance of the said Thomas Tinniswood (the plaintiff in error), the County Court of Yorkshire ceased to have jurisdiction to entertain the same in the same court, and ought not further to have proceeded therein; and the point marked for argument by the plaintiff in error was, that the jurisdiction of the County Court was taken away by the cognizance which involved the question of title to land, and consequently that the plea in bar, and all subsequent proceedings, were erroneous, and without authority.

Allen, Serjt. (with him *Reu*) for the plaintiff in error.—From all the books of practice no modification is to be found of the doctrine that the County Court has no jurisdiction in questions of freehold. (Comyn's Digest, County Court, C. 8.) There the case of *Cannon v. Smallwood* (3 Levinz, 224) is quoted, where it is said, "Questions of freehold cannot be tried in the County Court without a writ;" and "the County Court has no power after freehold pleaded to proceed in the action either directly or collaterally."

Channell, Serjt. for the defendant in error (the plaintiff below).—In this case the freehold does not come in question. The plaintiff below never disputed that the freehold belonged to the corporation of York, but he denied that the defendant below was the bailiff of the corporation. [MAULE, J.—The cognizance offers an issue upon the freehold, although that issue is not accepted.] In *Cannon v. Smallwood* the issue was, whether the fences were in repair; and upon the effect of the pleadings the question rose, whether the freehold was not charged with their repair. The words quoted were an *obiter dictum* unnecessary to the decision of the case. It must be contended on the other side, that the moment a plea mentioning the freehold is pleaded, the jurisdiction of the County Court is at an end, whereas it is only so really if the freehold actually comes in question. Upon this record the defendant is a mere wrongdoer, without any authority to distrain at all. [TINDAL, C. J.—The case quoted says, that if the pleadings are such that the freehold may afterwards come in question, the jurisdiction of the County Court at once ceases. MAULE, J.—In the Ecclesiastical Courts, if a matter is pleaded upon which there may be an issue which those Courts cannot try, a prohibition at once issues. If the judge of the County Court is incompetent to deal with questions of freehold, it may be quite unnecessary to wait to see what the issue will be. COLTMAN, J.—In *Cannon v. Smallwood*, as between the parties the freehold could not afterwards be disputed. It might, as regarded other parties than those who were privy to the judgment. Would not that be the case here also?]

Allen, Serjt. in reply.

TINDAL, C. J.—In this case the authority of *Cannon v. Smallwood* has been brought before us; and that case seems to me to be as nearly in point with the present as possible. There the freehold was not brought in issue by a direct traverse, but only collaterally. So here there is no issue upon the point whether the freehold belongs to the mayor and citizens, but only the collateral issue, whether the defendant below was their bailiff, and whether he took the cattle as their bailiff and by their command. It appears by the record, without going further than the plea, that the Court had lost its jurisdiction. The defendant

below should then have issued a *recordari facias loquelam*, and brought the action into one of the superior courts. There is a strong confirmation to the authority from 3 Levinz, in Coke's Second Institute, 310, 311, in the comment upon the Statute of Gloucester. The statute says, that sheriffs shall hold pleas in their counties as they have been accustomed to be pleaded. Coke says, "Now what are the pleas they may hold?" and then he states that writs of trespasses before justices are within this law; "but if the trespass be *vi et armis*, where the King upon conviction should have a fine, the sheriff in his county cannot hold plea of it, for no Court can assess a fine but a Court of Record, because a *capias* to take the body is incident to it." And then afterwards there is a further limitation which bears upon the present question: "Neither shall he hold plea of trespass for taking away of charters concerning the inheritance or freehold, for it is a maxim in law, '*quod placita concernent chartas seu scripta liberum tenementum tangunt in aliquibus curiis quæ recordum non habent secundum legem et consuetudinem Regni Angliæ sine brevi regis placitari non debent.*'" That seems to me to corroborate the case cited.

COLTMAN, J.—This case has not been successfully distinguished from *Cannon v. Smallwood*. It seems to me to be analogous to proceedings in the Ecclesiastical Court. There, if a modus is pleaded in a question of tithe, the Court is ousted of its jurisdiction.

MAULE, J.—If the freehold had been traversed by the plea, and the plea had been demurred to, it is difficult to say that the Court would not have been ousted as having no jurisdiction.

CRESSWELL, J.—The case from Levinz is rather startling in the first instance, but the passage from the Second Institute shows the principle of the rule there laid down.

Judgment for the plaintiff in error (the defendant below).

Saturday, June 6.

LORD v. WARDELL.

Practice—New trial—Change of attorney.

The objection that the attorney, from whom a notice has been received, is not the attorney who commenced an action, and that there has been no order for a change of attorney, is of the strictest nature, and must be clearly made out. Upon a trial, a verdict had been found for the defendant. The plaintiff obtained a rule for a new trial, upon payment of costs. The costs were not paid for ten years. In the interim the plaintiff's attorney died, and a new attorney took his place. A Term's notice was given of an application to the Court to discharge the rule for a new trial; the notice being given by an attorney, not named in the record, who described himself as agent for the above-named defendant: Held, that the plaintiff could not object to the sufficiency of the notice, unless he could prove distinctly that no change in the defendant's attorney had been duly made, either in the lifetime of the plaintiff's original attorney, or since his decease.

This was an action of trover for a title-deed. The action was commenced in June, 1836, and tried at the Spring Assizes, 1837. A verdict was found for the defendant; but in the following Term a rule was made absolute for a new trial upon payment of costs by the plaintiff. The costs were taxed in June, 1837. The costs were not paid, and no further steps were taken by either side until the commencement of the present year. In the meanwhile William Bertram Bishop, the plaintiff's attorney in the action, died, and was succeeded in his business by John Beck, who also became the attorney of the plaintiff. A Term ago, notice was served upon the plaintiff and John Beck, of an intended application to the Court to discharge the rule for a new trial. The notice was given by Nicholas Henry Rowsell, who described himself as of the firm of Hall, Moorliyan, and Rowsell, and as "agent for the above-named defendant." The affidavit of the above facts, and of the service of the notice, was also made by N. H. Rowsell, similarly describing himself.

Early in the present Term Channell, Serjt. for the defendant, had obtained a rule for discharging the rule obtained for a new trial upon the payment of costs, against which

Byles, Serjt. now shewed cause. He produced an affidavit, made jointly by John Beck and Lord, the plaintiff, the former of whom deposed that he had succeeded to the business of the plaintiff's late attorney, William B. Bishop, and both of whom swore "that they had not, nor had either of them, received any notice of the change of the defendant's attorney; neither did they, nor either of them, know who was the attorney of the defendant except by the notice and affidavit in the said cause (*describing them*) signed by Nicholas Henry Rowsell, of the firm of Hall, Moorliyan, and Rowsell, agents of the above-named defendant."

Byles, Serjt. for the plaintiff.—There is a fatal objection to the application. The attorney upon the record is a different person from the attorney who takes the present step. There has been no application to change the attorney, and therefore no good

Term's notice has been given. After this lapse of time, no proceedings can be taken without proof of a Term's notice given by the proper person. Where it appears that there is one attorney at one time and another at a different time, it must be shown how the change has been made; if the original attorney be dead, that there has been a notice of the change; if alive, that there has been an order to change.

MAULE, J.—Where is the defect apparent upon the face of the proceedings? It would be vastly inconvenient to hold that upon every interlocutory proceeding there must be an affidavit to show all the changes of the attorney.

Channell, Serjt. in support of the rule.—The notice was given, and the affidavit is made by the London agent, who is the same as has been throughout the proceedings, and who describes himself as having that character. The case of *Muy v. Wooding* (3 M. and S. 500) makes it doubtful whether the necessity of a Term's notice is not confined to proceedings before verdict. [MAULE, J.—That case does not apply. There no step had been taken to call the verdict in question, and it had become too late to disturb it. Lord Ellenborough gives the reason of the rule, "that while the matter is still in controversy, the party should, after so long a lapse as four Terms without any proceedings, have notice that he may prepare himself; but when the matter has passed in *rem judicatum* by the verdict, the same reason does not apply." Those remarks have no force in a case in which the Court has granted a new trial.] It is quite consistent with the plaintiff's affidavit, that a notice to change the attorney may have been served upon W. B. Bishop in his lifetime, or upon some intermediate attorney of the plaintiff since the decease of Bishop. An objection of this kind ought to be conclusively made out, and all the burden of proof lies on the opposite side.

TINDAL, C. J.—It is certainly an objection of a very strict nature, and I think you ought to make it appear to the Court very clearly.

The rest of the Court concurring,

Rule absoluté.

Monday, June 8.

COLDHAM v. SHOWLER.

An agreement was made between A. S. and J. C. written out upon paper, and signed by the parties. At the same interview J. S. agreed with J. C. to guarantee the performance of the agreement by A. S. and signed upon the other side of the paper the following memorandum:—"I hereby undertake that J. S. shall perform all the covenants and conditions mentioned in the annexed agreement, and hold myself responsible for her." Held, that the two agreements were incorporated, and that the consideration for the latter agreement sufficiently appeared.

An agreement was entered into between A. S. and J. C. for the sale of a public-house from the former to the latter: possession was to be taken, and the contract completed, upon October 20th. A deposit was paid, which was to be returned if the consent of the landlord could not be obtained. Upon the 20th October, the parties met, and the money to be paid upon the completion of the contract not being ready, it was agreed that they should meet again on the following day. The landlord had not then been applied to. When they met again he was applied to, and refused his consent. In an action to recover back the deposit—Held, that these facts would not support a plea; that before breach of the said agreement, and before a reasonable time had elapsed for procuring the landlord's consent, the plaintiff refused to purchase, &c.

This was an action of *assumpsit* on a special agreement. The declaration stated an agreement by one Amelia Showler to sell to the plaintiff a certain public-house for 150l. and that a deposit of 30l. was paid upon condition that, if the plaintiff was not accepted as tenant by the landlord, the deposit-money should be returned, and the agreement cancelled. It then stated, that, in consideration of this agreement having been made at defendant's request, the defendant, being the father of Amelia Showler, undertook that his daughter should perform all the covenants and conditions in the agreement mentioned, and held himself responsible for her. Mutual promises. Averment—That the plaintiff was not accepted as tenant by the landlord; that Amelia Showler was required to pay the 30l. deposit; that she had failed to do so. Breach—That the defendant, disregarding his said promise, had not held himself responsible, &c. nor been responsible, and had not re-paid to the plaintiff the said deposit-money, &c.

Pleas: 1. That there was no such agreement. 2. That after the making of the agreement, and before breach, and before a reasonable time for obtaining the consent of the landlord had elapsed, plaintiff refused to purchase the public-house, &c. or to pay for the same, &c. The replication took issue upon the first, and traversed the second plea.

At the trial before Erle, J. at the sittings in Mid-lanx after last Easter Term, it appeared that the public-house in question was in the occupation of Amelia Showler; that a negotiation took place between the plaintiff and defendant for a sale of the stock, goodwill, &c. and that on the 20th of October, 1845, a meeting took place on the premises, when two

agreements were written and signed. They were on different sides of the same paper, but the former was executed before the latter was drawn. The former was made between Amelia Showler and the plaintiff, and thereby "Amelia Showler agreed, in consideration of the sum of 30l. a deposit in part payment of 150l. &c. to sell the good-will and fixtures, &c. and her interest in the public-house and premises, &c. at and for the sum of 150l. and also all the stock, &c. at trade prices in the usual manner;" and the plaintiff agreed "to purchase the same, &c. and to pay for the same on taking possession, which should be on or prior to the 20th October, 1845." Then followed a condition that "if the plaintiff should not be accepted as tenant by the landlord upon the same terms as A. S. the deposit-money should be returned." The latter was as follows: "I hereby undertake that my daughter, Amelia Showler, shall perform all the covenants and conditions mentioned in the annexed agreement, and hold and consider myself responsible for her." This was signed by the defendant only. It appeared that the parties met upon the 20th October, at which time the landlord had not been consulted on the subject, but that a brewer's clerk who was to have advanced the money for the plaintiff not being present an appointment was made for the following day for the completion of the purchase, but at that time the parties saw the landlord, who refused his consent to the change of tenant. It was objected, first, that the defendant's undertaking was a collateral one within sect. 4 of the Statute of Frauds, and that it disclosed no consideration; that it was an independent contract, and the other agreement could not be taken in to assist it: secondly, that the second plea was proved: that the 20th October was the day fixed for the completion of the contract, and that it could not be varied by parol; that on that day the plaintiff was not ready, and the deposit money was forfeited. Erle, J. overruled the objections, and directed a verdict for the plaintiff; damages, 30l. A verdict having been found accordingly, and Byles, Serjt. having obtained a rule for a new trial on the ground of misdirection,

Talfourd, Serjt. (with him Bovill) shewed cause.—As to the first point, this was really and substantially one entire transaction: the father negotiated the whole matter, and the two parts of the agreement have reference to each other, and were intended to make but one contract. (*Spittell v. Lavender*, 5 B. Moore, 270.) As to the second point, it is only the possession that is to be given upon the 20th October. The consent of the landlord is a collateral thing, which the defendant was bound to procure. The plea does not rest upon the defence that on the particular day the plaintiff was not ready to complete, but that he was not ready within a reasonable time. This objection is therefore not open to the defendant. There is no evidence at all in support of the plea; for to refuse to do an act, not a mere non-feasance, and there is no pretence that there was any thing like an actual refusal upon the part of the plaintiff.

Byles, Serjt. in support of the rule.—In *Spittell v. Lavender*, the agent, when he signed, shewed that he merely signed as agent; then came the signature of his principal to confirm it. Here there are two distinct agreements, and in the second the consideration does not appear. Then, there is no difference between neglected and refused. The condition precedent to the defendant's liability is the plaintiff's consent to perform his part of the contract.

TINDAL, C. J.—You are quite answered. The parties were all of them together at the time the agreements were written, and it can make no difference that they are on different sides of the paper. Probably there was not room for both on one side.

MAULE, J.—The signature of the father applies to all that precedes it. It is impossible to say that the money was forfeited, or that there was a breach of the contract on the part of the plaintiff, when the landlord's consent had not been obtained.

COLTMAN and CRESSWELL, JJ. concurred.

Rule discharged.

June 5 and 9.

TOOMER v. GINGELL.

Since the passing of 7 & 8 Vict. c. 96, the final order only protects the person of the insolvent from process, and therefore such final order is no bar to an action brought against the insolvent.

This was an action of *assumpsit*. The defendant pleaded, that after the making of the said promises, and before the commencement of the suit, he had presented his petition for protection from process to the Court of Bankruptcy, and that the commissioner had granted him his final order. The whole of the proceedings were fully stated in the plea, which disclosed every thing requisite to give the commissioner jurisdiction. The final order itself was in the form given in Schedule A, No. 3, of the 7 & 8 Vict. c. 96, and directed to be employed by sec. 22 of the statute.

To this plea there was a general demurrer. Channell, Serjt. in support of the demurrer, referred to *Coak v. Henson* (14 Law J. N. S. C. P. 295), and to the several clauses of 5 & 6 Vict. c. 116, & 7 & 8 Vict. c. 96; and contended that, although the former statute had contained a clause making the final order

granted under that Act pleadable in bar, yet that by the latter statute the form of the final order was changed, and the plea in bar taken away, the final order now operating merely as a protection to the person of the insolvent.

Talfourd, Serjt. for the defendant, when the case first came before the Court, argued that since the new statute the final order for protection of the person had the same effect as formerly the final order for protection and distribution, but afterwards he said that he had looked at the case of *Nichols v. Payne* (2 D. & L. 629), and that he could not support the plea.

MAULE, J.—I have read the statute through very carefully, and it seems to me to have been the intention of the legislature that the final order should no longer operate any further than as a protection for the person.

Judgment for the plaintiff.

Wednesday, June 10.

FRANCIS v. DODSWORTH.

To a plea of set-off the plaintiff replied, "as to the sum of 30l. parcel of the money in the plea stated to be due," a discharge under the Insolvent Debtors' Act, concluding with a verification: as to the residue, *nil debet*, concluding to the country. The defendant having demurred to the whole replication, and also taken issue upon the last part of it, the Court directed him to amend, either by striking out the demurrer or the rejoinder, or by restricting the demurrer to the first part of the replication.

The defendant not having applied to the Court until nearly two months after the pleading of the rejoinder, the Court gave leave to amend without costs.

Debt—For work and labour.

Plea (inter alia)—Set-off.

Replication as to the plea of the defendant, &c. that after the sum of 30l. parcel of the money in the plea stated to be due became due, the plaintiff was discharged under the Insolvent Debtors' Act, with a verification; and *nil debet* as to the residue, concluding to the country.

Rejoinder—"And the defendant saith that the said replication is not sufficient in law; and the defendant shews to the Court here the following causes," &c. (setting out the grounds of demurrer). And as to the replication of the plaintiff to the residue of the sum of money stated, &c. and whereof the plaintiff prays that it may be inquired by the country, *similiter*.

On a former day, Manning, Serjt. had obtained a rule calling upon the defendant to shew cause why either the rejoinder or the demurrer should not be set aside, or why the demurrer should not be restricted to the former part of the replication.

Byles, Serjt. now shewed cause.—The utmost to be said is, that we ought to have restrained our demurrer to the first part of the replication. But the replication itself is bad (*Fairthorne v. Donald*, 13 M. & W. 724). Although my demurrer may be too large, the Court will, after argument, restrict it to that part of the opposite pleading which is bad; and the first part of this replication is an argumentative *nil debet*. Besides, this application is too late. The defendant rejoined on March 16th, and this rule was not moved until the following 4th of June. (Reg. Gen. H. T. 2 Wm. 4, 33.)

TINDAL, C. J.—The justice of the case requires that you should amend without payment of costs. How are we to know whether to put the pleadings as they stand into the special paper, or to send them down for trial? You give the plaintiff neither in law nor in fact a complete issue, but keep him at arm's length with a weapon never before used in Westminster Hall. The defendant has lain by too long, or he would be entitled to costs.

MAULE, J.—I think the plaintiff would have been quite safe in replying *nil debet* to the whole plea. He might have shewn his discharge under the Insolvent Act as evidence in support of that replication.

The defendant to amend without payment of costs.

BUSINESS OF THE WEEK.

Friday, June 5.

SPECIAL PAPER.

PANNELL v. MILL.—Channell, Serjt. (with him Boreham) for the plaintiff. Sir Theo. Wills and Manning, Serjts. (with them Fitzherbert), for the defendant.

ROGERS v. RICHARDS.—Channell, Serjt. for the plaintiff, prayed the judgment of the Court.

STEVENS v. DESBOROUGH.—Talfourd, Serjt. for the plaintiff. Channell, Serjt. for the defendant, without argument, prayed leave to amend.

Leave to amend upon payment of costs; otherwise, judgment for the plaintiff.

TOOMER v. GINGELL.—Channell, Serjt. for the plaintiff. Talfourd, Serjt. for the defendant. Argument adjourned.

Saturday, June 6.

The Court gave judgment in the three following cases:—

DORRIS v. ATKINSON & FAWCETT.

Rule absolute, unless the plaintiff consents to limit the verdict.

COOPER v. SHEPHERD. Judgment for defendant.

BOWLEY v. BELL. *Rule absolute.*

FINDLEY v. FARQUHARSON.—Dowling, Serjt. moved for a rule calling upon the plaintiff to shew cause why the Mas-

ter should not review his taxation. The defendant had pleaded *severance*, and had succeeded upon her plea, but the Master had refused to allow her any costs.

Rule to shew cause.

JOHNSON v. POTTER.—Byles, Serjt. shewed cause. Dowling, Serjt. in support of the rule. The questions were merely of fact.

Rule discharged.

TOTAL v. JOHNSTONE.—Byles, Serjt. (with him Alderson), shewed cause. Channell, Serjt. (with him Granger), in support of the rule.

Rule discharged.

REG. v. HEWESWORTH.—Talfourd, Serjt. asked for a day to be appointed for the defendant to receive the sentence of the Court, and for leave to file affidavits. The Court appointed the first day of Michaelmas Term for giving sentences.

Application granted.

WILSON v. BARFORD.—Wilkins, Serjt. (with him Pearson) shewed cause. Byles, Serjt. in support of the rule.

Rule discharged.

HILL v. KITCHING.—Kinglake, Serjt. (with him M. Smith) shewed cause. Manning, Serjt. in support of the rule.

Argument adjourned.

OLLIVER, TODD, CHAPLIN AND OTHERS.—Channell, Serjt. moved for a rule to shew cause why proceedings should not be stayed. This was an action of trespass for the same cause of action as had already been disposed of by proceedings under the Interpleader Act.

Rule to shew cause.

Monday, June 8.

WINTER v. PLAYDEN.—Galea, Serjt. shewed cause against a rule obtained by Allen, Serjt. for judgment as in case of a nonsuit.

Rule discharged on a peremptory undertaking.

LEVISON v. WILDS.—Byles, Serjt. moved for a rule calling upon the plaintiff to shew cause why proceedings should not be stayed until the plaintiff should pay the costs of a former action between the same parties, and give security for costs.

Rule to shew cause.

ROBINSON v. BROWN AND ANOTHER.—Byles, Serjt. moved to set aside the verdict for the plaintiff, and to enter a nonsuit pursuant to leave reserved, or a verdict for the defendant, or for a new trial, upon the ground of the improper reception of evidence. This was an action against the executors of a surety, and it was essential to prove that a notice in writing had been served upon the principal. The principal was not called, nor was it proved that he had been served with a subpoena duces tecum to produce the notice. The evidence of a clerk to the plaintiff that he had sent the notice in a letter to the principal, was received and objected to. (*Lensu v. Palmer, M. & M. 31.*)

Rule to shew cause.

ROBINSON v. BROWN AND ANOTHER.—Talfourd, Serjt. moved, pursuant to leave reserved, to increase the damages from 300l. to 400l. The point raised will be found in the report of a motion in the same case, Law T. Vol. VII. p. 183.

Rule to shew cause.

HINTON v. ACHAMAN.—Manning, Serjt. moved for a rule to shew cause why the defendant should not enter up final judgment for himself, or why the plaintiff should not enter up final judgment for the defendant upon the 2nd and 5th pleas, demurrers to which had been decided in favour of the defendant. The motion was made with a view to proceedings in a court of error. (*King v. Johnson (N. & M. 279); Law v. King (3 Wms. Saunders, 80); Tolson v. Kaye (6 Man. & G. 436),* were mentioned.)

Rule to shew cause.

RE HANNAH TATHAM.—Manning, Serjt. applied for leave for a married woman to dispose of her estate under 3 & 4 Wm. 4, c. 74, s. 91.

Application granted.

WRIGHT v. BURROUGHS.—C. Jones, Serjt. moved on behalf of the plaintiff's attorney for a rule calling upon the defendant to shew cause why the plea, *paua darrein continuance* herein should not be set aside with costs—first, upon an affidavit that it had been pleaded by collusion between the plaintiff and the defendant to deprive the attorney of his costs; secondly, on the ground that the plea *paua darrein continuance* cannot be pleaded after demurrer. (*Staple v. Hayden, 6 Mod. 9; Parkes v. Crafts, 1 Lord Raym. 506; Stoner v. Gibson, Mob. 81.*)

Rule to shew cause.

DON DEM. STRINGER v. STRINGER.—Channell, Serjt. moved for a rule calling upon the plaintiff to shew cause why proceedings should not be stayed until payment of costs of a prior judgment.

Rule to shew cause.

BAILEY v. BURROUGHS.—Byles, Serjt. moved to set aside the appearance entered for the defendant and all subsequent proceedings, upon the ground that the defendant had not been served with process.

Rule to shew cause.

Tuesday, June 9.

STORY v. SMALWOOD.—Talfourd, Serjt. moved for a rule to shew cause why the notice of trial by proviso should not be set aside, and further proceedings stayed, until the defendant should give security for costs.

Rule to shew cause.

WARREN v. FRANCE AND OTHERS.—WARREN AND WIFE v. FRANCE AND OTHERS.—Talfourd, Serjt. moved, upon the part of Naah, one of the defendants, for a rule to shew cause why the examinations taken upon interrogatories in the first of these causes should not be used as evidence in the second, and why the exhibits in the possession of the Master should not be returned, or why the trial should not be postponed until the return of a commission to examine witnesses from Australia.

Rule to shew cause.

NIAS v. DAVIES.—Dowling, Serjt. (with him E. V. Wilkins) shewed cause.—Channell, Serjt. in support of the rule.

Cur. adv. vult.

DOYLE v. EDWARDS.—C. Jones, Serjt. moved to arrest the judgment, or to award a *certiorari de novo*, or for a new trial. The action was for a bill of exchange, alleged in the declaration to have been made on the 11th of December, 1846. The objection to the date in the declaration was not taken at the trial. The Court thought it to be the same case as an impossible date, and to be cured by verdict.

Rule refused.

Wednesday, June 10.

TUN v. SPANNA AND OTHERS.—Byles, Serjt. shewed cause. Sir Thos. Wilde, Serjt. in support of the rule.

Rule absolute to postpone the trial until the sittings after Hilary Term, 1847.

HULTON v. THOMPSON.—Manning, Serjt. moved for a rule for the Master to tax the plaintiff's costs in this action, which was brought on a judgment. The merits of the case appear in a report of the case in the LAW TIMES, Vol. VI. p. 39.

Rule to shew cause (returnable at chambers). (HULTON v. THOMPSON.—Channell, Serjt. moved for a commission to examine witnesses at Valparaiso.)

Rule to shew cause.

BIKY v. PRESTWICK.—Byles, Serjt. (with him Parry) shewed cause. Channell, Serjt. (with him Bonill) in support of the rule for a new trial.

Rule discharged.

WILKINSON v. CAMPION.—Channell, Serjt. moved for a rule to shew cause why the Master should not review his taxation on the ground that he had not allowed the defendant the costs of the 3rd issue, upon which the defendant had succeeded.

Rule to shew cause.

POOLEY v. TAYLOR.—Byles, Serjt. shewed cause. Channell, Serjt. in support of the rule for judgment as in case of a nonsuit.

Rule discharged upon a peremptory undertaking.

COURT OF EXCHEQUER.

Thursday, June 4.

BRADLEY v. TONGE.
A, being in debt to B, agreed to convey a certain estate to him, and to deliver to him an abstract of title by a certain day: Held, in an action against A for the non-performance of this agreement, that B was only entitled to nominal damages.

This was an action brought against the defendant for the breach of an agreement to deliver to the plaintiff an abstract of title to a certain estate, and it appeared that the defendant, being in debt to the plaintiff to a considerable amount, had agreed to convey to the plaintiff the estate in question in payment of his debt. The defendant, however, being unable to make a good title to the property, no abstract was delivered, which the breach set out in the declaration. At the trial, the value of the estate was proved, and this it was contended should be the measure of damages. The learned judge, however, who tried the cause, directed a verdict to be entered for the plaintiff with nominal damages (40s.), giving him leave to move to increase the amount to any sum which the Court should think fit, if the Court should be of opinion that he was entitled to more than nominal damages.

Whately, Q.C. having obtained a rule nisi accordingly.

Talfourd, Serjt. and Whitmore now shewed cause, and contended that the ruling of the learned judge was right, and that if the plaintiff could recover damages in this action commensurate with the value of the estate, he might also recover his original debt in another action, and thus be paid twice over. [Stopped by the Court.]

Whately, Q.C. and Greaves, in support of the rule, contended that the proper question for the jury was, in how much worse a position was the plaintiff now than if he had received a conveyance of the property. Now, as the defendant had shewn no title, the plaintiff had a right to assume there was a good title, and also that he was in insolvent circumstances; if so, it was clear that the damages should be equal to the value of the estate.

Case cited, *Hopkins v. Grazebrook (6 B. & C. 31)*.

By the COURT.—The plaintiff is only entitled to nominal damages. He is still entitled to sue for his whole debt; and it may be he is now in a better position than he would have been if he had got this estate, which was worth a less sum than the whole debt.

There was a count for money paid, on which it was agreed that the plaintiff had a right to recover 30l. 12s. 8d.

Damages increased on this count by 30l. 12s. 8d.; as to the other part of the declaration, rule refused.

Friday, June 5.

DON DEM. STACE v. WHEELER.

A demise in ejectment by two out of three co-executors is good.

Fortescue, for the lessors of the plaintiff, now shewed cause against the rule obtained by Peacock to arrest the judgment in this case. The question is, whether a demise laid in the names of two out of three co-executors is good, those two alone having taken out probate of the will of the testator. It is submitted that a demise so laid is perfectly good. It is no doubt laid down as a general rule, that all the co-executors must join in an action, but there is no mode of compelling them to proceed therein, and if one should refuse to do so, the only practicable course is by summons and severance, a mode which is now, however, obsolete. (Bac. Abr. Executors and Administrators, D. 3.) The whole legal interest is in each executor, and he, consequently, may part with the whole estate. (Co. Litt. 186; 4 Bac. Abr. (last edit.) 494.) The difference between a joint tenant and a co-executor is this, that in a joint grant or lease each joint tenant only passes his own interest, but each co-executor, by such an instrument, passes the entirety. Each co-executor takes the whole estate, though all are in law but one person. (4 Bac. Abr. Executors and Administrators, D. 1; Com. Dig. Administration, B. 12.) Fortescue also referred to *Godolphin's Orphan's Legacy, 134; Herbert v. Pigott (3 Cr. & M. 384); Wentworth on Executors, 211; Nation v. Foster (1 Cr. M. & R. 172); Roll. Abr. 924, O; Dyer 23, a.* He was then stopped by the Court.

Peacock, contra.—The demise must be stated according to its legal effect; if two out of three co-executors demise, the estate does not pass out of them

jointly, and each of several joint tenants passes only his separate interest. The distinction is this, that on the demise of one joint tenant, his portion only of the estate demised can be recovered, whereas, on the demise of a joint executor, the whole may be recovered, but no joint estate passes by a demise by two out of three executors; the rule is, in this case, the same as in an action on a joint and several bond. Either one or all of three co-obligees may sue, but two out of the three cannot. *Doe v. Errington (1 A. & E. 750)* is an authority against this demise.

By the COURT.—The right of action on a joint and several bond is regulated by the nature of the agreement into which the parties have entered. The legal effect of a demise by two out of three co-executors is, that each demises his own separate interest, but then each co-executor has the entire interest, so that the plaintiff gets the whole estate. The difficulty suggested by Mr. Peacock is really quite as great when the demise is by all the executors, as when it is by two out of three only.

Rule discharged.

SMITH v. JEFFRIES.

Under a written contract for "Ware" potatoes, evidence that "Regent's Wares" were intended by the parties is inadmissible.

This was an action (tried before Lord Denman, C. J.) on a contract for the purchase of sixty tons of Ware potatoes at 5l. per ton. At the trial the learned judge admitted evidence to shew that the contract was, in fact, for the purchase of Regent's Ware potatoes. The term Ware, it appeared, referred to the quality of the potato, and meant the best of any particular sort; Regent's Wares being, consequently, the best of one particular sort of potato, called Regent's. Shee, Serjt. had obtained a rule nisi for a new trial, on the ground that the above evidence ought not to have been admitted; and, against this rule,

M. Chambers, Q.C. and Dawson now shewed cause.—The ambiguity in this case arose from evidence dehors the contract, and might, therefore, be removed in the same way; it was a latent ambiguity. Evidence was indeed necessary to shew to what sort of potatoes the contract between the parties was intended to refer, there being many different kinds of best potatoes. [ALDERSON, B.—If I buy sixty tons of potatoes, may not the vendor deliver to me kidney potatoes?] Evidence would be admissible to explain the subject-matter of the contract. (*Doe v. Osenden v. Chichester, 4 Dow. R. 93; Birch v. Depeyster, 1 Stark. N. P. C. 210.*) [ALDERSON, B.—No doubt evidence is admissible to shew in what sense parties used a particular term, which in different trades has different significations, and thereby to shew to which trade the parties meant to apply it; but here there is no doubt about the meaning of the term. [POLLOCK, C.B.—This contract being in part unexecuted, and the action being brought in respect of that part, would it not be void for uncertainty?] At all events, if this evidence was improperly received, it did not in any way influence the jury, for they have calculated the damages as if the contract had been merely for Ware potatoes, and not for Regent's Wares, and the learned judge was not dissatisfied with the verdict. They also cited the 4th and 7th rules laid down in Sir James Wigram on Extrinsic Evidence, Clayton v. Gregson (6 Nev. & M. 694); Doe v. Need (2 M. & W. 129).]

By the COURT (without calling upon Shee, Serjt. to support his rule).—The evidence was, beyond all doubt, improperly received; there must, therefore, be a new trial.

Rule absolute.

JACKSON v. SMITHSON.

A declaration in case for an injury caused by an animal belonging to the defendant, need not contain an averment that the said animal was kept negligently by him.

This was an action against the defendant for an injury caused to the plaintiff's wife by a ferocious ram belonging to the defendant. A verdict having been found for the plaintiff, Shee, Serjt. subsequently obtained a rule for a new trial, on the ground of surprise, or to arrest the judgment on the ground that the declaration contained no averment that the defendant negligently kept the said ram. Against this rule

M. Chambers, Q.C. and Jos. Brown now shewed cause.—It is not necessary to allege negligence, if the declaration avers the mischievous propensity of the animal which caused the injury, and that the defendant was aware of such propensity. The law on this subject is laid down by Lord Holt, in *Ren v. Huggins (2 Lord Raym. 1574); Smith v. Pelah (2 Stra. 1264)*. Besides, the declaration in this case avers that the defendant "wrongfully and injuriously" kept the ram, and this is sufficient. The identical point now raised was decided this very Term (June 3) by the Court of Queen's Bench, in *May v. Burdett*. The declaration there was in the same form as this, and the Court held it good after verdict. They also cited 2 Chitt. Pleading, 401, note; Register Brevium, fo. 110, b. 111; Cropper v. Matthews (2 Siderfin, 127); Liber Placitandi, fol. 40, pla. 86; 1 Wms. Saunders, 37, note (1); Jenkins v. Turner (1 Lord Raym. 109); Curtis v. Mills (5 C. & F. 490), and were then stopped by the Court.

Shee, Serjt. and Wordsworth, in support of their rule, attempted to distinguish the present case from that of *May v. Burdett*, and cited *Jones v. Perry* (2 Esp. 482); *Hartley v. Harriman* (1 B. & Ald. 620); *Blackman v. Simmons* (3 C. & P. 168); *Sarch v. Blackburn* (4 C. & P. 297). The Court, however, thought that the decision in *May v. Burdett* was a clear authority against the motion in arrest of judgment, and that the affidavits were insufficient to justify them in granting a new trial on the ground of surprise. They therefore discharged the rule.

Rule discharged.

Saturday, June 6.

THE MAYOR AND CORPORATION OF POOLE
v. WHITT.

In an action against a party for rent in arrear, he pleaded eviction, under a title paramount: Held, that to entitle the defendant to a verdict, the plea must disclose such a title in the party evicting, as would enable him to maintain ejectment. Held also, that where the party has this right, it is not absolutely necessary that the defendant should have been actually turned out of possession, but a demand of possession and an attornment would be sufficient to support the averment of an eviction.

This was an action on a covenant in a lease for rent. The defendant pleaded eviction by title paramount. Verdict for the plaintiff—damages, 412*l.* with leave reserved to move to enter a verdict for the defendant.

At the trial it appeared that the action was brought to recover certain rents of a market-house, and certain tolls, of which the defendant was lessee to the corporation. The facts set out in the plea, and relied on as a defence, were, that a gentleman of the name of Parr had been town clerk of Poole prior to the passing of the Municipal Corporations Act. After the passing of that Act, Mr. Parr was put out of his office by the new town council, but he was awarded 4,000*l.* as compensation for the loss of his office. This was secured to him by a bond for that amount, which was to be paid off by instalments; upon the instalments becoming due, they were not paid, whereupon Mr. Parr brought an action on his bond, obtained judgment, and issued a writ of *elegit* against the lands of the corporation. At this time the market and tolls, for the rent of which the present action was brought, were in the occupation of one Browne (as tenant to the corporation), who, upon notice from Parr that he had issued an *elegit* against the lands of the corporation, attorned to him, and paid him the rents up to the expiration of his lease in 1840. This was done with the full knowledge of the corporation. In 1840, a Mr. West became the lessee, and he also attorned and paid rent to Parr until 1843, when his lease expired, and the defendant Whitt became tenant. He also received notice from Parr, and attorned and paid the rent to him for some time, when he received notice from the corporation to pay his rent to them. This the defendant refused to do, whereupon the present action was brought. It further appeared, that the reason the corporation took this course was, that they had been advised that Mr. Parr had no right to attach the rents in question under his *elegit*, on the ground that, there having been two prior mortgages of the property made by the corporation for 500 and 1,000 years, they were only entitled to the reversion, and therefore, that Mr. Parr had no sufficient title under the *elegit* to enable him to evict Whitt.

A rule nisi to enter a verdict for the defendant having been obtained by *Cockburn, Q.C.*

Crowder, Q.C. Stock, and Maynard shewed cause.—First, Mr. Parr has no title to evict; and secondly, if he had, there is no legal eviction here. The plea shews, on the face of it, that Mr. Parr had no title; for it sets out the inquisition on the *elegit*, and the finding of the jury, and they find that the corporation held the property subject to two mortgages for years. This being so, the corporation had merely an equity of redemption and reversion expectant in fee in the property, which it is contended is not extendable under an *elegit*. The issue the other side has to make out is, that Parr forcibly put out and expelled the defendant. Now, the only evidence in this case was on attornment by Whitt to Parr, on a threat to turn him out; and if Parr had no title to turn him out, this attornment amounts to nothing. The way to test this is, whether or not Parr could have maintained his ejectment against Whitt. Now, it is clear that he could not; for at most he could only have the same title under the *elegit* as the corporation had, and although they had assumed to lease to Whitt, and he cannot dispute their title, yet they had no legal title, which was outstanding in the mortgages. [*ROLF, B.*—Do not assume that there is no power for a tenant in *elegit* to take the reversion of a freehold under an *elegit*, where there is a mortgage for years.] But here they have shewn no title in Parr which could have enabled him to maintain ejectment against Whitt; and if so, the plea is not proved, for there is no actual eviction. The other side may rely on 1 & 2 Vict. c. 119, but that statute, it is submitted, does not affect the question. Cases cited: *Lister v. Deland* (3 Brown's Chy. Cases, 477); *Doe dem. Hall v. Greenhill* (4 B. & A. 684); *Harris v. Booker* (12 B. Moore, 263, and 4 Bing. 96); *Harris*

v. Pugh (4 Bing. 335, 2 Sugden Ven. & Purc. 396); *Jefferson v. Martin* (2 Saun. Rep. 11, A. n. k); *Hawkes v. Orton* (5 A. & E. 367); *Simons v. Farren* (1 B. & C. 271); *Wheeler v. Branstons* (5 Q. B. 373).

Cockburn, Q.C. Barstow, and Poulton, contra, contended, that the facts shewed that there was not merely a naked reversion in the corporation, but a subsisting interest, for they were clothed with the possession, and that, therefore, this case might well come under the words of the statute which direct the sheriff to deliver "all lands," &c. over which the debtor has a disposing power. If it was to be held that this property is not extendable, any one might prevent his property from being extendable, by charging 10*l.* a year on lands worth 10,000*l.* a year. [*ALDERSON, B.*—But then the party having the *elegit* may take possession, on paying off the mortgage.] But why should he be put to that? The only question here is, was there an eviction, and had Parr a title sufficient to enable him to evict? It is submitted there was, and that it is clear that Parr had a paramount title to the corporation, and might keep Whitt as his tenant or evict him, as he thought fit; if so, then the demand and the attornment amount to an expulsion; then how can the corporation say, after granting a lease as tenants in fee, that they are only tenants in reversion? The principle of estoppel ought to apply. Parr became in the same position as a second mortgagee; he was tenant in *elegit*, had taken possession, and we and prior tenants to Whitt had paid rent to him; he therefore stood as high as a second mortgagee, and could even have maintained his ejectment against the corporation; and whatever the mortgagee might say, the mortgagor could not deny the right of Parr to the rents. Whatever the corporation had in the property, that Parr had a right to take. Cases cited: *Beckett v. Benson* (2 Atkins. Rep. 292); *Pope v. Biggs* (9 B. & C. 245); *Evans v. Eliot* (9 A. & E. 342); *Johnson v. Jones* (ib. 809); *Rogers v. Pitcher* (6 Taunt. 202); *Lindsey v. Lindsey* (Bull. N. P. 110, a); *Doe dem. Whallon v. Penfold* (3 Q. B. 757); *Doe v. Clifton* (4 A. & E. 813).

POLLOCK, C. B.—This is a motion to enter a verdict for the defendant. [The learned judge then went through the facts.] The only question on the pleadings is, whether Parr did "put out and expel the defendant or not." Now, if the person having the right to turn a party out, goes to him and demands possession, and the party says it is needless to turn me out, I will attorn, this attornment may, no doubt, be pleaded as an expulsion, for it is substantially an expulsion; if, therefore, Parr had a good right to turn Whitt out of possession, the defendant is entitled to a verdict. But then what is the right of Parr? It is said he had all the right of the corporation. That may be, and that some other plea would have been sufficient; but this plea is wholly insufficient as a defence to this action, for it states that Parr took all the estate which the corporation had, and that was a reversion merely, subject to two mortgages. He had, therefore, no right to maintain ejectment against the corporation, consequently no right against Whitt. Whatever, therefore, his claim to relief may be elsewhere, or on another state of pleadings, upon this plea the verdict must stand for the plaintiff.

ALDERSON, B.—I am of the same opinion, and on this short point, that the title set up in Parr is shewn to be a title subject to the title of the mortgagee, and that Parr has no right to the immediate possession. If Parr had had this immediate right, there might have been a sufficient expusio.

ROLFE, B. and PLATT, B. concurred.

Rule discharged.

Monday, June 8.

HENRY v. GOLDNEY.

Motion to consolidate actions brought against different members of a provisional committee for the same cause of action.

Jerris, Q.C. moved for a rule calling on the plaintiff to shew cause why the proceedings herein, and in twenty-eight other actions by the same plaintiff, should not be stayed, on payment of costs, until the plaintiff consent to consolidate them. He moved on an affidavit which set forth that these twenty-nine actions were all by the same plaintiff, for the same cause of action, against different members of the provisional committee of a railway company; that the defendant's attorney was acting as attorney for all the defendants, and in that capacity had written to the plaintiff's attorney some time since, when the actions were first commenced, undertaking to appear for all or any number of the defendants that he might select, if he would consolidate the actions. To this and a second letter no reply was given, whereupon a plea in abatement for non-joinder was put in. To this the plaintiff demurred, and ruled the defendant to join in demurrer. The case came on to be argued on the 3rd of June (see 7 Law T. 211), when judgment was given for the plaintiff, that he answer over. The only way to stay the great costs which must ensue by these twenty-nine actions, for the same cause of action being tried, was, it was submitted, by the Court granting the present rule.

By the Court.—Take a rule nisi, and on payment

of the costs only up to the time of the letter offering, to consolidate the actions. Rule nisi.

SPECIAL PAPER.

HIGGS v. BARHAYS.

In an action against a party for special damage incurred by the plaintiff, owing to the defendant having improperly constructed an article which he had to manufacture and put up for the plaintiff: Held on demurrer, that a plea pleaded by way of estoppel, that the now defendant had recovered the price of the article in an action against the now plaintiff, and that therefore he ought not now to maintain his action for the special damage, on the ground that he might have set it off in the former action, was a bad plea.

This was an action on the case, and the declaration set out an agreement by the defendant with the plaintiff to make him a kitchen range; it then went on to allege, that the defendant so badly constructed the said kitchen range, and so badly put up the same, that it would not work, by reason whereof the plaintiff was put to great expense of his moneys in endeavouring to make the said kitchen range work properly. To this the defendant pleaded, by way of estoppel, that the plaintiff ought not to be allowed to maintain his action against the defendant, because, after the committing by him, the defendant, of the said grievances in the declaration mentioned, an action had been commenced by the now defendant against the now plaintiff for the price of the said kitchen range, and the then defendant then paid into Court in the said action a large sum of money, to wit, the sum of 42*l.* for the price of the said kitchen range, which the now defendant had taken out of Court in satisfaction of his claim; to this plea there was a demurrer.

Cleasby now appeared to support the demurrer, and contended that the plea was wholly inapplicable by way of estoppel; that it was clear the now plaintiff could not have pleaded in the former action the special damage which had occurred to him, some of which, indeed, had taken place since that action. Stopped by the Court.

Carrington, in support of the plea, contended that the now plaintiff could have set off the damage which had occurred to him, the improper construction of the kitchen range, in the former action, or have pleaded it in mitigation of damages or reduction of price. Cases cited:—*Mondie v. Steel* (8 M. & W. 688); *Thornton v. Plaice* (1 M. & R. 218); *Fisher v. Samuda* (1 Camp. 190). [*ROLFE, B.*—The same principle you contend for would apply to the case of a warranty, and if this argument be worth anything, it will go to shew that you can never bring an action for a false warranty, where you have paid the price of the article.] If this is not pleadable by way of estoppel, it is nothing.

POLLOCK, B.—I quite agree with you, it is either an estoppel, or nothing; I think it is not an estoppel. By the Court. Judgment for the plaintiff.

Tuesday, June 9.

ASHBY v. BATES.

Action on a Policy of Insurance—Right to begin.

This was an action of *assumpsit* on a policy of insurance on the life of one Ashby. The plea averred that the assured had at the time of making the usual declaration been afflicted with rupture.

Replication, de injuriâ.—At the trial it was ruled by the learned judge (Coltman) that on these pleadings the defendant was entitled to begin, and a rule was subsequently obtained by *Humphrey, Q.C.* to shew cause why there should not be a new trial on the ground of misdirection as to the right to begin, and on affidavits.

Whitehurst, Q.C. (Waddington with him) now shewed cause.—There are two questions for the determination of the Court in this case. 1st. Was the learned judge right in ruling that on these pleadings the defendant was entitled to begin? 2ndly. If he was not right, will the Court on that account grant a new trial? In moving for the rule nisi, *Gruch v. Ingall* (14 M. & W. 95) was relied upon, but that case is different from the present; there the plaintiff in his declaration negatived the fact that he had been afflicted with any one of the various diseases from which he had declared himself to have been exempt; that is, there was a specific denial as to each disease; here the declaration merely avers that the statement made to the insurers was true in every particular. In the case referred to, there was a direct issue on the allegations in the declaration; here the defendant introduces new matter by his plea, viz. that the plaintiff had been afflicted with rupture, to which the plaintiff replies *de injuriâ*. It was argued in support of this rule, that the plaintiff must offer some proof in support of the general averment in the declaration, that the affirmative of the issue consequently lies upon him, and that he was entitled to begin at the trial; but in this mode of arguing the nature of the plea is overlooked; by that plea the defendant sets up new matter by way of defence, and this new matter he was bound to prove; he does not traverse the general allegation made by the plaintiff, and therefore he ought to have commenced by establishing his defence. In an action for the price of a horse sold with a warranty, alleging that the horse belonged to a

particular person, the plaintiff need not make any averment of the truth of this allegation; that is analogous to the present case; and if the plaintiff were bound to prove that he had not been afflicted with any one of the diseases specified, or with any disease tending to shorten life, he would be much embarrassed, and would have to prove the non-existence of many different diseases. [POLLOCK, C. B.—Must not the plaintiff, under the plea of *non-assumpsit*, prior to the New Rules, have given some evidence in support of the averment in the declaration? And in an action for indicting without reasonable and probable cause, must not the plaintiff produce some evidence of the absence of such cause, although no doubt very slight would be sufficient? So, in proceedings under the Game Laws, some evidence must surely be given that the defendant was not duly qualified. PLATT, B.—The plea here should have been like that usual in an action for the price of a horse where the plaintiff avers in his declaration that the horse was sound, and the defendant pleads that the horse was not sound, in this, to wit, that he was lame.] Here the plea concludes with a verification, and the judge at Nisi Prius has no right to decide whether the plea should so conclude, or whether it should conclude to the country, which he would do, in fact, if he were to rule that the plaintiff should begin; he must be guided by the form of the plea, and is merely to try the issue joined between the parties. The effect of these pleadings is, that the plaintiff desires the jury to inquire whether the defendant can prove the plaintiff's declaration to be untrue, and accordingly the defendant having this onus cast upon him must begin. (Butley v. Catterall, 1 Mood. & Rob. 379.) [ALDERSON, B.—If you are right, would not this be an immaterial issue? because the jury, even if they had found that the plea was not established, would not necessarily have thereby affirmed the truth of the averment in the declaration.] At all events, even if the learned judge were mistaken, the Court will not, merely on that account, grant a new trial. This was a point of practice at Nisi Prius, and error does not lie on a point of practice. Besides, all the evidence was fully and fairly before the jury. He also referred to *Pole v. Rogers* (2 Mood. & R. 887); *Rawlins v. Desborough* (2 Mood. & R. 70); *Huselman v. Fernie* (3 M. & W. 686).

Humphrey, Q. C. and Meller, in support of his rule.—The plaintiff was entitled to begin; unless he did so, the real question could not be brought before the jury, for the basis of this contract is, that the statement made by the plaintiff was true. It does not matter on whom the proof is attempted to be thrown by the form of the plea. Neither can the defendant make that immaterial which is substantially a part of the plaintiff's case. The truth of the averment in the declaration was a condition precedent to the plaintiff's right to recover. *Mercer v. Whall* (5 Q. B. 447) shows that where the judge misdirects as to the right to begin, the Court will grant a new trial. [ALDERSON, B.—If it appears that the misdirection has caused a miscarriage.] They cited *Ridgway v. Boulton* (1 Mood. & R. 217); *Cooper v. Wakley* (1 Mood. & M. 248); *Sonell v. Champion* (6 A. & E. 407); 2 Marshall on Insurance, 773, 775; Com. Dig. Pleading (C. 54); *Slavers v. Curling* (8 B. N. C. 355). They also supported their rule on the ground of surprise.

POLLOCK, C. B.—This rule ought to be made absolute. Before the New Rules, the plaintiff must have given some evidence of the truth of the declaration made by him. The defendant cannot, by the particular form in which he chooses to frame his plea, affect the right to begin. *Gosch v. Ingall* is a direct authority as to this, and therefore a traverse with a verification does not give this right to the defendant. Whether the defendant simply traverses an averment in the declaration, or traverses with a verification, to which the plaintiff replies *de injuria*, or replies by re-asserting the truth of the averment traversed, it matters not; the issue will be substantially the same in each case, and the plaintiff will be entitled to begin. Then, as the learned judge decided erroneously as to this right, and as this misdirection must, in fact, make a material difference as to the probable result of the case, the Court will, in its discretion, grant a new trial.

ALDERSON, B.—*Gosch v. Ingall* would be a direct authority, if this plea had concluded to the country; and *Rawlins v. Desborough* shews that the mere form of the issue cannot affect the right to begin.

ROLYE, B.—I concur with extreme reluctance; it is a sort of scandal to the administration of justice that a new trial should be granted, where the erroneous ruling was merely as to the right to begin. The practice, however, prevails, that the Court will interfere in these cases; and that being so, I think the present is one of those cases in which a new trial should be had, and in which some injustice might have been occasioned by the misdirection.

PLATT, B.—It appears to me that the mode in which the discretion of the judge at Nisi Prius has been exercised ought to be subject to the superior wisdom of the Court, even with reference to his ruling as to the right to begin. On the main question, I

concur with the rest of the Court in thinking that in this case that ruling of the learned judge was erroneous.

Rule absolute.

[The business of the Court on Wednesday, June 10, will be reported in the next number.]

BUSINESS OF THE WEEK.

Thursday, June 4.

WHEELER v. DALOWAY.

Rule discharged.

GARRET v. GARBOROUGH.—In this case it appeared that the point of law intended to be argued did not arise on the facts; the rule was therefore discharged.

Rule discharged.

BUXLEY v. BOYDELL.

Stet processus by agreement.

Saturday, June 6.

DORRIS v. WILKINS.—Bull, Q. C. moved for a rule calling on the lessor of the plaintiff to shew cause why the proceedings herein should not be stayed until the costs of a former action of ejectment for the same property against one Bethurst, a tenant of the defendant, be paid. He stated that there were five actions by the same party on the same claim against different tenants.

Rule nisi.

PRICE v. PRICE.—V. Williams shewed cause against a rule of *Horne's* for a new trial, on the ground that the verdict was against the evidence. *Horne, contra.*

Rule absolute.

JENKINS v. MASON.—Agreement that the jury should be discharged without giving a verdict.

Rule accordingly.

Monday, June 8.

HOLFOED v. CRAWSEY.—V. Williams was heard for the defendant. *Peacock, contra.* Williams in reply.

Cur. adv. vult.

BENTON v. POLKINHOORN.—*Dumrurer* to declaration on the ground that it set out a special agreement in a way that was contradictory and doubtful. *Lush* was heard in support of the demurrer. *Addison, contra.*

Judgment for the defendant.

DORRIS v. LLOYD and JONES v. LUIS; JONES v. DORRIS. Judgment for the lessor of the plaintiff. (To be reported next week.)

Tuesday, June 9.

BRETT v. FARNELL.—Locke shewed cause against the rule *Nisi*, for a new trial obtained by *Paterson* in this case, on affidavits, and on the ground that the verdict was against evidence.

Rule absolute.

FABINA v. HOME.—This case was tried before the undersheriff of Middlesex, June 4, and a verdict found for the plaintiff.

Prentice now moved for a new trial, on the ground of misdirection, and that the verdict was against evidence; and likewise he moved for a nonsuit, on the ground of non-joinder. On each ground the Court granted a

Rule to shew cause.

Judgment for the plaintiff was yesterday (June 12) delivered by this Court in the important case of *Walsh v. Spottiswoode*, which will be reported very fully in the next number.

EXCHEQUER CHAMBER.

ON ERROR FROM THE COURT OF EXCHEQUER. Argued, June 18, 1845. Determined, April 28, 1846. (Before TINDAL, C.J., COLERIDGE, WILLIAMS, COLTMAN, MAULE, and CRESSWELL, JJ.) DEAN v. THE QUEEN. (a)

1. A commission was issued on the 21st of February, to inquire whether John Dean was then indebted to her Majesty in any and what duties of customs, on goods imported from abroad, and it was made returnable on the 15th of April. An inquiry issued, tested on the 1st of March, stating that Dean was, on the day of taking the inquiry, indebted to her Majesty in a certain sum: Held, that the inquiry was good.

2. The writ of *scire facias* was tested on the 30th of March, and the commission was returnable on the 15th of April: Held, that the irregularity was no ground of error.

3. The counsel for the Crown is entitled to a general reply in the Court of Exchequer Chamber in revenue cases.

This case was one of the revenue cases; and the error alleged was an inconsistency between the finding of an inquiry, and the commission under which it was held. The record set out a writ of *scire facias*, reciting, that by an inquiry taken on the 1st day of March, in the 6th year of Victoria, it was found that John Dean, importer of foreign silks, was, on the day of taking the said inquiry, truly indebted to her Majesty in the sum of 262l. 10s. for the duty of customs on certain foreign silks, by him imported into the United Kingdom, from foreign parts, between the 8th day of February, 1841, and the 14th day of February, 1841; and that the said 262l. 10s. remained due and unpaid, as by the said commission and inquiry appeared. Wherefore the sheriff was commanded to give notice to the said John Dean to appear before the Barons of the Exchequer on the 15th of April next, to shew cause why there should not be execution against him. The writ bore *teste* the 30th day of March in the 6th Viet. The record then stated, that, on the 25th day of May, the said John Dean appeared in court, and craved oyer of the commission in the said writ of *scire facias* mentioned, and the writ was set out. The commission empowered the Commissioners to inquire whether the said John Dean be now indebted to her Majesty in any way, and what sums, for the duties aforesaid, and commanded them to have their inquiry at Westminster, on the 15th day of April

next, to be delivered with the commission. The commission bore *teste* the 21st of February, 6 Viet. The record then set out the inquiry in oyer. It was dated the 1st of March, and stated, that the Commissioners say, that John Dean, importer of foreign silks, is the said commission named, is, on the day of taking this inquiry, justly and truly indebted to her Majesty in the sum of 262l. 10s. for the duty of customs on certain foreign silks by him, the said John Dean, imported into the United Kingdom from foreign parts, between the 8th day of February, 1841, and the 14th day of February, 1841, and that the said sum still remains due and unpaid. The record then set out the plea of the defendant, that he was not, on the day of taking the said inquiry under the said commission, justly and truly indebted to her Majesty in the said sum of 262l. 10s. for the duty, &c., nor did the said sum remain due on the day of taking the said inquiry. The jury found that the defendant was, on the day of taking the inquiry under the said commission, justly and truly indebted to her Majesty in the sum of 137l. 16s. for the duty of customs on certain foreign silks by him imported into the United Kingdom from foreign parts between the 8th day of February and the 14th day of July, 1841, and the said sum was due and unpaid on the said day of taking the said inquiry, in manner and form as in the writ of *scire facias*, and the said inquiry is alleged; and, thereupon, it was adjudged by the Barons of the Exchequer, that her Majesty should have execution against the said John Dean for the said sum of 137l. 16s. The record then set out the writ of error, in which manifest error was alleged in this, to wit:—that it appears in and by the record and proceedings aforesaid, that the finding of the commissioners under the said inquiry is not in conformity with the inquiry directed by the said commission, inasmuch as the inquiry directed by the said commission was, whether any, and what debt, was due from the said John Dean to her said Majesty at the date of the said commission, which was the 21st day of February, in the year of our Lord, 1843; but the finding of the jury upon such inquiry was merely that the said John Dean was on the day of the taking of the said inquiry under the said commission, which was the 1st day of March, in the year of our Lord 1843 aforesaid, justly and truly indebted to her said Majesty in the sum of 262l. 10s. for the duty of customs on certain foreign silks by him, the said John Dean, imported into the United Kingdom from foreign parts between the 8th day of February, 1841, and the 14th day of February, 1841; and the said sum of 262l. 10s. was due and unpaid on the said day of taking the said inquiry under the commission. Manifest error was also alleged in this, to wit, that it appears by the record and proceedings aforesaid, that the said writ of *scire facias* was issued before the said commission was returnable, and before there was any debt of record due from the said John Dean to her said Majesty.

Mr. Chambers, Q. C. appeared in support of the writ of error.

J. Wilde for the Crown.

Chambers contended, first, that the inquiry was faulty, for the reason assigned in the grounds of error; and the inquiry directed was, whether Dean was indebted at the date of the commission, viz. the 21st of February; and there was no allegation in the inquiry that the debt was ever due before the 1st of March. Dean might have become indebted in February, before the commission, and ceased to be a debtor, and then have become indebted at the time of the inquiry. The inquiry ought to have said that the debt accrued in February, and had continued ever since. It would then have included the 21st of February. Secondly, the proceedings are altogether invalid, because the *scire facias* issued before the inquiry was returnable. There is no actual debt of record till the return day of the commission. The commission here was returnable the 15th of April, the first day of Easter Term, and the *scire facias* was issued the 30th of March preceding, which, being in vacation, must be considered, in legal effect, as of the Term preceding. In *West, on Exents*, 816, 17, the law is thus distinctly laid down:—"The *scire facias*, though it may be sued out in vacation, must be tested in Term, and must be made returnable in Term. And therefore a *scire facias* cannot be sued out in vacation, or an inquiry taken under an extent which has been sued out, and is consequently tested in that vacation; because, as the *scire facias*, if sued out in vacation, must be tested as of the antecedent Term, and must recite the inquiry in such case as the foundation of it, it would appear in such case that the *scire facias* was sued out before the inquiry, on which it was founded, was taken. And the Court quashed such a *scire facias* on motion, and ruled that the objection could not be got rid of by a special memorandum upon the record, shewing the day on which the *scire facias* was really issued." The case referred to is *Re v. Pearson* (3 Price, 288); when Baron Wood said, "This is not a case in which we ought to depart from the ancient practice of the Court, which has always been never to issue a *scire facias* till after the return of the inquiry; and that practice is founded in good reason, for the debt

(a) This case was reported by A. A. Fry, Esq.

is not of record till then, and it is therefore consistent both with the rule of law and the facts recited in the *scire facias*. It is very true that by the 5 & 6 Vict. c. 86, s. 8, all commissions, writs, or other process may bear *teste*, and be made returnable on any day certain in term or vacation to be named in such commission, writ, or other process; but that is a privilege conceded to the Crown of naming a special day for the return, which may be waived, and if it is not availed of, the advantage conferred by the statute is lost. This variance, therefore, between the *scire facias* and the inquisition is a vital defect in the whole proceedings, for which a writ of error lies, as a debt of record is necessary to ground the proceedings, and there can be no such debt till the return of the inquisition.

Wilde, contra.—1st. The inquisition is in the usual and ordinary form. (Manning, Exch. Prac. 261-2.) Here it is clear that the debt was due at the time of the commission. It arose from the importation of goods, made prior to the issuing of the commission; and it is a necessary inference that the debt was due at that time. The 3 & 4 Wm. 4, c. 56, s. 2, imposes the duties on all goods, &c. imported, and from that time of importation the duties were payable. This was expressly laid down in *The Attorney-General v. Austed* (12 M. & W. 520). The finding of the inquisition is in effect that the debt existed all the time from importation to the return of the inquisition. 2nd. The objection is merely technical, and cannot arise on a writ of error. It is not a point of substance, but merely an irregularity in the issue. *Reed v. Pearson* was an application to set aside the writ for irregularity. The *scire facias* here is a proceeding merely of mesne process; it is the first step to bring in the party, as in an *audita querela*, where the party appeared upon the *scire facias* and demurred, for that the *scire facias* bore date the 23rd of October, and the *audita querela* the 3rd of November after; but the Court disallowed the demurrer, because here the *scire facias* is only to bring in the party, and in the nature of a mesne process. (*Vaughan v. Lloyd*, 1 Vent. 7.) And in *Reed v. Wilmot* (1 Vent. 220), where, in an action of false imprisonment, the plaintiff demurred to a justification by the defendant of a *copias* in an inferior court, because it was not shewn that a summons was issued first, Lord Hale, in allowing the demurrer, said that "on a writ of error this error is not assignable, because a fault in the process is aided by appearance." *Robert v. Andrews* (Cro. El. 83, Error); and *B. Bacon, Ab. Error*, K. 5, are to the same effect. It is not, in truth, necessary to cite authority to shew that when there is a mere irregularity, error does not lie. Here the commission is tested the 1st February, and it was returnable the 15th April. It was actually returned the 1st of March. The inquisition was on the 1st March, and the *scire facias* was dated on the same day. The defendant appeared on the 25th May. The *scire facias* was founded on the commission and the inquisition, which appeared of record. An *extent* might have issued on this inquisition previous to its return (*West on Extents*, p. 48); and if an *extent* might issue, a *fortiori* a *scire facias*.

Chambers, in reply.—1st. The commission gives no authority except for the particular purpose of the inquiry, which was to ascertain whether Dean was indebted at the date of the said commission. The commissioners had no authority to hear one word on the trial except under that specific authority. No practice can cure this evil. The *Attorney-General v. Austed* is in favour of the defendant. The duties are due on importation, and *prima facie* they are chargeable on the importer; but the goods may remain in the warehouse, or be taken out by some assignee of the bill of lading. "The Warehousing Act, 3 & 4 Wm. 4, c. 57, was intended," says Baron Parke, "to give the merchant time for payment of the duties until the goods are either exported or taken out for home consumption." So in this case, an assignment might have taken place between the date of the commission and the inquisition; and, in that case, the assignee and not Dean would be liable. 2nd, as to the *scire facias*. There is no authority to issue a *scire facias* in the vacation: if issued in the vacation, it ought to be tested as of the preceding Term: a writ with a *bad teste* ought to be regarded as of the preceding Term. Although *Reed v. Pearson* was a case on motion, it does not follow that because you come early, you may not come afterwards.

Wilde claimed a general reply, on the part of the Crown, in revenue causes in this Court, which was allowed. He said that the *scire facias*, being tested in vacation, was cured by the 5 & 6 Vict. c. 86, s. 8, and insisted that the objection, if any, being matter only of irregularity, could not be ground of error.

Cur. adv. vult.

Tuesday, April 28.
JUDGMENT.

TINDAL, C. J. now delivered the judgment of the Court. The first objection raised on this record is, that the finding of the commissioners under the inquisition is not in conformity with the inquiry directed by the commission. The commission, as it appears upon the record when set out on oyer, directs

the commissioners to inquire whether John Dean is now indebted to her Majesty in any and what sums of money for the duties aforesaid, and the commission is tested on the 28th of February, in the sixth year of her Majesty's reign. It is argued that the commissioners are confined to the inquiry, whether John Dean was indebted on that day. The inquisition, which is also set out on the record, was taken on the 1st of March, in the same year, and the commissioners find, on the oath of good and lawful men, therein mentioned, that John Dean, on the day of taking this inquisition, is justly and truly indebted to her Majesty in the sum of 262l. 10s. for duty of customs on certain foreign silk by him the said John Dean imported into the United Kingdom from foreign parts, between the 1st day of February, 1841, and the 14th day of February, 1841, and the said 262l. 10s. and every part thereof still remains due and unpaid; and we are of opinion that there is no inconsistency whatever between the finding of the jury and the authority given to the commissioners; for the inquisition finds the duty to have become due on the 14th of January, 1841; and as the inquisition further proceeds to find that it still remained due and unpaid on the 1st of March, the day on which the inquisition is taken, it follows, necessarily, that the jury find the duty to be due on the 21st of February, the day on which the commission was issued; indeed it is manifest, from the special finding of the origin of the debt, that it must have been a debt from the 14th of February, 1841, for it has been decided that the importer of goods from a foreign country becomes liable, on importation, to the duties of customs payable thereon. See the *Attorney-General v. Armistead and Others*; and the latest day of the inquisition in this case is found to be the 14th of February; but even if the origin of the debt had not so distinctly appeared on the inquisition, it appears, from the inspection of a great number of commissions and inquisitions taken thereon, with which we have been furnished from the year 1777 downwards, that the commissions and inquisitions have always been framed in the same precise form as the present, so that the course and practice which is the law of the Courts would have been a sufficient sanction for the form in which the documents in question are issued, even without any other answer to the objection first taken. The second objection raised upon the record was, that the writ of *scire facias* issued before the commission was returnable, and, therefore, before any debt appeared upon the record, the commission being returnable on the 15th of April, and the *scire facias* bearing *teste* on the 30th March, and being made returnable on the same day as the commission, namely, the 15th of April; but we are of opinion that the objection amounts only to an irregularity, and not to error on the record. In the case of *Reed v. Pearson*, and others on which the plaintiff in error relies, the objection, which is precisely the same as the present, was treated by the defendant as matter of irregularity only, and so held by the Court. The *scire facias* in this case is only in the nature of process to bring the party into Court to answer; and if the *teste* of mesne process is too early, that does not make the process a nullity, but irregular only (1 Ventris, p. 7); we therefore think the judgment of the Court of Exchequer must be affirmed.

BAIL COURT.

Thursday, June 4.

(Before Mr. Justice WIGHTMAN.)
Doe dem. HARRISON v. ROE.

Judgment against the casual ejector—Service of the declaration in ejectment.

Parry moved for judgment against the casual ejector.—The tenant in possession, John Frederick Franks, was called upon by the declaration to appear on the first day of this term, but they had been unable to serve him, as he was keeping out of the way on purpose to prevent service; it was hoped, however, that what had been done would be deemed sufficient to entitle the lessor to a rule nisi. It appeared by the affidavits that a clerk of the plaintiff's attorney went to the dwelling-house of the tenant in possession which it was sought to recover by this ejectment, and knocked several times on each occasion at the front door, but no one came to it, and it was discovered that the door was bolted and barred. He then went round to a back entrance through a field, which belonged to the tenant in possession, and which back entrance he managed to approach, notwithstanding the tenant kept himself well protected by the aid of a fierce dog. Here he saw some children, and also a young woman apparently about 15 or 16 years of age, who told him that she was the tenant's daughter, but that she did not reside with him upon the premises, and that her father was at home but would not be seen. He thereupon explained to her the purport of his visit, and begged her to inform her father, which she promised to do; he also made an appointment to call again the next day, but did not leave any copy. He again called next day accordingly, when he saw the same children whom he had seen before, and who ran away

from him as soon as he got near them; he was unable to see any one else, and he went round to the front door and stuck up the notice there.

WIGHTMAN, J.—Why did you not leave a copy of the declaration with the daughter?

Parry.—We could not do that, as the daughter did not reside on the premises, but she said she would tell her father, and it is clear that she keeps out of the way on purpose.

WIGHTMAN, J.—I do not think you have done enough. If I were to grant you this judgment, any one who knocks at the door and can't see the tenant, might stick up the declaration on the door and then sign judgment. Rule refused.

DAY v. TUCKETT.

The Court will not grant a rule for the inspection of a document in the possession of another party merely to enable him the better to frame his plea.

Collier moved for a rule calling upon the plaintiff to produce an I O U for the inspection of the defendant. An action had been brought by the plaintiff against the defendant for slander in imputing to the plaintiff that he had been guilty of forging an I O U. The defendant stated in his affidavit circumstances from which he drew his conclusion that the defendant was guilty, but that he was unable to prepare his plea without an inspection of the document. (*Browning and Another v. Ayloffe*, 7 B. & C. 204.)

WIGHTMAN, J.—It is a most extraordinary application, and I cannot grant it. Rule refused.

Friday, June 5.

LIPSCOMBE, Executor, v. TURNER.

When a defendant in a cause consents, by a judge's order, to a stay of proceedings on payment of debt and costs, the latter to be taxed as between attorney and client, such costs only should be allowed as necessarily arise out of the action above (unless specially provided for in the order). Where, therefore, the creditors of a deceased party file a creditors' bill and a receiver is appointed, but restrained from bringing any action without the assent of the Master to whom the suit is referred, and it becomes necessary to sue a debtor to the estate, and for that purpose steps are taken to procure the assent of the Master, and the action is afterwards stayed upon the undertaking of the defendant to pay the debt and costs, to be taxed as between attorney and client, the costs of obtaining the Master's consent to sue ought not to be allowed on taxation.

T. W. Saunders shewed cause against a rule to review the Master's taxation. The facts of the case were these:—One John Holland, being the assignee of a mortgage of some funded property in which the defendant, who was the mortgagor, had a life interest, died leaving the plaintiff and another (since dead) his executors. Subsequently, the creditors of Holland filed a bill in Chancery for the administration of his estate and effects. In this suit an order was made appointing a receiver, and restraining him from taking any proceedings at law or in equity for the purpose of getting in the estate with the assent of the Master to whom the cause stood referred. Many applications having been made to the defendant by the receiver, for the payment of the mortgage debt, and in which he was distinctly informed that, unless he made some settlement, the Master would be applied to for his authority to sue, and, no arrangement being made, the receiver took the necessary steps to obtain the sanction of the Master to the bringing of this action, which being obtained, the action was brought in the name of the surviving executor against the defendant accordingly. After the action had proceeded some time, the defendant consented to an order to stay proceedings, on payment, at a certain day, of debt and costs, to be taxed as between attorney and client. On the taxation the Master allowed the costs of the proceedings to obtain the consent of the Master in Chancery to the bringing of the action, amounting to about 5l., to which allowance the defendant objected, and in respect of which this rule was obtained. It was now insisted, that as the taxation was agreed to be upon the principle of attorney and client, and as the costs of obtaining the Master's assent were necessarily incurred, and without which assent this action could not have been commenced, and would, in the ordinary course, be payable by the client to his attorney, they were fairly chargeable upon the defendant, whose conduct it was which rendered the action necessary, and who, by agreeing to such a course of taxation, must be presumed to undertake to save the plaintiff harmless of all the costs necessarily incurred in bringing the action.

J. Browne, in support of the rule, argued that, notwithstanding these costs were necessarily incurred before bringing the action, yet they had become so in consequence of the Chancery suit, which, for their own security, the creditors had thought proper to institute, and which, therefore, should not be saddled on the defendant, who could only, in fairness, be called upon to pay the costs incurred (as between attorney and client) in the action itself; the preliminary proceedings in Chancery being no part of the action, but the steps rendered necessary (not by the defendant) in order to institute it, and that if it was

intended to saddle the defendant with them, they should have been specially provided for in the order staying the proceedings. *Cur. adv. vult.*

JUDGMENT.

His Lordship to-day gave the following judgment:—In this case, which was a motion to review the Master's taxation, an action had been brought upon a mortgage-deed against the mortgagor, by the executor of the assignee of the mortgage. It appears, that on the death of the assignee of the mortgage, his creditors filed a bill for the administration of his estate and effects, and a receiver was appointed, who, however, was restrained by the order appointing him from bridging any action, unless by the permission of the Master, to whom the cause stood referred, and this obviously for the benefit of the estate, in order to prevent needless costs being incurred, and operated as a sort of injunction against the receiver himself. After the proceedings in the action had gone on for some time, there was an order by which it was agreed that they should be stayed upon certain terms, by which the defendant on a certain day was to pay the debt and costs, the latter to be taxed as between attorney and client. The costs were taxed accordingly; and on the part of the plaintiff it was insisted that, in addition to the ordinary costs of the action, he was entitled to certain costs incurred in Chancery in applying for leave to commence the action; and some instances were referred to of a somewhat similar nature, as in applying to the Court of Chancery for affidavits, or to the Court of Bankruptcy for the proceedings upon a fiat, or applying for an order to sue *in forma pauperis*, in all of which cases the costs are allowed on taxation as between attorney and client; but I think those cases are not applicable, as they arise necessarily out of the cause, and are incident to the cause itself; but in the present case the application by the receiver to the Master has no relation to the particular cause in question, but to relieve him of a sort of injunction in order to enable him to bring the action; it appears to be a sort of personal disability which disables him from suing, and the defendant has really nothing to do with it; it is an accident, which occurs in consequence of the creditors having thought proper to file a bill in Chancery, and not a matter which necessarily arises out of the action. It seems to me that these costs hardly come within the general view which has been adopted in a taxation as between attorney and client, the principle of which is rather that the ordinary costs as between party and party should be taxed upon such a scale as to include all the costs of the plaintiff in the action. I think, therefore, that the costs in Chancery in this matter ought not to be allowed. I felt some doubt upon the subject, certainly, and therefore was anxious to take time in considering it. *Rule absolute.*

NEWTON AND ANOTHER v. STEWART.

When, in an affidavit verifying a plea in abatement for non-joinder, the number of the house in the street at which the party is said to reside is stated, and it is proved on affidavit that such statement is untrue, the plea will be set aside.

Keane shewed cause against a rule calling upon the plaintiff to shew cause why the plea in abatement, and the affidavit in support thereof, should not be set aside, &c. The plea in abatement was that of the nonjoinder of twenty-four other parties (defendants), and several objections were taken to the sufficiency of the plea and affidavit, amongst which was the following: the affidavit described one of the parties who ought to have been joined as "George Augustin Brown, of No. 22, Gower-street, Bedford-square, in the county of Middlesex;" and it was shewn by affidavit that no such person resided there. Upon this objection it was urged, in support of the plea, that the description was sufficiently certain, and that it would have been enough to have given the street without the number of the house, the 3 & 4 Wm. 4, c. 42, s. 8, merely requiring that the "place of residence of such person shall be stated with convenient certainty," &c.

WIGHTMAN, J.—This description, perhaps, might have been sufficient if you had stated "Gower-street" generally; but you point out the very house as the residence of the party, and why should the plaintiff seek elsewhere? You are bound by the description which you have given.

Rule absolute, the defendant to plead issuably in four days, taking notice of trial for the adjournment day.

Saturday, June 6.

(Before Mr. Justice WIGHTMAN.)

BUTTERWORTH v. WILLIAMS.

When a summons is heard at chambers, and the parties are referred to the Court, they are bound to apply promptly.

Martin, Q. C. and Bonill shewed cause against a rule to amend the judgment-roll by stating therein the true date of the issuing and return of the *fiat facias* in this cause into the county of Kent, and the writ of *testatum fieri facias* therein mentioned. It appeared that the venue in this case was Kent, and that final judgment was entered up on the 23rd February last,

and a *testatum fieri facias* issued into the city of London on the same day, under which the defendant's goods were seized; that no original *fi. fa.* was issued into Kent until the 26th February; that on the previous 24th, the defendant signed a declaration of insolvency, which was duly filed on the 25th, upon which day a fiat duly issued against him, notice having been given to all parties of the act of bankruptcy on the previous 24th; that, on the 2nd of March, a summons was obtained, at the instance of the official assignee, to set aside the *testatum fieri facias* for irregularity, on the ground that no writ of execution into Kent had been returned and filed previously to the issuing and executing of the *testatum fieri facias*, which summons was dismissed in consequence of the production of the office copy judgment-roll, containing the return and filing of the original *fi. fa.* before the issuing of the *testatum*; that, on the 10th March, another summons was obtained to erase the entry on the judgment-roll of the return of the *fi. fa.* and of the award and issuing of the *testatum fieri facias*, on the ground before mentioned; and that, upon the hearing of such summons, it was agreed between the parties, with the assent of the judge, that the subject should be adjourned to be heard by the Court, which adjournment was indorsed "Adjourned to be heard by the Court." The present rule was moved on the 5th of May following. It was now contended that this application was made too late; that the question having been adjourned from the 10th of March, the parties should have come promptly to the Court early in the ensuing term, and not have delayed the application until the latter end of it. (*Warner v. Haddon*, 9 Dowl. 960; *King v. Birch*, 3 Q. B. 425; *Bate v. Lawrence*, 2 Dowl. & L. 83.)

Jervis and Jones, contra, argued that as this was a case in which third parties were interested, the usual rule as to promptness in applying does not apply.

WIGHTMAN, J.—You were aware of this on the 10th of March, and were then referred to the Court. You are not to be allowed to come at any time. If I permit this motion to proceed, it will be a precedent in future cases. The objection to the writ amounts, if to any thing, only to an irregularity, and you were, therefore, bound to have come promptly.

Rule discharged.

Monday, June 8.

(Before Mr. Justice WILLIAMS.)

ROBERTS v. HAMMOND.

Upon a motion for judgment as in case of a nonsuit, for not proceeding to trial after issue joined, if the motion would be too early in a country cause, and in time in a town one, it is necessary to state in the affidavit whether the action be in fact a town or country one.

Udall shewed cause against a rule for judgment as in case of a nonsuit for not proceeding to trial. Issue was joined on the 5th January last; but the affidavit upon which the rule was obtained did not state whether the cause was a town or a country one, which it was submitted, was a fatal omission, as the defendant would be too early with his motion if the cause were a country one.

Power, contra, argued that the affidavit was sufficient, as the fact of the cause being a town one must be well known to the other side.

WILLIAMS, J.—As under one state of circumstances you are in time, and under the other you are not, you should shew by your affidavit the actual state of the facts. It is the duty of the party who applies for a rule to shew to the Court all the facts which are necessary to entitle him to it.

Rule discharged with costs.

Tuesday, June 9.

(Before Mr. Justice WIGHTMAN.)

The Court will, under certain circumstances, permit the amendment of the name of the defendant in the entry of judgment.

Bramwell shewed cause against a rule for amending the judgment-roll by inserting the Christian name of the defendant therein. It appeared that the name of the defendant had been inserted in the writ and declaration as—Hume. The defendant, however, having taken out a summons and obtained an order for payment of the debt by instalments, signed his name as Robert Montague Hume; but the officer of the Court having refused to allow judgment to be signed, except as the defendant was described in the declaration, the judgment was signed accordingly. It now being intended to proceed to outlawry against the defendant, it was thought desirable to amend the entry by the insertion of the Christian names of the defendant; and against this application it was contended that the Court had no power to amend, and that, even if it permitted the amendment, the judgment would not tally with the other proceedings.

O'Brien, contra, argued that the Court had power to make the amendment, and that if it were necessary that the other proceedings should tally with the judgment, they also could be amended. (*Moody v. —*, 3 Dowl. 496.)

WIGHTMAN, J. thought that the amendment would be proper in this case, and that the declaration could be made conformable.

Rule absolute to amend the judgment and declaration, on payment of the costs of amendment and of this motion.

Wednesday, June 10.

COMPTON v. TAMLYN.

An affidavit sworn with a view to a proceeding which does not take place, cannot afterwards be used in support of a distinct matter.

J. Brown shewed cause against a rule for an attachment for not paying two sums of money pursuant to an award, and he proposed to read an affidavit made last Term, with a view to a motion which was not then made.

Barstow objected that the affidavit could not be received, inasmuch as it was a merely voluntary one, not made in any proceeding now before the Court, and upon which therefore perjury could not be as-signed.

Brown contended that the affidavit could be used, and that perjury could be assigned upon it as used in shewing cause against a rule, for that the merely swearing to the affidavit without its being used is sufficient to constitute perjury.

WIGHTMAN, J.—That may be in a case actually depending, but here, at the time it was sworn, it was intended for another purpose than that for which it is now used. The affidavit must be made in the course of some judicial proceeding; there was no proceeding in Court when this affidavit was made, and it is now intended to make use of it for a purpose for which it was not sworn. It cannot be used. (The case then proceeded.) *Rule absolute.*

BUSINESS OF THE WEEK.

Friday, June 5.

REG. v. THE RECORDER OF YORK.—Bliss shewed cause against a rule for a *mandamus* commanding the recorder of York to enter continuances and hear an appeal. *Hall, contra.* *Cur. adv. vult.*

SMITH v. GEE.—Aspinall moved to set aside the appearance *sec. stat.* and the notice of declaration herein for irregularity. *Rule nisi.*

Thursday, June 4.

BURFIELD v. ABE.—Tyrrhitt moved for a rule calling upon the parish officers of Burfield to shew cause why a *certiorari*, issued to bring up an order of sessions, confirming an order of justices, subject to a special case, should not be lodged with the clerk of the peace. The writ had been issued long since, and was in the possession of the parish of Burfield, but they had taken no further steps to bring up the proceedings. (2 Hawk. c. 27, s. 8; 1 Keb. 102, 194.) *Rule nisi.*

REG. v. MARY DIX.—Jones, Serjt. moved for a *certiorari* to bring up an indictment found against the defendant for perjury. *Rule absolute.*

DOE dem. DAVIS v. ROE.—V. Williams shewed cause against a rule to set aside a judgment in ejectment, and all subsequent proceedings, on the ground that the tenant in possession had given no notice to his landlord.

Rule absolute, on payment of costs.

REG. v. DICKSON.—C. Jones, Serjt. applied for a *certiorari* to remove into this court an indictment for perjury. *Writ granted.*

Saturday, June 6.

REG. v. SWINBURN AND ANOTHER.—Oller moved for a *certiorari* to remove an indictment into this court, found against the defendants at the Quarter Sessions for Durham, for carrying on some alkali works. It was suggested that points of law will arise. *Certiorari granted.*

REG. on the prosecution of THE DUKE OF BRUNSWICK v. GREGORY.—Wordsworth moved to amend the plea-roll herein. *Rule nisi.*

RIDLEY v. BROWN.—Gray moved to set aside the judgment, and all subsequent proceedings, for irregularity. *Rule nisi.*

LANGDALE v. MCLEAN.—Ogle moved to set aside the do-murrer herein as frivolous. *Rule nisi.*

REG. v. THE RECORDER OF YORK.—Bliss shewed cause. *Hall, contra.* *Cur. adv. vult.*

BURY v. PEERS.—Crompton shewed cause. Arnold, contra. *Rule discharged.*

Monday, June 8.

LUKE v. REED.—Barlow moved to set aside the award and all subsequent proceedings herein. *Rule nisi.*

KNILL v. LOVEGROVE.—Lush shewed cause against a rule for judgment, as in case of a nonsuit. *Miller, contra.*

Rule discharged upon a peremptory undertaking.

Tuesday, June 9.

NEWTON v. STEWART.—Keane moved for a rule to set aside so much of the former rule herein as directed the payment of costs. *Rule refused.*

BUSHELL v. BOARD.—Petersdorff moved to set aside the judgment signed herein. *Rule nisi.*

REG. v. THE JUSTICES OF CHESHIRE.—Egerton shewed cause against a rule calling upon these justices to enter continuances and hear an appeal. *Townsend, contra.*

Rule absolute.

SNOOK v. DANIEL.—Bonill shewed cause against a rule for judgment as in case of a nonsuit. *Bramwell, contra.*

Rule discharged on a peremptory undertaking.

Es parte NICHOLLS.—Collier moved for a *certiorari* to remove into this court an order of the Quarter Sessions of Cornwall confirming an order in bastardy, on the ground of defects apparent on the face of the original order. *Writ granted.*

Wednesday, June 10.

Es parte WINN.—Whitehurst, Q. C. moved for a rule nisi for a *mandamus*, commanding the Overseers of Basingstoke, Lincolnshire, to grant a certificate under the 3 & 4 Vict. c. 61, in order that the applicant may obtain an Excise beer licence. *Rule nisi.*

ELGAR v. GARWOOD.—Cowling moved to set aside the award herein, or refer it back to the arbitrator. *Rule refused.*

DAVIS v. JONES. *Rule absolute, no cause shewn.*

SMEE v. LAMPRELL.—Wise moved for judgment as in case of a nonsuit, for not proceeding to trial. *Rule nisi.*

LAW V. MORLOCK.—*Knowles, Q.C. and Corrie*
abst. cause herein. The Solicitor-General and Bovill,
contra.
BOUTON V. FRITCHARD.—*Greaves shewed cause against*
the rule for a new trial herein. Peacock, contra.
Part heard.

Legal Briefs.

COURT OF EXCHEQUER.
 Guildhall, Friday, June 5.
 (Before PARKE, B.)

INGRAM V. FERGUSON.

Work and labour—Advertisements in newspapers—
Compliance with 6 & 7 Wm. 4, c. 76—Onus of proof
of—Pleading—Illegality.

In an action of work and labour, for inserting adver-
tisements in a newspaper, it is not incumbent on the
plaintiff to shew compliance with the provisions of
the statute 6 & 7 Wm. 4, c. 76, which requires that
before a newspaper shall be printed or published, the
proprietor shall lodge a declaration and certificate;
for if the necessary steps have not been taken by the
plaintiff, the publication and contract are illegal, and
the defendant must plead the illegality of the con-
tract.

Assumpsit—For work and labour, for the insertion
of advertisements in the Railway Mail newspaper.

Plea—Non-assumpsit.

Knowles, Q.C. and Brown, for the plaintiff, proved
that the defendant was a provisional committee-man
of a railway, and that the advertisements in question
had been inserted in the Railway Mail, of which paper
the plaintiff was the proprietor.

At the close of the case,

Jervis, Q.C. (with him Hawkins) submitted, for
the defendant, that the case for the plaintiff had
failed, inasmuch as he had not offered any proof of
compliance on his part with the provisions of the Act
6 & 7 Wm. 4, c. 76, the sixth section of which enacts
that "no person shall print or publish, or cause to
be printed or published, any newspaper, before there
shall be delivered to the commissioners of stamps and
taxes, or to the proper authorized officer at the
head office for stamps in Westminster, Edinburgh, or
Dublin respectively, or to the distributor of stamps or
other proper officer appointed by the said commis-
sioners for the purpose in or for the district within
which such newspaper shall be intended to be printed
and published, a declaration in writing, containing
the several matters and things hereinafter for that
purpose specified: that is to say, every such declaration
shall set forth the correct title of the newspaper to
which the same shall relate, and the true description
of the house or building wherein such newspaper is
intended to be printed, and also of the house or
building wherein such newspaper is intended to be
published, by, or for, or on behalf of the proprietor,
and shall also set forth the true name, address, and
place of abode of every person who is intended to be
the printer, or to conduct the actual printing of such
newspaper, and of every person who is intended to be
the actual publisher thereof, and of every person who
shall be a proprietor of such newspaper, who shall be
resident out of the United Kingdom, and also of every
person resident in the United Kingdom, who shall be
a proprietor of the same, if the number of such last-
mentioned persons, exclusive of the printer and pub-
lisher, shall not exceed two, &c." Now this is an
action for work and labour on an implied contract of
payment for the insertion of advertisements in the
newspaper, of which the plaintiff claims to be the sole
proprietor. It is, therefore, apprehended that he
ought to prove a compliance with the section above-
named, before he can sue in this action. [PARKE, B.]
—You have not proved the illegality of the contract.]

Jervis.—The plaintiff must make out that he sues
 on a legal contract; he has no right, by law, to print
 or publish his paper till he has proved that he made
 such a declaration as is required by the Act. [PARKE,
 B.—No. All that he says by his declaration is, that
 he, at your request, printed certain advertisements in
 the Railway Mail, and he has proved it, or, at least,
 given evidence to go to the jury to that effect; that
 is enough for him to do, in an action for work and
 labour. If the work and labour were illegal, you
 must plead the illegality specially.]

Jervis.—We may not have the means of pleading it;
 we may not know who the plaintiff is, or what the
 Railway Mail is? [PARKE, B.—Then you can have
 particulars of the plaintiff's demand, which will supply
 you with all that knowledge.]

Jervis.—But suppose, when the declaration is pre-
 sented, it should be found not to correspond with the
 imprint required by the Act to be attached to the end
 of every newspaper.

PARKE, B.—Then that would be illegal, and you
 must plead it.

Jervis.—If your lordship looks at the imprint, you
 will see that the paper professes to have been printed
 and published, at the office of the Railway Mail, by
 Charles Ingram, and also published by F. Kennedy,
 of Fetter-lane and Royal Exchange. If the declara-
 tion did not correspond with this, the plaintiff could
 not recover; and it is contended that the plaintiff
 ought to shew such correspondence. The production

of the declaration would also determine the question
 whether the plaintiff was the sole proprietor of this
 paper, which is disputed; and the plaintiff evades
 that issue by omitting to prove the declaration re-
 quired by law to legalize his conduct. It is therefore
 submitted that the plaintiff's case has failed. This is
 not an action by a stranger, but by the proprietor
 himself, who must be taken to know all about it.

PARKE, B.—I think the plaintiff need not give
 any such evidence, whether he is a proprietor or a
 stranger. The declaration states that he has inserted
 certain advertisements, at your request, in the Rail-
 way Mail, and of that allegation there is proof to go
 to the jury. If there had been anything illegal in
 that act, by reason of the non-compliance with the
 Act of Parliament, the onus lies on the defendant of
 putting that on the record, who must plead the ille-
 gality of the contract on which the action is founded.
 I will, however, reserve the point if it should become
 necessary.

The case then went to the jury on the merits, and

Verdict for defendant.

June 9 and 10.

(Before Mr. Baron PARKE.)

LAW V. WILSON.

Liability of provisional committee-men.

Where a projected company had both a managing com-
mittee and a provisional committee, a member of the
provisional committee, who has never taken any part
in the management, is not liable for the debts incurred
by the managing committee.

Where a defendant had consented to become a "di-
rector," but was placed upon the provisional commit-
tee, held, that a consent to belong to the latter was
not proved.

It must also be shewn that, when the defendant con-
sented to become a member of the provisional com-
mittee, he intended to take upon himself all the
responsibilities which the managing committee might
think proper to incur.

Where a man merely allows his name to be inserted in
the list of provisional committee-men, he does not
thereby make himself responsible for every act or
every liability of a managing committee, unless it be
proved that he had acted in the conduct of the
concern.

This was an action for goods sold and delivered to
 the defendant, as a member of the provisional com-
 mittee of the Southampton, Petersfield, and London
 Direct Railway Company. The sum sought to be re-
 covered was 55*l.* 17*s.* 6*d.*

Jervis, Q.C. and Cole, for the plaintiff; Hoggins
and Rawlinson, for the defendant.

It appeared that, in the month of September last,
 a scheme was got up by Mr. Duncan, the solicitor, to
 construct a railway from Southampton to Petersfield,
 and then on "direct" to London. On the 30th of
 that month, Mr. Duncan and the other solicitors
 made the following letter to the defendant:—

"72, Lombard-street, Sept. 30, 1848.

"Sir,—At the request of Mr. Bradley, we forward
 you a prospectus of the 'Southampton, Petersfield,
 and London Direct Railway,' and shall feel obliged
 by your informing us whether you desire to have your
 name inserted in the list of the provisional committee
 of the company. "We are, &c."

In reply to this letter the writers obtained no
 written answer; but in a few days after it had been
 sent, although the party to whom it had been ad-
 dressed had removed from his former habitation, the
 defendant called at the office and stated that he
 should have no objection to become a director of the
 company. The clerk thereupon endorsed on the letter
 "Agreeable to be a director." The company went
 on, and presently an allotment of 50 shares was
 awarded to the defendant as one of the provisional
 committee. The defendant, however, not only never
 took up the shares, but never took any notice either
 of the numerous letters and official reports and
 papers which were constantly being forwarded to him
 from the company's office. By-and-by the railway-
 market became under the influence of the panic, and
 then the managing committee—for there was a man-
 aging committee, consisting of some 16 or 18 per-
 sons—thought it useless to proceed with the under-
 taking, and at once turned their minds to the
 consideration of the question as to which would be
 the best way of winding up the concern, and liquida-
 ting the debts which had been incurred. The result
 of this deliberation was a resolution to return 25*s.*
 per share, out of the 2*l.* 2*s.* deposit, to the share-
 holders, which was subsequently done, and that each
 provisional committeeman should be called upon to
 contribute the sum of 35*l.* as his fair proportion of
 the expenses incurred. Accordingly a letter, con-
 taining the resolution, and soliciting the payment of
 the 35*l.*, was sent to the defendant, but of that
 communication he took not the slightest notice. In
 the end, however, the present action was brought by
 the plaintiff, one of the creditors of the concern,
 against him, in his character of a member of the
 provisional committee of the company.

On behalf of the plaintiff's case, there was, under
 these circumstances, a failure in proving that the

defendant had, upon any occasion, acted in the con-
 duct or management of the affairs of the company.

Hoggins, for the defendant, said he should throw
himself back upon the question which had been left
to the jury in Barnett v. Lamert, namely, "did the
defendant render himself liable for the goods supplied
in consequence of his having given an express con-
sent or an implied consent by personal communication
or in writing" to become a provisional committe-
man, and to become, in common with others, respon-
sible and liable for the debts of the company? or did
he give such an authority to the secretary of the com-
pany as could bind him to the consequences of any
acts of what now appeared to be a select managing
committee? That was the simple question, he ap-
prehended. It was quite clear that he had not given
any consent to become a member of the provisional
committee, and, therefore, that being so, it was
beyond all doubt that he was in no way liable for
the debts.

Mr. Baron PARKE, in summing up, said, it was
 in the first instance necessary for the plaintiff to
 make out that there had been an express contract en-
 tered into by the defendant in person, or by his agent,
 and that it was only upon such ground that he could
 recover. The question was, whether the person who
 entered into the contract with the plaintiff was the
 authorized agent of the party who was sought to be
 made liable? There was no doubt that in the first
 instance the claim was upon Brooks, the secretary,
 but if that party contracted the debt as the agent of
 another, then the question arose as to whether the
 defendant was that other. In the present instance
 the plaintiff, there was no doubt, could have brought
 his action against Brooks, or against the managing
 committee, but he had not chosen to sue either of
 these, against either of whom he could have had no
 difficulty in proving his claim, but rather chose to
 select a member of the provisional committee. The
 acting committee had abandoned the concern,
 and had then made a claim upon the provisional
 committee. But the managing committee had
 clearly made themselves liable for these debts, for
 they it was who had conducted the concern and had
 authorized the contraction of debts. But, so far as
 the jury was concerned in the present case, the ques-
 tion was, whether it had been made out to their sa-
 tisfaction that the defendant had rendered himself
 liable by consenting to become a director. That
 consent was clearly not in the terms of the present
 form of action in so far as the description was con-
 cerned. The defendant consented to become a direc-
 tor, not a provisional committeeman, and the pro-
 moters of the company or the managing committee
 had thought proper to make him that which, as
 far as the evidence went, he had not consented to
 become. The jury, before they could make him
 liable to this claim, must be satisfied that he had given
 his consent, or had meant to become a member of
 the provisional committee; and, further, that in
 that capacity he had intended to take upon himself
 all the responsibilities which the managing com-
 mittee might think proper to incur. Then there was
 another matter for them to take into consideration.
 The defendant, it was admitted on the part of
 the clerk of the company, had not only not taken up his
 shares, but had never acted as a committeeman, or
 taken the most remote participation in the business.
 He did not accept the settlement of 50 shares; he had
 in no way interfered in the concern, nor had he at-
 tended any meeting, and he had refused to answer
 or take any notice of the numerous letters which had
 been sent to him from the office of the company. It,
 moreover, appeared that the provisional committee
 had had no power to interfere with the managing
 committee. If the jury were of opinion that the
 defendant had not given his consent to become a pro-
 visional committeeman, there was then an end to
 the case. There had been no evidence offered to
 shew what the duties of the provisional committee
 were, but all had gone to establish the responsibility
 of the managing committee, and that those parties
 were responsible for all acts and debts they incurred,
 either by themselves or by their agent.

The jury returned a verdict for the defendant.

Mr. Baron PARKE then said, that it was not to be
 supposed that because a man allowed his name to be
 inserted in the list of provisional committeemen, he
 made himself responsible for every act or every lia-
 bility of a managing committee, unless it could be
 proved that he had acted in the conduct of the con-
 cern.

CENTRAL CRIMINAL COURT.

Friday, May 15.

(Before the Hon. C. E. LAW, Recorder.)

REG. V. JOHN HAYES AND ELLYN MATES.

A and B were indicted for jointly uttering counterfeit
coins. The evidence was, that A went into a shop and
uttered the same, B remaining outside at a distance
of fifty yards. Held, that before B could be con-
victed it must be shewn that he was so near to A as
to be able to assist her in such uttering as by a sign,
&c. Sed quare.

In this case the prisoners were indicted for the joint uttering and putting off of a counterfeit half-crown under 2 Wm. 4, c. 34, s. 7.

Baldwin and *F. J. Smith* appeared for the prosecution.

The prisoners were undefended.

The facts proved were, that the two prisoners were in company together, and that Hayes had been seen to hand something to the woman Mayes, but what it was he so passed could not be distinctly shown. Immediately afterwards the woman went into a shop, and then gave the counterfeit half-crown in payment for some small articles. Hayes went to the door of the shop with Mayes, and then stayed in the street, but passed once while she was in the shop, and then remained three doors off, a distance of near fifty yards, until he was joined by the woman; they then walked away in company.

THE RECORDER.—Is there any case to go to the jury of a joint uttering against the male prisoner?

Baldwin.—It is submitted that there is. He was seen to pass the door once while the woman was in the shop, and then remained three doors off. It may be a question whether or not he was in such a position as to see what she was about, or what passed in the shop; but still, as the two prisoners were together before the female prisoner uttered the coin, and after, it is for the jury to say whether or not they think there was a concert between them.

THE RECORDER.—Can you cite any case where it has been held a joint uttering, where one was not so near as to contribute to aid the other in any way, by sign or otherwise? The learned Recorder referred to *Rees v. Soares* (Russ. & Ry. 25.)

Baldwin.—There is no case exactly in point: the one which is most near to it is *Rees v. Skerritt* (2 C. & P. 427.) He referred also to 1 Russ. Crimes & Mis. 83.

THE RECORDER.—I think, as this is a statutable offence, that they must both contribute to the uttering. If it were merely a misdemeanor it would be different. This may be a conspiracy to utter bad money, but that is not within the statute. If this had been the first case, and I had to decide whether this was an offence within the statute or not, I should say yes; and that all who were engaged in it were guilty. But it has not been so held in any of the cases I have been able to find, but rather the other way, and I do not like to be the first to throw any doubt upon the ruling.

THE RECORDER (in summing up).—Unless you are prepared to say, that the male prisoners contributed to the uttering, you cannot convict him. He may have been guilty of another offence, but not the one at present charged by the indictment which you have to try. To make him a joint utterer, he must have been so near to the woman at the time she uttered the coin, as to be able to aid her by a sign; or to assist her in the uttering, by encouraging her with his countenance or personal aid and assistance. If you think he was so near that also might yet under his countenance, as by his telegraphing, or otherwise, you may, under such circumstances, find him guilty; should you be satisfied that he did, in fact, deliver that bad coin to her, and which she afterwards delivered to the witness, you may then find her guilty of the "putting off."

Payne cited *R. v. Page and Jones* (9 Car. & Pay. 767.)

Verdict, Guilty.

In this case the learned Recorder has stated the law on this point according to former decisions, though, at the same time, he intimated that he did so contra his own opinion. The distinction here lies in the difference between accessories in felony, and accessories in misdemeanors. The former are principals in the second degree, but the latter are principals in the first degree. Whatever, therefore, would make a person an accessory in felony, would make him a principal in a misdemeanor. The cases of *Rees v. Elise*, 1 Russ. on Cr. and Mis. 81; *Reg. v. Page and Jones*, *supra*, were clearly decided on the same principle as if the charge had been that of felony. With all due deference, this seems to be incorrect. The right view would appear to be that taken by Mr. Greaves, in his edition of Russell on Crimes, that where, in cases of this nature, the evidence would satisfy the jury, if the case had been a felony, that the party absent was an accessory, he would, in a misdemeanor, be a principal. (See 1 Russ. Cr. 82, n. d, in which the principle, as here stated, is strongly supported; see also *Reg. v. Moland and Others* (2 Moody, C. C. R. 276). There is no distinction between a statutable and common law misdemeanor; when an offence is made a misdemeanor by statute, it is made so for all purposes. (*R. v. Roderick*, 7 C. & P. 796.)

Irish Reports.

COURT OF QUEEN'S BENCH.

Thursday, April 30.

(SITTINGS IN BANC.)

Criminal information.—Privilege of counsel.

Reg. at the prosecution of ISAAC BUTT, esq. Q.C. v. FREDERICK JACKSON, gent. one of the Attorneys.

This was an application on behalf of Isaac Butt, esq. one of her Majesty's counsel, for liberty to file a criminal information against Mr. Frederick Jackson, one of the attorneys of the Court, for having, by writing certain letters to the prosecutor, and by other means, sought to induce him to commit a breach of the peace by fighting a duel with the defendant.

Bennett, Q.C. in support of the motion.—The transaction arose out of some observations made by Mr. Butt in an address to the jury at the Commission Court, on behalf of a Mrs. Scott, who was tried on an indictment for bigamy, Mr. Jackson being the attorney for the prosecution. The affidavits of Mr. Butt stated that he had been retained by Messrs. M'Gusty and Snagg to defend Mrs. Scott at the last commission at Green-street, on two separate charges of bigamy, one for intermarrying with a person named Galway, her husband, James Carter, being then alive; the second, for intermarrying with John Bindon Scott, in the year 1833, James Carter being then living; and that, upon the 8th of April, he received his instructions from those gentlemen as Mrs. Scott's attorneys, and was informed by them that the case was one of great hardship against his client, and that criminal proceedings were instituted against her for the purpose of thereby terminating in a summary manner certain suits pending in the Court of Chancery and in the Ecclesiastical Court, and that the criminal proceedings were instituted by the attorney in the Chancery cause, for Mr. John Bindon Scott, the lady's husband, under circumstances of hardship and oppression, after a long interval of time, and not until after Mrs. Scott had refused to accede to a compromise proposed between her and Mr. Scott, and that deponent had been informed that the prosecution would be sustained by testimony of a discreditable nature, and that every effort would be made by the prosecutors to blacken the character of Mrs. Scott, who from the length of time which had elapsed would be placed at a disadvantage in meeting such charges. The trial took place on the 13th of April, before Mr. Baron Richards and Mr. Justice Ball, and a jury of the city of Dublin, and upon that occasion deponent was the prisoner's leading counsel, Mr. Peebles and Mr. O'Hagan being with him. The case for the prosecution occupied two days; and on the 15th, deponent addressed the jury for the prisoner, and in his address strongly reflected on the object of the prosecution and the conduct of the persons engaged in its management. Deponent stated also, that he was merely actuated by the desire honestly and faithfully to discharge his duty to his client; and that he did not at the time, or now, believe that he exceeded his duty, and that he was not influenced by any feeling of hostility to Mr. Jackson, or the other persons engaged in the prosecution; and that he then and still believed that it was necessary for the effectual and valid defence of his client to strongly reflect on the character of the prosecution; and that, ~~that he suggested to make the observations in question, the defence of his client would not have been as effectual as it ought to have been, in conformity with his instructions.~~ On the 17th of April Mrs. Scott was acquitted; but a second indictment having been found against her for marrying Mr. Scott, her first husband, Carter, being still alive, counsel for the prosecution sought that this trial should be postponed; but at deponent's suggestion the question of postponement stood over till the following Monday, when the parties were to be ready to proceed, if the postponement should not be granted by the Court. The affidavit then proceeds to state that on the same evening deponent was waited on by Captain R. Blackwood, who stated that he came from his friend Mr. Jackson, and handed deponent the following letter, which is in the handwriting of Mr. Jackson:—

"9, Harcourt-street,

"Friday evening, April 17th.

"SIR,—An impression was made by a sentence contained in your speech on Wednesday, that you used language, direct or implied, to the import that 'you knew Mr. Jackson, and that although you did know him, you did not shrink from saying that his conduct in bringing forward this case was unmanly and disgraceful.'

"Making all due allowance for the liberties conceded to counsel, and the privileges claimed by advocates, it is absolutely necessary that I should know whether, in the observations made by you, it was your intention to convey any thing offensive to myself in my capacity as a gentleman, or derogatory to my character as a professional man?

"Not wishing to interfere in the slightest degree with your duties to your client, I have forbore from making this application until the termination of the trial; and I send my friend Captain Blackwood with this letter, who will be the bearer of any communication you wish to make.—I have the honour to be, Sir, your very obedient servant,

"FREDERICK JACKSON.

"Isaac Butt, esq. Q.C. &c. Leeson-street." The prosecutor states, that having read over the letter, he stated that he could not give an answer to it until the proceedings pending against Mrs. Scott were disposed of, and that in the mean time he should feel

at liberty to consult some members of his own profession upon the subject, which appeared to him to involve the privileges of the Bar in some degree. Deponent further states that he was taken by surprise by the communication, and that his postponement of a reply to it was not with the intention of noticing it in the manner the defendant intended, and that several members of the Bar, to whom he had disclosed all the facts which had occurred, advised him that he was imperatively bound not to give any explanation relative to what he had stated in court in defence of his client. On the following Monday, the Court having refused to postpone the trial, and no evidence being produced to sustain the second charge, Mrs. Scott was a second time acquitted. Immediately after her acquittal, Mr. Butt, seeing Captain Blackwood apparently waiting for him, and he being then engaged in defending a libel case, he went out and appointed to see him at eight o'clock that evening, and Captain Blackwood having accordingly called, he wrote the following letter, and gave it to him for Mr. Jackson:—

"72, Leeson-street,

"Tuesday, April 21st, 1846.

"SIR—I have to acknowledge the receipt of your note of Saturday, which was on that day handed me by Captain Blackwood.

"Whatever observations I made on the occasion to which your note refers I made in the discharge of my professional duty. I am bound to say, that in making those observations I meant nothing more than to discharge that duty, and I had no other motive.

"Farther than this I do not feel myself at liberty to reply to the questions in your note. I cannot recognize your right to call me to account for what I have done in the discharge of my professional duty; and anxious as I am to give the fullest explanation to any gentleman who might feel himself aggrieved by any thing I may have said, I feel that I owe it as a duty to my profession to say, in reply to your note, that I do not feel myself called on to answer the questions which it puts to me.—I have the honour to be your very obedient servant,

"ISAAC BUTT.

"Frederick Jackson, esq. Harcourt-street."

The affidavits then proceed to state that Captain B. not considering this letter satisfactory, asked whether deponent would refer him to a friend for the purpose of a hostile meeting? or did he refuse to do so? which deponent most unequivocally did. The affidavit then states the receipt of the following letter from Mr. Jackson on the 22nd inst. :—

"9, Harcourt-street, Wednesday morning,

"April 26th, 1846.

"SIR,—Your letter of Tuesday evening's date, in reply to mine of Friday last, has been handed to me by my friend Captain Blackwood. In it I find you shelter yourself from the personal responsibility which one gentleman necessarily incurs, and to which every person in society who has the pretensions of being a gentleman is liable, when he gratuitously and wantonly insults another under the subterfuge of 'professional privilege,' and the allegation of acting 'in the discharge of a duty.' Both pleas—the one for not making a generous reparation where an injury had been inflicted, and the other for not affording that satisfaction which the laws of honour demand when an insult had been offered—are untenable and untrue. The solicitor by whom you were employed gave to me personally, and through my counsel, his unqualified denial, and that denial was voluntary, of having instructed you to use any observation of an offensive nature towards me, and his total dissent from their application as regarded my conduct in the case. With respect to the real cause of your shrinking from a responsibility which you deliberately incurred, without perhaps fully calculating upon the ulterior consequences in which your conduct would involve you (for of this I fully acquit you), I shall not venture to designate it or you by the term or epithet which naturally suggest themselves; but I confidently expect that the members of both professions, as well as the public, will draw their own conclusions as to the course you have taken, and be much more likely to come to the conviction that in adopting it you have been influenced much more by the consideration of your personal safety than actuated by a regard for the assertion of 'professional privilege.'—I have the honour to be, Sir, your very humble servant,

"FREDERICK JACKSON.

"To Isaac Butt, esq., Q.C. 72, Leeson-street."

Deponent further stated, that on the 23rd April he read in *Saunders's News-letter*, three other letters, which he believed were inserted by direction of Mr. Jackson; one to the editor, requesting him to insert the correspondence; one from Capt. Blackwood to Mr. Jackson, and one from Mr. Murdock, a mutual friend; and that deponent had been advised by counsel, that in consequence of certain observations, in Jackson's last letter, inserted in *Saunders's News-letter*, it would be necessary for him to disclose to the Court the nature of the instructions which he received for the defence of Mrs. Scott, and the facts relative to the origin of the prosecution, and the conduct of Mr. Jackson, in relation to certain propositions made to Mrs. Scott; and that deponent, prior

to the trial, in a consultation at which Mrs. Scott's solicitor attended, took particular pains to ascertain whether he could rely upon the facts of which he had been instructed, and the circumstances which in his opinion reflected upon Mr. Jackson, when he was informed by Mrs. Scott's attorney that he could, and that Mr. Jackson must admit the truth of the facts on oath, if examined; and deponent states that his reason for making such particular inquiries was, that Mr. Jackson had always been considered a very respectable man. Deponent further states, that the other counsel engaged with him in the case concurred in the general tone of observation adopted by him in the conduct of the case, and that part of his instructions consisted of the sworn answer of Mrs. Scott in the Chancery cause, in which she stated the making of certain propositions to her relative to the abandonment of criminal proceedings. These propositions are of such a nature, that unless the Court require it, I should wish to avoid detailing them.

BLACKBURN, C. J.—There is no necessity, Mr. Bennett, for your detailing them.

Bennett.—Mr. Butt, in his comments upon Mr. Jackson's conduct, acted upon his instructions, part of which consisted of facts which had been sworn to, and also upon what appeared at the trial of Mrs. Scott.

BLACKBURN, C. J.—The Court are of opinion that you have stated most abundantly sufficient grounds for the granting of a conditional order.

Rule nisi accordingly.

THE LEGISLATOR.

Summary.

THE proceedings of the Parliament have been of small professional interest, however important to the public. It may now be considered as *certain* that no one of the projected Law Reforms will be carried during the present session, which will necessarily be hurried to an early close, with the passing only of such measures as are absolutely essential to state emergencies. With this assurance, all interest in them ceases.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, June 5.

Waste Lands, Ireland—"for promoting the reclamation of waste lands in Ireland"
Steam Navigation—"for the regulation of steam navigation, and for requiring sea-going vessels to carry boats"
Wreck and Salvage—"for consolidating and amending the laws relating to wreck and salvage."

Monday, June 8.

Smoke Prohibition—"to prohibit the nuisance of smoke from furnaces or manufactories."

BILLS READ A THIRD TIME AND PASSED.

Friday, June 5.

Legal Quays, London.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Monday, June 8.

Dundee's Estate
Mallow and Fermoy Railway
Great Southern and Western Railway
Kilmarney Junction Railway
Cork, Blackrock, and Passage Railway
Clonmell and Thurles Railway.

BILLS READ A SECOND TIME.

Thursday, June 4.

Great Leinster and Munster Railway
Askew's Estate Bill
British Guarantee Association.

Monday, June 8.

Cullen's Estate.

Wednesday, June 10.

Midland Great Western of Ireland Railway
Scottish Central and Caledonian Junction Railway, by order

BILLS READ A THIRD TIME AND PASSED.

Thursday, June 4.

Harrogate Gas
Glasgow, Barrhead, and Neilston Direct Railway
Birkenhead Small Debts
Birkenhead, Lancashire, and Cheshire Junction Railway
Midland Railway, four branches
Sitting and Dealermine Railway
Aston Gates.

Friday, June 5.

Dublin and Kingston Extension Railway
Cragh's Divorce
Midland Great Western Railway, Ireland
Wainhope's Estate.
Buckinghamshire Midland Junction Railway
Stam College Estate
Great North of Scotland, Eastern Extension
Alford Valley Railway
Manchester and Birmingham Railway
Moorfield Railway Extension
Glasgow, Paisley, and Greenock Railway
Guthrie Greenfield Works
General Terminus and Glasgow Harbour Railway.

East of Fife Railway
Great Grimsby and Sheffield Junction
Ambergate, Nottingham, Boston, and Eastern Junction
Railway
Portsmouth Harbour Pier
Solly's Estate.

Monday, June 8.

Caledonian and Dumbartonshire Junction Railway
Cambridge and Oxford Railway
Dunblane, Doune, and Callander Railway
East and West Yorkshire Junction Railway
Glasgow, Strathaven, and Lesmahagow Direct Railway
Kilmarnock and Troon Railway
Liverpool Improvement
Liverpool Sanatory Regulations
London and South Western Railway Acts Amendment
Morayshire Railway
Slamannan Railway
Thames Haven Dock and Railway (No. 9)
Wilsontown, Morningaide, and Coltness Railway (Branches).

Wednesday, June 10.

Ayrshire Bridge of Weir and Port Glasgow Junction Railway
Ballochney Railway
Bridgewater and Taunton Canal, Railway, and Harbour
Bristol and Exeter Railway
Bromsgrove Improvement and Small Tenements (No. 2)
Buckinghamshire Railway
Edinburgh Paving
Great Grimsby Gas
Leeds and Thirsk Railway
" Knareborough Branch Extension
" North Eastern Extension

Leith Paving
London and South Western Railway, Farnham and Alton Branch
London and Birmingham Railway
Manchester, Sheffield, and Midland Junction Railway
Manchester, Buxton, Matlock, and Midland Junction Railway
Midland Railway, Leicester and Swannington Alteration and Branches
Midland Railway, Nottingham and Mansfield
Newcastle-upon-Tyne Improvement
Reading, Guildford, and Reigate Railway
Scottish Central Railway, Alloa Branch
" Perth Termini and Stations
Sittingbourne Improvement.

Thursday, June 11.

Decade Railway
Forth and Clyde and Monkland Navigation Junction
Herculeum Docks
Walsfield, Pontefract, and Goole Railway.

SESSIONAL PRINTED PAPERS.

Army and Military Services—Account
Wool and Woollen Manufactures—Accounts
Kew Gardens, &c.—Paper
Military Prison (Wooden)—Return
Tobacco Smuggling—Returns
Private Bills—Return
Railway Bills Classification—Sixteenth Report of Committee
Sugar—Account
Capital Crime—Paper
Westminster Bridge and New Palace—Second Report of Committee
Mr. Warner's Inventions—Paper
Channel Islands—Paper
Outrages (Ireland)—Return
Westminster Election—Amended Return
Tajia of Sakara—Paper
Bills—County Works Presentments (Ireland)
Drainage
Coroners (Ireland)—Amended
Spitalfields New Street
Wreck and Salvage
Smoke Prohibition

Colonial Land and Emigration Commission—Sixth Report
Ship Eclair—Correspondence
Criminal Law—Second Report of Commissioners
Criminal Offenders (Scotland)—Tables
Population, Taxation, &c.—Returns
Outrages (Tipperary, Limerick, Clare, Leitrim, and Roscommon)—Abstract of the Police Reports
Railways—Copy of Minute of Board of Trade respecting the Gauge of Railways
Homicides (Ireland)—Returns
Sugar—Return
Railway Bills Classification—Seventeenth Report of Committee
West India Produce—Account
National Education (Ireland)—Twelfth Report of Commissioners

Bills in Progress.

Draft of a Bill, intitled "An Act for Consolidating and Amending so much of the Criminal Law as relates to incapacity to commit crimes, duress, the essentials of a criminal injury, criminal agency and participation, and homicide and other offences against the person."

Be it enacted, &c.

1. That the schedule to this Act annexed shall be deemed and taken to be parcel of this Act, and that the four chapters of the same, and the ten sections of the said chapters, and the 148 articles of the said sections, and the headings thereof and the numbers thereof, respectively, shall be deemed and taken to be enacted by this present Act, as if each and every of the said chapters, sections, articles, headings, and numbers had been expressly and in terms herein recited, with the usual words and in the usual forms of enactment, or declaration, or proviso, as the case may be; and that from the passing of this Act every one guilty of any offence described in, or defined by, the said schedule, shall be liable to such punishment as is therein appointed in respect of such offence.

2. That after the passing of this Act, the rule of

law whereby a married woman charged with the commission of any crime is, in case her husband be present at the time, presumed to have acted under his coercion, unless it appear that she did not so act; and all rules of law contrary to the provisions of chap. I. of the said schedule shall be, and the same are hereby repealed and annulled. (a)

3. That no person shall, after the passing of this Act, be liable to prosecution by an indictment or information in respect of any offence against the person not included in the said schedule.

4. Provided that nothing hereinbefore contained shall exempt any person from prosecution by indictment or information in respect of any offence against the person not included in the said schedule in any case where, by any Act or Acts of Parliament, persons committing such offence are made specially punishable on account of the party against whom or the place wherein such offence is committed. (b)

5. Provided also that nothing herein contained shall exempt any offender from any proceeding in respect of any offence against the person in which any magistrate or commissioner is or shall be empowered to exercise any summary jurisdiction without trial by jury.

6. Provided also that as regards any offence against the person perpetrated before the — day of — 1846, and also as regards any offence against the person in part perpetrated by any act done before that day, and which offence shall be completed or commenced on or after that day, the offender shall be punishable as if this Act had not been passed.

7. That after the passing of this Act every offence in respect of which it is declared by the said schedule that the offender shall incur the penalties of the 6th or any higher class, shall be tried in the same manner, and be subject to all the same rules of procedure as if such offence were by the said schedule declared to be a felony; and every offence in respect of which it is declared by the said schedule that the offender shall incur the penalties of any lower class, shall be tried in the same manner, and be subject to all the same rules of procedure, as if such last-mentioned offence were by the said schedule declared to be a misdemeanour. (c)

HOUSE OF LORDS.

NEW LAW OF SETTLEMENT.

THURSDAY, June 13.—The Earl of WINCHELSEA expressed his hope that this measure would not receive the assent of Parliament. It was a highly objectionable one.—The Earl of RADNOR thought any discussion on the measure at present premature. He did not agree with his noble friend; on the contrary, he thought that the present law of settlement was a great grievance to the poor, and that the ministerial measure was a step in the right direction for its improvement. After a few words from Lord ABERNETHY, the Earl of WICKLOW expressed his disapproval of the government measure. If introduced into Parliament, it would destroy the whole benefit of the poor-law system there. The measure, that government had not been called upon, and was wrong in introducing it at all.—Lord REDENBALLE was of opinion that a more mischievous plan than that of a union settlement could not be adopted.

HOUSE OF COMMONS.

POOR REMOVAL BILL.

FRIDAY, June 5.—Sir J. GRAHAM moved that the House go into committee on the Poor Law Removal Bill. After some discussion on a point of order, Mr. E. DENISON moved as an instruction to the committee the following resolutions:—

"After a day to be fixed for each union, all paupers of the parishes comprising the union shall be settled in the union, and not in any such parish of such union.

"That such paupers be maintained, and all expenses defrayed from a fund levied from each parish in the proportion of the expenditure for the relief of the poor incurred by such parish for the last seven years.

"Debts already charged on the rates, and interest due in respect of such debts, shall not be affected by the change."

Col. WOOD was of opinion that the poor-law settlement question would ultimately compel the legislature to pay that attention which its importance re-

(a) Upon the subject of marital coercion, see the note to article 9 of section 1, of chap. I. of the schedule.

(b) The necessity for this provision as an exception to section 3, is occasioned by the limited nature of the digest now submitted to your Majesty, should it be proposed to pass it into a law before the completion of the whole digest of crimes and punishments. No such clause would be necessary if the whole digest were completed. The following are examples of the offences to which the above provision is intended to apply, viz. treason in shooting at the Queen, the offence of striking a judge whilst in the execution of his office, &c.

(c) The object of the above clause is to make the system of procedure at present applicable to felonies and misdemeanours, applicable to the offences contained in the schedule, notwithstanding to the provisions of the above clause, until your committee shall have considered the whole subject of the degrees of crimes and trial of offenders.

quired, and he hoped that a general assessment for the poor rate on the plan of the property tax would soon be adopted. With respect to the bill, he hoped that it would be so framed as to secure to persons the benefit of a proper residence in any locality. At the present moment he could not support the resolutions as they then stood.—After a few remarks from Mr. Banks, Mr. Rice, and Mr. Christopher, Mr. STURTT advocated the principle of a union settlement, which he thought would have the effect of equalizing the burden of the poor-rates. He thought the question ought to be discussed with that attention which its importance required.—Mr. PAKINGTON also advocated a change in the law of settlement, but expressed his conviction that if the proposition then before the House was adopted, it would prevent the bill passing that session.

—Sir J. GRAHAM entered into a lengthened explanation of the merits of the bill, and concluded by saying that it was his intention to support the proposition of Mr. E. DENISON; but if the House refused to adopt that proposition, he was ready to accept any other which would be an improvement, as he was of opinion it was of great importance this measure should be passed, to prevent the evil of operatives in manufacturing districts being removed, against their will, to rural ones. After a few observations from Mr. BROTHWICK, Sir R. INGLIS considered the measure as another of those blows levelled against the parochial system of England.—Mr. C. WOOD advocated the principle of a union settlement.—Mr. HANLEY censured the government for the extraordinary invasion they had made on the parochial institutions of the country.—Mr. V. SMITH said that he wished to see union settlements established, but thought there ought to be a union rate established with them. After a few words from Mr. B. ESCOTT and Mr. GRAINGER, Lord MORPETH adverted to the evils which labourers endured in the Wolds of Yorkshire from the working of the parochial system. Three-fourths of the removals were persons who had lived more than five years away from their respective parishes. He had no doubt the present measure would greatly diminish those removals, and he should therefore give the bill his hearty support.—Mr. T. DUNCOMBE said that to do any good at all they ought to abolish the law of settlement altogether. He was perfectly sure that the whole of the labouring population were in favour of such a measure, and he thought that if any alteration was to be made, now was the time to do it. He, therefore, had a proposition, in the shape of an amendment, to make, to the effect that an instruction be given to the committee to make provision for the repeal of the laws of settlement; that relief should be given in the union when the necessity should occur, and also that Government should provide a fund instead of an assessment.—General JOHNSON seconded the amendment.

—Mr. BRIGHT vindicated the manufacturers from the aspersions thrown out respecting their turning their men adrift during the late period of depression.—Lord G. BENTINCK opposed the motion of Mr. E. DENISON, but in some measure approved of Mr. T. DUNCOMBE'S. He, however, hoped that such an important measure would not be disposed of in a house comparatively empty, but that they would adjourn the debate for a full one, when due attention would be given to the various provisions of the bill. If such a course was pursued, he was sure it would conciliate a great portion of the operative classes in the country.—Sir T. D. ACLAND supported the bill.—Mr. BANKES contended that the bill ought to give to the industrious classes in manufacturing towns an absolute settlement after a residence of five years in the locality.—Mr. SPOONER said he should oppose the motion of the hon. member for Malton (Mr. Evelyn Denison).—After a few words of explanation from Sir JAMES GRAHAM, Lord J. RUSSELL considered the question before them a most difficult one, and that the difficulties surrounding it had not been decreased by the course pursued by the hon. gentleman opposite (Sir James Graham), who lectured the Whig Government for bringing in a Poor Law Amendment Bill in an imperfect state. The right hon. baronet had now brought forward a bill which he was willing to alter. He should give his vote for the amendment of the hon. member for Malton, provided it was understood that if it should be hereafter considered necessary to adopt a union settlement, he should be at perfect liberty to vote against it.—Lord J. MANNERS thought the conduct of Sir J. Graham most extraordinary in so readily adopting the amendment of an opponent.—Mr. P. BORTHWICK moved that the debate be adjourned.—Mr. T. DUNCOMBE defended himself from some remarks made on his conduct respecting the corn-laws, by Mr. Bright.—Mr. P. BORTHWICK withdrew his motion, and the House divided on Mr. Dunccombe's amendment, when it was lost by a majority of 105 to 89.—Mr. E. DENISON'S motion was then put, and carried by a majority of 92 to 70.—Mr. E. DENISON moved that the House go into committee *pro forma*.—After some remarks from Sir H. Inglis, Mr. T. DUNCOMBE, and Mr. Hanley, Sir J. GRAHAM hoped the House would consent to a proposition—namely, that further progress of the bill be postponed until Monday, and in the mean time he would be able to confer with the hon. gentleman opposite respecting the clauses which he proposed to introduce in order

to carry out the instructions sanctioned by the House. In that case he would be answerable for any alterations that it might be found necessary to make in the bill.—Col. SIBTHORP then addressed the House, and the committee on the bill was appointed for Monday next.—The other orders of the day were then read, and the House adjourned.

THE MAGISTRATE.

Summary.

THE Poor Removal Bill has been treated after a very extraordinary fashion. Sir JAMES GRAHAM, its parent, was in favour of the substitution of union settlements for parochial settlements, and proposed the former to the House of Commons; but the design was so ill-received that he did not venture to renew it in another session, and the Poor Removal Bill was brought in shorn of that provision, and limiting its cares to the regulation of removals instead of the reconstruction of settlements. But it was thought that an independent member might do what the Government dared not attempt, so Mr. DENISON moved a series of instructions to the committee for providing union settlements, which motion was met by Sir JAMES with an aspect of charming candour, and a professed willingness to submit to the wishes of the House, and it was carried accordingly by a considerable majority, the Government undertaking to withdraw the Bill and introduce the settlement thus forced upon them. So the Removal Bill has been converted into a Settlement Bill, and nobody is responsible for the measure. It belongs to the collective House, and if it fail, the Anti-Poor-Law people will be able to affix the blame to no man, or men, or party. This may be convenient enough, but it is certainly contrary to the usual manner of passing important laws, and looks much like an abdication of its powers on the part of the Government. To the proposed Union Settlement we have nothing to object. On the contrary, we think it will be beneficial to those who are the principal parties whose interests are to be consulted in such a matter—the paupers. Whatever will prevent removals we look upon as a boon to the poor, and therefore it is that we would abolish the law of settlement altogether, and maintain the pauper wherever he happens to become chargeable, the state providing the funds out of a general rate, and the local authorities administering them. But as such a reform is much too complete to be adopted in an age of compromise and tinkering, we are glad to see even an approach to it, in the shape of Union Settlements as substitutes for Parochial Settlements.

THE grand jury of the county of Middlesex have made a presentment which deserves perusal for the boldness with which it declares the utter uselessness of grand juries, and calls upon the Legislature to abolish an institution which other improvements in the administration of justice have made not merely a worthless waste of the public time, but an actual mischief. This is the statement alluded to:—

The grand jury for the county of Middlesex, assembled at Clerkenwell, the 3rd day of June, 1846, having endeavoured to fulfil, to the best of their abilities, the purpose for which they have been summoned, feel it a duty they owe, not only to themselves but to the Court, to offer a respectful representation of *their utter uselessness*. Not only have they felt their services to be useless, but in some instances they have been a *positive impediment to the administration of justice*. Summoned from their various avocations for what they have been led to consider a great public duty, and invested, as they have always considered, with a serious responsibility; quite willing, however, to take upon themselves such responsibility, and to devote their time to the public service, they have found themselves *utterly helpless for any purpose of good*. Unacquainted with facts which have already been sifted, and are exhibited on the depositions before the Court, and unable from their very constitution to arrive at any knowledge of facts by cross-examination or otherwise; confined to the evidence of only such witnesses as are endorsed on the indictment, and unable to seek other information, although in some cases it has been shewn to be at

hand, they have felt the performance of their duties to be little better than a waste of time and an idle mockery. Though perfectly aware that this Court has no power to afford them any relief, they take this method to place their sentiments on record, as it is only by similar reiterated representations that any amelioration can be expected from the Legislature.

We subjoin some remarks of the *Morning Chronicle*, which will have the entire concurrence of those of our readers who have watched the practical working of Grand Juries.

Every person possessing the slightest acquaintance with the practical working of the grand jury system will immediately recognize, in the language which we have quoted, a faithful estimate of the general nature and utility of this absurd institution; which, in the nature of things, must be utterly useless wherever it happens to be harmless; which, at the very best, is only a clumsy clog upon the working of the machinery of justice; but which, upon many occasions, becomes the medium through which delinquents of the worst character and most unquestionable guilt are enabled to escape; or by which prosecutors, equally infamous, obtain the power to commit the grossest oppression, under the pretence of putting the law in motion for the punishment of guilt. Everybody is aware that, except in a few cases, no person can be put upon trial in the criminal courts of this country, unless upon an indictment which has been found to be a "true bill" by the grand jury in whose jurisdiction the crime has been committed. The indictment comes before the grand jury, having upon the back of it the names of such witnesses as the prosecutor thinks proper to produce upon that occasion. To listen to what these witnesses, or such of them as are actually produced, may think proper to say, is the whole amount of authority which the grand jury possess over the case; and even a grand juror who may know that the evidence of a particular witness is absolutely untrue, has no power to make his knowledge available in that place for the protection of the party accused; whilst, if he disclose the testimony which he so knows to be false, he is liable to be punished by fine and imprisonment. But before the case comes before the grand jury it has in general been brought before the magistrate, where the investigation has been conducted in the most public manner; where all parties are entitled to have professional assistance, and where, through the medium of the press, the utmost possible publicity is given to all the material circumstances of every case which is of any importance to the public, or capable of interesting it in any degree, however small. After such an inquiry, and generally speaking, after one or more adjournments of the case, the prisoner is committed for trial; upon which an indictment is laid before the grand jury, who, acting without professional assistance, without the power of hearing more than one side, and in a secrecy which they swear not to violate, are called upon to decide, upon a part of the evidence laid before the magistrate, whether he was justified in the conclusion of guilt which he drew from the whole. The suppression before the grand jury of any material part of the evidence adduced before the justice, must, of course, in general produce the ignoring of the indictment. And when the bill has been thrown out, the accused party must be discharged, even though he may have confessed his guilt before the magistrate in the previous investigation!

The stupid and mischievous character of such a system is evident at a glance. After the complete and public investigation which takes place before the justice, it seems a wanton waste of time, trouble, and expense, to put the prosecutor to the necessity of renewing the inquiry before the grand jury in circumstances which render the inquiry itself absolutely ridiculous.

POOR REMOVAL BILL.—NORWICH, JUNE 10.—A very large and influential meeting of the rate-payers of this city was held to-day at the Guildhall, for the purpose of taking into consideration the Poor Removal Bill now before Parliament. The meeting was convened by the mayor, who presided, at the request of the corporation of guardians of the poor, and was attended by a great number of the magistrates and leading men of the city. Several resolutions were passed, condemnatory of the 8th clause of the bill, which decided that five years' residence in a place would give a person a settlement there, the meeting being of opinion that this clause would entail disastrous consequences on all large towns, by increasing their pauper population at least one-third. In one town (Barwell, in Cambridgeshire) the population would be increased five-sixths. Petitions to Parliament, founded on these resolutions, were unanimously agreed to. On the motion of A. A. H. Beckwith, esq. the governor of the court of guardians, it was agreed to present a petition to Parliament, praying that a temporal law might be made, empowering all guardians of unions or parishes to relieve paupers resident there, but not settled, at those places without causing their removal, charging the guardians of their place of settlement with the expense—the court of

guardians here having tried that plan and found it very successful. NATIONAL RATE.—A petition, founded on the following resolution, was also unanimously agreed to:—"That this meeting is decidedly of opinion that the only effectual alteration in the law of settlement, and by which free scope could be given to the labour of the people, would be to abolish the present law of settlement, and rating, and to substitute a general national tax on real and personal property."

The following building is certified as a place duly registered for solemnizing marriages, pursuant to an Act of the 6th and 7th Wm. 4, c. 85:—

"Wesleyan Chapel, Stockton, Durham. William Best, superintendent registrar."

THE LAWYER.

Summary.

THE events of the week requiring special notice are more numerous than usual. The most important of the contents of this double number are the Term reports, which continue to be very heavy, and of course of the foremost interest with professional readers, to whom the earliest intelligence of points decided is often a matter of serious moment. To these, therefore, it is our rule that all other news shall give place. So many judgments are promised at the sittings after Term, that we fear two or three more double numbers will be required in order to keep pace with them.

The Court of Queen's Bench has pronounced its formal sanction of the decision of the Quarter Sessions in Denbighshire giving *exclusive* audience to the Bar. Lord DENMAN observed, that the privilege of the Bar had been sustained in practice, and approved upon the ground that it ensured competent legal assistance, and that it was expedient to maintain the distinction between the two branches of the legal Profession.

A curious question as to the limitation of the right of advocates "to abuse the other side," has been raised in Ireland, and the formal decision of the judges, if that can be called such which decides nothing, will be found among the legal intelligence. *The Times* has some stringent, but not altogether undeserved, comments on the abuses of this privilege by persons who would be angry if denied the title of gentlemen. We shall return to the subject next week. These are the remarks of our lawyer-hating contemporary:—

Our Irish intelligence to-day includes the report of a case involving a point of much importance to the Bar, and of considerable interest to society at large. We allude to the criminal information filed by Mr. Butt, the barrister, against Mr. Jackson, an attorney, for sending him a challenge, to answer for language spoken in the course of professional advocacy. The language complained of involved a direct charge against the attorney of subornation of perjury, and the use of it was not denied by the barrister. The latter, however, justified himself on the ground of professional privilege, refused to give satisfaction, and brought the case before the Queen's Bench. In a technical point of view, the Court had no alternative but to let the information go, for the challenge had undoubtedly been given, and an offence committed against the law. It must be understood that an application for an information is strictly a preliminary proceeding, upon which the general merits of the case—such as the amount of provocation, and the conduct of the parties towards each other—need not be inquired into. The decision here is, therefore, by no means conclusive of the general question—whether or not Mr. Butt exceeded the bounds of professional license in imputing to Mr. Jackson an indictable offence; and the judgment of the chief justice does, in fact, expressly leave this question undecided. It would, we think, have been well if some opinion had been given on a point of so much general interest—the only point, indeed, which it was important to have an opinion upon. We admit that the Court must have gone a little out of its way to express such an opinion, and that the expression would therefore not have had all the force of a judicial sentence. But the moral effect might and must have been extremely beneficial. The gentlemen of the bar do sometimes forget themselves strangely, and say things which, after every allowance is made for the heat of the moment, and for the license necessary for the client's benefit, are still quite unjustifiable. We cannot, in this place, enter fully into the

merits of the question of an advocate's freedom of speech, but it will hardly be denied that his remarks ought to be confined to the matter at issue. Mr. Butt appears to have acted on the instructions which many non-professional persons have, with some reason, imagined to be a general formula for a barrister's brief—"No defence; abuse the plaintiff's attorney." Doubtless it is very expedient for a counsel to act up to his instructions, but surely he does not put away all discretion when he assumes the wig and gown. All the world must respect a *fearless* advocate, but none but pettifogging attorneys and knavish clients admire an *unscrupulous* one.

We take the first opportunity of informing the Profession that a very important decision has been given by the Court of Queen's Bench, upon the true construction of the 8 Anne, c. 14. The case we refer to is *Cocker v. Musgrove* (*supra*, 5 Law T. 72), which was argued the first day of Hilary Term last, and judgment therein was given last Tuesday. The facts and the arguments will be reported next week. It will suffice for the present to mention that it decided that where a sheriff in possession under a *f. fa.* has notice of rent due, and of which notice is given to the execution creditor, he is not bound, nor is it his duty, to proceed with the sale, until the execution creditor has paid the rent, and this, too, irrespective of the value of the goods, or the amount of rent. The Court admitted that this was not followed in practice, but that it was the true construction of the statute.

The Court of Exchequer has this day (Friday) given judgment for the plaintiff in the important case of *Wallstab v. Spottiswoode*; thus affirming the right of allottees to recover back deposits paid upon projected joint-stock companies. It is presumed that the question will be taken before a Court of Error, the Exchequer judges having shewn an unusual *animus* against provisional committees, from the commencement of the present flood of litigation. The case and judgment will, we hope, be fully reported next week.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been graciously pleased to appoint George Crowe, esq. now her Majesty's Consul at Patras, to be her Majesty's Consul-General at Tripoli.

The Queen has also been graciously pleased to appoint Thomas Wood, esq. now British Vice-Consul at Bengasi, to be her Majesty's Consul at Patras.

The Lord Chancellor has appointed John Richard Wood, of Woodbridge, in the county of Suffolk, gent. Henry Peake of Sleaford, in the county of Lincoln, gent. and Alexander Blucher Smith, of Melksham, in the county of Wilts, gent. to be Masters Extraordinary in the High Court of Chancery.

COMMISSIONS SIGNED BY LORDS LIEUTENANT. DEVONSHIRE.—C. B. Calmady, esq. Colonel H. R. F. Davie, and H. Porter, esq. to be Deputy Lieutenants.

NEW SOLICITOR OF EXCISE.—We hear that Mr. Douglas, the barrister, has received the appointment of Solicitor of Excise, vacant by the promotion of Sir Francis Doyle to the office of Receiver General of Customs, in the room of Sir William Boothby, deceased. The salary of the latter office is 1,500*l.* per annum, but in addition to it Sir William held the nearly sinecure office of Paymaster of the Band of Gentlemen Pensioners, producing the sum of 2,29*l.* It has not transpired on whom the paymastership will be bestowed.

COURT PAPERS.

COMMON LAW SITTINGS.

COURT OF EXCHEQUER.

Trinity Term—9th Victoria, 1846.

Thursday, June 4.

This Court will, on Thursday, the 18th day of June instant, hold sittings, and will proceed in disposing of the business then pending in the new trial paper, and special paper, on the said 18th day of June, and on the two following days, and on Monday, the 22nd day of June instant, and five following days, and on Monday, the 29th day of June instant, and the five following days.

BY THE COURT.

COURT OF COMMON PLEAS.

Trinity Term, in the 9th year of the reign of Queen Victoria.

Wednesday, June 10, 1846.

This Court will, on Monday, the 6th day of July next, hold a sitting, and will proceed to give judgment in certain of the matters standing over for the consideration of the Court. N. C. TINDAL.

EXCHEQUER OF PLEAS.

Sittings at Nisi Prius in Middlesex and London, before the Right Hon. Sir FREDERICK POLLOCK, Knt. after Trinity Term, 1846.

MIDDLESEX.

Saturday .. June 13	Common Juries
Monday .. 15	
Tuesday .. 16	
Wednesday .. 17	Excise and Common Juries
Thursday .. 18	
Friday .. 19	
Saturday .. 20	Customs and Common Juries
Monday .. 22	Common Juries
Tuesday .. 23	
Wednesday .. 24	
Thursday .. 25	Special Juries.
Friday .. 26	
Saturday .. 27	

LONDON.

Monday .. 15	To adjourn only
Monday .. 20	Adjournment day. Common Juries
Tuesday .. 30	
Wednesday July 1	Common Juries
Thursday .. 2	
Friday .. 3	
Saturday .. 4	
Monday .. 6	
Tuesday .. 7	Special Juries.
Wednesday .. 8	
Thursday .. 9	
Friday .. 10	

The Court will sit at ten o'clock.

COURT OF QUEEN'S BENCH.

This Court will, on Monday, the 15th, Saturday, the 20th, Monday, the 22nd, and five following days, hold sittings, and will proceed in disposing of the business in the special paper, the new trial paper, and in giving judgment in cases then pending.—By order, &c.

The following cases, selected from the special paper, will be proceeded with to-day:—

Nind v. Parry	Bull and Another v. Taylor
Ranzer v. Parry	Ray v. Hirst
Loonie v. Oldfield	Smith v. Ball
Fielding v. Daniels	Munden v. Duke of Bruns-
Eadon v. Branscomb	wick
O'Neil v. Brindle	Parnall v. Jones
Lynall and Another v. Chal-	Mitchell v. Johnson
lender	Lery v. Webb.
Cardwell and Others v. Hol-	
gate	

The Court will then proceed with the new trial paper.

SUMMER CIRCUITS, 1846.

WESTERN CIRCUIT.

On Thursday, Mr. Justice ERLE and Mr. Baron PLATT, the judges appointed to proceed on this circuit, finally appointed and signed the list of days for holding the assizes in and for the several counties comprised within the circuit, viz. for

The Town and County of Southampton—Saturday, July 11, at the Castle of Winchester
Dorsetshire—Friday, July 17, at Dorchester
Wiltshire—Tuesday, July 21, at Devizes
Devonshire—Saturday, July 25, at the Castle of Exeter
City of Exeter—Saturday, July 25, at the Guildhall of the city of Exeter
Cornwall—Saturday, August 1, at Bodmin
Somersetshire—Thursday, August 6, at the city of Wells
Bristol—Thursday, August 13, at the Guildhall of the city of Bristol
City of Bristol—the same day, at the same place.

MIDLAND CIRCUIT.

Mr. Justice PATTERSON and Mr. Justice COLERIDGE, the judges appointed to proceed on this circuit, also, on Thursday, finally appointed the days for holding the assizes on this circuit—viz. for

Northamptonshire—Monday, July 13, at Northampton
Rutlandshire—Friday, July 17, at Oakham
Lincolnshire—Saturday, July 17, at the Castle of Lincoln
City of Lincoln—Saturday, July 18, at the Guildhall
Nottinghamshire—Wednesday, July 22, at Nottingham
Town and County of Nottingham—Wednesday, July 22, at the Guildhall
Derbyshire—Monday, July 27, at Derby
Leicestershire—Thursday, July 30, at Leicester
Leicester and Borough—Thursday, July 30, at the Guildhall
Warwickshire, Coventry Division—Monday, August 3, at Coventry
City of Coventry—Monday, August 3, at the Guildhall
Warwickshire Division—Tuesday, August 4, at the Castle at Warwick

HOME CIRCUIT.

(Before the Right Hon. Baron PARKES and the Hon. Justice COLTMAN.)

Herts—Thursday, July 9, at Hertford
Essex—Monday, July 13, at Chelmsford
Kent—Monday, July 20, at Maidstone
Sussex—Monday, July 20, at Lewes
Surrey—Thursday, July 30, at Guildford, on which day business will be proceeded with.

NORTH WALES AND CHESTER CIRCUIT.

(Before the Right Hon. Lord Chief Justice DENMAN.)

Montgomeryshire—Monday, July 13, at Newtown
Merionethshire—Thursday, July 16, at Dolgelly
Carnarvonshire—Saturday, July 18, at Carnarvon
Anglesey—Wednesday, July 22, at Beaumaris
Denbighshire—Saturday, July 26, at Ruthin
Flintshire—Wednesday, July 29, at Mold

Cheshire—Saturday, August 1, at the Castle, Chester
Chester and City—the same day at Chester

SOUTH WALES AND CHESTER CIRCUIT.

(Before the Hon. Mr. Baron Rolfe.)

Glamorganshire—Saturday, July 4, at Cardiff
Carmarthenshire—Monday, July 13, at Carmarthen
Pembrokeshire—Saturday, July 18, at Haverfordwest
Cardiganshire—Wednesday, July 23, at Cardigan
Brecknockshire—Saturday, July 25, at Brecon
Stathenshire—Wednesday, July 26, at Prestegyn
Cheshire—Saturday, Aug. 1, at the Castle, Chester
Chester and City, the same day, at Chester
Lord Denman and Mr. Baron Rolfe, after proceeding on their respective circuits, and holding the assizes at Mold and Prestegyn, will meet at Chester, and jointly hold the assizes for that county.

CANDIDATES WHO PASSED THE EXAMINATION,

EASTER TERM, 1846.

(From the Legal Observer.)

Batt, Henry, articled to J. C. Fouldrinier, then of Dyer's Hall, now of 1, Scott's-yard, Bush-lane; B. C. Luttley, Dyer's Hall, and Wandsworth
Birch, Henry—Isaac East, Hadleigh, Suffolk
Bouta, Charles—F. Bowker, Winchester
Bowen, Charles Burin—R. Stephens, Plymouth
Bramall, Henry James Marmion—T. B. B. Stevens, Tamworth
Bramwell, Thomas Vicars—W. Woolam, Stockport
Branson, Thomas Sands—T. Branson, Sheffield
Burgess, John—W. Hannen, Shaftesbury
Carr, William—J. Hartley, Settle; G. Dudgeon, now G. Hartley
Channing, Henry—R. Utermare Bullen, Taunton—G. Mathias, Taunton
Chapman, Frederick—J. Johnston, 100, Chancery-lane; C. H. Rhodes, 63, Chancery-lane
Chilwell, George—C. Handley, Norwich
Church, Henry Francis—J. T. Church, 9, Bedford-row
Clarke, William—T. Tilson, 29, Coleman-street
Cockle, Henry—J. Sandom, Deptford; W. Sandom, Deptford
Coode, Edward, jun.—Edward Coode, St. Austell
Cudry, Nathaniel—C. Bayly, Frome, Somerset; C. Clarke, 30, Lincoln's-inn Fields
Crammond, David William—T. Warry, New-inn; G. Warry, New-inn
Cross, Thomas Plomer Lewis—W. H. Cross, Surrey-street, Strand
Dacie, William—W. S. Dacie, Throgmorton-street; Sir G. Stephen, Furnival's-inn
Dawber, Robert, jun.—E. Jackson, Wisbeach, St. Peter, Isle of Ely, Cambridge
Deane, Edward Howard—E. G. Deane, Liverpool
Dendy, Samuel Frederick—S. Dendy, 3, Bream's-buffings, Chancery-lane
Dodd, Henry—R. Gibson, Hexham
Dry, James—R. F. Graham, Newbury, Berks
England, Charles—C. Metcalfe, jun. Wisbeach St. Peter's, Cambridge
Eam, William—W. Wake, Sheffield
Faithfull, E. Williams—E. C. Faithfull, Winchester
Falkner, John Stringer—F. Falkner, Bath
Fellows, Henry Butler—J. W. Wall, Devizes; E. F. Fenell, 32, Bedford-row
Finnis, Robert—J. Robinson, Southampton-buildings; R. Fitz Finnis, late of 21, Hart-street, Bloomsbury, deceased, and assigned to C. Gaines, 1, Caroline-street, Bedford-square
Floodwood, Thomas Parrier—H. Everett, Salisbury; G. B. Townsend, Salisbury
Fox, Charles James—R. Sankey, Canterbury
Fraser, Edward John—L. Acland, formerly of 7, Chancery-lane, now of Bombay; H. C. Chilton, 7, Chancery-lane
Gartside, Benjamin—E. Brown, Oldham; Wm. Buckley, Ashton-under-Lyne
Gee, Robert—C. E. Palmer, Barnstaple;—E. Shearn, Stratton, Cornwall
Gibson, Charles Reginald—J. Widdows, 9, Copthall-court; J. R. Gibson, 9, Copthall-court
Gifford, Robert Courtenay—J. H. Townsend, Honiton
Griffith, Thomas Aubrey—E. Stephens, Llandaff; T. J. Clarke, Bishopgate Churchyard
Grimeley, Henry—C. Warren, Market Drayton
Harris, Frederick—H. W. Tyndall, Birmingham
Heath, John Massey—G. Vincent, formerly of 9, King's Bench-walk, then of 1, Paper-buildings, and afterwards of 9, King's Bench-walk
Hickens, William, jun.—W. Hickens, St. Ives
Hicks, Leonard Hopwood—L. Hicks, Gray's-inn
Hedgson, George—R. Jennings, Great Driffield
Holmes, Richard, jun.—R. Holmes, Arundel; T. C. Campbell, 21, Essex-street
Jones, Thomas—J. Jones, Chorley; E. D. Stanton, Chorley
Jones, William Halse Gatty—W. Jones, Crosby-square
Lawrence, George—F. J. Reed, 59, Friday-street
Long, Walker Scarsley—S. Long, Portsea; N. Gedy, 14, George-street, Mansion House
Maddock, Samuel Horace Clarke—A. J. Knapp, Bristol
Manby, Edward, jun.—W. Manby, Wolverhampton
Masou, Charles—A. Walby, Uttoxeter
Miles, Thomas, jun.—S. Miles, late of Leicester, deceased
R. Miles, Leicester
Meen, William—W. Harris, 5, Stone-buildings, Lincoln's-inn
Morris, Price—T. Hughes, Astrad, Denbigh
Mote, Edward—D. W. Wire, St. Swinith's-lane
Newman, Samuel—H. Gem, Lincoln's-inn Fields
Peake, Frederick—T. Clarke, 43, Craven-street; R. G. Clarke
Peake, Henry—G. Jackson, Wisbeach
Pugham, John Isaac—T. Hamlin, Redhill, Wington
Phillips, John William—T. Gwynne, Haverfordwest
Phippe, Thomas—J. H. F. Lewis, 38, Essex-street, Strand
Pope, John Woodford—J. Daw, Exeter
Powell, Edward Howell—T. Farney, Ripon
Prance, Courtney Connell—A. Booker, Plymouth
Quick, Henry Brannard—J. Dyer, 27, Ely-place
Robinson, Thomas—F. Crabb, Rugeley
Rodgers, Henry—T. W. Rodgers, Sheffield
Sharp, James—J. C. Sharp, Southampton
Shepherd, Thomas Richard—J. Ashton, Warrington

Sherring, Joseph Brodribb, jun.—S. Cory, Bristol
Shuttleworth, Samuel—H. S. Westmacott, 25, John-street, Bedford-row
Smith, John Bridgeman—H. S. Stokes, Truro
Smith, Ralph Blacklock—A. Smith, Sheffield
Spickett, John—J. Dolman, Clifford's Inn
Stedman, John—W. Holmes, 25, Great George-street
Sworder, Thomas, jun.—T. Sworder, sen. Hartford—G. Dobeham, Salters' Hall, St. Swinith's-lane
Tomlin, James Robinson—O. Tomlin, Richmond—J. Williams, 4, Verulam-buildings
Turner, John—R. B. Preston—J. Parker, 31, Great George-street, Westminster
Uthoff, Edward—R. B. Biddle, Chelmsford
Watson, George Steward—J. H. Watson, 73, Basinghall-street
Weigall, John Charles Edwards—T. H. Dixon, 5, New Bow-court
Wenden, George—R. Tabram, Cambridge; J. Vizard, Dursley
Weymouth, Thomas Wyse—I. Weymouth, Kingsbridge
Wheat, John James—J. Wheat, Sheffield
Wilde, John Thomas—J. T. Woodhouse, Leominster
Wilkin, Charles—J. Wilkin, 217, Piccadilly
Wilkinson, Samuel, jun.—J. Foster, Walsall
Wilson, Benjamin—W. F. Bertlett, Nicholas-lane
Wilson, James, jun.—J. Mallaby, Liverpool
Wilson, William Wilfred—W. Besenmont, Warrington
Wright, John Kyme—J. Wright, 7, Rathbone-place, Oxford-street

WEST RIDING MIDSUMMER SESSIONS.

These Sessions will be held at Skipton, on the 30th June; by adjournment, from thence at Bradford, on the 1st July; and by further adjournment from thence at Rotherham, on the 6th July; when the new regulation respecting appeals mentioned in the Sessions' Advertisement in another column will be acted upon.

LEGAL INTELLIGENCE.

SHERIFFS' COURT—GUILDHALL.—SINGULAR STATUTE.—BRADSHAW V. LAVENDER.—The plaintiff in this case, Watson Bradshaw, a tailor, sought to recover of the defendant, Thomas Johnson Lavender, a clerk in a railway office, the sum of 6l. 4s. for work and labour done.

Prendergast said that the whole of the plaintiff's case being admitted, it rested with him to open the case on the part of the defendant, and he must say that in all his experience he had never been engaged in such an extraordinary action before. The question for them to try would be, whether the clothes the plaintiff had made were made in such a manner that he could legally recover the value of them. In order more clearly for the jury to understand the case, he would read the plea which the defendant had put upon the record. The learned gentleman here read the plea, which set forth "that the goods and each and every of them, were clothes (to wit on the 5th day of March, in the year of our Lord 1846) made by the plaintiff, he then being a tailor, as such tailor, for the defendant, which the defendant on the day and year aforesaid requested plaintiff to make for him, with buttons and button-holes therein and thereon respectively, and which were respectively wholly useless to the defendant without buttons and button-holes, and the plaintiff so then being, and as such tailor, unlawfully made, set on, and bound on the said clothes, and on each and every of them, buttons and button-holes made of and bound with cloth, serge, druggat, frieze, camel, and any other stuffs that clothes are usually made of, velvet excepted, contrary to the form of the statute in such case, and then illegally sold and delivered the said clothes with the said buttons and button-holes therein and thereon, and forming and being part and parcel thereof, to the defendant, and with no other button or button-hole therein or thereon, contrary to the form of the statute, &c. &c." The plaintiff, in his replication, denied that he made the button-holes as stated in the plea, or delivered them to the defendant as alleged in the second count. In continuation, the learned counsel said the jury would not be troubled with the law of the case, for that was very clear upon the subject. By the statute of Geo. 1, cap. 7, it was enacted that no one should make, use, or sell any clothes on which were buttons made of or bound with cloth, serge, druggat, frieze, camel, or any other stuff or stuffs that clothes are usually made of, under a penalty of 40s. A penalty was inflicted, not only against the maker, but also against the wearer of such clothes, for he found that by the 7th of George I. it was enacted, that no person should use or wear such buttons or button-holes under a similar penalty. This Act was called the Birmingham Act, and was made for the purpose of supporting and encouraging the trade of Birmingham; and although it might be said that the buttons worn in the present day were more fashionable than formerly, still it was quite right that fashion should conform to the law. After some further remarks in allusion to the replication of the defendant, the learned gentleman concluded by stating that the clothes would be produced, and it would be for the jury to say whether the buttons upon them were made or covered by such stuff as was mentioned in the Act. If they were such, the defendant would be entitled to the verdict. Mr. Charles Fisher, a grocer, identified the clothes (con-

sisting of a white Chesterfield, a plush waistcoat, and a blue body-coat) produced as these supplied to the defendant by plaintiff.—Cross-examined by Mr. Ryland.—The inside of the buttons appears to be composed of tin or iron, and the outside covering silk. This was the defendant's case.

Ryland contended that all the witness had proved was, that the buttons were covered with silk; and as nothing was mentioned in the Act of George I. of silk, the plaintiff was entitled to the verdict.

The COMMISSIONER.—Would it not come within the meaning of that portion of the Act, "of stuff that clothes are usually made of?"

Ryland submitted that it was not within the meaning of any of the words of the Act of Parliament. The learned gentleman, at some length, contended that the Act of Parliament could not be made use of as an answer to an action of debt, when power was given to sue for a penalty of forty shillings for every dozen of buttons, which was recoverable before a justice of the peace, who had the power, if the party had not goods to levy upon, to commit him to the common gaol of the county for three months, with hard labour.

The judge was of opinion that the power given for enforcing the penalty did not do away with the right of a defendant to plead the statute which made it an illegal act to make such clothes. He thought the case must go to the jury, and he would ask them to look at the buttons, and say if they were made of "stuff," and secondly, if they were made of "stuff that clothes are usually made of."

Prendergast, in answer to Mr. Ryland, wished to impress upon the jury that serge was made from silk, and being so, the latter commodity came within the meaning of that part of the Act which said, "or stuff of which clothes are usually made."

Ryland.—You don't pretend to say that coats are usually made of silk?

After some further discussion, the learned judge decided on the case going to the jury.

Ryland then addressed the jury, and said that it was a disgrace to the country, and an insult to a court of justice, that in these days of civilization and refinement, a statute like the one they had heard of should be continued on the statute-book. The legislature would be doing its duty if, once every fifteen or twenty years, it would go through the statute-book and repeal those laws which were really a great disgrace to see now and then put in force. He would put it to the jury, whether it was not monstrous that they were liable to a penalty of 40s. for wearing buttons of a peculiar make.

The learned judge left it to the jury to say whether the buttons were made of the various stuffs named in the Act of Parliament, or of stuff that clothes were usually made of. The witness had stated that the buttons were made of silk and tin, or iron; now clothes were not usually made of either the one or the other of those articles, but they would examine the clothes, and state what their opinions were with regard to the buttons.

After examining the clothes for about five minutes, the jury returned a verdict for the plaintiff, thus establishing the "legality" of the buttons now in common use.

WESTMINSTER COURT OF REQUESTS.—At the Marylebone vestry, on Saturday last, the report of the committee appointed to investigate the charges of corruption and extravagance against the Westminster Court of Requests was brought up and read. It stated that the charges were fully sustained, that the abuses complained of were attributable to the constitution and irresponsible authority of the commissioners, and recommended that a petition be presented to the House of Commons, praying that the present Court of Commissioners be abolished, and another body, formed upon the elective and representative principle, appointed to succeed the present commissioners. Mr. Nelson moved, and Mr. Soden seconded, the adoption of the report. Mr. Elliott, a commissioner of the court, said that he had been so disgusted at beholding builders, architects, and surveyors voting away sums of money, in the expenditure of which they were deeply interested, that he had not attended the court for the last ten years. Mr. Hope, a commissioner for the last forty years, expressed his full concurrence in any measure calculated to effect a reform in the court. Mr. St. John urged the vestry to exert every endeavour to introduce the representative system into that body, but on no account to allow the subordination of the commission or centralization scheme. Messrs. Daniel, Morley, Selomons, Joseph, Glaxier, and other gentlemen, having supported the adoption of the report, it was unanimously carried, and the committee were directed to draw up the petition recommended in that report.

DINNER TO PRINCE ALBERT AT LINCOLN'S-INN.—His Royal Highness Prince Albert honoured the Benchers of Lincoln's-inn with his company at dinner on Wednesday evening—the first grand day since the election of his Royal Highness to be one of their body. The new hall was crowded by members of the inn, of whom there were nearly 300 present.

His Royal Highness arrived shortly before eight o'clock, attended by several noblemen and gentlemen of his household, and was received with the usual ceremonies. The Prince wore the silk gown of a bencher, and the star of the Order of the Garter. Amongst those present were Lords Brougham and Denman, and the great majority of the Benchers, the Bishop of Durham, &c. Lord Brougham sat next his Royal Highness at table. The only toast given during the evening, "The Queen," was proposed by Mr. Tancred, Q.C. the treasurer of the inn. His Royal Highness was warmly received on his entrance into the hall, and was loudly cheered as he departed. An admirable dinner and a profusion of rich and rare wines were provided by the Benchers for the entertainment of the members of the inn. The band of the Coldstream Guards performed several pieces in the gallery in the course of the evening.

THE VICE-CHANCELLOR'S COURT, OXFORD.—During term, a court is occasionally held here, which is presided over by the assessor, Dr. Kenyon, in which he is assisted by the registrar, Rev. Dr. Bliss, and the two proctors of the court, the Rev. H. Carey and the Rev. J. Hughes. It is in this that tradesmen sue the members of the university for the recovery of their debts; and livery stable-keepers are mulcted for letting out tandems and vehicles which are not considered orthodox. The judge, as well as the proctors who officiate as counsel, are clothed in academics, but do not display wigs, which deprivation in the eyes of some persons, abridges them a little of the dignity and gravity they would otherwise possess. The court is small and but thinly attended, although it is open to the public, who rarely avail themselves of the privilege, unless the cases about to be brought forward possess some peculiar interest; but, generally speaking, there is no lack of amusement, and a tolerable insight into university life may be obtained: the generality of cases are simple ones of debt, which there is an unwillingness on the part of the debtor to pay so early as his creditor requires. The case is simply stated to the Court, and the debtor, through his proctor, pleads his reasons for not paying the debt, and sometimes sets up as a plea that the articles were unnecessary, or that he was a minor when he gave such liberal patronage to his wine-merchant, tailor, or shoemaker. Although such pleas when substantiated are fatal to the claims of the tradesman, still the proceeding is looked on both in the university and town as so discreditable and dishonest that it is rarely resorted to now. A great many cases are brought before this Court in every term, which is the best proof that the tradesmen have confidence in the integrity and justice of the learned civilian who presides over it. On Friday last the Court was occupied with two or three simple cases, and with one that excited considerable interest. It was between two rival book-sellers, *Graham versus Vincent*, and *Vincent versus Graham*. Although these were cross actions, they were resolved into one, as they rested entirely on the question whether a borrowed book had been returned. Evidence was submitted on both sides, and the Court decided that there was sufficient proof that the book was returned, and under any circumstances Mr. Vincent was not justified in keeping back money which had been sent for a totally different purpose.

INFORMATION FOR INSOLVENTS.—In the Leeds District Court of Bankruptcy, on Thursday, Mr. Commissioner Burge gave judgment in a case of a bankrupt sharebroker, which involved a question of some importance to persons who are made bankrupts on their own petition. Objection was made to the bankrupt passing his last examination on the ground that the fiat had been issued upon his own petition, and that there were no assets available for distribution amongst the creditors, as the amount likely to be realized was scarcely sufficient to work the fiat. The evidence adduced shewed that there was a considerable amount of debts that ought to be realized; and, therefore, his Honour allowed the bankrupt to pass his examination; but he intimated a strong opinion that if the allegation of want of devisable assets had been sustained, he should have felt it his duty to adjourn the examination *sine die*, as he thought that the Act of Parliament was not framed to meet such cases, and that a party so circumstanced ought to resort to the Insolvent Debtor Acts, and not to the Bankrupt laws.

PALACE COURT.—PRIVILEGES OF COUNSEL.—During the hearing this morning of several cases under the new Small Debts Act, an application was made by an attorney named Shepherd on the part of a person who had refused to obey an order of the Court. Mr. Benn and Mr. Locke resisted the right of Mr. Shepherd to do so, on the ground that the counsel of the court alone were entitled to appear before or to address the Court. Mr. Shepherd contended that under the 6th clause of the Small Debts Act, he was entitled to address the Court. The clause alluded to enacts that no plaintiff is bound to appear by counsel, attorneys, or agents, but that he might, but was not compelled, to attend in person. If, then, a plaintiff was not bound to employ either counsel, attorney, or agent, and they were named in the clause, it was clear that the Act contemplated that they might or might not be employed. Therefore, it was

not necessary to employ either in particular. In fact, the parties could not always afford to pay the fees. The judge (Mr. Brett) said, that, from his own experience, he knew the liberality of the counsel. When parties could not afford to pay, they had held briefs gratuitously. There could be no doubt that, as a matter of privilege, the counsel only were entitled to address the Court and jury. The learned counsel said they did not wish to press their right in trifling cases; but must in this present one, where a contempt of Court had been made, and which only could be removed by motion of counsel.

INCREASE OF ATTORNEYS.—From the official list of persons who have given the requisite notices of their intention to apply to be admitted on the roll of attorneys of the Court of Queen's Bench, lately issued by the authorities of the Law Institution, it appears that in addition to 157 notices given previous to Easter Term last, 170 more have given notice for Michaelmas Term next; eight for re-admission, and eighteen for the renewal of certificates during the present term, making altogether an increase of attorneys in two terms of 335. The average annual increase of attorneys exceeds 600.

PROPERTY TAX.—Return of the net amount of Property and Income Tax received for the two years ending April 5, 1845, classed under the several schedules (A), (B), (C), (D), and (E), in the Act 5 & 6 Vict. c. 35. The result, for Great Britain, is as follows:—

	Year ending 5th April, 1844.	Year ending 5th April 1845.
Schedule A.....	£2,378,060 ..	£2,366,047
" B.....	317,716 ..	315,607
" C.....	795,702 ..	766,066
" D.....	1,559,828 ..	1,541,970
" E.....	321,478 ..	313,900
Total....	£5,372,784 ..	£5,303,591

ORDNANCE SURVEY, SCOTLAND.—Returns, shewing the expenses, the present state, and the progress of the survey.—In the counties of Wigton and Kirkcudbright, from 1st May, 1843, to Dec. 31, 1845, there were surveyed 628,502 acres, and drawn 104,131 acres. There were employed, during the last year, one officer of the Royal Engineers, 36 Royal Sappers and Miners, 54 civil assistants, and 63 labourers. The staff for the ensuing year is the same, excepting that the number of Sappers and Miners is increased to 51. The sums expended in the period above mentioned amount to 11,360*l.* exclusive of the last quarter's accounts, not yet closed. In addition to the surveying carried on in the counties of Wigton and Kirkcudbright, extensive observations have been made for determining the astronomical latitudes of the Monarch, in the island of Lewis; Ben Hutick, near Tongue, in Sutherlandshire; Ben Lomond, near Dumbarton; and Ben Huguish, in the island of Tiree. Observations to perfect the secondary triangulation in advance of the surveyors have been extended over a large portion of the county of Dumfriesshire, and others have been made for supplying data for Admiralty surveys of Locks, Long, Gait, Straven, and Ridas, and the Frith of Forth. The engraving of Wigtonshire, on the scale of six inches to a mile, is begun, and will be proceeded with as rapidly as the plans are prepared.

PROCEEDINGS OF LAW SOCIETIES.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

THE first public meeting of this society was held on Saturday, the 6th inst. at the rooms of the society, 21, Regent-street, and there was not so much a crowded as an influential attendance of noblemen and gentlemen present on the occasion. In addition to those who took part in the proceedings, and whose names will appear in our report, we observed the Duke of Cleveland, Lord Chief Justice Denman, Lord J. Manners, Mr. Lynch, Mr. Starkie, Mr. W. Hawes, and Mr. Travers.

Lord Brougham, who is president of the society, took the chair at half-past three o'clock, and the proceedings commenced. His lordship said that he would make his observations much fewer than the subject would justify, while he shortly called the attention of the meeting to the business which had brought them together. More than twelve months ago a society had been established there for the purpose of promoting that most important of all designs, the amendment of the law of this country. It proposed to found that amendment not on any rash or speculative views, but on sound principles, both as to the objects to be attained, and the manner of effecting them. And certainly they had hitherto no reason to complain of not being approved by the community at large, or of not having secured the approbation of the Government of the country and the members of both Houses of Parliament. During the twelve or fourteen months, or perhaps he might rather

to say nearly two years, which the society had been in operation, it had made very considerable progress in the great design which its members had proposed to themselves. The first course they took was this; they divided themselves into committees, each of which devoted itself to one particular subject—one engaged in the consideration of the criminal law, another in that of the language of Acts of Parliament, another on the law of real property, and the rest on the various branches of the law to which their attention might be beneficially directed. The reports of those separate committees had been printed at different times, and extensively circulated; and it appeared to the members that the time had at last arrived when it was fit to call on the great body of their fellow-subjects to assist in the labours and share in the counsels of the society. They had, therefore, thought it proper to summon a general meeting of persons interested in the objects of the society, to hear the course which it was about to take, and the fruits which its labours were yielding. He would now call their attention to that subject. He (Lord Brougham) had always felt a deep interest in the subject of law reform, and had, as many of them knew, devoted to it a great portion of his life. He had laboured for it strenuously, and he would add, not hopelessly, and although he had met with disappointments, he believed they might now look forward to the pleasure of success. The first thing they did was to report in favour of certain legislative measures, and he was requested by his colleagues to take under his protection one or two of those measures which required the sanction of Parliament. He had brought forward no less than nine of these during the Session before last, out of which number four had become the law of the land, and, in his opinion, were of very great benefit. One of these bills, which was that for the merging or extinction of terms outstanding which had been satisfied, had been entirely approved of by the Profession, and still more by those for whose benefit it was made; by the landowners and others, to whom security of title and cheapness of conveyancing was of very great importance. Another of these bills, and a very important one, related to the law of debtor and creditor. He had brought forward that bill, though it passed less from the society than the other, and he took more of the responsibility with regard to it on himself. That was the bill for the Abolition of Imprisonment for Debt. It had been considerably modified in committee by Lord Lyndhurst, Lord Coleridge, and himself, and had subsequently passed into a law; so that imprisonment for debt had ceased to exist in this country. It existed only for the suppression of crime, and that was the true principle. For reaching at the property of a debtor, he believed that the arrest on mesne process was much more effectual than the arrest on execution; for when a man became insolvent it was quite useless to bring an action against him, as Mr. Commissioner Rame had very clearly proved, there being no less than twelve steps in the law which a man must take before execution; and each of these steps was attended with serious expense. In arrest on mesne process it was said that the property of the debtor was at once got hold of, whereas, long before that twelfth step in arrest on execution was arrived at, the debtor had made away with, or spent, or secreted his means. The law now said, that any man who was indebted might apply to the Court of Bankruptcy for protection, unless it was proved that he had been guilty of fraud or gross extravagance. In such cases, if he made away with his property or refused to give it up, then his imprisonment was for contempt. His was bound to admit that there was great division of opinion on that point, and he knew that in the Profession and in the trading world it was said that they had gone a little too far in favour of the debtor, and that they ought now to retrace their steps; that if they could not retrace their steps, which he (Lord Brougham) thought it would be a very difficult thing to do, they should give the creditor every protection, security, and consideration, and go as far in his favour as they had done in that of the debtor. That was his opinion, and, therefore, he had listened to the arguments urged on the subject by tradesmen as well as by members of the Profession, and was disposed to give them the aid of measures which, without destroying what had already been done, might act as a set-off in favour of the creditor. The presumption must always be against the man who did not pay what he owed, and that the creditor was in the right. (Hear.) The creditor could not be to blame, but the debtor might. The imprisonment of a debtor for fraud was no grievance, but a necessary part of the administration of public justice. There was one part of the bill which he was sure would work very ill indeed, a part undertaken by the Lord Chancellor, whose humanity had been exercised in favour of debtors under 20*l.* His noble friend at first agreed with him, but said that small debt courts should have the power of imprisonment. However, there came out at the time such statements of the unspeakable horrors of the prisons attached to these courts, that no one could resist his noble friend's proposition, that imprisonment in such cases should be abolished altogether. The unfortunate thing, how-

ever, was, that it was not considered that almost all the debts in the country were small debts. The tradesmen very justly complained that out of 900 debts on their books, 890 were under 20l. for men took care not to get credit for more. He had moved for the appointment of a committee to consider whether the Act might not be remedied by putting the small debtor on the same footing as the larger. Another measure which had been successful, having been brought forward on the reports of the society, was for shortening deeds and lessening the expense of conveyancing. His lordship shortly explained the causes which had rendered such a measure necessary, and quoted instances. The measure had produced the best results, he said, with respect to settlements, devises, and wills, and more particularly it had proved a boon to those connected with the land in regulating the subject of farm leases. They were proceeding bit by bit, and God forbid that they should do otherwise. He should say that it would be the greatest reflection on the law, that a person should come down, and say, "Here is a new code, which I have invented, and which I wish to be established." It was impossible, he believed, to codify too much; and the criminal code was now waiting for Mr. Starkie's report. The criminal code would have been ready in a short time, but the Lord Chancellor said, "I must beg you to stop in your code till we see how we are to remove the penal statutes which deform our statute-book, and which have occupied the attention of the commissioners for so many months." Their six months' labour had borne the fruits of the Lord Chancellor's bill, now before the House of Lords. If the people were called on to obey the law, it was the bounden duty of the State to let the law be so arranged as that they could understand it. It was bound to give them a code of criminal laws, and he hoped soon to find that part of the society's labours attained. They were called *dilettante* legislators. But he begged to state who those *dilettante* legislators were. He would take the instances of the Terms Bill and the Short Deeds Bill. These were the fruits of the following *dilettante* legislators:—the Lord Chancellor, an ex-Chancellor, and another ex-Chancellor of Ireland, the Lord Chief Justice, the Master of the Rolls. These *dilettante* legislators gave the bill in every part of their progress their entire and hearty support. Again, it was said that the Real Property Commission should be avoided; but the Finance and Recovery Bill was the work of the Real Property Commissioners; the Powers Bill was drawn by them, together with the Will Statute. All these were bills which had made the law of real property different to what it was, that old Mr. Shadwell, if he were to rise again, would not know what industry he was in. To have recourse to the Real Property Commissioners from those who were called *dilettante* legislators, was like an appeal from Phillip to Phillip. The noble and learned lord concluded by apologizing to the meeting for detaining them so long from the business to be brought before them.

—SIR JOHN BURNES then rose to propose the first resolution, which was as follows:—"That the well-considered and practical amendment of the law is of the utmost importance to all classes of the community, and that the subject may be advantageously promoted by a society composed of members of all classes of the legal profession, and of other persons not belonging to that profession, desirous to co-operate with them." His lordship said, that if he considered the resolution anything beyond the affirmation of a principle he should feel that he was guilty of a great intrusion. As a country gentleman he was deeply concerned in the effectiveness of the law bearing on the land of England. He rejoiced to see that the members of the society were such as to justify the expectation that from their united labours better operations would result. They were practically acquainted with the imperfections of the science of which they were masters. He and others, not professional, knew those imperfections, not by the knowledge of the principles of the law, but of the consequences litigation entailed. There was not one noble lord in the committee, which recently sat to consider the peculiar burdens on land who did not leave it with the impression that the present state of the law was one of the greatest grievances to which the proprietors of land were subjected, and that while every other class of the community was interested in improving the law, there was none more especially interested than they in such improvement and simplification. This had been brought before them very strongly in the shape of a question and answer, which he hoped, without disrespect to his lordship in the chair, he might quote. A legal friend of his was asked what he believed was the greatest burden upon land in this country? His answer was, "the Court of Chancery." (Laughter.) He would leave it to any one to determine whether the simplicity of the reply was not as unanswerable as its truth was undeniable. But the committee did not rest on the mere allegation, however undeniable, for they went into special facts and inquiries—they went into the examination of men of the highest learning and experience in their profession, and he believed that all were impressed with the opinion that reform in this

matter was required. It appeared in the course of the inquiry that one of the best steps taken in that direction was the system of registration, that the value of landed property and its security had been considerably increased thereby.

Mr. Serjeant D'OYLEY seconded the resolution, which was then put and carried.

The Marquis of CLANRICARDE moved the next resolution, which was as follows:—"That the transfer of real property is greatly impeded by the existing system of conveyancing, and that the market value of land is kept down below its proper value." The noble marquis commenced by saying, that it was a very remarkable fact that the members of the late committee of inquiry, in politics so wide apart, should yet, on the substance of the resolution he had to propose, be so completely agreed. One report had been made by the majority, and another most able one (he trusted he might be permitted to say, without expressing any opinion in other respects) by the minority, but when they came to recommend what should be done to relieve land from its burdens, they arrived on the first point at the same result. Now who had anything to do with real property or with the purchase and sale of it without having had the grievance complained of brought home to him? He alluded, in saying so, not merely to the uncertainty, but the expense and delay produced. There was the greatest difficulty in forcing a sale of land on an unwilling purchaser, and effecting those sales, or raising money on real security, was often almost a ruinous course to those who attempted it. The noble marquis concluded by moving the resolution, which was seconded by

Lord BEAUMONT, who, as having presided over the late committee alluded to by previous speakers, confirmed what had been said with regard to its proceedings. It was impossible for any one to have been present in the house during the examinations on real property, without being impressed with the conviction that the country was burdened beyond all others in that respect. It was gratifying to think that there was a great probability that the landowners would be relieved from the burden now that the labours of the society would be devoted to the subject. The noble lord concluded by seconding the motion, which was put and carried.

Mr. BURNES moved the third resolution, which was—"That the proceedings of the Court of Chancery required great and extensive amendment." The learned gentleman said that he wished to speak of the Court of Chancery as an instrument which most usefully affected the property of men, and it was for that very reason he required that its improvement should keep pace with the necessities of the age. The resolution which he had to move rightly discriminated between the principles of the Court and its procedure. The procedure required great vigilance—unceasing watchfulness in striking away the defective law—amending mistakes, and accommodating the amendments to the improved state of society. In speaking of the procedure, it might be expected that he should draw their attention to some instances in which it required great amendment. There was one point which he would not refer to, for it was a subject which had attracted general attention. It regarded the simplification of justice in the Court of Chancery with respect to charities. So amply endowed was this country—so much did it rejoice in the universal diffusion of charity, that such trusts formed a very large portion of the administration of justice in the Court of Chancery. But the expenditure was too heavy, and there existed a great facility on the part of judges in giving way to the desire that the administration should be borne out. He would instance the case of a small charity in Norfolk, by which eighteen cottages were left in trust for the use, rent free, of as many deserving labourers. Some peculiar circumstances led to a suspicion in the neighbourhood of a breach of the trust. Costs were incurred. An order was perhaps too hastily made that those costs should be borne by the property. It was sold in consequence, intended, as it was in the outset, as the means of support for deserving labourers. The solicitor permitted the property to be put up in eighteen separate lots, for which eighteen separate titles were made out; the consequence was, that out of the sale which realized 1,800l. 1,400l. were deducted for expenses incurred. Mr. Bethell, after some observations on this case, referred to the possibility of having in Chancery a proceeding long known with advantage to the common law, and which, if known there also, might realize the means of conveying cheap and esteemed justice to the poor. It would operate, he thought, as a species of reconciliation to the parties, and frequently prevent the necessity of litigation. What he alluded to was that the judges of the court should attend at chambers to receive in some extemporary form a great number of applications. He would take the case of a poor man to whom a legacy of 100l. had been left. He would suppose the testator had given his principal estate to another person, and that such principal estate was not of such a nature as that the legacy of 100l. could be easily got out of it. Now, in such circumstances, was the poor man to obtain his right? He would suppose that he could

go to a judge's chambers to discover proof there. The executor would have questions put to him by the judge, and if the means were not provided for immediate payment, at least a satisfactory assurance would be given, and litigation thus be prevented. In this and many such cases the order of the judge at chambers would be sufficient. He would allude again to that subject of complaint that, when the decree was pronounced the suitor, instead of welcoming it as the fruit of his toils, found himself in a worse position than ever, and encumbered with new losses and disappointments. He alluded to those investigations in the Master's office. Sufferings were produced which the Master had no power to control. Now, if there was a power to go from the Master to a judge at chambers, a great deal of time, expenditure, and the hope delayed, which maketh the heart sick, might be avoided. During the last twenty years, great things had been done in ameliorating the law. When Lord Lyndhurst first received the seals, the work began, and it had continued while his lordship in the chair was in office, and since. But of necessity the amendments of the law must be slow, and, therefore, the subject invited suggestions from all quarters. As for the chancellors, the legislature had armed them with a statute, giving them large powers, and, therefore, it became the society to deliberate how these might best be exercised for its purposes.

Mr. SPENCER seconded the motion, and

The CHAIRMAN, in putting it, complimented Mr. Bethell on his valuable suggestion, and expressed his entire approbation of it. The judges of the Chancery Court were now five in number, two more than he had thought requisite, and they might be most usefully employed in affording at chambers a common ground where suitors themselves might meet without professional advisers.

The resolution having been carried,

Mr. Commissioner FANE moved the next resolution, which was—"That the law of debtor and creditor is causing great dissatisfaction in the trading and other branches of the community, inasmuch as it is neither sufficiently considerate towards the honest debtor, nor sufficiently stringent towards the dishonest debtor." The learned commissioner commenced by referring to the acknowledgment made by the noble lord in the chair, that he thought the time had come for considering the question of arrest on mesne process, with a view to the interests of the creditor. He then passed to the statement in the resolution, that the law was not sufficiently considerate towards the honest debtor. He had been engaged in the administration of the law of debtor and creditor, and though the result had been to convince him that for one honest there were 1,000 dishonest debtors, still it was impossible to deny that occasionally there does turn up a case of honesty on the part of a debtor, and in many cases an impression had been created on his mind that the honest debtor did not meet with the consideration due to his misfortunes. It appeared to him that this was so, because the body of creditors, or the majority of them, had not power to bind the minority. Why should it be so? Why should one resisting creditor have the power to force the whole affair into bankruptcy? It was quite true that an honest man did not become dishonest because he had been bankrupt, but why should he be subjected to so cruel an imputation as that name implied? He entirely concurred in what had fallen from the noble chairman that the law was not sufficiently stringent towards the dishonest debtor.

Mr. J. SKEWART seconded the motion, which was put and carried, after having been supported by a gentleman who spoke in strong terms on the leniency of the law towards dishonest debtors, and on the liberality with which creditors were generally disposed to act.

The Duke of RICHMOND moved the next resolution, which was, "That great as are the amendments recently effected in the criminal law, much yet remains to be done both as to punishment and procedure, more especially as regards the system of secondary punishments and the treatment of juvenile offenders, and the due preparation of the criminal code and digest." The Noble Duke said that though he might be charged with presumption in proposing such a resolution, still he was induced to do so by his anxiety to promote the interests of the society, and assist in the amendment of the law of the land. If they who had property were anxious to improve the civil law of the country, must they not also be so to improve the criminal law? Presiding, as he often did, at the Quarter Sessions, he had often brought under his notice cases of hardship caused by the law, which were a disgrace to its efficiency. Sitting at a Court of Quarter Sessions, presided over by Serjeant D'Oyley, he had seen children of ten, eleven, and twelve years of age, brought up to be tried for felony, and, if convicted, having the brand of felon imprinted on their brows. Was it right that a child of ten or twelve years old, who hardly knew right from wrong, should be brought before the grand jury, tried by the verdict of twelve men, and, if it stole to the amount of an egg, branded as a felon, and when that is so it is very difficult ever after to make him follow an honest course of life? He would give no opinion how the existing codes of our

admiral law ought to be remedied, but he ventured to tell them that they could not better perform their duties to themselves and their country than by getting rid of those evils which were so rapidly increasing.

The Marquis of NORMANBY, in seconding the resolution, expressed his cordial interest in the success of the society, and regretted that circumstances having removed him from the country at the time when he first became a member, he was consequently less conversant than he wished to be with the details of its proceedings.

Lord RADNOR shortly moved, and Mr. EWART seconded, the sixth resolution, which was agreed to. It was as follows:—"That the existing system of framing public Acts of Parliament leads to a mode of drawing them deficient in closeness and uniformity of language, and that it is desirable that some measures should be adopted to secure these manifest advantages to the Houses of Parliament, the courts of justice, and the public at large."

The last resolution, proposed by Mr. JOSEPH HUME, seconded by Mr. DUCKWORTH, and agreed to by the meeting, was—"That in an especial manner some improvement in the course of legislative procedure be required for transacting the private and local business of the country in Parliament in a manner satisfactory to all parties, and consistently with the undoubted privileges of Parliament."

After a vote of thanks to Lord Brougham for his conduct in the chair, the meeting broke up.

CORRESPONDENCE.

CONVEYANCING.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Your extracts from the "Report of the Lords Committee on the Burdens on Land," in your journal of this week, affords an opportunity of saying somewhat on the above subject.

I had all along been inclined to think that the threatened changes in the system of Conveyancing were levied at business which was of a very heavy description; one would be led to this opinion by the extraordinary assertions as to the charges; such, for instance, as those made by Lord Campbell, when he said, that "the costs of a Conveyance frequently equalled that of the freehold itself," when he spoke of the "enormous" expenses attendant on the conveyance of property; when he said that the parcels were enumerated with the most "inconceivable" verbosity; that the release contained such a "vast" number of covenants that sometimes the parchment used for it were sufficient in extent of surface to cover the whole of the property conveyed; expressions, by the bye, which carry their own refutation on the face of them.

By the extract from the report, however, it would appear that it is by no means at very large business exclusively that the blow is aimed: under the heads both of "inequality of stamp duties," and "costs of Conveyancing," the evidence cited commences at transactions of the value of 50*l.*, and it is on this evidence I would offer some remarks. As to the inequality of the operation of the Stamp Laws, as I happen to have already spent much time, and some money, in endeavoring to call attention to that iniquity, I would only here ask the question, is the dip into the pocket of the public, by means of stamp charges, the fault of the lawyers?

But with regard to the cost of Conveyancing, I do not know where Mr. Baxter gets the premises, from which he draws the conclusions embodied in his evidence; his account astonishes me: but perhaps the profession in some parts of the country is threefold more painful than it is in this neighbourhood. I need not repeat his evidence, but refer your readers to it in page 213 of the current volume of the *L. T.*, and in answer, would crave attention to Mr. Rankin's letter in page 546, volume 5 of the *L. T.*, to one of mine in page 63, volume 1 of the *L. T.*, and to the following observations:—

Firstly. That abomination, the lease for a year stamp, is now generally disused, not only in small transactions, but in large ones; but pray to whom is the public indebted for the saving? Is it not to the very men against whom these reiterated accusations of high charges are made? Clearly, noble lords themselves have done nought to save the public the expense: as is well known, they met in solemn conclave, to deprive solicitors of the *il.* for the preparation of the lease for a year; but at the same time declared that 1*l.* 1*s.* for the stamp duty should still be paid.

Secondly. There is no doubt that, notwithstanding the continued vilification of the members of the profession, constant and thoughtful effort, attended with considerable responsibility, has for a long time past been made to shorten Conveyances: and I believe that commonly, at all events among what may be called modern practitioners, they are as short as is consistent with safety; sometimes perhaps shorter than this.

Thirdly. In addition to what has been said about charges in the before-mentioned two letters, I would

add, that I consider the following amounts to be about what in this neighbourhood is received for the respective transactions mentioned. A mortgage for 50*l.* would cost in stamps and law expenses 4*l.*; a mortgage for 100*l.* or even 150*l.*, 6*l.*; a mortgage for 400*l.*, 14*l.*; a mortgage for 1,500*l.*, 23*l.*: and so on in proportion, being respectively 8*l.*, 6*l.* 4*l.*, 3*l.* and 1*l.* 13*s.* 4*d.* per cent., instead of respectively 30*l.*, 20*l.*, 7*l.* and 3*l.* per cent.; this of course does not include the fees for any extraordinary professional labour; but as for ordinary fees, such as "instructions," and "attendants," which would be allowed on taxation, I have no hesitation in saying, that in the majority of cases they are not charged; and I do not see how, in making a general estimate, charges for extraordinary professional labour can be included, as they must vary in every given case, where such labour is required; by which I mean Mr. Baxter cannot have included them in his evidence; should, however, this gentleman have included unusual charges, then the case is not fairly stated.

In constructing any new scale of conveyancing fees, I would most strongly advocate the adoption of the ad valorem principle; it will be found in the main the soundest.

I should like to add more to deprecate the continual, and vexatious, it would almost seem "spiteful" efforts made by the legislature to reduce what it appears, very erroneously, to suppose to be the large gains of the legal profession, but fear to make my letter longer, and therefore conclude, with a hope that this brushing of the subject will call forth abler advocates of the interests of the attorneys.

Yours, &c.

A. CHAMBERLAIN.

Portsea, June 10th, 1846.

SELECTIONS FROM CORRESPONDENCE.

AN "OLD SUBSCRIBER" submits the following on the subject of Conveyancing:—

I think your advocacy of the rights of the legal profession, of which I am a member, entitles you to our thanks and hearty support. The impending change in conveyancing practice will seriously affect country practitioners, who will, by the proposed simplifying of the forms, be doubly injured, I fear, by every hedge lawyer becoming a conveyancer. Do you not think, therefore, that the attention of the profession should be directed to secure some provision being made in the bill now in progress through Parliament, forbidding under a heavy penalty any person drawing deeds who is not a certificated conveyancer or attorney? and I do not think that it would be carrying the measure too far to enact that no deed should be valid unless it be drawn by such a certificated conveyancer or attorney in actual practice. At first sight this may savour of selfishness, but I think it would be found a valuable protection to the public against their inattention in employing unqualified persons, by requiring every deed to be indorsed with the name of the attorney who prepared it, and who would be held responsible for its accuracy. This guarantee to the public would be lost if every unemployed lawyer's clerk is to be at liberty to draw deeds. This is the most valuable part of the country attorney's practice, and if he is not to be thus protected, I do not know why he should continue to pay the annual certificate duty, nor is there much reason for the payment of so large a duty on articles of clerkship or for the incurring of so much expense in the education of a clerk.

Requesting the insertion of this in your next, and your consideration of the subject.

"P. R. A." thus writes on the Certificate Duty:—

I am glad to find from the notice you took of my letter as to the certificate duty, that my observations have been anticipated. I am well aware that your valuable journal has done quite enough now, and heretofore, in the way of anticipation, but will anything be done in Parliament? You seem to think that the Bill to shorten conveyances will afford an opportunity of mentioning the subject. Has the profession any friend in either house of Parliament to do this? Whatever may become of this Bill, the certificate duty ought not to be paid next November. There is quite enough to justify the profession in calling for the repeal of that tax, and, in my opinion, for compensation *alms*. They have paid money to the country on the faith of receiving certain profits, now taken away. I heard of a deputation of attorneys who waited on the Chancellor of the Exchequer, and immediately addressed a letter to that honourable personage, complaining of the tax, and pointing out if the money raised by it were required at all, that it might easily be obtained in the way I mentioned to you, viz. by 1*s.* payments on different stages of suits, &c. and so the unequal nature of the oppression at any rate be got rid of, and the sacrifice not be felt by parties struggling for a livelihood, but I took care at the same time to deny the justice of any tax of the kind. I do hope this session will not pass away without our being relieved.

Heirs-at-Law, Next of Kin, &c. &c.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent impertinent anxiety, a fee of half-a-crown for each inquiry must be paid to the publisher, or (if by letter, postage stamps to that amount included.)]

111. NEPHEWS AND NIECES, OF CHILDREN OF nephews and nieces, of JOHN WALTON, living on 26th July, 1828, or their Devisees, Heirs-at-Law, or Personal Representatives. The said JOHN WALTON resided in the Strand, London, where he practised as an apothecary for many years, and died there in the early part of the year 1794. He was about 78 years of age, and a widower at the time of his decease, and left two children, THOMAS WALTON and ANN FOX WALTON, both since deceased.

112. THE PERSONAL REPRESENTATIVE OF WILLIAM MILLS, formerly of North-street, Locks-fields, Walworth, painter. Something to their advantage.

113. ANY DEED OR BOND with the signature of ROBERT JOHN HUGHES STANLEY, of Loughborough Castle, Cambridgeshire, up to June, 1835.

114. ELIZABETH JEFFERY, spinster, who resided in 1830 at No. 8, Shoudburn-court, Crawford-street, Marylebone, and niece of ANN JEFFERY, formerly servant to Mrs. Barnard, of Featherstone-street, City-road, but late of Frederick-street, in the parish of St. Pancras, spinster, deceased. Something to their advantage.

115. NEXT OF KIN OR HEIR-AT-LAW OF JAMES BASSNETT, late of Rainford, in the county of Lancashire (died May 1833), living at the time of the testator's death in May 1833, or their Representatives.

116. NEXT OF KIN OF JOHN SMITH, who formerly resided with his aunt, Mrs. Catherine Marchant, late of Astwick Hall, near Buntingford, Hert's; afterwards entered the army, and died in the year 1811. Or any person claiming a bequest under the will of JOHN BLEASDALE, formerly of Buntingford aforesaid, grocer.

117. NEXT OF KIN OF AURELIA ROGERS, late of Fressingfield, Cornwall, spinster (died January 1833), or their Representatives.

118. THE CHILDREN, or their Representatives, of JOHN WELLS, late of the city of Worcester, hair-weaver, legatee of WILLIAM HASLEWOOD, who resided at Bridgworth, Salop, gentleman, who died October 1832, having bequeathed by his will 30*l.* to JOHN WELLS, late of the City of Worcester, hair-weaver, who afterwards lived in Portpool-lane, in the parish of St. Andrew, Holborn, and died there in June 1837.

119. NEXT OF KIN OF SOPHIA FALLS (formerly of SOPHIA OWENS, spinster), of Clifton, Gloucestershire (died Sept. 1834), or their Representatives.

120. RICHARD JAMES, or his HEIRS, owner of 2,000 acres of land, survey No. 270, on Deer-creek, twenty miles from Chillicothe, State of Ohio, United States, patented to him in 1796.

121. RELATIONS, OR NEXT OF KIN OF JOHN MANKIN, late of No. 13, Diamond-row, Stepney-green, Middlesex, mariner. Something to their advantage.

122. MRS. SARAH WOODFORD, formerly of Adam-street, Edgewood-road, widow. Something to her advantage.

123. GRAND NEPHEWS OF GRAND NIECES OF JOSEPH SHERKARD, late of Lower-street, Deal, Kent, purser in the royal navy (died 14th April, 1835), and by his will, dated Feb. 28, 1835, gave all his residuary estate among his nephews and nieces not named or otherwise provided for in his said will.

124. NEXT OF KIN OF JOHN KENTISH, late of Paddington-street, Marylebone, Middlesex, victualler (died 9th July, 1823), or their Representatives.

125. CREDITORS OF WILLIAM HOLT, Threadneedle-street, solicitor. Something to their advantage.

126. ROBERT WATSON WADE, WILLIAM GREAVES, and his wife, MARY ANN WILLIAMS, MARY BEAN, and MARY SOPHIA BOYES (formerly NESTON), legatees of MARY POTTIS, late of Manchester-street, Brighton, spinster (died April 1835).

127. NEXT OF KIN OF JOHN PARSONS COOK, late of Crewm-court, Chesapeake, City of London, warehouseman (died August 1831).

128. MRS. MARY DALMAHOY, formerly residing at Portobello, near Edinburgh, and afterwards at 40, Grafton-street East, Carmarthen-square, London, or her daughter, Mrs. MARY BARBER.

129. CHILDREN OF MRS. ESTHER HILL, formerly of Beayfield, who resided at Clapton, Surrey, about the year 1773, or their DESCENDANTS.

130. RELATIONS OR NEXT OF KIN OF JAMES DOUGLAS, late of Devonport, mariner (died 2nd Dec. 1835), on board the brig or vessel called the *Theresa*, of Prince Edward's Island, Moon, master, at Newport, county of Monmouth, and who was, at the time of his death, a mariner on board of the said brig. Something to their advantage.

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

C. G. (Coleford).—A letter without names will be no exposure, and its publication would be wholly wanting to utility or interest.

ERRATA.—The reader is requested to correct the following errors in the last number of the LAW TIMES:—In the argument in *Henry v. Goldney*, page 211, lines 6 and 15, for "the contract of parties," and "the contracting parties," line 49, for "joint stock proprietors," read "joint tort-owners." In *Stadman v. Hockley*, page 211, for "the 5th Act of Parliament," read "the 5th sort of bailment."

NOTICE.

The publisher hastens to explain a mistake occasioned last week through a change of address. Inquiry was made as to the whereabouts of "Mr. E. Bretherton, Old Swan, near Liverpool," to whom the *LAW TIMES* had been sent, and by whom none of the many applications had been answered. It seems, however, that this gentleman is the same person with Mr. E. Bretherton in the *Law List* named as practising at Liverpool. In consequence of this double address he appears twice in the publisher's books, in place as of Liverpool, in the other as of Old Swan, where the papers were sent, and where repeated applications have been made by letter without any reply, and in consequence of which it was that the inquiry was made, it being an invariable rule at this office never to adopt any stringent proceeding until patience is exhausted by the neglect or refusal of the parties indebted to answer applications, and that patience is not exhausted till nine or ten letters have failed to elicit a reply. Mr. Bretherton explains that, being addressed, at the Old Swan, he did not receive them, and this, coupled with the dubious character of the address, led to the inquiry. We are happy, however, to state, that the accounts charged to Mr. E. Bretherton, Liverpool, are perfectly satisfactory. It was that charged to Mr. E. Bretherton, "Old Swan, near Liverpool," which, for the reason above stated, necessitated information. No complaint was intended to be preferred against Mr. Bretherton, of Liverpool.

NOTICE TO SUBSCRIBERS.

The volumes of the *LAW TIMES*, neatly, strongly, and uniformly bound, for 5s. 6d. each, with the name and address of the owner on the cover, 1s. extra, if sent to the office. If the numbers for binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

NOTICE.

The *LAW DIGEST* is now completed. Being stamped, it may be sent by post, or may be had, sewn in a wrapper, price 5s. 6d.

NOTICE.

The subscription for the current half-year is now due, and subscribers desirous of availing themselves of the great reduction allowed for pre-payment, should forward the same in the course of the ensuing week. The prepaid subscription is 11. 5s. for the half-year, and 21. 7s. for the year, being a reduction respectively of 25 and 30 per cent.

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THE LAW TIMES.

SATURDAY, JUNE 13, 1846.

SOCIETY FOR THE AMENDMENT OF THE LAW.

The first public meeting of this Society was held on Saturday last, and the best report of the proceedings that we could find appears in its proper place.

It has been remarked as a curious fact, that the noble, and honourable, and learned personages who were the speakers on the occasion, were either successful lawyers, who had profited largely by the abuses they were now eager to reform, or legislators who have the power to accomplish the object, without calling in the aid of a society.

To the first of these objections it is difficult to suggest a satisfactory answer. "We must be permitted," says *The Times*, "to doubt the

bound fides with which those who have found the law a very good thing for themselves, now come forward to pronounce it a very bad thing for all who come after them. We cannot believe them guilty of the base ingratitude of wishing to kick down the ladder by which they have been raised, or of the meanness of desiring that none shall derive any benefit hereafter from a system by which they have so largely profited. We may be told that conscience will operate very strongly on those who have practised evil all their lives; but, surely, if this had anything to do with the present movement of the old lawyers against the abuses of their Profession, they would feel that the disgorge of their gains would be necessary to shew the heartiness of their penitence."

Now, although these satirical remarks savour not a little of the spirit of hostility to the lawyers by which *The Times* has been always actuated, they are certainly not altogether without justification. It is strange that those who have made their fortunes by the abuses they denounce should be so energetic in speaking ill of the bridge they had passed in safety. It looks very much like a death-bed repentance; or, rather, like the proverbial zeal of an antiquated rower for the suppression of the pleasant vices in which he has no longer the power to indulge. *The Times* proceeds in the same strain:—

Perhaps the occasional sums that find their way to the Exchequer in the shape of conscience-money may be proofs of so many gentle qualms having been experienced by Chancery lawyers, who feel that by their gains the public has been victimised. Still those wretched and very occasional dribblets are not sufficient evidence that the society for amending the law has among its legal members those who are actuated by an earnest wish to make all the atonement possible to the community for having lived and thrived on one of the worst of the *incubi* to which it is subjected. When we find the state of the law coolly denounced at a public meeting by an ex-chancellor and a practising Queen's counsel—one having made, and the other still making, a splendid income by the law as it is—we are reminded of the anecdotes we read in the papers the other day of two brothers on a temperance mission, one acting as lecturer and the other being always drunk in order to serve as a frightful example. Lord Brougham is the lecturer in this case; and Mr. Bethell, Q.C., who is still, not merely upping, but imbibing very large draughts at the Chancery bar—who, in fact, if success can intoxicate, has had enough to inebriate the strongest head—Mr. Bethell comes, we presume, to a meeting for denouncing the shameful expenses of law in the somewhat humiliating character of "a frightful example."

The Times has written with intent to ridicule the idea of law-reforming lawyers, and not as advancing a serious argument, and, therefore, a very strict adherence to fact cannot be expected. But, even for the sake of fun, it is not justifiable to promulgate an untruth. *The Times* insinuates that the Society is composed entirely of old lawyers, whose fortunes are already secured. But the fact is far otherwise. A great majority of the members are young men, and it must be admitted that they are the most intelligent and energetic of both branches of the Profession. The older members alone were, as a matter of courtesy, and in pursuance of custom, put forward at the public meeting, but they are certainly backed by a considerable body of those who have their fortunes yet to make, and who, if law reform be really injurious to the interests of the lawyers, must be more public-spirited than any class-men the world has yet seen.

But the truth is, the opinion of the most intelligent members of the Bar, and among the most thoughtful of the attorneys, is, that real Law Reform,—as suggested by practical men and not the mere theories of the study—will not prove injurious to the interests of the Profession, in either of its branches; that the diminished costliness of legal proceedings will materially increase the quantity of law, and that more clients, more suits, and more conveyances, will more than compensate the abbreviation of forms or the reduction of fees. It is for this

reason that the Law Amendment Society counts among its members so many men whose fortunes are yet to be made.

The Times has fallen into another error—or, rather, has put forward another objection *ad captandam*—but which will not bear a moment's investigation. It is due to the lawyers, and the legislators who have joined them in their enterprise, to dispose of it at once. *The Times* says:—

We have on former occasions remarked on the prevailing mania for having a society to do—or rather to talk about—the duties that should be performed by others. This association for the amendment of the law, consisting as it does almost entirely of legislators, is an illustration of the principle we complain of being pushed to the very extreme of absurdity. If the law requires amendment—and we are quite willing to admit that there is still great need of law reform—why do the legislators who were present at the meeting on Saturday neglect their duty in the Houses of which they are members by going merely to talk to No. 21, Regent-street? Are we to be taught that pressure from without is so necessary to stir the Legislature, that if the motive power is not furnished by the public, the members of Parliament will become agitators against themselves, and form themselves into a society to demand from themselves what themselves alone are able to grant in their legislative capacity? The absurdity of this position is self-evident, but it is exactly the position in which members of Parliament place themselves when they form societies out of doors for objects which within the walls of their respective Houses they have the power, and it is their duty, to advance.

This clever bit of ridicule proceeds on the assumption that a majority of our legislators are members of the Society, and therefore have the power to accomplish their design without the aid of a society. But they are, in fact, only a small proportion of either the Lords or the Commons. They could not carry a single measure of Law Reform of their own strength; and until the entire system of public business be altered, until the Legislature shall so represent public opinion that no expression of it out of doors shall be necessary, there can be no more impropriety in, nor will there be the less necessity for, the formation of societies to advance improvements in the law, than for the furtherance of any other subject of public interest.

But there is another answer to the objection of *The Times*. The legislators join the lawyers in this Society for the purpose of mutual assistance. Alone, the unpractised legislator could do little to advance Law Reform, whatever his desire; he must have the aid of the practical lawyer to mature the plan, and put it into shape, and to instruct him in the facts and reasons by which it is to be supported. By their union in the same society this important object is secured in the most effectual manner, and the public and the Profession are thus saved from the infliction of that most grievous nuisance—changes of the law proposed by theorists unskilled in the practical working of the complicated machine they rashly undertake to regulate.

RAILWAY LIABILITIES.

The particular attention of the reader is directed to the case of *Law v. Wilson*, tried on Tuesday and Wednesday last in the Exchequer, by Mr. Baron PARKE, whose name is a guarantee that any opinion expressed upon a trial at which he has presided is entitled to the respect and confidence of the Profession, and will ultimately be found to be the correct law on the subject under discussion. At this moment, when so much litigation is pending and threatened, involving a similar question, the deliberate expression of such an opinion will doubtless prevent many useless and costly contests, and, therefore, we hasten to submit it to the readers of the *LAW TIMES*.

Many points were decided in this case, some of them growing out of its peculiar circumstances; but those to which we desire to attract the special notice of the Profession are the following, one of which is new, although the same state of facts must have existed in most of the cases yet tried; and the other, though not new, is important as a decided and unequivocal opinion upon a point hitherto held in com-

siderable doubt, and upon which the Profession have differed in their views, although anxious that the law of the case should be made to coincide with its justice.

The first point decided, so far as one distinguished judge can decide it, is that where a railway project has both a managing committee and a provisional committee, and the members of the latter take no part in the management, the former alone are responsible for the debts they incur, unless it can be shewn that by joining the provisional committee the defendant intended to make himself responsible for all the acts of the managing committee.

So entirely is this consistent with common justice, that the uninitiated may be surprised that it should have ever been questionable at common law. But the fallacy has originated in a prevalent supposition that the committees of railway projects are partners, and that thus one is responsible for the acts of the others. But they are, in fact, merely joint contractors, like the joint and several makers of a promissory note, and the right of the creditor to sue depends upon the express or implied terms of the credit given. Where there is a managing committee, and the creditor deals with them, it is but a reasonable implication that his credit was given to them, and not to the members of the provisional committee, with whom he had no dealings, and to whom, therefore, it cannot be supposed that he looked for payment when he accepted the offer.

The other point is the broad general proposition, which we state almost in the very words of Mr. Baron PARKE, that if a man merely allows his name to be inserted in the list of a *provisional* committee, he does not thereby make himself responsible for every act or every liability of a *managing* committee, unless it be proved that he had acted in the conduct of the concern.

This, too, is in accordance with common sense and justice, although some recent cases, growing out of the railway speculations, appeared to have sanctioned a contrary opinion, and to have held that a mere consent to be placed on the provisional committee, although no part had been actually taken in the business, was sufficient to make the party liable for its acts.

Whether Mr. Baron PARKE intended that his expressions should be taken in the broad sense in which they are reported, or whether he meant only to reiterate the opinion already noticed as to the non-liability of the provisional committee where there is a managing committee, may, we think, reasonably be questioned. He was, perhaps, alluding to the particular case when he laid down the proposition. But in its practical results this will be very unimportant. There are very few, if any, of the railways that had not a managing as well as a provisional committee, and therefore there is scarcely one in which an action could be supported against a member of the provisional committee for debts incurred by the managing committee.

E. W. C.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY

ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.
(Continued from p. 219.)

II. PRACTICAL DIRECTIONS FOR PREPARING THE ABSTRACT.

1. *Heading of the abstract.*
2. *Root or origin of the title.*
3. *When a double abstract will be necessary.*
4. *How the various documents should be set out.*
5. *Deeds how to be abstracted.*
6. *Attendant terms.*
7. *Copyhold assurances.*
8. *Wills.*
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12. *Acts of Parliament.*
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15. *Descents.*
16. *Administration.*
17. *Matters of fact.*
18. *Cancellation, alteration, or erasure of documents.*

1. *Heading of the abstract.*

The abstract usually commences with a heading setting out the name of the owner; the nature and tenure of the property, and the estate or interest he

takes in it; as also the name and local description of the premises. When the description of the parcels is short, it is sometimes fully set out in this place, and merely referred to in abstracting the subsequent documents; but the more frequent practice is to set out the parcels *verbatim* from the first abstracted deed, and to refer to them shortly in those subsequently abstracted.

2. *Root or origin of the title.*

In framing an abstract the title should be carried back to some document not less than sixty years old, that time having, for many years, been considered as the established period from which a purchaser is entitled to require his title to commence. Some able writers have, indeed, lately contended that the recent Statute of Limitations (3 & 4 Will. 4, c. 27,) has shortened this period, and that, consequently, it would be a convenient rule to take a middle course, and to treat fifty years as a sufficient time to trace back a title in ordinary cases. There is nothing, however, in the statute to warrant the introduction of any rule of this kind; for though it renders the security of sixty years better than it was before, because the time within which suits may be instituted is thereby shortened; still another ground of the rule, viz. the duration of human life, is not affected by it; and the objection to titles on the ground that the conveying parties might have been mere tenants for life, or that there may be equitable rights, as between trustees and *cestuis que trust* still exists; although, to be sure, in the last-mentioned instance, the statute will begin to run from the time a conveyance is made to a purchaser (3 & 4 Wm. 4, c. 27, s. 25). Whatever, therefore, might have been the intention of the legislature in passing this Statute of Limitations (3 & 4 Wm. 4, c. 27), it has not led to the result of shortening the period from which titles were to be deduced (*Cooper v. Emery*, 1 Phill. 388; *Hodgkin v. Cooper*, Rolls, Jan. 28, 1846; 6 Law T. 451). And even a sixty years' title may be insufficient unless its origin can be shewn. It also occasionally becomes necessary to carry back the title beyond that period; as, for example, where a deed, though dated more than sixty years since, operates as an execution of a power contained in some previous deed or will, in which case the instrument creating the power should be abstracted; and the like doctrine holds with respect to a settlement made in pursuance of marriage articles, where the articles themselves must necessarily be inspected in order to satisfy the purchaser that the settlement was made in accordance with them (1 Prest. Abs. 70). But where a necessary has been suffered more than sixty years ago, it will be no objection to the title that the deed or will by which the entail was created cannot be produced. And generally, where an abstract commences with a conveyance to a purchaser, and a possession of sixty years can be shewn under it, it will be considered as sufficient evidence that the party making such conveyance had a lawful right to do so (1 Prest. Abs. 116). As a general rule, therefore, it will be sufficient to commence an abstract with some purchase-deed, settlement, or will at any date at or beyond sixty years, without incumbering the abstract with any of the previous documents. Mr. Preston, with his usual accuracy and discernment, remarks, that a deed of conveyance to the person who was the first purchaser affords the strongest presumption that the title was considered good at that time, and that the person who made it was the absolute owner in fee-simple; but that when a title cannot be taken up by a deed of this kind, the next best instrument for that purpose is a will, or some settlement made by a person acting as the absolute owner of the fee-simple. "This document," the same learned writer observes, "with possession consistent with the evidence of title, furnishes the like presumption of a good title; and the presumption is greatly strengthened if there has been a frequent change of ownership without any adverse claim."

Pedigree should accompany abstract, when.—As often as a title depends on a descent, a pedigree, authenticated by such evidence as would be sufficient to support the title in case of an adverse claim, should accompany the abstract. (1 Prest. Abs. 43.)

As to advowsons.—In the case of advowsons, it was always considered necessary to trace back the title farther than in other kinds of real property. The reason of this was, that the title of an advowson might not have been in possession, nor an opportunity occurred of trying the title within the sixty years. Thus, according to the authority of Sir E. Coke, there was a person of

one of his churches who had been incumbent there upwards of fifty years. Sir William Blackstone also mentions (3 Blac. Com. 251) that the last two incumbents of Chelmsford cum Farnborough continued one hundred and one years; so that, as the learned commentator proceeds to remark, had the last of these incumbents been the clerk of an usurper, or had been presented by lapse, it would have been necessary and unavoidable to the patron, in case of a dispute, to have recurred back above a century, in order to shew a clear title and seisin by presentment, and admission of the prior incumbent. He then adds, that as the title of advowsons is rendered more precarious than that of any other hereditament, it might not perhaps be amiss if a limitation were compounded of a length of time and number of avoidances together; as, for instance, if no seisin were admitted or alleged in any writs of patronage after sixty years, and three avoidances were past. These wise suggestions, after a lapse of many years, and having been read in the interim by every lawyer in the land, were at length attended to, and the object of them carried into effect by the late Statute of Limitations (3 & 4 Wm. 4, c. 27), by the 30th section of which it is enacted that no advowson shall be recovered but within three incumencies adverse to the right of presentation, or sixty years. By the section next immediately following (sec. 31), it is, however, provided that, although incumencies by reason of lapse will be adverse presentations within the meaning of the period, yet that such incumencies as arise from the promotion of the prior incumbent to a bishopric are not to be so considered; and one hundred years' adverse possession is the extreme limit now allowed under that statute for the recovery of an advowson. The title, therefore, to an advowson should now be carried back to a period of not less than one hundred years; to which title a list of presentations should be annexed, to shew that acts of ownership have been duly exercised in conformity with such right of presentation.

Tithes.—Notwithstanding the original right to tithes must be founded on a grant from the Crown at the dissolution of the monasteries, yet no one ever now thinks of calling for a title commencing and regularly deduced from so ancient a time as this; a clear sixty years' title being all a purchaser of this kind of property is entitled to require, or can compel a vendor to give.

Documents should be abstracted according to priority of their respective dates.—The various documents by which the title is to be supported should be inserted in the abstract according to the order of their respective dates, unless the property has come through different channels; in which case the course of each separate portion must be traced separately until the ownership of the whole of them unites in the same party. As suppose for instance three estates, A, B, and C, all held under different titles, have been purchased by D, then the title of each of these estates must be traced separately down to the conveyance of the whole of them to D, after which they will all three become consolidated in one common title, and from that period they will all be traced together as long as the entire property continues to flow on in the same course. To accomplish this, all the documents "As to A," must be abstracted down to D's purchase-deed. Next the documents "As to B," and then the documents "As to C," down to the conveyance to D; which being done, then insert a heading, "As to all said premises," commencing with the first conveyance, or other disposition from D to any other party. The like observations are also applicable where an estate in joint tenancy or coparcenary has been severed, until the whole estates unite again in one common title.

3. *When a double abstract will be necessary.*

In some instances an abstract relating only to the property intended to be conveyed, will not alone suffice; as where lands have been taken in exchange (4 Rep. 121; 1 Prest. Abs. 87), or allotted under inclosure acts, in both of which instances an abstract must not only be furnished of documents of title relating to the estate sold or allotted, but of those also of the estates given in exchange, or of the original estates in respect of which the lands were allotted. The reason why a double title is required in the first instance, is, because the foundation of an exchange was an implied warranty, which engendered the right of entry in case of eviction (Shep. Touch. 290; Finch L. 27; Shep. Fract. Couns. 2). In the second instance, because the allotted lands became liable to the uses of the es-

tates in respect of which they were allotted. The statute of 4 & 5 Wm. 4, c. 30, s. 24, 25, has, however, made some important alterations in the law in the latter case; as that statute, by expressly changing the uses, takes away any right of eviction after an exchange made of lands in common fields under the powers of that Act; and by a still more recent enactment (8 & 9 Vict. c. 106), deeds of exchange have no longer the effect of creating any warranty, or right of re-entry, or implied covenant by implication. But this statute is only prospective, and will not affect assurances made previously. As to these, therefore, a double abstract will still be necessary.

Copyholds.—Another instance in which an additional abstract will be required, is in the case of an enfranchised copyhold estate, when the title of the lord to the freehold must be shewn, in addition to that of the copyholder, previously to his enfranchisement. (1 Prest. Abs.)

Leasehold.—In the case of leaseholds, also, unless there is some express agreement or stipulation to the contrary, the vendor must be prepared to produce his lessor's title, otherwise he cannot compel the purchaser to complete the contract. (*Rosewell v. Vaughan*, Cro. Jac. 196; *Lymey v. Selby*, 2 Lord Raym. 218; *Keach v. Hall*, Doug. 21; *Waring v. Macreth*, 11 Ves. 343; *Fidler v. Hooker*, 2 Mer. 424; *Purvis v. Rayner*, 9 Pri. 488; *Souter v. Drake*, 5 B. & A. 992.) It may be proper also to remark, that the purchaser of leaseholds is equally entitled to a clear sixty years' title as if he were a purchaser of the fee-simple itself. (*Hodgkinson v. Cooper*, 6 Law T. 451.) The title, also, should be regularly deduced from the original lease by means of the intermediate assignments, though, if these cannot be produced, their loss may, in some instances, be supplied by the recitals. (*Doe v. Maple*, 3 Bing. N.C. 832.)

Where the property contracted for is of various tenures.—When the property consists of lands of different tenures, as where some are freehold and others leasehold, or of copyhold or customary tenure, then the purchaser should be furnished with a separate abstract of each distinct species of property.

Adwoson.—In the case of an adwoson, the purchaser will be entitled to a statement of the presentations, and by whom made; also the names of the clerks presented during the period of time comprised in the abstract, which, as I have already stated, ought to extend over a period of one hundred years.

(To be continued.)

HOW TO INVEST CAPITAL.

An useful little book by Mr. G. M. Bell, entitled *A Guide to the Investment of Capital*, has just been published. Under the various heads of houses, land, annuities, joint-stock banks, railways, shipping, insurance companies, mines, bills of exchange, bonds, and mortgages, and foreign funds, is comprised a short description of all the means of investment which are offered to capitalists. The hints, which form part of the "general summary" which concludes the work, we extract, as they give a good classification of the various kinds of investment, made to suit the various kinds of parties investing:—

"1. Those who desire to obtain the highest rate of interest without much risk ought to select the best of the public companies, such as banks, insurance companies, old railway companies, and other established undertakings of high character.

"2. Those who would prefer a high rate of interest, and are willing to run the risk that securities yielding high rates generally involve, ought to invest in mines, in ships, and in new railway companies; they may stake their money upon scrip, and upon new shares where there is a prospect of their being run up to a high premium.

"3. Those who are not in a position to invest their money for any lengthened period, but may require to call it up suddenly, or within a short time, should invest in the funds, or deposit it with a bank that allows interest.

"4. Those who desire to obtain a steady and uniform rate of interest, and to be secure of their capital in a few years, may invest in railway bonds. In doing this they will consult their own advantage in selecting the bonds of such lines of railway as are well managed, and possess a good and improving traffic.

"5. Those who are willing to be content with a low rate of interest, and to be entirely secure from risk, ought to invest in Exchequer Bills, India Bonds, or landed property.

"6. It can scarcely be deemed advisable to make permanent investments to a large amount, at periods when there is any commercial or political excitement in the country. When the position of commercial

and political affairs is unsettled, when the public mind is agitated with regard to passing events, the value of securities of every description is liable to be more or less affected. The anticipation as well as the realization of change will often produce great variations in the prices of the funds and other public securities. The late railway excitement had the effect of running up prices to a most unreasonable extent. The depression that followed, while it was in some measure only the natural result of an inflated and unsound system, strongly exhibited the danger of embarking in new enterprises, involving responsibilities comparatively unknown. Nor has the injurious effect of that excitement been yet experienced in all its deformity. Many persons are under the impression that the prices of railway shares must rally, and a strong feeling that this will soon be witnessed is extensively prevalent. There is every probability, however, that such parties will find that they have been under a strong delusion. The value of the shares in good lines already in operation, or in course of construction, may improve, and perhaps in some cases considerably; but it will only be after the rubbish lines have been swept out, and after 'speculations for a wind up' have begun to cease.

"Persons who have money in hand ought not, at such periods, to invest it hastily in doubtful securities, or in such as are likely to be affected by the circumstances to which we have alluded. They ought to keep it at command, so as to be able to take advantage of a fall in those securities which present a favourable opportunity of investing to some profit. It will be found to be the general practice of experienced capitalists to lend their money only upon the best securities, and for the shortest possible periods, where there is any cause of disquietude in commercial or political affairs, or in the circumstances of the country.

"7. Persons engaged in trade, who have not more capital than is necessary to conduct their trade—who have, in fact, no surplus money at their disposal—ought to be cautious of entering into money speculations of any kind—of making investments in railways, or any other schemes or securities of a doubtful or hazardous description. The *Gazette* has recently been filled with the names of tradesmen who were doing well, and might have continued to do well by attending to their own proper business, but who, from a mistaken sense of their position, by embarking in thoughtless speculation, have involved their families and themselves in misery and ruin. Tradesmen without spare capital ought never to embark in such schemes. Those parties only can be justified in doing so who can afford to lose money, and are prepared to meet the engagements for which they become liable."

The following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

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Bank Stock	205½	205½	205½	205½	205½	205½
India Stock	265½	264½	265½	265½	265½	265½
India Bonds, prem.	28	28	27	27	27	27
Exchequer Bills, prem.	20	19	19	18	19	16
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Peruvian	39½	39½	39½	39½	39½	39½
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Mexican	30½	29½	29½	29½	29½	29
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Danish	88	88½	88½	88½	88½	87½
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Chilian	99½	99½	99½	99½	99½	99½
Buenos Ayres	39½	39½	40½	41½	41½	41
Brazilian	82½	82½	82½	82½	82	82
Belgian	96½	96½	96½	96	96½	96½

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, June 1.

Clarkson, J. grocer, assignees, July 2.—Deacon, T. E. tanner, last exam. July 20.—Docher, H. oilman, div. next week. Turquand, London.

Tuesday, June 2.

Chambers and Co. bankers, first and final div. Chambers, jun. div. next week. Groom, London.—Cramper, J. B. coal merchant, last exam. June 23.—Haynes, J. wine warehousemen, assignees, June 26.—Salmon, J. carpenter, last exam. July 7.

Thursday, June 4.

Garland, R. corn Chandler, div. next week. Pennell, London.

Friday, June 5.

Chamberlaine, W. grocer, annulled.—Peaks, J. S. cordwainer, div. next week. Alsager, London.—Frost, J. W. coffee dealer, div. next week. Belcher, London.—Key, J. oilman, final div. next week. Belcher, London.—Parkins, L. E. chemist, final div. next week. Belcher, London.—Williams, T. merchant, last exam. passed.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Brooke, J. miller, first, 1s. 7d. Whitmore, London.—Flowers, E. C. cattle dealer, 18s. 11d. Belcher, London.—Jenkins, J. currier, 2s. 3d. Whitmore, London.—Olden, G. grocer, 24d. Belcher, London.—Roberts and Hughes, drapers, first, 15s. Hobson, Manchester.—Tomlinson, W. jun. scrivener, fourth, 4d. Turner, Liverpool.—Watson, L. ironmonger, 24d. Belcher, London.—Watson, H. jun. wheelwright, 1s. 11d. Belcher, London.—Whitworth, A. cloth finisher, first and final, 1s. 5d. Hope, Leeds.

Insolvents' Estates.

Carter, C. clerk in the Admiralty-office, Cloudealeys-sq. 18. 8d. Belcher, London.—Selfe, H. watch maker, Bristol, 74d.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, June 5.

Lowes, R. J. and Hill, W. printers, Manchester, May 25. Trusts. T. Cooper, stationer, West Smithfield, and C. T. Vickers, Manchester. Sol. Hampson, Manchester.—Smith, W. A., Clark, W. and Macdonald, A. fancy flower manufacturers, Wood-st. April 8. Trusts. G. Oliver, artificial flower manufacturer, Belvidere-place, Borough-rd. and T. Freeman, warehouseman, Wood-st. Sol. Galliaume, Bucklersbury.

Gazette, June 9.

Edgcomb, W. and Kimpson, E. wholesale stationers, Budge-row, May 29. Trusts. T. Healey, Queenshithe, and G. Herring, Walbrook, wholesale stationers. Sol. Ashley, Lord Mayor's-ct.-office.—Nicholson, J. draper, Devonport, May 20. Trusts. R. Johnson, Watling-st. and A. Beater, Aldermanbury, warehousemen. Sol. Robinson, Queen-st.-place.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, June 5.

BERTHAM, JOHN, gun maker, Richmond, Yorkshire, June 16 and July 7, at eleven, Leeds, Com. Burge; Hope, off. ass.; Kirk, Symond's-inn, and Harle, Leeds, sols. Date of fiat, May 30. Bankrupt's own petition.

BLEAKLEY, ROBERT, bricklayer, builder, and publican, Liverpool, June 16 and July 9, at twelve, Liverpool, Com. Ludlow; Turner, off. ass.; Gregory and Co. Bedford-row, and Green, Liverpool, sols. Date of fiat, May 29. Bankrupt's own petition.

BODDINGTON, JOHN, corn, hop, and provision dealer, June 17 and 30, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Russell and Co. High-st. Scutwhark, sols. Date of fiat, May 25. C. Humble, hop merchant, High-st. Southwark, pet. cr.

CONLEN, JAMES, woollen draper, Cheltenham, June 19 and July 21, at one, Bristol, Com. Stevens; Miller, off. ass.; Dowling, Gloucester, sol. Date of fiat, May 27. T. Husband, gent. Cheltenham, pet. cr.

HOPKINS, CHARLES GORDON MATTHEW JOHN, tailor and draper, 5, Portman-sq. Portman-sq. June 10, at half-past one, July 14, at twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Mead, Bedford-row, sol. Date of fiat, May 28. E. Jones, wine merchant, North-st. Pentonville, pet. cr.

MITCHELL, WILLIAM, furniture dealer, 18, Finsbury-pl. South, City, also of Upper Fitzroy-st. Fitzroy-sq. and Kent-st. Borough of Southwark, June 10, at half-past ten, July 3, at ten, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Kinsey, Blosbury-sq. sol. Date of fiat, May 30. C. and W. Nightingale, Wardour-st. Saho, pet. crs.

NORTCLIFFE, WILLIAM, dyer and stower, Thornhill Briggs, Halifax, and stuff merchant, 8, Milk-street, Manchester, June 15 and July 13, at eleven, Leeds, Com. West; Young, off. ass.; Jacques and Co. Ely-place, and Battys and Co. Huddersfield, sols. Date of fiat, day 22. T. Marshall, machine maker, Huddersfield, pet. cr.

PAINE, JOHN DAVIS, publisher, Hatcham, Surrey, copperplate and lithographic printer, and picture frame dealer, Duke-st. Westminster, June 18, at three, July 20, at twelve, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Richardson, Coleman-street, sol. Date of fiat, May 8. Bankrupt's own petition.

SHAWSON, PAUL, and YOUNG, THOMAS BERTON, chymists, druggists, and brokers, Louth, June 17 and July 8, at eleven, Town-hall, Hull, Com. Burge; Kynastor, off. ass.; Humphreys and Co. Chancery-lane, and Wilson, Binbrook, sols. Date of fiat, May 23. R. Crotcheffer, farmer, Hainton, Lincolnshire, pet. cr.

SHEEL, ROBERT, grocer and tea-dealer, Wilsted-st. Somers-town, June 18, at half-past two, July 20, at half-past eleven, Basinghall-street, Com. Shepherd; Graham, off. ass.; Hill and Matthews, St. Mary Axe, sols. Date of fiat, June 2. T. Hayward, A. Conway, and J. Phelps, grocers, Maiden-lane, pet. crs.

SMITHSON, WILLOUGHBY MARSHALL, printer and publisher, and dealer in railway shares, St. George's-fields, Canterbury, June 16, at half-past twelve, July 16, at eleven, Basinghall-st. Com. Evans; Johnson, off. ass.; Lewis, Warwick-ct. Gray's-inn, sols. Date of fiat, June 3. Bankrupt's own petition.

SOLOMON, JOHN, outfitter, Exeter, June 17, at eleven, July 16, at one, Exeter, Com. Berr; Hurtall, off. ass.; Jones, Sme-lane, and Stogdon, Exeter, sols. Date of fiat, May 27. G. Howes, W. W. Jan. and F. Cook, W.

Hooke, and E. Featon, warehousemen, St. Paul's Church-yard, pet. crs.
STILLER, HODGSON, wool comber and top maker, Well, Yorkshire, June 16 and July 13, at eleven, Leeds, Com. West; Young, off. ass.; Williamson and Co. Gray's Inn, and Carian, Leeds, sola. Date of fiat, May 30. Bankrupt's own petition.

Gazette, June 9.

CHILD, JOHN, grocer, Wakefield, Yorkshire, June 23, and July 13, at eleven, Leeds, Com. West; Freeman, off. ass.; Piddley, Temple, and Brown, Wakefield, sola. Date of fiat, May 30. M. Harding, earthenware dealer, Wakefield, pet. crs.

GALLIMORE, CHARLES, pearl button and stud maker, Birmingham, June 19, and July 14, at ten, Birmingham, Com. Daniell; Valpy, off. ass.; Wright, Birmingham, sol. Date of fiat, June 8. S. Willis, button manufacturer, Birmingham, pet. crs.

GIBSON, JOHN, merchant, 10, Coleman-street, city, June 17, and July 30, at twelve, Basinghall-st. Com. Goulburn; Follett, off. ass.; Marten and Co. Commercial Sale Rooms, sola. Date of fiat, June 3. W. J. K., and E. Hunter, upholsters, Moorgate-st. pet. crs.

MISKIN, JOHN RICHARD, tea dealer, grocer, and British wine merchant, Hammond-place, Chatham, June 18, at half-past eleven, July 20, at half-past twelve, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Butler, Tooley-st. sol. Date of fiat, June 4. Bankrupt's own petition.

PHILLIPS, FRANCIS FREEMAN, coach maker, Bristol, June 23, and July 21, at eleven, Bristol, Com. Stevenson; Acraman, off. ass.; Biggs, Bristol, sol. Date of fiat, June 5. Bankrupt's own petition.

SCOTT, JOHN, flour dealer, South-st. Sheffield Moor, Sheffield, June 26, and July 10, at eleven, Leeds, Com. West; Freeman, off. ass.; Tattershall, Great James-st. and Chambers, Sheffield, sola. Date of fiat, June 2. Bankrupt's own petition.

SLY, FREDERICK, carrier, Truro, Cornwall, June 18, at one, July 15, at eleven, Exeter, Com. Bare; Hirtzell, off. ass.; Bennallack, Truro, Stogdon, Exeter, and Bourdillon and Sons, Great Winchester-st. sola. Date of fiat, May 25. T. S. Bolitho, merchant, Penzance, pet. crs.

SMITH, JESSE, cheesemonger, 13, Wellington-st. Newington-causway, June 17 and July 14, at two, Basinghall-st. Com. Holroyd; Groom, off. ass.; Pullen, Basinghall-st. sol. Date of fiat, June 6. Bankrupt's own petition.

WEEKS, EDWARD, hothouse builder, King's-rd. Chelsea, June 18, at half-past twelve, July 20, at eleven, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Lettis, Bartlett's-bldg. sol. Date of fiat, June 7. W. H. Tucker, window glass manufacturer, 137, High Holborn, pet. crs.

WRIGHT, JOHN, druggist and manufacturing chemist, 330, Oxford-st. June 10, at two, July 21, at twelve, Basinghall-st. Com. Fane; Alsager, off. ass.; Tilson and Squance, Coleman-st. sola. Date of fiat, April 27. W. Shadbolt, W. M. Christie, G. H. Foster, J. T. Oxley, G. Scholefield, and G. Taylor, bankers, Princess-st. pet. crs.

Meetings at Basinghall-street.

Gazette, June 5.

DEVIES, G. saddler, High-st. Borough, June 23, at half-past one, last exam.—**Dykes, E. S. basket-maker**, Romford, June 26, at half-past twelve, and—**Elkins, V. coachmaker and bookseller**, Southampton-pl. Euston-sq. and of High-st. Marylebone, June 30, at eleven, and—**Oakley, T. farmer and dealer in oil-cake**, Kingsbury-farm, St. Alban's, Hertfordshire, June 30, at twelve, div.—**Pritchett and Oridge**, glove manufacturers, Charlbury, June 27, at eleven, and—**Thomson and Farber**, comb-makers, Cambridge-st. June 23, at eleven, prf. of debts.—**Williams, L. wollen draper**, Oxford, June 26, at half-past one, further div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Barlow, J. watchmaker, St. Martin's-lane, June 30, at eleven.—**Dorling, E. wool dealer**, Ipswich, June 29, at half-past two.

Gazette, June 9.

Lewis, R. wollen manufacturer, Wootton-under-Edge, June 23, at eleven, Bristol (adj. June 8), last exam.—**Miller, W. manufacturer**, Manchester, June 19, at twelve, Manchester (adj. May 28), last exam.—**Pilling, S. and Watson, R. G. wine and spirit merchants**, hop merchants, and malsters, Gateshead, Durham, June 30, at half-past ten, Newcastle, sep. aud. of Pilling, and July 3, at half-past eleven, sep. div.—**Rowles, J. worsted manufacturer**, Leicester, June 30, at ten, Birmingham, div.—**Scott, C. currier**, Newcastle-under-Lyme, July 2, at one, Birmingham, aud. and proof of debts.—**Thompson, J. chain and anchor manufacturer**, Sunderland, June 30, at half-past one, Newcastle, aud. and July 3, at twelve, fin. div.—**Wallace, J. grocer and tea dealer**, Durham and Sunderland, June 19, at half-past ten, Newcastle (adj. May 28), last exam. and June 30, at twelve, aud. and July 3, at half-past ten, first div.—**Williams, T. victualler**, Bristol, July 2, at eleven, Bristol, aud.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Sale and Booth, ironmasters, Sheffield and Rotherham, July 3, at eleven, Sheffield.—**Hall, H. cattle-dealer**, Grey-stead, June 30, at half-past ten, Newcastle.—**Ryder, B. M. grocer**, Hull, July 1, at eleven, Hull.

Partnerships Dissolved.

Gazette, June 2.

Binge, L. and J. fancy repositories, Lowther Arcade, May 25. Debts paid by L. Binge.—**Cottrell, J. and W. plumbers**, Worcester, May 29.—**Dean, T. and Jackson, L. tailors**, Preston, March 3.—**Donnell, J. and Appleby, E. provision dealers**, Liverpool, May 30.—**Ebbens, W. J. and G. and Miles, E. coal merchants**, Southbury, Dec. 31. Debts paid by Miles.—**Edwards, W. J. and Try, W. G. May 4.**—**Firth, H. and W. general carriers**, Bradford, Feb. 4.—**Fisher, F. and Blundell, T. L. jun. surgeon dentists**, Frith-st. May 29. Debts paid by Fisher.—**Greenhalgh, N. and T. and Settle, J. cotton spinners**, Sharples or elsewhere, May 29. Debts paid by Messrs. Greenhalgh.—**Hammond, C. and T. D. chymists**, Hull, May 30. Debts paid by T. D. Hammond.—**Hoyle, J. and G. tea dealers**, Manchester, May 11.—**Hudson, J. and Dawson, J. masons**, Leeds, May 28.—**Johnson, M. A. and Penfold, J. farmers and sack manufacturers**, Loddsworth, May 29.—**Jones, S. Pearce, T. and Jenkins, R. iron founders**, Preston, Aug. 1, 1844.—**Joplin, W. and H. brewers**, Liverpool, May 27.—**Molloy, C. and Cawlow, B. painters**, Bradford, May 30.—**Mant, H. J. and Harcey, H. J. solicitors**, Bath, May 31.—**Marchant, J. A. and E. A.**

clothers, Trowbridge, May 27.—**Marks, R. and Allen, W. slate merchants**, Augustus-st. and Edward-st. April 29.—**Pilling, A., Milner, W. and Hale, M. fancy wollen manufacturers**, Huddersfield, so far as regards Pilling, May 29. Debts paid by the remaining partners.—**Price, M. and Crompton, T. fire brick manufacturers**, Pott Shrigley, May 27.—**Ramsbottom, W. and Procter, T. spindle makers**, Habergham Eves, May 30. Debts paid by Ramsbottom.—**Reynolds, A. E. and Field, J. W. silvermiths**, Stone-end, Jan. 1.—**Setterington, M. and Jones, E. drapers**, Bath, May 30. Debts paid by Jones.—**Smith, E. and M. brick manufacturers**, Conisbrough, April 23. Debts paid by E. Smith.—**Stevenson, W. and J. bleachers and ironmongers**, Wirksworth, May 28. Debts paid by J. Stevenson.—**Stolle, W. and Browne, R. cotton manufacturers**, Manchester, May 29. Debts paid by Stolle.—**Thompson, J. deceased**, Lambrigg, Benn, J. Lowther, Benn, J. jun. and R. both of Kendal, and Farrar, W. Liverpool, dealers in guano, June 1, 1845.—**Whitfield, W., Darley, C., Brown, T., Bladworth, J., and Wrightson, W. brewers**, Thorne, so far as regards Whitfield, Jan. 1. Debts paid by the remaining partners.

Gazette, June 5.

Boond, S. and J. P. file manufacturers, Salford, May 23.—**Buttill, W. and Leadbeater, J. grocers**, Sheffield, April 8.—**Couthard, J., Manico, E. S. and Couthard, E. commission agents**, Brook's-wharf, Upper Thames-street, so far as regards Manico, May 30.—**Cunliffe, R. Hoyle, J. Buckley, G. Hanson, J. and Read, R. stone masons**, Rossendale, so far as regards Read, June 2. Debts paid by the remaining partners.—**Fisher, J. sen. and Fisher, T. and J. jun. Robinson, H. and Walker, J. lace merchants**, Watling-st. and Nottingham, so far as regards Walker, June 1. Debts paid by the remaining partners.—**Frearson, H. Marshall, T. and Eley, G. lace manufacturers**, Nottingham, so far as regards Frearson, May 7. Debts paid by Marshall, Eley, and Baker, T. C.—**Gardner, E. Dickinson, W. H. and Williams, W. manufacturing chymists**, Fieldgate-st. so far as regards Gardner, June 1.—**Gott, C. and Jefferson, J. builders**, Scarborough, June 1. Debts paid by Gott.—**Gray, T. Dangerfield, A. D. and Loosgrove, G. H. newspaper proprietors**, Salisbury-sq. May 1. Debts paid by Dangerfield.—**Hill, J. T. and Hill, N. jun. merchants**, Hull, Jan. 1.—**Irvine, T. and Jenkins, J. hat manufacturers**, Red Cross-st. Southwark, June 3. Debts paid by Dand, Depford.—**Kay, T. A. and Shawwood, M. A. milliners**, Davies-st. June 1.—**Luscombe, R. and Bowden, E. mercers**, Totnes, June 2. Debts paid by Bowden.—**McCrea, H. C. and Board, H. J. worsted manufacturers**, Halifax, June 1.—**Maher, F. and Stevenson, G. fish salesmen**, Lower Thames-st. May 30. Debts paid by Stevenson.—**Mason, S. jun. and Kneebush, A. commission agents**, Manchester, May 2. Debts paid by Mason, June 2. Debts paid by Naylor, at his counting-house, Basinghall-st. Leeds.—**Phene, H. and Salter, T. B. surgeons**, Ryde, June 2.—**Pithey, W. and Perkins, A. G. merchants**, Austin-frs., Dec. 31.—**Shepherd, T. and Glodhill, T. tinkers**, Bristol, May 28.—**Smith, T. and Hodnett, J. potters**, Kingswinford, March 25. Debts paid by Hodnett.—**Speakman, J. and Wright, H. waggon grocers**, makers, Windle, Feb. 24. Debts paid by Wright.—**Thornley, J. and Earle, T. jun. stock brokers**, Hull, June 1.—**Wells, M. and Winn, J. Custom-house agents**, Love-lane, May 28.—**Dykes, E. S. basket maker**, Romford, June 26, at half-past twelve.—**Elkins, V. coachmaker and bookseller**, Southampton-place, Euston-sq. and High-st. Marylebone, June 30, at eleven.—**Griffith and Pearson, tailors**, New Bond-st.—June 26, at eleven.—**Kleff, P. cheesemonger**, South-st. June 26, at twelve.—**Metcalf, T. carpenter**, Princess-st. June 26, at one.—**Mills, W. glove manufacturers**, Feather-lane, June 27, at one.—**Morgan, E. coach builder**, Lisson-st. June 29, at one.—**Sheppard, R. W. inkkeeper**, Ensham, June 26, at twelve.—**Stephenson, R. apothecary**, Southwick-st. June 26, at eleven.—**Weatherhog and Weatherhog, farmers**, Stone, June 26, at one.—**Williams, T. merchant**, Fenchurch-st. June 26, at twelve.

Gazette, June 9.

Adams, J. C. wollen warehouseman, Basinghall-street, June 30, at half-past eleven, div.—**Collins, C. v. agent**, King William-street and Adelaide-place, Kidderminster, June 19, at two (adj. May 19), last exam.—**Cooper, T. umbrella manufacturer**, New Bond-street, July 3, at eleven, and—**Ellis, J. W. cloth merchant**, Lawrence-lane, June 26, at two, last exam.—**Hadden, W. J. brewer**, Tottenham, June 19, at twelve (adj. June 5), last exam.—**Mama, J. woollappler and manufacturer**, Norwich, June 30, at half-past one, div.—**Sanderson, W. W. baker**, 7, Great Russell-street, St. Paul's, Covent-garden, June 30, at half-past twelve, div.—**Streeter, T. draper**, High-street, Camden-town, June 30, at one, div.—**Tuddenham, J. builder**, Bayswater, June 30, at twelve, and—**Turner, H. cowkeeper**, Theobald's-road, Bedford-row, June 30, at half-past twelve, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Ablett and Ablett, drapers, High Holborn, June 30, at two.—**Kirkup, J. coal merchant**, Rotherhithe, June 30, at half-past eleven.—**Tebbutt, J. auctioneer**, Cambridge, July 8, at eleven.—**Wilson, J. cabinet maker**, Woolwich and Chelsea, June 30, at one.

Meetings in the Country.

Gazette, June 6.

Barfield, A. T. B. artist, Bristol, June 20, at twelve, Bristol (adj. June 4), last exam.—**Beaumont, A. M. wollen cloth manufacturer**, Almondbury, June 30, at eleven, Leeds, and—**Broadhead, D. and Balcar, A. J. stock and share brokers**, Leeds, June 30, at eleven, Leeds (and not on June 26), first sep. div.—**Brooks, J. and J. curriers and wollen drapers**, Glastonbury, June 30, at eleven, Somersetshire, div.—**Burton, S. and J. chymists and druggists**, Kingston-upon-Hull, July 1, at eleven, Hull, first joint and sep. div.—**Cartwright, C. H. grocer**, Warrington, June 17, at twelve, Manchester (adj. May 19), last exam.—**Clark, B. corn factor**, Leeds, June 29, at eleven, Leeds (and not on June 26), first div.—**Headington, B. laceman**, Bath and Liverpool, June 30, at twelve, Liverpool, and—**Holroyd, J. and R. S. cotton spinners and manufacturers**, Smaller's-mill, Soyland, Halifax, June 29, at eleven, Leeds, sep. div.—**Howarth, J. wollen manufacturer**, Rochdale, June 17, at twelve, Manchester, last exam.—**Hughes, O. linen draper**, Holyhead, June 30, at eleven, Liverpool, and—**Vesey, J. hatter**, Exeter, June 30, at eleven, Exeter, to aud. and July 1, at eleven, div.—**Ward, F. rag merchant**, Batley, Yorkshire, June 30, at eleven, Leeds (and not on June 26), first div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Darden, E. H. manufacturing chemist, Standish, June 20, at eleven, Bristol.—**Hoare, E. clothier**, Falmouth, June 20, Bristol.
Gazette, June 9.
Anteretti, J. grocer, Walsall, July 2, at one, Birmingham, aud.—**Bulmer, J. merchant**, Harrogate, June 20, at half-past eleven, Newcastle, and—**Chambers, J. C. needle manufacturer**, Ipsley, Warwickshire, July 4, Birmingham, aud. and div.—**Featherstone and Kirkpatrick ironfounders**, Manchester, June 20, at half-past ten, Manchester (adj. May 22), last exam.—**Kirkpatrick-Harford, J. and Davies, W. W. ironmasters, ironfounders, and iron merchants**, Bristol, and Ebbw Vale, Salsbury, Monmouthshire, July 3, at eleven, Bristol (sep. aud. of Harford, July 9, at eleven)—sep. div.

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, June 2.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Ayres, W. T. undertaker, Redcross-st. Southwark, June 11, at eleven.—**Baden, W. oilman**, Star-st. Paddington, June 9, at half-past twelve.—**Bartlett, I. coach smith**, Oxford-place, Waterloo-road, June 11, at eleven.—**Bush, G. H. out of business**, Seymour-place, Bryanstone-sq. June 6, at two.—**De Burgh, J. H. lieutenant**, North-st. Westminster, June 16, at eleven.—**Edwards, E. miller**, Devonshire-terrace, New North-road, June 11, at twelve.—**Fox, J. accountant**, Mayfield-st. Dalston, June 16, at eleven.—**Hannam, W. J. stationer**, Bird-st. Oxford-st. June 9, at twelve.—**Hemmelberg, J. Eau de Cologne dealer**, Theobald's-road, June 11, at twelve.—**Hills, S. spinster**, South Bersted, June 4, at eleven.—**Knowling, S. baker**, Colchester, June 11, at eleven.—**Long, H. general dealer**, Ryder's-court, Leicester-square, June 6, at two.—**M'Pherson, D. auctioneer**, Ipswich, June 6, at half-past one.—**May, R. bootmaker**, Star-street, Paddington, June 11, at eleven.—**Palmer, W. watchmaker**, Bennett-st. Stamford-st. June 11, at twelve.—**Peire, J. enameller**, Hoxton Old-town, June 9, at half-past twelve.—**Pewell, W. undertaker**, Coppice-row, June 6, at half-past two.—**Purcell, N. innholder**, Lower Tooting, June 6, at one.—**Smith, J. W. tailor**, Peckham, June 11, at twelve.—**Swift, A. miller**, Frant, June 9, at half-past eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Hawkin, M. R. ship broker, Cardiff, June 19, at twelve, Bristol.—**Orist, J. F. victualler**, Bath, June 11, at half-past twelve, Bristol.—**Hall, W. billiard maker**, Charter-house, Hinton, June 13, at twelve, Bristol.—**Harley, J. powerloom weaver**, Liversey, June 9, at twelve, Manchester.—**Jones, J. stone mason**, Bristol, June 11, at twelve, Bristol.—**M'Cann, H. plasterer**, Manchester, June 9, at twelve, Manchester.—**Smith, R. engraver to calico printers**, Bess-bottom, June 13, at twelve, Manchester.—**Wilson, J. bricklayer**, Ringham, June 15, at twelve, Birmingham.—**Worner, E. J. excise officer**, Llanelli, June 19, at eleven, Bristol.

MEETINGS AT BASINGHALL-STREET.

Hubbard, J. plumber, High-st. Newington-batts, June 25, at twelve.

Gazette, June 5.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Boiletti, J. T. hair-dresser's assistant, Brighton, June 18, at eleven.—**Bowman, B. sen. carver**, Fleet-st. June 18, at twelve.—**Bull, T. clerk**, Union-road, Clapham-rise, June 18, at half-past eleven.—**Cale, R. toilet maker**, Hatten-garden, June 18, at eleven.—**Campbell, M. J. lodging-house keeper**, Alfred-pl. Bedford-sq. June 15, at eleven.—**Cope, W. T. wine cooper**, Kingland-row, Dalston, June 18, at twelve.—**Downes, R. bedstead maker**, Gravel-lane, Southwark, June 18, at twelve.—**Ellis, J. farmer**, Little Clacton, June 18, at twelve.—**Gooday, J. wheelwright**, Wickham Bishop, June 18, at one.—**Graves, R. out of business**, Arundel-st. Coventry-st. Haymarket, June 18, at half-past eleven.—**Hagden, J. D. baker**, Zoor-pl. Camberwell-lane, June 18, at one.—**Hunter, W. A. wharfinger**, Smith-st. Stepney, June 18, at twelve.—**Pilbeam, T. coach smith**, Parker-st. Drury-lane, June 9, at one.—**Richardson, F. auctioneer**, Hammer-smith, June 18, at half-past eleven.—**Roberts, G. F. stationer**, Union-st. Southwark, June 18, at eleven.—**Sand, W. chymist**, New Arleford, June 16, at twelve.—**Sanders, J. carpenter**, Kendrick's-pl. Chertsey-st. Bedford-sq. June 18, at half-past eleven.—**Shillinglaw, J. librarian**, Waterloo-pl. Pall Mall, June 18, at twelve.—**Springall, E. blacksmith**, Acton, June 18, at eleven.—**Turbot, J. B. clerk**, Bell-cl. Milton-st. Cripplegate, June 18, at eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Brooke, J. weaver, Meltham, June 18, at eleven, Leeds.—**Brooke, R. weaver**, Almondbury, June 18, at eleven, Leeds.—**Dyson, W. wheelwright**, Sowby-bridge, June 18, at eleven, Leeds.—**Ebege, E. B. surgeon**, Simonbarn, June 18, at half-past ten, Newcastle.—**Malhoun, J. brewer**, Brighouse, June 18, at eleven, Leeds.—**Munro, T. T. veterinary surgeon**, Liverpool, June 23, at eleven, Newcastle.—**Robson, T. publican**, North Shields, June 30, at one, Newcastle.—**Simmonds, T. cider dealer**, Cheltenham, June 13, at one, Bristol.—**Ormonet, G. traveller**, Bishopwearmouth, June 23, at twelve, Newcastle.

MEETINGS IN THE COUNTRY.

Higson, J. hoiler, Leeds, June 27, at eleven, Leeds, and—**Nash, T. tavern keeper**, Halifax, June 27, at eleven, Leeds, and—**Robins, W. June 26**, at ten, Birmingham, aud. and div.—**Snell, E. chemist**, Caistor, June 27, at eleven, Leeds, and—**Swinnburne, C. plasterer**, Middlesborough, June 27, at eleven, Leeds, aud.

From the Gazette of Friday, June 12.

Bankrupts.

Hill, J. C. grocer, Reading.—**Wright, J. common brewer**, Ockham, Surrey.—**Bennet, C. miller**, Winchester.—**Hart, W. hat manufacturer**, High-street, Whitechapel.—**Pim, J. B. and Payne, C. paper makers**, Mansfield-street, Borough-road.—**Simmons, T. corn merchant**, Woodbury, Bucks.—**Holt, J. glove manufacturer**, Castle Donington, Leicester-shire.—**Clark, D. leather dealer**, Liverpool.—**Stanley, J. warehouseman**, Manchester.—**Fur, C. victualler**, Kingston-upon-Hull.

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

May 7, and June 6.

BROWN v. BAMFORD.

Separate property—Clause against anticipation—Feme covert—Alienation—Form of limitation of separate estate—Negative words not necessary—Intention—Power of appointment and estate.

The form commonly used by conveyancers for limiting property to the separate use of a married woman, with the clause against anticipation of the income, is sufficient, as it plainly indicates the intention to prevent the married woman from charging the property and anticipating her income, without the insertion of express negative words.

The decision of the Vice-Chancellor of England in this case (11 Simons, 127), and subsequently affirmed by the Lord Chancellor, overruled.

The intention of the settlor to give a married woman a life interest in the property without the power of anticipating the income, operates and controls the whole clause.

John Beckett, by his will, dated the 21st of September, 1832, gave certain leasehold houses and stock in the funds to trustees, upon trust from time to time, during the natural life of his daughter, Sophia Bamford, or until she should be duly declared a bankrupt, or take the benefit of any Act passed, or to be passed, for the relief of insolvent debtors, to pay the clear rents, interest, dividends, and proceeds of such leasehold hereditaments, stocks, funds, and securities, unto such person or persons, for such intents and purposes, and in such manner as Sophia Bamford, by any writing or writings under her hand, when and as the same should become due, but not by way of assignment, charge, or other anticipation thereof, should, notwithstanding her then present or any future coverture, direct or appoint; and in default of any such direction or appointment, or as far as the same, if incomplete, should not extend, into her proper hands, for her sole and separate use, independent of the debts, control, or interference of her then present or any future husband; for which purpose the testator directed that the receipts, in writing, under the hand of his daughter, Sophia Bamford, should, notwithstanding any such covertures as aforesaid, be good and sufficient discharges for the last-mentioned rents, interests, dividends, and proceeds, or so much thereof as should in such receipts respectively be expressed to have been received; and from and after the decease of his daughter, Sophia Bamford, or such her bankruptcy or insolvency as aforesaid, which should first happen, then in trust for all and every or such one or more of her children as therein mentioned. After the testator's death, Sophia Bamford, in consideration of the Sunderland Joint Stock Banking Company

withdrawing a writ under which certain goods of Benjamin Parker, her son-in-law, had been taken in execution for a debt due from him to the company, signed a paper writing, by which she agreed to guarantee the payment of the debt to the company. In December 1840, Parker became bankrupt; and no moneys having been paid in reduction of the debt since the guarantee was given, the bill was filed by one of the public officers of the company against Sophia Bamford and John Bamford, her husband, and the assignee of Parker's estate, and the trustees of the will; which, after stating that Sophia Bamford had refused to pay the debt which she had so guaranteed, alleged that John and Sophia Bamford, and the trustees, pretended that Sophia Bamford was by the will restrained from charging her shares and interests in the dividends, rents, issues, and profits of the trust property, or rendering the same liable for any claim on her, by way of anticipation; whereas the plaintiff charged that, according to the true construction of the will, Sophia Bamford had both a restricted power of appointment and the general uncontrolled dominion over the income so bequeathed to her for life as aforesaid; and that by the agreement signed by her as before mentioned, she had rendered all the property which she was entitled to or interested in under the will, liable to the payment of the debt. The bill prayed for a declaration that the income which Sophia Bamford was entitled to, under the will, for her separate use, was liable, to the extent of her right in or to the same, to make good and pay the debt to the company.

To this bill Bamford and wife, and the trustees of the will, demurred for want of equity, and on argument before the Vice-Chancellor of England, his Honour overruled the demurrer, upon the ground that the words upon which the question arose were the same in substance as the words in *Barrymore v. Ellis* (8 Sim. 1). In giving judgment, the Vice-Chancellor observed, that he admitted the common form to be in the terms stated, but it always appeared to him to be defective. That when he was in the habit of drawing conveyances, and wished to settle on a lady property over which she was to have no power of anticipation, he always used to introduce an express proviso, that no receipt should be a discharge to the trustees, except a receipt given by the lady for rents or dividends then actually become due. That in this case there were no negative words in the receipt clause, and therefore there was nothing to restrict the power which Mrs. Bamford had, to dispose of or charge the rents and dividends of the trust property under the general direction to pay those rents and dividends to her for her separate use.

From this decision the defendant appealed to the Lord Chancellor, who, on the 16th day of April, 1844 (3 Law T. 69), affirmed the decision of the Vice-Chancellor, upon the ground that the restriction on anticipation did not extend to the estate which she took in default of appointment, and that it was not to be distinguished from *Barrymore v. Ellis*. It having been represented to the Lord Chancellor that this decision did not give satisfaction to the profession, especially to conveyancers, and that much consternation had been excited by reason that the ordinary form by which married women were restrained from anticipating was substantially the same as that in this case, his lordship consented to have the appeal reargued before him by one counsel on each side.

Bethell, for the defendants, the appellants, contended that the form which the Vice-Chancellor had declared to be ineffectual, had been for many years the common form, and much alarm had been excited in families by the decision; that the two branches of the clause ought not to be severed, for that construction would render the restriction on the power of appointment merely idle, and would entirely defeat the testator's intention; that the true way was to read the whole together as relating to but one subject, which was a separate interest in the married woman for her life, without power of alienation. Two other judges of this Court had expressly declined to follow the decision in this case. He cited and referred to *Pybus v. Smith* (3 Bro. C.C. 339); *Ellis v. Atkins* (3 Bro. C.C. 565); *Parkes v. White* (11 Ves. 209); *Jackson v. Hobhouse* (2 Merivale, 489); *Hulme v. Tenant* (1 Bro. C.C. 16); *Chapman v. Parsonage* (5 Ves. 15). The form was Mr. Bytler's. It is also found in *Roper on Husband and Wife*, edited by Mr. Jacob; *Sanders on Wills and Trusts*, 4th edit. App. 129; *Jarman's Bythewood*, vol. 9, p. 215 (he comments on *Barrymore v. Ellis*, *supra*); *Barton v. Brisco* (Jacob, 603); *Acton v. White* (1 Sim. & Stu. 429); *Moore v. Moore* (1 Col. 54); *Harnett v. MacDougal* (Rolls, 27th Feb. 1845, 5 Beav. 59).

Stuart, for the plaintiff, the respondent, contended, forms of conveyances cannot be reconciled; that this gift consisted of a power of appointment and an estate to her separate use; the first was restricted from anticipation, but there was no such restriction applicable to the latter, and consequently the married woman takes the estate with all the incidents of property. (*Owens v. Dickenson*, Craig & Phillips, 48; *Chance on Powers*, s. 114.) He commented on the cases cited and mentioned on the other side, and

cited and referred to *Brandon v. Robinson* (18 Ves. 429); *Medley v. Horton* (8 Jur. 853); *Cox v. Chamberlain* (4 Ves. 631).

Bethell, in reply, referred to the doctrine of the separate estate as laid down in *Tullett v. Armstrong* (4 My. & Cr. 444).

JUDGMENT.

The LORD CHANCELLOR.—This was an appeal from a decree of the Vice-Chancellor of England. When the case first came before me, I expressed an opinion upon it in accordance with the judgment of the Vice-Chancellor; but entertaining doubts as to the correctness of that opinion, I directed the case to be again argued. The result of that argument, and subsequent consideration of the case, have led me to change the opinion I had previously formed. The testator, John Beckett, by his will, dated the 21st of September, 1832, gave certain leasehold houses and stock in the funds to trustees upon trust, from time to time, during the natural life of his daughter, Sophia Bamford, or until she should be duly declared bankrupt, or take the benefit of any Act for the relief of insolvent debtors, to pay the clear rents interest, dividends, and proceeds of such leasehold hereditaments, stocks, funds, and securities, unto such person or persons, and for such intents and purposes, and in such manner, as Sophia Bamford, by any writing or writings under her hand, and as the same should become due, but not by the way of assignment, charge, or other anticipation thereof, should, notwithstanding her then present or any future coverture, direct or appoint, and in default of any such direction or appointment, or so far as the same, if incomplete, should not extend, unto her own proper hands, for her sole and separate use, independent of the debts, control, and interference of her then present or any future husband; and the testator directed that the receipts in writing of his daughter, Sophia Bamford, should, notwithstanding any such coverture, be good and sufficient discharges to the trustees for the last-mentioned rents, interests, dividends, and proceeds, or so much thereof as should in such receipts respectively be expressed to have been received. I think the intention of the testator was, that the income of the property should be kept entire for the use of his daughter, and that it should not be charged or disposed of except as the successive payments should become due; that it should not be in any way anticipated. It could not reasonably be supposed that he would be so careful, as he evidently has been, to exclude one mode of anticipation, and at the same time mean to leave the property subject to alienation, even to its full extent, in another form. The question, therefore, is, whether the terms used by the testator are sufficient to enable the Court to give effect to this intention. The trust is to pay the rents to such persons as Sophia Bamford, by any writing under her hand, when and as the same shall become due, should direct and appoint, but not by way of assignment, charge, or other anticipation thereof; and in default of such direction or appointment, or as far as the same, if incomplete, shall not extend unto her proper hands, for her sole and separate use. This right to appoint was not to be exercised until the rents and other income became due, and then only to the extent of what was due. In default of any such appointment, the rents, &c. and those only, or so much of them as shall not have been appropriated by the appointment, are to be paid into her own hands. All this is very clearly and precisely expressed. The negative words in this clause, viz. "but not by way of assignment, charge, or other anticipation," remained to be considered. The question depends upon the effect of these words. The daughter, Sophia Bamford, was not allowed, by means of any assignment, charge, or other anticipation, to direct the payment or application of the rents, &c. by the trustees; but any assignment, charge, or other anticipation, if effectual, would operate as direction, and this is so evidently considered by the testator or other person who framed this clause. The effect, therefore, of the prohibition is to restrain Sophia Bamford from assigning, charging, or in any manner anticipating the income or exercising any dominion or control over her life estate, unless in the form and under the restrictions contained in the power of appointment; she is precluded from assigning, charging, or in any manner anticipating the rents or other income; but she is permitted, when and as they become due, and not before, to direct the application of them; and in default of any such direction, they are to be paid into her own hands. I think this is the true construction of this clause, and it corresponds with what I consider to have been the manifest intention of the testator, viz. that the continuance of the income, during his daughter's life, should be secured for her benefit. This case does not in any degree depend upon the terms of the receipt clause; the observations of the learned judge upon that point appear to have arisen from what occurred incidentally in the course of the discussion. I certainly do not understand that this decision is rested on any such ground. He considered that this question came within the principle upon which he had decided *Barrymore v. Ellis*, viz. that where a limited power of appointment is created, and, in default of

execution of such power, the estate is given generally to the same person, it is competent in the donee to dispose of the estate without regard to the power, the execution of which he is at liberty to waive and abandon. The question, however, is not as to the principle, as stated, but as to the application of it to the present case. I think it has no such application. The restriction against anticipation extends to the whole gift. That is the true construction of the bequest, and it corresponds with what was the manifest intention of the testator. I may further observe, that the receipt clause in this case is, in all its material parts, the same as in the settlement stated in the case of *Barlow v. Briscoe* (Jac. 603). That was a case very much considered by the Court and the bar, but it would have been wholly unnecessary to discuss the important question there decided, if it had been supposed that the clause would have admitted of the interpretation given in the present instance by the Vice-Chancellor. For these reasons, this appeal must be allowed.

Bethell.—The effect of your lordship's allowing this appeal is, that the demurrer to the bill in the Court below is allowed.

The LORD CHANCELLOR.—Yes; but there will be no costs of the appeal.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Tuesday, March 17.

ANDREWS v. LOCKWOOD.

Practice—Pleading—Revivor for costs.

Where a decree among other things has directed one party to pay costs to be taxed, but the other party dies before taxation, all the rest of the decree having been performed, a bill of revivor will not lie.

Where, by the decree, deeds are ordered to be delivered up, but there was no statement in the bill of revivor that they had so been delivered up, a plea and not a demurrer is the proper mode of defence.

This was a bill of revivor by the personal representative of a Mr. G. D. Andrews, one of the defendants in the original suit of *Andrews v. Abdy*. (a) It stated that, at the hearing of the original cause, a decree was made whereby it was ordered that the plaintiff's bill should stand dismissed, with costs, to be taxed by the Taxing Master of this court in rotation, and that such costs, when taxed, should be paid by the said plaintiff, William Joseph Lockwood, to the said defendants, Andrews and T. N. Abdy, and that by consent it was ordered that the documents deposited with the record and writ clerk, pursuant to an order in the said decree mentioned, should be delivered to the defendants. That the said defendant, Andrews, had since died, and that the plaintiff was his personal representative, and the bill prayed that the decree might be revived. Lockwood, who was ordered by that decree to pay the costs, put in the following plea to the said bill of revivor:—"That before the said plaintiff exhibited her said bill, that is to say, on the 26th day of May, 1846, the documents mentioned in the decree of the 26th of Feb. 1845, in the said bill stated or referred to, and which were by the said decree ordered to be delivered to the defendants in such decree named, were, in pursuance of such decree, duly delivered to the defendants, to whom the same were, by the said decree, ordered to be delivered; that by the means aforesaid the said decree was, before the filing of the said plaintiff's said bill of complaint, fully performed and executed in all respects, save in so far as respects the taxation and payment of the costs thereby directed to be taxed and paid; and the defendant doth therefore plead the matter aforesaid in bar to the said plaintiff's bill, and to all the relief thereby sought."

The whole question now to be argued was simply whether, upon the death of a party who was directed to receive costs, a bill of revivor lay when nothing remained to be done under the decree but the taxation and payment of costs.

Bethell and Heathfield, in support of the plea.—The rules of the Court are, first, that whenever a party is directed to pay costs, and such payment forms the only matter of the decree, the decree cannot be revived after the death of either party: secondly, if the Court orders something else to be done besides the mere payment of costs, but the only part of the decree which remains to be performed at the time of the abatement is the payment of costs, the suit cannot be revived, and there is no settled distinction between an abatement by the death of the party to pay, and that occasioned by the death of the party to receive the costs. In *Morgan v. Scudamore* (2 Ves. jun. 313), which was heard upon demurrer, Lord Loughborough attempted to draw a distinction between the party entitled to the costs dying, and the party to pay the costs dying; that, however, was a mere *dictum*. The same case was again heard before his lordship, after answer, and then he held that a suit might be revived for costs only, although there had been no taxation. We admit that to have been a departure from the general rule; but that decision

was doubted, and the former practice revived in *Jupp v. Geering* (5 Madd. 375).

Cases cited and commented upon: *White v. Hayward* (2 Ves. 461); *Johnson v. Peck* (2 Ves. 464); *Kemp v. Mackrell* (2 Ves. 579); *Hall v. Smith* (1 Bro. C. C. 438); *Gibb. For. Rom.* 181.

James Parker and Goodvee, contra.—The question is, not as to whether we are to revive simply for the purpose of adjudicating upon the subject of costs. We admit that, if a party die before a decree, you cannot revive for the purpose of adjudication as to costs; but here there has been a final decree for costs; the plaintiff having unjustly filed his bill, which put the defendant to a great expense, the plaintiff was ordered to pay those costs. This, we contend, established a right to the costs as if they had been incurred in any other way. Sir John Leach, in *Jupp v. Geering*, took upon himself to overturn this rule, which had been established by three Lord Chancellors, Lord Camden, Lord Thurlow, and Lord Loughborough, the latter of whom, in *Morgan v. Scudamore*, decided, after reviewing all the cases, that a bill might lie for untaxed costs. Sir John Leach supposed that Lord Loughborough went upon some fanciful analogy to the common law, but we can shew that there is no analogy between the one and the other. Doubtless, in the early times there existed a general understanding that there should be no revivor for costs; but no reason was ever assigned for that rule, although in those times the Courts went even so far as to allow a party to revive even for taxed costs; and this remained so even to the time of Lord King. (*Thorne v. Pitt*, Selw. Ch. Cas. Tem. King, 54; *Lloyd v. Powis*, 1 Dick, 16; *Temple v. Rouse*, 1 Ch. Cas. 17; *Lord Dacres v. Tuile*, 2 Ch. Rep. 127.) This Court, however, has always deemed it a hard rule, and has struggled upon the slightest ground to depart from it. (*Hall v. Smith*, *Johnson v. Peck*, *Kemp v. Mackrell*, 3 Atk. 812; *Blower v. Morrell*, 3 Atk. 772.) [The VICE-CHANCELLOR.—The expression put into Lord Loughborough's mouth by Mr. Veasey is, "Lord Camden overruled the demurrer, as the deeds were set aside for fraud." Now, when words so absurd are put into the mouth of a Lord Chancellor, I must come to the conclusion that he is misreported. In the case of *Jenour v. Jenour* (10 Ves. 572), Lord Eldon, in his judgment, said, "You cannot revive for costs alone; but if they are to be paid out of an estate, you may revive for them." Now it is very remarkable what changes have taken place upon this question. The old practice continued down to the time of Lord Camden; then came his decision. Lord Bathurst revived the former practice. Then Lord Thurlow re-established the practice. Lord Loughborough unsettled it again. After that, Lord Eldon laid down the rule that you cannot revive for costs only. And, finally, we have Lord Redesdale stating as follows:—"A demurrer will also in many cases hold to a bill of revivor brought simply for costs; the Court in general not permitting a suit to be revived for that purpose only, except where the costs have been actually taxed before the abatement happened." 3 ed. p. 164.] Sir John Leach deduces the rule from analogy to that at the common law. But whether at law final judgment be given for plaintiff or defendant, the taxation precedes the final judgment, and there the amount is mentioned in such final judgment, upon which execution afterwards issues. A final decree, however, in a Court of Equity is unlike a final judgment at law, it being the invariable practice in this Court to refer it to the Master to compute what is due. Again, the Master's report or certificate is also unlike a judgment at law, for the only effect of it is to ascertain the *quantum*. And although the certificate for costs does not require confirmation, the process to recover the costs proceeds upon the decree, and not upon the report. No analogy, therefore, whatever exists between interlocutory judgments and final judgment at law, and the relation between the final decree in this Court and the Master's report. Execution issues upon the final judgment at law, but process does not issue upon the Master's report. But upon the assumption that we are wrong in this view of the case, still we submit that by the 18th section of 1 and 2 Vict. c. 110, a decree of this Court must have the same effect to all intents as a judgment at law. The party declared entitled to costs is a judgment creditor forthwith. [The VICE-CHANCELLOR.—Do you think the statute of 1 and 2 Vict. c. 110, gives any new equity? It affords a party in whose favour the decree is made a right to proceed by execution, but does it give any new equity against the debtor? It allows a writ of *fi. fa.* to issue out of this Court, which it did not before, and why should the writ be denied to the representatives of a deceased party? It is said that costs die with the person—but how can that be? If there be a revivor for the smallest matter besides, it revives the decree for costs also. Besides, the defence ought to have been taken by demurrer, and not by plea, as the allegation of the delivery up of the deeds was immaterial.]

JUDGMENT.

The VICE-CHANCELLOR.—I am pleased that this case has been brought forward, and also with the arguments for the bill. The practice stands thus:—

It is unquestionable, and indeed it is admitted by the other side, that, according to the early rule of the Court, a bill of revivor did not lie for costs alone. There were some exceptions—as, for instance, where, as stated by my Lord Eldon, the costs were directed to be paid out of a fund. That the rule, however, existed in the way I have stated, is undeniable; nay, the fact that the chief argument against the rule being on the ground of moral propriety proves its existence. It appears also that, although Lord Camden had taken upon himself to decide in the manner in which Lord Loughborough stated he had done, yet of so little authority was that decision held, that it was expressly overruled by Lord Bathurst. Then we find Lord Thurlow going out of his way to give a right which he otherwise did not think he was enabled to give, by ordering the Master to sign his report. Again, we have the decision of Lord Loughborough, in *Morgan v. Scudamore*, in the year 1796; and it is to be remarked that that decision cannot be taken to have settled the law according to the expressed wish of Lord Loughborough, for Lord Eldon, in *Jenour v. Jenour*, laid down the rule itself generally, namely, "you cannot revive for costs alone; but if the costs are to be paid out of an estate, you may revive for them." He did not think it necessary to give all the exceptions; he stated the general rule, and that the general rule was subject to exceptions. This proves that his lordship was alive to the practice as it existed in his time. Lord Redesdale only gives the general rule that there cannot be a revivor for costs merely; and so he laid down the rule in the second edition of his Book on Pleading in 1787, in the third edition in 1814, and in the last edition in 1828. The question, it appears, came on again in 1820, that being about twenty-four years after Lord Loughborough's decision; and there Sir John Leach, in answering the argument which had been used by Mr. Spence, taking it for granted that what Mr. Trealove stated was the law, except for what was argued by Mr. Spence, addresses himself to that argument; but it was clearly his opinion that if the argument urged by Mr. Spence did not stand in the way, the general rule ought to prevail, and he so decided, which decision still remains undisturbed. And now, after the lapse of twenty-six years, the case comes on. Now I cannot, upon a question of this kind, enter into the original propriety of the practice; but this idea strikes me, that it could not have been conceived to be just that, without any exception, and under all circumstances, and at any time, a bill of revivor might be filed for procuring the payment of costs merely. That would have been creating a perpetuity which no other general rule allows. If a new rule is to be established it must be done by a superior authority. My duty is only to consider what the rule is at the present time; and I do understand it to be thus: that if there be a decree for payment of costs, and such costs are not taxed before the abatement, and they are not within the excepted cases, there cannot be a revivor for those costs merely. I cannot think that the mere circumstance of a something remaining to be done under the decree is sufficient to give a right in perpetuity to revive for costs. Whatever absurdity there may be in the original rule, there would be much greater in allowing this perpetuity. Again, it has been urged that this plea is in point of pleading wrong, because it is contended that it is a plea of an immaterial fact, viz.: that the documents had been delivered up. Upon the best consideration, however, that I can give, I think the fact stated in the plea that the documents were delivered up, was a fact material to be stated, and thus gets rid of the reasoning which might have been adduced in respect of a demurrer. I am, upon the whole, of opinion that the practice is too strongly laid down for me to disturb it, and I must, therefore, hold this plea good.

Plea allowed.

ROLLS COURT.

Friday, May 22.

DUNCOMBE v. LEWIS.

Practice—New Orders—Common order to amend—Irregularity—Discharge.

A bill was filed against two defendants who put in their answers separately; the plaintiff excepted to both for insufficiency, and one of the defendants having submitted, and put in a fresh answer, and the exceptions being allowed as to the other, the plaintiff obtained the common order to amend, and that the latter defendant should answer the amendments and exceptions together; the defendant who had put in a fresh answer to the original bill, answered the amendments, and then the other defendant answered the amendments and exceptions; the plaintiff then obtained the common order to amend.—*Held irregular.*

This was a motion to discharge with costs the common order which the plaintiff had obtained to amend his bill, for irregularity. The bill was filed on the 17th February, 1845, against the defendants, Charles Lewis and Elizabeth Levy, who, on the 19th May following, put in separate answers. On the 10th July the plaintiff excepted to the answer of E. Levy, for insufficiency, and she submitted thereto, and put in a fresh answer on the 24th of September. The

(a) Vol. 5, ante, p. 122.

plaintiff also excepted to the answer of Lewis, and one of the exceptions being allowed, he, on the 7th November, obtained the common order to amend, and that the defendant Lewis might answer the exceptions and amendments together; but as to E. Levy, she had only to answer the amendments, which accordingly she did, on the 17th February, 1846. On the 19th of the same month, Lewis answered the amendments and exceptions; and on the 7th May the plaintiff obtained the common order to amend as against both defendants, and this order it was now sought to set aside for irregularity.

Southgate, in support of the motion, contended that as there had, on the 7th November, been a previous order to amend, the second order was irregular, and ought to be discharged. (*Davis v. Prout*, 5 Beav. 375.) Mrs. Lewis had put in a full answer in September, and there had been two common orders to amend since. It was true that, by the first order, Lewis was to answer amendments and exceptions together; whereas the cases decided on the subject had reference to a full answer, but that made no difference.

Hallett, contra, said the case of *Davis v. Prout* had no application; for it was decided on the 13th Order of 1831. Now the 32nd and 33rd Articles of the 16th Order contained special provisions, the former for the case in which there was only one answer, and the latter where there were several. Both defendants in this case put in an insufficient answer, and each was excepted to. Mrs. Levy submitted, and put in a fresh answer; Lewis did not, but went to the Master without success. The plaintiff then obtained an order to amend, and that the defendant Lewis might answer the amendments and exceptions together. Lewis did so on the 19th of February, and within four weeks after that answer was to be considered sufficient. The plaintiff might, under the 66th of the New Orders, obtain the common order to amend, for an insufficient answer was no answer at all; and, therefore, the order so obtained was the first after answer. (*Dalton v. Hayter*, 7 Beav. 576.) The 16th Order, Article 33, at all events, means that there may be one order of course, after the answer of the several defendants is to be deemed sufficient.

The MASTER of the ROLLS.—The question is not whether the plaintiff is entitled to amend at all, but whether he is at liberty to do so by virtue of a common order of course; and I am of opinion that he is not. The 66th of the New Orders says, "One order of course for leave to amend a bill, as the plaintiff may be advised, may be obtained by the plaintiff at any time before filing (or undertaking to file) a replication, and within four weeks after the answer, or the last of several answers, is to be deemed to be sufficient." So far Mr. Hallett has contended for the right construction, that there may be one order after the last answer, that is, the last of several defendants, is sufficient. But then the order goes on to say, "But no further order, of course, for leave to amend a bill is to be granted after an answer has been filed, unless in the case provided for," which this is not. Now, there has been an order for leave to amend, and an amendment; then answers, and then an order for leave to amend. Well, is not that contrary to the 66th Order, and is it not a further order? But it is said to be inconsistent with the 33rd Article of the 16th Order; but the Orders are all dependent on one another. The 16th Order, Art. 33, says, "In cases where there are several defendants who do not join in the same answer, the plaintiff (if not precluded from amending, or limited as to the time of amending, by some former order) may, after answer, and before replication, or undertaking to reply, at any time within four weeks after the last answer is deemed or found to be sufficient, obtain one order of course, for leave to amend his bill." Well, there has been one order of course obtained, and the 66th Order says, "No further order" is to be granted; the plaintiff is, therefore, "precluded" from obtaining the order in question. There is no doubt about the meaning of the Orders, and I would recommend gentlemen to construe them more by the words that are in themselves than by comparing them with each other. Something has been said about an insufficient answer being no answer at all, but that is only a way of speaking we have in this court. I wonder whether, in case of a defendant committing perjury in his answer, it would be any answer to an indictment to say an insufficient answer is no answer? After all, however, the plaintiff may obtain an order to amend, on special application. I discharge the order with costs.

Friday, May 22.

SMITH v. SMITH.

Practice—Service of subpoena.

Glasse, in this case, which is reported 7 Law T. 155, produced the affidavit of the person who had called on George Smith, the father-in-law, and Mary Smith, the mother of Rosina Smith, the infant, stating that she was informed that the latter intended to remain in Scotland, and was not expected to return to this country; and he now renewed his application for the order, and to fix a time for appearance and answering.

The MASTER of the ROLLS allowed a fortnight to appear, and six weeks to answer.

RAMSBOTTOM v. FREEMAN.

Practice—Solicitor and client—Conduct of solicitor—Jurisdiction.

The defendant Freeman renewed his application in this case (reported 7 Law T. 155), and read the affidavits on both sides, from which it appeared to be admitted on both sides that the money was paid, and that the relation of solicitor and client existed; but Freeman alleged that Jervis solicited him to deliver the papers into his possession, and to be allowed to undertake the business, whereas Jervis denied this, and alleged he had been requested by Freeman; and as to the money, though Jervis admitted the receipt of it, yet he denied that it was for a particular purpose, as alleged by Freeman. As to the transaction itself in reference to the dismissal of the bill, Freeman went into a long detail of circumstances with a view to shew that he had been deceived and "deceived," with promises and pretences on the part of Jervis that he would take the necessary steps to get the bill dismissed, and that nothing had ever been done. He said he had been frequently sent for by Jervis to come to his house, at a considerable loss of time and at expense; and he had constantly promised, but never performed any thing; that he once pretended to consult a person in his (Freeman's) presence as to the practicability of obtaining the order of dismissal, and told him he would have it with 20l. or 30l. costs; that 1l. 8s. 6d. part of the money, was expressly given for the purpose of making the provisional assignee a party, and that Jervis said the necessary steps had been taken to bring on the motion, which was then in the paper; that he frequently brought him to Court to see the business disposed of, but either the Court had risen, or some other obstacle intervened to prevent the motion coming on; that he stated to him he had filed a long affidavit respecting the matter, but he had never produced that to him, nor indeed had given him any reason, except his own word, to suppose he had done any thing. He then stated several personal matters as to the solvency, &c. of Jervis, and expressed a hope that the Court would interfere.

Wright, for Mr. Jervis, said the receipt of the money was admitted, and it was wrong to make this expensive motion, the proper course being to apply for the common order to tax, which would have cost about 5s. 6d. only. There was no reason to go out of the common course of the Court. There was a sum of 20l. due to Mr. Jervis; and he denied the charges brought against him; and, as to the other irrelevant allegations, he did not think it was proper to answer them. There was an order to tax already in other suits, and the taxed costs were not paid. Mr. Jervis cannot give up the money, even if he would, for he may have to account for it to the provisional assignee, who does not concur.

The MASTER of the ROLLS.—This is a very painful and distressing case. The application is made in a form in which I have no jurisdiction to grant an order. The conduct of the solicitor is not satisfactory, for he has not met the charge. It is admitted that the relation of solicitor and client exists, but the parties offer no explanation as to how the relation arose, and as to the purpose to which the money was to be applied. It is clear Freeman has a right to have a bill of costs delivered and taxed, on his undertaking to pay any thing that may be found due, and if the balance should be the other way, he has a right to recover the difference. But Jervis says he did business in that and other suits; whereas Freeman alleges he did not, but entirely deluded him. The matter is a proper one to be investigated; but how? If there had been the common order to tax, Jervis would not have got a penny but for such business as he could shew he performed; the bill, therefore, should have been delivered and taxed. On the other hand, if he has done wrong, there is another way of proceeding; but in neither case is a motion like this the proper course. A number of calumnious allegations have been made, which are irrelevant to the question, and therefore improper. I make no order in this case; and I give no costs, for I am not satisfied with the conduct of Mr. Jervis.

Monday, May 24.

v.

Practice—Answer—Serjeant-at-arms.

If an order for a Serjeant-at-arms, for want of an answer, be obtained, and before it is drawn up or executed the answer is filed, it is unnecessary to move to suspend the drawing of it up, as it would not be served after notice of the filing of the answer; and if the answer be found sufficient it ultimately falls to the ground.

Turner moved to suspend the drawing up of the order for a serjeant-at-arms, for want of an answer which had been obtained on Friday last, on the ground that the answer was filed before 4 o'clock on Saturday, the order not having been then executed or even drawn up.

The MASTER of the ROLLS. They cannot serve the order now, as the answer is in; the execution of the order is therefore virtually suspended till the

answer is found sufficient or insufficient. It would be a mistake to execute an order of a serjeant-at-arms when the answer is in, and they have notice of it; you are, therefore, safe till the answer is found sufficient or insufficient, after exceptions; and if it should be found sufficient, the order falls to the ground.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Monday, May 4.

REG. v. PELHAM.

Indictment for ill-treating a lunatic, sufficiency of. An indictment for ill-treating a lunatic in one count charged, that whilst the lunatic was under the care and control of the defendant, the defendant did certain things. Held, no sufficient averment that the lunatic was under the care and control of the defendant.

In another count it charged, that the lunatic resided with the defendant; that the defendant had sufficient means for the support of both of them; and that the lunatic was incapable of taking care of himself, whereby it became the duty of the defendant to take care of the lunatic. Held, that no such duty was shewn.

The same count then went on to charge various acts of omission and commission, to the great damage and peril of the said lunatic. Held insufficient, for not shewing that any injury had been actually sustained, or that the acts charged had been so long continued that injury must, in all probability, have resulted.

Indictment.—Upon the first and fourth counts the defendant was acquitted. The second and third were as follows:—

Second Count.—And the jurors aforesaid, upon their oaths aforesaid, do further present that the said Harriet Eleanor Pelham, being such person as aforesaid, and unlawfully and maliciously contriving and intending to hurt and injure the said Brent Spencer, being a person of unsound intellect and incapable of taking care of himself, did, whilst the said Brent Spencer, being such person as last aforesaid, was under the care, custody, and control of the said Harriet Eleanor Pelham, and whilst the said Harriet Eleanor Pelham received divers sums of money for his support and maintenance, with force and arms, &c. to wit, on the said fourteenth day of May, in the year of our Lord 1844, and for a long space of time, to wit, for the space of ten years before then, and at the parish aforesaid, in the county aforesaid, cruelly, inhumanly, unnecessarily, maliciously, and unlawfully, keep, confine, and imprison the said Brent Spencer in the dark, cold, and unwholesome room aforesaid; and did, during the time last aforesaid, cruelly, inhumanly, unnecessarily, maliciously, and unlawfully neglect and omit to clothe the body of the said Brent Spencer; and did then and there suffer and permit the body of the said Brent Spencer to be naked and foul, and covered with soil, excrement, and vermin; and did also then and there suffer and permit divers large quantities of filth, soil, excrement, and vermin to collect and remain in the said room, and there to cause divers noisome, noxious, offensive, and unwholesome smells, vapours, and stench; and did also then and there keep the said Brent Spencer without sufficient and proper air, warmth, and exercise necessary for the health of the said Brent Spencer, to the great damage and peril of the said Brent Spencer, of the evil example of all other persons, and against the peace of our said lady the Queen, her crown and dignity.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present that the said Brent Spencer was the illegitimate son of the said Harriet Eleanor Pelham, and that for a long space of time, to wit, for the space of ten years, the said Brent Spencer was of unsound intellect, and incapable of taking care of himself, and during all that time the said Brent Spencer resided with the said Harriet Eleanor Pelham; and the said Harriet Eleanor Pelham had possessed and enjoyed ample and sufficient means for the comfortable support and maintenance of herself and the said Brent Spencer, whereupon it became, and then was, the duty of the said Harriet Eleanor Pelham, during all the time aforesaid, to take due and proper care of said the Brent Spencer. Nevertheless, the jurors aforesaid, upon their oaths aforesaid, do further present that the said Harriet Eleanor Pelham, being an evil disposed person, did not, nor would, during the time aforesaid, take due or proper care of the said Brent Spencer, but on the contrary thereof, during that time, to wit, in the parish aforesaid, in the county aforesaid, cruelly, inhumanly, unnecessarily, maliciously, and unlawfully, did keep and confine the said Brent Spencer in a dark, cold, and unwholesome room, in and parcel of a dwelling-house, situate and being in the parish aforesaid; and did also then and there neglect and omit to provide and furnish the said Brent Spencer with proper and requisite clothing for the body of him, the said Brent Spencer; and did then and there

suffer and permit the body of the said Brent Spencer to be, and the same was, during the time aforesaid, foul, and covered with soil, excrement, and vermin; and did also then and there suffer and permit divers large quantities of filth, soil, excrement, and vermin to collect and remain in the said room, and there to cause divers noisome, noxious, offensive, and unwholesome smells, vapours, and stench; and did also then and there keep the said Brent Spencer without sufficient and proper air, warmth, and exercise, necessary for the health of the said Brent Spencer, to the great damage and peril of the said Brent Spencer, to the evil example of all other persons, and against the peace of our said lady the Queen her crown and dignity.

A rule nisi having been obtained to arrest the judgment upon those two counts,

Watson, Q. C. on the first day of last Easter Term, shewed cause; and on that and the following day

E. James and Phinn were heard in support of the rule. Many objections were taken to the indictment; but as two only are noticed in the judgment of the Court, it is not thought necessary to give the argument at length.

The following cases were referred to: *R. v. Marriott*, 8 Car. & P. 425; *R. v. Edwards*, ib. 611; *Urmoston v. Neucomen*, 4 Ad. & Ell. 899; *R. v. Friend*, R. & R. C. C. 20; *R. v. Smith*, 2 Carr. & P. 449; *R. v. Squire*, 1 Russ. on Crimes, last ed. 490; *R. v. Self*, 1 Leach, 137; 1 East's P. C. c. 5, s. 13; *R. v. Saunders*, 7 C. & P. 277, and the note to that case in 1 Russ. on Crimes, 492; *R. v. Maude*, 2 Dowl. N. S. 58; 11 L. J. N. S. M. C. 120; *R. v. Clendon*, 2 Stra. 870; 2 Ld. Raym. 1572; *R. v. Benfield*, Burr. 980; *Campbell v. The Queen*, 1 Cox, C. L. Cas. 269; *R. v. Somerton*, 7 B. & C. 463; *Smith v. Adkins*, 8 M. & W. 362.

JUDGMENT.

LORD DENMAN, C. J. now delivered judgment.—There were two counts in this indictment on which the defendant was convicted. One was objected to for want of a positive averment that the lunatic was under the defendant's care when she committed the acts for which she stood indicted. They were all said to have been done whilst the unfortunate lunatic was under her care or control, but there was no averment that he ever was so. Some cases were quoted to shew that this followed by necessary implication, from the averment, that the acts were done whilst he was under her control; but none of them go to that extent. With respect to the other count, there was no averment that the lunatic was under the care and control of the defendant, so as to shew that there was any duty in her to take care of her son. Even if such duty had been shewn, acts of commission and omission were charged against the defendant as likely to produce injury; but it was not alleged that injury was actually produced, and it is by no means a necessary consequence of such acts, nor was it alleged to have been the actual consequence of them: nor were the acts stated to have continued so long that injury must or probably would result. There is, therefore, nothing at most beyond a probable conjecture to shew that the patient's sufferings, or that the supposed injuries, were at all connected with his mother's misconduct, and the judgment must therefore be arrested. *Rule absolute.*

Tuesday, May 26.

DOR dem. MOLESWORTH v. SLEEMAN.
Reputed manor.

Upon a question of manorial rights or boundaries, evidence of reputation is admissible where the manor is shewn to be a reputed manor, just as much as where it is shewn to be an existing manor.

Ejectment for certain strips of land called land-scores, extending eighteen feet from the limit of the manor into the adjoining land. At the trial before Coleridge, J. at the Devon Spring Assizes, 1845, the question was treated as one of parcel or no parcel; and there was some evidence, although very slight, of the existence of a manor called Affland. There was stronger evidence of it being a reputed manor. In summing up, Mr. Justice Coleridge told the jury that the reasons which rendered evidence of what old people had said admissible to shew the existence of a manor failed when it was shewn that the manor in question was only a reputed manor,—“that which may or may not have been formerly a manor,”—and that if they thought Affland was a reputed manor only, they were to give no weight to the declarations which had been received, for that then the parties who had made these declarations had no more to do with the boundaries of Affland than of a private estate; but that if they considered it was a manor, they were then to give weight to this evidence by reputation. The jury found for the defendant.

In Easter Term, 1845, Greenwood obtained a rule nisi for a new trial for misdirection, against which

Crowder, Q. C. Montagu Smith, and Merivale (May 4) shewed cause.—Evidence of reputation is only used as to manors, but when it is proved that it is not a manor, but has been only a reputed manor, the effect of admitting such evidence would be to extend the rules hitherto followed. Even once calling it a manor would be sufficient to render evidence of

boundary by reputation admissible. This is not a claim of waste, but of parcel or no parcel. A reputed manor is that which has ceased to have a court, for defect of suitors; but other rights of a public nature may exist, and those may be provable by reputation; but not so where it is a simple question of boundaries between two proprietors. In *Soane v. Ireland* (10 East, 259) a manor was proved to have existed. Here there was only slight evidence of a manor by reputation.

Greenwood, contra.—This evidence is equally admissible whether it is a manor or a reputed manor. A reputed manor is that which has once been a manor, but which has ceased to have the necessary legal incidents. It is not merely that it has been called a manor. *Sir M. Finch's case* (6 Rep. 63); *R. v. Chester* (Skinner, 661); *Watkin's Copyholder*; *Coke's Copyholder*, p. 60; *Steele v. Prickett* (2 Stark. 468, 5 Esp.); *Soane v. Ireland* (10 East, 259), were cited. *Cur. adv. vult.*

In Trinity Term the Court delivered judgment as follows:—

JUDGMENT.

LORD DENMAN, C. J.—In this case the plaintiff claims the property in question, seeking to prove that it is his by shewing it is within the boundary of his reputed manor; as to which boundary my learned brother Coleridge told the jury they were to consider whether this was a reputed manor or a manor, and if it were not a manor, evidence of reputation ought not to be considered by them; because in that case there was no probability in its favour, as there were no inhabitants of the manor interested in ascertaining the evidence. On much consideration, we cannot accede to this doctrine; for by a reputed manor is commonly understood to be that which has been a manor, though from some supervening cause it has ceased to be so. There seems to be no reason why such conversations as were related might not have been held during the existence of the manor, and used to prove that the manor existed. There is no rule of law which confines such conversations to persons who are tenants of the manor, because it is a public question, in which all the neighbourhood would be likely to express their opinions. Two cases have been cited from 5 Esp. and 10 East, in which this is clearly made to appear. The first of them is like the present in all points, and it is clearly made there to appear that the defect of freeholders capable of doing suit in the manors does not prevent that which has been a manor from being so. We therefore think the question was wrongly left to the jury, and the rule must be absolute.

Rule absolute.

DOLBY v. RIMINGTON.

Prohibition.

If the Court can see, upon the face of the proceedings in the Ecclesiastical Court, that matters of purely temporal cognizance (as parochiality, and the existence of a custom) are put in issue, prohibition will be granted.

Declaration in prohibition.—This was a demurrer to a plea. The argument turned almost entirely upon the effect of the proceedings in the Ecclesiastical Court, as set out upon the pleadings.

Peacock (with whom was Unthank), in support of the demurrer. *Cowling, contra.*

Byerley v. Windus (5 B. & C. 1); *Earl of Beauchamp v. Turner* (10 A. & E. 218); 3 Burn's Ecclesiastical Law, 190, 263; *Scott v. Wall* (Hob. 247); *Boothby v. Bailey* (Hob. 696); *Hullock v. University of Cambridge* (1 Q. B. 593), were cited.

Cur. adv. vult.

On June 2, judgment was delivered as follows:—

JUDGMENT.

LORD DENMAN, C. J.—This was a process of prohibition, the question arising upon demurrer to the plea to the declaration, which makes it necessary to advert with some particularity to the declaration. The declaration states that the plaintiff was libelled in the Spiritual Court, and the libel did, amongst other things, allege, firstly, that the parish of Foston, in the county of Lincoln, actually was part of and within the parish of Long Bennington, in the same county, during the period therein specified; 2ndly, that for the like period a laudable usage prevailed for the inhabitants of Foston to maintain their own parish church and contribute to the repair of the parish church of Long Bennington, and all necessary charges and expenses laid out and expended by the churchwardens, in a certain proportion stated in the libel. The declaration, after noticing other parts of the libel not material to be stated, proceeds:—“And the now plaintiff gave in the said episcopal and consistorial court a negative issue to the said libel, denying thereby the allegations of the said libel;” so that we must understand (nothing appearing to the contrary) that the first and second allegations in the said libel above set forth, and which contain matter of temporal cognizance, were denied, or, as we should term it, put in issue, in the court below. The declaration, however, goes farther to state the course of proceeding in the Ecclesiastical Court:—“the now plaintiff, by way of answer to the said libel, did by his personal answer plead and allege amongst other things,”—and then follows a distinct denial that Foston is part

of or within the said parish of Long Bennington; and also that there is any such usage or custom that Foston, besides maintaining its own parish church, should contribute in a certain proportion to the repair of that of Long Bennington, or all or any of the necessary expenses otherwise incurred by the churchwardens of Long Bennington. So we see a second distinct and formal denial pleaded to the two formal allegations in the libel, containing matter of temporal cognizance. The declaration, however, proceeds still further, and states such proceedings were thereupon had that the now plaintiff allege that Foston was a distinct and separate parish, and had a parish church, which had been, time out of mind, maintained by the parishioners of Foston aforesaid, and that the same was not a hamlet, chapel, or township belonging to or within the said parish of Long Bennington, and that from time whereof the memory of man is not to the contrary, Foston had been held and considered a separate and distinct parish to all intents and purposes. Then follows, in respect of the said suit, a statement, that it was falsely alleged in the libel, that from the time therein mentioned an ancient usage had been observed by Foston, by which the inhabitants of Foston contributed to the support of the parish church of Long Bennington in the proportion of three to eight, and that when the churchwardens of Long Bennington levied 8l. for the repair of the said church, or in due execution of their office of churchwardens, the inhabitants of Foston had been used to raise towards the same 3l. as their due proportion of such charges and expenses; and the now plaintiff expressly alleged and propounded there was no such usage or custom of Foston contributing in any proportion towards the repair of the parish church of Long Bennington; and the inhabitants of Foston never had been summoned to a vestry held for Long Bennington for the purpose of making a church-rate or any other purpose. It is observable that the usage or custom for Foston to contribute in the terms stated, that is, towards the repair of the church of Foston, and also all repairs and expenses and charges laid out by the churchwardens of Long Bennington have been twice denied by the now plaintiff, first by a negative issue, and again by his personal answer; but in the latter part of the passage just quoted, the expense of the churchwardens is omitted; and that circumstance was relied upon in the argument in support of the plea, to which we will now refer. It states that from the time whereof the memory of man is not to the contrary, there has been, and still is, an ancient usage, custom, and prescription; and during all the time aforesaid, has been observed and prevailed, by which Foston has supported its own chapel, and contributed to the support and reparation of the parish church of Long Bennington, in a certain proportion already specified as in the said libel is in that behalf mentioned. Now the usage stated in the libel is set forth in the declaration, and there is nothing before us respecting that libel except what is so put; it is not that stated in the plea. The part respecting the expenses of the churchwardens, contained in the libel, is omitted in the plea; the usage or custom, therefore, found in the Ecclesiastical Court is another and a different one from that contained in the libel; but besides this, the plea is confined to the existence of the usage or custom by virtue of which the parishioners of Foston were required to contribute a proportion of three to eight towards the repairs of the parish church of Long Bennington independently of their own repairs. It appears, however, upon the statement of the proceedings contained in the declaration—as has been already observed, they are before us in no other manner—that another issue has been twice raised in the Ecclesiastical Court, viz. whether Foston be a part of or within the parish of Long Bennington; and the question is purely of temporal cognizance, and to be decided according to the rules of common law. Upon the whole, we are of opinion that the plea discloses no sufficient ground for awarding a commutation, and that our judgment must be for the plaintiff.

Judgment for the plaintiff.

BAILEY v. WALFORD.

Case for false assertion.

A mere false assertion by which another person is misled to his injury is no ground of action.

But if such false assertion is made knowingly and willfully, and with the view to the advantage of the party who makes it, in consequence of the person to whom it is made believing it, such person acting upon it, and suffering damage, may sue in case for false representation.

This was a declaration in case for a false representation, to which the defendant demurred generally. The declaration was very long and special, but the substance is stated in the judgment.

Applied, in support of demurrer.—The declaration does not shew any special duty on the part of the defendant to inform the plaintiff, and if the plaintiff was misled it was his own fault. *Pasley v. Freeman* (3 T. R. 51); *Bailey v. Merrill* (3 Bulst. 94); *Kelly v. Partington* (5 B. & Ad. 645); 5 & 6 Vict. c. 100; *Vernon v. Keys* (12 E. 632), were cited. The inuendo

as to the false representation is also larger than is warranted, and the very words should have been set out. (*Guttsale v. Mather*, 1 M. & W. 495.)

Browne (with him *Simon*), contra.—It was not in the plaintiff's course of business or power to ascertain the truth of the assertions of the defendant, for there is no opportunity of inspecting the copyright of the designs. But at any rate the assertion was made falsely and wilfully, and with the view to gain, by causing damage to the plaintiff. (*Evans v. Collins*, 4 Q. B. 804; *Taylor v. Ashton*, 11 M. & W. 401.) There is no necessity to set out the exact words used. (*Turnley v. McGregor*, 6 Sc. N. R. 906.)

Aspland, in reply. *Cur. adv. vult.*
In Trinity Term, judgment was delivered as follows:—

JUDGMENT.

LORD DENMAN, C.J.—The declaration in substance states that the plaintiff was a dealer in printed silk goods, and had sent to defendant divers lots of such goods, the last lot of which contained handkerchiefs which had been printed by the plaintiff in a certain ornamental pattern, and that he was about to print others of the same pattern for profit, all of which were sold to the defendant; yet the defendant, artfully contriving to deceive, injure, and defraud the plaintiff, and induce him to desist from printing the same, and deprive him of the profits, and put him to great unnecessary expense, falsely, fraudulently, and deceitfully represented, and affirmed to the plaintiff, of and concerning the said last lot of the said handkerchiefs, that in the said last lot there were copies of a registered pattern, and the parties interested in the pattern intended to proceed against the defendant in the most expensive manner, namely, by injunction and order of the Court of Chancery, thereby meaning that the said pattern was a copy of the pattern registered according to the statute, whereas in fact no such pattern had been registered, and no party did so intend, as the defendant well knew; in consequence of which false assertion the plaintiff was induced to take a long journey from Glasgow to London, for the purpose of inquiring into such matter, and satisfy the party that he was injured in his trade, and refrained from making goods of that kind according to orders received. The defendant demurred generally. The judgment which was given in this Court in *Evans v. Collins*, affirming the proposition that every false statement made by one person and believed by another, and so acted on as to bring loss on him, constituted a grievance for which the law gives a remedy by action, has been overruled by the Exchequer Chamber, which did not deny the authority of *Humphreys v. Platt* in the House of Lords, but thought that it might be distinguished from *Evans v. Collins*. Whether, in point of reason that is satisfactory we need not inquire, for having been established by a Court of Error it must prevail, and on the more general subject we must admit the reasonableness of the doctrine there laid down, for if any untrue statement, which occasions loss or damage, would found an action at law, a man might sue his neighbour at any moment for communicating erroneous information, such, for instance, as having a conspicuous clock too slow by which the plaintiff might be prevented from attending some duty. This doctrine, therefore, must be restrained within some reasonable limit; but an averment that the falsehood of his statement was known to him, and that he knowingly and wilfully uttered it, seems to carry the matter somewhat further. If the defendant was under any legal obligation to state the truth correctly to the plaintiff, that would be a grievance in misleading him for which an action on the case might lie, still more so if he made a false representation with a view of some unfair advantage to himself. Now, here, on minutely examining the declaration, although not very scientifically drawn, we think it sufficiently appears that the defendant uttered knowingly a deliberate falsehood on this subject with a view to his own advantage. It is averred he did so with a design to deprive the plaintiff of the benefit of the last lot of goods for his own sole use, and this might have been effected in the manner alleged by deterring the plaintiff from bringing his goods to market. The defendant has no right to say the plaintiff was wrong in giving him credit for the truth of what he said. There is no doubt that the special damage would naturally follow from the confidence of the plaintiff. We think, therefore, the plaintiff has laid a good cause of action, and the demurrer must be overruled. The objection that the innuendo was too large as laid in the declaration is answered by the remark that no innuendo was required.

Judgment for plaintiff.

GILES v. GILES.

Independent conditions.

An agreement recited that the father of the defendant made his will, and therein directed his debts to be paid; that he had made a former will, and afterwards disposed of some of his property contained in that will, so as to make a considerable alteration as to the interest the children would take after his death; and then it recites that the parties were desirous to take equally, as they would have done if the original will had stood,

and therefore the defendant, in consideration of natural love and affection to the plaintiff and his sister, and for other good causes, agreed to permit the plaintiff to occupy all that part of the lands and premises in his possession until the 29th of September, which would be in the year 1843; the plaintiff paying, therefore, on the said last-mentioned day, that is, on the 29th of September, 1843, to the defendant the sum agreed upon, 30l. as rent for the same, and then to deliver up the same premises to the defendant in good tenantable repair, and in the meantime to manage the premises in a husband-like manner, and according to the custom of the country, and to permit the defendant to enter for the arrears of crop at the usual time; and upon the plaintiff, his executors, administrators, and assigns, so quitting the said premises, and paying the said rent, and observing the other stipulations, and releasing the defendant from all claims of his under the said will, and also releasing and quitting the defendant, his heirs, and so on, from all the freehold and leasehold lands and hereditaments which were to each given by the former will, and which the plaintiff did thereby agree to do, he the defendant said he would well and truly pay unto the plaintiff the sum of 200l. with the interest of 4l. 10s. per annum, to be calculated from the 29th of May, 1842. And by the said agreement it was also further agreed, that all deeds and releases that might be required by the defendant, pursuant to these presents, should be prepared by the attorney of the defendant at his own expense. The declaration went on to state that the plaintiff was ready and willing to deliver up the premises, and stated also that he was ready and willing to execute the release; and then says, that although no release was prepared by the attorney of the defendant, according to the said arrangement, yet the defendant did not pay the money. The defendant traversed by his second plea the readiness and willingness to quit and deliver the premises, and in the third the readiness and willingness to release.—Held on demurrer, that the second plea was good, because the conditions were concurrent and not conditions precedent, or wholly independent, but that the third was bad as tendering an immaterial issue.—Held also that the second was not too large a traverse.

Demurrer to plea.—This was a question as to whether certain conditions were precedent or independent. The judgment sets out the pleadings sufficiently.

Buff, C.C. (May 1) argued in support of the demurrer.

M. Smith, contra.
Pordage v. Cole (1 Williams's Saund. 319); *Campbell v. Jones* (6 T. R. 572); *Carpenter v. Cresswell* (1 M. & P. 66); *Stavers v. Curking* (3 B. N. C. 355); *Chanter v. Leese* (4 M. & W. 295), were cited.

Cur. adv. vult.

JUDGMENT.

In Trinity Term, judgment was delivered as follows:—

PATTON, J.—This was an action on an agreement which was recited, that the father of the defendant made his will, and therein directed his debts to be paid; that he had made a former will, and afterwards disposed of some of his property contained in that will, so as to make a considerable alteration as to the interest the children would take after his death; and then it recites that the parties were desirous to take equally, as they would have done if the original will had stood, and therefore the defendant, in consideration of natural love and affection to the plaintiff and his sister, and for other good causes, agreed to permit the plaintiff to occupy all that part of the lands and premises in his possession until the 29th of September, which would be in the year 1843; the plaintiff paying, therefore, on the said last-mentioned day, that is, on the 29th of September, 1843, to the defendant the sum agreed upon, 30l. as rent for the same, and then to deliver up the same premises to the defendant in good tenantable repair, and in the meantime to manage the premises in a husband-like manner, and according to the custom of the country, and to permit the defendant to enter for the arrears of crop at the usual time; and upon the plaintiff, his executors, administrators, and assigns, so quitting the said premises, and paying the said rent, and observing the other stipulations, and releasing the defendant from all claims of his under the said will, and also releasing and quitting the defendant, his heirs, and so on, from all the freehold and leasehold lands and hereditaments which were to each given by the former will, and which the plaintiff did thereby agree to do, he the defendant said he would well and truly pay unto the plaintiff the sum of 200l. with the interest of 4l. 10s. per annum, to be calculated from the 29th of May, 1842. And by the said agreement it was also further agreed, that all deeds and releases that might be required by the defendant, pursuant to these presents, should be prepared by the attorney of the defendant, at his own expense. The declaration went on to state that the plaintiff was ready and willing to deliver up the premises, and stated also that he was ready and willing to execute the release; and then says, that although no release was prepared by the attorney of the

defendant, according to the said arrangement, yet the defendant did not pay the money. The pleas were non assumpsit, and then that the plaintiff was not ready and willing to quit and deliver up the said premises so in possession of the plaintiff, as in the agreement mentioned; or to pay the said rent in the manner and form as the plaintiff has alleged in the declaration; and then there is a further plea, that the plaintiff was not ready and willing to release the defendant in manner and form. Then the first question on this state of the pleadings is, whether the declaration is sufficient, and it is objected to on the ground that the plaintiff had only averred a readiness and willingness to deliver up the premises and to pay the rent and release the defendant; whereas the defendant contends those things were conditions precedent to his the defendant's paying the 200l. under the agreement, and undoubtedly the declaration ought to have averred an actual performance of those things. The plaintiff, on the other hand, contended that those things to be done by him, and the payment of the 200l. by the defendant, were independent acts altogether, and the averment of readiness and willingness is unnecessary and not traversable, and therefore may be considered an immaterial issue. We think the plaintiff is wrong in his view, and that these acts are clearly not independent. The words are upon the plaintiff doing so and so, the defendant promises to pay 200l.; the time for paying is not fixed by the agreement itself, and cannot be fixed otherwise than by the plaintiff doing the acts required on his part. The case of *Pordage v. Cole* (1 Saund. 320), cited in the argument is one of importance; there were also others cited in the notes to *Peters v. Ops* (2 Saunders, 352) quite as important, and more strictly applicable to the present case. On consideration of those cases and the intention of the parties in the agreement in this case, as shown by the agreement itself, we are of opinion that the acts to be done by the plaintiff were not conditions precedent—not independent but concurrent with those to be done by the defendant, and therefore it was sufficient for the plaintiff to aver readiness and willingness to do them; but if it was necessary for him to make the averment, it follows that the averment was traversable, and therefore the plaintiff's demurrer to the pleas on the ground that they tendered an immaterial issue cannot be sustained, except, indeed, as to the third plea for other reasons. But the plaintiff objects to the pleas on other grounds; to the second he objects that it is multifarious, inasmuch as it puts in issue two distinct things, the plaintiff's readiness and willingness to pay the rent, and also to deliver up possession. Now the plaintiff was bound to do both acts; the issue therefore does not cast on him further proof than the averment; and although he is ready and willing to do either, it does not necessarily follow the defendant was bound to traverse them separately. The principle laid down in *Stuhls v. Lanson* (1 M. & W. 728); *Drewe v. Lanson* (11 A. & E. 529); and *Moore v. Boulcott* (1 Bing. N. C. 323), is that a traverse is too large where it casts more proof on the other side than is necessary to maintain the pleadings which contain an allegation traversable. That is not so here; therefore we think the second plea not objectionable on that ground; the judgment, therefore, should be for the defendant on that plea. As to the third plea, the plaintiff objects that as it appears by the agreement set out in the declaration the release was to be given to the defendant, was to be prepared by the defendant's attorney, and as it is averred in the declaration that no such release was prepared, the plaintiff's readiness and willingness to have executed the release if prepared has become immaterial; and we think this objection must prevail. If no release was prepared by the defendant's attorney, the plaintiff might still sue the defendant for the money, whether he was ready to have executed it or not; indeed, if none were prepared, it would be sufficient for the plaintiff to prove his willingness to have executed it, for he was not bound to call upon the defendant to prepare the release. If, on the other hand, the release was prepared by the defendant, he should have pleaded the fact, and shewn the refusal by the plaintiff to execute it. On the demurrer to this plea we think the issue is immaterial, and the judgment must be for the plaintiff.

Judgment for plaintiff on the third plea, for the defendant on the second.

Tuesday June 2.]

MAY v. BURDETT.

Pleading—Action on the case for injury committed by a monkey—Averment of negligence.

In an action on the case for an injury committed by an animal kept by the defendant, it is sufficient to allege the mischievous propensity of the animal and the defendant's knowledge of that propensity, without averring that the defendant negligently kept such animal; for the gist of the action is the keeping it after notice of its propensity.

The declaration was in case for an injury done to the plaintiff by a monkey kept by the defendant, but as the form of it, as well as the objections taken to

it, are so fully stated in the judgment of the Court, it is thought unnecessary to repeat them here.

Watson and Couch (Jan. 15) shewed cause against a rule which had been obtained to arrest the judgment; and in addition to the authorities mentioned in the judgment they cited the Pleader's Assistant, 103, 117; Lilley's Entries, 29; Liber Placitandi, p. 40, pl. 56; Morgan, 443; Rastall, 556; 2 Wentw. 437; Vin. Ab. Actions (H. & H. 2); *Sketchel v. Elltham*, Freem. 534, pl. 722; *Bayntine v. Sharp*, 1 Lutw. 90, cited in *Jenkins v. Turner*, 1 Lord Raym. 109; 2 Salk 662.

Cockburn, Q.C. on the same day, and *Pickering*, on Jan. 26, contra, cited, Anon. 1 Vent. 295; 2 Lev. 172; Com. Dig. Pleader, P. 2, 8; *Brock v. Copeland*, 1 Esp. 208; *Blackman v. Simmons*, 3 Car. & P. 138; *Hartley v. Harriman*, 1 B. & A. 620; *Curtis v. Mills*, 5 Car. & P. 489; *Jones v. Perry*, 2 Esp. 482; *Jordin v. Crump*, 8 M. & W. 782; *Beck v. Dyson*, 4 Camp. 198; *Hogan v. Sharpe*, 7 C. & P. 755.

Cur. adv. vult.

JUDGMENT.

LORD DENMAN, C.J. now delivered the judgment of the Court.—A motion to arrest judgment in an action on the case, for keeping a monkey which the defendant knew to be accustomed to bite people, and which bit the female plaintiff, the declaration stated the defendant wrongfully kept a monkey, well knowing it was of a mischievous and ferocious nature, and used and accustomed to attack and bite mankind, and that it was dangerous to allow it to be at large; and that the monkey, while the defendant kept the same, did attack and bite and injure the female plaintiff, laying special damage. It was objected, on the part of the defendant, that the declaration was bad, for not alleging negligence or some default on the part of the plaintiff, in not properly securing and keeping the animal; and it was said, consistently with this declaration, the monkey might have been kept with due and proper caution, and that the injury might have been occasioned by the carelessness and want of caution of the plaintiff herself. A great many cases and precedents were cited on the argument, and the conclusion to be drawn from them appears to us to be, that the declaration is good on the face of it; and that whoever keeps an animal accustomed to attack and bite mankind, with a knowledge that it is so accustomed, is *prima facie* liable in an action on the case, at the suit of any person attacked and injured by the animal, without any averment of negligence or default in receiving and taking care of it. The gist of the action is the keeping of the animal after a knowledge of its mischievous propensities. The precedents, both ancient and modern, with scarcely an exception, merely state the ferocity of the animal and the knowledge of the defendant without any allegation of negligence or want of care. A great many were referred to on the argument, commencing with the Register (1066, 110, a), and ending with *Thomas v. Morgan* (2 Cr. & R. 496), and all in the same terms, *as nearly as*. In the Register two precedents of writs are given; one for keeping a dog accustomed to bite sheep, and the other for keeping a boar accustomed to wound other animals. The cause of action, as stated in the declaration, is the propensity of the animal and the knowledge of the defendant, and the injury to the plaintiff, but there is no allegation of negligence or want of care. The case of *Mason v. Keeling* (1st Lord Raym. 606; and 12 Mod. 332) was much relied upon on the part of the defendant; want of due care was alleged, but the *scienter* was omitted, and the question was not whether the declaration would be good without the allegation of want of care, but whether it was good without the allegation of knowledge; and there it was held that it was not. No case has been cited in which it has been decided that a declaration stating the ferocity of the animal, and the knowledge of the defendant of the ferocity of the animal was bad, for not averring negligence also; but various dicta were cited to shew that this is an action founded on negligence, and therefore not maintainable unless some negligence or want of care was alleged. In Comyn's Digest, title "Action on the Case for Negligence" (A. 5), it is stated that "an action on the case lies for a neglect in taking care of his cattle, dog, &c.;" and passages were cited from the old authorities, and also some cases at Nisi Prius, in which expressions were used shewing that if persons suffered animals to go at large, knowing them to be disposed to do mischief, they were liable in case any mischief was done; and it was attempted to be inferred from these that the liability only attached in case they were suffered to go at large, or be otherwise insecure; but the conclusion to be drawn from the examination of all the authorities appears to us to be this: that a person keeping a mischievous animal, with knowledge of its propensity, is bound to keep it secure, at his peril; and that if it does mischief, the negligence must be presumed, without any express averment of it. The precedents as well as the authorities fully warrant this conclusion; the negligence is in keeping such an animal after notice. The case of *Smith v. Pelah* (2 Strange, 1264), and the passage in 1 Hale's Pleas of the Crown, put the liability on those two grounds. It may be that if the injury was solely oc-

casioned by the wilfulness of the plaintiff, after warning, that may be a ground of defence by confession and avoidance; but it is unnecessary to give an opinion as to this, for we think the declaration is good on the face of it, and shews a *prima facie* liability in the defendant. It was said, indeed, further, on the part of the defendant, that if the monkey be an animal *fera nature*, and an injury be committed by it, he would not be liable, if it escaped and went at large, without any default on the part of the defendant, during the time it so escaped, because at that time it would not be in his keeping, nor under his control. But we cannot allow any weight to this objection, for, in the first place, there is no statement in the declaration that the monkey had escaped, but, on the contrary, it is expressly averred that the injury occurred while the defendant kept it. We are, besides, of opinion, as I have already stated, that the defendant, if he did keep it, was bound to keep it secure, at all events. The rule must, therefore, be discharged.

Rule discharged.

Saturday, June 6.

R. v. THE INHABITANTS OF WALBOTTLE.

Settlement by hiring and service—Exceptional hiring. Upon the construction of a pit-bond, whereby a pauper was hired for a year to do a full day's work every working day, including pay Saturday, and the master was to find so much work as would enable him to earn 28s. in a fortnight; the hiring was held exceptive; although it was agreed that during the days the pits should be off work the pauper should continue to be the servant of the employer.

Upon appeal against an order of removal, the Quarter Sessions quashed the order subject to a case, which set out a pit-bond, by service under which the settlement was claimed. The material provisions of the bond were, that the pauper was hired for a year to work in a pit; that he should on every working day, including pay Saturdays, do a full day's work, or such a quantity of work as should be deemed so; that the master should find as much work as would enable him to earn 28s. in a fortnight, under a penalty of 2s. 6d.; except for fourteen days at Christmas, during which he might lay the pits off work; but that during ten days at Christmas, and other days when the pits should be off work, the pauper should continue in the service, although not at work. The pauper was to live in a cottage provided by the master, but to quit the cottage when he quitted the employment; and some restrictions were imposed as to the keeping of cattle, &c.

R. Ingham, in support of the order of sessions.—This is not an exceptive hiring. One test is, whether the pauper was bound to work more than a limited number of hours in each day; *R. v. Ossett-cum-Gaithorpe*, 4 B. & Ad. 216, 220; and that case as well as *R. v. Byker*, 2 B. & C. 114, are authorities to shew that in this case, according to the proper construction of the agreement, it fixes only the minimum, not the maximum, of labour. In the latter case it was agreed that the master should pay for every good day's work, not exceeding fourteen hours, so much, and 2d. per day when that time was exceeded; and in answer to the argument there used, that the pauper was entitled to absent himself at the expiration of fourteen hours, and that the master could not compel him to work any longer, Bayley, J. delivering the judgment of the Court, said: "We are of opinion that the time was only mentioned as the measure of the wages; that the contract does not impose any limit upon what might reasonably be required by the master; and that the relation of master and servant continued during the whole twenty-four hours." So here no limit is imposed upon what the master might reasonably require; for the only limit is the ability of the man to work. In order to make the hiring exceptive there must be a distinct exception of some period, during which the control of the master would not continue; as of ten days at Christmas in *R. v. Gateshead*, 2 B. & C. 117, a, and of the pay Saturdays in *R. v. Cowper*, 5 Ad. & E. 333; but here the exception of certain days at Christmas is qualified by an express proviso that the relation of master and servant shall continue the whole time; and they are to work on pay Saturdays. The contract is silent as to Sundays; but that does not suspend the relation of master and servant during that day. It is one of those exceptions which are implied in every contract, and is like the exemption of hours for relaxation, food, and rest. (*R. v. All Saints, Worcester*, 1 B. & Ald. 322.) Something depends upon the nature of the occupation. *R. v. Norton Bavant*, 3 Ad. & E. 161, was the case of a colt shearer; *R. v. Edmond*, 3 B. & A. 107, that of a bricklayer; *R. v. Birmingham*, 9 B. & C. 925, that of a button-caster; *R. v. Stoke-upon-Trent*, 5 Q.B. 303, that of a china-manufacturer; all of them occupations entirely different from that of working at a pit. How can it be said here that the employment is at an end when the full day's work is done? The other stipulations of the contract forbid that construction. The men occupy houses belonging to the master; and they are to quit their houses when they quit their employment; they are not to keep certain cattle; and they are subjected

to other restrictions which could only be imposed by the authority of a master.

Knowles, Q.C. and *Granger, contra.*—In this contract of hiring there is an exception, 1st, of certain hours in every day; 2nd, of Sundays; and 3rd, of certain days at Christmas. The rule is clear that in order to confer a settlement, the relation of master and servant must subsist during every moment of the year; and as to the first of the above exceptions, there is no distinction between this case and *R. v. Gateshead*, 2 B. & C. 117, a. The contract there contained a provision exactly similar to the 8th clause in this contract; and it is a mistake to suppose that that case was decided upon the exception of certain days at Christmas. In *R. v. St. Helen's Auckland* (4 B. & Adol. 718, 724), Lord Denman, C.J. referring to that case, said: "It appears, however, from the reasoning of the judges there given, that the hiring was held to be exceptive, not because the pauper was not bound to work for his master during the ten days, but because he was not bound to work during the whole of every day, but during such part of the day only as might be required to complete a full day's work." With that explanation of the decision in *R. v. Gateshead*, it governs this case. [WILLIAMS, J.—What do you say to the 6th clause, which provides that the pauper is to continue the servant of the employer when the pit is laid off work?] That applies to a part of the Christmas holidays only; not to the ordinary working days. In *R. v. St. Helen's Auckland*, the contract was to work constantly at the pit; and therefore in that case the settlement was upheld; but whenever there is a period during which the pauper cannot be compelled to work, the hiring is exceptive, and confers no settlement. (*R. v. Cowper*, 5 Ad. & Ell. 333; *R. v. Byker*, 2 B. & C. 114.) Secondly, there is by implication an exception of Sundays. Every other day is mentioned in the contract, and *expressio unius est exclusio alterius*. Thirdly, of the fourteen days at Christmas, four of them are not covered by the 6th clause; and the contract is exceptive, therefore, in that respect. No argument can be drawn in favour of the settlement from the stipulation that the houses and employment are to be given up together; because, as there is but one hiring, the power to eject would not arise until the expiration of the period for which the hiring took place.

LORD DENMAN, C.J.—*R. v. Gateshead* must decide this case, unless the words of the 6th clause are general enough to make the pauper a servant of the employer during the whole time over which the hiring extends. They are calculated to create that impression in the first instance, but upon examination it is clear that they do not refer to the ordinary working days. That being so, there is such a limitation of the hours of work, as in *R. v. Gateshead* was held to constitute an exceptive hiring.

PATTERSON, J. and WILLIAMS, J. concurring.

Rule absolute to quash the order of Sessions.

Jan. 11 and 12, and June 9.

COCKER v. MUSGROVE and MOON.

8 Anne, c. 14.—*Payment of rent under an execution. The true construction of the 8 Anne, c. 14, s. 1, is, that where the sheriff in possession under a *f. fa.* receives notice, as well as the execution creditor, of rent being due (not exceeding one year), it is not his duty to proceed to a sale, unless the execution creditor first of all pays the rent to the landlord, whatever may be the supposed value of the goods seized.*

Quære, whether notice to the execution creditor is necessary to justify the sheriff in not proceeding?

In an action for a false return, the declaration stated that there were goods out of which the defendant might and ought to have levied. One of the pleas traversed that allegation. The facts were, that five executions came into the sheriff's hands, that there was rent due from the execution debtor, of which the several plaintiffs had notice, but no one of them chose to pay the rent. The sheriff returned these facts; the jury found that there were goods sufficient to pay the rent and execution, and a verdict was found for the plaintiff under the direction of the learned judge.

Held, upon motion for a new trial, that the return was true, and that under these circumstances there were no goods upon which the sheriff could levy.

This was an action for a false return. The declaration set out that the plaintiff had recovered judgment against one Steinitz, and issued execution thereon. That the writ was duly delivered to the defendants, as sheriffs of Middlesex. Upon being ruled to return the writ, the defendants returned, that before they had received the plaintiff's writ, they had received five other writs of *f. fa.* indorsed for various amounts; that under them they had seized, and while the goods remained in their hands for want of buyers, they received notice of a year's rent being due; that they gave notice to the several execution creditors, but that no one had paid the rent pursuant to the statute; and that there were no other goods or chattels within his bailiwick whereof he could cause to be made the plaintiff's writ. The indorsement of the declaration averred, that although there were more than suffi-

cient goods to satisfy the said five writs and rents, and whereof the defendants, as such sheriffs, ought to have levied the amount of the plaintiff's writ, and although they had seized more than sufficient, yet they would not levy the amount last aforesaid, and afterwards falsely returned as above-mentioned. The defendants pleaded not guilty, and in the 2nd plea traversed the averment that there were any goods besides the goods and chattels sufficient to satisfy the said writs and rent, whereof the defendants had notice, or could, or might, or ought to have levied the amount of the plaintiff's writ. The action was tried before Mr. Justice Wightman at the sittings after Hilary Term, 1845; and the plaintiff having only proved goods upon the premises and subject to the rent, it was objected by *Bovill* and *Wise*, for the defendants, that the plaintiff should be nonsuited, as the effect of 8 Anne, c. 14, was to make it the duty of the execution creditor to pay the rent, and until that was done there were no goods upon which the sheriff could levy. The objection was overruled, and upon the facts the jury found for the plaintiff, that the goods were more than sufficient in value to pay the writs and the rent.

In Easter Term, a rule nisi for a new trial, on the ground of misdirection, was granted (*supra*, 5 Law T. 72), against which, in Hilary Term last (Jan. 11),

Watson, Q. C. shewed cause.—This rule must be discharged. The evidence showed that every thing was done by the sheriff under an indemnity from the attorney of the execution debtor, and the attorney to the defendants in this action. [Lord DENMAN, C. J.—That has nothing to do with this question. WIGHTMAN, J.—The sheriff says it would have been a breach of duty to have sold.] The sheriff ought to have levied and paid the landlord, for there were sufficient goods for this purpose, as the jury have expressly found. Wherever actions have been brought for the non-payment of the rent, the sheriff, and not the execution creditor, has been sued. The landlord is not entitled to the goods, but to the amount they sell for, up to the value of a year's rent. [COLERIDGE, J.—I don't see what interest the execution creditor has in selling, unless there be enough to pay the rent.] This is so done in practice, and is the established usage. [WIGHTMAN, J.—What is the strict right? That the practice has been different cannot affect that.] The sheriff has no business to remain upon the premises, as he would be liable to an action, at the suit of the debtor. He must therefore sell, although it may be admitted, for the purposes of the present case, that he ought not to remove. The cases against the sheriff are where the removal has taken place, without payment of the rent. And this is the view taken by the Court of Exchequer, in *Riseley v. Ryle*, 11 M. & W. 16; where Parke, B. says: "The duty is cast upon the sheriff to take care that the goods are not removed, he having notice that rent is due." [PATTERSON, J.—Suppose he sells, would not the vendee remove without payment of the rent. COLERIDGE, J.—Money had and received will not lie against the sheriff by the landlord. (a) *Calvert v. Joffe*, 2 B. & Ad. 418, which was cited when this rule was obtained, is distinguishable, for it was merely an application to the Court for leave to pay money into court. Both Lord Tenterden, C. J. and Parke, J. speak of it being wrong to remove the goods; but here the question is, ought he not to have sold? [PATTERSON, J. referred to the other parts of the judgment in that case.] The sheriff must not allow the removal before payment. The position now contended for would place the sheriff in great difficulty. [PATTERSON, J.—All the cases may perhaps turn on this, that there the sheriff did not follow the words of the statute. It appears to be the duty of the execution creditor to pay. Is there any plea to raise the point?]

Bovill.—The second plea is, that there were no goods besides, &c. whereof the sheriff could levy.

Watson.—That is not the proper mode of raising it.

Bovill and *Wise* contra.—It is clear that this question is properly raised by the pleadings. The traverse, that there were no goods whereof the sheriff could levy, means, no goods applicable to the plaintiff's writ; and if the construction of the statute put by the defendant be correct, there would be no goods applicable, for none could be sold until the rent was paid. *Drew v. Lainson*, 11 A. & E. 529; *Stubbs v. Lainson*, 1 M. & W. 728; *Windle v. Freeman*, 11 A. & E. 539, shew this to be the meaning of the word "levied." *Heenan v. Beans*, 1 D. N. S. 204, is to the same effect. The sheriff here says he was prohibited from realizing the plaintiff's writ by a sale, because the rent was unpaid. It is sufficient here to shew that he is not obliged to sell; although the words of the statute seem to prohibit even the taking of goods liable to rent. But at any rate he cannot sell. *Calvert v. Joffe*, in 2 B. & Ad. 418, is a strong authority in favour of the defendants. The goods had been sold under a *f. fa.* and removed without the year's rent being paid, for which the landlord sued the sheriff. He offered to pay into Court the whole proceeds of the sale, which did not equal the rent, but

(a) His lordship probably referred to *Green v. Austin*, 3 Campb. 246.

the Court refused to permit this, holding clearly that the rent should have been paid first. Lord Tenterden, C. J. says: "The statute seems to contemplate that the execution creditor should pay the rent." [PATTERSON, J.—Had the sheriff here required any execution creditor to pay the rent? Did he put himself upon the statute?] Yes. [WIGHTMAN, J.—There was no evidence of that.] It is distinctly alleged in the return that the execution creditor had notice: and it is admitted by the declaration. [COLERIDGE, J.—Under what words do you say he is prohibited from realizing?] Upon the whole statute. [PATTERSON, J.—If a landlord does not interfere, why should a sheriff refuse to go on; there are no express words of prohibition?] It may be that notice is requisite, but according to the strict literal meaning, he is prohibited from taking. The Courts, indeed, have put a construction different from the exact words. Thus, in *Riseley v. Ryle*, 11 M. & W. 16, Parke, B. says: "It is clear the statute does not mean the original taking, but that there shall not be a substantial taking for the satisfaction of the debt, that is by the removal and sale of the goods without payment of the rent." The plaintiff here is seeking to impose an unfair liability upon the sheriff. It is not his duty to assess the value of the goods, nor is he bound by the value he states in the return. *Chambers v. Coleman*, 9 D. P. C. 594. Yet the plaintiff would in effect compel him to do so, for here the goods being of very uncertain value, he is to be answerable because the jury found they were of greater value than he thought. Had he sold, and the proceeds been insufficient, the cases shew that he would have been liable, although he paid over the whole proceeds to the landlord. [PATTERSON, J.—The sheriff relied upon the supposed value of the goods, and this is a mere afterthought, used for the purposes of defence.] *Wise*.—This objection was taken upon the very first occasion, and in the only way that it could have been taken. It could not have been raised by demurrer, for, until the plaintiff had closed his case, the defendants did not know but that he relied upon there having been some other goods which they could have seized which were not liable to the rent, or upon these premises. It happens, indeed, that the jury found that the value of the goods was more than sufficient to pay the executions and the rent; but it was not a question for them at all. It is a bare question of law arising upon the words of the statute. Unless this construction be given to the statute, it would be a useless enactment. The preamble and all its provisions shew that it was intended to benefit the landlords, and give them some rights they did not before possess; and it is only by this construction that any such right is given. Before the statute the goods could not have been distrained while in the hands of the sheriff, but if they remained there after the sale by him, they would become liable just the same as the goods of any other stranger. They would cease to be in the custody of the law, and the vendee could bring trover for them. It is said on the other side that the sheriff may sell but not remove. The fallacy in this argument is, that the removal is not the act of the sheriff, but of the vendee, and if the property is to be sold subject to a right of distress, who would become the purchaser? Take, for instance, a chattel of great value. The words of the first section are, that the goods shall "not be taken upon any pretence whatever," and the benefit given to the landlord is, that before the tenant's goods are sold he shall have the preference to the extent of a year's rent. The difference between a sale by distress, and a sale by the sheriff, is very great, and the landlord might incur a serious loss by the damage thus done to the tenant's property. Had the legislature intended otherwise, it would have been easy to have said the sheriff shall sell, and out of the proceeds shall pay the landlord, and the surplus, if any, to the execution creditor. But it is materially different. The party at whose suit the execution has issued is to pay the landlord, and then he may proceed to execute his judgment as he might have done before the act, i.e. without reference to any claim of rent; shewing, therefore, that the act has deprived the execution creditor of his rights, *pro tanto*, and given the advantage to the landlord. Nor does he ultimately lose, for the sheriff is to repay him the amount so paid to the landlord. The only difference is, that the execution creditor, and not the sheriff, is to estimate the value of the goods, and act accordingly. This is the grammatical meaning of the statute, as well as the plain intention, and it must be followed. It is said, indeed, that the practice has been different, but, as already has been observed in the course of the argument, this very disregard of the words of the statute has frequently brought the sheriff into positions of difficulty. It will be seen, however, that there are numerous authorities in support of this view, and not one against it. Thus the marginal note to *Henchell v. Kimpson* (2 Wills), is, a landlord is entitled to one year's rent before a defendant can sell upon an execution for costs on a nonsuit. Pratt, C. J. there said: "Before this statute execution took place of all debts that were not specific liens, even of rents due to landlords; it was thought hard that landlords should not have something like a specific lien, so the Par-

liament have given them this remedy for one year's rent, but for no more, because *vigilantibus non dormientibus jura subveniunt*. Neither a plaintiff or defendant has any right to go upon the premises; the law gives this entry to the sheriff only by virtue of the execution, but after he has notice of rent being due to the landlord he cannot remove the goods before he has satisfied the landlord one year's rent; the landlord shall have the like benefit of distress for one year's rent, as if there had been no execution at all. Unless the rent be paid, the sheriff must quit, and, if he does not quit, a special action on the case lies against him after notice of the rent due." "The bailiff in this case became a wrongdoer immediately after he had notice of the rent due." So in *Palgrave v. Windham*, 1 Str. 212, which was an action against a bailiff for executing a *f. fa.* and removing the goods before the landlord's rent was paid, it was admitted in argument that such a return as the present would have been good. This is important, as it was argued in the 6 Geo. 4, soon after the statute. In *Rothery v. Wood*, 3 Camp. 24, where the question turned upon the effect of the landlord consenting to the goods being sold, Lord Ellenborough, C. J. said: "In future it will be better for landlords to have their rent before they suffer their tenants' goods to be sold in execution." In *Stuart v. Whitaker*, 2 C. & P. 100, this very return was adopted. In *Calvert v. Joffe*, already cited, Mr. Justice Littledale observed: "The Act of Parliament says that no goods shall be taken in execution, unless the execution creditor shall pay a year's rent to the landlord of the premises; in point of practice, perhaps, the rent has been paid to the landlord by the sheriff, and not by the execution creditor, but the words of the Act of Parliament are clear." This view was also expressed by Patterson, J. in *Windle v. Freeman*, 1 G. & D. 93, as cited in *Riseley v. Ryle*, 11 M. & W. 20. (See also *Foster v. Hilton*, 1 D. P. C. 35.) So also the legislature have considered it in the 7 & 8 Vict. c. 96, s. 67, by which the landlord's "claim to goods" seized in execution is now limited in some cases to a shorter period than twelve months. The confusion between sale and removal has already been noticed. [COLERIDGE, J.—In one case it was held, that a bill of sale was a removal] (a). *Wise*.—Yes; but that case was examined and overruled recently in *Smallman v. Pollard*, 1 D. & L. 901; still the view now contended for was supported by Tindal, C. J. in his judgment. As there the point is properly raised, and the words of the statute are clear, while the authorities in favour of this construction, are opposed by nothing but the practice, it is submitted that the rule must be made absolute; for even if there be a doubt about it, there should be an opportunity for a bill of exceptions to be tendered.

Cur. adv. vult.

In Trinity Term (June 10) the judgment of the Court was delivered as follows:—

JUDGMENT.

Lord DENMAN, C. J.—This was an action against the sheriff of Middlesex, for not levying under a writ of *f. fa.* The declaration stated that there were goods out of which the defendant might and ought to have levied: one of the pleas traversed that allegation. The facts were, that five executions came into the sheriff's hands; that there was rent due from the execution debtor, of which the several plaintiffs had notice; but no one of them chose to pay the rent. The sheriff returned those facts; the jury found that there were goods sufficient to pay the rent and execution, and a verdict was found for the plaintiff under the direction of the learned judge. The defendants contend, upon the true construction of the statute of 8th Anne, they were not bound or at liberty to sell the goods until the rent was paid by one of the execution creditors. The practice, undoubtedly, has been very general for the sheriff to sell in such cases, and out of the proceeds to satisfy the landlord in the first instance, and if he does so sell he is liable to an action if he does not pay the landlord. Many cases shew this is not necessary. Some will be found cited in *Windle v. Freeman*, 11 A. & E.; and the statute is still more discussed in *Riseley v. Ryle*, 11 M. & W. 16. In the latter case, Parke, B. says: "Construing the Act as it has hitherto been construed, it means that the sheriff is not to remove the goods until the rent has first been paid by somebody; if he does, he is liable to an action at the suit of the landlord, for whose benefit the Act of Parliament was made." It is plain that the advance should be made by the execution creditor. If he neglects to make it after notice of rent being due (and it is not necessary to say whether notice be requisite), the sheriff cannot be called upon to sell the goods, let the value be what it will. Until the rent be paid, there are no goods out of which the sheriff is bound to levy, that is, bound to sell. We are, therefore, of opinion that the rule for a new trial in this case must be made absolute.

Rule absolute.

(a) See *West v. Hedges*, Barnes, 211.

Thursday, June 11.

Re THE JUSTICES OF DENBIGHSHIRE.**Power of magistrates to exclude attorneys from audience at Quarter Sessions.****Magistrates at Quarter Sessions have full power to regulate the practice of their own Court; and this Court, therefore, refused a rule for a certiorari to bring up an order of a Court of Quarter Sessions, directing that attorneys should not have audience when four barristers were present.**

Sir F. Kelly, S.G. moved for rule to shew cause why a writ of certiorari should not issue to the justices of Denbighshire, to bring up an order made by them in January last, confirming an order made on the 6th of July, 1845, whereby it was directed that in the Court of Quarter Sessions for that county, attorneys should not have audience if there were four barristers present. The question intended to be raised is, whether the magistrates had a right to exclude attorneys from audience. It is submitted that they have not. Since the passing of the Welch Judicature Act, attorneys had been heard exclusively at these sessions, except when, on some particular occasion, barristers had been taken there on special retainer. This course of proceeding continued till July of last year, when some barristers, having before attended the sessions, the magistrates made the order in question. It is admitted, with respect to magistrates exercising a summary jurisdiction, that they have complete authority in matters of practice in their own courts. The case of *Collier v. Hicks* (2 B. & Ald.), is an authority for that proposition; but even there Lord Tenterden referred to the want of the regular attendance of barristers at distant places, and the pressure of expense, which parties might, in some instances, be unable to bear. That last observation is one of peculiar force in these small courts, and in consideration of that, it may well be argued, that this exclusion of attorneys from acting as advocates ought not to be sanctioned.

Lord DENMAN, C.J.—It appears to me that the rule is most important that all courts of justice have full power to regulate their own practice. The exception to that rule arising from occasions of convenience, as stated by Lord Tenterden, does not appear to me to apply to this case, or to cases like this. The argument in favour of permitting attorneys to be heard because of the smaller expense, would apply here, as well as in other courts, and would apply not only in favour of them, but in favour also of those who would attend for still smaller charges than attorneys. Such an argument would be equally good in all cases whatever. We sit here to try causes which are often of very small amount; but that itself is no reason why attorneys, or persons who would accept even still smaller remuneration, should be entitled to audience as counsel. In my opinion, it is necessary, for the interests of all, that there should be orders, and privileged orders, in courts of justice. In saying this, it is not necessary in any degree to interfere with the discretion of each Court in the exercise of its undoubted power of regulating its own practice. That discretion has been exercised here with a reasonable limitation. That limitation is, that without there is a sufficient provision of barristers present, the attorneys shall be heard. If, instead of the limit being four, the justices had said sixty, the reason now relied on, that of expense, would have been equally good, for the poor man would have found equal difficulty in employing one barrister out of the larger as one out of the lesser number. I think that that reason is not sufficient to satisfy us that the order should be quashed, and I am therefore of opinion that the rule ought to be refused.

PATTERSON, J. concurring,

Rule refused.

REG. v. POOR LAW COMMISSIONERS.**Workhouses—4 & 5 W. 4, c. 76, s. 23.****The 23rd section of the Poor Law Amendment Act requires the consent of a majority of the board of guardians, or of the ratepayers, to any order for building workhouses. This means, the board of guardians, of any union, or single parish, created a union under section 39.****The Court, in refusing a rule for a certiorari to bring up an order made upon this construction of the Act, granted the Poor Law Commissioners their costs of shewing cause in the first instance.**

Martin, Q.C. (with whom was C. Clark) moved for a rule for a certiorari to bring up a certain order made by the Poor Law Commissioners for the erection of a workhouse for the parish of Kensington. The facts agreed on between the parties were that Kensington had formerly been part of the Hammer-smith union, but was now a union of itself. The order was made with the consent of "the majority of the guardians," but not with the consent of the majority of the rate-payers and owners of property entitled to vote, as, it is submitted, sec. 23 requires. By sections 21, 38, and 39, only the general powers are given to the board of guardians, of a single parish, and not that of building a workhouse, which is provided against by sec. 21. That must be done by the consent of the majority of the ratepayers, where there is not a union of several parishes. There are some express directions in the statute, as to the

guardians of such a union as this (sec. 38), and, therefore, the general words in sec. 23 must be qualified. There is a distinction between guardians of a union, and guardians of a parish. (*Reg. v. Justices of Surrey*, 6 A. & E. 883; *Reg. v. Lambeth*, 2 New Sess. Cas. 68.)

The Attorney-General, the Solicitor-General, and Tomlinson, appeared to shew cause in the first instance, but were not called upon.

Lord DENMAN, C.J.—It is not at all necessary to do violence to the construction of this statute for the purpose of refusing this motion. The proviso at the end of sec. 21 enacts that nothing therein shall give the commissioners power to alter or build workhouses, save and except such powers as are given expressly by this Act. Then the 23rd section gives power to build workhouses by and with the consent of a majority of the guardians of any union, or with the consent of the majority of the ratepayers. I quite agree that each is to be referred to each, and that the statute points out two separate modes of doing that. In the one case the parish is to be called on to assent through a majority of the ratepayers, that is, if they are not governed by a board of guardians. But there is a specific provision in the 39th section, that where a single parish is governed by a board of guardians, such board shall in like manner and in all respects act as a board of guardians for united parishes. Where there is no board of guardians the ratepayers must determine as to the workhouse, but the guardians where there is a board of guardians.

PATTERSON, J. concurred.

Rule refused.

The Attorney-General then applied for costs, although the commissioners had appeared, in the first instance, under sec. 106. By sec. 107, if the rule had been granted and the order sustained, they would have been entitled to costs. After some discussion the Court granted the costs.

Costs granted.

WALL v. PICKERNELL.

Costs.

Where the executors of the claimant in an Interpleader Act, to prevent money being paid out of Court, caused a foreign attachment to be served upon the Masters of the Court, the Court made a rule absolute for them to pay the costs of the proceedings rendered necessary thereby.

Wilkes shewed cause against a rule calling upon certain persons to pay the costs which had been rendered necessary by their attorney having issued a foreign attachment against the Masters of the Court, and so prevented certain moneys being paid out of Court under an Interpleader Issue. He contended that being executors only, and not actual parties to the record, costs could not be awarded against them, unless there had been any actual contempt; and that this was only a mistake on the part of their attorney, and as to legal rights. (*Evans v. Reece*, 2 Q. B. 334; *Hayward v. Gifford*, 4 M. & W. 194.)

Jervis, Q.C. contra.—As far back as the time of Comberbatch, was it decided that the process of foreign attachment would not lie against the Masters of the Court, which is, in effect, against the Court itself; and the parties have here interfered, so far as to render themselves liable.

By the COURT.—The rule must be absolute.

Rule absolute.

Friday, June 12.

FANCOUR V. THORNE.**A promissory note contained the following sentence: "and I have lodged with Mr. Thorne the counterpart leases granted by me to A B, C D, &c. as a collateral security for the said 500l. (the amount of the note and interest)." Held, that it did not therefore require any other than the usual note stamp.**

A rule had been obtained by Butt, Q.C. for a nonsuit, on objection that the note declared on was improperly stamped. It was in the usual form, but with this additional sentence, "and I have lodged with Mr. Thorne the counterpart leases granted by me to A B, C D, &c. as a collateral security for the said 500l. (the amount of the note) and interest," and it was contended that this rendered the note inadmissible, being only stamped as a note.

Maynard now shewed cause.—This sentence is in no respect a qualification of the note, nor need it be looked at or used for the purposes of this action. Even if looked at, it is not a document requiring a stamp. It is not an agreement, but merely a statement of a past fact. *Wise v. Charlton* (4 A. & E. 786); *Williams v. Gerry* (10 M. & W. 306); *Smart v. Nokes* (6 M. & G.); *Reed v. Deane* (7 B. & C. 361); *Evans v. Pratt* (1 D. N. S. 505); *Beechey v. Westbrook* (8 M. & W. 411); *Wroughton v. Turtle* (11 M. & W. 561) were cited.

Butt, Q.C. contra, referred to *Robertson v. Showler* (14 L. J.) and contended that the document was an agreement within the Stamp Act, as being evidence of an agreement to charge lands.

By the COURT.—It is not even evidence of an agreement binding in itself, and no stamp is requisite.

Rule discharged.

AMELET V. BRUCK.**Foreign bill of exchange.****A foreign bill of exchange stated the sum to be cent**

vingt quatre livres sterling, deux pence. At the top of the bill was written 124l. 0s. 2d., but a line was drawn through this, and at the side was put 122l. 2s. The acceptance was, in English, "for one hundred and twenty-two pounds, two shillings." It was declared on as a foreign bill for 122l. 2s.—Held, that it was rightly declared on as a foreign bill for that amount, and, therefore, did not require a stamp.

This was an action against the acceptor of a bill of exchange, drawn in Paris, and declared upon as a bill for 122l. 2s. At the trial the bill was produced, when it appeared to have been originally drawn for cent quatre vingt livres sterling, deux pence. A line was drawn through the quatre, and at the top of the bill 124l. was marked through, and 122l. 2s. written. Across the bill, in English, was written, "accepted for one hundred and twenty-two pounds, two shillings."

Humfrey, Q.C. thereupon objected that it required a stamp, the alteration having made it an English bill. A verdict was found for the plaintiff, subject to the objection, and a rule nisi had been obtained for a nonsuit (*supra*, 227), against which

Hoggins shewed cause.

Humfrey, Q.C. and Tapping, contra.—(*Bathe v. Taylor*, 15 East; *Taylor v. Morell*, 6 C. & P.)

Lord DENMAN, C.J.—The plaintiff draws a bill for the sum which he supposes is due to him from the defendant, and the defendant accepts for what he says is the correct sum. The plaintiff makes no complaint of this, but treats it as an acceptance for the smaller sum. I think he is quite entitled to do this, and there was no alteration in any material part.

PATTERSON, J.—It is not like *Knight v. Clements* (8 A. & E. 215), for there was nothing upon the face of the bill to explain the alteration. Here, if it needed any explanation, the bill itself affords it. But I see no reason why it is to be inferred that the alteration was not made in Paris, in which case it is admitted that no stamp would be necessary.

WILLIAMS, J. concurred.

Rule discharged.

REG. v. DOBSON.**Costs—Parties grieved.****The Court will not refuse costs of an indictment under 5 & 6 Wm. 3, c. 11, because the expenses have been partly or wholly paid by subscription.****Where costs are ordered to be paid by several defendants, an attachment may issue against any one for non-payment, without any affidavit that the others have been applied to for payment.**

Baddley moved for a rule nisi to set aside an attachment which had been issued against Sutton, one of the defendants, found guilty in this indictment for a nuisance (see *Law T.* 168) for non-payment of costs according to the Master's allocatur. This attachment has issued improperly, and upon insufficient materials. The parties claiming the costs had their expenses paid by subscription, and although it has already been decided that this was no objection against a side bar rule for taxation of costs, yet it prevents these parties issuing an attachment. (*Rees v. Cook*, 1 M. & R. 526.) [Lord Denman, C.J.—That has been a good deal doubted of late.] They are not parties grieved, within the statute, as the grievance stated in the affidavit is different from that laid in the indictment. Then the costs were taxed against all the defendants, and application should have been made to all, before an attachment was issued against one.

Lord DENMAN, C.J.—Mr. Sutton is one of the defendants, and there is no necessity to demand payment of the others. As to the other point, we recently considered it (see *R. v. Williams*, 3 Law T. 220), and we see no reason why a subscription for the purposes of the prosecution should benefit the defendants. Here the parties grieved were the prosecutors, and it is sufficiently shewn.

Rule refused.

REG. v. EAST LANCASHIRE RAILWAY COMPANY.**Second application.**

Archbold applied for leave to move for a mandamus to this company, to assess damages for severance of land, the former mandamus having been discharged for nonconformity with the rule nisi. (See *supra*, 228.) This was not a second application upon new materials, but the mistake arose entirely from the brief being indorsed simply rule nisi. No other affidavits but those then used are now proposed to be used.

The Court granted a rule nisi; an affidavit of the circumstances of the mistake to be made.

Rule nisi.

Saturday, June 13.

FIELDING v. DANIELS.**7 & 8 Vict. c. 110, s. 26.****A plea under the 7 & 8 Vict. c. 110, that a sale of scrip in a railway company not completely registered, is bad, if it does not negative the exceptions in sec. 2 of the Act.**

Martin, Q.C. in support of the demurrer to a plea under 7 & 8 Vict. c. 110, s. 26, was proceeding to argue the general question of the application of the section to railways.

PATTERSON, J.—This plea is clearly bad; the exceptions in sec. 2 are not negated.

Judgment for plaintiff.

BULL v. TAYLOR.

Plea in abatement.

To an action in promises against six defendants, a plea in abatement by four, that the promises were made by them jointly with one A B (not a defendant), and not with the other two defendants, is bad. Assumpsit.—Plea in abatement by four out of six defendants, that the promises were made jointly by the four defendants and one King (not a defendant), and not with the two other defendants.

Demurrer.

Jones, in support of the plea.—It is not bad as an argumentative traverse, for that is the mark of all pleas in abatement. (Stephen on Pleading, 244.)

PATTON, J.—What authority is there for such a plea in abatement for a misjoinder as well as a non-joinder?

Tomlinson was not called upon contra.

By the COURT.—It is clearly bad, for duplicity, and is altogether without authority.

Judgment of respondent, over.

BUSINESS OF THE WEEK.

Friday, June 12.

LAURENCE v. DAWSON.—Wordsworth shewed cause against rescinding an order of Coleridge, J. setting aside judgment signed herein as for want of plea. Ogle, contra.

Rule discharged, and two days' notice of trial to be taken.

FRANK v. BOWLES.—Smirk shewed cause against a rule to rescind an order of Wightman, J. setting aside a demurrer as frivolous. Harlstone, contra. Rule discharged.

DON DEM. BRYDGES v. BRYDGES.—Peacock moved for a rule nisi for the inspection of deeds.

Rule nisi returnable at chambers.

ALCOCK v. BOTTOM.—Wordsworth shewed cause against a rule obtained by Jervis, Q. C. for setting aside a judgment upon peremptory undertaking. Jervis, Q. C. contra.

Rule discharged.

IRVING v. NIXON.—Wordsworth moved to discharge the rule herein. No one appearing to support it.

Rule discharged.

SMEE v. LAMPRELL.—H. Hill shewed cause against a rule for judgment in case of nonsuit. Wise, contra.

Rule enlarged. Cause to be shown at chambers.

Saturday, June 13.

The following three cases, involve the question whether the 7 & 8 Vict. c. 110, was rightly construed in Young v. Smith, and in all of which the Court intimated that, if they agreed with the Court of Exchequer, they would give judgment shortly, but if they disagreed, they would not do so, as of course a writ of error would be brought.

LOONIE v. OLDFIELD.—Cowling, in support of the plea. Martin, Q. C. contra.

KADON v. BRANSCOMB.—Pashley, in support of demurrer. Martin, Q. C. contra.

O'NEIL v. BUNDLE.—Cowling, for demurrer. Bernie, contra.

CARDWELL v. HOLGATE.—A. Hawkins elected to amend. MITCHELL v. JOHNSON.—H. Hill prayed judgment for defendant, plaintiff not appearing.

Judgment for plaintiff.

LEVY v. WEBB.—Pearson heard. Adjourned.

Monday, June 15.

DON DEM. SIMPSON v. JOHNS.—Richards against the rule. No one being instructed to support it.

Rule discharged.

COWLING v. SHUTTS.—Wordsworth (with whom was Shaw, Serjt.) appeared against the rule. Peacock (with whom was Watson, Q. C.) in support. At the suggestion of Lord Denman, C. J. it was agreed that the verdict should stand for the full amount, but without costs. No fresh action to be brought.

Judgment accordingly.

COURT OF COMMON PLEAS.

April 22 and May 22.

POWLES, PUBLIC OFFICER, v. PAGE.

Since the 1 & 2 Vict. c. 96, a banking co-partnership is in the nature of a corporation, and notice to one of its members is not notice to all.

C D was a director of a banking company under 1 & 2 Vict. c. 96, and a member of a trading firm of A B and Co. Although a director, C D had nothing to do with the actual management of the accounts of the bank, which were under the management of three managing directors. A B having retired from the firm of A B and Company:

Held, that C D's knowledge of this fact was not constructive notice to the banking company.

This was an action brought by the public officer of the Liverpool Banking Company, and was stated in the form of a special case for the opinion of the Court. The defendant was sought to be charged with debts incurred by a co-partnership, of which he had been a member, but from which he had withdrawn in July, 1842. At that time the firm was indebted to the banking company, but considerably more than sufficient to pay the debt then due had since been paid into the bank by the new firm, although, in the course of their dealings, they had overdrawn their account. Dixon, who was one of the co-partnership at the time of the defendant's withdrawal from it, was a director of the bank, but the case found specially that that fact gave him no part in the management of the bank, which was conducted by a resident manager, not a shareholder, named Wilson, and three managing directors. The case further found that Dixon had never mentioned to any of the directors of the bank, that the partnership was dissolved. The other facts of the case, that are important to this report, appear in the judgment.

Channell, Serjt. (with him Warren), for the plain-

tiff, referred to 1 & 2 Vict. c. 96; 5 & 6 Vict. c. 85; Hill v. Manchester Water Works (5 B & Ad. 866); Stead v. Dunn (12 M. & W. 655); Duncan v. Chamberlayne (11 Sim. 123); Re Style (Turn. & Phil. 105); Thompson v. Spiers (14 Law J. N.S. 453 Ch.).

Byles, Serjt. (with him Atkinson) for the defendant, cited, in addition, Clayton's case (1 Meriv. 572); Simson v. Ingham (2 B. & C. 66). Cur. adv. vult.

JUDGMENT.

TINDAL, C. J.—This was an action of assumpsit, brought to recover the balance of a banking account. The declaration contained counts for work and labour, and commission, with the money counts. The defendants pleaded first, non-assumpsit; secondly, payment; thirdly, that the defendant was sued as one of a co-partnership, carrying on business under the name of "Grantham, Page, and Company," consisting of the defendant, John Grantham, and Wm. Dixon; and that at the time of the commencement of the suit, the co-partnership had a set-off against the banking company; fourthly, that the defendant had retired from the said co-partnership, which was thenceforth carried on under the name, style, and firm of "John Grantham and Company," of which the banking company had notice, and that there was an agreement between the banking company, and all the members of the firm of Grantham, Page, and Co. that the banking company should accept John Grantham's company as their debtors for the sum due from Grantham, Page, and Co. and should discharge the defendant from all liability for such sums; and that such agreement was performed; fifthly, as to the sum of 3,177l. 6s. 4d. accord and satisfaction, by the delivery of two bills of exchange amounting to that sum. The replication joined issue on the first plea; traversed the second and third; denied the act of performance mentioned in the fourth plea, and also the agreement to accept and receive the bills mentioned in the last plea. This cause came on to be tried before me at the sittings in London after Hilary Term, 1844, when it was agreed between the parties, that no question should be submitted to the jury, but that the facts should be stated in a special case for the opinion of the Court, who should have power to draw any inference the jury might have drawn, and direct the verdict to be entered on the several issues joined. The case was argued before us during the last Term, and the Court took time to consider the several points of law which were under discussion. The principal question in the case was whether the banking company had either actual or constructive notice of Page's withdrawal from the firm of Grantham, Page, and Company, before the debt sought to be recovered was contracted. We think it clear the facts stated in the case do not warrant the inference that the banking company actually knew of the dissolution of partnership between Page and the co-partners, and indeed it was hardly contended by my brother Byles that such an inference could be fairly drawn. But the main argument was that Dixon, one of the firm of Grantham, Page and Co. was a shareholder in the Liverpool Bank, and that what he knew must in point of law be considered as known to the banking company. It has been held that notice to a principal is notice to the agent, because it is the duty of the principal to give notice to his agent. See Parker v. Ramsbottom (3 B. & C. 267.) In like manner notice given to the Bank of England in London has been held to operate as notice to the branch banks; at all events, from the time when the information is given to transmit to them. Willis v. The Bank of England (4 A. & E. 21.) But those cases are obviously distinguishable from the present. The banking company and an individual shareholder cannot be considered as bearing the relation to each other of principal and agent. The cases of Porthouse v. Parker (1 Camp. 82), and Jackall v. Finch (12 East), bear a greater resemblance to the present case. In those cases it was held that where a firm consists of several persons, the knowledge of one is the knowledge of all; and such being the established rule of law, the real question in this case is, whether Dixon is or is not now to be considered as a member of an ordinary banking co-partnership; for if he is, the knowledge acquired by him would be binding on him as a partner in the banking company, and he could not sue Page for a debt contracted by Grantham, Page and Co. after Dixon knew that Page had been withdrawn from the firm.

We are of opinion that a joint-stock banking establishment, under the provisions of the 7 Geo. 4, c. 46, and the 1 & 2 Vict. c. 96, and suing in the name of a public officer, is not to be considered as an actual company, but as a quasi corporate body, and such joint stock company is not affected by that which may be known to each individual shareholder. The public officer represents a fluctuating body, suing for the existing body of shareholders, who may be different persons from those who were so at the time when the cause of action accrued; and this opinion is confirmed by what fell from Mr. Baron Parke in Stead v. Dunn (12 M. & W. 655), although unnecessary to decide the point in the case. It was pressed upon us in the course of the argument, even assuming that to be the law, yet, as Dixon was a member of the board of directors, the company must

be affected by that which was known to him, but as the case states he had not, as a director, any management or interference in the banking arrangements, we think the circumstance of his being a director makes no difference in this respect. The plaintiff, then, is entitled to a verdict on the first issue of non-assumpsit; and as it appears to us the facts stated do not make out any of the defendant's special pleas, as to which indeed no argument was offered before us, the verdict must be entered generally for the plaintiff for the balance sought to be recovered.

Judgment for the plaintiff.

June 6 and June 8.

HILL v. KITCHING.

1. By the custom of the trade in London, a broker procuring a charter-party for a ship owner is entitled to a commission of five per cent. upon the value of the freight provided for in the charter-party, whether the vessel ultimately be loaded according to the charter-party or not.

2. By the custom of the trade, if A, a broker, introduce B, another broker, to a shipowner, in order that a charter-party, which B has the power of procuring, may be effected with the shipowner, A is entitled to half the commission paid to B by the shipowner in respect of procuring the charter-party. In an action against the shipowner for the commission payable to the broker for effecting such a charter-party, under such circumstances:—Held, 1st, That B only is the proper person to sue, and not A and B jointly; 2nd, That A is a competent witness for B under 6 & 7 Vict. c. 85.

This was an action of assumpsit for work and labour, care, diligence, services, and attendances done and performed by the plaintiff, as a ship-broker for the defendant, at his request, in and about causing and procuring certain persons, trading under the firm of Messrs. Hills and Aldridge, to enter into a certain charter-party with the defendant, &c.

Plea, non-assumpsit, except as to 4l. 15s. as to that sum payment into Court.

At the trial before Tindal, C.J. at the sittings in London after last Easter Term, it appeared that the plaintiff was a ship-broker, and that having received instructions from Messrs. Hills and Aldridge to procure a ship for them, he went to another broker named Cramond, and was by him introduced to the defendant, who was a shipowner. After some negotiation, which was conducted by the plaintiff, a charter-party was entered into between Messrs. Hills and Aldridge and the defendant, whereby the defendant agreed that he would proceed to Ichaboe and load by his servants a full and complete cargo of guano, free from dirt and rubbish, and that his ship should therewith proceed to Cork or Falmouth for orders, and thence to some port of discharge, &c. He further undertook to deliver his cargo at the rate of 4l. 15s. per ton of 90 cwt. if the vessel reached Cork or Falmouth before April 30, 1844, but at the rate of 4l. 12s. 6d. per ton if she did not arrive until that day or later. And the charterers bound themselves to pay for every ton delivered, in the same way. The registered tonnage of the vessel was 328 tons, but it was proved that she was capable of taking a heavier cargo than that. The vessel did not return until after April 30th, and then only brought a cargo of about 80 tons. The plaintiff claimed remuneration for effecting the charter-party, and he called a number of witnesses who proved that it was the custom for the brokers upon effecting a charter party to receive a commission of 5 per cent. upon the freight. It was said to be usual not to receive the commission on the homeward freight until the return of the vessel, but it was also said that the broker was entitled to his commission immediately, and that it was a mere act of courtesy to allow the payment to be deferred. And two instances were deposed to, in which the broker had successfully maintained his right to immediate payment; one of them being a case in which the claim was enforced at law. The sum paid into Court, with some previous payment, covered the commission upon the cargo which actually arrived, and it was contended by Manning, Serjt. that that was all to which the plaintiff was entitled. It was urged as a proof of this that it must be uncertain what cargo the vessel would bring, and whether she would arrive before or after the 30th of April, so that the commission could not be ascertained until the vessel's return. Tindal, C.J. overruled the objection, but reserved leave to move to enter a nonsuit. One of the witnesses in support of the plaintiff's case was Cramond, and being examined on the voir dire, he deposed that by the usage of the trade he was entitled, from having introduced the plaintiff to the defendant, to half the commission; and it was thereupon objected, first, that he ought to have been made a co-plaintiff; next, that he was an inadmissible witness under 6 & 7 Vict. c. 85. These objections were overruled, and a verdict found for the plaintiff, damages 115l. 12s. Manning, Serjt. having obtained a rule to shew cause why a nonsuit should not be entered, or why there should not be a new trial on the ground of the improper reception of evidence.

Kingleake, Serjt. (with him M. Smith) shewed cause.—The broker is entitled to his commission, at

all events. All that the defendant wants is to have his vessel put into a condition for bringing home a cargo. If the merchant brought back nothing, the shipowner would still be bound to pay. If the voyage were abandoned, that would be no answer to the ship-broker's claim for commission. The earning of freight is no condition precedent to his right to recover. (*Reed v. Wright*, 10 B. & C. 438; *Broad v. Thomas*, 7 Bing. 99.) There is evidence in the case, that it is the practice to pay as soon as the charter-party is executed. The fact that this charter-party is in an unusual form, will make no difference. Then, Cramond could not have joined in suing. All that he does is to give the plaintiff some information. It matters not whether any other broker interferes, the person who brings the parties together is entitled to the commission. (*Burnett v. Boucher*, 9 C. & P. 620.) It is merely some private understanding, or some trade custom, by which Cramond would be entitled, ultimately, to demand of Hill some proportionate remuneration. Lastly, with regard to his competency as a witness. This is just one of the cases that Lord Denman's Act was intended to meet. The words in the proviso to 6 & 7 Vict. c. 85, s. 1, "Any person in whose immediate and individual behalf," cannot apply to Cramond. Supposing the plaintiff to have succeeded, it would still remain as a distinct matter to be proved, whether Cramond could demand any thing of him. He referred also to *Sinclair v. Sinclair*, 13 M. & W. 640.

Manning, Serjt. (with him *Warren*), in support of the rule.—First, there was no evidence to shew upon what commission could be calculated. This case has been put as if it were a contract for the sale of guano. [MAULE, J.—If the vessel were lost upon the voyage home, do you say no commission would be payable? Or if half the cargo were thrown over in a storm, would the broker be entitled to half his commission only?] The amount of commission is rendered doubtful by the uncertainty of the cargo, and the uncertainty of the time of arrival. This is not like the case of an ordinary charter-party. Here, the charterers are not bound to load a full cargo, or even a cargo of any kind. That is to be done by the shipowner. Next, the plaintiff was primarily employed by Hills and Aldridge. Cramond was employed by us. The evidence shows that, by the custom of the city of London, where one broker introduces another, they divide the brokerage. [TINDAL, C. J.—Cramond says, in his evidence, "I only look to Mr. Hill. I am to receive half the commission from Hill, if he recovers it. I have no demand upon Mr. Kitching. My claim is upon Hill." That is his mistake in the law. This action is brought, in part, for his "immediate and individual benefit," within the meaning of Lord Denman's Act. By the custom of the trade, the plaintiff will, if he recovers, become a trustee for Cramond. The case of *Sinclair v. Sinclair*, which establishes that a *prochein ami* and his wife are good witnesses, has no application.

TINDAL, C. J.—It appears, to me, that this verdict ought not to be disturbed. The first ground of objection is, that the plaintiff has no right to recover, on the ground of the uncertainty of the sum to be recovered; that uncertainty depending upon the amount of the cargo which the ship brought home, and also upon the uncertainty of the time of her arrival. But let us look to the position of the parties. Hill is a ship-agent, and the defendant a ship-owner. This is really an action upon a *quantum meruit*, for work and labour done. The plaintiff sets up that he is entitled to such a sum as is usually paid under similar circumstances, and which is calculated according to the benefit which the ship-owner is likely to receive. All the cases cannot be accurately the same, and cannot tally in all particulars with the case under consideration. General evidence was given that in such cases the ship-brokers are entitled to five per cent. on the freight, and although, from the courtesy of dealing, the sum due is oftener not paid until after the freight is earned, still there is evidence that it is considered by brokers to be due upon the execution of the charter-party, and a specific instance was adduced in which payment had been enforced at the earlier period. Then it is said that you cannot apply that to this case, which is not altogether of the ordinary kind. Perhaps not, rigorously, but still it is evidence for the jury, from which they may determine the amount. As to the uncertainty with reference to the amount of the cargo, the plaintiff is entitled to recover something as soon as the charter-party is executed; and the sum to which he is so entitled ought not to be liable to be cut down by the conduct of other parties. If the ship were lost he would still be entitled to something; if the ship brought home nothing he would be still entitled, and *a multo fortiori*, if, as was the case here, a cargo of some kind is actually brought. So, also, with regard to the other uncertainty, viz. that if the vessel arrive before the 30th of April, the defendant is to be entitled to 2s. 6d. a ton more than if she did not arrive until after that date. At all events it is quite clear that the plaintiff is entitled to his commission upon the smaller sum, unless, which is the position which I think is not sustainable, the earning of freight was a condition precedent to his receiving any thing. I think, there-

fore, that upon the point reserved there is no ground for a nonsuit. The other ground is either that Cramond ought to have been a co-plaintiff, or, that his evidence was inadmissible. But there was in reality no privity of contract between him and the defendant. If there was no privity of contract between them, it would only be to insist upon the right of nonsuitorship, the plaintiffs to require that Hill and Cramond should be joined. Cramond almost begins his evidence by declaring that he has no claim upon the defendant; that his demand is against Hill, the plaintiff. Next, is he within the proviso in Lord Denman's Act? The words of the proviso are, "that this Act shall not render competent any party to any suit, action, or proceeding individually named in the record;" and it then goes on to specify some persons exactly in the same position as to interest, although not named on the record; "any lessor of the plaintiff, or tenant of the premises sought to be recovered in ejectment, or the landlord or other person in whose right any defendant in replevin may make cognizance, or any person in whose immediate and individual behalf any action may be brought or defended, either wholly or in part." Is this witness in a parallel situation with any of these? If the plaintiff had made over to him the amount of the sum to be recovered, I should say that he was a person "in whose immediate and individual behalf the action was brought;" but that is not so. He has a claim against him upon a sub-contract, but he has no right to lay his hand upon the sum recovered. There was no evidence that Cramond had urged Hill to bring this action, or that he was liable for the costs of it. He would have brought his own action against Hill for an entirely different claim.

COLTMAN, J. concurred.

MAULE, J.—I think there has been, on the part of the defendant, some misapprehension of the effect of the evidence. It appears that the plaintiff was employed by the defendant, and did certain work. To obtain compensation for this the present action is brought. He shews that he did the work in the employment of the defendant; that proves that he is entitled to some compensation. Then the question is, how much? The plaintiff calls a number of witnesses, who say that the sum to which he is entitled is a definite amount, which is usually paid to brokers procuring the execution of a charter-party. In cross-examination, they say that the ordinary form of a charter-party is not like this; but it does not follow that for procuring such a charter-party to be effected the plaintiff was not entitled to compensation. If there were no charter-party in the knowledge of any of them except for freight in the strictest sense, yet from evidence of what is paid for effecting such charter-parties, the jury may fairly infer what this labour is worth. We are not now construing the charter-party, but this distinct contract to pay a fair price for work and labour done in procuring it to be effected. If it be once admitted that the plaintiff would be entitled to something if the vessel were lost, it follows that the earning of freight is no condition precedent, and in no wise affects his right in the present action. Indeed, if the right of the broker to his commission were always to depend on the return of the vessel, the broker would be, to a certain extent, an insurer, which would be very inconvenient. He must then be paid an additional sum for his risk, and it would be found a much more inconvenient practice than that of insuring in the regular way. Further, Cramond had no right to sue the defendant either alone or jointly with the plaintiff. If Hill had sold shoes, and Cramond recommended him to customers upon an agreement that he should have a per centage, Hill of course would have been the only person entitled to sue for the price of the shoes. Lastly, the proviso in Lord Denman's Act is to incapacitate both the formal plaintiff on the record, and the substantial plaintiff in the action, but Cramond was neither of these.

CRESSWELL, J. concurred.

Rule discharged.

Thursday, June 11.

SUMMERS C. OGDEN.

Costs—Judge's order.

Where a Judge's order was made, "that the issue in the cause should be amended," and "that the plaintiff should pay 13s. 4d. costs" to the defendant: Held, 1st. That the defendant was entitled to the costs, whether the amendment was made or not; and, 2ndly, That a demand of the costs having been made, and not complied with, the defendant was justified in making the order a rule of Court, and was entitled to the costs of so doing.

In this case an order had been made upon the 2nd of April by Cresswell, J. to the following effect:—"I do order that the plaintiff amend the issue herein by making it agree with the declaration, and that the plaintiff pay to the defendant, his attorney, or agent, the sum of 13s. 4d. costs." A copy of this order was drawn up by the defendant's attorney, dated April 4th, and served upon the plaintiff's attorney, together with a demand in writing of the payment of the costs awarded. The costs not having been paid, the defendant's attorney, on April 21st, made the order a rule of Court. At the taxation of costs thereupon,

the Master refused to allow the defendant the costs of making the order a rule of Court, and allowed him only 13s. 4d., the sum named in the judge's order. On a former day *Dowling*, Serjt. had obtained a rule to shew cause why the Master should not review his taxation; against which

C. Jones, Serjt. now shewed cause.—The plaintiff was never served with the judge's order, which was actually made. He was served with the copy of an order dated April 4th, whereas no order at all was made on that day. The order made April 2nd was not served on him, or he would, in all probability, have complied with it. [MAULE, J.—You were served with a document in the form of a judge's order, and bearing a judge's signature. That was a judge's order, though there might be a mistake in it. The date had nothing to do with it.] Then upon the construction of the order; two things are ordered by it,—the amendment of the issue, and the payment of 13s. 4d. costs. The two things are dependent upon each other. It was the defendant's order, not the plaintiff's. The document to be amended was in the hands of the defendant, and it was his duty to take it to the plaintiff and require him to make the amendment. Instead of doing so, he merely applied for the 13s. 4d. Until the amendment was made there was no claim for costs at all, and there having, therefore, been no default, the defendant had no right to incur the additional expense of making the order a rule of Court.

CRESSWELL, J.—My intention certainly was what the order expresses, that the defendant should have his costs, whether the amendment was made or not.

Dowling, Serjt. in support of the rule, was not called on.

Rule absolute.

SIEVEKING and ANOTHER v. DUTTON.

Pleading—General issue.

To an action for breach of an agreement to receive and purchase divers large quantities of wool, it is a good plea that the wool was to be delivered correspondent to a sample at the time of the agreement produced and shewn to the defendant, and that the goods which the plaintiff offered, and which the defendant refused to accept, were not equal to the sample.

Special *assumpsit* upon an agreement by the plaintiff to furnish, and the defendant to receive, divers large quantities of wool, to wit, 131 bales, &c. to be purchased by the defendant upon certain terms, to wit &c. with stipulations for discount in case of early payments. The declaration contained an averment that the plaintiffs tendered and offered to deliver the said goods to the defendant according to the terms of the said contract, and assigned as a breach the defendant's refusal to receive or purchase or pay for the said quantities of wool. The defendant pleaded (*in substance*) that at the time of ordering the wool and making the said promise the plaintiff produced and shewed him a certain sample, and promised to deliver the said quantities of wool according to the sample, and that the defendant ordered the said wool and made the said promise upon the faith and terms of the wool agreeing with the sample, and that the wool tendered did not agree with the sample.—*Verification*.

The plaintiff demurred on the grounds that the plea amounted to the general issue, that it was an informal traverse of the plaintiff's tender, and that it was double.

Dowling, Serjt. in support of the demurrer.—Under the New Rules the plea amounts to the general issue. It does not directly deny the contract alleged in the declaration, but sets up a contract inconsistent with it. (*Morgan v. Pebrer*, 3 Bing. N. C. 457; *Nash v. Breeze*, 11 M. & W. 352; *Heath v. Dwan*, 12 M. & W. 438.) If the plaintiff is bound to prove a tender, it is not such a tender as required by the plea.

Channell, Serjt. for the defendant.—It is not contended that if this were an action of *indebitatus assumpsit* this plea would be good; but here there is an express contract laid in such a manner that it is not safe for the defendant to deny it. The New Rules says, that "the plea of *non-assumpsit* shall operate only as a denial in fact of the express contract or promise alleged, or of some matters of fact from which the contract or promise alleged may be implied by law." [CRESSWELL, J. referred to *Parker v. Palmer* (4 B. & Ald. 387). If this had been a case of goods already sold and a refusal to accept, I should be with you. Here the contract is to supply and to receive divers quantities of wool. Would not that be satisfied by a supply of any wool whatsoever? If it is to be a sale upon the terms of agreeing with the sample, is there not a new condition introduced into the contract?] It would be so in an *indebitatus assumpsit*, but not in a case of this kind. Here the defendant has two defences, but by his plea he elects to depend on one of them. He says first, that it was a sale by sample; and secondly, that the wool tendered did not agree with the sample. The first defence is pleaded only as introductory, and as an inducement to the second. [MAULE, J.—That would be a great recipe for curing double pleas—to say that the first half was only inducement.] In *Stephen on Pleading*, p. 296, it is said, "No matter will operate to make a pleading double, that is pleaded only as necessary inducement to another allegation. Thus it may be pleaded that after the cause of action accrued,

the plaintiff (a woman) took husband, and that the husband afterwards released the defendant; for though the coverture is itself a defence, as well as the release, yet the averment of the coverture is a necessary introduction to that of the release." [MAULE, J.—That would be so where the defence cannot be set up otherwise.]

Douling, Serjt. replied.

The Court, after a few minutes' consultation, were about to give judgment, when

Douling, Serjt. prayed leave to amend.

Leave to the plaintiff to amend on the usual terms.

EVANS v. WATSON.

Stay of proceedings—Costs—Witnesses.

Where a judge's order has been obtained to stay proceedings until a given day in Term, to give time for an application to review the Master's taxation: if the Court grant a rule they will stay proceedings until cause shown, even though no notice of the motion has been given.

Where a defendant has obtained an order for putting off a trial from one assizes to another, and afterwards obtains an order to stay the action, upon payment of a certain sum and costs, the plaintiff is entitled to the costs of detaining a witness in England from the time of the postponement until the time of settling the action, even though he had obtained an order to examine the witness upon interrogatories, which order, in consequence of better advice, he has declined to act upon.

This was an action brought upon a charter-party to recover the sum of 2,356l. for not shipping a cargo of guano according to covenant. Notice of trial was given for the Summer Assizes in the year 1845, but upon the application of the defendant, a rule was made absolute upon payment of 1,600l. into court to postpone the trial until the Spring Assizes, 1846, on the ground of the absence of a material witness for the defendant. The trial was accordingly postponed, and in the month of February 1846, shortly before the Assizes, the defendant obtained an order that, upon the payment of 2,536l. and costs, all further proceedings should be stayed. Shortly after the rule for the postponement of the trial was made absolute, the plaintiff obtained an order for the examination of a certain witness who was about to leave England upon interrogatories, but the plaintiff's attorney, acting under the advice of counsel, subsequently thought that it would be more beneficial to the plaintiff's case that the witness should be detained in England, and examined in the ordinary way at the trial. The order for his examination was therefore abandoned, and the witness detained in England. On taxing the costs of the action, the plaintiff had claimed 150l. 4s. 2d. as the expenses of this witness, and the Master had allowed 97l. 14s. 2d. which, subject to a small deduction in respect of costs already paid by the defendant, was at the rate of 7s. a day from the time of his being subpoenaed until the date of the order for staying all further proceedings. Upon the 6th day of Term, *Byles*, Serjt. moved for a rule to shew cause why the Master should not review his taxation. He produced an affidavit of the foregoing facts, and also that, during the interval between the postponement of the trial and the final settlement, the witness had been employed by the plaintiff in various services, such as lading goods, and the like, at Liverpool. At the same time he moved that in the mean while all proceedings should be stayed. He admitted that no direct notice had been given to the plaintiff, but in the course of the preceding vacation, a judge's order had been obtained to stay proceedings until the fifth day of Term, in order to give time for an application to the Court for a review of the Master's taxation, and subsequently that order had been enlarged until the seventh day of Term. The order, however, was silent with regard to any application to stay execution.

The Court thought that sufficient notice had been given, and granted the rule to shew cause, with an order that in the meanwhile all proceedings should be stayed.

Channell, Serjt. now shewed cause.—He produced an affidavit from the plaintiff that the sum of 150l. 4s. 2d. had been actually paid to the witness, and that although the witness had occasionally been employed in the Liverpool Docks, he had worked as a volunteer, and had received no payment. In *Loneragan v. Royal Exchange Assurance* (7 Bing. 725, 729), it was held that the successful party was entitled to the expense of detaining a foreign witness in this country to await the trial of a cause, although opportunity was afforded for examination upon interrogatories. There the witness was detained from the 17th of September, 1829, until the 17th of February, 1830. So in *Mount v. Larkins* (6 Bing. 195), the Court allowed a charge for the witness's subsistence from the time of his being subpoenaed until the trial, although that was a period of six months. In both those cases, the Court held that the parties were not bound to examine a witness upon interrogatories where his appearance at the trial, and a *vide voce* examination in the hearing of the jury was likely to be more beneficial. *Berry v. Pratt* (1 B. & C. 276), is to the same

effect, although there the witness was an Englishman living in his own house, but detained from a voyage in order that he might be in readiness. In *White v. Brazier* (3 Dowl. 499), the Court would not send a case back to the Taxing Master for disallowing a claim for wages, as he had allowed liberally for subsistence and travelling expenses.

Byles, Serjt. in support of the rule. [TINDAL, C. J.—Have you any authority for the position that the parties are bound in such a case to proceed by examination upon interrogatories?] No; the application of that mode of obtaining testimony has been borrowed from the proceedings in a court of equity, and is of very modern date, but neither party has a right to incur unnecessary expense, and then charge it upon the other side. *Loneragan v. The Royal Exchange Assurance* (1 B. & C. 725) is no authority now upon this point, because at the time the circumstances of that case took place, there was no power to issue a commission and examine either by interrogatories or otherwise. The same remark applies to many other cases. (*Temperley v. Scott*, 1 Mo. & Sc. 601.) Here the plaintiff by obtaining an order for examination upon interrogatories showed that that was the proper course to adopt.

TINDAL, C. J.—This is an action brought to recover a large sum of money, 2,356l. and the defendant delayed the trial by an application for postponement. He has since then admitted his liability, and paid the money. It was a favour to the defendant to put off the trial, and it is not to be wondered at that the plaintiff did all he could to secure the attendance of his own witnesses, and to present them at the trial in the mode which he was advised was most favourable for the suit. If there had been a wanton keeping of a person in England, without regard to the plaintiff's protection, the case would have been different. Here, from the act of the defendant, it was necessary to detain him. I think the plaintiff was justified in keeping him here, and that the Master's taxation is right.

COLTMAN, J.—We ought to grant all reasonable costs to the successful party, and I do not think that these costs are unreasonable.

MAULE, J.—The parties ought to be allowed with some liberality to exercise a *bond fide* judgment, whether the same effect is likely to be produced by interrogatories as by an examination in open court. Here it seems to me that the plaintiff would have acted most unwisely if he had not detained the witness, and that he is fairly entitled to the costs of detaining him.

CRESSWELL, J.—In *Berry v. Pratt* (1 B. & C. 276), the Master allowed the subsistence money from the writ to the time of trial, and the Court thought that it was quite a proper allowance. We must not scan too nicely the discretion that is exercised in considering the respective advantages of a *vide voce* examination in Court, and an examination upon interrogatories.

Rule discharged with costs.

Friday, June 12.

FINDLEY v. FARQUHARSON.

Semble, a defendant succeeding upon a plea of coverture is entitled to some costs.

Quære, whether she is entitled to costs out of pocket only, or to costs generally.

In this case the defendant had pleaded a plea of coverture, upon which issue had been taken and a verdict found for the defendant. The Master had refused to allow her any costs on the ground that in this Court it was not the custom to allow costs to a married woman, defendant in an action.

On a former day in this Term, *Douling*, Serjt. had obtained a rule calling upon the plaintiff to shew cause why the Master should not review his taxation, against which,

Byles, Serjt. shewed cause.—The practice in this Court has been not to tax a *feme covert* her costs under such circumstances. As she is not liable for other costs, it is not reasonable that she should receive them. [MAULE, J.—Suppose she has separate property, and charges that with a debt with a view to providing for the expenses of a cause?] That might form ground for a special application. In *Wortley v. Rayner* (2 Doug. 636) it seems to have been thought necessary to join the husband in a *fi. fa.* sued out upon a judgment for the defendant, a *feme covert*, and then the writ was set aside as not being in conformity with the judgment. The stat. 23 Hen. 8, c. 15, only gives the defendant costs in cases where a plaintiff would have them. But the case of a *feme covert* plaintiff presents even greater difficulties than this. It is understood that in the Irish courts a *feme covert* defendant is allowed her costs out of pocket only, and that is also the rule here in the Queen's Bench.

It was ultimately determined that it should be referred to the Master to ascertain what the rule was in the other Courts, and to tax the defendant her costs accordingly.

Rule accordingly.

Ex parte BRUCE FRAZER.

Under 6 & 7 Vict. c. 73, ss. 8, 9, the Court has a discretionary power; and therefore where, in the affidavit filed under s. 8, the attorney filing described himself as "one of the attorneys of her Majesty's Court of Common Pleas," but omitted to swear dis-

tinctly that he had been duly admitted, the Court allowed a supplemental affidavit of his admission to be filed, and allowed the service of the clerk to be reckoned from the time of the execution of the articles, although more than six months had elapsed.

Talfourd, Serjt. applied on behalf of Mr. Bruce Frazer, an articulated clerk to a country attorney, for leave for the attorney to file with the proper officer a supplemental affidavit of his having been duly admitted, and that the service of the clerk might be reckoned to commence and be computed from the day of the execution of the articles. It appeared that Mr. Frazer had been bound by articles in writing to serve the attorney as a clerk, and that within six months of the execution of the articles, the attorney had filed an affidavit under 6 & 7 Vict. c. 73, s. 8, of the execution of the articles, in which he had described himself as "one of the attorneys of her Majesty's Court of Common Pleas," but had omitted to state distinctly, as required by the Act, that he had been duly admitted. *Talfourd*, Serjt. now proposed to file a supplemental affidavit by the attorney, "that he was duly admitted an attorney of this honourable court in Trinity Term, A.D. 1812;" and he also prayed that the service of Mr. Frazer might be computed as if this affidavit had been filed in the first instance. The 9th section of the statute provides that the requisite affidavit may be filed more than six months from the execution of the articles; but that in that case the service of the clerk shall be reckoned to commence from the day of filing the affidavit, unless one of the courts of law or equity shall otherwise order. Here more than six months had elapsed; but it was sworn that, at the time of filing the original affidavit, the attorney was not aware of the terms of the new Act of Parliament, and it was submitted that it was a proper case for the exercise of the Court's discretionary power.

By the COURT.—We think this a reasonable application. *Application granted.*

WRIGHT v. BURROUGHS.

Practice—Attorney—Pauper.

Where it appears to the Court that a compromise has taken place between a plaintiff, a pauper, and a defendant, in order to prevent the attorney of the plaintiff from obtaining his costs, the Court will set aside any proceedings that have been taken to render the compromise available for the purposes of defence. Such proceedings are not matters of irregularity, and therefore, although the application to set aside a plea, pleaded under such circumstances on the 22nd of April, was not made until the 8th of June: Held, that the application was in time.

In this case the plaintiff had been admitted to sue in *forma pauperis*. Several issues, both in law and in fact, had been raised by the pleadings, none of which had been determined. The issues in law stood in the paper for argument on April 22nd, but on that day, before the Court sat, the defendant delivered a plea of release, pleaded *pais darrein continuance*. The case was accordingly struck out of the paper, but on the 8th of June, in the present Term, *C. Jones*, Serjt. had obtained a rule to shew cause why the plea *pais darrein continuance* should not be set aside, on the ground that it had been pleaded by collusion between the plaintiff and the defendant to deprive the plaintiff's attorney of his costs; and upon another ground, which it becomes unnecessary to report.

Douling, Serjt. now shewed cause.—He produced an affidavit, from which it appeared that the plaintiff had written to the defendant, protesting that "he did not wish the lawyers to get any thing out of the matter," and offering, "that, if the defendant would release him from all costs, he would release his claim upon the defendant." This offer was accepted, and the release accordingly executed and pleaded. In *ex parte Hart, re Tovey v. Payne* (1 B. & Ad. 660), where the defendants obtained a release from the plaintiff after notice of trial, and pleaded it *pais darrein continuance*, no fraud being shewn, the Court refused to interfere. [MAULE, J.—Here the plaintiff is a pauper, who applies to the Court for assistance. They appoint him an attorney to do his work for nothing, except in the event of his obtaining a verdict. Then if there is to be a compromise, he loses all prospect of getting any thing at all for his labour. In any other case the attorney may get the costs from his client.] [TINDAL, C. J.—What induces the attorney to undertake the case? Is it not the *spes spoli* resulting therefrom? The pauper cannot take a step without the certificate of counsel, and that is an additional assurance to the Court and to the attorney that the pauper has a good cause of action.] Then this application comes too late. The plea is pleaded April 22nd. The plaintiff's attorney takes no step for nearly two months, and then comes and asks to set it aside. This case ought to stand upon the same footing as an irregularity, and any objection, if not speedily made, he held to be waived. [TINDAL, C. J.—This is not a case of irregularity, but of collusion. I do not see how the defendant can be hurt by the delay.]

C. Jones, Serjt. in support of the rule.—The attorney is entitled to some indulgence. The plea of release came upon him by surprise, and he had a right

to take time to advise with counsel, and consider the course to be adopted. He swears that his costs out of pocket are more than 30*l.* and that he was advised he should have succeeded upon the demurrer, in which case his costs would have amounted to 100*l.* This is not a question of irregularity, but of fraud.

TINDAL, C. J.—It is only a very strong case that can justify a compromise when the plaintiff is a pauper. All that the attorney has to look to in such a case for his remuneration is the result of the suit. Generally a release from the plaintiff to the defendant, without the knowledge of the plaintiff's attorney, is a strong sign of collusion; but here, from the circumstances, there seems no doubt that there was the intention imputed. It is not desirable to make the situation of attorney for a pauper such that no man of credit will take it at all, which will be the case if we are to suffer a pauper plaintiff to deceive his attorney, and oust him of costs in this manner. This is not like a case of irregularity governed by certain rules, as to the time at which advantage is to be taken. The only effect of an earlier application would have been that the plea of release would have been taken off the record a little sooner.

The rest of the Court concurred. *Rule absolute.*

OLLIER v. TODD, LAURIE, CHAPLIN, and OTHERS.

The Court has no power under the Interpleader Act to protect the sheriff by staying an action of trespass for breaking and entering brought in respect of circumstances accompanying the seizure of goods to which the title was disputed, and has been adjusted by proceedings under the Interpleader Act.

This was an action of trespass for breaking and entering certain apartments of Mary Ollier, the plaintiff. It appeared that the defendant Todd had recovered judgment against one Magee, and had issued a *fi. fa.* thereon, under which the sheriff of Middlesex had entered the apartments of the plaintiff, and seized certain goods, for which she served a claim. A summons was taken out under the Interpleader Act, and, subsequently, an order was made to restore the goods to the plaintiff, upon her paying 30*l.* into Court, to abide the event of an issue, *Ollier v. Todd*. These proceedings, as well as the action of *Todd v. Magee*, were in the Court of Exchequer. Upon the day appointed for trial, Todd, in open court, repudiated the proceedings, and a verdict was found for Mary Ollier, the plaintiff in the issue. After this the present action was commenced in this court against Todd, the execution creditor, Laurie and Chaplin, the sheriffs of Middlesex, and others. On a former day Channell, Serjt. had obtained a rule to shew cause why all further proceedings as against the sheriff should not be stayed, on the ground that the cause of action had already been disposed of under the Interpleader Act.

Byles, Serjt. now shewed cause.—There is no precedent for an application of this kind. The plaintiff has recovered her goods and obtained the compensation for their seizure to which she is entitled, but she has got no compensation for the breaking and entering of her house. Where the sheriff enters the house of a debtor, and seizes goods that are not the property of the debtor, he is protected by the Interpleader Act. This is a case where he enters a house which is not the house of the debtor. If this motion succeed, it will follow that he may enter any house on speculation. The stat. 1 & 2 Wm. 4, c. 58, s. 6, applies only to cases in which the sheriff requires protection from counter-claims to the property in certain goods. Further, this Court ought not to entertain any application in the matter at all. All the previous proceedings have been in the Court of Exchequer, and are, therefore, not subject to the control of this Court.

Sir T. Wilde and Channell, Serjts. in support of the rule.—The Interpleader Act is a remedial measure, and ought to be liberally construed. The 6th section of it, after reciting the difficulties that sometimes arise in the execution of process against goods and chattels by reason of claims made by persons not the parties against whom such process has issued, whereby sheriffs are exposed to the hazard and expenses of actions, enacts, for the relief and protection of sheriffs, &c. in such cases "that when any such claim shall be made to any goods or chattels taken under any such process, it shall be lawful for the Court from which such process issued, upon application of such sheriff, &c. to call before them by rule of Court as well the party issuing such process as the party making such claim, and thereupon to exercise for the adjustment of such claims and the relief and protection of the sheriff, all or any of the powers and authorities before contained, and make such rules and decisions as shall appear to be just according to the circumstances of the case." These words draw down to them all the previous sections, and together vest in the Court, or in a judge, powers quite large enough to meet this case. This is, substantially, the same evil as the Act affects to remedy; the form only is changed. The action is brought for that kind of trespass which is peculiar to the seizure of goods. The intention of the legislature will be defeated, and the Act rendered nugatory, if these proceedings are not stayed. [**CRESSWELL, J.**—Suppose the sheriff, with an execution against

A enters B's house and takes the goods of C. Then there are interpleader proceedings between the execution creditor and C, and the goods are found to be the property of C. Would that prevent B from having an action against the sheriff for breaking and entering his house? **TINDAL, C. J.**—The interpleader rule would have disposed of the question as to the goods, but nothing further. If that had been urged before the judge making the order, he would have declined to make it. [**MAULE, J.**—He would have made an order as to the goods.] No. The sheriff would have preferred to stand by his common law liabilities. [**MAULE, J.**—In ordinary cases the only question is as to the goods. The Act was not intended to protect in extraordinary cases.] Then as to the Court to which the application should be made. The Act would be a nullity if the parties had only to go to a different Court from that in which the order was obtained. [**MAULE, J.**—Could an order in another Court stay proceedings in this Court? All the proceedings under the Interpleader Act were in the Court of Exchequer. What jurisdiction has any other Court?] Every Court has a general jurisdiction over proceedings in its own Court, although it may exercise that jurisdiction with a reasonable relation to proceedings in another Court. This Court only can stay proceedings taken in this Court. Suppose an interpleader order in the Court of Exchequer, and afterwards an action of trespass *de bonis asportatis*, or trover brought for the same goods in this Court; it would be perfectly competent for the parties to appeal to the equitable jurisdiction of this Court to stay proceedings. [**MAULE, J.**—As to an action of trover, there would have been in the interpleader proceedings an adjudication to whom the goods belonged, and the defendant might avail himself of it by plea.]

TINDAL, C. J.—It appears to me that this case does not fall within the terms of the Interpleader Act, and that we have no authority to stay proceedings. The plaintiff has two causes of action: first, a right of complaint for the breaking and entry of her house; and, secondly, a claim to the goods that are seized there. As for one of them, the latter, the Interpleader Act provides a remedy, by empowering the Court or a judge to call before them the different claimants, and to make such order as the justice of the case requires. But the Act is quite silent as to the other injury of breaking and entry. In *Semayne's* case (5 Cope, 91), it is laid down "that it is not lawful for the sheriff, at the suit of a common person, to break the defendant's house to execute any process at the suit of any subject; for thence would follow great inconvenience that men, as well in the night as in the day, should have their houses (which are their castles) broke, by colour whereof great damage and mischief might ensue; for by colour thereof, on any feigned suit, the house of any man, at any time, might be broke." And therefore, if the sheriff break and enter, he does it at his own peril. Of course, the amount of damages must depend very much upon the circumstances of the case. Here it seems that the place broken and entered is only a separate room in a dwelling-house; the jury will take that into their consideration, and confine their verdict to the measure of the injury sustained. The defendants may, if they think fit, pay money into court, and then the plaintiff will go on at her peril. However, nothing is said in the Act as to the injury sustained by breaking and entry, and we should be taking upon ourselves an authority which we do not possess, if we were to enlarge its application. The case of a sheriff entering into the wrong house is not of daily occurrence, and we must take this case upon the pleadings as if it were a separate house. Unless the plaintiff shews that these apartments were so occupied as that they became *domus mansionalis*, she will fail, but if she can show this she will succeed. The act is confined in the remedy, which it gives to a claim for goods.

COLTMAN, J.—The defendants are not entitled to the relief which they ask. The interpleader order was in the Court of Exchequer. There is nothing in the terms of it to prohibit this action. But if this action be in violation of the order, they are the proper persons to punish a breach of their own order.

MAULE and CRESSWELL, JJ. concurred.

Rule discharged with costs.

BUSINESS OF THE WEEK.

Thursday, June 11.

COULTHUS v. BOWES.—The Court delivered judgment.

Rule absolute for a new trial upon payment of costs.

SMART v. SANDARS (from the special paper).—**Channell, Serjt.** (with him *Tuprell*) for the plaintiff. **Byles, Serjt.** (with him *Crompton*) for the defendant. *Curr. adv. vult.*

WILLIAMS v. CAPPER (from the special paper).—**Channell, Serjt.** for the defendant, prayed the judgment of the Court.

Friday, June 12.

CARY v. SMALLWOOD.

RUGLEY v. KING.—**Byles, Serjt.** moved that the judgment signed might be set aside for irregularity. A rule had been obtained for judgment as in case of a nonsuit. The attorney for the defendant had given no notice of the rule until after it was returnable, and had then given notice in Leicester, on Saturday, to shew cause on Monday. No cause being shewn, he had procured the rule to be made absolute, and had signed judgment of nonsuit.

Rule nisi.

WILKINSON v. CAMPION.—**Dowling, Serjt.** shewed cause. **Channell, Serjt.** in support of the rule. There appearing to have been some misapprehension about the facts,

Matter referred back to Master.

WAREHAM v. PRANCE and OTHERS.—**WAREHAM et al. v. THE SAME.**—**Byles, Serjt.** (with him *Hawkins*) shewed cause. **Talfourd, Serjt.** (with him *T. C. Foster*) in support of the rule. It was ultimately agreed that there should be a rule to try peremptorily at the first sittings in Michaelmas Term, and that the defendants should be at liberty to have copies of the exhibits in the possession of the Master.

Rule accordingly.

SMEATON v. REED.—**C. Jones, Serjt.** shewed cause. **Byles, Serjt.** in support of the rule.

Rule discharged upon a peremptory undertaking.

DOE dem. STRINGER v. STRINGER.—On motion of **Talfourd, Serjt.** **Channell, Serjt.** consenting,

Rule enlarged.

LANE v. DIXON.—**Byles, Serjt.** moved to set aside the verdict for the plaintiff, and enter a verdict for the defendant, or a nonsuit, or for a new trial. The action was trespass, and the defendant having justified under a demise, the plaintiff replied a prior demise from August 30, 1845, to Sept. 29, in the same year, and thence from year to year. The demise proved was from Aug. 30, for a year, and so on from year to year. 2nd. The plaintiff charged breaking and entering certain apartments. The evidence was that defendant was in the adjoining passage, and prevented plaintiff from entering the apartments. (*Hartley v. Moram*, 3 Q.B. 701; *Bird v. Jones*, 15 Law J. N.S. 82, Q.B.) 3rd. The declaration had further charged the taking a certain brass plate of the plaintiff's. There was a plea of not possessed. It was submitted that upon the evidence defendant was entitled to a verdict on this issue; and that upon it defendant might arrest the judgment. (*Bennett v. Alcott*, 2 T.R. 166; *Taylor v. Cole*, 3 T.R. 292.) *Rule to shew cause.*

GIBBONS v. ALISON.—On the motion of **Shee, Serjt.** **Channell, Serjt.** consenting,

Rule enlarged.

COURT OF EXCHEQUER.

RODGERS v. MAW.

Where a set-off is pleaded to the whole action, and proved as to part only of the amount proved by the plaintiff, such set-off may be applied in reduction of the plaintiff's demand, though there are no other pleas proved which form an answer to the residue. Where an execution has been levied against a surety in an action upon the security which he had given for another, and the money paid over to the plaintiff by the sheriff, the surety may maintain an action for money paid against his defaulting principal, and, therefore, he may also prove the same facts under a plea of set-off for money paid in an action brought against him by his principal.

This case was argued in the Court of Exchequer two years ago, and in consequence of that lapse of time, and of a change in our reporters, we are prevented from giving the argument, which we regret the less, as the judgment itself contains every material point, and all the authorities.

JUDGMENT.

POLLOCK, C.B.—This was an action on a bond with a penalty of 4,000*l.* conditioned for the payment of 2,000*l.* by different instalments. The defendant pleaded a set-off, on which issue was joined. At the trial before my brother Rolfe, at the Liverpool Spring Assizes, 1844, it appeared that the periods of payment had all elapsed, and 1,725*l.* remained due, which was claimed in the action. The defendant's set-off was under these circumstances: the two plaintiffs and the defendant had been partners; they agreed to dissolve the partnership in January, 1840; the two plaintiffs agreed to take all the debts on themselves, and to release the defendant from all liability as to the joint concern; and this was the consideration for the bond upon which the action was brought. We have no doubt that this amounted to a covenant to pay the debt, and that, as between the plaintiff and the defendant, the defendant became a surety only. The plaintiffs, however, did not pay all the debts, but the defendant was sued with them by the holder of a bill for 1,700*l.* dated in December 1839, drawn by one of the plaintiffs on the firm. Before this action was brought, the defendant had paid to the holder of the note three sums of 500*l.*, 500*l.* and 60*l.* amounting to 1,060*l.*; a sum of 443*l.* had been paid by the sheriff under an execution against the defendant's goods, in an action at the suit of the holder of the note. At the trial, a verdict was taken for the sum claimed in the action, namely, 1,725*l.* and leave was reserved to the defendant to move to reduce the amount to 216*l.* 6*s.* 1*d.* or such sum as the Court should, under the circumstances, direct. Mr. Knowles accordingly obtained a rule to shew cause in Easter Term, which was argued before my brothers Gurney and Rolfe, and myself, in Easter Term. Two points were made on behalf of the plaintiffs; first, that as the set-off proved did not cover the plaintiff's demand, the plea was disproved, and could not avail in reduction of damages; second, that as part of the set-off consisted of money levied under an execution against the defendant's goods, and not paid by the defendant directly in money, it could not be made the subject of set-off as money paid; and the case of *Moore v. Pyrke* (11 East, 52) was cited as an authority on that point. With respect to the first point, there is no set-off at common law; it is merely under the statutes of set-off, and the question turns upon the construction those statutes have received of

ought to receive. The first statute is 2 Geo. 2, c. 23, s. 13, amended and made perpetual by the 8 Geo. 2, c. 24, ss. 4 and 5. The expression in the last Act, that "in case the plaintiff shall recover in any such action or suit, judgment shall be entered for no more than shall appear to be truly and justly due to the plaintiff, after one debt being set against the other, &c." imports that a set-off, if pleaded and proved, shall prevail in reducing the amount, though it may not wholly cover the plaintiff's demand. In *Collias v. Collias* (2 Burr. 820), Lord Mansfield, in the argument, threw out that set-off, under the 8 Geo. 2, must have the same effect as payment under the 8 & 9 Wm. 3, c. 11, and when, after deliberation, the Court gave judgment, it was expressly held that a set-off was equivalent to actual payment, and that a balance must be struck, as in equity and justice it ought. We believe this exposition of the statute has been acted upon ever since in Westminster Hall, and has not been doubted, unless the mistaken report of the case of *Tuck v. Tuck* (7 Dowl. P. C. 373), more correctly reported in 5 M. & W. 109, is an exception. It is contended for the plaintiff that if the plea of set-off pleaded to the whole does act as proof over the whole, that it will avail nothing, and not only the defendant cannot have a verdict to the extent of the set-off proved, which is undoubtedly correct, but the set-off, though proved, cannot operate in reduction of damages. We think this cannot be supported upon authority or on principle. The case of *Tuck v. Tuck* (5 M. & W. 109), cited for the plaintiff from 7 Dowl. shows the defendant cannot have a verdict on the plea of set-off, unless the plea covers the plaintiff's demand, either as it stood originally or as reduced by some other plea; but it is no authority for depriving the defendant of the benefit of the set-off in reduction of damages, for, according to the report in M. & W. stated by the learned counsel in the cause to be a correct report, this benefit was expressly allowed. In *Conner v. Paddon* (2 Crompt. M. & R. 547), it was held that the plea of set-off was not to be construed strictly; and in *Moore v. Bullin* (7 A. & E. 595), it was held that a plea of set-off was not divisible, and that if it failed to cover the demand, the plaintiff was entitled to a verdict on the whole plea. But there is nothing in that case, or in any of the cases, to shew that the defendant might not have the benefit in a reduction of the damages, although the plea was found against him; and in giving the judgment of the Court in that case, Lord Denman says, although the plea is no bar to the action, the evidence might reduce the damages. In *Tuck v. Tuck* the set-off was allowed at the trial to reduce the damages, although the Court would not enter a verdict to the amount proved; and in *Barnes v. Butcher* (9 Car. & P. 728), the same course was adopted. We are, therefore, clearly of opinion that, as to the sums actually paid, the set-off must avail in reducing the damages. With respect to the other point, it is certainly decided in *Moore v. Pyrke*, that where the goods of a party, taken as a distress for rent which ought to have been paid by another, were actually sold, the party injured could not recover as for money paid, though he might have maintained such an action had he paid the rent in money under the pressure of the distress, instead of allowing his goods to be sold. (See *Keall v. Partridge*, 8 T. R. 308.) The present case is not precisely the same. Here the plaintiff's goods were taken, not under a distress, but under a writ of *f. fa.* which directs the sheriff to make of the defendant's goods in that action "as much money," and the sheriff has so done; he has made money of the plaintiff's goods, and therewith has paid the claim in the action. The redress by a claim as for money paid is much more simple and beneficial than a special action upon the case, of which this is an instance. Here the plaintiffs sue for the consideration for their promise to indemnify, and the defendant, it is contended, cannot set-off the money paid by the produce of his goods in consequence of the breach of that promise. We cannot see upon what principle a man may not set off money paid by the produce of his goods as well as money paid directly without any sale of goods. If a man's goods are taken by an act of trespass, and are subsequently sold by the trespasser, and turned into money, he may maintain a trespass for the possible injury; or, waiving the former, he may maintain trover for the wrong; or, waiving the last altogether, he may sue for money had and received. In this case the surplus of the sale, after paying the debt, would clearly belong to the party, and he might sue the sheriff as for money had and received, and of which (the residue) the sheriff has paid a debt that the plaintiffs were bound to pay; we think it is at least doubtful whether it be not more in the spirit of the law that a set-off should be allowed in such a case, than that a party should be driven to a special action. In *Mercweather v. Nison* (8 Tr. R. 196), where an action had been brought against the defendants for a tort, and the damages reviewed were levied, as the report states, wholly on the plaintiff, and he sued as for money paid, it was decided that no contribution could be claimed as between wrong-doers; but neither at the trial, nor on the motion, was it suggested that the action would

not lie because the money was levied and not paid, if that was the fact, as may be collected, although not with certainty, from the report. Lord Kenyon in that case said there was a clear distinction between *forti* and *assumpsit*, and intimated that the action might have been maintained if the case had been one of contract, and not tort. And it may be observed that this case was not cited at the bar or noticed by the Court in *Moore v. Pyrke*. With respect to the necessity for the actual payment of money, it may be remarked, that although in *Marwell v. Jameson* (2 B. & A. 51) it was held that giving a bond to pay is not equivalent to payment, even in *Barclay v. Grock* (2 Esp. 571), Lord Kenyon decided that if a surety satisfied and extinguished the debt of the principal by giving a note which was unaccepted as payment, he might maintain an action for money paid before the note was due. Upon the whole, we think there is so much doubt in applying the case of *Moore v. Pyrke* to the present case, or in the principle of that decision, that we think an opportunity ought to be given to the defendant (if he desires it) to put this upon the record by special verdict, or bill of exceptions, which can be easily done by an arrangement between the parties.

Wednesday, June 10.

BOYDELL v. ECKSTEIN.

Under the plea that the defendant did not indorse a bill of exchange, he may give evidence to shew that the bill bearing the indorsements of the drawer, of A B, and of himself, was returned into A B's hands by an arrangement between A B and the defendant, the defendant's name being left upon it by mistake, and that the plaintiff took the bill from A B with notice of these facts.

This was an action against the indorsee of a bill of exchange (tried before Parke, B.), and the question was, whether, under the plea that the defendant did not indorse the said bill, evidence was admissible to shew that the bill, having been indorsed by three parties, viz. Johnson (the drawer), Penelah, and the defendant, had, by an arrangement between the two last-mentioned parties, been returned into the hands of Penelah, the defendant's indorsement having been satisfied, and that Penelah had given the bill to the plaintiff, that he might get the money for it, stating at the same time that the defendant's name had been left on by mistake, and that he was not liable on the bill.

Crowder, Q.C. now moved for a rule to shew cause why there should not be a new trial, on the ground of misdirection and of surprise, and that the verdict was against evidence. The defence set up at the trial ought to have been made the subject of a special plea, and was not properly received in evidence, under the plea that the defendant did not indorse. This would have been in accordance with the new rules. It is, for instance, quite usual to plead specially that the defendant handed over the bill to a party to get it discounted, and that that party wrongfully indorsed it to the plaintiff. [PARKE, B.—The present case is similar to *Master v. Allen* (8 M. & W.). Your argument must, therefore, go to impeach that decision.] A negotiable instrument bearing an indorsement by the party sued upon, must be shewn to have been fraudulently put in circulation in order that a valid defence may be constituted. [PARKE, B.—Here the defence is that the defendant's name was not upon the bill *animo transferendi*, but that it was there by mistake.] Then that defence should have been specially pleaded. [POLLOCK, C.B.—You contend that the matter mixed up with the indorsing should have been set forth. His lordship referred to *Pickard v. Sears* (6 Ad. E. 469).] Can a man who loses a bill on which he is subsequently sued set up this defence under the plea that he did not indorse? or if he delivers a bill with his indorsement upon it for the purpose of being cancelled, and this bill is lost, must not the facts here supposed be specially pleaded? [PARKE, B.—They might be given in evidence under the plea on this record.] [POLLOCK, C.B.—Here the defendant's indorsement was altogether satisfied.] The learned judge directed the jury, that if they believed Penelah, who was called as a witness, they ought to find for the defendant, and he further told them that, in the event of such a verdict, the plaintiff would have a remedy against other parties, viz. the drawer and acceptor; it is submitted that the learned judge was wrong as to this latter part of his direction, and that there should consequently be a new trial.

POLLOCK, C.B.—So far as the defendant was concerned, this bill was nothing more than a piece of waste paper. It appears by the evidence that the plaintiff held it with distinct notice of this fact, viz. that the defendant's name remained on the bill by mistake; and it further appeared that no consideration was given for that indorsement as it then stood; it was then sufficient to allege that the bill had not been indorsed, and to shew that the plaintiff received the bill with notice of the circumstances under which the defendant's name appeared on it.

ROLF, B.—*Marston v. Allen* is undistinguishable from this case, and, with reference to the point which has been under consideration, the New Rules have made no alteration in the mode of pleading. Then,

on the other point, viz. whether there ought to be a new trial, merely because the judge misdirected the jury as to what the law would be in an action which might be brought by the plaintiff against a different party, I am of opinion that a new trial ought not to be granted on that ground.

PLATT, B.—Here the bill having been indorsed by the defendant for value, was subsequently, and before it was due, returned into his hands, from which it passed, by an arrangement between the parties, to the witness Penelah; the defendant was, therefore, placed in the same situation as when he was first about to put his name to the bill. Besides, there was here no delivery, which is requisite to constitute a good title by indorsement.

PARKE, B.—I am quite satisfied with the verdict delivered by the jury in this case, and think that *Marston v. Allen* is directly in point. *Rule refused.*

HAIGH v. PARIS.

Under what circumstances there should be a special count to recover for work and labour, and where the common count is sufficient.

This was an action for work and labour, tried before Mr. Secondary Potter, in which a verdict was found for the plaintiff, with 41. 1s. damages. It appeared that the plaintiff had been engaged to work for the defendant at weekly wages, and the question was, whether the plaintiff could, under the common count, recover damages from the defendant for a breach of contract, the plaintiff not having been allowed by defendant to do the work stipulated for, owing to a disagreement respecting the number of hours per day during which the plaintiff was to work. At the trial, Greenwood insisted that the plaintiff ought to be nonsuited, as he had merely given evidence to shew the loss of time occasioned by the refusal of the plaintiff to employ him according to his contract, and on the ground that there was no count in the declaration specially framed on the contract between the parties. The plaintiff's counsel, however, having declined to be nonsuited, the case went to the jury; and Greenwood subsequently obtained a rule nisi for a new trial, on the ground of misdirection. Against this rule

Martin, Q. C. and Thomas now shewed cause.—The ground taken in moving for this rule cannot be sustained, this ground being that there ought to have been a special count in the declaration, setting forth the contract between the plaintiff and defendant. Now the rule is, that if a man is engaged at yearly wages, and discharged after a month's employment only, he cannot maintain an action for work and labour until after the expiration of the year for which he was engaged; but if he sues before the expiration of the year he must declare specially. Here there was evidence to go to the jury of a hiring, and the week had expired. [POLLOCK, C.B.—But what evidence was there of work done, and how can the plaintiff recover on the common count without giving such evidence? It seems that the Secondary must have directed the jury to find the value of the time lost by the plaintiff, i. e. must have directed them to find the amount of a week's wages, subject to the opinion of this Court as to the plaintiff's right to recover under this declaration.] There was some evidence to establish the count for work and labour; why, therefore, should not the plaintiff be entitled to recover? [POLLOCK, C.B.—The jury were substantially directed to consider whether the plaintiff was wrongfully discharged or not, but this issue was immaterial on these pleadings.] Then the verdict here being for a sum under 5l. the Court will not interfere on the ground that the verdict was against evidence. [POLLOCK, C.B.—The amount of damages does not matter on a motion for a misdirection.] It was contended that the plaintiff could not recover any thing without a special count, but it is submitted that an engineer, who was sent for into the country to survey a line for a projected railway, might recover on the common count for the time lost by him in going down, if he was subsequently not allowed to make his survey. [ALDERSON, B.—That would depend entirely upon the nature of the contract.—If the contract were for making the survey, then the going down to the place named is incidental to the subject-matter of the contract, and the engineer must bring his action for a breach of the contract, and so recover damages for his work and labour in going down. But if he were in the first instance directed to go down to a particular place, and this was a distinct and separate contract, although the order were given with a view to a subsequent survey, he might sue on the common count for work and labour.]

POLLOCK, C.B.—There ought clearly to be a new trial in this case. *Rule absolute.*

STEADMAN v. ARDEN.

An allottee of shares in a projected railway company, who is called upon to pay money in respect of the shares allotted to him, is entitled to inspect the subscribers' agreement and Parliamentary contract—those deeds being within the power and control of the other party.

Bramwell shewed cause against a rule obtained by Wiles for an inspection of the Parliamentary contract

and subscribers' agreement of the Dublin and Armagh Railway Company; the rule having been moved on affidavits, stating those documents to be within the power and control of the defendant and his attorneys, and that the plaintiff had no copy of the deeds to which he was a party. It appeared that the defendant was a director and provisional committee-man of the railway company in question. *Bramwell* argued that the defendant had no exclusive power over the deed, but held it in the character of a trustee for other parties; that the action between the parties was not upon the deed, but collateral to it, and that at all events the rule would be granted, if at all, as against the defendant only, and not as against his attorneys. He cited *Pickering v. Noyes* (1 B. & C. 262); *Mayor of Arundel v. Holmes* (8 Dowl. P.C. 118); *Morroo v. Sanders* (3 B. Moore, 671).

Willes, in support of his rule, cited *Doe dem. Morris v. Roe* (1 M. & W. 207); *Charnock v. Lumley* (5 Scott, 438); and was then stopped by the Court, who ordered that the defendant should produce the deed for the inspection of the other party, both having an interest in it.

Rule accordingly.

Thursday, June 11.

TART v. DARBY AND ANOTHER.

A, occupying premises of *B*, tenant to *C*, entered into an agreement with *B* and *C* to become *C*'s tenant at the expiration of *B*'s term. Before that time arrived, *C* makes an unconditional contract to sell the property to *A*; the title is objected to by *A*, and *A* continues to occupy, paying no rent until *C* distrains for twelve months' rent under the agreement for tenancy: Held, that the agreement for a future tenancy operated as a lease, and that the relation of landlord and tenant existed between the parties at the time of the distress, notwithstanding the contract to purchase.

—Stamp.

This was an action brought by the plaintiff against the defendants for distraining property of the plaintiff when no rent was due. There was also a count in trover. To this the defendants pleaded not guilty by statute. At the trial the following facts were proved: In October, 1843, one Robert Mountain was tenant to the defendants of certain premises, and the plaintiff wishing to take them, the following agreement was entered into between the parties:—

An agreement entered into the 28th day of October, 1843, between Robert Mountain, of West Bromwich, of the first part; Thomas Darby and William Darby, both of West Bromwich aforesaid, of the second part; and James Tart, of Birmingham, provision dealer, of the third part.

Whereas the said Robert Mountain holds and rents, of and under the said William and Thomas Darby, a messuage or dwelling-house, situate at Mares Green, West Bromwich, with the out-buildings thereto, at the rent of 25*l.* per year, payable quarterly.

And whereas the said Robert Mountain hath agreed with the said James Tart to underlet the said house and premises to him the said James Tart from Monday next at and after the rent of 20*l.* per year, until the 24th day of June, next, at which time the said William and Thomas Darby agreed to exonerate the said Robert Mountain from his tenancy, on his paying all rent up to the said 24th day of June next, and to accept the said James Tart as tenant from that period at the rent of 20*l.* per year, payable quarterly, and under the further provisions hereinafter mentioned. Now therefore the said Robert Mountain agrees to let, and the said James Tart agrees to take, the said messuage and premises from this time till the 24th day of June next, at the rate of 20*l.* per year, free from all deductions, the said rent to be payable quarterly, and such rent to commence from Monday next, and a proportionate rental paid on the 25th day of December next. And the said Robert Mountain agrees to find all materials except lath to put up the partition wall and make good the ceiling, he the said James Tart finding lath and labour. And the said James Tart agrees to take of the said William and Thomas Darby the said messuage and premises from the said 24th day of June next, at the yearly rent of 20*l.* per year, payable quarterly, free of all deductions, and to give or take six months' notice previously to giving up the said premises. And the said Thomas and William Darby agree to release and exonerate the said Robert Mountain from his tenancy on and from the said 24th day of June next, on his paying up all rent due to that time, after the rate of 25*l.* per year.

As witness the hands of the said parties.

The mark of ROBERT MOUNTAIN.

WM. DARBY.

JAS. TART.

On this agreement being signed, Tart entered into possession of the premises, and in March 1844, being anxious to purchase the premises, he applied to the Darbys to sell them to him, which they agreed to do, and signed an agreement in the following form:—
“We, the undersigned, executors of the late William Maybury, agree to sell to Mr. James Tart the property now occupied by him in the parish of West Bromwich, in the county of Stafford, for the sum of 340*l.* The aforesaid executors to be at the expense of the title-deeds.

(Signed)

W. DARBY.

THOS. DARBY.”

Soon after this, on an abstract of title being delivered, it appeared that the executors had only a mortgage term of the premises for 1,000 years, with a power of sale, but not the freehold. Upon this, disputes arose between the parties, Tart asserting that they had undertaken to sell him the freehold, while the defendants contended that the plaintiff knew they had only a term for 1,000 years, which was all they undertook to sell. This dispute went on until June 1845, when, Tart refusing to pay rent, but insisting on the Darbys making to him a title to the freehold, they distrained on the premises for the year's rent. At the trial a verdict was found for the defendants, whereupon *Humfrey*, Q. C. obtained a rule nisi for a new trial, on the ground that the agreement between Mountain, Tart, and the Darbys, did not amount to a lease, but was merely an agreement for one; but even if it was a lease, Tart had a mere *interesse termini*, until after the expiration of Mountain's term; and as the agreement to sell intervened, there never was a tenancy between Tart and the Darbys, so as to give them a power to distrain.

Whitehurst, Q. C. now shewed cause.—If this was a mere agreement for a lease, I admit, we should have no right to distrain, but it is clear that it is a lease. The question is, what was the intention of the parties at the time the agreement was signed? If nothing remains to be done, it is a present demise; and here it is clear that the parties never contemplated any further instrument being executed, but intended the one signed to be the only one, as far as regards Mountain. This is perfectly clear; and what distinction can be drawn between him and the Darbys? It is clear, that they meant it to be a lease to Tart from the 24th of June, and no other act was to be done by them.

Then comes the question, whether this *interesse termini* was put an end to by the agreement to purchase in March? This, it is submitted, it is not; there was never any surrender of the term by the lessee, and it never could have been his intention to surrender; if the lessor could not make a good title, there is no distinction to be drawn between this case and one of a valuable lease at a peppercorn rent. *Doe dem. Gray v. Stanion*, 1 M. & W. 695, is in point, and shews that an agreement to purchase of this kind does not operate as a surrender of a tenancy from year to year. The only difference between that case and the present is, that in that case there was an existing tenancy, and not an *interesse termini* merely. But then there was an entry here in June to perfect the lease; and if this instrument be a lease, the moment he was in possession he was in under it. Then there is another point, which is, that the agreement for the sale requires a 1*l.* stamp, and when produced at the trial merely bore a 2*s.* 6*d.* stamp, with a 10*l.* penalty, which was insufficient.

Humfrey, Q. C.—That was the fault of the Stamp-office. We wished to stamp with a 1*l.* stamp, and a 5*l.* penalty; but they said it required a 2*s.* 6*d.* stamp, with a 10*l.* penalty under 7 & 8 Vict.

Whitehurst.—That is clearly wrong, as the duty attached before 7 & 8 Vict. came into operation. [POLLOCK, C. B.—This is a case of hardship, no doubt; but we have only to inquire whether a 2*s.* 6*d.* stamp is sufficient. It is clear that it is not. ALDERSON, B.—Why did you keep the good wine to the last? If you had mentioned this before, you would have saved a good deal of time, as it disposes of the whole question.] But this merely goes to a nonsuit, and I would rather keep the verdict.

ALDERSON, B.—Of course, under these circumstances, the Court would grant a new trial to give the plaintiff time to restamp this paper; and I think the proper stamp would be a 2*s.* 6*d.* one, with a 10*l.* penalty.

Humfrey, Q. C. and S. J. Partridge, in support of the rule, contended that Tart was never tenant from year to year of the Darbys, that until June Tart was tenant of a mere *interesse termini*, which was put an end to by the agreement to purchase in March, so that he was never in under the lease. The entry in June was under the agreement to purchase, which was not completed, owing to the default of the defendants; therefore it was not for them to set off that fact, and force on the plaintiff the condition of landlord and tenant.

POLLOCK, C. B.—This rule must be discharged. We are all of opinion that this instrument is a lease; it is quite clear that it was one as far as regards Mountain, and who can look at it and say that it is not so as regards the Darbys and Tart? It is quite absurd to suppose that they would give up one tenant without getting another; then if so, it is put an end to by the agreement? I think it would be absurd to hold that he is in under an *interesse termini*; that an agreement of this kind would put an end to the lease. Here when he enters he enters under every term that belongs to him.

ALDERSON, B.—I am of the same opinion. It is absurd to say that the landlord meant to give up his title against Tart, if the purchase was not completed; the old terms were to be superseded, on the supposition that the new agreement could be carried out; if not, then you must go on as before. There is no

hardship in this, for if he has broken his contract as to the sale, you have your right of action for such breach. It then comes to the question of whether this is a lease or not; on that point we must look at the intention of the parties at the time it was made, and it is clear that they meant it to operate as a lease.

Rule discharged.

Friday, June 12.

WALSTAB v. SPOTTISWOODE.

(Argued May 29 and 30.—Decided June 12.)

1. Where the number of shares on a projected railway company, in which the deposits are paid up, is so small as not to justify the provisional directors in proceeding with the scheme; and where the concern is, consequently, abandoned, without issuing scrip or going before Parliament, an allottee who has paid his deposit may recover back the entire amount so paid from the provisional committee, under the common count for money had and received.
2. The letters of application for, and allotment of shares in, a projected railway, do not constitute a partnership in the undertaking as between the allottee and the provisional committee.
3. The allotment of shares in an undertaking which is not carried on in compliance with the terms of the prospectus, and which turns out wholly abortive, forms no legal consideration for the payment of the deposit by the allottee.

This was an action of *assumpsit* brought by the plaintiff, who was an allottee of thirty shares in the Direct Birmingham, Oxford, Reading, and Brighton Railway, to recover back the amount of deposits paid up in respect of such shares from the defendant, who was a member of the provisional committee of the line in question. The declaration contained a special count, alleging a contract by the defendant to deliver scrip for the shares allotted to the plaintiff, and a breach of such contract; and there was also a count for money had and received. The defendant pleaded *non assumpsit*, and several special pleas. It is not, however, considered necessary to set out the pleadings at length, because the Court, in delivering their judgment, expressed no decided opinion as to the sufficiency of the special count, nor did the argument or decision turn upon the form of the pleas, but was confined to considering whether the plaintiff could or could not recover the deposit money as money had and received by the defendant to the plaintiff's use. The facts will be found very clearly stated, both in the course of the argument and in the judgment, and it will be only necessary to refer to that statement. At the trial (before Pollock, C. B.) a verdict was found for the plaintiff for the full amount claimed, viz. 78*l.* 15*s.* and in Easter Term (Wednesday, April 22), *Martin*, Q. C. moved for a rule to shew cause why a nonsuit should not be entered, pursuant to leave reserved by the learned judge, on grounds which will be found stated in the LAW TIMES for the 25th of April last. The Court having granted a rule nisi,

Jervis, Q. C. and *Willes*, now (May 29) shewed cause.—The rule to enter a nonsuit in this case was moved on three grounds—1st, that the two written documents, viz. the letter of application and that of allotment, did not prove any contract on the part of the defendant to deliver scrip; 2ndly, that there was no evidence of any authority given by the defendant which could make him liable on the contract, he being only a provisional committee-man, and the Joint Stock Companies Act not empowering a company to issue scrip before complete registration; 3rdly, as to the count for money had and received, it was contended that the liability of the promoters of an abortive scheme to return the amount of deposits to the subscribers thereto, which liability existed prior to the stat. 7 & 8 Vict. c. 110, to the full extent of returning the entire deposit money, without any deduction therefrom, has been removed by that Act altogether. The argument on the other side must go to this length, that the promoters are entitled to deal with the funds placed in their hands for the purpose of liquidating preliminary expenses, even where they do not go before Parliament; and that the subscribers are therefore liable to contribute to all the current preliminary expenses of the company, however great those expenses may be. It must be argued, in fact, that the subscribers are jointly liable with the promoters for all such expenses. The question which arises on the first plea is this—whether the allotment of shares to the plaintiff, and the payment to the company's bankers of the deposit on the shares by the allottee, suffice to raise a contract on the part of the defendant to exchange for scrip the letter of allotment and the banker's receipt for the deposit. This question, in fact, turns upon the form of the letter of allotment, and on the constitution and nature of companies such as that referred to. The Court, therefore, will have to determine whether the promise alleged in the first count to have been made by the defendant has been proved; and secondly, whether, prior to the passing of the Joint Stock Companies Act, the money paid by the plaintiff could not have been recovered under the count for money had and received; and if so, whether that statute makes any difference with respect to the plaintiff's right to recover which previously existed. The history of the formation of the company in question seems to have

been this:—The commencement of its existence must be taken to date from the 6th of August last, on which day the usual entry was made at the Registry-office. Some slight changes in the name of the company were made subsequently to this entry, and on the 12th of September the prospectus of the company was filed. Then an advertisement appeared, which stated that the prospectus would be issued; and finally the prospectus itself made its appearance. The second name in this prospectus on the list of registered directors is that of the defendant; and the prospectus ends by stating that applications for shares may be made at the offices of the company, and at other specified places. By this prospectus the company, it must be observed, was held out as being duly registered. The next document registered was on the 9th October, being the consent of certain parties to act as provisional directors, and the agreement on the part of two trustees of the company to take one or more shares each in the concern. The advertised capital of the company was stated to be 2,000,000*l.* in 80,000 shares of 25*l.* each; applications were made for 400,000 shares, of which 70,000 were allotted, but of this number the deposit was paid on 4,000 shares only, that is to say, the entire sum paid up was 10,500*l.* only. The plaintiff applied for shares on October 7th, and an allotment was made to her of thirty shares on October 18th, on which shares the deposit money was paid into the bank. The promoters subsequently determined that no scrip should be issued, and that the subscribers should not be allowed to sign the deeds; that, in fact, no step at all should be taken towards carrying out the original objects for which the scheme was got up. No plans were ever deposited under the standing orders, nor were any steps taken for obtaining the Act. The only proceedings indeed took place between August 6th and October 9th, and in answer to repeated inquiries and applications on the part of the plaintiff, she was informed at the office of the company that the directors did not intend to prosecute the undertaking, to issue scrip or to return the amount of the deposits without first satisfying the liabilities incurred. Under the circumstances above enumerated, were the directors bound to return the whole deposits, or were they entitled to deduct the expenses before returning them? With respect to the first count of the declaration, it has been argued that the letters of application and allotment cannot be taken as together constituting one entire contract, and it was further said that the company was never in a condition to issue scrip under the Joint Stock Companies Act, and that, consequently, the defendant cannot be liable on the special count; but by section 23, it is evident that the promoters are empowered, after provisional registration, to allot shares, and when section 24 is taken in connection with that just cited, it will be equally clear that they have power to issue scrip. It will be argued that the power to issue certificates of shares given by section 25 to companies completely registered shows that companies provisionally registered only cannot issue scrip; but a reference to section 51 shows that the certificates mentioned in section 25 are quite different from scrip, and of a peculiar nature, and the conclusion is, that after provisional registration, the promoters may allot shares and issue scrip; the statute, therefore, did not in any way interfere with the performance of the contract which is disclosed on the face of the letters of application and allotment, and the defendant was, consequently, bound to deliver scrip to the plaintiff. The more important question, however, arises on the second count, that for money had and received, and it is submitted, with the authority of *Nockells v. Crosby* (3 B. & C. 814), and from the observations of Bayley, J. Littledale, J. and Holroyd, J. in that case, that the scheme having failed and proved abortive the promoters were liable to return the entire deposit money paid by the plaintiff, without any deduction. The duty of the promoters was to carry out the projected company according to the terms of the prospectus, and all the authorities shew that the subscribers only agree to become shareholders when the company is actually formed; that the deposit money is, in fact, paid as earnest that the party so paying it will take the number of shares on which it is paid when the company is actually formed. [ALDERSON, B.—The question would, of course, be different, where all the shares have been taken up and paid upon; then surely the shareholders will be liable to bear their proportion of the expenses.] That may be conceded; but here the promoters take the preliminary steps at their own peril. [ALDERSON, B.—There are, in fact, two questions. 1st, Can the promoters take any preliminary steps before all the shares have been taken up and paid upon? 2ndly, Are they entitled to take such steps when all the shares have been paid upon? Is the bargain entered into for the purpose of enabling the promoters to defray the expenses of the preliminary proceedings, or was the money merely paid as earnest that the shares should be taken?] The ten per cent. deposit is clearly paid as earnest money, for the satisfaction of Parliament. [POLLOCK, C.B.—Was the object of the joint stock Companies Act to protect provisional committeemen, or the subscribers, or both?] The cases with reference to joint-stock

companies shew that the directors cannot act until the entire fund has been subscribed. The directors have, therefore, made themselves liable for the expenses, according to the law as it existed before the Act; and that Act was not passed with a view to altering the contract of the parties, but for the purpose of regulating the formation of joint-stock companies. Thus, sec. 23 does not enlarge the power previously vested in the promoters; it merely gives them a power to allot shares, and receive the deposits by way of earnest thereon, as well as such further sums as may be required by the standing orders. Then, again, the certificate of provisional registration is obtained by registering the name and object of the company, and the names of the promoters, and there is no provision enabling the shareholders to interfere in any way with carrying on the company before the certificate of complete registration has been obtained. The whole object of the Act is clearly to regulate the formation of joint-stock companies, but not to affect the liability of parties engaging in such companies, or to alter the responsibilities which previously to the passing of that Act attached to them. [ALDERSON, B.—As to so much of the deposit money as is required to be paid into the Accountant-General's hands by the standing orders, it certainly seems to me that this is subscribed for that specific purpose, and cannot be expended by the directors.] Then as to the 2s. 6*d.* per share, being the 10s. per cent. on the amount of such share, it is submitted that this must likewise be returned to the plaintiff. *Pitchford v. Davis* (5 M. & W. 2); *Fox v. Clifton* 6 Bing. 792; *S. C.* 9 Bing. 115; and *Lake v. The Duke of Argyll* (9 Jur. 295), are equally authorities to shew that the promoters could not apply the 10s. per cent. as to shew that they could not apply the other portion of the deposit money to the payment of the expenses. [ALDERSON, B.—*Nockells v. Crosby* is an authority for you as to the latter, but not as to the former.] The argument derived from the fact that the whole number of subscribers had not been obtained, is equally applicable to the 10s. per cent. as to the 2*l.* 10s. and with respect to both these amounts it is therefore submitted that the plaintiff is entitled to recover.

Martin, Q.C. F. V. Lee, and Peacock, in support of their rule.—The existence of companies like the present was not contemplated by or known to the law until within a very short period, and decisions with reference to companies differently constituted, and the objects of which were different, must be applied to railway projects with great caution. The object which all parties have in view who enter upon an undertaking like that under consideration, is twofold; it is to give each shareholder a transferable interest in the concern, and to make proprietorship the criterion of responsibility. In *Kempson v. Saunders* (4 Bing. 5), it was indeed held, that where a company projected for a particular purpose is abandoned without effecting that purpose, there has been a failure of consideration, which entitles a party who has advanced his money on the understanding that such purpose would be accomplished, to recover the money so advanced. In the first place, the decision just cited cannot be upheld, and is now admitted by the whole Profession to be bad law; the principle there laid down would lead to great injustices. Then, secondly, no evidence was here given to shew that the undertaking had been abandoned, for it was not obligatory on the provisional directors to go to Parliament during the Sessions then next ensuing; the case of *Kempson v. Saunders*, therefore, does not apply. Then, as to the special count, that cannot be supported, because there was no consideration for anything beyond the allotting of the shares to the plaintiff, and those shares have been allotted. The whole consideration having been thus exhausted, no new consideration appears for the promise on the part of the defendant there alleged, viz.: to deliver scrip to the plaintiff. Neither can the count for money had and received be sustained, for a subscriber to a company like this becomes a *quasi* partner in it; he deposits his money for the express purpose of meeting the expenses and furthering the objects of the company, and he, in fact, becomes a member of a joint partnership concern, the expenses of which ought in fairness, and without any reference to the Joint Stock Companies Act, to be borne by all the subscribers jointly. Two of the cases cited and relied upon on the other side, viz. those of *Lake v. Duke of Argyll*, and *Pitchford v. Davis*, are quite correct, but differ from the present. In the first of these the question was as to the expenses prior to the partnership being formed, and the second related to the liabilities of parties after the trade of the company had actually commenced, and while it was being carried on. The other cases were also, it is conceded, quite correctly decided, but are no authorities against the proposition contended for on behalf of the defendant, viz. that here the deposit-money was brought into hotch-pot for the general purposes of the concern, and was, therefore, chargeable with the expenses incurred. [Argument in continuation, May 30.] The committee was not bound to deliver scrip before complete registration, therefore, the contract set out in the first count of the declaration was not proved

at the trial. The question is, whether in the powers given to the committee by the 23rd section of the Joint Stock Companies Registration Act, the words "to perform such other acts only as are necessary for constituting the company," gave them a power to issue scrip before complete registration. This, it is submitted, it does not, but even if it did, they are not bound to do so, for it cannot be said that the issuing scrip is in any way an act "necessary for constituting the company." The scrip in itself is mere valueless paper, and confers no title in the holder to claim shares in the company, which can only be done through the allotment. A holder of scrip incurs no liability. (*Jackson v. Coker*, 4 Bevan, 59.) No liability can be transferred by the sale of it: if it could be held that scrip represented shares, and was in fact the title to the share, a party holding it might transfer to a man of straw, and so get rid of his liability, which is the very thing the legislature has tried to guard against. Then, again, the contract declared on is to deliver scrip certificates on the executing by the plaintiff of the subscribers' contract. This she has not done, but says she was discharged from such execution by the defendant; now it is submitted there was no evidence to go to the jury of any such waiver or discharge; but further, it is submitted that the Court must judge of the agreement between the parties from the documents by which it was sought to be proved, and these (being the letter of application and allotment) shewed that the agreement was respecting "shares," not "scrip." If this were so, then the agreement had been satisfied, for shares had been allotted; the bare fact that the letter contained directions as to where the deposit was to be paid, and as to obtaining scrip, could not make the provisional committee-men liable for not delivering scrip, when they had no power to do so, and they had done all they promised to do by allotting the shares. Then as to the second count, it is submitted that there was here (the moment the money was paid) a *quasi* partnership; the money went into one common fund, was liable to the legitimate expenses, and the moment any part thereof was properly expended, this action for money had and received could not be maintained; there was no earmarking of the money, but it was all paid in to a common fund, properly applicable to the legitimate expenses; on the other hand, if this be not so, and the parties are not *quasi* partners, then they stood in the position of separate contracting parties, vendor and vendee; the contract is for the allotment of shares; that contract has been satisfied by the allotment, and the money cannot be recovered back; for this Court will not enter into the question of whether the party has made a wise or foolish bargain; and it is admitted that the undertaking in question was a *bond fide* scheme. Then, thirdly, it is contended that there is no evidence that the undertaking was abandoned, so as to bring the case within the principle laid down in *Nockells v. Crosby*; it is clear that there is no necessity to go to Parliament in the first session after the company is formed, and any one of the promoters may insist on the scheme going on; the company is provisionally registered, and that registration lasts for twelve months, which time has not yet expired; and it is submitted that no one subscriber has a right to withdraw his name at any time, and call on the others to pay him back his money; he has no right to do this as long as the provisional registration lasts. [ALDERSON, B.—But here the plaintiff is not an original promoter, but a subscriber to a scheme promoted by A, B, and C; and the question is, whether the external subscribers cannot put an end to the speculation *quoad* themselves.] It is submitted they cannot, and that the promoters may go on to get the company completely registered. [POLLOCK, C.B.—I think there is sufficient evidence of a statement by one of the directors that they intended to wind up the affairs of the company, pay off the expenses, and return the balance.] But that statement could not bind the other promoters who might choose to go on; now here there were 90 provisional committee-men, who cannot be all bound by the statement of one upon the whole case; then it is submitted that the judgment of the Court must be for the defendant, both on the special count, and the count for money had and received. *Cur. adv. vult.*

JUDGMENT.

POLLOCK, C.B. now (June 19) delivered the judgment of the Court.—This was an action of *assumpsit*. The declaration contains a special count, founded on an alleged contract to deliver scrip; and there was also a count for money had and received. At the trial before me on Friday, the 27th of February last, it appeared that the defendant was a member of the provisional committee of the Direct Birmingham, Oxford, Reading, and Brighton Junction Railway Company, which was registered provisionally, under the 7 & 8 Vict. c. 110. The prospectus announced the capital to be two millions, in 80,000 shares of 25*l.* each, and the deposit required was stated to be 2*l.* 12s. 6*d.* per share. On the 7th of October, 1845, the plaintiff applied to the provisional committee for shares, according to the form directed by the committee; which form it is not

necessary now to state. And on the 18th of October, she received a letter of allotment in the following form:—"Letter of allotment. Not transferable. Direct Birmingham, &c. Capital, two millions, in 80,000 shares of 25l. each. Deposit, 2l. 12s. 6d. —The committee of management have allotted to you thirty shares in this undertaking, and I am directed to request you will pay the deposit of 2l. 12s. 6d. per share, amounting to 78l. 15s. into one of the under-mentioned banks, or this allotment will be null and void. This letter will be exchanged for scrip, on your presenting it at the offices of the company, and executing the parliamentary contract. The subscribers' agreement will lie at the offices of the company on and after —, of which due notice will be given." This letter was signed by the secretary, and further set out the names of various bankers, to whom the subscription might be paid; and this letter having been sent to the plaintiff, the plaintiff in due time paid the deposit on the thirty shares to the London Joint Stock Banking Company. On the 27th of October the plaintiff applied for the scrip. The time for delivering the scrip was extended by the provisional committee to the 6th of November. On the 12th of November the plaintiff applied again, and after some other fruitless applications at the office of the company, she was told by the secretary that the directors did not mean to issue scrip; and upon the plaintiff's requesting to have her money repaid to her, the final answer given at the office by one of the provisional committee was, that a statement would be made of the concerns of the company, and that the surplus would be divided. It was admitted at the trial that 400,000 shares had been applied for, and that 70,000 shares had been allotted; but on the 5th of October, 1845, the public confidence in railway schemes having been much shaken, the deposit was paid on 4,000 shares only, a number much too small to justify proceeding with the scheme. The plaintiff, failing to get scrip or her money back, brought the present action. At the trial it was contended by the defendant's counsel that the defendant was not liable under either of the counts in the declaration, the special count, or that for money had and received. A verdict was found for the plaintiff under the direction of the Lord Chief Baron, with leave to the defendant to move to enter a nonsuit if there was no evidence to support the verdict, all the points raised by the defendant's counsel being reserved. Accordingly Mr. Martin, in Easter Term, moved for a rule to enter a nonsuit, which was argued before me and my brothers Alderson, Rolfe, and Platt, on the 29th and 30th of May last. For the defendant it was contended that the contract, as laid in the special count, was not proved, and that the defendant was under no contract to deliver scrip. The argument, as to the defendant's liability on the count for money had and received, turned on the question whether the alleged subscribers became *quasi* partners, and whether their subscriptions went into a common fund to be applied to the general purposes of the undertaking; and with reference to the defendant's liability on the special count, the argument was, that the application being for shares, which shares had been accordingly allotted, she had all that she asked for, and therefore had no ground of complaint. Lastly, it was said there was no evidence of the concern being at an end, as the defendant was not bound by what another member of the committee stated; and that unless the concern was abandoned, money had and received would not lie. For the plaintiff it was argued that the special count was proved, and that there was evidence that the concern was at an end. *Nockells v. Crosby* (3 B. & C. 814) is an authority that the plaintiff is entitled to recover. We do not think it necessary to give any opinion on the special count, as to which some doubt may well be entertained, because we are all of opinion that the plaintiff is entitled to recover on the count for money had and received; and as the plaintiff cannot be entitled in a case like the present to damages upon the first count for not delivering the scrip, as upon a contract broken, and also to have her money returned as upon a contract rescinded, we are of opinion that the verdict for the plaintiff on the count for money had and received ought to stand; but that the verdict for the plaintiff on the first count ought to be set aside, and a verdict entered for the defendant. With respect to the first point, whether the plaintiff and the subscribers became *quasi* partners, and the subscription became a general fund to be divided for the mutual benefit of all, so that no one could claim back his subscription, we are of opinion that such is not the true result of the publication of the prospectus, the application for shares, the allotment, and the payment of the deposit. We think in this case no partnership ever actually commenced. In *Fitchford v. Davis* (5 M. & W. 2) it was decided that, where a prospectus was issued for a speculation to be carried on by means of a certain capital, the subscriber did not become a partner unless the terms of the prospectus were in that respect complied with. That decision, I believe, has been frequently acted upon in this and the other courts of Westminster Hall. In the case of *Nockells v. Crosby* (3 B. & C. 814), it seems that a precisely similar document had

been given. It appears to us that the application for shares, and the payment of the deposit, amount to nothing if the shares subscribed for are so few that the concern cannot be proceeded with, and the scheme must be abortive. With respect to the point that the plaintiff applied for shares, and that shares were actually allotted, it is a sufficient answer to say, that the allotment of shares in an abortive scheme, which does not correspond with what the prospectus held out, is really not a compliance with the application. This scheme has wholly failed, and ceased, even as a speculation; nothing whatever has been allotted. But it was urged that there was no evidence of the concern being at an end. We think the answer given at the office, by one of the provisional committee, that a statement would be made and the surplus divided, was evidence to go to the jury that the concern was abandoned; and, unopposed as this was by any evidence on the part of the defendant, we think the jury were well warranted in finding that the scheme was at an end. If so, we think, on the authority of *Nockells v. Crosby*, that the plaintiff is entitled, on the count for money had and received, to recover. A question was made, though not much argued, whether there was any difference between one portion and another of the deposit-money on each share, it being, as we think, manifest that the deposit of 2l. 12s. 6d. consisted of 2s. 6d. being 10s. per cent. on the 25l. in pursuance of the 23rd clause of the Act referred to, and the residue being 10 per cent. required to be deposited by the standing orders of Parliament. We think it is clear beyond all doubt that the amount paid in order to be deposited in pursuance of the standing orders, must be returned to the plaintiff. There is no foundation whatever for the claim to that which was paid for a specific purpose, as the concern was abandoned before the money could be applied to that specific purpose, but we think the remainder of the money may also be claimed back. The judgments of Mr. Justice Holroyd, and Mr. Justice Littleale, in *Nockells v. Crosby*, apply to this part of the case. To use the language of Mr. Justice Holroyd in that case, "the concern was really never set a-going, and the expenses incurred in setting the scheme on foot are not to be paid out of the concern, unless they are adopted when it is actually in operation. All the steps taken were only preparatory to carrying the project into effect, and as it never was really carried into effect, the plaintiff is entitled to have back the whole deposit." On these grounds we think a verdict ought to be entered for the defendant on the first count, and that a verdict for the plaintiff on the count for money had and received ought to stand, and therefore that there must be judgment for the plaintiff.

Jervis, Q.C.—The defendant will have a verdict on the first count on the plea of *non assumpsit* only.

POLLOCK, C.B.—Yes.

PLATT, B.—That is quite right. The contract laid in that count was not proved.

Rule absolute to enter the verdict for the defendant on the issue raised by the plea of non assumpsit to the first count, and discharged as to the rest. Judgment to be entered for the plaintiff.

THORNETT V. HAINES.

If a vendor, having advertised property to be sold without reserve, employs a puffer to raise the price at the sale, the deposit money may be recovered back by the party who has paid it.

In order to render the sale invalid, on the ground of puffing, it is not necessary to connect the puffer with the principal by direct proof, indirect evidence is sufficient for this purpose.

This case has been already reported in the Law T. for May 2. Cause having been shewn by *Byles, Serjt., Robinson and Wordsworth* (Tuesday, April 28), against the rule for a nonsuit obtained by *Humfrey, Q.C.*; and *Humfrey* having on that day been heard in support of his rule, the Court thought that if it appeared on consideration that the defendant had been shewn, by the evidence adduced at the trial, to have been connected with certain parties who acted as puffers at the sale, such sale was void by reason of the puffing, but they reserved the question of agency for their consideration. The Court now (Friday, June 12) delivered their opinions at length on the point reserved, and as the main question is really one of considerable importance, it has been thought better to give the judgment *in extenso*. It would be useless to restate the facts of the case, as they will be easily collected from the judgment.

JUDGMENT.

POLLOCK, C.B.—This case was tried before me on the 4th of December last, when a verdict was found for the plaintiff, subject to a motion for a nonsuit if the Court should think that Robinson's evidence of what passed on the subject in question was not receivable, or if receivable, was insufficient. In the ensuing Term there was a motion made by Mr. *Humfrey* for a nonsuit, and cause was shewn by my brother *Byles* on the 28th of April. I am of opinion, and so is my brother *Platt*, that this rule ought to be discharged. My brother *Parke* differs from us; and I will shortly state the points which were made in the argument, and the grounds

on which it appears to me the rule ought to be discharged. This was an action for money had and received to recover back a deposit paid on the purchase of an estate at a sale by auction, on the ground that puffers were employed, on behalf of the vendor, at this sale; and that such a description of fraud or improper conduct prevents any contract arising out of the transaction, which can be binding on the plaintiff. At the trial, a person of the name of Fry, who had been previously employed by the defendant, deposed, that he had applied to a person of the name of Robinson, to attend the sale and bid for him. He was to bid up to a certain sum, and then Fry was to tell him if he was to bid further. Accordingly, Robinson attended the auction; he sat on one side, and Fry on the other. He bid 1,200l. Fry did not bid at all. Robinson at last bid up to 1,570l. and then he saw a lady and gentleman leave the room; that lady and gentleman were, in fact, the plaintiff and his wife. The lady, he says, came in again. He did not go beyond 1,570l. because Fry shook his head, and told him to go no further. The other circumstances of the case connecting Fry with the transaction were these: it appeared that Fry had been employed by Walker, the real defendant—the auctioneer. Fry was employed by Walker on former occasions, and on the present occasion Fry was the person who had been referred to. A person of the name of Dickinson, a foreman to Walker, stated that persons were frequently referred to Fry while the house was on sale, and that in this way Fry had appeared to be in communication with Walker, who was the real seller of the property, both on the present and on a former occasion. It appears to me that in the present case, either Fry was bidding for himself, or he was directing Robinson to bid for him, or he was directing Robinson to bid on account of Walker; who is, in reality, the defendant, and who has, no doubt, indemnified the present defendant. I think, in this state of things, it was a fair question for the jury, which of the above suppositions was really correct, and the jury having acted upon the evidence laid before them, which, I must say, I think was undoubtedly receivable, I think the rule for a nonsuit ought to be discharged. I should regret to dispose of the rule upon the very narrow grounds upon which, undoubtedly and strictly, it might be disposed of, the question for the Court merely being whether there is any evidence to go to the jury that Robinson, who was at the auction, did, in reality, bid on behalf of Walker. My brother *Parke* is of opinion, that this is left too doubtful, and that there is not sufficiently distinct evidence of employment by Walker, so as to make Walker, who is the real defendant, responsible for what is done; but I own, it appears to me, that there is sufficient evidence to warrant the finding of the jury; that we ought not to disturb the verdict; and that this rule ought to be discharged.

PLATT, B.—Upon the argument of this case, three questions were raised: was there evidence to connect the defendant with the puffer? Was the evidence properly admitted? And would it be a defence in a court of law, to prove that the vendor employed that puffer? With regard to the third question, the Court are unanimously of opinion, that if a vendor, having advertised property to be sold without reserve, employs a puffer to raise the price at the sale, the deposit money may be recovered back again. Upon the two other questions, it is proper that the grounds of the difference of opinion, existing amongst the members of this Court, should be stated. Now, the evidence which appeared in the case was this. Fry attended the sale. He employed Robinson to bid until he should reach 1,590l. The plaintiff and his wife attend the sale; they leave the room after a bidding up to 1,570l.; they return, and the wife, not the husband, makes another bidding, advancing to 1,575l., upon which Fry nods to Robinson, importing, as he understood, that he was to stop. It is clear, therefore, what the object of Fry was upon that occasion, in employing Robinson. It was to raise the price if he could to 1,590l.; and when he found a solitary bidder, flagging in the bidding, and there was a danger of not arriving at that sum, and of not getting beyond 1,575l. then he stops the authority, and the premises are knocked down to the purchasers at 1,575l. Would any jury doubt, taking those facts together, that Robinson was a puffer? Well, but that is not enough; you must connect that puffing with the defendant. Suppose Fry had been called, and he had stated, upon his oath, that he was desired to employ a man so to act at the sale, there would be no doubt that he would then be directly connected; but it is not necessary to connect by direct evidence, if you can arrive at facts from which a jury, reasonably considering those facts, might come to the conclusion that Fry was employed by Haines, why then the whole case is proved against Haines. Now what is the evidence to connect Fry? Why, the evidence is this. Fry had been employed by the defendant in purchasing that very house, as his agent, which he was then selling; particulars of sale, published to the world, referred to the house for information, and when the parties went to the house, they were referred to Fry. Well now, taking those two facts together, and coupling it with his conduct at the sale,

immense as he could not have any interest at all in raising the price, except he was employed by a person really interested in the price; taking all those facts together, is it not reasonable to conclude he could not so have acted without being employed by Haines to act as he did? It seems to me, on the whole, that the evidence was altogether admissible, and that the jury have given a very proper verdict, by which they fix Haines with the privity of Fry's employment of Robinson to bid.

ROLYE, B.—I only heard part of the argument on one side, and therefore, of course, I can give no opinion. *Rule discharged.*

BUSINESS OF THE WEEK.

Wednesday, June 10.

STANLEY P. LOGIE.—In this case, which was an action on a warranty of potatoes, and in which a verdict was found for the plaintiff, *Bumfroy, Q.C.* moved for a new trial on the ground of surprise and of misdirection. The first count in the declaration alleged that the sale of the potatoes was by sample, and that the bulk did not correspond with the sample; and the second was framed on the warranty. The learned judge told the jury that there was no evidence on the second count, but left the first to them. The Court, after referring to the evidence, thought that the direction of the learned judge was correct, and refused the rule.

Rule refused.

NEWTON P. THE GRAND JUNCTION RAILWAY COMPANY.—*Martin, Q.C.* showed cause against the rule nisi obtained by *Jervis, Q.C.* in this case. The rule called upon the plaintiff to show cause why the date of the entry of judgment should not be altered, and why proceedings should not be stayed on payment of costs. *Jervis, Q.C.* having been heard in support of his rule, the Court took time to consider.

Cur. adv. vult.

Friday, June 12.

In the matter of *GEORGE SALTER.*—*Jervis* showed cause against the rule obtained by *Jones* in the matter of the above-named *George Salter*, an attorney, which was shortly mentioned in a recent number of the *LAW TIMES*.

Rule discharged with costs.

WILSON P. GRAY.—*Butt* showed cause against the rule for a new trial granted in this case, which turned entirely on the sufficiency of the affidavits on which it was moved, and presented no feature of interest. The Court made the rule absolute on payment of the costs of the trial, and of the present application within a week after taxation, and such sum of money, if any, as a Judge at chambers should order on the plaintiff's application; otherwise the rule to be discharged.

Rule accordingly.

Thursday, June 11.

MIDDLETON V. LEVY.—This was a rule nisi for a new trial, on the ground that the verdict was against evidence. *Whitcomb, Q.C.* showed cause.

Rule absolute.

DON DEM. WOOD V. WATKINS.

Referred to the Master.

CLARK V. LEVY.—This was a rule calling on the plaintiff to show cause why the defendant should not have leave to add a plea. *Barstow* appeared to show cause, and stated he could not resist the rule being made absolute.

Rule absolute.

CROWN CASES RESERVED.

EASTER TERM.

Saturday, April 25.

REG. V. ROBERT WORTLEY AND JOHN ALLEN.

Larceny in a church—Box affixed to pew—

Statement of property.

Upon an indictment for stealing a box and coin in a parish church, it appeared that the box was an ancient box, fixed by screws to a pew in the middle aisle, with an inscription on it, "Remember the poor;" and that there were two locks to the box, but there was no evidence to show who had the custody of the keys, or that the churchwardens or any other person had ever taken out the money for distribution. Held, that the property was well laid in *J. N.* and others, it being proved that *J. N.* was the vicar of the parish.

The two prisoners, together with another person not in custody, were indicted before *Tindal, C.J.* at the last assizes for the county of Northampton, for feloniously and sacrilegiously breaking and entering the parish church of Oundle, in the county of Northampton, and stealing a certain box and a quantity of silver and copper coin, in the said church being found and being. The property in the said box and coin was laid, in the first count, in *Charles Thomas Wilson* and another; in the second count, in *Joshua Nussey* and others; and in the third count, in *Samuel Tibbetts* and others.

The jury acquitted the prisoners of breaking and entering into the church, and found them guilty of stealing only.

Whereupon an objection was taken by the prisoners' counsel, that the box was fixed to the freehold of the church, and formed part of the freehold; and that there was no count in the indictment properly framed under 7 & 8 Geo. 4, c. 29, ss. 3, 4, and 44, to warrant a conviction for "stealing a fixture fixed in or to any building" (see *Res v. Nixon*, 7 C. & P. 442); and further, that the box, being a fixture to the church, formed part of the freehold of the church; and there was no count stating the property to be in the vicar or rector, in whom the freehold of the church was vested by law.

The box was a very ancient box, firmly fixed by two screws at the back to the outside of a pew in the centre aisle of the church, and by a third screw at the bottom to a supporter beneath; and over the box

was an ancient board, with the inscription painted thereon, "Remember the poor." There were two locks to the box, but no evidence was given to show in whose custody the keys of such locks were kept, nor was there any evidence that the money had ever been taken out by the churchwardens, or any other person, for the purpose of being distributed, although it was proved that both silver and copper had from time to time been dropped into the box.

It was further objected that the property, as to the money, was improperly laid in each count of the indictment.

In the first count, in which the property is described to be in *Charles Thomas Wilson* and another, *Charles Thomas Wilson* was one out of two churchwardens of the parish; in the second count, in which the property was laid in *Joshua Nussey* and others, *Joshua Nussey* was the vicar of the parish; and in the last count, in which the property was described to be in *Samuel Tibbetts* and others, *Samuel Tibbetts* was one out of many parishioners.

It was contended that the churchwardens could have no property, as churchwardens, in this money; that in no view of the case could the vicar and any others have the property; and that even if it belonged to the parishioners, which it was agreed could not be the case, such property should have been laid in them by the description of parishioners.

The learned judge thought there was sufficient difficulty in the case to reserve the judgment, and to request the opinion of the judges; intending, if the conviction should be supported, that the prisoners should be sentenced to seven years' transportation.

Flood, for the prisoners.—First, There is a general objection to all the counts; the property is laid in certain persons by name, but there is no description of the office by virtue of which they hold the property. This is contrary to all the precedents. (*R. v. Barton*, 1 Ry. & Moo. C.C. 237; *R. v. Went*, Russ. & R. C.C. 359.) [*TINDAL, C.J.*—That shows that churchwardens may be described by their name of office, but does it follow that you must so describe them? There is no decision on the point; but the precedents are uniform. [*TINDAL, C.J.* referred to stat. 59 Geo. 3, c. 17.] That makes churchwardens a body corporate, and authorizes the description of them in any action or indictment by their corporate name. In the case of *R. v. Beacall* (Ry. & M. C.C. 15), an indictment under a local Act was framed in the way now contended for. Churchwardens must so describe themselves when they sue as churchwardens (*Hadman v. Ringwood*, Cro. Eliz. 146), and if, in an indictment, property is laid in them because they are churchwardens, it must describe them as churchwardens, otherwise the indictment would be satisfied by evidence that the goods belonged to parties who were not churchwardens. A conviction or acquittal upon an indictment laying the property in certain persons not described as churchwardens could not be pleaded to an indictment laying it in them as churchwardens, because in the latter case it is *ad damnum parochianorum*, but not in the former. (*Hadman v. Ringwood*, Cro. Eliz. 179.)

[*CRESSWELL, J.* referred to *Taylor v. Parner* (1 Vent. 88).] Secondly, the box and the money could not be the property of the churchwardens; churchwardens have no property in things found in the church, unless they are things with regard to which they have some concern in the discharge of their duties as churchwardens. For example, they have a property in the bell-ropes, because it is their duty to provide and repair them; and in tools left by workmen in the church, because the reparation of the church is within the scope of their duty (*Jackson v. Adams*, 2 Bing. N.C. 402); but it is no part of the duty of churchwardens to fix boxes to the pews in the church. It is said in *Barn's Justice* (citing Year Book, 12 Hen. 7, 29 a), that gifts to the church are gifts to the churchwardens; but there is no evidence that this box or money were gifts to the church. [*TINDAL, C.J.*—Stat. 27 Hen. 8, c. 25, expressly requires a poor-box to be kept in the church; and one of the canons directs the churchwardens to keep a strong chest, to which there were to be three keys.] This box had not three keys, but only two. and the offertory-money was not put into it; but at all events, if this box had been put up under that statute, then the churchwardens for that purpose are a corporation; and *R. v. Beacall* shows that they must be described as churchwardens. [*TINDAL, C.J.*—But the box and money were in the custody and care of the vicar and churchwardens, and the question is whether, nobody else appearing, the property is not theirs.] The statute (59 Geo. 3), which gives to the churchwardens and overseers a corporate character, and provides that they may be described by their corporate name, affords an argument against this indictment, which gives the names of the individuals but not the office. (*Ward v. Clarke*, 13 Law J. N.S. Exch. 229.) Lastly, it appeared that the box in question was affixed to a pew facultied to a particular hospital; and there being no evidence who had the key of the box, the *prima facie* presumption is, that the box belonged to that hospital. [*PARKE, B.*—Would it not rather belong to the rector? If so, there is no count laying the property in the rector.

Cur. adv. vult.

Afterwards the judges assembled to consider the case, and held that the property was well laid in the second count. *Conviction held right.*

MAIL COURT.

Thursday, June 11.

(Before Mr. Justice WIGHTMAN.)

BOULTON V. FRITCHARD.

When, upon the trial of a cause, evidence is improperly rejected, which, if admitted, must have been decisive of the case, and the jury, notwithstanding this, find a verdict for the party tendering it, there being no other evidence produced by him, the Court will not disturb such verdict if it is satisfied that substantial justice has been done, and that the result must be the same if a new trial were granted.

Greaves showed cause against a rule to set aside the verdict for the defendant obtained on the trial of this cause before the sheriff of Gloucestershire, and for a new trial. The action was on debt by the plaintiff, who was a drover, and the particulars delivered were as follows:—

"This action is brought to recover the sum of 8l. 11s. 11d. being the balance due from the defendant to the plaintiff on the following account:—

		£	s.	d.
1845				
Aug. 1 to 9	} To 9 days, at 3s. 6d. per day	1	11	6
Oct. 10 to Dec. 22				
	To 74 days, at 3s. 6d. per day	12	19	0
	Paid for feed of cattle, pikes, and men to assist during these periods, at plaintiff's request			
		30	16	5

Balance due 8 11 11
"Above are the particulars," &c. &c.

A summons having been taken out by the defendant for a better particular of the third item of 30l. 16s. 5d. in the plaintiff's demand, an order was made upon the plaintiff for "a further and better account in writing, with dates and items, of the particulars of the plaintiff's demand for which this action is brought, as to the last item," &c. In pursuance of this order, a fresh particular was delivered, not only of the said item of 30l. 16s. 5d. but of the two preceding items of 1l. 11s. 6d. and 12l. 19s. but no mention was made in this second particular of "By cash at various times 36l. 15s." The defendant pleaded one plea, viz. "never indebted." An order for a trial before the sheriff of Gloucestershire having been obtained, the writ of trial was sent down, attached to which were the particulars last delivered only, and which contained no admission of the payments by the defendant, as in the first particulars. At the trial, the plaintiff proved a debt to the amount of 22l. odd. The defendant's attorney then cross-examined the last witness as to certain payments made by defendant to plaintiff, which course was objected to by the plaintiff's counsel; the under-sheriff, however, permitted the witness to be cross-examined as to moneys advanced to the plaintiff for expenses incurred by him on the road with the defendant's cattle, but not as to money paid by defendant to plaintiff generally, as there was no plea of payment, and the particulars gave no credit for payments, and although, therefore, the defendant proved that he had advanced to the plaintiff more than sufficient to liquidate his claim, the under-sheriff would not allow any portion to be set against the plaintiff's claim for wages. The defendant's attorney then tendered in evidence the particulars of demand as at first delivered, and wherein there was an admission of the payment of 36l. 15s. which, however, was rejected by the under-sheriff, who, in his summing up, advised the jury to find for the plaintiff to the amount of 8l. 1s. the sum proved for wages. The jury, however, gave a verdict for the defendant, whereupon this rule was moved as a verdict against evidence. It was now contended against the rule, that the under-sheriff was wrong in rejecting the evidence tendered of the first particular, wherein credit was given for 36l. 15s.; and that, inasmuch as substantial justice has been done by the verdict, and the result on a second trial would inevitably be the same, the rule ought to be discharged. (*Kenyon v. Wakes*, 2 M. & W. 764; *Booth v. Howard*, 5 Dowl. 438; *Eastwick v. Harman*, 6 M. & W. 13; *Booley v. Moore*, 8 Dowl. 375; *Townson v. Jackson*, 13 M. & W. 374; *Rowlands v. Blakley*, 1 Q. B. 403; *Morgan v. Harris*, 1 Dowl. 570; *Smethurst v. Taylor*, 14 L. J. Ex. 86; *Bright v. Eyrton*, 1 Burr. 395; *Smith v. Brampton*, 2 Salk. 644; *Macrow v. Hull*, 1 Burr. 11; *Edmonds v. —*, 2 Jurist, 4; *Farewell v. Chaffey*, 1 Burr. 54; *Wilkins v. Payne*, 4 T. R. 468; *Fascroft v. Devonshire*, 2 Burr. 936; *Greave v. Barrett*, 5 Tyrw. 475; *Doce dem. Rutzen v. Farr*, 4 Ad. & Ell. 53; *Wright v. Tatham*, 7 Ad. & Ell. 313.)

Peacock, contra, contended that whether the under-sheriff was, or was not, right in rejecting the evidence, the verdict as it stood was wholly unsupported by

any evidence; and that there was no instance in which the Court had refused a new trial under such circumstances, and that if the case went again down to trial, the plaintiff might be enabled to prove a greater demand.

WIGHTMAN, J.—This case undoubtedly differs considerably from any that have been cited, and for some time I had considerable doubts whether or not I ought to grant a new trial; but upon the whole I think it is within the principle of the cases that have been referred to, and that I ought not to grant a new trial, since it is clear that the jury have come to a correct conclusion, although upon insufficient evidence, for, taking the evidence of the defendant as it ought to have been received, it appears that credit was given for money, as shown by the particulars, more than sufficient to cover the plaintiff's demand, as proved at the trial. But it is said that, notwithstanding this, as there was no plea of payment on the record, the defendant was not entitled to give these payments in evidence; but it must be remembered, that the reason for dispensing with a plea of payment is, because the particulars admit it. Now it appears here, that in the first particulars credit was given for payments, and then a summons was taken out for a better particular of one of the items of the plaintiff's demand, and then he makes out a fresh particular of his whole claim, omitting altogether the payments for which he had before given credit, and annexes these latter particulars only to the record. Now it is clear that he ought to have annexed the first particular as well as the amended one, and it would be letting the plaintiff avail himself of his own wrong to grant this rule. If, then, upon the whole case it appears that this verdict which has been given, will be again given, to what purpose shall I send the case down for a new trial? No doubt, if the evidence of the first particulars had been received, the verdict would have been right; and, indeed, if the evidence had been in fact received, and the verdict had been returned for the plaintiff, the defendant would have been justified in applying for a new trial. Without, therefore, laying down any strict rule upon the subject, it certainly seems to me that if a new trial were granted, only the same result would be come to, and therefore that I ought not to grant it.

Rule discharged.

Friday, June 12.

DOE dem. THOMAS v. ROE.

The notice at the foot of a declaration in ejectment delivered on the 16th May (Easter Vacation) directed the tenant to appear as of next Easter Term:—Held, sufficient for a rule nisi.

L. Thomas moved for judgment against the casual ejector. The notice to the tenant was to appear as of next Easter Term; it was personally served on the 16th of May (Easter Vacation.)

WIGHTMAN, J. thought that the service was sufficient for a rule to shew cause.

Rule nisi returnable at Chambers.

BUSINESS OF THE WEEK.

Thursday, June 11.

Ex parte HENRY FORD.—*Poulsen* moved for a *certiorari* to remove into this court an indictment found against the applicant at the Andover Borough Sessions, for obtaining property by false pretences; a variety of facts were stated as a ground for the application.

Writ granted.
Archbold moved for a *certiorari* to remove a conviction into this court, under the Truck Act, 1 & 2 Wm. 4, c. 37, in order that the same might be quashed, on the grounds, 1st, that it does not appear that the information was taken upon oath; 2nd, that the case itself was not within the Act.

Rule nisi.

REG. v. —. *Ryland* moved on the part of the prosecution for a *certiorari* to remove into this court an indictment found against the keeper of the prison of St. Alban's, for a wilful escape; the object of the indictment being to try the right of conflicting jurisdiction, nice points of law being likely to arise, and it being desirable to have a special jury.

Writ granted.

BEER, a pauper, v. RAPSON.—*Ball* shewed cause against a rule for dispaupering the plaintiff herein, and making him pay the costs of the day, and he took a preliminary objection to the affidavit, as being wrongly entitled. *Crowder, Q.C. contra.*

Rule discharged.

REG. v. MARCUS WILLIAM TURNER, Esq.—*The Attorney-General* moved for a criminal information against this gentleman, for a libel published by him in a pamphlet entitled "Extraordinary Case in the Ecclesiastical Court."

Rule nisi.

Martin, Q.C. moved for a rule calling upon the Under-sheriff of Brecon to answer the matters of an affidavit.

Rule nisi.

REG. v. THE LATE SHERIFF OF BRECON.—*V. Williams* shewed cause against a rule for setting aside the attachment herein.—*M. Smith, contra.*

Rule discharged with costs.

BRADSHAW v. BLEADON.—*Horry* shewed cause against a rule for judgment as in case of a nonsuit. *Fitzpatrick, contra.*

Peremptory undertaking to try at the first sitting in Michaelmas Term.

V. AYREY.—*H. Hill* shewed cause in the first instance against a rule applied for by *Addison*, to set aside the writ of *fi. fa.* as not having issued pursuant to the terms of the warrant of attorney.

Rule refused.

REG. v. THE INHABITANTS OF WATFORD.—*Hill, Q.C.* shewed cause against a rule for setting aside the order of Mr. Justice Maule herein, for costs on a road indictment. *Hayes, contra.*

Cur. adv. vult.

REG. v. THE JUSTICES OF GLAMORGANSHIRE.—*V. Wil-*

liams shewed cause against a rule obtained calling upon the above justices to erase an entry. *Horn, in support.*

Rule discharged.

CONNOR v. WEBB.—*Prideaux* moved to set aside the declaration herein, with costs, on the ground of the form of action being different to that stated in the writ.

Rule nisi.

Friday, June 12.

Re THE STAFFORDSHIRE AND DERBYSHIRE AUDIT UNION.—*Huddleston* moved for a *certiorari* to remove an allowance of an item in the auditor's account for this union under 7 & 8 Vict. c. 101, s. 35.

DOE dem. THE EARL OF ROMNEY v. ROE.—*Ball* shewed cause against a rule calling upon the tenant herein to give security for costs, &c. *Deeds, contra.*

Rule discharged.

GRIFFITHS v. THOMAS and ANOTHER.—In this case, which was argued last Term before Mr. Justice Coleridge, his lordship said the rule would be absolute without costs.

DOE dem. HOBBS v. SMITH.—In this case also, which was argued last Term, his lordship said the rule would be discharged.

BRADSHAW v. LAVENDER.—*Ryland* shewed cause against a rule for a new trial herein. *Prendergast, contra.*

Rule discharged.

MITTON v. SMITH.—*Crowder, Q.C.* and *Ball* shewed cause against a rule for entering a suggestion on the roll to deprive the plaintiff of costs under the Birmingham Court of Requests Act; it appeared that the action was for rent which was excepted out of the Act. *Allen, Serjt. contra.*

Rule discharged.

BURBRIDGE v. —.—*Simmons* shewed cause against a rule for an attachment against an attorney for not delivering his bill of costs pursuant to a judge's order. *Woolrych, contra.*

Rule absolute, not to issue for one month on payment of costs.

JOHNSON v. MINNER.—*Lush* shewed cause against the rule for setting aside the writ of trial herein. *Rew, contra.*

Cur. adv. vult.

LANGDALE v. LANE.—*Pearson* shewed cause against a rule for setting aside the demurrer herein as frivolous. *Ogle, contra.*

Rule discharged.

BATE v. BLURTON.—*Whitmore* shewed cause against a rule for judgment as in case of a nonsuit. *Lee, contra.*

Rule discharged with costs.

WHITFIELD v. WAITE.—*Lush* shewed cause against a rule for setting aside the writ of *distringas* to compel an appearance. *Prentice, contra.*

Rule discharged—Costs in the cause.

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

Thursday, May 21.

(Before Mr. Commissioner HOLROYD.)

Re MACDONALD.

An insolvent must describe himself in his petition by the names by which he has been known. Thus, where he had been christened in Spain as "Juan," and here had in some Chancery proceedings styled himself "Juan, otherwise John": Held, that "John" alone was insufficient, and that the petition must be dismissed.

Although the petition is dismissed, the insolvent is still a suitor of the Court until his return home, provided he use no improper delay, and therefore is privileged from arrest.

The petitioner had, in his petition for protection, described himself as "John Macdonald." On his application for the interim order, it appeared on his examination, that he was a native of Spain and had been baptized by the name of "Juan." He had also in some Chancery proceedings styled himself "Juan, otherwise John Macdonald."

Steele, for the opposing creditors, contended that this was a misdescription,—that the petition must be dismissed.

Buchanan, as attorney for the insolvent, argued that as "Juan" and "John" were both the same name in fact, only in different languages, the insolvent, when in England, was rightly called John.

His HONOUR, however, considered the objection fatal. The petitioner had recognized his name of "Juan" in England. Could he have sworn that he had never used it, the case might have been different. This petition must be dismissed, but the insolvent might file another.

It appeared that immediately upon this decision a *ca. sa.* was placed by Mr. Steele in the hands of one of the sheriff's officers against the insolvent, with directions to execute it.

The officer applied to the Court for advice under the circumstances, whether the defendant was privileged.

His HONOUR considered that while the insolvent was engaged in coming to the court, or going from it, he was a suitor, and as such privileged from arrest, provided he used no undue delay, or went out of his proper road.

The officer said that he should decline to execute the warrant.

Wednesday, June 17.

(Before Mr. Commissioner GOULBURN.)

Ex parte SHEFFIELD.

Important rule—Costs of fiat on bankrupt's own petition.

As a general rule, the Commissioners will allow to the solicitor to a trader suing out of a fiat against himself, under 7 & 8 Vict. c. 96, s. 41, the same costs as to the solicitor to a petitioning creditor under 6 Geo. 4, c. 16, s. 14, unless it be shewn that he had been

previously paid, or that there was ground to suspect fraud or collusion between him and the trader.

Mr. Commissioner GOULBURN, on the appearance of Mr. Lawrence in court this morning, stated that he had submitted the question raised by that gentleman on Friday, the 12th ult. to his learned brothers of the Subdivision Court, and they were agreed in the rule upon which they proposed hereafter to act in such cases. The question raised was, whether the solicitor to a trader suing out a fiat against himself under the provisions of the statute 7 & 8 Vict. c. 96, s. 41, stood in the same position, as to the costs for suing out such fiat, as the solicitor to a petitioning creditor under the 14th section of the 6 Geo. 4, c. 16, and whether the Court were equally bound in the first case, as in the last, "to ascertain such costs at the sitting for the choice of assignees, and direct the assignees, when chosen, to pay such costs out of the first moneys got in under the fiat." Mr. Lawrence had strongly insisted that the latter part of the 41st section of the 7 & 8 Vict. c. 96, which ran in these words, "And all further proceedings under such fiat shall be thenceforth prosecuted and carried on in like manner as if such fiat had been issued and adjudicated upon on the petition of a creditor of a bankrupt," was sufficient to place a bankrupt petitioning and a creditor petitioning precisely on the same footing, and bring them equally under the provisions of the 14th sec. of 6 Geo. 4, c. 16. His Honour said, that his brother Commissioners and himself were not disposed to go to the full length of such a proposition, nor did they consider it imperative on them to award such costs under the statute; but, treating the question as one in which a discretion might be exercised according to the facts of each case, the general rule would be to allow such costs to the solicitor suing out the fiat, unless it could be shewn that he had previously been paid, or that there was ground to suspect fraud or collusion between him and the trader seeking relief through the Court.

THE LEGISLATOR.

Summary.

THE only legislative proceeding of the week having any interest for the Profession, is the passing of the Railway Companies' Dissolution Bill, which all companies involved in litigation ought to lose no time in adopting; and if the directors decline, the shareholders should proceed without them. The Bill for the establishment of Small Debts Courts has been laid upon the table of the House of Lords. We hope to present our readers with an abstract of it next week.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, June 12.

Landlord and Tenant, Ireland—"for improving the relation of landlord and tenant in Ireland, by providing compensation, in certain cases, for tenants who shall build on or drain farms, and to secure to the parties respectively entitled thereto the due payment of such compensation."

Ejectments, &c. Ireland—"to amend the law in Ireland as to ejectments and distresses, and as to the occupation of lands."

Leases, Ireland—"to facilitate and encourage the granting of certain leases for terms of years in Ireland, and to reduce the stamp duty thereon."

Tuesday, June 16.

Administration of Justice—"for the more effectual administration of justice."

BILLS READ A SECOND TIME.

Friday, June 12.

Wreck and Salvage.

Thursday, June 13.

Drainage of Lands.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A SECOND TIME.

Friday, June 12.

Spitalfields New Street.

Monday, June 15.

Clonmell and Thurles Railway
Cork, Blackrock, and Passage Railway
Great Southern and Western Railway
Killarney Junction Railway
Mallow and Fermoy Railway
Thomson's Charity Estate
Waterford, Wexford, Wicklow, and Dublin Railway.

Tuesday, June 16.

Dundas's Estate

BILLS READ A THIRD TIME AND PASSED.

Friday, June 12.

Earl of Bessington's Estate
Glasgow and Monkland Junction Railway
Guildford and Portsmouth Railway, No. 2
Leith Paving
Lismahagow and Coatbridge Mineral Junction Railway
Liverpool Sanitary Regulations
London and South Western Railway Acts Amendment
Newcastle-upon-Tyne Improvement
Portsmouth Harbour Pier

Sir George Dunbar's Estate
Worcester New Gas
York Improvement.

Monday, June 15.

Arryll Canal
Aashurton, Newton, and South Devon Railway
Ayrshire and Port Glasgow Junction Railway
Birmingham, Lichfield, and Manchester Railway
Blackburn and North Western Junction Railway
Caledonian Railway, Glasgow Terminal
Mid Lothian Branches

Tuesday, June 16.

Marquess of Donegal's Estate.

Wednesday, June 17.

Glasgow Municipal Police
Muddersfield and Manchester Railway and Canal
Kennington Lane, &c. Lighting
Newmarket and Chesterford Railway
Newport and Pillgwenly Waterworks
St. Helen's Canal and Railway
Sheffield, Ashton, and Manchester Railway
Ditto, Dukinfield Branches
Shropshire Union Railways and Canal
Wakefield and Goole Railway.

Thursday, June 18.

Birmingham, Lichfield, and Manchester Railway
Frilford (Berks) Inclosure
Great Grimsby Railway and Grimsby Docks
Portbury Pier and Railway
Wakefield and Goole Railway. Methley Branch.

SESSIONAL PRINTED PAPERS.

Metropolitan Sewage Manure—Paper
Assaults, &c. Ireland—Return
Greenwich Park, Railroads—Paper
Steam Vessels—Supplemental Return
Railway Bills' Classification—Eighteenth Report of Com-
mittee
New Zealand—Correspondence with Lieutenant Governor
Grey
Loans for Public Works—Returns
Fisheries, Ireland—Fourth Report of Commissioners
Sweets or Made Wines—Returns
Railway Bills' Classification—Nineteenth Report of Com-
mittee
Poor Law—Return
Bills—Steam Navigation
Landlord and Tenant, Ireland
Ejectments & Ireland
Leases, Ireland.

HOUSE OF LORDS.

COUNTY LUNATIC ASYLUM ACT.

MONDAY, June 15.—The Duke of RICHMOND inquired whether the government intended to bring in a bill explanatory of this Act?—The Duke of WELLINGTON's reply was all but perfectly laudable in the gallery. The impression prevailed, however, that it was to the effect that the subject would come under the notice of Parliament.

HOUSES OF REFUGE FOR DISCHARGED PRISONERS.

The Duke of RICHMOND asked whether government had any intention of instituting inquiries as to providing houses of refuge for persons discharged from prison.—The Duke of WELLINGTON had made inquiries upon the subject. He hoped that a measure would be brought forward, but its introduction depended in no inconsiderable degree upon the course adopted by Parliament with reference to a bill now under discussion in the other house, providing for the transfer of criminal prosecutions from the county rates to the consolidated funds.

SMALL DEBTS.

The Duke of BUCKLEIGH laid on the table a bill intended to facilitate the recovery of small debts in England.

HOUSE OF COMMONS.

RAILWAY COMPANIES' DISSOLUTION BILL.

FRIDAY, June 12.—On the motion that this bill be read a third time—Mr. HUDSON moved the insertion of the two clauses of which he had given notice. The clauses were agreed to, and the bill was read a third time and passed.

FEEs IN BANKRUPTCY.—Mr. Serjeant Manning, in his proposal to the Lord Chancellor for the amendment of the law of bankruptcy and insolvency, makes the following observations on the payment of fees in bankruptcy:—"It has been matter of complaint against the present system of bankruptcy, that in small bankruptcies the costs and other expenses attending the obtaining, the opening, and the working of the fiat, form a heavy charge upon the assets, and sometimes entirely absorb them; and the expense of administering an estate under a bankruptcy has been contrasted with the inexpensive proceedings of the Court of Insolvent Debtors, where estates, of which the assets have been only 12l. have been able to yield a dividend. This disadvantageous contrast, however, arises merely from the fact that the Court for the Relief of Insolvent Debtors is provided by the State, while the Court of Bankruptcy is supported by those who have need of its assistance, and the creditors not only bear the actual expenses of administering the estate, but are bound to make heavy payments towards the compensation receivable by the holders of sinecure offices. A person suing a debtor who is in circumstances which will enable him to pay the full amount of debt and costs, if the claim made upon him be established, finds courts of law and courts of equity pro-

vided by the State, and judges paid out of the Consolidated Fund, ready to do him justice; but if the debtor is only able to pay 1s. in the pound, instead of 20s. the creditor, according to the present system in bankruptcy, must, through the medium of fees, provide a court at his own expense, and pay the judges himself. That a creditor of a solvent debtor should be enabled to enforce his demand in courts paid by the State, appears to be most reasonable, inasmuch as the advantages derived to the public from the indirect operation of courts of law in deterring from, and in preventing injustice, are of incalculably greater importance than any benefits obtained by individual suitors, who, at great hazard, seek redress for injustice actually committed; but there seems to be no reason for treating more unfavourably those who come before a Court because they have already sustained a loss, or for saying to the all but ruined creditor, '*Qui sentit incommodum sentire debet et onus.*'" The learned serjeant proposes the following remedy:—"I therefore suggest that the salaries of the judges and officers of the court should be paid out of the Consolidated Fund, and that the payments to sinecure officers should be transferred to the same fund. I further suggest, that in every insolvency, whether carried through the court, or terminated by a registered letter of license, &c. five per cent. should be deducted out of the sums distributable amongst the creditors, and paid into a fee fund; and that at the end of each half-year the amount received into the fee fund during the half-year should be applied in part discharge of the bills of costs taxed during the half-year, in proportion to the amount of such bills of costs, without regard to the amount of the assets of each individual estate; the money so applied not to exceed two-thirds of such bills of cost, and any surplus remaining to be added to the fee fund of the succeeding half-year."

THE MAGISTRATE.

Summary.

NOTHING has occurred during the week that requires particular notice.

CRIME.—In the report presented to the watch committee by Capt. Willis, the chief constable, the total number of persons apprehended during the year 1845, for offences of every description committed in the borough, is set down at 9,635, viz.:—6,943 males, and 2,722 females, of whom 3,851 were discharged by the magistrates. By far the greatest number were charged with drunkenness, 2,185 having been apprehended whilst drunk and inebriate, and 2,003 drunk and disorderly. The next in point of number were persons charged with common assaults, who are stated to be 771; after whom appear 623 apprehended for larceny in houses, shops, and warehouses. One person only was apprehended on each of the following charges:—coining, being at large under sentence of transportation, cruelty to animals, and offending against the Mutiny Act. Amongst the entire number of 9,635, only 21 were found to have received a superior education, whilst 3,499 had received no instruction whatever, being unable either to read or write; 5,536 are stated to have been able to read, or read and write imperfectly, and 579 able to read and write well. The countries to which they severally belong are thus given:—English, 6,944; Irish, 2,279; Scotch, 231; Welsh, 135; the remaining 46 were foreigners from various countries.—*Manchester Courier.*

THE LAWYER.

Summary.

AGAIN we can only point to the huge mass of reports assembled in this double number, as containing the really important intelligence. Some of the decisions will be found to be of great interest, and requiring the instant attention of the practitioner. For the reasons stated in another place, this double number is presented at the charge of a single one.

The increase of *aisi prius* business in London is keeping pace with its diminution in the country. The cause is probably that the facility of railway communication makes the metropolis as ready of access as the assize town, with the advantage of less cost of living, and the convenience of an arrangement by which attorneys and witnesses are not compelled to be idling about the court for a week waiting their turn. But it is a pity that this business is not more equally divided. The Exchequer had upwards of 150 causes entered for the present sittings, while the other Courts had comparatively few. Why the attorneys should

prefer to take their business into the Exchequer is a mystery. It offers no single advantage, and many disadvantages.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been pleased to approve of Mr. Charles Maximilien Hurtung, as Consul at Freetown, Sierra Leone, for his Majesty the King of the Belgians.

The Queen has also been pleased to approve of Mr. Luther Brackett, as Consul at Pictou, Nova Scotia, for the United States of America.

The Queen has been pleased to appoint Thomas O'Brien, esq. to be Colonial Secretary for Sierra Leone.

Her Majesty has been pleased to appoint Keppel Robert Edward Foote, esq. in the room of Charles Pettingal, esq. deceased, to be the arbitrator on the part of her Majesty in the Mixed British and Portuguese Commission established at Boa Vista, in the Cape Verde Islands, under the treaty of the 3rd of July, 1842, between Great Britain and Portugal, for the suppression of the slave trade.

Her Majesty has also been pleased to appoint Thomas Crowley Weston, esq. in the room of Charles Brooke Bidwell, esq. deceased, to be the Registrar to the several Courts of Mixed Commission established at Sierra Leone, under treaties with foreign powers, for the suppression of the slave trade.

The Lord Chancellor has appointed John Frederick Reeves, Gent. and Henry Channing, Gent. both of Taunton, in the county of Somerset, to be Masters Extraordinary in the High Court of Chancery.

MIDDLE TEMPLE.—The undermentioned gentlemen were called to the degree of the Utter Bar, on Friday week, and published in the Middle Temple-hall this day:—Mr. Luke Henry Hansard, B.C.L.; Mr. Joseph Pringle Simpson, L.L.B.; Mr. John William Ellison, Mr. Charles Bicknell, Mr. Percy Sparkes, Mr. William Digby Seymour, B.A. Trinity College, Dublin; Mr. Frederick Joseph Blake Spurway, and Mr. Edward Power.

INNER TEMPLE.—The Trinity Term calls to the bar of this Society comprise the undermentioned members who have been sworn in and admitted to the degree of barrister-at-law:—Mr. W. Powell, M.A. of Exeter College, Oxford; Mr. T. Ingleby, M.A. of St. John's College, Cambridge; Mr. W. Franks, M.A. of Trinity College, Cambridge; Mr. W. H. Richardson, M.A. of Oriel College, Oxford; Mr. Edmund Law, M.A.; Mr. C. Warner Lewis, B.A. of Trinity College, Cambridge; Mr. J. Boyle, M.A. of Balliol College, Oxford; and Mr. E. H. Vaughan, M.A.

COURT PAPERS.

CHANCERY SITTINGS

At Lincoln's-inn, after Trinity Term, 1846.

Before the LORD CHANCELLOR.

Monday .. June 22—First Seal	
Tuesday .. 23	
Wednesday .. 24	Appeals
Thursday .. 25	
Friday .. 26	Petition day. Unopposed Petitions and Appeals
Saturday .. 27—Second Seal	
Monday .. 29	
Tuesday .. 30	Appeals
Wednesday .. July 1	
Thursday .. 2	Petition day. Unopposed Petitions and Appeals
Friday .. 3	
Saturday .. 4—Third Seal	
Monday .. 6	Appeals
Tuesday .. 7	
Wednesday .. 8	Petition day. Unopposed Petitions and Appeals
Thursday .. 9	
Friday .. 10	
Saturday .. 11	Appeals
Monday .. 13	
Tuesday .. 14	Petition day. Unopposed Petitions and Appeals
Wednesday .. 15	
Thursday .. 16	
Friday .. 17	Petition day. Unopposed Petitions and Appeals
Saturday .. 18	
Monday .. 20	Appeals
Tuesday .. 21	
Wednesday .. 22	
Thursday .. 23—Fourth Seal	
Friday .. 24—General Petition day.	

Such days as his Lordship is occupied in the House of Lords excepted.

Before the VICE-CHANCELLOR OF ENGLAND.

Monday .. June 22—First Seal	
Tuesday .. 23	
Wednesday .. 24	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday .. 25	
Friday .. 26	Petition day. Short Causes, Petitions, and Causes
Saturday .. 27—Pleas, &c.	
Monday .. 29—Second Seal	

Tuesday	30	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday	July 1	
Thursday	2	
Friday	3	Petition day. Short causes and causes
Saturday	4	Pleas, &c.
Monday	5	Third Seal
Tuesday	7	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday	8	
Thursday	9	Petitions, Unopposed first, Short Causes, and Causes
Friday	10	
Saturday	11	
Monday	13	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday	14	
Wednesday	15	
Thursday	16	
Friday	17	Petition day. Short Causes, Petitions, and Causes
Saturday	18	
Monday	20	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday	21	
Wednesday	22	
Thursday	23	Fourth Seal
Friday	24	General Petition day. Petitions and Short Causes.

Before the MASTER OF THE ROLLS.

Monday	June 22	First Seal
Tuesday	23	
Wednesday	24	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday	25	
Friday	26	
Saturday	27	
Monday	29	Second Seal
Tuesday	30	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday	July 1	
Thursday	2	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Friday	3	
Saturday	4	
Monday	6	Third Seal
Tuesday	7	
Wednesday	8	
Thursday	9	
Friday	10	
Saturday	11	
Monday	13	
Tuesday	14	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday	15	
Thursday	16	
Friday	17	
Saturday	18	
Monday	20	
Tuesday	21	
Wednesday	22	
Thursday	23	Fourth Seal

Note.—Short causes, consent causes, and consent petitions, every Saturday, at the sitting of the Court. Consent petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Before VICE-CHANCELLOR KNIGHT BRUCE.

Monday	June 22	First Seal
Tuesday	23	Pleas, Demurrers, &c.
Wednesday	24	Bankrupt Petitions and Causes
Thursday	25	Pleas, &c.
Friday	26	Petition day. Petitions and Causes
Saturday	27	Short Causes and Causes
Monday	29	Second Seal
Tuesday	30	Pleas, Demurrers, &c.
Wednesday	July 1	Bankrupt Petitions and ditto
Thursday	2	Pleas, &c.
Friday	3	Petition day. Petitions and Causes
Saturday	4	Short Causes and Causes
Monday	6	Third Seal
Tuesday	7	Pleas, &c.
Wednesday	8	Bankrupt Petitions and ditto
Thursday	9	Pleas, &c.
Friday	10	Petition day. Petitions and Causes
Saturday	11	Short Causes and Causes
Monday	13	Bankrupt Petitions
Tuesday	14	Pleas, &c.
Wednesday	15	Bankrupt Petitions and ditto
Thursday	16	Pleas, &c.
Friday	17	Petition day. Petitions and Causes
Saturday	18	Short Causes and Causes
Monday	20	Bankrupt Petitions and ditto
Tuesday	21	Pleas, &c.
Wednesday	22	Bankrupt Petitions, &c.
Thursday	23	Fourth Seal
Friday	24	Petition Day. Petitions and Causes
Saturday	25	Short Causes and Causes
Monday	27	
Tuesday	28	Petitions and Causes
Wednesday	29	
Thursday	30	
Friday	31	Short Causes and Causes
Saturday	Aug. 1	Bankrupt Petitions.

Before VICE-CHANCELLOR WIGRAM.

Monday	June 22	First Seal
Tuesday	23	
Wednesday	24	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday	25	
Friday	26	Petition day
Saturday	27	Short Causes, Petitions (unopposed first), and Causes
Monday	29	Second Seal
Tuesday	30	
Wednesday	July 1	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Thursday	2	
Friday	3	Petition day. Pleas, Demurrers, &c.
Saturday	4	Short Causes, Petitions (unopposed first), and Causes
Monday	6	Third Seal
Tuesday	7	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday	8	
Thursday	9	
Friday	10	Petitions and ditto

Saturday	11	Short Causes, Petitions (unopposed first), and Causes
Monday	13	
Tuesday	14	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday	15	
Thursday	16	Pleas, &c.
Friday	17	Petitions and ditto
Saturday	18	Short Causes, Petitions (unopposed first), and Causes
Monday	20	
Tuesday	21	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Wednesday	22	
Thursday	23	Fourth Seal
Friday	24	Petition day. Petitions and Causes
Saturday	25	Short Causes, Petitions, and Causes.

SUMMER CIRCUITS, 1846.

OXFORD CIRCUIT.

Sir Nicholas Conyngham Tindal, Knight, Lord Chief Justice of the Common Pleas, and Mr. Justice Maule, the Judges appointed to proceed on this circuit, have finally fixed the days and signed the precepts for holding the assizes in and for the several counties comprised in the circuit, viz. for

Berkshire—Thursday, July 9, at Abingdon
Oxfordshire—Saturday, July 11, at Oxford
Worcestershire—Friday, July 17, at Worcester
City of Worcester—The same day, at the Guildhall of the city of Worcester
Staffordshire—Thursday, July 23, at the Castle, at Stafford

Shropshire—Wednesday, July 29, at Shrewsbury
Herefordshire—Saturday, August 1, at Hereford
Monmouthshire—Wednesday, August 5, at Monmouth
Gloucestershire—Saturday, August 8, at Gloucester
City of Gloucester—The same day, at the Guildhall of the city of Gloucester

HOME CIRCUIT.

We are requested to state that, instead of the business beginning at Guildford on the commission-day, which is to be Thursday, the 30th of July, the business will not begin there till Friday, the 31st; but at Lewes the business will begin on the commission-day, viz. Monday, July 27.

COURT OF EXCHEQUER.

Trinity Term—9th Victoria, 1846.

Friday, June 12, 1846.

The Court will, on Wednesday, the 24th day of June instant, or on one or more of the subsequent days already appointed by rule of court for the sittings of this court after the present Term, proceed to give judgment on the several rules to shew cause now standing for judgment.

Read in open court,

BY THE COURT.

T. Dax.

LEGAL INTELLIGENCE.

Re W. BROMLEY.

BANKRUPTCY COURT, JUNE 12.—This bankrupt, an attorney in Gray's Inn, came up upon special application for his adjourned last examination. The debts and liabilities are stated to be nearly 200,000*l.*, and the only dividend as yet paid is 1*l.* in the pound, but considerable assets are expected to be realized. The whole of the proceedings in this complicated case were reported about two and a half years ago, when the case was heard and adjourned *sine die* by the late Sir C. F. Williams, certain conditions being then imposed upon the bankrupt, and when several alleged breaches of trust were imputed to him.

Wilde, as counsel for the assignees, opposed the present application.

Mr. Bromley said it was merely an adjournment *sine die*, with liberty to come up again at his own expense.

His HONOUR observed that as the conditions were not filed with the proceedings, he could not take cognizance of them. Were he to go through the balance-sheet, nothing having been added to it since it was adjudicated upon, he should be reviewing the decision of Sir Charles Williams; and that he could not do. He thought that the only thing he could do was to again adjourn the case *sine die*.

A lengthened discussion here took place between the learned counsel, the bankrupt, and a person named Bolt, who claimed to be a creditor, although set down in the bankrupt's balance-sheet as a debtor to a very considerable amount.

The learned Commissioner said that Mr. Bromley should give an account of the state of his affairs as nearly as he could at the time of the dissolution of partnership with his brother.

Mr. Bromley was afraid that he could furnish no further accounts than he had already done.

His HONOUR.—You can try.

Mr. Bromley.—I will do so, your Honour.

Wilde asked that the bankrupt's account of the state of his affairs should commence five years before the issue of the fiat, inasmuch as he was an attorney, and the allegations against him chiefly consisted of breaches of trust. His case was not like that of an ordinary tradesman, who perhaps could not furnish an account of the state of his affairs for five years before his bankruptcy or insolvency, inasmuch as his business was liable to fluctuation, not as in the case of Bromley, who was always using (as alleged) other persons' money.

His HONOUR ordered that this account should be filed, and the case was adjourned.

COURT OF BANKRUPTCY.—IMPORTANT CASE UNDER THE SMALL DEBTS ACT.—Mr. Dinn, from the office of Mr. Engleheart, of Doctors' Commons, stated that he had to apply to the Court under these circumstances:—A short time since, Francis Willmott, a workman in Deptford dockyard, was summoned, under the Small Debts Act, to this court, for 4*l.* 4*s.* 8*d.* debt, and 5*l.* 9*s.* costs, on a judgment recovered by Mr. James Price, a baker, of Blackheath-hill. His Honour made an order upon the defendant to pay 10*s.* per month, but he had failed to keep up his payments, and consequently a warrant of commitment was issued, and placed in the hands of Joshua Morris, the sheriff's officer of Greenwich, who refused, however, to execute it, and, therefore, all the proceedings were stultified. The Commissioner: What do you want to do?—Mr. Dinn: That is the difficulty, and I wish for your Honour's advice. Would your Honour object to the warrant being directed to the messenger of the court?—The Commissioner: I cannot allow that. The messenger was appointed to attend to matters in bankruptcy, and not to go running all over Kent to find an insolvent debtor.—Mr. Dinn: It has been suggested that the sheriff's officer should be brought here for having committed a contempt of court. Can I have a summons against him to compel him to shew cause why he does not execute your Honour's warrant?—The Commissioner: Shew me that the Act gives me the power to assist you, and I will do so. My own opinion is that he has rendered himself liable to an indictment; but I am not a common-law lawyer, and you must go to them who framed this Act. When I was appointed a commissioner, it was upon the assumption that I was acquainted with bankruptcy law, and not small debt acts and insolvent debtors.—Mr. Dinn: It is a very hard case upon my client. Here is a fraudulent debtor acting us at defiance, and laughing at an Act of Parliament.—The Commissioner: Then why do you not go to the Secretary of State, and represent the circumstance to him; and if Sir James Graham refuses to assist you, you may get a member of Parliament to present a petition to relieve you from your difficulty.—Mr. Dinn: Yes; but it is difficult to get a creditor to take that trouble.—The Commissioner: Then if creditors will not bestir themselves, I can do nothing for them. Why not go to the association which has been formed to prosecute fraudulent debtors, and represent to them that your case to-day may be theirs to-morrow, and ask them to interfere?—Mr. Dinn: Does your Honour not think that, under the Act, you are compelled to direct the warrant to your messenger?—The Commissioner: No; and, if I do wrong, you can complain against me, and then I shall have an opportunity of explaining my views of this Act of Parliament to the Legislature. I shall not have the slightest objection to be brought before the House of Commons for this purpose. After some further discussion, the Court declined to interfere, and Mr. Dinn expressed his determination to address the Secretary of State upon the subject. It may be mentioned that Mr. Commissioner Fonblanque positively refuses to allow these warrants to be executed by anybody but the messenger of his court, and which sometimes is attended with very heavy expenses for travelling, &c. So much for the uniformity, in these courts, of the administration of law, and the construction to be placed upon the provisions of the statute in question.

EXECUTION OF WARRANTS OF ATTORNEY.—*Re JOHN HARLOW.*—The bankrupt, who attended to pass his last examination, had for years kept a cigar shop, at No. 9, Leicester-square. Mr. Nicholas, barrister, appeared for a creditor residing at Vienna; and Mr. Lawrence, solicitor, was for the bankrupt; an attorney, named Bedford, represented Mr. Fryer, tobacco manufacturer. It appeared that the bankrupt in 1842 was discharged under the Insolvent Debtors Act, and now he was a bankrupt. Mr. Fryer was a creditor on the two occasions, during which time he carried on business in Leicester-square, and from 1842 to 1845 Mr. Fryer's name was over the door, and he had acted as his servant. In September, 1845, they changed positions; and Mr. Fryer refused to give him a warrant of attorney for 1,500*l.* which included the old debt under the insolvency. A warrant of attorney was placed before him, and, in order to claim the business, he signed the same. He had to find an attorney who would witness the instrument. Several objected, and at last he found an attorney, who attested his signature for 13*s.* 4*d.*—Mr. Commissioner Fonblanque regretted that an attorney was to be found who would attest a signature under such circumstances. It was in fraud of the Act and the regulations of the superior courts. The object of the Act was to prevent an attorney who might be picked up from witnessing such an instrument. The attorney for Mr. Fryer assured the commissioner that it was a common practice. Mr. Commissioner Fonblanque said the frequency of the practice did not make it respectable. He could not too

strongly condemn the practice. On the part of Mr. Fryer, it was stated that the bankrupt had the warrant of attorney some days in his possession before he executed it. The bankrupt positively denied the allegation.

THE INNER TEMPLE BENCHERS.—Mr. Hayward's appeal was partly heard on Monday last. The whole question turns on the power of the judges to call on the benchers to exercise a sound discretion in the conduct of their elections; and the grand object of Sir Charles Wetherell (who appeared for the bench) seemed to be to shut out inquiry by technical objections. The course pursued by the Bench of driving Mr. Hayward to prove a strict legal claim is universally condemned; and it is pointedly asked whether, if he had been excluded from a circuit mess by a misrepresentation, the members would have refused to repair their error on the ground that no legal remedy was open to him. The worst thing that could happen to the bench would be an abandonment of the jurisdiction by the judges; for, in that case, a select committee will immediately be moved for to inquire into the affair and consider the constitution of these bodies, who are intrusted with very large powers of a public character. All moral weight and influence that ought to attach to the decisions of the bench are already forfeited. The excluding power, as exercised by the other inns, may operate usefully as a check; as exercised at the Inner Temple (by ballot, preceded by secret calumny) it can serve only to bring the institution into contempt.—*Examiner*.

ABOLITION OF THE EARLY DELIVERY.—The following order, with reference to the early delivery of letters in the metropolis, was posted in the letter-carriers' branch of the inland office a few minutes before 8 o'clock on Monday evening:—"Order of the Postmaster-General, June 13, 1846.—On the 25th inst. the early delivery on the city walks will be discontinued. The sub-posters who deliver the city walks will, on and after that date, act as assistant letter-carriers on their respective walks. Mr. Kelly will make proper arrangements to carry these regulations into effect. To insure the above order of his lordship being carried into complete operation with the smallest possible inconvenience to the public, the letter-carriers holding such walks will prepare statements of the present deliveries, so that they may be equalized and regulated in compliance with the above order. In order that all employed on the walks may be thoroughly acquainted with every part of this order, it is intended that the letter-carriers and their assistants, as the case may be, shall be changed to the different divisions of the same walks periodically." The operation of the above "order" will save the merchants and traders of the metropolis upwards of 2,000*l.* per annum. Extensive changes in the management must also follow it, as the chief part of the men in the city walks depend principally upon the public for their incomes, the "Crown pay" of the senior men being only 30*l.* 5*s.* per annum, or 14*s.* per week.

A KNOTTY POINT.—Three years ago, says a Paris paper, the courts and tribunals of Austria were consulted upon the "knotty" question, whether there was reason to change the mode of executing capital sentences, and substituting decapitation for suspension. Their reply was for the rejection of decollation (as practised in France), for the principal reason, that it accustomed the people to the sight of blood; but at the same time they expressed a wish that some modification might be made in the prevailing system of strangulation, which tortured the victim too much. A year ago a surgeon of the University of Padua proposed to the Government a new method of strangulation, for which he took care to have himself breveted. This method chiefly consisted of a mechanism which, when the criminal was fastened to the gibbet, drew him violently by the feet and the head, occasioned the dislocation of the vertebral column on the level of the neck, and this occasioned instantaneous death. This method, after being tried for one year, has just been definitively adopted in the Lombardo-Venetian kingdom, and the surgeon who invented it has, to the great surprise of his companions and compatriots, accepted the "honourable" office of "director of executions," over which he will be bound to preside, in order to superintend the application of his plan.

THE WILL OF CHARLES GREGORY FAIRFAX, Esq., of Gilling Castle, Yorkshire, has just been proved. He has devised the castle of Gilling, with its rights and royalties, and also the manor of Coulton, in Yorkshire, together with the mills, parks, warrens, lands, tenements, tithes, and hereditaments, in Gilling, Coulton, Ampleford, Yearsley, and Grimston, to his son, Charles Gregory Fairfax, and to his issue; on failure, to his two daughters and their issue; on failure, to his son-in-law, Francis Cholmeley, esq. of Brandsly Hall, Yorkshire, and that the person hereafter becoming entitled in progression, not being of the same name, shall apply for the royal license to use the surname of Fairfax, and quarter with their own the family arms. He has bequeathed to his daughters pecuniary legacies, as well as to his executors, Thomas Meynell, jun. and James Russell, both of York.

PROCEEDINGS OF LAW SOCIETIES.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

General Meeting, May 20, 1846.

Sir JOHN STODDART, LL.D. in the Chair.

The minutes of the last meeting (the 6th inst.) were read and confirmed. The following members were balloted for and elected: The Lord Beaumont; the Lord Advocate, M.P.; Captain Dawson, R.E.; and James Moncrief, esq. Advocate.

The second report of the Committee on the Law of Property on the following reference was presented: "To consider of the propriety of establishing a general Register of Deeds and Instruments affecting Real Property, and for this purpose to adapt the machinery similar to that of the public funds for the transfer of real property." It was agreed that the report should be printed and further considered at the next meeting.

General Meeting, June 3, 1846.

Mr. COMMISSIONER FANE in the Chair.

The minutes of the last meeting (the 20th of May last) were read and confirmed. The second report of the Committee on the Law of Property on the following reference: "To consider of the propriety of establishing a general Register of Deeds and Instruments affecting Real Property," was ordered to be received.

The following reference was made to the Committee on the Law of Property: "To consider whether, in connection with a General Register, the principle of insurance of titles might not be introduced."

MEETING OF THE ATTORNEYS AND SOLICITORS OF IRELAND.

On the 12th inst. a meeting of the members of the above Profession was held at Plunket's Buildings, Wincetavern-street, pursuant to requisition, for the purpose of "giving expression to the general feeling of respect and esteem entertained towards Frederick Jackson, esq. by the entire body of the Profession, of all parties and of all creeds." The chair was taken by T. O'REILLY, Esq.

Mr. M'EVoy GARTLAN said that the purpose for which they had assembled there was neither to abuse Mr. Butt nor pass eulogiums on Mr. Jackson, but, as members of a Profession, to express their perfect concurrence in the line of conduct which had been adopted by the latter on a late occasion in defending the rights of the Profession to which he belonged, and their intention of on all occasions supporting every member of that profession who stood up as he had done in defence of its privileges, no matter what might be his religion or politics. He (Mr. G.) did not even know Mr. Jackson personally, and believed that he widely differed with him in religion and politics. That it was a bad principle that a man should be attacked who possessed not any legitimate means of defending himself, and that the attack should go forth to the public when the accused was equally without the power of defending himself before them, was what they (the meeting) had now to affirm. What means of defence had Mr. Jackson had from the attack which had been made upon him, when his counsel remained silent upon the delivery of the observations conveying it, and the Bench did not interfere? He (Mr. G.) could not see that he had any. He was no duellist or advocate of duelling; but he asked them what other way had a gentleman of avenging himself when an unprovoked and unfounded attack was made on him in a court of justice? Mr. Gartlan concluded by moving the first resolution.

Mr. THOMAS WRIGHT seconded the resolution.

Mr. SCOTT observed that, considering the manner in which that meeting had been convened, they ought to consider before they deemed the resolutions which should be passed at it resolutions of the Profession at large.

Mr. CANTWELL said that, but for the observation which Mr. Scott had just made, he would not have spoken. With great respect to him, he did not think that he was justified in considering that meeting as anything but a meeting of the attorneys of Ireland. He (Mr. C.) admitted having been inclined to think that the meeting should be convened in the rooms of the Society of Attorneys; but the opinion which he had entertained on that point had been much shaken by the gratuitous insult which was in the advertisement that had appeared from the committee that morning. That advertisement had virtually announced to the public that the Society of Attorneys did not comprehend within it all, or represent, the attorneys at large. However the *locus in quo* their resolutions should be adopted, was a matter totally below the consideration of that meeting. He was sorry that that meeting was not as numerous as it ought to be, or indeed would have been, if the Society of Attorneys had relaxed from their rule, as they might have done, and attached proper importance to the discussion of the matter which had brought that meeting together. There were one or two observations of his friend, Mr. Gartlan, with which he did not quite

concur. He (Mr. Cantwell) thought that that meeting should carefully avoid interfering with what were private considerations between Mr. Butt and Mr. Jackson—whether Mr. Butt was right or Mr. Jackson was wrong, was utterly beside what was to occupy their attention. But they had before them this, that the Court of Queen's Bench, after a solemn investigation, had pronounced that Mr. Jackson had only uprightly and properly discharged his professional duty; and in the face of that tribunal they had found a man of professional rank and eminence insisting on this monstrous proposition, that it was the privilege of the profession of the Bar to assail attorneys, perfectly irrespective of whether they deserved it or not, and perfectly regardless of whether they were discharging their duty or not; and declaring that if his profession was not left at liberty to adopt that course, it would be a degraded profession. How much more degraded would their profession be, if its members were obliged to succumb to such a proposition! They were not now called on to do more than would become them on that occasion; and he thought the moral of that meeting should be felt to be this, that they were determined not to suffer attacks on such a principle as it had, on the part of the Bar, been attempted to affirm. The judges of the land had, thanks to them, negatived it. And recollect these powerful observations of the Lord Chief Justice—they should be stereotyped for the benefit of the attorneys' profession—"that it was certainly a circumstance to be considered that these observations had been made in the presence of two judges of the land," and "it was to be remembered that the party had not complained of it at the time." There were enunciated in these observations two important things, and material to the protection of their profession. First, that two judges of the land had permitted observations to be made which four judges had afterwards declared ought not to have been made. Secondly, an intimation that on every future occasion when observations of a severe character were made upon an attorney, he should at once appeal to the Court to restrain the speaker, in case his topics were not warranted by evidence.

A GENTLEMAN, who had just entered the room, stated that he had had a conversation with Mr. Jackson, in which the latter stated that he felt extremely obliged to the Profession for the sympathy which they felt for him, but would, at the same time, request that that meeting should not carry on any further proceedings.

It was, however, considered that the meeting were at liberty to proceed independently of Mr. Jackson's wishes, and the resolution was accordingly put from the chair, and carried.

Mr. MILLS moved, and Mr. CROWLEY seconded, the next resolution, which was put and carried.

The usual thanks were then passed to the chairman, after which the meeting separated.

The following resolutions were entered into:—

Proposed by PETER M. E. GARTLAN; seconded by THOMAS EDMUND WRIGHT, Esq.:

Resolved—That whilst we disclaim the remotest intention of interfering in, or making matter of discussion any part of the recent transaction between Messrs. Butt and Jackson which could be regarded as personal between these gentlemen, yet we feel called upon to express our conviction that in that transaction, and many of its consequential details, there were involved elements and considerations materially and interestingly affecting the position and privileges of this Profession, and that Mr. Jackson is entitled to the thanks of his brethren for the manner in which he defended that position and maintained those privileges.

Proposed by HENRY MILLS, Esq.; seconded by JAMES COWLEY, Esq.:

Resolved—That we deprecate in the strongest terms the unlimited privilege of irresponsible personal abuse claimed for the members of the Bar, and so unsparingly employed by some of them against the members of our Profession and the public, in matters connected with the exercise of our arduous and onerous duties; and that it is our firm determination, by all the means in our power, and upon all occasions, to discountenance and discourage so unconstitutional, so unfair, and so offensive a practice. —*Saunders's News Letter*.

UNITED LAW CLERKS' SOCIETY.—The fourteenth annual celebration took place at the Crown and Anchor Tavern, Mr. Baron Platt in the chair, supported by upwards of 150 gentlemen. The objects of this society are to establish a general benefit fund, for rendering liberal pecuniary assistance in the events of sickness, inability, through age or other infirmity, to earn the means of subsistence, and on the death of a member or member's wife. Also a casual fund to afford assistance by loans and gifts to law clerks, whether members or not, and their widows in temporary distress; to provide situations for law clerks generally, and the profession with efficient and respectable clerks; to form a library of useful legal works, and to register situations. The health of the Queen and the Queen Dowager having been given in succession, and received with the usual accla-

mations, the chairman proposed the health of Prince Albert and the rest of the Royal family; and in proposing this toast, the chairman thought it a favourable occasion to call to the minds of the company that his Royal Highness had recently become a bencher, and that, therefore, this society had a fair claim to look forward to the patronage and aid of his Royal Highness to assist his professional brethren. (Cheers and laughter.) The annual report was then read by the secretary, which gave a very favourable account of the condition of the society. They have upwards of 8,500l. funded; and in the last year their increased addition to the fund exceeded 1,100l. being a larger addition than in any previous year. Their subscriptions and donations had also progressively increased; and, although the demands on the funds were considerable, no applicant had been left unrelied, and no debt unliquidated. In fact, there appeared to be the best prospect of the society prospering to a high degree; and to accomplish that object it only required the co-operation of the law-clerks themselves generally, as a body, with the patronage they had already been so fortunate as to have received. The report was universally approved of, and the chairman immediately proposed the toast of the evening, "Prosperity to the United Law Clerks' Society;" and, in recommending the toast to the consideration of the company, the chairman dwelt with much effect on the valuable services of the class of men for whose advantage this society was founded, on whose integrity and strict attention to their employers' business depended so much the interests not only of that employer, but of the public at large. Mr. Phipson responded to the toast, after which the healths of the Lord Chancellor, and the other patrons of the society, were proposed by Mr. Fortescue, and received with acclamation; and then followed the health of the chairman, proposed by Mr. James, which was drunk with three times three, and immense cheers. To this succeeded several other routine toasts, and the conviviality of the evening was kept up to a reasonable time. The dinner and wines were very good.

ARTICLED CLERKS' SOCIETY.

THE Committee of this Society had an interview yesterday with Mr. WYSE, M.P. the Chairman of the Committee of the House of Commons now sitting on the subject of Legal Education, when the hon. member promised to bring their proposition for the improvement of the education of articled clerks under the consideration of the committee.

CORRESPONDENCE.

REFORMS IN CONVEYANCING.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I have read with attention the proceedings of the Society for promoting the Amendment of the Law, reported in your number of the 13th instant, more particularly with reference to the question of conveyancing; as also your own remarks, and Mr. Chamberlain's letter on the subject. The recent grounds on which the society founds its argument for reforms in conveyancing, appear to arise from the report of a committee of the House of Lords, met to consider the burdens on land. I by no means think this an unprejudiced tribunal, composed as it is of parties anticipating a loss, and willing to make any persons they can lay hold of contribute to their indemnity. I certainly was astounded at Mr. Baxter's assertion, that the average charge for mortgages of 50l. was thirty per cent. &c. Who Mr. Baxter is, or whether he is a professional man, I know not; but if he is, I can only say that I wonder he has ever had clients sufficient to enable him to take an average of his exorbitant charges. If he is not, then he has been grossly imposed upon. This, however, is a specimen of the fair way in which law expenses are computed. Mr. Chamberlain hits the right nail on the head. It is the unfair distribution of stamp duties, and the unwillingness of the legislature to revise these laws, that press heavily on attorney and client. But I deny that law expenses affect in any sensible degree the value of land, which is governed by causes of a fluctuating and uncertain nature. If this were not the case, the value of land would be the same in all years and in all places, which is notoriously not the case. As to Lord Campbell's exaggerations, it seems as if he and Mr. Baxter must have derived their information from the same quarter. If ever the parchment of a conveyance covered the property it transferred, it must be in the same manner as Queen Dido managed at Carthage, when she cut the bull's hide into strips. Really, if the profits of law are so great, how happens it that the Profession is not much richer than it is. Doctor's Commons, and the Probate and Legacy Duties Office, do not encourage the belief that attorneys accumulate large fortunes. This, however, is no argument against reform, and, as I have said before, I am by no means opposed to it. But I still think the mode of proceeding, and the parties who intrust themselves with it, are not the best qualified to carry out the

project judiciously or impartially. Lord Brougham says they are called a "dilettanti society," and refers with triumph to its members and the acts they have given birth to. A most unfortunate allusion. Every act they have produced has either been repealed or most copiously amended, in the same or the following session, and, in spite of Lord Brougham's assertion, are not much favoured by the Profession, because most of what they have done well was in practice done before, and a great part of what is unrepealed is a dead letter. Lord Brougham does not approve of reviving the real property commission, and yet, with due deference to his lordship, the acts emanating from this Board were models of legislation, and accomplished what they proposed, being undertaken by men competent in every way to their task. Their measures were not struck off *currente calamo*, to be introduced into Parliament with hot haste, but were matured under the midnight oil, in the retirement and quiet of chambers, and were "written, re-written, and written again."

To whom, then, are these changes to be intrusted, and by whom are they to be effected? We are agreed as to the expediency of yielding to the general prepossession in favour of change; but who is to protect the interests of the Profession? There is but one body which presents itself to the mind,—the Law Institution. What is this corporation about? Is it paralysed? Is it frightened? For what was it instituted? Why did the Profession hail its formation as an *Aegis* against abuses and aggression? If not the Law Institution, then who is to be the protector of the Profession? If you agree with me that the Law Institution is called upon to exert itself at this juncture, and that the Profession is dissatisfied with its inefficiency, either in a protective or in any other capacity, then I trust you will use your powerful voice in calling on it to "sleep no more," for dull indeed will it be if it will not stir in this.

I am yours, &c.

June 18, 1846.

PUCK.

SHAM ATTORNEYS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I think if all professional men were to add "Solicitor," or "Attorney-at-Law," to their signatures to all letters, &c. and to make it publicly known that such was the *new rule of the Profession*, it would check *Sham Attorneys* more than any thing else; as without the word "Solicitor" their letters would be mere waste paper; and if they used the word, I presume they would become amenable to the law.

The letters of *Sham Attorneys* only have effect because people think they are real attorneys; therefore I opine, by the proposed plan, professional men may defeat the ends of the *Sham Attorneys*.

I am, Sir, &c.

JNO. GREENE.

Leeds.

SELECTIONS FROM CORRESPONDENCE.

A "COUNTRY SUBSCRIBER" transmits the following just and too frequent complaints:—

Some London attorneys are in the frequent habit of sending me writs to serve for them in the country; I serve the writs, but seldom get paid. What do you advise me to do in order to get paid?

I was thinking of making out a list of them, and inserting it in your columns, so that other country attorneys may know that when they have writs sent them by any names in the list, they will not be paid, and decline transacting the business.

"LEX" thus notices the recent important decision in *Cocker v. Musgrave*:—

In addition to the erroneous practice shewn by the judgment in *Cocker v. Musgrave* to have been hitherto followed under the Act 8 Anne, c. 14, there is I think another point on which the practice under that Act has been contrary to its true construction. It is the invariable practice in case of an execution, and of a claim being made by the landlord for his rent, to give him the priority over the execution creditor, notwithstanding the debtor does not hold under a lease, but is merely an occupier of the premises as tenant thereof, under a parol or written agreement, or under some other understanding between him and his landlord. Now, on perusing the Act, it seems to me, and I submit the point for the consideration of the Profession, that in such a case a landlord can only have the benefit of that Act where there is an actual lease, and not where there is only an agreement, even though such agreement may be a written one.

"AN ATTORNEY," at Preston, submits a query to which many besides himself would be very glad of a satisfactory reply.

I shall be greatly obliged if any of your numerous readers can inform me how an account for agency (under 40s.) can be recovered from a solicitor in one of the large towns of Yorkshire?

Heirs-at-Law, Next of Kin, &c. Wanted.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent impertinent curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount enclosed.]

151. CERTIFICATE OF MARRIAGE OF SAMUEL TROUTBACK to SARAH RHODES, supposed to be about the year 1690; and of B. MOORE (supposed to be Benjamin) to SARAH TROUTBACK, supposed about the year 1706. 25s. reward for each.
152. NEXT OF KIN OF JOHN DONALDSON, formerly of Marylebone-lane, Oxford-road, but late of Blandford-mews, Manchester-square, Middlesex, shoemaker, deceased. Something to advantage.
153. ALFRED ANDERSON, aged 80, who two or three years since (date of advertisement, July 1836) was residing at Varie and Philip-street, New York, U.S. and was at that time mentioned as on the point of marriage to a young lady named Jane Coy. Something to advantage.
154. HEIR OF HEIRS-AT-LAW AND NEXT OF KIN OF ELIZABETH BURNES, late of Liverpool (died 23rd December, 1835).
155. RELATIONS OR NEXT OF KIN OF ROBERT YOUNG, otherwise ROBERT MOOND, late a mariner on board the merchant ship *Offey*, and a native of New Zealand, who died in England, 3rd May, 1836. Something to their advantage.
156. NEXT OF KIN OF ELIZABETH TURNOCK, late of Stafford, widow, living at her decease, in the year 1832.
157. LAWRENCE LANNIGAN, otherwise JAMES LAWRENCE, who formerly lived as shopman with the late Mr. Sherborn, silversmith, St. James's-street, about the year 1816. Something to his advantage.
158. THOMAS MOORE, son of Thomas and Charlotte Moore, and grandson of the late Rebecca Greenleaf. Something to his advantage.
159. HEIR-AT-LAW OF ISRAEL JAMES HUDSON, late of Dean-street, in the parish of St. Paul, Bristol, esq. (died Feb. 1835.)
160. NEXT OF KIN OF SAMUEL BOURN, late of Castle-street, Oxford-street, esq. (died Sept. 1834) or their representatives.
161. NEXT OF KIN OF PETER COCHRANE, late of Percival-street, Northampton-square, London, Esq. (died July 1835.)
162. NEXT OF KIN AND HEIRS-AT-LAW OF SUSANNAH LARGENT, late of St. Margaret's, Rochester, widow (died Aug. 1835.)
163. NEXT OF KIN, or other PERSONAL REPRESENTATIVES, of Mrs. MARY ELLIOT, died at Dorchester, 27th July, 1836, unmarried. She had lived there for the last 40 or 50 years, and it is supposed was born in or near Derby about the year 1744.
164. HEIRS OF ROBERT BLOOMFIELD, formerly of Rayleigh, Essex, who left London for New York in the spring of 1835. Something to advantage.
165. GEORGE TOMPKINS, who about the year 1834 was valet in the service of Sir Philip Musgrave, Bart. of Portland-place, and who afterwards lived with Mr. Campbell, at Birkfield, near Ipswich, which last place he is supposed to have left about April 1831. Something to advantage.

(To be continued weekly.)

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

J. D. (Liverpool).—Thanks for the extract. The suggestion is good, and will be made use of.

NOTICE TO SUBSCRIBERS.

The volumes of the LAW TIMES, neatly, strongly, and uniformly bound, for 5s. 6d. each, with the name and address of the owner on the cover, 1s. extra, if sent to the office. If the numbers for binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

The LAW DIGEST is now completed. Being stamped, it may be sent by post, or may be had, sewn in a wrapper, price 5s. 6d.

NOTICE.

The subscription for the current half-year is now due, and subscribers desirous of availing themselves of the great reduction allowed for pre-payment, should forward the same in the course of the ensuing week. The prepaid subscription is 1l. 5s. for the half-year, and 2l. 7s. for the year, being a reduction respectively of 25 and 30 per cent.

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N.B.—For Scale for Estate Advertisements, see JOURNAL OF PROPERTY.

THE LAW TIMES.

SATURDAY, JUNE 20, 1846.

TO SUBSCRIBERS.

It was stated some time since that strict faith would be observed with subscribers as to the Advertisements. It was promised that, for whatever space they should exceed the pages allotted to them, compensation should be made to the reader. As the number of advertisements varies at different seasons, it is impossible to prescribe any limit to them, and usually they will not permit of postponement. It was, therefore, agreed that an account should be kept, and whatever they trespassed upon the reader's domain should be supplied by gratuitous additional pages. In pursuance of this pledge, the subscriber is to-day presented with a GRATIS double number, which not only enables us to meet a portion of the mass of reports sent in, but to provide for a flood of Advertisements, and balance the account due for past trespasses upon the reader's good nature.

CONDUCT OF THE COURTS.

It is with considerable reluctance, and only after long hesitation and repeated deliberation as to the precise line of public duty in a Professional Journal, that we have come to the conclusion that we should be neglecting that duty were we to be silent upon a subject of complaint which is matter of general remark in private, but which no individual presumes to prefer publicly. That which would be deemed impertinent in an individual, will, perhaps, be received as kindly as it is meant from a journal that represents the general opinion in this matter.

Let us state frankly then, that the complaint which, lest the motive be mistaken, we have thus prefaced, is the habit into which the Barons of the Exchequer have fallen, of incessant interruptions of Counsel in the course of their arguments, converting, in fact, what should be a formal argument into a dialogue, to the serious diminution of the dignity of the Court, and the grievous vexation of those who are thus forced into a sort of half examination, half controversy, not with one judge only, but often with two or three at once. Sure we are that the learned Barons of the Exchequer, who have fallen into this habit probably from the very kindness of their dispositions, cannot form the slightest conception of the strange effect it has upon the spectator, or the inconvenience it occasions to Counsel. The latter goes down prepared with an argument complete, each step being necessary to be proved in order to support that which is to follow. Instead of being permitted to put that argument uninterrupted after his own fashion, he has scarcely opened it but objections and interrogatories are interposed, now from one judge, now from another, and often from two at once, until the links in the chain of his reasoning are utterly lost, and, perplexed, confused, not knowing what first to answer, or how to pass an opinion in an instant upon the many supposititious cases thrown out to him, the baffled Counsel is compelled to resume his seat, with his real argument unspoken, and the merits of his own case undeveloped.

That this is not an exaggerated picture we believe will be allowed by all who have spoken or sat in that Court, and its mischiefs are so apparent, that it will, we are confident, be

enough to state the fact to ensure an alteration. It must be admitted, too, that it is not exclusively the fault of the learned Barons, although it is more manifest in the Exchequer than in the other Courts. It has been for many years a growing practice everywhere. Perhaps Counsel were at first to blame, by boring the Judges with long and irrelevant speeches that touched on every topic—but the point in issue. We can make very great allowance indeed for the impatience of a Judge condemned to hear a man talk for an hour beside the question, and occasional hints to bring him back to the point will, in such case, be commendable. But the interruptions complained of are not confined to such cases, nor to such men. The best as well as the worst are troubled by them.

Indeed, the interrogatory system, to which all the judges are so partial, is a bad one, and should be resorted to only as a matter of necessity. It was said of Sir WILLIAM FOLLETT, that very early in his career he thus appropriately answered a Judge who had interrupted his argument with "But how, Mr. FOLLETT, if the plaintiff had re-entered?" "My lord, when that point arises, I shall be happy to argue it before your lordships; at present my case is that he did not, and to that I confine myself."

There is in this reply so much good sense, that we leave it to the consideration of the learned Judges, confident that it will carry with it the weight due to such an authority.

For ourselves it is, perhaps, scarcely needful to add that we have written with the most entire respect, assured that the custom complained of continues only because its effect is not apparent to the learned Barons themselves, and nobody has yet had the courage to tell them of it; and, above all, giving them full credit for the best motives, and that it proceeds from a desire to expedite the administration of justice by keeping Counsel to the point. But, practically, its effect is just the reverse of this; it protracts discussion, and certainly introduces perplexity, first in the Counsel, and afterwards in themselves.

RAILWAY LITIGATION.

THE decision of the Court of Exchequer in the case of *Henry v. Goldney*, 7 Law T. 211, where forty separate actions were commenced against so many members of a committee for the same debt, that the action pending against one might not be pleaded in bar of the actions against the rest, is, it must be admitted, directly opposed to the prevailing opinion of the Profession, and therefore the point will probably be raised again in some other court.

But in the meanwhile the decision seems to have been looked upon as a sort of justification of such a system of wholesale litigation, and we understand that many similar proceedings have since been taken.

Our purpose, in these few remarks, is to warn the readers of the LAW TIMES against the danger of such a course, and to shew them the real nature of the decision.

The single question here raised was as to the validity of the plea of *lis pendens*. Even if the Court was right in disallowing such a plea, the difficulties and dangers of a plaintiff remain as before.

Now, what are they?

The case of *Carne v. Legh*, 6 B. & C. 124, shews that the defendants might make a summary application to the Court on payment of the debt and costs by one, and that the Court will thereupon stay proceedings without payment of costs, and make the plaintiffs pay the costs of the application.

But if the defendants are resolute, the result cannot be otherwise than still more ruinous to the plaintiff even than this.

Suppose him to have brought forty actions for the same debt. All proceed *pari passu*; all are set down for trial; they cannot all be heard at one and the same instant: one must

precede the others; the instant there is judgment upon that one, all the rest may plead that judgment in bar of their actions, and that plea would be good *quis darrien continuance*.

What, now, is the condition of the unhappy plaintiff? He has one judgment; to that alone he can now look for payment of his debt; his remedy is gone against all the rest, and if he has made a bad shot, and brought down a poor bird, he loses the whole.

But if he be fortunate enough to recover his debt from that one, what is his position with respect to all the rest? Here are thirty-nine actions down for trial, in each one of which he is sure of a verdict against him, and payment of the defendant's costs. What can he do? There is no resource but to discontinue, and this he can only effect by payment of the costs up to the time of discontinuance, and they will be at least 6*l.* per action, besides his own costs.

Before any attorney advises his client thus to multiply actions for the sake of increasing his costs, let him think of the possible consequences to himself also.

His client can have no object in forty actions for the same debt, unless, as in some cases we have heard of, the client shares the profit of the attorney in the transaction.

But let this come before the Court, and he would be struck from the rolls without mercy.

And if it can be in any manner made to appear that it was for the costs, and not for the client, that the multiplied actions were brought, we believe the Court would inflict an exemplary punishment.

So much by way of warning to attorneys speculating in multiplied suits for the same debt. A word now of advice to attorneys for defendants in such suits.

Let your first endeavour be to ascertain who are the other defendants, and act in concert.

If the debt be really due, let it be raised by contribution, and reserved for the acquittance of the one against whom the first judgment may be had. Make no terms; listen to no compromises; compel the plaintiff to proceed or to discontinue. If he do not proceed, he cannot obtain his debt; if he proceed, he can only obtain one judgment in his favour by subjecting himself to the costs in all the other actions. Any way you must catch him in his own trap, if you can only persuade your clients not to be terrified into compliance with an extortion by the sight of a writ.

And if you can catch the attorney tripping, you will be conferring a favour on your Profession by doing your best to relieve it of one of a class who, during the last six months, have brought upon it more discredit than will be effaced in six years.

SHAM LAWYERS.

Denton Chare, Newcastle-upon-Tyne,
June 2, 1846.

SIR,—I am instructed by Mr. James Brown, of Birtley, shoemaker, to apply to you for payment of 1*l.* 1*s.* and unless the same be paid to me immediately at my office, I shall cause you to be summoned to Durham, and proceed under the new Act, for the recovery thereof, without further notice.—I am, Sir, your most obedient servant,

JAMES CROZIER.

Another from a bailiff at Barnstaple:—

Barnstaple May 11, 1846.

SIR,—I am directed by Mr. John Harding, of Ilfracombe, to apply to you for the Payment of the sum of 1*l.* and unless the Same be Paid to me, with the expance of this letter, on or Befor friday nex, a County Cort summons Will be sarved you without aney further notice.—Remen yours,

LEWIS PINKHAM, 6, Sion Place, Barnstaple.

to T. Williams, Ilfracombe.

Both should be looked to and warned of the fate of Mr. LATHAM.

ADVERTISING ATTORNEYS.

Can any reader ascertain who is Mr. A. Z.?

NOTICE TO INSOLVENTS.—A solicitor, of many years' experience, offers his services to insolvents to

prepare their petitions and conduct their business through the Court of Bankruptcy under the New Act for Relief of Insolvent Debtors, where they may be speedily relieved from their difficulties without imprisonment; or, in cases where it may not be deemed necessary to resort to the above expedient, arrangements may be made with creditors by composition or otherwise. Charges very moderate. Apply at the offices, 5, Bartlett's-buildings, Holborn. Letters for A. Z. attended to.

THE LAST CONTRIVANCE.

THE following handbill has been sent to the Governor of the gaol at Presteign, to deliver to the debtors there confined. One of them wrote for particulars, and was informed by Mr. LORD that his discharge would be procured immediately on his forwarding 5*l.* on account of his charges. Can any reader oblige us by information as to the "Society," as it is termed, or its *Honorary Secretary* :—

MUTUAL PROTECTION SOCIETY.—Offices removed to 10, Gray's-lan-square, London.—By the present humane Acts, all traders owing debts under 300*l.* and non-traders owing debts to any amount, can avoid the illegal and unconstitutional system of imprisonment for debt, by filing a petition and schedule in the Bankruptcy Court. All persons confined for debt, being traders, and owing debts under 300*l.* and non-traders to any amount, can be forthwith discharged from prison. No person can be arrested under 20*l.* Settlements after marriage can be legally made after marriage in such manner that the wife and family can be protected, even in case of future bankruptcy or insolvency. All information, advice, and assistance obtained at this office, and the fees are fixed. T. LORD, *Honorary Secretary* to the Anti-Imprisonment for Debt Society.

N.B.—A petition will be shortly forwarded with a view to the total abolition of imprisonment for debt.

VERULAM PUBLICATIONS.

A number of *New Magistrates' Cases* has just been delivered, and another, comprising some of the cases of last Term, is now in the press.

Part IV. of *Cox's Criminal Law Cases* is in the press, and will be ready for the Circuits.

The Second Number of the Second Volume of *Real Property and Conveyancing Cases* will appear in the course of a week.

Mr. Saunders's *Practice of Summary Convictions*, the first of the projected series of Books on the Practice of the Law, was duly published on Saturday last, as announced.

The various forms for the coming Registration are now printed for the use of the subscribers, and may be had in any quantity.

LIABILITY OF PROVISIONAL COMMITTEES.

THE case of *Law v. Wilson*, reported and commented upon last week, and its apparent, perhaps real, discrepancy with some cases previously and since decided, shew how extremely vague is the information upon which both judges and juries are proceeding in the trial of the railway cases. It will not be labour ill-bestowed to endeavour to ascertain what are really the principles of law applicable to the questions already tried and still at issue, and what the actual state of facts; and as we are addressing Professional readers only, the argument shall be stated in as close and naked a form as language will permit. To prevent mistakes, it will be necessary to go back to its very foundations.

A orders certain goods of B, who supplies them. The law presumes a contract between A and B; by B to supply them, and by A to pay for them their fair value. If B deliver the goods, and A does not pay for them, B has an action against A for their value.

But if A had ordered the goods as agent for C and D, B would have an action against them also. In such an action it would be necessary for B to prove that A was the agent of C and D, authorized by them to contract the debt on their behalf.

An authority from C and D to A to contract debts for them, as their agent, may be either express or implied. For our present purpose we deal with an implied authority only; and we confine our view to the case of a servant.

A servant has an implied authority to make contracts for his master, within the ordinary and reasonable scope of his employment; at least, so far as the interests of third parties are concerned, and the master is bound by the contracts so made.

We have arrived now at the first point in the cases under discussion, up to which both the law and the facts are clear and indisputable. The contracts of the secretary for all matters reasonably requisite for the carrying out of a railway company are binding upon his employers.

Here, then, arises the great question—who are his employers?

But before we examine this, a hint may not be unwelcome. It often happened that no orders were given but by a vote of the Managing Committee, formally entered, and of which the creditor had notice. In such case, there can be no doubt that the Managing Committee are liable.

Where there was no Managing Committee, but only one general Provisional Committee, by whom all the business was transacted, there can be little, if any, doubt that all the members are liable, whether they actually interfered or not. They might have taken part, had they pleased; and, as their names appeared, it may be assumed that the credit was given to them.

But the question becomes vastly more complicated and difficult when there is a Managing Committee as well as a Provisional Committee.

Still it is not at all a question of law, but of fact. The law is clear enough, that the principal is liable for the acts of his agent; the point here at issue is, simply, who was the principal?

In fact, then, railways were conducted after a twofold fashion. In some instances, but few, the Provisional Committee appointed a Managing Committee. In the great majority of cases it will be found that the Managing Committee were self-appointed; that the Provisional Committee were merely asked to lend their names, as it were, as *approvers*, or *patrons* of the scheme, and not as managers; that as such, and only as such, they were lent; that the Managing Committee never invited the attendance, or permitted the interference, or asked the counsel of the Provisional Committee, or in any manner recognized them as having an interest, until they wanted their money to pay the debts they had wantonly incurred.

In such a state of facts there can be no rational doubt that the Managing Committee alone are answerable for the debts they alone incurred. The Secretary, who gave the orders, was appointed by them, was their servant and agent, and acted on their authority alone.

What, then, is the question for the jury?

The facts are few and simple. A, B, and C, are managers of a scheme. X, Y, and Z, consent to have their names placed in a list of Provisional Committee, but they take no part, are not permitted to interfere in the management, do not authorize any contracts, or appoint or control the managers who do.

From this the jury have to draw the inference as reasonable men.

Did X, Y, and Z, intend thereby to authorize A, B, and C, to make contracts for them to any amount they pleased? As Mr. Baron PARKE well put it, they cannot reasonably be considered to have done so. The Act of itself does not justify such a construction; it is entirely a question of intent.

But, we ask, if the presumption be not quite the other way? When there is a Managing Committee, every body knows what it means, as distinguished from the Provisional Committee; and may not an authority given to add the name to the latter, be deemed the best evidence that the defendant did not desire or intend to take upon himself the duties or responsibilities of the former?

In this view of the case, Mr. Baron PARKE was wrong when he directed the jury, that an authority to put down the name as "director" was not an authority to do so as a Provisional Committee-man. The fact is, that all are, nominally, directors, only these are subdivided into Managing Committee and Provisional Committee, and an authority to put down the name as director was an authority to place him on either list. But this is only one of the strange multitude of mistakes, both of fact and law that have been made by the Courts, and echoed by the press, from the very beginning of these *saturnalia* of litigation.

Nor will juries do other than further the ends of justice by so construing the facts we have described. Manifestly, justice prescribes that they who improvidently incurred the debts should pay them, and that they should not be permitted to throw them upon those whom they did not consult in the contracting of them. The creditor will equally reco-

ver, but he will do so from the party liable both in law and justice, instead of from the party liable, if at all, only in law and not in justice. E. W. C.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5*s.*]

BIRTHS.

ADAMS.—On the 18th inst. at 21, Cennought-square, the wife of John Adams, jun. esq. barrister-at-law, of a son.
HARRISON.—On the 16th inst. at Putney, the lady of Edward M. Harrison, esq. barrister-at-law, of a son.
LINDSELL.—On the 11th inst. at Torrington-square, the wife of John Lindsell, esq. of Lincoln's-inn, of a son.

MARRIAGES.

CALVERT, the Rev. William, A.B. of Pembroke College, to Ellen Harriet, eldest daughter of William Pritchard, of Doctors'-commons, esq. High Bailiff of Southwark, on the 16th inst. at St. Benet's, Paul's-wharf.

DEATHS.

COOPER, Mrs. Elizabeth, wife of John Henry Cooper, esq. and daughter of the late Godfrey Sykes, esq. solicitor to the Board of Stamps, on the 13th inst. at the Knoll Sands, near Bridgnorth, aged 55.
DEARB, Charles, esq. late of the Inner Temple, on the 12th inst. at Royston Hall, Kilburn, aged 76.
FOOTNER, Mrs. Fanny, wife of Harry Footner, esq. solicitor, on the 7th inst. at Andover, aged 38.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.

(Continued from p. 246.)

4. How the various documents should be set out.

The vendor's solicitor must be especially careful to set out every document in the abstract that can in any way affect the title; as he will render himself personally liable for the consequences, if he suppresses any incumbrances, or keeps back any document whatever by which the real and true nature of the title may be revealed. (*Arnot v. Biscoe*, 1 Ves. sen. 96; *Burroughs v. Lock*, 10 Ves. 475; *Boules v. Stewart*, 1 Sch. & Lef. 227; 1 Prest. Abs. 39.)

Arrangement of the clauses.—In order that the various clauses may the more readily catch the reader's eye, it has long been the practice to distinguish the different parts of the abstracted documents by setting them out in margins, varying from one another in breadth; hence an ordinary abstract has commonly four or five marginal spaces. In the outer space, or margin, merely the date of the instrument is inserted. In the first inner space, or margin, if the documents are deeds, the title of them, as "Indentures of Lease and Release," with the names and additions of the conveying parties, are set out; the recitals are commonly set out in the second; the *testatum* in the first; the granting part in the second; the parcels in the fourth; the general words in the fifth; the *habendum* in the second; the declaration of uses in the third; the powers, if any, in the second, as also the covenants; and the clause noticing the attestation and endorsement of receipt of the purchase-money in the fourth. There is not, however, any precise rule laid down as to the manner in which the respective clauses are to be set out. The chief object of the arrangement is to enable the reader, at a single glance, to discover any particular portion of an abstracted document; a method which very considerably assists the investigation of a lengthy abstract, where it so frequently becomes necessary to refer backwards and forwards from one part of it to another.

As to Wills.—Wills are commonly set out within the inner or first margin; but with all due deference to those experienced practitioners who have so long adhered to this plan, I think it would be a far better one to confine it, at any rate, within the limits of the second margin. Few instruments call for more frequent or lengthy marginal remarks from the peruser of an abstract than a will, on account of the various objects it embraces, and not unfrequently from the inartificial manner in which it is penned; so that it often happens that these observations are too voluminous to be contained in the remaining margin, and are, consequently, obliged to be extended to the back of the sheet or carried on to the margin of the next. If possible, the marginal remarks of the party perusing the abstract should be placed as nearly as possible to the particular clause to which they refer.

Acts of Parliament—Fines and Recoveries.—

Acts of Parliament, as also chirographs of fines and exemplifications of recoveries, are usually set out within the first margin; as are also most matters of fact which in any way concern the title, such as marriages, births, deaths, descents, intestacies, failure of issue, or the like.

Order in which documents should be abstracted.—The various documents, as also such matters of fact as are important to the title, should be abstracted according to the order of their respective dates. If there are two documents of the same date, they should then be abstracted according to the order in which they may be presumed to have been executed; as for example: if lands were conveyed to trustees by one deed, upon trusts declared by another deed of the same date, the deed of conveyance to the trustees is the instrument which should be first abstracted.

5. Deeds, how to be abstracted.

As to the date and parties.—In abstracting a deed, the date and name of the deed are first set out; next come the names of the parties; who should be described, by their Christian and surnames, with the addition of esquire, gentleman, yeoman, &c. as the case may be, to which is frequently added their place of residence; and if they are described in the deed as filling any particular character, as heir, executor, trustee, &c. they should be so described in the abstract. This, indeed, is sometimes done where the parties act in either of the above mentioned characters, but are not so described in the deed; but whenever the latter is done, the additional description should be inserted within brackets, in order to shew that they were not so described in the abstracted deed.

Although it is not often done, I consider that in preparing the abstract the stamps of the abstracted deeds should be mentioned underneath the date, in order that the purchaser's solicitor may at once ascertain whether the duty affixed be correct or not. This often becomes a matter of high importance, and yet it is one that the attention of counsel is rarely drawn to, in investigating a title. It is one, however, to which I shall beg to draw the attention of my readers when I come to treat of that part of my subject.

Recitals.—After the description of the parties come the recitals, which should be set out in the order in which they occur in the abstracting deed, which, though they may often be considerably abbreviated, should yet be set out with sufficient fulness to explain their whole purport; but when once fully given, it will be sufficient, whenever it again becomes necessary to notice such recital, to state simply the name and date of the recited instrument (e.g.) "Reciting before abstracted indres. of le. & rele. of the 20th and 21st days of October, 1803." Where brevity in an abstract is desirable, several recitals may be noticed very shortly; as, "Reciting before abstracted indres. of le. & rele. of 20th and 21st days of October, 1803. Also reciting the before abstracted indres. of demise of the 1st day of Dec. 1804; the indres. of appointment of the 29th day of June, 1805; the indres. of le. & rele. of the 28th and 29th days of Sept. 1814; the indres. of bargain and sale of the 1st day of July, 1817; and the indres. of le. and rele. of the 11th and 12th days of Oct. 1823;" to the effect hereinbefore abstracted.

Testatum.—The testatum or witnessing part should set forth the nature of the consideration, and where money is required to be paid in any particular manner in pursuance of the terms of any trust or power, then that part of the deed which points out such particular mode of application should be fully abstracted, in order to shew that all the necessary requisites have been complied with. (1 Prest. Abs. 78.) Where there is a mere nominal consideration, as 5s. or a pepper corn, it should be shortly stated.

Granting clause.—The granting clause should contain all the words of conveyance, but the words of conveyance should not be repeated. If there are distinct granting clauses, each clause should be abstracted according to its order in the deed. (1 Prest. Abs. 75.) If the conveyance is made at the request or by the direction of any particular person, or where a party is stated to have conveyed in any particular character, as heir, executor, trustee, &c. it should be so stated. So where a power is exercised, the reference to the power should be inserted, together with the prescribed mode in which it was to be executed and attested; and it should also be stated in the attestation clause that all the above requisitions were duly complied with. (Ib. id.)

Parcels.—The parcels should be set out *verbatim*

from the first abstracted deed, but in those subsequently abstracted it will be sufficient to refer to them as "All before abstracted premises." (1 Prest. Abs. 81, 83.) Unless where the description has been varied by more recent assurances, in which case such variation should be noticed. (Ib. 84.) If there is any exception reserved by the abstracted deed it should be set out *verbatim* in the same margin, and immediately following the parcels. The general words, such as "Together with all houses, &c." are usually inserted thus shortly; as are also the reversion, the all estate, and all deeds, &c. clauses, viz.:—"And the reversion, &c. and all the estate, &c. together with all deeds, &c." But should either of such clauses contain any special matter, it should be fully set out.

Habendum.—The latter words of the *habendum* as "To hold, &c." only are inserted; but the words of limitation following should be fully stated; as "To hold unto the said A B and his heirs, to the use of the said A B, his heirs, and assigns, for ever;" or "To hold unto and to the use of the said A B, his heirs, and assigns, for ever;" for whatever words of limitation are here used, they should be copied *verbatim*, and not simply their effect and operation inserted: as to A B in fee, to the usual uses to bar dower. The latter terms in fact, even in a recital, are incorrect; because there are many minute forms to use to bar dower, each varying from the other in some essential particular. As for example, the mode of executing the power of appointment reserved to the purchaser; which is sometimes directed to be attested by a certain number of witnesses; sometimes to be executed by any deed or instrument in writing; sometimes the power to appoint by will is omitted, and sometimes it is confined to a deed only; but without prescribing any number of witnesses; so that under such general terms as those above alluded to, it would be impossible for any one to know precisely what the exact uses were. This indeed might in some cases become very important to a title; as where the party conveys by appointment only, and the deed is attested but by one witness, when the power he purposes to exercise directs that there shall be two.

Where there are several habendum clauses.—If, as frequently happens, there are several *habendum* clauses, then each of these according to the respective order in which it stands in the deed must be set out in the abstract.

Of the reddendum clause.—Where there is a *reddendum* clause in the deed it may generally be given shortly; unless the render is made payable in any particular or unusual manner; but where that occurs, the manner in which it is payable should be stated. (1 Prest. Abs. 101.)

Declaration of uses, trusts, powers, and other special matters.—It requires considerable skill and judgment to abstract any special limitations in a proper manner, so as to avoid on the one hand overloading the abstract with unnecessary verbosity, as on the other to omit nothing necessary to the elucidation of the title. In the instance of estates tail, for example, the precise words of limitation creating the first estate tail; as also of any estate tail upon the barring of which the title depends should be fully set out; but the remainders, if created by the usual and proper words of limitation, may be simply stated to be such. In cases where the regular words of limitation have not been used, or an estate only arises by implication, although no doubt exists as to the legal effect and operation, the precise words used should, nevertheless, be copied *verbatim* into the abstract; as should also all provisions for abridging or defeating any estate. So where there is a proviso for redemption in a mortgage deed, the time and place of payment should be stated (if place be mentioned) as also by whom the money is to be paid, and the amount of interest reserved. Whether trusts or powers should be abstracted shortly or fully, will, in a great measure, depend upon whether or not such trusts have arisen, or such powers have been, or are intended to be, exercised. If powers have not been exercised, or are barred, released, or extinguished, or have become incapable of taking effect, or are in their nature immaterial to the title, it will be sufficient, in either of those cases, simply to refer to them. (1 Prest. Abs. 151.) Where trusts or powers of sale have been executed, the clauses (provided there be such) exonerating the purchaser from seeing to the application of his purchase-money, or inquiring into the necessity or expediency of the sale, or the performance of act or condition pre-

cedent or concurrent with the sale, should be abstracted rather fully. (Ib. id.)

Covenants.—The common covenants in deeds are usually abstracted shortly, as follows.—Covenants from said (*venditor*) that he was seised in fee; had good right to convey; for quiet enjoyment; free from incumbrances; and for further assurance. (Prest. Abs. 152; 3 ib. 56.) If there are any other covenants, particularly if they are of a special nature, they should be more fully abstracted. This should more particularly be done in the case of a sale of leasehold property; where all burdensome covenants should be set out in the abstract nearly *verbatim*; or at any rate quite sufficient should be extracted to explain their full meaning and object, so that a purchaser cannot possibly be misled by any omission in such abstract. Covenants from trustees are simply inserted as covenant from the said (*trustee*) that he has done no act to incur.

Execution and attestation clause.—It should be stated by what parties the deed is executed, and if any one or more named in the deed have omitted to do so, that fact should be mentioned. Omissions of this kind frequently occur where the dower trustee is described as a party to the conveyance, whose actual concurrence not being actually essential to pass the whole estate and interest intended to be thereby conveyed is often unattended to; but however immaterial his concurrence may be, the fact of his non-execution should nevertheless be noticed; for every fact connected with the title should be stated precisely as it occurs. Upon the same principle, therefore, if the instrument be executed in any particular manner, it should appear on the abstract that it has been executed accordingly. For example, where a power has been exercised in pursuance of some specific requisitions imposed by the instrument creating it, the particular mode of execution should be stated, in order to shew that the terms of the power have been strictly complied with. So where any act or thing is required to be done beyond the mere simple act of sealing and delivering the deed of conveyance; as livery of seisin upon a feoffment, or enrolment upon a deed of bargain and sale, or a disentailing deed; or where the acknowledgment of a married woman is necessary to give validity to the conveyance; such of those facts as have taken place should be mentioned. Nor indeed will simply doing this, in all instances, suffice; as in some at least the time also at which such acts were performed should also be set forth; and if the lands lie in a register county, and the deeds or other assurances have been duly registered, it should be so stated. In the instance of a feoffment also, the manner in which livery was given or received; as by attorney, or with the consent of the tenants, where the lands are on lease, as the case may be, is usually indorsed on the deed; and if this be done, it should so appear in the abstract. And in this, and in fact in all cases where a deed is executed by attorney, it will not be sufficient simply to mention that fact, but the power of attorney itself should also be abstracted, though this may be done very briefly.

Memorandum of receipt of purchase-money.—To the attestation there should be annexed a memorandum that the receipt of the consideration money is indorsed, and if signed and witnessed, as the common practice now is in all modern deeds, those facts should be mentioned. (1 Prest. Abs. 72; *Rountree v. Jacob*, 2 Taunt. 141.)

(To be continued.)

THE VALUE OF LAND.—The great Willenhall estate, in Warwickshire, with a rental of 1,550l. a year, was sold by Mr. Robins, at the Auction Mart, on Tuesday, for 48,100 guineas. Lord Craven is the purchaser. Mr. Jones Loyd and Mr. Mellor (one of the tenants) were the highest of the unsuccessful competitors. This sum, it will be seen, is thirty-three-and-a-half years' purchase, and upon a rack rental.

SALE OF ADVOWNSONS.—Mr. Alderman Farebrother disposed of, by auction, at Garraway's, the following advowsons, severally situated in the counties of Essex, Kent, and Suffolk. The first was the right of presentation to the rectory of Great Tey, about eight miles from Colchester, value about 904l. per annum, including the right of presentation to the vicarage of Mount Tey, sold for 9,800l. The right of presentation to the rectory of Kinstone, near Canterbury, the rent-charge in lieu of tithes, amounted to about 500l., sold for 2,950l. The perpetual right of presentation to the united rectory of Flempton-cum-Hargrave, four miles from Bury St. Edmunds, annual value 605l. 13s. 4d. subject to deductions of about 126l., sold for 5,200l.

Public Sales.

By Mr. W. W. SIMPSON, at the Mart.

A freehold estate called Beades Hall Farm, situate in the parishes of Whittle, Chignall St. James, and Chignall Smealey, Essex. It comprises a farm-house, agricultural buildings, and 164a. 2p. of arable, meadow, and pasture land, let for five years at 150l. per annum. It was bought in at the selling price, which was 4,300l.

By Messrs. HOGGART and NORTON.

A beautiful property situate at the foot of Crouch-hill, Horney, comprising a mansion, attached and detached offices, pleasure-grounds, gardens, lake, fishponds, and park-like lands, the whole containing 150 acres; held for 45 years at 520l.—2,100l.

THE following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

For the first 70 words 5s.

For every succeeding 30 words . . . 1s.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	96½	96½	95½	95½	95½	95½
Three per Cents. Reduced	95½	95½	95½	95½	95½	95½
New Three-&-a-quarter per Cts . .	96½	97½	97½	97½	97½	96½
Long Annuities	101	101	101	101	101	101
Bank Stock	205½	205½	205½	205½	206	206½
India Stock	265½	265½	265½	265½	265½	265½
India Bonds, prem.	28	28	27	27	27	27
Exchequer Bills, prem.	16	16	16	16	16½	15½

FOREIGN.

Spanish Five per Cents.	24½	24½	24½	24½	24	24
Spanish Three per Cents.	37½	37½	37½	37½	37½	37½
Russian	110½	110½	110	110	110½	109½
Peruvian	38½	38½	38	38	37½	37½
Portuguese	51½	50	50	50	50	50½
Mexican	30½	29½	29½	29½	29½	29
Deferred	16½	16½	16½	16½	16½	16½
Dutch Two-and-a-Half per Cents.	59½	59½	60½	60½	60½	60½
Four per Cents.	92½	92½	92½	91½	91½	91½
Danish	88	88½	88½	88½	88½	87½
Colombian	17½	17½	17½	17½	17	17
Chilian	99½	99½	99½	99½	99½	99½
Buenos Ayres	39½	39½	40½	41½	41½	41
Brazilian	82	82	82	82	82	82
Belgian	96½	96½	96½	96	96½	96½

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, June 8.

Dalton, J. grocer, div. next week. Graham, London.

Tuesday, June 9.

Latham, S. M. banker, last exam. June 30.—Laws, J. grocer, last exam. June 19.—Pinnit, J. goldsmith, div. next week. Edwards, London.—Pulling, C. potatoe salesman, last exam. June 19.—Walduck, H. chymist, last exam. passed.

Wednesday, June 10.

Emanuel and Co. goldsmiths, joint div. next week. Edwards, London.—Mitchell, W. furniture dealer, assignees, June 17.—Needham, F. H. dressing case maker, last exam. June 23.—Smiths and Co. glass merchants, last exam. Sept. 11.—Wadsworth, G. B. apothecary, last exam. Sept. 11.

Thursday, June 11.

Bradshaw, W. cattle salesman, last exam. passed.—Denson and Day, brewers, last exam. July 20.—Eby, W. silk dresser, div. next week, Graham, London.—Edmonds, C. J. apothecary, last exam. passed.—Foothead, H. H. milliner, div. next week. Graham, London.—Gandy, T. grocer, last exam. passed.—Marks, D. pen manufacturer, div. next week. Johnson, London.

Friday, June 12.

Agate, M. grocer, final div. next week. Alsager, London.—Baxter, G. currier, last exam. sine die.—Blacklocks, R. innkeeper, div. next week. Pennell, London.—Bond, C. J. tailor, last exam. passed.—Bromley, W. scrivener, last exam. sine die.—Carter and Co. woollen drapers, final div. Carter next week. Groom, London.—Graham and Co. calico printers, joint div. and sep. Graham next week. Follett, London.—Pitche, J. W. tailor, last exam. June 30.—Pursell, S. ironmonger, div. next week. Edwards, London.—Sheffield and Sheffield, grocers, last exam. July 16.—Sheffield, W. grocer, annulled.

Saturday, June 13.

Bullock, B. H. wine merchant, last exam. passed.—Harlow, J. tobacconist, last exam. passed.—Ufford, J. G. brewer, last exam. July 10.—Whitlaw and Co. builders, last exam. July 2.—Wolton, J. C. ironmonger, div. next week. Green, London.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Alexander and Co. hardwaremen, third, 1s. 6d. Groom, London.—Austin, J. draper, first, 5s. Herniman, Exeter.—Banning, J. stationer, first, 4s. 2d. Bird, Liverpool.—Bell, W. and H. seed crushers, second, 53d. Freeman, Leeds.—Bridge, G. C. grocer, 2s. 10d. Groom, London.—Brown, W. L. merchant, first 3s. 7½d. Bird, Liverpool.—Butcher, W. W. commission agent, first, 3s. 10d. Groom, London.—Campton, R. and J. bankers, fourth, 3s. 10d. Kynaston, Leeds.—Clough, J. chymist, first, 3s. 9d. Young,

Leeds.—Collinson, W. shipwright, second, 3d. Freeman, Leeds.—Durnall, J. ironmonger, 1s. 10d. Groom, London.—Edwards, R. draper, first, 2s. 6d. Young, Leeds.—Elcott and Allen, cornfactors, first and fin. 2s. 1½d. Kynaston, Leeds.—Fairclough, G. F. scrivener, second, 5½d. Turner, Liverpool.—Fowler and Limborne, tea dealers, first, 2s. 6d. Groom, London.—Gardner, H. merchant, second, 4½d. Bird, Liverpool.—Goddard, G. tea dealer, first 5s. Graham, London.—James, G. timber merchant, first, 1s. Valpy, Birmingham.—Lupton and Co. flax spinners, first joint, 5s. sep. of T. L. 5s. Young, Leeds.—Mair, T. merchant, 2nd 6½d. of 1d. Belcher, London.—Maillet, J. cotton spinner, first, 3s. 9d. Young, Leeds.—Marshall, R. stonemason, third, 3rd. Groom, London.—Martin, J. fringe manufacturer, first, 1s. 6d. Graham, London.—Middleton, G. wine merchant, first, 2s. 8d. Christie, Birmingham.—Owen, P. miller, first, 3s. Morgan, Liverpool.—Roberts, J. farmer, first, 2s. 3d. Morgan, Liverpool.—Turner and Co. merchants, third, 2d. and 1-16th of 1d. Bird, Liverpool.—Walker, J. butcher, first, 3s. 2d. Kynaston, Leeds.—Wair, R. auctioneer, final, 3d. Herniman, Exeter.

Insolvents' Estates.

Bolton, J. E. porkman, Pleasant-place, Holloway, 1s. 1d.—Coppard, J. labourer, Worming, 4s.—Cox, A. gunmaker, Winchester, 4s. 11½d.—Croly, H. captain in the army, Dover, 1s. 2½d.—Dunn, J. dentist, Wigmore-st. 1s. 6d.—Houghton, W. builder, Birmingham, first, 1s. 1½d. Christie, Birmingham.—Parker, J. appraiser, Wye Bridge-st. Herefordshire, 1s. 9½d.—Solomon, P. hardwearer, Newcastle, 1s. 4½d.—Vachee, A. clerk, Up. Norfolk-st. Mile-end, 1s. 11d.—Wright, G. J. clerk, Hampton, 3s. 9½d.

ASSIGNMENTS.

To Trustees for the benefit of Creditors.

Gazette, June 12.

Cleave, J. printer, Shoe-lane, May 23. Trust. J. Barry, wholesale stationer, Queenhithe. Sols. Vandercorn and Co. Bush-lane.—Constable, T. draper, Beaconsfield, May 6. Trust. D. Smith, gent. Wood-st. Sol. Ashurst, Cheapside.—Gorringe, F. draper, Hastings, May 30. Trusts. J. Dillon, Fore-st. and T. Devas, Laurence-lane, wholesale warehousemen, and W. Pritty, sq. Mornington-road, Regent's-park. Sol. Ashurst, Cheapside.—Leggett, G. publican, Toxteth-park, April 15. Trusts. W. Preston, spirit merchant, Liverpool, and R. Hindley, brewer, Toxteth-park. Sol. Leather, Liverpool.—Levy, A. S. and Vaughan, J. C. wholesale fruit merchants, Botolph-lane, May 18. Trusts. W. Were, wholesale provision merchant, Botolph-lane, and G. Raha, ship broker, Mark-lane. Sol. Mount, Lawrence Pountney-lane.—Luckman, H. D. haberdasher, Manchester, May 11. Trusts. C. Roberts, warehouseman, and S. Northcote, lace merchant, St. Paul's Church-yard. Sol. Bronckhurst, Basinghall-st.—Sleath, J. bookseller, Calverton, Buckinghamshire, May 29. Trusts. J. Barry, wholesale stationer, Queenhithe, and J. Capes, bookseller, Paternoster-row, Sols. Vandercorn and Co. Bush-lane.—Sout, E. bookbinder, Tabernacle-walk and Platina-st. Finsbury, May 29. Trusts. J. Barry, wholesale stationer, Queenhithe, and J. George, leather seller, Skinner-st. Sols. Vandercorn and Co. Bush-lane.

Gazette, June 10.

Gillham, F. butcher, Margate, June 12. Trust. J. Woodruff, butcher, Sandwich. Sol. Wright, Margate.—Walker, E. and Griffiths, G. coachmakers, Charles-pl. Westbourne-terrace, May 18. Trusts. T. Brown, coachsmith, Allsop-pl. New-rd. and A. Riddiford, Gerrard-st. Sols. Messrs. Bicknell, Manchester-st.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, June 12.

BENNS, CHARLES, miller and corn dealer, Winchester, June 23, at two, July 14, at half-past two, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Gedge, George-st. Mansion-house, and Pain, Whitechurch, sols. Date of fiat, May 30. C. Pain, yeoman, Earl Shatton, Southampton, pet. cr.
CLARK, DAVID, leather dealer and cut shoe bill manufacturer, Liverpool, June 22 and July 21, at twelve, Liverpool, Com. Ludlow; Bird, off. ass.; Johnson and Co. Temple and Grocott, Liverpool, sols. Date of fiat, June 5. Bankrupt's own petition.
FOX, CHARLES, victualler and tavern keeper, Kingston-upon-Hull, June 24 and July 15, at eleven, Mansion-house, Hull, Com. Burge; Kynaston, off. ass.; Wells and Smith, Hull, and Filson and Co. Coleman-street, sols. Date of fiat, June 4. T. Daniels, auctioneer, Hull, pet. cr.
HARR, WILLIAM, hat manufacturer, 83, High-st. Whitechapel, June 23, at half-past two, July 14, at eleven, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Rawlings, Crosby-hall-chambers and Romford, sol. Date of fiat, June 10. Bankrupt's own petition.
HILL, JOHN COMPTON, grocer and tea-dealer, Market-place, Reading, Berks, June 22 and July 27, at eleven, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Lewis and Lewis, Ely-place, sols. Date of fiat June 10. Bankrupt's own petition.
HOLT, JAMES, glove manufacturer, Castle Donington, Leicestershire, June 23 and July 28, at twelve, Birmingham, Com. Balguy; Huish, Castle Donington, and Hebert, Birmingham, sols. Date of fiat, June 8. Bankrupt's own petition.
SIM, JOHN BEDFORD, and PAYNE, CHARLES, paper makers, Pin-factory, Borough-road, June 23, at one, July 14, at two, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Lewis, Grosvenor-st. sol. Date of fiat, May 21. Bankrupt's own petition.
SIMMONS, THOMAS, corn merchant, corn dealer, and farmer, Woodburn, Bucks, June 12, at half past two, July 21, at eleven, Basinghall-st. Com. Evans; Bell, off. ass.; Walker, Finsbury-circus, and Spicer, Great Marlway, sols. Date of fiat, June 10. Bankrupt's own petition.
STAVELY, JAMES, warehouseman, dealer in printed calicoes and flannels, Manchester, June 24 and July 22, at twelve, Manchester; Fraser, off. ass.; Gregory and Co. Bedford-row, and Marsden, Manchester, sols. Date of fiat, June 6. John Gouldenburgh, merchant, Manchester, pet. cr.
WYATT, JOHN, common brewer and coal merchant, Oakham Court Brewery, Oakham, Surrey, June 23, at eleven, and July 21, at twelve, Basinghall-st. Com. Goulburn; Follett, off. ass.; Walker, Gray's-ion, sol. Date of fiat, June 11. Bankrupt's own petition.

Gazette, June 16.

BARTON, GEORGE, and BARTON, JOHN, copper roller manufacturers, Manchester, June 30 and July 23, at eleven, Manchester; Fraser, off. ass.; Slater and Heelis, Manchester, and Milne and Co. Temple, sols. Date of fiat, June 13. Henry Fother and William Marshall, commission agents, Manchester, pet. crs.

BATES, WALLER, stock and share broker, Manchester, June 29 and July 22, at twelve, Manchester; Fraser, off. ass.; Cooper, Manchester, and Gregory and Co. Bedford-row, sols. Date of fiat, June 11. Bankrupt's own petition.

BICKERTON, JAMES, hat manufacturer, Castle-st. Southwark, June 26, at half-past one, and July 28th, at eleven, Basinghall-st. Com. Fane; Whitmore, off. ass.; Fox, Finsbury Circus, sol. Date of fiat, June 13. Thomas Fowler and John Drewett, bankers, Princes-st. pet. crs.

BOULTON, JOHN, carrier, Ashton-under-Lyne, June 26 and July 17, at eleven, Manchester. Hobson, off. ass.; Reed and Langford, Friday-st. and Sale and Co. Manchester, sols. Date of fiat, June 10. George Byron, plumber, Dukinfield, pet. cr.

ELPHICK, HENRY, licenced victualler, 45, Wardour-st. St. James's, June 23, at half-past one, and July 28, at eleven, Basinghall-st. Com. Fonblanque; Balcher, off. ass.; Lloyd, Milk-st. sol. Date of fiat, June 8. Bankrupt's own petition.

FILBEY, WILLIAM, coach maker, Wryadisbury, Buckinghamshire, June 23 and July 20, at half-past ten, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Lloyd, Milk-st. sol. Date of fiat, June 12. C. T. Pratt, cabinet maker, Vineyard-walk, Clerkenwell, pet. cr.

GARDNER, EDWARD, manufacturing chemist, 33, Fieldgate-st. Whitechapel, June 23, at twelve, July 21, at one, Basinghall-st. Com. Goulburn; Green, off. ass.; Spillan, Camomile-st. sol. Date of fiat, June 6. Bankrupt's own petition.

HARE, PATRICK, tallow chandler, Liverpool, June 29 and July 21, at twelve, Liverpool, Com. Ludlow; Bird, off. ass.; Norris and Co. Bartlett's-buildings, and Avison and Co. Liverpool, sols. Date of fiat, June 11. P. Hare, tallow chandler, Liverpool, pet. cr.

KIRBY, WILLIAM, hotel keeper, Liverpool, June 23, at twelve, July 21, at eleven, Liverpool, Com. Ludlow; Turner, off. ass.; Holme and Co. New-inn, and Yates, jun. Liverpool, sols. Date of fiat, June 11. J. S. Richmond and H. Richmond, wine merchants, pet. crs.

PILBEAM, THOMAS, coachsmith and wheelwright, 35, Parker-st. Drury-lane, and Hanover-st. Hart-st. Covent-garden, June 25, at two, July 21, at half-past eleven, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Goren, South Molton-st. sol. Date of fiat, June 11. Bankrupt's own petition.

SMITH, JOHN GREAVES, grocer and corn dealer, June 29 and July 21, at twelve, Liverpool, Com. Ludlow; Bird, off. ass.; Keightley and Co. Chancery-lane, and Hetherington and Co. Liverpool, sols. Date of fiat, June 4. W. Bingley, grocer, Liverpool, pet. cr.

SMITH, SIDNEY, grocer, Bedminster, Bristol, July 2, at one, Aug. 3, at eleven, Bristol, Com. Stephen; Miller, off. ass.; Perkins, Bristol, sol. Date of fiat, June 12. Bankrupt's own petition.

SMITH, WILLIAM HENRY, newspaper proprietor and printer, Swansea, Glamorganshire, July 2 and Aug. 3, at one, Bristol, Com. Stephen; Hutton, off. ass.; Strick, Doughty-st. sol. Date of fiat, June 8. Bankrupt's own petition.

STAINES, JOHN COLLINS, tailor and draper, Oundle, Northampton, June 30, at one, July 25, at twelve, Basinghall-st. Com. Holroyd; Groom, off. ass.; Wood and Fraser, Dean-st. sols. Date of fiat, June 18. J. P. Tewart, E. Tewart, R. Tewart, and W. S. Wheeler, merchants, Ludgate-st. pet. crs.

Meetings at Basinghall-street.

Gazette, June 12.

Boggs, G. Taylor, W. and Shand, W. jun. merchants, Great Winchester-st. July 6, at twelve, fur. jt. div. and fur. sep. of Boggs.—Coe, J. money-scrivener, Sise-lane, July 2, at one, and—Cooper, W. brewer, Lower Shadwell, July 7, at half-past eleven, and—Cubitt, M. builder, High Holborn, June 23, at half-past two, last exam.—Griffiths and Pearson, tailors, New Bond-st. July 3, at eleven, and—Hays and Ayres, wollen drapers, Newgate-st. July 9, at two, and—Jay, J. builder, London-wall, July 3, at two, div.—Lankesher, J. surgeon, Little Chelsea, June 25, at half-past twelve, last exam.—Latham, S. M. banker, Dover, July 8, at twelve, and—Stone, W. laceman, Wood-st. July 2, at eleven, and—Tomlin, J. ship broker, St. Michael's-alley, July 3, at half-past one, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Cooper, T. umbrella manufacturer, New Bond-st. July 3, at eleven.—Knor, J. carpenter, Black Horse-yd. Bond-st. July 3, at one.—Walduck, H. chemist, New Bond-st. July 7, at twelve.

MEETINGS IN THE COUNTRY.

Ansell, J. T. attorney, Birkenhead, July 6, at eleven, Liverpool, and.—Cotton, J. ropemaker, West Retford, July 3, at eleven, Sheffield, div.—Gould, W. joiner, Liverpool, July 6, at twelve, Liverpool, and.—Higson, J. hosier, Leeds, July 2, at eleven, Leeds, div.—Nash, T. farmer, Halifax, July 2, at eleven, Leeds, div.—Owen, W. maltster, Aberdovey, July 6, at eleven, Liverpool, and.—Snell, E. chemist, Caistor, July 1, at eleven, Hull, div.

Gazette, June 16.

Challen, J. brewer and maltster, Odiam, Hampshire, July 8, at one, div.—Chesor, W. cooper, Stepney, July 10, at half-past one, and.—Clark, D. merchant, New Broad-st. city, July 8, at one, further div.—Cooper, T. umbrella manufacturer, 22, New Bond-st. July 7, at one, div.—Dykes, E. S. basket maker and cooper, Romford, Essex, July 4, at one, div.—Emanuel, M. and H. E. goldsmiths and silversmiths, 5, Hanover-sq. July 7, at twelve, sep. divs.—Gilo, J. merchant, Moorgate-st. July 10, at twelve, and.—Griffiths, M. and Pearson, P. tailors, New Bond-st. July 10, at eleven, joint div.—Harvard, J. lamp maker, 59, Brook-st. Bond-st. July 10, at eleven, joint div.—Hook, J. contractor and brick merchant, Nine-elms and Wandsworth-road, July 7, at one, div.—Martin, A. widow and linen draper, Sturminster Newton, Dorsetshire, July 7, at twelve, div.—Pritchett, S. and Oridge, J. P. glove manufacturers, drapers, and grocers,

Charlbury, Oxfordshire, July 4, at one, div.—*Stearman*, W. carpenter, Chelsea, July 10, at eleven, aud.—*Sterry*, W. B. sail maker, Jamaica-row and Bermondsey-wall, Bermondsey, July 7, at half-past twelve, div.—*Tebbutt*, J. auctioneer, Cambridge, June 26, at twelve, proof of a debt.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Bond, C. J. tailor, Blackheath, July 10, at twelve.—*Collins*, W. tailor, Rugby, July 8, at eleven.

Meetings in the Country.

Gazette, June 12.

Blundell, J. pawnbroker, Scholes-st. Wigan, Lancashire, July 6, at twelve, Manchester, aud. and July 7, at twelve, first div.—*Burns*, W. draper and grocer, Rhy, July 3, at one, Liverpool, aud.—*Colville* and *Colville*, merchants, Liverpool, July 3, at eleven, Liverpool, aud.—*Foulkes*, R. cat-the salesman, Northop, July 2, at eleven, Liverpool, aud.—*Headling*, R. laceman, Bath and Liverpool, July 2, at twelve, Liverpool, div.—*Hoare*, W. apothecary, Altonfield, Staffordshire, July 7, at twelve, Birmingham, aud. and div.—*Hughes*, G. linen draper, Holyhead, Carnarvonshire, July 3, at twelve, Liverpool, div.—*Kewley*, J. tailor, Liverpool, July 6, at twelve, Liverpool, aud.—*Knight*, J. mercer, Preston, June 24, at twelve, Manchester (adj. May 20), last exam.—*Marsland*, H. silk throwster, Borden, June 17, at twelve, Manchester (adj. May 20), last exam.—*Nicholson*, J. linen and woollen draper and tea dealer, Blackburn, Lancashire, July 7, at twelve, Manchester, aud. and July 8, at twelve, div.—*Oliver* and *Hastings*, butchers, Cheltenham, July 9, at eleven, Bristol, last exam.—*Payne*, G. F. dealer in optical and nautical instruments and stationery, and chronometer and watch manufacturer, Liverpool, July 2, at twelve, Liverpool, aud. and July 3, at twelve, div.—*Picairn*, T. merchant, Liverpool, July 6, at eleven, Liverpool, aud.—*Readdy*, C. Miller, Stamford, Lincolnshire, July 7, at half-past twelve, Birmingham, aud. and div.—*Rhodes*, T. cotton spinner, Manchester, June 24, at twelve, Manchester (adj. June 8), choose ass.—*Spencer*, B. baker, Nottingham, July 7, at eleven, Birmingham, aud.—*Taylor*, W. G. and *Guy*, E. hosiers and glovers, Lord-st. Liverpool, July 8, at eleven, Liverpool, second joint div.—*Wenman*, T. merchant, Birmingham, July 7, at twelve, Birmingham, aud.—*Williams*, E. draper, Northop, June 22, at eleven, Liverpool (adj. May 26), last exam.—*Yould* and *Rennards*, cheesefactors, Liverpool, July 3, at eleven, Liverpool, aud.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Croft, J. R. commission merchant, Liverpool, July 3, at twelve, Bristol.—*Foulkes*, R. cattle salesman, Northop, July 3, at eleven, Liverpool.—*Harris*, T. victualler, Birmingham, July 4, at twelve, Birmingham.—*Hill*, E. hosier, Stourport, July 9, at one, Birmingham.—*Hughes*, O. draper, Holyhead, July 3, at eleven, Liverpool.—*Nash*, W. grocer, Oldbury, July 4, at twelve, Birmingham.—*Pitt*, C. victualler, Bristol, July 6, at twelve, Bristol.—*Sutton*, T. jun. draper, Atherton, July 14, at eleven, Birmingham.

Gazette, June 10.

Birkett, J. tanner, Cockermouth, Cumberland, July 7, at eleven, Newcastle, aud. and July 9, at one, div.—*Edmond* and *Edmond*, merchants, Liverpool and Bombay, June 26, at eleven, Manchester (adj. June 12), last exam.—*Hanley*, E. S. grocer, Birmingham, July 14, at eleven, Birmingham, aud.—*Hansen*, P. merchant and shipowner, Newcastle-upon-Tyne, July 9, at twelve, Newcastle, second div.—*Harley*, W. S. hatter and clothier, Chapel-st. Penance, Cornwall, July 14, at eleven, Exeter, aud. and July 15, at eleven, div.—*Hughes*, G. J. commission merchant, Liverpool, June 29, at twelve, Liverpool (adj. June 11), last exam.—*Kewley*, J. tailor and draper, Liverpool, July 7, at twelve, Liverpool, div.—*Lawrence*, W. store and fender manufacturer, Sheffield, Yorkshire, July 10, at eleven, Sheffield, aud. and first div.—*M. Alister*, J. merchant, Liverpool, July 7, at twelve, Liverpool, aud.—*Osborn*, G. whip and fishing tackle maker, High-st. Exeter, July 14, at eleven, Exeter, aud. and July 15, at eleven, div.—*Picairn*, T. merchant and shipowner, Liverpool, July 7, at eleven, Liverpool, div.—*Robertson*, G. Garrow, J. and *Alexander*, J. ship chandlers and rope manufacturers, July 7, at eleven, Liverpool, aud. and July 8, at twelve, final div.—*Robinson*, W. H. wine merchant, Leicester, July 14, at eleven, Birmingham, aud.—*Verlue*, S. merchant, Liverpool, July 8, at eleven, Liverpool, aud. and July 10, at eleven, div.—*Wales*, W. grocer, Newcastle, July 7, at half-past eleven, Newcastle, aud.—*Walker*, A. Wolverhampton, July 9, at twelve, Birmingham, aud.—*Wenman*, T. merchant, Birmingham, July 10, at twelve, Birmingham, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Boord, S. woollen draper, Bristol, July 7, at eleven, Bristol.—*Foulkes*, H. share broker, Manchester, July 8, at twelve, Manchester.—*Harrison*, J. ship Chandler, Hull, July 8, at eleven, Town-hall, Hull.—*Wade*, S. M. cotton dealer, Liverpool, July 9, at eleven, Liverpool.—*Wilmot*, J. coach proprietor, Lenton, July 10, at twelve Cutler's-hall, Sheffield.—*Ogden*, S. woollen factor, Manchester, July 8, at twelve, Manchester.

Partnerships Dissolved.

Gazette, June 9.

Birtwistle, T. and *W. Haydock*, J. and *Preston*, W. cotton spinners, Great Harwood, June 3. Debts paid by *Birtwistle*.—*Brown*, E. and *Trayford*, G. carriers, Louth, Sept. 12.—*Bury*, H. and *Crewe*, P. C. engineers, Church, June 4. Debts paid by *Bury*.—*Calderhead*, J. and *Williams*, C. Jewellers, Regent-st. June 4.—*Gay*, J. and *G. merchants*, Queen-st. place, June 1.—*George*, W. and *Shawing*, J. bottlers, West Bromwich, June 3. Debts paid by *George*.—*Grisbrook*, J. and *E. Woolwich*, Feb. 23.—*Holland*, J. T. Coventry, and *Cross*, T. Attleborough, railway contractors, May 12.—*Hyloop*, R. and *Dubois*, J. carriers, Gosport, May 23. Debts paid by *Hyloop*.—*Imray*, J. and *Flick*, W. wholesale stationers, Old Fish-st. hill, May 14. Debts paid by *Imray*.—*Jesse*, J. and *Bevan*, W. surgeons, Ardwick, June 8. Debts paid by *Bevan*.—*Kilner*, J. and *Evans*, W. H. surgeons, Bath, June 1.—*Levie*, W. L. and *J. W. mercers*, Bath, June 1.—*Long*, G. and *Taylor*, G. auctioneers, Stafford and Wolverhampton, May 17.—*Newton*, G. H. and *Peck*, H. cement manuf. Hull, June 5.—*Nicklin*, A. and *Forster*, E. brush manuf. Wolverhampton, June 5. Debts paid by *Nicklin*.—*Ridgway*, J. and *Taylor*, J. corn dealers, Stalybridge, June 6.—*Shoolbred*, J. C. C. G. G. and *Brown*, H. Tottenham-court-rd. so far as regards Cook, Feb. 20.—*Smith*, G. and *Ellder*, A.

and *Stewart*, P. booksellers, Cornhill, May 29.—*Tagliabue*, A. and *Cicci*, F. barometer manuf. Brook-st. Oct. 1, 1842.—*Turner*, J. G. and *Price*, W. sharebrokers, Leeds, June 1.

Gazette, June 12.

Benstead, J. and *Star*, W. Hamilton-mews and Church-st. Lisson-grove, June 6.—*Carterton*, W. and *Dixon*, F. S. attorneys, Angel-court, Throgmorton-st. May 4.—*Deen*, G. W. and *Winkley*, T. silversmiths, High-st. Southwark, June 9. Debts paid by *Dean*.—*Evershed*, W. and *Farnes*, J. and *W. soap manufacturers*, Cliff, near Leazes, June 8. Debts paid by *Evershed* and *Son*.—*Fanning*, J. and *Weymouth*, J. stationers, Plymouth, June 4. Debts paid by *Fanning*.—*Hewson*, E. and *Simpson*, J. stock brokers, Horncastle, June 6.—*Hoppe*, C. and *C. E. and J. coal merchants*, Pig's-quay, May 16. Debts paid by *C. E. Hoppe*.—*Humphreys*, G. Keightley, A. Parkin, W. Cundiffe, R. and *Beesom*, H. A. attorneys, so far as regards *Humphreys* and *Parkin*, June 11. Debts paid by the remaining partners *M. Leas*, W. and *Disawood*, A. share brokers, Manchester, June 9.—*Mathews*, M. and *E. H. printers*, Bristol, June 8. Debts paid by *M. Mathews*.—*Mayhew*, H. and *Grant*, E. C. newspaper proprietors, June 11.—*Needham*, F. H. and *Parton*, E. dress makers, Huntingdon, June 9. Debts paid by *Needham*.—*Palmer*, H. and *Ollard*, W. L. attorneys, Upwell Cambridgehire, June 4.—*Pontifer*, E. B. and *Barnett*, J. copersmiths, Great Dover-st. Southwark, June 8.—*Stanton*, J. C. and *Newton*, H. cement manufacturers, Burton-upon-Trent, June 9. Debts paid by *Stanton*.—*Warricker*, W. and *Golland*, T. C. college drapers, Cambridge, June 8.—*Webster*, J. and *Moultrie*, C. attorneys, Aldermanbury, June 11.—*Wiseman*, M. and *Cole*, T. coach makers, Kensington, June 4.—*Worth*, S. and *Frith*, J. architects, Sheffield, May 1. Debts paid by *Worth*.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, June 9.

Adams, J. farmer, Little Clacton, June 18, at twelve.—*Brown*, T. tailor, Irthingborough, June 25, at twelve.—*Brown*, W. coach smith, London-rd. June 25, at twelve.—*Bugs*, J. grocer, Hoxton Old-town, June 25, at half-past eleven.—*Bushell*, G. barge owner, Thornham, June 25, at twelve.—*Dixon*, J. corn meter, Bromley-st. Stepney, June 25, at eleven.—*Gardiner*, C. tailor, Gibson-st. Waterloo-rd. June 25, at half-past eleven.—*Hardy*, J. boot maker, Tooley-st. June 18, at eleven.—*Hughes*, W. W. surveyor, Ockbrook, June 25, at eleven.—*Macdonald*, J. gent. Cork-st. June 25, at eleven.—*Merrifield*, J. clerk, Cornwall-place, Holloway, June 25, at eleven.—*Reed*, J. corn chandler, Brick-lane, June 25, at eleven.—*Troft*, A. grocer, Bushey, June 25, at eleven.—*Williams*, W. H. gent. Brighton, June 25, at eleven.

MEETINGS IN THE COUNTRY.

Swinburne, G. plasterer, Middleborough, July 2, at eleven, Leeds, div.

Gazette, June 12.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Bush, G. M. out of business, Seymour-place, Bryanston-square, June 6, at two.—*De Vraat*, J. physician, Tonbridge-place, New-road, June 25, at eleven.—*Ellis*, J. clerk, Dean-st. Soho, June 18, at half-past eleven.—*Elderton*, F. C. clerk, Westminster-square, Clerkenwell, June 25, at eleven.—*Palmer*, E. victualler, Bocking, June 18, at one.—*Gibbons*, J. out of business, Narrow-street, Limehouse, June 25, at eleven.—*Houston*, J. surgeon, Church-row, Fenchurch-street, June 25, at one.—*Hyde*, A. W. comedian, Cumberland-terrace, Camden-town, June 25, at eleven.—*Lowe*, R. G. gas fitter, Chapel-street, Tottenham-court-road, June 25, at eleven.—*Muller*, H. tobacconist, Bedford-place, Commercial-road East, June 1, at eleven.—*Peacey*, G. out of business, East-street, Globe-fields, Mile-end-road, June 25, at one.—*Ramsden*, J. gent. Kensington-gore, June 18, at half-past eleven.—*Reynold*, G. innkeeper, Mendham, near Thwaite, June 18, at half-past eleven.—*Reynold*, P. out of business, London-street, Tottenham-court-road, June 25, at twelve.—*Simpson*, J. artist, Carlisle-street, Soho, June 25, at eleven.—*Watts*, J. jun. Oxford-street, June 18, at eleven.—*Wensley*, C. omnibus proprietor, White Lion-yard, High-street, Putney, June 25, at twelve.—*Woods*, W. baker, St. Mary's-cottages, Old Kent-road, June 18, at half-past eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Baker, N. out of business, Norwich, June 22, at half-past ten, Birmingham.—*Bower*, W. saddler, Little Sheffield, June 19, at eleven, Sheffield.—*Forth*, G. joiner, Ripon, June 10, at eleven, Leeds.—*Griffiths*, R. knife manufacturer, Sheffield, June 19, at eleven, Sheffield.—*Gill*, T. blade forger, Sheffield, June 19, at eleven, Sheffield.—*Honey*, W. R. surgeon, Coleford, June 26, at eleven, Bristol.—*Lunn*, J. T. painter, Bradford, June 18, at eleven, Leeds.—*McCracken*, J. coal dealer, Halifax, June 18, at eleven, Leeds.—*Morris*, E. clerk, Cardiff, June 18, at twelve, Bristol.—*Nutt*, W. carter, Sheffield, June 18, at eleven, Sheffield.—*Tharme*, W. G. agent and ale dealer, Barrington, June 22, at twelve, Manchester.—*Wragg*, J. jacquard maker, New Lenton, June 19, at eleven, Sheffield.

From the Gazette of Friday, June 19.

Bankrupts.

Fowler, A. C. draper, Louth, Lincolnshire.—*Everett*, W. builder, Drury-lane.—*Therley*, J. cabinet maker, Newman-street.—*Hart*, T. R. victualler, Leatherbridge.—*Sewell*, E. hatter, Old Bond-st.—*Morris*, H. stonemason, South Lambeth New-road.—*Court*, T. bootmaker, Brighton.—*Wiles*, J. tailor, Little Bell-alley, Moorgate-st.—*Blackburn*, J. cloth manufacturer, Gomersel, Yorkshire.—*M. Intosh*, W. spirit merchant, Kingston-upon-Hall.—*Hobson*, M. corn and coal merchant, Great Grimby.—*Shorthouse*, G. merchant, Newport, Monmouth.—*Bull*, C. linen draper, Lane-end, Staffordshire.—*Lead*, J. innkeeper, Wellington, Shropshire.—*Smith*, J. grocer, Stratford-upon-Avon.—*Pattinson*, R. grocer, Exeter.—*Perrott*, R. S. grocer, Exeter.—*Rolfe*, W. music seller, Manchester.—*Potter*, J. portable weighing machine maker, Manchester.—*Lumley*, G. cotton manufacturer, Wigan.—*Hughes*, J. provision dealer, Liverpool.—*Jones*, E. ironmonger, Liverpool.

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Thursday, June 4.
NEWMAN v. RING.

Practice—Order nisi to dissolve the common injunction—Mode of shewing cause against, or making the order absolute—Hand motions—Drawing up order—Breach of common injunction—Notice of motion to commit—Injunction—Breach of injunction in the nature of a wrong.

An order nisi having been obtained for dissolving the common injunction, unless cause shewn on a day named, the plaintiff's junior counsel on that day handed in to the registrar a brief, undertaking to shew cause on a future day mentioned. Later in the day the defendant's counsel moved in court that the order nisi be confirmed, and endorsed his brief accordingly. The defendant having then proceeded with his action without making any inquiry at the registrar's office, and without having drawn up any order, was held on appeal, reversing the decision below, liable to be committed for breach of the injunction.

This was a motion by way of appeal from the decision of the Vice-Chancellor of England, who had refused a motion made by the plaintiff that the defendants might be committed for breach of the common injunction. The notice of motion on the appeal had been varied by asking that the defendants, of whom there were three, "or some or one of them," might be committed for breach, whereas, when the motion was before the Vice-Chancellor, the notice of motion was simply that the defendants might be committed. At that time only one of the defendants had been personally served with the notice, but on this motion all three had been served. The plaintiff is the lessee of the tolls of the Kentish Town and Holloway turnpike roads, of which road the defendants were three of the trustees; and the object of the suit was to set aside the contract, and to restrain the defendants from prosecuting an action at law they had commenced against the plaintiff for the rent of the tolls.

The bill was filed on the 30th of December, 1845, by Newman, the lessee of the tolls, and Parsons, his surety. The answer was filed on the 13th of January, 1846, and that answer having been on the 6th of February reported insufficient, the common injunction was on the same day obtained on a petition of course at the Rolls. The next day the order for the common injunction was served upon the defendants, and on the same day the further answer was filed, but too late to prevent the common injunction from issuing. On the 20th of February the defendants obtained an order nisi to dissolve the injunction, unless cause shewn on the 25th of February, and on the 21st of February the order nisi was served on the plaintiff. On the 25th of February Mr. Glasse, the plaintiff's junior counsel, handed in a brief to the registrar undertaking to shew cause against dissolving the injunction on the 11th of March, which was the next

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motion day. On the same day (the 25th of February) Mr. Bethell, the defendant's senior counsel, moved in court that the order nisi be made absolute, and indorsed his brief "Order nisi made absolute, unless cause shewn." The defendant's solicitor did not take the brief to the registrar's office; but on the 28th of February, considering the injunction to have been dissolved, delivered a declaration in the action at law, and proceeded to require the plaintiff in equity to plead at law. The plaintiffs then moved before the Vice-Chancellor, that the defendants should be committed for breach of the injunction; but it was argued on the part of the defendants—first, that the defendants had had no notice of the injunction; secondly, that upon Mr. Bethell's motion, on the 25th of February, the order nisi for dissolving the injunction had been made absolute, no cause having been shewn in open court; that the handing in a brief to the registrar was insufficient; thirdly, that the notice of motion for committing the defendants applied to all three, but only one of them had been served with notice of the motion. Upon the two last points the Vice-Chancellor refused the motion, with costs. From that decision the plaintiffs appealed.

Cooper and Glasse, for the appeal motion.—The practice of the Court is to hand in the undertaking to shew cause to the registrar, and not wait until the motion to make the rule absolute is made in open court. The practice is thus stated in 1 Smith's Chancery Practice (second edition), 616:—"The defendant, on filing his answer, may obtain upon petition, or motion as of course, an order nisi to dissolve the common injunction, which is drawn up on the terms that unless the plaintiff, his clerk in court having notice thereof, shall, on the day of shew unto the Court good cause to the contrary, the injunction shall be dissolved. The day named in the order is usually the next motion day." * * * "On the day named in the order, the defendant is at liberty to move, as of course, that the order nisi may be made absolute, which is ordered accordingly, and the injunction thereby dissolved, unless the plaintiff appears by counsel, and shews insufficiency or impertinence in the answer or cause, or undertakes to shew cause on the merits why the injunction should not be dissolved on the next motion day. The defendant should be particularly careful only to furnish his counsel with a half-guinea hand brief, to move to make the order nisi absolute, and by no means to give him a copy of the pleadings; as if cause is not shewn on the merits, the latter brief is rendered useless, and will be disallowed him in costs. The order absolute to dissolve an injunction does not require to be served. If the plaintiff undertakes to shew cause on the merits (which he does by instructing counsel by a hand motion, but no order is drawn up), he undertakes to do so on a fixed day, usually the next motion day, and then, but not before, each party is allowed to make "a brief of the pleadings." And in p. 621 of the same book, the practice, when the plaintiff intends to shew cause on the merits, is thus stated: "If the plaintiff intends to shew cause upon the merits, he instructs his counsel to appear on the day on which the defendant would otherwise be entitled to make the order absolute, and to undertake to shew cause on the merits at the next seal. This is a motion of course." This practice has been strictly followed by the plaintiff, and the defendant's solicitor ought to have inquired at the registrar's office before proceeding with the action. On the 25th of February, Mr. Glasse handed in to the registrar a brief, requiring time to shew cause, and an order was drawn appointing the 11th of March, the next seal day, for hearing the motion to dissolve the common injunction. In a later part of the day Mr. Bethell mentioned the motion to the Court, and indorsed his brief "Order made absolute unless cause shewn." The defendant's solicitor did not inquire whether cause had been shewn, and did not draw up the order absolute to dissolve, which could not have been done without an affidavit of the service of the order nisi. He, however, considered the injunction dissolved, and on the 26th served the declaration in the action against the plaintiffs. On the 2nd March the affidavit of service of the order nisi was filed, but no order to dissolve the injunction had been drawn up.

The LORD CHANCELLOR.—No order could have been drawn up on Mr. Bethell's brief, which had been superseded by Mr. Glasse's undertaking.

Cooper read the affidavit filed by the defendant's solicitor. He should have applied to the registrar of the day.

The LORD CHANCELLOR.—It must be the result of the mistake of the solicitor.

James Parker and Perry, for the defendants, contended that the plaintiff had waived the irregularity, if it was one, by moving on the merits before the Vice-Chancellor to extend the common injunction. *Mills v. Cobby*, 1 Merivale, 3. The plaintiff had now served all the defendants with notice of this motion, but when before the Vice-Chancellor, one of them only had been personally served; the motion, therefore, could not have succeeded before the Vice-Chancellor. *Ellerton v. Thirk*, 1 Jac. & Walk. 376. If the plaintiff had a right to move at all he should have come to the Court promptly. The order on plaintiff's

undertaking was not drawn up for ten days; he did not serve till the 7th of March.

The LORD CHANCELLOR.—That was in time for the 11th of March, the day named in the order.

Parker.—It was the duty of the plaintiff's counsel to have waited in Court until the defendant's counsel moved to make the order absolute, and then given the undertaking, or to communicate with the counsel on the other side.

The LORD CHANCELLOR.—I think the usual course is, that the undertaking is handed in, and then the other party should inquire at the registrar's office.

The Lord Chancellor having intimated an opinion that plaintiffs must succeed upon their appeal motion, it was arranged that the sum in question in the cause and the action should be brought into Court, and the whole question between the parties decided by this Court, upon the plaintiff's appeal motion for extending the common injunction.

Parker contended that the defendant ought not to pay the costs, at all events on the motion before the Vice-Chancellor, inasmuch as the notice of motion was wrong, one defendant only having been served.

The LORD CHANCELLOR.—The breach of an injunction is in the nature of a wrong which is joint and several. All wrongs are several. That ground will not save the defendants from costs.

Parker.—It is an indulgence to permit the undertaking to be delivered in, instead of waiting in court for the motion.

The LORD CHANCELLOR.—It is stated by Mr. Smith to be the regular practice. That was in accordance with the indorsement on Mr. Bethell's brief, which was, "order absolute unless cause shewn."

Wakefield, *amicus curia*.—It has been the practice to hand in the undertakings for thirty-nine years to my knowledge.

Parker.—The plaintiffs do not move until they have pleaded at law, and thereby condoned the breach. They should have put themselves under the protection of the Court.

The LORD CHANCELLOR.—There being no injunction, judgment must have been signed of course; it would have been difficult to have got protection in time.

Perry.—The error was unintentional; the practice as stated by Mr. Smith is not clear, as nothing is said of it in Daniel. The onus of searching does not lie on the defendants.

The LORD CHANCELLOR.—Mr. Smith states an exceedingly good reason for the practice, namely, that it should not be necessary to deliver full briefs in the first instance. The practice has now existed for nearly fifty years. It appears to me that the proceedings of the plaintiff were regular, and that the order of the Vice-Chancellor on the motion to commit the defendants for breach of the common injunction must be discharged. That order saddles the plaintiffs, which I am of opinion should not have been ordered. The plaintiffs ought not to have been required to pay the costs. The only effect of discharging the order of the Vice-Chancellor is to relieve them from payment of those costs which they ought not to have been required to pay. The order must direct the plaintiffs to pay into court the instalments of the rent as they become due.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Feb. 11 and 12.

BOHN v. BOGUE.

Copyright—Injunction—Piracy—Acknowledgment of quotations.

The plaintiff, H. G. B., had become entitled to the entire copyright of "Illustrations of the Life of L. de M." The defendant, D. B., commenced a certain publication called "The European Library," the first volume whereof was intitled "A Life of L. de M." several passages of which were admitted by the defendant to have been copied from the "Illustrations." Held, that the defendant having, by so doing, materially lessened the price of the original work by knowingly taking a material valuable part of it, this was sufficient to constitute a piracy from the "Illustrations," notwithstanding the passages copied were stated to be quotations, and were not so many nor extensive as to make the work so pirated a substitution for the original one.

The plaintiff, Henry George Bohn, moved for an injunction to restrain the defendant from selling or disposing of any more copies of the first volume of "The European Library" with any passages, articles, or matters, copied or taken from a work intitled "Illustrations of the Life of Lorenzo de Medici."

The bill and the affidavits in support of it stated that the plaintiff, H. G. Bohn, by various transactions and dealings, became entitled to the entire copyright of the "Illustrations," and had a considerable number of copies of it on sale; that the defendant, Daniel Bogue, in the month of November, 1845, published, for the first time, the first volume of the said "European Library," intitled "A Life of Lorenzo de Medici." The bill set forth several passages con-

tained in the first volume, admitted to have been copied from the "Illustrations," and a passage also from the preface alluded to in the judgment.

Bethell and Renshaw appeared on behalf of the motion.

Cases cited: *Miller v. Taylor*, 4 Burr. 2,303; *Maxman v. Tegg*, 2 Russ. 385; *Bramwell v. Halcombe*, 3 My. & Cr. 737; *Campbell v. Scott*, 11 Sim. 31; *Sweet v. Maugham*, id. 51; *Lewis v. Fullerton*, 2 Bea. 6; *Sanders v. Smith*, 3 My. & C. 711.

Stuart, Talford, and Craig, for the defendants, attempted to prove that only inconsiderable portions of the work had been copied, and that whatever extracts there might be, they were acknowledged to be quotations, and not original passages; and not, therefore, of such a character and description as to render the original work in the plaintiff's possession valueless. The cases referred to by the other side, were undoubted cases of piracy, and consisted of such as where either the quotations and extracts were either not acknowledged, or were so extensive as to displace the original publication.

Cases cited: *Wilkin v. Aikin*, 17 Ves. 422; *Carey v. Kearley*, 4 Esp. 168.

The VICE-CHANCELLOR.—I think the case has been very well argued, and that every thing has been said in favour of the defendant, that is capable of being urged, and it is out of the defendant's own mouth that it must be decided; because, where a complaint is made before the Court, it must appear that the piracy has either been of what is called "a large part," or of a "material part." Now, then, as it regards this, let us see what the defendant, or rather, what Mr. Hazlitt has confessed in the advertisement of this very book. In the first place, the "Life of Lorenzo de Medici," was published by Mr. Roscoe; and it seems to have attracted a great deal of notice and criticism; and many attacks were made on the book, both at home and abroad. From such criticisms and attacks, Mr. Roscoe thought it right to vindicate himself by a publication of the "Illustrations." Now, Mr. Hazlitt says, "And I have acted upon the same principle, with reference to the Illustrations of the 'Life of Lorenzo de Medici,' published by Mr. Roscoe, in 1822. This volume, a thick quarto, appearing now in the form of rather a thin octavo, is occupied, almost exclusively, with long controversial dissertations in reply to Sismondi and others, which, leaving the matter just where it stood, are of no interest whatever to the general reader. Here and there an illustration really illustrative occurs, and of all such I have, to a greater or less extent, availed myself." So that Mr. Hazlitt first of all throws overboard the greater part of the work as utterly worthless, as of no use whatever to any one, and of no interest whatever, and then, feeling conscious of the value of what he intended to take; feeling, I say, that it might be beneficial for his purpose to take it, and at the same time running down the value of the thing as much as possible, he makes use of this language: "Here and there an illustration really illustrative occurs, and of all such I have availed myself." Shewing by this act that he conceived the thing valuable, and using words at the same time which tend to depreciate the substance of the theft. I must, therefore, take it upon his own words, that the extracts which he has thought proper to take are more or less the really material or valuable part of the "Illustrations." They are, however, taken, and are embodied in this new publication—this volume of the "European Cabinet Library," which contains the "Life of Lorenzo;" and it is a matter of observation certainly, that where the passages are taken, they are taken with reference to the very passage of the "Illustrations" whence they are taken. Now I can easily conceive that confession may at the time it is made be so far a proof of honesty; but such a confession, in my mind, does not, from the very nature of it, diminish the previous theft, provided a theft has been committed: it may, indeed, save some trouble in convicting the party, but it neither excuses nor justifies his conduct. I have therefore, upon the defendant's own shewing, a positive admission that he has deliberately taken the only material and valuable parts in the plaintiff's book of illustrations. Now, then, I cannot but myself think that where the defendant, by his own statement, has shewn that he considers them valuable, whatever a jury may possibly think to the contrary, it is enough for this Court to see that the party has adopted means to retain it, because he feels confident that when it was first taken it was valuable, and so may answer his purpose. This seems to me to be a very plain case. Now, as it respects the opinion given of Lord Ellenborough in *Ronorth v. Wilkes* in the first volume of Campbell's Nisi Prius Reports, his lordship must be taken to have used the word "substitute" with reference to the particular case before him; and it is perfectly clear to my mind that never can be the true criterion. I will, for example, take this case. We are all aware that there has been a very valuable Greek Lexicon published by Mr. Liddell and another friend of his at Oxford; now no person who published that Lexicon, omitting three or four words at the end of each letter of the alpha-

bet, could have done that of which it might be said it was a substitute, for nobody would take it as a substitute. Can it, however, be doubted that it might have the effect of materially diminishing the price of the first book? For although no one would take it as a substitute, many persons might not care so much, and might be inclined to purchase it cheaply for what it really did contain, which might probably amount to more than ninety-nine hundredths of the whole, and yet it would in no manner be a substitute; and therefore the language is not generally correct so as to be applicable in every case. Now as to what was decided by Lord Ellenborough in the case of *Maxman v. Tegg*, 2 Russ. 385. There I happened to be one of the counsel for the defendant, and from the first to last I never had any doubt that we had really an untenable case; and observe, there was an order penned with great accuracy; but look at the last paragraph, and see the result of that case. The affair was compromised by the defendant paying a sum of money to the plaintiffs to induce them not to proceed, and they acted thus upon a knowledge of their own case, and so it was a case which in reality furnished, after all, very valuable observations; but as a case it amounted to nothing whatever, for it was all on one side. This case before me is, however, one free from difficulty; and I must say, with reference to some observations which were made yesterday on the subject of the work, it really does not appear to me that where there happens to have been slight departures in the language made by Mr. Hazlitt from the notes originally compiled by Mr. Roscoe, that any material alteration has been effected for the better; but it appears to me that the thing, if possible, has been rendered something worse; and therefore what I shall do will be to grant the injunction, because, from the defendant's own declaration, I think the case is plain that he has taken a materially valuable part of the plaintiff's work with a full knowledge of the fact. The plaintiff must, therefore, bring such an action as he may be advised, on the usual terms. The rest of the motion must stand over, both parties having liberty to apply. Supposing it to be necessary for the purpose of trying the action, which I direct as to what I believe to be made out clearly, namely, that the plaintiff had an equitable right to the copyright in question, I should give such a direction as will get rid of that difficulty, and enable the substance of the case itself to be brought before a jury. The Court always protects the equitable interest; and provided the equitable right to the copyright is complete, the Court will see that the real question shall be tried, although there may exist a defect in respect of the legal property.

ROLLS COURT.

April 21 and 22.

HULME v. CHITTY.

Separation deed—Construction—Afterborn children—General words.

By a deed of separation it was agreed between husband and wife that they should live separate during their joint lives, and that the children should live with the wife; and the husband covenanted to pay to the trustees of the deed during his life an annual sum for the support of the wife and "the children," the whole to cease on the death of the wife and children in his lifetime. The savings in any one year, if not required in a subsequent year, were to be accumulated on the trusts of a policy effected on his life. It was then agreed that (there being then five children living) a certain proportion of the annuity should, on the death of the wife before the husband, be deducted "for each and every of the said five children" then dead, or who should die afterwards in his lifetime. The income of the money assured on the policy was to go to the wife for life for the same purposes as the annuity; and after the death of the survivor of the husband and wife, the principal was to be divided equally among "all and every such child or children of the husband on the body of the wife begotten as should" attain 21, &c. There was also a maintenance clause; and if all the children died before attaining 21, &c. then the fund was to go to the husband, his executors, &c.

Twelve years after the separation, the husband and wife were reconciled and lived together, and a sixth child was born.

Three only of the five children born at the date of the deed lived to attain 21; and on the death of the wife, who survived her husband, they or their representatives claimed to be entitled to the fund, to the exclusion of the sixth child, who had also attained 21; and it was held, that though the language of the deed was comprehensive enough to include the sixth child, yet as it was contrary to the whole scope of the deed and the declared intention of the parties to include him, he was not entitled to any share.

On the 4th of December, 1809, a deed of separation was executed between Joseph Chitty of the first part, Elizabeth Chitty, his wife, of the second part, and Henry Richmond and Charles Chitty of the third part, whereby, after reciting that the parties of the first and second parts had agreed to live separate for the remainder of their joint lives, Joseph Chitty

covenanted with the trustees that Elizabeth Chitty should be at liberty to live apart from him without molestation, &c.; and that "all and every the children" of Elizabeth Chitty, lawfully begotten, should and might be and reside with her, and be wholly under her control, and that all property thereafter coming to her should be to her separate use. And he further covenanted that he would during his life pay the sum of 550*l.* to the trustees, to be applied by them in such manner as they should think fit, for the maintenance and support of Elizabeth Chitty and "of her said children," or such of them as should from time to time be living. And it was thereby also agreed, that if the trustees should not think fit to apply the whole of the said annual sum of 550*l.* in any one year for the purposes of the trust, the surplus should be accumulated and held by them upon the trusts thereafter expressed of and concerning the sum of 1,500*l.* the amount of a policy agreed to be effected on the life of Mr. Chitty, but with liberty to use the savings so effected on the same trusts in any subsequent year. And, after reciting that there were then five children living, it was thereby agreed that on the death of the said Elizabeth Chitty (in case the same should happen in the life time of the husband,) the sum of 75*l.* should be deducted from the said annual sum of 550*l.* "for each and every of the said five children of them, the said Joseph Chitty and Elizabeth Chitty, who should or might be dead" at the death of the said Elizabeth Chitty, with a like deduction for any one dying afterwards. And it was thereby declared that the trustees should invest the 1,500*l.* to be received upon the policy of assurance in the public funds, &c. and should pay the dividends and income thereof to Elizabeth Chitty for life; and after the death of the survivor of them, the said Joseph Chitty and Elizabeth Chitty, the principal should be in trust "for all and every such child or children of the said Joseph Chitty on the body of the said Elizabeth Chitty his wife lawfully begotten," who, being a son or sons, should attain twenty-one, or, &c. equally to be divided between them, share and share alike. It was also thereby provided that the trustees might apply the income of the expectant share "of every such child" towards his or her maintenance till the share of him or her became vested; and after the death of the husband and wife they were also to apply a portion, not exceeding a moiety of the share "of each or any such children," for his or her advancement in the world. And if no child should live to attain a vested interest, the trust fund was to be in trust for Joseph Chitty, his executors, administrators, or assigns.

At the date of the deed there were five children living, four of whom died in the lifetime of their father, two of them under age and without issue; but the other two lived to attain twenty-one. Elizabeth Chitty, the remaining child of the five then living, in the year 1824 intermarried with J. W. Hulme, and has attained twenty-one.

In the year 1814 Mr. and Mrs. Chitty became reconciled, and lived together from that time till the death of Mr. Chitty in 1841; and on the 12th of September, 1815, Mr. Tompson Chitty, a sixth child, was born. On the 17th of February, 1841, Mr. Chitty died intestate; and Elizabeth Chitty, his widow, died on the 5th of January. The trust fund arising from the policy, which was effected in the Equitable Assurance Society, together with the savings effected, amounted to nearly 10,000*l.* and Tompson Chitty claiming a share therein, Mr. and Mrs. Hulme, their four infant children, and the trustees of their marriage settlement, instituted this suit to try the question.

Kindersley (with him Willcock), for the plaintiff, said there was no dispute about the facts, and the only question was how far the trusts included the after-born son. The whole scope and object of the deed, as well as the declared intention of the parties, are in favour of the construction contended for by the plaintiffs. The words "the children," &c. indeed might be large enough to comprehend an after-born child, but they must be modified and explained by the circumstances.

Turner (with him H. Stensens), for the widow and infant child of one of the three children who attained twenty-one, and for the widow of the other and her husband.

Finney and Heathfield, for the trustees.

Robson, for an incumbrancer on the share of one of the children.

Roupeil (with him James), for Tompson Chitty.—The deed was intended to serve two purposes; the first and primary being the separation, and to make provision for the wife and children in consequence thereof; and the other was a trust to provide for the wife and children after the death of Mr. Chitty. Whether intended or not, the wording of the deed is such as to embrace the existing state of things; and the trusts are not exhausted, even if Mr. Chitty and all the children were to die.

Kindersley in reply.

The MASTER of the ROLLS said there could be no doubt whatever the intention of the parties was to live separate during the rest of their lives, not that

the covenant was in the least obligatory upon them, for if they chose to enter again upon the discharge of their conjugal duties, no deed could prevent them from doing so. It is out of the question therefore to suppose they had any intention of coming together again. That agreement then being intended to be carried into effect, and being recited in the deed, covenants for that purpose were entered into by Mr. Chitty. The parties appear to have proposed to themselves two distinct objects; first, to provide during the life of Mr. Chitty for the maintenance and support of the wife and also of the children, or such of them as should from time to time be living; and that was secured by the payment of the annual sum of 550l. to the trustees for that purpose. Now when the parties had thus entered into an agreement by which they had manifested their intention that there should be no communication between them, can there be a doubt that they meant any other children than those then living, or such of them as should be living from time to time? The next object which is distinctly stated, is to make such further provision for the wife and children as thereafter mentioned. How is that done? It was agreed that the savings out of the annual sum of 550l. not required in subsequent years, should be accumulated, and should be held and applied on the same trusts as the 1,500l. intended to be secured by the policy to be effected on the life of Mr. Chitty; that is, that in case Mr. Chitty should die first, the income was to be paid to Mrs. Chitty, for the support of herself and children. All this appears to be so clearly and plainly set forth in the deed, that there could be no doubt about it. If the matter rested there; but a question has been raised as to the provision disposing of the trust fund after the death of the survivor of Mr. and Mrs. Chitty, and it is argued that it was to be held for all and every the children of Mr. and Mrs. Chitty. The trust is, "after the decease of the survivor of them, the said Joseph Chitty and Elizabeth Chitty, in trust for all and," &c. Now, if you consider the whole object of the deed, founded upon the agreement to live separate for their joint lives, even if there was more ambiguity in the clause than there is, I think it clear that the only objects of the deed intended to be provided for, are the wife and children then living. There is nothing to shew that Tompson Chitty was not as much an object of his father's affection as his other children; but what has happened makes a difficulty in his case; and the Court would be glad to be able to include him as well as the other children in the provision made for them; but it cannot do so contrary to the plain meaning and intention of the deed executed by the parties themselves. Mr. and Mrs. Chitty having lived separate for twelve years, became reconciled, and, contrary to the intention of the deed, but in accordance with their religious and moral duties, and their solemn engagements to one another, came together again, and lived together for twenty-seven years; and the consequence was the birth of Mr. Tompson Chitty; and the contest now is, that he being a child of Mr. and Mrs. Chitty, lawfully begotten, is entitled to a share of a provision made for children by the deed. I should be glad if I could construe the deed so as to admit him, but it is impossible for me to do so. The language employed, if taken by itself, and not in relation to the scope and object of the deed, would include him, that is, the words might have that effect, if they only were to be looked to. It is said there were two objects of the deed; first, to provide for the wife and children during Mr. Chitty's life, and then to create a trust for the wife and all the children, after the death of the survivor; but the circumstances of the case do not admit of that construction. The deed does not forbid future cohabitation; but it prevents me from saying that at the time it was executed the parties intended to make a provision for children other than those then living. They intended a permanent separation, which was perfectly inconsistent with the notion that they were making a provision for children born after reconciliation. On the whole, I am bound to declare that the provision was intended for the wife and children then living. Mr. Tompson Chitty is entitled to his costs.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Tuesday, May 5.

WOOD v. HARDISTY.

Trustee—Breach of trust—Specialty debt.

Where by a deed, to which A B was a party, it was declared that A B, his executors, administrators, and assigns, should stand possessed of certain funds in trust for C D (also a party to the deed), her executors, administrators, and assigns, and A B died insolvent, it was held that C D's representative was entitled, in respect of the money due under the deed, to claim as a specialty creditor against the estate of A B, notwithstanding circumstances which were alleged to have altered the position of the claim.

By an indenture, dated the 16th of May, 1838, and made between the Rev. Friskney Gunniss, of the first

part, William Forbes, of the second part, and Susanna Gunniss, the sister of F. Gunniss, of the third part, three policies of assurance on the life of the said F. Gunniss, were assigned by him to W. Forbes, his executors, administrators, and assigns, subject to any mortgages affecting the same, upon trust that Forbes, his executors, administrators, or assigns, should receive the moneys payable on account of the policies, and out of the same pay all mortgages and charges affecting the same, and interest thereon, and all costs in executing the trusts; the indenture then proceeded as follows: "And it is hereby further declared, that, subject to the trusts aforesaid, the said W. Forbes, his executors, administrators, and assigns, shall stand possessed of the said policies of assurance, and of the moneys, bonuses, and accumulations, to be received in respect thereof, and of all other the premises hereby assigned, or intended so to be, upon trust for the said Susanna Gunniss, her executors, administrators, and assigns, for her and their own absolute use and benefit." F. Gunniss, by his will, dated the 26th of July, 1838, appointed the said W. Forbes and Susanna Gunniss executor and executrix thereof, and gave all his real and personal estate unto or in trust for Susanna Gunniss. F. Gunniss died on the 9th of November, 1838, and his will was proved on the 17th of the same month by Forbes and Susanna Gunniss, but it was alleged by the bill that Forbes alone acted in winding up the testator's estate. Shortly after the death of F. Gunniss, Forbes received the moneys payable in respect of the three policies, and, after discharging the incumbrances, the same amounted to 6,812l. 18s. Forbes received other moneys, part of the testator's estate, and by a written account of his receipts and payments, dated the 18th of October, 1839, there appeared to be a balance due to S. Gunniss from Forbes, of 7,000l. This account, with an acknowledgment that that sum, with interest at 4 per cent. from the 10th of October 1839, was due to Miss Gunniss, was signed by her and by Forbes. Forbes died on the 6th of January 1842, in testate, and the defendants, his nieces, took out letters of administration of his effects on the 3rd of February following. By payments made to Miss Gunniss by Forbes, and by the defendants, the sum due to Miss Gunniss was reduced to 2,400l. S. Gunniss, by her will, appointed the plaintiff and another person, who renounced probate, her executors, and died on the 30th of January 1844. The will was proved on the 4th of May 1844. Forbes's estate proving insufficient for the payment of all his debts, the question discussed was as to the right of the plaintiff to be considered a specialty creditor for the moneys due to him as the representative of Miss Gunniss.

Swanston, Russell, and W. R. Ellis, for the plaintiff, contended, that there being an agreement under seal in this case, that the trustee will hold the moneys in trust for Miss Gunniss, such agreement was in the nature of a covenant, and, therefore, there was a debt to Miss Gunniss in the nature of a specialty debt.

The VICE-CHANCELLOR.—Then every trustee under a marriage settlement, who commits a breach of trust, is a specialty debtor.

Swanston.—A mere breach of trust is only a simple contract debt, but if there are other circumstances, the fact of the debt arising from a breach of trust would not prevent its being a specialty debt. In *Lord Montford v. Lord Cadogan* (19 Ves. 638), Lord Eldon remarked, "It is said that trustees are not under covenant, and they are not bound under hand and seal; but they have, in equity, undertaken to execute the trusts exactly as if they had so executed the instrument; and the general words, 'it is declared and agreed,' &c. amount to a covenant."

Headfield, for the defendants. The following cases were also cited:—*Deg v. Deg* (2 P. Wms. 412); *Turner v. Wardle* (7 Sim. 80; Vin. Abr. Cov. 387, pl. 7); *Vernon v. Vaudry* (2 Atk. 119); *Coz v. Bateman* (2 Ves. sen. 19); *Gifford v. Manley* (Ca. temp. Talb. 109); *Mason v. Davenport* (2 Sim. 227); *Clayton's case* (1 Mer. 572); *Perris v. Roberts* (1 Vern. 34); *Sterndale v. Hankinson* (1 Sim. 393); *Williams v. Randburn* (6 Bing. 71); *Whittington v. Jennings* (6 Sim. 493); *Randall v. Lynch* (13 East, 179); *The Duke of St. Albans v. Ellis* (16 East, 352); and *Bartlett v. Hodgson* (1 Term Rep. 42).

The VICE-CHANCELLOR considered that the debt must be treated as a specialty debt, and referred it to the Master to inquire whether any thing, and what, was due from the estate of Forbes, deceased, to the plaintiff, as executor of Miss Gunniss, under the indenture of the 16th of May 1838, with liberty to state special circumstances, and reserving further directions and costs.

Friday, May 29.

HALL v. AUSTIN.

Practice—Parties—32nd Order of August 1841. Where three persons commit a breach of trust, and one dies, a person complaining of the breach of trust may, under the 32nd Order of August 1841, sue the survivors without making the representatives of the deceased trustee parties.

Where executors commit a breach of trust, and one dies before any suit is instituted to a suit for the general administration of the estate, the representatives of the deceased executor are properly parties.

Alexander Dizmore Keate, by his will dated the 30th of July, 1823, appointed R. Poole, Edward Austin, and Barbara Keate, his executors. The testator died in 1826, and his will was proved by all the executors. R. Poole died in 1832. This suit was instituted against Edward Austin and Barbara Keate, for the purpose of administering the testator's estate, and it was also sought by the suit to charge the defendants with 500l. alleged to have been paid by them in breach of trust. By his answer it was averred by Austin that R. Poole concurred in the alleged breach of trust, and that his representatives were proper parties to the suit.

Roll, for the defendant, Austin, upon the question of parties, cited *Perry v. Knott*, 5 Bea. 293; *Kellaway v. Johnson*, 319; *Biggs v. Penn*, 4 Hare, 469; *Shipton v. Rawlins* (before Vice-Chancellor Wigram); *Lloyd v. Smith*, 7 Jurist; and *Allan v. Houlden*, 6 Bea. 148. The 32nd Order of August 1841 provided that, in all cases in which the plaintiff had a joint and several demand against several persons, either as principals or sureties, it should not be necessary to bring before the Court, as parties to a suit concerning such demand, all the persons liable thereto; but the plaintiff might proceed against one or more of the persons severally liable. This Order was not applicable to such a case as the present, as there was no contract in the case of a breach of trust. The order might be applied where the liability was by contract, and also where the Court sees distinctly that the contest is between the plaintiffs and the persons primarily liable, and then the plaintiffs would be the only persons to suffer by the absence of the other parties.

Russell and Prior, for the plaintiff, relied upon the decisions by the Master of the Rolls upon the 32nd Order.

Roll, in reply.

The VICE-CHANCELLOR.—The Master of the Rolls is one of the judges who signed the orders in question, and he is the senior of the judges whose opinions on this order, whether conflicting or not conflicting, have been brought under my attention; and therefore, without attempting to form any opinion of my own, I shall follow the Master of the Rolls, unless a judge senior to him (that is, the Lord Chancellor) appears to have decided otherwise; and then I shall, also without forming any opinion of my own, follow his decision. I understand the Master of the Rolls to have decided that this order does apply to a breach of trust; and that if three men commit a breach of trust, a person complaining of that breach of trust, may sue two, and not the third. That, however, does not dispose of this case. It is suggested that if executors commit a breach of trust, and one of them dies before any suit is instituted, the persons interested in the estate cannot institute a suit for the general administration of the estate without making the representatives of the deceased executor parties. Then, if that be so, this suit is defective for want of parties.

The question suggested was argued on a subsequent day, and

The VICE-CHANCELLOR considered that it would be proper to make the representatives of the deceased executor parties.

VICE-CHANCELLOR WIGRAM'S COURT.

June 3 and 4.

LOWES v. LOWES.

Will—Construction—Dower—Election.

When a testator devises his real and personal estate to trustees, and creates a beneficial trust in favour of his wife, and then directs his trustees to manage his estate in such a manner as is inconsistent with the setting out of dower by metes and bounds, the trust in favour of his wife will be sufficient to put her to her election.

Nicholas Lowes, by his will dated Oct. 29, 1838, devised and bequeathed all the real and personal estate unto and to the use of his brother John Lowes and George Lowes, their heirs, executors, administrators, and assigns, according to the different nature and tenures thereof, upon trust to pay his debts, funeral and testamentary expenses, and subject thereto and to all such expenses as shall be incurred in the management of the said trusts, upon trust to raise out of the rents a yearly sum of 100l. and pay the same to his wife, Lucy Lowes, during her widowhood, and subject thereto to apply such part of the rent as may be necessary for the maintenance of his daughter, Mary Lowes, until she attain twenty-one years of age, and then to pay the whole of the said rents to his daughter for life for her separate use, remainder to the children of his said daughter, remainder over; and he directed his said trustees, during the continuance of the trusts, and notwithstanding any of the trusts therein contained, to continue and carry on all or any of the farms or other concerns in which he might be engaged at the time of his death, for such period, and in such manner as his said trustees should think fit, with full power to restrict or diminish, or to enlarge any such concern, as they should think proper; and he further empowered his said trustees, during the continuance of the trusts, to

demise or lease all or any part of the hereditaments, for the time being, vested in them, upon the trusts aforesaid, for any term not exceeding twenty-one years, in possession or reversion; and he also gave his trustees power to sell or mortgage; and in case of sale, he directed the produce of his real estate to be held as personal estate, and subject to the trusts of his will, so far as the same were applicable, and appointed the plaintiffs his executors and trustees of his will, and died in the year 1841, leaving his wife and daughter surviving.

The testator's estate consisted of freehold and copyhold lands, some of which were out upon mortgage, and a great part of the remainder he held in his own hands, and farmed for his own purposes.

The personal estate proving insufficient to carry out the trusts of the will, the trustees determined to sell the lands; upon which the widow put in her claim for dower out of those lands, in addition to the annuity of 100*l.* given by the will; the trustees refused to admit her claim for dower, and filed the present bill on the 19th of May, 1842, against all parties beneficially interested under the will, to have the trusts administered under the decree of the Court; when the cause came on for further directions, the only important question argued before the Court was, whether the widow was not bound to make her election between the right to dower, and the annuity given to her by the testator?

Wood and Foster appeared for the plaintiffs, and contended that the powers given to the trustees over these lands were wholly inconsistent with the proceedings necessary in setting out dower by metes and bounds. The testator gave her an annuity which, with the dower, if allowed, would exhaust the whole produce of the estate. The testator must have known the value of his property when making his will, and it is clear he intended to provide for the maintenance of his daughter, which would wholly fail if the widow had both the annuity and the dower out of the estate. They cited *Miall v. Brain*, 4 Mad. 119; *Butcher v. Kemp*, 5 Mad. 61; *Birmingham v. Kirwan*, 2 Sch. & Lef. 444; *Hull v. Hill*, 1 Dru. & Wan. 94; *Roodly v. Dixon*, 3 Russ. 204; *Strahan v. Sutton*, 3 Ves. 349.

Romilly and Toller, for the defendants, contended that with regard to the claim of dower there was nothing in the will that shewed any intention in the testator to bar his widow of a claim for dower. He did not so express himself. The insufficiency of his estate is no ground for depriving her. He may have supposed it sufficient, and if he had intended the annuity to be a substitute for dower nothing could have been easier than for him to have declared himself so when he bequeathed the annuity, and cited *Dowson v. Bell*, 1 Keen, 761; *Harrison v. Harrison*, id. 765; *Birmingham v. Kirwan*, 2 Sch. & Lef. 444; *Greatoris v. Casey*, 6 Ves. 615.

Vice-Chancellor WIGRAM.—The point to be determined in this case is, whether the widow of the testator is entitled to her dower and freebench out of the lands left by the testator in addition to an annuity bequeathed to her in his will. It is clear a mere devise of lands to a wife for life, or an annuity, is not in itself sufficient to bar dower, which is a clear legal right, and intent to exclude that right by voluntary gift must be demonstrated either by express words or by clear and manifest intention. If there be anything ambiguous or doubtful, if the Court cannot say that it was clearly the intention to exclude, then the averment that the gift was made in lieu of dower cannot be supported, and to make a case of election, that is necessary, for a gift is to be taken as pure, until a condition appears; a widow's title to dower must in all cases be admitted, unless the will under which she takes the benefit contains provisions absolutely inconsistent with her claim of dower; the difficulty in all cases must be as to the application of these principles to particular cases; in the present case, had the will not proceeded (after making provision for his wife, and daughter, and his debts) to direct the carrying on of the farms in his occupation at his decease, in the same manner as in his lifetime, or as the trustees should think proper, I should have held the widow clearly entitled to dower, and her annuity also; but it has been held in *Roodly v. Dixon* that a direction to carry on farms in the occupation of a testator at the time of his death, and other duties which make the setting out of dower by metes and bounds, inconsistent with the complete performance of such trusts, imply an intention to exclude the right of dower, and put the widow to her election; therefore, in this case, if I was to decide that the widow should not be put to her election, I should be substantially overruling that case; and the case of *Miall v. Brain*, and the observations of Lord Redesdale upon the case of *Villa Real v. Lord Galway*, when he gave judgment in *Birmingham v. Kirwan*, and should make the law more difficult in its application than it is at present; I, therefore, decree that the widow is bound to elect.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Tuesday, May 26.

HARROLD v. WHITTAKER.

Covenant for rent—Assignee of mortgage—Pleading—Duplicitly.

Covenant for rent by assignee of mortgage against assignee of a term upon a lease, reserving rent to the mortgagee, during the continuance of the mortgage, and after payment and satisfaction thereof to the mortgagor. The covenant laid in the declaration was, that the lessee did covenant, &c. with the mortgagee, and also with the mortgagor, that he, his executors, &c. should and would pay, &c. to the mortgagor the yearly sum, &c. on the several days and times, and in manner as the same was thereinbefore reserved and made payable.

The declaration averred, that, after the making of the lease, and during the continuance of the term thereby granted, and after defendant became assignee, and while he continued assignee, and before the commencement of the suit, two years' rent became and was still in arrear and unpaid to the plaintiff; but it contained no direct averment that the mortgage was continuing when the rent accrued, or that the rent became in arrear after the plaintiff became assignee of the reversion.

The defendant pleaded, that before any part of the rent became due, and after the making of the lease, and during the continuance of the mortgage, the mortgagee was paid and satisfied of all the principal moneys and interest due to him by virtue of the mortgage out of moneys arising from the absolute sale of a part of the demised premises; and that the mortgagee afterwards, by indenture executed by him, acknowledged himself to be so paid and satisfied, and released the mortgagor from all claims in respect thereof.

Held, 1. That the plea sufficiently shewed that the mortgage was not continuing, inasmuch as the continuance of the mortgage in the reddendum meant the continuance of the mortgage debt. 2. That the plea was bad for duplicity: the payment in satisfaction and the release being too distinct grounds of defence. 3. That the action might be maintained by the mortgagee alone, as the interests of mortgagor and mortgagee in the covenant were separate. 4. That it was unnecessary to aver in the declaration the continuance of the mortgage term. 5. That it was unnecessary to aver in the declaration the continuance of the mortgage, meaning thereby the mortgage debt; that being a condition subsequent and not precedent to the right of the mortgagee to receive the rent. 6. That, upon general demurrer, the averment that the rent became due to the plaintiff was sufficient, without a direct averment that the rent became due after the plaintiff became assignee of the reversion.

Covenant for rent by assignee of mortgagee, demurrer to the plea. The material part of the pleadings, and the points raised in argument, are sufficiently set out in the judgment of the Court.

F. Robinson argued in support of the demurrer; and Peacock, contra.

The following authorities were cited: *Com. Dig. Pleader, C. 51, 66; Fryer v. Coombes*, 11 Ad. & Ell. 403; *Webb v. Russell*, 3 T.R. 393; *Withers v. Bircham*, 3 B. & C. 254; *Anderson v. Martindale*, 1 East. 497; *Mills v. Ladbroke*, 7 Scott, N.R. 1005, 1023; *Slingsby's case*, 5 Co. Rep. 18; *Hopkinson v. Lee*, 14 L.J. N.S. Q.B. 101; *Foley v. Aldenbrook*, 4 Q.B. 197; *Bac. Ab. Pleader, B. 5, 2; Brooke v. Spong*, 15 L.J. N.S. Exch. 95; *Thursby v. Plant*, 1 Saund. 230, 235, a, n. (8), and cases there cited; *Lilly's Entries*, 136; 3 Went. 481; 2 Mad. Ent. 19; *Skinner v. Lamberg*, 4 M. & G. 477.

Cur. adv. vult.

JUDGMENT.

PATTESON, J.—This was an action of covenant for rent under a demise by indenture, by which James Eyre Salmon, being mortgagee of, amongst others, the premises for which the rent is now claimed, at the request of Benjamin Yeoman, the mortgagor, demised, and Yeoman also himself confirmed, to Robert Lee, whose assignee the defendant is, for 4,000 years, at the annual rent of eighteen guineas; the words of the reddendum are, "yielding and paying therefore yearly, and every year during the said term, to the said J. Eyre Salmon, his executors, administrators, and assigns, during the continuance of the said hereinafter recited mortgage, and after payment and satisfaction thereof, unto the said Benjamin Yeoman, his executors, administrators, and assigns, the yearly rent of eighteen guineas." The covenant on which the declaration is framed is in these words: "And the said Robert Lee did thereby covenant, promise, and agree, to and with the said J. Eyre Salmon, his executors, administrators, and assigns, and also to and with the said Benjamin Yeoman, his executors, administrators, and assigns, in manner following, that is to say—that he, the said Robert Lee, his executors, administrators, and assigns, should and would well and truly pay, or cause to be paid, to the said

Benjamin Yeoman, the yearly rent of eighteen guineas, free and clear of all deductions and charges, on the several days and times in the manner as the same was thereinbefore reserved and made payable." The interest of Yeoman, the mortgagor, appeared to be the term of 4,000 years, the whole of which he had assigned to Salmon, by way of mortgage, prior to the making of the lease to Lee. The plaintiff then transferred title to Salmon by deeds, so all of which Yeoman's name appeared as a party; but the declaration does not aver that any one of them was executed by Yeoman. This is material, because if the plaintiff had traced title both from Yeoman and Salmon, both from the mortgagor and the mortgagee, the question is that case might have assumed a very different shape; but from his tracing only from Salmon, the mortgagee, he undoubtedly puts himself in the situation of assignee of the mortgagee only. There is no averment in the declaration that the mortgage was continuing at the time when the rent sued for accrued. The declaration then alleges, that after the making of the indenture of lease, and during the term of 4,000 years—that is, the term granted by the lease to Lee—and after the defendant became assignee, and while he continued assignee, and before the commencement of this suit, two years' rent became and was still in arrear and unpaid to the plaintiff; but it does not aver in terms that it became in arrear after the plaintiff became assignee of the reversion. The defendant pleaded that before any part of the said arrears of rent became due, and after the making of the indenture of demise, and during the continuance of the mortgage, Salmon was paid and satisfied of all the principal moneys and interest due to him by virtue of the mortgage out of the moneys arising from the absolute sale of a part of the demised premises; and afterwards, by indenture executed by him, acknowledged himself to be so paid and satisfied, and acquitted, released, and discharged Yeoman from all claims in respect thereof. Several objections are taken to this plea: first, that it does not shew that the mortgage is not continuing, but only that the mortgage money had been paid. Now this objection depends on the meaning to be given to the words "during the continuance of the said mortgage, and after payment and satisfaction thereof," in the reddendum. These words plainly shew that the rent was to be paid to Yeoman, not on reassignment of the term, or putting an end to the mortgage security, but on the payment and satisfaction of the money secured by mortgage, and by the words "during the continuance of the mortgage," is plainly meant the continuance of the mortgage debt. Now the plea distinctly states payment in satisfaction of the mortgage money before the rent sued for accrued, which sufficiently shews that the rent was no longer payable to the mortgagee; in which case he certainly could not have sued alone, if at all. The second objection to the plea is, that it is double, and this seems to us to be fatal. The payment of the mortgage money and the execution of the deed by the mortgagee, releasing the mortgagor, are plainly two different things, and either would have been sufficient to shew that the mortgage no longer continued; that is, in the sense in which we speak of the mortgage, as the mortgage money. If the plaintiff, by his replication, were to deny the payment, he would leave the release unanswered, which would have put an end to the mortgage debt, even if it were not paid; and, on the other hand, if he denies the release, it leaves the payment of the money unanswered; and we think the defendant cannot sustain the plea against the charge of duplicity, which is one of the causes of demurrer set forth. But it is said the declaration is bad, and that it is so on several grounds. 1st. It is objected that the action should have been brought jointly by the mortgagee and the mortgagor. Now, the mortgagor having parted with all his legal interest, and having only the equity of redemption, nothing would pass from him to the lessee, and he would hardly be said to have confirmed the lease; then the reddendum makes the rent payable separately, at one time to the mortgagee, and at another time to the mortgagor; and the covenant is capable of being read as several. The Court, therefore, must construe the covenant according to the interest and according to the apparent meaning of the covenant itself; and this is in accordance with all the cases found collected in the note to *Eccleston v. Cliphsham*, 1 Saund. 153, the last edit.; added to this, there is the case of *Bradburne v. Botfield*, 14 Law Journal, N. S. Exch. 330. I do not know whether it is reported in any other book or not. (e) 2ndly. It is objected that the declaration ought to have averred the continuance of the mortgage. This objection arises on general demurrer; and there is an averment in the declaration that the plaintiff became, and was and is possessed of the entirety of the said demised premises, for all the residue and remainder of the said term of 4,000 years; that is the term, and which only Yeoman had. This is probably a sufficient averment by implication of the continuance of the mortgage term, if any such averment were necessary. See *Fryer v. Coombes*, 11 A. & E. 403, and the note to *Thursby v. Plant*, 1 Saund. 265, a; for, in truth, no

(e) It is also reported 14 Mee. & W. 599.

avertment is necessary, as regards a term of years which is certain and definite. The objection, however, here is, that the continuance of the mortgage is not averred, by which we understand the continuance of the mortgage debt; however, if this had been a continuance of the term, it is not necessary to aver it, because the term of 200 years, or any other number of years, must continue to the end, unless put an end to by some power. The objection, however, here is, that the continuance of the mortgage is not averred, by which we can only understand the continuance of the mortgage debt. There is nothing in the declaration that supplies the want of this averment by implication, for the mortgage term may well continue after the mortgage money has been paid. The question, therefore, is, whether the payment of the mortgage-money, by which the continuance of the mortgage would be determined, is to be considered a condition subsequent and in discharge of the right of the mortgagee to redeem the rent within the late case, in the Court of Exchequer, of *Brooke v. Spang*, 15 Law J. N. S. 94, cited in the argument, and we think that it is to be so considered; that it is not necessary to hold that the continuance of the mortgage should be averred in the declaration, as it was a condition subsequent, and not precedent. The third objection was, that it does not appear by the declaration that the rent sued for accrued after the plaintiff became assignee of the reversion. Whatever force there might be in this objection pointed out on special demurrer, we are of opinion, on general demurrer, the averment that the rent became due to the plaintiff is sufficient. On the whole, therefore, we are of opinion, the judgment must be for the plaintiff.

Judgment for the plaintiff.

Monday, June 15,

Prescription—Interruption.

Where a claim to a right of common rests upon continued acts of enjoyment, sometimes resisted and sometimes acquiesced in, during thirty years, it is sometimes left to the jury to say whether the interruption was such a substantial enjoyment as to support a plea to have effect under 3 & 4 Wm. 4, c. 71.

Replevin for taking cattle on a common called Rudge Heath. The avowry alleged the *locus in quo* to be the soil and freehold of the defendant. The plea in bar set up a right of common claimed as of right under Prescription Act (2 & 3 Wm. 4, c. 71). At the trial it appeared that the *locus in quo* was a waste piece of ground belonging to a manor of which the defendant was the lord, but that for thirty years the plaintiff had constantly and openly sent his sheep upon it, claiming the right of pasture there. This was sometimes resisted and sometimes not, and the resistance had, at times, been unsuccessful. Platt, B. left it to the jury to say whether there was a substantial interruption of the plaintiff's enjoyment, and if they thought that there was, the verdict was to be for the defendant, otherwise not. They found for the plaintiff. *Talfourd, Serjt.* had obtained a rule to set aside this for misdirection, against which cause had been shewn on a previous day, and

Yardley and Wiles were now heard in support of the rule.—The proper mode of leaving it to the jury was, whether the enjoyment was substantial on the part of the plaintiff. It could not be said that there was an interruption unless enjoyment was first proved, and where the whole period had been a series of rustic contests and petty warfare as to the common. There was no substantial enjoyment. (Co. Litt. 114, a; *Tickle v. Brown*, 4 A. & E. 369; *Gale and Whatley on Easements*, p. 122; *Bailey v. Appleyard*, 8 A. & E. 161, were cited.)

By the COURT.—We think the direction was quite right. It is, indeed, the same thing as that contended for. The words "substantial interruption" and "substantial enjoyment" might equally be used. The words "claiming as of right," in the statute, clearly mean something different and less than a rightful claim.

Rule discharged.

Monday, June 22.

DAY v. EDWARDS.

Pawnbroker.

In an action on the case against a pawnbroker for putting deleterious liquid into a cruet whilst it was in pledge to him, and which it contained when it was redeemed, by drinking which the plaintiff, the child of the party who redeemed it, had been seriously injured, it must be averred that the defendant knew of the nature of the liquid so used. Therefore, where the trial had been conducted upon both sides upon the supposition that negligence was sufficient, and no proof was offered of such averment, a new trial was ordered, that the opinion of the jury might be taken upon that point. *Quære, whether any action would lie under the circumstances?*

This was an action upon the case against the defendant, a pawnbroker, for having placed in a glass cruet, whilst in pledge to him, some nitric acid, and delivered it with its contents to the father of the plaintiff, who redeemed it, without giving him due information, whereby the plaintiff, a son of the person

who so redeemed it, ignorantly drank it, and received serious injury.

At the trial the jury found a verdict for the plaintiff; and *Lush* had obtained a rule nisi to set it aside for misdirection, or for arrest of judgment, on the grounds that the damages were too remote, that the use of the cruet was legal, and no averment of malice.

Miller and Petersdorff shewed cause.

Humfrey, Q.C. and *Lush* were heard in support of the rule. These points, however, were not decided, and the argument is omitted. It appeared that at the trial the case was treated as one of negligence, and no proof offered that the defendant knew of the contents of the cruet when he delivered it out of pawn. Upon this ground

Lord DENMAN, C. J. said there must be a new trial, for the fact of knowledge on the part of the defendant, of the contents of the cruet, was not proved on the trial, or left to the jury. The trial was conducted on the supposition that proof of negligence was sufficient without proof of knowledge, and had, therefore, miscarried. It is alleged in the declaration that it was the duty of the defendant to warn people that the cruet contained poison, but, before this duty could arise, knowledge of the fact was essential. I do not, however, agree with the arguments as to the meaning of proximate cause. A person is not to be deprived of remedy because no necessary and immediate connection can be shewn between the wrongful act and the injury complained of. It is sufficient that the injury has been caused by the wrongful act of the defendant. Nor do I consider that the law is to be limited to the reported cases, where an injury is shewn to have resulted from the wrongful act of another. These questions may be raised hereafter, but, upon the ground mentioned, there must be a new trial.

Business of the week.

Wednesday, June 23.

Sedgwick v. Hammond.—*Martin, Q.C.* (with him *Bovill*) shewed cause against the rule. *V. Lee* (with whom was *Humfrey, Q.C.*) contra. *Rule discharged.*

COURT OF COMMON PLEAS.

April 30 and May 22.

POTTS and OTHERS, Assignees, &c. v. EYTON and JONES.

A B had a share in a large colliery, and induced C D to open a general shop in the neighbourhood of the colliery, at which the men employed in the colliery were directed to purchase what they required. It was arranged that A B should receive a per centage upon the gross amount paid at the shop by the workmen belonging to the colliery. Held, that this did not constitute a partnership between A B and C D as to third parties.

This was an action brought by the assignees of a bankrupt banking company against the two defendants. One of them, Jones, suffered judgment by default: the other pleaded several pleas, and at the trial obtained a verdict. The points in the case appear fully in the judgment.

In the argument, *Channell, Serjt.* was for the defendant Eyton; *Sir Thos. Wilde, Serjt.* (with him *Crowder, Q.C.* and *Archbold*) for the plaintiffs.

The following authorities were cited: *Ex parte Hamper*, 17 Ves. jun. 404; *Wagh v. Carver*, 2 Hy. Black. 235; *Benjamin v. Porteus*, 2 Hy. Black. 590; *Sandilands v. Marsh*, 2 B. & A. 673.

Cur. adv. vult.

May 22.—The judgment of the Court was delivered by TINDAL, C.J.

JUDGMENT.

TINDAL, C.J.—This was an action of *assumpsit* for money paid by the bankrupts before their bankruptcy to the use of the defendants. The defendant Jones suffered judgment by default. The other defendant pleaded *non assumpsit*, and several special pleas, which it is unnecessary to notice. At the trial before me, at the sittings in London after last Michaelmas Term, it appeared that in 1828 the defendant Eyton was concerned in a colliery at Mostyn Quay, in Wales; and an agreement was entered into between him and Jones for opening a tally-shop at Mostyn Quay, not far from the colliery, for the purpose of supplying goods to the workmen of the colliery. Eyton built the shop, and his name was placed over it, and it was licensed to sell tea, &c. the license being taken out in his name. The invoices for the goods supplied to the shop were made out in Eyton's name, who paid for them. Jones managed the shop, and the workmen at Eyton's colliery were supplied with tickets, which were settled for when the wages were paid. The truck system was abolished in 1831; from that time Eyton's workmen paid at the shop for the goods, and Jones paid over to Eyton the principal part of the money received for the goods, but reserved sufficient for such small payments as were usually made at the shop. Eyton received for his own use 7 per cent. on the amount of all sales to his workmen, and Jones had all the rest of the profits of the concern, from whatever source acquired. In 1834 a change was made in the arrangement between Eyton and Jones; the latter was thenceforth to buy in

his own name all goods supplied to the shop, and the payment for them was to be received by him, and he was to suffer Eyton to receive 5 per cent. instead of 7, on the amount of the sales to his workmen. Eyton objected to his name remaining over the door of the concern, but it was not removed. Jones paid Eyton 5 per cent. of the profits, Eyton's name remaining over the door till October, 1840, when a fire occurred to put an end to the business. In 1834, when Jones began to buy the goods in his own name, he opened an account with the bank; the bank failed in 1839, and at that time the balance exceeded 2,000*l.* due to them on that account. Besides the shop at Mostyn Quay, Jones, in 1834, opened three other shops in other places in his own name, and on his own account, and he supplied them with goods from the shop at Mostyn Quay. On this state of facts it was contended for the plaintiffs that they were entitled to recover this balance against Eyton, as having been a partner with Jones. I left it to the jury to say whether there was a sharing of the profit and loss between Eyton and Jones after the account was opened, and if not, whether Eyton, by his own conduct, held himself out to the world as a partner with Jones, and induced the bank to give Jones credit upon the faith of his being a partner. The jury answered both questions in the negative, and returned a verdict for the defendant. In Hilary Term a rule nisi for a new trial, on the ground that the verdict was against the evidence, was granted, and in the course of the last Term was fully argued. Our judgment was deferred, in order that we might carefully examine the evidence given at the trial; having so done, we cannot find any ground for disturbing the verdict. There was no evidence to shew that credit was in fact given to Eyton, or that the bank knew his name was over the door of the shop at Mostyn Quay, or that they supposed him to be a partner, or a person who had the management of the affair; and we think if they could have given such evidence it would no doubt have been given by their witnesses; we must assume, therefore, that credit was given to Jones alone, and if Eyton is to be made liable it must be on the ground of actual partnership between himself and Jones. It was contended that an act of partnership was proved between them, as Eyton, by taking 5 per cent. upon the sales to his workmen, received a share of the profits, and was, therefore, in point of law, a partner as to third persons. We are of opinion that the taking of the money was not sufficient to make him a partner. Traders become partners between themselves by mutual participation of profit and loss; as to third persons, they are partners if they share the profits of the concern, or share the receipts, to the amount of which the creditors of the concern would have a right to look for payment. In such a case they are to be made liable for the losses, though they may have stipulated for exemptions from this liability. *Grace v. Smith*, 2 W. Bl. 998; and *Smith v. Watson* 2 B. & C. 401. In the former of those cases the Lord Chief Justice de Grey, after laying down the rule of law in the terms stated, proceeds thus: "If any one advances or lends money to a trader, it is only lent on his general personal security. It is no specific lien upon the profits of the trade, and yet the lender is generally interested in those profits: he relies on them for repayment." And a little lower down he says, "I think the true criterion is to inquire whether Smith agreed to share the profits of the trade with Robinson, or whether he only relied on those profits as a fund of payment; a distinction not more nice than usually occurs in questions of trade or usury; the jury have said this is not payable out of the profits." So in the present case the jury have said there was no agreement to share the proceeds. This distinction has been recognised in many cases which it may suffice to mention. *Dry v. Beswell*, 1 Campb. 320; and *Benjamin v. Porteus*, 2 Hy. Bl. 590; And so in *Ex parte Hamper*, 17 Ves. jun. 404, Lord Eldon said, "that the distinction was so thin that he could not state it as established upon due consideration." Yet he acted on it in that case, and in *Ex parte Watson*, 19 Ves. jun. 461, where he said, "One who receives a salary not charged upon profits, according to a known though nice distinction, is not by that a partner." Nor does it appear to make any difference whether the money was received by way of interest, or rent, or wages, or salary, or commission on sales. It appears to us in the present case that the payment to Eyton was no other than a commission on certain sales supposed to be effected through his influence over his workmen, and is not sufficient to render him, as a matter of legal inference, liable as a partner; and that so far as the question is material that was disposed of by the jury. This view of the subject renders it unnecessary to consider whether Eyton, if a partner in the shop at Mostyn Quay, was to be held liable on the banking account. On the whole, we are of opinion that the verdict is right, and that the rule for a new trial must be discharged.

Rule discharged.

April 29, May 2 and 25.

FRYCE v. BELCHER.

In an action by a private individual for damage resulting to himself personally from the commission of an

unlawful act by another, the material fact of the personal injury is sufficiently averred under a *per quod*, and need not be more positively or expressly stated.

In an action against a returning officer for not receiving the plaintiff's vote at an election, the plaintiff averred in his declaration "that he was a burgess of the borough entitled to give his vote, &c." The defendant pleaded "that the plaintiff was not a burgess of the said borough duly qualified or entitled to vote, &c. *modo ac forma*." Held, that this traverse was too large.

The declaration in this case contained three counts. The first count, after setting out "that the defendant was the mayor and returning officer for the borough of Abingdon," and the issuing of a writ to the sheriff of Berkshire, which recited "that Sir Frederick Theisger, knight, the former member for the borough, had accepted the office of the attorney-general," and which "commanded the sheriff to issue his precept to the mayor and burgesses to elect a new member," and, after setting out the issuing of the sheriff's precept, accordingly charged "that the plaintiff then being, and the plaintiff avers that he was, a burgess of the said borough, entitled to give his vote, &c." and that he was ready and willing, and offered to give his vote for one Richard Caulfield, &c. and answer the questions, &c. and to take the oath, &c. but that the defendant, so being such mayor and returning officer as aforesaid, hindered and prevented him from voting. To this count the defendant pleaded that the plaintiff was not at the time in that behalf in the first count mentioned a burgess of the said borough, duly qualified or entitled to vote as a burgess, in or at the election of the said burgess, *modo ac forma*.

The second count varied slightly from the first, and was demurred to upon special grounds; but as the defendant asked for leave to amend without receiving any intimation from the Court, and without proceeding thoroughly into the argument, this count and the demurrer to it are omitted.

The third count set out a writ to the sheriff of Berkshire, in the same form as in the first count, and a precept from the sheriff to the defendant, being the mayor and returning officer of Abingdon, to cause a burgess to be elected for the borough of Abingdon, by virtue of which the burgesses of Abingdon were assembled to elect a burgess for the borough of Abingdon; and it alleged that, during the assembly, and before such burgess was elected, the plaintiff being a burgess of the borough, and the name of the plaintiff being on the register of voters, and standing No. 216 in the list of voters; and the plaintiff being entitled to give his vote for the choosing of a burgess, according to the exigency of the said writ, before the defendant, being the mayor and returning officer to whom it belonged to take and allow such vote, was ready and willing, and offered to give his vote for choosing R. Caulfield, esq. a burgess for that Parliament, and that it was the duty of the defendant to enter the vote of the plaintiff on the poll-book, without entering into or allowing any scrutiny before him, so being such returning officer as aforesaid, with regard to such vote; nevertheless, that the defendant, so being such mayor and returning officer as aforesaid, well knowing the premises, but contriving and wrongfully, wilfully, maliciously, and fraudulently intending to injure the plaintiff, and vex, and harass, and delay the plaintiff in the exercise of his privilege of voting, and deprive him of the benefit of his said privilege, did wrongfully order and allow a scrutiny to be held before him, the said defendant, so being such returning officer as aforesaid, to wit, at the Guildhall of the said borough, with regard to the vote of the plaintiff so tendered by him as aforesaid, and with regard to the right and qualification of him, the plaintiff, to give the said vote, and to have his said vote admitted and allowed, and did further wrongfully take upon him to adjudge and determine at and after such scrutiny so ordered and allowed as aforesaid, that the plaintiff was not then entitled, and had no qualification enabling him to give his vote at the said election, whereby the plaintiff was not only wrongfully vexed, harassed, delayed, hindered, and obstructed in the exercise of his said privilege of voting, but was then wholly deprived of the benefit of his said privilege, and a burgess of the said borough was elected for that Parliament, the vote of him, the plaintiff, being so hindered and obstructed, and without any vote of him, the said plaintiff. To this count also there was a special demurrer.

The plaintiff joined in demurrer, and demurred to the defendant's plea to the first count, as offering too large a traverse.

Talfourd, Serjt. for the defendant.—The plea to the first count is good. It is true that by 6 & 7 Vict. c. 18, s. 79, the register is conclusive evidence of the voter's retaining the same qualification, but still another point may be involved, viz. his continuance to reside within the boundaries. That is the point to which the last proviso in sec. 79 is directed. Besides, the word "duly" is surplusage, and may be rejected. The plaintiff has no burden of proof thrown upon him which he had not before. The word "entitled," *ex vi termini*, includes that he was qualified and duly

entitled. In *Armani v. Castrique*, 13 M. & W. 443, the declaration described a bill of exchange generally, and a plea that A B did not indorse "the said inland bill," was held good on special demurrer. The argument upon the other point will sufficiently appear from the judgment. (6 & 7 Vict. c. 18, ss. 79, 81, 82, were referred to.) The most important is sec. 82, which enacts (*inter alia*) that "no scrutiny shall hereafter be allowed by or before any returning officer with regard to any vote given or tendered at any such election, any law, statute, or usage to the contrary notwithstanding."

Kinglake, Serjt. for the plaintiff.—First, the plea is bad. It introduces new matter not found in the declaration, and traverses it. It tenders immaterial issues. It is impossible for the plaintiff to know in what sense the word "qualified" is used in the plea. It may raise a variety of issues as to whether the plaintiff has become disqualified since the decision of the revising barrister, whether he has changed his residence, or whether there be any other latent objection to his vote. If we took issue, we might be met at the trial by proof that the decision of the revising barrister was improper.

TINDAL, C. J.—The traverse is bad on special demurrer. The declaration contains two distinct allegations; one, that the plaintiff stood No. 216 on the register; and the second, that he was entitled to vote. The first plea is too large a traverse of the latter allegation.

Upon the other count *Kinglake*, Serjt. referred to 2 & 3 Wm. 4, c. 45, ss. 59, 66; 6 & 7 Vict. c. 18, ss. 79—82, 86, 97; *Ashley v. White*, 2 Ld. Raym. 938; *Schinotti v. Burnsted*, 6 T. R. 646; *Taylor v. Heniker*, 12 A. & E. 488; *Blafeld v. Payne*, 4 B. & Ad. 410; *Bailiffs of Tewkesbury v. Diston*, 6 East, 462, per Lord Ellenborough; *Weller v. Baker*, the *Dippers*' case, 2 Will. 422.

JUDGMENT.

The Judgment of the Court was now delivered by TINDAL, C. J.—The questions arising on the first count, and on the second count of the declaration, were disposed of on the argument, by the defendant being allowed to amend the plea, and to withdraw his demurrer, and plead over to the second count. The only remaining question, therefore, is, whether the third count, which is specially demurred to, is open to objection. His Lordship read the material parts of the count. On the part of the defendant, it was contended that the words following the words "whereby" could not be considered as being an averment of matter of fact, but merely matter of conclusion or inference drawn from the matters previously alleged, and that the preceding matter did not disclose with due certainty any cause of action, it not being alleged that the scrutiny was held during the election, nor that the vote of the plaintiff was not entered on the poll-book, and reckoned up with the others. On the part of the plaintiff it was contended that the holding of a scrutiny by the returning officer being expressly prohibited by the Act 6 & 7 Vict. c. 18, s. 82, the action would lie for holding the scrutiny, though no damage resulted to the plaintiff; for which *Blafeld v. Payne*, *Taylor v. Heniker*, and the *Dippers*' case, 2 Wilson, were cited; and it was also contended, that if damage was necessary to be alleged, there was a sufficient allegation of damage to the plaintiff. No case was cited to shew whether the matter alleged after the word "whereby" is to be considered as amounting on demurrer to a sufficient averment of matter of fact; nor have we found any decision on the point, although in the case of *Colson v. Perry*, 2 Rolle's Reports, 379, the point was incidentally discussed. In that case the plaintiff declared that Queen Elizabeth, being seised of the manor of S—, granted him thirty acres, parcel of the manor by copy, and granted four acres, parcel of the said manor, to the defendant, and alleged that the copyholders of the said thirty acres have at all times used to have common for certain cattle, from the 1st day of August until the Feast of All Saints, in the four acres, and shewing that the defendant on the 1st of May enclosed the said four acres with hedges and ditches *per quod*, he could not have his common, &c. The defendant pleaded not guilty, and a verdict was found for the plaintiff. It was moved in arrest of judgment for not alleging continuance of the enclosure until and after the 1st of August; but all the judges agreed that after verdict the judgment should not be arrested; but Dodridge J. said that the *per quod estant le inclosure del'plea* does not amount to an averment; the *per quod* is a reduction and inference out of the preceding declaration, and will not amount to an averment, for it is a conclusion, and not a matter of action; but he agreed that after verdict the declaration was good: but Ley, C. J. said that the *per quod* amounted to an averment. It is to be observed that matters subsequent to the *per quod* were held in that case to be a sufficient averment after the verdict, not only of what was directly stated, but of a matter not stated, but only to be collected by inference, namely, that the inclosure of the four acres continued after the 1st of May, and until the 17th of August. The allegation in question would perhaps be open to a special demurrer on that ground, but it does not follow from thence that the words following

the *per quod* in a declaration of this nature are in all cases to be considered as matter of conclusion and inference only; on the contrary, the course of pleading shews that they are sometimes to be looked upon as allegations of matters of fact. In *Rastell's Entries*, 613, is a precedent of an action by a master for the beating of his servant, with no allegation of loss of service except under the *per quod*; that the loss of service is a material fact required to be proved is clear. It is said in *Mary's case*, 9 Coke, "If my servant is beat, the master shall not have an action for this battery, unless the battery is so great, that by reason thereof he loses the service of his servant; but the servant himself for every small battery shall have an action; and the reason of the difference is, that the master has not any damage by the personal beating of his servant, but by reason of a *per quod*, namely *per quod servitium amisit*; so that the original act is not the cause of his action, but consequent upon it, namely, the loss of his service is the cause of his action; for be the battery greater or less, if the master doth not lose the service of his servant, he shall not have an action." So, in the same case, it was said, "For every feeding by the cattle of a stranger the commoner shall not have an assize or an action on the case, as his case is; but the feeding ought to be such, *per quod* the commoner, &c. common of pasture for his cattle, &c. *habere non potuit sed proficuum suum inde per totius id tempus amisit*." So that if the trespass be so small that he has not any loss, but sufficient in an ample manner remains for him, "the commoner shall not take them damage-tenant, nor have any action for it." And a little lower down it is said—"So in the case at bar, the lord of the soil shall have an action for trespass done in the waste or common, as an immediate trespass to him, be it greater or less; but the commoner shall not have an action but by consequence, viz. if the trespass be such, *per quod proficuum communie sue, &c. amisit*, or that he could not have his common in so beneficial a manner as he had before." It has, indeed, been subsequently considered that the mere invasion of the commoner's right may furnish a ground of action against a stranger; but still the doctrine so laid down in *Mary's case* is applicable to the present question; for as the Court in that case held the action maintainable, on the ground that it contained the allegation *per quod proficuum communie sue amisit*, it follows that they considered the matter alleged, after the *per quod*, to be a sufficient averment of a material fact. So in the case of a nuisance to a highway, whereby the plaintiff has received a particular damage, the precedents shew that the damage which is the cause of action may be alleged under the *per quod*. The same in *Mr. Chitty's Precedents*, p. 241, or what does not seem materially to differ, under the words *ratione cuius, &c.* to be found in *Winch's Entries*, 47. Another ground of objection urged by the defendant was, that the count was defective in not shewing how the damage stated after the *per quod* resulted from the holding of the scrutiny, which, for any thing that appeared, might have been held after the election was finished and the return made, and if the matter which follows the *per quod*, was to be looked upon as matter of inference and conclusion only, it might well be argued it was an inference not legitimately drawn from the premises; but if it is to be considered, as we think it is, as an averment of a matter of fact, it will be sufficient if the damage in question might possibly have resulted from the unlawful act of holding the scrutiny. It was clearly possible that the delay arising from holding a scrutiny might have had the effect of preventing the plaintiff from exercising his right of voting, and if such was the fact, there is no doubt the action would be maintainable, the act of the defendant being wrongful, and having caused a particular damage to the plaintiff. As the defendant has obtained leave to amend his pleadings in relation to the other count, he ought to have leave, if he desires it, to withdraw his demurrer to this count, and to plead to it.

Talfourd, Serjt. accepted the offer.

Leave to amend: otherwise, judgment for the plaintiff.

April 24 and 29; June 6.

COOPER v. SHEPHERD.

To an action of trover for a bedstead, the defendant pleaded that the plaintiff had recovered judgment in a previous action against B. W. for the conversion of the same bedstead to the full value of the bedstead, and that the plaintiff had received satisfaction for that judgment. The plea then stated that the conversion by B. W. was a conversion not later than the conversion in the declaration mentioned, and that before the conversion in the declaration mentioned, B. W. sold the bedstead to the defendant, who paid for the same, and that the taking, under such sale, was the conversion complained of in the declaration. Held, on special demurrer, that the plea was a good plea in confession and avoidance.

Trover for a bedstead.

Plea.—That the plaintiff heretofore and long before the commencement of this suit, to wit, &c. in this court of our Lady the Queen, &c. impleaded one B.

W. in an action of trover for converting, to wit, on the day and year in that action mentioned, to wit, &c. among other goods and chattels in the declaration in that action mentioned, the same identical bedstead in the declaration in this action mentioned, and such proceedings were thereupon had in that action that afterwards and before the commencement of this suit, to wit, &c. the plaintiff, by the consideration and judgment of the said Court, recovered in the said action against the said B. W. 75*l.* for his damages, which he had sustained on occasion of the converting by the said B. W. of the said bedstead, and the said other goods and chattels in the declaration in that action mentioned, and also 12*l.* for his costs and charges, &c. *pro ut patet per recordam.* And the defendant further says that, after the recovery of the said judgment against the said B. W. as aforesaid, and before the commencement of this suit, to wit, &c. the said B. W. fully paid and satisfied the plaintiff the said several sums of 75*l.* and 12*l.* in form aforesaid recovered against him, and the plaintiff then took and received the same of and from the said B. W. in full satisfaction of the said judgment. And the defendant further says, that the said damages, so far as the same were estimated, assessed, recovered, paid, and received as aforesaid in respect of the said bedstead were estimated and assessed and were recovered and paid and received as aforesaid, as and for, and in respect of, and as the full value of the said bedstead, and not otherwise, and were and amounted in fact to the full value of the said bedstead. And the defendant further says, that the said conversion of the said bedstead by the said B. W. for which the said action against the said B. W. was brought, and in respect of which the said damages were estimated, assessed, recovered, and paid, and received as aforesaid, was a conversion not later in point of time than the conversion above complained of against the defendant; and that just before, and at the time of the conversion of the said bedstead by the defendant above complained of against him, the said bedstead being then in the possession of the said B. W. he the said B. W. to wit, on the day and year above-mentioned, sold and delivered the same to the defendant, at and for a certain reasonable price in that behalf, to wit, &c.; and the defendant then paid to the said B. W. who then accepted and received of and from him the defendant, a large sum of money, to wit, &c. as and for, and in full satisfaction and discharge of the said price of the said bedstead as last aforesaid, and the defendant then had and took, and received the said bedstead of and from the said B. W. to and for his the defendant's own use, and as and for his own, under and by virtue of such sale and delivery as aforesaid. And the defendant further says, that the having, taking, and receiving of the same, by the defendant as aforesaid, is the same conversion of the said bedstead, as is above complained of against him the defendant.—*Verification.*

Special demurrer, assigning for grounds, that it did not sufficiently appear by the plea that the conversion by the said B. W. was after the plaintiff was possessed, or that the plaintiff was not lawfully possessed between the times of the two conversions, or that B. W. was possessed at the time when he sold to the defendant; that a recovery for one conversion was no reason why damages should not be recovered for another; that the plea was an argumentative traverse of plaintiff's possession; that it did not appear that the recovery against B. W. or the payment by B. W. was before the conversion by the defendant; that the plea confessed without avoiding, &c.

Dowling, Serjt. in support of the demurrer.

Telford, Serjt. (with him *Hawkins*) in support of the defendant's plea.

The following authorities were referred to: *Cooper v. Willomatt*, 1 C. B. 672; *Adams v. Broughton*, 2 Stra. 1078; *Bishop v. Viscountess Montague*, Cro. Eliz. 824; *Holmes v. Wilson*, 10 A. & E. 511, *et notam*; *Barnett v. Brandao*, 6 M. & G. 640 (Manning's note); *Unwin v. St. Quintin*, 11 M. & W. 277; *Comyns v. Boyer*, Cro. Eliz. 485.

JUDGMENT.

June 6.—TINDAL, C.J. delivered the judgment of the Court, which, excepting the statement of the pleadings, which is omitted, was as follows:—The argument before us has been, that the plea is bad, either upon the ground that if taken as a traverse of the plaintiff's possession, it is argumentative only; or, if taken as a confession, there is no avoidance; but we think the plea is unobjectionable on either of these grounds. A plaintiff in trover, where no special damage is alleged, is not entitled to damages beyond the value of the chattel he has lost; and after he has once received full value, he is not entitled to further compensation in respect of the same loss. And according to the doctrine of the cases which were cited in the argument, by a former recovery in trover, and payment of damages, the plaintiff's right of property is barred, and the property vested in the defendant in the action. *Adams v. Broughton*, 2 Strange, 1078, and *Jenkins's Cent. p. 189* (Cent. 4, Ca. 88), where it is laid down, "A, in trespass against B for taking a horse recovers damages; by this recovery, and execution had thereon, the property in the horse is vested in B. *Solutio pretii emptionis loco habetur.*" Now, the present plea ought,

as it appears to us, to be construed as alleging a sale by B. W. to the defendant, before the plaintiff recovered judgment against B. W.; and if the plea be so construed it would be a confession of a cause of action avoided by matter subsequent; namely, by recovery and satisfaction for the same cause of action from another; for the damage to the plaintiff is the cause of his action, and the loss of the chattel is that damage; and though the conversion by the defendant is different from the conversion by B. W. and may make either the one or the other liable to the plaintiff at his election, yet satisfaction from one forms the defence for the other. In *Bird v. Randall*, 3 Burrows, 1345, a recovery from a servant of damages for leaving the service of his master was a bar to an action against a defendant for seducing the servant to leave his master's service; because the loss of the service was the damage, and that damage was compensated for in the first action. But if, on the other hand, the plea be construed to allege the sale to the defendant to be after the recovery by the plaintiff from B. W. still the plea as to this point may be sustained, as giving what has been called in modern cases implied colour to the plaintiff; for it admits that the plaintiff had at one time a right of property, but shews it to be barred by the matter of the plea; like the case of a plea, to an action of trover, of a sale to the defendant in market overt, or a taking by the defendant as a waife; which pleas may be pleaded in trover or trespass. *Comyns v. Boyer*, Cro. Eliz. 404; *Legfield's case*, 10 Rep. 86; *Unwin v. St. Quintin*, 11 M. & W. 277. And as to the further objection, that the plea contained a confession of the cause of action, but did not also contain an avoidance thereof, inasmuch as it did not sufficiently appear that the possession by B. W. in respect of which the plaintiff recovered, continued till the sale by him to the defendant; and that it was consistent with the plea that the plaintiff might have acquired the property a second time, which B. W. first wrongfully took from him, before the sale by him to the defendant; we think the possession of B. W. as first alleged in the plea, and which became rightful by the recovery in trover and payment of damages, must be taken to have continued until the sale to the defendant took place, inasmuch as nothing appears to the contrary. The plea alleges in effect that B. W. took, and, being possessed, sold to the defendant; and although it would have been more certain if it had been pleaded that he, being so possessed, sold, still it appears to us sufficiently certain, and that no change in the possession is to be presumed. We therefore think the judgment ought to be given for the defendant.

Judgment for the defendant.

April 21, 28, and June 6.

DOE dem. ATKINSON v. FAWCETT.

Where testator being seized in fee of one moiety of a house devised "my moiety of the house which my son R. A. now lives in, to my son R. A.": this was held to pass the fee.

This was an action of ejectment tried before Rolfe, B. at the last summer assizes for the county of York. The lessor of the plaintiff claimed one half of the messuage in respect of which the ejectment was brought as devisee, and the other half as heir at law of one George Atkinson. No question arose with reference to the former half, but with regard to the latter it appeared that George Atkinson, being seized in fee-simple of one moiety of the house in question, by his will disposed of it as follows:—"I give and bequeath to my son, Richard Atkinson, my moiety of the house which he now lives in, and all my personal property new in his keeping." Upon the part of the plaintiff it was contended that these words gave Richard Atkinson only an estate for life, and that, Richard Atkinson being dead, the lessor of the plaintiff was entitled as heir at law to George Atkinson. Rolfe, B. being of this opinion, directed a verdict for the plaintiff. In the following Michaelmas Term, Channell, Serjt. obtained a rule to show cause why there should not be a new trial upon the ground of misdirection, and argued that the words in the will passed the whole fee. In Easter Term last,

Sir Thos. Wilde, Serjt. shewed cause, and contended that the words "my moiety," were descriptive only of the thing devised, and not of the quantum of estate intended to be conveyed, and that therefore, as there were no words of inheritance, the devisee took only a life estate. He quoted 2 Jarman on Wills, p. 192; *Viner's Abridg. Devise*, L. a, pl. 11; *Pettywood v. Cooke*, Cro. Eliz. 52; *Bebb v. Penoyre*, 11 East, 160; *Bailis v. Gale*, 2 Ves. sen. 48; *Middleton v. Swayne*, Skinner, 339; *Roe v. Bacon*, 4 M. & S. 366; *Paris v. Miller*, 5 M. & S. 408; *Doe dem. Clarke v. Clarke*, 1 Cr. & M. 39; *Doe dem. Ashby v. Baines*, 2 C. M. & R. 23; *Doe dem. Roberts v. Roberts*, 7 M. & W. 382; *Doe v. Gwillim*, 5 B. & Ad. 122, 2 Nev. & M. 247, S.C.

Channell, Serjt. in support of the rule, maintained, first, that the words, "my moiety of the house" denote the interest and pass the fee; secondly, that the words are not limited by what follows, viz., "which my son now lives in," but that these last are words merely of local description; thirdly, that the presump-

tion that the testator intended to pass all his interest is strengthened by the association of the words whereby he gives his son absolutely "all his personal property" now in the son's keeping. Besides the authorities cited on the other side, he referred to *Doe dem. Templeman v. Martin*, 4 B. & Ad. 785, per Parke, J.; *Andrew v. Southouse*, 5 T. R. 293.

Cur. adv. vult.

JUDGMENT.

June 6.—TINDAL, C.J. delivered the judgment of the Court.—The question in this case was, whether Richard Atkinson, the son of the testator, took an estate in fee, or for life only, in a moiety of the house devised to him by his father's will. The devise was seized in fee-simple of one moiety of the house in which his son was living, and being so seized, devised in these terms—"I give and bequeath to my son Richard Atkinson my moiety of the house which he now lives in, and all my personal property now in his keeping;" and the answer to this question depends, as it appears to us, upon the proper interpretation to be put upon the words "my moiety." If those words do in their natural and ordinary signification import the interest which the testator had in the house, then they will carry the whole interest he had, that is, the fee; but if, on the other hand, the words only have the narrower meaning, and are construed to import no more than one half of the house, then undoubtedly the devise of the half of the house would be a devise for life only. It appears to us that the word "moiety," which is accompanied generally, whether in pleading or in conveying, with the words "half part" as synonymous with it or explanatory of its force, carries with it the signification of the part or interest which the party takes in any subject-matter; so that when a man devises his moiety, he devises his half part, or the interest which he has in the thing devised. The case of *Pettywood v. Cooke*, Cro. Eliz. 52, which was relied upon in argument on the part of the defendant, does not in any way affect the present question. In that case the devise was not seized of any particular part or interest in the fee, but of the entirety. The devise was not, as here, of the devisee's third part; but being seized in fee of three several houses, he devised one of them to each of his three children and their heirs; and if any of them died without issue, then the survivors should enjoy, *totam illam partem*, to be equally divided between them. The judges held in that case, that no more than an estate for life was devised by the devise over; and construed *totam illam partem*, to mean *totam illam domum*. In that case the words limiting the devise had cut down the estate of the daughters to an estate tail, and made the devise, in effect, no more than a devise in tail, with several remainders over, without specifying the estate of the remaindermen, which must have been for life only. And even as to this case, Lord Ellenborough, in *Bebb v. Penoyre*, 11 East, 160, expressed a strong doubt whether that decision was right. In the case before the Court, that of a devise to a brother of "my half part of four freehold houses which I hold with him," he intimates an opinion that he should be disposed to think the words sufficient to carry the fee. And the same learned judge has expressed the same opinion upon the devise of "my share" in *Paris v. Miller*, 5 M. & S. 408. He observes, "This is not the devise of a portion which the devisee has carved out of the entirety; it existed in her as it was devised. The words 'my share,' as it seems to me, were used as denoting the interest;" which view of the case was adopted by the Court. Upon these grounds, we think the words of this devise are sufficient to carry the fee, and the rule for a new trial must be made absolute.

Rule absolute for a new trial, unless the plaintiff consents to enter the verdict for one moiety for him, and one moiety for the defendant.

EXCHEQUER CHAMBER.

ON ERROR FROM THE COURT OF QUEEN'S BENCH.

(Before PARKE, ALDERSON, and ROLFE, BB.—COLTMAN, MAULE, CRESSWELL, and ERLE, JJ.)
WEDLAKE v. GARDNER.

Argued May 12.—Determined June 15.

A patent was taken out for a certain improvement in a machine for cutting turnips; this improvement consisting in a peculiar diagonal arrangement of knives within a rotary drum-cutter, by which arrangement the knives were brought successively into operation, thus obviating several objections to the rotary drum-cutter which had previously existed. In an action brought for an infringement of the patent, it was objected that the terms of the specification were sufficiently comprehensive to include the drum-cutter, which was an undoubtedly old invention, as well as the arrangement of the knives above-mentioned, or that at all events it must be taken to include every arrangement of the knives on the diagonal principle, and that in either case the patent was void as claiming an old invention. Held, that the specification must be read in a fair and candid spirit, with a desire to be instructed by it, and not

merely to discover defects in it; and that when so read, the specification must be taken to refer to that peculiar adaptation of the knives to the old invention, which was new, as appeared by the evidence at the trial. If a specification sufficiently explains the whole principle of the invention claimed by the patentee, it is not necessary to set forth the results of that principle.

This case came before the Court of Exchequer Chamber in the shape of a bill of exceptions to the direction of the learned judge (Patteson) at the trial of this case, which was an action for the infringement of a patent for the invention of a certain improvement in a machine for cutting Swedish and other turnips, mangold-wurzel, and other roots used as food for sheep, horned cattle, and other animals. To the declaration, which was in the usual form, there were several pleas—1st, not guilty; 2nd, that the plaintiff was not the true inventor; 3rd, that the invention was not new; 4th, that the plaintiff had not sufficiently described the nature of his said invention; 5th, that the alleged invention was not an improvement; and, lastly, a plea which set out the specification; and then stated that, though part of the alleged invention was new, a part of it was old, and that the specification did not sufficiently describe that part. The plaintiff denied the last plea, and, by the general replication *de injuria*, joined issue on or traversed the others. The specification, as set out in the declaration, was in substance as follows: "The invention was in the first place described as 'my invention of certain improvements on machines for cutting Swedish and other turnips, mangold-wurzel, and other roots used as food for sheep, horned cattle, and other animals.' The specification then proceeded to refer to the accompanying plan of a rotary cutter as shewn in operation; this rotary cutter being formed as a drum mounted upon an axle, certain parts of its periphery having different radii, in order to produce the recesses into which the roots of the turnips were to descend. It then proceeded to refer to the plates, and described the operation of the machine in these words: 'The rotary cutter thus constructed would then appear as shewn in perspective at figure 6, and in revolving upon its axle would bring the knives progressively into operation one after another, their upper cutting edges being all coincident in the same cylindrical curve, and their radial edges revolving in parallel circles at right angles to the axis of the drum.' Then it went on to say, that in this way 'the knives will be brought successively into operation, and so cut the roots into strips or narrow pieces, which pieces or strips will pass through the apertures behind the knives into the interior of the drum, and will from thence fall through the shoot below on to the floor, or into any vessel provided beneath to receive them. By the construction of the knife shewn and the mode of attaching it to the drum, I am enabled to replace any one of the knives accidentally broken. But I sometimes construct the knives by bending plates of steel in the form shewn in perspective at figure 7, the cutting edges being placed in the same relative positions as before described. When the plates are affixed to the cast-iron part of the drum, the curved part of the plates forms that portion of the periphery of the drum marked b. in the former figure. I wish it to be understood that I do not intend to confine myself to any precise number of cutters or knives to be affixed to a rotary drum, nor do I at all times employ two sets of cutters, as shewn in the figures referred to, and though I have described the knives as placed in two series on opposite sides of the middle plates of the drum, yet I do not confine myself to that arrangement, as I sometimes place the knives in a diagonal range along the drum from end to end, which would be illustrated by cutting the drum into two parallel portions at right angles to its axis in the dotted line shewn in figure 2. Lastly, I wish it to be understood that I claim the adaptation of the particular form of knife with two cutting edges, shewn in the drawing, and also the placing of those knives in diagonal ranges in the manner described, or any other suitable construction of knives, the faces of the radial cutting edges of which shall stand parallel to the ends of the drum, and to each other.' The specification then referred to another example of the adaptation of a series of straight knives arranged in conjunction with the diagonal cutting edges. On the trial, several witnesses were examined, some of whom gave evidence that no machine like the plaintiff's had been seen before,—though there were machines, and particularly a machine invented by one Snowdon, which cut by means of knives arranged on a drum, but that the knives were so placed in the machine as to make their cutting at the same moment, one knife cutting horizontally, or in a cylindrical direction as the drum went round, whilst the others were vertical or parallel to the sides of the drum, and the effect was said to be that the machine required great force to be used in the moving power, and that the strips of turnips were compressed in passing in the intervals between the knives, so as to lead to the clogging of the machine. The evidence also was, that the plaintiff's machine worked with less power, because the

knives being arranged diagonally came into action successively; and that as one finished its work before another began, there was no compression of the slices of turnips, and therefore no clogging. Some witnesses also stated, that there was, before the patented machine, a machine described as a table cutter, which had vertical and horizontal cutters, which severally struck the turnips at the same time, but slightly behind each other, so that the pieces of turnips were jammed together in passing through the machine. The witnesses likewise said that the plaintiff's invention was of great practical utility. It was admitted that the defendant made and sold machines similar to those of the plaintiff, cutting step by step, and which, as one of the witnesses said, acted on the same principle. It was contended at the trial, on behalf of the defendant below (the plaintiff in error), that the plaintiff below was not, upon the evidence, entitled to recover, because the principle of his invention was not new, but was the same as that of Snowdon's machine. It was also contended, that the specification was not sufficiently precise in its terms, and that it must be taken to include every rotary cutter, consisting of a drum furnished with knives, or, at all events, every species of knives arranged in the drum on what is called the diagonal principle, and that on either construction the invention was open to the objection already stated, that, viz. of being old. It was further argued, that the specification was too vague, and did not sufficiently distinguish the old from the new parts of the invention, nor set forth with distinctness the principle of the patent claimed. The nature of these objections will be better understood by a reference to the judgment of the Court as given below.

Hill, Q.C. for the plaintiff in error.—The plaintiff in error is willing to admit that his machine would be an infringement of the defendant's patent if that patent is valid, but he denies its validity. The patent is for an improvement in a machine for cutting turnips, &c. used as food for sheep and cattle, and consists in the peculiar construction of a rotary cutter, and in the adaptation of that cutter to the machine for cutting turnips. The object of this improvement is to prevent the necessity of squeezing the turnips and clogging the machine; and it is worked by less power than the old machine, inasmuch as the knives come into operation successively. The patent is void, because the specification is too large for the invention. The specification applies to the rotary cutter, which is a cylinder or drum, armed with knives; but this was not the invention of Gardner, the patentee, for he was not the first who applied the drum armed with knives to the purpose stated in the patent. The specification is not confined, as it ought to have been, to the mode by which the knives have been adapted to the object in view. Another objection to this patent is, that the patentee claims as his invention the placing of the knives diagonally; whereas he was not the inventor of the diagonal principle, but only of the particular mode in which that principle has been applied to this machine; and it is a well-known rule, that a patentee must not leave the subject-matter of his patent in doubt, but must clearly ascertain and describe the nature of his invention. (*Hindmarch on Patents*, 183, 184—188, and cases there cited; *Bovill v. Moore*, 2 Marshall, 211; *S. C. Davison's Patent Cases*, 364; *Harmer v. Playne*, 11 East, 101.) The objections to this patent are, then, twofold; 1st, that the patentee claims too much; 2ndly, that he does not sufficiently point out what he does claim.

Watson, Q.C. for the defendant in error.—The answer to the objections which have been raised to the validity of this patent is very short. The defendant in error claims as his invention the arranging the knives diagonally in the drum, so that they may cut successively—he claims a particular species of rotary cutter on the diagonal principle. He referred to *Minter v. Wells*, Webster's Patent Cases, 127; *Carpenter v. Smith*, Webster's Patent Cases, 530; *Macfarland v. Price*, Webster's Patent Cases, 75.

Hill, in reply, referred to Macfarland v. Price.

June 15.—*PARKER, B.* now proceeded to deliver the judgment of the Court. His lordship first adverted to the evidence, and to the pleadings on the record, of which an abstract has been given above, and then proceeded thus:—The counsel for the defendant made eight objections, which are fully set out in the bill of exceptions, and insisted that on all or some of those the learned judge ought to have directed the jury to find that the plaintiff was not entitled to recover. He refusing to do so, and having directed the jury to the contrary, an exception is taken to his direction. The objections taken are in substance three: first, that the principle of the plaintiff's invention was not new, and was the same as that of Snowdon's machine; secondly, that the specification was not very clear, but must be taken to describe the subject-matter of the patent as being the rotary cutter, consisting of a drum furnished with knives, and that the cutter formed of the drum and the knives was old, and consequently the invention being in part not new, the patent was void; and further, that if the specification included every species of cutting by knives diagonally, it would

be void for a similar reason, and that the table-machine was constructed on that principle; 3rdly, that the specification is not sufficient, for that it did not sufficiently describe the old and the new, nor describe the principle of the patent, nor state the angle at which the knives are to be placed. The two latter objections were those mainly insisted upon before us, and properly so; because there can be no doubt that the principle of the plaintiff's invention, which is a machine to cut by steps, is different from that of Snowdon's machine in which the knives cut simultaneously, and from that of the table cutter, which, though it operated partly in the same way, is quite a different sort of machine; and we are of opinion that neither of the other objections are well founded. If we look, as we ought to look, at the whole specification in a fair and candid spirit, with a desire to be instructed by it, and not merely to discover defects in it, then if the specification, which explains what the patentee himself claims, had really comprised every sort of cutting machine, consisting of a drum with knives, no doubt it would have been void; for we think the machine of Snowdon was decidedly of that description, and was unquestionably an old invention. So, if the specification had claimed all sorts of machines for cutting diagonally, not simultaneously, it would also have been void; but we think this is not the meaning of the specification, which does not claim every kind of cutter with a drum, or every species of diagonal cutter; but only a particular species of drum cutter in which the knives are placed diagonally. The evidence was that this species of cutting was new. If Snowdon's machine had been first used subsequently to the date of the patent, we think that would have been no infringement of it; nor would the table-cutter have been an infringement. The next objection is as to the sufficiency of the specification, and, admitting that the plaintiff's is an invention of a particular species of a drum-cutter, it is argued that it is insufficient, because it does not properly describe the principle of the patent, nor state the angle at which the knives ought to be placed; but it appears to all of us that it is sufficiently clear, and that the knives are to be so placed as that one shall finish its work before the other commences, which is the whole principle of the machine, and that it was not necessary to state what the result of that principle did consist in, viz. the non-compression of the strips of turnips, the prevention of clogging, and the smallest expenditure of moving power. As to the angle at which the knives ought to be placed, the specification itself does not state it, nor could it do so, for there is no certain angle. It must depend on two things—the width of the strips to which it may be convenient to the person who uses the machine to cut the turnips, and the length of the vertical knives used. And when the specification is considered in conjunction with the evidence, a competent person would have no difficulty in constructing according to it a proper machine; nor have we any difficulty in deciding that the principle of the defendant's machine is the same as the plaintiff's, of which it is consequently an infringement. The learned judge's direction is therefore right, and the judgment of the Court of Queen's Bench must be affirmed. *Judgment affirmed.*

BUSINESS OF THE WEEK.

Saturday, June 13.

ERROR FROM THE QUEEN'S BENCH.

The Court gave judgment in the following cases, which will be reported at the earliest practicable period:—

DIMES v. THE GRAND JUNCTION RAILWAY COMPANY.

Judgment reversed.

BYRNE v. THE QUEEN.

Judgment affirmed.

THE YORK AND NORTH MIDLAND RAILWAY COMPANY v. THE QUEEN, on the prosecution of Sir William Milner and Others.

Judgment affirmed.

KEIR v. LEEHAN.

Judgment affirmed.

After delivering the above judgments, the case of *Gosssett v. Howard* was called on, and the arguments of the Attorney-General, who appeared for the plaintiff in error, were not concluded at the rising of the Court.

Monday, June 15.

ERROR FROM THE QUEEN'S BENCH.

TINDAL, C.J., delivered the judgment of the Court in the case of *Partridge v. The Governor and Company of the Bank of England*, reversing the judgment of the Court below, as to the 1st and 2nd counts in the declaration, and affirming that judgment as to the last count.

WEDLAKE v. GARDNER.—Judgment in this case was likewise delivered by *PARKER, B.* The report will be found *supra*.

The arguments of the Attorney-General were then concluded in the case of *Gosssett v. Howard*, and *Petersdoff*, for the defendant in error, was part heard. No day was named for the farther hearing of this case at the rising of the Court; it will, therefore, stand over, we presume, till the sitting of the Court after Michaelmas Term ensuing.

Tuesday, June 16.

ERROR FROM THE COMMON PLEAS.

CLIFT v. SCHWABE.

Judgment reversed.

M'ALPINE v. MANGWALL.—This was an action for the infringement of a patent, which had been tried before *Tindal, C.J.*, to whose direction to the jury the plaintiff in error took exception. The patent was entitled as being for improvements in machinery for stretching, drying, and finishing woven fabrics, and the object of the invention was to clear out the starch from between the meshes of such woven fabrics or melins, whilst undergoing the process of stretching, drying, and finishing, by means of machinery, which gave to the same on which the starch

was stretched a diagonal motion; this motion had, previously to the invention of the patentee (the plaintiff below), been produced by manual labour, and the patent was consequently for the machinery by which this motion was communicated to the old invention. The exception to the running up of the Lord Chief Justice was, that his lordship ought to have directed the jury that the specification was not by its terms confined to that portion of the entire machine which was new, and that it was bad for not distinguishing the new from the old. Several other points were taken in the course of the argument, which it would be useless to report at length, because the Court gave judgment upon the form of the exceptions as disclosed upon the record. They thought that it did not sufficiently appear what the direction of the learned judge really was, and that no misdirection being set forth in the special case on which the Court was called upon to give judgment, the judgment of the Court below must be affirmed. *Webster for the plaintiff in Error. Sir T. Wilde for the defendant in Error.*

Judgment affirmed.

Thursday, June 18.

ERROR FROM THE COURT OF EXCHEQUER.

The Court this day delivered judgment in the case of *Woodroffe v. Doe dem. Daniel*, which will be reported in a very early number of the LAW TIMES. The judgment of the Court of Exchequer was affirmed as to one moiety of the estate for which the ejectment had been brought, and as to the other moiety was reversed.

THOMAS P. HUDSON.—*Watson, Q.C. for the defendant in Error. Martin, Q.C. in reply. Cur. adv. vult.*

Friday, June 19.

LEDSAW v. RUSSELL.—*Sir F. Kelly for the plaintiff in Error. M. Smith, for the defendant in Error.*

Cur. adv. vult.

CROWN CASES RESERVED.

Saturday, April 25.

(Before all the Judges except ALDERSON, B., COLERIDGE, J., MAULE, J., & WIGHTMAN, J.)

Rex v. ELIZABETH JONES.

Larceny of a post letter.—Intercepting a post letter, and burning it.

A servant about to quit the service of her mistress applied to another person for a situation, and was promised an engagement if the answer of her former mistress to a letter inquiring as to her character should be satisfactory. That letter was written and posted; but the servant, having been in the mean time dismissed by her former mistress, and told that she would not give her a character, went to the post-office, and applied for her mistress's letters, which were given to her. She then took from the rest the letter containing the inquiry as to her character, and burnt it. The rest she sent to her mistress. Upon an indictment for stealing a post letter, held that she was properly convicted.

The prisoner was indicted before the Lord Chief Baron, at the last assizes for the county of Hereford, for stealing a post letter, and was convicted upon her own confession, subject to the opinion of the judges upon the following case:—

The prisoner, Elizabeth Jones, pleaded guilty to an indictment under 1 Viet. c. 36, s. 28, for stealing, at Ross, from an officer of the post-office, a post letter, the property of her Majesty's Postmaster-General.

The prisoner had been cook in the employ of Mrs. Garbett, of Upton Bishop, whose service she was about to leave, having herself given notice to do so, and was in treaty with a Mrs. Dangerfield, of Cheltenham, for a similar situation. Mrs. Dangerfield had consented to employ her, if a satisfactory answer from Mrs. Garbett should be returned to a letter to be written for the purpose of making inquiries respecting her character; this letter, the subject of the present indictment, was written by Mrs. Dangerfield, directed to Mrs. Garbett, and posted at Cheltenham, was from thence duly forwarded to the post-office at Ross.

Mrs. Garbett having found fault with the prisoner for allowing the friend of another servant to breakfast in the kitchen without her leave, discharged her from her service, and told her that a character would not be given to her. The day after her dismissal she went to the post-office at Ross, and there applied to the clerk on duty for the letter from Cheltenham, addressed to Mrs. Garbett, stating that she was a servant in Mrs. Garbett's employ, and that Mrs. Garbett expected a letter from Cheltenham that morning, which she was to take; but upon being informed that the one letter by itself could not be given, she first took from the office all the letters for Mr. and Mrs. Garbett, including that written by Mrs. Dangerfield, and then selected the one which was the subject of the present indictment, and burnt it, but delivered the others to the person who was in the habit of conveying the letters from the Ross post-office to the inhabitants of Upton Bishop, and they reached Mr. and Mrs. Garbett in safety.

The question for the opinion of the Judges is, whether the taking and destroying of the letter under these circumstances amounted to larceny.

Huddleston, for the prisoner.—This is a conviction upon an indictment under the 28th section of 7 Wm. 4 and 1 Viet. c. 36; and to support it, all the ingredients of a larceny at common law must appear; but here there is a total absence of one material ingredient, viz. the *lucrum causid*. All the definitions of larceny, implicitly or expressly, shew that the taking, to be

felonious, must be *animo furandi* and *lucri causid*. (4 Blacks. Com. 229; 2 East's P. C. c. 16, s. 2; and per Grose, J. in *R. v. Hammond*, 2 Leach, 1089.) It is not contended that the *lucrum*, as here used, means only pecuniary gain; it is satisfied by proof of any advantage which may be measured by a pecuniary amount; and its meaning is well illustrated by the sentence in Terence—"Quid mihi *lucri* curi te fallere?" Some decisions have certainly carried the meaning of that word very far; as in the case of a servant stealing his master's corn to give to his master's horses; but that is an extent which the criminal law commissioners have designated as ridiculous. *R. v. Cabbage* (Russ. & Ry. 292) does not support the marginal note, which states that it is not necessary that the taking should be *lucri causid*; for in that case there was the greatest advantage to one of the prisoners. In *R. v. Morfit* (Russ. & Ry. 307), *R. v. Handley* (Car. & M. 547), *R. v. Gruncell* (9 Car. & P. 365), *Re Jacklin* (1 New S. C. 208, 13 L. J. N. S. M. C. 139), *R. v. Richards* (1 Car. & K. 529), *R. v. Bligh-ton* (Dickenson's Q. S. 202, 4th ed.), although an extended meaning was given to the words *lucri causid*, still it was held to be a necessary ingredient in the offence. Now here there was no gain or advantage to the prisoner by intercepting and destroying the letter; it was a letter which she herself had put in motion; and her obtaining a situation did not depend upon it. It would have been a different thing if she had intercepted an answer, which she believed to be unsatisfactory. Here, she goes, as it were, to take her own letter; for Mrs. Dangerfield was only the agent of the prisoner for the purpose of making inquiries as to her character. Suppose she had written the letter herself, the stopping it might be a fraud upon the post-office, but would it be a larceny? *R. v. Godfrey* (8 Car. & P. 563) is an authority for saying that it would not. Although the post-office considers all letters in the course of transmission through the post the property of the Postmaster-General, still the prisoner might well have considered this letter as her own; and if so, she was not guilty of a larceny; and this quite independently of the strict question of the law, whether the property of a letter is in the sender or addressee. Lastly, this was a false pretence, and not a larceny, because by the delivery of the letter to the prisoner the property was parted with.

Bros. for the Crown.—It is admitted that this offence must contain all the ingredients of larceny at common law, and here all that is necessary appears. There can be no question as to the property, because the Act of Parliament (sec. 40) expressly provides that the property may be laid in the Postmaster-General; and the case, therefore, is, that the prisoner has taken the chattel of another by means of a fraud; which, if done *animo furandi*, is larceny. [POLLOCK, C.B.—Suppose the prisoner had seen a letter lying on a table, and had applied a lighted paper to it, would it have been larceny? There would have been no asportation then. [POLLOCK, C.B.—Then if burning it would not be a larceny, is the taking of it for the purpose of burning it a larceny? The question is, whether it is taken *animo furandi*; and whether a person can be said to convert a chattel to his own use by burning it, as he certainly may in some cases. The main argument on the other side is, that there is no evidence that the taking was *lucri causid*; but those words are not to be found in the original definition of larceny. (3 Inst. 107, citing the Mirror; Bracton, Lib. iii. c. 32, p. 159; 1 Hale, 503; 1 Hawk. P. C. c. 33.) They are first introduced into the definition of larceny by Blackstone (4 Com. 229), who borrows them from the civil law; but at all events there is no authority for saying that the word *lucrum* means an advantage which can be measured by a pecuniary amount. In *R. v. Cabbage* (Russ. & Ry. 292), the advantage was prevention of evidence by destroying a horse, which clearly could not be measured by money. Here the object was to stop an inquiry into the prisoner's character, the reply to which would have been prejudicial to her. *R. v. Morfit* (Russ. & Ry. 307) is also, for the same reason, an authority in support of this conviction. In *R. v. Richards* (1 Car. & K. 529), Tindal, C. J. left it to the jury to say "whether the prisoner had put an iron axle into a furnace with a felonious intent to convert it to a purpose for his own profit; for, if he did so, it was a larceny;" although the iron would go back to the master's in another form; and the only advantage which the prisoner would get, would be id. for the extra weight drawn out of the furnace, according to the mode adopted of paying for the work. *R. v. Godfrey* (8 Car. & P. 563) is a very different case: it arose out of an election squabble; and all that the learned judge said was, that if a letter were opened out of idle curiosity, it would not be a felony.

Huddleston.—The definition in the Mirror contains the word "*egregius*," which is equivalent to the "*lucrum*" of the civil law. Lambard, in his "*Elementary*," gives a similar definition; and all the cases which have been cited shew that some advantage to be gained is one of the ingredients of larceny. Then here there is no evidence of any sort of advantage; and as to the property in the letter, the Act only provides that it may be laid in the Postmaster-General, to avoid the difficulty of laying it either in the sender

or addressee; it does not in fact alter the property; for the Postmaster-General is only the *locum tenens* of the real owner. The last point, that, at all events, the Postmaster-General had parted with the property, and not merely with the possession of the letter, and that, therefore, the conduct of the prisoner was a false pretence, and not a larceny, has received no answer.

Cur. adv. vult.

The learned judges afterwards announced to consider the case, and held that the taking and destroying of the letter, under the circumstances stated, amounted to larceny; and that, therefore, the conviction was right.

Conviction sustained.

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

Wednesday, June 24.

(Before Mr. Commissioner FANE.)

Re Wm. HURNELL.

Assignments by traders.

A trader who assigns his property after service of writ will be deemed to have been guilty of fraudulent preference as against the creditor for whose debt such action was brought. It is his duty to file a declaration of insolvency.

The bankrupt had applied in August last for his certificate, but was opposed by Mr. Pain, on behalf of the creditors, on the ground that, after having been served with writs for various debts, he had assigned some property to his own foreman, and permitted his brother-in-law to take in execution all his other property. Judgment was deferred, but at the urgent request of the bankrupt it was this day given.

His Honour went very minutely into the facts of the case, stating that he should at all events have postponed the certificate for three years, because the bankrupt, after having been served with writs at the suit of creditors, had assigned his property in Leadenhall-street to his own foreman, and had permitted his brother-in-law to take in execution all his property in Windmill-street, and finally refused the certificate altogether, on the ground that the bankrupt had concealed about 150*l*. the proceeds of his furniture. His Honour added—I have often stated, and I shall continue to repeat it, until the public mind becomes familiar with the principle, that I shall always consider the date of the first writ served upon a person who afterwards becomes a bankrupt, without having paid the creditor who sued him, as the very latest period at which he must be deemed to have known that bankruptcy was approaching; and I shall always consider every act done, or omitted to be done by him after that date, tending directly or indirectly to the enabling of one or more of his creditors to get the bulk of his property, to the prejudice of the general body, as a serious act of commercial delinquency, to be punished by a postponement of the certificate, according to the circumstances of the case. It often happens that where property has been snatched from the general body of creditors by a seizure under execution, at the instance of one creditor, the bankrupt attempts to excuse himself on the ground that he could not prevent the seizure. I answer, that a trader can prevent such preference, by filing a declaration of insolvency, and it is his duty to do so. If he chooses not to perform that duty, he must be punished.

Dist Prims.

COURT OF EXCHEQUER.

Wednesday, June 17.

(Before Sir F. POLLOCK, C.B.)

The ATTORNEY-GENERAL v. BAILEY.

Excise information—Illicit Distillery—License—Sale and use of spirits—Construction of 6 Geo. 4, c. 80, and 6 Geo. 4, c. 81.

A person distilling spirits for use on his own premises in the way of his trade, is equally liable to the duties and penalties imposed by the excise laws as if he distilled for sale.

This was an information at the suit of the Attorney-General against the defendant for penalties under the Excise Laws. The stat. 6 Geo. 4, c. 80, s. 26, enacts that if any person shall make or manufacture, deal in, retail, or sell any goods or commodities thereafter mentioned for the making, or manufacturing, or dealing in, retailing or selling of such goods or commodities, a license is required by the Act. Without taking out such license as is in that behalf required, he, she, or they shall, for every such offence, respectively forfeit and lose the respective penalty thereupon imposed as thereafter mentioned, that is to say, "Every distiller or maker of low wines or spirits, and every rectifier or compounder of spirits, so offending respectively, shall respectively forfeit and lose 500*l*." The stat. 6 Geo. 4, c. 80, s. 30, enacts, "That entry shall be made of the name and abode of the distiller and the place where the premises intended to be entered in, or shall be situate, and a true declaration given of the vessels and utensils erected and intended to be used therein." The 39th section then provides

for the power to enter premises, and where any private or concealed still, back, or other vessel, for making worts or wash, or for making or distilling low wines and spirits, or any privately made spirits or low wines, or any wash or other materials preparing for distillation, are set up or kept, and to seize the same, and enacts "That, in case they shall not, within ten days next after such seizure, be claimed by the true and lawful owner thereof, then the said stills, backs, and other vessels, spirits, low wines, wash, and other material for distillation, shall be absolutely forfeited, and the premises of any such private or concealed still, back, or other vessel, or the person in whose custody the same shall be found, whether such seizure be claimed or not, shall forfeit and lose for every place in which such private still, back, or other vessel shall be so found, and also for every such still, back, and vessel found therein, the sum of 200*l*." The information contained counts applicable to these provisions, and in support thereof,

Sir F. Kelly, S.G. (*Wilde* with him), proved that on the 16th of July last certain excise officers repaired to the premises of the defendant, situate in Globe-road, Mile-end, where he professed to carry on the occupation of purifier of oils and manufacturer of size under the title of "*Carter and Sims*," and there discovered various vessels and utensils, all of which were used in the process of distillation, while, in various other vessels and vats, was a quantity of spirits in various stages of manufacture. One of the men, engaged by the defendant as his foreman, proved that spirits of nitre and ammonia had been continually manufactured on the premises, and that the plain spirit had also been made there, some of which had been supplied in large quantities to the defendant's customers.

At the close of the case for the Crown, which abundantly established the connection of the defendant with the premises and vessels in question, either as part or sole owner,

Martin, Q.C. (with whom were *Dowdeswell* and *Duncan*), on behalf of the defendant, submitted that he was not liable to the penalties sought to be recovered in this information. He was prepared to shew to, and hoped to satisfy, the Chief Baron that the defendant had not in any degree infringed the statute 6 Geo. 4, c. 80 & 81, for that his distillery was quite legal. The statutes in which the information was grounded were meant to apply solely to distillers and makers of low wines and spirits for sale, and did not touch those who distilled wines and spirits on their own premises for the purpose of making some other manufacture in which they dealt. The witnesses for the Crown had admitted that the great bulk of the spirit manufactured at this place was used in the making of sal volatile and sweet spirits of nitre; and, on the true construction of these Acts, the defendant was prepared to shew that he was not liable to these penalties. This was done by many of the great wholesale chemists, and would be equally liable with the defendant.

Sir F. POLLOCK, C.B.—This is a subject which I have considered, and on which I have arrived long ago at a deliberate opinion. It would be waste of time, therefore, to enter upon any argument in support of the position taken by the defendant.

Martin hinted that his lordship would allow him to state the points on which the objection was founded.

Sir F. Kelly, S.G. apprehended that no doubt could exist on the subject; the 11th section of 6 Geo. 4, c. 80, was decisive; for it is there enacted, that "every person making or keeping any wash prepared or fit for distilling, or making low wines or spirits, or any low wines or ferments, and having in his, her, or their custody or use any still or stills, shall be deemed and taken to be, and is hereby declared to be, a distiller, liable to the several duties of excise, and to the several penalties, fines, and forfeitures imposed by this Act relating to distillers."

Sir F. POLLOCK, C.B.—There can be no question, as it appears to me, on the subject. It is impossible that I should have been so long engaged in considering these statutes as an advocate when opposing the Crown, and afterwards when, on two occasions, I held the office of Attorney-General, and recently, since I have occupied a seat on this bench, without arriving in my own mind at a conclusion satisfactory to myself, on this very subject, and I must say that I entertain no doubt whatever that the defendant is within these Acts, whether he makes spirits to sell, or whether he makes them to use in some other trade of his own. In either case he is a distiller, and as such is liable to the control of these statutes. The same thing had been done by an eminent blacking maker, who, being accustomed to use a quantity of vinegar in his trade, for which, when he bought it he had to pay a penny duty, thought he would save that duty by making vinegar on his own premises. He, however, was obliged to pay the duty on it as a distiller, and I cannot for a moment sanction any misconception in the mind of the public as to the state of the law on the subject, or rather of my opinion on that law. I entertain not the slightest hesitation in saying that the defendant is liable under these circumstances. It would be a monstrous thing to have it supposed in this country that a man could set up as a distiller on

his own account, and so defraud the revenue of the duties chargeable on the materials used by him in his trade, and on which he would pay those duties if he had bought them. Such a state of things would be most dangerous, and the proposition was a most abused one, in my opinion. For this reason it was that I am unwilling to listen to any argument on the matter. At the same time I am ready, for I am bound to be so if the argument be pressed; but as I am willing to reserve the point for solemn discussion by the Court next Term, I think any argument now would be wasted, as I shall hold as I have expressed myself, and so direct the jury on the state of the law.

The learned Chief Baron then directed the jury in consonance with this opinion so expressed, and they found a verdict for the Crown.

Thursday, June 28.

(Before POLLOCK, C. B. and a Special Jury.)

BANKS v. GOODE.

Liabilities of Provisional Committees.—Advertising agents.

The question for the jury is, whether the consent to become a member of the committee was merely intended to express approval of the project, or was it intended to express, not only approval of the line, but willingness to incur the preliminary expenses? If the jury be of opinion that the purpose, in putting down the name, was only to express approval, and not to share the expenses, the person who did so with the former view is not liable for the payment of them.

The rule laid down by Parke, B. in Low v. Wilson, as to the non-liability of members of the Provisional Committee, where there is a Managing Committee, is correct.

Knowles and Wiles, for the plaintiff; and Crowder and Rawlinson, for the defendant.

This was an action to recover the sum of 560*l*. brought by the plaintiff, an advertising agent, against the defendant, a member of the provisional committee of the Salisbury and Lymington Junction Railway. The leading features in this case appeared to be, that the company had been projected in the month of September last by a gentleman at the bar of the name of H. J. Mellor, who had asked the firm of Weall and Berkeley to act as solicitors to the company, stating that the preliminary expenses would not be more than 50*l*. or 60*l*. A prospectus was accordingly prepared, printed, and issued, prior to which some advertisements announcing the company were inserted in the newspapers. Eventually the prospectus was published, as in the case of all other railways, in the morning and evening journals of London, and in some of the country papers. These insertions were, in the majority of instances, the result of the exertion of the plaintiff, and it was for the money paid for them that he now brought his action. Mr. Mellor, however, it appeared, had a co-promoter or projector in the person of a Mr. Brown, of Lymington, who was appointed what is denominated the "Local Agent." At first there was not any provisional committee published, but afterwards, when a few gentlemen had consented to act in that capacity, their names were put into the papers, and, as the list swelled in numbers, the alteration was made in the advertisements and prospectus by the addition of the new names. The defendant, in a conversation with Mr. Downes, expressed himself willing to become a member of the provisional committee; and, accordingly, in a few days a prospectus was sent to him, wherein his name was printed as a member of that committee. There was to have been a meeting of the committee on the 28th of October, but some of that body considering that it would be better to have a preliminary survey made prior to a meeting taking place, that event did not come to pass until the 7th of November. At this meeting Colonel Sloane acted as chairman, and the report of Mr. Braithwaite upon the survey was read. The orders for the advertisements were given oftentimes, if not upon most occasions, in the presence of several of the committee-men. At the period when the first advertisements were inserted, the company was composed of Mr. Mellor and his own firm (Weall and Berkeley). This was on the 26th of September, but in a few days afterwards they received several applications and offers of gentlemen to become members of the provisional committee. To most of the committee-men his firm gave a letter of indemnity against all liability for expenses, and his firm conceiving the course necessary by the Act of Parliament, had registered a copy of the circular containing the indemnity. This was done on the 16th of October. There was not any letter of indemnity sent to the defendant. At the time of Mr. Mellor asking his firm to act as solicitors to the company, he said the preliminary expenses would not be more than about 50*l*., and they accordingly undertook the concern, and paid all the preliminary expenses out of their own pockets, just as they should have done in the case of any other professional business. They gave an indemnity to Captain Rooke, but did not (as was understood) give one to Mr. Willis. The solicitors to the company were the attorneys for the plaintiff in the present case. The plaintiff had brought

about twelve actions against as many different committeemen.

The LORD CHIEF BARON, in summing up, said that he should leave to the jury the same questions which he had left in the case of *Reynell v. Lewis*—namely, what was the effect of the defendant having consented to become a member of the provisional committee—which was a question entirely for the jury—and then whether that consent authorized any other person, the other members of the committee, the solicitors, or the secretary, to pledge the name of the defendant for the payment of certain reasonable and necessary expenses; and if so, then whether, in consequence of the appearance of certain names in the list of the committee, the plaintiff had been induced to take them as security for payment, and thereupon to furnish the outlay the reimbursement of which he now sought. This case presented topics for strong remarks, which remarks it was not his duty to withhold. This was one of those companies pretending to be a railway company which had never had any existence at all, and it appeared to him that the practice of getting provisional committees together by asking certain persons to consent to become as it were a few committeemen, to give a colour to the concern, was a system which was open to very strong observations. Now, he could not in any way understand how gentlemen could consent to become members of a provisional or any other committee under an indemnity from the persons who were, in truth, getting it up for the purpose of holding them out to the world as *bond fide* committeemen, when, at the same time, they were neither more nor less than, by that act, the mere instruments of the very solicitors by whose persuasion they had been induced to join the committee. When a number of persons were got together in these companies under the indemnity of the solicitors, he must confess that it appeared to him to be a delusion, not only upon the public and the world at large, but upon all other parties who might become connected with them, or with a company upon other and different terms. Mr. Downes had said that at the time he was speaking to the defendant upon the subject of the company he had shewn that gentleman his letter of indemnity. If that were so, it was somewhat odd if the defendant had not said that he should have no objection to become a committeeman upon the same terms. However that had been, the fact in either case could make no difference in so far as the plaintiff was concerned, if he was not aware of the existence of the indemnity; and that he was not had been proved by the fact of his having brought an action against Downes in the first instance. Now, although Downes had received this indemnity, he was liable to the plaintiff, and then his own remedy upon the indemnity was against the persons from whom he had received it—namely, Messrs. Weall and Berkeley. He must in the end have looked to the parties from whom he had received it—the solicitors of the company. If advertising in the public newspapers were part of the necessary expenditure for hatching the eggs of a railway company so as to give it life, and to make it fit to be brought into the world, and then to maintain it in life—who, let him ask, was to pay the expense of that advertising but the committee? or, were they merely an ornamental part of the concern? The question upon that part of the case then was, did the consent to become a member of the committee merely express the approval of the party so consenting of the project, or did it express not only his approval of the line, but his willingness to incur the preliminary expenses—not the expenses which the shareholders' money would be applied to when they supplied and poured in the capital for the construction of the railway, but the preliminary expenses? If, then, the jury were of opinion that the putting his name down as a committeeman had nothing to do with the preliminary expenses, in that case the person who did that in their view had nothing to do with the payment of them; but if they thought that at the time he had done so he had intended to share in the reasonable expenses of bringing out the company into full operation in the character of his initiated partnership as it were—this preliminary association—they would find a verdict against him. Now, the jury must consider what a man undertook when he became a member of a provisional committee. As far as a creditor was concerned, he had nothing to do with any private arrangement between the parties; all he had to do with was the prospectus. That was his guide in the matter. The case of *Low v. Wilson*, which had been mentioned as decided by his learned brother Parke, was different from this, inasmuch as in that case there had been a "managing" as well as a "provisional" committee, whilst here the former had not had any existence. As he had perused the report in the ordinary channel of public information his opinion had gone along with that expressed from the bench by his learned brother. But that case was quite different from the one now before the Court, because there there had been a committee of management, which was not the case here. Then, as to the next question for the consideration of the jury; when a man was once a member of a provisional committee, whether he was sent to by the company once or twenty

times, it did not alter his position in the least. The letter of the 16th October, containing the prospectus, in which his name was published as a member of the committee, was evidence sufficient, even if there were no other, of his knowledge that his name had been published. But there was another fact to prove that knowledge. On the 28th of October the defendant was summoned to attend a meeting, when he wrote up to say that he would come up if the money was sent down to him to pay his expenses. The jury must consider whether the plaintiff would have been likely to have laid out upwards of 500*l.* in a matter of this sort for a speculating attorney, or whether he had not taken that step considering that the names of the committee were pledged as the security for his repayment. If the plaintiff had at that time known one half of what they all were aware of now in respect of railway companies, he was inclined to think that he would not have laid out one quarter of the sum he claimed. Even taking it for granted that Mr. Weall, the solicitor, had been surrounded by his indemnified satellites, still it had been proved that the plaintiff had received some of his orders from that gentleman when several of them were present, he receiving the orders under the impression that they were given him in the presence of *bond fide* committeemen. The jury, however, would take all the circumstances into consideration, and find in accordance with the opinion they might form thereon.

Verdict for the defendant.

COURT OF COMMON PLEAS.

Monday, June 22.

(Before Mr. Justice ERLE.)

PARRETT v. BLUNT and CORNFOT.

Liabilities of Provisional Committee-men.

The solicitor to a projected Railway Company having ordered the insertion of various advertisements without the order of the committee, can the members of the committee be considered to have authorised their names to be pledged to the plaintiff for payment of such advertisements—quære?

In an action against a member of a provisional committee for debts incurred on behalf of the projected Company, it must be proved,

- 1st. That defendant had been a member of such committee at the time of the contracting of the debt.
- 2nd. That he had held himself out to the plaintiff as authorising the contraction thereof, and pledged his name to the plaintiff for the amount.
- 3rd. That defendant knew that the committee were incurring expenses on behalf of the projected railway upon his credit, and that he consented to have his name so used.
- 4th. That the expenses so incurred were reasonable and usual.

The plaintiff was an advertising agent. The action was brought to recover from the defendants, as members of the provisional committee of the Jamaica Southern, Eastern, and Northern Railway, the sum of 64*l.* 6*s.* 6*d.* for advertising the scheme from the 9th to the 25th of September, 1845, in the *Times* and other newspapers.

G. Jones, Serjt. and Wordsworth for the plaintiff. Humphrey and Wiles, for the defendant.

The company in question was projected during the railway mania in August, 1845, the proposed capital being 1,500,000*l.* in 30,000 shares of 50*l.* and the names of both the defendants appeared in the prospectus as provisional committee-men.

The secretary to the proposed company and clerk in their offices, Mr. Orlando Aguilar, proved that defendant Blunt frequently attended at the office as a member of the provisional committee, and occasionally acted as chairman of the managing committee. He had also seen the other defendant attend at the company's offices on more than one occasion, and had shewn him a prospectus, with his name in it as a provisional committee-man; but he (Cornfoot) had never attended any meetings of the committee. Mr. Preston, the solicitor to the company, had ordered the insertion of the advertisements, and the newspapers containing them were each day laid on the office-table. In his cross-examination this witness stated that he and his brother, and two persons named Campbell and Stock, had started the company, and he and his brother, on the 25th of September proposed to give up their right as projectors of the company, for the sum of 15,000*l.* and 400 shares.

The attendance of Blunt, at two meetings of the provisional committee, was proved from the minute-book. There was nothing, however, in the minutes shewing any express authority from the committee to insert the advertisements.

A letter from Cornfoot of the 1st of December, was also read in answer to an application from the plaintiff, stating that he had retired from the company from the first meeting. There was no minute shewing that Cornfoot had ever attended any of the meetings. The amount of the debt was not disputed.

Mr. Justice ERLE, in summing up, said the first question was, *aye or no*, had the defendants authorised their names to be pledged to the plaintiff for the payment of the price of these advertisements? No express order had been proved, emanating from the

provisional committee, and the only evidence to go to the jury was that the attorney to the company had given the order for the advertisements. This was very slight evidence. If the jury should be of opinion that the provisional committee had not in any way given authority for the insertion of their advertisements, then they must find for the defendants. Assuming, however, that such an authority had been given, it became then a question whether the defendants had both been members of the provisional committee either for a part or for the whole of the time, between the 9th and the 25th of September, and had held themselves out to the plaintiff as authorising the insertion of the advertisements. The jury must also determine whether both the defendants knew that the committee were incurring expenses on behalf of the projected railway on credit, and also whether the expenses that had been incurred were reasonable and usual. The defendants might have given their consent to their liability, not supposing that any large debts would be incurred. There was nothing in the prospectus to show that any such would be incurred, and up to the 25th of September there did not appear in the minute book a single resolution whereby the committee could be held liable for any debt. If the jury thought that Cornfoot might well have consented to have his name used, without reason to know what expenses would be incurred on his credit, they ought to find for the defendants. If they were of opinion in the affirmative, then they would consider whether the expenses incurred had been reasonable and usual; if so, they would find for the plaintiff.

The jury found a verdict for the plaintiff for the full amount sought to be recovered, leave being reserved to the defendants to move to enter a nonsuit, on the ground that there was no sufficient evidence to maintain the action.

Tuesday, June 23.

(Before Mr. Justice ERLE.)

WONTNEE v. SHAPIER.

Right of allottees to recover back deposits.

Where a managing committee of a railway had advertised that all the shares were allotted, when in fact they had allotted only a small proportion of them, whereby the plaintiff was induced to pay deposits:—Held, that he might recover back the deposits so paid.

And even where defendant had executed the Parliamentary deed and subscribers' agreement under such a misstatement of the facts: held, that if the jury should be of opinion that he had executed such deed on the same understanding with which he had paid the money, such deed was void as against the plaintiff, and no bar to the action.

Knowles, Q. C. Byles, Serjt. and Joseph Brown, for the plaintiff.

The Solicitor-General, Doobing, Serjt. and Fitzherbert, for the defendant.

Knowles opened the case. The plaintiff is a solicitor, and the defendant a man of large property, residing in Sussex-gardens, Hyde-park, and chairman of the allotment committee of the "Direct London and Exeter Railway," for which object a company was formed on the 24th of May last year, and provisionally registered. The prospectus put forth by the company stated its object to be to form a direct line of railway from London to Exeter, with an extension line to Falmouth and Penzance; capital 3,000,000*l.* in 120,000 shares of 25*l.*; deposit 11*7s.* 6*d.* per share. Then followed the names of a number of noblemen and gentlemen of high respectability as directors and committee of management. The plaintiff applied for two allotments of shares of thirty each, and on the 15th of October last an allotment of the shares was made by the allotment committee, of which the defendant was chairman, and the defendant had allotted to him the shares for which he had applied. Two days afterwards, on the 15th, and subsequently on the 17th of October, advertisements were inserted in the *Times* newspaper as follows:—

"The Direct London and Exeter Railway.—The managing committee of this company hereby give notice, that the allotment of shares is completed, and that the letters will be issued to the public, if possible, this day."

"E. S. BLUNDELL, Honorary Secretary."

"October 13, 1845."

There was then a further advertisement, stating that the committee had no doubt of being able to comply with the standing orders, and announcing when a further "call" per share would be demanded. On the 17th of October the following advertisement was inserted in the *Times*:—

"The Direct London and Exeter Railway, with extension to Penzance.—The committee of management hereby give notice that they have completed the allotment of shares, and that the usual letters are this day issued. In the arduous duty of deciding on the claims, unprecedented, it is believed, in their number and respectability, the committee have been obliged to give a preference to applicants locally interested, or likely to bring to bear for the company a large share of legitimate influence. The numerous persons with undoubted claims on the score of wealth and social

standing, whose applications have either been passed over or cut down, are requested to accept this reason as the committee's apology."

The plaintiff believing from this statement that a full and fair allotment of the shares announced in the prospectus had been made, paid his deposit of 82*l.* 10*s.* on the shares allotted to him on the 21st of October into the bank of Messrs. Currie and Co, the company's bankers, and subsequently, on the 4th of November, executed the parliamentary contract and subscribers' agreement, and received scrip signed by two directors, the defendant and a Mr. Spicer. The plaintiff heard nothing more of the company's affairs till the 15th of December, when a public meeting of the shareholders was called by advertisement at the London Tavern, at which Sir Bruce Chichester presided as chairman, when it appeared that instead of the whole 120,000 shares having been allotted, constituting the capital of the company, only 58,000 shares had been allotted, the committee having thus retained more than half the shares for their own use. At this time the shares were at a premium, and more than 400,000 shares had been applied for. At the meeting, which was rather a stormy one, a report and resolutions were agreed to, expressing the deep regret of the committee that only 58,000 shares had been allotted, which had injured the interests of the company, and, together with the panic, the consequence had been, that out of the 58,000 shares allotted, 35,460 then remained unpaid; and it was resolved, that the committee be authorized to issue shares to the extent required for the deposit in Parliament; if the amount were not subscribed, the whole sum to be returned to the subscribers without reduction. The deposits then paid up were 82,395*l.* out of which sum 4,344*l.* had been paid for parliamentary expenses, 14,050*l.* for engineering and surveying, 8,791*l.* for law expenses, 2,689*l.* for advertising; then there were various miscellaneous expenses, and "Dr. Blundell not accounted for, 512*l.* 10*s.*;" that gentleman, the honorary secretary, having left his post in debt to the company this amount, and taken with him the papers of the company. The total expenses amounted to upwards of 31,900*l.* leaving a balance in the hands of the company of 492*l.* The reading of this account gave great dissatisfaction to the meeting, and it appeared on inquiry that out of sixty-three provisional committeemen who had each agreed to take 150 shares, only nineteen had paid upon their shares. The plaintiff on that occasion moved an amendment to the effect, "that the committee had appropriated more than half the shares for their own benefit, and had procured the subscribers' money on the faith of an advertisement stating that a full and fair allotment had been made, and on this ground the whole of the deposits ought to be returned, and the committee ought to bear the expense." Great confusion took place, and the amendment was never put. A committee of management of three was appointed, who had since let the affairs of the company drop through, and they were unable to go before Parliament, and the scheme might be said to be virtually abandoned. The plaintiff, therefore, sought to recover the amount of deposit money which he had paid, first, on the ground of failure of consideration on the part of the projectors of the railway; secondly, on the ground of fraud; and third, because the directors had no right to incur expenses at the cost of the shareholders until the amount of the stipulated capital was subscribed.

The facts having been proved,

The *Solicitor-General* now submitted that the plaintiff must be nonsuited, on the ground that he had entered into his contract before the advertisement appeared, and before any imputation of fraud could exist; and, as a partner and shareholder in the company, he was entitled to a share of the effects, and to any benefit which might accrue to him as the holder of the scrip. He could not, therefore, be said to have paid his money without consideration, the company being still in existence, and he having authorized the trustees, by the partnership deed which he had signed, to go before Parliament next session for an act.

ERLE, J. said that the plaintiff's contract was, that he should have allotted to him a certain portion of 120,000 shares, which would produce a capital of 3,000,000*l.* to form a railway estimated to cost as much; that did not mean that he should have allotted to him a certain portion of 58,000*l.* and take his chance of the remaining shares being allotted to enable the performance of the contract. The case of *Pitchford v. Davis*, 5 Meesom and Welsby's Reports, decided it to be a breach of contract on the part of directors not to allot the number of shares, and raise the amount of capital proposed.

The *Solicitor-General* said the plaintiff's contract was not that the allotment should go for nothing, unless the whole number of shares were purchased. The contract was merely, that if so many shares were allotted to him, he would pay the deposit on each.

ERLE, J. thought the case ought to go to the jury. There was evidence which ought to be left to them whether the plaintiff had a right to recover back the money he had paid on a consideration tainted with

fraud. The plaintiff paid the money on a consideration that 60 shares were allotted to him as parcel of 120,000 shares; and it seemed to him (Erie, J.) material that every person should understand how many shares were allotted, in order that he might know how many coadjutors he had in the undertaking, and how far the requisite capital was subscribed.

The Solicitor-General then addressed the jury at great length for the defendant.—It was unfortunate that, owing to the misconduct of Dr. Blundell, and to the panic, the undertaking had not proceeded as was anticipated, supported as it was by many names of respectability. If the law were as laid down in *Pitchford v. Davis*, it was high time that it should be altered; and if this case were determined on that authority, it would be necessary to resort to the Court of the last resort. He should humbly ask the learned judge to lay down the law on the subject, in order that if he differed from him the point might be satisfactorily settled. He contended that the advertisement did no damage to the plaintiff, for the less the number of shares in the market, the more valuable they would be, and if he intended to sell his shares he would get the greater profit, if not it would have no effect.

He called Mr. White, who proved the execution of the Parliamentary contract by the plaintiff, and put in copies of the deeds, which were taken as read, and which authorized the trustees and directors to proceed to Parliament to obtain a bill next session.

Knowles, Q.C. having replied,

ERIE, J. in summing up, said, there were two grounds on which the plaintiff claimed a verdict. First, the fact that Wontner had contracted for sixty shares, parcel of 120,000, and that the statement that all these shares had been allotted, was a material inducement to him to pay his deposit. If the jury were of that opinion, they ought to find their verdict for him on this ground:—Was the advertisement false to the knowledge of the defendant? If they thought it was, and that it was a material inducement to the plaintiff to pay his deposit, and that he would not have paid it had he known the real facts, they would find for the plaintiff. Secondly, did they think that this scheme was an abortive scheme, and at an end? If they thought so, on this ground also they must find for the plaintiff; for it had been determined in the Court of Exchequer that, if a party paid a deposit on an abortive scheme, he had a right to recover back his deposit. And they would also say whether the deed was executed by the plaintiff on the same understanding with which he had paid the money.

The jury, after a short consultation, found a verdict for the plaintiff on both grounds. Damages, 82l. 10s.; and that the plaintiff executed the deed with the same understanding as he had paid the money.

THE LEGISLATOR.

Summary.

THE measure of the Session has become law, and with its birth expires the Government. Of course, in such circumstances, nothing more will be done than necessity compels. No projects of law will proceed beyond their present emergency. The business bills will be rapidly carried through their various stages, and then the Parliament will be prorogued, to give the new Government time to prepare their measures. All the threatened changes in the law may, we presume, be deemed as deferred, if not destroyed, unless the impatience of the landlords should induce the hurrying of the Conveyancing Bill into a law, amid the mob of bills that mark the close of a Session. By the bye, this curious measure has been almost doubled in length in its passage through the committee, by the addition of short forms, applicable to various other kinds of conveyances. The Friendly Societies Bill has been so changed both by Lords and Commons, that scarcely an original feature remains. It is, however, very much improved, and mainly through the instrumentality of Mr. NEISON, who pointed out to the government some radical defects in the measure, as originally framed, and his suggestions were at once adopted.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, June 19.

Clerks of Crown, &c. Ireland—"to provide that the offices of Clerk of the Crown, and Clerk of the Peace in Ireland, shall be held by the same person."

Monday, June 22.

Charitable Trusts—"for procuring accounts of receipt and expenditure by all persons administering charitable trusts in England."

Baths and Washhouses—"for promoting the voluntary establishment, in boroughs and parishes in England and Wales, of public baths and washhouses."

Wednesday, June 24.

New Zealand Loan—"to authorize a loan from the Consolidated Fund to the New Zealand Company."

Thursday, June 25.

Rateable Property, Ireland—"to amend the law relating to the valuation of rateable property in Ireland."

Newfoundland—"to continue certain of the provisions of an Act of the 5 & 6 of Viet. for amending the constitution of the Government of Newfoundland."

Exclusive Privilege of Trading Abolition, Ireland—"for the abolition of the exclusive privilege of trading, or of regulating trades, in cities, towns, or boroughs of Ireland."

BILLS READ A SECOND TIME.

Wednesday, June 24.

Real Property Conveyance
Bankruptcy and Insolvency
Sugar Duties.

Thursday, June 25.

Clerks of the Crown Ireland.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A SECOND TIME.

Friday, June 19.

Larne, Belfast, and Ballymena Railway
Limerick, Ennis, and Killahee Railway
Mountmellick Junction Railway
Templemore and Nenagh Railway.

Monday, June 22.

Archbishop of York's Estate
De Winton's Estate
Newry, Warrenpoint, and Rostrevor Railway.

BILLS READ A THIRD TIME AND PASSED.

Friday, June 19.

Argyll Canal
Banffshire Roads
Caledonian Railway
Eastern Counties
London and Blackwall Railway
Midland Railway
Newcastle and Berwick Railway
" Darlington Junction Railway
Portbury Pier and Railway
Scottish Central Railway
West London
Worcester Gas.

Monday, June 22.

Belfast and County Down Railway
Leicester and Bedford Railway.

Tuesday, June 23.

Airdrie and Coatbridge Waterworks
Ardrossan Municipal Police and Improvement
Stockton Gas
Wakefield, Pontefract, and Goole Railway.

Wednesday, June 24.

Banffshire Roads

Thursday, June 25.

Askew's Estate
Edinburgh and Bathgate Railway
Schoolmasters' Widows' Fund.

SESSIONAL PRINTED PAPERS.

Railway Gauge, Major General Pauley's Report
New South Wales Immigration—Paper
Vagrants—Return
Railway Bills Classification—Twentieth Report of Committee
Bricks—Return
Revenue—Account
Van Diemen's Land—Correspondence
Van Diemen's Land, Convict Discipline—Paper
Keighley Union—Mr. Austin's Report
Sudbury Union—Paper
International Copyright—Convention with Prussia
Bills—Real Property Conveyance
Administration of Justice
Charitable Trusts
Friendly Societies, Lords' Amendments
Ordnance Survey
Clerks of the Crown, &c. (Ireland)
Western Australia
Collisions of Shipping—Returns
Vaccine Institution—Report
Poor Law Commissioners—Paper
Poor Law (Norfolk and Suffolk)—Report from Sir John Walsham
Railway Bills—Return
Postage Convention (France)—Additional Articles
Copper, Tin, Zinc, Lead, and Lead Ore—Accounts
Newcastle Coal Turn Bill—Return
Sugar—Account
Railway Bills Classification—Twenty-first Report of Committee.

Bills in Progress.

CHURCHES.—The following is an outline of the Bill to provide for the erection and repair of Churches in consolidated ecclesiastical districts (just introduced into the House of Commons by Mr. R. Hodgson and Mr. H. Elphinstone). The preamble recites the several Acts for building additional Churches, from 58 Geo. 3, c. 45, to 8 and 9 Viet. c. 70; and then proceeds to enact, "That it is expedient to provide for the erection and repair of Churches and Chapels in consolidated ecclesiastical districts; and that consolidated ecclesiastical districts be considered distinct parishes." Churchwardens or other officers are to be appointed for new parishes.

Clause 3 relates to the rate for building new churches:—"That it shall be lawful for the rate-payers in any such new separate parish (provided always that the consent in writing of the ordinary shall be

first duly obtained), to make a rate for the building of a new church, or for the repairing or for the enlarging any church or chapel now existing, for the use of the inhabitants of such new separate parish: provided always that no such rate shall be valid unless rate-payers occupying at the least three-fourths of the property rated to the relief of the poor in such new separate parish concur in the making such rate; and no such rate shall be valid unless due notice be given of the intention to make such rate for such purpose, by an advertisement published during three successive weeks, in some one newspaper published in the county or counties wherein such parish is situated, signed by the churchwardens, overseers, and ten rate-payers, or where there shall be fewer than ten rate-payers, by rate-payers to the amount of one-fourth of the rates levied for the relief of the poor.

Clause 4 declares that churchwardens may raise money for building new churches by mortgage—provided always, that it shall be covenanted that not less than one-tenth of the sum so borrowed shall be annually paid off, in addition to the interest agreed to be paid for such sum.

Clause 5. Providing sites for New Churches.—That it shall be lawful to erect any such new church or chapel on any glebe land on any part of such new separate parish; and it shall be lawful to take any quantity of such glebe land, not exceeding in the whole two acres, for the purpose of forming a churchyard for the burial of the dead; and the glebe land so taken for the site of such new church, and for such churchyard, shall thereafter be vested in the ordinary for the use of such separate parish; provided always, that such glebe lands shall not be taken unless the ordinary and the clerk in holy orders who may be in the possession of the glebe land shall give their consent thereto in writing.

Clause 6 provides that funds now applicable to repairs of churches may in certain cases be applied for the purposes of this Act.

HOUSE OF COMMONS.

PAUPER LUNATICS ACT.

TUESDAY, June 23.—Sir J. TROLLOPE wished to repeat a question which he had already put to the right hon. gentleman the Secretary of State for the Home Department. It was, whether it was the intention of her Majesty's government to amend the Pauper Lunatics Act during the present session, as regarded the discretion allowed to magistrates in case of applications for the relief of lunatic paupers being made to them.—Sir J. GRAHAM said that in consequence of a doubt that existed, whether it was mandatory or not on magistrates to send pauper lunatics to work-houses, the question was submitted to the law officers of the Crown, who decided that it was mandatory. It was then the intention of the Government to make an alteration in that respect this session.

REGISTRAR OF THE NEW SOUTH WALES COURT.

Mr. HUME begged to ask some of the members of her Majesty's Government, whether any further information had been received from New South Wales, respecting the defalcation of Mr. Manning, the registrar of the court there, and whether the Government had taken any means to repay the creditors on the funds in that court.—The CHANCELLOR of the EXCHEQUER was understood to say that proceedings had been instituted against the sureties of Mr. Manning, and that the amount of their bonds, which had been recovered, would be applied in liquidation of the creditors' claims.

GENERAL RECORD OFFICE.

Mr. C. BULLER, according to notice, moved that a select committee should be appointed to consider the best means of providing a General Record Office for England and Wales. The resolution was not opposed, but a discussion took place on the propriety of submitting to the same committee the consideration of the best means to be adopted for recording the works of the ancient historians of this country. This discussion was entered into by Mr. W. Wynne, Mr. Hume, Mr. Protheroe, Mr. Christie, and the Chancellor of the Exchequer, after which the original motion was carried.

NEW STATUTES

Of the Session 9 Victoria.

(Continued from page 121.)

[In this record of actual Legislation, only the statutes and parts of statutes of peculiar importance to the Profession are given *verbatim*. Of the rest, the title, or a brief analysis only, is preserved here.]

CAP. XIII.

An Act to Indemnify such Persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the Time limited for those purposes respectively until the 25th day of March, 1847.

(May 14, 1846.)

This is the annual Indemnity Act, whose provisions it is unnecessary to repeat.

CAP. XIV.

An Act to continue until the first day of March, 1847, and from thence to the end of the then next Session of Parliament, the several Acts relating to Insolvent Debtors in India.

(May 14, 1846.)

CAP. XV.

An Act for raising the Sum of Eighteen millions, three hundred and eighty thousand, two hundred Pounds, by Exchequer Bills, for the service of the year 1846. (May 14, 1846.)

CAP. XVI.

An Act to authorize the Inclosure of certain Lands, in pursuance of the recommendation of the Inclosure Commissioners for England and Wales.

(May 14, 1846.)

CAP. XVII.

An Act for the Abolition of the exclusive Privilege of trading in Burghs in Scotland.

(May 14, 1846.)

CAP. XVIII.

An Act to amend Two Clerical Errors in an Act of the last Session, for regulating the Labour of Children, Young Persons, and Women, in Print Works.

(June 18, 1846.)

The errors were, that "Fifty" had been once inserted by mistake instead of "Thirty," in referring to the time of attendance at school, and in a proviso the words "young person" were inserted.

CAP. XIX.

An Act to amend an Act of the Second and Third Years of his late Majesty, by providing additional Booths in Polling Places at Elections in Ireland, where the number of Electors whose names shall begin with the same Letter of the Alphabet shall exceed a certain number.

(June 18, 1846.)

CAP. XX.

An Act to amend an Act of the Second Year of her present Majesty for providing for the Custody of certain Moneys paid, in pursuance of the Standing Orders of either House of Parliament, by Subscribers to Works or Undertakings to be effected under the Authority of Parliament.

(June 18, 1846.)

CAP. XXI.

An Act to enable the Right Honourable Henry Viscount Hardinge to receive the full Benefit of an Annuity of 5,000*l.* granted to him by the East-India Company.

(June 18, 1846.)

THE MAGISTRATE.

Summary.

THE Poor Removal Bill, now converted into a Settlement Bill, seems to be slumbering. There is, however, no chance of its becoming law during the present session, unless the new Government should feel itself bound to forward the remaining portions of the scheme of its predecessors, of which the Corn Bill and Tariff were only a part. Fortunately, these questions of settlement, and so forth, are not subjects of party conflict.

EMPLOYMENT OF CONVICTS LEAVING GAOL.—Mr. Benjamin Colchester, of Ipswich, has just published the following suggestion on this important subject:—"I propose that a company shall be formed, and a farm taken to the extent of two or three hundred acres, say 150 acres to begin with, which would cost 1,500*l.* to carry through the first year, which may be raised by 100 shares of 15*l.* each, or 15 shares of 100*l.* each. I prefer the former, as more persons would be interested in it. A careful tenant should have the farm, and take the risk of profit and loss, if desirable, or let it remain the property of the company. If sufficient men and boys are ready to leave the goal, the whole work should be done by them; and perhaps there would be no better plan to begin with than to furnish each person with a suitable dress, and a change of under clothing, should they feel disposed to accept of the offer; but let it be perfectly understood that it shall be entirely at the option of the convict to come or not; but if he do come, to conform strictly to all the rules. Lodging they must find for themselves, boarding at the farm; for breakfast good bread and cheese, and then, at the usual time, a good hot meat dinner, and for supper bread and cheese: at first 1*s.* per week by way of wages, to increase at the master's pleasure, under the superintendence of the subscribers or not; possibly it may be most advisable to give the master entire control. If any desire to board themselves, let them have wages according to their work, the same as other labourers.

The farm to be cultivated in the best possible manner, and all the work done as well as they can be taught to do it. Certain rules would be required as the affair progressed."

THE LAWYER.

Summary.

We write, on Friday, when changes are only expected, not accomplished. But the prospect has absorbed all other subjects during the week, and speculation is afloat as to the fortunate men who are to fill the law offices. There can be no doubt about the Chancellor or the Attorney-General. Lord COTTENHAM has unquestioned claims to the one, Sir THOMAS WILDE to the other. But beyond these all is conjecture.

COURT PAPERS.

TRANSFER OF CHANCERY CAUSES.—For the purpose of equalising the business in the various Chancery Courts, the Lord Chancellor has directed the following causes to be transferred from the books of the Vice-Chancellor of Eng-

land to the books of Vice-Chancellor Wigram, viz.:—Ford v. Westell—Woods v. Woods, six causes—Webb v. Gower—Bagshaw v. Macneil—Waugh v. Waugh—Tuffnell v. Driver—Paris v. Livermore—Same v. Mildon—Hurst v. Kemp—Ashton v. Higginbottom—Same v. Woolley—Maitland v. Rodger—Same v. Sturges—Plowden v. Thorpe—Warm v. Golding—White v. Thorndell—Major v. Major—Pinky v. Remmett—East India Company v. Cooper's Company—Baker v. Boyldon—Du Visme v. Graham—Same v. same—Baker v. Wetton—De Sola v. Mesnard—Campbell v. London and Brighton Railway Company—Stephen v. Green—Same v. Hellicar—Jessop v. Jessop—M'Dermot v. Wilcox—Blair v. Bromley—Burt v. Burnham—Nicholson v. Cock—Same v. same—Dollond v. Reld—Duncombe v. Levy—Wilson v. Williams—Dell v. Dell—Fraser v. Jons—Faulding v. Newbon—Same v. Sheriff—Leigh v. Earl Balcarras—Dale v. Hamilton—Bostock v. Shaw—Emerson v. Emerson—Hammon v. Sedgwick—Warner v. Hodgson—Same v. Brown—Kirby v. Meah—Greenington v. Buckley—Tapwell v. Taylor—Parkes v. Odell—Same v. Chasum—Carlake v. Elliott—Handford v. Handford—Maxwell v. Kibblewhite—Same v. same—Tarte v. Phillips—Dyneley v. Dyneley—Porter v. Porter—Scott v. Beasley—Starky v. Blake—Zolson v. Dykes—three causes, and Ogle v. Hansard.

COURT OF QUEEN'S BENCH.

On Thursday Lord Denman, C.J. stated that next Term there would be no Special Paper days in Term, but that the New Trial Paper would be taken during Term, and the Special Paper at the Sittings after Term.

CIRCUITS OF THE JUDGES.
The Lord Chief Baron Pollock will remain in Town.

	WESTERN.	NORTHERN.	MIDLAND.	NORFOLK.	HOMER.	OXFORD.	S. WALES.	N. WALES.	SUMMER CIRCUITS, 1846.
	J. Erie B. Platt	J. Wightman J. Crosswell	J. Patteson J. Coleridge	B. Alderson J. Williams	B. Parke J. Colman	L.C.J. Tindal J. Maule	B. Rolfe	Ld. Denman	Commission Days.
	Winchester.	York & City	Nottingham [and Town]	Buckingham Bedford	Hertford	Abingdon Oxford	Cardiff	...	Sat. ... July 4
	Dorchester.	...	Northampton	...	Chelmsford	...	...	...	Thursday ... 9
	Derby.	...	Oakham Lincoln	...	...	...	...	...	Friday ... 10
	Exeter & Oly.	...	...	...	...	...	...	...	Saturday ... 11
	Sunday ... 12
	Monday ... 13
	Tuesday ... 14
	Wednesday ... 15
	Thursday ... 16
	Friday ... 17
	Saturday ... 18
	Sunday ... 19
	Monday ... 20
	Tuesday ... 21
	Wednesday ... 22
	Thursday ... 23
	Friday ... 24
	Saturday ... 25
	Sunday ... 26
	Monday ... 27
	Tuesday ... 28
	Wednesday ... 29
	Thursday ... 30
	Sat. ... Aug. 1
	Monday ... 2
	Tuesday ... 3
	Wednesday ... 4
	Thursday ... 5
	Friday ... 6
	Saturday ... 7
	Sunday ... 8
	Monday ... 9
	Tuesday ... 10
	Wednesday ... 11
	Thursday ... 12
	Friday ... 13
	Saturday ... 14
	Sunday ... 15

* Business to commence at 12 o'clock on Monday.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

COMMISSIONS SIGNED BY LORDS-LIEUTENANT.

COUNTY OF SOMERSET.—E. Broderip, esq.; J. J. Coney, esq.; W. H. M. Colston, esq.; Sir C. A. Elton; W. H. G. Langton, esq.; G. T. Scobell, esq.; J. Hippeley, esq.; W. A. Sandford, esq.; the Rev. W. P. Thomas; J. I. C. Ireland, esq.; H. Lyne, esq.; the Rev. F. B. Portman; R. C. Tudway, esq.; J. Giles, esq.; B. Neville, esq. M. P.; E. B. Napier, esq.; F. H. Syngue, esq.; the Rev. J. Vane; J. Goodden, esq.; W. Phelps, esq.; E. Galton, esq.; W. H. T. Brigstocke, esq. to be Deputy Lieutenants.

COUNTY OF BERKS.—J. Sivewright, jun. esq. to be Deputy Lieutenant.

COUNTY OF SOUTHAMPTON.—J. Lobb, esq.; Le Feuvre, esq. to be Deputy Lieutenants.

COUNTY OF CLACKMANNAN.—P. Anstruther, esq.; P. Haig, esq. to be Deputy Lieutenants.

Mr. David Pollock (elder brother of the Chief Baron of the Exchequer,) has just received the ap-

pointment of Chief Justice of Bombay, the salary of which is 8,000*l.* per annum. Mr. Pollock is now on circuit discharging the duties of commissioner of the Insolvent Debtors' Court, which office he has enjoyed for about two years, having received that appointment on the death of the late Mr. Commissioner Bowen. The salary of the commissioners of the Insolvent Court is 1,500*l.* a year. Mr. Cooke, the eminent barrister, practising in the Bankrupt and Insolvent Courts, is generally expected to fill the vacancy caused by the removal of Mr. Pollock.

THE NEW COMMISSIONERS OF THE INSOLVENT COURT.—The rumour of the appointment of Mr. Cooke, the barrister, as the new Commissioner of the Insolvent Court (vacant by the removal of Mr. Commissioner Pollock to the Chief Justiceship of Bombay) is without foundation. Mr. Charles Phillips, a commissioner of the Liverpool District Court of Bankruptcy, has received the appointment. The learned commissioner, by accepting the situation, will lose 300*l.* a year, his present salary as a country commissioner in bankruptcy being 1,800*l.* per annum, but it is said he has been influenced mainly by considerations of health. The vacancy thus created in the court at Liverpool will be filled, it is understood, by

Mr. Henry James Perry, the Lord Chancellor's secretary.—*Globe*.

THE UNDER-SHERIFFALTY.—Mr. Baylis, of the firm of Baylis and Drewe, of Basinghall-street, has been appointed under-sheriff to Alderman Challis, and Mr. Kennard's under-sheriff will be Mr. Tilleard, of the firm of Tilleard, Sons, and Freeman, Old Jewry.

LEGAL INTELLIGENCE.

RAILWAY LIABILITIES.

TO THE EDITOR OF THE DAILY NEWS.

SIR,—The following copy of the opinion of a Queen's counsel, just taken, on some points arising out of the transactions of a railway company which has withdrawn its bill, will, I am disposed to think, be acceptable to a large body of your readers. The questions are so shaped as to render the statement of the case unnecessary.

A CHANCERY SOLICITOR.

Gray's Inn, June 23.

Question 1. Are the original subscribers, who have lately sold their scrip, still liable to unsatisfied creditors?—Answer. They are.—Question 2. Are they liable for such further calls as may be made?—Answer. This depends upon whether the directors and other subscribers have accepted the purchasers in their place, and so released them.—Question 3. Will the Court of Chancery compel the purchasers to indemnify the sellers against their liability to creditors and for calls?—Answer. It will not, unless there were special agreements to that effect.—Question 4. The Joint Stock Company Regulation Act of 7 & 8 Vict. c. 110, s. 26, prohibiting the sale of shares before complete registration, are not sales, the company being only provisionally registered, illegal? If not, are not such sales illegal upon other grounds?—Answer. It has been determined that the above section does not apply to railway companies. The circumstance, therefore, of the company being only provisionally registered is immaterial. The sale of railway scrip does not appear to be illegal, notwithstanding there are some dicta in the books not favourable to such a transaction. But though the sale be not illegal, yet it will be seen from my answers to the other questions that the result of it is different from what probably most original subscribers have anticipated. A sale of railway scrip in the way usual in the city, merely creates the relation of trustee and *cestui que trust* between the original subscriber and the purchaser, and by no means relieves the former from responsibility as regards other persons.

[We omit the signature; but it is that of a distinguished counsel.—Ed. D. N.]

A STRANGE PROVISION.—It has lately been decided by the Court of Amsterdam, that the law which obliges the State to provide for the seventh child in any family where the first six are living, is still in vigour; in consequence of which the State was condemned to pay to a man named Hoogland 250 florins per annum (21l.), till his seventh child shall have reached the age of 18, or to provide for it till that time. This sentence was confirmed by the Court Royal of La Hague.

VENTILATION AND DR. REID.—At the Central Criminal Court this week rather a singular scene occurred. The Recorder in the course of the day complained of the great heat in the Court. He said the thermometer stood at 70, and he should be very glad to have a little fresh air. He was informed that, by Dr. Reid's new ventilating process, all the windows of the court were nailed down, so that it was hopeless to expect any supply of fresh air from that quarter. In a short time some explosions appeared to take place in the neighbourhood of the court, and the proceedings were interrupted by repeated bang, bang, bangs. The Recorder inquired what the guns were firing for? Mr. Straight said that the reports which had attracted the attention of the Court did not proceed from guns, but were occasioned by some new experiment by Dr. Reid to ventilate the court. Mr. Ballantine said he hoped they should not all be blown up by some of the doctor's experiments. The business then proceeded, and in a little while the explosions ceased, but the court remained as hot as ever.

METROPOLITAN BUILDINGS ACT.—On Wednesday, the 1st of July, the 53rd section of the Metropolitan Buildings Act (7 & 8 Victoria, c. 84) will take effect. The object of this provision is to improve the sanitary condition of the poor with respect to close, undrained, and unventilated rooms, which are not to be used as dwellings after the 1st proximo. It is declared by the section that from and after the day mentioned it shall not be lawful to let separately to hire as a dwelling any such room or cellar not constructed according to the rules specified in schedule "K," nor to suffer it to be occupied as such, nor to let, hire, occupy, or suffer to be occupied any such room or cellar built underground for any purpose (except for a ware-room or store-room); and that if any per-

son wilfully let or suffer to be occupied in manner aforesaid any underground cellar or room contrary to the provisions of the Act, then, on conviction thereof before two justices of the peace, such person shall be liable to forfeit for every day during which such cellar or room shall be so occupied a sum not exceeding 20s. and one-half of such penalty shall go to the person who shall sue for the same, and the other half to the poor of the parish in which such unlawfully occupied cellar or room shall be situate. In reference to lowermost rooms, it is provided by the schedule that if a room or cellar be used as a separate dwelling, the floor must not be below the surface or level of the ground immediately adjoining thereto, unless it have an area, fire-place, and window, and unless it be properly drained, with a window fitted with glazed sashes to open for ventilation.

EQUITY ARREARS, JUNE 22.—It appears that the business before four of the Equity Courts, upon the resumption of the Trinity sittings after Term this day, is of a comparatively moderate character. Those causes which have stood over many successive terms are appeals before the Lord Chancellor, of which there are, in his lordship's list, 42; this, however, is under the usual average. The Vice-Chancellor of England's list, including entries up to Saturday, shews a total of 116. The number before Vice-Chancellor Knight Bruce is 64; this shews an increase upon the number usually upon his Honour's register at the commencement of Term sittings after. Vice-Chancellor Wigram's list gives a total of 98 causes, of which number 67 have just been transferred from the list of the Vice-Chancellor of England, commencing with *Ford v. Wastell*, and ending with *Oyle v. Hansard*. Thus the total is 320.

PROVISIONAL AND MANAGING COMMITTEEMEN.—A correspondent, whose signature is "L. R.," illustrates with much acuteness the distinction between these two characters. "No case of provisional committee-men's liabilities appears to me to have been correctly stated hitherto, because due regard has not been paid to the distinction between the duties and the responsibilities of the member of a provisional and the member of a managing committee. After a company is formed, the managing committee placed in power, the solicitor and banker appointed, the functions of the provisional committee cease, the new one entirely superseding it. The members of the provisional committee not nominated on the managing committee have no power, and no knowledge but what is common to everybody. The acting or managing committee allot the shares and conduct themselves towards members of the provisional committee not of their own number exactly as towards other persons. These provisional committee-men, by taking shares, only incur the liabilities of other simple shareholders. Those of them who by letter decline to take up their shares, cease to have any connection with the company. To hold a provisional committee-man, who has been denuded, or who has denuded himself of all power, liable for all the actions of the managing committee for months and years, is monstrous. To maintain that a provisional is a permanent committee is as absurd as to talk of a 'permanent preparatory measure.' The power, and with it the responsibility, of the provisional committee-men ceases the moment the company is formed."

—*Daily News*.

FRIENDLY SOCIETIES BILL.—The amendments made by the Lords in this bill, as sent up by the House of Commons and now returned, have since been printed. Four additional clauses have been added by their lordships, and various amendments made in the clauses which appeared in the bill as it passed the House of Commons. The bill has been completely changed since its introduction to the House of Commons. It was altered in committee, again altered, and altered by the House of Lords. The substance of the new clauses is to enable members to withdraw from societies on written notice; to require returns from societies to the registrars; and to adopt the forms set forth in the bill. The new measure is to be construed with and as part of the Friendly Societies Acts of the 10th George IV. and of the 5th William IV.

A Memorial to the Lord Chancellor is in the course of signature at Nottingham, praying that a new district, to be called the Birmingham East district, might be formed, comprising the town of Nottingham, the city of Lincoln, and the counties of Nottingham, Leicester, and Lincoln, for which new district one of the Commissioners of the Court of Bankruptcy, now held at Birmingham, could hold the Court at Nottingham, as the centre of such district. The number of bankruptcies which have occurred in the said counties of Nottingham, Leicester, and Lincoln, since November, 1842, up to the 1st of April, 1846, are 101, being forty-three from Nottingham, and twenty-four from Leicestershire, and fifty-four from Lincolnshire; and during the same period also about 80 insolvent cases from the said counties and towns; and by the above alteration, the cases from such three counties would be heard at Nottingham; and the five counties of Warwick, Worcester, Hereford, Salop, and Stafford, and the southern divi-

sion of Derbyshire, would still continue at Birmingham.

DECREASE OF CRIME.—A gratifying decrease of crime may be noticed during the last year or two in Leicestershire. In May last, there were but fourteen commitments to the castle, and the majority of these cases were minor offences, there being but three of felony. Since the 1st of June, there have been but nine commitments, and of these but four for felony. In January, 1844, at which time the construction of railways opened so wide a field for labour in this and the adjoining counties, there were but fifteen commitments, a number far below any in the corresponding months for ten years. For the sessions next week, there is not even a single case, nor is there at present a female prisoner in the castle. All this tells of an improvement in the labour market, and in the habits and morals of the population.

MALT.—Reports to her Majesty's Government, relative to the feeding of cattle with malt. The reports comprise—1. Questions addressed to, and letters in reply from, Dr. Thompson, Dr. Lyon Playfair, and Mr. Graham on the subject. 2. A summary of experiments on the relative value of barley and malt on the milk of cows, used as food. 3. The relative value of grass, barley, malt, molasses, linseed, and bean-meal, when used as food for cows. 4. The relative value of barley and malt, when employed in fattening bullocks.—The result of a multitude of experiments, whose details are given, appears to be that malt is considerably inferior to barley, both in the production of milk and in fattening the animal. This conclusion coincides with that drawn from the chemical analysis of the two substances, since barley when malted loses nearly one-fifth of its weight, and contains a less proportion of azote, an element which is indispensable either for the support of the animal, or the production of milk.

CORRESPONDENCE.

CONVEYANCING.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Being concerned for some purchasers of very small pieces of land, for which, as they purchase for accommodation, they have to pay a very high price, I am consequently desirous of rendering the expenses of the conveyances as light as may be. The circumstances of the title render long recitals necessary, and it struck me that Lord Brougham's miniature conveyance would be applicable to the case; but I hesitate to use it, because I am not clear, whether a progressive stamp duty would not be payable, notwithstanding the conveyance, under Lord Brougham's Act, might not contain more than 2,160 words. That Act renders a conveyance under it chargeable with the same stamp duty as if it had been a release founded on a lease for a year; and with the same stamp duty with which such lease for a year would have been chargeable. Therefore, as the lease for a year is abolished, and the stamp duty retained, it strikes me that the stamp duty was meant to be retained also on the long forms of column two, though the short forms of column one only are actually inserted in the conveyance. Perhaps some of your readers will enlighten me on this point.

Is our Law Institution defunct? The Society for the Amendment of the Law are active, and seem determined to deal out reform with no sparing hand; but I hear of no corresponding activity on the part of any of our law societies. All professional men, I believe, concur in the opinion that reform is requisite, and all I think are ready to assist in promoting sound and judicious measures to effect that object; but the public should not be permitted to impute our acquiescence to drowsiness or inability to protect our own interests. The curtailment of our profits by conveyancing reform is a fair ground upon which to claim a curtailment of our expenses, by a repeal of the certificate duty; and in order to protect what conveyancing practice may be left to us, from the inroads of unprofessional dabblers in that science, we may fairly ask for some legislative enactment. Such, for instance, as rendering it essential that every conveyancer should either be a member of one of the Inns of Court, or have served five years under articles, and be admitted to one of the courts, having been previously examined; and it would be a great protection, if it was enacted, that every practitioner should affix to every conveyance which he prepared a seal (similar to that used for notarial purposes), and himself sign a certificate on the conveyance, that it was prepared by himself, or some other duly qualified practitioner; rendering any party imitating such seal, or illegally using any, subject to an indictment for forgery, and subjecting to a heavy penalty any practitioner who should permit an unqualified person to use his seal, or append his name to any conveyance; or who should himself attach his seal or certificate to any conveyance prepared by an unqualified person.

I am, Sir, &c.

June 22, 1846.

AN OLD SUBSCRIBER.

RAILWAY LITIGATION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I quite concur in the feeling of disapprobation which you express in respect to the course pursued by some of the Profession of suing out separate writs against numerous parties for the same debt, but I entertain some doubt as to the propriety of the plan which you recommend the defendants to adopt.

In the case you put of all the forty actions proceeding *pari passu*, and all being set down for trial, it is true they could not all be heard at the same instant, and no doubt, as soon as judgment was obtained in one action, that judgment might be pleaded in bar to such of the other actions as might be then pending; but I apprehend the plaintiffs, merely obtaining a verdict in one action, would afford the defendants no ground of defence to the others: and if the cause were tried in town at the sittings after Term, or in the country at the Assizes, the plaintiff, although he obtained a verdict, could not have judgment until the 5th day of the ensuing Term, and he might delay the signing his judgment to even a later period, whilst, in the meantime, all the other actions might be tried and verdicts for the plaintiff obtained; and, after verdicts, I conceive the defendants could not avail themselves of any judgment which might be obtained against any other defendant.

I would submit, therefore, that instead of pleading, one of the defendants should suffer judgment by default, when such judgment might, I apprehend (at least if the action were brought in debt, as I believe the majority of them are) be pleaded in bar to the other actions.

I am, Sir, &c.

WM. THORNE.

Wolverhampton, June 25, 1846.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Great complaints, it appears, still continue to be made on the subject of the unequal distribution of business amongst the three courts of Common Law. To the threatened plan of throwing open the Court of Common Pleas, by Parliamentary interference, as one of the means of lessening the amount of the evil, you have already urged, as a strong objection, that such a course would increase another existing evil; viz. the difficulty at present experienced of securing the attendance of leading counsel, who would then have three instead of two courts to attend to. Might not the amount of business in the courts be nearly equalised, and the danger of entrusting a case to junior counsel, at the same time, be diminished, by some such plan as the following?

In all cases (where the courts have concurrent jurisdiction), in which the venue is intended to be laid in London or Middlesex, if the plaintiff's (or first plaintiff's) name begins with any letter from A to K, let the action be brought in the Common Pleas; if with any letter from L to Z, in the Exchequer; and with respect to country causes, let certain circuits be appropriated to each of the three courts. By this means, something like an equality of business might be attained; and by giving none of the London or Middlesex causes to the Queen's Bench, that court would be able to get through its own peculiar business.

No difficulty, I apprehend, would attend the adoption of such a plan as this, except, perhaps, in cases of change of venue. Some arrangement, however, might be made to meet this: for instance, it might be ordered by rule of all the courts, or by Act of Parliament, if necessary, that the cause shall remain in the court out of which the writ of summons issued, until after issue joined, and afterwards be transferred to the court to which it would have originally belonged, had the venue been in the first instance laid in the county to which it shall have been ultimately changed.

I am, Sir, &c.

FMA. BRAITHWAITE.

Truro, June 22, 1846.

SELECTIONS FROM CORRESPONDENCE.

Esor replies to two queries in our last.

First, as to "Small Agency Charges."—If your Preston correspondent could ascertain (which he soon may) if the large town in Yorkshire "rejoices" in a local court for the recovery of small debts, which most of the large towns do; then, I think, he cannot have much difficulty in obtaining payment of his agency account. I say nothing of the expense attending it. But, there is quite as much cause of complaint by country Solicitors against their correspondents (*casual*, I mean) in London, and other large towns, of non-payment, or most dreadfully long "deferred" payment of such country agent's charges for service of writs and other proceedings; and I feel sorry to have to add, that the charge attaches as much to the "great" as the smaller offices.

Then as to "Reforms in Conveyancing."—Many of your readers appear quite astounded at reading the extracts of evidence given by Mr. Baxter before the Lords' Committee on "Land Burdens," and cannot believe that gentleman is a solicitor. But such

is the fact; and also eminent in his profession. He resides in a most respectable town in Yorkshire, and enjoys an extensive practice, and should, therefore, know something of the expenses attending conveyancing. I can well see the object of his having been called on to give evidence, as he is, or was, solicitor to the Great Yorkshire "Agricultural Protection" Society. But I consider Mr. B. is too good "a friend" to the profession to do any thing to injure his "less successful" competitors, and that his evidence was mainly directed to obtain a revision of the stamp duties on conveyances and mortgages, &c. which he knows, as well as any one, tend so much to injure the best branch of business of the country solicitor.

I am sorry I cannot concur with another contributor, "Puck," in his remarks that the Law Institution is the proper body to stand forward to protect the interest of our branch of the profession. I really am at a loss to discover of what utility that body has been to the Profession, beyond its periodical examination of article clerks; but to expect from the Law Institution the preparation of a scale of charges in conveyancing that would be allowed, or submitted to, both in town and country, is quite hopeless! It is your high "fixed" scale, which obtains in London and other large towns, that causes all the noise and hubbub against the Profession; and yet a new practitioner cannot depart from it without great risk of losing caste amongst the most respectable of his brethren; and if he urges to his clients that his charges are according to the fixed legal scale, as allowed on taxation, he would soon find his clients go to others who had a more easy sliding scale of their own.

In short, it is come to this, that as the solicitor is liable for negligence in the conduct of his business, and the client has a remedy also by taxation, why not let each solicitor charge according to his own notion of the trouble and anxiety attending the business done (that is, within the present well-understood scale of charges); in other words, if A chooses to rest satisfied with 3s. 4d. where B would probably charge 6s. 8d. why should the latter, or his brethren of older standing, complain? Let this be done; let the certificate duty be repealed, and some enactment passed, that none but duly admitted and practising solicitors should prepare deeds and other legal documents, and you would then not have such an infliction and inroad of petty agents, accountants, brokers, &c. *et id omne genus*, to the injury of the maligned and hard-worked legal practitioner.

E. A. B. thus answers a query in our last as to non-payment by London solicitors:—

The best plan for a "Country Subscriber" to adopt for the future will be, to employ Mr. Laidman, of 119, Chancery-lane, or some other respectable party, who makes it his business to receive small sums from the London solicitors for such services as your correspondent speaks of, performed by solicitors in the country.

Retra-at-Law, Next of Kin, &c. Wanted.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent impertinent curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount included.]

146. CHARLES KNIGHT, formerly of Godalming, Surrey, who is supposed to have served on board her Majesty's ship *Glendower*, and who has not been heard of for 34 years. Property belonging to him.

147. THE CHILDREN, SONS AND DAUGHTERS, of the BROTHERS AND SISTERS of MRS. ANN TURNER, late of Dawley, county of Northampton, widow (died Jan. 1835), except Charles Mead and Frances Baker. Legatees of said Ann Turner.

148. JOHN BRINDEN, formerly of Chippenham, Wilts, afterwards of Frome, Somerset, since of 18, Angel-alley, Little Moorfields, London, or his WIDOW or ISSUE. Legacy under the will of Mr. John Mortimer, late of Woolton Bassett, gent.

149. NEXT OF KIN of THOMAS BROWN, late of Sundon, county of Bedford, farmer (died April 1821), or their representatives.

150. HEIR at LAW of THOMAS SMITH, late of the parish of Berkswell, near Coventry (died 31st May, 1831).

151. NEXT OF KIN of CATHERINE STONE, spinster, formerly of Woburn-place, Russell-square, Middlesex, now of Normand-house, Fulham, of unsound mind. She was one of the children of Robert Stone, and Deborah, his wife, formerly Deborah Hicks, and was born in the year 1765.

152. WILL of ROBERT CHALK, late of Linton, Cambridge, gentleman (died 19th Nov. 1834). Deceased was in London, in May 1833, at which time the will is presumed to have been drawn by some professional man there, and taken into the country to be executed.

153. CHILDREN of REYNOLD GARNER, JONATHAN GARNER, and JAMES GARNER, and of ELIZABETH HENDY, brothers and sisters of NICHOLAS GARNER,

late of the town of Nassau, in the island of New Providence (died 4th July, 1832).

154. CERTIFICATE of the BURIAL of JOHN DUGNE LEBMAULT, esq. formerly of Grosvenor-street, Grosvenor-square, died between the years 1766 and 1866.

155. NEXT OF KIN of EDWARD FLEWIS, late of Derby, gentleman (died 5th Dec. 1833).

156. NEXT OF KIN of MARGARET THOMPSON, widow of George Thompson, late of Albany-street, New-road, Middlesex, gentleman (died 14th April, 1834).

157. CHILDREN of WILLIAM HERITAGE, and ANN his wife, MARK LORTMAN, and MARY his wife, JOHN SCOTT, and JANE his wife, and JAMES IRVING, and NANCY his wife, or their representatives. Legatees under will of WILLIAM IRVING, late of Coppice-row, Clerkenwell, Middlesex, gentleman.

158. NEXT OF KIN of ELIZABETH HUMPHREY, late of the city of Bristol (died 26th Sept. 1833), or their representatives.

159. NEXT OF KIN of JANE CAMPION, formerly of Lisbon, Portugal, afterwards of 8, Bryanstone-square, and late of Woburn-place, Russell-square, Middlesex, spinster (died 27th Nov. 1834).

160. FIRST COUSINS or COUSINS GERMAN to JOHN CARTER, heretofore of Busby, county of York, and late of Forth Moor, in the parish of Houghton-le-Skerne, county of Durham, farmer (son of Robinson Carter, heretofore of Yarm, county of York), and late of Busby, aforesaid, farmer, deceased, and nephew of John Carter, late of Yarm, aforesaid, solicitor, also deceased (died 12th March, 1835).

(To be continued weekly.)

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

G. P. W. (Gloucester).—The advertisement sent has been already published.

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The subscription for the current half-year is now due, and subscribers desirous of availing themselves of the great reduction allowed for pre-payment, should forward the same in the course of the ensuing week. The prepaid subscription is 1l. 5s. for the half-year, and 2l. 7s. for the year, being a reduction respectively of 25 and 30 per cent.

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THE LAW TIMES.

SATURDAY, JUNE 27, 1846.

LOCAL COURTS.

ANOTHER Bill for the establishment of Local Courts is before Parliament. It is not likely to be more successful than its predecessors. Introduced at the close of a Session, by a Government in *extremis*, it is difficult to

assign a motive for the movement, unless it is an excuse for staying the progress of the numerous Small Debts Bills that were marching through the Legislature. If this were indeed its purpose, it is one much to be commended, though the machinery be somewhat ponderous for so insignificant an object. We look upon the system of private speculation in Courts of Justice as an unmitigated mischief. A few individuals, having an eye to offices in it, get up a Local Court, and obtain the sanction of Parliament to a measure vesting in them the powers and prerogatives of a Court of Justice—often extending to jurisdiction over the liberties, always over the properties, of the people. Verily it justifies the character given to us by foreigners of being in all things a trading people. We have proprietary churches—proprietary schools—and last, most strange of all, speculative Courts of Justice! Undoubtedly, if there be need of more tribunals, they should be established systematically, by the State, under the control of the State, and their proceedings regulated by the State; and, so far as the new Local Courts Bill is intended to be a substitute for the many projected private Courts, it is a timely and necessary measure. We do not now, and never have we denied that greater facilities are required for the recovery of small debts and the settlement of small disputes. We have always advocated more speedy trial and less costs. We have contended that, so far as it is possible, justice should, to use the favourite phrase, be brought home to men's doors, and that they should not be compelled to take long journeys to seek it. But while cordially concurring in the principle, and anxious to see it carried into practice, we have been obliged to oppose every measure yet produced with the proclaimed purpose of putting these principles into operation. And wherefore? Because they failed to accomplish their design. Because they were not wisely adapted to their end. Because they were manifestly framed by men of the study, not by men of the world. Because practical experience had not presided at the councils of their authors, and we were assured that they would produce vastly more of mischief than they would remove. Nor does the present measure better recommend itself to the practical judgment than either of its predecessors. We have not been able, as yet, to do more than glance at it hastily; but the radical defects of all the other projects are apparent in this new one. It extends the jurisdiction of the Local Courts to the sum of 20*l.*, a sum too great to be intrusted to such a tribunal. To law-makers, 20*l.* may appear insignificant; but to the class of suitors by whom the courts will be frequented, the result of a wrong judgment would be ruinous. When it is remembered, that the measure aims at excluding altogether the interference of professional men, by making the fees so trifling that no respectable attorney could sell his time and education so cheaply; that parties will have to conduct their own cases there, amid the proverbial disadvantages of being their own clients. When to these are added the further evil resulting from the brood of harpies, in the shape of sham lawyers, sure to be engendered by cheap courts from which real lawyers are excluded; and the tricks to which the unprotected suitor will be exposed from his unscrupulous opponents, the sum of 20*l.* is much too large to be subjected to such a jurisdiction.

Over and over again we have said, and we repeat it now, that the only practically efficient method of complying with the demand for cheap and speedy justice is the remodelling of the existing Courts of Quarter Sessions. There is the machinery already provided, and which, at a very trifling cost, may be adapted to all the exigencies of the

occasion. A paid chairman and a jurisdiction enlarged to all actions under 20*l.* unless a judge in chambers shall otherwise appoint, on application by either party shewing good reason for a hearing by a higher tribunal, would give to the public all the benefits, without any of the evils, of the proposed Local Courts. To make them still more efficient, they might be empowered to hold intermediate sessions in different parts of the county. An appeal might be allowed to the superior courts.

Nor would the services of the revived Courts of Quarter Sessions end here. A great saving of expense might be made by adopting the Irish mode of registration, and devoting one day in each session to the registration, the paid chairman performing the duties of revising-barrister, and admitting new claimants, or hearing objections to those already registered. A plan might be readily devised for securing fairness in both, by requiring the claim or notice of objection to be lodged at the sessions preceding the hearing, so that all parties interested may have ample time to prepare, and the safeguard of costs might, as now, be thrown around both claimants and objectors. Thus would be swept away all the costly machinery of the annual registration, for the register would be always in process of formation. A man having once established his claim, would remain there until formally objected to and, after a hearing, expunged.

There are many other functions which well-regulated Courts of Quarter Sessions might discharge, and which will readily suggest themselves to the reader.

We trust that before the Local Courts Bill shall, in another session, be urged forward with serious intent to pass it into a law, the Profession will feel the necessity of a little more union and energy in self-defence than they have hitherto exhibited, and that they will exert their great influence, not in a mere dogged opposition to any change, but to procure such alterations only as will really prove beneficial. And we trust that this subject of Local Courts especially will engage the attention of the Society for the Amendment of the Law, with purpose to ascertain whether the modification of the Quarter Sessions Courts, somewhat after the manner we have ventured to suggest, would not be more efficient than the establishment of the new Courts contemplated by the various measures hitherto framed. If the Society will take up the question earnestly, and look at it practically, we are confident they would come to that conclusion, and what they recommend will, without difficulty, be adopted by any government, only too happy to be relieved from the task of Law Reform by a body in whom they have confidence, as not only willing to work, but peculiarly competent.

It is to be earnestly hoped, moreover, that into the next Parliament the Lawyers will take care to put a representative of their own, to speak their opinions and protect their interests. They require such a champion, at least as much as the surgeons.

ENFRANCHISEMENT OF COPYHOLDS.

WHEN the Act for the Enfranchisement of Copyholds was passing through the Parliament, it was loudly trumpeted as a great boon to the public, and certain to effect, in a very few years, the entire removal of those remnants of feudality—the copyholds. At first it was proposed to make enfranchisement, at a fair value, compulsory upon the lords; but ultimately it was resolved to give fair trial to an amicable arrangement in the first instance, with an understanding that what was refused to grace should be forced by legislative interference.

Some years have now elapsed, and the copyholds voluntarily enfranchised are extremely few. As was the case with the tithes, opposing parties cannot agree as to the value of their

interests. The lord demands too much, the tenant offers too little. There is no chance of the enfranchisement of the copyholds by voluntary settlements for as many centuries to come as they have already existed. The manner in which the system is working will be best exhibited by an instance that has fallen within our personal knowledge.

The Manor of Taunton Dean, in Somerset, is a copyhold of inheritance. The fines and heriots are fixed and very trifling. The actual value of the fee is little more than nominal. But the lord demands for it most exorbitant prices. Thus he lately required 150*l.* for the fee of a small plot of ground of which the fine did not exceed 10*s.* per annum,—that is, about sixteen times its actual value!!

Probably our readers could produce instances of demands equally extortionate in other manors, and we should be obliged by information upon the subject, for the time is come when the compulsory emancipation of copyholds must be urged upon the legislature. A fair trial has been given to the voluntary system. It has failed utterly. The understanding was, that if it did not succeed a more stringent measure should be adopted. We need not say that to the Profession the subject is one of great moment. The emancipation of copyholds would throw among the Profession generally a vast amount of business now confined to a few stewards. It is, therefore, worth an effort, and it is another proof of the want of some organization by which the concerns of the Profession might be cared for and their influence centred on one point. Here, too, the Law Amendment Society might render worthy service. The enfranchisement of copyholds is a subject that should receive their early consideration,—it is more practical and more urgent than many of those we see upon their books.

RAILWAY LITIGATION.

We have reported all the most interesting cases of the past week growing out of the railway litigation. It will be seen that the decisions are of very great importance, and further elucidate the yet unsettled law on these matters. We have also received some communications from correspondents, which shall have an early place. We defer until next week a reply to their objections, and the further commentaries upon the points at issue in the present railway litigation, which have been called for by the new decisions of the present week.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 6*s.*]

BIRTHS.

RING.—On the 23rd inst. the lady of Charles Ring, esq. of Doctors'-commons and Mitcham, of a daughter.
TEMPLE.—On the 24th inst. at 30, Berners-street, Russell-square, the wife of Stephen Temple, esq. barrister-at-law, of a daughter.

MARRIAGE.

SMYTH, Luke Dowell, M.D. of Bingham, Nottinghamshire, to Emma Elizabeth, eldest daughter of Thomas Weatherly Marriott, esq. of Sunbury, Middlesex, one of her Majesty's justices of the peace for the said county, on the 18th inst. at Sunbury.

DEATHS.

ALKIN, Thomas Turner, esq. at the Court Lodge, Hants, for many years a deputy lieutenant and justice of the peace for the county of Kent, on the 18th inst. aged 72.
BLACKBURN, William, eldest son of the late Wm. Blackburn, esq. of Southwark, on the 19th inst. at his sister's house, 28, Bloomsbury-square, aged 58.

THE CRITIC.

New Books.

The Equitable Jurisdiction of the Court of Chancery; comprising its rise, progress, and final establishment, &c. By GEORGE SPENCE, Esq. one of her Majesty's Counsel. In 2 vols. Vol. the First. London, 1846. Stevens and Norton.
This work has a far wider interest than most of those that invite the attention of a legal periodical. It is something more than a mere Law Book. It aspires to the character of History. Every lawyer who deserves the name must read it, and every man

who desires an insight into the rise and progress of our social and political fabric ought to do so. The object proposed by Mr. SPENCE is no less an one than "to trace the outlines of the history of the Laws of England, so far as they relate to property." In pursuance of this design, it has been his purpose to explain how those laws came to be administered by distinct tribunals, the Courts of Common Law and the Court of Chancery, and to point out the boundary lines between their respective jurisdictions.

In order to this, Mr. SPENCE has gone back to the earliest authentic records of a defined civil jurisprudence, which followed the introduction of Roman laws and institutions. He has then reviewed the laws established by the Anglo-Saxons and Danes, "endeavouring," he says, "to interpret those codes by reference to the state of society at the time, and to the existing customs disclosed" by the various documents he had examined. He has further attempted to ascertain "how much of those laws and customs may be considered as original or indigenous, or of native invention, how much as the result of imitation or adoption."

The Feudal System, its origin, rise and progress, are next reviewed, and with great learning and research it is shown how far that system prevailed in England down to the period of the Conquest. Mr. SPENCE differs in his views from most of his predecessors, but he advances no opinions without adducing his authorities, and the suggestions of an original thinker will form a valuable contribution to the mass of information from which the truth is to be ultimately evolved.

The second part of the work commences with the Conquest, and the author has endeavoured to present the real nature of that event, and its actual effect upon the pre-existing laws and constitution of England. He next traces the rise and establishment of the common law, pointing out its sources, and concluding with an account of its leading principles, and of its system of judicial procedure with reference to the rights of property.

The rise, progress, and final establishment of the modern equitable jurisdiction of the Court of Chancery is next examined, and the author points out the reasons which gave occasion for the establishment of a court having a distinct jurisdiction from that of the Courts of Common Law, the nature and extent of the powers of that court, and the principles upon which its jurisdiction was originally founded, and detailing the divisions into which that jurisdiction ultimately settled down, and so to exhibit the leading features and principles of the modern jurisdiction of the Court of Chancery.

Such, as described by Mr. SPENCE in his preface, is the bold and extensive design of this work, of which the first volume is now submitted to the Profession. And the execution is altogether worthy of that design. Vast industry has been bestowed upon the collection of the materials, sound judgment has been exercised in the selection of the valuable from the worthless, and the skill of an accomplished writer has been exhibited in the manner of presenting them to the reader. Although extremely learned, Mr. SPENCE's pages are never dull or dry. They have none of the repulsiveness of legal lore, but by the author's happy manner of expressing himself in plain English, where words could be found, and avoiding technicalities save where no equivalent was to be had, he has contrived to make of a seemingly unattractive subject a book that not only abounds in information, but which will be read for amusement, and not by lawyers alone, but by all students of English history.

Our quarterly friend, the *Law Magazine*, will doubtless make this volume the subject of a long and interesting paper. The weekly journalist, with his more restricted space and more numerous and urgent claims upon it, is compelled to be more brief than the intrinsic merits of such a publication as this may seem to deserve. But we regret the less that we are unable to review it more fully, because it is a work which every lawyer will place upon his shelves, not for reference only, but to be read and studied from the beginning to the end. To the law student especially must it be commended as the best introduction to the history of the law yet offered him. It should be read immediately after "Blackstone," and before he enters upon books of practice; for when he has learned the origin of the courts, of their jurisdiction, and of their forms of procedure, he will find them more readily committed to memory, and will see good reasons for many things which otherwise might appear to him meaningless and absurd.

We have been unwilling longer to delay a notice of this volume, and so we introduce it to our readers thus briefly during the press of the Term reports. But we do not purpose thus to dismiss it. As soon as the business of the courts is somewhat relaxed and space permits, it is our intention to return to it, and, with a few more commentaries upon the contents, to present some extracts that will illustrate the remarks we have now made, and also yield some useful information to our readers.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY

ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.

(Continued from p. 273.)

6. *Attendant terms.*

Where a term has been assigned to attend the inheritance, the deed or other assurance by which the term was created should be fully abstracted, but the *meane assignments* may be abstracted very shortly. (1 Prest. Abs. 25.)

7. *Copyhold assurances.*

In titles relating to copyhold estates, in addition to the deed declaring the uses, the date of the surrenders and admittances, by whom made, and to whom, should be set forth; such being, in substance, the actual mode by which property of that description is conveyed from one party to another. Any particular manorial customs that may affect the property should also be mentioned, as also the admittance of the customary heir as such; and where any estate tail has been barred, the mode in which it has been done should be stated, in order that it may be seen that the customary requisites and formalities have been duly complied with, and any agreements or other transaction than can in any way affect the equitable title, should also be shown. (1 Prest. Abs. 204.) In case the property has been devised by will, it should be so stated, whether there was any surrender to the use of such will. Such a surrender is not, however, now necessary to give validity to a will of copyhold property made subsequent to the year 1815. (Stat. 55 Geo. 3, c. 192.) But that statute, it must be observed, is only prospective.

8. *Wills.*

The date of the will itself, and not the time at which it is proved, is what should be set opposite to the commencement of will in the outer margin of the abstract. A will should be abstracted more fully than a deed, and, generally speaking, every charge affecting the abstracted premises should be inserted. Yet, where the property is devised upon trust to pay debts and legacies, it will not be absolutely necessary to set out and specify the legacies; because, where real estate is devised for purposes of this kind, the purchaser is not bound to see that the legacies are paid; nor is he, in fact, in any way responsible as to the manner in which his purchase-money may be applied; and the like rule holds also with respect to real property devised to be sold for the payment of debts (*Humble v. Bull*, 1 Ex. Cs. Abr. 345; *Smith v. Guyon*, 1 Bro. C. C. 186; *Williamson v. Curtis*, 3 ib. 96; *Barker v. Duke of Devonshire*, 3 Mer. 310; 3 Prest. Abs. 360) unless such debts are specified and scheduled; but if scheduled, or if even specifically mentioned in the will, the purchaser will be responsible for the application of the purchase-money, and must see that it is applied in liquidation of those charges unless the will contains an express clause exonerating purchasers from all responsibility with respect to the application of such purchase-money (3 Prest. Abs. 360; *Pays v. Adams*, Rolls, July 30, 1841, 10 Law J., N. S. 107). But the latter rule will not apply to leasehold estates sold by executors in that character, they being by law intrusted with a power of converting the personal estate of their testator into money for the purpose of paying his debts, the application of which a purchaser has no right whatever to interfere with; consequently from the actual necessity, and in common justice, he is exonerated from seeing how it is laid out, beyond the liquidation of those charges upon the property which are independent of the will, as mortgages, or other charges thereon, anterior to such will. (Butl. note to 1 Ins. 290; 3 Prest. Abs. 259, 260.) The fact of probate should be set out

at the foot of the will, stating the court in which it was proved, and by whom; as also the day of the month and year in which such probate was obtained. If the will is registered in consequence of the devised lands lying within a register county, the fact of registration should be stated. (1 Prest. Abs. 182, 185.)

9. *Fines and Recoveries.*

In the case of fines and recoveries, the practice is to set out in the outer margin the term and reign of the king or queen for the time being in which they were levied or suffered, and not the day of the month and year in which those assurances were made: "as Hilary Term, 40 Geo. 3." In the case of a fine, the abstract should specify what particular species of fine it was; as *sur cognisance de droit come ceo*, &c. *sur concesses*, &c.; and should also contain the names of the parties, viz. the conusor, conusee, as also the parcels as set out in the fine, with their local situation. In the exemplification of a recovery, the names of the demandant, tenant, and vouches, in the course and order in which the parties were respectively vouched; as also all the parcels with their local description, as well as the time at which the writ of *seisin* was returnable, and *seisin* delivered, should be all stated.

10. *Commission or fiat in bankruptcy.*

In the case of a commission or fiat in bankruptcy prior to the statute of the 1 & 2 Wm. 4, c. 56, it is requisite to abstract the commission commencing with the date, which should be inserted in the usual manner in the outer margin, then stating the commission or fiat, and the names of the commissioners, with the clause of *quorum*, in order that it may be seen whether the commissioners have duly exercised their authority, and, of course, the deed of bargain and sale of the commissioners. (1 Prest. Abs. 167.) But the property of bankrupts, since the passing of the Act above alluded to, vests in the assignees, without any other conveyance in the abstracting which the recital of the trading and act of bankruptcy, as also the appointment of the assignees, should be set out rather fully; unless where the bankrupt himself concurred in the conveyance, who, in that case, would be estopped from disputing either of the above facts.

11. *Insolvency.*

Where the title is traced through an insolvent, if the proceedings be prior to the statute 1 & 2 Vict. c. 110, the time of presenting and filing of the petition by the insolvent, the conveyance and assignment to the provisional assignee, and the conveyance and assignment by such provisional assignee to the creditor's assignee, must be set out in the abstract; and these assurances, which are filed of record in the court, must be authenticated by a copy of such record made upon parchment under the seal of such court. (Stat. 7 Geo. 4, c. 57, ss. 11, 19.) If the proceedings are subsequent to the above-mentioned statute of the 1 & 2 Vict. c. 110, then the order made under such last-mentioned Act duly entered of record of the petition of the insolvent, or upon the petition of an execution creditor, vesting the estate and effects of the insolvent in the provisional assignee, and likewise the order appointing the creditor's assignee, must be set out in the abstract; and must be verified by such certified copy written out upon parchment under the seal of the Court (ss. 42, 45, 46). And where any conveyance of an insolvent would require to be registered, in that case, as the certified copy should be registered in the same manner as an ordinary conveyance, the fact of registration should be mentioned in the abstract.

If the proceedings are under the Act 5 & 6 Vict. c. 116, which authorizes the Court of Bankruptcy to administer relief to insolvent debtors at large, the abstract should set out the insolvent's petition for protection from process, the nomination by the commissioner of the official assignee, and then the final order made by the commissioner for the protection of the person of the insolvent from all process, and for the vesting of his estate and effects in the official and creditor's assignee. And as this act requires a meeting of the creditors to be called before the assignee can sell the real estate, the fact of the meeting having been held, and the resolution of the creditors approving and directing the sale, should perhaps properly appear on the abstract. (*Sidebottom v. Barrington*, 4 Beav. 110; *Wright v. Maunier*, ib. 512.)

12. *Acts of Parliament.*

Where there is any private Act of Parliament

relating to the title, the usual practice is to abstract it very shortly, because a printed form of the Act itself is always forwarded with the abstract.

13. Judgments.

It was not formerly usual to abstract judgments, the practice being for the purchaser to search for them, except in those cases where such search was rendered unnecessary by the equitable protection afforded by an attendant term, or the like; but as since the statute of the 1 & 2 Vict. c. 10, judgments are made an actual charge upon the lands, the vendor's solicitor ought to abstract them.

14. Decrees.

Decrees or decretal orders, where they in any way affect the property, should be abstracted. And wherever there has been a reference to the Master upon any point relating to the title, his report, together with the order or decree thereupon, should be stated.

15. Descents.

Descents should be proved by an authenticated pedigree, in which the names of the parties, and the days of their births, marriages, and deaths, as also of the respective ages at which they each respectively died, all of which should be copied out *verbatim*. To this should be added extracts from ancient leases, or land tax, assessments, or such other evidence of ownership as can be produced to shew the manner in which, and by whom, the property has been enjoyed.

16. Administration.

Where letters of administration have been granted, it should be mentioned whether they were general or special, the name of the Court out of which they were obtained, and to whom granted. The date also should be set out in the usual way in the outer margin.

17. Matters of fact.

Matters of fact, such as births, marriages, and deaths, should be inserted in the order in which they occur; and if authenticated by certificates, the latter with the dates of the events therein certified should be set out. In the case of intestacy, letters of administration are the most satisfactory evidence of that fact, and if they have been obtained they should be abstracted for that purpose.

18. Cancellation, alteration, or erasure of documents.

Before dismissing this portion of my subject, I consider it will be proper to remark that no fact or circumstance whatever connected with the title should be omitted, simply because such fact or circumstance may be insufficient to invalidate it. Take, for example, the case of the cancellation of a material deed, which, as the law now stands, will not annul it, or restore the estate to the former proprietor (*Magennis v. McCullough*, Gilb. Eq. Cas. 235; *Bolton v. Carlisle* (Bishop of), 2 Hen. Blackst. 264; *Perrott v. Perrott*, 14 East, 423; see also *Roe v. York* (Archbishop of), 6 East, 86; *Doe dem. Courtail v. Thomas*, 9 B. & C. 288). Still a fact of that kind ought not to be passed by unnoticed in the abstract. If an erasure or interlineation has been made subsequent to the execution of the instrument, that fact should be disclosed, together with the manner and circumstances under which it was done; and the more particularly so, as a fraudulent alteration by either of those means, if made by the person himself taking under it, would vitiate his interest altogether. It was, indeed, formerly considered that an alteration by erasure or interlineation, would avoid the whole instrument, even if made by a mere stranger. But the strictness of this rule has been latterly so far relaxed, that, as the law now stands, an alteration by a stranger will not of itself invalidate a deed or other instrument; so that now the original contents will still be allowed to retain their effect and operation, if it can be clearly shewn what that effect and operation was. To accomplish this the mutilated instrument may be given in evidence as far as its contents appear; and extrinsic evidence will be admitted to shew what parts have been erased or altered, as also of the words contained in such altered or erased parts; but if for want of this evidence, or any uncertainty arising out of it, the original contents of the deed cannot be ascertained, then the old rule would become applicable, or, more properly speaking, the deed would become void for uncertainty. In cases of this or a like kind, every fact and circumstance, as I have before stated, connected with such alteration or erasure, should be

fully revealed by the abstract. See 1 Prest. Abs. 156, 157.

(To be continued.)

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	95½	95½	95½	95½	95½	95½
Three per Cents. Reduced	95½	95½	95½	95½	95½	95½
New Three & a-quarter per Cts	96½	97½	97½	97½	97½	97½
Long Annuities	101	101	101	101	101	101
Bank Stock	205½	205½	205½	205½	205½	205½
India Stock	265½	264½	265½	265½	265½	265½
India Bonds, prem.	28	28	27	27	27	27
Exchequer Bills, prem.	16	16	16	16	16½	15½
FOREIGN.						
Spanish Five per Cents.	24½	24½	24½	24½	24½	24½
Spanish Three per Cents.	37½	37½	37½	37½	37½	37½
Russian	110½	110½	110	110	110½	109½
Peruvian	38½	38½	38	38	37½	37½
Portuguese	51½	50	50	50	50	50½
Mexican	30½	29½	29½	29½	29½	29
Deferred	16½	16½	16½	16½	16½	16½
Dutch Two-and-a-Half per Cents.	50½	50½	60½	60½	60½	60½
Four per Cents.	92½	92½	92½	91½	91½	91½
Danish	88	88½	88½	88½	88½	87½
Colombian	17½	17½	17½	17½	17	17
Chilian	99½	99½	99½	99½	99½	99½
Buenos Ayres	39½	39½	40½	41½	41½	41
Brazilian	82	82	82	82	82	82
Belgian	96½	96½	96½	96	96½	96½

Public Sales.

By Messrs. DANIEL SMITH and SON.

The freehold property, comprising the Maer Hall estate, in Staffordshire, bordering on Cheshire and Shropshire, near Newcastle-under-Lyme, many years the residence and property of the late Josiah Wedgwood, esq. forming a domain of 1,100 acres. Also, the advowson and manor of Maer, and a residence known as Camp Hill, adjoining the property, were offered in five lots, as follows, viz.—

The first lot comprises the mansion of Maer Hall, stabling, gardens, and park-like pastures, refreshed by a lake of 23 acres, together with 1,022a. 1r. of land—43,900l.

The perpetual advowson of the living of Maer, the present incumbent aged 50.—5,000l.

Camp-hill House, together with 26a. 3r. 22p. of land.—2,800l.

The freehold impropriate small tithes of the parish, commuted at 22l. 1s. 8d.—340l.

The 25th lot was withdrawn.

The freehold villa, at Old Windsor, Berks, late the residence of Mrs. Carbonel, deceased, with its beautiful grounds and paddock of pasture land, comprising above 13 acres—sold for 2,600l.

By Messrs. WALTERS, LOVEJOY, and SON, at Garraway's.

A freehold residence, No. 10, on the north side of Lincoln's-inn-fields—3,200l.

A villa residence, and about three acres of garden and meadow land, situated on the north side of the Uxbridge-road, at Shepherd's Bush; held for 88 years, at 17l. 6s. per annum—920l.

A piece of building-ground on the east side of the preceding lot, frontage 110 feet by 190 deep, and 90 feet wide; held for 88 years, at 16l.—200l.

Three copyhold tenements, Nos. 47, 48, and 49, Penny's-fields, Poplar—1,030l.

By Messrs. WINSTANLEY, at the Mart.

A freehold residence, situate at Upper Clapton, with coach-houses, stabling, gardens, orchard, and pleasure-grounds, and a paddock, comprising altogether about five acres—4,300l.

A freehold residence, known as Grove House, situate at Weybridge, Surrey, with stabling, and about seven acres of land—2,000l.

The lease of a shop and dwelling-house, No. 93, Newgate-street—150l.

By Messrs. DRIVER, at the Mart.

A freehold estate, comprising the celebrated Glazenwood Horticultural Orchard, Nursery, and American Gardens, containing about 50 acres, with an excellent mansion and a newly-erected villa residence, situate three miles from Braine-tree, in the parish of Bradwell Nest, Coggeshall, in two lots, as follows:—

The first lot comprises the mansion-house and 38 acres of land, including the Australian garden and filbert orchard—3,900l.

The second lot comprises the horticultural garden, American garden, conservatories, and orchard, together with a residence and other buildings, in all 12 acres—1,400l.

VALUE OF LAND.—At an auction, at Crewkerne, held by Mr. Eales White, some land was sold at the rate of nearly 200l. per acre, not for building, but purely for agricultural purposes, and at some distance from the town. Surely such instances as these will serve to dispel the apprehensions of alarmists.—*Taunton Courier*.

SALE OF THE ST. JAMES'S CLUB-HOUSE.—On Tuesday, at one o'clock, by order of the executors of the late Mr. Crockford, the St. James's Club-house, St. James's-street, better known by the title of "Crockford's," with the whole of the furniture, &c. was brought to the hammer, Messrs. Christie and Manson being the auctioneers. The first lot put up was the unexpired lease of twenty-two years of the building, which the auctioneer stated was built some few years since under the direction of Mr. Wyatt, the well-known architect; the decoration of the building

alone costing the late proprietor 94,000l. The premises are held under three leases, for terms which expire at Michaelmas 1868, at a yearly rent of 1,400l. and are insured by the lessor at the sum of 11,000l. a covenant in the lease also compelling the lessee for the time being to insure in a further sum of 6,000l. Mr. Manson said he was aware that the building was not suitable to the multitude, but for the purposes of a public institution nothing could be better. The first offer for the lease was 1,000l. and eventually it was knocked down for 2,900l. Who the purchaser was could not be ascertained.

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, June 15.

Waller and Waller, grocers, joint div. next week. Turquand, London. Exam. July 13.

Tuesday, June 16.

Burnett, E. merchant, first div. next week. Groom, London.—Bailey and Co. leather manufacturers, last exam. July 21.—Dickinson, G. farmer, div. next week. Groom, London.—Eccall, R. draper, div. next week. Alsager, London.—Hambridge, C. coachsmith, last exam. Sept. 22.—Gipin, W. army clothier, div. next week. Whitmore, London.—Miller, J. painter, last exam. July 14.—Thompson, W. wine merchant, last exam. passed. Thibbe, T. cooper, div. next week. Alsager, London.—Vade, J. silk printer, last exam. July 21.—Wells and Co. coal merchants, last exam. sine die.—Weston, J. hatter, last exam. Aug. 18.

Wednesday, June 17.

Ross and Ogilvie, army agents, first joint div. next week. Groom, London.—Smith, J. cheesemonger, assignees, July 14.

Thursday, June 18.

Freeman, T. fringe manufacturer, last exam. passed.—Hearn, R. commission agent, last exam. passed.—Starbeck, R. shipwright, div. next week. Pennell, London.—Taylor, J. J. tobacconist, last exam. passed.

Friday, June 19.

Aburrow, W. druggist, last exam. July 13.—Bell, W. merchant, further div. next week. Groom, London.—Carter and Co. woollen drapers, fur. jt. div. next week. Groom, London.—Christ, J. wine broker, div. next week. Alsager, London.—Clarke, C. draper, last exam. passed.—Clayton, E. victualler, div. next week. Follett, London.—Collins, C. yarn agent, last exam. July 28.—Dow, J. A. draper, div. next week. Follett, London.—Fearley, J. worsted stuff manufacturer, last exam. July 17.—Hadden, W. J. brewer, last exam. passed.—Harrison, S. provision merchant, div. next week. Belcher, London.—Johnsons and Mess, bankers, joint div. next week. Follett, London.—Reis and Co. soap manufacturers, joint and sep. R. and K. next week. Alsager, London.—Rogers, W. draper, div. next week. Follett, London.—Standen, T. brewer, div. next week. Follett, London.

Saturday, June 20.

Munkhouse and Co. merchants, fin. jt. and sep. divs. next week. Green, London.—Perry, R. draper, last exam. sine die.—Stevens, T. W. G. hackneyman, outlawed.—Willis, J. eating-house keeper, last exam. passed.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Atkinson, A. and F. colour manufacturers, second, 72d. Wakley, Newcastle.—Bridgitt, W. B. iron merchant, second, 3s. Wakley, Newcastle.—Harrington and Co. calico printers, third and 4th. Baker, Newcastle.—Knight, T. and M. T. upholsterers, first jt. 3s. 6d. sep. T. K. 18s. 8d. M. T. K. 30s. Miller, Bristol.—Littler, S. draper, first, 2s. Cazenove, Liverpool.—Perry, G. coach builder, 2s. 3d. Miller, Bristol.

Insolvents' Estates.

Beale, J. porter, Maldon, 6s. 10d.—Guttim, D. farmer, Clifrow, 1s. 2d.—Halford, J. R. draper, out of business, Shepley-farm, near Broomsgrove, 3s. 5d.—Jensen, W. attorney, Hedon, fur. 8d.—Mabbett, R. bootmaker, Elmfield, 2s. 5d.—Patt, S. widow, Manchester, 2s. 5d.—Reed, E. B. gent. Wick, fur. 1s. 7d.—Robson, H. A. bookseller, Thame, 7d.—Ward, W. farmer and publican, Wessenhall St. Peter, 1s. 5d.—Wood, J. grocer, Fenchurch-st. 13s. 10d.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, June 19.

Couper, J. chemist, Downham-market, June 13. Trusts. F. Langton, Lawrence Pountney-lane, and J. De C. Smith, druggist, Norwich. Sol. Reed, Downham-market.—Spencer, W. L. baker, Doncaster, June 4. Trusts. F. Ingham, grocer, Doncaster, and B. Skelton, miller, Scrooby. Sol. Mason, Doncaster.—Spink, J. farmer, Buxhall, June 13. Trusts. D. Downing, farmer, Brettenham, and S. W. Hunt, auctioneer, Wetherden. Sol. Gudgeon, Stowmarket.

Gazette, June 23.

Braddell, T. R. G. esq. Coniahed Priory, Lancashire, June 3. Trusts. T. H. S. Sotheron, M. P. Bowden Park. R. G. Townley, esq. Fulbourne, Cambridgeshire, and the Rev. W. G. Townley, clerk, Outwell, Norfolk. Sols. Fladgate and Co. Essex-st.—Harris, J. farmer, Sevenoaks, June 12. Trusts. R. Harrison, silk manufacturer, Friday-st. J. Harris, surgeon, Sevenoaks, and R. Marshall, yeoman, Sevenoaks. Sol. Holcroft, Sevenoaks.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, June 19.

BALL, CHARLES, linen draper, Lane-end and Cheadle, Staffordshire, July 11 and 25, at twelve, Birmingham. Com. Daniell; Whitmore, off. ass.; Lloyd, Milk-st. and Bartlett, Birmingham, sols. Date of fiat, June 5. J. and H. Cowper and H. Nash, warehousemen, St. Paul's Church-yard, pet. crs.

BLACKBURN, JOSEPH, cloth manufacturer, Gomersal, Yorkshire, July 2 and 27, at eleven, Leeds, Com. Burge; Hope, off. ass.; Hall, Aldermanbury, Lees, Bradford, and Bond, Leeds, sols. Date of fiat, May 13. J. Hall, woolstapler, Bradford, pet. cr.

COURT, THOMAS, boot and shoemaker, No. 19, North-st. Brighton, June 20, at eleven, July 30, at two, Basinghall-st. Com. Evans; Johnson, off. ass.; Lawrence and Reed, Cheshire, sols. Date of fiat, June 13. W. E. Fitch, gent. Brighton, pet. cr.

EVERETT, WILLIAM, builder, No. 88, Drury-lane, lately trading in partnership with Edward Woods, June 26, at half-past ten, July 23, at twelve, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Townshend, Howland-st. Fitzroy-sq. sol. Date of fiat, June 17. Bankrupt's own petition.

FOWLER, ANSELMO COLTON, draper, Louth, Lincolnshire, July 3 and 31, at one, Basinghall-st. Com. Fane; Whitmore, off. ass.; Jones, Sise-lane, sol. Date of fiat, June 10. W. Smith, W. Leaf, J. Coles, M. Bankston, and W. S. Leaf, warehousemen, Old Champs, pet. crs.

HART, THOMAS RICE, victualler, Horse and Groom, Leabridge, Essex, June 20, at half-past eleven, August 6, at eleven, Basinghall-st. Com. Evans; Bell, off. ass.; Fry and Co. Cheshire, sols. Date of fiat, June 16. Bankrupt's own petition.

HOBSON, MATTHEW, corn and coal merchant, Great Grimaby, Lincolnshire, July 1 and 23, at eleven, Hull, Com. Burge; Kynaston, off. ass.; Kirk, Symond's-inn, Daubney, Great Grimaby, and Bell, Hull, sols. Date of fiat, June 10. W. G. Loft, farmer, Hesling, Lincolnshire, pet. cr.

HUGHES, JOHN, provision dealer, Stanhope-st. Liverpool, June 29 and July 21, at twelve, Liverpool, Com. Ludlow; Turner, off. ass.; Cornthwaite and Co. Old Jewry-chambers, and Pemberton, Liverpool, sols. Date of fiat, June 11. J. Reynolds, grocer, Liverpool, pet. cr.

JONES, EDWARD, ironmonger, Liverpool, June 29 and July 21, at twelve, Liverpool, Com. Ludlow; Turner, off. ass.; Keightley and Co. Chancery-lane, and Hetherington and Co. Liverpool, sols. Date of fiat, June 13. E. Jones, ironmonger, pet. cr.

LEAD, JOHN, innkeeper, Wellington, Salop, July 7 and 31, at twelve, Birmingham; Valpy, off. ass.; Greatwood, Wellington, and Motterham and Knowles, Birmingham, sols. Date of fiat, June 13. T. Smallwood, gent. Wellington, pet. cr.

LUMLEY, GEORGE, cotton and linen manufacturer, Wigan, June 30 and July 23, at twelve, Manchester; Hobson, off. ass.; Gregory and Co. Bedford-row, and Leigh, Wigan, sols. Date of fiat, June 11. I. Taylor, linen manufacturer, Wigan, pet. cr.

M'INTOSH, WILLIAM, spirit merchant, High-st. Kingston-upon-Hull, July 1 and 22, at eleven, Hull; Kynaston, off. ass.; Leigh, George-st. Mansion-house, and Stamp, Hull, sols. Date of fiat, June 10. W. T. Tennant and E. Woodbridge, wine merchants, Trinity-square, pet. crs.

MORRIS, HENRY, stone mason and builder, South Lambeth New-road, June 26, at two, July 30, at one, Basinghall-st. Com. Evans; Bell, off. ass.; Dawes, Serjeant's-inn, sol. Date of fiat, June 13. G. Thatcher, ironmonger, Clapham-common, and J. F. Sherwood, house decorator, Holland-place, Clapham-road, pet. crs.

PATTISON, ROBERT, grocer and wine and spirit merchant, Exeter, July 6, at twelve, July 23, at one, Exeter, Com. Berr; Herniman, off. ass.; Terrell, Exeter, sol. Date of fiat, June 12. Bankrupt's own petition.

PERKINS, ROBERT STANFORD, grocer and wine and spirit merchant, Exeter, July 6, at twelve, July 23, at one, Exeter, Com. Berr; Herniman, off. ass.; Terrell, Exeter, sol. Date of fiat, June 12. Bankrupt's own petition.

POTTER, JOHN, portable steam weighing machine and scale beam maker, June 30, at twelve, July 23, at eleven, Manchester; Hobson, off. ass.; Jacques and Edwards, Ely-place, and Chew, Manchester, sols. Date of fiat, June 13. J. Rowcroft, ironfounder, Manchester, pet. cr.

ROLFE, WILLIAM, music seller, 59, King-st. and 42, Burlington-st. Manchester, June 30 and July 20, at twelve, Manchester; Pott, off. ass.; Messrs. Baddley, Leman-st. and Simpson, Manchester, sols. Date of fiat, June 11. T. H. and N. Rolfe, pianoforte makers, Cheshire, pet. crs.

SEWELL, EDWARD, hatter, 40, Old Bond-st. June 20, at one, Aug. 6, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Hare, Coleman-st. sol. Date of fiat, June 18. Bankrupt's own petition.

SHORTHOUSE, GEORGE, merchant, Newport, Monmouthshire, July 4, at twelve, Aug. 4, at eleven, Bristol, Com. Stephens; Acraman, off. ass.; Smith, Bristol, sol. Date of fiat, May 22. R. Bruce, merchant, Bristol, pet. cr.

SMITH, JOHN, grocer and provision dealer, Stratton-upon-Avon, Warwickshire, June 27 and July 23, at twelve, Birmingham, Com. Daniel; Whitmore, off. ass.; James, Birmingham, sol. Date of fiat, June 11. Bankrupt's own petition.

THORLEY, JOSEPH, cabinet maker, 10, Newman-st. July 1 and 23, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Taylor and Co. Great James-st. sols.

WILCOX, JOSEPH, tailor, 28, Little Bell-alley, Moorgate-st. June 23 and July 27, at half-past eleven, Basinghall-st. Com. Shepherd; Graham, off. ass.; Smith, Basinghall-st. sol. Date of fiat, June 13. J. Griffin, woolen factor, Basinghall-st. pet. cr.

Gazette, June 23.

BREDEL, EDWARD, and **RAFFOLD, CHARLES**, builders, Reading, Berks, July 10, at one, July 23, at two, Basinghall-st. Com. Holroyd; Groom, off. ass.; Hill and Heard, Throgmorton-st. and Weedon and Slocombe, Reading, sols. Date of fiat, June 19. Bankrupt's own petition.

BLURTON, THOMAS JAMES, wine merchant, 163, Piccadilly, July 3, at eleven, Aug. 7, at twelve, Basinghall-st. Com. Fane; Alinger, off. ass.; Hare, Coleman-st. sol. Date of fiat, June 19. Bankrupt's own petition.

CARTER, JOHN THOMAS, apothecary, 10, Berners-st. Oxford-st. June 29, at two, Aug. 7, at half-past eleven, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Pooch, Bartholomew-close, sol. Date of fiat, June 17. H. Jukes, 13, King-st. Portman-sq. builder, pet. cr.

COOK, THOMAS AQUILA, carver and gilder, Robin Hood-yard, Leather-lane, July 3, at twelve, Aug. 7, at half-past twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Taylor, Moorgate-st. sol. Date of fiat, June 19. Bankrupt's own petition.

CORRELL, WILLIAM, and **WHARF, GEORGE**, potatoe dealers and watermen, Boston, Lincoln, July 9 and 29, at twelve, Birmingham, Com. Daniel; Bittleston,

off. ass.; Smith, Birmingham, sol. Date of fiat, June 18. Bankrupt's own petition.

EVA, JAMES JAY, baker and flour dealer, Redruth, Cornwall, July 6, at twelve, Aug. 4, at eleven, Exeter, Com. Berr; Hirtzel, off. ass.; Millett and Borlase, Penzance, Terrell, Exeter, and Coods and Co. Bedford-row, sols. Date of fiat, June 8. John Marshall Bromley, merchant, Penzance, pet. cr.

FULLER, ELIZABETH, baker, Harrow, July 3, at half-past one, July 31, at half-past eleven, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Turner, Percy-st. sol. Date of fiat, June 20. Bankrupt's own petition.

HALL, SAMUEL, commission agent and share broker, Manchester, July 8 and 29, at twelve, Manchester; Pott, off. ass.; Gregory and Co. Bedford-row, and Cooper, Manchester, sols. Date of fiat, June 18. George Bivins, tobacco manufacturer, Manchester, pet. cr.

HARPER, JOSEPH, provision merchant, and commission agent, 139, Chancery-lane, July 3, at one, July 31, at eleven, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Horsley, Staple-inn, sol. Date of fiat, June 15. Bankrupt's own petition.

HATTERLEY, GEORGE, stove grate and fender manufacturer, Sheffield, July 3 and 31, at eleven, Sheffield, Com. West; Freeman, off. ass.; Tattershall, Great James-st. and Broadbent, Sheffield, sols. Date of fiat, June 8. Bankrupt's own petition.

HOLMES, JOHN, cutlery manufacturer, Sheffield, July 3 and 31, at eleven, Sheffield, Com. West; Freeman, off. ass.; Nixon, Clifford's-inn, and Binney, Sheffield, sols. Date of fiat, June 13. Bankrupt's own petition.

JOLIFFE, JAMES EDWIN HUDSON, chemist and druggist, 6, Bindon-pl. Durham-down, Gloucester, and 2, Dowry, square, Bristol, July 7 and Aug. 4, at one, Bristol, Com. Stephens; Hutton, off. ass.; Coles, Bristol, sol. Date of fiat, June 18. Bankrupt's own petition.

KENNETT, WILLIAM, and **REYNOLDS, JOHN HAMMON**, wax and tallow chandlers and oilmen, 25, Lamb-st. Spital-fields, June 29, at half-past one, Aug. 7, at eleven, Basinghall-st. Com. Shepherd; Graham, off. ass.; Wheatley, Walbrook, sol. Date of fiat, June 19. Bankrupt's own petition.

LONGFIELD, GEORGE, tailor and wollen draper, West Bromwich, Staffordshire, July 7 and Aug. 7, at half-past ten, Birmingham; Christie, off. ass.; Hodgson, Birmingham, sol. Date of fiat, June 19. Bankrupt's own petition.

M'ROBERTS, WILLIAM, grocer and provision dealer, Liverpool, July 9 and 27, at twelve, Liverpool; Com. Ludlow; Bird, off. ass.; Cornthwaite and Co. Old Jewry-chambers, and Pemberton, Liverpool, sols. Date of fiat, June 15. J. Reynolds, wholesale grocer, Liverpool, pet. cr.

OLIVER, SAMUEL, provision dealer, Hyde, Cheshire, July 16 and 30, at twelve, Manchester; Hobson, off. ass.; Bower and Son, Chancery-lane, and Brooks, Ashton-under-Lyne, sols. Date of fiat, June 15. J. Bamforth, corn-dealer, Ashton-under-Lyne, pet. cr.

OSBOEN, WILLIAM HESKIN, and **BLACKBURN, HENRY WEBSTER**, stock and share brokers, Bradford, July 6 and 27, at eleven, Leeds, Com. Burge; Hope, off. ass.; Lawrence and Co. Old fish-st. and Morris, Bradford, sols. Date of fiat, June 16. Bankrupt's own petition.

PARTIDGE, JOHN, coal merchant, Cheltenham, July 7, and Aug. 4, at twelve, Bristol, Com. Stephens; Acraman, off. ass.; Jessop, Cheltenham, sol. Date of fiat, June 17. J. N. Tanner, esq. Plymouth, pet. cr.

PERMER, RICHARD, hatter, Leeds, July 6, and 27, at eleven, Leeds, Com. Burge; Hope, off. ass.; Few and Co. Covent-garden, and Messrs. Upton, Leeds, sols. Date of fiat, June 17. Bankrupt's own petition.

RAINS, HORATIO, boiler maker and innkeeper, Newton Wood, Chester, July 7 and 29, at twelve, Manchester, Pott, off. ass.; Gregory and Co. Bedford-row, and Law, Manchester, sols. Date of fiat, June 10. J. A. Fullerton, iron merchant, Manchester, pet. cr.

SIMPSON, JAMES CHARLES, pawnbroker, Sheffield, July 3 and 31, at eleven, Sheffield, Com. West; Freeman, off. ass.; Tattershall, Great James-st. Broadbent, Sheffield, and Blackburn, Leeds, sols. Date of fiat, June 10. J. Frith, pawnbroker, Sheffield, pet. cr.

SMITH, NEVILLE, HOLT, THOMAS LITTLETON, and **NEALE, JOHN**, printers, 113, Fleet-st. July 3, at half-past twelve, and July 31, at twelve, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Messrs. Cross, Surrey-st. Strand, sols. Date of fiat, June 6. G. Berry, newspaper agent, 116, Upper Stamford-st. pet. cr.

SMITH, STEPHEN, miller, Bradford, Berks, July 1 and August 1, at twelve, Basinghall-st. Com. Goulburn; Follett, off. ass.; Johnson and Co. Temple, and Cole and Co. Basingstoke, sols. Date of fiat, June 17. R. By, yeoman, Bradford, pet. cr.

TOKLINS, CHARLES, and **LOCK, WILLIAM**, plumbers, 46, Henry-st. East, Portland-town, July 7, at half-past one, July 23, at eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Trott, Crown-st. sol. Date of fiat, June 19. W. and R. Webb, brick makers, Stoke Newington, pet. crs.

WILDT, ALFRED, hatter, 266, Oxford-st. July 1, at half-past eleven, Aug. 1, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Low, Chancery-lane, sol. Date of fiat, June 20. H. Bakewell, hatter, 151, Church-st. Shoreditch, pet. cr.

WILLIAMS, HENRY, apothecary, Llanrwst, Denbighshire, July 3 and 31, at twelve, Liverpool, Com. Ludlow; Turner, off. ass.; Bower and Son, Chancery-lane, and Hughes, Llanrwst, sols. Date of fiat, June 17. Bankrupt's own petition.

WILSON, THOMAS, CHARLES KIRKMAN, and **WILLIAM**, linen drapers, Liverpool, July 15 and Aug. 11, at twelve, Liverpool, Com. Ludlow; Turner, off. ass.; Gregory and Co. Bedford-row, and Clay and Co. Liverpool, sols. Date of fiat, June 18. Bankrupt's own petition.

WOODBRIDGE, JAMES, saddler and harness maker, Gun-st. Reading, July 9, at half-past one, Aug. 4, at eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Smith, Reading, and Badham and Co. Verulam-buildings, sols. Date of fiat, June 16. J. Philbrick, tanner, Reading, pet. cr.

Meetings at Basinghall-street.

Gazette, June 19.

Bartlett, C. merchant, Southampton, July 10, at one, div.—**Brett, J.** sheep salesman, Luton, July 14, at eleven, and—**Haddon, W. J.** brewer, Tottenham, July 10, at half-past twelve, div.—**Harlow, J.** tobacconist, Leicester-sq. July 10, at eleven, div.—**Kearton, W.** cheesemonger, 13 and 14,

Lamb-st. Spital-sq. July 10, at twelve, div.—**Waller, T. B.** and **J. grocers**, Ipswich, July 13, at twelve, div.—**Stones, W.** laceman, Wood-st. City, July 10, at one, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Blacker and Earlt, warehousemen, Gresham-st. July 13, at half-past two.—**Budgett, J. S. B.** bookseller, Strand, July 13, at half-past eleven.—**Bullock, B. H.** wine merchant, Nicholas-lane, July 10, at two.—**Clifford, E.** victualler, Minster, July 10, at two.—**Gandy, T.** grocer, Lower-rd. Islington, July 13, at twelve.—**Harlow, J.** tobacconist, Leicester-sq. July 10, at eleven.—**Stearman, W.** carpenter, Chelsea, July 10, at eleven.—**Stones, W.** laceman, Wood-st. July 10, at one.—**Thompson, W.** wine merchant, Cooper's-row and Fowke's-buildings, July 10, at twelve.

Gazette, June 23.

Dewar, J. auctioneer and commission agent, Charles-st. Berkeley-sq. July 14, at twelve, div.—**Dixon, F.** carrier, 38, Long-lane, Berners-st. July 16, at half-past one, div.—**Giro, J.** merchant, Moorgate-st. City, July 17, at twelve, div.—**Harrop, J.** clothier, Saddleworth, July 3, at half-past eleven, proof of a debt.—**Hove, W.** builder, Bexford, July 15, at twelve, aud.—**Latham, S. M.** banker and ship agent, Dover, June 30, at one (adj. June 9) last exam. and July 14, at half-past twelve, div.—**Ross, Sir J. Knt.** banker, Grace church-st. July 15, at twelve, aud.—**Walters, C. H.** dealer in paintings, Piccadilly, July 17, at half-past one, aud.—**Ward, R. G. and Perry, J.** meat salesmen, 14, Newgate-market, and 43, Gilbert-st. Oxford-street, July 16, at two, sep. div. of Perry.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Bartlett, T. J. M. bill broker, Pall-mall East, July 15, at eleven.—**Bligh, J.** grocer, Chelmsford, July 15, at one.—**Warriner, G.** victualler, George-yd. Lombard-st. July 17, at eleven.—**Wills, J.** eating-house keeper, Bucklersbury, July 15, at one.

Meetings in the Country.

Gazette, June 19.

Astle, W. plumber, Wolverhampton, July 15, at twelve, Birmingham, aud.—**Buttrey, J.** commission agent, Manchester, June 30, at one, Manchester (adj. June 10), last exam. and to choose assignees.—**Clay, T.** merchant, Huddersfield, July 13, at eleven, Leeds, aud.—**Edmond and Edmond**, merchants, Liverpool and Bombay, July 1, at eleven, Manchester (adj. June 8), last exam. of T. Edmond.—**Fox and Fox**, oilmen, Manchester, July 2, at eleven, Manchester (adj. June 13), last exam.—**Gales, T. Guest, W. J. Naisby, J. F. and Kirtley, M.** ship builders and ship-owners, all of Hylton, Durham, July 13, at half-past twelve, Newcastle, joint aud. and sep. of Gales.—**Gosson and Shanks**, brewers, Morpeth, July 13, at half-past twelve, Newcastle, aud.—**Habgood, W.** merchant, Manchester, July 14, at twelve, Manchester, div.—**Harrison, T.** victualler, Birmingham, July 11, at one, Birmingham, aud. and July 18, at one, div.—**Kelsey, J.** joiner, Manchester, July 14, at twelve, Manchester, aud.—**Rodgett, S.** ironfounder, Blackburn, July 1, at twelve, Manchester (adj. June 10), last exam.—**Summers, W. and Rae, N.** ropemakers, Strangeways, Manchester, July 13, at twelve, Manchester, aud. and July 14, at twelve, further div.—**Taylor, T.** grocer, Newcastle, July 18, at half-past ten, Newcastle, aud.—**Tomkinson, M.** linen draper, Kidderminster, July 11, at twelve, Birmingham, aud. and final div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Blundell, J. pawnbroker, Wigan, July 15, at twelve, Manchester.—**Clay, T.** merchant, Huddersfield, July 13, at eleven, Leeds.—**Davies, J.** mercer, Shrewsbury, July 13, at twelve, Manchester.—**Howarth, J.** woollen manufacturer, Rochdale, July 14, at twelve, Manchester.—**Mottram, P.** draper, Shrewsbury, July 14, at twelve, Birmingham.—**Parker, C.** draper, Liverpool, July 15, at eleven, Liverpool.—**Rowbotham and Kenworthy**, calico printers, Brinkway and Manchester, July 16, at twelve, Manchester.—**Shanks, S.** cloth finisher, Leeds, July 13, at eleven, Leeds.—**Staples, E. J.** surgeon, Bristol, July 13, at eleven, Bristol.—**Taylor, T.** grocer, Newcastle, July 13, at half-past ten, Newcastle.—**Timmins, J.** brickmaker, Ceynham, July 10, at half-past ten, Birmingham.—**Walker and Williamson**, sharebrokers, Leeds, July 14, at eleven, Leeds.

Gazette, June 23.

Arkell, J. miller, Stow-on-the-Wold, July 17, at eleven, Bristol, aud.—**Clay, T.** merchant and commission agent, Longroydbridge, Huddersfield, Yorkshire, July 21, at eleven, Leeds, div.—**Oregon, J. S.** grocer, Manchester, July 17, at twelve, Newcastle, aud.—**Hall and Toone**, lace manufacturers, Nottingham, July 15, at twelve, Birmingham, aud.—**Kelly, W.** common brewer, Chester, July 15, at twelve, Liverpool, div.—**Kemp, J. C.** merchant, Liverpool, July 13, at twelve, Liverpool, div.—**Leather and Wardle**, earthenware manufacturers, Leeds, July 18, at eleven, Leeds, aud.—**Marsland, H.** silk throwster, Roden, July 10, at twelve, Manchester (adj. June 17), last exam.—**Masey, J.** grocer, Manchester, July 17, at one, Manchester, aud.—**Nichol, A.** shipbroker, Newcastle, July 14, at half-past ten, Newcastle, aud.—**Pridley, H.** upholsterer, Droitwich, July 15, at twelve, Birmingham, aud. and proofs.—**Sutton, T.** jun. draper, Atherstone, July 14, at eleven, Birmingham, aud.—**Taylor, J.** merchant, Liverpool, July 15, at eleven, Liverpool, div.—**White, J.** corn dealer, Linton, July 14, at ten, Birmingham (adj. May 14, 1892), last exam.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Bacon, J. carpenter, York, July 14, at eleven, Leeds.—**Birchall, A.** sharebroker, Manchester, July 16, at eleven, Manchester.—**Godfrey, J.** linendraper, Midsomer Norton, July 17, at eleven, Bristol.—**Nichol, A.** shipbroker, Newcastle, July 14, at half-past ten, Newcastle.—**Walters, H.** victualler, Bristol, July 16, at eleven, Bristol.—**Whitfield, G.** soda water manufacturer, Nottingham, July 15, at twelve, Birmingham.

Partnerships Dissolved.

Gazette, June 16.

Banks, W. and Russell, J. Knighton, March 25.—**Brown, E. G. E. and Blendon, G.** sack manufacturers, Mark-lane, June 15. Debts paid by Blendon.—**Cawkwell, W. O. and Dally, J.** coal merchants, Tooley-st. June 10.—**Davies, M. and Conway, S.** ironmongers, Cardiff, June 11. Debts paid by Davies.—**Goddard, W. and Bastinam, C.** coal merchants, Millbank-st. June 15.—**Hands, T. and Dally, G. B.** stock brokers, York, June 12.—**Harris, J.** Whyting, G. H. and

Whitting, J. discount agents, Lombard-st. April 13.—**Maddock, G.** and **W. lace** manufacturers, Nottingham, June 9.—**Nias, B.** and **Saunders, H.** upholsterers, Brighton, June 13. Debts paid by **Nias, B.** and **W. G. and Conran, I.** 8, proprietors of the safety letter box, London, June 4.—**Postlethwaite, R.** and **Hayton, E.** wine merchants, Kendal, June 11. Debts paid by **Hayton, E.**—**Robinson, S.** and **Mousley, G.** surgeons, Atherton, June 16.—**Robinson, S.** and **Jennings, W.** carriers, Osweston, June 10.—**Saile, W. P.** and **Pickles, R.** and **W. tar** distillers, Barnsley and Burton, June 12. Debts paid by **R. Pickles, W. L.** and **Sargent, E.** sword manufacturers, Birmingham, Dec. 25.—**Saunders, D.** and **Bromley, B.** joiners, Birkenhead, June 8.

Gazette, June 19.

Baverstock, J. H. and **Parnell, G.** brewers, Walworth, May 25.—**Currey, B.** and **W. Wilmer, W.** attorneys, Old Palace-yard, so far as regards Wilmer, May 28.—**Feneca, L.** and **Steinhart, C.** dealers in perfumery, Broad-st. and Old Fish-st. Sept. 25.—**Fooks, C. B.** and **Johnson, F.** auctioneers, Seale-st. May 13. Debts paid by **Fooks, C. B.**—**Forman, R. jun.** and **Williams, E. P.** stock brokers, Derby, June 18. Debts paid by **Williams, E. P.**—**Garnett, R.** and **W. worsted** spinners, Bradford, so far as regards **R. Garnett, May 25.** Debts paid by the remaining partners.—**Hamer, J. Clough, J. Smith, T.** and **Holgate, W.** calico printers, Newchurch, May 13.—**Hampson, J.** and **G. pork** butchers, Ashton-under-Lyne, Aug. 12.—**Hansard, L. J.** Southampton-st. and **Gardiner, J.** Hammersmith, printers, April 24.—**Heathcote, M.** and **Collison, R. P.** surgeons, Maghull, May 1.—**Lord, G.** and **W. cotton** spinners, Shawforth, June 10.—**Martin, P. S. F. Watney, D. Swayne, G.** and **Bevill, G. H.** Gwendraeth Anthracite coal and iron works, June 16.—**Nias, B.** and **Saunders, H.** upholsterers, Brighton, June 13. Debts paid by **Nias, B.**—**France, T.** and **C. brewers, Bocking, June 13.**—**Sanger, T.** and **Younger, J.** masons, North Shields and Tyne-mouth, June 17.—Debts paid by **Younger, J.** and **G. carmen, Hyde-place, Hoxton, May 8.**—**Wynn, J. Wilson, T. Hall, J.** and **G. Newsome, T.** and **Hemingway, E.** woollen manufacturers, Dewsbury, so far as regards **Wynn, June 13.**

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, June 16.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Atterton, T. master, Bury St. Edmunds, June 26, at two.—**Baughen, J.** plumber, Stanley-place, Paddington, June 25, at half-past eleven.—**Blagrove, H. G.** professor of music, Mortimer-st. Cavendish-sq. June 23, at twelve.—**Clark, C.** omnibus conductor, Great-street, Chelsea, June 26, at two.—**Garland, J.** out of business, Norland-terrace, Notting-hill, June 23, at one.—**Grooms, G. B.** carpenter, Walton-on-Thames, June 23, at half-past two.—**Grosvenor, E. B.** (in the employ of the London City Mission Society), York-st. Kingland-rd. June 23, at eleven.—**Hamilton, G. A.** linen draper, Arboret-st. Stepney, June 23, at one.—**Jones, E.** coal-wheeler, Johnson-terrace, Mile-end, June 23, at three.—**Johnson, W.** carpenter, Great Shelford, June 23, at two.—**Lee, J. A.** clerk, Regent-sq. July 2, at one.—**Moore, A.** engraver, Kingland-green, June 25, at half-past one.—**Oak, E.** brewer, Burrough-green, June 23, at half-past twelve.—**Read, R. B.** Wick, esquire, July 23, at twelve.—**Speakman, J.** jun. miller, Chelmsford, June 3, at two.—**Standeven, T. D.** coal dealer, Richmond-st. Haymarket, June 23, at half-past eleven.—**Tittensor, M.** glass dealer, Drury-lane, June 23, at half-past two.—**White, T.** beer retailer, Poplar, June 23, at eleven.—**White, J. L. Le M.** chemist, Walton-upon-Thames, June 25, at twelve.

PETITIONS TO BE HEARD IN THE COUNTRY.

Beros, G. tin plate worker, Blackburn, June 23, at twelve, Manchester.—**Charlesworth, J.** farmer, Peniston, June 25, at eleven, Leeds.—**Cooke, J.** grocer, Bridgford, June 26, at ten, Birmingham.—**Denny, J.** head maker, Bradford, June 25, at eleven, Leeds.—**Ennes, B.** clerk, Bedminster, July 2, at twelve, Bristol.—**Fisher, J.** shroud maker, Birmingham, June 26, at ten, Birmingham.—**Foulston, J.** corn miller, Blackburn, June 23, at twelve, Manchester.—**Greenaway, W.** shopkeeper, Woorwinostow, June 25, at one, Exeter.—**Haythorn, J.** silk plaited cord manuf. Nottingham, June 26, at ten, Birmingham.—**Inston, J.** pump maker, Kidderminster, June 24, at twelve, Birmingham.—**Ireland, J.** cooper, Collumpton, June 25, at one, Exeter.—**Langdale, J.** joiner, Liverpool, June 23, at twelve, Liverpool.—**Outram, J.** innkeeper, Dore-moor, near Sheffield, June 25, at twelve, Manchester.—**Payne, W.** tea dealer, Bath, June 23, at eleven, Bristol.—**Protheroe, W. J.** fire iron manufacturer, Dudley, June 23, at ten, Birmingham.—**Scott, J.** appraiser, Liverpool, June 29, at eleven, Liverpool.—**Shepperson, S.** labourer, Bingham, June 24, at twelve, Birmingham.—**Walker, G.** housekeeper, Ancoats, June 25, at twelve, Manchester.—**Westaway, T.** tailor, Exeter, June 23, at eleven, Exeter.

MEETINGS IN THE COUNTRY.

Brooke, J. cupper, Liverpool, July 7, at eleven, Liverpool, and, and July 8, at twelve, div.—**Fryde, D.** joiner, Birkenhead, July 8, at eleven, Liverpool, and.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, June 19.

Amass, G. jun. butcher, Debenham, July 9, at eleven.—**Champion, E.** boot maker, Tonbridge Wells, June 29, at half-past eleven.—**Copplestone, J.** traveller, Trinity-sq. July 2, at eleven.—**Felton, H.** late innkeeper and baker, Blotchworth, July 9, at eleven.—**Hayes, T.** publican, Langham, June 29, at eleven.—**King, J.** saddler, Chiswell-st. June 29, at half-past eleven.—**Reading, D.** cooper, Patterson-st. Stepney, July 9, at eleven.—**Smith, W.** out of business, Northampton, July 9, at half-past eleven.—**Strip, J.** assistant to a whitensmith, Winchester, July 9, at eleven.—**Whitt, T. L.** late lessee of tolls, Poole, July 2, at eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Antrobus, G. butcher, Tosteth-park, June 23, at eleven, Liverpool.—**Ashworth, J.** delman, Shawforth, June 29, at twelve, Manchester.—**Barber, J.** blacksmith, Stockport, June 29, at twelve, Manchester.—**Barnesley, E.** grocer, Birkenhead, June 29, at eleven, Liverpool.—**Buckle, J.** tea-dealer, Snape, June 23, at eleven, Leeds.—**Castledine, H.** innkeeper, Coventry, June 27, at twelve, Birmingham.—**Dalby, J.**

beer seller, Bradford, June 23, at eleven, Leeds.—**Deakin, R.** butcher, Palm's-hill, near Wem, June 26, at ten, Birmingham.—**Dibb, G.** butcher, Shipley, June 23, at eleven, Leeds.—**Easty, B. S.** traveller, Nottingham, June 26, at ten, Birmingham.—**Kendall, M. A.** dressmaker Bath, June 26, at one, Bristol.—**Jowett, J.** razor grinder, Sheffield, June 26, at eleven, Sheffield.—**Potter, J.** out of business, Ardwick-upon-Dearne, June 26, at eleven, Sheffield.

From the Gazette of Friday, June 26.

Bankrupts.

Morel, D. A. dentist, Langham-place, Marylebone.—**Soul, E.** bookseller, Tabernacle-walk, Finsbury.—**Knigh, T.** draper, Minorities, City.—**Beart, R. H.** wine merchant, Great Yarmouth, Norfolk.—**Hobbs, F.** baker, Romford, Essex.—**Evans, S. R.** beer shop keeper, Copprice-row, Clerkenwell.—**Sugden, J.** worsted manufacturer, Stoston, Yorkshire.—**Dibb, E.** grocer, Idle, Yorkshire.—**Marcus, H. J.** and **Naylor, J.** share brokers.—**Lonsgeron, W.** wine merchant, Liverpool.—**Lyddon, J. S.** chymist, Birkenhead, Cheshire.—**Stonehouse, C. H.** ship broker, Newport, Monmouthshire.—**Holtam, J.** otherwise Holtam, grocer, Lockhampton, Gloucester.—**Derham, T. P.** linen draper, Westbury-upon-Trym, Bristol.—**Hornfield, W. H.** draper, Cardiff, Glamorganshire.—**Philp, J.** stationer, Bristol.

ADVERTISEMENTS.

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Saturday, June 6.

THWAITES v. FORMAN.

Practice—Staying cause after decree in another suit for administration—Construction—Priority of gifts—Parties.

Where there are two suits against executors for administration by different legatees, in two branches of the court, and a decree has been obtained in one suit, the defendants may apply in the other suit to stay all proceedings therein, and the Court is quite competent to suspend the cause within its own jurisdiction until the other cause has been finally disposed of.

Where a testator, after directing his real and personal estate to be converted into money, directs that, "in the first place," one annuity shall be provided for, and, "in the next place," another annuity be provided for, by the appropriation of stock or real security, or by the purchase of government annuities, and then proceeds to make other bequests, there is nothing in the expressions "in the first place," and "in the next place," to give the annuitants priority over the other legatees.

The plaintiff, Elizabeth Thwaites, was an annuitant of 30l. a year under the will of Henry Thwaites, the testator in the cause, dated the 25th July, 1839, and the bill was filed for payment of the arrears of the annuity, and to have a fund set apart to answer the annuity. The testator had also bequeathed an annuity of 100l. a year to his brother, John Thwaites, the father of the plaintiff, in satisfaction of a security to that amount. John Thwaites had since died, and the plaintiff, as his personal representative, claimed also the arrears of that annuity. The plaintiff, by her bill, insisted that, on a right construction of the will, these two annuities were entitled to priority over the legacies given by the will. This cause was in the list of causes before Vice-Chancellor Knight Bruce. There was another suit of *Osborn v. Forman* for the administration of the same testator's estate, in which a decree for an account had been made by Vice-Chancellor Wigram. Before that decree had been left for entry, the defendants moved to stay proceedings before Vice-Chancellor Knight Bruce, who dismissed the bill as against the testator's heir-at-law, and directed all further proceedings to be stayed till further order, without prejudice to any application which the plaintiff might think fit to make in the other cause to Vice-Chancellor Wigram, and the costs were reserved. If the plaintiff's claim to priority was established, she would have been entitled to a per-

sonal decree against the defendants, inasmuch as other legacies, &c. had been paid, and there was some expectation that the estate would prove deficient. The Vice-Chancellor had decided against the plaintiff's claim to priority; from that decree the plaintiff appealed.

Parker and Glasse, for the appeal, contended that the plaintiff was not bound to wait until the accounts in that cause had been taken. The testator devised and bequeathed considerable real and personal estate to the defendants *Forman and Shipley* in the following terms:—"As to all and every my messuages, farms, lands, hereditaments, and real estate whatsoever, and as to all my moneys, securities for money, rents, &c. not specifically devised and bequeathed to *Forman and Shipley*, their heirs, executors, and administrators, upon trust as to the real estate, and so much of the personal estate as should not consist of money, to sell; and I direct that the said trustees should stand possessed of the money to arise from such sales upon trust, in the first place, to pay certain sums [sums the testator stated himself to be under covenant to pay] and my funeral and testamentary expenses; and in the second place, to set apart and appropriate on government or real security an annuity of 100l. which I am bound to pay to my brother John, and an annuity of 30l. to Elizabeth [the plaintiff] the daughter of my said brother, for her life." And the said testator directed that his trustees might be at liberty to purchase government annuities instead of making investments to meet these annuities. The testator had plainly indicated his intention to prefer these annuitants; but the plaintiff had received only a small part of her own annuity or of the arrears due to her late father. The trustees had, notwithstanding, paid away large sums to other legatees, amounting to 6,000l. including 750l. to the executors. (*Brown v. Brown*, 1 Keen, 275.) The answer intimates a doubt whether the estate will be sufficient to pay all the legacies. The bill in this suit was filed on the 7th of November, 1843, and the plaintiff learnt from the answer of the executors, put in on the 28th of January, 1844, that the suit of *Osborn v. Forman* was pending. They contended that the mere pendency of another suit by another legatee or annuitant formed no reason why the present suit should not proceed. In May 1844 the cause of *Osborn v. Forman* was heard before the Vice-Chancellor Wigram, and it was afterwards, on the 26th of June, put in his honour's paper to be spoken to. The decree as drawn up now bears that date, but it was not drawn up, and therefore did not become an efficient decree till the 13th of November, 1844. On the 26th of June, 1844, the plaintiff's solicitor received from the defendants' solicitor a notice, entitled in the two causes, informing the plaintiff that a decree had been pronounced, by which the estates had been ordered to be sold, and directed all to be done that could be done in *Thwaites v. Forman*, and required the plaintiff to incur no further expense in that suit, and gave notice that, in case of non-compliance, the defendant would move to stay proceedings in this suit. On the 6th of July, 1844, *subpoena* to hear judgment was served in this cause, and, on the 9th of July, a notice of motion, also entitled in this cause, was served upon the plaintiff, whereby it was stated that the Court would be moved to stay all proceedings in the cause of *Thwaites v. Forman*. The motion was ordered to come on with the cause, and the matter was partly argued before the vacation. On the 6th of December the order was pronounced, against which the plaintiff appealed. The case is reported, as heard in the court below, 1 Col. 409, and the Vice-Chancellor referred to *Beeston v. Booth*, 4 Mad. 161, but that case is distinguishable from the present.

The LORD CHANCELLOR.—The only words you can rely upon are those in which the testator says, "after making the investments," &c. Does that go beyond *Beeston v. Booth*?

Parker.—The other interests do not commence until these annuities are provided for.

The LORD CHANCELLOR.—Suppose the words had been "and then," would this case not have fallen precisely within the authority of *Beeston v. Booth*?

Parker.—As to the stay of proceedings.

The LORD CHANCELLOR.—The Vice-Chancellor then went upon the assumption that all are to take equally.

Parker.—Yes; up to the decree, any person having claim against a testator's estate by reason of a legacy or debt, may proceed with his own suit. The pendency of another suit amounts to nothing. There is a settled rule as to the mode and terms of staying proceedings in these suits. Leave is given to the plaintiff in the second suit to come in under the other cause, with costs up to the hearing. Here there is no power to go in under the decree, and no provision for the plaintiff's costs.

The LORD CHANCELLOR.—The Court will not stay proceedings in the usual way; this case is not within the general rule, for the plaintiff chose to go on, and the decision was against her.

Parker.—The motion was irregular, for it was entitled in *Thwaites v. Forman* only, and it ought to have been entitled in both causes. The Vice-Chancellor

regretted he had not jurisdiction, because the other cause was before another branch of the Court. The defendant should have come to your lordship and asked for leave to give a notice of motion in both causes.

The LORD CHANCELLOR.—I think the notice of motion should have been in both causes, or leave to give notice should have been obtained in the way pointed out by Mr. Parker.

Parker.—The Vice-Chancellor said he had jurisdiction in one cause only, and all he could do was to direct the cause to stand over. The other suit was instituted by residuary legatees, and there were no parties present to protect the interests of annuitants and other legatees. The Vice-Chancellor said they might have applied to the Lord Chancellor, and that he could not conceive why some means had not been taken to place the two causes in one branch of the court.

The LORD CHANCELLOR.—The difficulty seems to have arisen from that.

Parker.—The Vice-Chancellor said, if he could he would have referred this cause to the same Master, and consolidated the two causes. (*Jackson v. Leag*, 1 Jac. & Walk. 229; *Eades v. Harris*, 1 Harc.) In *Seton* on Decrees, it is stated that the plaintiff is entitled to go and obtain his costs up to the hearing; and that notice is ineffectual. The common decree is, that the Master shall be at liberty to adopt proceedings in the other cause. (*Vernon v. Thellason*, 1 Phillips.) A suit by legatees or creditors is never stayed except upon the terms stated.

The LORD CHANCELLOR.—What difference will it make whether I make an order on the decree or the motion?

Parker.—If the order is made on the decree it will be in the common form, reserving further directions and costs.

Glasse, on the same side, cited *Rogers v. Soutten*, 2 Keen, 598; *The Corporation of Clergymen's Sons v. Swainson*, 1 Ves. sen. 75; *Whitlam v. Heming*, 2 Sim. 493. The decree in this cause should be the common decree, referring the cause to the same Master as the other cause had been referred to, with liberty to adopt the accounts and conclusions he had come to in that cause. With the present order, that was impracticable, and therefore the plaintiff was bound to appeal. This suit was not to be tied up for an indefinite time. Besides, the objection would be taken of want of parties, that all the other annuitants and legatees should have been parties to the suit notwithstanding the 30th Order of August, 1841, on the authority of *Miller v. Huddleston*, 13 Sim. 467. That objection was taken in the other suit of *Osborn v. Forman*, 2 Harc. 666.

Anderton and Goodere, for the defendants, on the construction of the gifts of the annuities, contended that *Beeston v. Booth* was a conclusive authority against the plaintiff's claim to priority. On the point of practice the plaintiff had been offered her costs up to the time of the motion.

The LORD CHANCELLOR.—The proceedings in the cause were stayed, and the plaintiff had leave to apply in the other cause. Would it not have been sufficient to have made an order in this suit, to stay proceedings on payment of costs, when another suit for administration is pending, in which the accounts could be taken, and justice done between the parties? Is it necessary to do more than stay proceedings on payment of costs? Is it essential that there should be an order for leave for the plaintiff in this suit to attend the taking of the accounts?

Anderton.—No such order is ever made in a creditor's suit.

The LORD CHANCELLOR.—The Vice-Chancellor merely postponed the hearing of the cause; he directed it to stand over; the decree amounts to nothing more than a direction to let the cause stand over for the present, with leave to the parties to proceed in the other cause before Vice-Chancellor Wigram, as they think fit. That is only postponing his decision. Is that a ground of appeal? Mr. Parker says the established precedent has been departed from.

Goodere.—The cases cited on the other side relate to creditors' suits. There is a distinction between creditors and legatees, because the former claim paramount to the will. The Court does not necessarily give legatees costs. The case in *Jacob & Walker's Reports* is founded on its special circumstances. The Court is not bound by any such rule. (*Hayward v. Constable*, 2 Young & Col. Exch. Rep. 43; *Moore v. Prior*, *ibid.* 375.) In the latter case the order was that the suit be stayed, and the question of costs was reserved. (*Cumming v. Slater*, You. & Col. C. C. 585.) The second cause was ordered to stand over, and come on with the other cause on further directions, and that one decree should be made in both suits. Here the Vice-Chancellor gave the plaintiff leave to apply in the other suit.

The LORD CHANCELLOR.—Why should he have leave to go in more than any other legatee? The Master makes a report upon the will, and any legatee may except to the report if his particular interest is not attended to, and if delay takes place, any legatee may apply to have the conduct of the cause. What is he to do? Leave to do what?

Parker.—To attend the proceedings in the Master's office.

Goodeve.—Other legatees have the same right to go in to watch the proceedings as the plaintiff.

Kenyon Parker, Roupell, jun. and Tripp, for other defendants.

Parker, in reply, cited *Holden v. Kynaston*, 2 Beavan, 205.

The LORD CHANCELLOR.—This appeal must be dismissed. When the Court disposes of a cause, it disposes of the costs also; but here there was no final order, only a postponement of the final determination. As to the form of the order, it exactly corresponds with that in *Moore v. Prior*, in 2 Y. & Col. Exch. Rep. The question of costs is entirely in the discretion of the Court, which is quite competent to postpone the one cause until the other has been heard and finally disposed of. Vice-Chancellor Knight Bruce doubtless thought that as he had no control over the other cause, some inconvenience might arise if he had made any order; and he adopted it, without any reference to the cause pending in the Court of Vice-Chancellor Wigram, as was done in the case reported in the Exchequer. I think it was quite competent to the Vice-Chancellor to take that course. As to the main question, the construction of the will, I must be quite satisfied the testator wished these annuities to be paid before the legatees, before I can reverse the decision of the Vice-Chancellor upon that ground; but I think no priority has been established. I cannot accede to the argument of Mr. Parker, that these annuities must be considered to come under the class of debts. Unless I am clearly satisfied that the testator intended a preference, I cannot give the annuitants priority; and there appears to me to be nothing in the will to take them out of the ordinary rule of equity, that all annuitants and legatees are to take equally. The appeal will be dismissed with costs.

Re Webb, in Lunacy.

Friday, May 29.

Practice in lunacy—Petition for a commission against a person abroad.

The petition in this matter was presented by Mr. F. Webb, the nephew and tenant in tail in remainder of an estate, of which John Webb, the alleged lunatic, was tenant for life. The petition prayed a commission to inquire into the state of mind of the alleged lunatic, stating that, after a confinement of several months in the establishments of two of the most eminent medical men in Paris, he was now in a state of hopeless insanity. The affidavits of Sir T. Cherrise, the physician to the British embassy, and several French physicians, corroborated this statement. Mr. Webb had large landed estates in Yorkshire and Lincolnshire, producing an income of 12,400*l.* but in consequence of an insane passion for pictures and articles of *vertu*, he had incurred debts to the extent of 58,600*l.* which had been paid by money borrowed from the West of England Fire and Life Assurance Company, and which now formed a charge on the life estate, requiring, with the sum for the insurance of the lunatic's life, an annual outlay of 4,900*l.* The expenses of management were 2,500*l.* more, and the petitioner alleged, that as the estates were in the hands of a manager who had not given any security, there was an additional reason for asking the protection of the Court.

Romilly and Busk supported the petition, *James Parker and Walford* opposed, and read affidavits to shew that Mr. Webb had been removed lately to an establishment in Paris, where the treatment was very different from that under which his illness had hitherto continued, and that there was a reasonable prospect of his recovery.

Bacon, for the Insurance Company.

The LORD CHANCELLOR.—The case is of such a nature that no harm can be done by allowing the case to stand over for a short time, in order to ascertain the effect of the new treatment to which Mr. Webb is now subjected. Let the matter be in the paper on the day before the last seal.

The matter has not been again mentioned.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Monday, Feb. 23.

GREGSON v. HINDLEY.

Mortgage—Tenant for life—Statute of Limitations.
A tenant for life of a mortgage estate, admitted by way of recital, in a deed that interest on the mortgage had been paid: Held, not to be a sufficient acknowledgment of the mortgage debt against the remainderman, to prevent the operation of the Statute of Limitations.

The bill stated, among other things, that by an indenture, bearing date the 12th of August, 1806, John Hindley mortgaged certain renewable leaseholds for lives, at Marton, to John Dawber, for 99*l.*, and at the same time executed a bond for the same sum; and that he afterwards further charged the said leaseholds with the repayment of 40*l.* to the said John Daw-

ber. That the said John Hindley, by his will, bearing date the 5th of April, 1808, gave and bequeathed unto his wife Ann the said leaseholds, to hold the same, subject to certain yearly rents and payments, and also subject and chargeable with the payment of the interest of the sum of 99*l.*, secured thereon by way of mortgage, unto his said wife and her assigns, during the term of her natural life; and from and immediately after her decease, he gave and bequeathed the same unto his nephew, John Hindley, the defendant; subject and chargeable as aforesaid, and also subject and chargeable with the payment of the said principal sum of 99*l.* and interest thereon, to grow due from the decease of his said wife Ann. By a codicil to his will, bearing date the 15th Feb. 1817, the testator ratified and confirmed the devise of the said leaseholds to his said wife Ann and her assigns for her life, subject to the payment of the interest of such sum and sums of money as remained due and owing on mortgage of the same estate, or for which the title-deeds thereof might remain pledged; and from and after her decease he did ratify and confirm the devise thereof unto his said nephew, John Hindley, his heirs, executors, administrators, and assigns, subject and chargeable, nevertheless, with the payment of the several charges in his will mentioned, and also to such sum and sums of money as might be then due and owing on mortgage of the same estate, or for which the title-deeds might remain pledged by way of security. That John Hindley died in August, 1817. The bill, moreover, stated that by an indenture, bearing date the 18th day of August, 1839, after reciting, as the facts were, among other things, that the said two principal sums of 99*l.* and 40*l.* (amounting together to the sum of 1,036*l.*) only remained due and owing upon the said several securities, "all interest for the same having been paid." It was witnessed that, in consideration of 1,036*l.* Charles Wigglesworth, Sarah Wigglesworth, John Stowe and Rebecca his wife (the representatives of John Dawber, then deceased), with the privity and consent of Ann Hindley, then Ann Milns, did assign unto the plaintiff, Joseph Gregson, his executors, administrators, and assigns, all the said two principal sums of 99*l.* and 40*l.* and all interest to grow due thereon, and all the benefit and advantage thereof respectively, to have and enjoy the said principal sum and interest, as and for his and their own proper goods and chattels for ever. And by the same indenture the said leaseholds were also assigned to the plaintiff, John Gregson, his heirs and assigns, subject to a proviso for redemption on payment by Ann Milns, or the person who, after her decease, should be entitled in reversion to the said hereditaments, unto the plaintiff, John Gregson, his executors, administrators, or assigns, the sum of 1,036*l.* and interest. That the name of the plaintiff, John Gregson, was made use of in the said last-mentioned indenture, as a trustee for the said Ann Milns, and that the said sum of 1,036*l.* was in fact advanced by her. That Ann Milns died in 1842. The bill then, among other things, prayed that the defendant, John Hindley, might be decreed to obtain a renewed lease of the mortgaged premises, and that such renewed lease might be declared to be well charged with the payment of the said principal money and interest.

Wakefield and Faber, for the plaintiff, contended that the interest had been paid from time to time, and that it was not at all probable that it should have been paid all at once.

Bethell contended that, so far from there being any proof that interest had been paid from year to year, there was not even an allegation that interest had been paid from the death of the mortgagor in 1817, till the executing the indenture of 1839, an interval of more than twenty years, and therefore the Statute of Limitations would operate as a bar.

Roupell, Malins, Metcalf, Tennant, Campbell, Goldsmith, Hubbard, Bennett, and Barton, for the several other parties.

The VICE-CHANCELLOR.—What you are required to prove is, that payments of interest have been made within twenty years. As to the fact stated in the bill, taking it at the utmost, is, that on the 18th of August, 1839, all interest had been paid; very different indeed from an averment that interest had been paid during the interval of twenty years. Now this is a peculiar case, for it appears that the equity of redemption was devised to A for life, with remainder to B. Suppose it to be the fact that, for more than twenty years, no interest had been paid during A's life, a serious question would arise, namely, whether, after the reversioner had obtained the benefit of the Statute, it would be competent for the tenant for life, by her own act, to create a mortgage that should be redeemable. What the plaintiff seeks is, that he may have liberty to prove that payments of interest were made from time to time; but this was not coincident with the statement in the indenture, as that might mean, for any thing to the contrary appearing, that a lumping sum had been paid. My opinion is, that for the sake of admitting proof of payment from time to time, a specific set of facts ought to have been alleged in the bill. I can easily conceive that the grossest fraud might be practised on the remainderman, as for a

mere sixpence the tenant for life might sign an acknowledgment that no interest was due.

Bill dismissed, but without prejudice to the right of filing a new bill.

Monday, March 9.

MUSTON v. BRADSHAW.

Pleading—Specific performance of agreement—Deeds in possession of vendor's wife.

A purchaser filed his bill for specific performance, wherein he stated that upon application to the vendor for inspection of certain title-deeds belonging to the property, he refused to produce them, on the ground of his not being able to make out a good title or to produce the said title-deeds, by reason of his wife, H. B. having broken open a box and taken them away, the contrary whereof the plaintiff charged to be true; the bill nevertheless stated that the vendor's wife admitted that the said deeds were in her possession, but that she claimed an interest in, or had some claim upon the estate for her sole and separate use independently of her husband, and refused to deliver up or produce any of the said deeds or documents, unless her said alleged interest or claim was first satisfied, or some provision made for her out of the purchase-money. The plaintiff charged that the vendor's wife had not, and never had, any interest in the said estate, but if she had, it was subject to the plaintiff's contract, and that there was collusion between the vendor and his wife to defeat the agreement. The bill prayed that, if necessary, the defendants might answer separately and for specific performance, and that H. B. the vendor's wife, might be decreed to deliver up the title-deeds. A demurrer by H. B. for want of equity allowed.

It appears by the bill, that by an agreement bearing date the 2nd of April, 1845, the defendant, G. M. Bradshaw, agreed to sell, and the plaintiff agreed to purchase, the property in question for 7,999*l.* subject to a good title being thereunto made. That various applications had been made by the plaintiff to the said defendant, G. M. Bradshaw, to perform his part of the said agreement; but that he refused so to do, alleging his inability to make out a good title to the freehold and inheritance of the premises in question, and particularly that he was unable to deliver up, or procure to be delivered up, the title-deeds and muniments of title relating thereto; but the plaintiff charged the contrary of such allegations and pretences to be the truth. The bill then charged, that shortly after the 15th of May, 1845, the defendant, G. M. Bradshaw, stated to the plaintiff, that all the deeds relating to the title of the estate were then in his possession, and that plaintiff and his solicitor could see such deeds; that on the 22nd May, 1845, the plaintiff, with his solicitor, attended at the house of the defendant, Bradshaw, who produced all the title-deeds relating to the said estate; and, amongst others, indentures of lease and release of the 29th and 30th October, 1776, and a certain other deed bearing date the 6th October, 1841, which completed his aforesaid title; the last of which deeds was a conveyance of the legal estate from the trustees of a will under which defendant was entitled to other trustees, to uses to bar dower. The bill then charged that on a subsequent occasion the plaintiff and his solicitor attended at the house of the defendant for the purpose of examining the said title-deeds, and upon applying to the defendant to produce the said deeds, he refused so to do, alleging that he was unable to produce the said deeds and documents, by reason, as he alleged, that his, the said defendant's, wife had broken open a box in which the said defendant had kept such deeds and documents, and had taken them away, and that his said wife refused to give them up to him, or to inform him where the same were; and the said defendant also alleged that, under such circumstances, the said deeds were no longer under his control. The bill then charged that afterwards, and on the same occasion, Harriett Bradshaw, the wife of the said defendant, came into the room, and she then and there admitted or stated that the said deeds, or some of them, were in her possession; or that she knew where they then were, and could produce them; but she also then and there stated that she claimed an interest in, or had some claim upon, the said estate, or to that effect; and although she did not then state, and, in fact, upon being asked to do so, refused to state what her said alleged interest or claim was, she positively refused to deliver up or produce any of the said deeds and documents, or to state where the same were, unless her said alleged interest or claim was first satisfied, or some provision was made for her out of the said estate, or the purchase-money for the same. The bill then charged, that the said female defendant still claims some interest in the said estate, and in the said deeds; and she claims such interest for her sole and separate use, and independently of the said other defendant, her husband; but that, in fact, she has not and never had any interest whatever in the said estate, or any part thereof, or the said deeds; and, at all events, she has not, and never had, any interest therein, otherwise than subject to the said agreement of the 2nd of April last, nor any interest therein at all against the plaintiff, as such purchaser as afore-

said, or which entitles her to hold or retain the said indenture and deed, or either of them, as against the plaintiff; and her alleged interest therein arose after the date and execution of the said agreement, and by collusion with the said other defendant, in order to defeat such agreement. The bill prayed that, if necessary, the defendant might be ordered to answer separately; and that the defendant, G. M. Bradshaw, might be decreed specifically to perform the agreement of 2nd of April, 1845, and to do all acts necessary for that purpose, and especially to deliver up, or cause or procure to be delivered up to the plaintiff, by the said other defendant, or any other person in whose possession the same might be, the aforesaid indentures of lease and release of the 29th and 30th of October, 1776, and the said deed of the 6th of October, 1841, and all other deeds, instruments, writings, &c. the plaintiff offering to perform his part of the said agreement; and that it might be declared that the said female defendant had no interest in the said estate, or in any of the title-deeds and documents relating thereto, or otherwise; that it might be declared, that if she had any such interest therein, the same was subject to and without prejudice to the aforesaid agreement, and it is now void against the plaintiff; and that the said female defendant might be decreed to deliver up to plaintiff the said indentures of lease and release of the 29th and 30th of October, 1776, and the deed of the 6th of October, 1841. And also that an injunction might issue against the defendants, to restrain them from parting with the said documents. To this bill the defendant, Harriett Bradshaw, demurred, for want of equity.

Stuart and Steer, in support of the demurrer, contended that the bill was wrongly framed; for part of it prayed that Mrs. Bradshaw might be directed to answer separately from her husband, contrary to the doctrine of the Court, which will not act against a married in personam at all. There was, therefore, no ground to make Mrs. B. a defendant. Moreover, she was, in the bill, stated to have no interest. The rule of a court of equity is, that a married woman can only be brought before the Court in a matter relating to her separate property; but the decree is sought to be obtained personally against her. Is the allegation of her being in possession of a particular deed sufficient? If it be in her possession, it is the possession of the husband. Assuming, however, the statements in the bill to be correct, it is a case of adverse claim to the husband; the wife should then be a co-plaintiff; but this would have been only upon the ground of her having separate property. Cases cited:—*Aylett v. Ashton*, 1 My. & C. 105; *Langley v. Fisher*, 5 Bea. 443; *Francis v. Weyssell*, 1 Mad. 258; *Tasker v. Small*, 3 My. & C. 63; *Martin v. Mitchell*, 2 J. & W. 425.

Bethell and Toller, in support of the bill.—The argument used on the other side might be available, provided the demurrer had been that of the husband; but this lady is represented, first, as having, with a knowledge of the contract, fraudulently colluded with her husband to defeat the contract. Secondly, that for such purpose, she delivered to some other person the title-deeds in question. Thirdly, she is clearly represented, by the bill, as claiming an interest subordinate to the contract, and, therefore, that interest must be paid out of the purchase-money. We admit that a married woman cannot answer or demur except where there is an allegation that she has a separate interest in the suit. Now it is directly stated upon the bill that Mrs. Bradshaw claims some interest to her separate use, but then we charge that such claim is subordinate to our contract, and was created merely for the purpose of defeating our agreement. Suppose that, subsequent to the contract, the vendor had entered into collusion with A. B. and given him an interest in the property, A. B. having notice of the contract, can it be contended that A. B. ought not to be made a party? [THE VICE-CHANCELLOR.—The only question is, whether it sufficiently appears upon the face of this bill that the wife has an interest? The plaintiff asserts that she has none; and you state expressly that the husband alone can make a good title.] The wife may have an interest in the purchase-money. What we state is, that she has no interest against the plaintiff, although she may have as against the purchase-money.

THE VICE-CHANCELLOR.—Taking the whole case together, my opinion is that the plaintiff is bound by his own general allegations. In the first place, where the pretence is put into the husband's mouth of his inability to make a good title, the plaintiff expressly charges the contrary of such pretence to be true, and the bill throughout states that what this lady says is false, provided the husband can make a good title. As to the objection of filing a separate demurrer, I do not see how it affects the case. The question now is, whether the demurrer as it stands is good or bad. I must take the record as I find it, and I am bound to say I think the demurrer good.

Bethell.—Then your Honour will give us leave to amend?

Stuart objected, on the ground that it was a demurrer to an amended bill, and that if the plaintiff were allowed to further amend by stating the wife had

no interest, it would be contrary to the bill as it then stood.

His Honour allowed the demurrer, but with leave to amend the bill, which was afterwards done by striking out that portion of it which charged the contrary of the vendor's pretences as to being unable to make a good title, and to produce the title-deeds, to be true, and instead thereof charged that, at the time of entering into such agreement, and down to the 22nd of May, 1845, he was able to make a good title and to produce the title-deeds; and by striking out the denial of any interest in Harriett Bradshaw to her separate use, and instead, charged that such alleged charge or interest, if any, was created by her said husband subsequently to and with full knowledge by the said H. Bradshaw of the said contract for sale, and in order if possible to defeat the said contract; and further charged that, if she should appear to be entitled to any sum of money for her separate use raised out of the said estate, then a sufficient part of the purchase-money ought to be applied thereto; charging also possession by H. Bradshaw of the title-deeds. H. Bradshaw again demurred for want of equity, which was allowed.

ROLLS COURT.

July 19 and 22, November 8, 19, and 22, 1845, and April 17, 1846.

BENNETT v. COOPER.

Statute of Limitations—Mortgage—Trust to sell—Covenant—Assignment in Equity—Deed-poll—Appointment of attorney, operation of.

In the year 1816, A B mortgaged certain freehold premises for a term to C D, and entered into a covenant to pay the mortgage-money. In 1837, A B being then indebted in a sum of money to his bankers, he, together with C D, conveyed the premises in fee to the bankers on trust to sell and satisfy the debt due to themselves, and then that due to C D; and A B and C D entered into a joint and several covenant for the payment of the debt due to the bankers. In a few days after A B executed a deed-poll, whereby, in consideration of the debt due by him to C D, and C D's liability to the bankers, and in order to secure the repayment of the debt to him, he appointed C D, his attorney, to receive all sums thereafter to become due and owing to him (A B), and all legacies and bequests which should thereafter come to him or his then present or any future wife. From 1817 there was no evidence of any payment, nor of any acknowledgment of C D's debt, but as to the bankers, several transactions took place. In 1823, they entered into possession of the premises, and ultimately, in 1834, sold them, and applied the proceeds in payment of their debt, which was not thereby satisfied.

Held, that time did not run so as to bar the plaintiff's claim pending the execution of the trust; that the debt was a subsisting debt at the time of filing the bill; and that the deed-poll was valid and effectual, and operated as an assignment in equity of all sums of money and legacies thereafter receivable.

This was a suit instituted for the purpose of obtaining the benefit of a deed-poll executed by the defendant in 1817 in favour of his brother-in-law, the plaintiff, as a security for moneys lent, and an indemnity against his liability as surety for the defendant. The bill filed in October, 1842, stated that the defendant having in the year 1815 bought a mill and premises for 2,270*l.* borrowed 1,500*l.* from the plaintiff, and in January 1816 executed a mortgage for a term of years to secure the same, and covenanted to pay the money on the 1st of July then next, which, however, he failed to do. The defendant being indebted to his bankers to a considerable amount, and being pressed for payment, requested the plaintiff, and the plaintiff agreed to convey to them the mill and premises on trust to sell. Accordingly, by indentures of lease and release of the 22nd and 23rd of July, 1817, the premises were duly conveyed in fee to the bankers, on trust to sell and apply the proceeds in payment of the expenses of the sale, then in satisfying their own debt, and then in payment of the plaintiff's, which he agreed to postpone. And the plaintiff and defendant thereupon entered into a joint and several covenant to pay the debt, then amounting to 1,620*l.* 18*s.* 5*d.* due to the bankers, with interest; but, for the purpose of giving the plaintiff security and an indemnity for becoming surety, the defendant executed a deed-poll, bearing date the 7th of August, 1817, and thereby, after reciting that he was indebted to the plaintiff in the sum of 1,500*l.* and that the plaintiff had become surety for him, and that divers persons owed him, the defendant, various sums, and that he and his wife had expectations from their relations, who would probably bequeath them legacies or sums of money, and that he was desirous of securing the said debt of 1,500*l.*; it was thereby witnessed that he, the said defendant, in consideration of the debt, and in order to secure the repayment thereof, did, by the said deed-poll, fully and absolutely nominate, constitute, and appoint the plaintiff, his executors, administrators, and assigns, his true and lawful attorney and attorneys irrevocably, for him, and in his name, &c. to demand, sue for, and

receive from all and every person all sums of money which should thereafter be due and owing to the defendant, and all legacies and bequests coming to him or his then present or any future wife, &c.

The defendant continued to carry on the business of the mill till 1821, on the 11th of June in which year he retired, and on doing so delivered a bill of sale to the plaintiff, reciting that he owed the plaintiff 250*l.* and he thereby assigned to him all his goods, &c. in consideration thereof; and the plaintiff sold them, and paid over the proceeds to the bankers, in part discharge of their debt. The plaintiff also took possession of the mill, and worked it at a loss till January 1823, when the bankers, as mortgagees, took possession thereof, received the rents, and debited themselves therewith up to April 1834. The defendant being then indebted to them in more than 2,300*l.* they, with his consent in writing, sold the premises for the sum of 1,300*l.*

The bill then went on to state, that the debt to the bankers not being thereby paid, they still considered the plaintiff liable for the balance, then amounting to about 1,400*l.* and besides, the 1,500*l.* lent the defendant remained unpaid; that, shortly before 1838, the plaintiff found that the defendant had been bequeathed the interest for life of 700*l.* amounting to about 29*l.* 2*s.* and that in 1839, the defendant's wife had been bequeathed the interest of 200*l.* for life, amounting to about 8*l.*; and also certain residuary property, amounting to 1,118*l.*; and these several sums the plaintiff claimed to be entitled to by virtue of the deed-poll of the 7th of August, 1817. To take the case out of the Statute of Limitations, the plaintiff stated that certain payments were made to him in the years 1825 and 1828, by the bankers on behalf of the defendant, but whether in relation to this particular account did not appear; and that in 1839 the defendant wrote a letter to the executor, by whom one of the bequests was to be paid, in which he admitted the debt, and required to be furnished with a debtor and creditor account. In 1839, the plaintiff offered to take 20*l.* a year, or little more than half the income, together with half the residuary estate, in full of all demands, but the defendant refused to accept the offer, and the consequence was the institution of the present suit, which the plaintiff, being in reduced circumstances, was obliged to prosecute in form *paupe*ris.

The defendant, by his answer, admitted the principal facts, but denied that he owed the plaintiff the 250*l.* the consideration money for the bill of sale; and alleged that a partnership in the mill existed between him and the plaintiff from 1819 to 1821; and that, on his retiring, an arrangement was entered into between them, whereby the plaintiff agreed to take the premises, stock, goods, &c. and that from thenceforth all claims should be considered as liquidated, but that the agreement was not regularly drawn up, nor were the securities delivered to the defendant. Of this, however, there was no proof, and the plaintiff's evidence was entirely the other way. The defendant also insisted that, though a debt was originally due, and a liability incurred on the covenant to the bankers, they were now barred by time. He further insisted that the plaintiff was also barred; for as to the letter, though he admitted it was written, yet he denied it constituted an acknowledgment, as it was only written to ascertain what claims were set up against him; and, besides, it was to a third party. The deed-poll was inoperative, he insisted, as a conveyance of after-acquired legacies; and was also inoperative because of the arrangement of 1821, and was barred by time; and being made for valuable consideration, which was now extinguished, it might be revoked, and he did thereby revoke it. The interest of the 700*l.* he said, was given to his wife to her separate use.

The case came on several times to be heard, and as often stood over for compromise. After much negotiation, the difference between them was reduced to about 5*l.* down and 1*l.* 10*s.* a year; but neither party being willing to make further concession, the judgment of the Court became necessary.

Bagshaw (with him *Rogers*), for the plaintiff, insisted that by entering into the covenant to the bankers the plaintiff contracted a liability; and if the covenant continued, so did the debt, and therefore go also did the security given in respect of the debt. There was nothing in the nature of the deed of indemnity which rendered it inoperative, for agreements of the kind were often carried into effect. (*Whitfield v. Fausset*, 1 Ves. sen. 387; *Wright v. Wright*, 1 Ves. sen. 409; *Hobson v. Trecoar*, 2 P. Wms. 121; *Beckley v. Newland*, 2 P. Wms. 182.) The form of the deed-poll made no difference; for, being given as a security, it operates as an assignment in equity. The case of partnership set up was not proved. The plaintiff was entitled to the benefit of the deed-poll.

Kindersley (with him *Lewin*), for the defendant, insisted that the plaintiff was bound by the statute, as there had been no acknowledgment within twenty years, nor any part-payment, for even supposing the payments alleged had been made, they were not so made as to carry with them an admission that a larger debt was due. (*Tippits v. Heane*, 1 Cr. M. & R. 262;

Mills v. Fowkes, 5 Bing. N. C. 455; *Waugh v. Cope*, 6 Mees. & Wels. 824; *Holland v. Clarke*, 1 Y. & Coll. C. C. 151; *Phillips v. Phillips*, 3 Hare, 299.)

Bagshawe, in reply.

THE MASTER of the ROLLS stated the facts down to the execution of the deed-poll, and then proceeded:—I find no evidence I can rely on that the defendant was ever afterwards asked by the plaintiff for payment of the debt, or that he ever paid interest upon it; and the bill to recover it was not filed till the year 1842, twenty-five years after. But in July 1817, the plaintiff's debt was postponed to that of the bankers; and in 1821 the plaintiff paid over the produce of the sales by him of the defendant's stock, goods, and effects to the bankers, in part-payment of their debt; and in 1823 the bankers took the mill into their own hands, and entered into possession thereof; and in 1834 they sold the same, and received the purchase-money, and applied the whole of it, after paying the expenses of the sale, in part discharge of the 1,620l. 18s. 5d. the debt due to themselves. Thus in 1834 the estate was exhausted, the trusts were fully executed, and the debt remained unpaid. At this time the plaintiff had a covenant from the defendant for payment of his debt; and also a deed-poll, whereby he was constituted an attorney for the defendant, to receive all such sum or sums of money, or other property, as the defendant or his wife should become entitled to by will or otherwise, and to apply the same in discharge of his debt. Whilst this trust was pending, and the execution of it incomplete, it cannot be maintained that time ran so as to bar the plaintiff's claims, but the covenant remained till the year 1834 unaffected by time. The bill was filed in October 1842, and it alleges that in 1838 the defendant received certain sums of money coming within the scope and operation of the deed-poll; and it prays that it may be declared that the plaintiff is entitled to such sums by virtue thereof; and that an account may be taken of what is due in respect of the debt to the plaintiff, and of his liability, and that such sums may be applied in payment thereof. The defendant set up a defence to the bill, and insisted that the deed-poll was inoperative as an assignment of after-acquired property, and was also barred by time. The deed-poll, however, is made for valuable consideration, and amounts to an assignment in equity of all sums to be received out of legacies thereafter bequeathed. I think the debt did subsist at the time of filing the bill, and that the deed-poll operated as an assignment of all such property as is mentioned therein for the payment of the debt. The plaintiff is therefore entitled to the benefit of the deed-poll.

Declare that the sums so bequeathed to the defendant belong to the plaintiff, and reserve further directions and costs.

VICE-CHANCELLOR WIGRAM'S COURT.

Monday, June 22.

BELCHAM v. PERCIVAL.

Answer—Production of documents—Privilege—Waiver of privilege.

The general rule which entitles a plaintiff to inspect all documents partially set out and referred to for greater certainty in an answer, does not apply to privileged documents.

A defendant may waive privilege, as to part of a privileged document, by setting such part in his answer, and referring to it, but his so doing does not waive the privilege as to the remainder.

This was a bill for an account, and the defendant, against whom the account was prayed, died before putting in his answer, intestate; his administratrix was made a party by supplemental bill, and in her answer admitted she had in her possession a draft answer to the original bill, which had been prepared for the intestate before his death, but it did not appear whether it had been engrossed, signed, or settled by counsel. The plaintiff then moved for the production of the draft answer admitted to be in her possession, which she opposed, and the Court refused to order it, on the ground of the document being privileged. The plaintiff now renewed the application for production of the draft answer, on the ground that the defendant, after setting out a part of the draft answer, in her own answer referred to the document itself for greater certainty, and thereby she had waived the benefit of privilege.

THE VICE-CHANCELLOR.—It is perfectly settled that where a defendant in his answer states a document shortly and partially, and for the sake of greater caution refers to the document in order to show that the effect of the document has been accurately mentioned, in such a case the Court will order the document to be produced. *Hardman v. Ellman*, 2 Mylne & Keen, 732, and the cases there referred to, are an authority for that; but that rule only applies to documents in general, privileged documents do not come within the rule. It nowhere appears that a defendant, by setting out part of a privileged document, thereby loses his right to conceal the remainder; the act is voluntary on his part; and as to

the part set out he waives the privilege, and so much the plaintiff is entitled to inspection, but no more; the plaintiff must, therefore, have leave to inspect the portion set out in the answer, and the defendant shall be at liberty to conceal the remainder.

COURT OF COMMON PLEAS.

June 4 and 6.

BOWLEY v. BELL.

A employed B, a broker, to sell five shares in a railway. B contracted to sell them to C, another broker. At the time of the employment of B by A, and of the contract between B and C, the shares were in course of registration, and consequently no transfer took place. After considerable delay, and after the shares had risen in value, C wrote to B, threatening him that if the shares were not transferred, he, C, should buy a like number of shares in the market, at the increased price, and charge B with the difference of price. B gave notice of this threat to A, who distinctly forbade him from paying any money on his account. C afterwards fulfilled his threat, and B paid him the difference between the contract price and the then market price of the shares. By a rule of the stock exchange, to which B and C belonged, B was liable to make C this payment. No deed of transfer of the shares was ever tendered by C to B for execution, nor was the purchase-money ever tendered. Held, that B could not recover from A, as money paid to A's use, the money which B had paid to C as the difference between the prices of the shares at the two different times.

This was an action of *assumpsit* for money paid by the plaintiff to the use of the defendant, at his request.

Plea—Non assumpsit.

At the trial at the Lent Assizes, 1846, for the county of York, before Coleridge, J. a verdict was found for the plaintiff for 81l. 10s. subject to a leave reserved to the defendant to move to enter a nonsuit or a verdict for himself.

It appeared that the plaintiff was a share-broker at Hull, and the defendant a merchant residing at Newcastle, but also carrying on business at Hull. In the month of July, 1845, the defendant employed the plaintiff to sell five shares in the Great Grimsby and Sheffield Railway. The Act for the Great Grimsby and Sheffield Railway passed on the 26th June, 1845, and by it the Companies' Clauses Act (8 & 9 Vict. c. 16) and some other Acts were incorporated with it. The plaintiff negotiated a sale of the shares to Richardson, another share-broker, at Hull, but, at the time of the contract, the scrip shares were in the hands of the company for the purpose of registration, and no transfer of the shares took place. Some delay occurred in the registration, and the certificates were not given out by the company until the 12th of September. In August a call was made of 2l. 5s. per share, and a great deal of correspondence took place between the plaintiff and the defendant as to whether that call was to be paid by Richardson or by the defendant. On the 1st of September a meeting took place between the plaintiff and the defendant, at which the defendant signed the following memorandum, directed to the plaintiff:—

"On or before the 23rd instant, I undertake to pay a call of 2l. 5s. per share on five Great Grimsby and Sheffield Railway shares, sold by you on my account on the 28th of July last, and as soon after as possible pledge myself to execute the necessary transfer in respect thereof. The above to be repaid."

This memorandum bore no stamp, and was objected to as inadmissible in evidence. The call upon the shares was eventually paid by the defendant. No transfer of the shares took place, and upon the 18th of October, by which time they had risen considerably in value, Richardson wrote to the plaintiff that unless the shares were immediately transferred at the contract price, he should purchase five shares in the market, at the then market price, and hold the plaintiff liable for the difference. Upon the 22nd October the plaintiff communicated this notice to the defendant, who thereupon wrote the following letter to the plaintiff:—"I hereby caution you against paying any money on my account. I have received your notice of the 22nd. When the claim is settled in a court of law, I will pay it myself." Richardson subsequently bought five shares at an advanced price of 81l. 10s. and claimed that sum of the plaintiff. The plaintiff paid it, and now sued the defendant for it as money paid to his use. Both Richardson and the plaintiff were members of the Hull Stock Exchange, and it appeared that by a rule of the Stock Exchange at Hull, "all brokers are liable, if the principal be not named;" and, by the same rule, the plaintiff, under the above detailed circumstances, was liable to pay Richardson the sum in dispute. But there was no evidence that the rules of the Stock Exchange were known to the defendant; and indeed it was shewn that the Exchange itself was only founded in the previous March, and that the rules were framed somewhat later. No deed of transfer, in the form provided by schedule B to stat. 8 & 9 Vict. c. 16, was ever tendered by Richardson to the plaintiff, or by

Richardson or the plaintiff to the defendant for execution; nor was there ever any direct waiver of such tender; but in the month of October, after some correspondence between the parties, the defendant wrote to the plaintiff, that as he was going from home he had placed the correspondence in the hands of his attorney, and requested that all further communications might be made to him.

In Easter Term, Channell, Serjt. obtained a rule, pursuant to leave reserved, or for a new trial, on the grounds that this form of action was not maintainable, but that the plaintiff should have declared specially; that, no deed of transfer having been tendered by Richardson, the plaintiff paid in his own wrong, and therefore could not recover of the defendant; that the agreement of the 1st of September was an agreement "the matter whereof was of the value of 20l." and therefore required a stamp; that the delay of Richardson in purchasing the shares was an unreasonable delay, and discharged the plaintiff and the defendant.

On Thursday, June 4, Byles, Serjt. (with him Archbold) shewed cause. Channell, Serjt. (with him Atherton) supported the rule.

The following authorities were referred to:—*Thomson v. Davenport*, 9 B. & C. 86; *Child v. Morley*, 8 T. R. 610; *Lightfoot v. Creed*, 8 Taunt. 268; *Pitt v. Purvord*, 8 M. & W. 538; *Kemp v. Pinden*, 12 M. & W. 421; *Chadwick v. Sifts*, R. & M. 15; *Stephens v. De Medina*, 4 Q.B. 422. *Cur. adv. vult.*

On Saturday, June 6, TINDAL, C. J. delivered the judgment of the Court.

JUDGMENT.

In order to maintain this action for money paid to the use of the defendant at his request, it was necessary that the plaintiff should prove either an actual request on the part of the defendant, or that the money was paid in discharge of some liability, which the plaintiff had taken on himself, by the defendant's authority. No evidence was given of any actual request; it is, therefore, necessary to inquire whether the plaintiff paid to discharge some legal liability, and whether he incurred that liability by the defendant's authority. The precise nature of the contract which he entered into was not proved; but the evidence given by Richardson, on cross-examination, tends to shew that the contract was for registered shares. He says, "the shares were in for registration at the time I purchased. It was understood at the time of the bargain, between April and May, that the shares were then being registered." If the contract was for unregistered shares, it may be collected from the correspondence that the defendant did not authorize the plaintiff to make such a contract; and if he did make it, and thereby incurred the liability to have shares bought in against him, he cannot charge the defendant with the loss sustained. See the letters of the plaintiff to the defendant of the 11th of August, of the defendant to the plaintiff of the 15th of August, and of the plaintiff to the defendant of the 16th of August. Again, whatever was the form of the contract, it must be taken against the plaintiff that the purchase agreed to should be treated as a contract for registered shares; for, in answer to the defendant's letter of the 23rd of August, inquiring whether the contract was to be treated as void, the plaintiff answered, on the 27th, that Richardson would pay the contract price, and the amount of the call which had then been made, and which it would be necessary to pay in order to have a transfer of the shares after registration. The defendant thereupon paid the call, and nothing remained to be done but the execution of the transfer, which Richardson ought to have prepared and tendered for execution, together with the purchase-money; and until he did so he would not be in a situation to maintain an action for not transferring the shares; according to the case of *Stephens v. De Medina*, 4 Q.B. 422. No evidence was given of any further communication between the parties until the 15th of October, when the defendant wrote to the plaintiff, saying that as he was going from home he had placed the correspondence in the hands of his attorney, and requesting that all further communications might be made to him. This, it was said, amounted to a refusal to complete the contract, and dispensed with the tender of the transfer; but we think such meaning cannot be attributed to it, although the plaintiff, by paying the demands when the shares had been bought in by Richardson, as far as he was concerned, waived such tender. We think he clearly had no authority to do so after the defendant's letter expressly desiring him not to pay any money in his name as his agent. On the whole then, it appears to us, that if the contract was for unregistered shares the plaintiff was not authorized to make it; and if for registered shares, Richardson, not having tendered the transfer, was not in a situation to proceed against the plaintiff, and consequently payment by him was in his own wrong, and did not give him a right of action against the defendant for money paid to his use; and the rule for entering a nonsuit must, therefore, be made absolute.

Rule absolute accordingly.

COURT OF EXCHEQUER.

BUSINESS OF THE WEEK.

Wednesday, July 1.

NIGHTINGALE v. SMITH.—Special case from Chancery on the construction of a will. *Hodgson, Q.C.* was heard upon one side; *R. Palmer* (with whom was *J. Henderson*) contra. *Cur. adv. vult.*

MORRIS v. BAENES.—*Chilton, Q.C.* and *Ball* shewed cause; *V. Williams* contra.—The question was whether a local Act of Parliament had barred certain rights of common; and the Court were of opinion that it had not. Consequently the rule would have been made absolute to enter the verdict, but under the circumstances the Court were inclined to think that a new trial should be granted upon payment of costs. They said, however, they would first consult the learned judge before whom the cause was tried.

SWIFT v. HAWKINS.—*Wise* shewed cause against a rule for a nonsuit. *Hurlstone*, contra.

Argument to be resumed on Saturday.

The Court said that all the special cases should stand over until next Term, but the demurrers proceeded with on Friday and Saturday.

1st Prize.

COURT OF EXCHEQUER.

Monday, June 29.

(Before Sir F. POLLOCK, C.B.)

SAMUEL v. ROBINSON.

The purchase of goods at an auction by an insane man is so far void as to exclude the liability of the auctioneer for the difference between the price obtained at that and a subsequent sale.

Assumpsit for money had and received, and on an account stated. Pleas, the general issue.

From the plaintiff's evidence, it appeared that the plaintiff had placed some goods into the hands of the defendant, an auctioneer, for sale,—that the sale by auction had taken place, and that the goods had been purchased by one M^r Keller, who had turned out to be an insane man. This sale not being perfected, the defendant kept the goods, which were resold, and fetched an inferior price. Subsequently, however, by some figures in pencil upon the bills which he sent to the plaintiff, the defendant debited himself with the difference between the price obtained at the first and subsequent sale, and for the amount of that difference the present action was brought. Several auctioneers stated that it was the custom of the trade that auctioneers should be liable for the amount obtained, even from a madman.

Chambers, Q.C. for the plaintiff, insisted that the defendant, according to the custom of the trade, was liable for the amount obtained at the first sale, especially as, by the conditions of sale, a deposit was to be paid upon each lot, which had not been done by M^r Keller. After a failure to pay his deposit upon the first lot purchased, he ought not to have been permitted to bid for a second lot. But if the plaintiff could not recover upon the first count, the defendant's liability upon the account stated was proved by the pencil figures upon the bills.

Jervis, Q.C. for the defendant, submitted that the purchase of an insane man was altogether void, and that, therefore, the price obtained by the second sale was all the plaintiff was entitled to receive.

The LORD CHIEF BARON directed the jury that if an insane man bought goods at a sale, a plea setting forth his insanity would be no answer to an action to recover the price—though, no doubt, the fact of insanity would influence a jury, and they would never give to a plaintiff, in such an action, more than the fair value of the goods, and not any higher price at which they might have been sold. But in the present case, the question was, whether the auctioneer was liable for the price at which the goods had been sold to an insane person; and, notwithstanding any asserted custom in the trade, he had no hesitation in saying that the auctioneer was not liable. The sale must be regarded as void and of none effect; and he agreed with the defendant's counsel, that on the first count the plaintiff could not recover. But on the count for an account stated, there was strong evidence to go to the jury in the shape of the pencil figures in the defendant's own hand-writing. If these were genuine, they amounted to an admission of the debt; and it was for the jury to say whether they were genuine or not.

Verdict for the plaintiff for the full amount claimed.

M. Chambers and Lush, for the plaintiff; *J. Jervis and Phinn*, for the defendant.

Circuit Reports.

TARRY v. NEWMAN.

Justice of the peace—Jurisdiction of, under 7 & 8 Vict. c. 29—Form of information—Summons—Conviction and warrant—Costs.

Where a summons has been issued by one justice of the peace on a complaint under 7 & 8 Vict. c. 29, charging a party with stealing a growing tree. *Quere, whether, on the appearance of the party accused on that summons, it is competent to another justice of the peace to proceed to convict.*

Quere also, whether costs can be annulled under that statute.

Trespass for false imprisonment.

Plea, not guilty by statute.

O'Malley (with whom was *Crouch*), proved, for the defendant, that he and another person named Gray were summoned on the 10th February, 1845, to appear before Mr. Dashwood, a justice of the peace for the county of Bucks, under the 7 & 8 Vict. c. 29, s. 39, to answer the information and complaint of one Jos. Reeves, charging them with stealing one ash tree, of the value of 1s. the property of one E. F. Middleton. In pursuance of this summons, the plaintiff alone appeared on the day and at the time and place indicated therein; Mr. Dashwood, Mr. Newman, and another justice being then assembled at petty sessions.

When the case was called on, Mr. Dashwood was on the bench, but did not take any part in the proceedings which were conducted before Mr. Newman, who, having heard evidence, convicted the plaintiff in the following form:—

"County of } Be it remembered, that on the 21st
Bucks. } day of February, 1845, at Chipping Wycombe, in the county of Bucks, Wm. Tarry, of the parish of Hughendon, in the county of Bucks, is convicted before me, John Newman, esq. one of her Majesty's justices of the peace for the said county, for that he, the said Wm. Tarry, on the 9th of February, in the year aforesaid, at the parish of H. in the said county of Bucks, one ash tree, of the value of 1s. at the least, the property of E. F. M. Esq. then and there growing, unlawfully did steal, take and carry away, against the form of the stat. in such case made and provided. I, the said J. N. do therefore adjudge the said W. T. for the said offence (the same being his first offence) to forfeit and pay, over and above the value of the said tree so stolen as aforesaid, the sum of 5s. and for the value of the said tree so stolen as aforesaid, the further sum of 1s. and also to pay the sum of 1l. 4s. 6d. for costs, to be paid on or before the 19th day of March next, and in default of payment of the said sums, to be imprisoned in the House of Correction at Aylesbury, in and for the said county of Bucks, and there kept to hard labour for the space of one calendar month, unless the said sums shall be sooner paid; and I direct that the said sum of 5s. shall be paid to one of the overseers of the poor of the said parish, and in which the said offence was committed, to be by him applied according to the directions of the stat. in that case made and provided; and that the said sum of 1s. shall be paid to the said S. F. as the party aggrieved by the said offence, who has not been examined in proof of the same; and I do order that the sum of 1l. 4s. 6d. shall be immediately paid to Jos. Reeves, the complainant.

"Given under my hand and seal, the day and year first mentioned.

"JOHN NEWMAN." (L.S.)

The plaintiff not being in a situation to pay the costs was committed to prison ultimately, under the following warrant of the defendant.

"County of Bucks, } To the constable of the parish
to wit. } of Chipping Wycombe, in the county of Bucks; and to the keeper of the House of Correction at Aylesbury, in the said county.

Whereas Wm. Tarry, of the parish of Chipping Wycombe, in the said county, labourer, is convicted before me, John Newman, one of her Majesty's justices of the peace in and for the county of Bucks, upon the oath of J. Reeves and others, in the parish of Hughendon, in the said county, for that he the said William Tarry did, on the 9th of February last, at the parish of Hughendon, in the said county, steal, take and carry away one ash tree, from a certain place called Green Hill, in the parish of Hughendon, in the said county, then and there growing, of the value of 1s. the property of E. F. M. esq. contrary to the form of the statute in such case made and provided. And then I, the said justice, adjudged the said W. T. to forfeit and pay for his said offence (the same being his first offence) the sum of 5s. over and above the value of the article so stolen, as aforesaid, and for the value of the said article so stolen the sum of 1s. and also to pay the sum of 1l. 4s. 6d. for costs; and I directed that the said sum of 5s. should be paid to one of the overseers of the poor of the parish last aforesaid, in which the said offence was committed, to be by him appointed according to the directions of the statute in such case made and provided. And the said sum of 1s. to be paid to E. F. M. esq. the party aggrieved by the said offence, who was not examined in proof of the same, and that the said sum of 1l. 4s. 6d. for costs should be paid to the said J. R. the complainant. These are therefore to require you, the said constable, to apprehend and forthwith to convey the said W. T. to the said house of Correction at Aylesbury, in the county of Bucks, and deliver him to the

keeper thereof, together with this precept. And you, the said keeper, are hereby commanded to receive the said W. T. into your custody in the said house of correction, there to be imprisoned and kept to hard labour for the space of one calendar month, unless such sums as aforesaid shall be sooner paid and satisfied, and for your so doing this shall be your sufficient warrant.

"Given under my hand and seal, this 20th day of March, 1845. "JOHN NEWMAN." (L.S.)

Under these circumstances, O'Malley objected that the proceedings which terminated in the commitment of the plaintiff were irregular on several grounds. In the first place, the information and complaint were instituted before Mr. Dashwood, who issued his summons. He had, therefore, possession of the case, and the defendant had no jurisdiction over it at all. (Paley on Convictions, 3rd edition, p. 27; *R. v. Saintsbury*, 4 T. R. 456.) This depends on the 65th section, which enacts that "where any person shall be charged on the oath of a credible witness before any justice of the peace with any such offence, the justice may summon the person charged to appear at a time and place to be named in such summons, and if he shall not appear accordingly, then (on proof of the due service of such summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode), the justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person and bringing him before himself or some other justice of the peace, or the justice before whom the charge shall be made may, if he shall so think fit, without any previous summons (unless where otherwise specially directed), issue such warrant; and the justice before whom the person charged shall appear to be brought, shall proceed to hear and determine the case." This does not authorize a different magistrate to proceed with the case where the party appears, but only when the magistrate issuing the summons shall have issued his warrant to compel the appearance of the party charged. Except in such a case no second magistrate can interfere; at all events, he could only do so when the summons was in the alternative, as the warrant may be. In the second place, the proceedings are defective, inasmuch as they ought to have been commenced on the information of the party aggrieved, or at his instance. The expression, "if known," in the 66th section is explained by the 41st section, which refers to the case where the party is unknown; and the inference from those sections, coupled with the 70th section, is that the object was in order to avoid the risk of collusion that the party aggrieved is required to be the party complaining. Then the information is irregular for not shewing the residence of the party aggrieved, and because, being directed to two parties, it does not any where appear what became of the other person; the Act only imposing a single fine for the offence created thereby. There are also objections to the conviction, which does not state to which of the overseers the penalty shall be paid; and is erroneous in according costs, for which there is no authority in the Act. It is further submitted, that the warrant is defective, first, because it states a conviction in the present tense, while the conviction gave a month for the payment of the fine and penalty; and it does not shew that the default took place after that time so given by the conviction. The warrant is also defective, for ordering the commitment of the plaintiff, in default of payment of the penalty, the value, and also the costs; whereas, admitting that there is any power to award costs, the plaintiff might purge his offence by paying the penalty and value at once. The defendant, however, had no power to order the payment of costs without disjoining them. The only Act which confers the power of awarding costs is 18 Geo. 3, c. 19; and that cannot aid the defendant, for the conviction and warrant do not affect to proceed on that Act. The warrant is also bad, for not shewing clearly that the defendant had jurisdiction as a justice of the peace in the county of Bucks, and for not reciting a conviction which would justify any imprisonment at all, there being no adjudication in it. For these reasons, it is submitted, that these proceedings are irregular, and that the plaintiff is entitled to recover damages.

The learned Judge then interfered, by recommending the parties to agree on a verdict, and to reserve the points for the Court above. To this they assented, and a verdict was thereupon taken for the plaintiff, with 5l. damages, by consent.

THE LEGISLATOR.

Summary.

THE changes in the Government have necessarily brought all legislative proceedings to a stand still. It is probable that nothing more will be done in the present Session, than to pass measures required by the exigencies of state; so the lawyers may look forward to a few months' respite from the hopes and fears

by which they are alternately excited, through the proceedings alike of friends and foes at the commencement of every Parliamentary campaign. There is, however, no reason to expect that the recent changes will remove entirely all future cause for alarm. On the contrary, from every quarter there are warnings of contemplated invasions, which they would be wise not to disregard. The rival reports of the Lords Committee on the Burdens on Land indicated a settled opinion in both the great parties, that must, ere long, embody itself in the substantial form of actual legislation. The pending measures may, and probably will, perish and pass away; but only to be succeeded by others equally sweeping, perhaps more so. In the next Parliament, the lawyers will more need an active and intelligent representative, who thoroughly understands their requirements, than ever before; and it will be their own fault if they do not provide themselves with such a champion. Surely, they who procure seats for three-fourths of the House of Commons, could reserve one for a representative of their own.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A SECOND TIME.

Monday, June 29.

Commons Inclosure (No. 2)

BILLS READ A THIRD TIME AND PASSED.

Monday, June 29.

Sugar Duties
Coroners (Ireland)

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, June 26.

Eastern Counties Railway (Wisbech to Spalding)

Monday, June 29.

Galway and Kilkenny Railway
Dublin, Belfast and Coleraine Junction Railway

BILLS READ A SECOND TIME.

Friday, June 26.

Dublin and Enniskillen Railway
Dublin and Sandymount Atmospheric Railway
Londonderry and Enniskillen Railway

Monday, June 29.

Stamford and Spalding Railway

BILLS READ A THIRD TIME AND PASSED.

Friday, June 26.

Airdrie and Bathgate Junction Railway
Blackburn and Preston Railway
Cornwall Railway
Eastern Counties Railway Stations Enlargement
Glasgow, Dumfries, and Carlisle Railway (Amendments proposed, and referred to Select Committee in Standing Orders)
London and Birmingham Railway (Aylesbury Railway Purchase)
London and Birmingham Railway (Coventry to Nuneaton).
London and Birmingham Grand Junction and Manchester and Birmingham Railways Amalgamation
London and Birmingham Railway, Weedon and Northampton
Midland and Eastern Counties Railway, Cambridge to Weedon
North Union Railway
North Wales Railway
North Wales Mineral Railway Deviation and Branches
Sheffield General Cemetery
South Eastern Railway, from the Greenwich Railway to Chart, near Ashford, with Branches to Tunbridge and Riverhead; amendments to be proposed; by order.

Monday, June 29.

Blackburn, Durwen, and Bolton Railway
Black Sluice Drainage and Navigation
Enfield and Edmonton Railway
Sheffield, Rotherham, Barnsley, Wakefield, Huddersfield and Goole Railway
Wath-upon-Dearne Improvement
Wexford, Carlow, and Dublin Junction Railway
Great Leinster and Munster Railway, No. 1 (Carlow and Kilkenny)
Great Leinster and Munster Railway, No. 2 (Kilkenny and Clonmel)
Spitalfields New Street

SESSIONAL PRINTED PAPERS.

Municipal Boroughs—Abstract of Accounts
Scinde—Paper
Ordnance Survey—Returns
Bills—Baths and Washhouses
— Real Property Conveyances
— New Zealand Loan
Tariff of the German Customs' Union
New South Wales, Occupation of Crown Lands—Correspondence, part 6
Ordnance Survey—Further Returns
Lighthouses, &c.—Return
Marine Glass—Paper
— Bills—Service of Heirs, Scotland, amended
— Commons Inclosure, No. 2
— Newfoundland
— Exclusive Privilege of Trading Abolition, Ireland
— St. Andrew's University, Scotland—Report of Commissioners

PARLIAMENTARY PAPERS.

COLLEGE OF PHYSICIANS AND SURGEONS, &c.
—Returns from the Colleges of Physicians and Surgeons, the Societies of Apothecaries, and the Universities of Great Britain, shewing, for the three years ending 31st December, 1844, the number of candidates examined in each college, society, and university, for diplomas or licenses, in medicine and surgery; the numbers of such diplomas or licenses actually granted, and a definition of the rights and privileges which such diplomas or licenses have conferred on their possessors. The following statement shows the number of individuals who have received licenses or diplomas at each college, &c. in the three years specified:—

ENGLAND:—

Royal College of Physicians ..	Licenses ..	37
	Extra ditto ..	123
Royal College of Surgeons....	Diplomas ..	1576
Society of Apothecaries	Certificates ..	953
University of London	Degrees M.D.	23
University of Cambridge	Degrees M.D.	10
	Licenses ..	9
University of Oxford	Diplomas ..	6
	Licenses ..	7

SCOTLAND:—

University of Edinburgh	Degrees M.D.	245
Royal College of Surgeons, Edinburgh	Licentiates	266
	Fellows	4
Naval officers for promotions		35
University of Glasgow	Degrees M.D.	143
	Degrees C.M.	6
University and King's College, Aberdeen	Degrees M.D.	25
Marischal College, and University, Aberdeen	Diplomas	13
University of St. Andrews	Diplomas	117

IRELAND:—

King and Queen's College of Physicians	Licentiates	14
Royal College of Surgeons	Diplomas	131
Apothecaries' Hall	Licentiates	164
University of Dublin	Degrees M.D.	15
	Degrees M.B.	43

EDUCATION (IRELAND).—Return of the number of meetings of the Board of Commissioners of Education, with the names of the commissioners attending each, in the years 1843 and 1845. There were nineteen meetings in 1844, and eighteen in 1845. The number of commissioners present at each was from two to five; excepting two of the last meetings of 1845, at one of which there were seven, and another ten commissioners present. During the two years, two schools, the Raphoe Royal School, and the Cavan Royal School, had been inspected; the cause assigned for the inspection, in both cases, being the apparent inefficiency of the schools. The result of the inspection is not stated. No schools of industry have been established by the commissioners in Ireland. The administration and course of instruction in the Diocesan schools are given in a tabular form. Seventeen such schools are enumerated, exclusive of that of Tuam, recently established. The course of education seems to include the ordinary courses of classics and mathematics usual at public schools; and, in some instances, modern languages; together with the lower branches of an English education. The number of pupils at each school varies from four to a hundred and twelve. There is a similar statement respecting the seven royal schools of Armagh, Banagher, Carysford, Cavan, Dungannon, Enniskillen, and Raphoe, in which the average number of pupils is rather higher. But, in nearly all these schools there seems to have been of late years a tendency to fall off in the number of pupils. The salaries of the Diocesan schoolmasters are, it appears, paid exclusively by the bishops and clergy of the Established Church; besides which, the dividends on about 1,000l. government 3½ per cent. stock, is paid by the commissioners to the masters of the Meath and Ardsagh District School, and a sum of 1,292l. was voted in 1838 by the grand jury of Limerick, towards the erection of a school-house for the district of Limerick, Killaloe, and Kilfenora.

FRIENDLY SOCIETIES.—A return made to the House of Commons by Mr. Tidd Pratt (obtained by Mr. Muntz, the member for Birmingham) shews the number of friendly societies certified by Mr. Tidd Pratt to the 2nd of April, including one for married women, called "Odd Fellows," or "Odd Women." The number of friendly societies certified to the 1st of January, 1836 (given in a former return), was 2,862, since which time to the 1st of January, 1841, by a similar return, the number was 4,321. Mr. Tidd Pratt had certified from the 1st of January, 1841, to the 2nd of April in the same year, 261. In the year 1842 the number was 743; in 1843, 924; in 1844, 979; in 1845, 1,250; and in the year ending on the 2nd ult. 1,049. Under the provisions of the 10th George 4, c. 56, the returns of the friendly societies enrolled since the 1st of January, 1841, are to be sent by the several clerks of the peace to the Secretary of State during the present month. Mr. Tidd Pratt states, that on reference to his books he did not find that on the 2nd of April, 1845, he certified the rules "for a set of

married women calling themselves Odd Fellows," but he had an entry of the rules of a friendly society of "Odd Women," at Birmingham, for relief of members in sickness, with medical attendance, and the payment of a sum of money at death.

Bills in Progress.

JUDGMENT CREDITORS.—There is a Bill in the House of Lords (presented by Lord Brougham) to make creditors who have proved under process in bankruptcy and insolvency judgment creditors of bankrupts or insolvents. It is declared to be expedient to give additional remedies to creditors against debtors who, having been declared bankrupt or insolvent, do not account in a satisfactory way for such property as has been traced into their possession, or who have not kept such books as they ought to have done, or who have not continued to make the usual entries in their books up to the time of their bankruptcy or insolvency, or who may appear to have been guilty of great extravagance in their expenditure, or who may have put their creditors to unnecessary expense by vexatiously resisting proceedings taken against them by courts of justice for the recovery of debts, and who for these or any other reasons shall appear to the commissioner to be undeserving of protection. The Court of Bankruptcy may suspend or grant a protection. Assignees are to be considered judgment creditors, as also creditors who prove their debts. Property in the possession of a bankrupt or an insolvent unprotected may be seized for particular creditors.

HOUSE OF LORDS.

LEGAL APPOINTMENTS IN VAN DIEMAN'S LAND.
FRIDAY, June 26.—Lord BROUGHAM, seeing the noble Secretary for the Colonies in his place, begged to put to him the question of which he had given notice—namely, whether Mr. Macdonnell, who had been removed from the office of attorney-general in Van Dieman's Land, had been reinstated, or whether the emoluments of any other appointment he might have received were equivalent to those of the post he had occupied?—Lord LYTTELTON said the gentleman alluded to had filed the office of attorney-general in the colony since 1840, but in consequence of a dispute which he had had with the solicitor-general, his removal from that office had been recommended; but he had subsequently been appointed a commissioner of the insolvent court in the same place, which was a post of less importance.—Lord BROUGHAM regretted to hear that Mr. Macdonnell had been appointed to a situation in the same colony as that in which his conduct as attorney-general had given so much dissatisfaction. The noble lord referred to certain proceedings of Mr. Macdonnell while attorney-general in Van Dieman's Land, and gave notice that he would on Monday next move for a copy of Lord John Russell's dispatch on the subject.—Lord STANLEY said that that dispatch would show that Mr. Macdonnell had not been dismissed from his office as attorney-general for bad conduct, but merely because it had been found that the solicitor-general and he could not co-operate together. His strong impression was that no charge of corruption, dishonesty, or illegal conduct had been made against Mr. Macdonnell.

CHANGE OF VENUE, IRELAND.

Lord BROUGHAM said he now begged to lay on the table a bill of great importance to the good government of the sister kingdom. It was a measure for changing the venue in criminal prosecutions in Ireland, and was similar to the bill which he had introduced in 1843, and which he had only abandoned at the request of his noble and venerated friend opposite (the Duke of Wellington). He would now lay it on the table without discussion.—Bill accordingly laid on the table.

THE ROYAL ASSENT.

The royal assent was given by commission, with the usual forms, to the Corn Importation Bill, the Customs Duties Bill, the Explosive Substances Bill, and to sixty-one private Bills, among which were the London and York and the Direct Portsmouth Railway Bills.—The Lords Commissioners were the Lord Chancellor, the Duke of Buccleuch, the Earl of Hadlington, and the Earl of Dalhousie.

BANKRUPTCY AND INSOLVENCY.—A proposal made by Mr. Serjeant Manning to the Lord Chancellor for the amendment of the law of bankruptcy and insolvency has just been made public in a parliamentary paper printed by order of the House of Commons. The document, which extends to nearly 50 folio pages, contains a good deal of interesting matter on the two systems, with practical suggestions for improvement. It would seem to be the opinion of the learned serjeant (in which opinion several experienced men concur) that there should be only one system of insolvency, which should be distinct from that of bankruptcy. Several laws are now in force on insolvency, two having reference to non-discharge

ment and another to imprisonment. Whilst an insolvent debtor can petition the Court of Bankruptcy out of prison, an insolvent cannot petition the Insolvent Debtors' Court until he is in prison. Mr. Serjeant Manning takes a very comprehensive view of the system of insolvency, and urges the necessity of making the subsequently acquired property of a debtor subservient to the payment of his debts. There has existed a good deal of false compassion on this point, and men have asked why a man should be crippled in his future exertions from a knowledge that he is expected to consider the creditors from whose claims his person had been discharged. The learned serjeant places the matter in a very clear light before his lordship. "It would appear that considerable sums annually accrue to creditors in the Insolvent Debtors' Court, from legacies and other subsequently acquired property, in a manner that does not paralyse the debtor, or interfere with his getting an honest livelihood, or oblige him to do any thing more than that which a correct view of his position would induce him to do voluntarily. In addition to what is obtained for creditors through the direct intervention of the Insolvent Debtors' Court, credit should be given to the course thus adopted with respect to after-acquired property for all payments which are made out of Court, in consequence of its being known to the debtor that he can be compelled to pay. The amount is believed to be considerable. Instead of an equal distribution, however, the after-acquired property is too frequently made the subject of unjust preference or of partial coercion, which it is now proposed to put an end to. All this is reversed under the English Bankrupt Law. Few cases are recorded in which the certificated bankrupt has come forward to pay his debts, and where this has occurred, that which in truth is a mere act of restitution has been treated as an act of great generosity. This appears to be one of the cases in which a particular course of legislation long pursued has created a feeling in favour of the propriety and the justice of that course. The practice is assumed to be just, because it is understood to be legal. It is the tendency of the day, and more or less of all times, rather to sympathise with the present inconvenience suffered by the delinquent than with the less prominent, the less immediate sufferings of the innocent victims of his crime. Were this matter, however, to be now the subject of legislation for the first time, I think that the present system would find no support, at any rate that it would receive none from the persons of education, of station, and of high principle, who now step forward as its advocates. A man who contracts a debt contracts to pay the 20s. in the pound which he has obtained from his creditor. On what principle should a court be invested with the power of telling the debtor that as soon as he has performed a fraction of his contract—a part only of that for which he has received a full consideration, he is released from any liability to perform the remainder, whatever his subsequent ability may be? Yet such is the language which now for more than a century has been held in English Courts of Bankruptcy. This boon is not, however, held out to any but the trading classes of the community, nor even can it be reached by those classes, except where the interposition of a creditor or creditors, to whom the trader is indebted to a certain amount, can be obtained." There are materials now supplied from which a practical hand could mould a bill.

THE MAGISTRATE.

SUMMARY.

THIS has been the week for holding the County Quarter Sessions, and, so far as we have been enabled as yet to learn, the business has been generally light. The criminal courts have exhibited a gratifying decrease in the amount of crime, and the appeal courts a less pleasing (to the lawyers), but equally obvious, decrease of parochial litigation. It is remarkable, too, that, of the appeals heard, at least four-fifths are upon technical grounds, and not upon the merits, proving either the imperfection of our legislation or the over-strictness of the judges. When leisure permits, we purpose to present to our readers a *résumé* of the present state of the law (or, we should rather say, of the cases) relating to the Practice of Removals,—we mean, of the decisions upon the technicalities, which are now so numerous, and often so contradictory, that the practitioner experiences the utmost difficulty in learning what he may, and what he may not, do.

We are pleased to observe that at many of the recent sessions the chairmen expressed themselves in strong terms as to the necessity for Houses of Refuge for discharged prisoners.

This is no new topic to the readers of the LAW TIMES. It was here mooted more than two years since, and those remarks were the means of stimulating various localities to successful efforts for the accomplishment of the benevolent design. Among the most energetic of these appeals was that by Mr. ROGERS, Q.C. the Recorder of Exeter, who enforced his argument by some striking illustrations, which appeared to tell upon his audience, and will, it is to be hoped, produce a movement for the purpose among the inhabitants of that city. Still we must repeat our conviction that a provision for discharged prisoners is as much the duty of the Government as the provision of gaols. It is too serious a matter to be left to the chance operations of private benevolence. It is as incumbent upon the State to prevent crime as to punish it, and such a refuge is a preventive of crime. But it may be anticipated that this will be one of the many questions of social improvement which must occupy the attention of any government for some years to come.

The occurrence of the Quarter Sessions reminds us of an inconvenience, against which repeated objection has been made here. The County Quarter Sessions are held on fixed days; but the City and Borough Sessions are held just when it suits the caprice or convenience of the Recorders. The consequence is, that practitioners, and persons having business there, but non-resident, are ignorant when their presence will be necessary. This is a matter which really requires some regulation; and certainly the least the authorities of the cities and boroughs can do is, to announce the times of holding their Sessions, when those at a distance, but having business there, may readily find them, as in the LAW TIMES, and not to confine the advertisement, as now, to the local papers. Many boroughs have adopted this course, but many more have not done so. Perhaps if the Profession in each city or borough having a Quarter Sessions would notify the propriety of the plan to the authorities, the example would be generally followed.

REVIEW OF MAGISTRATES' CASES.

Decided during Easter Term and vacation, and Trinity Term and vacation.

WITH the exception of the decisions upon the construction of the 6 & 7 Vict. c. 36, as to the rating of Literary Institutions, and upon the forms of convictions under the Masters' and Servants' Act, there have not been many important cases during the last two Terms. The tendency of this branch of the law is to excessive refinement and technical objections, almost inappreciable from their minuteness, as will be seen from some of those mentioned in the following summary.

In noticing *Reg. v. Justices of Surrey*, *supra*, 6, 221, we considered that the construction of 9 Geo. 1, c. 7, was established to be, that where there was not sufficient notice of appeal, the Sessions were bound to respite. This point, if at all doubtful before, has been again decided in *Reg. v. Recorder and Justices of London*, 7 Law T. 226. The Sessions had there refused to hear an appeal which had been respite from January Sessions to April Sessions, on the ground that the appeal should have been tried at the January Sessions. The Court made a rule for a *mandamus* to enter continuances, and hear the appeal absolute, thereby confirming the view taken in *Reg. v. Shropshire (Justices)*, 7 East, 549. We may here mention, as an instance of the extreme minuteness of objections which unfortunately the Justices at Quarter Sessions sometimes hold to be fatal, that in *Reg. v. Justices of Middlesex*, 7 Law T. 117, a rule for a *mandamus* was made absolute to hear an appeal which had been refused, because the appellants, in describing the order, had made a mistake in the name of one of the justices, in consequence of the bad and illegible manner in which he had written his signature.

APPRENTICESHIP.

Parish apprentices.—Mode of binding.—Two points have been raised and decided as to the forms to be observed in the binding of parish apprentices, under 56 Geo. 3, c. 139. In *Reg. v. Inhabitants*

of *Holme*, 7 Law T. 204, it was objected that the second section requiring notice to the overseers of the parish in which the child was to serve the apprenticeship was not complied with, when it appeared that notice to one only had been given. The Court, however, overruled the objection, the general rule being, that notice to one of a body acting under a joint authority is notice to all. (*Reg. v. Warwickshire*, 6 A. & E. 873; *Reg. v. Staffordshire*, 4 A. & E. 842.) The other point was equally minute; viz. that an allowance by justices, under that Act, should show in itself the jurisdiction of the justices who signed it. This also was overruled, because the allowance being upon the indenture, and signed by justices of the same name as those named in the indenture, stating that it was signed as the Act required before the execution of the deed by any of the parties, it was to be presumed that the allowance was in fact signed by the same justices who had made the order, and within their jurisdiction.

Imperfect Apprenticeship.—A contract of living and service is not to be construed as an imperfect apprenticeship, because there is an incidental clause in the agreement, that a person in the employment of the master should receive a certain sum per week for superintending and instructing the parties hired when there is no distinct contract on the part of the master to teach, or no remedy given to them if they were not taught. (*Reg. v. North Hovan*, 7 Law T. 183.) The general object of the agreement is to be looked at, and in the principal case it was clear that that was hiring and service, and not apprenticeship.

ATTORNEYS.

Exclusive Audience of the Bar.—The question which has been some time pending at the Denbigh Quarter Sessions, as to the power of the Court to refuse to hear attorneys when there is a sufficient number of barristers present, has at length been settled in favour of the bar. (*Re the Justices of Denbighshire*, 7 Law T. 256.) A rule nisi, for a *certiorari* to bring up an order of the Sessions, directing, that when four barristers were present attorneys should not be heard, was at once refused. Lord Denman said, and we think most truly, that it is necessary for the interests of all parties that there should be privileged orders in courts of justice,—a body intervening between the judges and the suitors or their attorneys. We believe it to be equally advantageous to the attorneys themselves, that there should be this division of labour, and are glad that the so generally understood rule has now received judicial confirmation.

CERTIORARI.

When to be moved for.—If the six months allowed by 13 Geo. 2, c. 18, for removing proceedings in the Court below, have elapsed before the application for the writ, the Court will not grant it, unless by the consent of all parties, although, in fact, application would have been made in time to a judge at chambers, but for the unexpected absence of the judge. (*Reg. v. Justices of Anglessea*, 7 Law T. 67; see *Reg. v. Blosam*, 1 A. & E. 386.)

How issued.—The conflict of opinion in the two books of Crown Practice, by Mr. ARCHBOLD and Mr. CORNER, as to the issuing a writ of *certiorari*, in vacation, where no case has been granted, has been decided in favour of the view taken by Mr. ARCHBOLD, in the case of *Reg. v. Newton Ferrers*, 7 Law T. 203. The Court said that if *Reg. v. Chipping Sudbury*, 3 N. & M. 164, was correctly reported, it was wrongly decided, and held, that a judge's order for a writ of *certiorari*, to remove an order of Sessions, confirming an order of removal, may be granted, *ex parte*, in the first instance, though a case has not been granted, and the writ issue in vacation. E. W.

(To be continued.)

CRIMINAL LAW.

The following is the Second Report "to the Queen's Most Excellent Majesty, in her High Court of Chancery," of the Criminal Law Commissioners:—

"We, your Majesty's Commissioners, appointed by your Majesty's commission, bearing date the 22nd day of February, in the eighth year of your Majesty's reign, in presenting our second report to your Majesty, humbly beg to observe that by the original commission issued by his late Majesty, certain commissioners therein named were required 'to digest into one statute all the statutes and enactments touching crimes, and the trial and punishment thereof; and

also to digest into one other statute all the provisions of the common or unwritten law touching the same, and to inquire and report how far it may be expedient to combine both those statutes into one body of the criminal law, repealing all other statutory provisions; or, how far it may be expedient to pass into a law the first-mentioned only of the said statutes, and generally to inquire and report how far it may be expedient to consolidate the other branches of the existing statute law, or any of them. The former commission having expired upon the demise of the Crown, your Majesty was graciously pleased to issue a new commission in the same terms as that issued by his late Majesty.

"Under these two commissions the Commissioners, having considered the matters referred to them, gave their opinion in favour of the utility of framing a digest of the criminal law, and stated various arguments in support of their views on the subject. They also presented a complete digest of the criminal law. In framing this digest the Commissioners, in several instances, judged it expedient not to present the existing provisions of the law, but certain modifications thereof, of which they deemed the advantage to be manifest. And they, moreover, suggested various other modifications of the existing law, which they thought were proper to be made, but which they did not think fit to introduce into their digest, on account of the limited nature of their authority.

"Your present Commissioners have proceeded to execute the enlarged powers of the present commission, by which they are directed not simply to digest the law in its present state, but, also, in consolidating its provisions, to put into a form suitable for being passed by the Legislature such modifications of the actual law as they judge expedient to submit for the adoption of Parliament.

"They entirely agree with the Commissioners acting under the preceding commissions in their opinion regarding the importance of framing a digest of the criminal law. The propriety of rendering that law more accessible to the community, they think, cannot admit of doubt. An ascertained text will also afford more easy means of future alteration, whereby the inconveniences of the law may be rectified, and it may be adapted to meet new circumstances and exigencies, without impairing the uniformity of the system. As to which point it is observable, that a great number of the definitions and punishments of offences have been enacted in statutes, passed at different periods, without due regard to the general principles of the law, or the consistency of particular provisions. It is conceived, also, that judicial magistrates will be greatly assisted by having an authentic and systematic text of the law to which they can refer, though, in the application of it to particular cases, considerable scope must always remain for the exercise of judgment and explanatory exposition (as is now the case), by those entrusted with its administration. With respect to the mode in which future additions to, and alterations of, the law may be made, your Commissioners concur in opinion with the preceding Commissioners, that it would be desirable that such alterations and additions should be notified to the public by means of the *Gazette*, or some other official document, and that at the end of some fixed period, e. g. three years, they should, by the authority of Parliament, be embodied in the digest. On this subject, however, and that, generally, of the utility of a digest of the criminal law, your Commissioners beg to refer more particularly to the reports of the preceding Commissioners.

"Your Commissioners concur in general with the modifications of the existing law adopted or suggested by the preceding Commissioners; they think, also, that some further modifications are essential, in order to render the criminal law of the country suitable to the present state of society, and conformable to enlightened principles of jurisprudence. A simple digest of the actual law, without any modification, would, they apprehend, exhibit many imperfections, which, it cannot be doubted, it must be thought highly expedient to remove.

"Without adverting to all the defects in various branches of the existing law, or anticipating at length what will be more particularly considered in the course of this report, it must surely be deemed expedient to modify several of the present provisions of the law concerning accessories after the fact—the justifications and extenuations of homicide—the protection of officers of law whilst engaged in the execution of warrants or other legal process,—maritime coercion,—the punishment of accidental injuries without reference to the intention or the probable consequences of actions,—that relic of barbarism, the law of mayhem,—besides several other existing provisions, of which modifications are submitted in the present report.

"On some matters, though we do not feel entire confidence in our recommendations, we conceive that advantage may arise from submitting enactments founded on our opinions, the rejection of which, if unapproved of, will not be attended with any material delay or inconvenience; and the task of reducing into a statutory form the will of the Legislature, when it is ascertained, as regards any alterations,

cannot occupy considerable time. Of matters of this latter description, the new provisions submitted by your Commissioners on the law regarding duels are offered with great hesitation, not so much on account of doubts entertained by the Commissioners, as because it is a subject deeply affecting the interests of society, and upon which public opinion is much divided.

"As the modifications of the existing law proposed by the former and your present Commissioners occasionally affect principles of the deepest importance and most extensive influence, their consideration has necessarily occasioned much research and consultation, and has consumed much longer time than if the labours of your Commissioners had been confined simply to forming a digest of statutes, the principles laid down in text writers of authority, and the decisions applicable to the subjects treated of in the present report.

"In their present report, your Commissioners humbly submit to your Majesty the draft of a bill, framed in a shape to be passed by the Legislature, for the purpose of consolidating all the provisions of law as modified by your Commissioners regarding the general matters treated of in the preliminary chapter of the schedule to that bill, and the definitions and punishments of the offence of homicide and other offences against the person. To particular articles of the schedule notes are appended, indicating where the existing law has been modified, and the nature of the particular modification; and the bill and schedule, without notes, are again given in the appendix. Where the subjects to which the articles relate have been discussed by the previous Commissioners, references have been given to the reports in which those discussions are contained; and, where it has been thought necessary, the sentiments of the present Commissioners, in reference to the proposed modifications, have been expressed.

"Although your Commissioners have lost no time in submitting this portion of their labours to your Majesty, and have, in pursuance of the authority under which they act, framed the draft of the bill now submitted to your Majesty, they submit that it will not be expedient to pass such bill into a law before the whole digest is completed. For it is obvious that, in order to secure entire uniformity of principle and arrangement, it is very expedient that the Commissioners should have examined the whole subject, as well the part relating to procedure, as that regarding the substantive law. Much of useful generalization may thus also be effected, tending materially to render the digest more accessible and intelligible. It can scarcely fail to happen, that any one chapter of the digest may be rendered more precise and unobjectionable in every respect after the Commissioners shall have diligently scrutinized and reduced into proper articles all the other chapters; and until the views of the Commissioners, with reference to the mutual dependency of the several chapters and their general arrangement, shall be fully developed by the completion of the work, it is very probable that erroneous judgments may be formed of the practical operation and sufficiency of detached parts."

CRIMINAL JUSTICE IN FRANCE.—The *Moniteur* of Wednesday, the 24th ult. publishes a report on the administration of criminal justice in France, in 1844, addressed to the King by the Keeper of the Seals. According to that document, the Court of Assizes decided, during that year, on 5,379 accusations, comprising 7,195 accused—1,612 relating to crimes against persons, and 3,767 against property. As compared with the population, the average number of accused was 1 to 4,757 inhabitants. One species of crime against persons presented a constant and considerable increase during the 19 last years—namely, rapes on children. Between 1826 and 1830, only 139 individuals charged with that crime were annually tried, whilst in 1844 their number had nearly trebled, being 406. The number of cases of rape on adults, which had likewise increased, although in a smaller proportion, until 1843, reverted in 1844 to what it was between 1826 and 1830. The accused of perjury and infanticide were more numerous from 1836 to 1844 than they were in the previous period of ten years. The average of persons accused of murder was the same as during that period, and the cases of manslaughter had considerably diminished. Amongst the crimes against property, those that increased most were coinage, forgery, fraudulent bankruptcy, incendiarism, and domestic robberies. The proportion of highway robberies was the same, but that of other robberies had undergone a considerable reduction; after rising on an average to 3,296 from 1826 to 1830, to 3,045 from 1831 to 1840, they fell from this last year to 1844 to 2,478. Of the 7,195 accused brought to trial in 1844, 5,898 were males and 1,297 females. There was but one female tried at the assizes of the Departments of the Drome, Lower Pyrenees, and Upper Loire; two in the Aude, and three in the Upper Alps, Isère, and Tarn et Garonne. In the Department of the Seine, however, the proportion was 21 per cent.; in the Upper Saône, and Loire-et-Cher, 29 per cent.; and 31 per cent. and 32 per cent. in the

Finisterre and Côtes du Nord. In 1844, out of every 1,000 accused, 171 were under 21 years of age, 220 were aged from 21 to 30 years, 246 from 30 to 40, 162 from 40 to 50, 62 from 50 to 60, and 39 above 60. Of the 7,195 accused, 4,011 were unmarried, 2,826 were married; 2,212 of the latter had children, 614 had none, and 358 were widowers and widows, of whom 279 had children and 79 had none. 1,061 of those accused lived in idleness, although destitute of means of existence, 2,405 were occupied in field labour, 1,952 in mechanical pursuits, 486 were engaged in trade, 261 were carriers of goods, 1,545, innkeepers, lodgers, &c. 544 servants, 346 followed liberal professions; 3,761 could neither read nor write, 2,399 could read only, or read and wrote imperfectly, 885 read and wrote correctly, and 250 had received some education. Of the 5,379 accusations, 1,402 were entirely rejected by the jury, and 2,870 fully admitted; 2,555 against all the accused, and 315 against a portion only; finally, 1,107 accusations were admitted with certain modifications, which in 494 cases left to the facts their criminal character, and converted them in 623 others into mere offences; 2,290 accused were acquitted, 4,871 condemned; 34 children under 16 years of age, declared to have acted without discernment, were acquitted; 2,823 persons were sentenced to correctional penalties; 2,296 to upwards of a year's imprisonment, 521 to less than a year, and 6 to fine; 827 were condemned to seclusion, 961 to hard labour during a certain period, 209 for life, and 51 to death. Of the latter 41 were executed, the penalty of 9 was commuted, and 1 died after his appeal had been rejected by the Court of Cassation. The jury had brought in a verdict of "extenuating circumstances" in favour of 2,877 of the persons found guilty; 431 only out of the 1,997 sentenced to be publicly exposed were pilloried. The courts of correctional police passed judgment, in 1844, in 152,462 cases, comprising 500,184 persons—162,062 males, and 38,132 females. The tribunals of simple police, called upon to decide on slight infractions of regulations for public security and salubrity, gave their decision in 223,745 cases, comprising 291,962 accused, or 40,633 more than in 1843. The general list of the jury, in 1844, included 251,681 citizens. The number of suicides in that year was inferior by 47 to that of 1843—it still amounted to 2,973, of which 541 were committed in the department of the Seine. 2,197 of the persons who destroyed themselves were males, and 776 females; 20 males and 7 females were under 16 years of age; 145 from 16 to 31; 461, from 31 to 40; 1,169, from 40 to 50; 464, from 50 to 60; 417, from 60 to 70; 164, from 70 to 80; and 39, upwards of 80. 1,009 put an end to their existence by hanging, 999 by drowning, and 213 by the vapour of charcoal. Of these 153 belonged to the department of the Seine. One-fourth of the persons who committed suicide in 1844 laboured under affections of the brain.

THE LAWYER.

Summary.

THE legal changes consequent upon the resignation of the Ministry are, of course, the all-absorbing topic in the legal world. At the moment of writing this we are not in possession of any decisive intelligence. Should the new appointments be ascertained before we go to press, they shall be added.

The retirement of the late Lord Chancellor will not be regretted by the Profession. His great natural abilities were unfortunately of late years eclipsed by growing indolence; and seldom, perhaps, has the vast patronage of that office been dispensed with more of favouritism. The return of Lord COTTENHAM will be hailed with pleasure by the Profession, irrespective of party, as restoring to them the ablest living equity lawyer. His retirement gave the first impulse to the opinion, now almost universal, that the functions of the judge and the politician ought to be separated, and that Lord Chancellors should not be changed with the shiftings of party.

The Bankruptcy Amendment was, on the motion of Lord BROUGHAM, read in the House of Lords a third time, and passed, last evening.

NOTES ON NEW CASES IN EQUITY AND CONVEYANCING.

No. I.

SHEPHERD v. MOULS (4 Hare, 500).

The liability of trustees for neglect in investing the trust funds where a discretion as to the investment is reserved to them.

T. Shepherd, by his will, dated in 1829, gave to J. Hannan and W. Moul, their executors, &c. a portion

of his personal estate upon trust to sell and convert it into money, and to be possessed of such money upon trust to pay debts, &c. and to raise a sum, the yearly produce of which, when invested, would amount to 100*l.* and to invest the said money in the public funds, or at interest upon Government or real securities in England, and (with the consent of his wife during her widowhood) to vary the securities, &c. and pay the annual produce to his wife and her assigns for life, or during her widowhood; and in case of her marriage, to pay her an annuity of 50*l.* for life, and the trust-moneys above dealt with then to fall into the residue of his personal estate. And as to the residue of the moneys which should come into the hands of the said trustees, or, &c. and which should remain after answering the said trusts, the testator directed that the said trustees should invest the same upon such stocks, funds, or securities as aforesaid, and alter and vary the said stocks, &c. as they should think reasonable. And the testator declared the trusts of the said moneys, &c. (subject to the annuity to the wife) for the benefit of his six children. Until the trust-moneys, &c. should vest absolutely in some person under the trusts, the trustees were to lay out the same, at compound interest, for the benefit of those entitled under the trusts. The will contained the usual clauses for the indemnity of the trustees in respect of other than their own defaults, and Hannan and Moulds were appointed executors.

The executors possessed themselves of the personal estate, but instead of investing the residue according to the trusts of the will, one of them (Hannan) was permitted by the widow, and some of the parties ultimately interested therein, with the privity of the other executor, to retain the whole residuary funds at 4*l.* per cent. interest. Hannan became bankrupt, and the bill was filed by some of the residuary legatees against Moulds, Hannan, and his assignees, and the parties who had concurred in the breach of trust, for the administration of the estate, praying that the executors might be charged with what they had received, or with what, without their wilful neglect or default, they might have received. At the hearing, the plaintiffs asked for a reference to the Master, to inquire at what time the executors had possessed assets of the testator which might have been invested according to the directions of the will, and what was the average price of Consols at such times. The defendant Moulds resisting this inquiry, the case was argued at length, and

The VICE-CHANCELLOR (Wigram) decided, that the trustees could not be charged with the amount of stock which they might have purchased with the trust-moneys, at the time when such moneys were in their hands for investment, but were merely liable for the amount of money which they had actually received, with interest. He argued, "The discretion given to the trustees, to select an investment among several securities, makes it impossible to ascertain the amount of the loss (if any) which has arisen to the trust-fund from the omission to invest, except, perhaps, in the possible case (which has not occurred here) of a particular security having been offered to the trustees in conformity with the terms of the trust. Suppose the trustees were directed to invest moneys either in the funds or in the purchase of lands; there would, at a subsequent time, be no better reason for saying that the trustees ought to have made the investment in the funds, than that they ought to have purchased land. Unless some reason can be shown why the trustees should at any given moment have chosen one kind of investment rather than another, it seems impossible to say there has been a default by the trustees in not having made a particular investment, or what has been the definite loss to the trust-funds from the omission so to do. In this case I see no greater reason for saying that the trustees were bound to invest the trust-moneys on Government security, unless a real security had presented itself, than for saying that they were bound to invest the same moneys in real estate, unless a security in stock had been offered at a given price. The breach of trust is in having made no proper investment, not in having omitted to choose the one rather than the other." Having briefly referred to the conflicting authorities (which are mentioned in the note), his Honour proceeded—"I cannot see upon what principle the Court is to charge the trustees with an accidental improvement in value of one of several securities, where they are not bound, in the execution of the trust, to select that particular security rather than another. It is much to be regretted that there should be any difference of opinion in the

decisions upon a point of this nature, but I am unable to arrive at a conclusion which would have the effect of charging this trustee with the specific loss resulting from an act not having been done, which particular act the trustees were not, in the execution of their trust, imperatively bound to do. The case is very different from giving the *cestui que trust* the option of electing between the interest and the profit which a trustee may have made. In one case the Court pursues the actual consequences of the breach of trust; in the other, by going beyond the recovery of the trust moneys and interest, the Court must proceed on grounds purely hypothetical.

In endeavouring to ascertain the liability of a trustee, in consequence of the breach of his particular trust, it becomes material to consider the rules which prevail with regard to those trusts of which his neglect or defiance is one of many varieties of violation. For this purpose let us see what are the primary rules in relation to the breach of that common class of trusts which impose upon the trustee the duty of investing money in one or more specified securities. First, there is the very ordinary case of a trustee, who is bound, by the terms of his trust, to invest the money in a given security, as in the public funds, retaining the money in his own hands, and committing a breach of his trust by non-investment: or, where he does not retain it in his own hands, but invests it in some security, or deals with it in a manner, not authorized by the trust. In such cases there is no doubt as to the extent of the trustee's liability. "Where trustees are bound by the terms of their trust to invest the money in the public funds, and instead of doing so retain the money in their hands, the *cestui que trust* may elect to charge them either with the amount of the money, or with the amount of the stock which they might have purchased." (Per Wigram, V. C. in the above case.) "An executor, if he will take upon himself to act with regard to the testator's property in any other manner than his trust requires, puts himself in this situation—that he cannot possibly be a gainer by it: any gain must be for the benefit of his *cestui que trust*." (Per Lord Alvanley, M. R. *Piety v. Stace*, 4 Ves. 622.) And secondly, the very large, class of cases of which *Shepherd v. Moulds* is an instance varies from those just named, only in this respect,—that the terms of the trust, instead of specifying absolutely and conclusively the particular security in which the money is to be invested, leave some discretion in the hands of the trustees, and give them the power of selecting one out of two or more securities mentioned, for the purpose of investment. What is the extent of the trustee's liability for a breach of such a trust is a question less easy to be answered, and its difficulty, we fear, will be increased rather than removed by the decision of V. C. Wigram.

It is, however, with great diffidence, submitted, that as increased strictness has of recent years been applied to the conduct of trustees (see 2 Story's Eq. Jur. 480, *et seq.*), the severer rule will ultimately be applied, and they will be held chargeable, not merely with the amount of money received, but with the value of that security, which they might have obtained, most favourable to the *cestui que trust*. The authorities upon the point are indeed conflicting, but the balance undoubtedly seems to lean in favour of the stricter rule,—a balance, we venture to think, not even overturned by the judgment above given. In *Marsh v. Hunter* (6 Madd. 295), where the trust was to invest in stock, or on real security, and where the trustees lent on personal security, Sir John Leach, it is true, decided, that they were liable only for the principal money, and not for the value of the stock which might have been purchased. But several cases have followed that decision, in all of which an opposite conclusion has been arrived at. Such are *Hockley v. Bantock*, 1 Russ. 141; *Dimes v. Scott*, 4 Russ. 195; *Watts v. Girdlestone*, 6 Beav. 188; and *Asses v. Parkinson*, 7 Beav. 379, 385. The latter of these cases was not cited in *Shepherd v. Moulds*, and at the time was probably not reported. In it Lord Langdale adheres, without hesitation, to his former opinion. After consideration, he says, "I have examined the authorities cited in argument in this case, but I have not found any thing to cause me to alter the opinion which I have already expressed. Upon consideration, I retain the opinion I expressed in *Watts v. Girdlestone*, and think that case was rightly decided. The trustees had a discretion to

exercise. They might, at their option, have invested the money in the funds; and if the value had risen or fallen, they would have been safe, for they would have exercised their discretion according to the directions of the trust. But they did not exercise the discretion at all; and the question is, whether the *cestui que trust* has not a right to complain of the omission, and to be placed in the situation in which he could have been, if the trustees had not neglected to exercise the discretion reposed in them." *Ubi supra*; see also *Byrchall v. Bradford*, 6 Madd. 235; *Harrison v. Harrison*, 2 Atk. 121; *Powlett v. Herbert*, 1 Ves. 297; *Pocock v. Reddington*, 5 Ves. 794; *Bostock v. Blakeney*, 2 Bro. C.C. 653; *Dute v. Scales*, 12 Ves. 402, as confirming the same view. This conflict of authorities justifies a reference to principle, even on our part; and the principle applicable to such cases undoubtedly is, not only that the trustee shall receive no benefit, nor a possibility of benefit, but that the *cestui que trust* shall lose no benefit, from the breach of trust; and it is obvious, that the *cestui que trust* would (under the doctrine of *Marsh v. Hunter*), in many cases lose a benefit which he might have received, had the trustee, in the exercise of his discretion, selected the security which turns out to be the best. And against a man who has committed a clear and decided breach of trust, is the assumption an unreasonable or unjust one, that, had he discharged his duty at all, he would have exercised a sound discretion, and selected the (ultimately) best security? There seems something like a confusion of idea—or a trick of words—in the argument that, because there are two things, one or other of which he may do, at no given moment is he called upon to do either. His duty is to do one or other; but, neglecting both, can he plead the one against the other? Can he justify his omission to do one by an assertion that he might have done the other? The breach of trust is positive, and the severer rule ought surely to be acted upon against the breaker. Mr. Pemberton, *arguendo*, said, in *Hockley v. Bantock*, "Though the executors had an option to invest the money either in the funds or on mortgage, yet, as they did neither of the two things, either of which they might with propriety have done, and one or other of which it was their duty to do, the *cestui que trust* have now a right to say, 'you have committed a breach of trust; and for that breach of trust you shall be answerable, not in the way which may be most convenient for you, but upon the principle which shall be most beneficial to us.' Such is the universal rule, applicable to every case of breach of trust. Where a trustee employs the trust-money in business, he may be made to account, not merely for interest at five per cent. but for the profits of the trade; though it could in no case be his duty to invest the fund so as to produce more than legal interest. Not having lent out the money on mortgage, these defendants had no other alternative, except that of purchasing stock. Stock, however, has not been purchased, and the plaintiffs will hereafter have a right, if they think proper, to call upon the Court to compel the executors to place them in the same situation as if stock had been bought." (1 Russ. 143.) Upon the whole, it must be questioned whether *Shepherd v. Moulds* will be considered conclusive upon this important point.

Upon the general duty and liability of trustees, with respect to the investment of trust-moneys, see Lewis on the Law of Trusts and Trustees, c. 16, s. 3, pp. 305 to 316; and note (f) p. 313, vol. 4, of Martin's Conveyancing, by Davidson, tit. "Settlements," where all the cases are very neatly put together. J. W. B.

PROMOTIONS, APPOINTMENTS, ETC.

(Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.)

The Queen has been pleased to direct letters patent to be passed under the Great Seal, granting the dignities of Viscount and Earl of the United Kingdom of Great Britain and Ireland unto the Right Hon. Lord Francis Egerton, and the heirs male of his body lawfully begotten, by the names, styles, and titles of Viscount Brackley, of Brackley, in the county of Northampton, and Earl of Ellesmere, of Ellesmere, in the county of Salop.

The Queen has been pleased to appoint Charles Phillips, esq. barrister-at-law, to be one of the Commissioners for the Relief of Insolvent Debtors, in the room of David Pollock, esq. appointed Chief

Justice of the Supreme Court of Judicature at Bombay. Mr. Phillips is expected shortly to take his seat. Mr. Perry, the Lord Chancellor's secretary, has been appointed District Commissioner of Liverpool, in the room of Mr. Commissioner Phillips, who has returned to town. It is expected that Mr. Phillips will sit at the remaining places on the Northern Circuit, and that Mr. Commissioner Pollock, now on that circuit, will resign, and proceed to Bombay as Chief Justice.

The Queen has been pleased to grant unto William Alexander Anthony Archibald Hamilton Douglas, esq. (commonly called Marquis of Douglas and Clydesdale), the office of Knight Marishall of Scotland, in the room of William George Earl of Errol, deceased.

The Queen has also been pleased to direct letters patent to be passed under the Great Seal, granting the dignity of a Baronet of the United Kingdom of Great Britain and Ireland to the following gentlemen, and the respective heirs male of their bodies lawfully begotten, viz.:—The Right Hon. Thomas Frankland Lewis, of Harpton-count, in the county of Radnor; John Somerset Pakington, of Westwood-park, in the county of Worcester, esq.; John Gladstone, of Fasque and Balfour, in the county of Kincardine, esq.; James Weir Hogg, of Upper Grosvenor-street, in the county of Middlesex, esq.; William Feilden, of Fensicowles, in the county palatine of Lancaster, esq.; William Verner, of Verner's-bridge, in the county of Armagh, and of Inismagh, in the county of Tyrone, esq.; and Sir Moses Montefiore, of East Cliffe-lodge, in the Isle of Thanet, and county of Kent, Knight.

The Lord Chancellor has appointed William Sweet, of the city of Bristol, gent. to be a Master Extraordinary in the High Court of Chancery.

SOLICITOR OF EXCISE.—It was stated a short time since, and the matter was looked upon as a certainty, that Mr. Douglas, the barrister, would be the successor to Sir Francis Doyle (promoted to the office of Receiver General of Customs), in the solicitorship of Excise. Such, however, now turns out not to be the fact, for on Thursday morning a messenger arrived from the Treasury, bearing the official notice to the Commissioners of Excise, and conferring the appointment upon Mr. Bateman, LL.D. the chief clerk in that establishment. Dr. Bateman has for a great number of years devoted himself to the study of the excise laws, and is the author and compiler of the "Compendium of Excise Acts," which is the chief book of reference by the commissioners. This appointment is honourable to all parties.—*Morning Herald.*

The *Morning Chronicle* of Friday states, that Sir Thomas Wilde will of course be Attorney-General. The Solicitor-General, it is thought, will be either Mr. Jervis or Mr. Romilly.

The Irish Chancellorship will not, it is said, be filled for the present; but the seals will be put in commission. Mr. Pigot will, according to this rumour, continue for the present to watch the legal conduct of Irish business in the House of Commons, without, however, holding office. There appears to be no doubt that Mr. Baron Brady will be the next Chancellor, and will be succeeded as Chief Baron by Mr. Pigot. It is supposed that Mr. Moore and Mr. Monaghan will be the new Irish Attorney and Solicitor-General.

The Attorney-General has appointed Walter Hassey, Griffith, esq. crown prosecutor on the Home Circuit, in the room of the late Jonathan David Clarke, esq. Q.C.

Charles Coates, esq. and — Mockler, esq. have been appointed assistant crown prosecutors for the county and city of Kilkenny.

NEW LEGAL APPOINTMENTS.—It is confidently stated that the following legal appointments will be made by the new ministry:—The Lord Chief Baron Brady to be Lord Chancellor; the Right Hon. D. R. Pigott, Q.C. who was Attorney-General under the last Whig administration, to be Chief Baron; the Right Hon. Richard Moore, Q.C. to be Attorney-General; James H. Monahan, esq. Q.C. to be Solicitor-General; Mr. Hatchell, Q.C. to have the first vacant serjeantcy.

COURT PAPERS.

CHANCERY CAUSE LISTS

After Trinity Term, 1866.

Before the LORD CHANCELLOR.

Day to (Strickland v. Strickland)

do Same v. Boynton

Fixed Same v. Strickland

To fix a day—Vandelaar v. Blagrove

Coore v. Lowndes

Minor v. Minor, 2 appeals, supp. suit

Dalton v. Hayter, appeal

Attorney-gen. v. Masters and Wardens of Bristol, appeal

Black v. Chaytor, ditto

Johnson v. Reynolds, fur. dirs. by order

Watts v. Lord Eglington

Carson v. Belworthy

Watson v. Parker

Dietchison v. Cabburn

Belamy v. Sabine

Appeals

Appeals

Attorney-general v. Malkin, cause by order

S. O.—Johnson v. Child

Kidd v. North

Dord v. Whitwick

Moleworth v. Howard

Carmichael v. Carmichael

Hawkes v. Howell

Heming v. Swinnerton

Trail v. Bull

Youde v. Jones

Wrightson v. Macauley

Lawrence v. Bowles, cause by order

Gomperts v. Gomperts, 3 causes, appeal

Morris v. Howe

Horsman v. Abbey

Thomas v. Blackman

Bonds v. Slyman

Cooper v. Pitcher

Salkeld v. Johnson, on eqy. read.

Booth v. Crawshaw

Forbes v. Leeming

Andrews v. Lockwood

Stocker v. Dawson, 4 causes, appeal

Appeals

Appeals

Appeals

Before the VICE-CHANCELLOR OF ENGLAND.

Hiles v. Moore

Same v. Gleadow

Bell v. Earl of Mexborough, dem.

Sanders v. Kelsey, dem.

Colombine v. Chichester, 3 dems.

Moore v. Mitchell, 2 dems.

Strange v. Brennan, dem.

Goodman v. De Beauvoir, petition, 2 dems.

Johnson v. Forrester, fur. dirs.

Henderson v. Eason, exons. and fur. dirs. and petition

Terry v. Wachter

Simpson v. Holt, fur. dirs. and costs

Garrod v. Moor

Sunale v. Bickford

Bickford v. Bickford

Peacock v. Kernot

Morrison v. Watkins

Wright v. Barnewell, exons. and fur. dirs.

Greenway v. Buchanan

Walton v. Morritt

Dobson v. Lyle, fur. dirs. and costs

Parker v. Hawkes, exons.

Daivson v. Bagley

Penny v. Turner

Giffard v. Withington

Daniell v. Hill

Insole v. Featherstonhaugh

Lane v. Durant, exons. and fur. dirs.

Pocock v. Johnson

Cope v. Lewis

Evans v. Hunter

Attorney-gen. v. Trevelyan

Sturt v. Cooke

Blundell v. Gladstone, 4 causes, fur. dirs.

Hodgkinson v. Barrow, fur. dirs. and costs

Colbourn v. Colling

Langton v. Langton, 2 causes

Gowar v. Bennett, fur. dirs.

Hickson v. Smith, at defendant's request

Palmer v. Pattison, fur. dirs. and costs

Minter v. Wraith, fur. dirs. and costs

Mason v. Wakeman, exons.

Hennings v. Spiers, exons.

Chambers v. Waters, exons.

Lord Berosford v. Archbp. of Armagh, fur. dirs. and costs.

Smith v. Robinson

Foster v. Vernon, fur. dirs. and costs

Johnstone v. Lamb, ditto

Vale v. Sherwood, 7 causes, ditto

Haffenden v. Wood, exons.

Branscomb v. Branscomb, fur. dirs. and costs

Stammers v. Halliday, 3 causes, fur. dirs.

Ditto v. Battye, by order

Gray v. Gray, 3 causes, fur. dirs.

Dorville v. Wolf, fur. dirs. and costs

Richards v. Patterson, ditto

Adam v. Barham, 2 causes

Beaton v. Beaton

Woodman v. Madgen, fur. dirs. and costs

Attorney-gen. v. Pearson, exons. and fur. dirs.

Short—Craddock v. Piper, fur. dirs. and costs

Dawson v. Chappell, ditto

Andrew v. Moore, ditto

Wait v. Horton, ditto

Montagu v. Cator, fur. dirs. and costs

Groom v. Stinton, 4 causes

Elliott v. Elliott

Short—Corbett v. Limbrick, fur. dirs. and costs

Baxter v. Abbott, fur. dirs. and costs

De Beauvoir v. De Beauvoir, fur. dirs. and costs

Beale v. Warder, rehearing

Turner v. Simcock, fur. dirs. and costs

Booth v. Lightfoot, ditto

Ludlow v. Guilleband, fur. dirs. and costs

Af. M. T.—Att.-gen. v. East India Company

Roberts v. Cardell, exons.

Cook v. Tynney

Flight v. Bushby

Warwick v. Richardson, exons. and fur. dirs.

Morgan v. Kingdon, fur. dirs. and costs

Lewis v. Hinton, fur. dirs. and costs

Wilson v. Williams

Burnett v. Mackenby

Robetham v. Amplett, exon.

Poole v. Troughton

Ellison v. Clark

Milroy v. Milroy, fur. dirs. and costs

Baillif, &c. of Bridgenorth v. Collins

Gaches v. Warner

Same v. Pilkington

Flight v. Camac

Raymond v. Croke, fur. dirs. and costs

Langhler v. Back, ditto

Short—Trant v. Deffell, with petition

Birch v. Joy, fur. dirs. and costs

Short—Attorney-gen. v. Frank, fur. dirs.

Bilton v. Freshfield

Paxton v. Humble, fur. dirs.

Atkinson v. Glover

Pulley v. Artheridge, fur. dirs.

Wilson v. Jones, exons.

Short—Bishop v. Bishop

Spruce v. Perrin, fur. dirs. and costs

Wall v. Easington

Edwards v. Pricatly

Mayor, &c. of Rochester v. Lee

Day v. Slade

Pennyfather v. Pennyfather, 3 causes.

Before VICE-CHANCELLOR KNIGHT BRUCE.

Chuck v. Appleton, objection as to parties

Eddale v. Molyneux, plea

Michaelmas Term—Dodsworth v. Lord Kinnaird, at request

of defendant. Ditto, Same v. Same

30th June—Taylor v. Taylor

Middleton v. Wolf

27th July—Caton v. Ridout

1st July—Malins v. Price

Sowden v. Marriott, 3 causes

Langdon v. James, part heard

Attorney-Gen. v. Pearson

Attorney-Gen. v. Berry

Helliwell v. Briggs, 3 causes

Hanbury v. Ward

Quirrell v. Binnimore, fur. dirs. and costs

Butcher v. Rich, ditto

Caledonian In. Co. v. Gibb

Attorney-gen. v. Montefiore

Warner v. Pearce

Gawen v. Gawen, exons.

Same v. Same, fur. dirs. and costs

Wilkinson v. Garrett

Craven v. Stubbins

Brendon v. Brendon

Garrard v. Tuck

Richards v. Richards

Phillips v. Hunt, fur. dirs. and costs

Quirk v. Clayton

Culver v. Haynes, 3 causes

Norris v. Norris

Craik v. Lamb, fur. dirs. and costs

Same v. Hobson, ditto

Sutherland v. Sutherland

S. O. Thomas v. Brennan

Hyams v. Fitch

Parker v. Peet

Gibbs v. Waters

May v. Cooke

Attorney-gen. v. Glasgow College

Wynne v. Styan

Dyer v. Crick

Barry v. Marriott

Griffith v. Pughe

Wagstaff v. Crosby

Massey v. Johnson

Short—Wakefield v. Foster

Flight v. Marriott

Halbert v. Hulbert

Sowerby v. Pontop Railway Company, 2 causes

Same v. Same

Sabire v. Callbeck

Croston v. Croston

Smith v. Barney

Short—Ash v. Lyall

Sewell v. Alexander

Hales v. Grinfield

Cooper v. Aylmore, exons. and fur. dirs.

Taylor v. Cooper

Trumper v. Hodges, exons.

Wilson v. Parker

Farra v. Crosby, fur. dirs. and costs.

Before VICE-CHANCELLOR WIGRAM.

Ward v. Key

Gibson v. Ings

Garth v. Maclean

S. O.—Lowe v. Lowe, fur. dirs. and costs

Western v. Wood, exons. 4 sets

Sayers v. Lacon, exons. and fur. dirs.

Edye v. Hunter

Walker v. Sharpe

Burch v. Western, exons.

Short—Harrison v. Harrison, fur. dirs. and costs

Same v. Standen

Same v. Rains

Darke v. Herbert

Russ v. Morrell, exons. and fur. dirs.

Wild v. Woodyear

27th June—Dugdale v. Johnson

Ditto—Same v. Perry

Ditto—Lander v. Ingersoll

2nd July—Potter v. Sanders

4th July—Bostock v. Lee

Short—Morrison v. Martin

10th July—Attridge v. Lowin

Sutcliffe v. Banks

Packham v. Gregory, fur.

Jessop v. Jessop
 McDermott v. Wilcox
 Blair v. Bromley
 Bart v. Burnham
 Nicholson v. Locke, 2 causes
 Dolland v. Reed
 Duncombe v. Levy
 Dell v. Dell
 Fraser v. Jones
 Fausding v. Newborn, 2 causes
 Leigh v. Earl Balcarras
 Dale v. Hamilton
 Bostock v. Shaw
 Emerson v. Emerson
 Hammon v. Sedgwick
 Warner v. Hedges, 2 causes
 Kirby v. Maak
 Pennington v. Buckley
 Tapperell v. Taylor
 Parks v. Odill, 2 causes
 Cardale v. Elliott
 Handford v. Handford
 Maxwell v. Kibbithwaite, 2 causes
 Tarts v. Phillips
 Dynley v. Dynley, 2 causes
 Porter v. Porter
 Scott v. Bealey
 Starky v. Blake
 Tolson v. Dykes, 3 causes
 Ogle v. Hanaard (last transferred cause)
 Knight v. Knight, exons. 2 sets
 Lewis v. Thomas
 Lewis v. Clark
 Bell v. Alexander
 Short v. Bull v. Pritchard
 Dobson v. Land
 Connell v. Luke

CIRCUITS, IRELAND.

The following days have been appointed for holding the Summer Assizes:—

HOME CIRCUIT.

(Before the Hon. Mr. Justice BURTON, and the Right Hon. Mr. Justice PERRIN.)

County of Carlow, at Carlow, July 7.
 County of Kildare, at Athy, July 9.
 Queen's county, at Maryborough, July 11.
 Kings' county, at Tullamore, July 17.
 County of Westmeath, at Mullingar, July 23.
 County of Meath, at Trim, July 27.

NORTH-EAST CIRCUIT.

(Before the Lord Chief Justice and Mr. Justice CHAMPTON.)

County of the town of Drogheda, at Drogheda, July 1.
 County of Louth, at Dundalk, July 2.
 County of Monahan, at Monahan, July 6.
 County of Armagh, at Armagh, July 8.
 County Down, at Downpatrick, July 13.
 County Antrim, at Carrickfergus, July 17.
 Town of Carrickfergus, at Carrickfergus, same day.

NORTH-WEST CIRCUIT.

(Before the Lord Chief Justice of the Common Pleas, and Mr. Justice FORTANNA.)

County of Longford, at Longford, July 7.
 County of Cavan, at Cavan, July 10.
 County of Fermanagh, at Enniskillen, July 15.
 County of Tyrone, at Omagh, July 20.
 County of Donegal, at Lifford, July 23.
 City and county of Londonderry, at Londonderry, July 27.

CONNAUGHT CIRCUIT.

(Before the Lord Chief Baron RICHARDS.)

County of Roscommon, at Roscommon, July 7.
 County of Leitrim, at Carrick on Shannon, July 11.
 County of Sligo, at Sligo, July 17.
 County of Mayo, at Castlebar, July 22.
 County of Galway, at Galway, July 29.
 The Town of Galway, same day.

MUNSTER CIRCUIT.

(Before Mr. Baron LEPAGE and Mr. Justice JACKSON.)

County of Clare, at Ennis, July 7.
 County of Limerick, at Limerick, July 14.
 City of Limerick, at Limerick, same day.
 County of Kerry, at Tralee, July 24.
 County of Cork, at Cork, July 29.
 City of Cork, at Cork, same day.

LEINSTER CIRCUIT.

(Before Mr. Baron PARKE and Mr. Justice BALL.)

County of Wicklow, at Wicklow, July 7.
 County of Wexford, at Wexford, July 10.
 City and County of Waterford, at Waterford, July 13.
 County of Tipperary (South Riding), at Clonmel, July 18.
 City and County of Kilkenny, July 25.
 County of Tipperary (North Riding), at Nenagh, July 29.

A meeting of the members of the Bar was held on the 15th ult. in the Court of Admiralty, in pursuance of a requisition to Thomas Dickson, Q.C. as Father of the Bar. The learned Father was called to the chair. The question submitted to the meeting was, "whether the members of the Profession should or should not attend Quarter Sessions?" Upon the motion of Joseph Napier, esq. Q.C. seconded by Joseph Radcliffe, esq. Q.C. it was resolved unanimously, that the meeting was of opinion that the members of the Bar should attend the Quarter Sessions Courts; and for the purpose of carrying out that measure, each Circuit should form a Sessions Bar.

CANDIDATES WHO PASSED THE EXAMINATION, TRINITY TERM, 1846.

(From the Legal Observer.)

Adams, Henry, articled to C. Michmore, Totnes; G. Henman, 8, Weying-lane
 Adams, Richard—S. Smith, Walsall

Anderson, Weir—C. Bardswell, Liverpool
 Baldwin, Alexander—W. Foster, Settle
 Barret, Joseph Morton—E. Barret, Otley
 Barton, Samuel Milner—T. Higson, Manchester
 Bassett, Thomas Prichard, formerly Thos. Prichard Popkin
 Berry, Josiah—F. Braithwaite, Turro
 Biddle, John Henry—E. Barton, Bloomsbury-square
 Bloodworth, Henry—T. Scriven, Northampton
 Bowes, Richard—R. Brown, Sunderland
 Bowly, Thomas William—R. Bowly, Bishop Wearmouth
 Briggs, John Adolphus—T. Briggs, 55, Lincoln's-inn-fields
 Brock, Benjamin, jun.—W. Jones, Carmarthen; R. Med-calf, Lincoln's-inn-fields; J. Woodcock, Lincoln's-inn-fields
 Brown, Thomas Augustus—W. Hartcup, Bungay
 Burrell, Charles—P. A. Burrell, 1, White Hart-court, Lombard-street; S. A. Beck, Ironmongers' Hall
 Burton, William—R. M. Whitlow, Manchester
 Chadwick, John Nurse—B. R. Aldham, King's Lynn
 Chew, Thomas Heath—W. C. Chew, Manchester
 Clark, George James—G. Clark, 28, Finsbury-place
 Clayton, Haviland—H. B. Wedlake, 10, King's Bench-walk
 Dale, Robert—W. Smith, jun. York; W. Gray, York
 Dean, John Joseph—W. Dean, 16, Essex-street, Strand
 Deaborough, Lawrence, jun.—L. Deaborough, Sise-lane
 Dickinson, William Henry Allen—W. H. Allen, 17, Cliff-ford's-inn
 Dixon, Edward Adolphus—P. Walsh, jun. Oxford; G. Day-man, Oxford
 Dransfield, William—D. C. Battie, Huddersfield
 Driffield, Charles Edward—W. W. Driffield, Prescott
 Duffield, William Ward—E. S. Chalk, Chelmsford
 Elders, Thomas William—G. Leeman, York
 Evans, Robert—D. Evans, Liverpool
 Frankish, William—S. Lightfoot, Kingston-upon-Hull
 Hadow, Henry—W. Stephens, 30, Bedford-row
 Harris, Joseph William—C. Prescott, late of Manchester
 Harwood, Thomas Charles—G. R. Dodd, New Broad-street; G. Smith, 24, Golden-square
 Hawkes, Henry—W. S. Harding, Birmingham
 Henderson, Henry Renny—J. H. Henderson, 31, Blooms-bury-square
 Hodgson, John—H. W. Fenwick, Newcastle-upon-Tyne
 Jones, John—G. Salter, Eilesmers
 Jones, John—T. F. A. Burnaby, Newark-upon-Trent
 Long, George Henry—W. Long, Windsor
 Maberley, Thomas Henry—T. Maberley, Colchester
 Mackay, Christopher Bainbridge—C. Bainbridge, South Shields
 Mantell, Alexander Houston—J. W. Wall, Devizes
 Meech, Francis Weston—G. Arden, Weymouth
 Mellor, William Jones—B. A. Greene, St. Ives
 Miles Thomas—G. J. Nicholson, 3, Raymond-buildings.
 Nevill, Richard—R. Nevill, Tamworth
 Newill, Robert Daniel—J. J. Peale, Shrewsbury
 Niblett, Isaac Goodluck—J. K. Haberdell, Bristol
 Orchard, William Henry—E. Farn, 14, Gray's-inn-square
 Paley, Cornwallis—T. Farnery, Ripon
 Parry, Thomas—T. Williams, Carmarthen
 Patterson, Henry—J. Taylor, Manchester
 Peile, Rowland Babington—T. H. Peile, 6, Great Winchester-street
 Fiddle, John—P. Pearce, Newton Abbot
 Pinnock, George—J. R. Wemyss, Gloucester
 Pollard, William Darley—H. Blair, Manchester
 Radcliffe, Thomas—J. Neville, Blackburn
 Ransom, Robert, jun.—R. Ransom, sen. Sudbury
 Robson, William Wealdale, jun.—G. W. Wright, Sunder-land
 Russell, James Ward—J. Russell, York
 Sanders, Robert Muriel—R. B. Sanders, 1, New-inn
 Seville, Edward Bouchier—R. Brombridge, Barnstable
 Simpson, Henry—H. Sturmy, 8, Wellington-street, South-wark
 Slack, Edward Francis—J. Marsden, Wakefield; J. Phillips, Chippenham
 Slaney, Robert—F. Stanier, Newcastle-under-Lyne
 Snell, Silas—H. A. Vallack, Great Torrington
 Stafford, William, jun.—W. Stafford, 13, Buckingham-street, Strand
 Turner, William Rawson—H. Copeman, Kingston-upon-Hull
 Tweed, George Tash—C. M. I. Pollock, Great George-street, Westminster; H. H. Beckitt, 64, Lincoln's-inn-fields
 Unwin, Frederick George—T. Unwin, Sawbridgeworth
 Walker, Robert Greaves—H. Newton, York
 Ward, Newman—W. J. Norton, 1, New-street, Bishop's-gate-street
 Watts, Thomas David King—J. Maynard, 57, Coleman-street
 Westall, Samuel Thomas Maling—B. Holmes, New Inn
 Weston, William Henry—J. Meek, 1, Basinghall-street; J. Fox, Basinghall-street
 Whiting, William—W. H. Wright, 23, Essex-street
 Wilkinson, Richard—R. Moser, Kendal
 Woodgate, William—W. T. Neve, Cranbrook
 Woodroffe, George Thomas—W. Woodroffe, Lincoln's Inn.

QUESTIONS AT THE EXAMINATION.

Trinity Term, 1846.

COMMON AND STATUTE LAW AND PRACTICE OF THE COURTS.

What do you understand by the words "common law?"

How long is the writ of summons available after it has been issued?

Will service of a copy of a writ of summons on one of several partners against whom the action is brought, be good service against the whole firm?

In a common action in assumpsit for goods sold and delivered, what is it necessary to prove before the sheriff on executing a writ of inquiry?

Is a verbal undertaking to pay the debt of another obligatory in law; and if not, why not?

After action brought, and declaration delivered, in an action to which there is no defence on the merits, the defendant informs you, or you have good reason to believe, that he will go abroad to avoid payment,

what steps would you then take on behalf of the plaintiff?

Is an issue in law tried by a jury at *nisi prius*; or where else?

Explain the difference between a verdict and a judgment.

Is the Statute of Limitations a good answer to an action in assumpsit on a bill of exchange more than six years old, on which bill the interest has been paid within six years?

What are the requisites to constitute a valid tender?

Is the general issue *non assumpsit* a good plea in an action in debt on bond?

What is meant by a plea in abatement; and within what time after declaration must it be pleaded?

In what respects do an interlocutory and a final judgment differ?

Within what time after verdict or nonsuit must application be made for a new trial?

Name the ordinary writs of execution, and state the operation of each.

CONVEYANCING.

What estate must a person have to enable him to make a lease, by which the lessee may derive a present tenancy and occupation?

If a remainder-man, not in possession, make a lease, what estate or interest would the lessee derive under it?

Can a tenant for life in possession make a lease to continue beyond his life; and if so, under what circumstances so as to be good against those in remainder?

If joint tenants make a demise, what tenancy has the lessee?

If tenants in common make a lease, what tenancy has the lessee?

What leases can infants make, and what would be the tenancy of the lessee?

Suppose the husband to demise the wife's lands, and she survive her husband, what positive or contingent tenancy has the lessee?

What tenancy has a lessee by lease from an idiot or lunatic; and to have a secure tenancy for the term, what course should be adopted; and by what means can idiots and lunatics surrender and renew leases?

Mortgagor and mortgagee:—What separate right has each to lease mortgaged premises; and what would be the lessee's tenancy holding a lease from the one without the concurrence of the other?

State the general outline of the usual covenants and provisions in a lease of a house.

What is the difference between the *vivum vadium* or living pledge or mortgage, and the *mortuum vadium* or dead pledge or mortgage?

What is the distinction between estates in remainder and those in reversion?

What attestation is requisite to the valid execution of a will; and if a form of attestation be subscribed, what should be that form?

In preparing a bond from two persons, what should be attended to in the form of it, to make it effectual against both or either; and supposing one of the obligors to be merely a guarantee for the other, what should such guarantee require for his security from his co-obligor?

What is a deed of partition, and by whom may it be made?

EQUITY, AND PRACTICE OF THE COURTS.

What is the jurisdiction of Courts of Equity, as distinguished from Ecclesiastical Courts with respect to wills?

Will a Court of Equity interfere in all or what cases of breach of covenant?

In what manner should proceedings be taken on the part of married women and infants respectively?

If a trustee invest part of the trust property on a security not within his authority, and make a profit; and in other like investments sustain a loss, how is the account to be taken?

State some of the instances in which a Court of Equity will grant an injunction.

In what cases may a bill of discovery be filed; and what is the rule in such cases with respect to costs?

What are the necessary proceedings to bring a defendant before the Court?

State the several modes of defence which may be resorted to on behalf of a defendant.

What steps can be taken to compel a plaintiff to proceed to a hearing?

Has there been any, and what, recent change in the form of affidavits in Chancery?

How is the time for putting in an answer enlarged?

If a defendant do not appear in due time, what proceedings can the plaintiff take?

Can parties be served with process out of the jurisdiction of the Court, and how?

State the general course of proceeding in the Master's office, in a suit against executors or administrators, by a legatee or creditor.

Is there any, and what, recent alteration made with regard to the allowance of costs between party and party?

BANKRUPTCY, AND PRACTICE OF THE COURTS.

State the several proceedings necessary to be taken in obtaining and supporting a fiat.

Are there any, and what, debts which are not deemed sufficient to support a fiat?

Are there any, and what, persons not liable to the bankrupt laws?

Against what proceedings, and to whom, can an appeal be made in bankruptcy?

A bill of exchange drawn or accepted by the bankrupt, becoming due after the fiat is issued, what course must the holder of the bill adopt?

Is there any, and what, jurisdiction in bankruptcy over a joint-stock company neglecting to pay its debts?

By what means, since the abolition of arrest on *mesne* process, can a compulsory act of bankruptcy be established against a trader?

From what liabilities is a bankrupt discharged by his certificate?

On what grounds can a bankrupt's certificate be opposed, and before whom, and how?

Is there any, and what, protection to purchasers of property from the bankrupt, after a secret act of bankruptcy?

Have the commissioners in bankruptcy any, and what, jurisdiction, under a recent statute, over persons not in trade; and what relief can be afforded to such persons?

How does the property of the bankrupt vest in his assignees; and are there any, and what, exceptions to the general rule?

Must any, and what, proceedings be taken by assignees before commencing an action at law, or a suit in Chancery, or before referring a matter in dispute to arbitration?

How are proceedings in bankruptcy rendered admissible in evidence in an action or suit, and when is such evidence conclusive?

What is the course of proceeding by a creditor who holds a mortgage?

CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

What is a common nuisance, and how are persons committing it prosecuted?

Is a private as well as a public nuisance indictable?

How is a nuisance remedied, and is the remedy the same as to all nuisances?

What summary remedy is there against trespassers in search of game?

Who may kill game?

For what offence will a criminal information be allowed?

State the mode of application for a criminal information, and within what period it should be made.

In what case is the confession of a prisoner rejected as evidence against him?

Is the declaration of a person dying or believing himself dying, in any, and what cases, receivable in evidence?

In an indictment for perjury in an answer in Chancery, what evidence should be given?

On an indictment for perjury committed in an answer in Chancery, with what particular object is the handwriting of the defendant to it proved?

Is a person who has been convicted of perjury, and received the Queen's pardon, a competent witness?

Can a husband and wife be witnesses for or against each other in criminal courts, and are there any or what exceptions to the rule?

Can the first wife of a man be a witness on his indictment for bigamy?

Is a witness entitled (on criminal proceedings) to be paid for his loss of time as well as his expenses?

LEGAL INTELLIGENCE.**THE SHERIFFS' BANQUET TO THE JUDGES, &c.**

The sheriffs of London and Middlesex, Messrs. Chaplin and Laurie, entertained the judges and members of the Bar with a whitebait dinner, on Wednesday last, at the Crown and Sceptre, Greenwich. The Lord Mayor having kindly granted the use of the city barge, the greater portion of the company assembled at Blackfriars-*pier*, at half-past four o'clock, the hour fixed for embarkation. Among the judges who had accepted the sheriffs' invitation, and who also availed themselves of the opportunity of water transit, were the Lord Chief Justice Denman, the Vice-Chancellor, Mr. Baron Alderson, Mr. Justice Patteson, Mr. Justice Colman, Mr. Justice Erle, and Mr. Justice Wightman. The Right Hon. the Lord Mayor, and upwards of twenty members of the Court of Aldermen, the sheriffs elect, and several leading members of the Bar, and other distinguished guests, were also on board the barge. The party arrived at Greenwich at half-past five o'clock. The banquet was of the most *recherché* description, every delicacy both in and out of season covering the table. After the usual loyal toasts had been duly responded to, Mr. Sheriff Laurie rose to propose the health of the Lord Mayor. The worthy sheriff, in the course of his remarks, alluded to the fact of the banquet at which they were

then assembled taking place on the banks of their own magnificent river, instead of, as heretofore, within the confined limits of some one of the corporation halls. He flattered himself, from the very full attendance of her Majesty's judges, and other distinguished persons whom he saw around, that the change was considered an agreeable one. (A very general assent from the whole company followed this remark.) The Lord Mayor having responded to the toast, Mr. Sheriff Chaplin proposed the health of Lord Chief Justice Denman, and of the other judges who had honoured himself and his worthy colleague with their presence. Lord Denman duly acknowledged the compliment, and proposed the health of the sheriffs who had so worthily fulfilled the duties of their high office during the past year. The sheriffs severally returned thanks. The "Members of the Bar," the "Members for the City," "the Visitors," and other toasts having been given, and duly honoured, the party broke up about nine o'clock, returning to town by the city barge, which, it need scarcely be added, was plentifully stocked with champagne and other choice wines.

PROCLAMATIONS OF OUTLAWRY.—Wednesday being the first day of the quarter sessions for the county of Middlesex, the names of the following persons were, pursuant to the proclamation of outlawry issued against them, posted at the sessions-house, Clerkenwell:—William Cunningham Burton, late of Bath's Hotel, Piccadilly; J. A. Udney, late of 44, Lower Grosvenor-street; J. L. Wellesley, of Limer's Hotel, Conduit-street, Bond-street; James William Newcombe, of 4, Gloucester-street, Dorset-square; Richard Augustus Seymour, of 28, St. John's-wood-terrace, St. John's-wood; Lady Frances Twysden, late of Kensington; W. H. Gardiner, of Twickenham; William Frederick Byng, of Bury-street, St. James's; William Bailey, of Arabella-row, Pimlico; John Taysden, no specified place of residence; Fanny Stultz, widow, of 9, Gloster-place, Kentish-town; Thomas Gotobed, of Great Russell-street, Bloomsbury; Henry Lacey, of 23, York-street, Portman-square; Mary Ann Berryman, of Arundel-street, Strand; J. W. Gudge, of 31, Burton-street, Belgrave-square; and Douglas Kinnaird Wiggins, otherwise Charles Douglas Kinnaird, known as the Honourable Douglas Kinnaird Pulteney, of the Colonnade, Haymarket.

NEW WAY OF RECOVERING DEBTS.—Last week the constables of the L division were required to remove a mob of persons assembled near the Archbishop of Canterbury's palace, in consequence of a man walking backward and forward opposite the house by the water side, with the following inscription printed on a board:—"I am waiting here to be paid the sum of 1l. 13s. 6d. for one dozen of wine, or else have the bottles returned." On the board was also mentioned the name of the party opposite whose house the man was parading. The debt was understood to have been paid, and the mob dispersed.

NEW MONEY ORDER OFFICES.—An order has been issued at the General Post-office, that, on and after the 6th instant, offices will be opened for the granting and cashing orders at the undermentioned places:—Alcester, Warwickshire; Colne, Lancashire; Cranbourne, Dorsetshire; Crew, Cheshire; Machynletts, Monmouthshire; Nunlton, Warwickshire; Southwell, Nottinghamshire.

There is not a single prisoner for trial at the Cambridge sessions, which commenced yesterday. So remarkable a circumstance never before occurred. —*Bury Post.*

SUGAR.—An account showing the quantities of Sugar of the several sorts imported into the United Kingdom, and the quantities retained for actual consumption within the United Kingdom; together with the rates of duty charged on the home consumption, and the net revenue accruing therefrom, in each year, from 1816 to 1840, inclusive; followed by a comparative statement of the average prices of British Plantation and Foreign Plantation Sugar for the same series of years. This very complete and useful return was originally moved for by Mr. Baring, when Chancellor of the Exchequer under the Whig administration in May 1841, and during the debates on the sugar duties which took place at that period. The present is merely a reprint, moved for by Mr. Goulburn. We understand, however, that another return, embracing the five years which have since elapsed, is in preparation, which we shall abstract fully on its appearance.

PROCEEDINGS OF LAW SOCIETIES.**SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.****REPORT OF THE COUNCIL.**

In presenting their second annual report, the council of the society congratulate you on the progress the society has made. Our present meeting may in fact be considered as our first anniversary; for the

society is not yet eighteen months old, and when we last met, under the name of an annual meeting, it was scarcely constituted. We did, however, even at that early date, anticipate the result to which we have now the gratification of drawing your attention; for we felt strong conviction that the principles and objects of our institution, once understood, could not fail to attract that attention which we deem their importance to deserve. We did not, it is true, look forward to that sudden accession of members, or that rapid accumulation of subscriptions, which has so frequently marked the progress of associations formed for the furtherance of some directly benevolent or other attractive object; for though we are inferior to none in the importance of the end we seek, we must admit that it must be pursued through rough and uninviting ways. The impressions we have to produce are of slow growth, requiring much time for their maturity, yet more for the ascertaining of their true value. We cannot seek to attract you by recreation. —Diversity of labour is admitted to be a species of rest; but the labours to which we invite bear too near an analogy to your daily and professional pursuits to be classed as diversions. Come and work—come and teach—come and learn—are not among the invitations which meet the readiest acceptance. And yet we have succeeded.

We have the satisfaction of stating that the list of new members, admitted by ballot, since the last annual meeting, has nearly equalled the number of original members. Our recruits have indeed been principally from the ranks of the law; but we are not without indications that a more extended view of our object will shortly attract to us persons from other professions, callings, and stations, and that many distinguished members of the legislature will connect themselves with an institution which, without encroaching on the functions of Parliament, is calculated to facilitate its labours. Many of our senior members have manifested their willingness to open their stores of knowledge; and the juniors have shown no inconsiderable alacrity in taking advantage of their communications. We always looked forward to this combination as one of the many advantages of this Society.

The list of our ordinary members has suffered little diminution—we have to congratulate ourselves on the removal of Mr. Justice Erle and Mr. Baron Platt from the number of ordinary, to that of honorary members, in consequence of their elevation to the bench; in which class also the Chief Baron of the Exchequer has been enrolled. We have, on the other hand, to regret the loss of some amiable and learned colleagues—the sudden death of Mr. Deval deprived the Profession of a most learned member, and the cause of Law Reform (especially as regarding the laws of real property) of an effective advocate. By the no less sudden death of Mr. Commissioner Merivale, an amiable man, and very elegant scholar, was lost to society; nor can social intercourse be mentioned, without missing at once the good humour, wit, and spirit of Sir Charles Williams.

Consequent on the increase of members, the committee of management will have to report an improved state of your finances; and though they are not yet sufficient to afford an extensive outlay in printing, without which, both the progress of our labours, and their publicity when completed, must be naturally impeded, we are not without hope, that a further improvement in our income may enable us to be more liberal in this branch, and that without the necessity of resorting to any appeal to the public for pecuniary assistance. On this head there has been some difference of opinion in our Council; for while some members have contended, and with good reason, that for a public purpose of such permanent importance as the amendment of the law, we are well entitled to call on society for those contributions, which are always forthcoming in aid of objects of general utility; others have been unwilling to resort to this appeal, till they had exhausted their own resources; or at least till the amount of labour performed with our confined means, should serve as a basis for calculating the greater benefit which would result from a larger outlay.

To this end, it becomes necessary to advert to the work already completed—to that which is still in progress—and to the probability that some of our suggestions may be adopted by individual members of parliament, and that others may be deemed worthy of the notice of the government, and may thus ultimately obtain the sanction of the legislature. By the constitution of this society, the duty of preparing reports on various subjects, proposed in the first instance by any individual member, who will enter his doubts or suggestions in the *Rough Journal*, and then selected for reference by the Council, devolves on the various committees of the society, in which committee every member is at liberty to enrol himself. Of these committees there were originally ten, several of which have been already in active operation, and have presented reports, marked by the learning, discrimination, research, and judgment which might be expected from those who assisted in the debate of the subjects or (which is yet more important) drew up the result of the deliberations.

One of the earliest of these reports was made by the Parliamentary Committee, to which it was referred "to consider the propriety of establishing a board for revising and settling public bills in Parliament." This report, with the sanction of the society, was communicated by your president to Sir Robert Peel, as Prime Minister, as well as to the Lord Chancellor; and the council have reason to believe that the recommendation is under the consideration of the government.

The importance of some such measure as is here recommended becomes more and more apparent in every session of Parliament; as in every session, political and financial questions, and an overwhelming mass of business connected with public or private speculation, occupy more and more, and jurisprudential measures, less and less of the legislative attention. We have seen that bills for the amendment of the law are usually postponed to so late a period, that lengthened discussion upon them becomes impossible, and that they are either hastily thrown out, or passed in so crude and imperfect a state, that a year seldom elapses before "An Act to amend an Act," or "An Act to amend an Act intitled an Act to amend an Act," bears testimony to the imperfection of our legislative machinery. Large views of law reform are but seldom taken—a patch here and a patch there, as insulated evils or inconveniences are occasionally discovered, is all that can be expected; and the maxim of Lord Bacon, "that it is easier to change many things than one," seems to be utterly forgotten.

A responsible board for the preparation of bills would obviate much of this evil; and your Council is the more anxious to press upon your attention, and, through you, upon the attention of those with whom you are in communication on such subjects, as they consider it a main, if not an indispensable, condition to all sound amendment. Neither is there so much novelty, as may at first appear, in this proposition. It has been a constant practice to issue Commissions of Inquiry on various subjects, deemed too extensive for the consideration of a parliamentary committee, and the reports of such commissions have been followed by bills in conformity, or supposed conformity, with their recommendations: but as the commission does not continue to follow the bills through their several stages of parliamentary progress, it often happens that a small, and sometimes casual, deviation from the original plan totally alters the measure, and that so mischievously, that the supposed authors have felt it necessary to their reputation to repudiate the transformed or deformed offspring.

The Committee on Equity has been very diligently engaged on the several matters referred to them; and their labours have been facilitated by the liberal use of his chambers afforded for their sittings by Mr. Spence; a similar accommodation has also been given by Mr. Koe to the Debtor and Creditor Committee.

The first report made by the Equity Committee was on a reference, made to them in common with most of the other committees, "To consider the expediency of relieving the suitor from the expense of the judicial establishment, and of placing this burden on the general revenue of the country." We have to regret that no other committee has yet made a report on the subject, since it is one which cannot well be debated on any single branch of judicature, without reference to its bearings on many others. The next report was on the reference to consider "whether any safe and effectual means can be adopted for the taking of the accounts of executors and administrators, and the distribution of the personal estate of testators and intestates in any case; so as to diminish the expense which is at present incurred in attaining these objects." This report, presented on the 11th inst. is still under the consideration of the society. We therefore make no further comment on it than to say that it relates to a subject of every day's occurrence, and bears ample marks of the learning and diligence of those who have prepared it.

The Common Law Committee have made a very elaborate and valuable report on the subject of documentary evidence; it has met with the approbation of the society, and its recommendations are already embodied in a Bill now pending before Parliament.

We have the gratification of making a similar statement as to two reports of the Committee on the Law of Property. In pursuance of the recommendations contained in these reports, Bills to facilitate the conveyance of real property and the granting of leases, and for superseding the necessity of assigning outstanding terms, have been introduced in the present session.

The Committee on the Law of Property has also presented valuable Reports on the following references:—"Whether the appointment of new trustees should not vest the trust property in them, and whether the deed of conveyance or assignment might not be dispensed with." The principle recommended in this Report has been adopted in a Bill introduced by the Lord Chancellor for regulating Charitable Trusts. This Committee has also presented reports on the following references:—"Whether any facilities can be adopted for appointing new trustees in cases in

which there is no power in the instrument, or the power is defective, or cannot be exercised;" and "Whether it be possible and expedient to adapt the machinery of the public funds to the transfer of real property;" and also on the draft of a Bill for amending the Transfer of Property Act, privately communicated to the Committee.

The Committee on the Law of Debtor and Creditor has had many meetings on the several subjects referred to them; subjects which include not only the whole law of bankruptcy and insolvency, but the yet more important and intricate question of commercial and general credit. With so large a field before them, we cannot be surprised that they have not yet come to the conclusion of their labours. *Festinus lente* is never so sound a motto as when it relates to interference with the varying transactions of a great trading community.

In addition to the subjects on which reports have been presented, many other questions have been referred to the several committees, and are now under consideration, and in various stages of progress.

The formation of a library has not proceeded as favourably as we anticipated; for, though a few members have presented their works, and some facility has been afforded us in obtaining parliamentary papers, we still fall short of even the beginning of such a collection as the uses of the society would require.

In conclusion, the council trust that the society will agree with them, that, considering the difficulties which were likely to beset an association of this novel nature, it has met with all due encouragement, and has already proved itself competent to deal with the varied and important subjects which obviously come within its range.

The extent of its utility cannot, however, be ascertained by a transient view, various as are the questions already before it. Interesting as are the inquiries already instituted, important as are the objects already attained, or within reasonable hope of attainment, they fall infinitely short of the multiplicity of objects which the future may disclose to us. As inquiry proceeds, fresh fields of usefulness open themselves, fresh prospects arise. By the aid of our association, sound opinions may be formed and diffused, rash and inexpedient alterations in the law discussed and prevented, professional opinion ascertained and collected, and general assistance given to the gradual improvement of the law.

21, Regent-street, June 28, 1846.

THE THIRD ANNUAL REPORT OF THE COUNCIL.

Your council have now for the third time to report to the Society their views of its state and prospects.

Our numbers have continued to increase. In our last annual report, though we were able to announce a considerable accession of members, we were obliged to add, that our recruits were principally from the ranks of the law: however much we were pleased at lawyers joining us who were willing to aid us, still we felt that our labours would be comparatively fruitless unless we received that support which the community at large alone can give. This year we are happy to state that we have also been joined by many members of both Houses of Parliament, and by many other gentlemen belonging to the mercantile and other classes of the community.

In the last year death has deprived us of two eminent members, the late Earl Spencer and Mr. Justice Story, the one ever ready to promote any useful public object with his influence, and purse, the other a man whose legal writings have acquired for him an European reputation. We notice with pleasure that one of our ordinary members, Mr. Burge, has been appointed to fill the office of Commissioner of the Leeds Court of Bankruptcy, an office in the due performance of which we take the greater interest, because it is one of those offices which we owe to the progress of Law Amendment. In losing Earl Spencer we have to regret the loss of a vice-president. The increasing importance of the Society, as evidenced by the number of Peers of Parliament who have joined it, has induced the council to recommend that we should not merely fill up the vacancy thus occasioned, but increase the number of vice-presidents.

The Society has also enlarged the sphere of its exertions. They have called in the public to sanction and approve of their proceedings, and in that appeal they have been completely successful. At a public meeting held on the 6th of June instant, composed of many eminent and learned persons, as well members of this Society as persons not yet enrolled, resolutions in favour of its establishment and objects were unanimously passed.

It will be now our duty shortly to recapitulate the proceedings of the Society since our last report. We have the satisfaction of stating that the machinery of the Society has worked well. The plan of referring suggestions to particular committees competent to entertain them, which committees report on them to the general body, where they are again discussed, has proved well adapted to afford opportunities both for careful and extensive consideration and inquiry.

Inquiry indeed is the great object of the Society. It may be a humble one, but your council submit that it is of unquestionable use that inquiry should precede and accompany all changes in the law, and that correct information as to them should be diffused.

The Committee on the Law of Property has proceeded with its useful and successful labours, and to this committee, for its zeal and devotion to the cause, your council feel that especial praise is due. The Bills for rendering the assignment of satisfied terms unnecessary and facilitating the conveyance of property, which were founded on their reports, have passed into a law. The first of these has been accepted both by the Profession and the public as a great improvement. It has removed a source of great delay and expense, (the latter having been calculated as amounting to 200,000*l.* a year,) and has done much to simplify the title to land, while its security has been in no way diminished.

By the Acts relating to deeds an effectual blow, as we believe, has been struck at awarding professional remuneration according to the length of the instrument, and something has also been done to shorten particular classes of deeds. Your council have also observed with pleasure that the principle of these Acts has been adopted and recognized by her Majesty's Government in a Bill introduced in the present session for facilitating the granting of leases in Ireland. These Acts must also be taken as a legislative expression of opinion, that the Profession should exert themselves in every possible way to cheapen and simplify the necessary dealings between man and man connected with real property.

This opinion has been subsequently and more emphatically expressed by the report of a select committee of the House of Lords on the burdens upon land, a document which has justly received the greatest attention, and is entitled to the greatest weight, as expressing the unanimous opinion of all parties in that branch of the Legislature of "the necessity of a thorough revision of the whole subject of conveyancing, and the disuse of the present prolix, expensive, and vexatious system."¹

As this opinion was similar to that expressed by this Society from its commencement, we cannot but consider the Lords' report as a remarkable confirmation of our views, and (we trust we may add without presumption) some proof of the benefit which has already attended the diffusion of our reports and proceedings.

Your council is now watching with great interest the progress of the "Bill for further facilitating the Conveyance of Property," which stands for a third reading in the House of Lords, without one dissenting voice having been yet expressed. This Bill is a further adoption of the recommendations of the Society. Your council also invite attention to the other reports which have proceeded in the present session from this committee, more especially to those "On the Law of Mortgages," "On the Law of Uses and Trusts," and the two reports "On the establishment of a General Registry of Deeds." We believe that in these reports, and in those previously submitted to the Society, are to be found suggestions of the utmost importance; and that by following them out carefully and gradually, the community will be able to obtain, 1. A more ready mode of investing money on the mortgage of lands, which will be equally advantageous both to the borrower and the lender; 2. The shortening and cheapening the deeds relating to the transfer of lands; and 3. The simplification of the title to land, and more especially, the reduction of the delay and expense now attending a retrospective investigation of title.

We believe that these measures will be a great advantage to all branches of the public, and more especially to the landed interest, and the trading and mercantile interest. We also consider that a great social benefit will be conferred on the community if the number of small holders of land can be increased, and small capitalists be induced to invest their savings in land. Neither can we possibly believe that changes which will greatly facilitate all legal dealings with land, which will bring about a much larger and more rapid investment of capital in land, which will engage in legal transactions of this nature a much wider circle of the community, can in any way injure the legal Profession. We cannot think that the practical exclusion of the great mass of the people from taking any interest in the transactions of conveyancing is beneficial to any class, but least of all is it so to that class whose peculiar business it is to assist and prepare them. Your council, therefore, have the fullest confidence, that in recommending and furthering measures which improve and simplify the law, and facilitate to the utmost the alienation of property, they are the true friends of professional interests. Lawyers for the most part ourselves, we consider that the maintenance of the Profession of the law in an honourable and prosperous state in all its branches, is beneficial not only to the lawyer but to his client. Your council are desirous that the Society should act in harmony with the

¹ Report, p. xiii.

feelings and interests of the Profession; and we believe that these are in this case, as in most others, identical with those of the community at large.

The Equity Committee is entitled to praise for much assiduous attention to the subjects referred to them. They have presented a report recommending the establishment of a Court of Trusts, with a view to creating a system of public trusts, and thus superseding the necessity, if parties so please, of appointing private trustees. Your council have reason to suppose that a Bill will be brought in with the view rather of having the principle of a Public Trustee considered, than of attempting to pass any measure of this sort in the present session. This committee has devoted much time to the subject of the delays in the Master's offices. The committee have anxiously considered this important and difficult subject, and we look with hope and confidence to their ultimately suggesting a plan which may remedy this long-admitted grievance.

A useful report from the Common Law Committee for rendering the law uniform in all cases of actions brought against persons acting in pursuance of public Acts of Parliament has been received, and a Bill founded on it has been introduced, and will probably become law in the present session.

The Criminal Law Committee has presented two very valuable reports, one of which recommends for adoption the plan of Captain Moconochie, for the management of transported and other criminals; and the other reports in favour of submitting to the jurisdiction of the Petty Sessions unaggravated larcenies of small amount. Both these reports were the fruit of great consideration and discussion; and we believe that much benefit in the diffusion of sound information has already resulted from them.

Your council have the satisfaction of stating, that the income of the Society exceeds its present expenditure. We are desirous that, in conformity with the approved practice of almost all other societies, we should endeavour to obtain as extensive a diffusion as possible of the reports and proceedings of the Society. Having considered whether we should establish a separate publication for this purpose, or avail ourselves of any existing publication, we have come to the conclusion, that it would be both cheaper and more advantageous in the first instance to avail ourselves of an existing publication, if a suitable one could be found willing to forward the views of the Society. We have now much pleasure in announcing, that we have been able to make an arrangement with the publishers of the *Law Review*, (which has from its commencement promoted objects similar to those of the Society,) by means of which the reports and proceedings of the Society will be regularly published, and a more permanent record of the proceedings of the Society be obtained. According to this arrangement, the members of the Society will henceforth be presented with the *Law Review*, commencing with the current volume of that work. Our present resources have enabled us to do this. But the larger the funds are which are placed at our disposal, the more shall we be enabled, by the diffusion of sound information, to promote the objects of the Society.

In conclusion, your council think that the present position of the Society is a subject of high congratulation; that its progress has been as rapid as the most sanguine could have reasonably expected; that its members may hope for a long and useful continuance of its labours; and that the Society has already effected much permanent good, and has laid a broad foundation for effecting much more. We wish particularly to impress on the Society, that this must mainly depend on the accession to our ranks of the young. They must carry out what we only are able to project; and to their industry and energy the council look chiefly for the labour necessary for the completion of all great and useful undertakings.

21, Regent-street, June 17th, 1846.

MINUTES OF THE ANNUAL MEETING, JUNE 17, 1846.

The Right Hon. Lord BROUGHAM in the Chair.

The report of the council as to the state and progress of the society, was adopted, and ordered to be printed and circulated among the members. The accounts of the committee of management were presented and approved of. The following officers were ballotted for and elected for the ensuing year:—

President.—Lord Brougham.

Vice-Presidents.—The Duke of Richmond, K.G.; the Duke of Cleveland, K.G.; the Earl of Devon; the Earl of Radnor; Lord Ashburton; Lord Cottenham; Lord Campbell; Right Hon. Stephen Lushington, D.C.L.

Committee of Management.—W. Ewart, esq. M.P.; Mr. Commissioner Fonblanque; Mr. Commissioner Fane; Geo. Spence, esq. Q.C.; J. Pitt Taylor, esq.

Treasurer.—James Stewart, esq.

Hon. Secretary.—Wm. Vizard, esq.

The following members were ballotted for and elected:—Richard Cobden, esq. M.P.; J. A. Maynard, esq. barrister; Nathaniel Hibbert, esq. barrister; William Kingdom, esq.; Arthur Anderson, esq.; and Gurney Hoare, esq. as representing Barnett, Hoare, and Co.

The next general meeting will be held on Wednesday, the 1st of July next, at Half-past Four o'clock precisely.

Notice.—The report of the committee on the law of property on the following reference will be presented:—"To consider whether, in connexion with a general register, the principle of insurance of titles might not be introduced."

CORRESPONDENCE.

CONVEYANCE STAMPS.

SIR,—Your correspondent, "An Old Subscriber" (June 22, 1846) must surely be, beyond measure, scrupulous in regard to the stamp-duty on deeds prepared under the new Act to facilitate (?) conveyances. (a) He fears that, although his deed under that Act should contain less than thirty folios, yet that the progressive duty would be chargeable as if the long forms of col. 2 were inserted.

Now the fact is that (certain *dicta* to the contrary notwithstanding) the Stamp Act makes no progressive charge except upon the words actually contained in any deed, &c. and the facilitating Act, though declaring that deeds made in pursuance thereof shall be construed as if the forms of words in col. 2 were inserted therein, not only does not cause those words to be contained in the deed, but absolutely excludes them therefrom; substituting effect for language, and construction in lieu of contents; inasmuch that, to render the Stamp Act applicable, it would be requisite that the latter should expressly charge not only the words actually contained but those construed as contained in any deed, &c. and for this purpose "An Old Subscriber" may rest satisfied that a new Stamp Act would be indispensable.

As to section 3 charging the deed with the combined lease and release duties, it is scarcely requisite to observe that stamp-duties are not payable by inference; there must be an express, aye, and an explicit enactment, otherwise there is no duty. This clause leaves the release progressive duty chargeable as it previously was, on the words contained in, and not on the meaning to be drawn from, a given deed.

Your correspondent asks "Is our Law Institution deficient?" To which I should say, yes, verily, from the time of the famous, or, rather, infamous affair of the salaries and compensations.

I am, Sir, yours, &c.

ANOTHER OLD SUBSCRIBER.

June 29, 1846.

FEES IN REVENUE PROSECUTIONS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am clerk to the justices acting in and for this borough. Many informations are here exhibited for offences against the revenue laws, at the instance of the Commissioners of the Customs and Excise, and in each case a fee of 1l. 1s. used to be paid for examinations, hearing, &c.; but for some years past such fee has been refused, and I have charged strictly according to Lord John Russell's Table of Fees to be taken in Boroughs. Recently I have received from the collector at this port a note, of which the following is a copy:—

"I submit that the clerk to the justices may be requested to state under what authority the charges for examinations and commitments are made, as it would appear that the usual charges in those instances are, 1s. each taking examinations, and 1s. 6d. each for commitments."

"JOHN RUTHERFORD.

"To the Collector and Comptroller at Dover, as submitted, by order of the Commissioners."

Now I should be glad to be informed, through the medium of your valuable journal, by other gentlemen who are in a similar position to myself, what fees they are paid on the like occasions?

I am, Sir, yours, &c.

Dover, July 1, 1846. MATTHEW KENNETT.

(a) This stupid Act, in its first clause, speaks of the forms in the first schedule thereto, which schedule contains but one form, and the latter is put forward as a specimen of a short conveyance without any enactment of its sufficiency; nay, the words therein, "in pursuance of an Act to facilitate the Conveyance of Real Property," are actually adapted to mislead the practitioner into a belief that this reference to the Act will suffice, without an enactment to that effect, they would probably fail to do so; as they seem not to refer with more particularity to the Act in question than to the previous Lease and Release Act, or that of 8 & 9 Vict. c. 105.

All these Acts presuppose that, in the case of a release founded on a lease for a year, the latter must necessarily be a lease answering to the instruments under the head "Bargain and Sale (or lease) for a year," whereas an actual lease for a year, made irrespective of the purpose of enabling the lessee to take a release, were, nevertheless, equally good whereon to found a release, whilst the duty on such lease would be governed by its premium or rent, and might be anything from 10s. to 1,000l.; yet these statutes profess to retain a "lease for a year" duty as a thing definite and certain! It is fairly to be presumed that the judges would, in all cases under these Acts, deem the lowest possible lease duty (10s.) to be sufficient.

RECOVERY OF AGENCY ACCOUNTS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am induced to reply to the query of "An Attorney" at Preston, in your number of the 20th June, relative to the recovery of an account for agency (under 40s.) from a Solicitor in a large town in Yorkshire, because your correspondent subscribing himself "Ebor," whose reply is inserted in your last number, has fallen into an error calculated to mislead.

In the first place, according to the practice of all County Courts, and very many of the other local Courts, proceedings cannot be taken for the recovery of any debt unless the plaintiff and defendant reside—as well as the cause of action have arisen—within the jurisdiction of such Courts; so that if this be the practice of the Courts in Yorkshire, "An Attorney" at Preston could not maintain an action in those Courts.

Again; an Attorney may, if he be sued in any inferior Court, plead his privilege of being sued in the superior Court, in which he has been admitted, although the amount of debt be under 40s.

The course of the "Attorney at Preston" is quite clear, if the Solicitor in Yorkshire is responsible. Let him bring an action in the Court of Queen's Bench for the recovery of his charges—the Solicitor in Yorkshire will soon find it too expensive to delay payment. This would also be a very effectual remedy for the recovery of small agency charges from London Solicitors, and, if adopted in a few instances, would probably induce a systematic settlement in future.—I am, Sir, your's, &c.

Hereford, 2nd July, 1846.

SELECTIONS FROM CORRESPONDENCE.

"H." thus writes on the subject of railway liabilities:—

I am tempted, from the importance of the subject at this moment, to write a few lines in answer to E. W. C.'s article on the liability of Provisional Committee-men, in your last week's paper, hoping to provoke further elucidation of the subject, which I do not think E. W. C. has exhausted, nor do I think that he has conclusively argued what he has advanced.

He speaks of two positions, one of a provisional committee only, and the other of a provisional committee, and a self-elected managing committee, apparently two wholly distinct bodies, and the latter admitting of no interference from the former. There is, however, in practice, a third position, that of a provisional committee, and a self-elected managing committee, who have their acts confirmed, or seek to do so, by convening a general meeting of the provisional committee to confirm their acts. But I think in most cases it will be found that the managing committee are not a wholly distinct body from the provisional committee, but that they are a section of the latter committee, and that the members of the managing committee are enumerated in the prospectuses among both committees; but the one great hiatus, however, which I most respectfully submit to exist in E. W. C.'s argument is, that he omits to notice that every member of either committee is, without distinction, designated by 7 & 8 Vic. c. 110, s. 3, a promoter, and every such promoter, is, by the 4th section, compulsorily a shareholder, or rather a subscriber; that Act, therefore, removes every distinction to the extent of making every one who lends his name equally a promoter, and rateably with the number of his shares interested in the success and non-success of the undertaking, in other words, in its profits and loss. With the greatest deference, therefore, I submit that the legislature must have intended some liability to attach to promoter, shareholders, or subscribers; or such as theretofore attached to so called patrons or approvers who simply lent their names as such, and never interfered, or intended to take any interest in the undertaking; and therefore the terms patrons or approvers are not now applicable to provisional committee-men.

We find, then, that every promoter is an interested man in the undertaking, and has a voice in it; and, having a voice in it, it is laches if he don't use it; and if he don't use it, he must be presumed to be content to be led and guided by those who do interfere. And I submit that it is idle to say that the managing committee won't be interfered with by the other members of the provisional committee. They either can't help themselves, or they have the specific authority of such other members for so acting; and either position must in law and justice fix all parties to the general liabilities within the scope of the undertaking. I submit again, that every person deliberately agreeing in writing to be a promoter, shareholder, or subscriber of a railway, assumes an active duty and obligation; and that it is not open to him to be a passive spectator, and so absolve himself from liability. He, in fact, holds himself out to the public either as a managing man, or as one who can, will, and ought to control, so far as one voice goes, the undertaking generally, so as to make it profitable.

ble to those who are invited to, and on the strength of his name so appearing do, subscribe to the undertaking. A man who can, but does not control, under these circumstances, must be as liable as if he did control.

But the more immediate question is one of implied authority to contract debts by lending his name as a member of the provisional committee; and it is contended that, as he did not appoint the managing committee, and they would not permit interference, they cannot be his implied agents. To this, I again submit, no managing committee can be so circumstanced; they may be self-elected, but they gain no powers by such self-constitution, which the remaining members of the committee cannot control or altogether supersede. It seems conceded that the provisional committee, as a body, are joint and several contractors; and that the contracts of the few, if passively or actually allowed by the many, bind all. Now, allow me to ask, is not this precisely the case of the managing committee, which is only a section or few of the general provisional committee? Why, therefore, are the remainder of the provisional committee to be free from liability?

To plead ignorance of what is going on, appears to me quite indefensible. If what I have urged be correct, there is no legal distinction in point of object or interest in any member who is a promoter. We find 100 gentlemen called by themselves, and advertised as provisional committee-men, but in law all "promoter shareholders;" and some twelve of these 100 men also assume the name of managers. They all, without distinction, deliberately combine for the express purpose of creating such liabilities for their mutual profit or loss, as may be necessary, towards attaining the common object—a railway. They all know that certain work must be done, certain expenses must be incurred, and that within a limited time; they have confederated for that express object, nay, they have pledged themselves to the public so to do, and they must give account of their stewardship; can it be contended, with the slightest appearance of reason and justice, that any member (he being, remember, a person interested, by his voluntary agreement, in writing, in the profit and loss of the venture) may say with impunity, I know nothing about how it is managed, or who manages it; I never interfere. He must know it can't proceed without management; that it, in fact, is managed; that he can, if he please, control such management, but that he has omitted to do so, and that therefore he has implicitly given his authority to the managers, whoever they may be.

"An Original Subscriber" thus writes on the subject of the "Mutiny and Annual Indemnity Acts:"—

In going through your paper on Saturday night, an idea crossed my mind which has probably crossed it on each perusal of the Statute Book for the last twenty years or more, and which is this:—Why the provisions of the Mutiny Act, Annual Indemnity Act, and Acts of this description, should appear on the statute rolls every year, or in other words, why some general Acts should not be passed, to which the temporary annual Acts might be made to refer. This principle is being now so extensively adopted, that I am surprised to find it is not adopted with reference to the Acts in question.

Heirs-at-Law, Next of Kin, &c. Wanted.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent impertinent curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount enclosed.]

161. MATILDA SARAH WICKENS, daughter of the late Thomas Wickens, of Hackney, and Sarah Collins, formerly of Chelsea, or their representatives. Something to their advantage.
162. NEXT OF KIN of THOMAS DEAN, late of New Bond-street, Middlesex, livery-stable keeper (died 24th July, 1819), or their representatives.
163. NEXT OF KIN of ANN STEPHENS, late of Whitechapel-road, Middlesex, widow (died 3rd August, 1831), or their representatives.
164. NEXT OF KIN of JAMES STEPHENS, late of Spital-fields Market, and of Whitechapel-road, Middlesex, victualler (died 4th March, 1831), or their representatives.
165. HEIR-AT-LAW and NEXT OF KIN of RICHARD OAKLEY, of Pen Park, in the parishes of Henbury and Westbury-upon-Frym, county Gloucester, gentleman. Died 17th November, 1833.
166. GEORGE OAKLEY, brother of Richard Oakley, of Pen Park, in the parishes of Henbury and Westbury-upon-Frym, county Gloucester, gentleman, who died 17th November, 1833, having charged his personal estate with an annuity of 30*l.* to his brother, George Oakley, then in New Brunswick, in Nova Scotia.

167. MISS ELIZABETH HOWARD, formerly of Great Ormond-street, Middlesex, daughter and Heiress-at-Law of Richard Howard, formerly of the same place, gentleman.
168. HEIR-AT-LAW of WILLIAM ATLEYWAY, late of the parish of St. Mary, Haverfordwest, gentleman. Died April 1833.
169. NEXT OF KIN of WILLIAM TATE, late of Queen's-row, Pentonville, Middlesex, gentleman (died July 1837), and their representatives.
170. HEIR or HEIRS-AT-LAW of SAMUEL SARJEANT, late of Rothwell, otherwise Rowell, in county of Northampton, gentleman (died March 1839).
171. FIRST COUSINS of THOMAS PIERCE, late of Bowden Hill, in the parish of Laycock, Wiltshire, gentleman (died 14th September, 1839), and of HANNAH PIERCE, his wife, late of Gastard, parish of Corbham, Wiltshire (died 17th March, 1834), or their issue.
172. CHILDREN by the first marriage of the late JOSEPH ANDREWS, formerly of Usher's Quay, Dublin. Something to advantage.
173. ROBERT HUNTER, who was in Trinidad, in the West Indies, in 1826, and it is believed also in 1827; son of James Hunter, grocer, Cowgate, Edinburgh, and AGNES RULE, his spouse; and the children of the said Robert Hunter, if any.
174. HEIR-AT-LAW of JOSHUA LAMBERT, of Armley, in the parish of Leeds, clothier (died 1833); ISAAC LAMBERT, the father of said Joshua Lambert, about sixty years ago was a clothier at Farnley, near Leeds, and afterwards died at Silver Royd Hill, in Armley, in the year 1816; and said Joshua Lambert married one Sarah Bartle, and lived near Leeds until the year 1820, when he was appointed governor of the work-house at Hunslet, where he died, and where his widow is still living.

(To be continued weekly.)

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

A Correspondent from Bridlington is informed that our rule is, never to insert communications which are unaccompanied by the name of the sender.

JUVENILE.—*Poultanque's* is the most popular, if not the best, work on the subject named. That by Story, however, is a sound one, and has the advantage of being the more recent of the two.

E. B. (Truro).—Probably in our next.

GRIFFITHS v. THOMAS and ANOTHER.—We have received a communication from the plaintiff's attorney in this case, to the effect that the rule to review taxation of plaintiff's costs was not made absolute as erroneously stated in our report (*supra*, p. 306), but was discharged without costs.

NOTICE TO SUBSCRIBERS.

The volumes of the LAW TIMES, neatly, strongly, and uniformly bound, for 5*s.* 6*d.* each, with the name and address of the owner on the cover, 1*s.* extra, if sent to the office. If the numbers for binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

The numbers comprising the first volume of the VERULAM REPORTS of Real Property and Conveyancing Cases may also be transmitted for binding in like manner.

INDEX TO THE LAW.

The LAW DIGEST for the half-year ending Jan. 1 is now ready. It forms a complete Index to the Law decided during the half-year, and contains upwards of 2,000 cases. Price 5*s.* 6*d.* in a wrapper. Being stamped, it can be transmitted by post.

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N.B.—For Scale for Estate Advertisements, see JOURNAL OF PROPERTY.

THE LAW TIMES.

SATURDAY, JULY 4, 1846.

PRIVILEGE OF THE BAR.

THE case of *Butt v. Jackson*, which has occupied the Court of Queen's Bench in Ireland, elicited an elaborate judgment upon the right of Counsel to unlimited abuse, and so warmly

interests the Profession on both sides of the channel, that it must not pass without comment. The event itself is extraordinary, and the question it raises a grave one.

It will be seen that the Irish judges have determined, in effect, that the privilege usually understood to belong to Counsel, of saying what they please about any matter or person before the Court, is not really theirs, and has been only not disputed, because they have hitherto exercised that supposed privilege with discretion and forbearance.

We have very considerable doubt whether our own Court of Queen's Bench, with Lord DENMAN ever prompt to maintain to the utmost the rights and privileges of the Profession, would not have asserted the right of Counsel to unlimited speech, while it would have rebuked any abuse of that privilege. But we cannot say that such abuse of it is rare. We have heard, from men whose memories go back to the Bar of a past generation, that the license of speech in those days was vastly greater than it now is; that bullying and browbeating were the common practice of distinguished advocates; and that character was remorselessly assailed by a speaker whenever it was deemed desirable to discredit a witness.

Undoubtedly we have improved mightily in this respect. The bewigged bully is now the disreputable exception, and not the rule, as formerly. When a Barrister puts on his gown he does not put off the gentleman, nor usually does he venture to say at the Bar what he would not repeat in any other position. We say, that such is now the ordinary bearing of Counsel. But still, it must be admitted, do we find a class of men who make a sort of notoriety by blustering, and to whom the censure of the Irish judges would properly apply. To such, and to those who may be tempted by their apparent success to imitate their example, we commend a careful perusal, not of the judicial proceedings only in the case alluded to, but also to the meeting of the Attorneys, reported a short time since, held to express their sympathy with Mr. JACKSON.

Of all kinds of abuse current at the Bar, the most vulgar, and in the worst taste, is that so often indulged in of attacking an attorney. It is the ready resource of a barren mind, which, unable to frame a substantial argument out of the facts, seizes in despair at so easy and popular a method of amusing the ears of the Court. It is an act of cowardice, because the party assailed is not permitted to defend himself. And yet we see it daily practised, and passing unrebuked; and they who adopt it call themselves gentlemen, and, more strange still, it is partly sanctioned by the very persons who are the victims of the practice.

The proceedings of the Attorneys in Ireland offer an example how this evil practice may be suppressed. Let the Attorneys' Clubs everywhere declare their disapprobation, and recommend their professional brethren not to give their briefs to any man at the Bar who may permit that license to his tongue. Such a resolution would be more effective than the censures of the Judges. It would make abuse unprofitable, and when it ceases to pay it will be speedily abandoned.

Indeed, the entire system of browbeating and abuse is not only wrong in principle and an offence against good taste and gentlemanly feeling, but it is, moreover, like all wrong, a great mistake. It does not, in the long run, secure the end for which it is employed. It is always disagreeable to the Court, and deprives the Counsel who resorts to it of that confidence and ready access to its ear which is so neces-

sary to the successful discharge of his duties. To juries it is usually distasteful. They have the feelings of men, and it offends them to hear a witness who could have had no motive for falsehood charged with perjury, or one of blameless life loaded with obloquy, because it serves the purpose of the moment. A jury is so much more easily satisfied that a witness may be mistaken, than that he has wilfully perjured himself, that it is with astonishment we continually hear accusations of crime, when common sense, to say nothing of Christian feeling, would dictate that the error, if any, was only one of memory.

We trust, therefore, that the proceedings in Ireland, by directing attention to the subject of the abuse of the privilege of counsel, will lead to a change in the practice of many who may have erred hitherto from want of consideration. The privilege itself is a great, a glorious, a useful one; but that we may preserve and hand it down in its integrity to our successors, it is necessary, in these days of inquiry and reform, that we should take special care not to abuse it.

SHORT CONVEYANCES.

THIS bill has passed into the Commons, and in its progress through the committee of the Lords, its length has been more than doubled by the addition of short forms applicable to various kinds of conveyances, not included in the original bill, such as mortgage of reversionary interest in stock, mortgage of policy of assurance, transfer of mortgage, reconveyance of mortgaged property, covenants for titles, releases, &c. &c. Whether the recent change in the Government will stay its further progress we know not, but so far it has advanced without a word of opposition or objection from any quarter; and it is not improbable that, thus tacitly approved, it may be permitted to become law; and the lawyers cannot find one man in all the legislature to say for them—"This is a measure of serious moment; of vast extent; give us the practical men, who alone can judge how it will work—time to investigate its provisions, to state objections or improvements, and do not hurry it through Parliament faster even than we can read it, much less examine its bearings upon other parts of the law."

So reasonable a request could not be refused. But we have no friend who could make it for us, and assign a reason for it. So the measure will pass without one of the compensations to which the lawyers are entitled, in the shape of abolished certificate duties, and the placing of the Conveyancing under the same protection as the Common Law and Equity branches of their profession.

SHAM LAWYERS.

It will be observed that Mr. HENRY STIFF, of Reading, who has signed the following printed letter, demands costs, and, if paid, he would be guilty of the offence for which LATHAM was transported; so that the Profession at Reading should keep an eye upon him.

No. 1, Cadogan-place, Reading.

March 12th, 1846.

SIR,—I am desired by Mr. Thomas Mason to apply to you for the sum of 8s. 6d. and unless the amount be paid at my Office, or at within four days from the date hereof, the 16th inst. legal proceedings will be commenced against you for the recovery thereof.

I am, Sir, yours respectfully,
H. STIFF.

	s.	d.
Debt . . .	8	6
Costs . . .	3	6
	12	0

Mr. G. Brown, West-court, Reading.

VERULUM REPORTS.

THE 19th number of *New Magistrates Cases* was published on Saturday last; the next is in the Press.

The 14th number of Cox's *Criminal Law Cases* was published on Monday, and the 15th and 16th will be ready next week, so as to complete the fourth part for the ensuing assizes.

LAW TIMES EDITION OF IMPORTANT STATUTES.

THE fourth edition of the *Registration of Electors Acts*, incorporating the Reform Bill and other statutes, and with notes of the cases decided on appeal to the Court of Common Pleas, is now ready.

RAILWAY LITIGATION.

SINCE the last commentary, some cases have been decided, and some objections have been raised by correspondents of the *LAW TIMES*, alike requiring notice, and as the interest and importance of the subject have not diminished, no apology is needed for returning to it.

And first, as to the suggestion for avoiding a multiplicity of actions for the same debt. It has been shrewdly observed, that inasmuch as the judgment only, and not the verdict can be pleaded, the defence would not avail in causes set down for trial at the same sittings or assizes. This is true: but we have no doubt that in such case the Court would, on application, postpone the other trials, so as to permit of the defence being put in, and to avoid the practical absurdity of twenty distinct judgments for the same cause of action.

At all events, the difficulty might be avoided by one of the defendants permitting judgment to go against him by default, the rest pleading.

In illustration of the remark upon which we mentioned some time since that we believed the judges would punish any attempts made by an attorney to increase costs by issuing many writs for the same debt, we are glad to adduce an expression which fell from Chief Baron POLLOCK, to the effect that, if such a case were brought under the notice of the Court, means would be found to punish the offender.

Another correspondent, whose communication appears in the *LAW TIMES* of this day, enters at great length upon the question of the relative liabilities of managing and provisional committees, contending, with much ability, that there is no distinction in fact between the two parties, and therefore that there should be none in law. But having given to his argument the consideration it deserves, we must adhere to our former views, and not the less since they have received the confirmation of Chief Baron POLLOCK, in the case of *Banks v. Goode*, 7 Law T. 286. In the course of his summing up in that case, he remarked, "The case of *Lov v. Wilson*, which had been mentioned as decided by his learned brother PARKE, was different from this, inasmuch as in that case there had been a managing, as well as a provisional committee; whilst here, the former had not had any existence. As he had perused the report in the ordinary channel of public information, his opinion had gone along with that expressed from the Bench by his learned brother."

With the expressed opinions of two judges upon the point, it is unnecessary here to enter into the controversy. If the distinction exists in law, there can be no question that it does so in fact. How many of the hundreds of respectable persons who permitted their names to be placed upon provisional committees, did so with any other intention than that of patronage—as expressing their approval of the project, and their willingness to support it by taking shares? How many of them imagined that thereby they were giving an implied authority to the managing committee to pledge their credit for any amount they pleased? The test of the intent is this. If it had been stated to the party that the purpose of the application was that he should suffer a managing committee, in whose proceedings he was allowed to take no part, to incur as many debts as they pleased, without asking his opinion or consent, and for which debts he was to be liable, would the party have consented to join the provisional committee? If he would not have done so, knowing the liabilities, it shows that by doing so he did not intend to share those liabilities; and if he did not put down his name with that intent, according to the ruling in the case of *Parrett v. Blunt and Another*, 7 Law T. 286, he would not be liable.

And justice points in the same direction as the

law. The managing committee incurred the debt; their folly it was to rush into expenses before the means for payment were secured; if any advantages had accrued from success, they would have been theirs alone. It is, therefore, a manifest injustice to shift the burden upon parties innocent of incurring the debts, who were to profit nothing by success, and who are only called upon when the real wrong-doers want assistance to help them out of a difficulty of their own creation.

The next important point has been that decided in *Wontner v. Shairp*, 7 Law T. 287, in which it was held, that where there had been misrepresentation by a Managing Committee, an allottee may recover back the deposits paid, even although he had executed the subscribers' agreement and parliamentary contract, those deeds having been so executed in consequence of such misrepresentation, and being therefore void as tainted with fraud.

The principle here established is clear and indisputable; but some care will be required in its application. The misrepresentation must be within the knowledge of the defendant, and therefore it would be unsafe to bring such an action against any but a member of the Managing Committee; a Provisional Committee-man, who had never acted in the matter, would not be liable in this action, as he is in case of debts due to third parties, and to which his credit has been impliedly pledged. Fraud cannot be implied, it must be distinctly proved. Where there was a Managing Committee, actions to recover back deposits can only be brought with safety against the entire body, or one of its members.

Another question of great importance to the Profession was raised in the case of *Parrett v. Blunt and Another*, 7 Law T. 287. Here the solicitor to the company had ordered the insertion of advertisements without any authority from the Committee. Are the members of the Committee liable for his order? The jury found a verdict for the plaintiff, but leave was reserved to the defendants to enter a nonsuit on this ground, so that the question will ultimately come before the Court above. But it may be observed, that to order advertisements is no part of the duty of a solicitor, and, therefore, not within the scope of his implied authority. If he could order advertisements, he could order a survey, or any thing else that he chooses to consider desirable, without consulting his clients. The proposition is so monstrous when thus broadly stated, that there can be little doubt as to the result. Therefore care should be taken to ascertain by whom and by what authority the debt was incurred, before an action is brought. Nor is there any real hardship in this upon creditors. Before a man allows extensive credit, he is bound to see that the party giving an order on behalf of others is duly authorized; if he omit this obvious duty, it is at his own peril, and he may fairly be deemed to have given credit to the party from whom he received the order.

Such are the points that have presented themselves since last the subject was brought under the notice of the reader. They will require to be weighed well by all engaged in the railway litigation before any step be taken on either side; and it is with this view that they are collected and commented upon here.

E. W. C.

THE CRITIC.

New Books.

A New Law Dictionary, containing Explanations of such Technical Terms and Phrases as occur in the works of Legal Authors, in the Practice of the Courts, and in the Parliamentary Proceedings of the Houses of Lords and Commons; to which is added an outline of an Action-at-Law and of a Suit in Equity. By HENRY JAMES HOLTHOUSE, Esq. of the Inner-Temple, Special Pleader. Second edition, enlarged, crown 8vo. London, 1846. Thomas Blenkarn.

THIS is a great improvement upon the old Law Dictionaries. It is not a collection of treatises, like some, nor a mere naked definition of technical terms, like others; but it strikes the happy medium between meagreness and prolixity, and gives to the practitioner and the student just the sort of information he would look for in a dictionary, and that which is equally valuable, instruction where further particulars are to be found. In this second edition Mr. HOLTHOUSE has introduced many new headings which have risen into importance since the ap-

pearance of the first, and he has corrected some errors unavoidable in the carrying out of so extensive a design, and enlarged some articles that were deemed too curt for their purpose. Altogether, in its composition, its convenient size, and neat typography, this volume will be an acquisition to all engaged in the study, the practice, or the administration of the law, to be ever at hand as a faithful interpreter of other books.

The Law Digest; a general Index to the Reports published between the 1st of July and 31st of December, 1845. London, 1846. Law Times Office.

THIS laborious undertaking is intended to supply the practitioner with a ready reference to all the law decided during the half-year ending on the 1st of January, and it is, if successful, to be continued half-yearly. The plan is simple and convenient. All the cases reported during the half-year are arranged under their proper subjects, and these are placed alphabetically. If, therefore, the practitioner wants to ascertain what cases have been decided, say on the law of "Executors," he turns to that title, and under it he will find every case, where-soever reported, briefly digested with reference to the report, or reports, if more than one, where it appears. Besides this, there is an index to the names of cases, and to the names both of defendants and plaintiffs, so that if one be forgotten the case may still be traced by means of the other. The peculiarity of this work, and that in which it differs from any other digest, is, that it includes *all* the reports, whereas all the other digests exclude some, being guided in their selection, not by the wants of the practitioner, but according to the rivalries of publishers. The plan of this Digest is to omit none, and its consequent completeness gives it a peculiar value and utility. The amount of exclusion from the other digests may be judged by this, that the Digest before us, although embracing the reports only for *half-a-year*, contains *more* cases than does either of the others for a *whole year*, and the mere index of the names of the cases digested occupies no less than *twenty-four* closely printed columns. There is also a table of the statutes cited, arranged in chronological order.

It will not become us to express an opinion upon the merits of this publication. We can only give a description of it, leaving it to the reader from that description to determine whether it is likely to be an acquisition to his office.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 6s.]

BIRTHS.

BIRKBECK.—The lady of Thomas Birkbeck, esq. of Stackhouse, near Settle, of a son, on Wednesday, the 24th inst.

MARRIAGES.

STONDS, Mr. F. C. to Emily Frances, third surviving daughter, of Mr. Wentmore, solicitor, Lincoln's-inn-fields, and Cheyne-row, Chelsea, on March 5th, at New Town, Van Diemen's Land.

DEATHS.

HARRISON, Frances Elisa, the beloved wife of William Harrison, esq. of Gray's-inn and Balham-hill, Surrey, on the 27th inst. in Tavistock-square.

JAMES, James, esq. solicitor, Aylesbury, at the house of his son-in-law, Mr. Mayrick, 39, Eastbourne-terrace, Hyde-park, on the 24th inst. aged 55.

STESS, Sarah, widow of the late Godfrey Sykes, esq. solicitor to the Board of Stamps and Taxes, on the 30th ult. at the Knowle Sands, near Bridgenorth, aged 73.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY

ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.

(Continued from p. 294.)

CHAPTER IV.

DUTIES OF PURCHASER'S SOLICITOR IN INVESTIGATING THE TITLE.

1. Preliminary remarks.
2. Practical suggestions on the perusal of an abstract.
3. Legal operation and effect of the various instruments.
4. Execution and attestation of documents.
5. Descents.
6. As to estates *pur autre vie*.
7. Estates for years.
8. Copyhold and customary estates.

1. Preliminary Remarks.

The principal duty of the purchaser's solicitor is to ascertain whether the vendor can confer a good title, and if so, then to take care that the property is properly conveyed to his client. In investigating a title, the usual course is for the purchaser's solicitor to ascertain whether a good and marketable title appears on the face of the abstract; and if satisfied in this respect, to compare it with the documents therein set forth, in order to discover how far they correspond; and being satisfied also upon this most essential point, to see that the documents themselves are legally executed by the proper parties, and duly attested. Where there is pecuniary consideration, he should also see that the receipt is duly indorsed and signed. If enrolment was essential, he should see that this has been done accordingly; and, what is frequently never thought of, or, at any rate, very frequently overlooked, he should ascertain that the deeds bear the proper stamps.

Abstract should be submitted to counsel, When.—If the title is in the least degree complicated, the abstract should always be submitted to counsel for perusal. Strictly speaking, indeed, it is the duty of a purchaser's solicitor to submit the abstract to counsel in every instance, and by omitting to do so he renders himself personally responsible for any loss or prejudice his client may sustain in consequence of his accepting a bad, incumbered, or unmarketable title. (*Thwaites v. Mackerson*, 3 Carr. & Pay. 341; *Wilson v. Tucker*, 3 Stark. 104.) But this personal liability may often prove an inadequate recompense for the consequences of an act of negligence of this kind. Many solicitors, however willing, may be wholly unable to compensate a client who, on account of having bought property with a defective title, is either evicted from it outright, or compelled to hold it saddled with heavy incumbrances; added to which, all remedy against a solicitor for a default of this kind will be barred by the Statute of Limitations (stat. 21 Jac. 1, c. 16), six years after the commission of the act or default, without any reference to the time the actual damage accrued (*Short v. McCarthy*, 3 B. & A. 626; *Howell v. Young*, 5 B. & C. 259; 2 Carr. & Pay. 238); consequently, if such damage did not accrue within the six years, the remedy against the solicitors would be altogether barred. And even where compensation could be obtained, from what I have seen in matters of a like kind, I do not believe that one wronged client out of ten would attempt to enforce it. As a moral point of duty, therefore, if the slightest doubt arises upon the validity of a title, no solicitor should rely simply upon his own opinion, or take upon himself the responsibility of accepting it without having had the title investigated by counsel.

2. Practical Suggestions on the Perusal of an Abstract.

The principal objects to be kept in view in perusing an abstract, are,—1. To see that the title is carried back sufficiently far. 2. To discover the legal operation and effect of the various instruments, and the capacity of the various parties. 3. That there is a clear deduction both of the legal and equitable estate; to arrive at which it must be ascertained that all particular estates are either determined or can be conveyed to the purchaser, and that there are no incumbrances, or if there are, that they are of such a nature as can be got rid of, so that a clear and unburdened estate may pass to the purchaser. 4. It must appear beyond all doubt that the parcels comprised in any deed then under investigation are the same that are comprised in the former deeds (3 Prest. Abs. 33); and if the identity does not sufficiently appear from the abstract, it must be authenticated by extraneous evidence. This can usually be effected through the medium of land-tax or poor-rate assessments, when, if it should appear that such assessments have been made without any variation, except in the change of the owner's name, it may reasonably be presumed that all is right. (*Id. id.*)

Distinction between questions of conveyance and questions of title.—Another object which must never be lost sight of during the course of investigation, is the distinction between questions merely of conveyance and questions of title; that is to say, if the estate is outstanding in a trustee or any one who is under a legal obligation to make such a conveyance as the vendor shall direct, then it is a question of conveyance merely; but if the estate be outstanding in a party who is under no legal or

moral obligation to convey it, it is a question of title. (*Elliott v. Merryman*, Barnardist, 82; *Wynn v. Williams*, 5 Ves. 130; *Page v. Adam*, 9 L. J. 407.) In the latter instance the title is bad; in the former it is good; for the vendor being able to obtain the concurrence of all necessary parties, is thus enabled to convey an absolute estate to the purchaser.

How to analyze an abstract.—It will generally be advisable for the peruser to make an analysis of the abstract, which will be found to accelerate as well as simplify the labour of investigation. This course will be particularly advantageous where different parcels of land are derived through various channels, and the several documents relating to each are blended together in the abstract, according to their respective dates, when considerable confusion may arise, unless each portion is, as it ought to be, arranged under a distinct head, and treated altogether as if it was a distinct title, until the various portions unite in one person; and the like observations are also applicable to cases where there have been several mortgages of the same lands to different mortgagees, when the title of each mortgagee, as also the title of the equity of redemption, should be distinctly considered; an investigation which will be greatly accelerated by making a short analysis, an excellent form of which is furnished by Mr. Preston, in the appendix to his valuable work on abstracts of title.

In an ordinary case, an abstract of an estate of inheritance may be analyzed in the following simple manner:—1796, 3rd and 4th of June. Indre. of le. and rele.—Rele. A B conveyed to C D in fee; 1800, Oct. 7, C D devises to E F in fee; 1801, Nov. 10, testator died; 1802, Jan. 17, will proved in Prerogative Court of Canterbury; 1803, 1st and 2nd of March, E F conveys to J H in fee to uses to bar dower; 1805, 12th of May, J H mortgages to J L by appointment; and thus continue to set out the various instruments according to their respective dates and orders.

What inquiries should be made when important documents are omitted.—After making an analysis of the abstract, the attention should be particularly directed to see whether every document necessary to the elucidation of the title is there set forth; and if it should appear that any are omitted, or merely mentioned in the recitals, or simply referred to, they should be called for and their production insisted upon. This frequently occurs where persons seized in fee have made wills, but have made no disposition of the abstracted property; when the will ought to be produced, as affording the best and most conclusive and satisfactory evidence of that fact. The common practice of conveyancers, however, is to rest satisfied with the production of the probate copy, and not to require the original will. (Cov. Ev. 1.) Inquiry should also be made as to whether any owners of the property executed a marriage settlement, and, if so, its production should be required, in order to ascertain that the property is not affected by it; nothing should be taken for granted where proper evidence of the fact can be produced. Hence the peruser of an abstract should never rest satisfied with the bare statement of the fact of "fine levied," or, "recovery suffered accordingly;" but should call for the production of the chirograph of the fine, or exemplification of the recovery. Every stated fact should be supported by the proper evidence. To prove intestacy, therefore, letters of administration to the effects of the intestate should be produced; to prove the appointment of executors, an office extract from the will by which they were so appointed; to prove a pedigree, certificates of births, baptisms, marriages, deaths, and burials; and to prove the payment of an annuity or other annual charge, the last receipt from the party entitled acknowledging the payment.

Office copies from awards under Inclosure Acts, and an attested and examined copy of an Act of Parliament, not made a public one, or a printed copy of it made evidence, should be called for when such documents in any way relate to the abstracted premises.

Where any important fact is not mentioned, an inquiry becomes requisite.—Where any important fact is not stated in the abstract, as, for example, the enrolment of a deed of bargain and sale, or disentailing deed; livery of seisin in the case of a feoffment; the acknowledgment of a married woman; the registration of a deed in a register county; or that the terms of a power, as where a deed is required to be attested by two witnesses, have been duly

complied with, it should be asked whether these things have been done.

Where any unaccountable act has been done, inquiry becomes necessary.—Another subject demanding a strict inquiry, is when any unaccountable circumstance appears on the abstract; as where any act is done without any apparent reason, which is a matter always sufficient to excite suspicion; as, for instance, where a feoffment is made, or a fine levied, or a recovery suffered, and there does not appear to be any ostensible cause for those assurances having been made and entered into. So, where any unusual occurrence takes place, as when a deed is delivered as an escrow, it should be fully ascertained that every condition has been performed, and that the second delivery has taken place.

Requisitions, how usually inserted.—Requisitions like those I have just alluded to are generally inserted in the margin, where they readily attract the attention; the more important points being set out at the end of the abstract. Before, however, any marginal remarks are made, the abstract should be gone through and analysed, otherwise the margins may, as I have often seen them, be incumbered with a host of requisitions, which, on a further perusal, it will be seen have been already complied with.

Legal operation and effect of the various instruments.—The construction of the various documents necessary to establish a title is one of the most difficult, yet important, portions of a conveyancer's duties. Sometimes one part of an instrument is repugnant to another, when it becomes a question which is to prevail, and this, in great measure, will depend on the kind of instrument in which such repugnancy is found; if it be in a deed, then the general rule is, that the former clause shall prevail; if in a will, that the latter clause shall control the former one; though both in deeds and wills, as will be shewn hereafter, these rules are not without some exceptions. The same words also, when inserted in a deed, may receive a different interpretation when found in a will; and even when found in an instrument of the same kind, it may operate differently in relation to the time at which such instrument was made; as a will made prior or subsequent to the late Will Act (stat. 1 Vict. c. 26); or even when contained in the selfsame instrument, when the identical terms are applied to property of a distinct kind, or to devisees who stand in a peculiar degree of relationship to each other. The same terms may also convey a different interest when they relate to an equitable than they would if applied to a legal estate.

Where one part of an instrument is repugnant to another.—As a general rule in the case of a deed where the clauses have been repugnant to each other, the former clause has been allowed to prevail, though its effect would be to annihilate the latter one altogether; as if a grant were to be made to A and his heirs in the premises, and by the *habendum* the limitation was to be restrained to his life, the *habendum* would be rejected as repugnant to the estate of inheritance conferred on him by the premises, which a subsequent clause would not be permitted to divest. (21 Hen. 6, c. 7; 2 Rep. 23; 8 Rep. 56; Prest. Shep. Touch. 102.) But the *habendum* may explain what particular kind of heirs were intended, without being considered repugnant to the grant; therefore a limitation to A and his heirs; *habendum* to A and the heirs of his body, would not be considered as inconsistent; but the *habendum*, explaining the particular kind of heirs, cuts down what would otherwise have been an estate in fee-simple into an estate tail. (8 Co. 154, b.) And, notwithstanding the general rule of law is, that where there is any repugnancy between the premises and the *habendum*, the former shall operate and the latter be rejected, there are still certain circumstances under which the *habendum* will be allowed to supersede the former, as where the property is so limited that the grant is made to a person incapable of taking under it, as occurred in *Spyve v. Topham* (3 East, 155). In that case the lease for a year was made to Bass, and the re-lease, which was between one Thickerton, of the first part, Topham, of the second part, and Bass, as a trustee for Topham, of the third part, and in consideration of 700*l.* paid by Topham, it was witnessed that Thickerton confirmed to Topham and his heirs, to hold to Bass and his heirs to uses, which gave Topham a power of appointment. Now as the lease for a year was made to Bass, Topham had no estate which was capable of an enlargement; and it was, therefore, urged, that as Bass was

named in the *habendum* only, and not in the granting clause of the lease, he would not be deemed the re-leasee. The Court, however, rejected the grant or re-lease to Topham, and treated Bass, though named in the *habendum* and omitted in the premises, as the re-leasee; the judges at the same time observing, that the cases cited (a) were perfectly satisfactory in authorizing them to put a construction upon the deed in support of it, which, from the reason and sense of the thing, they should probably have done without such authorities. But, generally speaking, where one person is named as a grantee in the premises, and the other in the *habendum*, the grantee named in the premises would take to the exclusion of the grantee in the *habendum*; unless, indeed, the assurance were effected by a feoffment; for then it seems whichever grantee received the livery of seisin would have the preference, without respect to the order in which their names were respectively mentioned in the charter; livery of seisin being, in fact, the essential part of a feoffment. (1 Pres. Abs. 98, 99.)

As to terms of years.—It seems also to have been formerly considered that a limitation of all the estate of a term of years in the premises could not be controlled by the *habendum* to give a partial interest by way of underlease; but the law is otherwise now; for the rule at present seems to be, that the effect of the grant and *habendum* collectively taken are to demise the land and all the estate for a term of years; so that there is no repugnancy or inconsistency. (*Earl of Derby v. Taylor*, 1 East, 502.) Yet it seems that if the assignment contain a grant of all the estate, &c. and by the *habendum* the term is limited to commence from a future day, as the premises will pass all the time of the term, it will be repugnant to the *habendum*; for no assignment can be good unless it creates an immediate tenancy, or, in other words, privity, between the assignee and the reversioner. (*Jermyn v. Orchard*, Show. P. C. 109.) In such case, therefore, the *habendum* will be deemed repugnant, and, falling within the direct principles of the general rule above laid down, be rejected accordingly. But unless all the estate be limited in the premises, a grant of the lands held for a term to commence from a future day, or upon the happening of an event, is good; as, for example, suppose a lessee grant to A, that if J S shall die, A shall have his term, this is a good grant, and the term is to pass on a contingency; and the grant is suspended in operation, in respect of vesting of the estate, until the contingency happens. (Prest. Shep. Touch. 79; Plow. 524; 7 Taunt. 267.)

As to wills.—The general rule in wills, as I have already mentioned, is, that where two parts are repugnant to each other, so that they cannot possibly both take effect, the latter clause shall prevail. (Co. Litt. 112, b; *Ulrich v. Litchfield*, 2 Atk. 372; *Sims v. Doughty*, 5 Ves. 243; *Constantine v. Constantine*, 6 Ves. 100; *Doe dem. Leicester v. Biggs*, 1 Taunt. 109.) The case of *Crowe v. Odell* (1 Ball & Beat. 449, and 3 Dow. 61) affords a good exemplification of this doctrine. There, a testator devised the residue of his real and personal property to his children, A, B, and C, and their younger children, their heirs, executors, administrators, and assigns, for ever, which made it a clear joint devise; but he afterwards went on to declare that, nevertheless, his intentions were that A should receive the entire interest, or yearly produce, of such part of his real or personal fortune as he (the testator) intended for his younger children, during his life. The testator then made a similar direction as to B and C; and he provided that, in case any of his said children should die, the share of such should go to the younger children of such children; if no younger children, to the survivors. And he gave the parents a power of distribution among their younger children. Lord Clare, when Chancellor of Ireland, had held the parents and children to be entitled jointly; but Lord Manners afterwards determined that the parents took life estates only, with a power of distribution among their children; which decree was affirmed in the House of Lords.

(To be continued.)

Public Sales.

By Messrs. HOGGART and NORTON, at the Mart.
A house and business premises, No. 36, Bouverie-street, Fleet-street, held for 41 years, at 30*l.* per annum, let at 77*l.*—540*l.*

(a) 1 Ins. 7; Shep. Touch. 76; *Butler v. Elton*, Carey Rep. Chanc. 132; *Earles v. Lambert*, Allyn, 41; in opposition to *Bustard v. Coulter*, Cro. Elis. 909.

A freehold residence, on the summit of Castle-hill, Reading, Berks, with lawn, pleasure grounds, gardens, paddock, and stabling, the whole containing about 17 acres—7,500*l.*

A house and shop, situate No. 29, Compton-street, Bruns- wick-square, let at 7*l.* per annum; held for 61 years, at 23*l.* 17*s.* per annum—320*l.*

Five shares of 10*l.* each, in the Abney Park Cemetery, Stoke Newington; a dividend of 5*s.* per share was paid in October last, and a further dividend of 2*s.* 6*d.* is now declared—10*l.*

A similar lot—10*l.*

A ditto—10*l.*

Five similar shares—10*l.*

By Messrs. WINSTANLEY, at the Mart.

A copyhold house, called Great Marsh House, or Ham- mends, in the parish of Thorringtons, Essex, including a farm-house, stabling, buildings, and 199*a.* 2*r.* 97*p.* of marsh, meadow, and arable land—4,950*l.*

A freehold cottage with garden, orchard, &c. and 2*a.* 1*r.* 7*p.* of land, situate at Enfield Wash, Middlesex—630*l.*

Eleven acres of freehold arable land, near the above—400*l.* 5*s.* 2*d.* of freehold, arable, and marsh land, near the above—235*l.*

A small tenement, garden, and field, containing 2*a.* 2*r.* 35*p.*—155*l.*

A copyhold house, at Ialeworth, Middlesex, in Chancery, "Day and Others v. Holbrook and Others"—730*l.*

By Mr. FREDERICK CHINNOCK.

Four Italian villa residences, seated on a mount at the summit of Notting-hill; held for 97 years from Michaelmas 1825, at a ground-rent of 40*l.*; let at 295*l.*—3,500*l.*

Three leasehold ground-rents, amounting to 24*l.* 18*s.* per annum, arising from Nos. 14, 15, and 16, Ladbroke-terrace; also a yearly rental of 7*l.* 10*s.* arising from stabling in Weller-street, and a rent of 10*l.* from a house adjoining; held for 93 years from September 1839—770*l.*

A residence, No. 8, Ladbroke-terrace; held for 84½ years from March 1830, at 30*l.* per annum; let at 105*l.*—1,100*l.*

A ditto, No. 6—950*l.*

A ground-rent of 20*l.* per annum, arising from Harbury Cottage, in Ladbroke-terrace; held for 93 years from Sep- tember, 1839—875*l.*

A ground-rent of 21*l.* arising from a mansion adjoining, held for 93 years from September, 1830—380*l.*

A ground-rent of 10*l.* 10*s.* arising from a residence adjoining—300*l.*

A ditto—190*l.*

A ground-rent of 45*l.* per annum, arising from Nos. 1, 2, 3, and 4, Ladbroke-villas, held for 93 years from September, 1830—800*l.*

A freehold house, No. 2, New Pye-street, Westminster—355*l.*

A contingent reversion to 200*l.* per annum upon the death of a lady aged 69, during the life of a gentleman aged 69—410*l.*

By Mr. FULLER.

A freehold residence in Montague-place, Poplar—1,200*l.*

By Mr. RINGLE, at the Mart.

A residence, No. 1, Regent's-place, St. Pancras; held for 76 years from June, 1829, at 9*l.* per annum—740*l.*

A freehold house, No. 1, Manor-place, St. James's-street, Old Kent-road—275*l.*

A similar house, No. 2—320*l.*

Two ditto, Nos. 3 and 4—540*l.*

A similar house, No. 5—270*l.*

Two ditto, Nos. 6 and 7—370*l.*

A freehold residence, situate in the High-road, Edmonton—390*l.*

A freehold house, No. 3, Orchard High-street, Peckham—70*l.*

A similar house, No. 4—85*l.*

A freehold house, No. 5, Peckham-orchard, let at 14*l.* 6*s.*—110*l.*

A ditto—No. 6—110*l.*

A house, No. 7—75*l.*

Two Houses, Nos. 3 and 2, Artieholke-row, Camberwell—165*l.*

By Messrs. BECKWITH and SALMON.

A cottage residence, No. 1, Byron's-place, Old Kent-road; held for 70½ years, at 6*l.* 6*s.* let at 31*l.* 10*s.*—200*l.*

Eleven houses called Swan-place, Mile-end-road; held for 57½ years at 10*l.* let at 92*l.* 15*s.*—335*l.*

Eight houses, Nos. 3 to 10, Canal-street, Walworth; held for 59 years at 32*l.* let at 106*l.*—1085*l.*

Four houses, Nos. 3 to 6, Doctor-street, held for 64½ years at 16*l.* let at 30*l.*—445*l.*

A freehold residence, No. 6, Minerva-place, Old Kent-road—615*l.*

A cottage residence, No. 36, Lambeth-terrace, held for 11 years, at 6*l.* rates and taxes 6*s.* 6*d.*; let at 26*l.*—290*l.*

A house, No. 66, White Lion-street, Fentonville, held for 36 years, at 2*l.* 15*s.*; rates and taxes, 11*s.* 4*d.*; let at 30*l.*—205*l.*

An improved rental of 45*l.* per annum, arising from 10 houses in John-street and Martha-street, Cambridge-health; held for 41 years—490*l.*

By Messrs. DAVIS and VIGERS, at the Mart.

Four residences, with shops, in Gloucester-terrace, New-road, Whitechapel, and a soap factory in the rear thereof, in the hamlet of Mile-end Old Town; held for 94 years from Lady-Day, 1793, at 18*l.* per annum, let at 95*l.* per annum—665*l.*

A cottage residence, No. 7, Wellington-road, St. John's Wood; held for 74½ years at 30*l.* per annum—400*l.*

Three cottage residences, in East-street, Stockwell; held for 76 years at 8*l.* per annum—335*l.*

By Mr. COX.

A villa residence, Riverden, situate at Strand-on-the-Green, near Kew Bridge; held for 64 years at 26*l.* a year—190*l.*

Six leasehold houses, in Brighton-terrace, Surbiton, Surrey; held for 90 years from September, 1843, at a ground-rent of 84*l.* per annum—1,000*l.*

By Messrs. SHUTTLEWORTH and SONS.

A freehold house and shop, No. 12, Humberstone-street, Commercial-road, East—190*l.*

By Mr. ROBERTS.

A freehold family residence, situate in Church-road, Ed- monton—490*l.*

A freehold cottage residence with garden, near the above—290*l.*

Thirty plots of freehold building ground, situate in Church-road, Edmonton—60l. each lot.

A freehold estate, situate on the west side of Stoney-lane, Tooley-street, consisting of a warehouse, pottery, and dwelling-house; also nine freehold houses adjoining, forming the whole of Varley's-buildings—2,000l.

THE LATE DEAN OF WINDSOR.—The will of the Hon. and Very Rev. H. L. Hobart, D.D., late Dean of Windsor, and of the Collegiate Church of Wolverhampton, was proved in London on the 5th of June, by two of his executors, Captain Sir George Tyler, R. N., and Mr. Edmund Fitzmore, of the Inner Temple; a power being reserved to the Hon. Mrs. Hobart, his relict, to whom he has bequeathed an annuity of 300l., in addition to the provisions under marriage settlement, and leaves to her his carriages, horses, and furniture; the residue of his property he leaves to be divided amongst his children. The personal estate was estimated at 35,000l. His will is dated in 1829, and he died on the 8th of May, in his 75th year. He held the livings of Great Hasely, Nocton, and Wantage, and was Registrar of the Order of the Garter.—*Morning Post*.

The following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

For the first 70 words 5s.
For every succeeding 30 words . . . 1s.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	96½	96½	95½	95½	95½	95½
Three per Cents. Reduced	95½	95½	95½	95½	95½	95½
New Three-and-a-quarter per Cts. Long Annuitants	102½	101½	101½	101½	101½	101½
Bank Stock	205½	205½	206	206	206	206
India Stock	265½	264½	265½	265½	265½	265½
India Bonds, prem.	27	26	26	25	25	25
Exchequer Bills, prem.	16	16	16	15½	15½	15

FOREIGN.

Spanish Five per Cents.	24½	24½	24½	24½	24½	24½
Spanish Three per Cents.	37½	37½	37½	37½	37½	37½
Russian	110½	110½	110	110	110½	111½
Peruvian	38½	38½	38	38	37½	37½
Portuguese	51½	50	49	49	48	48
Mexican	30½	29½	29½	29½	29½	29
Brazilian	16½	16½	16½	16½	16½	16
Belgian	96½	96½	96½	96	96½	96½

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, June 23.

Barlow, G. iron merchant, div. next week. Graham, London.—Blacker and Co. warehousemen, jt. div. next week. Graham, London.—Bucknell, S. carman, div. next week. Graham, London.—Hutton, J. draper, div. next week. Graham, London.—Savery, F. baker, last exam. sine die.

Tuesday, June 23.

Balls, J. livery-stable keeper, final div. next week. Bell, London.—Batley, C. C. grocer, last exam. July 17.—Cubitt, M. builder, last exam. Sept. 24.—Davis, G. saddler, last exam. passed, div. next week. Bell, London.—Elphick, H. victualler, assignees, July 23.—Green, J. coal merchant, last exam. passed.—Lery, N. butcher, last exam. July 17.—McKinnell, C. wine merchant, last exam. Sept. 16.—Morpheus, W. draper, div. next week.—Bell, London.—Thompson, J. grocer, div. next week. Pennell, London.

Wednesday, June 25.

Fricker, H. innkeeper, div. next week. Turquand, London.—Lankhear, J. surgeon, last exam. passed.—Nicholas, T. carman, div. next week. Graham, London.—Syer, A. S. grocer, div. next week. Graham, London.—Ward, H. paper manuf. div. next week. Graham, London.—Whitmore, J. silkman, div. next week. Johnson, London.

Friday, June 26.

Chandler, B. ironmonger, div. next week. Graham, London.—Elkington, H. chemist, last exam. July 14.—Ellis, J. W. cloth merchant, last exam. passed.—Everett, W. builder, assignees, July 28.—Gordon, J. jun. ship broker, last exam. Aug. 19.—Lemon, W. B. ironmonger, last exam. passed.—Mills and Puckett, hop factors, last exam. July 10.—More and Co. coal merchants, jt. div. next week. Turquand, London.—Snowell, T. tailor, last exam. July 23.—Smith, R. cabinet maker, last exam. passed.—Whitby, L. builder, last exam. passed.

Saturday, June 27.

Williams, L. woollen draper, fur. div. next week. Groom, London.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Amos, T. builder, first, 7d. Groom, London.—Ashworth

and Co. brewers, first joint, 3s. first of Keyworth, 20s. Fraser, Manchester.—Atkinson and Co. colour manufacturers, first and final F. A. 20s. second A. A. 4s. 10d. and second joint, 7d. Wakley, Newcastle.—Altwater, W. dyer, 10d. Belcher, London.—Banister, R. draper, final, 1d. Green, London.—Bonner, C. scrivener, 10d. Belcher, London.—Calthrop, J. iron master, 1s. 2d. Belcher, London.—Colsworth, T. builder, first, 10s. 2d. Turquand, London.—Curtis, J. Chandler, second, 1d. Whitmore, Birmingham.—Frost, J. W. coffee dealer, 20s. Belcher, London.—Haselden, J. cotton spinner, second, 8d. and first and second, 3s. 3d. to new proofs. Fraser, Manchester.—Hill, J. victualler, first, 8s. Pennell, London.—Holland, J. grocer, second, 4s. 6d. Pennell, London.—Kendall, E. N. second, 17s. 6d. Edwards, London.—Last, G. general merchant, third and final, 1d. Whitmore, Birmingham.—Newton, A. L. merchant, first, 5d. Pennell, London.—Pernell, T. laceman, first, 1s. 3d. Pott, Manchester.—Pike, J. M. victualler, first, 3s. 8d. Turquand, London.—Pulvertoft, T. iron master, 7s. 2d. Belcher, London.—Ryans, J. chymist, first, 3s. 10d. Turquand, London.—Wace and Co. merchants, sixth, 8d. Groom, London.—Woolam, J. silk throwster, second, 1s. Pennell, London.

Insolvents' Estates.

Adams, R. T. butcher, Deal, 14s. 7d.—Kelsall, S. traveller, Stockport, 3s. 3d.—Lock, D. coachmaker, Watton, Norfolk, 1s.—Trelkowan, W. fisherman, Kingsand, near Devonport, 18s. 0d.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, June 26.

Banfill, C. T. grocer, Newton Abbot, May 7. Trust. E. C. Kent, gent. Newton Abbot. Sols. Willis and Francis, Newton Bushell.—Cleaver, J. fishing tackle manufacturer, Oxford, June 2. Trusts. J. Simms, bootmaker, and J. Brockliss, meatman, both of Oxford. Sol. Mallam, jun. Oxford.—Seward, R. builder, Tiverton, June 13. Trusts. J. Pollett, merchant, Exeter, and H. Drew, merchant, Thames-st. Sol. Tripp, Tiverton.—Tren, W. H. linen draper, Exeter, May 30. Trusts. W. H. Holyland, gent. St. Paul's-church-yard, and J. Bradbury, warehouseman, Basinghall-st. Sol. Jones, Sise-lane.—Waylen, W. innkeeper, Devizes, June 20. Trusts. T. Chandler, maltster, Devizes, and T. Kite, gent. of the same place. Sol. Wall, Devizes.

Gazette, June 30.

Boswell, W. victualler, Dudley, June 23. Trusts. W. Greathhead, glass manufacturer, and W. Brown, farmer, both of Dudley. Sol. Bolton, Dudley.—Mills, G. A. and Jay, C. coal merchants, Blackwall, June 23. Trusts. E. Western, esq. Great James-st. and J. Smith, esq. Monkwearmouth. Sol. Bracey, Old Broad-st.—Spooner, S. and Dunster, J. coach ironmongers, Castle-st. Long-acre, Feb. 27. Trusts. J. Rigby, coachsmith, Wednesbury, R. Distromel, coachsmith, West Bromwich, and S. Bayley, iron master, West Bromwich. Sol. Hunt, Boswell-court.—Williams, J. draper, Cheltenham, May 7. Trusts. J. B. Walker, Friday-st. Cheltenham, Wood-st. warehousemen, and E. Frampton, esq. Cheltenham. Sol. Moger, Paternoster-row.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, June 26.

BEART, ROBERT HAYWARD, wine and spirit merchant, Great Yarmouth, July 3, at half-past ten, August 3, at half-past eleven, Basinghall-st. Com. Shepherd, Graham, off. ass.; Penfold, Mecklenburgh-sq. sol. Date of fiat, June 6. W. Dixon, F. H. Brooks, and J. S. Dixon, bankers, Chancery-lane, pet. cr.

DERHAM, THOMAS PLUMLEY, linen draper, 3, Caroline-place, Westbury-upon-Trym, Bristol, July 9, at eleven, August 7, at twelve, Bristol. Com. Stevenson; Acraman, off. ass.; Messrs. Pridoux, Bristol, sols. Date of fiat, June 20. Bankrupt's own petition.

DISS, ENOS, grocer and corn miller, Id'e, Calverley, York, July 7 and 30, at eleven, Leeds. Com. West; Young, off. ass.; Sudlow and Co. Chancery-lane, and Cariss, Leeds, sols. Date of fiat, June 10. R. H. Swan, grocer, Leeds, pet. cr.

EVANS, SETH RICHARD, beer-shop keeper, and gas metre manufacturer, Maiden-lane, Islington, July 3, at twelve, August 1, at one, Basinghall-st. Com. Gouburn; Green, off. ass.; Cox and Stone, Poultry, sols. Date of fiat, June 14. W. Skirrow, metal dealer, Upper Thames-st. pet. cr.

HOBBS, FRANCIS, baker and corn-dealer, Romford, Essex, July 2, at half-past ten, August 7, at two, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Walker, Furnival's-inn, sol. Date of fiat, June 15. J. Thomas, farmer, Germains, Kilveden-hatch, Essex, pet. cr.

HOLTAM, JOSEPH, grocer and tea dealer, Leckhampton, Gloucester, July 10, at one, August 7, at eleven, Bristol. Com. Stevenson; Miller, off. ass.; Sheldon, Cheltenham; and Packwood, Cheltenham, sols. Date of fiat, June 18. W. Jones, coal merchant, Elmstone Hardwick, Gloucestershire, pet. cr.

HORNFIELD, WILLIAM HENRY, draper and shopkeeper, Cardiff, July 10 and August 18, at one, Bristol. Com. Stephen; Acraman, off. ass.; Messrs. Bevan, Bristol, sols. Date of fiat, June 23. Bankrupt's own petition.

KNIGHT, THOMAS, draper, 97, Minories, July 6, at one Aug. 4, at twelve, Basinghall-st. Com. Fonblanque; Belcher, off. ass. Sole and Turner, Aldermanbury, sols.

LONGHAM, WILLIAM, wine merchant and commission agent, Liverpool, July 15 and August 11, at twelve, Leeds. Com. Ludlow; Bird, off. ass.; Cornthwaite and Co. Old Jewry-chambers, and Pemberton, Liverpool, sols. Date of fiat, June 19. R. Brown, fringe manufacturer, Liverpool, pet. cr.

LYDDON, JOHN SELICK, chemist and druggist, Birkenhead, Cheshire, July 15 and Aug. 11, at twelve, Liverpool. Com. Ludlow; Bird, off. ass.; Oliver, Old Jewry, and Evans, Liverpool, sols. Date of fiat, June 15. Bankrupt's own petition.

MARCUS, HERMAN JULIUS, and NAYLOR, JOHN, share-brokers, July 30 and 31, at eleven, Leeds. Com. West; Young, off. ass.; Few and Co. Henrietta-st. and Messrs. Upton, Leeds, sols. Date of fiat, June 12. E. Sheppard, sharebroker, Leeds, pet. cr.

MOELL, DOMINIQUE ANDREW, dentist, 1, Langham-place, July 3, at half-past two, Aug. 8, at eleven, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Spencer, Lincoln's-

inn-fields, sol. Date of fiat, June 23. S. Smith, perfumer, Prince's-st. Cavendish-sq. pet. cr.
PHILIP, JAMES, wholesale stationer, Bristol, July 9, at twelve, Aug. 7, at eleven, Bristol. Com. Stevenson; Hutton, off. ass.; Brittan and Son, Bristol, sols. Date of fiat, June 23. Bankrupt's own petition.
SOUL, ELL, bookseller and bookbinder, 36, Tabernacle-walk, Finsbury, July 3, at half-past ten, July 31, at one, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Buchanan, Basinghall-st. sol. Date of fiat, June 23. Bankrupt's own petition.

STONEMOUSE, CHRISTOPHER HENRY, ship broker and general commission agent, Skinner-st. Newport, Monmouthshire, July 9, and Aug. 13, at one, Bristol. Com. Stevenson; Miller, off. ass.; Philippotts, Newport, sol. Date of fiat, June 23. T. Black, coal merchant, Newport, pet. cr.
SUDDEN, JOHN, worsted manufacturer, Steeton, near Keighley, Yorkshire, July 7 and 30, at eleven, Leeds. Com. West; Young, off. ass.; Jones and Co. Bedford-row, and Harle and Co. Leeds, sols. Date of fiat, June 17. Wm. Roper, woolstapler, Keighley, pet. cr.

Gazette, June 30.

ASTLEY, JOHN, nankeen and fustian manufacturer, Manchester and Whitefield, Lancashire, July 13 and 31, at twelve, Manchester; Hobson, off. ass.; Johnson and Co. Temple, and Dearden, Manchester, sols. Date of fiat, June 24. H. F. B. W., and B. Whitaker, cotton spinners, Manchester, and J. Sowerby, warehouseman, Manchester, pet. crs.

BURY, GEORGE, surgeon dentist, Handsworth, Staffordshire, July 9 and Aug. 8, at twelve, Birmingham, Com. Daniell; Bittlestone, off. ass.; Mottram and Knowles, Birmingham, and Smith and Co. Bedford-row, sols. Date of fiat, June 25. Bankrupt's own petition.

CHARLES, JOSEPH, innkeeper, Plymouth, July 16 and Aug. 1, at one, Exeter, Com. Bere; Hirtzel, off. ass.; Elworthy, Plymouth, Surr and Gribble, Lombard-st. and Stogdon, Exeter, sols. Date of fiat, June 24. W. H. Lucas, coal merchant, East Stone House, pet. cr.

EVANS, JAMES, cattle dealer and farmer, Haywood-lodge, Herefordshire, July 11 and Aug. 5, at twelve, Birmingham, Com. Daniell; Whitmore, off. ass.; Gwillim, Hereford, and Suckling, Birmingham, sols. Date of fiat, June 22. Bankrupt's own petition.

GAUCH, WILLIAM, J. auctioneer, St. Colomb Major, Cornwall, July 16 and Aug. 6, at one, Exeter, Com. Bere; Hermann, off. ass.; Connings and Son, Bodmin, Stogdon, Exeter, and Messrs. Smiths, Southampton-bldgs. sols. Date of fiat, June 26. Bankrupt's own petition.

HOUNSFIELD, WILLIAM HENRY, draper and shopkeeper, Cardiff, July 10 and Aug. 18, at one, Bristol. Com. Stephen; Acraman, off. ass.; Messrs. Bevan, Bristol, sols.

JOEL, TAYLOR, jeweller and warehouseman, 10, Dean-st. Newcastle-upon-Tyne, July 7, at half-past ten, Aug. 25, at half-past one, Newcastle. Com. Ellison; Baker, off. ass.; Crosby and Compton, Church-st. and Hodge, Newcastle, sols. Date of fiat, June 20. A. Alexander, manufacturing jeweller, Hatton-garden, pet. cr.

M'KIM, ROBERT, merchant, Bombay, July 17 and Aug. 6, at twelve, Manchester; Hobson, off. ass.; Abbott, Charlotte-st. and Atkinson and Co. Manchester, sols. Date of fiat, May 15. P. W. V. D. Scott, and B. Richmond, merchants, Manchester, pet. crs.

MILTON, THOMAS, victualler, innkeeper, and auctioneer, Lincoln, July 15 and Aug. 8, at eleven, Hull. Com. Barge; Kynaston, off. ass.; Messrs. Rushworth, Staple-inn, and Sanderson, Leeds, sols. Date of fiat, June 24. Bankrupt's own petition.

MOLYNEUX, WILLIAM, innkeeper, Sandwich, Kent, July 14, at three, Aug. 11, at eleven, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Halls and Co. Gray's-inn, and Lee and Tapley, Sandwich, sols. Date of fiat, June 20. R. Harrison, esq. Sandwich, pet. cr.

RANSOME, ISAAC, ribbon and trimming manufacturer, Coventry, July 9 and Aug. 15, at twelve, Birmingham, Com. Daniell; Whitmore, off. ass.; Troughton and Lea, Coventry, and Austen and Co. Gray's-inn, sols. Date of fiat, June 26. R. K. Rotherham, esq. Coventry, on behalf of the Coventry and Warwickshire Banking Company, pet. cr.

WATERHOUSE, JAMES, and SUTTON, ROBERT, calico printers, Salford, Manchester, July 14 and Aug. 5, at twelve, Manchester, Fraser, off. ass. Clay and Co. Manchester, and Gregory and Co. Bedford-row, sols. Date of fiat, June 25. J. Woodcock of Pendleton, and Joseph Gill, manufacturing chemists, pet. crs.

WEAVER, THOMAS DOLPHIN, ship and share broker, Liverpool, July 15 and Aug. 11, at twelve, Liverpool. Com. Ludlow; Turner, off. ass.; Wilkin, Furnival's-inn, and Brown, Liverpool, sols. Date of fiat, June 23. Bankrupt's own petition.

WOOD, JOSEPH, plumber, painter, and glazier, Luton, Bedfordshire, July 10, at half-past twelve, Aug. 14, at eleven, Basinghall-st. Com. Fane; Alsager, off. ass.; Taylor, North-bldgs. Finsbury-circus, sol. Date of fiat, June 20. Bankrupt's own petition.

WRIGHT, JANE, licensed victualler and tavern keeper, July 18 and Aug. 6, at eleven, Manchester, Hobson, off. ass.; Johnson and Co. Temple, and Hitchcock and Co. Manchester, sols. Date of fiat, June 10. H. Unthank, Manchester, and M. Hardy, spirit merchants, pet. crs.

Meetings at Basinghall-street.

Gazette, June 26.

Barley, C. C. grocer, Wisbeach, July 17, at eleven, aud.—Crane, J. coal agent, Crooked-lane and Fulham, July 7, at eleven, last exam.—Denning, I. watchmaker, Titchbourne-street, July 7, at two, proof of two debts.—Graham, G. Adams, T. and Macfarlane, M. B. calico printers, Cheap-side, July 17, at eleven, joint div. and sep. of Graham.—Perkins, J. jeweller, 7, North-pl. Gray's-inn-rd. July 18, at eleven, div.—Valls, J. silk printer, Manchester and Arnsfield, July 21, at half-past eleven, aud.—Waters, C. H. dealer in paintings and china, 20, Queen's-row, Piccadilly, July 21, at eleven, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Bradshaw, W. cattle salesman, Grettton, July 30, at half-past eleven.—Edmonds, C. J. apothecary, Bluntisham, July 20, at one.

Gazette, June 30.

Moir, R. stationer, West Cowes, July 31, at half-past one, aud.—Stephenson, R. apothecary, Southwick-st. July 22, at eleven, aud.—Todd and Todd, warehousemen, Bow Church-yard and Liverpool, July 31, at eleven, aud.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Clark, C. draper, Goswell-rd. and Cranbourne-st. July 22, at eleven.—*Green*, J. coal merchant, Yarmouth, July 22, at eleven.—*Timewell*, W. T. smelter, Charlotte-st. and Hill-st. Southwark, July 23, at twelve.—*Pritchett* and *Oridge*, glove manufacturers, Charlbury, July 23, at twelve, as to Pritchett.—*Whitby*, L. builder, Foulry, July 24, at eleven.

Meetings in the Country.

Gazette, June 26.
Bacon, J. carpenter and joiner, city of York, July 18, at eleven, Leeds, and July 21, at eleven, div.—*Blacket*, J. flax spinner, Stokeley, July 20, at half-past twelve, Newcastle, final div.—*Collins*, J. common brewer, Salford, July 6, at twelve, Manchester (adj. April 6), div.—*Dethick* and *Kay*, brewers, Newton-leath, July 7, at twelve, Manchester (adj. June 22), last exam.—*Gates*, T. Guest, W. J. Naisby, J. F. and *Kirley*, M. ship builders and ship owners, all of Hylton, Durham, July 20, at eleven, Newcastle, final div. of Gates.—*Goven*, E. and *Shanks*, A. common brewers, Morpeth, July 20, at twelve, Newcastle, final div.—*Gregson*, J. S. grocer, Manchester, July 24, at twelve, Manchester, div.—*James*, J. P. draper, Truro and Chacewater, July 21, at eleven, Exeter, and.—*Leadbeater*, J. manufacturer of shirtings, Manchester, July 6, at twelve, Manchester (adj. May 11), last exam.—*Leather*, G. and *Wardle*, C. W. earthenware manufacturers, Holbeck, Leeds, July 21, at eleven, Leeds, first joint and sep. divs.—*Leech*, J. ironmonger, Newcastle-upon-Tyne, July 20, at half-past ten, Newcastle, final div.—*Lewis*, R. woollen manufacturer, Wootton-under-Edge, July 21, at eleven, Bristol, and.—*Massey*, J. grocer, Manchester, July 21, at one, Manchester, div.—*Scott*, J. fruiterer, Newcastle, July 10, at half-past ten, Newcastle, last exam.—*Staples*, E. J. surgeon, Bristol, July 20, at eleven, Bristol, and.—*Taylor*, T. grocer and tea dealer, Newcastle-upon-Tyne, July 20, at one, Newcastle, div.—*Wren*, T. Preston, July 15, at twelve, Manchester (adj. June 17), div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Bridgwood, J. butcher, Castle Church, July 18, at eleven, Birmingham.—*Hance*, J. J. broker, Liverpool, July 21, at eleven, Liverpool.—*Leather* and *Wardle*, earthenware manufacturers, Leeds, July 21, at eleven, Leeds.—*Sawderson*, J. wine merchant, Liverpool, July 21, at twelve, Liverpool.

Gazette, June 26.
Archer, S. woollen manufacturer, Rochdale, July 7, at twelve, Manchester (adj. June 23), and.—*Arkell*, J. miller, baker, and maltster, Donnington-mill, Stow on the Wold, Gloucestershire, July 23, at eleven, Bristol, final div.—*Edensor* and *Humphreys*, merchants, Liverpool, July 22, at twelve, Liverpool, and.—*Fitzjames*, H. L. furrier or dealer in furs, Walcot, Bath, July 23, at twelve, Bristol, and. and July 24, at eleven, div.—*Gill*, F. dealer in hardware, Manchester, July 23, at twelve, Manchester, and. and July 24, at eleven, div.—*Gordon*, T. L. cabinet maker and timber dealer, Rack-street, Exeter, July 22, at eleven, Exeter, and. and July 23, at one, div.—*Hartop*, H. ironmaster, Wath-upon-Dearne, July 24, at eleven, Cuders'-hall, Sheffield, and.—*James*, J. P. draper, Truro and Chacewater, Cornwall, July 22, at eleven, Exeter, div.—*Law*, J. and *Hudson*, E. cotton spinners and manufacturers, Ramsden-wood, near Todmorden, Lancashire, July 23, at eleven, Manchester (adj. June 19), div.—*Lee*, T. brewer, Liverpool, July 23, at twelve, Liverpool, and.—*Lewis*, R. woollen manufacturer, Wootton-under-Edge, Gloucestershire, July 22, at eleven, Bristol, div.—*Morris*, J. auctioneer and dealer in furniture, Manchester, July 21, at eleven, Manchester, and. and July 22, at twelve, div.—*Ogle*, J. and *Watten*, W. merchants, Liverpool, July 22, at twelve, Liverpool, div. with respect to the ship *Vanguard*.—*Staples*, E. J. surgeon, Bristol, July 27, at eleven, Bristol, div.—*Sutton*, T. jun. draper, Atherton, Warwickshire, July 21, at twelve, Birmingham, div.—*Westhead*, J. smallware manufacturer, Manchester, July 21, at twelve, Manchester, and. and July 22, at twelve, final div.—*Westren*, T. maltster, miller, and brewer, Brunsford, July 23, at eleven, Exeter, and. and July 23, at one, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Allen, E. T. apothecary, York, July 23, at eleven, Leeds.—*Badger*, W. bootmaker, Rotherham, July 24, at eleven, Leeds.—*Brown*, T. D. commission agent, Liverpool, July 24, at eleven, Liverpool.—*Dale*, W. bricklayer, Liverpool, July 22, at eleven, Liverpool.—*Fitzjames*, H. L. furrier, Bath, July 24, at twelve, Bristol.—*Jarvis* and *Rowley*, silk manufacturers, Manchester, July 23, at twelve, Manchester, as to Rowley.

Partnerships Dissolved.

Gazette, June 26.
Abraham, S. Green, M. L. and E. L. exporters of goods, Jamaica, June 16.—*Allen*, C. J. and *Nicolay*, C. W. agricultural chemists, Fenchurch-st. June 1.—*Birkett*, B. and *Crennell*, D. joiners, Liverpool and Toxteth-park, April 18. Debts paid by Birkett.—*Elliot*, J. Chichester, and *Blake*, E. C. S. Southampton, architects, June 22. Debts paid by Elliott.—*Hall*, J. and *Croome*, E. W. share brokers, Liverpool, May 12.—*Heaton*, J. painter, and *Lewis*, J. carpenter, both of Bristol, June 30.—*Homersham*, J. and A. R. wool staplers, Bermondsey, St. Olaves, and elsewhere, June 22. Debts paid by J. Homersham.—*Horsden*, D. and *Ridings*, C. power loom manufacturers, Ardwick, June 17. Debts paid by Horsden.—*Hume*, W. Frier, and *Harward*, J. attorneys, Stourbridge, June 1. Debts paid by Frier and Harward.—*Lindley*, S. E. and M. A. M. head manufacturers, Cranbourn-st. June 22.—*Nutman*, B. and *Smith*, R. jun. engineers, Short-st. New-cut, June 22. Debts paid by Nutman.—*Phillips*, T. and *Elkred*, J. linen factors, Mile-st. June 19.—*Smith*, W. and *Pummett*, D. tea dealers, Shoreditch, June 22. Debts paid by either partner.—*Trotman*, J. and F. carriers, Frome Salwood, June 15. Debts paid by J. Trotman.—*Wilson*, G. M. and *Moore*, J. painters, Liverpool, June 5.—*Wood*, R. and *Stimpeon*, C. colonial brokers Mincing-lane, June 23.

Gazette, June 26.
Austen, W. and *Cuthbert*, G. milkmen and farmers, Tunbridge Wells, Jan. 5. Debts paid by Austen.—*Bailey*, T. and *Jackson*, R. cabinet-makers, New Bond-street, June 25.—*Balsam*, A. and *Hubert*, C. schoolmasters, Clapham, June 24.—*Bapt*, J. Pears, J. and W. wool cleaners, Leeds, June 24. Debts paid by W. Pears.—*Broughton*, B. and *Higgin*, R. butchers, Chorlton-upon-Medlock, June 28. Debts paid by Broughton.—*Carter*, P. W. and *M'Hugh*, W. cloth finishers, Basinghall-st. June 22. Debts

paid by Carter.—*Clarkson*, J. and *Searpe*, W. grocers, Strand, June 22. Debts paid by Sharpe.—*Gaites*, A. and *Cottle*, W. masons, Bath, June 22. Debts paid by Gaites.—*Greenwood*, W. and G. machine makers, Bradford, June 30.—*Johnson*, J. S. and *Greaves*, J. J. teachers of music, Preston, Dec. 31. Debts paid by Johnson.—*King*, S. and J. H. grocers, York, June 22. Debts paid by J. H. King.—*M'Kie*, S. L. and *Mitchell*, E. C. tailors and drapers, Manchester, June 15.—*Newman*, J. and *Bareley*, W. stationers, Watling-st. June 24.—*North*, B. S. and J. wool-staplers, Leeds, June 15. Debts paid by B. S. North.—*Pritchard*, H. Doherty, C. and *Scrivens*, S. furriers, Holland-st. Southwark, March 31. Debts paid by Pritchard and Scrivens.—*Ridgway*, J. and J. and *Loumdes*, T. J. New Zealand, Dec. 31.—*Royle*, G. *Rigby*, J. *Bate*, J. *Leicester*, P. *Seddon*, H. *Morton*, J. and *Leather*, J. flint glass manufacturers, Eccleston, Lancashire, so far as regards Rigby and Morton, June 20. Debts paid by the remaining partners.—*Short*, W. and *Alexander*, T. ship chandlers, Liverpool, June 19.—*Stevens*, N. and *Fearon*, S. attorneys, Grays's Inn-square and Fludger-st. June 24.—*Swift*, E. and *Hopkinson*, J. cotton warp dyers, Keighley, May 30. Debts paid by Swift.—*Todd*, J. *Taylor*, J. H. and *Cragg*, S. cotton spinners, Preston, so far as regards Cragg, June 23.—*Westcombe*, E. and *Gower*, E. milliners, Neath, June 24.

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, June 25.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Bateman, R. ladies' shoemaker, Jamaica-st. Commercial-road, East, June 30, at two.—*Bowman*, J. Bride-st. Liverpool-rd. June 30, at half-past twelve.—*Canan*, W. shoe manufacturer, Northampton, June 30, at two.—*Caslake*, H. grocer, Putney, June 30, at half-past one.—*Cathercole*, R. hawker, Burnham, June 30, at half-past one.—*Cloverer*, J. beer retailer, St. James's-terrace, Old Kent-road, June 30, at half-past one.—*Crake*, H. carver, York-rd. Lambeth, June 30, at two.—*Douling*, J. writer, Chelsea, June 30, at half-past eleven.—*East*, G. boot maker, Chelsea, July 2, at one.—*Finch*, W. gardener, Clapham, June 30, at eleven.—*Gearry*, M. tailor, Church-st. St. Ann's, June 30, at one.—*Gooch*, E. tailor, High-st. Poplar, June 30, at eleven.—*Kilton*, W. H. H. surgeon, Harley-st. June 30, at two.—*Lewis*, R. W. attorney, Brentwood, July 9, at half-past eleven.—*Nash*, W. beer retailer, Maldon, July 9, at one.—*Northwood*, J. master mariner, Osborn-rd. June 30, at eleven.—*Oldfield*, J. agent, Edgware-rd. June 30, at one.—*Pledger*, J. brewer, Cambridge, June 25, at eleven.—*Smith*, S. out of employ, Earsham, June 25, at half-past eleven.—*Sparrowhawk*, W. cordwainer, Edensbridge, June 25, at half-past eleven.—*Syrett*, W. mail-contractor, Bury St. Edmunds, July 2, at eleven.—*Thatcher*, H. B. constable, Canterbury, June 30, at two.—*Thompson*, J. out of business, Deptford, June 30, at twelve.—*Toomer*, W. carpenter, Upper Marylebone-st. July 9, at half-past eleven.—*White*, W. H. printer, Crown-row, Mile-end-rd. June 30, at two.—*Whitfield*, S. out of business, Windsor-terrace, City-rd. June 30, at one.—*Wilbeam*, F. C. grocer, Fulham, June 30, at twelve.—*Wilkins*, W. bricklayer, Exmouth-st. Euston-sq. July 2, at one.

PETITIONS TO BE HEARD IN THE COUNTRY.

Barnesley, E. commission agent, Liverpool, June 29, at eleven, Liverpool.—*Brascomb*, W. plumber, Huddersfield, July 2, at eleven, Leeds.—*Ellis*, G. W. chemist, Norton, July 1, at eleven, Hull.—*Goodwin*, J. out of business, Dudley, June 26, at ten, Birmingham.—*Hepton*, J. clock maker, Heckmondwike, July 2, at eleven, Leeds.—*Jenings*, W. butcher, Clyst-Honiton, July 6, at twelve, Exeter.—*Jones*, H. grocer, Liverpool, July 3, at eleven, Liverpool.—*Markham*, W. blacksmith, Wresley, July 1, at eleven, Hull.—*Morris*, B. labourer, Leyland, July 1, at one, Manchester.—*Mutsey*, J. farmer, Bristol, July 2, at half-past eleven, Bristol.—*Robins*, S. fringe manufacturer, Bath, July 7, at half-past eleven, Bristol.—*Rogston*, J. engine turner, Leeds, July 2, at eleven, Leeds.—*Sadlow*, W. warehouse keeper, Liverpool and Tranmere, July 9, at eleven, Liverpool.—*Swindell*, S. innkeeper, Manchester, July 2, at twelve, Manchester.—*Taylor*, J. farmer, Halifax, July 2, at eleven, Leeds.—*Winstanley*, S. watch cap maker, Liverpool, July 3, at eleven, Liverpool.

MEETINGS IN THE COUNTRY.

Hughes, H. July 15, at twelve, Liverpool, and.—*Meredith*, J. butter factor, Hay, July 6, at twelve, Bristol.—*Mirle*, J. slaughtering, Manchester, July 18, at eleven, Manchester, and. and twelve, div.—*Walker*, W. July 15, at eleven, Liverpool, and.

Gazette, June 26.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Burchell, J. C. brewer, Reading, June 27, at two.—*Ellis*, J. foreman to a livery stable keeper, July 2, at two.—*Harries*, F. solicitor, Verulam-building, Gray's-inn, July 2, at two.—*Knapp*, C. furniture dealer, Edgware-rd. July 2, at two.—*Lefevre*, E. widow, Claremont-terrace, Ilkington, July 6, at eleven.—*Smith*, J. grocer, Blackmore-end, Wetherfield, Essex, June 27, at two.—*Stenson*, J. book and printer, July 2, at two.

PETITIONS TO BE HEARD IN THE COUNTRY.

Colston, J. out of business, Whetstone, July 4, at twelve, Birmingham.—*Metcalfe*, J. miller, Hull, July 18, at eleven, Manchester-house, Hull.—*Nowell*, J. card maker, Birstall, July 9, at eleven, Leeds.—*Pethybridge*, R. gentleman's servant, Kenton, July 6, at twelve, Exeter.—*Winter*, J. gent. Stoke-under-Hamdon, July 6, at one, Exeter.

MEETINGS IN THE COUNTRY.

Pearson, J. small farmer, Huddersfield, July 21, at eleven, Leeds.

From the Gazette of Friday, July 3.

Bankrupts.

Goodale, M. builder, Middlesex.—*Rouse*, W. baker, Neptune-st. Rotherhithe.—*Hall*, A. S. grocer, Norwich.—*Lord*, J. tanner, Sheffield.—*Senior*, J. common brewer, Salford, Lancashire.—*Davis*, J. miller, Broadway, Worcestershire.—*Wood*, W. rope manufacturer.—*Irwin*, J. ironmonger, Liverpool.—*Dent*, J. cloth merchant, Huddersfield.

ADVERTISEMENTS.

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57, Chancery-lane.

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Tuesday, July 7.

This morning Lord Cottonham took his seat as Chancellor, and, after having taken the usual oaths, proceeded to hear appeal motions.

TARTE V. PHILLIPS.

Practice—Retransfer of causes—Interlocutory motion.

Torriano asked that this cause, which had been transferred from the paper of causes of the Vice-Chancellor of England to that of Vice-Chancellor Knight Bruce, might be retransferred to the paper of the Vice-Chancellor of England. The principal defendants were consenting parties, and notice of the application had been served upon the others, who did not appear. There had been a motion in the cause for an injunction, heard before the Vice-Chancellor of England, upon which the injunction was granted.

Ordered.

GURNEY V. SEPPINGS.

Mortgagee and mortgagor—Transfer of mortgage debt as a security—Action by mortgagee against mortgagor—Injunction.

Where a mortgagee had assigned the mortgage debt as security for a debt due from him to third parties, and afterwards brought an action against the mortgagee upon the covenant to pay the mortgage money, it was held, reversing the decision below, that the third parties, to whom the mortgage debt was assigned as security, had no equity to stay the action by injunction, except upon the terms of taking the mortgage security in full satisfaction for their debt, and releasing the original mortgagee from his liability to make good the deficiency of the sum due from him beyond the amount of the mortgage debt.

The plaintiffs in this suit were Messrs. Gurney, of Norwich, bankers, and the bill was filed to restrain the defendant from prosecuting an action at law he had commenced against one Nokes under these circumstances. Nokes had made two separate mortgages of 5,000l. each upon two different properties, to the defendant Seppings, and had covenanted to pay both sums in June 1845. In January 1845, Seppings applied to Messrs. Gurney for an advance of 10,000l. which was secured by an assignment to them of the two mortgages for 5,000l. made by Nokes. The sum borrowed by Seppings of Messrs. Gurney was further secured upon other property of his own. In June 1845, when Nokes's mortgages became payable, Seppings called upon Nokes to pay the amount of both mortgages to Messrs. Gurney, and on his failing to do so, immediately commenced an action in the Common Pleas against Nokes, for the recovery of the two sums of 5,000l. In November 1845, the present bill was filed by Messrs. Gurney against Seppings, to restrain him from prosecuting his action against Nokes, alleging that the mortgage debts had been transferred to them, and that they were not desirous of enforcing payment from Nokes

personally at present; that the defendant Seppings had no beneficial interest in the mortgage debts; that he was in embarrassed circumstances, and that if the money was paid into his hands, it would be in peril. The bill prayed an injunction to restrain the defendant from prosecuting the action against Nokes, and from receiving the mortgage debts. The Vice-Chancellor had granted an *ex parte* injunction, and subsequently refused a motion by the defendant to dissolve it. From that order the defendant appealed.

Jas. Parker and Smyth appeared to support the appeal motion to dissolve the injunction. They contended that the suit was, in fact, Nokes' suit, and stated that Seppings's answer displaced the allegations of the bill as to his being in embarrassed circumstances; that the plaintiffs had delayed from June, when they were first aware of the defendant's action, until the following November before they applied for an injunction. The defendant had offered to put himself in the plaintiffs' hands, and to have his action conducted by them, provided they would only prosecute it with diligence. The security of the mortgages was expected to be deficient, and it most was important to the defendant to get as much as possible from Nokes, the mortgagor. The defendant's position was that of a surety, and he had a right to enforce all his remedies.

Walker and Rogers, for the plaintiffs, contended that, if the action proceeded, the security would be deteriorated, Nokes being already in gaol. The plaintiffs' debt is of the same amount as the mortgages which had been assigned to them by the defendant, who, by that assignment, had been converted into a trustee for the plaintiffs. That the defendant's statement in his answer, that he is engaged in affairs of a speculative nature, substantially admits that he is embarrassed; and that it is no answer to the plaintiffs' demand to stay the action, that he means to pay over the money as soon as he has recovered it from Nokes. The defendant has no right to receive the money, it is the plaintiffs' money.

The LORD CHANCELLOR (without hearing a reply).—This is a very clear case. The question is, whether the plaintiffs, as assignees of the mortgage debts, have such an interest in the money as will entitle them to restrain the defendant from suing his mortgagor upon the covenants contained in the mortgaged deeds. The plaintiffs are assignees of two debts and mortgages, and have the first interest in the money to be paid by Nokes. On the other hand, the defendant Seppings says, he is under a personal responsibility to the Messrs. Gurneys for the payment of the debt, and that having an interest in the money he has a right to recover it. The defendant stands in the situation of surety for the amount of 10,000l. to Messrs. Gurney, and is bound to make good to them any difference there may be between the sum due and the amount realized upon the mortgage securities. He does not stand in the situation of a naked trustee; as surety, he has an interest in the amount to be obtained from Nokes, the mortgagor; and, being liable for the whole 10,000l. to the plaintiffs, he has a right to endeavour to realize what he can from the mortgagor. The plaintiffs cannot restrain the defendant from enforcing his securities, and still hold him liable. If they chose him, they may take to the securities in satisfaction of their debt.

The plaintiffs may take an injunction, upon the terms that they release the defendant from all claims upon him beyond what may be produced by the mortgage securities. It seems to have been the impression of the Vice-Chancellor that such would be the effect of his order; but that is a question of great nicety, and it is not necessary to leave the parties to realize that equity. The defendant may undertake to pay into court, or to pay to Messrs. Gurney, the amount which may be recovered from Nokes.

Jas. Parker.—The defendant does not want to receive the money, he is only desirous that the action should be prosecuted *bona fide*.

Walker.—Let the defendant consent that the sheriff may pay over the sum which may be obtained to Messrs. Gurney.

The LORD CHANCELLOR.—The parties may arrange that between themselves upon the principles I have stated. The injunction must be dissolved.

BLENKINSOP V. BLENKINSOP.

Practice—Service of subpoena on the defendant out of the jurisdiction—33rd Order of May 1845.

Wakefield and Faber moved, by way of appeal, to discharge an order made by the Master of the Rolls, which directed that the plaintiff might be at liberty to serve one of the defendants, who was resident out of the jurisdiction. The order was made under the 1st rule of the 33rd Order of May 1845, which provides that "the Court, upon application, supported by such evidence as shall satisfy the Court in what place or country such defendant is or may probably be found, may order that the subpoena to appear to, or to appear to and answer the bill, may be served on such defendant in such place or country, or within such limits as the Court thinks fit to direct." For a long period it was held to be a doubtful point in this court whether service of the subpoena on a defendant out

of the jurisdiction was good; but it was ultimately settled that such service was not good. Then, by Act of 2 Wm. 4, c. 33, it was enacted, that service of subpoena upon a defendant resident in Scotland or Ireland in any suits respecting land, made in pursuance of an order, should be deemed good service, upon the terms and at the time the Court should direct. But under that Act the plaintiff could not, after such service, enter an appearance for the absent defendant. Then by the 4 & 5 Wm. 4, c. 82, power was given to the Court to order a defendant, resident in any part of the world out of the jurisdiction, not in Scotland or Ireland, to be served with a subpoena. Then the general Order of May, 1845, gave power to the Court to serve such an order in all suits. The affidavit upon which the present order had been obtained merely stated that the defendant was then, and had for a certain long time past, been residing within the sanctuary of Holyrood House, in Scotland, but it did not state that he had gone out of the jurisdiction, or, in fact, that he had ever been within it. If such an enlarged construction were adopted, there was nothing to prevent a suit in this court between two foreigners resident out of the jurisdiction, with respect to subject-matter which had never been within the jurisdiction of the Court. Such would be the effect of the decision made by Vice-Chancellor Wigram upon this order in the case of *Whitmore v. Ryan* (15 Law J. 232). But that could not be sustained; the true principle was laid down by Lord Ellenborough in *Buchanan v. Beard* (9 East, 191), where he held that an act which authorized certain proceedings to be taken against a person "absent from the island" could not apply to a person who had never been present and subject to the jurisdiction. If neither the person nor the subject-matter of the suit was necessarily present, the procedure of the Court may be carried in vain.

The LORD CHANCELLOR.—This order was made, I presume, upon the special circumstances of the case. When the Court orders substituted service of the subpoena, it always does so upon a consideration of the special circumstances of the case. Here I find the affidavit is referred to in the order.

Glesse and Boyle contended, that it was plain, from the pleadings and the nature of the suit, that the subject-matter was in this country, and the Court had regard to those circumstances. They cited *Whitmore v. Ryan* (*supra*), *Jones v. Geddes* (15 Law J.), *Wakefield*, in reply.

The LORD CHANCELLOR dismissed the application with costs.

GILBERT V. COOPER.

Short notice of motion—Injunction—Railway company. *Torrell* asked leave to give short notice of motion of appeal from the order of the Vice-Chancellor, which restrained the defendants (a railway company) from disposing of 55,000l. and produced very great inconvenience.

The LORD CHANCELLOR.—I will hear the motion on Saturday.

JUDGMENTS BEFORE RESIGNING THE SEALS.—Lord Chancellor Lyndhurst handed to the Registrar judgments in the following cases which were before him upon appeal:—*Forbes v. Peacock*, reversed. Appeal from Vice-Chancellor of England.

Spalding v. Rading, affirmed. Appeal from Master of the Rolls.

Parsons v. Bignold, affirmed. Appeal from Vice-Chancellor of England.

Cottingham v. Lord Shrewsbury, affirmed. Appeal from Vice-Chancellor Wigram.

Livesey v. Livesey, affirmed. Appeal from Vice-Chancellor of England.

Smyth v. Tuck, affirmed. Appeal from Vice-Chancellor of England.

Whitworth v. Gaugain, affirmed. Appeal from Vice-Chancellor Wigram.

Toulmin v. Coupland, affirmed. Appeal from Vice-Chancellor Wigram.

Davenport v. Bishop, affirmed. Appeal from Vice-Chancellor Knight Bruce.

Smith v. Lord Edingham, affirmed. Appeal from Master of the Rolls.

Tullock v. Hartley, affirmed. Appeal from Vice-Chancellor Knight Bruce.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Thursday, March 26.

ADAMS V. HEATHCOTE.

Vendor and purchaser—Minority of vendor—Act of ownership by purchase—Objection to title—Laches. A purchaser under an agreement entered into possession and into receipt of the rents and profits of certain messuages and premises in the year 1827, without prejudice as to any question of title. After the delivery of the abstract, the purchaser took objections to the title, and by reason of a party necessary to the conveyance being a minor, the conveyance was postponed. The purchaser remained in possession down to the time of filing the bill, performing certain acts of ownership, and still offering objections to the title. Upon motion of the vendor in a suit for specific per-

formance, Held, that the defendant ought to pay the purchase-money into court with interest, after the usual rate of 4l. per cent.

The bill stated that the plaintiffs, B—, Adams, and certain other persons, being entitled to certain messuages and premises, entered into an agreement with the defendant for the sale to him of the same. The agreement bore date the 19th of December, 1825, and was signed by the parties, part of which agreement was as follows:—"The purchase-money to be paid on the 25th of March, 1827, on a good title being made to the same, from which time the said R. E. Heathcote is to enter into the receipt of the rents and profits of the same; but if from any cause the purchase-money shall not be paid on the said 25th of March, 1827, then the same to bear interest after the rate of 4l. for every 100l. by the year until the same shall be paid; the said parties hereto of the first part to make out a good title to the premises, and to deliver an abstract of such title at their own expense to the said R. E. Heathcote, or his solicitor, on or before the 25th of March next." The bill further shewed that the defendant entered into the receipt of the rents and profits of the said premises on the 25th of March, 1827; that an abstract of title had been furnished to the solicitor of the defendant, who made certain requisitions on behalf of the defendant, and that it then appeared that one of the parties, who was necessary to join in the conveyance, was then an infant, and that the defendant refused to complete his purchase until such infant attained his majority; and that, in consequence thereof, the execution of the conveyance was postponed; that the defendant continued in the possession of the said premises down to the present time, and in all respects dealt with the same as the owner thereof, viz. pulling down parts of the buildings, and committing other acts of waste; that he paid various sums, by way of interest, on the purchase-money, but that, for some time past, he had refused to pay any other sum in respect thereof; that the said infant attained his age of twenty-one years prior to the year 1843, and in that year plaintiff's solicitor furnished an additional abstract to defendant's solicitor, which contained certain other documents, in which it appeared that some of the vendors had, since the said agreement, charged their rights in the said premises, subject to the above agreement; that the defendant's solicitor returned the said abstract, accompanied with various requisitions and observations upon the title; that the plaintiffs' solicitor sent answers to such requisitions, accompanied with a protest that the answers were without prejudice to the right of the plaintiffs to insist that the defendant had accepted the title, and the defendant still refused to perform the agreement. The bill prayed for a specific performance of the contract.

The defendant put in his answer, whereby, admitting the agreement and his entry into possession of the premises about the time mentioned in the bill, insisted that he did so upon the understanding that it was to be without prejudice to any question of title which might arise, and submitted that he ought to be considered more in the light of a receiver than of a purchaser. He denied cutting down timber, but admitted his having pulled down some portion of the buildings, on account of their very dilapidated condition, and for certain other reasons in the defendant's answer mentioned. He denied that a good title had been shewn by the vendor, and for that reason he refused to complete his contract or pay his purchase-money.

A motion was now made on behalf of the plaintiffs, the chief purposes of which were that the defendant might within one calendar month pay the purchase-money into court, with so much interest thereon, at the rate of 4l. per cent. per annum, from the 25th day of March, 1827, until such payment, after deducting the sum of 690l. 9s. the aggregate amount of the sums in the defendant's answer stated to have been paid for interest, as should be ordered to be paid to the plaintiffs as thereafter mentioned, the amount thereof to be verified by affidavit; or otherwise that a receiver may be appointed of the rents of the said estate, with the usual directions; or otherwise, that possession of the said estate might be delivered up to the plaintiffs by the said defendant.

Bethell and S. Hall, in support of the motion.

Cases cited: *Gibson v. Clarke*, 1 V. & B. 500; *Cutler v. Simons*, 2 Mer. 103.

Stuart and Goodave, contra, contended that the present bill was filed for the specific performance of an imperfect contract, and, according to the practice of the Court, the purchaser had still his right to give up possession, and therefore, until all question as to the title was at an end, he ought not to be compelled to pay his purchase-money into court. (Sug. Ven. & Par. 357, 10th edit.)

Bethell, in reply.

The VICE-CHANCELLOR.—A most unusual period intervened between the agreement in question and the time fixed for its completion. This agreement was dated the 19th of December, 1825, and its performance was appointed to be the 25th of March, 1827. It appears, however, that in the month of March 1827, the defendant thought proper to take possession of

the premises upon the understanding, as stated by the answer, that it was to be without prejudice to any question of title. Early in the year 1827, an abstract of title was delivered, which was then but a small abstract. This, however, became ultimately increased in size by the addition of posterior deeds, which the interval consequent upon the minority of a party rendered necessary. The purchaser retained possession of the first abstract until 1837, and then at the vendors' request it was returned to them in order that it might be added to. During this period the purchaser remained in possession, in pursuance of the original agreement, and various acts were done. [His Honor here referred to the defendant's answer, wherein acts of ownership were admitted, and to the correspondence and negotiation which took place between the solicitors of the respective parties relating to the title.] Now I must, in the first place, observe, that the defendant has gone on treating himself more and more in the character of purchaser; for instead of putting an end to the affair by reason of the abstract not shewing a good title, he proceeds in the affair, and a discussion is kept up; then the bill is filed, and an answer is put in. Now, I cannot say that I am satisfied with that part of the defendant's proceeding wherein he endeavours to impress the transaction with a new character, namely, that his possession was to be considered the possession of a receiver merely; for he must have been aware that he entered into possession in the character of a person to a certain extent, at any rate, bound to perform the agreement; indeed, he is fixed by the circumstance stated in his own answer, namely, that he entered into possession "without prejudice to any question of title which might arise." What can be the meaning of this expression, otherwise than his having entered in the character of a purchaser? Such a statement is wholly inconsistent with the idea of his having taken possession as a receiver. Am I then, after so many years, to assume this to be a case wherein the title is to be rejected? My opinion is, that the defendant has, by his own acts, precluded himself from repudiating the possession. This being the case, he must pay the purchase-money into court, and also pay the usual interest.

Motion granted.

Thursday, April 16.

SNOW V. HALE.

Practice—Infant defendant—Decree.

The plaintiff in a suit, after having received notice that H. H. an infant defendant, had arrived at age, and did not continue to appear by her former attorney, proceeded, nevertheless, to obtain a decree against her, as though she were still an infant, together with other defendants in the suit: Held, that the defendant H. H. had a right to make a new defence.

Harriet Hole, one of the defendants to the above suit, having attained her age of twenty-one years, now moved that she might be at liberty to put in a new and further answer to the bill. The bill had been originally filed against her when she was an infant, to which she had put in her appearance by J. H. Wilson, her guardian. It appeared by affidavits that she came of age on the 13th of August, 1844, and on the 30th of the same month, she refused to allow W. Walsh, who had acted as the solicitor of her guardian, J. H. Wilson, to appear for her, and, in consequence of such refusal, he ceased thenceforth to act for her. On the 18th of November, 1844, W. Walsh was served with a copy of a subpoena to hear judgment as for Harriet Hale. Whereupon he returned to the plaintiff's solicitor the copy of the subpoena, accompanied with a letter, stating that H. Hole was of age, and that he, W. Walsh, no longer represented her as solicitor in the cause. Notwithstanding this notice, the cause proceeded to a hearing on the 18th of March, 1845, and a decree was then made, which was expressed to be in a suit between the plaintiff and Harriet Hale, and other infants, by J. H. their guardian, and other defendants. A motion was now made by Harriet Hale, that, having attained her age of twenty-one years, she might be at liberty to put in a new and further answer to the plaintiff's bill.

James Parker appeared for the motion, and on behalf of his client, urged her not being properly served with the subpoena, as she ought to have been, formed no ground for taking away her right of making the present application, to which she would have been entitled had she been an infant at the time when the decree was made; and whatever decree there may be in respect of others, there was none against the defendant.

Cases cited: *Kelsall v. Kelsall*, 2 M. & K. 409; *Cecil v. Lord Salisbury*, 2 Vern. 224.

Bethell, in opposition, contended that the case was still stronger than that of *Powys v. Lord Mansfield*, 6 Sim. 637; that had the defendant made the same application several months before the hearing, as she might have done, she would have been perfectly regular, and might have claimed to be heard; but instead of so doing, she suffers the decree to be made; thus claiming the option of refusing to be bound by the decree, if it were against her; but accepting the decree, and taking the benefit of it, if it be in her favour.

Stuart appeared for other defendants in the same interest.

J. Parker, in reply.

The VICE-CHANCELLOR.—The Court must, in the first place, consider how the decree has been obtained; it was expressed to be made between the plaintiff and Harriet Hale, an infant, and the other infants by their guardian, although no person at the time answered such description. I am of opinion that there has been no decree against this person, and she had therefore a right to make this application. The subpoena, which was intended to apply to the infant, was actually returned to the plaintiff's solicitor, who must have been aware of the facts; and yet the decree was drawn up as if the subpoena had been properly served.

Bethell.—Perhaps your Honor will consider whether, instead of the present application, the defendant ought not to have moved to set aside the decree, which, unless it were a decree against the late infant, it is no decree against any one.

The VICE-CHANCELLOR.—Very possibly the plaintiff may have placed himself in difficult circumstances, but still I shall give the defendant liberty to make a new defence, as though no decree had been made against her.

ROLLS COURT.

Friday, June 5.

Re WHILDON.

Practice—Delivery of solicitor's bill—Affidavit.

Where an order for the delivery of a solicitor's bill has not been complied with, and a four-day order is then applied for, the application ought to be accompanied with an affidavit of non-delivery.

On the 4th of April last, an order was made on the petition of Mr. Edward Poole, for the delivery of the bill of costs of his solicitor, Mr. William Wheldon, within a fortnight from the date of the service of the order. The bill not being delivered in the time, Gardner now applied for a four-day order to deliver it.

The MASTER of the ROLLS.—Have you an affidavit of non-delivery?

Gardner.—No.

The MASTER of the ROLLS.—Then let one be produced; the order would be irregular, if it should turn out that there had been delivery.

THOMAS V. GWYNNE.

Practice—Costs—Married woman, conveyance by—Purchasing consent.

An order was made in a creditor's suit for the sale of certain real estates, and for the conveyance thereof by certain parties, among whom was a married woman, who refused to consent. The plaintiff and the purchaser bought the consent for a certain sum each. The Taxing-Master would not, without the sanction of the Court, allow the sum paid by the plaintiff in the bill of costs of sale, &c. and the Court refused to make an order.

This was a creditor's suit, and certain real estates had been sold by a decree of the Court (5 Law T. 327, 342, and 6 Law T. 187), and had been ordered to be conveyed by certain parties interested therein after payment of debts, among others, by Thomas W. Howell and wife. The latter being a married woman, could not be compelled to convey, and being unwilling to do so, the plaintiff and the purchaser had agreed to pay her 15l. each to purchase her consent. The plaintiff added the 15l. paid by him to the bill of costs of sale, &c.; but the Taxing-Master would not allow the item without the sanction of the Court, as it was not properly costs.

Piggott now applied to the Court to direct the allowance of the item.—The purchaser had paid his money into Court, and there was an order for the distribution thereof among the several claimants, and it would not be necessary, therefore, to come to the Court again.

The MASTER of the ROLLS.—How can I sanction the application of part of the money for the purpose of inducing her to comply?

Piggott.—The money can't be got out of court till she consents to convey; and a married woman is not compellable to do so; if that were not so, I should not ask the order.

The MASTER of the ROLLS.—It is asking me to give away other people's money to a person who has no right to it, to induce her to give a consent which it is her duty to give, and for not giving which, she is, perhaps, punishable. What right has she to ask for 15l.? I cannot grant the motion.

Friday, May 22, and Friday, June 12.

SOUGHTON V. MARRIOTT.

Practice—Reading in one cause depositions taken in another—Irregularity—Publication.

A defendant in one suit instituted another himself as plaintiff; publication passed in the first cause, and was enlarged in the second, with the consent of the plaintiff, without prejudice, however, to its being set down for hearing; the plaintiff in the second cause having examined his witnesses, obtained the common

order to read in the one cause "the depositions taken" in the other, "saving all just exceptions;" the order was held regular, though the examination of witnesses in the second cause was going on, and publication might happen not to pass therein before the hearing of the first cause; and a motion to discharge the order for irregularity was refused with costs, but with an intimation by the Court that application might be made to the judge before whom the cause was, to relieve from payment thereof on merits.

In this cause, which is an administration suit, now before Vice-Chancellor Knight Bruce, the bill was filed on the 7th of June, 1846, and publication passed on the 1st of the present month of May, and subpoena to hear judgment was served for the 31st. Thomas Flight, one of the defendants in the cause, and an incumbrancer on a share of one of the legacies of the residuary interest under the will of Thomas Phillips, the testator in the cause, filed his bill on the 18th of June, 1846, in Vice-Chancellor Wigram's Court, to carry out the trusts of the will; and on the 20th of April last publication in the second cause (*Flight v. Marriott*) was enlarged, with the consent of the plaintiff, but without prejudice to the cause being set down in the meantime, and it will not now pass till the 20th of June. Flight began to examine his witnesses in his own cause on the 25th of April, and finished on the 6th of May, on which day he obtained the common order to read in the one cause the depositions "taken" in the other, "saving all just exceptions." This order it was now sought to set aside for irregularity.

Kindersley (with him *Cooke*), for the motion.—Publication has passed in this cause, and it will come on to be heard on the 1st of June, and publication will not pass in *Flight v. Marriott*, before Vice-Chancellor Wigram, till the 20th of June, and yet Flight has asked to use in this cause depositions taken in the other, though the examinations will be going on till the 20th of June, and could not be used in *Flight v. Marriott* itself, the cause in which they are taken. At the time the order was made some of the witnesses were on cross-examination; and depositions are in esse, and not "taken" till publication has passed, and the order to read them ought not to be made till after publication. [THE MASTER OF THE ROLLS.—Does "taken" mean "having been taken," or "to be taken," past or future? The question is, is it irregular to make an order to read depositions in one cause not already taken in the other?] Depositions taken in cause B, sought to be used in cause A, should be such as could be used at the time in cause B itself. If publication had passed at the time the order was made, it would be regular.

Turner, with him *Rogers*, contra.—Mr. Flight only asks to be at liberty to use the depositions partially, that is the depositions of the witnesses he has examined, or the depositions taken in *Flight v. Marriott*, at the time the order was made. And even these we may not be able to use unless publication is passed in our cause before the hearing of the other. The only difficulty is, we run the risk of not having the depositions we ask for. The form of the order is right (*Hinde and Turner Pract.*), and the clause "saving just exceptions" would at the hearing entitle the other side to make any exception as to the reading of the evidence which might be necessary; and the judge could determine as to the admissibility of the evidence, though not as to the regularity of the order, or he could reject the evidence altogether. It is said the order may delay the hearing of this cause, but that is not so, for the judge may go on if he likes, notwithstanding the order obtained. The defendants, *Sourton* and *Marriott*, who are now moving to discharge the order, abandoned the application to enlarge, because they could not get it without agreeing to set down the cause; the other defendants applying agreed to its being set down, and got the order to enlarge. Both causes are set down, and the question is, whether, when a cause is set down, the order to read depositions can be obtained? The order is of course, and may be got at any stage of the cause, "saving just exceptions."

Kindersley, in reply.—Justice requires that if there are two suits about the same matter, the evidence in the one may be used in the other, and the order for that purpose is a common order. The object of the rule is to save expense. You may have a prospective order to examine in both, or you may have the depositions taken in the one used in the other; but here it is ordered that all depositions to be taken are to be used. On the 6th of May last, a defendant cross-examined Flight's witnesses, and my clients examined in chief, and yet it is said it is a proper order to read a part of the evidence; but if you read a part, you must read the whole, and if you do not, it is a "just exception." The order therefore is irregular, and ought to be discharged.

THE MASTER OF THE ROLLS.—The question arises as to an order to read in one cause depositions taken in another, publication having passed in the one and not in the other. It is common to read in one cause depositions taken in another, and there is no reason why an order to do so may not be obtained even before the examination of the witnesses; and it is common enough after publication. There is this difference, however, in this case, that publication has

passed in one cause while the witnesses are being examined in the other; and it is asked that depositions in the cause in which proceedings are going on may be used in the other in which publication has passed. But the effect of this is to let in the examinations of witnesses taken after. The words "saving just exceptions," go to the circumstances under which the order was made. Just consider; Flight says he has examined several witnesses, and then gets an order which does not prevent him from examining more, though it appears he has concluded his examination. There is some difference of opinion as to the practice, and I shall make inquiries; but if I discharge the order, it will not preclude Mr. Flight from applying for an order on other grounds.

June 12.—THE MASTER OF THE ROLLS intimated his opinion, on due consideration of the case, to be, that the order was not irregular; and he refused the motion with costs; but he said he thought it a case in which application might be made to the judge in the other court to consider whether there might not be some means of relieving the applicant from the costs.

Friday, June 12.

THOMAS V. SELBY.

Practice—Service of bill on formal parties.

Where a bill has been served on formal parties, and is afterwards amended in consequence of a defendant, who had no interest, answering and disclaiming service of the original bill on formal parties, will not be considered service of the amended bill.

In this case, Thomas Collins (see p. 155, *supra*), having been found, was duly served with a copy of the bill, and he put in his answer and disclaimed all interest; whereupon the bill was amended.

Welford now moved that service of a copy of the original bill might be considered good service of a copy of the amended bill on certain formal parties thereto, the amendment being so trifling; but

THE MASTER OF THE ROLLS refused the motion, but gave leave, under the 28th Order of May last, to serve the copy of the amended bill in a reasonable time.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

May 27 and 28, and June 23.

RE FREMINGTON SCHOOL, *Ex parte* WARD.

Trustees of a charity—Removal of a schoolmaster. Where, by a will, a testator gave to trustees certain hereditaments upon trust to permit any person who might be a schoolmaster of a certain school to occupy the same, and to receive the rents and profits thereof; and also gave to the same trustees two rent-charges of 10l. each upon trust to pay the same to the said schoolmaster; and gave the right of election of the schoolmaster to the trustees, and also gave them the power from time to time to displace such person who might be the schoolmaster upon any neglect or misbehaviour in such master, or other just cause for which they or the greater number of them should agree upon and think fit to displace such master, it was held, that the trustees, in displacing a master, were bound to exercise their power according to those principles of right which are universal, and to those general rules applicable to the administration of justice which pervade the entire system of English law.

This was a petition presented under the 52 Geo. 3, c. 101, by William Ward and James Clarkson, on behalf of themselves and all other the inhabitants of the parish of Grinton, in the North Riding of the county of York; and it prayed that it might be declared that the petitioner, Ward, was still entitled to the office of schoolmaster of the endowed school of Fremington, in that parish; and that the electors, and especially the respondents, Messrs. Wyvill, Tardy, Surtees, and Orde, might be ordered to continue him in his office; and that they and all other the electors might be restrained from prosecuting any proceedings for ejecting him from his office, and that the respondents might pay the costs of the petition. James Hutchinson, by his will, dated the 3rd of February, 1643, after reciting that he was seised in fee of certain lands and hereditaments, and which he intended should be employed for the better maintenance of an able, learned, and religious schoolmaster, for the better teaching and educating of the children and youth of the town and township of Fremington, and the rest of the parish of Grinton for ever, gave and bequeathed the said dwelling-house and school-house thereunto adjoining, together with the said close called Langley Croft, to certain persons therein named, and their heirs and assigns for ever, upon the trust and confidence, and to the intent and purpose, that they, their heirs and assigns, should permit and suffer such person or persons as he should thereafter in his lifetime nominate and place to be schoolmaster there, to occupy and enjoy the said dwelling-house, school-house, and close before mentioned, during so long a time as such person or persons so to be nominated and placed should continue schoolmaster there, and that afterwards they should permit and suffer him who should be schoolmaster for

the time being for ever to occupy and enjoy the said premises, and to take and receive the issues and profits thereof, so long as he should be or continue schoolmaster there. And the testator gave and bequeathed to the same trustees and their heirs and assigns, upon the trusts thereafter mentioned and expressed, the annual rent of 10l. to be issuing out of all other the testator's messuages, lands, and tenements, in Fremington aforesaid; and he gave to the said trustees another rent-charge of 10l. out of his lands in another parish, and directed that the said rents should be paid half-yearly. The testator then directed that his said trustees should from time to time, and at all times thereafter, pay the said several rents of 10l. to such person or persons as should be by him nominated and appointed schoolmaster of the said school as aforesaid, and to every other schoolmaster, for and during such time as he or they should continue and be schoolmaster there for the time, in such manner as he had thereby formerly limited the profits of the said hereditaments before mentioned. After making other provisions, the testator directed that, after the death and deaths of such person or persons as should be by him nominated and placed in the said school as schoolmaster there, the schoolmaster for the time being should from time to time be elected and placed by his brother Richard Hutchinson, and his heirs, and others the owners of the messuages and lands at Fremington aforesaid, the parson of Spennithorne, the vicar of Grinton, the dean of Middleham, the parson of Richmond, the parson of Wensley, and the parson of Marske for the time being, or by the greater number of them; and the testator's will was, that the greater number of the persons so appointed to elect such new masters of the said school, after the death or departure of such master or masters which should be by him nominated and placed in the said school, should have power from time to time, from and after the testator's death, to displace any such person or persons who at any time in his lifetime, or at or after his death, should be elected and placed master in the said school, upon any neglect or misbehaviour in such master, or other just cause, for which they or the greater number of them should agree upon, and think fit to displace such master, and then choose and place another master there from time to time, as they or the greater number of them should think fit and convenient.

From the petition it appeared that Ward was appointed master of this school on the 5th of April, 1823. In 1832, in consequence of quarrels between them, Ward and his wife separated, he agreeing to allow her 26l. per annum. In April 1842, the Rev. Elias Tardy became vicar of Grinton, and in the following July called a meeting of the electors of the school, which was attended by himself, the Rev. Edward Wyvill, the parson of Spennithorne, and the Rev. Robert Meek, the parson of Richmond, and certain charges were made against the petitioner, but they were not substantiated. In September 1842, the petitioner's wife and daughter came to reside with him again, and continued until the middle of the following January, when they both left him. The wife having applied to the board of guardians for relief, the petitioner made her an additional allowance, and on the 22nd of April, 1844, she wrote to the petitioner, threatening that, if he did not give the daughter some assistance, she would apply, through the clergy, to the proper authorities. The wife made a charge against the petitioner, to Mr. Tardy, of gross indecency towards his own daughter, M. M. Ward, in October, November, and December, 1842, and the petitioner's son, W. T. Ward, supported his mother in the charge. On the 30th of May, 1844, Mr. Wyvill and Mr. Surtees, two of the electors, at the request of Mr. Tardy, met him at Fremington to investigate the charge, and, assisted by Mr. Simpson, a solicitor, they examined the wife, daughter, and son, but the other three electors (Messrs. Metcalfe, Wood, and Kendall) were not summoned to the meeting. The questions on behalf of the petitioner were put through the chairman, and not by the petitioner or his solicitor, Mr. Thairwall. At this meeting, however, the persons present not forming a majority of the electors, nothing was decided upon. On the 10th of August, 1844, the petitioner received a notice, signed by Messrs. Wyvill, Surtees, Tardy, and Orde, summoning him to attend on the 17th, a meeting to investigate the charges. The meeting took place on the 17th of August, and the minutes of the 30th of May were read, and one additional witness examined against the petitioner, and the former witnesses on behalf of the petitioner were re-examined. On the same day the petitioner was served with an order of dismissal, signed by Messrs. Wyvill, Tardy, Surtees, and Orde, the same being stated to be "for divers good causes them thereto especially moving."

Russell and G. L. Russell, for the petitioner, contended that the proceedings against Ward had been irregular, and that, therefore, he was entitled to be reinstated.

Bagshawe, for Mr. Metcalfe, one of the electors, supported the petition.

Sir F. Simpkinson and Biehner, for the respondents, cited the *Darlington School* case (*Law Journal* vol. xii. p. 124, and vol. xiv. p. 67.)

THE VICE-CHANCELLOR.—This petition is presented under the Charity Petition Act, and seeks relief against the petitioner's removal from the office of schoolmaster, which he held, upon a private charitable foundation in Yorkshire, the majority of the gentlemen styled electors, who are to be considered to be in the nature of governors of the charity (I do not say visitors), having displaced him, as he contends, unduly and improperly; but as the gentlemen composing that majority consider as being duly and properly. The first question for consideration seems to be, whether the petitioner was removable arbitrarily and at pleasure, or at discretion; whether his position is analogous to that of a servant, who, with or without notice, according to the circumstances, may be discharged without a reason assigned, or without a reason existing? This must depend upon the language used by the founder of the charity in his will. [His Honour then read those parts of the will which related to this charity, and proceeded as follows:—] I cannot accede to the argument that in the case of a schoolmaster, appointed under an instrument worded as this will is, the principles upon which the *Darlington School* case, cited during the argument, was decided, are applicable. In the present instance, as it appears to me, the master is not removable at the will or discretion of the electors, or any of them. He is made removable only for neglect, misbehaviour, or just cause. The electors, or a majority of them, are, in the event of neglect, misbehaviour, or just cause, to decide upon the question of the removal of the master, not whether, for any cause or reason, he shall be removed. Assuming that it was intended to be left to them to decide upon the matter of fact, I think that it was not left to them to decide upon matter of law. Assuming that they might decide, for example, that forgery or adultery, being by law a just cause, had been committed by him in fact, and that so he was removable, I think that they could not decide upon the ground of his refusal to wear a black coat, or to teach the Chinese language, the refusal being proved against him and not denied, that he should be removed, that not being a just cause. The petitioner, Mr. Ward, was many years ago appointed schoolmaster upon this foundation, and, as I conceive, he acquired, upon his appointment, a freehold, or an interest in the nature of a freehold, and the revenue belonging to it; whether equitable or legal, it is not necessary to inquire. Of course I do not say that he became an irremovable master; on the contrary, I assume the competency of the electors, or a majority of them, to remove him for just cause. This power, however, they were, as I conceive, bound to exercise not otherwise than judicially. I do not say that they were to do so in any technical manner, or according to any particular formalities, but judicially, in the sense of proceeding according to those principles of right which are universal, and to those general rules applicable to the administration of justice which pervade the entire system of English law. Thus, it was not competent for them to discharge the master arbitrarily, nor was it competent to them to adopt against him, in my judgment, any mode of proceeding substantially irregular. The counsel for the respondents opposing the petition, contend that the electors, or a majority of them, are to be considered as visitors, and that their acts are to be treated upon that footing. To this I am unable to accede; and I conceive that the act of removing or discharging a schoolmaster upon this charitable foundation, by the electors or a majority of them, is examinable in this Court, at least upon certain principles and within certain limits. I suppose, or rather I wish to be considered as assuming, without however deciding, that the mere circumstance of this Court believing witnesses, who were disbelieved by the electors or a majority of them, or *vice versa*, would not, and that the mere circumstance of this Court dissenting from a conclusion as to a matter of fact drawn by the electors or a majority of them, from evidence, or the mere fact of falsification, by testimony produced before this Court for the first time, and not before any of the electors, of evidence that was before them, and believed by them, also would not be sufficient to induce the Court to reinstate a schoolmaster removed or displaced by a majority of the electors in a judicial manner. The question then appears to arise whether, consistently with the views which I have stated, there is here any solid ground upon which to rest a dissent; I mean an effectual and practical dissent, on the part of the Court, from the proceedings of the 17th of August, 1844, and from their result and effect. After an attentive consideration of the argument and the evidence, I am of opinion that there is; a conclusion which I think is supported by the following reasons, which may or may not be all considered sufficient, although they are so in my judgment. In the first place, an affidavit has been made by Mr. Tardy, who became vicar of Grinton late in 1841, or very early in 1842, and who was a party to the ineffectual proceedings of the 4th of July, 1842; proceedings, perhaps, irregular as well as ineffectual, and who appears, certainly, from a time preceding that month, to have formed the belief, well or ill founded, that the petitioner was a person so objectionable as a school-

master, that his continuance in the office was very far from desirable. [His Honour then read Mr. Tardy's affidavit, which it is unnecessary to state here.] It appears, then, by this affidavit, that Mr. Tardy, upon statements which had been made to him *ex parte*, without having heard the accused, or conferred or communicated with him upon the subject, the accused being his parishioner, and to be afterwards tried by Mr. Tardy as one of his judges, permitted his mind to receive, in effect, a conviction of the guilt of the accused previously to the trial, inquiry, or investigation of the 30th of May, 1844. In the second place this proceeding took place before three electors only, the total number of electors being seven, and was irregular as taking place before parties who were without jurisdiction of any kind. Thirdly, the accused had not liberty upon that occasion, by himself or by his legal advisers, to cross-examine the witness, who, if not the only, was the chief witness produced against him, and, I suppose, the most important witness. The questions in cross-examination had to be put, and were put, through the chairman. The defence was, in my opinion, unduly interfered with, and I cannot say it was not impeded prejudicially to the accused. Fourthly, the documents of the 30th of May, 1844, entered upon the book of proceedings relating to the charity, and signed by Mr. Wyvill, who was a party to the affair of the 4th of July, 1842, by Mr. Surtees and by Mr. Tardy, records the unanimous and unhesitating decision by those three gentlemen of the petitioner's guilt, and their opinion that he ought to be dismissed. Thus three out of the four judges who tried the petitioner on the 17th of the following August, coming to that trial under a recorded declaration on their part of their opinion that he was guilty, could not certainly come to it with equal or unbiassed minds. This expression I desire to be understood as not using harshly or disrespectfully. Fifthly, the entry of the 30th of May, 1844, is the last in the book; and there is not, so far as I am aware, any judicial record, or judicial minute, of the proceedings of the 17th of August. Sixthly, it is, I think, a just inference from the affidavits upon the subject, that the defence, so far as relates to cross-examination, was, in the same manner as on the 30th of May, impeded on the 17th of August; less favourably to the accused, or less strictly, or less adversely, it is probable, if not certain, but still to some extent impeded, and, as I conceive, unduly; nor have I had the means of saying that it was not so materially. Seventhly, with regard to the effect of any consent or submission which, on the 30th of May or the 17th of August, there may have been on the part of the petitioner or Mr. Thairwall, I must say that, in estimating the weight or value of it, the inequality of position, at least, on that occasion, between the judges on the one hand, and the accused and his attorney on the other, appears to me to be a matter not to be overlooked, a remark which I make in no disrespectful sense. Eighthly, by the notice or summons of the 10th of August, Mr. Simpson's letter or notice of the 5th of August must be taken, I think, to have been effectually waived. Ninthly, if the notice or summons of the 10th of August contained any charge or language sufficiently specific, the only charge which it contains in language of that kind appears to me to be a charge of indecent exposure of the petitioner's person to his daughter. The other charges in the paper of the 10th of August are expressed too vaguely and too loosely, to be entitled, in my opinion, to be considered as charges effectually or validly made. I agree that the word "neglect" is there, but it is not accompanied by any date or by any statement of any facts of neglect, or the kind of neglect meant to be imputed. Tenthly, the paper which, loosely worded, as I have said, states investigations only as the object of the meeting of the 17th August, not mentioning that at that meeting the removal of the petitioner from his office would or might take place, or be proposed, must, I think, be construed as only, or at the utmost, notice of the object, meaning, or intention which, before the meeting, either the petitioner, or the dean of Middleham, or Mr. Kendall, or Mr. Metcalfe had. I think that neither the petitioner, nor any of the three absent electors, ought to be considered as having, previously to the meeting, been apprized that at that meeting such a step would or might be resorted to. Whether it was material or immaterial that the petitioner should be so apprized, I do not say; but, in my judgment, it was material that some or all of the three absent electors should be so apprized. According to my view of this case, they had not the opportunity afforded to them, which, as I think, ought to have been afforded to them, of consulting and being consulted, delivering their opinion and sentiments, and giving their voices upon the question of removing or displacing, or not removing or displacing, the schoolmaster. Eleventhly, the instrument of dismissal, under the hands and seals of the four electors present, on the 17th August, which was served on the petitioner on that same day, and had probably, I do not say certainly, but probably, judging from the internal and other evidence, been brought ready prepared, I do not say signed, to the meeting, does not contain or express any adjudication or conviction of crime,

neglect, misbehaviour, or any specific cause of removal. It merely says, "for divers good causes so hereunto specially moving." It mentions, in a documentary sense, the proceedings of the school, but the book does not appear to contain any record of the trial and the transactions of the 17th of August, nor am I aware, beyond the paper in question, that there is any such record. Twelfthly, as to the notice of the 17th of August, none of the three absent electors appear to have been consulted, or to have concurred in it, nor to have had the opportunity of considering it; and I think that if there is any weight in this, it bears, especially when compared with the documents of the 10th and 17th of August, in favour of the petitioner's case, rather than otherwise. Of these reasons, all probably, or all certainly, are not of equal weight, and more than one of them can be rejected without affecting the conclusion. It is sufficient for me to say that upon all or some of the considerations which I have stated, I think the order, the minutes of which will be read, is the proper one to be made on this petition. "Declare that the notices and order of the 30th of May, the 10th of August, and 17th of August, 1844, are ineffectual and void, and that the petitioner, Mr. Ward, has not been duly and effectually removed and displaced from his office of schoolmaster. This order of the Court to be without prejudice to the question, whether there has been any criminal conduct on the part of the petitioner, or whether there exists or not sufficient ground upon which the respondents, or any of them, may hereafter lawfully displace or remove the petitioner from his office in a due and regular manner; the petition in all other respects to stand over until the 3rd day of November next, and either party to have liberty to apply, notwithstanding this order of the Court, and, notwithstanding the petition, the respondents are to be at liberty to take any proceeding for the removal of the petitioner from his office for any just cause, if any, which it would have been competent to them to take if the proceedings of May and August, 1844, had not taken place, and the petitioner had not been removed. The parties respectively are to be at liberty to bring under the consideration of the Court on the 3rd of November next, when this petition is to be again mentioned, any statement, proceeding, or circumstances concerning the petitioner in respect of his office of schoolmaster, which between that day and the present time shall have taken place."

VICE-CHANCELLOR WIGRAM'S COURT.

Tuesday, June 30.

MORRISON v. MARTIN.

Will—Construction—Legacy.

Where a testator through his will shews an intention to benefit the children of certain relations whom he names, and describes them numerically, without naming them, the Court will hold the intention to be for the benefit of all the children, although they may exceed the number mentioned in the will.

James Hannay, by his will, dated 7th October, 1843, devised, amongst other bequests, as follows:— "To my nephew, John Turnbull, and his sister, Mrs. Primrose Wood, I bequeath 250*l.* each; to my nephew, James Douglas, I bequeath 200*l.* and my Peruvian bond for 500*l.*; to my nephew, William Martin, and his sister Isabella, I bequeath 200*l.* each; to my niece, Mrs. Conbrough, I bequeath 250*l.*; to my nieces, Mrs. Vise, Mrs. Stubbs, Mrs. Roy, and Mrs. Ward, I bequeath 200*l.* each; to my two grand-nieces, daughters of my late niece, Mrs. Emily King, and to my grand-nephew, Peter Kait, and his sister Jessie, and to the two children of my late nephews, James Martin and Andrew Douglas, I bequeath 100*l.* each;" and devised the residue to other parties therein mentioned; and appointed James Ruckin, who renounced, and the plaintiffs, his executors, and died in 1844. James Martin, named in the will, left three children; Andrew Douglas, also named in the will, left two children, all of whom were living at the date of the will and death of testator. Disputes arose between the friends of these five children, who are infants, and the residuary legatees, in respect to the construction of the will; the former contending that each of the five children are entitled to one hundred pounds, or, at all events, two members of each family are so entitled. The residuary legatees contended that the gift was void for uncertainty, or, if not, that only one child of each nephew was entitled to 100*l.* The bill was filed by the executors, to have the estate of the testator administered in court.

Walker appeared for the plaintiffs.

Wood for the defendants.

THE VICE-CHANCELLOR.—Declare in this cause that all the children of James Martin and Andrew Douglas alive at the date of the will and at the death of the testator, are entitled to a legacy of 100*l.* each, and the cost of all parties to be paid out of the residuary estate.

WILD v. WOODYATE.

Married woman—Separate use—Anticipation—Creditors.

A married woman entitled to property to her separate use for life, remainder to such uses as she should appoint, may, during coverture, exercise her power of appointment, and, in resettling the estate, may restrain her own power over her life estate, by the introduction of the usual clause against anticipation, which will be binding on herself and all subsequent creditors.

By indenture of the 29th June, 1816, Mrs. Anne Pitt, the mother of the defendant, Mrs. Woodyate, had a power to appoint the sum of 3,000*l.* in favour of her daughter. By deed-poll of 6th May, 1840, Mrs. Anne Pitt, reciting her power, and that her daughter had married the defendant Woodyate in 1839, and that no settlement had been executed, exercises her power of appointment, and directs and appoints the interest of the said sum of 3,000*l.* to be paid to her daughter (after her own decease) for her life, for her sole and separate use, and after her decease to apply the principal sum of 3,000*l.* to such uses as her daughter should by deed or will appoint, and in default of appointment, to the executors or administrators of her daughter. There was no clause introduced into the deed of May 1840, restraining Mrs. Woodyate from anticipating the income of the fund. By deeds executed on the 13th of May, 1840, between Mrs. Woodyate, of the first part; Woodyate, her husband, of the second part; Mrs. Anne Pitt, of the third part; and Williams and Sorrel (the trustees of the 3,000*l.*), of the fourth part; Mrs. Anne Pitt and Mrs. Woodyate direct and appoint Williams and Sorrel to pay the sum of 500*l.* due from Woodyate and wife to Evans, and, after the death of Mrs. Anne Pitt, to pay the dividends of the remainder of the 3,000*l.* to Mrs. Woodyate for her life for her separate use, without power of anticipation, and then to her husband for life, remainder to the children, if any, as they should jointly appoint; and if no children, then to such uses as Mrs. Woodyate should by deed or will appoint, and in default, in trust for the next of kin of Mrs. Woodyate. On the 19th of April, 1841, Woodyate and his wife executed a promissory note, whereby they promised to pay Thomas Wild the sum of 148*l.* twelve months after date. Woodyate was unable to pay the note when it became due, and Wild filed the present suit to have the amount paid out of the income of Mrs. Woodyate, derived from the residue of the 3,000*l.* Mrs. Anne Pitt being dead.

Wood and Roundell Palmer for the plaintiff.

Romilly for some of the defendants.

Willcock for the trustees of the wife and children.

The VICE-CHANCELLOR.—There can be no doubt that a married woman can exercise all the powers of a *feme sole* over property settled to her separate use, consistent with the deed under which she takes, and that she may be restrained in the exercise of those powers in a manner which the law does not allow in the limitation of estates to men; thus the enjoyment of a life estate to the separate use of a married woman may be deprived of the usual incidents attendant upon such an estate by the introduction of a clause against anticipation. Mrs. Woodyate, in this case, though a married woman, had, under the deed of 6th May, 1840, all the powers of a *feme sole* to carry out the limitations there expressed, and under those to execute the deed of 13th May, 1840, containing the clause against anticipation and the other limitations there expressed. This deed is clearly binding on all subsequent creditors, and prevents her life estate from being charged or alienated, and, therefore, no act of his could subject her life estate to the payment of the promissory note in question. I shall not give any opinion what effect a reference by Mrs. Woodyate to this specific property, when the promissory note was executed, or had there been any use made of the prior settlement to defraud the creditor, would have had in affecting the principal sum, as there is no evidence of any such conduct.

Saturday, July 4.

BAKER v. DOWTON.

Sale to plaintiff without reference to Master.

This was a petition of the plaintiff, who had the conduct of the cause, for an order to the Master to accept him as a purchaser of one of the lots directed to be sold under the decree of the Court. The estate had been put up for sale by auction in lots, and the Master put reserved prices upon the several lots. At the sale the bidding for the lot to which the petitioner referred did not amount to the reserved price, and it was, therefore, not sold. After the sale the plaintiff made an offer to the Master for the purchase of the lot not sold. This offer was higher than any one else had bid, and higher than the reserved price put down at the sale. The Master approved of the offer, but refused to complete the sale without the special order of the Court. The property comprised in the sale belonged to a man aged seventy years for his life, and after his death it was limited to his children equally; the children were all adult, but should their father have any more children, they would be entitled to their

share of the property. The father and children now living all approved of the offer made by the plaintiff.

Wood appeared for the petitioner; and Shapter, Sidebottom, and Sandys for the other parties.

The VICE-CHANCELLOR.—There is some difficulty in making this order without a special reference to the Master to inquire into the facts. The petitioner in this case has had the management of the cause, and consequently the production of the facts upon which the Master came to his conclusion as to the value upon which he fixed the reserved price, there is therefore strong ground for caution on the part of the Court in granting such an order as here prayed. However, as all the parties are represented and adult, and they approve of the order, a special reference may be saved under such circumstances. There is, however, the fact of after-born children to be considered, who would become entitled; but you say such an event is almost a physical impossibility from the age and infirmity of the father: of this, however, I must have an affidavit; and on your producing that to the Court, you may take the order as prayed in your petition.

Common Law Courts.

COURT OF COMMON PLEAS.

Friday, June 5.

THATCHER v. SIR RICHARD ENGLAND, Knight.

*Some property of the defendant having been stolen, the defendant published a handbill, headed "30*l.* reward," which, after enumerating the stolen articles, concluded—"The above sum will be paid by the adjutant of the 41st regiment on recovery of the property and conviction of the offender, or in proportion to the amount recovered." The plaintiff sued for the reward, and declared upon this as a promise to pay the sum mentioned "to such person as should cause the offender to be apprehended and convicted, and the said property to be recovered," and averred that he caused the said offender to be apprehended, and that by the means, evidence, and information of the plaintiff, the offender was convicted and the property recovered. It was found that the plaintiff did not give the first information as to the party committing the robbery, but that he was most active and mainly instrumental in procuring the recovery of the property and the conviction of the offender. Held, that he was not entitled to recover.*

This was an action of assumpsit. The declaration set out that certain goods and chattels of the defendant were feloniously stolen from the officers' quarters of the Infantry Barracks at Canterbury, and that the defendant thereupon caused and procured a certain advertisement, handbill, and placard to be printed and published, headed "30*l.* reward;" and whereby, after stating that the said goods had been so stolen as aforesaid, the defendant did promise and undertake that the said sum of 30*l.* should and would be paid by the adjutant of her Majesty's 41st regiment, on the recovery of the said property of the defendant and conviction of the offender, or in proportion to the amount recovered, to such person as should cause the offender to be apprehended and convicted, and the said property to be recovered. The declaration then averred, that the plaintiff did cause the said offender, to wit, one W. W. to be apprehended for the said felony, and that the said W. W. was, in due course of law, tried for the said felony, and was upon the said trial, upon and by means of the evidence and information of the plaintiff, found guilty thereof and duly sentenced; and that the said property of the defendant, so stolen as aforesaid, was recovered by the defendant by and through the means, evidence, and information of the plaintiff, but that neither the adjutant nor the defendant had paid, &c.

Pleas—1, *Non assumpsit*; 2 to 6, Traverses of all the material allegations in the declaration. At the trial before Coleridge, J. at the Summer Assizes, 1845, for the county of Kent, a verdict was found for the plaintiff; damages 25*l.*; subject to the opinion of the Court upon a special case.

The case found that the plaintiff was a policeman of Canterbury, and the defendant the colonel of the 41st regiment of infantry, which in the month of April, 1844, was quartered at Canterbury. On the 26th of that month the defendant was robbed of certain articles of jewellery, and immediately gave directions for publishing the following handbill:—

"£30 Reward.

"Stolen from the officers' quarters of the Infantry Barracks, Canterbury, on the night of April 26, 1844, the following articles, viz. One diamond ring, one old family ring, one purple topaz large ring set in small diamonds, one turquoise blue gold ring, one French enamel ring, money to the amount of 3*l.* one flat Geneva gold watch, with short gold chain and long hair chain. The above sum will be paid by the adjutant of the 41st regiment on recovery of the property, and conviction of the offender, or in proportion to the amount recovered."

The above articles were stolen by one W. W. who

was tried, convicted and sentenced at the July Sessions for the City of Canterbury, 1844. On June 10 one Fitzgerald informed the sergeant of the 41st regiment that W. W. had asked him to lend him some money to enable him to go to London to dispose of the property he had stolen from the defendant. Up to that time no suspicion had attached to W. W. The sergeant gave information of this fact to the superintendent of police, but did not then see the plaintiff. On June 14 one Pickering gave information to Eppe, a policeman of the place where W. W. was to be found, but Eppe could not discover him. Later in the same day the plaintiff received information that W. W. was at a certain public house in Canterbury, and went in quest of him with two other policemen. They found him at another public-house, and seized him, and after much resistance the plaintiff searched him, and took from him two of the rings mentioned in the advertisement, and two pawnbroker's duplicates relating to other parts of the stolen property. The plaintiff immediately apprehended W. W. and afterwards went to London, traced the property, procured summonses for and summoned the pawnbrokers to attend before the magistrates at Canterbury, and brought the defendant to identify the articles. The case found that the plaintiff incurred much trouble and expense in bringing together the witnesses, the same forming no part of his ordinary duty as a policeman. The value of all the property lost amounted to 94*l.* 15*s.*; of this, property to the amount of 85*l.* 15*s.* was recovered and restored to the defendant. The jury found specially, that the plaintiff did not give the first information as to the party committing the robbery; and, secondly, that the plaintiff was most active, and mainly instrumental in procuring the recovery of the property and the conviction of W. W. The Court was to direct whether a verdict should be entered for any and for what sum, or, if necessary, to direct a nonsuit to be entered.

Shes, Serjt. (with him Horn) for the plaintiff.—The first question is, whether the plaintiff did that which would put him in a position to say, "I have done that for which you contracted to give the reward." That depends upon the advertisement, and the construction put upon it in the declaration. The cases ordinarily quoted upon the subject of rewards do not apply, because in them the promises are made to the persons who do particular things. (*Williams v. Carwardine*, 4 B. & Ad. 621; 1 N. & M. 418, S.C.; *Lancaster v. Walsh*, 4 M. & W. 16; *England v. Davidson*, 11 A. & E. 856; *Smith v. Moore*, 1 C. B. 438.) The words in the advertisement must mean that the money is to be paid to the person who brings about the recovery of the property and the conviction of the offender. [MAULE, J.—Very probably they were intended to elicit the betrayal of a secret not otherwise to be procured.] [TINDAL, C.J.—There were two persons who gave information before the plaintiff had any thing to do with the matter.] Yes, but every thing that the others said or did came to nothing, and failed until the matter was taken up by the plaintiff. But the money was only to be paid upon the recovery of the property and the conviction of the offender. The promise does not depend upon the giving information, but the words point to something very different. None of the other parties did anything amounting to a recovery of the property or the conviction of the offender. It does not appear by the case that Fitzgerald or Pickering were even so much as witnesses at the trial; then what could they have to do with the conviction of the offender? Then, as to the recovery of the property, part was taken from the person of W. W. by the plaintiff, after violent resistance; the rest was traced by duplicates taken by the plaintiff from W. W.'s person, the plaintiff being at all the trouble and expense of travelling to London, and tracing the duplicates there. The plaintiff is entitled to recover, unless the Court will determine that the promise was not binding upon the defendant at all, but was a mere delusive pretence, intended to procure exertions and not to require them.

Channell, Serjt. (with him Petersdorff), were not called upon.

TINDAL, C. J.—It is a very unfortunate thing that the advertisement was not framed with more certainty, because, from the doubt and uncertainty connected with its interpretation, a person may have been put to great trouble and expense, under the honest idea that he was entitled to be paid the reward offered. The question is, who is the person who is to be paid the reward? The advertisement, after describing the stolen property, and prefacing that description with the words "30*l.* reward," says, "The above sum will be paid on recovery of the property and conviction of the offender," not saying to whom it will be paid. The question is, what is the legal construction of this advertisement, and who is intended to be described? And it seems to me, that that person is the original and meritorious cause of the recovery of the property and the conviction of the offender; the person who first gives the information which leads to both of these. That person is not the present plaintiff, for he does not perform any act until long after information has been given to other parties. First, a person named Fitzgerald tells the

serjeant of his regiment, and information is by him given to the superintendent of police. Then, on the 14th of June, another person, Pickering, gives information to Epps, a policeman. Epps endeavours to discover and apprehend him, but fails. Later in the same day the plaintiff appears, and he, with two other policemen, having learnt where the offender may be found, after some difficulty takes him into custody. No doubt the plaintiff does a great deal towards the recovery of the property, and the conviction of the offender; he summons the witnesses and marshals the proceedings of the trial. But is he the person who has all the merit of bringing about the recovery of the property and the conviction of the offender? No. If it had not been for Fitzgerald, neither the one nor the other would have taken place. On the other hand, if the plaintiff had failed, the other policeman, probably the same day, would have arrested the offender. After the track was once laid, and the information given, the plaintiff availed himself of it, and though late in the field was more successful than the rest.

COLTMAN, J.—We ought to construe these agreements as legal, and not honorary; because the party making them intends to bind himself legally. In order to entitle the plaintiff to recover, he must make out that he is solely entitled to sue. The difficulty has arisen, I dare say, because various persons have claimed the reward. I don't think the plaintiff as good a claimant as Fitzgerald. Perhaps they might sue jointly, but certainly not the plaintiff by himself.

MAULE, J.—The advertisement is silent as to the person to whom the reward is to be paid. In the cases cited it was held that an advertisement of this sort creates a legal obligation, although that at first was thought to be new law. I cannot find here, with any degree of certainty, who is the person to whom the money is to be paid. Perhaps it was intended that it should be divided among such persons as should, by information or otherwise, contribute to the recovery of the property and the conviction of the offender, in proportion to their services. That would be a reasonable way, and then a value might be set upon the information, the apprehending, and the other matters of the transaction. If any contract arises here, I think it must be somewhat of that kind, but that is not the contract laid in the declaration. Difficulties have often arisen in the cases of advertisements much more precise in their language, because often there is no one person who does that for which the reward is offered, but it is done in different degrees and proportions by different persons. One man finds out who the offender is, another where it is supposed he may be found; then he is not actually found at the first place, but then a third person gives some farther information by means of which he is taken. And then, though there is an intention to pay the money offered as a reward, yet the offerer is unwilling to pay more than one. Occasionally, in such cases, it is referred to the clerk of the peace or some other discreet person to distribute the money. That is the better plan, and is similar, I believe, to the practice adopted at the Home Office. In this case, however, there is a total absence of any words determining to whom the amount is to be paid; and the construction put upon the advertisement in the declaration is not the right one.

CRESSWELL, J.—I also am of opinion that the plaintiff is not entitled to recover. The advertisement is in a very loose form, and certainly does not point out any particular person, or specify any particular service. It is very doubtful if the contract is properly described in the declaration. But if properly described, all the material averments are traversed; and I think upon those traverses the defendant would succeed. First, I think the plaintiff did not cause the offender to be apprehended: the soldier gave information of the important fact upon which he was apprehended. That information was carried by the sergeant to the policeman. Therefore, in some sense, Fitzgerald caused the apprehension; in some sense, the man who told where he was to be found caused the same thing. Again, did the plaintiff cause the offender to be convicted? Surely it was not his evidence only. The pawnbroker gave some important evidence. Probably the jury acted in part upon the evidence of the pawnbroker. Then, as before, too, the person who first set the thing in motion was partly the cause. In the same way, he did not solely cause the property to be recovered. This case is a good deal like that of *Lancaster v. Walsh*, 4 M. & W. 16. There the advertisement was, that "Whosoever would give information, whereby the property might be traced, should, on conviction of the parties, receive the reward;" and it was held to mean the person who first gave information by which the stolen property was traced to the robbers—the first person who set the inquirers upon the right track.

Judgment of nonsuit.

Monday, July 6.

DOE dem. WOODALL and OTHERS v. WOODALL and ANOTHER.

T. M. by his will, after having devised real estates to his grandson T. L. with remainder in strict settlement to his issue, devised the same to his the testa-

tor's grandchildren, William, Samuel, Alice, and Hannah, if they should happen to be living at the time of the decease of T. L. "for and during the term of their natural lives, and the life of the survivor of them," as tenants in common, with remainder "to all and every the son and sons of the body and bodies" of his the testator's said grandchildren "lawfully to be begotten," and "the respective heirs of the body and bodies of all and every such son and sons lawfully issuing," remainder in tail in like manner to all the daughters of the testator's said grandchildren. There then followed the following clause: "And in case either of my said grandchildren, William, Samuel, Alice, and Hannah, shall happen to die, leaving no issue behind him, her, or them, then my will and meaning is, that all and singular the premises herein lastly devised, shall go and remain to the survivor of them, and the heirs of his or her body lawfully to be begotten in manner aforesaid." Held, that the words "in manner aforesaid" in the last clause referred to the preceding clause of the will, and that therefore the said grandchildren of the testator took only life estates under the will.

This was an action of ejectment brought to recover certain estates in the county of Monmouth, the facts of which were stated in a special case by the order of Coltman, J. and by the consent of the parties. In Michaelmas Term last the case was argued by Channell, Serjt. for the lessors of the plaintiff, and Byles, Serjt. for the defendant. The nature of the case fully appears in the judgment of the Court.

JUDGMENT.

COLTMAN, J. (in the absence of the late Chief Justice Tindal).—The question in this case is, whether, in the events which have happened, Samuel Llewellyn Morgan took an estate tail, or estate for life only, under the will of Thomas Morgan, in the lands in the parishes of Llanelleen and Llanover, in the county of Monmouth? If he took an estate for life only, judgment is then to be for the plaintiff; if in tail, then the defendant is entitled to the judgment. The will, after devising the lands in question to the testator's son, Samuel Morgan, for life, with remainder in strict settlement to his issue, with remainder to the testator's grandson, Thomas Llewellyn, with remainder in strict settlement to his issue, he devises as follows:—"And for default of such issue, then to the use of my grandchildren, William Llewellyn, Samuel Llewellyn, Alice Llewellyn, and Hannah Llewellyn (brothers and sisters of my said grandson, Thomas Llewellyn), if they shall happen to be living at the time of his decease, for and during the term of their natural lives, and the life of the survivor of them, to take as tenants in common, and not as joint tenants; and from and after their several deceases, and the decease of the survivor of them, the said William Llewellyn, Samuel Llewellyn, Alice Llewellyn, and Hannah Llewellyn, to the use and behoof of the first and all and every the son and sons of the body and bodies of my said grandchildren, William, Samuel, Alice, and Hannah, lawfully to be begotten, severally and successively, and in remainder, one after another, as they and every of them shall be in priority of birth and seniority of age, and of the several and respective heirs of the body and bodies of all and every such son and sons lawfully issuing, the elder of such sons and the heirs of his body lawfully issuing being always preferred, and to take before the younger of them; and the heirs of his and their body and bodies lawfully issuing to take as tenants in common, and not as joint tenants; and for want or in default of such issue, to the use of all and every the daughter and daughters of the bodies of my said grandchildren, William, Samuel, Alice, and Hannah, lawfully to be begotten, and the heirs of the bodies of such daughters respectively lawfully issuing, the daughters of each of my said grandchildren, William, Samuel, Alice, and Hannah, if more than one, to take as tenants in common, and not as joint tenants; and in case of the death and failure of some or any one or more of the said daughters of my said grandchildren, all and every the share and shares of her or them so dying, when and so often as it shall so happen, shall go, remain, and inure to the survivor and survivors and other and others of the said daughters, and the heirs of the body and bodies of such surviving and other daughter and daughters respectively, such surviving daughter, if more than one, to take also in equal parts and shares as tenants in common, and not as joint tenants, and if all such daughters but one shall die without issue, or if there shall happen to be but one daughter of the body of my said grandchildren lawfully to be begotten, then to the use of such only surviving daughter, and the heirs of her body lawfully issuing. And in case either of my said grandchildren, William, Samuel, Alice, and Hannah, shall happen to die leaving no issue behind him, her, or them, then my will and meaning is, that all and singular the premises herein lastly devised, shall go and remain to the survivor of them, and the heirs of his or her body lawfully to be begotten in manner aforesaid; and in failure of issue of either of their bodies lawfully begotten, then I give and bequeath the same premises to the use of the children of my brothers, Charles Morgan, and James Morgan,

in manner following, that is to say, two third parts of the said premises unto the children of Charles Morgan, and one-third part thereof to the children of James Morgan, and their lawful issue, their heirs and assigns, for ever, share and share alike." The devise to the four grandchildren and their issue consists of two clauses or parts, the first giving estates to the four grandchildren for life, with remainder in tail to their sons and daughters. The language leaves no doubt as to the estates which are granted to the grandchildren being for life only, and the estates to their sons and daughters being to them as purchasers in tail. The second clause is in these terms:—"In case either of my said grandchildren, William, Samuel, Alice, and Hannah, shall happen to die, leaving no issue behind him, her, or them, then my will and meaning is, that all and singular the premises herein lastly devised shall go and remain to the survivor of them, and the heirs of his or her body lawfully to be begotten in manner aforesaid." For the defendant it was insisted that this last devise, being a devise in the events which have happened, "the survivor and heir of the body lawfully begotten" gave the survivor an estate tail; while for the plaintiff it was contended, that though the words that are contained afterwards, "his or her body," are found in this clause, which give an estate tail unconnected with anything taking their effect away, yet as they are found, in connexion with words going before and coming after them, to be mere words of reference to the preceding clause, giving an estate for life, with remainder to the sons and daughters, as purchasers, the effect of the words "shall go and remain to the survivor of them, and the heirs of his or her body lawfully to be begotten in manner aforesaid," is to bring the lands in the events to which the second clause applies within the preceding clause, which gives life estates to the grandchildren, with remainder in tail to the sons and daughters; and we think this is the true construction of the clause. Such construction, on an examination of the sense of the particular words used, is more consistent with the intention of the testator than that contended for by the defendant, and is supported by the authority of decided cases. The clause was probably intended to supply the deficiency, or remove the doubt arising in the first clause, as to the persons who should take, in the event of one or more of the grandchildren dying without leaving issue. The words with which it commences, "my will and meaning is," are explanatory of the supplemental clause; the words "in manner aforesaid," are necessarily connected by grammatical construction with the words "shall go and remain," and refer to something introductory to the words "to the survivor and the heirs of his or her body lawfully begotten." The words "in manner aforesaid," taken in this connexion, have an express reference to the sense of "going and remaining," in some before-mentioned clause, by which the estates would "go and remain to the grandchildren, and the heirs of his or her body lawfully begotten," and there is no such meaning of "going and remaining," in any preceding part of the will, except the first clause, which gives estates to the grandchildren for life, and remainder to their sons and daughters in tail, which, though not in words a devise to the heirs of the body or bodies of the sons and daughters, is a devise which may not improperly be described as to the heirs of the bodies of the sons and daughters, inasmuch as those who would take under that are the same persons, and would take in the same order and succession, and to the same extent of interest. The defendants' construction of the words "in manner aforesaid" is inappropriate, and would give to these words no effect and meaning; but the will would be the same as if these words were left out; whereas the construction of the plaintiffs gives to them due meaning and effect. "It is always desirable," says Lord Ellenborough in *Meredith v. Meredith*, 10 East, 510, in commenting on the words "as aforesaid," "if possible to give effect to all the words of a will, and particularly when it enables the Court to give a uniform and consistent sense to the whole will." It is also clear, we think, that the words "lawfully begotten," in the first clause, applied to the sons and daughters who take as purchasers, and not to the heirs who are described as "heirs of their bodies lawfully issuing," or only as heirs of their bodies, without the words "lawfully to be begotten," and throughout the will it will be found the words "lawfully to be begotten," which occur a great many times, are applied to the sons and daughters taking as purchasers, and not to heirs to the extent it is in the clause in question; and so, also, in the analogous clause in the devise of the Abergavenny estates to Alice and Hannah. With respect to the meaning of the testator, it is evident that that construction which gives an estate tail is repugnant to the meaning carefully expressed in the words of the first clause, and to the giving an estate tail in the whole to the only daughter, which immediately precedes the second clause, and inconsistent with the general plan of the testator, as shewn by the devise to his son Samuel, and then to his grandson Thomas. The devise to Samuel, and then to Thomas, the grandson, for life,

is a life interest only. There are several decided cases that support the construction we have adopted, and none which we are aware of are opposed to it. In *Lisle v. Gray*, 2 Lev. 223, and 1 P. W. 90, "a covenant to stand seised, to the use of the covenantor's son E. for life, and after his decease to the use of the first son of the body of E. and the heirs male of the body of the first son, and in default of such issue, to the use of the second son of the body of E. and the heirs male of the body of the second son, and in default of such issue, to the use of the third son of the body of E. and the heirs male of the body of the third son, and in default of such issue, to the use of the fourth son of the body of E. and the heirs male of the body of the fourth son; and to all and every other the heirs male of the body of the said E. respectively and successively, and the heirs male of their bodies, according to their seniority of birth;" and it was held by the King's Bench and Exchequer Chamber, that E. took an estate for life only, notwithstanding the express limitation to the heirs male of his body. In *Lowe v. Davies*, 2 Lord Raymond, 1561, the testator devised to Benjamin Jevon, and his heirs lawfully to be begotten, that is to say, to his first, second, third, and every son and sons successively, lawfully to be begotten of the body of the said Benjamin; and the heirs of the body of such first, second, and third, and every other son and sons successively, lawfully issuing; and it was held, that Benjamin took an estate for life and not in tail, and the clause that followed the limitation to the heirs of the body of Benjamin was explanatory of which heirs of the body of Benjamin the devise meant; and in *Meredith v. Meredith*, 10 East, 503, the words "as aforesaid" were held to incorporate the words in the former clause. Two more of these cases were cited and not denied in the case of *Jesson and Others v. Wright*, 2 Bligh. 1, and they are explanatory, as we think, in the present case, of the rule stated by the Lord Chancellor in *Jesson v. Wright*, that the words "heirs of the body" will yield to a clear particular intent, that the estate should be only for life, and that that may be from the effect of super-added words, or any expressions shewing the particular intent of the testator; but that that must be clear, intelligible, and unequivocal. In the first case, the words "shall go and remain in manner aforesaid," import a clear and distinct reference to the first clause of the devise, which draws it down and incorporates it with the second, and the clause so incorporated would be intelligibly and unequivocally a particular intent, that the grandchildren taking under the second clause, shall, like those who take under the first, take an estate for life only. For this reason we are of opinion the judgment must be for the plaintiff.

Judgment for the plaintiff.

BUSINESS OF THE WEEK.

Monday, July 8.

The Court gave judgment in the following cases:—
Doe dem. WOODALL and OTHERS v. WOODALL and ANOTHER. Judgment for the plaintiff.

GAMBLE v. KURTZ.

Rule absolute to enter the special finding of the jury as a verdict for the defendant upon the second and third issues.

SMART v. SANDARS.

Judgment for the plaintiff.

HAYWARD v. BENNETT.

Judgment for the plaintiff.

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

Wednesday, July 1.

(Before Mr. Commissioner GOULBURN.)

Re W. MILLS.

The duty of traders, when they become embarrassed, is to come to this court on their own petition, and secure an equal division of their property among all their creditors. If they neglect to do this, or, being embarrassed, pay some in preference to others, they cannot claim the protection of this Court.

In the case of W. Mills (a glover in Foster-lane, City), which was argued on Saturday last, the Commissioner took time to consider the case before delivering judgment, as it involved many disputed facts. The learned Commissioner delivered an elaborate judgment, commenting very minutely upon the duty of traders when they became embarrassed, the object and benefit of the bankrupt laws, and the facts of the case, which are shortly these:—The bankrupt has been for a considerable time in trade, and in the panic of 1826 he was declared a bankrupt, and his estate under that bankruptcy had not as yet paid any dividend. He did not obtain his certificate under that commission for three or four years after passing his last examination. He embarked in trade again, and his first dealings were with Mr. Underwood, who is the largest creditor, and who had been in the house of his uncle (a Mr. Chamberlaine, a glover at Leicester) for upwards of thirty years. At that gentleman's decease he carried on the business, and as the bankrupt had dealt with Mr. Chamberlaine for a length of time, he (Mr. Underwood) was induced to give him credit, at various times, to the extent of about £201; and during the whole of his dealing with

him (the bankrupt) he has never received one farthing from him. In January last Mills called his creditors together, when he offered a composition of 6s. 8d. in the pound. In April, 1846, he became a bankrupt upon his own petition, but before doing so he sold his stock at a great sacrifice, administered his estate in which way he pleased, and made preferences to his brother by paying him his debt in full, and some creditors from 10s. to 14s. in the pound, whilst he was offering others 6s. in the pound within a month, and 1s. 8d. after a certain time. After all this had been done he came to this court with very little assets to receive its benefit. He has been dealing to some extent in accommodation bills, and his debts are about 2,000l., to meet which he says he has, good debts, 5l. 5s.; furniture, &c. 100l.; and railway scrip, 100l., which has been sold by the official assignee under the fiat for 60l. The bankrupt said in his examination, "It was with the consent of the creditors that I paid my brother in full." Mr. Underwood did not accept the offer made by the bankrupt, and he gave his reasons for so doing. Mr. Commissioner Goulburn wished it to be publicly known, that when traders became in difficulties, they could come to this court upon their own petition, and have their estates fairly and equally divided amongst the creditors. Under all the circumstances of this case the Court must suspend the bankrupt's certificate for the space of two years. The object of the bankrupt law was two-fold; first, to obtain from the trader a full and true disclosure and discovery of his estate, with a view to its equal distribution by the Court amongst the creditors; and that being done, secondly, to give to the bankrupt so having disclosed all his estate and effects, ample indemnity for the past, and protection for the future. Now in this case the bankrupt sought the latter object alone, having altogether run counter to the first, and thereby he (the bankrupt) had left himself without a *locus standi* in this court, and therefore in justice ought to take nothing from it. However, I (continued the learned Commissioner), am only induced not to go to the extreme point of altogether withholding the certificate in this case by two or three considerations which have been pressed upon me by the advocate for the bankrupt. One in particular was, that at the time when this bankrupt first found himself in difficulties (November or December, 1845), the statute enabling traders to make themselves bankrupt had very recently passed, and its provisions had not become generally known, and probably were not so to this bankrupt. It appeared also in the earlier part of his conduct relative to his calling together his creditors, he had acted upon the advice of a very respectable solicitor, upon whom (though the Commissioners thought such advice was not the course the bankrupt ought to have taken under the circumstances), the bankrupt had good grounds for relying. There is another ground, viz. that in cases of this description, involving so deeply the future prospects of traders who failed, I am a single judge, sitting without the aid of a jury, and without any power of appeal from my decision. This ought to undergo revision by the Legislature. It is too great a weight of responsibility to throw upon any one mind the task of conclusively, and without the power of review, deciding upon the future fortunes and fate of a bankrupt trader. This consideration, I trust, will not make me shrink from performing a duty which I consider imperative, but it certainly makes me most anxious to keep clearly within, rather than exceed the limits of moderation, before I award against a bankrupt a judgment involving such penal consequences.

Suspended accordingly.

Irish Reports.

QUEEN'S BENCH.

May 30 and June 1 and 10.

REG. at the prosecution of ISAAC BUTT, Esq. Q.C. v. FREDERICK JACKSON, Gent. one of the Attorneys.

Privilege of counsel—Criminal information for sending a challenge to counsel for words used in addressing a jury for a prisoner.

The Court will, in certain cases, though making a rule absolute for a criminal information, impose at the same time upon the prosecutor the terms of not proceeding to file it without the further order of the Court.

In this case a conditional order was obtained on a former day (see 7 Law T. 237) for leave to file a criminal information against the defendant, one of the attorneys of the court, for provoking the prosecutor, who was one of her Majesty's counsel, to fight a duel with him. In the report of the proceedings on that occasion, the substance of the affidavit of the prosecutor, and the letters which passed between the parties, will be found, from which it will be seen that the transaction arose out of certain observations contained in a speech made by the prosecutor, as counsel for a Mrs. Scott, who had been indicted for bigamy, in which he animadverted very strongly upon the conduct of the defendant, who was the attorney for the prosecution.

The affidavit of the defendant denied most positively the charges made against him in the prosecutor's address to the jury, and stated that he had never made any improper proposition to Mrs. Scott, to induce her to make a dishonourable compromise with Mr. Scott, or had ever suggested to her that in case she supplied evidence which would enable Mr. Scott to procure a divorce, that she should be paid the sums mentioned by her in her answer in the Chancery cause pending between her and Mr. Scott. Defendant's affidavit further stated that Mr. Butt, in allusion to defendant's conduct in the management of the prosecution of Mrs. Scott, with reference to the following letter—

"Harcourt-street, July 29th, 1845.

"DEAR MADAM,—I wrote to Mr. Irwin on Saturday, stating the cause of some delay which arose, and proposing now to complete the arrangement; I dare say he has by this written to you, and I think you will approve of what I proposed. If you send me an account on foot of the alimony, I shall endeavour to get it forwarded to you. I do not know any thing of the 25l. retained by Mr. Irwin.

"I remain yours truly,

"FREDERICK JACKSON."

"To Mrs. Scott,

"Post-office, Ryde, Isle of Wight."

said, "That letter was written in July, 1845, and the circumstances were the same then as now; and he (meaning deponent) was preparing the prosecution then. Had he said he was draining the wells of London and the hotels of Derry, and looking for witnesses who would make their fortunes, that he sent a bellman throughout Ulster, he would have written the letter of an honest man." The affidavit further stated that Mr. Butt said, "If I had Mr. Jackson, whose house in Harcourt-street was an emporium for the concoction of perjury from the north, on that table, to get out the details of this prosecution, you would see perjury had done its work;" and that these observations were accompanied by most violent gestures towards deponent. The deponent, in his affidavit, in the fullest manner denied all these imputations, stating positively that he had never been in a gambling-house in his life, and had never, to his knowledge or belief, produced any witness at the said trial out of a hell in London, or from any other disreputable place, and that at the period of his writing the letter of the 29th of July, 1845, he had not, directly or indirectly, received any suggestion, instruction, or direction to institute proceedings against Mrs. Scott, or to make any inquiries on the subject; and that at that period he was not aware of the particulars of her character, or the exact circumstances of her marriage with John Bindon Scott; and that he believed that the jury gave credit to the witnesses produced for the prosecution, as to all the material facts stated by them, but that the evidence as to the religion of James Carter (to whom it was charged that Mrs. Scott had been married) was not conclusive on either side, and that the jury gave the prisoner the benefit of the doubt on that point, and acquitted her, and that Mr. Butt declined to examine deponent to explain the letter of the 29th of July, 1845, though asked so to do by counsel for the prosecution. Deponent further stated, that Mr. Snagg, one of Mrs. Scott's attorneys, had sent him a communication, through two gentlemen, Mr. Brereton and Mr. T. W. Bond, stating that he had not authorized Mr. Butt to make the attack on the deponent which he did, and that he (Snagg) also personally told deponent so, and that he knew nothing in his character to authorize such an attack; and that he gave Mr. Butt the letter of the 29th of July to read for two purposes only—to show that alimony was given to Mrs. Scott by the Consistorial Court, and that some offer was made for a compromise, of the nature of which he (Snagg) was ignorant, but that it was reasonable to throw out to the jury that she had refused it; that Mr. McGusty, Mr. Snagg's partner, had told him (deponent) that he knew nothing whatever of the attack made on him, as he did not take any active part in the proceedings. The defendant's affidavit detailed also several interviews between deponent and Mr. R. Murdock, a mutual friend, upon the subject of the observations made by Mr. Butt relative to the defendant, which passages it is unnecessary to set out, as they are fully detailed in the judgment of the Court. Several other affidavits were filed on behalf of the defendant, both to support the allegation of Mr. Snagg having disclaimed the language used by Mr. Butt, and for the purpose of negating the fact of any dishonourable compromise having been proposed to Mrs. Scott. There was also an affidavit of the gentleman who reported the speech in question, specifying the precise language applied by the prosecutor to the defendant.

The prosecutor filed a supplemental affidavit denying the accuracy of the report of his speech relied on by the defendant, but admitting that in his address to the jury, he had stated that Mr. Jackson's conduct was disgraceful to him as a man; and stating, with reference to his observations upon the defendant's letter of 29th July, that the following were nearly, if

not identically, the expressions he made use of; and that this was the letter which he proposed to the jury as that which Mr. Jackson ought to have written:—"MADAM,—You are the vilest of women; I am framing an indictment against you, founded on your crimes; I am about to place you in a felon's dock, and if the oaths and consciences of twelve men do not protect you, I will place you in a felon's cell. I have raked up from the hells of London that man who pretends to be your husband. I have sent a bellman through Ulster to ring for the perjury of a province to bear you down, and I have opened at my office, in Harecourt-street, a receipt of slander, where no scandal is too contemptible, thankfully to be received, and (as deponent best recollected) munificently paid for."

Hatchell, Q.C. (with whom was *Henn, Q.C.*) now shewed cause, and contended the rule ought to be discharged on the grounds that the prosecutor had, in his affidavits, omitted to disclose to the Court material facts; and that from the affidavits it appeared that he had disintegrated himself to the extraordinary interference of the Court by the course he had adopted.

Bennet, Q.C. and *Napier, Q.C.* appeared in support of the rule.

Henn, Q.C. replied.

JUDGMENT.

June 16.—*BLACKBURN, C.J.*—In this case of the Queen at the prosecution of Isaac Butt against Frederick Jackson, an application has been made by Mr. Butt, one of her Majesty's counsel, for leave to file a criminal bill against Mr. Jackson, who is an attorney of this court. The ground of the application is his having sent Mr. Butt two letters, one dated the 17th, and the other the 22nd of April, 1846, with the intention of provoking him to fight a duel; and also the publication of these and other letters in the newspapers of this city on the 23rd of April. That the tendency and intention of those letters were such as the prosecutor has imputed to them has not, indeed could not, be denied; and the duty of the Court would be as simple as it is imperative, if we had only to consider whether those letters could be made the subject of a criminal information; but the application is resisted by the defendant upon two grounds, and these have engaged the serious attention of the Court. The first ground is, that the prosecutor provoked him to send a hostile message; and the second is, that the prosecutor has not disclosed to the Court facts which it was his duty to have disclosed. The provocation alleged to have been given is the slander of the defendant's character in an address made by the prosecutor as counsel for Mrs. Scott, who was tried for bigamy at the Commission Court in the month of April last. In reply to this the prosecutor insists that all he said was warranted by his instructions as Mrs. Scott's counsel, and was spoken in the discharge of his professional duty. This is contradicted by the defendant, who contends that in the observations of which he complains the prosecutor exceeded his instructions, and that upon a review of the proceedings at the trial it appears that the imputations made against his character and conduct were not warranted by the facts of the case, and that they were therefore unjustifiable. On these grounds we are required by the prosecutor to decide that he had a right, as counsel for Mrs. Scott, to use the language of which the defendant complains, and on the other hand, the defendant requires us to decide that Mr. Butt had not a right to use such language. It is unquestionably true, as a general proposition, that a person appealing to the extraordinary jurisdiction of this court exposes his own conduct, in the transaction which he complains of, to examination and scrutiny, and the Court will inquire into the provocation which he may have given, and, as the result of that investigation, it may refuse to take the matter at his instance out of the ordinary course of the law. In doing so the Court does not decide that the law has not been violated. It merely leaves the violation to be dealt with by the ordinary tribunals. But the present is not one of those cases in which we have been particularly required to, and have acted upon such a rule, and have refused to grant a criminal information. In this case the prosecution arises from what the prosecutor, for the reasons which have been stated by him, insists was an act of duty, and done in the exercise of a right, which was essential to enable him to discharge that duty. Upon this point the parties are at issue, and require us to decide between them. This we cannot do; there is not, that I am aware of, any instance to be found in which the Court has been engaged in such an investigation as a preliminary to the exercising its authority to grant a criminal information. In fact we do not possess in this case, nor in any similar case, information or means of information upon which to act, and without the possession of which it would be rash, even if it were possible, to come to any conclusion. We cannot afford any remedy or any redress. To refuse to grant a criminal information in such a case would be neither. It would not protect Mr. Jackson, though ever so much aggrieved, from a criminal prosecution to which he is liable; and the danger of assuming such a power is obvious, for our opinion might not agree

with that of the tribunal to which this case may yet be properly submitted. For these reasons, it appears to me impossible that the exercise of the right insisted upon by the prosecutor, or indeed of any other right can be drawn within our jurisdiction by a person who, having sent a message challenging the prosecutor to fight a duel, attempts to excuse himself by a denial of the right of the party of whom he complains. Many cases may be put illustrating the soundness of this opinion. Take, for example, a case where a prosecution of this nature may have arisen out of an alleged libel by the prosecutor on the defendant, which, on the other side, is insisted to be a privileged communication, how could this Court try that question? Can there be a doubt that the proper course would be to let the case go to trial, to let it be tried in an action, if the defendant should think proper to bring one, and that in the meantime the law should be vindicated, which we can do without the risk of injustice to any party? I admit that cases may arise in which the acts of a prosecutor, out of which the transaction originates, might be stated by him to be done in the exercise of a right, but which might appear to the Court to be merely a pretext. But, declining as we do to determine whether the prosecutor in this case was right or wrong in his address to the jury at the trial, we cannot look upon his address as having been without some colour of right or justification; and if it were for no other reason than this, that it was delivered in the presence of two of the Judges of the land, and that they do not seem to have thought that it was incumbent on them to interfere, nor did the defendant make any complaint or appeal to them for redress. In confirmation of the objection of the Court to decide this matter, which it appears both parties require us to do, I shall remark, further, that it would be highly inexpedient for us to take on ourselves, incidentally, and for any peculiar purpose, such as that which now presents itself, the decision of a question of so much importance, and one connected with the general administration of justice; such a question must be tried by itself, and on its own merits; it cannot be mixed up with the consideration of a transaction in which it is sought to make a man responsible otherwise than to the laws of his country for his conduct, whether as an officer or as an advocate, in a court of justice. It belongs to every subject of this realm, in all courts of justice, to assert and defend his rights, and to protect his liberty and his life, by the free and untrammelled statement of every fact, and use of every argument and observation, that can legitimately, that is, according to the rules and privileges of the law, conduce to those important ends. Every man has this right, and the privilege of exercising it in his own person. He may also commit its exercise to counsel, who takes it as his delegate; but its nature and constitution are not altered by that delegation. It is still the same right, to be exercised in the same manner and for the same purposes, and subject to the same limitation and control, as it would be if the party were pleading his own case. This consideration will at once shew the fallacy of the argument, that instructions to counsel are the test by which we should try whether the line of duty has been passed or not. No instructions can justify observations which are not warranted by facts proved, or by facts which may be legally proved; and it is the duty of counsel to exercise their own judgment and experience, and discretion; and whatever may be the nature of their instructions, to exclude all observations which the case does not properly admit of. Subject to these judicious and necessary limits, this right, when duly exercised, and directed to its proper purpose, should not be impeded or controlled; for if it be, an injury is sustained, not by the advocate, but by the client; not by the client alone, but by the entire community, whose interests are inseparably connected with a right which is essential to the administration of justice. Admitting that, in the exercise of this right, abuses have occurred, and may occur, they must be made matter of legal complaint and redress; they must not be redressed by a violation of the law of the land. Declining is a practice criminal in the highest degree, and those who provoke it are guilty of an offence of great magnitude. Happily the spirit of the age unites in its condemnation with the authority of the law and the solemn mandates of religion; and this Court must be, as it always has been, prompt and determined to discountenance and suppress this senseless relic of barbarity. It has become our duty to consider the omission of material facts which has been imputed to the prosecutor. These charges of omission are two—the first is, that the original affidavit makes no mention of those passages in Mr. Butt's address which impute to the defendant the subornation or concoction of perjury. To this the prosecutor replies, that the letter of the 17th April (see 7 Law T. p. 297, ante) pointed to and confirmed the complaint of the defendant to that part of the address which reflected on the defendant's conduct in making the proposition, whatever it was, alluded to in his letter to Mrs. Scott dated the 29th July, 1845; and he further states that he did not use the phrases imputed to him, nor any others, with the intention of charging the defendant with the

concoction of perjury. Now, although I think the prosecutor has assigned a sufficient reason to excuse the omission with which he is charged in this particular, I cannot avoid expressing my deep regret that he should have used language of the character which he admits he did use, and which, if he did not intend to charge Mr. Jackson with the subornation of perjury, was unfortunately but too well calculated to make such an impression. The next objection relates to the omission of the matters which occurred between Mr. Jackson and Mr. Murdoch on Monday, the 20th of April; and it is necessary to examine very minutely the allegations made in the affidavits relative to this matter. The first affidavit of Mr. Butt details the delivery to him of the letter of the 17th April, and what occurred on Saturday the 16th April, when Mr. Butt declined to give any reply to the bearer of the letter, Captain Blackwood, and deferred his reply until another indictment then pending against Mrs. Scott was disposed of, and an appointment was made for Captain Blackwood to receive his answer at four o'clock on the following Monday, if the second trial should then be over, or if not, then as soon as it should be terminated. Mr. Butt's affidavit states that he consulted members of his own profession in the interval, who advised him that he was imperatively bound to decline giving an explanation in answer to the letter of Mr. Jackson; he then states that, Monday having arrived, Mrs. Scott was acquitted of the second indictment, and that on that day he saw Captain Blackwood in court, and followed him out, and appointed ten o'clock that evening for him to receive his answer. On that occasion Captain Blackwood said that, if any arrangement were suggested, he would not throw any obstacle in the way, and he shewed Mr. Butt a letter from Mr. Murdoch, written the day before, which letter, Mr. Butt said, that gentleman was not authorised by him to write, though he might have been authorised by Mr. Jackson, adding "You had better see Mr. Jackson on the subject." This is the order in which the transactions which had occurred up to that period are detailed by Mr. Butt; thence all that he has disclosed relative to Mr. Murdoch's interference; but it appears that a great deal occurred relative to this matter, of which he makes no mention whatever. It is absolutely necessary, in considering this part of the case, to state verbatim a part of Mr. Jackson's affidavit. Mr. Jackson states that the application to postpone the second indictment against Mrs. Scott was fixed for Monday, at two o'clock; "that early on the said day, and previous to this, deponent going to said Commission Court, deponent met Robert Murdoch, seq. one of the attorneys of this honourable Court, and on whose honourable character this deponent has the utmost reliance, and whom deponent believes to be a friend and well-wisher of this deponent, and whom deponent knew to be on the most intimate terms with the said Isaac Butt; and said Robert Murdoch introduced the subject of said speech so made by said Isaac Butt, and stated his regret that any observation harmful to deponent's feelings should have been made; and stated that he, the said Robert Murdoch, was certain the same had been used by said Isaac Butt in the heat and excitement of said speech, and expressed a wish that an explanation should take place on the subject, and stated that he would wish to speak to deponent again on the subject; said, that, in the afternoon of said day, this deponent was attending said court in Green-street, waiting for the calling on of the application to postpone the said second indictment, when said Robert Murdoch called this deponent out of court and requested deponent to walk with said Robert Murdoch in Green-street, and that he, Robert Murdoch, there informed deponent that he had been speaking to Isaac Butt on the subject, and then added that he considered a statement satisfactory to deponent's feelings would be made at the rising of the Court on that day; but that said Isaac Butt felt a difficulty in doing so in consequence of deponent's letter as delivered to him on the 16th day of April as aforesaid; and said Robert Murdoch then said to deponent, "As a personal favour, and a friend to you both, let that letter be considered withdrawn, or otherwise say that that Butt wishes to say would appear under menace;" and in consequence of the terms of friendship and intimacy which existed between said Robert Murdoch and said Isaac Butt, and also of his friendship with this deponent, this deponent felt, and still feels, that said Robert Murdoch was desirous of acting in a kind manner as well to deponent as to the said Isaac Butt, and accordingly deponent consented that said Robert Murdoch should inform said Isaac Butt that he might consider said letter withdrawn, which the said Robert Murdoch subsequently on that day informed deponent, and which deponent believes to be true; that said Robert Murdoch accordingly, immediately after deponent as aforesaid, communicated the same to the said Isaac Butt; and deponent expected that, at the rising of the Court on said day, such statement would have taken place; and deponent sent for said Richard Blackwood, and informed him of what had occurred; said that the said Court rose without any explanation being offered, and deponent was in consequence

apprehensive that some misapprehension existed in the mind of said Robert Murdock, and therefore at once proceeded to his office in College-green, Dublin, and informed him that no explanation had taken place; and that deponent, having placed himself in the hands of said Richard Blackwood as his friend, felt considerably embarrassed, especially as said Rich. Blackwood informed deponent he had an appointment that afternoon with said Isaac Butt. But said Robt. Murdock expressed his conviction that said statement had not been made by reason of the said second indictment not having been called on, and that same would be made next day. And in order to prevent deponent from in any manner being embarrassed by his interference, stated he would write, and accordingly did write the letter referred to in the affidavit of said Isaac Butt, as an authority for deponent to authorize said Richard Blackwood postponing his visit upon that day, which this deponent handed to said Richard Blackwood, and which letter of the said Robert Murdock is in the words and agrees following:—

“ 21, College-Green, Monday Evening.

“ Dear Sir,—Understanding you left a letter at Mr. Butt's, and that you purpose calling there at four o'clock this evening, I feel authorized, as the friend of the parties, to request your not doing so for the present till you hear further. Yours very truly,

“ ROBERT MURDOCK.

“ Richard Blackwood, Esq.”

It would from this appear, upon an attentive perusal of the affidavits, that four interviews took place between Mr. Murdock and Jackson on that Monday morning. In the first Murdock spoke himself, and without any communication with Mr. Butt. But it would appear, and indeed there can be no doubt, that before the second interview, and in the mean time, he had seen Mr. Butt. Then, when speaking to the defendant, he stated to him that he expected that a communication which would be satisfactory to his feelings would be made at the rising of the Court, but that Butt felt a difficulty in consequence of the letter delivered to him. So here was a mutual friend treating and communicating with both parties, stating the impediment, and the only one, that Mr. Butt felt to giving what Murdock conceived would be a satisfactory explanation to the defendant; and Murdock in this interview said, “ Let the letter of the 17th April be withdrawn, as otherwise any thing Butt says may be considered as done under menace.” It is plain that the prosecutor had felt and suggested this difficulty. Mr. Murdock says so; and it is fairly to be inferred that Jackson was induced to believe, and expected, that an explanation would follow; he, in consequence, told Mr. Murdock to tell Mr. Butt the letter might be considered as withdrawn; and in a subsequent interview between Murdock and the prosecutor, the latter is informed on that same Monday that the letter is withdrawn, and the defendant remains under the expectation that the explanation promised by Murdock, and for which he seems to have had the authority of the prosecutor, would have been given at the rising of the Court; I say the authority of Mr. Butt, who raised the difficulty which Mr. Murdock represented to flow from the letter of the 17th of April. It may be said that all which Murdock stated is assumed to be true. I do assume it to be so, and so have both the parties, and I am safe in so assuming, because in the prosecutor's supplemental affidavit the accuracy of the statement is not denied, and there is only a simple denial of Murdock's authority to write the letter to Captain Blackwood requiring him to delay calling at the prosecutor's at the time originally fixed. No explanation takes place, and Mr. Butt in his affidavit does not say what he stated or what he did when informed by Mr. Murdock that the letter of defendant was withdrawn. No reply is given to Mr. Jackson, who is left in ignorance of the intentions of the prosecutor, and who only knows that the promised explanation has not been given. The next day Mr. Butt sees Captain Blackwood in court, and calling him aside appoints eight o'clock the same evening to give a reply to the communication of which he had been previously the bearer. It is impossible to doubt that the prosecutor should have given some account and explanation of the transactions which occurred on the Monday, and of the part he took in them; and the omission is the more remarkable and open to objection, because he made a supplemental affidavit to Mr. Jackson's, who relied on those transactions. Had the case stood as it was at the close of Monday, I should doubt extremely that Mr. Butt could have been assisted by this Court. I think there was an omission (assuming it were to be only an error of judgment) which was not just to either his adversary or the Court, but still I am satisfied that it ought not to prevent us from interfering, and what took place on the Monday cannot palliate the subsequent conduct of the defendant, and for these reasons. When the treaty already mentioned for giving a satisfactory explanation to the defendant, and for the withdrawal of the letter of the 17th of April by Mr. Jackson had taken place, he should have terminated the authority of Capt. Blackwood, the retraction of it should have been immediate and unequivocal, and there the

matter should have terminated. He ought, by that circumstance, to have been awakened to a sense of the position he held; particularly when, on the following evening, the challenge was declined, and most properly and laudably declined, by Mr. Butt. But instead of this, he appears to have added to his former breach of duty, and made it more flagrant, for it is impossible not to reprobate strongly the letter of the 22nd of April, and the publication of the correspondence in the newspapers on the 23rd. To judge from Mr. Jackson's subsequent conduct, it was not his intention absolutely to retract his letter; he never put himself in a position to shew he was resolved to retract it, and it is impossible to give him credit for having absolutely relinquished his intention to demand satisfaction by means of his friend Capt. Blackwood. He would have had great reason to complain if, having withdrawn his first letter, that satisfaction should have been refused him which he was led to expect; but it is not with merely the persisting in his original design that Jackson stands charged. He has to answer for other distinct and substantive offenses. Mr. Butt's refusal to meet him placed him in a position in which he should have recollected himself, having been very much in the wrong originally. Having dwelt upon the transactions of Monday, I must add, that I cannot connect them so as to make me think it possible that they were of such a nature as to preclude the right of the prosecutor to complain of what subsequently took place. My opinion is, that although the Court might be greatly embarrassed if called upon to decide upon the state of things in the earlier stages of the proceeding, yet that the treaty of Monday ceased to have the same degree of importance by reason of subsequent events. Having intimated an intention, as an act of public justice, to make the order absolute; it is due to Mr. Jackson to state it as an opinion that there is not the slightest stain resting on his character in respect to his conduct of the prosecution of Mrs. Scott; and although it does not therefore follow that Mr. Butt's address was unjustifiable, we are forced to conclude and believe that the indulgence of such extreme language as the prosecutor made use of was well calculated to do a great and unmerited injury to Mr. Jackson. Having a due regard to this, and keeping in mind the obscurity in which the prosecutor allowed us to remain as to part of the transactions of Monday, and also keeping in mind that, although not investigated, the complaint of Mr. Jackson against Mr. Butt may have been just and well founded, our rule is, that the conditional order be made absolute, but that no further proceedings be taken without the further order of the Court. For an order of this kind, the research of my brother Crampton has been enabled to supply a precedent in the proceedings in the case of *Sturgeon v. Barlow*, decided in the year 1894.

Napier, Q.C. stated that he had been instructed, on the part of the prosecutor, to express his consent that the conditional order should be discharged without costs at either side. The reason that proposition had not been previously made was, that Mr. Butt having been obliged to bring the matter under the consideration of the Court, he thought it but fair to the defendant not to cut short a public discussion, but to give him the opportunity of having the matter fully discussed by his able counsel, to give him the benefit of the full and fair discussion which had been had; but the Lord Chief Justice having now pronounced the well-considered judgment of the Court, he was instructed to state that, although Mr. Butt believed that in the discharge of his duty he had acted correctly, yet that, on the cooler consideration of all the circumstances of the case, he did feel that a serious injury had been inflicted upon Mr. Jackson, and he deeply regretted having been made the unconscious instrument of conveying imputations against him. Mr. Butt entertained no personal feelings against the defendant, his sole object was the vindication of the law; and having given Mr. Jackson the fullest opportunity of clearing his character, Mr. Butt now expressed, through his counsel, his sincere regret for any injury which Mr. Jackson might have sustained; and the prosecutor, therefore, now, on his own part, sought that the conditional order should be discharged without costs.

BLACKBURN, C.J. (after conferring with the rest of the Court).—Nothing can be more honourable to Mr. Butt than the proposition which he has now made; the opinion which he has formed of the purity of Mr. Jackson's conduct entirely concurs with that which is entertained by the Court. The only question now is, shall the order be discharged, or the rule left as pronounced by the Court? The Court propose to let it remain pronounced, Mr. Butt having distinctly intimated that he will not apply for the further order of the Court.

THE LEGISLATOR.

Summary.

ANOTHER stagnant week. The brief results of the labours of the Session so far are con-

tained in the New Statutes that will be found in the present number and next week. This will be the smallest volume of statutes that any year has produced for half a century. So much the better, perhaps. A little rest will not be unwelcome to the Lawyers, after the labour annually imposed upon them of studying a thousand pages of new laws.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A SECOND TIME.
Friday, July 5.

Baths and Washhouses.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.
Friday, July 5.

Ramsay's Estate.

BILLS READ A SECOND TIME.
Friday, July 5.

Clark's Divorce

Ely and Huntingdon Railway, Bedford Extension
Sheffield and Lincolnshire Extension Railway.

Monday, July 6.

Fleming's Estate

Hill's Estate.

Tuesday, July 7.

Dublin, Belfast, and Coleraine Junction Railway, by order
Eastern Counties Railway, Wisbech to Spalding
Galway and Kilkenny Railway, by order
Howell's Charity Estate, by order
Ludlow Charity Estate.

BILLS READ A THIRD TIME AND PASSED.
Friday, July 5.

Dublin, Dundrum, and Enniskerry Railway

East Lancashire Railway

Hertford and Hatfield Railway

Midland Railway, Birmingham Extension

Rothsay Municipal and Police

Oxford, Worcester, and Wolverhampton Railway

Shrewsbury, Oswestry, and Chester Junction Railway, Crick-

heath and Wem Lines

Ditto, Extension and Deviations, ditto

Ditto, North Wales Mineral Railway Amalgamation

St. Alban's, Luton, and Dunstable Railway

Vidgessan's Estate

Videau's Estate

Wauchope's Estate

Midland Railway, Oakham Canal

London, Brighton, and Croydon Railways

Pow Downage.

Monday, July 6.

Belfast Improvement

Bristol and Birmingham Railway, Gloucester and Stone-

house Junction

Caledonian Railway, Castles Dediation

Chorley Waterworks

De Winton's Estate

Dundas's Estate

Exeter, Yeovil, and Dorchester Railway

Gravesend and Rochester Railway and Canal Sale and Fur-

chase

Great North of England Railway Purchase

Hell and Selby Railway Purchase

Kennington-lane, &c. Lighting, &c.

Kilmarnock Waterworks

Lancaster and Carlisle Railway

Leeds and Bradford Railway

Leeds, Dewsbury, and Manchester Railway

London and Birmingham Railway, Birmingham Canal Ar-

rangements

Ditto, Leamington Extension

London and South Western Railway, Basingstoke to Sali-

sbury

London, Salisbury, and Yeovil Junction Railway, Basing-

stoke to Yeovil

Manchester, Bolton, and Bury Canal Navigation and Rail-

way

Midland Great Western Railway of Ireland

Midland Railway, Birmingham and Gloucester Branches

Ditto, Leicester and Swannington Vesting

Newcastle and Darlington Junction Railway, &c. Purchase

Ditto, Pontefract, &c. Purchase

Sheffield New Streets

Shrewsbury and Herefordshire Railway

South Eastern, No. 2, Greenwich to Chatham

Tenby, Saundersfoot, and South Wales Railway

West Cornwall Railway.

Tuesday, July 7.

Bury Improvement, No. 2

Caledonian Railway, Glasgow, &c. Purchase

Cullen's Estate Bill

Dudley Canal and Birmingham Canal Amalgamation

Eastern Counties and Thames Junction Railway Branches

Newcastle-upon-Tyne and Carlisle Branch Railway

Richmond Railway, Kew Branch

Surrey Iron Railway Company Dissolving

Swansea Vale Railway

Thomson's Charity Estate Bill

Waterford Harbour, No. 2

Thursday, July 9.

Bristol and Birmingham and Midland Railways

Clonmel and Thurles Railway

Cockermouth and Workington Extension Railway

Cork, Blackrock, and Passage Railway

Croagh's Divorce Bill

Cromford Canal

Edinburgh and Glasgow Railways Junction

Furness Railway Extensions

Great Southern and Western Railway, Cork Extension

Huddersfield and Manchester Railway, Oldham Branch

Huddersfield and Manchester Amalgamation

Kilmarnock Junction Railway

Limerick, Ennis, and Killeale Railway

Mallow and Fermoy Railway

Midland Great Western Railway of Ireland
Mountmellick Junction Railway
Newport, Abergavenny, and Hereford Railway
Severn Navigation
Sheffield and Manchester Railway, &c. Amalgamation
Ditto Peak Forest and Macclesfield Canal Purchase
Shropshire Union Railways and Canal, Chester and Wolverhampton Line
Ditto, Shrewsbury to Stafford
South Devon Railway
Strathgairn and Breadalbane Railway
Taw Vale Railway Extension
Vale of Neath Railway
Wilt, Somerset, and Weymouth Railway

SESSIONAL PRINTED PAPERS.

Bills—Bankruptcy and Insolvency, amended
—Rateable Property, Ireland
—Glasgow and Belfast Union Railway, Petitions—Report
—Glasgow and Belfast Union Railway, Petitions—Minutes of Evidence
Greenwich-park, Railway—Plans
Bone-pounding—Paper
Designs Registration—Return
Army Prize Money—Account
East India—Accounts
Jurors, Tipperary—Return
Railway Terminal, Metropolis—Report of Commissioners
Quarantine Laws—Correspondence
Master Printers, Scotland—Report
Mersey Bridge, River Mersey—Paper
New Houses of Parliament, Warming and Ventilating—Report
Wearmouth Bridge—Abstract Return
Poor Law Guardians—Paper
Public General Acts—Cap. 18, 19, 20, 21, 22, 23, 24, and 25.
Aitcham Union—Paper
Barrow Workhouse—Paper
Burdens on Land—Lord Monteagle's Communication to the Board of Trade
New Zealand—Further Papers
Railway Bills Classification—Twenty-second Report of Committee
Colonial Office—Paper
Ware Union—Return.

NEW STATUTES

Of the Session 9 Victoria.

(Continued from page 289.)

[In this record of actual Legislation, only the statutes and parts of statutes of peculiar importance to the Profession are given *verbatim*. Of the rest, the title, or a brief analysis only, is preserved here.]

CAP. XXII.

An Act to amend the Laws relating to the Importation of Corn. (June 26, 1846.)

This is the famous Corn Bill. It has no professional interest.

CAP. XXIII.

An Act to alter certain Duties of Customs. (June 26, 1846.)

CAP. XXIV.

An Act for removing some defects in the Administration of Criminal Justice. (June 26, 1846.)

We present this Act entire.

1. *Power of criminal courts as to terms of transportation and imprisonment.*—Whereas in certain cases of felony the Court is not empowered by law to award sentence of transportation for a less period than the term of the offender's life or some long term of years, or sentence of imprisonment for any shorter term than two years; but it is desirable that some such offenders should suffer transportation or imprisonment for a shorter period respectively, at the discretion of the Court before which they are convicted: now be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in all cases where the Court is now by law empowered or required to award a sentence of transportation exceeding seven years, it shall be lawful for such Court, at its discretion, to award a sentence of transportation for a term of years not less than seven years, or to award such sentence of imprisonment for any period not exceeding two years, with or without hard labour, as shall to the Court in its discretion appear just under all the circumstances.

2. *Repeal of provision in 4 & 5 Wm. 4, c. 36, as to indictments before grand jury of Central Criminal Court.* Indictments may now be preferred before the said Court.—And whereas it is now required by law that no indictment shall be presented before the grand jury of the Central Criminal Court for certain offences unless the party prosecuting shall have first entered into recognizances to prosecute; be it enacted, that the said provision be and the same is hereby repealed; and that bills of indictment may be preferred by any person before the grand jury of the said Court for any offence alleged to be committed within the jurisdiction of the said Court in the same manner as may be done before any other grand jury.

3. *Writs for removing indictments from Central Criminal Court to specify county, &c. in which same shall be tried.*—And whereas doubts have been raised as to the proper place of trial, where indictments have been removed by writ of *certiorari* from the Central Criminal Court into the Court of Queen's Bench; be it enacted, that every writ of *certiorari* for removing an indictment from the said Central Criminal Court shall

specify the county or jurisdiction in which the same shall be tried; and a jury shall be summoned and the trial proceed in the same manner in all respects as if the indictment had been originally preferred in that county or jurisdiction.

4. *Certificate of recognizance filed to prosecute writ of error, to be made out by the Clerk of the Crown, Master or Assistant Master on the Crown side of the Court of Queen's Bench, and to be a sufficient warrant for defendant's discharge.*—And whereas, by an Act passed in the last session of Parliament, intitled "An Act to stay Execution of Judgment for Misdemeanors upon giving Bail in Error," it is (amongst other things) enacted, that the Clerk of the Crown in the Court of Queen's Bench shall, for the purposes in the said Act mentioned, make out and deliver certificates in writing under his hand of the due filing of record in the said court of any recognizance given to prosecute any writ of error in the manner in the said Act mentioned, and that any such certificate, when duly verified by affidavit, shall be a sufficient warrant to every gaoler or other person having the custody of such defendant or defendants in execution of such judgment to discharge him or them out of custody, and also to every person having in his possession the whole or any part of any fine levied in execution of any such judgment, to authorize and require the repayment thereof to the defendant or defendants: and whereas the making of such affidavit creates unnecessary expense and delay, and it is expedient to dispense with the same, and to make further provision for the making and delivery of such certificates; be it therefore enacted, That any such certificate as aforesaid under the hand either of the said Clerk of the Crown or of the Master or Assistant Master on the Crown side of the said Court, and sealed with the seal of the Crown Office in the said Court, shall be a sufficient warrant for the discharge of any such defendant or defendants, and for the repayment of any such fine.

CAP. XXV.

An Act for preventing malicious Injuries to Persons and Property by Fire, or by explosive or destructive Substances. (June 26, 1846.)

We present this statute entire:—

1. *Persons maliciously blowing up dwelling-houses, any one being therein, guilty of felony.*—Whereas the unlawful and malicious destruction of buildings, and attempts to injure persons and property, by fire, or by gunpowder and other explosive or destructive substances, is not adequately punishable by law: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that whoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroy, throw down, or damage the whole or any part of any dwelling-house, any person being therein, shall be guilty of felony.

2. *Blowing up buildings with intent to murder, guilty of felony.*—That whoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroy or damage any building with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of felony.

3. *Injuring persons by explosive substances, guilty of felony.*—That whoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burn, maim, disfigure, disable, or do any grievous bodily harm to any person, shall be guilty of felony.

4. *Attempting to do bodily injury by sending, &c. explosive or dangerous substances, guilty of felony.*—That whoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send or deliver to, or cause to be taken or received by, any person any explosive substance, or any other dangerous or noxious thing, or cast or throw at or upon or otherwise apply to any person any corrosive fluid or other destructive or explosive substance, with intent, in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, shall, although no bodily injury be effected, be guilty of felony.

5. *Punishment for felonies hereinbefore specified.*—That whoever shall be convicted of any felony hereinbefore mentioned shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of his natural life, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years.

6. *Punishment for persons attempting to blow up buildings, &c.*—That whoever shall unlawfully and maliciously place or throw in, into, upon, against, or near any building or vessel any gunpowder or other explosive substance with intent to do any bodily damage to any person, or to destroy or damage any building or vessel, or any machinery, working tools, fixtures, goods, or chattels, shall, whether or not any explosion take place, and whether or not any injury is effected to any person, or any damage to any building, vessel, machinery, working tools, fixtures,

goods, or chattels, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for any term not exceeding fifteen years, or to be imprisoned for any term not exceeding two years.

7. *Punishment for persons attempting to set fire to buildings.*—That whoever shall unlawfully and maliciously by any overt act attempt to set fire to any building, vessel, or mine, or to any stack or steer, or to any vegetable produce of such kind, and with such intent that if the offence were complete the offender would be guilty of felony, and liable to be transported beyond the seas for the term of his natural life, shall, although such building, vessel, mine, stack, steer, or vegetable produce be not actually set on fire, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for any term not exceeding fifteen years, or to be imprisoned for any term not exceeding two years.

8. *Punishment for persons manufacturing, &c. explosive substances for the purpose of committing offences against this Act.*—That whoever shall knowingly have in his possession, or make or manufacture, any gunpowder, explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument, or thing, with intent by means thereof to commit, or for the purpose of enabling any other person to commit, any offence against this Act, shall be guilty of a misdemeanor, and on conviction thereof shall be liable to be imprisoned for any term not exceeding two years.

9. *Male offenders under eighteen years of age convicted under this Act may be publicly or privately whipped.*—That every male person under the age of eighteen years who shall be convicted of any offence under this Act, or who shall be convicted of feloniously setting fire to any building, vessel or mine, or to any stack or steer, shall be liable, at the discretion of the Court before which he shall be convicted, in addition to any other sentence which may be passed upon him, to be publicly or privately whipped in such manner and as often, not exceeding thrice, as the Court shall direct.

10. *As to the punishment of accessories before and after the fact.*—That in the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact shall be punishable in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act shall, on conviction, be liable to be imprisoned for any term not exceeding two years.

11. *Persons convicted of offences for which imprisonment may be awarded, may be kept to hard labour, and in solitary confinement.*—That where any person shall be convicted of any offence punishable under this Act for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one calendar month at any one time, and not exceeding three calendar months in any one year, as to the Court in its discretion shall seem meet.

12. *Justices may issue warrants for searching any house, &c. in which any explosive substance is suspected to be made or kept. Persons executing such warrants to have same powers as given by 12 Geo. 3, c. 61.*—That any justice of the peace of any county, riding, division, liberty, borough, or place in which any gunpowder or other explosive, dangerous, or noxious substance is suspected to be made or kept for the purpose of being used in committing an offence under this Act, upon reasonable cause assigned upon oath by any person or persons, may issue a warrant or warrants under his hand and seal for searching in the daytime any house, shop, cellar, yard, or other place, or any vessel, in which such gunpowder, or other explosive, dangerous, or noxious substance is suspected to be made or kept for such purpose as aforesaid; and that every person acting in the execution of any such warrant shall have, for seizing, removing to proper places, and detaining all such gunpowder, explosive, dangerous, or noxious substances, found upon such search, which he shall have good cause to suspect to be intended to be used in committing an offence under this Act, and the barrels, packages, and cases in which the same shall be, the same powers which are given to persons searching for unlawful quantities of gunpowder under the warrant of a justice by an Act passed in the twelfth year of the reign of King George the Third, intitled "An Act to regulate the making, keeping, and carriage of gunpowder within Great Britain, and to repeal the laws heretofore made for any of those purposes."

13. *Any person loitering at night suspected of felony under this Act may be taken into custody without warrant.*—That it shall be lawful for any constable or peace officer to take into custody, without a warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to

suspect of having committed or being about to commit any felony under this Act, and to detain such person until he can be brought before a justice of the peace to be dealt with according to law.

14. *Not to be detained after noon of the following day.*—That no such person having been so apprehended shall be detained after noon of the following day without being brought before a justice of the peace.

15. *Offences under this Act not to be tried by justices, &c. at sessions.*—That neither the justices of the peace acting in and for any county, riding, division, or liberty, nor the recorder of any borough, shall at any session of the peace, or at any adjournment thereof, try any person or persons for any offence under this Act.

16. *Nothing in this Act to affect powers of 5 & 6 Wm. 4, c. 38, and 4 Geo. 4, c. 64.*—That nothing in this Act contained shall be construed to extend to the alteration or repeal of any of the powers, provisions, or regulations contained in an Act passed in the sixth year of the reign of his late Majesty, intitled "An Act for effecting greater Uniformity of Practice in the Government of the several Prisons in England and Wales, and for appointing Inspectors of Prisons in Great Britain," or in an Act passed in the fourth year of the reign of King George the Fourth, intitled "An Act for consolidating and amending the Laws relating to the building, repairing, and regulating of certain Gaols and Houses of Correction in England and Wales."

17. *As to offences committed within the Admiralty jurisdiction.*—That where any felony punishable under this Act shall be committed within the jurisdiction of the Admiralty of England or of Ireland, the same shall be dealt with, inquired of, tried, and determined in the same manner as any other felony committed within that jurisdiction.

18. *Not to extend to Scotland.*—That nothing in this Act contained shall extend to Scotland.

19. *Act may be amended, &c.*—That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

CAP. XXVI.

An Act for abolishing the Office of Superintendent of Convicts under Sentence of Transportation.
(July 3, 1846.)

By this statute so much of the 5 Geo. 4, c. 84, as gives the custody, &c. of male offenders out of England to the superintendent in England, &c. is repealed; and such powers are in future to be exercised by the governor of each colony. Upon the next vacancy, the office is to be abolished.

THE MAGISTRATE.

Summary.

THE great questions of the prevention of crime and the regulation of punishment; how a man may best be deterred from getting into gaol, and how saved from utter ruin when he gets out of it, are to be the social reforms which are the peculiar mission of the new Government. The addresses of most of the ministers allude to these problems, as requiring speedy solution; and when the extent of an evil is fully understood, it is not so difficult to find a remedy. We presume that the Poor Removal Bill will perish with its parents, and be no more heard of, during this Session at least. In the next it will probably re-appear in a different dress; another, yet the same.

FORM OF EXAMINATIONS.

Two cases decided during the last term are of such great practical importance that we must direct special attention to them. They relate to the form of caption and jurat in examinations.

The first was that of *Reg. v. The Inhabitants of Molesworth*, which was by some accident omitted by the reporters of the LAW TIMES, but which appears in the *New Sessions Cases*. In this case three questions were raised: 1st. Whether an order expressed to be on a complaint made "by Thomas George, on behalf of the churchwardens and overseers," was not bad for not shewing the authority of Thomas George to make such complaint for them? 2nd. Whether the certificate of chargeability rendered unnecessary any evidence on oath that the pauper was resident? 3rd. If the caption of the examinations should not shew that they and each of them had been taken on the complaint of the churchwardens and overseers? The Court held, as to the last point, that the caption of an examination ought to shew that it was so taken. In practice this is so rarely done that, according to

the above decision, very few orders could be supported, and therefore the utmost care should be taken in future, not merely to state the fact of the complaint in the caption, but to do so in terms which shall afford no opportunity for further quibbling. The Courts are evidently inclining to strictness in all matters of form relating to removals, and however absurd such objections may be in reason, they are law, and must be observed.

The other case is that of *Reg. v. Ratcliffe Caley*, reported 7 LAW T. 182. Here the first of the examinations correctly set out the caption, and shewed that it was taken before justices having jurisdiction. But the second and subsequent examinations were headed, "touching the above-named settlement, taken upon oath before us, the said justices," and contained no other allegation by which the jurisdiction of the justices was shewn. The Court of Queen's Bench held the order to be bad, expressly asserting the rule that each examination should be a complete and perfect document in itself. Mr. Justice WILLIAMS used these expressions: "The statute says, copies of the examinations shall be sent. What is this, when the examination can only be made good by a reference to the next preceding or one further removed?"

With all deference to the learned judge, there is an error in this. The statutes say a copy of the examination (not copies of the examinations, in the plural) shall be sent. Now this seems to us to constitute a very important distinction, to which the attention of the Court does not appear to have been drawn. The statute has treated all the examinations as one document, and if so, a general caption and a general jurat should be sufficient. "The cases," says WILLIAMS, J. "as to the margin of an order or an indictment have nothing to do with this, for there the margin is part of the same document." But the real question yet to be determined is, whether the whole of the examinations do not, under the language of the statute, constitute together one document; to wit, the examination required by the statute to be sent.

This, however, is a point which may be better raised upon some past order; as the rule is an easy one to follow, that each examination shall be "a complete and perfect document in itself," it will be observed in future by all who desire to keep on the safe side.

At a recent sessions the question has arisen whether a common caption and jurat to several examinations, references being had to both of the former, to each of the latter will be sufficient. Arguing from analogy, in the instance of affidavits where the practice is of daily occurrence, it may be supposed that such a form would be sufficient; but the language of the judges in the case to which attention has been invited, here throws sufficient doubt upon the practice to make it prudent not to continue it longer.

It is therefore recommended to practitioners in future to give to each examination a distinct caption and jurat as complete and perfect as if it was the only one.

F. W. C.

THE NEW CHIEF JUSTICE OF THE COMMON PLEAS.—The following address of Sir T. Wilde, on bidding adieu to his constituents at Worcester, is a part of the legal history of the time:—Sir Thomas Wilde returned thanks. If I could want any motive to the pure and honest discharge of the solemn duties which are likely soon to devolve upon me, I should have it in the feeling that the citizens of Worcester will ever look upon me as their late representative with a watchful eye, in hopes that the honour of the city will be maintained in the integrity upon the bench of their former member. I ascend that bench under somewhat peculiar circumstances; I am about to occupy the seat of a man whom I have revered and loved, and that man, a few hours ago, was alive. How soon I may be called to another scene no one can tell. The suddenness of the occasion that has withdrawn me from you, ought to take me to that bench which I am about to ascend with the feelings of deep responsibility, which should be entertained, indeed, by every one charged with the welfare of his fellow-creatures, and uncertain how soon he is to answer for the manner in which he has fulfilled that duty. I leave you therefore with this security for my conduct; I value the friendship of many of the gentlemen around me, and I trust, that though my political connection with you has ceased, my connection with you as a friend will never cease but with my life. I feel that you have acquired an interest in my character and my conduct; I trust I have regard enough for you to take care that no member of the constituency of Worcester may ever blush for that magistrate who formerly represented him. I cannot doubt that the

approbation of a city like Worcester must have had its share in inducing in the Government that confidence which has led them to advise her Majesty to confer upon me the high office I am now called to fill; I therefore feel that I owe you the allegiance of faithful and upright conduct. God send I may discharge it! To you I engage for my fidelity in that discharge of my duty which I trust will secure the approbation of my God when I shall be called hence by Him.

MUNICIPAL BOROUGH.—An abstract of the annual accounts of the municipal boroughs in England and Wales, presented to Parliament for the year ended the 31st of August last, has been printed in a document of forty-nine folio pages. There are 183 municipal boroughs in England and Wales, and in the document now before the House of Commons an abstract is given of the various accounts required in accordance with the 6th and 7th Wm. 4, cap. 104, and the 1st Vict. cap. 78. In the borough of Birmingham, it appears that the balance in the treasurer's hands at the end of last year was 4,901l. 17s. 7d.; the rents received in the year ended in August last amounted to 106l. 5s.; the borough rates to 29,315l. 14s. 6d.; from the treasury 846l. 10s. 11d. was received on account of prosecutions; the fines on convictions were 181l. 13s. 3d.; the sale of property, 198l. 5s. 6d.; which, with miscellaneous, 33l. 0s. 6d. made the receipts 35,583l. 7s. 3d. The expenditure is given on the other side of the account,—1,117l. for salaries and allowances; 365l. 8s. 0d. for rent, taxes, &c.; the pay of the police and constables in the year was 14,905l. 10s. 9d.; the administration of justice, prosecutions, &c. amounted to 1,803l. 19s. 6d.; the gaol maintenance, &c. of prisoners, 278l. 10s.; county expenses, 3,080l.; the coroner was paid 998l. 10s.; public works, repairs, &c. 200l. 15s.; municipal election, 68l. 3s.; printing, advertising, stationery, &c. 480l. 16s. 4d.; law expenses, 500l. Principal paid off, with interest, 1,393l. 18s. 8d.; and miscellaneous, 364l. 18s. 10d.; leaving a balance in the treasurer's hands of 10,025l. 17s. 1d. In the statement for Gravesend, 497l. 16s. 8d. appears to have been received in the year for tolls and dues; and at Great Yarmouth the tolls and dues were 4,111l. 11s. 1d.; and at Hull they were 8,284l. 4s. 9d.; whilst at Liverpool they were as much as 83,518l. 18s. 2d. In the borough of Liverpool, the receipts in the year, with a balance of 68,739l. 7s. 4d. in the treasurer's hands, were 646,112l. 12s. 8d.; of which 289,529l. 11s. 2d. was received on fines on grant and renewal of leases; and 4,345l. 4s. 11d. by fines on convictions. After various payments in the year, including 2,135l. 8s. 1d. given to charities, the balance in hand was, in August last, nearly 60,000l.

REMOVAL OF PAUPERS.—The House of Commons have directed the publication of a return, shewing the number of paupers removed to their places of settlement from the manufacturing towns of Lancashire, Yorkshire, and Cheshire, during the years 1841, 1842, and 1843. The total numbers of persons removed from 25 manufacturing towns enumerated in the return were—in 1841, 718 families, comprising 2,254 persons; in 1842, 1,393 families, comprising 3,922 persons; and in 1843, 1,745 families, comprising 5,166 persons. No returns had been received from Stockport, Bury, Blackburn, and Leeds (township). The return states that from Manchester there were removed, in 1842, 414 families, comprising 928 persons; in 1843, 587 families, comprising 1,553 persons. From Salford (including Pendlebury and Pendleton), in 1841, 156 families, comprising 419 persons; in 1842, 183 families, comprising 470 persons; in 1843, 229 families, comprising 614 persons. From Chorlton-upon-Medlock (including Ardwick and Hulme), in 1841, 32 families, comprising 90 persons; in 1842, 65 families, comprising 166 persons; in 1843, 66 families, comprising 186 persons.—*Manchester Guardian*.

POOR LAW GUARDIANS.—In a Parliamentary paper lately issued, two instances are given relative to the liabilities of poor law guardians acting as contractors, which instances may be of service as affording proof that indirect means are as opposed as direct means in the supply of articles to parishes. In the year 1840 the clerk of the Charterfield union discovered that an individual guardian was in the habit of supplying the contractor with part of the milk consumed in workhouses, which conduct in his opinion rendered him liable to the penalties imposed by the Act 65 Geo. 3, c. 137. The guardian kept a considerable number of cows and sold milk. His plea was that he was not bound to know that the milk he sold to the contractor was supplied to the parish. The secretary to the Poor Law Commissioners informed the clerk that the guardian was liable to the penalties prescribed, and cited the case *West and Andrews*, in 5th B. and A. page 398. In 1844 the keeper of a lunatic asylum applied to the commissioners to know whether the fact of having lunatic paupers in his asylum, for which he was paid quarterly by a union, prevented him from being a guardian of such union. The answer was, that if he was elected a guardian, and continued be concerned in the maintenance of the lunatics, he was liable to the penalties.

THE CONFESSION OF TAWELL, THE MURDERER, became the subject of another discussion amongst the magistrates of Bucks at their meeting on Thursday. The chaplain still refusing to give up the document, Dr. Lee gave notice that he would move the following resolution at the next Quarter Session:—"That the clerk be instructed to communicate to Mr. Cox the disapprobation of the magistrates with his conduct respecting the statement delivered by Mr. Tawell to Mr. Sherriff, the gaoler, and by Mr. Sherriff to the Rev. Mr. Cox, the chaplain of the gaol; that the magistrates fully expected that the Rev. Mr. Cox would have delivered up this statement to them in consequence of the request or desire to this effect, when made by a majority of the magistrates present at the Court of Quarter Sessions; and that they consider his conduct, in still withholding the document, has been uncourteous and even contumacious towards them."

The first prison in England adapted for the reception of prisoners before trial is in course of erection in Middlesex. It is called a "House of Detention."

THE LAWYER.

SUMMARY.

THIS has been a busy week among the Lawyers. No sooner were the legal appointments made by the new Ministry than they were disturbed by the sudden interposition of a higher power. It pleased the Almighty to call away, as it were, from the very judgment-seat he had filled with so much honour to himself and advantage to his country, Sir NICHOLAS TINDAL, the Chief Justice of the Common Pleas. The dignity was, according to usage, immediately offered to and accepted by Sir THOMAS WILDE, the Attorney-General of two days' standing. Of the deceased judge we have spoken elsewhere. Of his successor it may be said that a fitter man for the place could not be found. We have observed Sir THOMAS WILDE when occasionally sitting in aid of the judges during a heavy assize on the Western Circuit, and we remember our impression was that we had never seen a judge who played the part so well. His summings-up were masterly, and his addresses to the prisoners impressive beyond measure. The Common Pleas has sustained a great loss in Sir N. TINDAL; but the reputation of that Court, which has lately stood the highest in the esteem of the Profession, will not suffer by the exchange. Sir T. WILDE is a consummate lawyer, and brings to the judgment-seat that which is even more valuable than legal lore, an extensive acquaintance with men and the business of men, in which he has had a longer and larger experience than any lawyer of his age. By this unexpected exaltation Mr. JERVIS takes the high post of Attorney-General, thus within three days passing from a plain Q.C. to be Solicitor-General and Attorney-General; a rise whose rapidity is probably without precedent. It is said at the time we write, but not positively known, that Mr. ROMILLY will be the Solicitor-General, and it is known to be the Lord Chancellor's opinion that one of the Law Officers of the Crown ought to be taken from the Equity Bar.

The new Lord Chancellor has vigorously resumed his duties. He gives judgments with a rapidity to which the Court has been long a stranger. His wonderful mastery of Equity Law and Practice enables him to do this. His learning has not grown rusty during the period that it has been unused.

The Railways Dissolution Bill has become law, and is now in operation. We are surprised to see so few notices of intention to take advantage of its useful provisions for the amicable and inexpensive dissolution of abandoned railway schemes, and so to avoid the litigation now bringing ruin upon all parties.

PROMOTIONS, APPOINTMENTS, ETC.

Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been pleased to approve of Mr. Henry Horace Haynes, as Consul at Demerara for her Majesty the Queen of Portugal and the Algarves.

The Queen has been pleased to appoint Henry James Perry, esq. Barrister-at-Law, to be one of the Commissioners to act in the prosecution of Fiats of Bankruptcy in the country.

The Lord Chancellor has appointed Samuel Wilkinson, jun. of Walsall, Staffordshire, gent. to be a Master Extraordinary in the High Court of Chancery.

NEW QUEEN'S COUNSEL.—We understand the under-mentioned gentlemen have been appointed Queen's Counsel, and that they will take their seats within the bar at the first sitting of Lord Cottenham—namely, S. H. Walpole, esq. of 15 years' standing; J. Rolt, esq. of 11 years' standing; J. Bacon, esq. of 19 years' standing; and J. W. Willcock, esq. of 21 years' standing, of the Equity Bar.—*Globe*.

(From *Tuesday's Gazette*.)

At the Court at Buckingham Palace, the 6th day of July, 1846, present, the Queen's Most Excellent Majesty in Council.

Her Majesty in Council was pleased to declare the Most Hon. Henry Marquis of Lansdowne, Knight of the Most Noble Order of the Garter, Lord President of Her Majesty's Most Hon. Privy Council.

The Most Noble Francis Duke of Bedford, and the Right Hon. Charles Wood, were, by command of her Majesty, sworn of her Majesty's Most Hon. Privy Council.

Her Majesty in Council was pleased to deliver the Great Seal to the Right Hon. Charles Christopher Lord Cottenham, whereupon the oath of Lord High Chancellor of Great Britain was, by her Majesty's command, administered to his lordship.

Her Majesty has been pleased to deliver the custody of the Privy Seal to the Right Hon. Gilbert Earl of Minto.

Her Majesty has been pleased to appoint the Right Hon. Henry George Earl Grey, the Right Hon. Henry John Viscount Palmerston, and the Right Hon. Sir George Grey, Bart. to be three of Her Majesty's principal Secretaries of State.

Her Majesty has been pleased to appoint the Right Hon. Charles Wood, Chancellor and Under Treasurer of her Majesty's Exchequer.

Her Majesty has been pleased to declare the Right Hon. John William Earl of Bessborough, Lieutenant-General and General Governor of that part of the United Kingdom called Ireland.

Her Majesty has been pleased to appoint the Right Hon. George William Frederick Earl of Clarendon, President of the Committee of Council appointed for the consideration of all matters relating to trade and Foreign plantations.

Her Majesty has been pleased to deliver the custody of the seals of the duchy and county palatine of Lancaster to the Right Hon. Lord Campbell.

The Queen has been pleased to direct letters patent to be passed under the Great Seal of the United Kingdom of Great Britain and Ireland, constituting and appointing the Right Hon. John Russell (commonly called Lord John Russell); the Right Hon. Charles Wood; Hugh Fortescue, esq. (commonly called Viscount Ebrington); Denis O'Connor, esq. (commonly called the O'Connor Don); William Gibson Craig, esq.; and Henry Rich, esq. to be Commissioners for executing the offices of Treasurer of the Exchequer of Great Britain and Lord High Treasurer of Ireland.

The Queen has also been pleased to direct letters patent to be passed under the Great Seal of the United Kingdom of Great Britain and Ireland, granting to the Right Hon. Charles Wood the offices of Chancellor and Under Treasurer of Her Majesty's Exchequer.

Her Majesty has been pleased to constitute and appoint the Right Hon. Fox Maule to be her Majesty's Secretary at War.

The Queen has also been pleased to grant the office of Her Majesty's Advocate for Scotland to Andrew Rutherford, esq.

The Queen has also been pleased to grant the office of Solicitor-General for Scotland to Thomas Maitland, esq. Advocate.

MEMBERS RETURNED TO SERVE IN THIS PRESENT PARLIAMENT.

City of London.—The Right Honourable John Russell (commonly called Lord John Russell), First Lord of her Majesty's Treasury.

City of Worcester.—Sir Denis Le Marchant, Bart. in the room of Sir Thomas Wilde, Knt.

Town of Nottingham.—The Right Honourable Sir John Cam Hobhouse, Bart. of Chantry House, in the county of Wilts President of the Board of Control.

JUDICIAL APPOINTMENTS IN IRELAND.

Chief Baron Brady, whose admirable conduct as a judge has won for him the unqualified approbation of all parties, has received an official announcement of his appointment as Lord Chancellor of Ireland. This selection will give universal satisfaction.

Mr. Pigot, the former Whig Attorney-General, is to be the new Chief Baron of the Exchequer, a station for which he is eminently qualified.

Mr. Greene, who acts as Attorney-General, waited upon Mr. Serjeant Stock, the late member for Cashel, with an intimation that he had been selected as judge of assize, in consequence of the acceptance of the office of Lord Chancellor by Chief Baron Brady. Mr. Stock, who is first sergeant, left town for Ennis, accompanied by Mr. Edwin Battersby as his regester, to attend the Munster circuit.

One of the Dublin papers, opposed to the Government, gives the following account of the new law officers:—

"Chief Baron of the Exchequer.—Mr. Pigot is appointed.

"Attorney-General, Mr. Richard Moore.—Is a great lawyer, and, what is more and better, he is a great man. Possessing a mind of no ordinary mould, and talents of no common calibre, he is a reasoner of the first order,—clear, concise, and logical, and possesses considerable powers as an orator. Mr. Moore is an honour to his profession, and his acceptance of office reflects more credit on the Government than their nomination does upon him. In private life, or in the circle in which he moves, no man is held in higher or more deserved estimation than Mr. Moore, and amongst the members of his own profession he is respected and beloved. It is scarcely necessary for us to say that Mr. Moore is an anti-*Repealer*. Those who know him state that he is a man of great firmness of purpose, and that, should the peace of the country be threatened, or its security be put in jeopardy, he is not to be deterred or cajoled from the discharge of his duty.

UNDER SECRETARY FOR IRELAND.—It is stated that Mr. Redington, Q. C. is to be the new under secretary, and, of course, he is to vacate the representation of Dundalk.

SOLICITOR-GENERAL.—Mr. Monahan is appointed to this important office. He is a Roman Catholic; but that per se, as we have over and over again asserted, is amongst the party we represent no objection, even with a Conservative Government in power, to the honourable promotion of any loyal and respectable professor of that creed. We cannot call to mind any occasion upon which Mr. Monahan appeared as a political character. He is a decided opponent to repeal; and the immense practice he has at the Bar is evidence—and the best that can be adduced—of the estimation in which he is held by the suitors, the solicitors, and the public.

IRISH LAW APPOINTMENTS—THE CIRCUITS.

Chief Baron Brady was to have gone the Connaught circuit as one of the judges of assize; but his elevation to the Chancellorship rendered it necessary to fill his place on circuit.

Mr. Justice Ball, who had been nominated to the Leinster circuit, left town for Rosecommon, to take the place of the late Chief Baron.

Baron Lefroy, the senior judge on the Munster circuit, will take the place of Mr. Justice Ball on the Leinster circuit.

Mr. Serjeant Stock, has been appointed one of the judges of assize on the Munster circuit, in the place of Baron Lefroy.

In consequence of the necessity of Mr. Pigot's attendance in the House of Commons during the progress of Bills relating to this country, the patent of the right hon. gentleman as Chief Baron will not be completed for some time; but no possible inconvenience can result from the delay, as the Court will not resume its sittings until Michaelmas Term.

NEWFOUNDLAND.—GOVERNMENT APPOINTMENTS.—His Excellency the Governor has been pleased to appoint Charles Simms, esq. to be Master in Chancery of the Supreme Court of this island, in room of the Hon. Assistant Judge Lilly; Mr. Martin Shea, of Placentia, to be a notary public in the southern district of this island; and Mr. Francis Lynch, to be a member of the Catholic Board of Education at Harbour Grace, in the room of Mr. Thomas Power, resigned.

COURT PAPERS.

CHANCERY ORDER.—The following order relative to keeping and examining accounts of the property in the Court of Chancery has just been issued by command of the Lord Chancellor, viz.:—In the matter of the Suitors of the High Court of Chancery. Whereas it is proper that the accounts kept by the Accountant-General of this Court should be examined and compared in order to settle the same:—And whereas it will require considerable time to perfect such examination, and it is necessary that a time should be appointed for closing the books of accounts of the said Accountant-General for the purpose aforesaid: his lordship doth order that the books of the said Accountant-General be closed from and after Saturday, the 15th day of August next, to Thursday, the 29th day of October next, in order to adjust the accounts of the suitors with the books kept at the Bank, and that during that time no draft for any money, or certificate for any effects under the care and direction of this Court, be signed or delivered out by the said Accountant-General, or any clerks or agents.

ties transferred or accepted by him relating to the suitors of this Court; and that no purchase, sale, or transfer be made by the said Accountant-General unless the order, request, or registrar's certificate be left at his office on or before Friday, the 7th day of August next; and that no order for the payment of any money out of court which may be then in court be received at the Accountant-General's office after Monday, the 10th day of August next; and, to the end that the suitors may have notice hereof, and apply to the Court as there shall be occasion to have money paid to them out of the Bank, or stocks or annuities transferred to them before the said 15th day of August next, it is ordered that this order be affixed up in the several offices of this court.

LEGAL INTELLIGENCE.

SURREY QUARTER SESSIONS.

Guildford, July 3.

The Joint-Stock Company Registration Act. Important Decision.

SAMUEL HENRY POWELL, Appellant, v. A CONVICTION BY THE HON. MR. NORTON.

This was an appeal against a decision of Mr. Norton, at the Lambeth Police Court, convicting the appellant in the sum of 20l. for neglecting to register a railway speculation of which he had been the promoter.

W. Payne appeared in support of the conviction. Wallinger and Bagley were for the appellant.

Payne having taken some objections to the nature of the appeal, which were overruled by the Court,

Wallinger addressed the bench on behalf of the appellant. He said this was an appeal against a conviction under the Act of the 7th and 8th Victoria, commonly known as the Joint Stock Company Registration Act. The appellant was alleged to have been the promoter of a railway undertaking called the Grand Junction Great Western and South Western Junction Railway Company; and a penalty of 20l. had been inflicted upon him for not having registered the company in accordance with the provisions of the above Act of Parliament. He should contend that such an association did not come within the scope and meaning of that Act of Parliament; and he referred the Court to the second clause in that Act, which required that certain undertakings should be registered, but which expressly excepted all undertakings from the operation of the Act where they could not be carried into effect without the sanction of an Act of Parliament. Now, as it was perfectly clear that the undertaking in question could not be carried into effect without an Act of Parliament, he submitted that the clause imposing the penalty could not apply to the case, and that, therefore, the conviction must be quashed. The learned counsel then cited the decision given by Lord Denman in a recent case of *Lorton v. Hickman*, which, he said, entirely confirmed the view of the Act he begged to suggest to the bench, and he therefore called upon the magistrates to quash the conviction.

Bagley, on the same side, said it appeared to him the point was so clear that he should not trouble the Court further than to say that in another decision in the Court of Exchequer, in the case of *Smith v. Young*, the very same principle had been sanctioned by the Court.

Payne said there were cases in which the legality of the sale of scrip was the question at issue, and they did not apply to this case.

Wallinger said the point involved in these cases was, whether railways came within the scope of the Joint-Stock Company Registration Act, which was the question now at issue.

Payne, on behalf of the respondent, submitted that the Act of Parliament in question was clearly intended to apply to railways, as well as to any other description of joint-stock undertaking. He cited the 4th section of the Act in question, and said that, after enumerating various descriptions of works, it concluded by the words, "whether for executing any such work as aforesaid under the authority of the Act of Parliament, or for any other purpose, the same should be registered in accordance with the provisions of the Act." He reminded the Court that it was exceedingly important for the public to know who were the originators and promoters of these schemes; and in confirmation of his opinion, that they came within the scope of the Act of Parliament, he said he was in a condition to prove that almost up to that very day it had been the practice to register all such undertakings.

Wallinger admitted that this might have been done, but that did not alter the case. The question was a very nice one, and until the decision to which he had referred, there might have been some doubt upon the point, but it was now quite settled.

The Court, after a short consultation, quashed the conviction.

Wallinger applied for full costs.

The Court, however, said they did not think it was a case in which they could allow more than the usual amount of forty shillings.

COURT OF CHANCERY.—Lord Cottenham attended court on Thursday as Lord Chancellor. His lordship was accompanied by the Master of the Rolls, the Vice-Chancellor of England, the Vice-Chancellor Wigram, and Master Wingfield. The customary oaths were tendered to his lordship by the clerk of the crown, and when the usual declaration had been signed the other judges retired.

COURT OF COMMON PLEAS, Guildhall, Tuesday.

—Our usual report of legal proceedings, we deeply regret, must this day give place to the sad intelligence of the death, last night, of the learned, dignified, and most amiable personage who presided over this court. As Lord Chief Justice Sir N. C. Tindal has for the period of upwards of 16 years admirably discharged every judicial duty, and both in his official character, and by his private virtues, he never failed justly to possess unqualified public confidence and respect, as well as the highest esteem and most sincere attachment of that profession which he so conspicuously adorned. The mention of the unexpected and melancholy tidings this morning threw a gloom over every individual present in the court, and as the intelligence spread, it was everywhere received by the members of the bar with that sincere feeling of sorrow which flows from the touching and homely reflection, that (as each expressed it) the deceased had never been known to give intentional offence, or be discourteous, either by word or gesture, to those who had the honour to practise before him, whether he were the most experienced senior, or a junior of the humblest standing. Mr. Justice Coltman, soon after the appointed hour of sitting this morning, entered the court, and stated that in consequence of the melancholy event which had happened the present sittings could no longer be held. Mr. Serjeant Talfourd then rose and said—My lord, I may be permitted to say, on behalf of myself and the bar, that we feel we could not now properly discharge our duties after the great calamity which has just befallen us. And thus the sittings terminated.

FUNERAL OF THE LATE CHIEF JUSTICE.—The funeral will take place on Monday morning next, when the mortal remains will be removed from Bedford-square for interment in the family vault at Kensal-green Cemetery. The ceremony will in every respect accord with the rank in life of the deceased.

Mr. Walpole, Mr. Bacon, and Mr. Rolt took their places within the bar, as of her Majesty's counsel.

SIR THOMAS WILDE.—It is somewhat singular that at the time of the late election Sir Thomas Wilde should have received during his stay in Worcester his appointment as Attorney-General; and that yesterday, on the eve of his second election, he should have received his elevation to the dignity of Chief Justice of the Court of Common Pleas. We presume that he will attend our assizes next week, in his judicial capacity.—*Worcester Journal*, July 6.

THE TEMPLE.—On Monday a deputation, composed of some of the members of the Bench of Lincoln's Inn, the Middle Temple, and Gray's Inn, and several learned lords, &c. who are interested and have been active in forwarding and discussing the subject of an improved system of legal education for students qualifying themselves for the bar, assembled in the Parliament Chamber of the Inner Temple, to partake of a banquet given to the deputations and other heads of the above-mentioned Inns of court. Amongst the company were—Lord Lyndhurst, Lord Brougham, Lord Campbell, Sir Charles Wetherall, Sir H. Jenner Fust, Sir John Beckett, Sir George Rose, Sir F. Thesiger, the treasurer of Lincoln's Inn, the treasurer of the Inner Temple, the treasurer of the Middle Temple, Dr. Lushington, Hrace Twiss, esq. T. Starkie, esq. W. Whately, esq. R. C. Hildyard, esq. D. Dundas, esq. W. Lee, esq. G. M. Butt, esq. Russell Gurney, esq. T. Purvis, esq. R. Bethell, esq. and C. T. Swanston, esq. Q.C. and John Wyatt, esq. a barrister of 56 years' standing.

INNS OF COURT GRAND DINNER.—On Tuesday evening an entertainment was given in the Hall of the Middle Temple, by the benchers of that society, to a large body of the benchers of the societies of Lincoln's Inn, the Inner Temple, and Gray's Inn. Amongst the assemblage were most of the leading members of the bar, and several eminent individuals who have gone through home and foreign judicial service.

HOME CIRCUIT.—HERTFORD, Thursday.—The commission for the county of Herts was opened this morning, at eleven o'clock, by Mr. Baron Parke, and his lordship and Mr. Justice Coltman afterwards attended Divine service. At one o'clock both courts proceeded to business, Baron Parke presiding in the Civil Side, and Mr. Justice Coltman in the Crown Court. The cause list is heavy for this county, there being twenty-three entered, seven or eight of which are special jury cases. The criminal calendar is light, there being only fourteen prisoners. None of the cases disposed of during the day contained any feature of public interest.

THE NEW IRISH CHANCELLOR.—The *Dublin Evening Post* makes the following observations on the appointment of Chief Baron Brady to the Chancery:—"That this appointment will cause universal satisfaction there is, there can be no doubt.

First, because he is an Irishman. Every one, no matter what his politics—every barrister in the hall—will rejoice at this appointment, because, for the first time almost, it opens the highest honour of the profession to the Irish bar. Hitherto this great office was considered the heirloom of some successful Chancery pleader in England. Hereafter, whatever changes and chances may come, it will be the reward of native merit and learning. We confess, however, we rejoice in the elevation of the Lord Chief Baron on his own account. His ability as a judge, his great talent, his learning, his readiness, his impartiality,—these are the themes of every man's eulogy. We are the humble echoes of the public voice in this regard. But we honour him for his high principle, for the steadiness of his devotion to the public cause, and for his love of constitutional liberty. If we might add another topic without offence, we should say we rejoice at the elevation of this man because we know the kindness and cordiality of his nature, and that he is utterly above affectation of any kind. In the dignity to which he is raised sure we are that he will forget no friend; and, happily for Lord Chancellor Brady, he has no foes to conciliate; he never had one."

The Ecclesiastical Commissioners propose, under the authority of a recent Act of Parliament, to abolish all the peculiar and prebendal jurisdictions throughout the kingdom, and to merge them in the archidiaconal and diocesan jurisdiction in which they are locally situated.—*Globe*.

METROPOLITAN BUILDINGS ACT.—On and after the 1st of July, 1846, it will not be lawful to let separately for hire as a dwelling, nor to occupy or suffer to be occupied as such, any underground room or cellar of which the surface of the floor is more than 3 feet below the surface of the footway of the nearest street or alley, unless there be an area on one side 3 feet wide in every part, and six inches lower than the floor of such room or cellar, and at least 5 feet in length in front of the window, and open, or covered only with open iron gratings; the window opening must be 9 superficial feet in area, and filled with glazed sashes, 4½ feet being made to open for ventilation; the room or cellar must also be 7 feet at least in height from floor to ceiling, and have an open fireplace with a proper flue therefrom. For the future any person letting or suffering to be occupied as a separate dwelling any underground room or cellar, contrary to the provisions of this Act, will, on conviction before two justices of the peace, be liable to forfeit for every day during which such room or cellar shall have been occupied a sum not exceeding 20s. one half to go to the person who sues for the same, and the remainder to the poor of the parish in which such unlawfully occupied room or cellar is situated.

BANKRUPTCY AND INSOLVENCY.—The Bill introduced by Mr. Hawes to amend the law relating to bankruptcy and insolvency, has been printed as amended by the committee. Two clauses have been added. It is provided by one of the new clauses, that on the non-appearance of a trader summoned, or his not satisfying the Court that he has a good defence, the Court may require him to give an account of his stock in trade, and a bond for duly carrying on his trade and accounting for it at the end of fourteen days. Power is proposed to be given to the Court of Bankruptcy to withhold protection from arrest to bankrupts and insolvents, under the several Acts relating to them. There are now 37 clauses in the measure. Creditors who prove in bankruptcy or insolvency may be regarded as judgment creditors, and the provision for the purpose was inserted a long time before Lord Brougham brought forward his Bill, which has just been printed.

HIGH SHERIFFS, "SIXTY YEARS SINCE."—There is a tradition on the Oxford circuit that Judge Buller once met at the first assize town with a very unsophisticated sheriff, who bluntly demanded of his lordship, as he was stepping into his carriage, whether he was a *bona fide* judge (the worthy functionary made but one syllable of *judge*), as they had been so often fobbed off with sergeants in those parts? When satisfied on this important particular he took his seat aside of the judge. A grave severity on the countenance of Mr. Justice Buller occasioned some misgivings in the mind of the sheriff, who expressed his fear that he had done something wrong. "It is certainly," said his lordship, with a smile, "against etiquette on these occasions for the sheriff to take his seat fronting the horses, unless,"—he put his hand on the gentleman who was starting up—"unless invited by the judge, as I now invite you." Craddock tells a story of a learned predecessor's encounter with another sheriff, not unamusing. The world was then not so highly refined as at present. After the usual opening of common topics, such as the roads and the weather, the high sheriff began to feel himself a little more emboldened, and ventured to ask his lordship whether, at the last place, he had gone to see the elephant? The judge with great good humour, replied—"Why no, Mr. High Sheriff, I cannot say that I did, for a little difficulty occurred; we both came into the town in form, with the trumpet sounding before us, and there was a point of ceremony to be settled, which should visit first."

to be administered. This expense, we think, could not be objected to, when it is considered that it will ensure the perfect safety of the property.

We further recommend that private trustees and executors should be enabled, under proper limits, to relieve themselves from all future trouble and responsibility, upon passing their accounts, accounting for all property, and consenting to a transfer of the trust estates to the management of a commissioner. We also think that increased facilities should be given to *cestui que trusts* to remove improper trustees and executors, and to secure trust property from further danger and mismanagement.

GENERAL MEETING, JULY 1, 1846.

Mr. Commissioner FONBLANQUE in the Chair. The minutes of the last meeting (the 3rd of June last) were read and confirmed.

Mr. James Stewart gave notice that he would move on the 15th of July for "a Special Committee to consider the best means of extending the range of the Society's operations."

The report of the committee on the Law of Property on the following reference was presented:—"To consider whether, in connexion with a general register, the principle of insurance of titles might not be introduced." It was agreed that the report should be further considered at the next meeting.

Adjourned till Wednesday, the 15th inst. at half-past four o'clock precisely.

CORRESPONDENCE.

THE SOCIETY FOR THE AMENDMENT OF THE LAW.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The report of the "Society for the Amendment of the Law," printed in your paper of the 4th inst. is, to my humble comprehension, a development of that extraordinary state of things now existing in this country, viz. legislating out of Parliament. For what has Parliament now to do but to print, register, and publish the emanations of bodies of men who, whether for good or evil, erect themselves into *quasi legislative bodies*, and carry their results to the Houses of Parliament, to be passed into laws, whether the Government will or no? The Anti Corn-Law League was a pregnant example of this way of doing the business of the country; but at all events the League had the honesty and the decency to give all parties interested a fair trial, and were not sparing in time or argument to impart conviction to those who differed from them. In the short space of eighteen months, according to their report, the Society for the Amendment of the Law has arisen, a Minerva, armed in full proof, and absolute in sapience, arrogating to itself the wisdom of eighteen centuries, and propounding and carrying changes greater than in those eighteen centuries have been attempted. The self-gratulation, the undoubted confidence, the expression of universal good-will, and excellent intentions, interlarded in the document, are well calculated to mislead a general reader. The "passing of a bill through the House of Lords without a dissentient voice;" the "lawyers ourselves, considering the maintenance of the law in an honourable and prosperous state, beneficial not only to the lawyer but to his client," are *ad captandum* sentences which draw off attention from the railroad speed, and more than railroad rashness, with which this body rushes in *medias res*, cutting up the old plantations of the law, and putting in a few scanty shrubs, of which experience alone can determine the growth or value. I have before stated, and still assert it, that the Acts already carried by this body of men do not deserve the encomiums they bestow on them. For instance, the 7 & 8 Vict. c. 76, for simplifying the assurance of property, abolishes contingent remainders, and executory devises, and contains two clauses (*inter alia*) enabling executors, &c. of mortgagees to convey the legal estate instead of the heir, on payment of the mortgage, and to give receipts. The Act 8 & 9 Vict. c. 106, repeals this Act, and revives contingent remainders, but expunges the two clauses relating to mortgagees, which would have been practically beneficial, and would, without injuring the attorney, have benefited the client. If this is good and safe legislation, what may not be done to torture the law?

But, say these "lawyers ourselves," Should we hurt the profession? None are less trustworthy than such reformers. What sort of lawyers are they? Attorneys? No. The attorney is a *mutum et serile pecus*, only named to be laughed down, and made the stalking-horse of all-sided Committees, who, because they cannot invent other burthens on land, rake up the stale charge of the expenses of conveyancing. The Society shews you the way in which they will benefit the Profession. The Act for abolishing the Assignment of Terms has, according to their report, saved 200,000*l.* in one year. Now I readily grant that, if this measure is a general benefit, the extent of loss to the Profession (and no mean one is it) should not hinder its operation. But I deny that it is of so great a benefit, and I doubt much whether time will

not in many instances verify my denial. That improvement in this direction was impracticable, I do not say, but not the sort alluded to. It appears to them matter of congratulation that there was not a dissentient voice in the Lords to their Bills now before the House of Commons. Any candid reformer would regret that there was not. But who was to open his mouth to have it closed by such men as Lords Brougham and Campbell? What lord is there so bold and disinterested as to dare avow himself an opponent to such inspired Lycurguses? As you emphatically say, we have no one to speak for us, and so measures pass without one of the safeguards we are entitled to. I defy any one to shew how the Society proposed even to compensate the loss to the Profession. Length, they say, is not to be the criterion of remuneration, but they do not say what is. Oh, but say they, it will be no loss; it will be a gain. Increase of small conveyances! Mere words. Where is the land to come from? Have not great proprietors increased latterly; and is it likely they will parcel out their land? Is it not very doubtful that such parcelling out is desirable? Amongst the members of this very Society I think I could point out some who are of that opinion. Of much about the same value are all other promises of this nature. But unless the present Government think it right to check the speed of these gentlemen, the die is apparently cast. The Law Institution has basely betrayed the confidence of the Profession, and has shewn its aptitude to encourage jobs, instead of protecting its members. No one appears to reflect for a moment that our still complicated tenures—freehold, copyhold, leasehold, &c.—are not likely to yield to ultra-simple measures of reform, or that such measures may not eventually cause greater confusion still. No one seems to think it desirable to see what may be done to simplify the tenure of land, before simplifying its mode of transfer. This might clash with the interests of some members of the Society. Nor do I see that the grievances of the Profession are even alluded to as such. The shameful amount of fees, stamps, &c.—these do not call for the attention of the Society. The abolition or modification of the latter, and the charging fees on the consolidated fund, would relieve the Profession, and must not be thought of. No, the screw must be tightened. It is coolly proposed to consider "whether the machinery of the public funds cannot be applied to the transfer of real property." This comes at an auspicious moment; the moment when Mr. Richard Cobden has been ballotted a member of the Society. What must follow, but "Free trade in Law," and every man his own attorney? and when this consummation is brought about, it may be discovered that Lord Mansfield was right when he said that every such person had a fool for his client. I am, Sir, yours,

ONE, &c.

P.S.—Not *Puck*, as misprinted in your last number.

SELECTIONS FROM CORRESPONDENCE.

"A Devonshire Attorney" submits these remarks on "Short Conveyances":—

It appears to me marvellously strange that the Profession should be so apathetic respecting the impending changes, which must so seriously affect it. Is it spell-bound, and prepared to fall, an unresisting victim? or are all the leading members so engrossed by Railway business, that they can't spare time to think about "Short Conveyances." I, as a country attorney of small influence, have been week by week anxiously expecting your valuable columns would contain some definite propositions, emanating from some of your able correspondents, shewing what should be done, and how it should be done. Your article in the LAW TIMES of the 4th inst. really startles me. Is it indeed probable that the Bill will be passed without any countervailing clauses? Are the profits of the attorney to be seriously curtailed? and are conveyancers, land agents, surveyors, auctioneers, *et id genus omne*, to be allowed to share the poor remains? This is a very serious question, for it needs no conjuror to foretell that when there are statutory forms for all sorts of deeds, not only will the learned gentlemen above mentioned be quite sure that they are competent to the task of preparing them, but purchasers and mortgagees will also deem them competent. And now, Sir, if the Act passes, and this anticipated infringement of what ought to be our exclusive privileges is not prevented, what is to become of the country attorneys, whose practice is mainly conveyancing? A friend of mine says conveyances will be sold in stationers' shops at three-halfpence per dozen. Lest I should trespass on your space, I will say nothing about the Certificate Duty. Permit me to tender you my thanks for your endeavours to stir up the slumbering energies of the Profession. I have from the first been a subscriber to the LAW TIMES, and my sole motive for originally subscribing was, the anticipation that it would be a powerful organ to protect the interests of the Profession in those times of change which were then foreshadowed. It has been a watchful and judicious guardian. If the members of our Profession were

united, it would be amply and speedily illustrated that "union is strength." Let me entreat you to sound the alarm louder and louder still, until the lethargy under which the Profession as a body is now existing, be effectually dispelled, and that before it is too late. I do not feel myself competent to originate, but I shall be happy to follow, in any course calculated to sustain our rights. I can hardly tell you how absurdly extravagant Mr. Baxter's scale of costs appears.

A Correspondent inquires, "how a person who finds from the lists that there are unclaimed dividends, standing in his name, or his trustees', in the books of the Bank of England, is to proceed to ascertain the amount, and to recover the same."

Deaths-at-Law, Next of Kin, &c. DEPARTED.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent important errands, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount enclosed.]

175. HEIR-AT-LAW OF CHARLES LEWIS, of the parish of Trelawney, Cornwall, in the island of Jamaica (died 17th June, 1838), or their representatives.
176. HEIR, or HEIR-AT-LAW and NEXT OF KIN OF SALOME TURST, late of John-street, Tottenham-court-road, St. Pancras, Middlesex, spinster (died March, 1805), or their representatives.
177. FRANCIS SHARP, son of Francis Sharp, late of Grantham, Lincolnshire, gentleman, deceased. Something to advantage.
178. JOHN WHITE, formerly of Water-lane, City of London; breeches maker, nephew of George King, late of Willdon, Northamptonshire, gentleman, deceased, or Children of said J. White. Something to advantage.
179. NEXT OF KIN OF MARY WALL, formerly of Leicester-square, widow (died 1787), and of JAMES WALL, hatter, son of said Mary Wall, who in 1794 resided in Duke-street, Oxford-street. Something to advantage.
180. WILLIAM MANSFELD, who in or about the year 1822 resided in Tooley-street, in the Borough of Southwark. Something to his advantage.
181. PHILIP STEPHENSON, formerly of Liverpool, and afterwards a private in the 17th foot, and who was discharged at his own request at Sydney, New South Wales, on the 31st July, 1833. Something to advantage.
182. NEXT OF KIN OF THOMAS MOORE (died October, 1798), and who formerly resided at Plymouth, and NEXT OF KIN of testator's widow, ANN MOORE (died April 1890), or their representatives.
183. ANN, wife of JOHN NIVEN, formerly of High-street, Borough, victualler; SUSANNA, wife of CHARLES SHEPPARD, formerly of Philpot-lane, London; ANN, wife of ROBERT STEWARDSON, formerly of Aldermanbury, London, warehouseman; ELIZABETH, wife of JOSEPH STEWARDSON, formerly of the Borough, linen draper, or their representatives. Something to advantage.
184. JAMES CURRIE, son of the late James Currie Carlyle, esq. of Bridgekirk, city of Dumfries.
185. MR. JEROME DE LACROIX, formerly superior officer, and Mrs. VERNEUIL RABOIN, his wife. Something to advantage.
186. NEPHEWS and NIECES OF SAMUEL CROUCH, deceased, late of Battle, Sussex, yeoman (died March 1835); sons and daughters, or so reported, of his deceased brothers and sisters, viz. MARY HOGGINS, ETHEL WEAVER, WILLIAM CROUCH, JOHN CROUCH, THOMAS CROUCH, JAMES CROUCH, EDWARD CROUCH, SARAH LULHAM, STEPHEN CROUCH, and ANN BARKER.
187. HEIR-AT-LAW OF JOHN CLAYDON, late of Cambridge, coal merchant (died 11th of February, 1834).
188. NEXT OF KIN OF JOHN DAY, late of Barming, in the county of Kent, yeoman (died 8th November, 1832), or their representatives.
189. BENJAMIN COOKE GRIFFENHOOF, who in 1818 resided at 8, New Ormond-street.
(To be continued weekly.)

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

The complaint of the non-insertion of the case *Leprumatura*. The written judgments being reported verbatim, are obliged, after they are translated by the short-hand writer, to be sent to the law reporter, who has to work up the argument. Hence they never appear on the same week that they are delivered, and usually it takes three weeks to make them ready, especially with sessions and circuits engaging the time of the reporters.

W. R. is unavoidably deferred. The unique Sham Lawyer correspondent, from Hull, next week.

A. N.—We are unable to account for the omission of this case, and our reporters are out of town.

TABER v. NEWMAN.—The Act cited in the head-note to this case, in your last number, should have been 7 & 8 Geo. 4, cap. 20, sec. 20, instead of 7 & 8 Vict. cap. 20, &c. as therein stated.

NOTICE TO SUBSCRIBERS.

The volumes of the LAW TIMES, neatly, strongly, and uniformly bound, for 5s. 6d. each, with the name and address of the owner on the cover, 1s. extra, if sent to the office. If the numbers for binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

The numbers comprising the first volume of the VERULAM REPORTS of Real Property and Conveyancing Cases may also be transmitted for binding in like manner.

INDEX TO THE LAW.

The LAW DIGEST for the half-year ending Jan. 1 is now ready. It forms a complete Index to the Law decided during the half-year, and contains upwards of 2,000 cases. Price 5s. 6d. in a wrapper. Being stamped, it can be transmitted by post.

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N. B.—For Scale for Estate Advertisements, see JOURNAL OF PROPERTY.

THE LAW TIMES.

SATURDAY, JULY 11, 1846.

DEATH OF SIR NICHOLAS TINDAL.

It is with profound sorrow that we record the almost sudden death of one who was justly the pride of the Profession—Sir NICHOLAS TINDAL, the Chief Justice of the Common Pleas.

The details of his death—the story of his life—will be found in another place. But it would ill become a journal whose columns have been so largely adorned by the profound learning, the clear logical argument, and the simple but graceful language, of him who presided over the Common Pleas for so many years, with so much honour to himself and advantage to the community, to note the melancholy event in its legal history of the time, without adding its mite to the universal expression of genuine sorrow at the loss we have sustained.

Whatever the influence of party and sectarian feeling upon the good fame of all other men in office; however other institutions and their dignitaries are attacked in the indiscriminate rage of political warfare, it is a proud reflection that the Legal Tribunals of England have never found an enemy, and their judges no assailants. The fiercest democrat—the wildest lover of change—he who would dethrone the monarch, despoil the Church, and abolish the Peerage—never breathes a whisper against the Judges. They are the only persons who command the respect of all parties and sects and may boast that they have not an enemy. This is the result of the unblemished manner in which the Judges have discharged the functions of their high office. For generations not even a shadow of suspicion has dimmed the purity of their ermine. It would seem as if, when they ascended the judgment-seat, they were enabled to put away the passions and prejudices of human nature. Pre-eminently was this manifested in Sir NICHOLAS TINDAL.

A more perfect Judge never adorned the Bench. He united extensive legal knowledge with an extraordinary aptitude for applying it to the ever-varying circumstances of society. His patience was unbounded; no trouble was too great where it helped to a clearer view of the case under consideration; his courtesy to

the Bar was a model for the bearing of a Judge to the Counsel practising before him, especially in the kindness with which he would listen to a junior, and appear to overlook the embarrassed manner in attention to the matter; not a tone or gesture of impatience was there, but, on the contrary, an aspect of encouragement that inspired the timid.

And the same innate kindness of heart attended him in the performance of the painful duties of the Criminal Court. The poor prisoner looked in the face of this Judge, and instead of severity he saw pity, and where he had dreaded a stern foe he found a gentle friend. Sir NICHOLAS TINDAL believed that his duty was not punishment alone, but to see that the prisoner had all the protection which the law has provided; to secure conviction only where guilt was beyond reasonable doubt, and when that was fully established, his sentences were distinguished for considerate mildness; he looked at the motives to crime, measured the temptations, and the criminal and the spectators were assured that no more punishment was inflicted than the circumstances of the case demanded; and all felt that it was with pain and sorrow the sentence was pronounced.

With such a presiding Judge, it was the more to be lamented that the Court of Common Pleas should have been almost closed against the public. We are selfish enough to regret that we had not more frequent opportunities for hearing his lucid commentaries upon mercantile law. No long time will elapse before the Court he adorned must be thrown open to the whole Profession, and take its share of the general business of the country; and 'it adds to the regret that he who had ruled it so well should not have survived to conduct its first grappleings with the rush of business, which the quality of its Bench is sure to attract to it, as soon as its Bar shall be opened to the free competition of the entire Profession.

THE LATE ATTORNEY-GENERAL.

LET others worship the rising sun; be it ours to pay the homage due to the lustre of that which has departed.

Sir FREDERICK THESIGER retires with the undivided respect and esteem of all parties. Never was the office of Attorney-General filled by one who, in every particular, was so blameless. He reflected more of honour and dignity upon his office than it conferred upon him. Yet did it not lift him for a moment above himself. The first Law Officer of the Crown was as kind, as courteous, as affable as considerate to a junior, as unaffected, as ever he was when struggling onward to fame and fortune. Sir FREDERICK THESIGER retires with this proud and perhaps unparalleled boast, that during his term of office he has not once employed the extraordinary powers with which the law has armed him for any political offence. *Ex officio* in his hands have become rusty; may they not grow bright again in the hands of his successors.

TOUTING FOR BRIEFS.

THE police reports, some days since, contained a curious examination of a Jew who lurks about the Old Bailey and the police-offices, and who asserted that he made a livelihood by procuring briefs for barristers, for each of which he was allowed the liberal sum of half-a-crown. He named one of his pretended patrons.

After the much that is reported, and the more that is known, though not proved, of the "going-on" at the Old Bailey, and how business there is brought into particular channels, the Jew's confident assertion upon his oath did not take us by surprise, but we looked eagerly to see if it would be contradicted by the parties concerned. We were pleased to find that, on the following day, an emphatic and unreserved contradiction was given to the Jew's evidence. Three or four gentlemen indignantly denied the

charge, and protested that they had never before seen the fellow who made it.

What does such a gratuitous story-teller deserve?—a fellow who, for no purpose that can be conceived, thus deliberately swears to what so many gentlemen assert to be false?

No doubt can now exist in any mind as to the Jew being utterly unknown to the learned counsel who so indignantly repudiated his acquaintance.

But it would have been more satisfactory if their clerks had made a similar declaration. Usually, it is those naughty clerks that do such naughty things. They cannot understand the nice sense of professional honour that governs their masters. In their green-eyed simplicity they will sometimes get briefs from their friends, Christian as well as Jew, in a manner their masters never could or would sanction, if they knew it; *only they don't know!*

LEGAL EDUCATION.

MR. WYSE'S Committee is still pursuing its labours, and has been carrying its inquiries into every branch of the Profession. A great deal of interesting, useful, and curious information will be elicited upon a subject about which there has hitherto prevailed, both within and without the Profession, a remarkable ignorance. As soon as the report is printed, it will be made the subject of repeated review here. In the meanwhile, we recommend all who can help the researches of the Committee to forward their suggestions. They will receive whatever consideration their merits may deserve.

SHAM LAWYERS.

WE have before us some more of these performances.

A Mr. H. BALL, of Bodmin, advertises himself as a schoolmaster and law-stationer, with the following note:—

N.B. Wills made, debts collected, conveyances, mortgages, agreements, leases, bonds, bills, notes, and other securities, copied or engrossed.

Here is a neatly lithographed circular, which we copy, but suppressing the names of the writers, as, probably, they would be more pleased than annoyed to be advertised here. It is, perhaps, scarcely necessary to warn our readers against being entrapped by any such applications.

Gentlemen,—Having been led to the consideration of the necessity of establishing upon economical principles an office for the exclusive purpose of conducting the miscellaneous business of country solicitors, we respectfully beg to submit to you this circular.

It is obvious that the description of business alluded to, which is at present conducted by the agents in London, can be performed by any individual who has been at all accustomed to the general routine of a professional office in town; and it is with the view of saving what we conceive to be unnecessary expense to country gentlemen that we propose to commence this new undertaking.

The miscellaneous business will comprise everything which does not require the direct interference of a solicitor; such as all matters in connection with the Stamp Office, making up and passing residuary accounts, paying legacy duties, stamping deeds, &c.; searching for judgments, and all other searches of what nature soever; filing the acknowledgments of married women; registering and obtaining the execution of deeds; registering judgments; filing warrants of attorney; enrolling deeds and specifications; obtaining certificates of baptism and burial; all matters connected with the Prerogative Court (not requiring the interference of a proctor), the Bank, East India House, and such other public offices as may properly come under the cognizance of the proposed establishment.

The plan upon which we propose to proceed as regards remuneration will be one-third of the full fees as at present charged, but should we succeed in obtaining the patronage we are seeking, it is possible we may be able to reduce the expense to a much lower scale.

We beg further to add, that the business entrusted to us will be confided to persons immediately interested, and all transactions will, therefore, be carried on strictly upon private and confidential principles.

We shall be obliged by a reply at your early convenience, and, if favourable, we shall be happy to furnish you with our references.

NECROLOGY

OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

DEATH OF LORD CHIEF JUSTICE TINDAL.

(From the Times.)

THE earthly career of the late Lord Chief Justice of the Common Pleas has been terminated rather suddenly. About ten days ago he attended the hearing of an Irish appeal in the House of Lords—*Sheehy v. Lord Muskerry*. On leaving the house he complained of excessive heat, and appeared to be almost fainting. He was, within a few hours, seized with paralysis of the left leg, extending, as we understand, to the hipjoint; and, after the lapse of two or three days, his medical adviser recommended him to proceed to the seaside. Without delay he repaired to Folkestone, accompanied by his son, Captain Tindal; but there he unhappily experienced a renewal of his alarming malady. Several members of his family were summoned, though little more than in time to witness his dissolution. He expired on Monday evening at half-past 7 o'clock, to the inexpressible grief of his family and numerous friends, as well as to the great regret of the public at large—for he was one of the most popular as well as the most eminent judges that ever adorned the bench of justice.

Sir Nicolas Conyngham Tindal was in the 70th year of his age, having been born in 1776. There was, however, a general impression that his birth took place some years earlier than that day, for, though hale and vigorous, he seemed to be rather older than threescore-and-ten. It is also generally supposed that he was a native of Buckinghamshire; but of this there can be no doubt, that he is descended from an old Essex family, and that his father, Robert Tindal, who was a solicitor, resided for many years, if not the whole of his life, at Chelmsford, in Essex. There is a Mr. Tindal, brother to the late Chief Justice, who practises as a solicitor in Aylesbury, but we have every reason to believe that the subject of this notice was born at Chelmsford. After the usual course of school education, he entered at Trinity College, Cambridge, in the year 1795, and within four years of that period—in 1799—he took the degree of A.B. and that of A.M. in 1802. In the former year he was eighth wrangler and senior Chancellor's medallist. In the month of October, 1801, he was elected a fellow of his college, and held the fellowship for eight years. Immediately after taking his Master's degree, he became a student of Lincoln's-inn, by which society he was eventually called to the bar. His connexion with Lincoln's-inn probably gave rise to the common error that he had been a Chancery barrister; but, on the contrary, his practice was limited to the common law courts. Shortly after his admission to Lincoln's-inn, he entered upon practice, and with very considerable success, as a special pleader, and Lord Brougham stated that he had been among the number of his pupils. There can be no question that a young law student could hardly have chosen a safer guide, for a man more thoroughly learned than Mr. Tindal even then was, in every department of the law, could scarcely be found within the range of the profession; and he was especially celebrated for what is called "black letter learning." His high reputation brought him so many clients that at a very early age he thought it safe to go to the bar, and accordingly we find that he was called in Trinity Term, 1803. In the same year he married the youngest daughter of the late Captain Thomas Symonds, R.N. and, of course, resigned his fellowship. A numerous family were the issue of this marriage, but the wife of Sir Nicolas Tindal died many years ago. In the Court of King's Bench, and on the Northern Circuit, every year brought Mr. Tindal additional reputation as a lawyer, but very little fame as an advocate. He was never at a loss for a case; he could always expound a principle; he could give the history of any statute, and with great perspicuity set forth its provisions; he could argue any point, however apparently hopeless, and impeach the validity of any legal document, however apparently sound; but a knavish witness could elude his examination, and an apathetic jury were never warmed by his eloquence; yet he had what the profession calls a "capital business;" and a large income rewarded his learning, his industry, and his high reasoning faculties. The natural process by which lawyers seek advancement in their profession is to get into Parliament. Mr. Tindal, however, enjoyed a distinguished opportunity of appearing before one house of Parliament long before his election as a member of the other. A bill of pains and penalties was preferred against the Queen of George IV. and in one of the most extraordinary proceedings that our history records, Mr. Tindal was called upon to bear his part. He, conjointly with several others, was counsel for the Queen. How far his astuteness and knowledge rendered him an efficient assistant to her Majesty's Attorney-General was a matter not very apparent at that period. That he was capable of giving valuable hints to his more showy brethren, Lords Brougham and Denman, there can be no doubt, but his oratory was not of the order to neutralize the dazzling ingenuity of Copley

or to cope with the wily manoeuvres of a cloud of Italian witnesses. Hence, though he enjoyed the honour of being a Queen's advocate, he obtained with the public little additional reputation from his share in this extraordinary inquiry. We now follow him to the House of Commons, to which assembly in the year 1824 he was returned by the Wigton district of burghs; and here also we can say but little for his qualifications as a public speaker. His manner was cold, dry, and unimpassioned; his political and historical knowledge displayed itself to small advantage; it bore upon few questions, and not even upon those with much power. One would have expected that his talents and learning as a lawyer must have often enabled him to enlighten the House on legal difficulties, but yet he had not a popular mode of discussing even questions of law. Nevertheless, a better man for the office of Solicitor-General could not be found amongst the Tory lawyers in the month of September, 1826, when Sir C. Wetherell became Attorney-General, in consequence of the elevation of Sir John Copley, afterwards Lord Lyndhurst, to the Mastership of the Rolls. At this time Mr. Tindal became Sir Nicolas, but he still remained without any very material increase of professional fame, nor was he called upon during his tenure of office to assist in any important prosecution on behalf of the Crown. Sir J. Copley, who had represented the University of Cambridge, became Lord Chancellor in the year 1827, during the Canning Administration; thereupon a vacancy occurred in the representation of that constituency, and Sir Nicolas Tindal solicited its suffrages. Mr. William John Banks, though also a Tory, went down to Cambridge to oppose him; the result of the polling was 479 for Sir Nicolas Tindal, and 378 for Mr. Banks. He had been chosen for Harwich at the general election in 1826, but of course readily withdrew from that borough to enjoy the honour of representing his *alma mater*. Eventually, however, he became perfectly satisfied with two years' possession of this much envied distinction. Gout, irritability, and Sir Thomas Wilde, combined their united virulence to drive poor Lord Wynford almost beside himself. The chief seat in the Common Pleas, therefore, became vacant, and a prize within the grasp of the Solicitor-General. Sir Robert Peel represented Oxford, Sir Nicolas Tindal Cambridge; the one was leading minister in the lower House, and the other second law officer of the Crown; the one proposed Catholic emancipation, the other supported it; the one retained his place in the Cabinet and lost his seat for Oxford; the member for Cambridge gave up his seat for that university, but obtained a seat upon the bench; and in the month of June, 1829, became Chief Justice of the Common Pleas, which position he occupied during the long period of seventeen years; although, under the 6th of Geo. 4, cap. 83, he might, at the end of fifteen years, have claimed exoneration from the toils of that high station. Death, however, has at length deprived him of its honours and relieved him of its labours. Sir Thomas Wilde will soon occupy the situation which he filled on the bench, although few men are qualified to supply the place which he held in the public esteem. If he had any faults, he certainly possessed many most shining qualities as a judge. Gentlemen of the bar who practise in a given court may never be able to agree amongst each other, or with the public, respecting the merits of any judge who occupies a seat on the bench of that Court; still less can they be brought to anything like an admission that any judge at any time was ever wholly faultless. The public, however, are not remarkable for such nice fastidiousness; but, with less knowledge and far less fastidiousness, they pronounce an unqualified opinion, either to the great discredit or the infinite honour of the personage who may at the time have become the subject of their notice. As to the merits of Chief Justice Tindal the bar may be divided, but the public are unanimous. They look at his "summings-up" as among the most masterly exhibitions of judicial sagacity, and they regarded his calm, thoughtful, and tranquil inflexibility as the impersonation of British justice. They admired the vigour and promptitude with which he would cast the light of a clear and searching intellect upon some vast accumulation of minute facts, inferences, and expositions,—how he would track out a plain and palpable path amidst some labyrinth of contradictory evidences. The world viewed with admiration the manner in which he threw aside the sophistries and disentangled the forensic perplexities with which cases are sometimes enveloped,—how he dissipated the obscurities, lopped off the irrelevancies, curtailed the redundancies which had been imported into the cause by the weak or wily advocate, and finally how he reduced the real point in dispute to its strict and indisputable merits. Such was the impression that the character of Chief Justice Tindal made upon the community at large; and, whatever criticism his alleged eccentricities might occasionally provoke, among the members of the bar, all was forgotten in the intervals between one Term and another, while his imperturbable temper, the uniform amenity of his manner, his perfect independence of spirit, his high integrity, and great judicial abilities, were always present to the mind of every observer.

We extract the following eloquent and truthful eulogium from the *Daily News*—

The tidings of the death of Sir Nicolas Tindal, which so deeply shocked the court over which he had so long presided, and brought its sittings abruptly to a close, will be deeply felt by all who revere the pure administration of justice. Few judges who have died in our remembrance have left us so much to admire, and none so much to love. More distinguished, when an advocate, by the depth of his learning, and the cogency of his arguments, than by the brilliancy of his declamation; more adapted for the work of convincing the Court, than of persuading or dazzling a jury; he brought to the judgment-seat a mind more unruffled by passion, a nature less disturbed by the vehemence of advocacy, than eminent judges who have passed many years in the achievement of great *Nisi Prius* success have been able to preserve. In this aptitude for the judicial office, he resembled the late Lord Tenterden; like him, a pleader and a scholar; with less vigour, perhaps, of legal intellect, but with an amenity and sweetness of disposition which rendered authority charming, and which the late Chief Justice of the King's Bench did not care to cherish. Like Lord Tenterden, he was deeply grounded in the principles of commercial law, and felicitous in applying them to the varying aspects of busy life; and if he did not so largely expand our unwritten code by new application of its principles to the exigencies of the times, he illumined the doctrines established by others with the clearest exposition, and adorned them with unrivalled grace of style. The distinctness of his perceptions gave to the language of his judgments, when pronounced without more consideration than the press of the argument allowed, a precision and an elegance which even the long deliberation and jealous art of Lord Stowell could not improve. In mere correctness, Lord Tenterden's language might be equal to Tindal's; but it fell short in the happy selection of words, and in the pellucid beauty of arrangement, to which it was a luxury to listen.

In presiding over trials at *Nisi Prius*, Lord Chief Justice Tindal was distinguished by impartiality and patience. He was not in a hurry, even to be just. The strenuous labour with which he not only recorded the minutest details of verbal evidence, but transcribed all important passages of documents,—often preserving all the essence of a long correspondence on his notes,—proved his earnest anxiety to attain truth, and secure the means of revising his own possible errors. If in the performance of this great feature of his duty there was any failure, it arose from the want of moral indignation at discovered baseness. He was too rarely touched with noble anger. His gentle nature, shrinking from the infliction of pain, sometimes deprived the Profession of that salutary lesson which the denunciation of base endeavours to pervert justice has given, in the just rage of Ellenborough, in the sharp rebuke of Tenterden, and in the generous scorn of Cresswell. But this graceful timidity of disposition, while it weakened the collateral influence of those episodes in causes which develop the character of the parties who conduct them, rarely, if ever, prevented a correct conclusion on the direct issues for trial, and never interfered with the discharge of his duty in criminal causes. In hearing these—where the occasion for censure was not incidental, but involved in the very issue to be tried—he was "settled and bound up" to the work of justice, and allowed no weakness or misgiving to interfere between the criminal and his doom. Yet, in this character, no judge ever won more completely the reluctant praise of those whom he was compelled to punish. On the trials of Frost and his associates, and in those which followed the outbreaks in Staffordshire (although his political opinions and feelings were known to be directly opposite to those of all who favoured the accused; and although his sentences, when discretionary, were not marked by leniency when compared with those of other judges), the calm impressiveness of his manner—the patient attention which, even when wearied, never failed—the personal courtesy with which the human being, however perverted or debased, was regarded—the pitying tones and unaffected dignity with which judgment was pronounced—made all confess, that if justice had ever seemed more awful, it never had been more passionless and serene. It is too soon yet to call to mind in detail the charms of his conversation; the fine intellectual wit—the sparkling epigrammatic wisdom—the almost feminine delicacy of touch, with which all topics were handled. These were the traits which rendered the picture complete to the eyes of those privileged to inspect it closely and in happy hours. But the prominent features of his judicial character, which time need not soften and even death cannot make more sacred, are at this moment impressed on the heart of our country as those of one of the greatest and best of her judges.

ROBERT MAUGHAM RICHARDS, ESQ.

We have to record the decease of one of the most respected, if indeed not one of the most eminent members of the English bar—Robert Maugham

Richards, esq., whose name must be familiar to many of our readers. He expired on Thursday last at his residence in Whitehall-place, aged 53. The complaint which proved fatal to the learned gentleman was an affection of the spine of long standing. Symptoms first manifested themselves about four years since, when Mr. Richards was in the height of practice; and such were the apprehensions entertained of the result, that he adopted the advice of his medical attendants by retiring from the bar, resolving to spend the remainder of his days in comparative retirement, having previously, it is understood, amassed a handsome independence by his professional exertions during a period of nearly twenty-four years. For some time previous to the fatal attack he apparently enjoyed fair health; and although he abated in a great degree, if not wholly, from all professional duties, he nevertheless moved in another character—that of a philanthropist, and was an active supporter of many of our most beneficial charitable institutions. He was one of the coadjutors of his Royal Highness the Duke of Cambridge in the formation of the Governnesses' Benevolent Institution, and took a deep interest in its proceedings up to the last few days of his earthly career.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

LEACH.—The wife of Thomas Leach, esq. Barrister-at-Law, at 53, Russell-square, of a son, on the 8th inst.
MOORE.—The wife of Regnier W. Moore, esq. Barrister-at-Law, at No. 2, Charles-street, Westbourne-terrace, Hyde-park, of a son, on the 3rd inst.

MARRIAGES.

FAITHFULL, Mr. Edward Williams, solicitor, Winchester, to Mary Anne, daughter of the late Major-General Henry Faithfull, of the East India Company's Service, on the 7th inst. at Winchester.

CHANDLER, Allen, esq. of Gray's-Inn, Barrister-at-Law, to Maria, youngest daughter of the late Stratford Robinson, esq. of Jermyn-street, St. James's, on the 4th inst. at Putney.

DEATHS.

DENT, Shelley Lucy, second daughter of Mr. Dent, of Wolverhampton, Attorney-at-Law, on the 4th inst. aged three years and eight months.

DYSON, Elizabeth, second daughter of the late Mr. Thomas Dyson, solicitor, of 31, Bedford-row, at Devonshire-place, Brighton, on the 3rd inst.

TINDAL, the Right Hon. Sir Nicholas Conyngham, Knight, Lord Chief Justice of Her Majesty's Court of Common Pleas, at Folkestone, on the 6th inst. aged 69.

FRACOCK, Mr. William, Solicitor, late of Carlton-chambers, Regent-street, at Bezhill, near Hastings, on the 24th ult. aged 39.

RICHARDS, Robert Vaughan, esq. Queen's Counsel, on the 2nd inst.

THE CRITIC.

New Books.

Common Forms in Conveyancing, including Recitals. By CHARLES DAVIDSON, of the Middle Temple, Esq. Barrister-at-Law. London, 1846. Maxwell and Co.

COMMON FORMS are precisely those which the practitioner most wants, and never knows where to find. If a solicitor is called upon to prepare a difficult conveyance, he will be sure to find a precedent somewhere; but if something extremely simple is required, and his memory will not serve him as to the precise words usually employed, he hunts through his bulky tomes in a vain attempt to discover a guide. No book has condescended to embalm it in print, because it is so simple; being common, it is presumed to be known to everybody, and not unfrequently it happens that the man who is the most learned in law, and most prompt in a matter of profound law, is most perplexed about a common form.

It is to supply this defect that Mr. DAVIDSON has published this volume. It contains all the forms in ordinary use in conveyancing; indeed, all that a solicitor ought ever to use; for, if more difficult ones are demanded, the case is one in which it would be his duty to seek the aid of counsel.

The Law of Loan Societies. By JOHN GREENWOOD, M.A. Barrister-at-Law. Benning and Co. A Treatise on Annuities, with an Appendix, containing the Statutes on the subject. By CHARLES RANN KENNEDY, Esq. Barrister-at-Law. London: Benning and Co.

THE first of these pamphlets contains, in addition to the statute 3 & 4 Vict. c. 110, an introductory notice of loan societies, their objects and uses. The other is an essay on annuities, originally written for the Useful Knowledge Society, but now adapted for lawyers by the addition of the statutes. Both are copiously indexed.

JOURNAL OF PROPERTY.

Public Sales.

By Messrs. HOGGART and NORTON, at the Mart.
A freehold property, consisting of a family mansion, near the church at Clapham, Surrey, containing 1a. 10p., let at 136l. per annum, subject to a rent charge of 6l. per annum—2,400l.

5a. 3r. 11p. of freehold meadow land, adjoining the preceding lot—2,440l.

A freehold residence near the above, together with 4a. 3r. 13p. of land—2,400l.

By Messrs. SHUTTLEWORTH and BONS.
The absolute reversion to a moiety of 1,000l. East India Stock—510l.

The absolute reversion to one fourth part of 2,921l. 7s. 3d. Three-and-a-quarter per Cent. Bank Annuities, upon the decease of a lady in her 58th year—325l.

The absolute reversion to two-ninth parts of 1,500l. Three per Cent. Consols, upon the decease of a lady in the 49th year of her age—79l.

The dividends and annual income, which, during the life of a gentleman, who attained the age of 53 years on the 15th February, 1846, shall arise from so much Three per Cent. Consols as shall be purchased with the sum of 2,600l. sterling—500l.

The absolute reversion to one-fifth of 1,666l. 13s. 4d. Three per Cent. Reduced Annuities, on the death of a lady in her 61st year; also the contingent reversion to one-fourth of 250l. Three per Cent. Reduced Annuities, one-fourth of 333l. 6s. 8d. like annuities, and one-fourth of 304l. 9s. 4d. late Three-and-a-quarter per Cent. on the death of the said lady—125l.

A policy in the Equitable, for 1,000l. on a life aged 60—220l.

A contingent reversion to 449l. 19s. 10d. Three per Cent. Consols, after the decease of a lady in her 61st year; also a similar reversion to an eighth share of 6,860l. 13s. 4d. Three per Cent. Consols; also a policy for 500l. in the same office—500l.

By Mr. W. W. SIMPSON.

A freehold residence, No. 3, Upper Fitzroy-place, Kentish Town—sold for 500l.

The Russell Park estate was sold by private contract.

By Messrs. BROOKS and GREEN, at Garraway's.
A house No. 1, Anderson-street, King's-road, Chelsea; held for 96 years, at 10l. per annum; let at 45l.—430l.

A similar residence, No. 2; let at 47l.—395l.

A similar residence, No. 6—400l.

A ditto, No. 7—400l. A ditto, No. 8—395l.

A similar residence, No. 10—385l.

A ditto, No. 11—385l. A ditto, No. 12—400l.

A residence, No. 13—410l.

A ditto, No. 14—400l. A ditto, No. 15—400l.

A house, No. 9, Anderson-street, with business premises in Draycott-place; held for 96 years at a peppercorn—710l.

THE following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

For the first 70 words 5s.
For every succeeding 30 words . . . 1s.

THE MONEY MARKET.

	8d.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	95½	95½	96	96	96	96½
Three per Cents. Reduced	96	96	96	96	96	96½
New Three-and-a-quarter per Cts. . . .	96½	97½	97½	97	97	97½
Long Annuities	104	104	104	104	104	104½
Bank Stock	206	206	207	207	207½	208
India Stock	265½	264½	265½	265	265½	266½
India Bonds, prem.	27	26	26	25	25	25
Exchequer Bill, prem.	15	15	15	14	15	16

FOREIGN.

Spanish Five per Cents.	24½	24½	24½	24½	24½	24½
Spanish Three per Cents.	37½	37½	37½	36½	36½	36½
Russian	111½	111½	111	111½	112½	112½
Peruvian	38½	38½	38	37½	37½	37½
Portuguese	48	48	48	48	48	48
Mexican	29	29½	28	28	28	27½
Deferred	16½	16½	16½	16½	16½	16½
Dutch Two-and-a-Half per Cents.	59½	59½	60½	60½	60½	60
Four per Cents.	92½	92½	93	93	94	94½
Danish	88	88½	88½	88½	88½	87½
Colombian	17½	17½	17½	17½	17	17
Chilian	98	97	96	96	96	96
Buenos Ayres	39½	39½	40½	41½	41½	41
Brazilian	83	83	84	84	85	85
Belgian	96½	96½	96½	96	96½	96½

SALE OF THE WHITEKNIGHTS ESTATE.—This highly picturesque domain, formerly the seat of the late Duke of Marlborough, was submitted to public competition by Mr. F. Chinnock, on Thursday, at the Railway Hotel, Reading. The whole estate, including the well-known botanical and American gardens, and delightful wilderness, forming upwards of 284 acres, was first offered in one lot, with a view to retain its original features, but no sufficiently enterprising capitalist was met with. The property was then put up in sixty-four lots, and a spirited competition took place. This division will lead to the erection, by the several purchasers, of detached ornamental villa residences, which will prove an ornament to the adjacent town. The Wilderness, a charming

and romantic retreat, comprising thirty-six acres in extent, which was disposed of in one lot, will happily remain entire. Some portion of the land sold in lots realized from 150l. to 200l. per acre.

SALE OF FORD ABBEY.—On Thursday the sale by auction of the Ford Abbey estate took place at the Auction Mart, and excited considerable competition. It is situated in the Vale of the Aze, Dorsetshire, and consists of about 1,200 acres of rich land, with the park, and realized a rent approaching 2,000l. per annum. It was, about the year 1815, let for a few years to the celebrated Jeremy Bentham, during the temporary sojourn of the late proprietor on the continent. The abbey dates its origin as far back as the year 1136, the first year of King Stephen. The Courtneys were a long while patrons of the abbey, and about the year 1690 it came into the family of the Gwyns, in which it has continued. The timber, fixtures, and deer were to be taken at a valuation. The property was sold for 52,000l. and bought by a gentleman of the name of Gwyn.

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, June 29.

Aslett, W. grocer, final div. next week. Turquand, London.—Bond, W. H. ale merchant, div. next week. Turquand, London.—Sex, G. livery-stable keeper, last exam. passed.

Tuesday, June 30.

Adams, J. C. woollen warehouseman, div. next week. Johnson, London.—Armistead, M. milliner, last exam. passed.—Latham, S. M. banker, last exam. passed.—Mene, J. woolstapler, div. next week.—Oakley, T. farmer, div. next week. Johnson, London.—Sanderson, W. W. baker, div. next week. Whitmore, London.—Streeter, T. draper, div. next week. Johnson, London.—Thorn, A. oilman, last exam. Aug. 23.—Turner, H. cowkeeper, div. next week. Johnson, London.—Whalley, S. grocer, last exam. passed.

Thursday, July 2.

Clarkson, J. grocer, last exam. sine die.

Friday, July 3.

Beart, R. H. wine merchant, assignees, Aug. 3.—Burton, A. coal merchant, last exam. Aug. 22.—Cook, T. A. carrier, assignees, Aug. 7.—Darnborough, W. tailor, last exam. passed.—Davis, J. dentist, last exam. passed.—Fraser, R. S. gas-meter manufacturer, assignees, Aug. 1.—Fulter, E. S. baker, assignees, July 31.—Harper, J. commission agent, assignees, July 14.—Jury, J. builder, div. next week. Whitmore, London.—M'Donnell, W. printer, last exam. July 23.—Mitchell, W. furniture dealer, last exam. July 21.—Nelson, R. hotel keeper, last exam. passed.—Perry, J. grocer, last exam. Aug. 22.—Smith and Co. printers, assignees, July 6.

Saturday, July 4.

Bacon, J. E. leather factor, last exam. sine die.—Berry, J. draper, last exam. passed.—Dykes, E. S. basket maker, div. next week. Green, London.—Fritchett and Co. glove manufacturers, div. next week. Green, London.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Bennett, T. H. builder, second, 7d. Aarman, Bristol.—Denning, I. watch maker, first, 2s. 6d. Whitmore, London.—Docker, H. oilman, first, 4s. Turquand, London.—Emanuel and Co. goldsmiths, first, 6s. 6d. Groom, London.—Fordyce, W. bookseller, first, 2s. 9d. Wakley, Newcastle.—Gale, J. and Son, rope makers, 3s. 9d. to new proofs. Follett, London.—Gibson, J. furrier, first, 1s. 2d. Pott, Manchester.—Hawden, J. cotton spinner, second, 8d. and first and second, 3s. 3d. to new proofs. Fraser, Manchester.—Heaper, T. W. chymists, first, 10s. 11d. Whitmore, London.—Hutchinson, R. leather seller, 2d. Follett, London.—Jones, F. wine merchant, 1s. 6d. Follett, London.—Littlewood, J. hosier, 1s. 6d. Follett, London.—Maclean, M. cloth factor, first, 1s. 6d. Groom, London.—Parsons, brewer, second, 3d. Aarman, Bristol.—Thompson, B. innkeeper, 1s. 9d. Follett, London.—Watkins and Co. lead merchants, second, 7d. and first and second, 3s. 9d. to new proofs. Fraser, Manchester.—Welch, J. victualler, 3d. Follett, London.—Williams, W. victualler, 2d. Follett, London.

Insolvents' Estates.

Brigham, R. attorney, Stockley, 1s. 8d.—Kelsall, S. traveller, Stockport, 5s. 3d.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, July 3.

Fall, T. chemist, York, June 23. Trusts. W. Kirby, C. Robinson, and H. Robinson, wholesale druggists, York. Sol. Seymour, York.—White, W. general furnishing warehouseman, Newcastle-upon-Tyne, June 18. Trusts. F. G. Harding, looking-glass manufacturer, Fore-st. and J. Harrell, fender manufacturer, West Smithfield. Sol. Harle, Newcastle, and Smith, Wilmington-sq.—Whiteworth, O. S. hosier, Fleet-st. June 24. Trust. R. Andrews, warehouseman, Friday-st. Sol. Lawrence and Reed, Cheap-side.—Wright, J. W. G. gent. Liverpool, July 3, 1835. Trusts. W. Far, Playliffe, gent. near Newport, and J. Clarke, plumber, Poolton-cum-Sewcombe, July 29, at twelve, office of Forshaw and Co. Liverpool, to choose new trustees.

Gazette, July 7.

Acock, J. ropemaker, Wittoo, June 26. Trust. W. Gregory, esq. Winnington. Sol. Barker and Cheshire, Northwich.—Biggs, A. S. general shopkeeper, Colchester, June 27. Trusts. G. Marshall, grocer, and J. Kent, oilman, Colchester. Sol. Barnes, Colchester.—Hasted, W. coach-builder, Twickenham, June 18. Trusts. E. Payne and E. W.

Payne, coach lace manufacturers, Great Queen-st. Sols. Collins and Rigley, Crescent-place, Bridge-st.—*Muddock, H. G. and Rowland, F. T.* booters, Oxford-st. June 12. Trasts. W. Nevill, hostler, Maiden-lane, and R. Andrews, warehouseman, Friday-st. Sol. Sole, Aldermanbury.—*Stanton, J. Brown, T. Newton, T. and Swift, J.* glass bottle manufacturers, Manchester, June 30. Trasts. W. H. Barrow, agent, J. B. Milner, iron merchant, and T. Roberts, timber merchant, Manchester. Sols. Taylor and Andrews, Bolton-le-Moors.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, July 3.
DAVIS, JOHN, miller, and maltster, Broadway, Worcester, and provision dealer, Heaton Norris, Lancaster, July 14, at twelve, August 7, at eleven, Birmingham, Com. Balguy, Christie, off. ass.; Chatham, Stockport, and Mottram and Knowles, Birmingham, sols. Date of fiat, June 26. Bankrupt's own petition.
DEWY, JAMES, cloth merchant, Huddersfield, July 14 and August 4, at eleven, Leeds, Com. West; Young, off. ass.; Sudlow and Co. Chancery-lane, and Floyd, Huddersfield, sols. Date of fiat, July 1. Bankrupt's own petition.
GOODALE, MICHAEL, builder, Hornsey New-road, Middlesex, July 14, at eleven, August 14, at one, Basinghall-st. Com. Fane; Whitmore, off. ass.; Keighley, Basinghall-st. sol. Date of fiat, June 30. G. Flowers, brick-maker, Queen's-road, Holloway, pet. cr.
HOLL, ALFRED SAMUEL, grocer, Norwich, July 14, at half-past twelve, August 22, at twelve, Basinghall-st. Com. Holroyd; Groom, off. ass.; Abbott and Wheatley, Rolls-yard, and Miller and Son, Norwich, sols. Date of fiat, June 27. Bankrupt's own petition.
IRVINE, JAMES, ironmonger, Liverpool, July 9 and August 11, at twelve, Liverpool, Com. Ludlow; Turner, off. ass.; Norris and Co. London, and Thompson, Liverpool, sols. Date of fiat, June 11. Bankrupt's own petition.
LORD, JOSEPH, tanner and leather currier, and boot and shoemaker, Sheffield, July 17 and August 7, at eleven, Sheffield, Com. West; Freeman, off. ass.; Nixon, Clifford's-lane, and Binney, Sheffield, sols. Date of fiat, June 27. Bankrupt's own petition.
BOUSE, WILLIAM, bread and biscuit baker, late of 6, Neptune-st. Rotherhithe, July 14 and Aug. 18, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Oliver, Old Jewry, sol. Date of fiat, July 1. T. Bladgen, corn dealer, Goswell-rd. pet. cr.
SENIOR, JOHN, common brewer, Salford, Lancashire, July 15 and Aug. 7, at eleven, Manchester, Hobson, off. ass.; Gregory and Co. Bedford-row, and Clay and Co. Manchester, sols. Date of fiat, June 29. Bankrupt's own petition.
WOOD, WILTON, flat rope and patent hemp band manufacturer, Liverpool, July 15 and Aug. 11, at eleven, Liverpool, Com. Ludlow; Bird, off. ass.; Norris and Co. Bartlett's-bldg. and Bell, Liverpool, sols. Date of fiat, June 29. Bankrupt's own petition.

Gazette, July 7.

BAKER, ROBERT, farmer and cattle and sheep dealer, Christchurch, Monmouthshire, July 31, at twelve, Aug. 29, at eleven, Bristol, Com. Stephen; Acraman, off. ass.; Jones and Son, Bristol, sols. Date of fiat, July 1. Bankrupt's own petition.
BARTON, JOHN, stone mason and builder, Birkenhead, Cheshire, July 17 and Aug. 11, at eleven, Liverpool, Com. Ludlow; Turner, off. ass.; Marples and Co. Frederick's-pl. and Greene, Liverpool, sols. Date of fiat, July 2. Bankrupt's own petition.
BEILBY, THOMAS, and KAMBERY, WILLIAM, flax and tow spinners, Leeds, July 21 and Aug. 11, at eleven, Leeds, Com. Burge; Hope, off. ass.; Williamson and Co. Gray's-lane, and Carol, Leeds, sols. Date of fiat, June 23. H. Ludolf, wool merchant, Leeds, pet. cr.
BURY, GEORGE, surgeon, druggist, and apothecary, Handsworth, Staffordshire, July 9 and Aug. 8, at twelve, Birmingham, Com. Daniel; Bittleston, off. ass.; Mottram and Knowles, Birmingham, and Smith and Co. Bedford-row, sols. Date of fiat, June 25. Bankrupt's own petition.
FARRER, JOHN, cabinet manufacturer, No. 66, Curtain-rd. Shoreditch, July 14, at eleven, and Aug. 22, at two, Basinghall-st. Com. Holroyd; Groom, off. ass.; Taylor, Moorgate-st. sol. Date of fiat, July 3. Bankrupt's own petition.

GRIBSON, WILLIAM, dealer in glass and china, Leeds, July 31 and Aug. 11, at eleven, Leeds, Com. Burge; Hope, off. ass.; Few and Co. Henrietta-st. and Messrs. Upton, Leeds, sols. Date of fiat, July 1. R. Waite and T. Wardle, sharebrokers, Leeds, pet. crs.
GRIFFITHS, SAMUEL, wholesale druggists, Wolverhampton, July 17 and Aug. 14, at ten, Birmingham, Com. Balguy; Valpy, off. ass.; Brown, Bilston, sol. Date of fiat, June 28. T. H. Pemberton, iron master, Sedgley, pet. cr.
HORNBY, GEORGE, builder, Leebury, Northumberland-shire, July 13, at twelve, and Aug. 21, at one, Newcastle, Com. Ellison; Wakley, off. ass.; Bennett and Co. Scott's-yard, sols. Date of fiat, July 1. Bankrupt's own petition.

JOY, WILLIAM, plumber and glazier, Tonbridge, Kent, July 17, at one, and Aug. 30, at half-past eleven, Basinghall-st. Com. Fane; Almagor, off. ass.; Stanning, Long-lane, and Stanning and Carnell, Tonbridge, sols. Date of fiat, July 6. Bankrupt's own petition.
KENT, BENJAMIN, out of business, Roeherville, Kent, July 14 and Aug. 14, at two, Basinghall-st. Com. Fane; Whitmore, off. ass.; Badley, Gray's-lane-square, sol. Date of fiat, June 6. Bankrupt's own petition.

KINGCOTE, ROBERT ARTHUR FITZARDINGS, merchant, Nicholas-lane, Lombard-st. July 15, at eleven, and Aug. 21, at twelve, Basinghall-st. Com. Shepherd; Graham, off. ass.; Beddome and Weir, Nicholas-lane, sols. Date of fiat, June 6. Bankrupt's own petition.
KIRK, WHITLEY, stock and share broker, Salford, July 18 and Aug. 7, at eleven, Manchester; Hobson, off. ass.; Abbott, Charlotte-st. and Atkinson and Co. Manchester, sols. Date of fiat, July 1. Bankrupt's own petition.

REED, ALFRED, and POWELL, SAMUEL JOHN, ironmongers, Tottenham-court-road, July 14, at one, and Aug. 20, at twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Barton, Wolsingham-place, Kennington-road, sol. Date of fiat, July 6. Bankrupt's own petition.
SORBY, JAMES, scrivener, lead merchant, and smelter of lead ore, Sheffield, July 24 and Aug. 7, at eleven, Leeds;

Com. West; Freeman, off. ass.; Walter and Pemberton, Symond's-lane, and Wake, Sheffield, sols. Date of fiat, June 27. Bankrupt's own petition.

SUDLOW, WILLIAM, warehousekeeper and wharfinger, Liverpool, July 18 and Aug. 11, at eleven, Liverpool; Com. Ludlow; Bird, off. ass.; Gregory and Co. Bedford-row, and Green, Liverpool, sols. Date of fiat, June 30. Bankrupt's own petition.

WARD, JOSEPH, worsted stuff manufacturer, Clayton heights, Bradford, York, July 20 and Aug. 11, at eleven, Leeds; Com. West; Young, off. ass.; Gregory and Co., Bedford-row, Wavell, Halifax, and Courtenay, Leeds, sols. Date of fiat, June 30. T. Mills, cotton-warp maker, Halifax, pet. cr.

WOODTHORPE, HENRY, grocer, Aveley, Essex, July 17, at twelve, and Aug. 21, at eleven, Basinghall-st. Com. Shepherd; Targuand, off. ass.; Catlin, Ely-place, sol. Date of fiat, July 1. A. Grymer, cheesemonger, High-st. Whitechapel, pet. cr.

Meetings at Basinghall-street.

Gazette, July 3.

Elkington, H. chemist, Maids-hill, July 14, at half-past twelve (adj. June 26), last exam.—*Freeman, R.* booter, Edwards-st. July 15, at eleven, prf. of debt.—*Moir, R.* stationer and jeweller, West Coates, Isle of Wight, July 24, at half-past one, div.—*Ferry, R.* draper, Brighton, July 15, at twelve (adj. June 30), last exam.—*Rothchild, B. L. M.* diamond merchant, Great Queen-street, July 14, at eleven (adj. June 4), last exam.—*Turner, J.* manufacturer of printing materials, Brooke-st. July 6, at eleven, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Bradford, W. G. tailor, Bucklersbury, July 25, at two.—*Latham, S. M.* banker, Dover, July 24, at half-past twelve.—*Whalley, S.* grocer, William-st. Lisson-grove, July 24, at twelve.

Gazette, July 7.

Deiley and Inskip, leather manufacturers, Bermondsey, July 21, at twelve (adj. June 16), last exam.—*Shewell, T.* tailor, Ludgate-st. July 22, at twelve (adj. June 26), last exam.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Beattie and Macnaghen, merchants, Nicholas-lane, July 29, at twelve.—*Darnborough, W.* tailor, Richmond, July 29, at eleven.—*Hadden, W. J.* brewer, Tottenham, July 29, at twelve.—*Lenon, W. B.* ironmonger, Croydon, July 28, at one.—*Nelson, R.* hotel keeper, Great Portland-st. July 29, at eleven.—*Smith, R.* cabinet maker, Sussex-pl. Tottenham-cr. rd. July 29, at eleven.—*Whitlaw and Whitlaw*, builders, Litchfield-st. and Store-st. July 28, at two.

Meetings in the Country.

Gazette, July 3.

Aroher, S. woollen manufacturer, Rochdale, Lancashire, July 21, at twelve, Manchester, (adj. June 23), first div.—*Barnett, J.* paratout maker, Birmingham, July 25, at twelve, Birmingham, and.—*Faucus and Fauscus*, timber merchants, Stockton-upon-Tees, July 28, at one, Newcastle, and.—*Gascogne, R.* cattle dealer, Little Bytham, July 31, at ten, Birmingham, and.—*Gill, W.* corn merchant, Warrington, July 16, at eleven, Manchester (adj. June 12), last exam.—*Gore, J. G.* innkeeper, Eight Bells inn, Cheltenham, July 27, at one, Bristol, div.—*Harley, E. S.* grocer, Birmingham, July 27, at ten, Birmingham, and.—*Lane, H.* innkeeper, Derby, July 31, at ten, Birmingham, and.—*Lee, T.* common brewer, Liverpool, July 27, at twelve, Liverpool, div.—*Ogle, J. esq.* Pickwick, Wiltshire, and *Walton, W.* merchant, Liverpool, July 27, at twelve, Liverpool, div. with respect to the ship *Westmoreland*.—*Rodgett, S.* ironfounder, Blackburn, July 13, at twelve, Manchester (adj. June 1), last exam.—*Roe, H.* goldsmith, Liverpool, July 27, at eleven, Liverpool, and.—*Scott, J.* fruiterer, Newcastle, July 28, at half-past twelve, Newcastle, and.—*Watson, G.* bookseller, Gateshead, July 28, at half-past twelve, Newcastle, and.—*Wheeler, J. D. C.* victualler, Forpout, July 28, at eleven, Exeter, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Dunington, H. glove manufacturer, Nottingham, July 30, at eleven, Birmingham.—*Roe, J.* drysalter, Manchester, July 30, at twelve, Manchester.

Gazette, July 7.

Ankrett, J. grocer and provision dealer, Walsall, Staffordshire, July 30, at twelve, Birmingham, final div.—*Clarke and Co.* bankers, Leicester, July 28, at half-past ten, Birmingham, sep. and of Smith.—*Findley, T.* plasterer and painter, July 28, at twelve, Manchester, and. and July 29, at twelve, first div.—*Livingston, J.* and *Brittain, T.* plumbers, glaziers, and brass founders, Manchester, July 30, at eleven, Manchester, sep. and. and July 31, at eleven, final sep. div.—*Plank, F.* perfumer and general dealer, Plymouth, July 28, at eleven, Exeter, and. and July 29, at eleven, div.—*Robinson, J.* millwright and machine maker, Salford, Lancashire, July 28, at twelve, Manchester, and. and July 29, at twelve, div.—*Russel, G.* merchant, Birmingham, July 28, at ten, Birmingham, and.—*Stuttard, J.* cotton spinner, Manchester, July 13, at twelve, Manchester (adj. June 15), last exam.—*Watson, G.* bookseller, Gateshead, Durham, July 31, at eleven, Newcastle, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Cadogan, J. jun. hat and shoe warehouseman, Brecon, July 31, at eleven, Bristol.—*Cooke, J.* auctioneer, Cheltenham, July 31, at twelve, Bristol.—*Fliden, T.* boot manufacturer, Liverpool, July 28, at eleven, Liverpool.—*For and Fox*, oilmen, Manchester, July 30, at eleven, Manchester.—*Hoges, J.* manufacturing chemist, Manchester, July 31, at eleven, Manchester.—*Rhodes, P.* cotton spinner, Manchester, July 29, at twelve, Manchester.—*Thomson, D.* bleacher, Manchester, July 30, at eleven, Manchester.

Partnerships Dissolved.

Gazette, June 30.

Acton, J. and Hayley, R. H. ginger beer manufacturers, Birkenhead, June 24.—*Berry, J.* and *G.* surgical syringe makers, White Lion-st. Fentonville, June 16. Debts paid by J. Berry.—*Benn, W.* and *H. C.* coal merchants, Hampton, June 26. Debts paid by W. Benn.—*Chadwick, E.* Chatham, W. and *Dyson, E.* fancy cloth manufacturers, Paddock, near Huddersfield, June 25. Debts paid by Chatham and *Dyson*.—*Chappelow, W.* jun. and *Petch, T.* harness makers, Long Acre, July 29. Debts paid by Petch.—*Dobbs, E. L. A.* and *O. B.* Fleet-st. and Soho-sq. sq. far as

regards *O. B.* Dobbs, June 30.—*Foot, E.* and *Edwards, W. B.* ironmongers, Blandford Forum and elsewhere, June 30. Debts paid by W. B. Edwards.—*Foster, W.* and *Orme, W.* spade manufacturers and coal merchants, Stourbridge, Amblesote, and Kingswinford, June 24. Debts paid by Foster.—*George, W.* and *R.* plumbers, Wokingham, June 26. Debts paid by R. George.—*Hunter, Z. J.* and *James, R.* surgical instrument makers, Webber-row, Blackfriars-rd. Jan. 20.—*Lower, R. J.* and *Hill, W.* printers, Manchester, June 26.—*Maben, H. C.* and *Boston, S.* merchants, Manchester and Oporto, Feb. 13.—*Pinscuff, S.* allies, A. and *Heas, J. R.* merchants, Manchester and Leeds, June 26. Debts paid by Pinscuff and Heas, at Manchester.—*Ragner, J.* and *Davis, P.* coffee house keepers, St. John-st. June 24.—*Robinson, M. Goddall, P.* and *Goddall, R.* carding millers, Gudeley, June 18. Debts paid by Messrs. Goddall.—*Sugden, S.* and *Croson, J.* cotton spinners, Rosendale, June 26. Debts paid by Sugden.—*Sykes, A.* Mathews, J. and *Middlehurst, F.* fancy cloth manufacturers, Kirkburton, June 30.—*Taylor, C.* and *M.* pork butchers, Manchester, June 26. Debts paid by Charles Taylor.—*Thwaites, W. J.* and *Smith, W. H.* lacemen, Tatchbrook-st. Pimlico, June 29.—*Wade, J.* and *W.* tailors, Holborn-hill, June 29.—*Webster, G.* and *Smith, C.* painters, St. Helena, June 28. Debts paid by Webster.

Gazette, July 3.

Atkinson, G. and *R.* builders, Corbridge, Jan. 16.—*Bretton, J.* Jones, R. L. Steel, H. and *Thompson, J.* timber merchants, Liverpool, June 30.—*Briggs, E.* and *Bright, G.* hat manufacturers, Rochdale, July 1. Debts paid by Briggs.—*Buchler, H.* and *Thol, J. P.* merchants, Mark-lane, June 30. Debts paid by either partner.—*Byers, J.* and *Stagg, J. C.* Stockton, June 30. Debts paid by Byers.—*Celbert, T.* and *Hancock, W.* woollen drapers, Bradford, June 30.—*Clarke, F.* and *Gosling, F. S.* attorneys, Austin-frars, Feb. 17.—*Gregory, I.* and *Goold, G.* tanners, Tewkesbury and Gloucester, June 30.—*Hall, J.* and *Gover, E.* draughtsmen, Princess-st. Bedford-row, July 3.—*Henderson, J.* jun. and *Altkin, A.* ironfounders, Liverpool, June 13.—*Hodges, F.* and *M. H.* music sellers, Bristol, June 30. Debts paid by F. Hodges.—*Holmes, G.* and *M. C.* glass, J. boxer manufacturers, Liverpool, June 30.—*Holmes, J.* and *Morrow, J.* stove-grate manufacturers, Newcastle, June 13. Debts paid by Holmes.—*Hook, C.* and *Rodney, E. J.* wine merchants, Brittox, Devizes, March 25. Debts paid by Hook.—*Jop, W. T. O.* W. G., and *E. jun.* oil merchants, Thwaite-mills and Leeds, April 30.—*Lawson, W. M.* and *P.* corn dealers, Commercial-road, East, June 30.—*Leach, J.* and *Cook, J.* butchers, Liverpool, June 18. Debts paid by Leach.—*Lee, H.* Brumby, W. W. Middleton, and *Lee, G. H.* table-knife manufacturers, Sheffield, so far as regards Brumby and Middleton, June 30.—*Lyall, J. P.* Berlyn, P. stock brokers, Manchester, June 30.—*Marrlott, T.* Munk, E. and *Smith, H.* wholesale drapers, Nottingham, June 30.—*Nash, J.* and *Bainbridge, F. B.* school keepers, Heavitree, June 27.—*North, J.* and *Dixon, J.* blue manufacturers, City-road, June 30.—*Osler, D. R.* and *J.* corn millers, Halifax, June 25.—*Payne, J.* and *Fraser, T.* printers and wine merchants, Leicester, June 30.—*Potter, J.* and *Nicholson, H.* drapers, Chelmsford, June 30. Debts paid by Nicholson.—*Powell, J.* and *Lowndes, R.* share brokers, Liverpool, June 30.—*Pratt, S. L.* and *Wilson, J.* June 29.—*Raddell, W.* and *Hill, J. H.* veterinary surgeons, Plymouth and Devonport, July 1.—*Verres, G.* and *Woodcock, W.* woollaplayers, Leeds, June 29. Debts paid by Woodcock.—*Wallace, J.* and *Silcock, J.* grocers, Carlisle, June 19. Debts paid by Wallace.—*Wilson, J.* and *Graham, J.* silk manufacturers, Gresham-st. June 24.—*Woodhead, J.* and *Charnsworth, T.* stock brokers, Bradford, May 29.

Endorsements

Petitioning the Courts of Bankruptcy.

Gazette, June 20.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Berham, F. surgeon, Osnaburgh-st. July 13, at one.—*Bolton, W.* general dealer, Hammersmith, July 9, at twelve.—*Buckland, T. G.* teacher of music, Great Bland-st. Dover-road, July 9, at eleven.—*Cooke, C.* grocer, Chelmsford, July 9, at eleven.—*Cohen, M.* Somerset-place, New-road, White-chapel, July 4, at eleven.—*Gould, T.* out of business, Stangate-st. Lambeth, July 3, at half-past one.—*Handley, E.* embroidress, Brighton, July 16, at eleven.—*Holder, T. R.* butcher, Surrey Canal-bridge, Old Kent-road, July 3, at half-past one.—*Ker, T. C.* Parliamentary agent, Woburn-place, Russell-square, July 9, at eleven.—*King, M.* widow, Alpha-st. Old Kent-road, July 9, at eleven.—*Lankford, G. H.* egg merchant, Worcester-st. Borough, July 9, at twelve.—*Macdonald, J.* gent. Bryanstone-st. July 7, at one.—*Muller, H.* tobacconist, Bedford-place, Commercial-road East, July 3, at half-past one.—*Pring, J.* sen. plumber, Battersea-fields, July 16, at eleven.—*Rippon, H.* baker, Alfred-terrace, Cambridge-heath, July 8, at three.—*Shurey, J.* glass cutter, St. Andrew's-hill, Doctors' commons, July 16, at eleven.—*Turner, J.* saddle-tree maker, Clarence-gardens, Regent's-park, July 16, at eleven.—*Tuson, E. W.* surgeon, Tonbridge-place, New-road, July 8, at three.—*Westbrook, W.* coal dealer, Great Windmill-st. July 16, at half-past eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Dexter, W. china painter, Derby, July 11, at twelve, Birmingham.—*Gregory, E.* keeper of assembly rooms, Swansea, July 13, at eleven, Bristol.—*Hitchins, F.* joiner, New Ferry, July 6, at eleven, Liverpool.—*Long, S.* lithographic printer, Manchester, July 7, at twelve, Manchester.—*Lucas, T.* cowkeeper, Liverpool, July 6, at half-past eleven, Liverpool.—*Morse, W.* baker, Randwick, July 13, at eleven, Bristol.—*Scott, W.* out of employ, Nottingham and Roddington, July 11, at twelve, Birmingham.—*Wake, D. L.* out of business, Penryn, July 6, at eleven, Liverpool.—*Whitemore, S.* farrier, Ashwick, July 13, at eleven, Bristol.—*Wood, J.* bell hanger, Birkenhead, July 6, at eleven, Liverpool.

Gazette, July 3.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Beeson, W. gent. Charing, Kent, and Holly-st. Haggerstone, July 16, at twelve.—*Bottrill, T.* booter, Barnsbury-place, Islington, July 4, at two.—*Burns, G.* carrier, Cambridge, July 10, at twelve.—*Presley, T.* master of a house, Lower Norwood, and herbalist, the Triangles, Norwood, July 16, at twelve.—*Richardson, J.* and

keeper, Kinsbury-green, July 4, at half-past one.—*Underhill*, F. S. builder, Wokingham, July 4, at half-past one.—*Wales*, R. H. attorney, Queen's Prison, July 16, at eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Bourmont, G. teacher of languages, Liverpool, July 9, at twelve, Liverpool.—*Booth*, W. beer seller, Nottingham, July 7, at ten, Birmingham.—*Bowen*, J. farmer, Winsley, July 21, at ten, Birmingham.—*Dean*, J. out of business, Burnley, July 13, at twelve, Manchester.—*Easton*, R. artist, Leamington, July 17, at ten, Birmingham.—*Hallas*, R. porter, Manchester, July 16, at twelve, Manchester.—*Hamer*, A. out of business, Manchester, July 18, at twelve, Manchester.—*Haywood*, J. staymaker, Cheltenham, July 7, at one, Bristol.—*McCarthy*, D. pork butcher, New Scotland-road, July 6, at twelve, Liverpool.—*MacLagan*, W. E. out of business, Lyndcombe and Widcombe, July 10, at twelve, Bristol.—*Meacham*, E. out of business, Lyndham, Salop, July 11, at twelve, Birmingham.—*Pilbury*, J. builder, Aston, July 16, at twelve, Birmingham.—*Sargeant*, J. Dissenting minister, Tidewell, July 18, at eleven, Manchester.—*Smith*, E. tailor and beer seller, Birmingham, July 10, at ten, Birmingham.—*Wales*, W. blacksmith, Shildon, July 28, at half-past one, Newcastle.—*Whitworth*, T. blacksmith, Rochdale, July 16, at twelve, Manchester.

MEETINGS IN THE COUNTRY.

Green, E. house agent, Whitecross-st. July 24, at half-past eleven, div.—*Pearson*, J. small farmer, Huddersfield, July 21, at eleven, Leeds, as to rescinding final order.

From the Gazette of Friday, July 10.

Bankrupts.

Barley, A. draper.—*Page*, P. F. and P. N. builders, King's-road, Gray's-inn.—*Dravits*, E. music seller, Brighton.—*Oshorn*, W. jun. silversmith, St. James's-st. Piccadilly.—*Stiles*, J. soda water maker, Wells-st. Oxford-street.—*Savage*, H. apothecary, Dorset-place, Dorset-sq.—*Ballad*, J. innkeeper, Hastings.—*Evans*, R. H. and C. E. auctioneers, New Bond-st.—*Nicholls*, E. C. broker, Bristol.—*Hutchinson*, T. tea dealer, Sunderland.—*Robinson*, W. dyer, Saddleworth, Yorkshire.—*Stark*, J. M. bookseller, Gainsborough.—*Watts*, W. machine maker, Doncaster.—*Purser*, S. draper, Cheltenham.—*Scott*, B. seedman, Bath.—*James*, D. victualler, Cardigan.—*Butler*, F. ironmonger, Stafford.

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Printed particulars and conditions of sale, with lithographed plans, will be issued fourteen days prior to sale, and may be obtained of the respective tenants, who will show the premises, also of Mr. BAKER, House Agent, 6, Montagu-place, Kentish Town; or Mr. WITTHALL, Solicitor, 7, Parliament-street; at Garraway's; and at the Offices of the Auctioneer, 80, Cheapside.

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Lot 1 will comprise a building formerly used as a farm-house, and now divided into tenements, barn, suitable out-buildings, stables, and thirteen cottages, and 25*ac.* 2r. 60p. (more or less) of land, of which 20*ac.* 1r. 5p. are arable, and 15*ac.* 1r. 30p. are pasture, and the rest plantation. The property comprised in the above is holden under lease from the Bishop of Ely for twenty-one years from 25th of March last, renewable every seven years.

Lot 2 will comprise 25*ac.* 6r. 6p. (more or less) of land, of which 17*ac.* 0r. 17p. are arable, and the rest pasture. The land contained in this lot is copyhold of the manor of Maney.

Lot 3 will comprise the mansion, with the lodge, coach-house, stables, and farm-buildings, and 25*ac.* 0r. 16p. (more or less) of land, of which 18*ac.* 3r. 37p. are arable, and 6*ac.* 1r. 34p. are pasture, and the residue plantation. The property comprised in this lot is also holden under lease from the Bishop of Ely for twenty-one years from the 25th day of March last, renewable every seven years.

Lot 4 will comprise two tenements, with out-buildings, and 1*ac.* 2r. 22p. (more or less) of garden ground. This lot is copyhold of the manor of Wisbech Barton.

Printed descriptive particulars may be obtained, ten days previous to the day of sale, at the Offices of Mr. J. O. Searles, Solicitor, King's Lynn; and Mr. St. Barthelemy, Solicitor, 14, Parliament-street, London; and of Mr. John Hodson, one of the Auctioneers, Wisbech.

King's Lynn, June 30, 1846.

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THE REPORTS.

Equity Courts.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Saturday, March 21.

BROOKS v. LAKE.

Bequest of personality—Tenant for life—Effect of words of inheritance—Absolute gift.
A testator gave a sum of money to each of his four sisters named in his will, providing, however, that "should it so happen that the whole should die without heirs, the sum is ultimately to revert to the estate of the family; but should all or any of them die, with heirs of their body, the sum of which they severally die possessed is to be continued to their heirs for ever, and not to revert to the estate." Held, that under this disposition the legatees were entitled to absolute interests.

The Honourable George Augustus Frederick Lake, by his last will and testament, bearing date 19th of March, 1808, gave, among other legacies, as follows: "To the Hon. Mrs. Brooks, my sister, 4,000l.; to the Hon. Mrs. Harvey, my sister, 4,000l.; to the Hon. Frances Lake, my sister, 4,000l.; to the Hon. Anne Lake, my sister, 4,000l.; to the Hon. Warwick Lake, my brother, 4,000l. for ever. The respective sums left to my sisters, Annabell Brooks, Elizabeth Harvey, Frances Lake, and Anne Lake, are, in the event of either of them dying without heirs, to be equally divided between the survivors of the four above-mentioned; and should it so happen that the whole should die without heirs, the sum is ultimately to revert to the estate of the family; but should all or any of them die without heirs of their body, the sum of which they severally die possessed is to be continued to their heirs for ever, and not to revert to the estate. The sum left to my brother Warwick is his for ever." The testator gave the residue of his property unto and equally between his brother, Francis Gerard Lord Lake, and his brother-in-law, Richard Borough. The testator died in the month of August 1808. Anne Lake married John Wardlaw, and died in 1845, leaving several children. A suit having been instituted for the purpose of administering the testator's estate, Anne Wardlaw assigned her legacy, which had been carried over to her separate account, to the trustees of her marriage settlement; and the trustees of the settlement now petitioned that the money might be paid out to them; whereupon the question arose, whether Mrs. Wardlaw took an absolute interest in the bequest, or a life estate only with remainder to her children.

Bethell and Sidebottom, for the petitioners.
Stuart, on the other side, submitted that the words used by the testator could not be treated as a nullity, or as having no meaning; but that the testator must have intended that the children and grandchildren of Mrs. Wardlaw should have an interest in the fund.

The VICE-CHANCELLOR decided that Mrs. Ward-

law took an absolute interest, and that there was no limitation over which the Court could carry into effect.

Wednesday, July 1.

LEWIS v. BILLING.

Railway liabilities.

The bill charged that the managing committee of a certain railway, having assets in their hands, had paid or undertaken to pay, B. one of the defendants, a debt due to him on account of the said railway, and had used his name in an action against the plaintiff to recover the same debt, and prayed an injunction to restrain the action.

Demurrer on the ground of want of equity.

Held, that there was a plain equity against the defendant B. inasmuch as it was a matter of the grossest fraud that parties who have no beneficial interest in an action should harass the plaintiff in the defendant's name.

This was a demurrer to a bill filed by the plaintiff, who is a shareholder in the Wolverhampton, Chester, and Birkenhead Junction Railway (an undertaking which has failed), to restrain an action at law under these circumstances:—It appeared by the bill, that in the latter part of 1845 the above railway company was provisionally registered under the Joint Stock Act, and the managing committee proceeded to allot shares, and possessed themselves in that character of 3,000l. assets of the company; that there was a large sum of outstanding debts, and amongst the rest, a debt due to the defendant for printing and engraving. This debt was partly paid by the managing committee to the defendant, and partly to agents for him, and was then assigned by him to them; notwithstanding which he had brought an action against the plaintiff at the instance of the managing committee (the other defendants), by whom he was guaranteed and indemnified against any loss which might accrue by such a proceeding. The plaintiff then applied to the defendants, and requested them to refrain from suing him, or allowing him to be sued, which they refused, unless he would pay 100l. an amount arbitrarily named, but not shewn by any account to be his share of the liabilities of the company. This he refused to do. The bill then charged that the defendants threatened to distribute and divide the funds, without discharging the liabilities of the company; that the action by Billing was for a larger sum than was actually due to him, and that the other defendants held in their hands funds amply sufficient to discharge all the debts due from the company. The bill charged that the defendants had signed cheques for purposes not sanctioned by their Act; that the shareholders were very numerous, and the plaintiff could not discover their names; but charged that their interests were identical with those of the present defendants, and prayed an injunction to restrain the action by the defendant Billing, or by the other defendants in his name, and from distributing or dividing the assets of the company, except in discharge of the debts, and that all proper accounts might be taken and directions given, the plaintiff offering to pay whatever sum was properly due from him. To this bill a general demurrer was put in.

K. Parker and Hullett, in support of the demurrer, cited *Fernihough v. Leader*, decided by his Honour in May last, as distinguished from the present case.

Bethell and Adams in support of the bill.

The VICE-CHANCELLOR said, his opinion was, that this demurrer must be overruled. It might be perfectly true that, in detail, the case of *Fernihough v. Leader* and this case were not the same, nor was it necessary that they should be, in order that the principle on which the Court then decided should equally apply to this case. The bill, as it represented the circumstances, made out a plain equity at least as against Billing, because it represented that certain persons wished to form a company, and a company was formed to a certain extent, and debts were due from the company, and amongst the rest a debt due to Billing, for which he thought proper to sue the company; and what was alleged in the bill was, that the other defendants applied moneys in their hands to pay Billing's debt, for which he thought proper to sue the plaintiffs; it represented that, partly by payment to Billing and partly to agents for him, the whole was paid, but he afterwards assigned the debt to the other defendants, and allowed them to bring an action in his name. The bill was filed, not for forming a company, nor for dissolving a company, nor for carrying on or interfering with the affairs of the company, except that the moneys in the other defendants' hands might be applied for debts due. There was a plain equity against Billing; it was a matter of the grossest fraud that parties who had no beneficial interest in the action should be allowed to harass the plaintiff, when they themselves had moneys applicable for the payment of the debt. It was, as stated, a gross act of dishonesty, and a cogent case against Billing. Neither of the demurrers, for want of equity, parties, or multifariousness, was sustained. The pleader had drawn the bill concisely, and very properly so; and he (the Vice-Chancellor) was not sure whether this was not a speaking demurrer, the demurring party having taken upon himself to speak

of an effect which might be produced, but which did not appear, and, therefore, upon the whole substance of the case, the demurrers must be overruled.

ROLLS COURT.

Monday, July 6.

BIDDULPH v. LORD CAMOYS.

Practice—New Orders—Guardian of person of unsound mind—Husband and wife.

Where a husband and wife were made defendants in a cause, and the husband was of unsound mind, but not so found by inquisition, the plaintiff applied, under the provisions of the 32nd of the New Orders, for an order of the Court to appoint a solicitor of the Court guardian of the husband, by whom he might appear and answer, and proposed that the wife's solicitor should be appointed; the Court refused the application.

An application to appoint the plaintiff's solicitor guardian was also refused; and the solicitor to the Sutors' Fund was appointed, he being the person commonly appointed in such cases.

Cooke applied, under the 32nd of the New Orders, on the part of the plaintiff in this cause, for an order to appoint a solicitor of the Court guardian to a defendant of unsound mind, by whom he might appear and answer; and proposed that Mr. Charles Addis, the solicitor of the wife of the defendant, who was also a defendant in the cause, might be appointed such guardian. He stated that the wife was or might be interested in the subject-matter of the suit, but that the husband was not, and therefore there was no adverse interest in him; and it would be convenient to have the wife's solicitor the guardian, inasmuch as the husband was under her care and management. She had been duly served with notice of the motion as directed by the 32nd Order, and though she did not appear, there would be no difficulty as to that.

The MASTER of the ROLLS.—I don't think that right, and I will not allow it.

Cooke.—Well, will your Lordship allow Mr. Neeris, the plaintiff's solicitor, to be the guardian?

The MASTER of the ROLLS.—I cannot say the solicitor of the plaintiff is a proper person to be appointed in such cases.

Cooke.—Well, then, let the solicitor to the Sutors' Fund be appointed.

The MASTER of the ROLLS.—Yes, I will. The solicitor of the wife may be a very proper person in himself to be appointed, but there is such a blending of interest between the husband and wife, that I could not rightly order the solicitor to be appointed his guardian.

Cooke.—Perhaps you would permit Mr. Charles Addis to act with him.

The MASTER of the ROLLS.—No, I can't interfere with the solicitor to the Sutors' Fund exercising his discretion.

Saturday, June 27.

ROWLEY v. ADAMS.

Practice—Staying proceedings—Appeal.

An order was made in a cause for the sale of certain devised real estates, for the payment of legacies, with which they were charged in case the personal estate of the testator should prove insufficient. From this decree there was an appeal, and application was made to the Court to stay the sale till after the result of the appeal should be known, on the ground that, if the decree should be reversed, the sale would be unnecessary, and the devisees would be greatly injured by the sale; but the Court refused to oblige the legatees to wait the result, and only made the order on the consent of the plaintiffs, the parties being all members of the same family.

In this case a decree had been made to sell freehold property, consisting of a brewery, &c. at Horsey, to pay two legatees of 12,000l. each charged thereon by the testator, in favour of his two daughters, in case the personal estate should be deficient, which proved to be the case. But one object of the suit was, to charge the executors, Adams and Marsh, with a breach of trust, in which, however, the plaintiffs were not successful; but if they had been, or should an appeal be so, then there would be sufficient personality (to be made good by the executors) to pay the legacies in question, and the sale of the realty would be unnecessary; and it was alleged, a sale would be very injurious to William Wyatt, the devisee thereof. An appeal from the decree on all the points is now pending before the House of Lords: but William Wyatt was not originally a party to the appeal, and, therefore, his application on a former day (see 6 Law T. 155) to stay proceedings as to the sale, till the result of the appeal should be known, was refused. Since that time, however, he presented a petition of appeal to the Lords, and now renewed his application.

Wray, for the motion, said, that the Master had found that the executors might, without wilful default, have raised the legacies out of the personality, but exceptions had been taken to the report, and were held to be valid, and the case was now on appeal to the House of Lords. Mr. William Wyatt was not

originally an appealing party, because the point as to the sale, or the necessity of it, was involved in the other questions; but he was now an appealing party, and renewed his application for a stay of proceedings. If the appeal should be successful, the executors would be liable for a much larger sum than 24,000*l.* and, of course, the sale of this devised estate would, therefore, be unnecessary, and much loss would be saved to him. [THE MASTER OF THE ROLLS.—Would not you be recompensed by the executors?] Yes, but the sale, in itself a loss, would not be prevented. [THE MASTER OF THE ROLLS.—Yes, but he would not be ruined. The plaintiffs are entitled by the decree to be paid their legacies in priority to you, because the real estate is charged; and for the mere chance of avoiding a sale, you seek this delay.] There is a receiver on the estate, and there can be no such need of haste.

Turner, for the plaintiffs, here intimated, that being all members of the same family, the plaintiffs would not press their opposition to the motion.

Kindersley and Roll, for the defendants, the executors.

THE MASTER OF THE ROLLS.—I have nothing to say in opposition to any arrangement the parties may consent to. The case is this: the legacies are to be raised out of the personal estate, and if there is enough for the purpose, the real estate ought not to be sold. The personal estate cannot be got or realized, and, therefore, the Court may resort to the real estate specifically charged, though an appeal from the decree is pending, which may render the sale unnecessary; but the legacies cannot be delayed if they insist upon their rights. But here the plaintiffs, being members of the same family, do not press, and, therefore, the sale may be suspended; but every thing else directed by the decree must proceed.

June 27, and July 6.
TAPRELL v. TAYLOR.

Practice—Suing in *formâ pauperis*—Discharging common order.

Quare, whether a plaintiff who is in possession of a house and premises, the subject-matter of the suit, and who has obtained the common order to sue in formâ pauperis, can be dispaupered.

This was a suit instituted by the plaintiff to enforce specific performance of a lease of a house which he had built, on an alleged agreement by the defendant to grant him a lease upon his so doing. The defendant being unwilling to grant the lease, or, at least, not having granted it, the bill was filed to compel him, the plaintiff having obtained the common order to sue in *formâ pauperis*. The plaintiff now applied to discharge the order so obtained.

Willcock, for the motion, insisted that the order ought to be discharged on two grounds: first, that the plaintiff was in possession of the house, the subject-matter of the suit, the house being of considerable value; and, secondly, that the plaintiff, independently of this, was not in circumstances such as to entitle him to the order. The house was built, and was of the value of 140*l.* or 150*l.* He was in possession under an agreement to pay 5*l.* 5*s.* ground-rent, the house being worth 10*l.* rent over and above that sum. Besides, he let lodgings, and was a joiner, able to earn, and did earn, 2*l.* or 3*l.* a week; and possessed a chest of tools of the value of 40*l.* or 50*l.* and had regular employment. The plaintiff to the suit had put in affidavits denying this, though he admitted that he allowed his brother to remain in the house without any compensation. He said the house itself was merely a shell, and that there was no flooring. But an indifferent witness swore that there was a floor laid down, but it was not nailed. He cited *Spenser v. Briant*, 11 Ves. 49.

E. Montagu, for the plaintiff, said the house might be worth the money stated if a lease were granted, but it was not so without it. As to the circumstances of the plaintiff, they were, according to the affidavits, such as are consistent only with abject poverty. In *Allan v. Macpherson*, 5 Beav. 469, the plaintiff was entitled to the money, the subject of the suit, and he was not dispaupered. He cited *Perry v. Walker*, 1 Y. & C. C. 676.

THE MASTER OF THE ROLLS.—The only embarrassing matter is the possession of the property. It is in vain to say he gave lodging to his brother for nothing. That might be sold for something, and it is money's worth. You have not proved you could not make any thing of it.

Montague proposed that it should stand over with a view to an arrangement; and this was, after some discussion, agreed to.

Saturday, June 27.

Re DAVIS.

Costs—Taxation—Discharging common order.

Willcock applied, in this case, for an order to discharge the common order to tax the bill of Thomas William Davis, a solicitor employed by the East and West Junction Railway Company. It appeared that Mr. Davis was the local solicitor of the company, and had been active in getting it up, and that the town agents and solicitors of the company had obtained the com-

mon order to tax his bill of costs, though there was no connection whatever between the parties.

Shapter, on the other side, had no instructions. The MASTER OF THE ROLLS.—There is no need of argument. Discharge the order.

Re FORTH MARINE INSURANCE COMPANY.
Stat. 7 & 8 Vict. c. 111, ss. 20, 22—Bankrupt company—Winding-up.

This was an application, by petition, under the 7 & 8 Vict. c. 111, ss. 20, 22, for the aid of the Court. The company had become bankrupt, and the object of the petition, which was by the assignees, was to obtain an order for taking the accounts and winding-up the affairs of the company, and for assessing the contributions to be paid by each member to make up the deficit. After much discussion, the case stood over for further evidence; but it is important as being about the first application to the Court on the Act.

VICE-CHANCELLOR WIGRAM'S COURT.

Tuesday, June 30.

WARD v. KEY.

Patent—Infringement—Injunction—Practice.

A defendant does not prejudice his case by not appearing on a motion for an injunction to restrain him in the infringement of a patent, provided he defends himself in the subsequent proceedings; and if he questions the validity of the plaintiff's title even at the hearing, though he may not have done so on the motion for the injunction, and no issue was then directed, yet the Court will not retain the injunction without directing the plaintiff to establish his right at law before it grants him further relief.

The plaintiff in this suit, who is a musical instrument maker, had turned his attention to the tuning of drums and improvements in the mode of stretching drum-heads, and more particularly kettle-drums, which are used in cavalry bands, where the ordinary mode of straining the heads was found to be a great inconvenience, and considering he had invented a mode of softening the tone of drums in general by perforating numerous holes in the sides thereof instead of one hole, and also that he had invented an improved mode of tightening the heads of drums by means of internal machinery, which was worked by means of a screw from a handle on the outside, instead of the old plan by cords and straps on the outside, he took out a patent in the year 1837 to secure to himself the exclusive benefit of such improvements.

The defendant, who is also a musical instrument maker, residing at Charing-cross, was discovered by the plaintiff to have manufactured drums upon the principle and according to the same plan as the plaintiff had set out in the specification of his patent, and sold drums so made to several regiments without the permission of the plaintiff, whereupon he filed the present bill in the year 1843 to restrain the defendant from making and selling kettle-drums for the use of cavalry bands in the manner which the plaintiff alleged was an infringement of his patent, and also for an account of the profits received by the defendant from the sale of drums manufactured in the manner described in the plaintiff's specification lodged for his patent. The plaintiff served the defendant with notice of an application for an injunction, the defendant did not appear upon the motion being made, and an injunction was granted; but in drawing up the order, it omitted, by some mistake, to direct an issue to try the fact of infringement.

The defendant submitted to the injunction, and never moved to have it dissolved.

The plaintiff now moved to have the other relief prayed for by his bill, without being put to establish his right at law.

Romilly and Roll appeared for the plaintiff.

Wood and Hetherington, for the defendant, insisted there was no damage done to the plaintiff by the defendant; that the plaintiff had not produced a single instrument made by the defendant to satisfy the Court that an infringement had been made; they had only produced instruments of their own to explain the nature of the improvement the plaintiff had taken out a patent for. There was no novelty in this manner of straining drums as set out in the plaintiff's specification; the principle was well known to the trade; the only useful part of the machinery was the screw, and that had been used by other musical instrument makers before and since the plaintiff had taken out his patent; that so far from the increased number of holes being beneficial, they were known to have quite a contrary effect, for they admitted damp air, which affected the head of the drum injuriously; and that even this was not new, for it had long before been tried and abandoned, and they read evidence in proof; and contended that as some of the supposed improvements set out in the specification were useless, that nullified the patent; and cited *Morgan v. Scamard*, Webster's Patent Cases, 196; 2 Meeson & Welsby, 544; *Levis v. Marling*, 10 Barn. & Cress. 22; they therefore contended that the only question which remained to be considered was, whether there should be an order directing an issue, or whether the bill

should, upon the evidence produced, be dismissed with costs. At all events, it was clear that the plaintiff ought to establish his right at law before he got the relief he prayed in equity.

THE VICE-CHANCELLOR.—The defendant in this case did not appear to oppose the motion for the injunction, although he had notice of it. Whether the order then made was regular or not, in having omitted to direct the plaintiff to try his right at law, I shall give no opinion; if it was erroneous, it was so by the neglect of the Court, and should not be made to operate injuriously against the interest of the defendant, because he did not appear upon the motion and protect his rights. I quite agree with the counsel for the defendant, that a defendant is not bound to set a plaintiff right when he takes a wrong course, and that he is quite in time if he seeks the protection of the Court when that course is likely to be prejudicial to his interest. In this case, although the defendant submitted to the order of the Court granting this injunction, without appearing, yet, when the cause is brought on for hearing, he appeared, examined witnesses, and defended the suit. This cannot be said to be a case of a defendant allowing the plaintiff to proceed, and make what he could of his case, and then taking an objection to some irregularity which the Court had improvidently committed; the plaintiff is therefore bound, notwithstanding, to prove his case at the hearing to the satisfaction of the Court, precisely the same as if no such irregularity had occurred. In this case much evidence has been read on both sides to support and defeat the validity of this patent. The course the Court pursues in applications of this kind is this: where a person has obtained a patent, and had an exclusive enjoyment under it, the Court will give so much credit to his apparent right as to interpose immediately by injunction to restrain the invasion of it, and continue that interposition until the apparent right has been displaced. On the other hand, if a person takes out a patent for an invention, and is unable to support it, except upon the ground of some alleged improvement in the mode of applying that which was previously in use, and it so becomes a serious question both in point of law and of fact whether the patent is not altogether invalid, then, upon an application to this Court for what may be called the extra relief which it affords upon a *prima facie* case, the Court will use its discretion, and if it sees sufficient ground for doubt, will either dissolve the injunction absolutely, or direct an issue, or direct the party applying to bring an action; after the trial of which, either he may apply to revive, if successful, or else the other party may come before the Court and say, "I have been successful in displacing this patent, and am entitled to have my costs, by being brought here upon an allegation of right which cannot be supported." I think this is not one of those cases in which the plaintiff has so proved his case at the hearing that the Court would decree a perpetual injunction without putting him to try his rights at law. There is sufficient evidence for protecting the plaintiff's title subject to that, and then it remains to be considered whether the Court should deal with this case as Lord Cottenham did in *Bacon v. Jones* (4 Mylne & Craig, 433),—that is, dismiss the bill with costs, leaving the plaintiff to his remedy at law,—or whether I should retain the bill, giving the plaintiff liberty to bring an action. The defendant, in this case, had notice of the motion for an injunction to restrain him from doing what the plaintiff insisted was an infringement of his patent, and did not appear; and since the injunction has been granted, he has ceased to do the acts complained of, and permitted the injunction to continue. Under these circumstances, I do not think I should be dealing too hardly with the defendant if I retained this bill, and give the plaintiff an opportunity of trying his right at law, if he thinks fit. I shall resume the question of costs.

Friday, July 3.

GERRARD v. LORD DINORBEN.

Practice—Simple contract debt—Interest—Voluntary bond—46th Order of 26th Aug. 1841.

A creditor under a voluntary bond, established before the Master in an administration suit, is entitled to be paid his debt before a simple contract creditor, whose debt does not carry interest, receives interest upon his debt, under the 46th Order of 26th Aug. 1841.

This was a suit for the administration of the estate of the late Duke of Sussex. The creditors had proved their debts, and all specialty debts had been paid, with interest, and all simple contract debts bearing interest had been paid, with interest; and next, all the simple contract debts not bearing interest had been paid, and there was still a large surplus, and more than sufficient to pay the costs of the suit. Amongst the proofs before the Master was a bond debt executed by the testator, without consideration, to Mademoiselle D'Este, for 10,000*l.*; finding there was a surplus, she applied to have it paid to her in liquidation of the bond debt she had proved; on the other hand, the creditors by simple contract, who had not received interest, insisted that they were entitled to priority, under the 46th Rule of the 26th of August, 1841, whereby it is declared, "that a creditor whose

debt does not carry interest, who shall come in and establish the same before the Master under a decree or order in a suit, shall be entitled to interest upon his debt, at the rate of 4l. per cent. from the date of the decree, out of any assets which may remain, after satisfying the costs of the suit, the debts established, and the interest of such debts as by law carry interest."

Russell appeared for the creditors, and contended that persons claiming under voluntary instruments were not creditors at all in the consideration of creditors for valuable consideration; that they only held a position superior to legatees in the administration of an estate; and that until these creditors had been paid interest upon their debts, which the Court clearly recognized them entitled to in making this order, no person claiming under a mere voluntary instrument could receive any portion of this residue.

Tinney, for Mademoiselle D'Este, contended that this voluntary bond must be clearly recognized as a debt; it had been proved and admitted as such by the Master, and the order relied upon by the other side expressly recognizes the payment of all debts established, before interest shall be paid on debts by simple contract not bearing interest. This surplus was, therefore, clearly applicable to the payment of the debt due upon this voluntary bond.

The VICE-CHANCELLOR. — A voluntary bond clearly creates a debt, and though it does not hold priority over debts for a valuable consideration, it may be enforced in the usual order of administration against the estate of a testator. The bond in question has been established before the Master, and it is, therefore, a debt which the Court is bound to recognize. All claims upon this estate which hold priority to this debt have been satisfied, and there being a surplus, the obligee of this bond has put in her claim for payment; this is resisted by the creditors by simple contract, who have not received interest on their debts, and they support their right under the order which has been cited; they have been paid all they bargained for with the testator, and the order mentioned does not contemplate the payment of any interest, which the creditor had not secured, until all the debts established in the cause have been satisfied. The debt under this bond has been established before the Master; it must, therefore, be paid before these simple contract creditors can become entitled to have the surplus of this estate applied in the manner directed by Lord Cottenham's Order of August 1841.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Saturday, May 30.

REG. v. THE INHABITANTS OF MOLESWORTH.
Caption of examinations taken in support of an order of removal.

The captions of examinations taken upon an application for an order of removal did not contain a statement that they were taken upon the complaint of the churchwardens and overseers of the parish applying for the order; they were held insufficient, and the order quashed on that ground.

Semble, per Patteson, J. that an order reciting a complaint "by T. G. on behalf of the churchwardens and overseers" of the removing parish is bad.

Upon appeal against an order of two justices for the removal of Isabella Mantle and her four children from the parish of Bythorn to the parish of Molesworth, both in the County of Huntingdon, the Court of Quarter Sessions confirmed the order, subject to the opinion of this Court, upon a case; which set out, first, a complaint of chargeability, purporting to have been made "by Thomas George, one of the overseers of Bythorn on behalf of the churchwardens and overseers of Bythorn;" and, secondly, the order of justices reciting that "complaint hath been made unto us whose names are hereunto set, and seals affixed, &c. by Thomas George, on behalf of the churchwardens and overseers of the poor of the parish of Bythorn; that, &c." Thomas George was one of the overseers of Bythorn at the time the complaint was made; and it was made by him with the sanction and authority, and at the request and on behalf of the churchwardens and overseers of that parish. The captions of all the examinations were in the following form:—

"Huntingdonshire to wit.—The examination of Isabella Mantle, &c. taken on oath this 22nd day of March, 1845, before us, two of her Majesty's justices of the peace in and for the said county, touching the place of the last legal settlement of Isabella Mantle and her four children, &c."

At the trial of the appeal it was objected that the order was bad for not shewing a complaint by the churchwardens and overseers of the removing parish, and because it did not appear from the captions of the examinations that they were taken upon the complaint of the churchwardens and overseers of the poor of the parish of Bythorn.

Burcham, in support of the order of Sessions.—Neither of these objections can be sustained: as to

the first, the order recites a complaint by Thomas George on behalf of the parish officers, and the case finds that he was one of them, and authorized by the rest. But it is not necessary that that should appear upon the order; it is not disputed that one of the parish officers may make the complaint as agent for the rest; and if the principle of agency is admissible at all, it cannot matter whether the agent be a parish officer or not; his right to make the complaint depends upon his character of agent, not of parish officer. [PATTESON, J.—But for all that appears here, Mr. George may have been a volunteer in the matter.] The case finds the contrary. The other objection to the caption of the examinations is, that they do not appear to have been taken on the complaint of the parish officers; but they are stated to be taken "touching the settlement of the paupers;" and a complaint of the parish officers must be presumed.

Wortledge, contra, was not heard.

Lord DENMAN, C. J.—The last objection is fatal. Every objection would be cured by the answer which is given to this; that as justices would do wrong if they acted without jurisdiction, it is to be presumed that they had it.

PATTESON, and WILLIAMS, JJ. concurring,
Rule absolute to quash the order of sessions.

COURT OF COMMON PLEAS.

Thursday, June 11, and Monday, July 6.

SMART v. SANDARS.

A factor having goods of a principal in his possession for sale becomes under advances to the principal and requires payment. Meanwhile he sells a portion of the goods at a particular price, and thereupon the principal gives him notice not to sell any more at a lower price than a given sum, which is higher than that at which the first portion was sold:—Held, that the factor is not justified, after a reasonable time for payment of his advances has elapsed, in selling at a lower price than that specified in the notice given him with a view to recovering his advances; but that he is liable to an action at the suit of the principal for so doing.

This was an action of *assumpsit*. The plaintiff declared that, whereas the defendant was and is a corn-factor at Liverpool, and heretofore, to wit, &c. in consideration that the plaintiff, at the request of the defendant, had consigned and delivered to him, as such factor, a cargo consisting of 8,000 bushels of wheat to be sold and disposed of by the defendant as such factor, for and on account of the plaintiff, for a reasonable commission and reward to be paid by the plaintiff to the defendant in that behalf; the defendant promised to obey and observe the lawful orders and directions of the plaintiff to be given by him to the defendant in regard to the sale and disposal of the wheat. Averment, that the defendant afterwards sold and disposed of a small portion of the cargo at 6s. 4d. per bushel, and that the plaintiff thereupon gave him notice and ordered him not to sell any more at less than 7s. a bushel. Breach, that although, &c. yet the defendant sold the same at lower prices. There was also a second count in the same form respecting another cargo.

Pleas to the first count. 3. That after the cargo of wheat had been so consigned to the defendant as such factor, and before the committing of the alleged breach of promise, the defendant, as such factor, became and was under advances to the plaintiff in respect of the said consignment of the said cargo of wheat to a larger amount than the value of the said cargo, to wit, &c. and which said sum so advanced to the plaintiff by the defendant was then due and payable, &c. and which advances the defendant had come under by reason of having accepted divers bills of exchange for the plaintiff, and at his request against and on the security of the said cargo in the said first count mentioned before the giving of any of the orders in the first count mentioned; and that afterwards, and before the committing of the said breach of promise, the defendant gave notice to the plaintiff that he required the same sum of money so advanced by him as such factor to be repaid, and that if the plaintiff did not repay him, he should sell the whole of the residue of the said wheat, and out of the money produced by such sale should repay himself the money advanced; that a reasonable time for the repayment elapsed, but that the plaintiff did not repay the advances; that for the purpose of repaying the said sum of money so advanced, it was absolutely necessary for the defendant to sell the whole of the residue of the said wheat; and that therefore for the purpose of reimbursing and repaying to himself the sum advanced, he sold the residue of the wheat for the prices in the said first count mentioned, the same being the best prices he could obtain for the said cargo of wheat, and that the proceeds were not sufficient to repay him the whole of the money advanced.

4. That the plaintiff was indebted to the defendant for advances on other consignments, and that he had a lien on the wheat in question for such advances, and a right to have them repaid out of the proceeds of the wheat. The plea then went on to state the

nonpayment and the sale of the wheat, as in plea 3. There were similar pleas to the second count, and a special demurrer to each. Among the grounds of demurrer assigned to each were, that the plea was an argumentative traverse of the promise; that it was bad as amounting to the general issue; that in answer to the averment in the declaration that the defendant promised to obey the lawful orders of the plaintiff, the defendant professed to shew that he only promised to obey such orders as should not be inconsistent with the right claimed to sell in order to repay the advances; that it was uncertain whether the defendant meant to admit or to deny the promise; that if the defendant meant to insist that the advances gave him a subsequent authority to disobey the plaintiff's orders, such authority should have been pleaded as the result of an express agreement, and ought not to have been left as an inference of law, &c.

Channell, Serjt. (with him Taprell), for the plaintiff.

Byles, Serjt. (with him Crompton), for the defendant.

The following authorities were cited:—*Dufresne v. Hutchinson*, 3 Taunt. 117; *Raleigh and Others* (assignees, &c.) v. *Atkinson*, 6 M. & W. 670; *Story on Agency*, § 371; *Pothonier v. Dawson*, Holt, N.P. 383; *Parker v. Brancher*, 2 Law Reporter, p. 46, for June 1839 (American); *Brown v. M'Gran*, 14 Peter's Reports, 480 (American); *Gausson v. Morton*, 10 B. & C. 731; *Walsh v. Whitcomb*, 2 Esp. 565; *Story on Bailments*, § 308; *Bell's Principles of the Law of Scotland*, 1364; 3 Kent's Commentaries, 642 (3rd ed.); *Warner v. M'Kay*, 1 M. & W. 591; *Smart v. Hyde*, 8 M. & W. 723; *Smith v. Dixon*, 7 A. & E. 1; *Whitaker v. Mason*, 2 Bing. N.C. 359; *Nash v. Breeze*, 11 M. & W. 352. Cur. adv. vult.

July 6.—COLTMAN, J.(a) delivered the judgment of the Court.

JUDGMENT.

In the argument upon this demurrer several objections in point of form were urged against the plea, and also that it was bad in substance, which of course is the most important question. In order to answer that, let us first inquire what are the relative positions of a principal and a factor for sale. From the mere relation of principal and factor, the latter derives authority to sell at such time, and for such prices, as he may in the exercise of his discretion think best for his employer; but if he receives the goods subject to any special instructions, he is bound to obey them, and the authority, whether general or special, is binding. This was not denied, but on the behalf of the defendant it was contended, that where a factor has advanced money on goods consigned to him for sale, the authority to sell is irrevocable, because it would be coupled with an interest. That may be true; but it was incumbent on the defendant to maintain also, that on the failure of the principal to repay such advances within a reasonable time after demand, the authority of the factor is enlarged, and that he has an absolute right to sell at any time for the best price that can be obtained, without regard to the interests of the principal, and without regard to the nature of the authority originally given to him. No case was cited in which this point appears to have been decided in any English court. In *Warner v. M'Kay*, 1 M. & W. 591, it was incidentally mentioned, and as far as any opinion of the judges can be collected from the report, it would seem that Parke, B. thought that a factor might sell to repay himself advances, and that Lord Abinger, C.J. was of a different opinion; and certainly there is nothing there said that can be treated as an authority for our guidance in this case. But we were referred to a passage in *Story's Law of Agency*. In the chapter "On the right of lien of agents" (ch. 14, § 371), he says, "In certain cases, where he has made advances as a factor, it would seem to be clear that he may sell to repay those advances without the assent of the owner (*inuito domino*), if the latter, after due notice of his intention to sell for the advances, does not repay him the amount." For this is cited a decision of the Supreme Court of Massachusetts, which refers to the case of *Pothonier v. Dawson*, Holt, N.P. 383. The latter was not an instance of goods placed in the hands of a factor for sale, but of a party in whose hands goods were deposited to secure the repayment at the time agreed upon of the money lent; in which case Gibbs, C. J. said, "Undoubtedly, as a general proposition, a right of lien gives no right to sell the goods; but when goods are deposited by way of security to indemnify a party against a loan of money, it is more than a pledge. The lender's rights are more extensive than such as accrue under an ordinary lien in the way of trade." And he proceeds to say that, "from the nature of the transaction, it might be inferred that the contract was that if the borrower failed to repay the money, the lender might sell to repay himself." We were also referred to *Story on Bailments*, ch. v. "On Pawns or Pledges," s. 308, where the rule of law is said to be, that if a pledge is not redeemed within the stipulated time by a due performance of the contract, the pawnee may

(a) TINDAL, C. J. was absent from indisposition.

sell it in order to have his debt or indemnity. But the relation of principal and factor, where money is advanced on goods consigned for sale, is not that of pawnee and pawnee, as they are delivered for sale on account of, and for the benefit of, the principal, not by way of security or indemnity against the loan, though they operate as such, the factor having a lien upon them and upon their proceeds, when sold to the amount of the claim against the principal. The authority of factors, whether general or special, may become irrevocable where advances have been made; but there is nothing in this transaction from which, to adopt the language of Gibbs, C.J. such a contract can be inferred, and the defendant was bound to prove the contract, if at any time the goods were to be forfeited, or the authority to sell enlarged, so as to enable the factor to sell at any time for the repayment of the advances, without reference to its being for the interest of the principal to sell at that time, and for that price. Nor can we find any principle in the law by which, independently of the contract, such authority is given. On these grounds it appears to us the plea is bad in substance. It is unnecessary to consider whether the authority thus supposed to be given to the factor is to be construed as an enlargement of his original authority, by the same rule of law; or as arising from some implied condition annexed to the original contract. In either case it would be very doubtful whether they should not be treated as identical. The contract laid in the plea, therefore, sets up a defence which amounts to the general issue. For the reasons we have above given, we think the third plea is bad, and the other special pleas are open to the same objection; and our judgment must be for the plaintiff.

Judgment for the plaintiff.

June 3 and July 6.

HAYWARD v. BENNETT.

To an action upon a bond given under 1 & 2 Vict. c. 110, s. 8, conditioned for the render of H. H. to the custody of the gaoler of the court in which the action should be brought, within such time and in such manner as that Court should direct, the defendant pleaded, that the action was brought in the Queen's Bench, judgment recovered, and that, according to the practice of the said Court, the plaintiff caused to be issued a ca. sa.; that according to the practice of the Court, the ca. sa. was delivered to the sheriff, and that before any breach of the condition H. H. was arrested under the writ; that afterwards H. H. sued out a habeas corpus, that the sheriffs thereupon brought him before one of the judges of the Queen's Bench, who committed him to the custody of the Marshal of the Marshalsea, of all which the plaintiff had notice; that H. H. was always ready to render himself, but was prevented in manner aforesaid. Held, that the plea was bad.

This was an action of debt on a bond. The plea which was demurred to, and the arguments appear fully in the judgment.

Byles, Serjt. for the plaintiff.

Talford and Channell, Serjts. for the defendant.

The judgment was delivered on July 6, by COLTMAN, J. (a)

JUDGMENT.

This was an action of debt on a bond entered into in pursuance of the statute 1 & 2 Vict. c. 110, s. 8. The defendant prayedoyer of the bond. The condition was, after reciting that James Hayward, the plaintiff in this action, had made an affidavit, stating, that Henry Haines was indebted to him in the sum of 681l. 15s. that if Henry Haines did and should pay to James Hayward such sums of money as should be recovered against the said Henry Haines and John Heffer, or against the said Henry Haines, in any action which had been brought, or should thereafter be brought, for the recovery of the said alleged debt of 681l. 15s. or should render himself into the custody of the gaoler of the court in which such action should have been, or might be, brought for recovery of the said alleged debt, within such time and in such manner as the said Court, or any judge thereof, should direct, then the said bond or obligation should be void, or otherwise to be and remain of full force and effect. The defendant pleaded, in substance, that after the making of the said writing obligatory, and before the commencement of this suit, to wit, &c. the plaintiff brought an action in the Court of Queen's Bench against John Heffer and Henry Haines for the recovery of the said alleged debt, and that the plaintiff afterwards recovered against the said J. H. and H. H. the sum of 924l. 1s. as well in respect of the said debt, as for his costs and charges, &c. The defendant further said, that afterwards, and before the commencement of this suit, and according to the practice of the said Court, to wit, on the 29th of October, 1842, the plaintiff caused to be issued out of the Court of Queen's Bench, upon the said judgment so recovered by him as aforesaid, a writ of *capias ad satisfaciendum* against the said J. H. and H. H. directed to the sheriffs of London, whereby the Queen commanded the said sheriffs to take the said J. H.

and H. H. and them safely keep, so that the said sheriffs might have the bodies of the said J. H. and H. H. before the Queen herself at Westminster, on Tuesday, the 15th day of November next ensuing, to satisfy the said plaintiff the said sum of 924l. 1s. together with interest at the rate of 4 per cent. from the 30th day of June, 1842; and the sheriffs were commanded to have them then and there. The defendant further said, that afterwards, and according to the practice of the Court, the said writ was delivered to the said sheriffs; and afterwards, and before the return day, to wit, on the 15th day of November therein mentioned, and before any breach of the said condition, and before the time of the said Henry Haines surrendering himself according to the practice of the said Court had expired, and within a reasonable time before the commencement of this suit, to wit, on the 14th of November, 1842, the said Henry Haines, being within the bailiwick of the said sheriffs, was, according to the practice of the said Court, taken and arrested under the said writ, and surrendered himself thereto, and was kept in the custody of the said sheriffs, by virtue of the said writ. And the defendant further said that afterwards, and before any breach of the said condition, and before the commencement of this suit, and while the said Henry Haines remained in the custody of the said sheriffs in execution under the said writ, and the said judgment, and within a reasonable time after, &c. to wit, &c. the said Henry Haines caused to be issued out of the said Court of Queen's Bench, according to the practice of the said Court, a writ of *habeas corpus cum causa*, whereby the sheriffs were commanded to have the body of the said Henry Haines before the Lord Chief Justice of the said Court, to do and receive &c. And the defendant further said that the said writ afterwards, and before the commencement of this suit, and according to the practice of the said Court, was delivered to the said sheriffs, and under and by virtue of the said writ such sheriffs immediately, and within a reasonable time afterwards, to wit, &c. according to the practice of the said Court, brought the said Henry Haines before the Honourable Sir John Patteson, Knight, one of her Majesty's justices of the said Court, who then, according to the practice of the said Court, received from the said sheriffs the body of the said Henry Haines, who then, before any breach of the said condition, and before the time of the said Henry Haines surrendering himself according to the practice of the said Court had expired, and before the commencement of this suit, to wit, &c. according to the practice of the said Court, committed the said Henry Haines into the custody of the marshal of the Marshalsea, Thomas Chapman, esq. the marshal, then being the gaoler of her Majesty's said Court, and the said marshal then received, and kept, and confined the said Henry Haines under and by virtue of that committal and execution, and at the suit of the plaintiff upon the said judgment, according to the practice of the said Court, until and after the return day of the said writ of *capias ad satisfaciendum*, to wit, &c. of all of which the plaintiff had notice. And the defendant further said that after the commitment of the said Henry Haines as aforesaid, and before the commencement of this suit, to wit, &c. the said sheriffs made their return to the said writ of *capias ad satisfaciendum*, and thereby returned that they had taken the said Henry Haines and kept him until they had received the said writ of *habeas corpus cum causa*, and further returned the commitment of the said Henry Haines. And the defendant further said, that from the time of the recovery of the said judgment, until the said Henry Haines was taken and arrested under the said writ of *capias ad satisfaciendum*, he the said Henry Haines was always ready and willing to render himself into the custody of the gaoler of the said Court, according to the practice of the said Court, and afterwards, and whilst he was and remained in custody as aforesaid, he was ready and willing so to render himself and would have rendered himself accordingly, but he was prevented by the plaintiff from so doing in manner aforesaid, and which last-mentioned premises the plaintiff well knew. To this plea the plaintiff demurred specially, on the ground that it purports in one part to shew the condition of the writing obligatory to be performed by the said Henry Haines, and in another part sets up matter of excuse; and that if the plea is to be taken as shewing that Henry Haines had rendered himself in compliance with the said condition, it was bad as not stating distinctly that he did render himself according to the practice of the Court, but if as setting up matter of excuse for not rendering according to the condition, then that it did not shew any sufficient excuse, or any answer to the action. We think it clear that this plea is to be looked at as a plea of performance, and that it is defective on the ground already stated on demurrer. We cannot in this court take notice of the practice of the Court of Queen's Bench. If the matters pleaded do constitute a tender according to the practice of that court that ought to be a matter of averment. But on the part of the defendant it was contended that the plea should be considered as setting up a certain tender according to the practice of the Court. It may be admitted as clear law that if there is an obligation

defensible on the performance of a certain condition, and the condition becomes impossible by the act of the obligee, the obligor should be excused from performance (Co. Littleton, 266, a.) But it does not appear to us that the defendant in this case has shewn the existence of any such impossibility. The act relied upon for that purpose is the suing out the *capias ad satisfaciendum*, and the delivering of it to the sheriffs; from which it was intended that the Court should infer that it was impossible that the said Henry Haines should surrender himself into the custody of the marshal according to the practice of the Court of Queen's Bench. If any such impossibility did in fact exist, it should have been averred distinctly, so that a certain and definite issue might be taken upon it. Instead of taking such a proceeding, the defendant says, that the said Henry Haines would have rendered himself, but was prevented by the plaintiff as aforesaid; or, in other words, was prevented by the plaintiff suing out the writ of *capias ad satisfaciendum*, which this Court cannot judicially know is any impediment whatever to the writ. We therefore think that the plea is bad, and there must be judgment for the plaintiff thereupon.

Judgment accordingly.

COURT OF EXCHEQUER.

Wednesday, June 24.

BOOTH v. MILLNE.

The rule laid down in *Cripps v. Wells, Car. & Marsh.* 489, as to the right to begin, is the correct rule. Where the judge is wrong in his ruling as to the right to begin, the Court will not necessarily grant a new trial, unless it appear that the mistake of the judge occasioned clear and manifest wrong to the party who was properly entitled to begin.

In this case, Martin, Q.C. shewed cause against the rule for a new trial obtained by Pashley in last Easter Term (April 22), on the ground that the learned judge at the trial was mistaken in his ruling as to the right to begin, and that the defendant was entitled so to do.

Pashley was heard in support of his rule, and in the course of the argument, which it is not thought necessary to give at length, the following cases were cited: *Cripps v. Wells, Car. & M.* 489; *Smart v. Rayner, 6 C. & P.* 721; *Mercer v. Whell, 5 Q.B.* 447.

By the COURT.—In this case the plaintiff was entitled to begin, and the ruling of Rolfe, B. in *Cripps v. Wells* was correct. There the plaintiff (as indorsee) declared on three promissory notes against the defendant, who was the drawer. The declaration contained counts on the notes only, without any other count; the defendant pleaded, as to part of the amount, payment of that sum while the payee was the holder of the notes, and as to the residue, payment into Court, and that plaintiff had sustained no greater damages. The plaintiff replied to the first plea, that the payment was not made while the payee was the holder of the notes; and to the second plea, that the plaintiff had sustained greater damages. The learned judge held, that although if the first issue had stood alone, the defendant would have been entitled to begin; yet that the second issue entitled the plaintiff to begin, notwithstanding a statement by the defendant's counsel, that if the defendant succeeded on the first issue, the plaintiff, as matter of calculation, could not be entitled to say anything on the second issue. We should mention, that the report of what fell from Lord Abinger in *Blackman v. Fernie, 2 Jurist*, 444, 446, is incorrect; the Lord Chief Baron did not (according to the recollection of Mr. Baron Parke) say that the Court would have interfered to rectify the error, "if the Lord Chief Justice had been decidedly wrong" in his ruling as to his right to begin; but if such ruling had been clear and manifest wrong, the rule in this case must be discharged.

Rule discharged.

PILKINGTON v. SCOTT.

Certain persons agreed to enter into the service of the plaintiffs as workmen and servants in their business for seven years, at stipulated wages. In case of desertion in the trade carried on by the plaintiffs, the plaintiff were to be at liberty to give notice that they should not employ the said workmen, in which case the wages during the period of non-employment were to be calculated at one moiety of those paid during the week preceding the notice, the masters being likewise at liberty in case of sickness to employ other hands, and to dismiss the workmen, parties to the agreement, on giving one month's notice of their intention so to do. The workmen on their parts agreed not, during the said period of seven years, to enter into the employ of any parties except the plaintiffs, but the agreement did not contain any express promise by the plaintiffs to employ the said workmen.—Held, that this agreement was not void, as being unreasonably in restraint of trade; that there was some consideration for the agreement by the servants; and that according to the case of *Hitchcock v. Coker, 6 A. & E.* 438, the Court could not therefore inquire into the adequacy of such consideration.

This was an action brought against the defendant for wrongfully detaining the servants of the plaintiffs. To the declaration, the pleas were Not Guilty, and

(a) Tindal, C.J. was absent from indisposition.

others which it is not material to specify. It appeared at the trial that an agreement had been entered into between the plaintiffs and certain persons who proposed to enter into their service as workmen, in the business carried on by the plaintiffs. By this agreement, the parties contracted to work exclusively for the plaintiffs at certain wages for seven years, the plaintiffs, on giving due notice, to be at liberty, in case of any depression in the business by them carried on, to discontinue employing the workmen with whom the agreement was entered into on certain terms therein specified, viz. that the wages were, during the period of non-employment, to be calculated at one moiety of those paid during the week preceding the date of the notice, the plaintiffs likewise to be at liberty in case of sickness to employ other persons in lieu of those contracted with, and to be empowered to dismiss the parties to the contract altogether, on giving one month's notice of their intention so to do. The agreement did not contain any express undertaking, or promise, on the part of the plaintiffs, to employ the said workmen in their business. *Martin, Q.C. and Crompton*, now showed cause against the rule for a new trial, obtained April 21, by *Knowles, Q.C.* (see Law T. for April 27). They argued that this was not a contract in restraint of trade, and cited *Hitchcock v. Coker*, 6 A. & E. 438, as shewing that where the restraint is neither unreasonable nor oppressive, and where there is some consideration for the contract between the parties, the Court will not enter into the question, whether the consideration was equal in value to the restraint agreed to by the party to whom that consideration moved.

J. Henderson, in support of the rule.—A contract by A. to work for B. for seven years, in consideration of 100*l.* is good; but a contract by A. not to work for any person except B. during seven years, in consideration of 100*l.* but without any contract on the part of B. to employ him, would be bad. The case last put is similar to the present; besides, here the restraint was unreasonable, and against public policy. *Hitchcock v. Coker* only decided that as between the parties themselves, the adequacy of the consideration could not be considered; but with reference to the public, it is submitted, that it may be inquired into. He cited *Mellan v. May*, 11 M. & W. 663; *Ward v. Byrne*, 6 M. & W. 548; *Aspin v. Austin*, 5 Q.B. 671; *Dunn v. Sayles*, 5 Q.B. 685; *Young v. Timmins*, 1 Cr. & J. 331.

ALDERSON, B.—There is no doubt that where a contract is unreasonably in restraint of trade, it is void; and according to *Hitchcock v. Coker*, even where the restraint is not unreasonable, there must be some consideration for the contract; but if there appear to have been some consideration, the Court will not inquire what that consideration was; whereas, previously to this case, it was thought that the adequacy of the consideration might be inquired into. In the present case, it appears to me that the agreement was not unreasonably in restraint of trade, that there was some consideration for it, and that *Hitchcock v. Coker* consequently applies.

ROLFE and PLATT, BB. concurred.

Rule discharged.

Thursday, June 25.

JOWETT v. SPENCER.

By indenture between the plaintiff of the first part, J. L. of the second part, and the defendant of the third part, the said J. L. at the request and by the direction of the plaintiff, granted to the defendant all the coal mines, beds, veins, and seams of coal under a certain message and land, to hold the same to the defendant, &c. subject to the covenants therein contained; and the defendant, by the indenture, covenanted to pay to the plaintiff, as the price and consideration money for the coal so granted, 40*l.* for every statute acre which should be found under such message and land, until the said price and consideration for the coal should be fully paid. The defendant covenanted to pay the plaintiff 40*l.* part of the said consideration money, in each year, in two equal instalments, one, &c. whether the whole of an acre of the said coal should be gotten in every such year or not. In an action upon this indenture, the declaration stated, that at the time of making the said indenture there were within and under the said message and land, divers statute acres of the said coal, and that a large quantity, to wit, &c. still remained within and under the said message and land, and that a sum of money, to wit, 40*l.* for two half-yearly instalments for the coal aforesaid, became and was due, and still was in arrear and unpaid. Held, that upon this declaration the plaintiff was not entitled to recover, inasmuch as the finding of the coal was a condition precedent to the obligation to pay, and in order to shew that the defendant had become liable to pay the 40*l.* the plaintiff should have averred in his declaration that coal had been found within and under the said message and land.

This was an action of covenant on an indenture, the material parts of which will be found stated in the judgment (*infra*), and a verdict having been found for the plaintiff.

Addison now (June 24) showed cause against the rule obtained by *Jervis, Q.C.* (see the Law

T. for April 25), to arrest the judgment, on the ground that there was no averment in the declaration that coal had been found within or under the message and land in the indenture mentioned, and that such averment was necessary, inasmuch as the finding of the coal was a condition precedent to the obligation on the part of the defendant to pay the consideration agreed upon between the parties. *Addison* argued that the averment in the declaration that there was coal under the said land was equivalent to an express averment that coal was found there, and that the jury could not have found for the plaintiff unless this fact, viz. that coal had been found under the said land, had been proved to their satisfaction at the trial, and that by such finding the defect, if any, in the declaration was cured. He cited *Stinnet v. Hogg*, 1 Williams Saund. 6th edit. 28, c.

Atherton, in support of the rule, contended that there was nothing on the face of the declaration to shew that coal had ever been found under the lands in question; that the grant was in fact a grant of all existing coal, with a contract on the part of the defendant to pay at a certain rate for all that should be found; that the existence of coal and the finding of it were very different things; and that the omission in the declaration of any averment that coal had been found was fatal to the maintenance of the action. In the course of his argument, *Platt, B.* referred to *Sicklemore v. Thistleton*, 6 M. & S. 9.

Cur. adv. vult.

JUDGMENT.

June 25.—*ALDERSON, B.* now gave judgment as follows:—This was a motion in arrest of judgment. The declaration stated that by indenture between the plaintiff, of the first part, J. L. of the second part, and the defendant, of the third part, the said J. L. at the request and by the direction of the plaintiff, granted to the defendant all the coal mines, beds, veins, and seams of coal under a certain message and land, to hold the same to the said defendant, &c. subject to the covenants therein contained; and that the defendant, by the said indenture, covenanted to pay unto the plaintiff, as the price and consideration money of the coal so granted, 40*l.* for every statute acre which should be found under such message and land; and until the said price and consideration money for the coal should be fully paid, that he, the defendant, would pay to the plaintiff 40*l.* part of the said consideration money, in each year in two equal instalments, on the 3rd of January and the 3rd of July, the first payment to be made on the 3rd of January next after the date of the indenture; and whether the whole of an acre of the said coal should be gotten in every such year or not. The declaration further stated, that at the time of making the said indenture, there were, within and under the said message and lands, divers statute acres of the said coal, and that a large quantity, to wit, thirteen acres of the said coal, still remained within and under the said message and lands, and that a sum of money, to wit, 40*l.* for two half-yearly instalments for the coal aforesaid, became and was due, and still was in arrear and unpaid. The defendant pleaded *non est factum*, and another plea not affecting the present question. On these pleas issue was joined, and the jury found a verdict for the plaintiff, and the question now is, whether upon this finding the plaintiff is entitled to judgment? By the covenant, for the breach of which this action was brought, the defendant bound himself to pay 40*l.* for every statute acre of the said coal that should be found within and under the said message and land, and to pay that sum yearly, by half-yearly instalments, whether one acre of the said coal should be gotten or not. The finding of the coal is consequently, as it appears to us, a condition precedent to the obligation to pay; and in order to shew that the defendant had become liable to pay the 40*l.* the plaintiff should have averred in his declaration, that coal had been found under and within the message and land. The averment that coal was within and under the message and land is quite consistent with its never having been found. The language of the agreement is, for the annual payment of 40*l.* whether the whole of an acre of coal should be gotten or not. Such a covenant as this shews that the party to the deed intended that the word "found" should import more than the mere existence of the coal; whether it is used as synonymous with "gotten," or whether as synonymous with "in a condition to be gotten," or the ability to get the coal beyond that of its mere existence, is quite unimportant; the necessity of the averment of its having been found still remains. It was contended by the plaintiff's counsel, that after verdict and adjudication of the sum of 40*l.* for a year's rent, the averment that the rent became and still was in arrear and unpaid was sufficient to support the declaration, and that the jury must have found the verdict on the assumption that coal had been found. In *Sicklemore v. Thistleton*, 6 Maule & Sel. 9, the Court of Queen's Bench held that that general averment was not sufficient, even after verdict. In that case, the defendant had executed a lease of certain premises. In the declaration it was stated that the covenant was general that the lessee should pay the rent and perform the

covenants to be by him paid and performed, and the breach assigned was that rent was in arrear; but the deed having been set out on *oyer*, the effect of which was to make it part of the declaration, it appeared that the defendant covenanted to pay on demand, in case the lessee should neglect to pay the rent forty days after it became due. The declaration did not aver the demand on the expiration of the forty days, and judgment was arrested, though the declaration was that three-quarters' arrears of rent were unpaid. The form of assigning the breach in the present declaration, by describing the money to be due as two half-yearly instalments of the price or consideration for the coal, limits it to the supposed arrears of instalments of the price of the coal, being within and under the message and land; for the breach is, that after the making of the indenture, and before the commencement of the suit, a sum of money, to wit, 40*l.* as two half-yearly instalments of the said price or consideration money for the coal within and under the said message and land, became and was due, and still was in arrear and unpaid, contrary to the tenor and effect of the defendant's covenant. This breach differs from the obligation imposed by the covenant, which was not to pay for coal still existing within and under the said message and land, but for such as should be found. We therefore think this declaration is bad, and that the judgment must be arrested.

Judgment arrested.

THE MAYOR, &c. OF SALFORD, v. ACKERS.

By the 82nd section of the local Act, 11 Geo. 4, c. 8, the commissioners appointed to carry out the provisions of that Act were, amongst other things, empowered to cause new pavements, &c. to be made at the charge of the owners or occupiers of houses, &c.; and by the 83rd section it was provided that, previously to so doing, they should give notice to such occupiers, requiring them to make such pavements; and in case any such owner or occupier should neglect or refuse so to do for the space of six calendar months, "then and in such case it should be lawful for the said commissioners, &c. to cause the same to be done, and to recover the costs, charges, and expenses thereof from such owner or occupier, in case of refusal to pay the same, in such manner as herein is mentioned." The declaration in an action brought to recover the expenses incurred by the commissioners in paving, &c. from the owner or occupier of a house within their jurisdiction did not contain any averment that notice had been given to the owner or occupier under the said 83rd section: Held, on general demurrer, that the giving the notice was a condition precedent to the right of the commissioners to maintain the action, and that it was incumbent on them to aver in the declaration that such notice had been given.

The arguments on the demurrer in this case will be found reported in the LAW TIMES for May 30. The Court, on the argument which was concluded June 1, took time to consider their judgment, which was now (June 26) delivered as follows:—

JUDGMENT.

ROLFE, B.—This was an action brought by the new corporation of Salford, as having succeeded to all the original rights and privileges of the old incorporators of that borough by the local Act of the 11 Geo. 4, c. 8. The action was brought against the defendant as the owner of land in a certain street, paved by order of the commissioners, to recover his quota for the expense of paving that street. The declaration, after reciting that this was one of the streets within the borough liable to the jurisdiction of the commissioners; and also reciting that the commissioners had, in the exercise of their power, caused that street to be paved, goes on to aver that the proportion of the expense to be paid by the defendant in respect of that land was 21*l.* and something odd. The declaration then states the charter incorporating the borough, and subsequently the local Act, under the provisions of which all the rights of the commissioners were transferred to the plaintiffs, including the right to recover the money, if any, that should be so due from the defendant; and it then avers non-payment of the above-mentioned sum of 21*l.* To this declaration the defendant demurred generally, on the ground that the Paving Act did not give any right of action to the commissioners. The plaintiffs relied on the 82nd section of the Paving Act, which enacts, that it shall be lawful for the commissioners to cause new pavements to be made, &c. in such manner as to them shall seem meet, and that the charges and expenses of such new pavement shall be paid and reimbursed by the owners and occupiers of lands adjoining the said streets, each of such owners and occupiers paying an equal share thereof. It goes on to shew how that share is to be ascertained, and enacts, that it shall be lawful for the commissioners to recover such expenses by an action at law in any of the superior courts. It was on this clause that the plaintiffs relied. The defendant, not disputing that clause, denied the right of action, and insisted that clause 83 imposes a duty on the commissioners, as a condition precedent, of first requiring the owners or occupiers

to do the work themselves, and that it is only on their default and neglect to do so that the right of the commissioners arises. That section, the 83rd, begins with the words "provided always," and then proceeds to enact, that before the commissioners shall cause the streets to be paved as therein aforesaid, they shall first give notice to every owner and occupier, requiring him to pave the same in such manner as they shall direct; and that if any such owner or occupier shall for six months neglect so to do, then, and in such case, it shall be lawful for the commissioners, and they are thereby required, to cause the same to be done, and recover the expenses from such owner or occupier in such manner as therein is mentioned. On these two clauses, taken together, the defendant contends that the giving of the notice was a condition precedent, and that the declaration is bad on general demurrer, for not containing an averment that such notice had been given. We think, undoubtedly, his argument is good, and must prevail. The contention on the other side was, that inasmuch as the notice to the owners and occupiers, calling on them to do the work themselves, was the subject of a separate and subsequent clause introduced by way of proviso, non-compliance with such subsequent enactment was matter to be set up by the defendant by way of defence, and that it was not necessary for the plaintiffs to advert to it in the declaration; and it was further contended that the principle of those cases applies in which it has been held that an exception not being embodied in the enacting clause, but forming the subject of a distinct proviso, must be pleaded distinctly, and need not be stated by the party whose case rests on the words of the enacting clause. We do not question the doctrine of that class of cases, which is, however, wholly inapplicable to this. The question in this case is, taking the two clauses together, under what circumstances were the commissioners entitled to maintain an action against the owner. They were empowered to do so only when they had first given notice to the owner requiring him to do the work himself. The first clause, the 82nd, does authorize the commissioners to bring an action without in terms imposing any previous condition. But the next clause shows clearly that it is open to the owners and other parties to do the work themselves; and it enacts that in default of their doing so, then (which certainly means then only) it shall be lawful for the commissioners to recover the expense in such manner as is herein (that is to say, in the previous clause) mentioned. This makes the notice a condition precedent, without which no action can arise, and, in compliance with the general principle, it must be averred. Mr. Watson, for the plaintiffs, against this construction, pointed out the difficulty there would be in knowing to whom the notices should be given, or who the owners and occupiers were that claimed the land. No doubt there may be such difficulties, but they are difficulties that the parties who obtained the Act have brought on themselves, and cannot affect third persons. However, our decision on this demurrer is upon the short ground that we think the having given the notices is a condition precedent to the plaintiffs' right of action, and that it was incumbent on them to aver in the declaration that such notices were given; and therefore the demurrer must be allowed, and there must be judgment for the defendant.

Judgment for the defendant.

Saturday, July 4.

WALLER v. BLACKLOCK.

To a declaration in trespass, the defendant pleaded several pleas. The cause went down for trial at the assizes, and was made a remanet. Afterwards, the defendant obtained leave to withdraw one of his pleas, and to substitute another for it; and the cause was subsequently tried, when a verdict was found for the defendant, on the plea thus substituted, and for the plaintiff on the other pleas: Held, on motion to review the Master's taxation of costs, that the plaintiff was entitled to all the costs up to the period of the cause being made a remanet at the first assizes.

In this case Hoggins shewed cause, in Trinity Term last (May 22), against a rule which had been obtained by Cowling, for reviewing the Master's taxation of costs, made under the following circumstances:—The action was in trespass for destroying plaintiff's weir. The defendant pleaded several pleas, and when the cause went down to trial at the assizes, it was made a remanet. The defendant having applied for leave to withdraw one of his pleas, and to substitute another for it, this application was granted, "on payment of the costs of and occasioned by such amendment;" when the cause went down again after this amendment, a verdict was found for the defendant, on the amended plea, and for the plaintiff on the other issues; and thereupon, Master Walker allowed to the plaintiff all the costs, up to the time of the cause being made a remanet. No cases were cited in the course of the argument, which turned altogether on the above facts; and the Court, after hearing Cowling in support of his rule, took time to consider their judgment, which was now (July 4), delivered by PARKE, B. as follows:—

JUDGMENT.

This case stood over for our consideration. The

question was, whether Master Walker was right in allowing the plaintiff the costs of the remanet. To the declaration the defendant pleaded several pleas. The cause went down to the assizes, and was made a remanet. Afterwards the defendant applied for leave to amend one of his pleas, and permission was given so to do. The case went down again to the subsequent assizes, when the plaintiff failed upon the substituted plea, but succeeded on the other issues; and upon taxation of costs, Master Walker allowed to the plaintiff all the costs of the remanet at the first assizes. An application was made to review his taxation, but we are clearly of opinion that Master Walker was right, and it seems to us that he was right upon this principle. The plaintiff, in order that justice might be done, with reference to the issues raised on the record at the time of the first assizes, underwent the delay of the trial at those assizes, and ought, therefore, to receive his part of the costs of those issues; that is, the costs of the delay, which are the costs of the remanet. It therefore seems to us that the rule must be discharged.

EXCHEQUER CHAMBER.

ON ERROR FROM THE COURT OF COMMON PLEAS.

(Before POLLOCK, C.B.—PARKE, ALDERSON, and ROYCE, B.B.—PATTESON, COLERIDGE, and WIGHTMAN, J.J.)

CLIFT v. SCHWABE.

Argued Feb. 4.—Determined June 16.

Upon a policy of life insurance were indorsed certain conditions and regulations, amongst which was the following: "Every policy effected by a person on his or her own life shall be void if such person shall commit suicide, or die by duelling or the hands of justice." To a declaration on this policy, the defendants who were directors of the insurance company, pleaded that the assured did commit suicide, whereby the policy became void, and on this plea issue was joined. At the trial evidence was given that the deceased destroyed himself by having, voluntarily and for the purpose of killing himself, swallowed a quantity of sulphuric acid. The same witness also gave evidence to show that at the time of his swallowing the said sulphuric acid the deceased was of unsound mind, whereupon the learned judge told the jury that in order to find the issue for the defendants they must be satisfied that the deceased died by his own voluntary act, being then able to distinguish between right and wrong, and to appreciate the nature and quality of the act which he was doing, so as to be a responsible and moral agent.—Held (Pollock, C.B. and Wightman, J. diss.) that this direction was incorrect, that the word "suicide" must be interpreted in accordance with its ordinary meaning, and must be taken to include every act of self-destruction, provided it be the intentional act of the party, knowing at the time the probable consequences of what he is about to do.

This was an action brought to recover the amount of several policies of insurance for 999l. each on the life of one Louis Schwabe deceased, whereby the plaintiff below, the administratrix of the last will and testament of the said Louis Schwabe, sought to recover the sum insured from the defendants, James Clift and Edward Bates, who were directors of "The Argus Assurance Company," with which company the above-mentioned insurance had been effected. Upon the policy of insurance certain conditions and regulations were indorsed, to which the policy was readed therein, in like manner as if they had been inserted therein, and amongst these conditions was the following: "6th. Every policy effected by a person on his or her own life shall be void, if such person shall commit suicide, or die by duelling, or the hands of justice. But if any policy effected by a person on his or her own life shall afterwards be actually assigned to any person or persons by way of mortgage, or for the benefit of any creditor or creditors, or charged with any sum or sums for the benefit of any mortgagee or mortgagees, or creditor or creditors, and the person on whose life the assurance shall have been effected, shall commit suicide, or die by duelling, or by the hands of justice, then the policy so assigned or charged shall not be void to the extent of the principal sum or sums, and interest secured by the assignment or charge, or if any policy effected by any person on his or her own life, shall afterwards be absolutely assigned to a purchaser for valuable consideration in any transaction (except that of settlement upon or after marriage or any other occasion), and the person on whose life the assurance shall have been effected, shall commit suicide, or die by duelling, or by the hands of justice, then the policy so assigned shall continue in full force, notwithstanding such suicide or death." The declaration contained counts upon five separate policies of insurance for 999l. each, subject respectively to the condition or proviso above set forth, and the aggregate amount of which the plaintiff sought by the present action to recover. To this declaration the defendant pleaded as follows:—"That though true it is that the said several policies of insurance in the declaration mentioned were so made, and that the defendants promised as in the declara-

tion is mentioned, and that the said Louis Schwabe died as in the declaration is alleged, yet for plea to the said declaration the defendants say, that after the making of the said several policies, and the said promises respectively, to wit, on the 10th day of January, in the year of our Lord, 1845, the said Louis Schwabe did commit suicide, whereby the said policies respectively became and were void." The plaintiff, by her replication, traversed the allegation in the plea above set forth, viz.: that the said Louis Schwabe did commit suicide, and on this traverse issue was joined. The cause came on for trial at the last Summer Assizes, before Mr. Justice Cresswell, at Liverpool, and evidence was given which shewed that the said Louis Schwabe had destroyed himself by taking sulphuric acid; evidence was likewise given that the assured was in an unsound state of mind at the time when he so destroyed himself, and the learned judge thereupon directed the jury that, in order to find the issue joined between the parties for the defendants, it was necessary that they should be satisfied that the said Louis Schwabe died by his own voluntary act, being then able to distinguish between right and wrong, and to appreciate the nature and quality of the act that he was doing, so as to be a responsible moral agent; that the burthen of proof as to his dying by his own voluntary act, was on the defendants, but that being established, the jury must assume that he was of sane mind, and a responsible moral agent, unless the contrary should appear in evidence. A verdict was accordingly found for the plaintiff below, a bill of exceptions being tendered on behalf of the defendants below, to the charge and direction of the learned judge, on the ground that the jury ought to have been directed that, "if the said Louis Schwabe, deceased, voluntarily took the said sulphuric acid for the purpose of destroying life, being conscious of the probable consequences of the act, and having at the time of so taking it sufficient mind to will to destroy life, he had committed suicide within the meaning of the said 6th condition of the said policies respectively." The points for argument before the Court of Exchequer Chamber on the part of the plaintiffs in error, were as follows: "That according to the true construction of the expression in the 6th condition of the several policies 'shall commit suicide,' if the assured by his own voluntary act, put himself to death, intending at the time of committing the act to cause his own death, and being conscious that such would be the probable effect of the means employed by him for that purpose, the condition attached, and the several policies, became forfeited; although at the time of so killing himself he might be of unsound mind, and incapable, by reason of such unsoundness, of distinguishing between right and wrong, and that the jury ought to have been directed accordingly." "The points for argument on the part of the defendant in error, were, that the direction of the learned judge was correct, and that, 'if the deceased died by his own voluntary act, being then of insane mind and unable to distinguish between right and wrong, and to appreciate the nature and quality of the act that he was doing, so as to be a responsible moral agent, he did not commit suicide avoiding the policies, according to the provisos in that behalf therein respectively contained.'"

Sir F. Kelly, S. G. for the plaintiffs in error.—The words "commit suicide," to which the Court are now called upon to affix a meaning, have no ascertained technical signification, and therefore the Court will be guided by the intention of the parties to the policy of insurance to be collected from the words used by them. The case of *Borradaile v. Hunter*, 5 Man. & Gr. 639, must necessarily be brought under the consideration of this Court on the present occasion. That was an action on a life policy of insurance, containing a proviso, that in case "the assured should die by his own hands, or by the hands of justice, or in consequence of a duel," the policy should be void. The assured, as appeared at the trial, threw himself into the Thames and was drowned; and upon an issue whether the assured died by his own hands, the jury found that he "voluntarily threw himself into the water, knowing at the time that he should thereby destroy his life, and intending thereby to do so; but that at the time of committing the act, he was not capable of judging between right and wrong." The verdict having been entered for the defendant, who was a trustee of the insurance company, a motion was subsequently made by Sir Thomas Wilde to enter the verdict for the plaintiff, on the ground that the expression "dying by his own hands" was synonymous with "suicide," and that the question really was, whether the assured was or was not in a sane state of mind at the time of committing the act in question. A majority of the Court of Common Pleas, consisting of Coltman, Erskine, and Maule, J.J. were of opinion that the policy was avoided under the circumstances above stated; and that the proviso included all acts of voluntary self-destruction, and was not limited by the accompanying provisos to acts of felonious suicide. This opinion, it is submitted, and not that of the Lord Chief Justice, was correct; and, if so, this case is a direct authority for the now plaintiffs in error, and against the direction of the learned judge at the trial. [POLLOCK, C.B. referred to *Hadfield's case*, 1 Col-

Hanson on Lunatics, 480, and to the argument of Mr. Erskine in that case as reported, ib. 483.] The words used in this case by the insurance company must not be so much restricted as to comprise only cases of felonious suicide or *felo de se*. Why is such a distinction to be imported into the contract entered into by these parties? The words "commit suicide" are exactly equivalent to, and co-extensive with, the words "die by his own hands." The Court will look to the popular meaning of the expression "commit suicide," and if so, they must give to it the general, and not the restricted sense. The term known to the law as applicable to felonious suicide is "self-murder." The words "suicide" and "homicide" are co-extensive, the former being applied to self-destruction, and the latter to the destruction of the life of another person. As homicide may be justifiable, so suicide may occur without moral guilt, as where it is committed by one *non compos mentis*. [ALDERSON, B.—May not homicide be accidental as well as justifiable? Tomlins's Law Dict. title Homicide.] That would merely shew that the word "suicide" must have a still larger signification than that contended for. The legal meaning of "homicide" will be found in 3 Inst. 54; and there amongst the different kinds of homicide is mentioned homicide by misadventure, which is, "when a man doth an act that is not unlawful which, without any evil intent, tendeth to a man's death." Ib. 66. In *Borradaile v. Hunter*, the learned judge at the trial (Erskine, J.) expressed his opinion that, if the deceased's mind was so far gone that he did not know the consequences of the act, and the mind was not moving to the act, it was not within the proviso in the policy on which the action was brought; but in the present case, as indeed in most cases, the state of facts is different from that suggested by the learned judge; because here the deceased, although labouring under excitement, did know the consequences of his act. [POLLOCK, C.B.—No difficulty could arise, if, after the word "suicide" in the proviso, were added the words "whether felonious or not."] In construing this proviso, the Court will be guided by the rule as laid down by Maule, J. in *Borradaile v. Hunter*; he says, "In construing these words, it is proper to consider, first, what is their meaning in the largest sense which, according to the common use of language, belongs to them; and if it should appear that that sense is larger than the sense in which they must be understood in the instrument in question, secondly, what is the object for which they are used? They ought not to be extended beyond their ordinary sense in order to comprehend a case within their object; for that would be to give effect to an intention not expressed; nor can they be so restricted as to exclude a case both within their object and within their ordinary sense without violating the fundamental rule which requires that effect should be given to such intention of the parties as they have used fit words to express." It must, moreover, be borne in mind, whilst endeavouring to ascertain the intention of the parties, that great detriment would be caused to insurance offices, if the term "suicide" were confined to cases of felonious self-destruction, and that it never could have been intended that a jury should have to inquire into the state of mind of the deceased in every case of self-destruction by a party insured. That portion of the judgment of Erskine, J. in *Borradaile v. Hunter* is, moreover, incorrect in which he assumes that the words "shall commit suicide" "have been popularly understood and judicially considered as importing a criminal act of self-destruction." The more comprehensive is, likewise, it is submitted, the true meaning of these words. If this view be correct, the case of *Garrett v. Barclay*, 5 Man. & Gr. 643, note (a), which was only a *Nisi Prius* decision, cannot be supported, and the cases of *Kinnear v. Borradaile* and *Kinnear v. Nicholson*, (ib. 644, notes (b) and (c)) cannot be cited as decisions on the point now before the Court. In *Borradaile v. Hunter*, Erskine, J. thought that suicide must be taken to have a different meaning from the expression "dying by his own hand;" whereas Tindal, C. J. thought that they were essentially the same. On the whole it is submitted that "suicide" is the better expression of the two. [ALDERSON, B.—The act done by a man cannot be called his act if he be labouring under perfect fatuity at the time of committing it, but there may be a partial intention which will suffice to make it his act.] The proper test may be, whether he knows the consequences of his own act, and does it with such knowledge; but insurance offices are not bound to enter into all the more refined metaphysical distinctions of which very many may doubtless be suggested. Then, as to the application of the maxim *nosctur a sociis* made by Tindal, C. J. in *Borradaile v. Hunter*, it may be observed that the acts mentioned in the proviso in the policy could hardly have been otherwise conjoined. It may be said also that the word "commit" is only applicable to a criminal act; but this is not so, for after a justification to a declaration in trespass, it is usual to allege that the defendant, therefore, committed the said trespass. The Court will, however, without entering into such nice distinctions, endeavour, from a consideration of the entire instrument,

to ascertain and carry out the intention of the parties, and will affix the popular and ordinary meaning to the words which they have used.

J. Henderson, for the defendant in error (the plaintiff below).—The simple question is this—What is to be understood by the word "suicide?" The popular meaning may no doubt be important with a view to answering this question, but this meaning is not that contended for on behalf of the plaintiffs in error. This is a word of modern origin—it has not been necessary for the Courts to affix a meaning to it in interpreting wills—it is not to be found in the old English Bible, and in legal writers it is used as synonymous with *felo de se*. The definition of *felo de se* will be found in Hale, P.C. c. 21, and in 4 Bla. Com. 189. [ALDERSON, B.—It is clear that the word suicide includes a *felo de se*, but is the term confined to felonious self-destruction?] The meaning given to the word "suicide" in Johnson's Dictionary shews that it is so confined; and if the meaning of any word in this policy is doubtful, it must be taken against the insurance company, and in favour of the assured. The word "suicide" signifies the act of a man who slays himself, knowing the consequences and quality of his act; then the verb "commit" is applicable only where the thing done is criminal, at all events, it implies that the thing done is the deliberate act of the will of the doer, and the expression "commit suicide" is equivalent to the phrase, "commit the crime of suicide." Then as to the test suggested, that a person is within the proviso who knows the consequences of his own act, and does it with such knowledge, this test is incorrect, for it might include a lunatic, who, whilst in a fit of lunacy or delirium, destroyed himself. [POLLOCK, C.B.—The law recognizes no difference in the degree of mental alienation, as existing where persons are *non compos mentis*; but the word "will" is surely applicable only to a sane man.] It is a rule of law that *actus non facit rerum nisi mens sit rea*; an act, therefore, cannot be legally criminal unless the intentions of the person doing that act were criminal, and a person *non compos* can have no criminal intention. [POLLOCK, C.B.—But there may be degrees of mental alienation, though not of legal responsibility. PARKES, B.—A man might be competent to make a will, though in such a state of mind as not to be responsible criminally for his actions.] The case of *Borradaile v. Hunter*, so much relied upon by the plaintiffs in error, will be found quite consistent with the view now contended for. Erskine, J. expressly recognizes the more restricted meaning of the word "suicide" as being correct. Besides, in that case the words of the exception in the policy were somewhat different from those here used; and, at all events, that decision will now be reviewed by this Court. The cases cited in the notes referred to in 5 Man. & Gr. are not material, and reference may be made to *The Amicable Company v. Bolland*, 4 Bligh, N.S. 194, as an authority for the defendant in error. Lastly, death by the self-destruction of the assured, whilst labouring under mental derangement, is one of those occurrences the probabilities respecting which may be calculated, and against which, therefore, it may be considered one of the special objects of companies like the present to insure; and if the meaning of the exception is doubtful, the words used must be taken *contra proferentem*.

Sir F. Kelly, in reply.—The authority of Lord Hale is against the defendant in error, for, according to his definition, "suicide" includes self-murder and death *per infortunium*. Richardson's Dict. titles Suicide and Commit, is likewise in favour of my argument; and the form of a plea of *liberum tenementum*, as given in Chitt. on Pleading, shews that the word "commit" is not exclusively applicable to a criminal or illegal act. The words used in this policy are large enough to include every act of self-destruction where the party did the act intentionally, and with a knowledge of its probable consequences; and there is nothing contained in the instrument from which it can be supposed that the parties had any intention to give it a more restricted signification. It is therefore submitted that the judgment of the Court below ought to be reversed.

The Court now (June 16), in consequence of a difference of opinion amongst its members, proceeded to deliver judgment *seriatim*.

JUDGMENT.

WIGHTMAN, J.—I am of opinion, on the best consideration I can give to this case, that the direction of the learned judge to the jury on the trial of the cause was right, and that their decision that Louis Schwabe did not, under the circumstances found by them, commit suicide within the meaning of the exception in the policy of insurance upon his life was right. The exception or proviso in the policy is in these terms: "Every policy effected by a person, on his own life shall be void if such person shall commit suicide, or die by duelling, or the hands of justice." The defendant pleaded that Schwabe, whose life was insured by himself, did commit suicide; which was denied by the plaintiff in the action. The evidence was, that the deceased voluntarily took poison in sufficient quantity to cause death, for the purpose of killing himself, but that he was, when he took the

poison, of unsound mind. The learned judge told the jury that in order to find a verdict for the defendant in the action they must be satisfied that the deceased died by his own voluntary act, being then able to distinguish between right and wrong, and to appreciate the nature and quality of the act that he was doing so as to be a responsible moral agent. To this direction a bill of exceptions was tendered, it being contended on the part of the defendants that it was sufficient to entitle them to a verdict if the deceased had sufficient mind to intend to kill himself, and to know that the poison would probably have that effect, and that he took the poison with that intent, though he might be unable to distinguish between right and wrong, or to appreciate the nature and quality of the act he was doing, so as to be a responsible moral agent. The question then is, whether, by the word "suicide," as used in the policy, a criminal killing of himself, such as could only be committed by a responsible moral agent, was intended; for if it was, the direction of the learned judge and the verdict of the jury were right, otherwise not. It is admitted that the word is not to be understood in the largest sense of which the word is capable, as it would include the accidental or unintentional killing of himself, which it was not contended would be within the meaning of the exception. The term suicide has no technical or legal meaning; it is derived from the Latin, from the compound word *suicidium*; but the English word "suicide," is not to be found in any Latin Dictionary or Glossary that I have met with. We must, therefore, consider its ordinary meaning in the English language, as used in that language, taken in connection with the apparent object and intent of the proviso in the policy in which it occurs. In all the English books in which it occurs, legal or otherwise, it is almost invariably, I believe I may say invariably, used to denote a criminal act. In Johnson's Dictionary, when used as denoting an act, it is said to mean "self-murder," "the horrid crime of destroying oneself," and when used as denoting a person is said to mean a self "murderer." In Webster's Dictionary the same meaning is given, and in Rees's Encyclopædia the same, and the same in the Encyclopædia Britannica. In Blackstone's Commentaries, vol. iv. p. 189, the term "suicide" is used as meaning *felo de se*; and he says, "The suicide is guilty of a double offence, one spiritual and the other temporal, and the law reckons it amongst the highest crimes." Particular instances may be given to shew that the word "suicide" is necessarily used in the English language in a criminal sense, and that such is the meaning of the word in its general and ordinary acceptance. I have not been able to find any passage in any writer in the English language in which the word has otherwise been used. If that be so, is there anything in the policy or the terms of it to shew that it is used in the proviso in question not in the general and ordinary sense, but in another of which it is capable, although unusual? The word is used in a disqualifying exception, a proviso by which under certain circumstances the insurance and premiums paid are forfeited, and the benefit of the policy lost. The usual course is to look strictly to the terms of such a policy, and not to regard them in their ordinary meaning; but in the present case, if the ordinary meaning of the term suicide was more uncertain than it seems to be, the terms used in the proviso itself in connection with it tend to shew the sense in which the insurers who used it intended it should be used; the condition is to be void "if such person shall commit suicide, or die by duelling, or the hands of justice." The three excepted modes of death are classed together in one exception or proviso, and two of them are unquestionably the consequences of crime, and if the maxim *nosctur a sociis* is applied, it strongly tends to shew that the term "suicide" is used in a criminal sense also. In *Borradaile v. Hunter*, 5 Manning and Granger, 639, which was cited upon the argument, Mr. Justice Erskine, who agreed with the majority of the judges, says, as one of the grounds for his judgment, "Where I find the terms 'shall commit suicide,' that have been popularly understood and judicially considered as importing a criminal act of self-destruction, exchanged for terms not liable to be so construed, it may, I think, be fairly inferred, that the terms adopted were intended to embrace all cases of intentional self-destruction, unless it can be collected from the immediate context that the parties used them in a more limited sense;" and my Lord Chief Justice Tindal, in his judgment in the same case, says, "If the exception had run in the terms 'shall die by suicide, or by the hands of justice, or in consequence of a duel,' surely no doubt could have arisen that a felonious suicide was intended thereby." I refer to these passages as shewing the opinions of the learned judges as to the meaning of the term suicide, when used in such an exception, and in connection with such other terms as occur in the present case. I forbear to speculate upon the probable objects of the insurers in introducing such a proviso. It can hardly be because such means of death as those excepted are events not to be calculated upon, for there is no doubt but the probabilities of such events are as well calcu-

lable as any other; and, moreover, those modes of death are not excepted when the policies are upon the lives of others. It may be that the exception in the case of suicide was introduced for the case of a person deliberately insuring his life, with the intention of committing suicide, in order to benefit his family; or it may be that the insurers were influenced by some higher motive—a wish to check such modes of death as those excepted; either of these objects would seem to indicate that the word was used in its ordinary sense, namely, the commission of the crime: but as no satisfactory result can be drawn from such a speculation, it is better to judge of the case merely by the ordinary language used, taken in connexion with the other terms which are used along with it. Upon the whole, it appears to me there is nothing in this case to shew an intention on the part of the insurer to use the word "suicide" in a more extended sense than that which is ordinarily and properly attributed to it; and that, on the contrary, the context shews that it was their intention to use it in the ordinary and popular sense, and that they have so used it. I therefore think that the direction of the learned judge was correct at the trial, and that the defendant in error is entitled to our judgment.

ROYLE, B.—The question in this case is very short. Louis Schwabe, in the year 1836, insured his own life for 999l. in the office of which the plaintiffs in error were directors, liable to be sued for the money so insured. The policy by which the 999l. was insured contained a clause in these words—"Every policy effected by a person on his own life shall be void if such person shall commit suicide or die by duelling or the hands of justice." Louis Schwabe died in 1841, and the defendant in error obtained letters of administration, and then sued the plaintiffs in error in an action of *assumpsit* for the 999l. secured by the policy. The plaintiffs in error pleaded that Louis Schwabe did commit suicide, whereby the policy became void, and on this issue was joined. The issue was tried before my brother Cresswell at the Lancashire Summer Assizes last year, and upon the part of the plaintiff in error, a witness was called to prove that Schwabe's death was caused by his having voluntarily, and for the purpose of killing himself, swallowed a quantity of sulphuric acid. The same witness also gave evidence tending to shew that at the time of his swallowing the said sulphuric acid Louis Schwabe was of unsound mind; whereupon my brother Cresswell, who summed up the case, told the jury, in order to find the issue for the plaintiffs in error, they must be satisfied that Louis Schwabe died by his own voluntary act, being then able to distinguish between right and wrong, and to appreciate the nature and quality of the act he was doing, so as to be a rational moral agent. To this ruling the plaintiffs in error have excepted; we have, therefore, to see whether the ruling was right, and this depends upon the meaning of the words in the policy, "shall commit suicide." If it mean "shall destroy his own life under circumstances which would make him a *felo de se*," then the ruling was right; if it merely mean "shall intentionally kill himself," then the ruling was wrong. The word "suicide" is not, as it appears to me, a word of art, to which any legal meaning is to be affixed, different from that which it is popularly understood to bear. The authorities referred to by the defendant in error, as shewing that "suicide" means the felonious taking away of a man's life, do not, as it seems to me, at all bear out his proposition. Lord Hale, indeed, in the 31st chapter of the Pleas of the Crown, vol. i. p. 411, certainly speaks of *felo de se* and "suicide," as convertible terms, and defines both the one and the other as being where a man of the age of discretion, and *compos mentis*, voluntarily kills himself; but it appears to me plain, from the whole context of the passage in question, that Lord Hale did not understand he was there giving a definition of the term suicide, except as it was generally used to mean the same thing as *felo de se*. This seems manifest from the context; what in the passage in question he calls suicide, he in a few lines above designates as homicide. There can be no doubt that a man who takes away the life of another commits homicide, even though the act were justifiable, or may have happened *per infortunium*, and therefore was not criminal. See Hale's Pleas of the Crown, c. 39. Taking suicide as meaning the same thing as homicide of one's self, it seems to follow that, in the opinion of Lord Hale, neither guilt nor moral responsibility are necessarily involved in the legal definition of suicide. The passage to which we have been referred in Blackstone's Commentaries seems, instead of confirming the notion that suicide means *felo de se*, strongly to shew that suicide does not, in the opinion of Mr. Justice Blackstone, necessarily include the notion of moral responsibility. The learned commentator, after stating that a party who destroys himself is not *felo de se* unless he was in his senses, adds that coroners' juries are apt to push the principle too far, and to hold that every act of suicide is an act of insanity. It is plain the word he uses, suicide, is there used as designating the mere act of self-destruction; otherwise the passage would be insensible. The only other autho-

rity referred to in which the word suicide occurs is the recent case of *Borradaile v. Hunter*, 5 Manning & Granger, 639, an action like this, upon a policy of insurance, in which is the stipulation for making it void, not as in this case if the party should commit suicide, but if he should die by his own hands. There the majority of the Court held that the assured having intentionally destroyed himself, although he was at the time incapable of distinguishing between right and wrong, the policy was void. Chief Justice Tindal differed from the rest of the Court, and at page 668 of his judgment, the following passage occurs:—"The expression 'dying by his own hands,' is in fact no more than the translation into English of the word of Latin origin 'suicide;' but if the exception had run in the terms 'shall die by suicide, or by the hands of justice, or in consequence of a duel,' surely no doubt could have arisen that a felonious suicide was intended thereby." This, although it shews that the Lord Chief Justice would, from the context, have interpreted the word "suicide" in this policy as he had interpreted the words "die by his own hands" in *Borradaile v. Hunter*, viz. as referring only to a case of self-destruction perpetrated by a person of sound mind, yet shews also he did not think that to be the necessary or natural meaning of the word suicide, standing alone. The distinction between felonious suicide, and suicide not felonious, taken and observed on by the Chief Justice, seems conclusively to shew that in his opinion suicide did not necessarily, *ex vi termini*, import a criminal act, and, therefore, the act of a responsible moral agent; and, in the same case, near the bottom of page 638, Mr. Justice Erskine speaks of criminal suicide, shewing he took the same view of the meaning of the word suicide as was taken by the Chief Justice. All these authorities seem to me to favour my interpretation of this word; but after all, our decision must rest entirely on what is the ordinary meaning of the term. In my opinion every act of self-destruction is in common language described by the word suicide, provided it is the intentional act of the party, knowing the probable consequences of what he is about. This is, I think, the ordinary meaning of the word. I see nothing in the context to enable me to give it any other than its ordinary signification. For these reasons I think there must be judgment for the plaintiffs in error, and that a *verdict de novo* must be awarded.

PATERSON, J.—The sole question in this case is, what is the meaning of the words "to commit suicide" in the policy in question? It is argued, first, that these words have a technical meaning, and import a felony. No authority is cited for this position; no case in which the finding of a jury, that A has committed suicide, has been held equivalent to a finding that A has murdered himself, or that A was a felon of himself. Unless some record should be found, or some decision of the Court in which suicide has been held to have the same meaning as self-murder, I am at a loss to know what ground there is for saying the words "to commit suicide" have any technical meaning at all. It is argued, secondly, that the words in their ordinary acceptance import felony. The word suicide, literally translated, means only killing himself or herself. The circumstances attending the act manifestly cannot affect the literal meaning of the word. Reference is made to Hale's Pleas of the Crown, chapter 31, where Lord Hale is speaking of different kinds of murder, and speaks of suicide as *felo de se*, which, no doubt, he does; but he is treating of criminal suicide only; he no where intimates that the word suicide in itself imports criminal suicide. Johnson's Dictionary and Richardson's Dictionary are also referred to. They are but of very little weight when the Court are considering what the parties to a contract mean by the words they have used. The word "commit" is said always to be used in a bad sense. Be it so: but how does that prove that it communicates the quality of being felonious to the word "suicide"? No suicide is good or meritorious. It must always be spoken of in a bad sense, however pitiable, or one may hope, excusable, the circumstances of it may be. But it is argued, thirdly, that a felonious suicide only is pointed at by this policy, and that this appears by the words themselves, and by the context. Now the words themselves are large enough to embrace self-destruction generally as well as self-murder, though not indeed, as is admitted in *Borradaile v. Hunter*, 5 M. & G. 639, to embrace cases of mere accident, or of insanity extending to unconsciousness of the act done, or of its physical consequences; because such cases, although comprehended in the very words themselves, cannot be considered to have been in the contemplation of the contracting parties, but clearly embracing an act of self-destruction committed by a person who was aware of the probable consequences of the act, and intended those consequences to follow. The context in this case, as in that of *Borradaile v. Hunter*, is "or die by duelling or the hands of justice," except that in that case the words were "die by his own hands, or by the hands of justice, or in consequence of a duel;" so that the word "die" applied to all the members of the sentence; whereas here the words "commit suicide" are complete as a sentence without any words taken

from the other part. I do not know that this makes any difference. It is true the other two modes of death appear to be connected with felony; yet, as I apprehend, actual felony forms no ingredient in the act which occasions an exception from liability; for if it did, it would be competent to the plaintiff in an action to prove that the deceased, although dying by the hands of justice, was, in truth, innocent of the crime for which he suffered; in the same manner as it is no doubt competent to an executor to traverse an inquest and a verdict of *felo de se* found upon view of the body of his testator by the coroner, and to prove that the deceased, although killed in a duel, had fired his pistol in the air, and never contemplated shooting his opponent. Such defence would certainly be excluded, for the words of exception are express, "die by the hands of justice;" that is, whether guilty or not, or by duelling, whether a felony or not. It seems to me, then, that the exception is not framed with reference to the commission of any felony, or any crime at all, but to guard against the time for the payment of the money insured being accelerated by the voluntary act of the party interested in the money. It is equally so accelerated by the voluntary act if the deceased knew the consequences of his act and intended them to follow, whether he is sane, or under some delusion as to the moral quality of the act done. That the voluntary act of the party interested need not be a felony, is further apparent from this circumstance, to my apprehension, that the clause in the policy goes on to do away with the exception altogether where the deceased has parted with all interest, either for himself or his family, by assigning the policy, or where the deceased has mortgaged it, or charged it for the benefit of creditors, to do away with the exception to the extent of the sum secured. Even felony might, therefore, be committed in these cases, just as much as if the previous exception in the policy had not been made. I do not inquire into the meaning of this qualification of the exception of the policy; whether it has any thing to do with the temptation to destroy himself being removed from the insured, when he has parted with his interest, or not, or whether it is inserted as an inducement to those who want to raise money on a policy at this office; or whether any, and what other reason may be assigned; it is sufficient for my purpose that it tends to shew that the contracting parties did not regard the commission of felony as necessary in order to bring a person within the exception in their contract. Upon the whole, I am of opinion that the words "commit suicide" mean only "kill himself;" and that the true question to be put to the jury is that which was put by Mr. Justice Erskine in *Borradaile v. Hunter*, viz. whether the deceased knew the probable consequences of his act, and did that act voluntarily, intending such consequences to follow, and that no question should be put as to the act done being criminal or not. It follows that the judgment should be reversed, in my opinion, and a *verdict de novo* awarded.

ALDERSON, B.—I also am, in this case, of the same opinion that there ought to be a *verdict de novo*, and I shall say a very few words upon the points raised. The true principle governing cases of this sort seems to be very well laid down by my brother Maule in the case of *Borradaile v. Hunter*. The words in question seem to me in this case to have their proper construction when taken as including all cases of voluntary self-destruction. They do not apply to cases in which the will is not exercised at all, as where death results from accident or delirium, but where the self-destruction is voluntary, although the will may be perverted. It seems to me, therefore, that the argument arising out of the peculiar use of the word suicide in this contract is fallacious, and that the word is often used in its most extended sense, that viz. which has been assigned to it on behalf of the plaintiffs in error. For instance, to take so common a book as the *Encyclopædia Britannica*, under the head of suicide I find this observation: "The general causes of suicide are twofold—insanity and crime." So that the word "suicide" has often in its ordinary acceptance in the English language that enlarged sense, and it is not, therefore, to be confined to cases of criminal intention alone. Then a reliance is placed upon the words in the company of which it is found in the policy, "death by duelling or by the hands of justice." I doubt, however, whether that argument carries the case much further. Suppose a person insured was to die in a duel, I do not conceive it would be competent to say that he was insane at the time. Cases may easily be suggested, in which a duel might be fatal, and yet not felonious; such as a duel in the course of war, or the like. The case, however, has been so fully gone into by those learned judges who have immediately preceded me, that I shall do no more than express my concurrence with their judgments.

PARKE, B.—This question may be very shortly stated, since by the terms of the policy, all conditions and regulations endorsed are incorporated in it, and one of these is, that every policy effected by a person on his own or her own life, shall be void, if such person "shall commit suicide, or die by duelling, or the

hands of justice." On the trial, my brother Cresswell told the jury, in order to find the said issue for the defendants, it was necessary that the jury should be satisfied that Louis Schwabe, the deceased, died by his own voluntary act, being then able to distinguish between right and wrong, and to enter into and appreciate the nature and quality of the act which he was doing, so as to be a responsible moral agent. The burthen of the proof as to his dying by his own voluntary act was on the defendants, and that being established, the jury must assume that he was of sane mind, and consequently a moral agent, unless the contrary should appear in evidence. The question is, whether this direction was correct. I agree with the majority of the judges who have preceded me, that the direction as to the necessity of his being a responsible moral agent is wrong. I think, according to the proper construction of this policy, the act of self-destruction being voluntary, it is immaterial whether the party committing that act was, at the time of its commission, sane or not. This being a written contract between the parties, the construction belongs to the Court, and the Court must adopt the usual rule and construe the proviso as well as other parts of the instrument according to the ordinary meaning of the language used. I refer to the authority of Lord Tenterden in *Moody & Malkin*, 191, 195, as to the proviso, and every other part of an instrument being construed on the same principle and, except the terms of art or technical words, unequivocally in their proper sense, unless any thing to the contrary appear from the context. An ancient word may, no doubt, be explained by cotemporaneous usage—words which acquire a peculiar sense by a particular usage. Here there is no occasion for any of these exceptions in construing this proviso; the two latter are inapplicable, and there is no ground for saying the word suicide is a legal technical term or word of art. An Inquisition stating that the deceased had committed suicide would be clearly informal or bad. Before the case of *Borradale v. Hunter*, there certainly is not any decision of any Court as to the express meaning of the precise words now under consideration. Nor can the intimation of an opinion by Lord Chief Justice Tindal, by way of illustration of his argument as to the meaning of the expression then before the Court, have the same effect as a decision. The whole question resolves itself into an inquiry as to the sense of the words used in the ordinary language of the present day, the instrument to be construed, bearing date the 4th day of July, 1836. We are all perfectly competent to form an opinion on such a subject, and need not refer for information to text-writers or lexicographers or authors ancient or modern. Whether the case depended on our explanation or on dictionaries, the result would necessarily be the same. Johnson explains the word suicide by "self-murder, the horrid crime of self-murder," which no doubt it includes. Webster says, both "self-murder," and the act of designedly destroying oneself; and he states this to be a word of modern introduction; and he adds, to constitute suicide, the person must be of years of discretion, referring to Blackstone inaccurately for a passage in that author, vol. 4, page 179, which applies to persons being *felo de se*. Webster says, that it means both self-murder and the act of designedly destroying oneself; and Richardson says it is the act of slaying of himself, or self-murder. The question does not depend on the authority of such authors, but turns on the natural meaning of the language now used. I must own I feel no doubt as to the import of the expression to commit suicide. In ordinary parlance this expression is applied to every one who has purposely killed himself, whether from tedium of life or transport of grief, or in a fit of temporary insanity. To die by his own hand, or to commit suicide, seems to me to be all one, and to apply to all voluntary self-destruction. I do not see any reason why a different sense from the ordinary one should be attributed to the instrument in question; on the contrary, I see very good grounds for believing the word is used in the ordinary sense to avoid the consequence which would have followed the adoption of such words, as the committing murder on himself, or self-murder. It may be well supposed that the jury would, in favour of the family of the deceased, take the same lax view of the evidence as coroners' juries generally do. I think, therefore, the judgment ought to be reversed, and a *verdict de novo* awarded.

POLLOCK, C.B.—I regret that I differ from the majority of the Court who have already delivered their opinions. It was after the fullest deliberation that I felt compelled to come to the conclusion that the direction of my brother Cresswell to the jury at the trial was correct in point of law, and that the plaintiff below is entitled to the judgment of the Court. It is my duty, with whatever reluctance and hesitation, to state my own view of the case, and the reasons upon which the conclusion I have arrived at is founded. The question in point of form has been so clearly stated already, that it is unnecessary to state it again, for in substance it is, what is the meaning of the words "commit suicide" in the policy in question? Does the expression mean and include

that the party was *compos mentis*, that he was a responsible being capable of distinguishing right from wrong, as stated by my brother Cresswell to the jury? or was the expression applicable to a person who produces his own death, and also uses the means of destruction with a knowledge of the effect it will produce, and with the special intention of producing death, but whose understanding and judgment or will are so perverted by disease that he has ceased to be responsible criminally for his conduct, in short who is insane, possibly upon every other point but the physical effects of using a deadly weapon? In considering the question, almost every thing turns upon the meaning of the words as ordinarily occurring in the English language and in the English authors, and especially in books written on law or morals. Now, what is the meaning of the word "suicide," merely as an English word, according to the best authorities? Does it mean a killing of oneself in the same sense that "homicide" means simply killing of a human being, whether by accident, negligence, or in self-defence? or does it imply the criminal taking away of one's own life? The word is of modern origin; it does not occur in the Bible, nor in any English author before the reign of Charles II, probably not until after the reign of Queen Anne. As far as I have been able to trace it, it first occurs as an English word in Hale's Pleas of the Crown. Lord Hale was a judge during the Commonwealth, and died in the year 1676; his work was published in 1736. The word, however, is not in Hawkins, whose work was first published in 1716, probably written many years after Lord Hale, and published many years before it. The word is to be found in Blackstone. The legal authorities will be adverted to presently, but I wish to notice first the authorities not legal. Now the meaning assigned to the word in almost all dictionaries, is, that it signifies self-murder. Johnson, in his Dictionary, says suicide, or "self-murder, the horrid crime of destroying oneself." The actor is a self-murderer, and Johnson gives no other signification of the word at all. In Richardson's Dictionary, it is a "slayer of himself;" also, the "slaying of himself is self-murder." In the Dictionnaire Universelle of the French language, published in 1779, it is said the word was introduced into the French language by the Abbé Fontaine, and a quotation is given from his works where it is manifestly used in the sense given to it by Johnson. Fontaine was born in 1686, and died in 1765. (a) In the year 1644 were published the works of John Donne, dean of St. Paul's, some of whose poetry is quoted by Horae Tooke, in his letters to Junius, and some also in the Nouvelles (of Fontaine), and who died in 1631; and in this edition of his works, published some years after his death, his treatise entitled *Biathanatos* is to be found, which is "A declaration of that paradox, or thesis, that self-homicide is not so naturally a sin that it may never be otherwise." (b) The word suicide does not occur in this work professedly treating upon the subject. It may therefore be presumed the word was not then in general use—probably not in use at all. In 1785 Archdeacon Paley first published his work, the Principles of Political and Moral Philosophy. Chapter III. Book IV. is on suicide, and all throughout that chapter the word is used as the act of a rational, moral, and responsible agent, and in no other sense. In 1790 Charles Moore, Rector of Caxton, in Kent, published a work, entitled "A Full Enquiry into the subject of Suicide; to which is added, as being closely connected with the subject, Two Treatises on Duelling and Gaming;" and at page 4 there is the following passage: "There are points there that have been settled, and exceptions have been made previous to the general charge of guilt in all who put a sudden end to their own lives; for although every person who terminates his lawful existence by his own hand commits suicide, yet he does not, therefore, always commit murder, which alone constitutes its guilt. The same distinction is necessary in regard to a man's killing himself as it would be if he killed another person, which latter he may do either inadvertently or legally, and therefore in either case innocently, without the imputation of being the murderer of another. Where a man kills himself inadvertently or involuntarily, it comes under the legal description of accidental death, or *per infortunium*; but as to his doing it legally, or as to his doing it illegally, the law allows of no such case. The only instance of innocence is that which it allows to the commission of voluntary suicide, as in the case of madness, when a man, being indeed under no moral guidance, can be exposed to no imputation of guilt on account of his behaviour to himself or to others." In the Encyclopædia Britannica the explanation of the word suicide is, "the crime of self-murder on the person who commits it;" although it is true that the act in the latter part of the same article, as also in Blackstone's Commentaries, is spoken of as the act of suicide, no doubt, apart

(a) But see the Biographie Universelle, according to which the Abbé Jacques Fontaine, author of the Nouvelles Ecclésiastiques, was born in 1686, and died in 1761.
(b) See the Biographical Dictionary edited by Chalmers. Dr. Donne was born in 1573.

from the guilt, or the voluntary intention to commit it, yet this seems to arise from the imperfection of human language, by which the word health, which, no doubt, naturally means a state of good health, is spoken of as the condition of a person, with reference to health, and includes bad health, as we speak of a bad shilling, because we have no better expression to use for the purpose, the real fact being that it is no shilling at all. There is a treatise on law in the Encyclopædia Britannica, in which suicide is spoken of. It is to be found in the second volume of the Pure Sciences, 711; in speaking of offences against the self, the writer says, "There are cases where society may interfere to prevent or to punish;" and he says, "This observation applies to suicide, the greatest offence that man can commit against himself." These are all the lay authorities I think it necessary to refer to; but there are legal authorities which, if unopposed by other and greater authorities, I should deem binding and conclusive on the subject in a court of law. Lord Hale, in the work already alluded to, defines *felo de se*, or suicide, to be where a man of the age of discretion, and *compos mentis*, voluntarily kills himself by stabbing, poison, or in any other way. Judge Blackstone, in the Commentaries, first published in 1765, uses the word in connection with self-murder, in the same sense as Lord Hale, and the other judges; 4th vol. p. 289. In Burn's Ecclesiastical Law, title Suicide, there is the following passage:—"By the rubric before the burial office, persons who have laid violent hands on themselves shall not have that office used at their interment; and the reason thereof given by the canon law is, because they die in the commission of a mortal sin, and therefore this extended not to idiots and lunatics, or persons otherwise of insane mind, and children under the age of discretion, or the like; so also not to those who do it involuntarily, as where a man kills himself by accident; for in such cases it is not their crime but their very great misfortune." Burn's Ecclesiastical Law was, I believe, first published in the year 1760, and there is a note, by the learned editor of this work, published in the year 1942, in which, commenting upon the statute 4 Geo. 4, ch. 52, in which the expression suicide is of course not to be found, but the only expression used is, "persons who are *felo de se*," the learned editor says, by that statute suicides are to be buried in the churchyard at night. It is perfectly clear, therefore, that the learned editor of that work considered that the word suicide was properly used in making that note as expressing precisely the same thing which in the statute is expressed by *felo de se*. In Jacob's Law Dictionary, published in 1772, under the word suicide you are immediately referred to "self-murder;" and on referring to the word self-murder, there are some observations about the law having ranked the crime among the greatest offences, and there are references there given to Blackstone's Commentaries. It should seem, therefore, that the word has never been used by any law writer, except in the sense of a criminal taking away of one's own life, at least I am not aware of any instance in any law writer of its use in any other sense. It may, therefore, be presumed, that the word is of legal introduction from this history of it, and was, perhaps, first taken from the law writers by Archdeacon Paley, who used it very shortly after the publication of Blackstone's Commentaries; it has since become a word of much more general use; but I am not aware of any authority by which it can be shown that it has lost the original meaning, to express which it was originally formed or adopted from some other language; and I think it is clear that, although it may possibly sometimes admit in modern times of a more loose and vague interpretation from the imperfection of language, to which I have already adverted, it certainly does mean self-destruction by a person *compos mentis* and morally responsible for his acts; and the question is, whether that meaning so given is what was intended by the parties to this contract. Now in this policy I find it coupled with the word "commit," the expression is "commit suicide." The meaning of "commit" in Johnson, with reference to this use of the word, is to perpetrate or to do a fault, or to be guilty of the crime perpetrated; "to commit," therefore, is "to act," but always in an ill sense; and there is no material difference between Johnson's Dictionary in this respect and Richardson, and, I believe, Webster or any other. If, therefore, it be admitted, as I think it must be, that one meaning of suicide imports, not a moral act, but a criminal act, the use of the expression "commit suicide" affords a strong reason for believing that the parties to the contract used the word in that sense, unless one has a far stronger reason for believing the parties to this contract used the word in some other sense. The sentence altogether in which it appears may throw some light on the matter: it is coupled with death by duelling or by the hands of justice; and the condition is, not "if the party shall die by suicide," but if he shall "commit suicide." I think this imports some deliberation, and with respect to this act, therefore, it must be a criminal act, and not an act the result of insanity, which may leave the party intelligence enough to know the means of death, but without any moral control over his ac-

tions. Again, does the nature of the instrument itself supply any argument either way? The object of such a policy is generally to make a provision for the family of the insured, and he naturally desires to include all risks. It is admitted, he is protected, not only against the common chances of death by disease, but against accidents, or even negligence of the grossest kind. He may become the immediate cause of his own death by a deadly weapon, provided he be so insane as to be utterly unconscious of what he is doing. But, according to the argument for the defendant, if he retains just enough of the glimmering of intelligence to produce death by competent means, but has entirely lost all reason so as to be deprived altogether of all moral sense, and so as to be for any other act but this a complete madman, the policy is void. I own I cannot from the nature of the contract believe that this was what the parties intended. A man anxious to provide for his family would, among the possible calamities of life that might terminate it, anticipate madness in some form or other as one of them; and whether it prostrated his intellect altogether, or produced delusion, or destroyed only a part of his faculties, it would, in my judgment, make no difference. The language used in the agreement between the parties does not necessarily exclude this risk. I think, therefore, as against the office, this risk ought to be considered as included; but, in examining the question on more general principles, I am induced to come to the same conclusion. In the eye of the law, with reference to crime, a man is either *compos mentis* and responsible, or he is *non compos mentis* and irresponsible. Physiologically, no doubt, it is otherwise; gradations are perhaps perceptible from the highest perfection of intellect to the darkest obscuration of the mind; but, in point of law, as soon as it is ascertained that a person, to use the language of my brother Cresswell in directing the jury, has lost all sense of right and wrong, it matters not what else of the human faculties or capacities remains, he ceases to be a responsible agent, and in my judgment can no more commit suicide than he can commit murder. Lastly, the views taken by the defendant's counsel appear to me to be opposed to all the principles of sound philosophy which can be applied to the subject. It is admitted of course that the office would be liable if death ensued from any of the ordinary casualties of life, even resulting from the act of the party insured, provided the act was not done with an intention to kill himself. The act of a raving madman, or of a patient under the influence of disease, is protected by the policy, the consequences are not foreseen, nor, as it is called for the purpose of argument, intended; although whether an insane man can be said to intend any thing is a very great question which is worthy of much consideration before we come to an opposite conclusion. So if insanity should produce delusion and deprive a man of the use of his ordinary senses, and a party should mistake a deadly weapon for an instrument of music, and fancy he was playing it, and was destroying his own life, this would not be committing suicide within the purpose of the policy; but what if the delusion, instead of applying to an instrument of death, applied to the man himself? Suppose he believed he was Marcus Curtius, and ought to leap into a gulph, or that he was one of the Decii and must sacrifice himself for the benefit of his country? or what if in an insane delusion he fancied himself an apostle and that it became his duty to die the death of a martyr? what sound philosophy is there in taking a distinction between a delusion about the instrument of death and a delusion with respect to the man against whom it is to be used? or what distinction in point of good sense can be taken between physical blindness in consequence of which a party insured walks into a well, or intellectual or moral blindness which, leaving him the use of his senses and a knowledge of the physical consequences of his acts, has deprived him of all judgment which should control and govern those acts, and of all moral sense to perceive their consequences? It may be said that when a delusion extends to the character or condition of the party, so that he mistakes his own identity, he does not mean to kill himself; and in such a case the office would be liable. But how far is this doctrine to be carried, supposing under a delusion he believed he had committed a sin for which he ought to put himself to death, and that this was the result of insanity? Is this a mistake of his identity? How is a judge to direct a jury so as to steer clear of the various and complicated difficulties that might arise from this view of the subject? In my opinion, such matters as these ought to find no place in the decision of a question of this deep importance, in which are involved, from the present extensive practice of life insurance, the peace, the happiness, and the security of thousands of families. Some simple, clear, and safe rule ought to be laid down on a subject in which the public is so deeply interested. In my judgment, if death be the result of disease, whether by affecting the senses or by affecting the reason, the insurance office is liable under this policy, whether the privation of reason is total or partial—whether it produces a delusion of one kind or

another—whether it affects sensation, apprehension, memory, judgment, or wit, or any of the moral and intellectual powers which constitute our nature; if the act be not the act of a sane responsible creature, but is the result of any delusion or perversion, whether physical, intellectual, or moral, it is not the act of the man, and to hold otherwise seems to me to be a departure from the simplicity of the law, and to be repugnant to that sound policy which is the spirit of all law. I shall only add, I have not adverted to the case of *Borradaile v. Hunter*, because the expression in that case was, "die by his own hand," and is different from the expression in this case, "commit suicide." That decision appears to me to be no authority upon the point arising here. The opinion of the majority of the Court being in favour of the plaintiffs in error, there must, however, be judgment for them.

Judgment reversed, and a venire de novo awarded.

ON ERROR FROM THE COURT OF QUEEN'S BENCH.

(Before TINDAL, C.J.—MAULE, CRESSWELL, and ERLE, JJ.—PARKE, ROLFE, and PLATT, BB.)
THE YORK AND NORTH MIDLAND RAILWAY COMPANY v. THE QUEEN.

Argued May 9.—Decided June 13.

Where a writ of mandamus was issued to a railway company, commanding them to make a pond in each of several portions of fields, cut off from the residue of such fields by the railway; and it appeared that the Act required them, where fields containing ancient watering-places for cattle were intersected by the railway, to make proper watering-places for those portions of the fields from which access to the ancient watering-places was cut off, it not appearing on the face of the writ that the ponds thereby required to be made were necessary, or that one additional watering-place would not have been sufficient for the portions of land cut off from the ancient watering-places:—Held, that the writ was erroneous, and not valid in law, inasmuch as it ordered the company to do that which they were not under the Act of Parliament required to do.

This was a writ of error from the judgment of the Court of Queen's Bench, which will be found reported in 14 L. J. N. S., Q. B. 277, 281. The facts of the case may shortly be stated thus:—A writ of mandamus issued from the Court of Queen's Bench, commanding the defendants, in pursuance of the Act of Parliament by which they were incorporated (the stat. 6 & 7 Wm. 4, c. 81), to make ponds or watering-places in certain closes or pieces of land intersected by the railway, under the 88th section of that Act. To this writ the defendants made a return, stating an indenture between Sir W. M. Milner, the prosecutor of the said writ, and themselves, by which, in consideration of his not appealing the alteration of their line, it was agreed that they should pay to Sir W. M. Milner, as for the special damage thereby occasioned to his lands and tenements, and particularly to a mansion-house of his called Bolton Lodge, the sum of 5,000l. to be paid as therein mentioned, and to be exclusive of the value of the land which the company would require for the purposes of the railway, and damages which the company might commit, either to the said Sir W. M. Milner, or his tenants, and which land and damages were to be valued and paid for by the company in the manner provided for by the Act, unless the parties to the deed should otherwise agree; and further, that whenever any closes or pieces or parcels of land or ground belonging to him should be intersected by the railway, and if the adjoining land belonged to Sir W. M. Milner, and he should require the same, those parts on each side of the railway should be thrown into the adjoining land by removing the fences, drains, gates, and stiles, in a sufficient and workmanlike manner, and that the company should and would, at their own expense, make and complete such fences, drains, gates, and stiles, and other conveniences as might be necessary for the re-dividing of the fields on the same estate which should be intersected by the railway, and for laying them open to the adjoining fields of the said estate for the purpose of convenient occupation. The defendants below further stated that Sir W. M. Milner gave notice that in pursuance of the deed he required them to make such fences, drains, gates, stiles, and other conveniences as might be necessary, setting out as one head of the works which he required to be done the ponds, to compel the making whereof the writ of mandamus was issued. The defendants below then asserted that they did execute the works required except the ponds, and the return concluded with asserting that the cutting off of ponds and watering places as stated in the writ, and the damages occasioned thereby, were part of the special damages covered by the 5,000l.; and, further, that the ponds which the writ required them to make were not conveniences within the meaning of the indenture above mentioned. To this return there was a traverse, setting out at length the said indenture, bearing date the 1st of May, 1837, and concluding with special traverses of the assertions of the defendants below above set forth. To the above traverse there was a demurrer and joinder, and after argument the Court

of Queen's Bench gave judgment in favour of the prosecutor, and ordered that a peremptory writ of mandamus should issue. Upon this judgment the present writ of error was brought under the provisions of the recent statute 6 & 7 Vict. c. 67, intituled "An Act to enable parties to sue out and prosecute Writs of Error in certain cases upon the proceedings on Writs of Mandamus." In the course of the argument reference was made to several sections of the Act of Parliament 6 & 7 Wm. 4, c. 81, which is intituled "An Act for making a Railway from the City of York to unite the township of Althofts with various branches of Railway, all in the West-Riding of the County of York, or County of the said City;" but it will be found that the judgment of this Court proceeded entirely on the wording of the 88th section of the last-mentioned Act (the material part of which section is set out in the judgment), and on the form of the writ of mandamus which is set out at length in the report of the proceedings in the Court below, 14 L. J. N. S. Q. B. 277, to which, for the sake of brevity, the reader is referred. It will be proper to add that the argument in the Court of Error has been reported very shortly, because it was unnecessary for the Court to give any decision upon several points raised in it.

Martin, Q. C. for the plaintiffs in error.—There are two questions more especially for the consideration of the Court in this case: first, whether the writ of mandamus is not altogether erroneous? secondly, whether the indenture of the 1st of May, 1837, has not the effect of substituting its own provisions for those contained in the Act which constitutes the railway company? Now, by reading the 21st and 88th sections of the above Act in connexion with each other, it is clear that, when a field containing a watering-place for cattle was traversed by the railway, so that cattle in one portion of the field could no longer obtain access to the pond, it was the duty of the company to provide some convenient watering-place for such cattle, but it was not obligatory on them to provide a separate watering-place in each field so intersected. In other words, the company were only required to provide convenient watering-places at their own discretion in lieu of those to which the access was cut off by the line of railway. Then, with reference to the indenture, the effect of this instrument was in fact to supersede the provisions of the Act of Parliament, and to substitute for those provisions the private agreement between the parties, so as to preclude Sir W. Milner, who was a party to that deed, from falling back upon the Act. The portion of a railway Act relating to the purchase of land is neither more nor less than a private bargain between the company and the owner of the land; it is a compulsory contract obligatory on those parties, but unlike a public Act, which is binding upon all men, and the owner cannot, therefore, avail himself both of the Act of Parliament and of the indenture entered into between himself and the company (*Blakemore v. The Glamorgan and Swansea Canal Company*, 1 Mylne & K. 154); consequently Sir W. Milner was not entitled to the benefit of the 21st section in addition to the 5,000l. paid by the company as compensation for damage caused by the railway; nor is any duty imposed by the 88th section on this company such as is sought to be enforced by this writ of mandamus.

Knowles, Q. C. for the defendant in error.—The company were bound not merely to make watering-places, but to make them in particular fields, and there is nothing to show that the agreement between the parties was meant to exclude the operation of the Act. The former was intended to cover damage not compensated by the latter.

Martin, Q. C. in reply.

JUDGMENT.

TINDAL, C. J. now (June 13) proceeded to deliver the judgment of the Court.—In this case a writ of mandamus issued, which recited the passing of an Act of Parliament 6 & 7 Wm. 4, c. 81, incorporating the North Midland Railway Company, and giving them power to make the railway; and recited that it was enacted (see sec. 88) that the company should, at their own expense, make such arches and bridges, culverts, drains, or other passages, over, under, or by the side of the said railway, and the fences on the sides thereof respectively, of such dimensions as should be sufficient at all times to convey the water as clearly from the lands adjoining or lying near to the said railway, as before the making of the said railway, without obstructing or causing any damage to any of the said lands; and also the said company should make proper watering-places for cattle in all cases where, by means of the said railway, the cattle of any person occupying lands adjacent thereto should be deprived of access to their ancient watering-places, and to supply the same at all times with water from such rivers, brooks, streams, or springs of water as would have supplied the cattle of such person if the said railway had not been made, or from any other source from which such water could be lawfully obtained and used for that purpose; and it recited also another Act, passed in the 1st Victoria, enabling the company to alter their line of railway, and the writ further recited that the company, under the power

said provisions of the said Acts, extended their railway; and further, that the company, under the powers of the said Act, had made the railway through and intersected certain closes of Sir William Milner, in the occupation of his tenants, in which places there were ancient ponds or watering-places for cattle; and that by means of the said railway having so intersected the said closes, the said ancient ponds or watering-places for cattle had been severed and cut off from one portion of the said closes, respectively; and the cattle of the said tenants so respectively occupying such portion of the said closes, had been thereby deprived of access to their present property; and further, that the company had been required to make proper watering-places for cattle in such portions of the said closes, respectively, but had neglected to do so; wherefore, they were commanded to make, at their own cost and charges, proper watering-places for cattle in such portions, respectively, of the said several closes of land, and to supply the same at all times with water, &c. The company returned an indenture made between them and Sir William Milner, between the passing of the first and second Acts, whereby they covenanted to pay 5,000*l.* for the special damage which he would sustain, by reason of the railway passing through his land, and to make certain conveniences, and do certain other acts in the event of any of his fields being damaged by the cutting off a portion of the fields; and the return stated that the company did pay the sum of 5,000*l.* in full satisfaction and discharge of the special damage sustained by Sir William Milner, and alleged that the ponds required to be made by the company were the same conveniences which the company had covenanted to make, by the above-mentioned indenture. Sir William Milner traversed both branches of this return, to which the company demurred specially, and the Court below gave judgment on the return, and awarded a peremptory *mandamus*. A writ of error was brought under the provisions of the 6 & 7 Vict. c. 67, and the case was argued before us after Easter Term, when two questions were raised; first, whether the writ of *mandamus* was good; secondly, whether the indenture made between the parties imposing on the company the obligation therein contained, was or was not affected by the Act of Parliament. On the first question it was contended that the writ was erroneous, for that the cutting off a portion of the field, and thereby depriving the cattle in one portion from access to the water in the other, was the damage provided for by the 21st section of the Act, and if Sir William Milner sustained such damage, he should have sought compensation in the manner thereby pointed out; secondly, that the 88th section, upon which the writ of *mandamus* was founded did not at all apply to cases where fields were intersected by the railway, but to closes where the railway did not pass through the lands which prevented the cattle in the lands adjacent from going off these lands to their several watering-places not being in the same lands, but elsewhere; thirdly, that even if the injury sustained by Sir William Milner was one for which he could have a remedy by *mandamus*, the writ was erroneous in ordering the company to do what they were not under the Act required to do, for that it required them to make a pond in each of the said several portions of fields cut off from the residue of such fields by the railway, whereas the 88th section of the Act, if applicable at all, merely requires them to make proper watering-places. It is unnecessary to give any opinion upon the two first objections, as we are of opinion this last objection to the writ is well founded. There is nothing on the face of it to show that eight ponds are necessary, and it is quite consistent with all that appears on the face of the writ, that one watering-place would have been sufficient and proper for the whole of them. If, therefore, it commands something to be done which is not shown to be required by the statute, it is not valid in law. The judgment of the Court below, awarding the peremptory *mandamus*, must therefore be reversed.

Judgment reversed.

ON ERROR FROM THE COURT OF QUEEN'S BENCH.

(Before TINDAL, C.J.—COLTMAN, MAULE, and CRESSWELL, JJ.—PARKER, ALDERSON, ROLFE, and PLATT, BB.)

KEIR v. LEEMAN.

Argued May 11.—Determined June 13.

An agreement whereby the prosecutor of an indictment for an assault on a sheriff's officer, and for a riot, has agreed not to proceed on the indictment, and not to offer evidence in support of it, and has likewise agreed to withdraw an execution under a *fi. fa.*, in consideration that the defendants agreed to pay the costs of the prosecution for the assault and riot, and of an action for a wrongful levy under the *fi. fa.*, is altogether invalid, as being founded on an illegal consideration.

This was an action of *assumpsit*; and the declaration stated that, before the making of the promise of the defendants (Leeman and Pearson), one George Emmitt was indebted to the plaintiff in 150*l.*, that plaintiff recovered judgment against him in the Court of Queen's Bench, and thereupon sued out a

writ of *fi. fa.* that the sheriff accordingly made out his warrant, and delivered it to one Acton to be executed, and that by virtue of this warrant and writ, the said Acton entered upon a farm and into a messuage and dwelling-house of George Emmitt, situate &c. and seized certain goods, &c.; and that whilst so in possession, one William Emmitt, claiming title to the farm, &c. had, together with divers other persons, to wit, George Emmitt and five others, assaulted Acton, and his followers and assistants, and forcibly and violently ejected and expelled them from the said messuage and dwelling-house, and from the possession of divers goods and chattels seized and taken by them, and kept them so ejected and expelled until Acton, in order to retake possession, by virtue of the warrant, had necessarily and unavoidably a little broken the outer door, and had thereby re-entered and retaken the goods and chattels in the dwelling-house from which he had been so expelled. That thereupon William Emmitt had commenced an action of trespass in the Court of Queen's Bench against the said sheriff and Acton for the said entry into the messuage and dwelling-house, and the said seizing, &c., that the verdict of the jury was, before the making of the promise by the now defendants, returned for William Emmitt on the first issue [Not Guilty], and for the sheriff, &c. on the other issues. That after the entry of Acton into the messuage and dwelling-house, and the assaulting, ejecting, expelling, &c. a certain indictment against William Emmitt, George Emmitt, and five others, for riotously assembling to disturb the peace, and for assaulting Acton and his followers, &c. on the occasion above mentioned, had been preferred by the now plaintiff, and the indictment having been found at the Yorkshire Lent Assizes, A.D. 1842, stood for trial at the summer assizes for the said county, and the prosecutor was then and there, after the trial and verdict in the said cause, about to proceed further on such indictment, and to try the same, and adduce and offer evidence in support thereof. The declaration then stated that, before and at the time of the making the promise by the defendants, divers costs and charges had been incurred in and about the seizing and retaining in possession, and that a large balance of the damages and costs recovered against George Emmitt remained unsatisfied, and that divers large costs and charges had been incurred in defending the action brought by William Emmitt against the sheriff, and in prosecuting the said indictment and were due by the now plaintiff to his attorney. The declaration then proceeded thus:—"And thereupon afterwards, to wit, on, &c. in consideration that the prosecutor (to wit, the now plaintiff) of the indictment against George Emmitt and others (naming them) would, to wit, at the request of the defendants, not proceed further on such indictment, and of the sheriff of Yorkshire withdrawing, to wit, by and with the consent and direction of the now plaintiff at the request of the now defendants, from the possession of the crops and effects at the farm, under an execution against George Emmitt at the suit of the now plaintiff, the now defendants undertook and promised the plaintiff to pay him, on or before the last day of Michaelmas Term next thereafter, the balance of the principal money and costs then remaining unsatisfied in the original cause, to wit, *Keir v. George Emmitt*, and the balance of costs and charges in and about the execution of the warrant of *fi. fa.* issued in the same cause; and the now plaintiff avers that, confiding in the promise, &c. the prosecutor of the indictment, to wit, the now plaintiff, did not proceed further on such indictment; and that afterwards, to wit, on the day and year last aforesaid, at the said summer assizes, &c. the said prosecutor of the indictment did, by and with the assent of the said Acton, &c. instruct counsel to inform, and by such counsel did inform, the said justices, &c. of and concerning the premises, and did then and there, by and with the assent and leave of the Court thereupon, forbear to proceed further and to offer any evidence upon the said indictment; and thereupon the said persons so indicted, &c. were in due form of law, by a jury of the said county, acquitted of the premises in the indictment charged upon them, of which, &c. (notice to defendants)." The declaration then averred that the plaintiff did, in further pursuance of the agreement above mentioned, withdraw the execution against the said George Emmitt, but that the defendants had disregarded their promise, and had not paid, &c. (breach), whereby the plaintiff had lost the balance of the principal money and costs recovered against George Emmitt, and had become liable to pay, and had paid, the balance of the costs and charges incurred in and about the execution of the warrant. There were two other counts in the declaration, which it is not material to set out. The defendants pleaded several pleas, the second of which set out the indictment, and concluded thus:—"And so the defendants say that the said consideration for the said supposed promise in the said first count mentioned was and is illegal, and such supposed promise was and is wholly null and void."—*Verification*.

Demurrer to all the pleas and joinder. The defendant's points were, that the considerations for the promises in the declaration (as appearing upon the

declaration and pleas) are illegal, and the contracts illegal and void. The demurrer was argued in the Court of Queen's Bench in Trinity Term 1844 (see *Keir v. Leeman*, 6 Q. B. 308), and judgment was given by that Court for the defendants, on which judgment the present writ of error was brought.

Bias, for the plaintiff in error.—The question for this Court to decide may be simply stated to be, whether an agreement not to proceed on an indictment for a misdemeanor in consideration of the payment by the defendant of the costs incurred is illegal. The distinction between compounding a felony and compounding a misdemeanor is sufficiently broad; and *Collins v. Blanton*, 2 Wils. 341, is the only case in which it has been held that an agreement not to give evidence at the trial of an indictment for a misdemeanor in consideration of the payment of a certain sum of money is illegal. For a trespass it is open to the party aggrieved to proceed either by indictment or by civil action, and if damages were recovered in the latter, the Attorney-General would no doubt enter a *nolle pros.* as to the former; which shews that the offence charged in the indictment cannot be considered as a criminal offence, of which it would be against the policy of the law to allow a composition. In *Res v. Crisp*, 1 B. & Ald. 282, it was held that the statute 18 Eliz. c. 5, which forbids the compounding of any offence upon colour or pretence of process, or without process upon colour of any offence against any penal law, does not apply to offences cognizable only before magistrates; and the statute just mentioned was not in affirmance of the common law, but restrictive of it. Then there are many authorities to shew that in practice misdemeanours are frequently compounded, and that the Courts sanction such compositions. (*Williams v. Hedley*, 8 East, 378; *Johnson v. Ogilby*, 3 P. Williams, 277; *Drage v. Ibberson*, 2 Esp. 643.) Kyd on Awards, 2nd ed. 64, and Watson on Arbitration and Awards, 47, contain references to several other cases, which are likewise in point. In *Collins v. Blanton*, the agreement between the parties had for its object to stifle a prosecution for perjury; and in giving judgment, Wilmut, C.J. dwells particularly upon the enormity of the offence of wilful and corrupt perjury, which, he observes, is "a crime most detrimental to the commonwealth;" and again, "many felonies are not so enormous offences as perjury, and therefore to stifle a prosecution for perjury seems to be a greater offence than compounding some felonies." This case must, therefore, be looked upon as supportable, if at all, on its own peculiar facts. *Fallows v. Taylor*, 7 T. R. 476, is in favour of the right of the plaintiff to maintain this action. There certain magistrates had directed prosecutions for a public nuisance in a river; the plaintiff, by their order, had prepared bills of indictment against the defendant, who in order to avoid the expense of the indictment entered into the bond on which the action was brought to remove the nuisance, and the Court of Queen's Bench held the withdrawing the prosecutions to be a lawful consideration for the bond. In *Edgewood v. Rodd*, 5 East, 294, which will perhaps be cited on the other side, a penalty would have been incurred, on conviction, to the use of the Crown, and it was therefore not competent to the defendants to do any act tending to deprive the Crown of its security for the payment of the penalty (see argument, 5 East, 296); that case must likewise, if not distinguishable on the ground suggested, be considered as overruled by *Rex v. Crisp*, *supra*. *Pool v. Bousfield*, 1 Camp. 55, was only a *nisi prius* decision, and as such not entitled to much weight. Then *Beetley v. Wingfield*, 11 East, 46; *Baker v. Townsend*, 7 Taunt. 422; *Elworthy v. Bird*, 2 Sim. & Stu. 372; and *Kirk v. Strickwood*, 4 B. & Ad. 421, are direct authorities for the plaintiff. In order to avoid a contract such as that on which the present action is brought, it must on the face of it appear to be necessarily illegal (*Comyn on Contracts*, 2nd ed. 23, 24). Now circumstances may be supposed which would have certainly made this agreement perfectly legal; for instance, if while the prosecution was pending a civil action had been brought by the plaintiff, even if the indictment had actually been found, the Attorney-General would, according to the case of *Rex v. Fielding*, 2 Burr. 720, have granted a *nolle pros.* upon such indictment, and for this position *The Mayor of York v. Pilkington*, 2 Atkyns, 302, is an authority, and from *Elworthy v. Bird*, 2 Bing. 258, it seems that a discontinuance of the prosecution may be effected either by means of the Attorney-General or by calling the defendant into Court, and omitting to adduce evidence against him, and thus procuring an acquittal. He likewise cited *Holland v. Hall*, 1 B. & Ald. 53; *Haines v. Busk*, 5 Taunt. 521; *Sevell v. The Royal Exchange Assurance Company*, 4 Taunt. 856; *Harrington v. Klopogge*, 2 Bro. and Bing. 678 (note), as authorities to shew that in order to invalidate an agreement on the ground of illegality, it must be shewn not merely to be *prima facie* illegal, but necessarily so.

Martin, Q.C. for the defendants in error.—Even if the distinction contended for, viz. between misdemeanours which are in their nature analogous to felonies, and those for which there is a remedy by action, be correct, yet the application of the argument

for the plaintiff in this case would be fatal to the maintenance of the action, for the indictment was for an assault on a peace officer, and for a riot, and for these offences no redress could have been had by civil action. Neither can it be said that the Court had any power on the trial to assent to the compromise entered into between the prosecutor and the defendants, for this agreement being in itself illegal, could not be rendered legal by the judge. If an agreement like the present is to be upheld on the supposition that the Attorney-General might have sanctioned the entry of a *nolle prosequi*, an agreement not to offer evidence on an indictment for murder might likewise be held valid. The cases of *Holland v. Hall*, 1 B. & Ald. 53; and *Haines v. Busk*, 5 Taunt. 521, are quite correct. *Elworthy v. Bird*, 2 Bing. 258, and *The Mayor of York v. Pilkington*, 2 Atk. 302, have no bearing on the present question. *Jones v. Waite*, 5 B. N. C. 341, shews that any agreement contrary to the policy of the law is illegal, and that this is the true test, and not that suggested on behalf of the plaintiff. Then the case of *Garth v. Earnshaw*, 3 Yo. & Coll. 584, shews that such a compromise as this would be illegal, and if so, the consideration being bad in part, is bad altogether. (1 Smith's Leading Cases, 154, 169; Com. Dig. Action on the case upon *assumpsit*, Deb. 7.) Then it is clear on examination that no case cited on the other side shews that an indictment for a riot and assault can be compromised, and *Collins v. Blantern*, 2 Wils. 341, is an express authority that no action can be maintained on an agreement to compound a misdemeanor. Chitt. Contr. 3rd edit. 674, is an authority to the same effect.

Bliss, in reply.—There is no averment in this plea that the act of withdrawing the indictment, or rather of not giving evidence, was done illegally, and this need not necessarily have been the case. In *Jones v. Waite*, 5 B. N. C. 341, the agreement must have been illegal, and in *Garth v. Earnshaw*, 3 Yo. & Coll. 584, the contract was held illegal upon other grounds than those here suggested on behalf of the defendants.

JUDGMENT.

TINDAL, C.J. now (June 13) gave judgment as follows:—This was an action on an agreement, by which the defendants in consideration (*inter alia*) that the plaintiff being the prosecutor of an indictment preferred against certain persons for an assault and riot would not proceed further on such indictment, undertook and promised the plaintiff to pay him a certain amount of money. The declaration averred that in pursuance of such agreement the plaintiff did not proceed further with the indictment, and, with the assent of the then defendants, informed the Court before which the indictment was pending of the premises, and by leave of the Court forbore to give evidence, and the defendants were acquitted. The defendants pleaded several pleas to this action, but the most material plea is that which raises the question whether the consideration for the said supposed promise was illegal and the promise therefore void. On demurrer the Court of Queen's Bench held this to be so. The same question has been argued before us on the writ of error, and we think the judgment of the Queen's Bench was right. It seems clear from the various authorities brought before us on the argument that some misdemeanors are of such a nature that a contract to withdraw a prosecution in respect of them, and a consent to give no evidence against the parties, is founded on an illegal consideration. Such was the case of *Collins v. Blantern*, which was a prosecution for perjury. It is strange that a doubt as to the law in such a case should ever have been raised. A contrary decision would have placed it in the power of a private individual to make a profit to himself by doing a great public injury. It is difficult to comprehend the case of *Johnson v. Ogilby*, stated in 3 P. Williams, 277. There a prosecution for a fraud was suppressed, and the suppression was the consideration for the payment of a sum of money. The distinction between felony and misdemeanor seems to have been the foundation of the decision, but it was a distinction overruled in *Collins v. Blantern*. It is not, indeed, at all clear that the indictment for the fraud was compromised as a part of the agreement, or that the fraud was an indictable one; and perhaps the case may be so explained; if not, it cannot, we conceive, be sustained as law. In *Drage v. Ibberson* Lord Kenyon adverted to, and stated that he should adhere to, the class of cases which hold that the consideration for an act being the settling of a misdemeanor might be good in law. Thus a settlement of an indictment for a nuisance preferred by public authorities was held to be a lawful consideration for a bond binding the defendant to remove the nuisance: we presume on the ground which, however, is not very satisfactory, that the main object of the prosecution, the removal of the nuisance, was thereby effected; but the Court seem to have overlooked the consideration that the defendant who had infringed a public right was thereby entirely free from the punishment due to the violation of the public law. In *Edgcombe v. Rodd*, Le Blanc, J. assigns this as a reason for the consideration being illegal. "This," he observes, "was a prosecution for a public misdemeanor, and not for any private

injury to the prosecutor." It is difficult to reconcile this principle, which we think a just one, with the case of *Fallowes v. Taylor*, 7 T. R. 475. In *Pool v. Boussfield*, 1 Camp. 55, the forbearing to apply to the Court to compel the defendant to answer the matter of certain affidavits was held to be an illegal consideration for the defendant's promise; but there is a class of cases, such as *Beeley v. Wingfield*, 11 East, 46, and *Baker v. Townsend*, 7 Taunt. 422, which do not at all break in upon sound principles. Those are cases where the private rights of the injured party are made the subject of the agreement, and where, by the previous conviction of the defendant, the rights of the public are also preserved inviolate. As Gibbs, C. J. in the latter case, well observes, "The parties have referred nothing but what they had a right to refer; they have referred the several assaults." By which we understand the learned judge to mean their several rights to damages in respect of those assaults. "The reference of all matters in dispute refers all other their civil rights, which may well be referred;" which words shew such interpretation to be correct. The case of *Beeley v. Wingfield* was after conviction; and the promissory note seems merely to have been given for the expenses of the prosecution, and was obviously part of the punishment inflicted by the Court after conviction. Indeed, it is very remarkable what very little authority there is to be found—rather consisting of *dicta* than decisions for the principle that any compromise of a misdemeanor, or, indeed, of any public offence, can be otherwise than illegal, and a promise made upon such a consideration otherwise than void. If the matter were *res integra*, we should have no doubt upon the point. We have no doubt that in all offences which involve damages to the injured party for which he may maintain an action, it is competent for him, notwithstanding that they are also of a public nature, to compromise or settle his private damage in any manner he may think fit. It is said, indeed, in the case of an assault, he may also undertake not to prosecute on behalf of the public. It may be so; but we are not disposed to extend this any further. In the case before us, the compromise was of an assault and riotous obstruction of a public officer in the execution of his duty; and in no case has it been said that it is lawful to compromise a prosecution for such an offence. Where the judge at the trial sanctions the compromise of an indictment, the exact words used by him are material, for he cannot make legal that which the law declares to be illegal. We entirely agree in the observations of the Court of Queen's Bench as to this part of the case, and we think the judgment given by them must be affirmed.

Judgment affirmed.

Bankrupt and Insolvent Courts.

COURT OF REVIEW.

July 1 and 2.

Ex parte PARSON, *Re* FIDGER.

Costs—Fiat upon bankrupt's petition.

Where a fiat had been issued upon the petition of the bankrupt, and upon the choice of assignees, they appointed another solicitor, the costs of the bankrupt's solicitor up to the choice of assignees were, under the circumstances of the case, allowed out of the estate, but the Court declined to lay down any general rule on the subject.

The petitioner in this case was a solicitor, and had been employed by the bankrupt in suing out the fiat against him upon his own petition under 7 & 8 Vict. c. 96, s. 41. Assignees having been chosen, they appointed their own solicitor, and this petition was presented to have the costs of the petitioner paid out of the estate.

Taylor, for the petitioner, cited *Ex parte Patterson*, 1 De Gex, 158.

Swanston, for the assignees, opposed.

The CHIEF JUDGE.—I entirely approve of the course the Commissioner has taken in having this brought before the Court; but I think, under the circumstances of this case, these costs may be allowed, though I do not mean to lay down any general rule.

Tuesday, July 7.

Ex parte TURNER, *Re* OSBORN.

Opening fiat—Fiat issued on bankrupt's petition.

Where a fiat had been issued under the 7 & 8 Vict. c. 96, s. 41, upon the petition of the bankrupt, but the same had not been opened within the time required by the 5 & 6 Vict. c. 122, s. 4, the Court, upon the petition of a creditor, gave liberty to proceed upon the fiat.

In this case the fiat had been issued on the 2nd of July, on the petition of the bankrupt himself, under the 7 & 8 Vict. c. 96, s. 41, but up to the date of the petition the fiat had not been opened, as required by the 5 & 6 Vict. c. 122, s. 4, in the case of a fiat issued upon the petition of a creditor. This petition was therefore presented by some of the creditors, praying that the fiat might be annulled, and a new fiat issued upon their petition.

Glasse, for the petitioners, called the attention of the Court to the words of the 41st section of the 7 & 8 Vict. c. 96, which, after providing for the mode of proceeding to adjudication where the fiat had been issued on the bankrupt's petition, continued, "and all further proceedings under such fiat shall be thenceforth prosecuted and carried on in like manner as if such fiat had been issued and adjudicated upon on the petition of a creditor of the bankrupt." There being no adjudication in this case, the petition prayed that a new fiat should be issued, instead of applying to have the fiat opened in the manner provided by the 4th section of the 5 & 6 Vict. c. 122, as by the terms of the 7 & 8 Vict. c. 96, that section did not appear to be applicable to this case.

The CHIEF JUDGE.—On the assumption that if the fiat had been issued by a creditor instead of the bankrupt himself, there would have been a default, I think I could give you the order you would then have been entitled to.

Order made accordingly.

COMMISSIONERS' COURTS.

Wednesday July 15.

(Before Mr. Commissioner FONBLANQUE.)

Re BARTLETT.

An attorney who engages in the business of a bill discount will not be entitled to his certificate, even though unopposed by creditors.

The bankrupt was an attorney who had been largely engaged in discounting bills. He had also been the promoter of a distillery company, most of whose directors had run away. He had been entitled to some reversionary property. His profits were stated at 1,400*l.* a year; and his losses were chiefly in bad book debts and bad bills. His accounts had passed unopposed by any of his creditors. He now applied for his certificate.

Sturgeon, on behalf of Mrs. Casse, one of the creditors, opposed the granting of the certificate.

The bankrupt was subjected to a long examination, in which he admitted the above facts.

Cor. for the bankrupt, contended that his youth and inexperience were his excuse: that he was charged with no frauds upon his clients, and with no extravagant expenditure. He had been the victim of others. Of all his creditors, the only opposing one was a person who had been the main instrument of his ruin, and who had been summoned, but did not appear.

Mr. Commissioner FONBLANQUE said that there was no greater pest of society than a bill discounting attorney. In this case, fortunately for the bankrupt, there was no charge of unfair dealings with clients, or of extravagance. Still it was due to the respectable portion of a profession, whose character and position it was of the utmost importance to maintain, that transactions of this sort, so unworthy of an attorney, should not pass unrebuked and unpunished. He should, therefore, withhold the certificate for eighteen months.

Thursday, July 16.

(Before Mr. Commissioner FAWC.)

Re LITTON.

Residence within the Court District.

An insolvent had been in France for fifteen weeks preceding his petition.—Held, not to have had continuous residence within the Court district for twelve months, as required by 7 & 8 Vict. c. 96, s. 1.

Insolvent had resided some years within the jurisdiction of the Court, but had quitted it, gone to France, and had remained there fifteen weeks from November last. It was objected by *James*, for a creditor, that by 7 & 8 Vict. c. 96, s. 1, it was required that an insolvent petitioning the Court "shall have resided within the district during the twelve months next preceding" the presentation of his petition, and that this insolvent had not done.

Cooke, for the insolvent.

Mr. Commissioner FAWC said, that two questions arose—first, what was the meaning of the Act; and, secondly, whether the petitioner had resided within the district? As to the first, it was his opinion the twelve months meant twelve months next preceding the presentation of the petition, and must be substantially a continuous residence. As to the second point, he thought that although an absence from the jurisdiction for a moderate time for a purpose connected with business, or even pleasure, with the intention of returning, would not deprive the insolvent of his right to petition, yet that so long an absence as fifteen weeks was fatal. If any circumstances connected with the recovery of health, or affording any other explanation, could have been laid before the Court, it might have removed the difficulty. No such case was shewn, and therefore he dismissed the petition for want of jurisdiction, and directed that an order made for the insolvent's release from custody to certain executions should be vacated.

THE LEGISLATOR.

Summary.

It will be seen that legislation is not to be stayed altogether for this session. Ministers adopt the Poor Removal Bill of their predecessors, with some trifling alterations, and intend to press it. The Charitable Trusts Bill, not Lord LYNDHURST's, but Mr. HUME's—a sort of stop-gap till a more efficient one can be found—has been read a second time, and will pass the Commons, though its fate in the Lords is uncertain. Then there has been a talk about the Small Debts Bill. It is not abandoned, although there is not the slightest prospect of making it law during this session. But from the tone of the discussion it is obvious that a measure of the sort is inevitable, and cannot long be delayed. We trust, therefore, that before the next session a vigorous attempt will be made to procure a really efficient one in the shape of the scheme propounded here some months since for remodelling the Quarter Sessions Courts; or, at least, something like it. We have not heard a word of the probable fate of the Conveyancing Bill. It appears to be passing *sub silentio* by common consent, not a lawyer in the House to watch its progress or to anatomise it, still less to urge the claims of the Solicitors to compensation in the shape of abolished certificate duty and protection against interlopers, exempt office from their education and their taxes.

FRIDAY.—Since the above was in type the Premier has announced the purposes of the Government. The Small Debts Bill is, we regret to find, to be pressed forward this session, when it will be impossible that it can receive the attention due to the importance of the changes it introduces. It will, we fear, become law with all its imperfections, and henceforth be an obstacle by the new interests it will create to a more efficient measure. If the Lawyers find the new courts the nuisance we anticipate, they will only have themselves to blame; they have not used ordinary exertions to shew the Parliament the mischief of the present measure, and that which is equally necessary, a better one as a substitute. Mere dogged opposition to a change will not do now-a-days. It is necessary to accompany an objection to one scheme by some other shewing how the same end may be attained with more of certainty or less of evil. It is to their neglect of this rule of modern legislative warfare that the Lawyers are so helpless in Parliament. May they learn wisdom by their better experience, and, when they have an advocate in the House of Commons, instruct him not merely to oppose but to propose. They will then be heard with respect, and might make good compromises and obtain compensation, neither of which do they now procure.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Wednesday, July 18.

Lands and Companies Clauses Consolidation Bill,—“to amend the Lands Clauses Consolidation Act, 1845, and the Companies Clauses Consolidation Act, 1845.”

Thursday, July 16.

Books and Engravings Bill,—“to amend an Act of the seventh and eighth years of Her present Majesty, for regulating, under certain circumstances, the Duties payable upon Books and Engravings.”

Deadends' Abolition (No. 2) Bill,—“to abolish Deadends.”

Monday, July 13.

BILLS READ A SECOND TIME.

Ordinance Survey
Western Australia
New Zealand Loan.

Wednesday, July 18.

Administration of Justice Bill.

Thursday, July 16.

Rateable Property (Ireland)
Ejectments, &c. (Ireland)
Lenses (Ireland)
Privileges of Trade Abolition (Ireland)
Death by Accidents Compensation.

BILLS READ A SECOND TIME.

Friday, July 10.

Australian Agricultural Companies

Barr's Estate Bill
Park's Estate Bill
Sligo and Shannon Railway

Monday, July 13.

Lynn and Ely Railway
Ditto (Extension to March)
Metropolitan Sewage Manure Company
Ramsay's Estate Bill
Walsbech and Cambridge Junction Railway.

Tuesday, July 14.

Bishop of Jerusalem's Naturalization Bill
Lord Kinnaird's (Sir John Webb's) Estate Bill
Spalding's Estate Bill
Yeovil Borough Estate Bill.

BILLS READ A THIRD TIME.

Friday, July 10.

Argyll Canal
Birmingham and Oxford Railway
Ditto (Birmingham Extension)
Birmingham and Dudley Railway
Birmingham and Stour Valley Railway
Brighouse Sewering and Lighting
Bristol and Birmingham Railway
Glasgow and Belfast Union Railway
Glasgow and Coatbridge Railway
Larne and Ballymena Railway
Liverpool and Bury Railway
Liverpool and Leeds Railways Amalgamation
Llynvi Valley and South Wales Junction Railway
Manchester and Leeds Railway
Manchester and Bury Canal Navigation and Manchester Railway
Monmouthshire Railways
Oldham, Liverpool, and Birkenhead Junction Railway
Templemore and Nenagh Railway
Trent Valley and Grand Junction Railway
Waterford and Dublin Railway
West Riding Union Railways

Monday, July 13.

Galedonian Railways' Amalgamation
Caledonian Railway
Curtis's Divorce Bill
Dublin and Kingstown Extension Railway
East and West India Docks and Birmingham Junction Railway
Forth and Clyde Navigation Improvement
Grand Junction Railway
Leeds and Bradford Railway
Liverpool and Preston Railway

Tuesday, July 14.

Curtis's Divorce
Dublin and Kingstown Extension Railway
Forth and Clyde Navigation Improvement
Plymouth Great Western Docks
Sligo Ship Canal
Wexford Harbour Improvement.

Thursday, July 16.

Billingsgate Market
Cambridge Improvement
Edinburgh and Glasgow Union Canal
Hill's Estate Bill
Manchester and Southampton Railway
Sligo Ship Canal.

SESSIONAL PRINTED PAPERS.

Revenue, &c. (1836 to 1848)—Accounts
Wine, Spirits—Accounts
Timber Ships—Returns
Customs—Account
Greenwich Park, Railway—Paper
Civil List Pensions—Paper
Greenwich Park, Railway—Report of Sir James South
Spirits—Accounts
Tithes' Commutation—Returns
Metropolitan Sewage Manure—Report
Railway Bills' Classification—Twenty-third Report
Factories—Reports of Inspectors
New Zealand—Paper
New South Wales, Occupation of Crown Lands—Further Correspondence
Cape of Good Hope, &c.—Returns
Moneys in the Exchequer—Account.

HOUSE OF LORDS.

LORD CHIEF JUSTICE'S SALARY.

TUESDAY, July 14.—Lord BROUGHAM said he regretted the absence of the noble marquis (the Marquis of Lansdowne), inasmuch as he wished to call attention to a subject which he was sorry to be obliged to mention. He wished to give a general notice of his intention to submit to their lordships' consideration an important question, which was now peculiarly pressed upon them on account of the acceptance (although he believed the appointment was not as yet completed) by his learned friend, Serjeant Wilde, of the lord chief justiceship of the Court of Common Pleas. One of the Acts which he deeply lamented he had ever permitted to pass their lordships' House when he had the honour of holding the great seal, was that to which he was now about to refer. That most improper and wholly unconstitutional proceeding, however, did take place at the time he had the honour of holding office. He did not mean but to say that he was in some degree responsible for that measure which allowed the salary of the Lord Chief Justice, to whom the Act of Parliament gave 10,000*l.* a year, and which Lord Tenterden was entitled to enjoy during his life, to be reduced to 8,000*l.* a year. Their lordships permitted that act to be done, though they should never have consented to it. His lordship's executors—and, if he were one of them, he should hope he would not survive it—were entitled, he could shew, to receive the 2,000*l.* which Lord Tenterden had abstained from taking. It was not a permissive Act, nor one giving power to the Treasury to make such a reduction. It was wholly unconstitutional to

make any learned judge dependent upon the mercy of the Treasury. The Acts of the 6 George 4, caps. 82 and 84 (the latter applying to the Common Pleas, to which his learned friend Serjeant Wilde is appointed Lord Chief Justice), gave 10,000*l.* a year to the one Chief Justice, and 8,000*l.* a year to the other, payable by quarterly payments to themselves out of the Consolidated Fund of Great Britain. He must remind the house of this fact, and observe how monstrous it would be because a government was pleased to make a bargain with one Lord Chief Justice, by which he was to take less than he was really entitled to receive, and the residue to be paid into the Consolidated Fund—how monstrous it would be to continue the same course in respect to other chief justices, and perhaps go still further, and say that they should have 6,000*l.* instead of 10,000*l.* and then to dole to them an increased 500*l.* a year, according as these learned judges behaved to the satisfaction of the Crown? He hoped and trusted that something would be done to amend this defect in their proceedings. He had not seen any Act that had passed on this subject since the 6th Geo. 4, although he had certainly an impression on his mind that some Act of the kind had passed their lordships' house. He had abstained from bringing this question before the House at an earlier period only because his noble and learned friend the Lord Chief Justice of the Court of Queen's Bench had entreated him not to bring it forward. A judge more utterly beyond all possibility of being influenced by such considerations than his noble and learned friend had never existed, and a man caring less about money than the present Lord Chief Justice was not to be found in the Queen's dominions. That, however, was no reason why he should now abstain from bringing this subject forward, when, perhaps, they would have a repetition of the same traffic. Such a proceeding he thought was greatly to be reprobated—namely, that of giving a lower salary than the Act of Parliament declared ought to be given.—Earl GREY said that the subject to which the noble and learned lord had called their attention was certainly one of great importance. He understood that a certain arrangement had taken place a few years ago upon this subject, and it had been carried into effect in the manner referred to by the noble and learned lord. Their lordships would remember that in 1830 a committee of the other House of Parliament recommended a revision of the offices of the executive government, and in respect to the judicial officers an arrangement was made for a reduction of the salaries. He was very sorry, if his noble and learned friend thought that this arrangement was so objectionable, that he did not then adopt that simple and easy course of passing an Act of Parliament refusing their lordships' sanction to this arrangement, which was originally suggested by a committee of the other House of Parliament. In point of form it would have been, no doubt, better that such an Act was passed, but practically they had other modes of accomplishing the same object. He fully concurred with the noble and learned lord in the compliment he had paid to the character of the noble and learned Lord Chief Justice of the Court of Queen's Bench. He was sure that no government holding office in this country would or could be guilty of such an abuse of power as his noble and learned friend thought possible, because, in point of fact, the actual payment that would, under such circumstances, be made, would appear in the finance accounts, and would, of course, attract the attention of the public, by whom it would undoubtedly be condemned. Any practical abuse of this power would, therefore, be altogether impossible. The noble and learned lord was, however, himself charged with this especial business at the time this arrangement was made (“no, no,” from Lord Brougham). It was the noble and learned lord's peculiar and special province to look after this matter.—Lord BROUGHAM.—I was not told of it at the time. I knew nothing about it. I was, no doubt, cognizant of the arrangement; but it was a week after it was made.—Earl GREY.—The noble and learned lord surely must have known all about it when the report of the Ashburton committee was made to the House, recommending the salaries of the judges to be reduced. When Lord Denman was appointed to his present office the subject was adverted to in this house, and the necessity of the reduction of the salary taking place in conformity with the recommendation of the committee was then insisted upon. The noble and learned lord was himself Lord Chancellor at the time, and must of course have been aware of this proceeding. It was, he thought, with his noble and learned friend's cognizance that this arrangement had taken place. It was his (Lord Brougham's) business more than that of any other member of this house, if the arrangement were wrong, to have it at once corrected. If there was a necessity for bringing in an Act to regulate the salaries of the Chief Justice, he had no doubt the government would do so.—Lord BROUGHAM begged, in the first place, to say that he had not addressed the noble earl; he had addressed himself to those who were higher in office, and who, consequently, might be supposed to know more of the matter than the noble earl (a

laugh). He trusted, for the sake of regularity, that such scenes would not take place in future in that House, that when a noble lord declared upon his honour that he did not know a certain matter, the noble earl should get up and say, "But I know that you did know" (laughter). He trusted such was not the course which the noble marquis at the head of the present government in that house would pursue. The noble earl said he must have known the matter, and why? Because he was Lord Chancellor at the time, meaning, he presumed, that he was likely to have known it. He did not understand the distinction drawn by the noble earl between the Chief Justice of the Court of Queen's Bench and the Chief Justice of the Court of Common Pleas. Undoubtedly, something ought to be done. He had inquired of the Chief Justice whether he knew any thing of the cutting down of his salary to 7,000*l.* per annum; and he understood from him that he was no party to any arrangement of the kind, and he doubted very much whether the Chief Justice would accept it, giving up a very large private practice.—Lord CAMPBELL thought it was the imperative duty of his noble and learned friend opposite (Lord Brougham), who was Lord Chancellor at the time, to have carried out the recommendations that were made to reduce the salary of the Chief Justice of the Court of Queen's Bench to 8,000*l.* and that of the Chief Justice of the Common Pleas to 7,000*l.* per annum. So far as he understood his noble and learned friend, he had taken to himself a portion of the blame for not having carried out those recommendations.—After a few words from Lord BROUGHAM, in explanation, the LORD CHANCELLOR said it was quite clear that either the salary should remain at 10,000*l.* a year, or that there should be an Act of Parliament to reduce it to 8,000*l.* His noble and learned friend said that there was an implied understanding between the Government and the Chief Justice of the Court of Common Pleas; so far as he was aware nothing of the kind had taken place. The present Chief Justice had taken the office with all the emoluments belonging to it.

JUVENILE OFFENDERS BILL.

The Marquis of WESTMINSTER moved the second reading of this bill *pro forma*, on the understanding that if the Government should decline to take up the subject he should be at liberty to introduce a bill on the subject at an early period next session.—The Earl of DEVON approved of the principle of the bill, but wished to extend its operation to others besides juvenile offenders.—Lord CAMPBELL had the authority of the Chief Justice of the Queen's Bench for stating his entire approval of the principle of the bill. He, at the same time, was desirous of extending the summary mode provided by the measure to all offences of a certain mitigated description. There could be no doubt that the distinction between felonies and trespasses in certain cases was sufficiently fantastical, and he therefore rejoiced exceedingly that the noble marquis had taken up the subject, and would promise him all the assistance which it was in his power to afford.—The LORD CHANCELLOR thought that the noble marquis had taken a wise course, inasmuch as it would be impossible to give so important and difficult a subject due consideration at the present advanced period of the session. Of course their lordships could not expect him to express any opinion as to the remedy to be applied, but the existence of the evil to be remedied was not to be denied.

The bill was then read a second time *pro forma*.

SMALL DEBTS BILL.

THURSDAY, July 16.—The LORD CHANCELLOR, after presenting petitions from the clergy of Leicester against the Union of the Sees of St. Asaph and Bangor, and from Moira, in the county of Down, praying for the total abolition of capital punishment, stated that he had looked into the Bill for the Better Recovery of Small Debts, which had been introduced by the late President of the Council (the Duke of Buccleuch), and he intended to take an early day for moving its second reading.

HOUSE OF COMMONS.

SMALL DEBTS BILL.

COUNTY OF SOMERSET SMALL DEBTS BILL.

WEDNESDAY, July 15.—Mr. DICKINSON wished to know whether it was the intention of the Government to go on with this Bill, or whether, as seemed to be the impression in some quarters, they would put it aside in order to introduce some general legislation on the subject. In order to ascertain that fact, he would now move that the Bill be read a second time.—Sir G. GREY hoped the hon. member would not press his motion for the second reading. This was one of some Bills which had been stopped by the late Government for the purpose of introducing some general measure as to local courts. There was no doubt but that that Government would support such a general Bill if brought forward, and he hoped that her Majesty's present Government would even in the present session be able to get such a measure as that through. Many of the objections which had existed to general legislation on the subject had been re-

moved, and there was now a more general concurrence as to the advantages of such a measure than had existed at any former period. It was known that the late Government had prepared a Bill on the subject, and that Bill was at present under the consideration of the Lord Chancellor; but from its voluminous nature, and from the fact of the noble and learned lord having been in possession of the seals only a few days, it was impossible to go through it with that attention necessary to so important a measure; he hoped, nevertheless, that the Government would be able to introduce that measure with some modifications, even in the present session, but, if not, he hoped that they would be able to do so early in the next. Under these circumstances he trusted that the hon. member would not press his motion.—Mr. DICKINSON said he had heard no good ground why he should not press his motion. If this Bill were carried, its provisions would, of course, give way to general legislation on the subject.—Mr. B. ESCOTT concurred with the right hon. baronet (Sir G. Grey) that his hon. friend ought not to press his motion at present, but he hoped that some general measure with respect to local courts would be introduced, and that in that would be included some provision for establishing ecclesiastical courts.—Mr. H. BAKERLEY said that he had the strongest objection to this bill, which amongst other things would render nugatory some of the most important provisions of a Bill which had passed last year, called the Small Debts Bill.—Mr. ACLAND hoped that if this Bill were given up the Government would give some assurance as to what they intended with respect to general legislation on the subject.—Sir G. GREY stated, that the general feeling of the last as well as the present Government was in favour of this Bill, and he repeated the hope that even in the present session a general measure on the present subject would be brought forward and carried through; but it would be impossible to state at present the details of such a measure. The Bill already prepared by the late Government contained about 130 clauses, and he repeated, that time had not existed for their due examination since he took the seals.—Sir J. GRAHAM hoped and believed that her Majesty's Government would introduce some measure on the subject in the present session. The Bill prepared might, in fact, be considered as the labour of seven or eight years. The clerks in most of the small debt courts had been examined, and pains had been taken to meet their various objections, which he might say had now been altogether obviated. The patient attention of some of the most able and intelligent lawyers had been given to all its details. If the attention of his hon. and learned friend the Attorney-General, whom he then saw in his place, were directed to the Bill, he would find that extreme attention had been paid to the subject. All the parties who were connected with the Bill before the House had been duly informed that a general measure would be brought forward relative to it. He considered the present Bill as entirely too comprehensive for a local measure.—Mr. SPOONER hoped that the Government would press the bill in the present session, as it was absolutely necessary for the benefit of small traders, to enable them to collect their debts.—Mr. ESCOTT hoped his hon. friend would withdraw his motion, in order to let the subject be one of general legislation. It would be of the greatest importance to all persons engaged in trade.—Mr. DICKINSON said that he would give way to the general feeling of the House, and not press his motion.

POOR REMOVAL BILL.

Captain PECHELL wished to know what were the intentions of Government with respect to the motion for the Pauper Removal Bill, which stood on the orders for to-morrow. It would be very satisfactory to know the course which the right hon. gentleman the Secretary of State would pursue.—Sir G. GREY said, according to the statement of his noble friend the First Lord of the Treasury the other night, he would ask the House to-morrow (Thursday) to go into committee on the Bill. The course he proposed to follow was this, to take up the Bill as it stood, to pass it though the committee *pro forma*, and to ask the House to agree to the first eight clauses of the Bill. The Bill consisted of three parts; the first merely altered the law as to the removal of paupers, the second related to the trial of appeals, and the latter part of the Bill, which had been added since the instructions moved by the hon. member for Malton, and adopted by the House, related to union settlements. He proposed to omit the latter part of the Bill, and merely to ask the House to assent to that part which related to the removability of paupers. He hoped the course he proposed would render unnecessary the amendments contemplated by hon. members.

CHARITABLE TRUSTS.

Mr. HUME then moved the second reading of the Charitable Trusts Bill. The principle of it was to secure the accountability of persons entrusted with the funds of public charities.—Sir G. GREY would not oppose the second reading of the Bill. He cautioned the House, however, against supposing that this was a substitute for the Bill which had been

thrown out in the House of Lords, or for a more general measure.—After a few words from Mr. BROTHERTON and Mr. T. EGERTON, Mr. BERNAL warned Mr. Hume of the difficulties which he would have to encounter in carrying this measure, and recommended him to withdraw it, and to leave the whole subject in the hands of Government.—Mr. STAFFORD O'BRIEN concurred in the advice given by the last speaker to Mr. Hume, and protested against the principle that the House of Commons had a right to interfere with every charitable body. He moved that the Bill be read a second time that day six months.—Mr. BUCK seconded the amendment.—Mr. T. EGERTON tendered his thanks to Mr. Hume for the introduction of this Bill, and hoped that the House, with the knowledge of the abuses in the management of our charities, would read it a second time.—Mr. SPOONER contended that a measure of such importance as the present could not receive adequate consideration at this advanced period of the session.—Sir DE LACY EVANS supported the bill as a preliminary step to clear the way for some more comprehensive measure.—Mr. ESCOTT considered this measure to be one of so grave a character as to require the Government to take it into its own hands. The present Bill appeared to him to be very crude, and not likely to effect the objects for which it was intended. He recommended Mr. Hume to withdraw it for the present, and to introduce it next session in a modified form.—Sir J. GRAHAM explained the circumstances under which he had assented to allow Mr. Hume to read this bill a first time. He also gave a brief exposition of the provisions of Lord Lyndhurst's Bill on this subject, and expressed his regret that it had been defeated in the other House of Parliament. He considered the object of the present Bill to be very desirable, and insisted that the general rule of accountability ought to be enforced.—After some observations from Mr. NEWDEGATE and Mr. T. EGERTON, and a short reply from Mr. HUME, which led to a declaration from Lord G. SOMERSET that he would vote for the second reading of the Bill, although he thought that great alterations must be made in it in committee, the House divided, when the second reading was carried by a majority of 42 over 12 votes.

MEASURES TO BE PROCEEDED WITH.

THURSDAY, July 16.—Lord J. RUSSELL.—I stated, Sir, that I would to-day inform the House of the general course which the Government propose to pursue with respect to several of the Bills now before this House, and I will do so in moving the consideration of the orders of the day. I wish, in the first place, to give notice that I will on Monday next state the plan of the Government with respect to the sugar duties. With respect to the Bills now before this House, the first, which comes under my consideration is the Poor Removal Bill. With regard to that Bill I have already stated my general views to the House, and my right hon. friend the Secretary of State for the Home Department will presently state what is proposed to be done with regard to that Bill. The next is the Drainage Bill, which is a bill to facilitate the improvement of land. Some member of the Government will undertake that Bill with the object of carrying it through in the present Session. The next most important class of bills are those brought in by the noble lord who was lately the chief secretary of the Lord Lieutenant of Ireland. One of those, the Ejectment Bill, we propose to go on with (notwithstanding the shape it is in at present), making some alterations, but preserving the clause which prevents distressing on the growing crops. The Leases Bill we also propose to go on with. With regard to another Bill affecting Ireland, the Tenants' Compensation Bill, the machinery is extremely complicated; we wish to give further consideration to that Bill, with the view of seeing whether we can hope to pass it into a law. There are some other Bills affecting Ireland, with regard to which my right hon. friend, the chief secretary of the Lord Lieutenant, will be able to answer any inquiries which may be made on the subject; I don't see that there is any necessity for my noticing them at present. There are some Bills which are now in the House of Lords. One of them is called the Small Debts' Bill, which is similar to one which was introduced by a former Government, and by the late government, the subject of which has been repeatedly before the House. The present Government entirely approve of the general purposes of that Bill, and although it is a Bill of great length, and containing many clauses, they hope they may be able to obtain the consent of Parliament to that Bill, it being one of great importance. There is another Bill which is likewise, at present, in the House of Lords, which the Government do not propose to take into their own hands, unless it should be necessary, which I trust also will obtain the assent of Parliament, namely, the Religious Opinions Bill. That was introduced by a member of the late Government, as a Government Bill, and I trust the author of that Bill will continue to take charge of it; but if he should be of opinion that he cannot do that, some member of the present Government will continue it in the shape in which it at present stands. There are many other Bills which

are not bills of great importance, which we propose to go on with.

NEW STATUTES

Of the Session 9 Victoria.

(Continued from page 327.)

[In this record of actual Legislation, only the statutes and parts of statutes of peculiar importance to the Profession are given *verbatim*. Of the rest, the title, or a brief analysis only, is preserved here.]

CAP. XXVII.

An Act to amend the Laws relating to Friendly Societies. (July 3, 1846.)

This statute, as of universal interest, we present entire.

1. 4 & 5 Wm. 4, c. 40. *Purposes for which societies may be formed under 10 Geo. 4, c. 56, and 4 & 5 Wm. 4, c. 40.*—Whereas by an Act passed in the fifth year of the reign of his late Majesty, intituled, "An Act to amend an Act of the Tenth Year of his late Majesty King George the Fourth, to consolidate and amend the Laws relating to Friendly Societies," it is enacted, that it shall and may be lawful for any number of persons in Great Britain and Ireland to form themselves into and to establish a society, under the provisions of the said recited Act, for the mutual relief and maintenance of all and every the members thereof, their wives, children, relations, or nominees, in sickness, infancy, advanced age, widowhood, or any other natural state or contingency whereof the occurrence is susceptible of calculation by way of average, or for any other purpose which is not illegal: and whereas doubts have been entertained for what purposes a society may be established under the provisions of the said Act, and it is expedient that such purposes be better defined: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that a society may be established, under the provisions of the said Acts, for any of the following purposes; (that is to say),

1. For the lawful insurance of money to be paid on the death of the members to their husbands, wives, or children, kindred or nominees, or for defraying the expenses of the burial of the members, their husbands, wives, or children; provided that no person under the age of six shall be allowed to become a member of such society, and that no insurance shall be effected on the life of any child under six years of age;

2. For the relief, maintenance, or endowment of the members, their husbands, wives, children, kindred, or nominees, in infancy, old age, sickness, widowhood, or any other natural state of which the probability may be calculated by way of average;

3. Toward making good any loss sustained by the members by fire, flood, or shipwreck, or by any contingency of which the probability may be calculated by way of average, whereby they shall have sustained any loss or damage of their live or dead stock, or goods, or stock in trade, or of the tools or implements of their trade or calling;

4. For the frugal investment of the savings of the members for better enabling them to purchase food, firing, clothes, or other necessaries, or the tools or implements of their trade or calling, or to provide for the education of their children or kindred, with or without the assistance of charitable donations: provided always, that the shares in any such investment society shall not be transferable, and that the investment of each member shall accumulate or be employed for the sole benefit of the member investing, or the husband, wife, children, or kindred of such member, and that no part thereof shall be appropriated to the relief, maintenance, or endowment of any other member or person whomsoever, and that the full amount of the balance due according to the rules of such society to such member shall be paid to him or her on withdrawing from the society, and that no such last-mentioned society shall be entitled or allowed to invest its funds, or any part thereof, with the Commissioners for the Reduction of the National Debt;

5. For any other purpose which shall be certified to be legal in England or Ireland by her Majesty's Attorney or Solicitor-General, and in Scotland by the Lord Advocate, and which shall be allowed by one of her Majesty's Principal Secretaries of State as a purpose to which the powers and facilities of the said Acts ought to be extended; provided that the amount of the sum or value of the benefit to be assured to any member, or any person claiming by or through him or her, by any society for any purpose so certified and allowed as hereinbefore mentioned, shall not exceed in the whole two hundred pounds; and that this limitation shall be inserted in the rules of every society established for any purpose so

certified and allowed; and that no such last-mentioned society shall be entitled or allowed to invest its funds or any part thereof with the Commissioners for the Reduction of the National Debt.

2. *Member may withdraw from society, the rules of which do not prescribe the time, &c. on giving notice, and paying all arrears.*—And be it declared and enacted, That any member of a friendly society, the rules of which do not prescribe the time when or the conditions on which members shall be allowed to withdraw themselves, shall be allowed to withdraw himself or herself at any time from such society on giving written notice to the secretary or other proper officer of the society of his or her intention to do so, and on payment of all arrears due by such member; but after giving such notice as aforesaid no member shall be entitled to have any benefit from the funds of the society, or be liable to any further subscription or payment other than the amount of the arrears due from him or her at the time of giving such notice.

3. *Payments to society shall be kept distinct for each purpose subscribed for, or extra payments made for contingencies.*—That when a society is formed, under the provisions of the said Acts or this Act, for any purpose in addition to that of providing relief, maintenance, or endowment, in case of infancy, old age, sickness, widowhood, or other natural state as aforesaid, the contributions or payments for every such other purpose shall be kept separate and distinct, or the charges defrayed by extra subscriptions of the members, at the time such contingencies take place.

4. *Separate accounts to be kept for each particular benefit subscribed for.*—That the rules of every Friendly Society established after the passing of this Act shall provide that a book or books be kept, in which all monies received or paid on account of any particular fund or benefit for which the rules of the society provide shall be entered in a separate account, distinct from the monies received and paid on account of any other benefit or provision.

5. *Returns of the rates of sickness and mortality, assets and liabilities, shall be sent by every society to the registrar of friendly societies every five years.*—That the returns of the rate of sickness and mortality required by law to be sent by every friendly society at intervals of five years to the barrister or advocate by whom the rules of the society may have been certified shall be henceforth sent to the registrar of friendly societies in England, Scotland, and Ireland respectively, according to such form as shall be prepared for that purpose by the said several registrars under the direction of one of her Majesty's principal Secretaries of State; and with every such return shall be sent a report of the assets and liabilities of such society; and this provision shall be inserted in the rules of every society which shall be established after the passing of this Act.

6. *Penalties for not making returns to the registrar required by law.*—That the treasurers, trustees, stewards, or other principal officer of every such society, who by the rules of such society are or is bound to prepare or cause to be prepared the yearly general statement of the funds and effects of such society, shall be the persons who shall be respectively bound to make or cause to be made, and to send to the registrar of friendly societies the said returns of the rate of sickness and mortality, and the said report of the assets and liabilities of such society; and every such person who shall refuse or wilfully neglect to make or cause to be made or to send the said returns of sickness or mortality, or the said report of the assets and liabilities of such society, at the time and in the manner prescribed by the said Acts or this Act, shall be liable to a penalty not exceeding the sum of five pounds, to be recovered, with costs, before any two justices of the peace having jurisdiction where such society shall have its place of meeting; and on nonpayment thereof, the same, with the reasonable costs of conviction, shall be levied by distress and sale of the goods and chattels of the offender or offenders by warrant under the hand and seal of such justices.

7. *For establishing the legality of certain societies.*—That any friendly society established before the passing of this Act for any purpose which is hereinbefore specified, or for any legal purpose which shall be certified and allowed as is hereinbefore provided, and shall not have been adjudged not to be within the provisions of the first-recited Act by any court of competent jurisdiction, shall be deemed to have been within the provisions of the said Act from the time at which the rules thereof shall have been or may be certified or allowed by the barrister or advocate appointed to certify the rules of friendly societies.

8. *Repeal of part of 10 Geo. 4, c. 56, and 4 & 5 Wm. 4, c. 40. Societies legally established not excluded from benefit of said Acts.*—That so much of the said Acts of the tenth year of the reign of King George the Fourth, and of the fifth year of the reign of his late Majesty, as specifies the objects or purposes for which a society may be established under the provisions of the said Acts or either of them, or as gives to any court of sessions of the peace any power of confirming and allowing the rules of any such friendly society rejected or disapproved by the barrister or ad-

vocate appointed to certify the rules of friendly societies, shall be repealed: provided always, that the repeal of so much of the said Acts as is herein repealed shall not exclude from the benefit of the said Acts any society legally established according to the provisions of the said Acts, the rules of which were certified and enrolled before the passing of this Act.

9. *Provisions of 39 Geo. 3, c. 79, and 57 Geo. 3, c. 19, not to extend to friendly societies.*—That the provisions of an Act passed in the thirty-ninth year of the reign of King George the Third, intituled "An Act for the more effectual Suppression of Societies established for seditious and treasonable Purposes, and for better preventing treasonable and seditious Practices," and also of another Act passed in the fifty-seventh year of the reign of King George the Third, intituled "An Act for the more effectual preventing seditious Meetings and Assemblies," shall not extend to any society duly established under the statutes in force relating to friendly societies, or to any meeting of the members or officers thereof, in which society or at which meeting no business whatsoever other than that of the relief, maintenance, or endowment of the several persons to whom benefits are assured by the rules of such society are treated of, and which is established solely for the purpose of assuring benefits depending on the laws of sickness or mortality.

10. *Barrister appointed to certify rules to be styled Registrar of Friendly Societies in England, &c. and shall be paid by a salary instead of fees.*—That after the passing of this Act the barrister or advocate appointed to certify the rules of friendly societies shall be styled the Registrar of Friendly Societies in England, Ireland, and Scotland respectively, and shall be appointed by the commissioners for the reduction of the national debt, and shall hold his office during the pleasure of the said commissioners, and that the registrar of friendly societies in England shall be paid by salary instead of fees; and that it shall be lawful for her Majesty to grant to the barrister already appointed for that purpose in England a salary equal to the net average amount of fees received by him during the last three years for certifying the rules of friendly societies, after deducting the expenses incurred by him for office rent, salaries of clerks, stationery, and other expenses incident to the execution of his office, to be ascertained by the commissioners of her Majesty's treasury, provided such salary shall not exceed the sum of one thousand pounds by the year, and to every registrar of friendly societies in England hereafter to be appointed a salary not greater than eight hundred pounds by the year, and every such salary shall be paid by four equal quarterly payments; and any registrar of friendly societies in England who shall be appointed, or shall die, resign, or be removed from his office, in the interval between two quarterly days of payment, shall be entitled to a part of his salary proportional to that part of such quarter of a year during which he shall hold his appointment.

11. *Registrar to retain out of the fees received by him sufficient money to defray salaries and expenses of office. If fees not sufficient, balance to be paid out of consolidated fund.*—That the commissioners of her Majesty's treasury may allow the registrar of friendly societies in England to retain out of the fees received by him for certifying the rules of friendly societies, and for making awards and other proceedings as hereinafter provided, such sum as will defray the salary due to him, and also such sum as will defray the expenses from time to time allowed by the said commissioners for office rent, salaries of clerks, stationery, and other expenses incident to the execution of his office; and the balance, if any, shall be paid over to the account of the consolidated fund of the United Kingdom of Great Britain and Ireland; and the said commissioners shall from time to time regulate the manner in which such fees are to be received, kept, and accounted for; and if such fees shall not in any year be sufficient to defray such salary and expenses, the balance shall be paid out of the said consolidated fund.

12. *So much of 10 Geo. 4, c. 56, as requires rules to be filed with clerks of the peace, &c. repealed. Rules now filed, &c. to be taken off and returned to the registrar. One transcript of certified rules, and all rules returned, shall be kept by registrar. Rules certified by registrar to be of full force.*—That so much of the said Act of King George the Fourth as requires that a transcript of the rules of any society established under that Act, or to which the provisions of that Act have been extended and made applicable, shall be deposited with or filed by the clerk of the peace of any county, riding, or division of a county in England, and a certificate thereof returned to the society, and that the same shall be laid before and allowed and confirmed by the justices at any session of the peace, shall be repealed; and that all transcripts of such rules which are now filed with the rolls of the sessions of the peace in any county, riding, or division of a county, shall be taken off the file, and returned to the said registrar of friendly societies in England, Ireland, and Scotland respectively; and that after the passing of this Act each of the said registrars shall keep one of

the transcripts of all rules of any such society certified by him, and all the transcripts of rules which shall be so returned to him in such manner as shall be from time to time directed by one of her Majesty's principal Secretaries of State; and that all rules certified by any such registrar shall be of the same force, and all the provisions of the said Act of his Majesty King George the Fourth shall apply to them, as if they had been confirmed by the said justices, and filed with the rolls of the sessions of the peace.

13. *Registrar shall not certify rules unless society adopt tables certified by the actuary of National Debt Office, &c.*—That after the passing of this Act the registrar of friendly societies in England, Scotland, or Ireland shall not certify the rules of any friendly society established after the passing of this Act for the purpose of securing any benefit depending on the laws of sickness or mortality, unless such society shall adopt a table which shall have been certified to be a table which may be safely and fairly adopted for such purpose under the hand of the actuary to the commissioners for the reduction of the national debt, or of some person who shall have been for at least five years an actuary to some life insurance company in London, Edinburgh, or Dublin; and the name of the actuary by whom any such table shall have been certified shall be set forth in the rules, and printed at the foot of all copies of such table printed for the use of the society.

14. *For appointing new trustees in certain cases.*—That whenever any person seized or possessed of any lands, tenements, or hereditaments, or other property, or any estate or interest therein, as a trustee of any such society, shall be out of the jurisdiction of or not amenable to the process of the High Court of Chancery or Court of Exchequer in England or Ireland, or the Court of Session or Sheriff Court in Scotland, or shall be idiot, lunatic, or of unsound mind, or it shall be unknown whether he or she be living or dead, it shall be lawful for the registrar of friendly societies in England, Ireland, and Scotland respectively, on behalf and in the name of the person seized or possessed as aforesaid, to convey, surrender, release, assign, or otherwise assure the said lands, tenements, hereditaments, or property, or estate or interest, to the person duly nominated as trustee of such society in his or her stead, either alone or with any continuing trustee or trustees; and every such conveyance, release, surrender, assignment, or assurance shall be as valid and effectual to all intents and purposes as if the person being out of the jurisdiction or not amenable to the process of the said courts, or not known to be alive, or being idiot, lunatic, or of unsound mind, had been, at the time of the execution thereof, present, living, of sane mind, memory, and understanding, and had by himself or herself executed the same.

15. *Settlement of disputes between managers and members, &c. may be referred to registrar, unless law officers refer the same to a superior court.*—That every dispute between the trustees or managers of any friendly society and any member or officer thereof, or any executor, administrator, or next of kin of any such trustees, managers, member, or officer, or any creditor or assignee of any trustees, managers, member, or officer of any such society who may become bankrupt or insolvent, or any person claiming to be such executor, administrator, next of kin, creditor, or assignee, or to be entitled to any money paid to such society, or to any benefit arising therefrom, or with respect to the management of the affairs of such societies, for the settlement of which, according to the laws now in force, recourse must be had in England or Ireland to one of her Majesty's superior courts of law or equity, and in Scotland to the Court of Session or Sheriff Court, may be referred in writing to the registrar of friendly societies in England, Ireland, and Scotland respectively; and where the value of such subject-matter in dispute does not exceed twenty pounds, every such dispute shall be so referred, unless in England or Ireland her Majesty's Attorney or Solicitor-general, or in Scotland the Lord Advocate, shall certify in writing under his hand that such dispute ought to be decided by the judgment of a superior court of law or equity, and the said registrar shall have power to proceed *ex parte* on notice in writing to the said trustees or managers left or sent by the said registrar to the office of the said institution, or to the last known place of residence of such trustees, managers, members, or officers; and whatever award, order or determination shall be made by the said registrar shall be binding and conclusive on all parties, and shall be final to all intents and purposes, without any appeal; and all payments, assignments, sales, and transfers made in pursuance of any such order shall be good in law; and no submission to or award or determination of the said registrar shall be subject or liable to or charged with any stamp duty whatever.

16. *On such reference registrar may inspect books and administer oaths. False evidence, perjury.*—That on any such reference the said registrar shall be authorized to inspect and to require the production before him of any book or books belonging to the said institution relating to the matter in dispute, and to administer an oath to any witness appearing before him; and every person who, upon such oath, shall

wilfully and corruptly give any false evidence before such registrar shall be deemed to be guilty of perjury.

17. *When trustees shall be absent, &c. registrar may order stock to be transferred and dividends paid.*—That whenever it shall happen that every person in whose name any part of the several stocks, annuities, and funds transferable or which hereafter shall be made transferable at the Bank of England, or in the books of the governor and company of the Bank of England, or shall be standing as a trustee of any such society, shall be out of England, Ireland, or Scotland respectively, or shall be a bankrupt, insolvent, or lunatic, or it shall be unknown whether such trustee is living or dead, it shall be lawful for the registrar of friendly societies in England, Ireland, or Scotland respectively to direct that the accountant general, secretary, or deputy secretary, or other proper officer for the time being of the governor and company of the Bank of England, do transfer in the books of the said company such stock, annuities, or funds standing as aforesaid to and into the name of such person as such society may appoint, and also pay over to such person as aforesaid the dividends of such stock, annuities, or funds; and whenever it shall happen that one or more only, and not all or both, of such trustees as aforesaid shall be so absent, or a bankrupt, insolvent, or lunatic, or it be unknown whether any one or more of such trustees be living or dead, it shall be lawful for the said registrar to direct that the other and others of such trustees who shall be forthcoming and ready and qualified to act, do transfer such stock, annuities, or funds to or into the name of such person as aforesaid, and also that such forthcoming trustees do also receive and pay over the dividends of such stock, annuities, or funds as such society shall direct; and all such transfer and payments so made shall be valid and effectual to all intents and purposes whatsoever.

18. *Secretary of State to fix amount of fees payable on reference, and registrar to determine who shall pay them.*—That one of her Majesty's principal secretaries of state shall be empowered from time to time to fix reasonable fees to be paid on any such reference, and for such other proceedings as aforesaid, and all such fees shall be paid in the first instance by the trustees or managers of the society, and the registrar shall determine in and by his award by which of the parties and in what proportion the expense of such fees shall be finally borne, and the trustees or managers of such society, having paid such fees, shall be entitled to recover them from the party or parties against whom they shall be so finally awarded.

19. *Justices empowered to enforce payment of fees under awards. If persons do not pay money pursuant to order, the same, together with costs, may be levied by distress. Proviso as to Scotland.*—And for enforcing payment of such fees, and of any sum of money so awarded to be paid, be it enacted, That any one justice of the peace residing within the county within which such society shall be held, or within which the party resides against whom such award is made, upon complaint made upon oath by the party desiring to have the benefit of the award, or, in case of the managers or trustees of any such society, by an officer of such society appointed for that purpose, may summon the person against whom such award shall be made to appear at a time and place to be named in such summons; and upon his or her appearance, or in default thereof, upon due proof upon oath of the service of such summons, any two justices residing within the county aforesaid, upon due proof of the execution of such award, may order payment of the fees and money thereby awarded to be paid to the party appearing to be entitled thereunto, with such costs as shall be awarded by the said justices, not exceeding the sum of ten shillings; and in case the person against whom such order shall be made shall not pay the sum of money so ordered to the person and at the time specified in the said order, such justices shall, by warrant under their hands and seals, cause the same to be levied by distress and sale of the goods of the person on whom such order shall have been made, or by other legal proceeding, together with such costs as shall be awarded by the said justices, not exceeding the sum of ten shillings, and also the costs and charges attending such distress and sale or other legal proceeding, returning the overplus (if any) to the owner: provided always, that in Scotland it shall be competent to enforce payment of such fees, and of any sum of money so awarded to be paid, by proceeding before the sheriffs in the same manner as is by the law of Scotland competent for the recovery of any debt of the like amount.

20. *Rules certified by registrar, and awards executed under his hands, shall be received in evidence.*—That every transcript of the rules of any such society purporting to be certified by the registrar of friendly societies in England, Ireland, or Scotland, and every award or other proceeding as aforesaid purporting to be executed under the hand of the said registrar, shall be receivable in all courts and before all justices and others as evidence that such rules have been duly certified, or such award made, or such proceeding had, until the contrary shall be made to appear.

21. *Form set forth in the Schedule to this Act may be used.*—That the forms of certificate and award

which are set forth in the Schedule annexed to this Act may be used with such alterations as may be necessary to adapt them to the particular circumstances of each case, and that no objection shall be made or advantage taken for want of form in any such proceedings by any persons whatsoever.

22. *Act to be construed with 10 Geo. 4, c. 56, and 4 & 5 Wm. 4, c. 40.*—That this Act shall be construed with and as part of the said Acts of the tenth year of the reign of King George the Fourth, and of the fifth year of the reign of his late Majesty.

23. *Act may be amended, &c.*—That this Act may be amended or repealed by any Act to be passed during this Session of Parliament.

SCHEDULE TO WHICH THIS ACT REFERS.

Form of Registrar's Certificate.—I hereby certify, that these Rules (or alterations of rules) are in conformity to law, and to the provisions of the statutes in force relating to friendly societies.

A.B.
The Registrar of Friendly Societies
in England [Ireland or Scotland].
Day of

Form of Registrar's Award.—In pursuance of the provisions contained in the Act to amend the laws relating to friendly societies, I, A.B. the Registrar of Friendly Societies in England, [Ireland or Scotland], do hereby award, order, and determine that C.D. [specifying the name of the party or officers of the society,] do on the day of at pay to E.F. the sum of ; and I do further award, order, and determine that the fees of this my award, amounting to shall be borne and paid by the said

A.B.
The Registrar of Friendly Societies
in England [Ireland or Scotland].
Day of

CAP. XXVIII.

An Act to facilitate the Dissolution of certain Railway Companies. (3rd July, 1846.)

The provisions of this statute being of extensive but not of general interest, we present only the more important sections entire; the regulations as to matters of form would not, of course, be adopted without reference to the Act itself.

1. *Persons who shall have entered into a contract for the forming of a company for making a railway, &c. may dissolve the same pursuant to this Act.*—Whereas it is expedient to facilitate the dissolution of certain railway companies as hereafter mentioned, and to afford facilities for the winding the up concerns of such companies: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That when any persons or companies, before the passing of this Act, shall have entered into any contract usually called a subscription contract, or any other agreement or agreements, in writing or otherwise, for the formation of a company or partnership for making any railway which cannot be carried into execution without obtaining the authority of Parliament, and in respect of which an Act shall not before the passing of this Act have been obtained, it shall be lawful for such persons or companies to dissolve the said company or partnership, contract or agreement, in manner hereinafter mentioned, and that whether or not such contract or agreement shall contain any powers or provisions for dissolution of the company or partnership intended to be thereby formed: provided, nevertheless, that nothing herein contained shall prevent any such persons or companies from exercising any such power or provision for dissolution in their contract or agreement contained, if they shall see fit, at any time before availing themselves of the powers in this Act contained: provided, also, that the provisions of this Act shall be taken to apply to any contract or partnership for the making any railway, notwithstanding that the agreement or partnership may relate to any other objects in connection therewith; and (unless a separate capital and separate subscription shall exist as regards the different objects) then, on a dissolution under the provisions of this Act, the dissolution shall extend to the whole objects of the contract or partnership.

2. *Committee, &c. may call meetings of shareholders to consider dissolution.*—That it shall be lawful for the committee, provisional directors, or other persons by such contract or agreement as aforesaid intrusted with the management and carrying into effect of the undertaking, and who are hereinafter called "the committee," to call a meeting of the shareholders for the purpose of determining whether the partnership or company so as aforesaid intended to be formed (and which is hereinafter called "the company") shall be dissolved; and that if such meeting shall determine, as after mentioned, that the company shall be dissolved, then as from the date of the resolution come to at such meeting, the company shall be taken to be dissolved, and the committee shall not have power to proceed any farther with the undertaking.

3. *Shareholders may require committee to call meeting, and in default may call it themselves.*—That it shall be lawful for any five shareholders, as after defined, by writing under their hands, to require the committee to call a meeting for the purpose aforesaid; and that if the committee shall refuse or neglect, for six days after any such requisition shall have been left at the registered place of business of the company, as regards England and Ireland, and as regards Scotland, at the usual place of business, or shall have been served personally on any member of the committee, to call such meeting by notice as after mentioned, or if for any reason whatever such meeting shall not be convened and held in pursuance of the directions herein contained, it shall be lawful for any five shareholders to call such meeting; and after any such requisition shall have been left or served as aforesaid, it shall not be lawful for the committee or any of them to make any payments out of the moneys of such company, except in discharge of *bond fide* debts or liabilities, or in performance of contracts or engagements, previously entered into, and in payment of the expenses of calling and holding such meeting or any adjourned meeting, nor to enter into any contracts or engagements on behalf of the company or affecting the property thereof, nor to issue any shares or scrip or representing the capital stock of such company, until the meeting called as aforesaid shall have determined the question of dissolution.

4. *Meeting to be held duly called, although certain votes may be disallowed.*—That the meeting shall be held to have been duly called, although the votes of the parties calling the same, or any of such votes, shall be disallowed at the meeting by the scrutineers to be appointed as hereinafter mentioned.

5. *Notice of meeting to be by advertisement.*—That the calling of any such meeting shall be by notice, signed either on behalf of the committee by any one member of the same, or in case the meeting shall be called by the shareholders, then by the shareholders calling the same, such notice to be advertised in the *London Gazette* eight clear days and not more than fifteen days before the time to be therein fixed for holding such meeting, and also within the before-mentioned limits as to time, in three London daily newspapers; that in the case of railways to be made in Ireland, the said notice shall also be advertised, within the before-mentioned limits as to time, in the *Dublin Gazette* and in two newspapers in common circulation in the city of Dublin; and as to railways to be made in Scotland, the said notice shall also be advertised, within the before-mentioned limits as to time, in the *Edinburgh Gazette*, and in two newspapers in common circulation in the city of Edinburgh.

6. *Notices to specify the day, hour, &c. of meeting.*—That every notice of meeting shall specify the day, hour, place, and purpose of meeting; and the parties entitled to be present at such meeting shall be the persons producing the shares, scrip, or receipts hereinafter defined, or the proxies after-mentioned.

Then follow the regulations of the meetings, and of the voting. Of these, a short statement will suffice.

Sec. 7. Chairman to be elected by a majority of the committee, if present, and to have a casting vote.

Sec. 8. Chairman is bound to put the questions proposed, and no other business is to be transacted.

Sec. 9. Three scrutineers to be elected.

Sec. 10. Provision for the chairman not being entitled to vote.

Sec. 11. In event of a quorum not being present, meeting to be adjourned, and the votes of persons at original and adjourned meetings to be received as if given at one and the same meeting.

12. *As to the right of parties entitled to vote at meetings of the shareholders.*—That the only persons entitled to be present and vote at any such meeting as shareholders, by themselves or proxies, shall be those persons who shall for the time being be in possession of and produce certificates or receipts declaring parties entitled to shares in any company, or acknowledging the receipt of a deposit in such company, usually termed "scrip" or "receipts" for deposits on shares, and that notwithstanding the party in possession may not be the party to whom the same was originally granted, or that the same may not have been legally assigned to the party in possession, or notwithstanding the same may be possessed by the holder as a mere mortgagee, or in any other manner, or the same may be subject to any charge or lien, and which parties are by this Act called "shareholders;" provided that nothing herein contained shall authorize more than one vote, either for dissolution or bankruptcy, to be given in respect of the same share, notwithstanding any transfer or delivery of such share after a vote shall have been given in respect thereof.

13. *Mode of voting.*—That every shareholder shall, in voting on the questions of dissolution and bankruptcy, be entitled to one vote, by himself or proxy, in respect of every share held by him, or in respect of which scrip or receipts may have been issued or debts paid, and that all shareholders producing such

shares, scrip, or receipts, shall be entitled to attend meetings and to appoint proxies according to the form contained in the schedule hereto annexed, or in some form to the like effect: Provided always, and be it enacted, that the first of any such party attending any such meeting shall not in anywise increase or alter, either in law or equity, his rights or liabilities.

Sec. 14. Proxies to be signed before a Master in Chancery in England, or Sheriff, &c. in Scotland.

15. *Number of persons, &c. necessary to constitute a meeting.* Majority must consist of at least three-fifths of the votes of persons present.—That to constitute a meeting under the provisions of this Act for the purpose of deciding on a dissolution or bankruptcy, persons representing at least one-third part of the shares in the undertaking actually issued or given, either as shares, scrip, or receipts, must be present and vote; and that for the purpose of effecting a dissolution, and as to bankruptcy, there must be either a majority of the votes of the whole scrip of the company issued as aforesaid, or at least three-fifths of the votes of persons present and voting, either as shareholders or proxies, in favour of the motion for dissolution, and for the bankruptcy, if so resolved on.

Sec. 16. Minutes of the proceedings are to be advertised. The *London Gazette* is to be evidence. A penalty is imposed for signing false minutes.

Sec. 17. Places of meetings to be held as specified in the notice.

Sec. 18. No votes allowed except for scrip, &c. actually issued or given before 31st March, 1846. Mode of ascertaining the issues.

Sec. 19. Registrars of joint stock companies to require a return of issues, but the omission of the registrar to send notice is not to exempt the committee from penalties.

Sec. 20. Committees of projected railways in Scotland to lodge a return with the sheriff clerk of Edinburgh within twelve days from the passing of this Act.

Sec. 21. The sheriff clerk to give notice by advertisement for returns of issued scrip, &c. to be made.

Sec. 22. In default of return, the meeting may be called, which must represent one-third of the capital of the company.

23. *Meeting to decide if dissolution taken to be an act of bankruptcy. Scotland exempted.*—That, in addition to the question of dissolution, it shall be imperative on the meeting to decide whether such dissolution shall or shall not be taken to be an act of bankruptcy for the purpose of having the affairs of the company wound up under the provisions of the Act after-mentioned; but this provision shall not extend to the case of railways to be made in Scotland.

24. *If meeting decide that affairs shall not be so wound up, &c. then they shall be wound up like ordinary partnerships.*—That in case the meeting shall resolve that the affairs of the company shall not be so wound up, or in the case of a railway to be made in Scotland, if the majority shall resolve in favour of dissolution, then (subject to the power hereinafter given to the committee and to creditors of the company to petition for a fiat) the affairs of the said company shall be wound up according to the rules applicable to the dissolution of partnership undertakings, and as if the undertaking had been dissolved by mutual consent.

25. *Dissolution not to affect rights of creditors.*—Provided always, that the resolution to dissolve the company, or the actual dissolution thereof, shall not alter or affect the rights of creditors or other persons not being shareholders in the company, nor any engagements whatsoever which the committee may have entered into, and shall not affect any suits pending before the passing of this Act.

26. *If proposal of dissolution rejected, no new meeting to be called for six months to consider the question.*—That where any meeting called to consider the question of dissolution shall have determined the question of the dissolution of the company in the negative, no new meeting shall be called to consider the question of dissolution, or any matter relating thereto, until the lapse of six months from the day in which the question was last resolved in the negative.

27. *Any three of the committee, or any creditor or creditors, may petition for a fiat in bankruptcy.*—That it shall be lawful for any three of those who were of the committee of any company so dissolved, at any time after the dissolution thereof shall have been resolved, or for any creditor or creditors of such company to such amount as is now by law requisite to support a fiat in bankruptcy in England and Ireland, or a sequestration in Scotland, within three months after the dissolution thereof shall have been resolved, to petition that a fiat in bankruptcy may issue against such company if in England or Ireland, or that the estates of the company may be sequestrated if in Scotland.

28. *On issuing of fiats, companies to be subject to the provisions of the Acts for winding up the affairs of joint stock companies.* 7 & 8 Vict. c. 111; 8 & 9 Vict. c. 98.—That upon the production of a copy of the *London Gazette*, containing the resolution of any such meeting as aforesaid, whereby it shall be resolved that the dissolution of the company shall be an act of bankruptcy, or upon the petition of any three of the committee as aforesaid, or of any creditor under the last preceding clause, a fiat in bankruptcy shall issue against such company by the registered name or style of such company; and the company shall thereupon be deemed to be within the provisions of an Act passed in the seventh and eighth years of the reign of her present Majesty, intitled "An Act for facilitating the winding up of Joint-Stock Companies unable to meet their pecuniary Engagements;" and of another Act passed in the eighth and ninth years of the reign of her present Majesty, intitled "An Act to facilitate the winding up of Joint-Stock Companies in Ireland unable to meet their pecuniary Engagements," in all respects as if a fiat in bankruptcy had issued against it under the said Act before its dissolution; but this last provision not to extend to Scotland.

Sec. 29. Sequestration of estates of dissolved Scotch railway companies may be awarded.

30. *As to new railways by incorporated companies.*—That when any company for making any railway, actually incorporated before the passing of this Act, shall have agreed to form any new or other railway or an extension thereof, and in respect of which a new or further capital shall have been agreed to be raised or contributed, and shares as hereinbefore defined shall have been issued or otherwise appropriated, and deposits paid thereon, then such company or partnership (as regards the new undertaking) shall in all respects be considered as a company or undertaking within the provisions of this Act; and meetings shall be held, and shareholders entitled to shares as aforesaid in the new undertaking, shall in manner hereinbefore provided have power to dissolve such new undertaking, and to decide as to bankruptcy, in all respects as is provided with regard to the companies hereinbefore mentioned or defined.

31. *Member against whom judgment shall have been recovered, to be repaid by contribution from other members, together with costs.*—That where the dissolution of a company shall have been resolved under this Act, if judgment shall have been recovered, or shall afterwards be recovered in any action against any member of the committee for any debt due from such company or from such committee in respect of the undertaking, the member against whom such judgment shall have been recovered shall be entitled at law to a contribution from each of the other members of such committee towards the payment of the monies recovered by such judgment, and of all costs and expenses in relation thereto, of such a share of the whole amount of such monies, costs, and expenses, as would have been borne by such respective member upon an equal contribution by all the members of such committee, and may recover the contributions to which he may be so entitled, or any of them, by action or actions of debt, or on the case against all or any of such other members of such committee, but so that no such member shall be liable in any such action as aforesaid, for more than the share to which he shall respectively be liable to contribute under this provision.

32. *After dissolution of company no action, &c. to be brought by any attorney, &c. until one month after bill of fees shall have been delivered. Courts may refer bills for taxation to taxing officers.*—That after the dissolution of any company shall have been resolved under this Act, no action or suit shall be brought for the recovery of any fees, charges, or disbursements for any business done for such company by any attorney or solicitor, whether in his character of attorney or solicitor, or as agent or otherwise, until the expiration of one calendar month after a bill of such fees, charges, and disbursements, signed by the claimant, shall have been delivered to the committee or official assignee authorized to wind up the affairs of such company, or left at their or his place of business; and it shall be lawful for the Court of Queen's Bench, Common Pleas, or Exchequer, or any judge of either of such courts, and they are respectfully hereby required, on the application of such committee or of such official assignee, to refer such bill to be taxed and settled by any taxing officer of the court in which such reference shall be made; and the Court or judge making such reference shall restrain the claimant from commencing any action or suit touching his demand pending such reference, and such taxing officer may take such evidence in relation to such bill as he may think fit; and the costs of such reference shall be paid according to the event of such taxation (that is to say), if such bill when taxed be less by a sixth part than the bill delivered, then the claimant shall pay such costs, and if the bill when taxed shall not be less by a sixth part than the bill delivered, then the party on whose application the reference shall have been made shall pay such costs, to be considered and allowed nevertheless as part of the costs, charges, and expenses of executing the trusts and powers of

this Act; and every order to be made for such reference shall direct the officer to whom such reference shall be made to tax such costs of such reference to be so paid as aforesaid, and to certify what upon such reference shall be found to be due to or from such claimant in respect of such bill, and of the costs of such reference, and after such reference as aforesaid, no further or other sum than shall be so found due shall be recoverable in respect of such bill.

33. *Interpretation of Act.*—That the following words and expressions shall have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or subject-matter: (videlicet.)

The word "Month" shall mean calendar month:
The word "Person" shall include corporations.

Sec. 34. Act may be amended during the session.

Form of Proxy.

Railway Company.
Proxy to vote in respect of Shares.
I A B of holder of shares, [or scrip, or receipts for shares (as the case may be)], numbered respectively [here insert the numbers, unless the shares, scrip, receipts, or letter do not shew the denoting numbers], in the projected railway company, do hereby appoint C D of to be my proxy upon any matter relating to the dissolution or bankruptcy of the said company, to vote, dissent, and act as he shall think proper.

Witness my hand, the day of
Taken before me, having verified the numbers and name of the company with the documents produced to me,

Signed

Master Extraordinary, Sheriff, Sheriff Substitute, Justice, Consul, Vice-Consul, or Notary Public.

CAP. XXIX.

An Act for granting to her Majesty until the 5th day of August, 1846, certain Duties on Sugar imported into the United Kingdom.

(July 3, 1846.)

THE MAGISTRATE.

Summary.

NOTHING has occurred to claim particular notice, save the prospect of a possible carrying of the amended Poor Removal Bill during the present session. The "Summary of Magistrates' Cases" has been unavoidably deferred, in consequence of the indisposition of the writer. It will be completed next week.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The 6 & 7 Vict. c. 68, directs that justices of the peace shall grant licenses to houses for the performance of stage plays, when such houses are beyond the limits of the Lord Chamberlain's jurisdiction, and that justices shall make suitable rules for insuring order and decency at the several theatres licensed by them. Having had occasion to act (not perform) under this statute, I drew the subjoined forms, the only ones of any moment, and submit them for the approval of your readers, many of whom might be qualified to offer some useful practical remarks on the subject, as from the number of theatrical companies wandering about the country, applications of the like nature must be made to numerous magisterial divisions, and the penalty upon the Theatricals for keeping open without such license might be a heavy one, namely, not exceeding twenty pounds a day. As to the rules to be framed by justices, they must be governed by locality, but chiefly by the view to the maintenance of order.

Yours obediently,
Swindon. Wm. FOOTE.

NOTICE OF INTENDED APPLICATION FOR LICENSE.

To Clerk to the Justices of the Peace of the County of Wilts, acting in and for the division of in the said county.

I, the undersigned being the actual and responsible manager of a certain company of players, commonly called or known by the name or style of company of players, do hereby give you notice that I intend to make application, at a special sessions to be holden in and for your said division, to the justices of the peace assembled thereat, for a license to be granted unto me for the performance of stage plays in a certain building situate, &c. for the space of calendar months. And I request you will, within twenty-one days next after this application, appoint a day for holding a special sessions in the said division, for the purpose of

granting unto me such license, and that you will give notice of the holding of such sessions to each of the justices acting within such division, pursuant to the statute in such case made and provided.

Witness my hand this day of 184
Signed by the said in the presence of us the undersigned of her Majesty's Justices of the Peace, of and for the said county, and acting in and for the said division.

FORM OF LICENSE.
County of } We, the undersigned, being
Wilts. } four of her Majesty's justices of the peace of and for the county of Wilts, acting in and for the division of in the said county, present at a special sessions holden in and for the said division at in the said division, for the purpose of granting licenses to houses for the performance of stage plays, do hereby license, authorize, and empower he being the actual and responsible manager of a certain company of players, commonly called or known by the name of Company of Players, to have and keep open a certain situate at as and for a house and place of public resort, for the public performance of stage plays, under the provisions of an Act of Parliament passed in the sixth and seventh years of the reign of her present Majesty, entitled "An Act for Regulating Theatres," for the space of calendar months from this day. Provided that the said do observe and keep the rules for insuring order and decency at and in the said theatre so licensed by us, the said justices, and for regulating the times during which such theatre shall be allowed to be open, a copy of which rules is annexed to this license, pursuant to the statute in such case made and provided.

Signed and sealed by us, the above-named justices, in open court, at the special sessions aforesaid.

RULES (GENERAL).

1. The theatre shall be closed every Sunday, Christmas Day, Good Friday, and days appointed for a public fast and thanksgiving, and during Lent.
2. The theatre shall be closed every Saturday night at the hour of half-past eleven.
3. No spirituous liquors, wine, ale, beer, porter, cider, perry, or tobacco, shall be sold or disposed of in the theatre or upon the premises.
4. Police constables, when dressed in uniform, shall be permitted to have free ingress to the theatre at all times during the time of public performance.
5. The manager shall, to the best of his ability, maintain and keep good order and decent behaviour in the theatre during the hours of public performance.
6. For every breach of the above rules the manager shall forfeit and pay a penalty not exceeding the sum of

(Signed)

THE LAWYER.

Summary.

Mr. DUNDAS has been appointed Solicitor-General. The objections to an Equity man at Nisi Prius, where the law officers of the Crown are principally employed, are so numerous, that we are not surprised at the selection being made from the Common Law bar. It is with grief we learn that Mr. Justice CRESSWELL continues in bad health, and unable to attend to his judicial duties. The incident of the week that has given rise to the most talk in the Profession, is that which has been narrated and discussed in a leading article, and which, therefore, it is unnecessary to treat of here.

That we might be enabled to give at length the very important case of *Borradaile v. Hunter*, as well as to bring up some arrears of judgments and new statutes, we have been obliged to issue another double number. This will make the complement promised for the volume, and as the vacation is approaching, we hope that no more will be needed. Notwithstanding the enlarged space this week, we have been obliged to omit many reports and articles, and much intelligence and correspondence, for want of room. It is a rule to give precedence to the reports, except when matters of great urgency demand a place. A knowledge of the new decisions is of the first importance to the practitioner, and, therefore, speculative law is here made to give room to these.

REVIEW OF CASES

IN THE EQUITY, BANKRUPTCY, ECCLESIASTICAL, AND ADMIRALTY COURTS,

For the Half-year ending July 1, 1846.

ADMIRALTY.

NOT many cases of importance have occurred in this branch of the law; and those that have occurred are chiefly in reference to the very ordinary and frequent case of collision. An important decision, however, on the Pilotage Act has been incidentally come to in a case of this kind. By that Act the owners of vessels sailing up and down the Thames are compelled to take on board a duly licensed pilot. The *Topaz*, a Gravesend steamer, was at single anchor in the middle of the river, and was run into by a Dutch vessel which was going down the river, and thereby sustained damage. The question of compensation or non-compensation to the *Topaz* would have turned upon the question of which vessel was to be blamed; but a point was raised in favour of the Dutch vessel, which was, that as she had taken in a pilot, as directed by the provisions of the Pilotage Act, the owners were not responsible for his conduct, acting in their service under such circumstances, though he was a pilot whom they themselves had selected and constantly employed; and it was so held. (*The Batavier*, 6 Law T. 258.)

BANKRUPTCY.

Vesting of estate.—A point of considerable importance has lately been decided on appeal as to the vesting of the estate of a bankrupt in the assignees by the operation of the Bankrupt Acts, and as to the abatement of a suit on the death of the official assignee, who had alone carried it on. The point was first raised before the Master of the Rolls, and was afterwards brought before the Lord Chancellor on appeal; and the decision of the Chancellor, confirming that at the Rolls, is that the estate of a bankrupt vests in the assignees jointly, under the operation of the Bankrupt Acts, notwithstanding they may come to the estate at different times and in different rights, as the official and creditors' assignees, and, consequently, the whole interest survives to the official assignee on the death of the sole creditors' assignee; and where a suit has been carried on by the official assignee alone, it does not abate by his death, but on the appointment of a new official assignee, he will be substituted as plaintiff under the 67th section of 6 Geo. 4, c. 16. (*Mann v. Ricketts*, 6 Law T. 293.)

Construction of statutes.—The stat. 5 & 6 Vict. c. 116, gives the right to obtain interim and final protecting orders; and the Small Debts Act (8 & 9 Vict. c. 127), by sec. 2, provides that "no protection, or interim, or other order issuing out of any Court of Bankruptcy or for the relief of insolvent debtors, nor any certificate obtained after such order for imprisonment under this Act, shall be available to any debtor imprisoned under such order as aforesaid." Now if, after an order under the Small Debts Act for payment of a debt by instalments, and default in payment, the debtor should obtain an interim order for protection, it would appear that the creditor could not obtain an order for imprisonment for non-payment of the instalments, unless the imprisonment in such case should be held to be, as perhaps it ought, not an arrest for debt, but a punishment for disobedience and contempt of the Court making the order for payment. And in *re Tisdell*, 6 Law T. 436, the Court seemed to think that to be the true construction; and in the same case, the creditor was allowed to oppose the debtor's obtaining the final order. On the construction of the Small Debts Act also it has been held, in *re Reed*, 6 Law T. 436, that a petition to the Court of Bankruptcy for protection from process, prosecuted since that Act was passed, and attested by an attorney not admitted in bankruptcy, is properly received; though under the previous stat. 7 & 8 Vict. c. 96, the attestation must have been by an attorney; but there must be an attestation by some one.

The Small Debts Act, sec. 3, enacts "that no imprisonment under the Act shall in anywise operate as a satisfaction or extinguishment of any debt or demand;" and it has been contended that debts within the provisions of this Act are removed from the operation of preceding statutes; and hence, in *re Dover*, 6 Law T. 415, it was held that a protection granted under the 7 & 8 Vict. c. 70, was no answer to a summons issued under the Small Debts Act. And a debtor who vexatiously defends

an action, whereby the costs are increased, and who at the time of giving instructions to his attorney to plead has no reasonable prospect of being able to pay the costs incurred by the creditor, is, after judgment obtained, and on being summoned under 8 & 9 Vict. c. 127, liable to be committed under sec. 1 of that Act, for having wilfully contracted that part of the judgment debt which consisted of the costs, without reasonable prospect of being able to pay it, notwithstanding there was no evidence before the commissioner that the original debt had been improperly contracted. (*Reynolds v Parker*, 7 Law T. 7.)

Restriction on alienation.—The general rule is well settled that a person may give his property to another, so as to go over if he become bankrupt, &c. but he cannot give a continuing estate to such person to subsist after the bankruptcy, for that would be to alter the legal incidents of property. The cases of *Twopenny v. Peyton*, 10 Sim. 487, and *Godden v. Crowhurst*, 10 Sim. 642, in some measure broke in upon the rule, for in those cases an express provision that after bankruptcy, &c. the trustees should apply the fund for the maintenance and clothing of the bankrupt, and for no other purpose, was held to be valid. In the late case of *Younghusband v. Gisborne*, 7 Law T. 221, however, the rule was adhered to, the whole fund being made applicable to the maintenance and clothing of the annuitant in case of insolvency, &c. and the Lord Chancellor held, on appeal, that the assignee was entitled to it, notwithstanding the provision, thus questioning the latter, and apparently overruling the former, of the two cases in Simon.

Arrest of bankrupt.—A bankrupt having at the recommendation of the commissioner withdrawn his application for his certificate, his protection not then having expired, was arrested at the suit of a creditor, to prevent his going out of the jurisdiction. — Held, that such arrest was irregular. (*Ex parte Benn*, 6 Law T. 299.)

CONTRACT.

The unsettled state of the law as to railway transactions renders almost any case of importance which may tend to throw light upon the subject of the rights and liabilities of persons engaged therein. Accordingly we refer our readers to the case of *Parsons v. Spooner*, 6 Law T. 344, in which a contract entered into by the provisional committee was held to be unfavourable against the committee of directors formed out of the shareholders after the parliamentary contract and subscribers' agreement were signed. And on demurrer, general allegations shewing that the company had done all acts required to make them a legal body under a general Act of Parliament (The Joint Stock Company Registration Act) were sufficient to support a bill to enforce the contract against the committee of directors so formed. And in *Walford v. Adie*, 7 Law T. 27, it was held that a member of a joint stock company may sell his shares to the company without fraud upon the other shareholders, where the proceeding is done according to the rules of the company, and thus relieve himself from further liability, although he knew at the time the company were embarrassed, and obtained that information from the situation he held in the company.

COSTS.

Taxation.—The construction of the New Solicitors' Act (7 & 8 Vict. c. 73), in so far as regards the taxation of solicitors' bills of costs, is now pretty well settled. The greatest misconception prevailed at first, and to some extent yet prevails, as to the jurisdiction of the Court on petitions for taxation, and, accordingly, constant attempts were made to prevail upon the Court to take into consideration special agreements in reference to the costs or the mode of taxation. This the Court has over and over again refused to do, as not having jurisdiction. Again, where a third party becomes chargeable with a bill of costs incurred by a client to his solicitor, mistakes have been, and are still in some few instances, made, in supposing that the party chargeable stands in a different position from the client, and has different rights; whereas taxation, if allowed at all, is allowed on precisely the same terms as it would be to the client himself. Consequently, where there is no pressure at the time of payment by the client, nor any item impugned, taxation will be allowed on the petition of a third party. (*Re Evans*, 6 Law T. 254.) And specific errors must be alleged before a petition for leave to except to the Taxing Master's report will be allowed. Thus, an order being made, on the petition of a country soli-

citor, for the taxation of all his town agent's bills, the Taxing Master taxed all but those which, being in bankruptcy, had been previously taxed there, and paid; and, as to these, he called upon the town agent merely to prove his disbursements: it was held, that charges in a petition for leave to except to the report were without foundation, no specific error being alleged to have been made. (*Re Smith*, 7 Law T. 79.) The New Orders of May 1845 apply to taxation of costs since they came into operation, and, accordingly, in *Ex parte Fisher*, 7 Law T. 154, the practice as to costs came into discussion. The 5th article of the 120th of the New Orders, directs that, "where costs are to be taxed as between party and party, the Taxing Master may allow to the party entitled to receive such costs all such just and reasonable expenses as appear (among other things) to have been properly incurred in procuring the attendance of counsel in the Master's offices upon questions relating to pleadings or title." On this it was held that the Taxing Master was right, on a reference to him to tax costs as between party and party, in disallowing the costs of procuring the attendance of counsel before the Master, for the purpose of resisting a discharge in an executor's account. (*Russell v. Nicholls*, 7 Law T. 154.)

By what party to be paid.—On principle, the losing party in a case of litigation should pay the costs, as the other party is thereby proved to have the right; and, accordingly, the general rule is, that the costs follow the result; but there are exceptions. In *Millington v. Fox*, 3 Myl. & Cr. 338, Lord Cottenham says:—"I am very much disposed, as a general rule, to make the costs follow the result, because, however doubtful the title may be, or however proper it may be to dispute it, it is but fair that the party who really has the right should be re-imbursed, as far as giving him the costs of the suit can re-imburse him; but then there is another object which the Court must keep in view, namely, to repress unnecessary litigation, and to keep litigation within those bounds which are essential to enable the parties to vindicate and establish their rights." The rule, as well as the exception to it, are well exemplified in the late case of *Pearce v. Franks*, 6 Law T. 314, where the costs of an injunction suit, in which the plaintiff was substantially successful, having been increased by an allegation in the bill which was untrue, the Court ordered such increased costs to be paid by the plaintiff. Where an error has occurred in a decree, and the town-agent being told of it applies to the plaintiff's solicitor to have it corrected, who promises to have it done, but does not do so, and the town-agent does not inquire further, the costs of a petition to correct the error were held to be payable by the town-agent. (*Re Bolton*, 6 Law T. 451.)

Trustees.—The amount of costs is often very much increased by the conduct of the parties, rather than by the difficulties or importance of the case, and frequently the practice of the Court is taken advantage of, simply to increase costs. A striking illustration of this is to be found in *Merryweather v. Barber*, 6 Law T. 430, where trustees appeared by different solicitors, and thereby greatly increased the costs. But Vice-Chancellor Wigram, in that case, warned all parties in future that he would not allow costs in similar cases; and observed, that when it was the practice not to allow separate creditors costs before the Master, there never was any difficulty to make arrangements to act by one solicitor.

Assignee—Disclaimer.—The practice has been rather unsettled as to the allowance of costs to the provisional and other assignees who have disclaimed. In Mitf. Pl. 319, it is said—"If the defendant disclaims he will be entitled to his costs; but where the plaintiff has a right to know whether the defendant has an interest at the time the bill was filed, and he is properly brought before the Court, and the defendant says, I now abandon my interest, then it is simply a question of discretion with the Court whether it shall order the plaintiff to pay the defendant's costs or not, on the ground that he ought not to have filed the bill without first seeing the suit was necessary; for if he might have got from the defendant, without suit, that which he asks, it is common to say he shall pay costs." So that it is not merely disclaiming all interest that entitles to costs, but it must be shewn that the disclaiming assignee at the time of the filing of the bill had no interest; for if that be shewn, then he is improperly made a defendant and brought before the Court unnecessarily,

and is therefore entitled to his costs. An impression prevailed among many practitioners that a disclaimer of all interest now (that is when disclaimed) or at any time previously entitled the assignee to costs, but that a simple disclaimer of any interest at the time of the disclaimer merely without more did not. A late case, however, appears to have taken the true distinction in such cases. In *Gabriel v. Sturgis*, 6 Law T. 452, Vice-Chancellor Wigram says:—"The defendants have disclaimed, and the terms of their disclaimer are different; Sturgis says he does not and never did claim any interest; the other defendant disclaims, and says that he does not now claim any interest; I consider this distinction in form makes no real difference in the question; for the question to be asked is, in my view, about these costs, and not mere words; the only distinction, in my opinion, to be taken is this: whether at the time the bill was filed the defendant disclaimed all interest, and was therefore improperly made a party; or whether, not denying that he had an interest at the time the bill was filed, he now chooses to abandon all such interest." And again: "The distinction I have always taken is this, that where a party disclaims so as to shew that he had no interest when the bill was filed, that is the principle of disclaimer which, according to the settled rules of the Court, may be stated as entitling a party to costs." The same judge, in the case of *Griggs v. Sturgis*, 6 Law T. 478, held that a provisional assignee was not upon disclaimer as a matter of course entitled to his costs in a foreclosure suit. So in *Gibson v. Nichol*, 7 Law T. 108.

Constructive payment—Special directions.—It may happen that in ascertaining what payments have been made on account of bills, questions of law and of fact may arise which may require to be determined even in the limited jurisdiction under which bills are taxed, but whatever the Court itself might feel to be its duty in such cases, the Master's duty is to confine himself, in a case where he has received no special directions from the Court, to simple payments plainly proved to have been made on account of the bills, and not to take upon himself to certify whether a certain alleged transaction, not amounting to actual payment, is or is not a transaction which a court of law or equity would, under the circumstances, adjudge to constitute a debt or payment. (*Re Smith*, 7 Law T. 79.)

COSTS.

Security for.—The ordinary rule of Court that a solicitor cannot be allowed to contract with his client, or to take security for his costs, applies to a case in which a trustee stipulates with a solicitor that a demand should not be made upon him personally for charges in reference to the trust; but, in the case of a railway scheme, where some expenses were incurred by the solicitor, in promoting the scheme before the appointment of the provisional committee, the rule does not apply, the solicitor being entitled to be paid those at least, and a contract by the solicitor with the chairman of the committee to look to the deposit or joint stock of the company only for repayment is valid. (*Parsons v. Spooner*, 6 Law T. 344.)

Railway Company.—In the case of *Re Bristol and Exeter Railway Company*, 7 Law T. 2, the Act of that Company, directing money to be invested in land, there had been two references to the Master, relating to the purchase of two separate pieces of land, and an account had been taken of the amount due on certain mortgages thereof, the costs of the proceedings were held to be payable by the company.

COVENANT.

The stat. of Wm. & M. c. 14, gives the remedy of an action of debt against the devisees of real estate, and unless an action of debt would lie, the statute was inapplicable; consequently, when the covenant was contingent, and unascertained, damages were only to be recovered for the breach of it; such a case did not come within the statute, and there was no remedy. But a judgment recovered in an action for damages for a breach of a covenant, after the death of a covenantor, is a debt which may be levied, with interest, upon the real estate of the covenantor, in the hands of his devisees, where his personal estate is found insufficient. (*Moore v. Tucker*, 6 Law T. 389.)

CREDITORS.

The statutes 13 Eliz. c. 5, and 27 Eliz. c. 4, made in favour of creditors, have been very prolific in litigation, and the cases upon them are both numerous and complicated. The deeds which are

rendered void by them, as against creditors or others, are of two sorts; first, deeds made with an express intent to defraud creditors or subsequent purchasers; and, second, deeds upon good, but not valuable, considerations, which are usually called voluntary conveyances. The case of *Buckle v. Mitchell*, 18 Ves. 100, is a direct authority for holding that an equitable interest on land, entitling a party by contract to clothe it with a legal estate, makes such a party a purchaser in the opinion of the Court, and entitles him to avoid a voluntary settlement, and enforce his security. In *Lister v. Turner*, 7 Law T. 3, a post-nuptial settlement by a trader was held to be void against an equitable mortgagee, though the settlor, at the time of executing the settlement, had property three times the amount of his debts.

ECCLIASTICAL COURT.

Probate.—In the *Marquis of Hertford v. Zichi*, it was held that where a person used the term "codicil" in reference to another paper, it meant a codicil valid *per se*, duly executed under the statute; but in that case there were two sets of papers which would answer the description, and of course they were rejected. Sometimes, in such cases of reference, the contents of the paper are referred to, so as to incorporate it with and make it a part of the instrument referring to it; and, in a late case, where a testator left a will, a paper signed by one witness only, but endorsed "a codicil to my will," and a codicil duly executed, referring to "another codicil," all the three papers were admitted to probate. (*Ingoldby v. Ingoldby*, 6 Law T. 499.)

Church-rate, validity of.—Few points of this kind have been reported within the last six months, nor are there any worth noticing since the celebrated *Braintree* case. It is deserving of attention, however, that where a party is dissatisfied with the decision of the chairman of the vestry meeting, as to the majority, it is his duty to demand a poll, and the objection that the chairman had wrongly decided cannot be taken if that duty be neglected. (*Cornwall v. Wood*, 7 Law T. 189.)

(To be continued.)

THE PRACTICE OF WILLS.

By G. S. ALLNUTT, Esq. Barrister-at-Law.

BOOK I.

CHAPTER IV.—ON THE REVOCATION OF WILLS. (Continued from page 97.)

Alienation of estate.—Under the old law, a devise might be either partially or wholly revoked by the partial or entire alienation of the estate which was the subject of the devise.

Where a conveyance of the estate was made for a limited purpose only (as in the case of a mortgage, &c.), the will was revoked *pro tanto* only. (*Perkins v. Walk*, 1 Vern. 97; *Cave v. Holford*, 3 Ves. 654; 7 Bro. P. C. 593; *Earl Temple v. Duchess of Chandos*, 3 Ves. 685; and *Brain v. Brain*, 6 Madd. 221.)

Parceners and tenants in common retain the same estate and interest after partition, and though the partition be made by deed and fine instead of by writ, the prior devise is not revoked. (*Luther v. Kidby*, 8 Vin. Ab. 148, pl. 30; 3 P. Wms. 170, n.; *Risley v. Lady Ballinglass*, Sir T. Raym. 240). But where, by the deed effecting the partition, a moiety was given to such uses as the testator should appoint, and in default of appointment to him in fee, a prior devise by him was held to be revoked, the deed not being strictly confined to effecting the partition. (*Tickner v. Tickner*, before Lord Chief Justice Lee, and cited and acceded to by Lord Hardwicke in *Parsons v. Freeman*, 3 Atk. 741.)

In *Attorney-General v. Vigor*, 8 Ves. 256, a devise was held to be revoked by an exchange, although the land, after the death of the deviser, was restored to his heir under an arrangement, in consequence of a defect discovered in the title of the other party to the exchange.

If a testator had the land at the date of his will, and was disseised afterwards, the act not being an act of volition, and afterwards he entered, he was remitted to his old title, and therefore the land passed by his will. (*Attorney-General v. Vigor*, 8 Ves. 282.)

Where there were ulterior limitations in a mortgage-deed, which were beyond the purposes of the mortgage, a prior devise of the estate was held to be wholly revoked. (*Kenyon v. Sutton*, cited in *Williams v. Owen*, 2 Ves. jun. 601; *Herwood v. Oy-*

lander, 6 Ves. 199; S.C. 8 Ves. 106; and *Hodges v. Green*, 4 Russ. 28; see also *Brain v. Brain*, 6 Madd. 221.)

If the owner of an unqualified equitable estate devised it by his will, and afterwards took a conveyance of the unqualified legal estate, this was no revocation of the will, because the conveyance was incident to the equitable estate; as a partition was no revocation, because incident to a joint estate. (*Fullarton v. Watts*, Dougl. 691, n.; *Parsons v. Freeman*, Amb. 116; S.C. 1 Wils. 308; *Clough v. Clough*, 3 Myl. & Keen, 296; and *Ward v. Moore*, 4 Madd. 368.)

The case was different where, the contract not providing for it, a conveyance had been made to the usual limitations to bar dower. In *Rawlins v. Burgis* (2 Ves. & Bea. 385), Sir Thos. Plumer, V.C. said, "It has long been settled that a devise is not revoked by merely taking the legal estate, doing no more. That doctrine is stated in Roll. (1 Roll's Ab. 606, pl. 3); and although that case is opposed by *Pulbury v. Trevilian* (Dy. 142, b), no doubt can now be admitted on a point that has been long at rest. The question, then, is, whether any thing more was done, or whether the estate remained the same, without modification. The peculiarity of this case arises from applying the principles of a court of equity to an estate contracted for, but not actually conveyed. At law the contract creates a mere right, but no estate on which the will could operate: a case having no analogy to that of an estate actually vested in the deviser by conveyance. It is not now to be disputed, that if the deviser, being at the date of his will seised in fee, had subsequently made a feoffment to such uses as he should appoint, with remainder to himself in fee, that feoffment would have amounted to a revocation. The reasons are expressed by the Lord Chancellor, in *Maunderell v. Maunderell* (10 Ves. 264), where the distinction between *Luther v. Kidby* (8 Vin. Tit. Devise, r. 6, pl. 30, stated 3 P. Wms. 170; 2 Ves. jun. 600); and *Tickner v. Tickner* is clearly stated. The latter case has been so often recognized by Lord Hardwicke, Lord Alvanley, and Lord Eldon, that it is not now to be shaken. With regard to the equitable interest created by the contract, a purchaser before conveyance is in equity owner of the estate almost to every purpose: I qualify the proposition, as before payment of the purchase-money he may be restrained from cutting timber. If before conveyance a house should be burnt down, the loss would be his (*Paine v. Meller*, 6 Ves. 349; see 2 Vern. 280; 1 Eq. Ca. Ab. 25; 1 P. Wms. 60; 2 P. Wms. 632; 2 Atk. 273; 1 Bro. C. C. 156; 7 Ves. 274). If any acquisition by lives dropping should accrue, the profit would be his: as between the representatives of the purchaser his interest is considered as real estate; and a contract to sell a devised estate has the effect of revoking the devise. This contract under which the deviser became equitable owner of the estate, and was to have a good estate in fee-simple conveyed to him in the following September, is silent as to the form of the conveyance except by those general terms. The conveyance, therefore, which this Court would have directed, must have been of a pure, unqualified estate in fee, the contract pointing at nothing else. If the vendor had tendered this conveyance, the purchaser would not have been bound to accept it, but might have objected that the estate was modified in a manner different from his contract. If, then, a conveyance in fee would not have been a good execution of the contract, can this be so? Can an estate thus modified by the introduction of a power of appointment, to be executed only before two witnesses, and a trustee interposed, be represented as the same estate, a mere substitution of legal for the equitable fee, and therefore no revocation when the very slight alteration of the deviser's disposing power in *Tickner v. Tickner* had that effect? The argument that the beneficial interest remained the same would overturn that case. The conclusion must be, that there was some object beyond the mere completion of the contract by taking the legal estate, the case in that respect resembling *Brydges v. The Duchess of Chandos* (2 Ves. 417), and differing from *Williams v. Owens* (2 Ves. jun. 595). The consequence is, that the estate, when the purchaser died, was changed: it was no longer the same that he had by the contract; and; consistently with all the authorities, the effect is a revocation."

Where, after devising an estate, the testator con-

tracted for the sale of it, the devise was revoked, if at the time of the testator's death the contract were such that the testator might have enforced it against the purchaser, or the purchaser might have enforced it against the testator. (*Bennett v. The Earl of Tankerville*, 19 Ves. 170, and *Tebbutt v. Voules*, 6 Sim. 40.) "Even if the contract had been abandoned in the testator's life," observed Sir W. Grant, M. R. in *Bennett v. The Earl of Tankerville*, "I very much doubt whether that would have set up the will again without a republication."

By the 23rd section of the 1 Vict. c. 26, it is enacted "that no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death."

A question has been raised upon this section as to the right to the purchase-money of an estate devised by the will, and afterwards contracted to be sold by the testator. Mr. H. Sugden, in his comment upon the Wills Amendment Act, considers that it may be contended that by force of this section the purchase-money would, in such a case, belong to the devisee of the estate; but Mr. Jarman (Treatise on Wills, vol. I. p. 14) is of opinion that the case of *Knollys v. Shepherd* (cited in *Wall v. Bright*, 1 Jac. & Walk. 499) is an express decision in favour of the contrary view. In *Knollys v. Shepherd*, a testator having contracted for the sale of an estate, devised to his wife "all that his estate which he had contracted to sell to M.;" and it was held that this did not give the wife a right to the purchase-money; and certainly the decision appears to be conclusive upon the question.

Invalid conveyances.—Under the old law, where an attempt was made to alien the property, but, in consequence of the absence of some necessary formality, the attempt proved ineffectual, the devise of that property was nevertheless held to be revoked. "There are several instances," Lord Hardwicke observed, in *Beard v. Beard* (3 Atk. 72), "in this court where an incomplete act, and void at law, has been held here to be a revocation of a will notwithstanding, as a feoffment without livery, &c."

A covenant to surrender copyhold property previously devised was held to be a revocation of the will in equity, if the surrender would have been a revocation at law (*Vauser v. Jeffery*, 2 Swanst. 268); and in that case Lord Eldon said, "A bargain and sale, without enrolment, feoffment without livery of seisin, imperfect conveyances, though not capable to pass the estate, would amount to a revocation. Copyhold estates, not being within the statute which requires the attestation of three witnesses to a will, it may be a question whether many acts are not revocations of a will of copyholds which would not work a revocation in the case of freeholds."

In *Simpson v. Walker* (5 Sim. 1) it was held by Sir L. Shadwell, V.C. that a deed executed under circumstances which rendered it void in equity, and not at law, was a revocation of a prior will.

In *Matthews v. Venables* (9 Moore, 286, and 2 Bing. 136) it was held that a deed did not operate as a revocation of a will under the following circumstances:—A, by will, duly attested, devised all her freehold property to trustees for the use of B; seven days after executing the will she conveyed a part of the property to trustees for a charitable purpose, pursuant to 9 Geo. 2, c. 36; nine days after she made a codicil, attested by three witnesses, by which codicil she appointed another trustee, and directed that her money out at mortgage should be first applied to the payment of her debts. She died within a twelvemonth after the execution of the deed, which consequently became void, and the deed was held not to be a revocation of the will.

Implied revocation.—A codicil referring to a former will as the last will was, under the old law, held to cancel intermediate wills. (*Lord Walpole v. Lord Orford*, 3 Ves. 402.)

All codicils are part of the will; and therefore a codicil merely for a particular purpose, as to change an executor, and confirming the will in all other respects, does not revive a part of the will revoked by a former codicil. (*Crosbie v. Macdonald*, 4 Ves. 610.)

Revival of revoked will.—By the 22nd sec. of the 1 Vict. c. 26, it is enacted, "that no will be"

codicil, or any part thereof which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and shewing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown."

CHAP. V.—ON THE REPUBLICATION OF WILLS.

Under the old law, it was necessary that wills should be republished in order to include within their operation real estates acquired by the testator after his will had been made.

Many cases arose upon the constructive republication of wills; and in *Pigott v. Waller* (7 Ves. 98) it was held that a codicil, attested by three witnesses, though relating only to personal estate, and expressing no intention as to re-publication of the will, was a re-publication.

The contents of the codicil itself, however, might negative the presumed intention of a testator to republish his will. (*Bowes v. Bowes*, 7 Durn. & E. 482; *Hughes v. Turner*, 3 Myl. & K. 666; and other cases.)

It will be remembered, that wills executed since 1837 speak from the death of the testator, and therefore the decisions under the old law upon the subject of re-publication are not of much importance with regard to wills made since the passing of the Wills Amendment Act.

By the 34th section of that Act it is enacted, "that every will re-executed, or re-published, or revived by any codicil shall, for the purposes of that Act, be deemed to have been made at the time at which the same shall be so re-executed, re-published, or revived." A will, therefore, executed before 1838 will be brought within the operation of the 1 Vict. c. 26, by the execution of a codicil reviving the same after the 1st of January, 1838.

PROMOTIONS, APPOINTMENTS, ETC.

Clarks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

We have very much pleasure in announcing the appointment of Mr. Dundas to the office of Solicitor-General. The choice is an excellent one. Mr. Dundas is not only a lawyer, but a scholar and a gentleman, and his indifferent health has alone prevented him from before attaining the high position to which his talents have long given him a claim.

COURT PAPERS.

ARRANGEMENT OF BUSINESS AT THE JUDGES' CHAMBERS.

The Right Honourable the Lord Chief Baron will attend in the Exchequer Hall, to transact business during the absence of the judges on the circuits, when the following regulations will be strictly enforced until further orders:—

None but original summonses will be allowed to be placed on the file.

Adjourned summonses will be heard at ten o'clock.

The summonses on the general file will be called at ten o'clock, when they will be numbered, and heard in regular order after the adjourned summonses.

Counsel will be heard at two o'clock in the order in which the causes stand on the counsel's file.

Affidavits on *ex parte* applications (except for orders to hold to bail) must be left, and the orders applied for next day.

All affidavits must be properly indorsed with the names of the parties, the names of the attorneys, and the nature of the application. Those produced or referred to in support of any cause before his lordship must be filed.

Parties not in readiness when their numbers are

LEGAL INTELLIGENCE.

THE CIRCUITS.

NORTHERN CIRCUIT.

YORK, FRIDAY, JULY 10.—The assizes for the county of York commenced here to-day. Their Lordships, after attending divine service, sat for the despatch of business at twelve o'clock, Mr. Justice Creswell presiding on the criminal side, and Mr. Justice Wightman on the civil. The calendar for the county contains 70 cases, implicating 101 persons. There are 3 persons for trial in the city. There are 4 cases of murder, 1 of attempt to murder, 10 of

manslaughter, 8 of rape, 3 of forgery, 6 of cutting and wounding, 2 of maliciously shooting, 1 of arson, and 10 of burglary. On the civil side there are 103 causes entered for trial; 90 in the West Riding list, and but 13 in the list for the North and East Ridings.

WESTERN CIRCUIT.

WINCHESTER, JULY 13.—The commission was opened in this city on Saturday last. The judges appointed for this circuit, Mr. Justice Erle and Mr. Baron Platt, were met and escorted into the city with the usual formalities by the High Sheriff, John Beadmore, esq. and immediately proceeded to the Assize-hall, where the commission was read. The cause list contains an entry of eleven causes, of which four are marked for special juries. The calendar is light, there being only 34 prisoners for trial, and the charges against them are mostly of trifling character. Of these there is 1 of manslaughter, 1 of arson; shooting with intent to murder, 1; concealment of birth, 1; forgery, 1; burglary, 5; assault with intent, 1; night poaching, 2; robbery, 7; larceny, 14.

NORFOLK CIRCUIT.

BUCKINGHAM, SATURDAY, JULY 11.—Mr. Justice Williams opened the commission for this county yesterday, and at 10 o'clock this morning his Lordship and Mr. Baron Alderson opened their respective courts; there being two causes only on the civil side (one of which was undefended), while the calendar, in consequence of the recent sessions, was equally light, there being nine prisoners in all.

OXFORD CIRCUIT.

OXFORD, JULY 12.—The commission was yesterday opened with the usual formalities by Mr. Justice Maule. In the calendar there appear the names of 19 prisoners:—murder, 2; rape, 1; arson, 2; killing sheep, 1; sheep stealing, 1; poaching, 3; burglary, 1; housebreaking, 1; horse stealing, 1; assault, 1; larceny, 5.

There are nine cases entered, of which three are special jury cases. Among them is the case of *Doe dem. The Mayor and Corporation of Oxford v. The Rector and Fellows of Exeter College*, in which the title of the latter to their chapel will be disputed, in which Sir Fitzroy Kelly is specially retained.

MIDLAND CIRCUIT.

NORTHAMPTON, MONDAY, JULY 13.—The justices of assize for this circuit, the Hon. Sir John Patteson and the Hon. Sir John Taylor Coleridge, took their seats in the County-hall, Mr. Justice Patteson presiding in the Crown Court, and Mr. Justice Coleridge (who, though apparently still far from well, and shewing manifest indications of having been recently labouring under severe and protracted illness, yet seemed, we are most happy to be able to say, convalescent) taking his appointed seat on the Civil Side. The calendar is remarkably light for this county, presenting only 12 cases, and the names of 11 prisoners for trial, of whom one stood indicted upon two charges of setting fire to barns, stables, stacks, &c.; one for stabbing, cutting, and wounding; one for robbery; one for assault with intent to rob; one for stealing from the person; one for breaking and entering a dwelling-house; and one for concealing the birth of a child. The other cases were of a most trifling character. There appeared to be one case only in the borough, which was for cutting and wounding. On the civil side the list presented eight causes for trial, of which four were marked for special juries, one of which, *Bullin v. Masters and Another*, is an issue from the Court of Chancery upon a question of title *modus*.

FUNERAL OF THE LATE CHIEF JUSTICE TINDAL.—On Monday morning the mortal remains of the late Chief Justice Tindal were removed from Bedford-square, for interment in the family vault at Kensal-green Cemetery. At nine o'clock the mournful cortege, consisting of a hearse drawn by six horses and ten mourning coaches, each drawn by four horses, moved from the house, and taking the shortest route arrived at the cemetery shortly after ten. About fifty gentlemen, principally the immediate relatives and friends of the deceased, comprised the attendants, amongst whom we noticed Mr. Baron Parke, Sir W. Symonds (of the Civil Department Royal Navy), Major Symonds, Capt. Symonds, R.N. Capt. Tindal, R.N. and Mr. C. G. Tindal, (sons of the deceased), Mr. Bosanquet the banker (son-in-law to the deceased), the Rev. J. E. Tyler, Sir J. de Vieuille (of St. Helen's, Jersey), Major Woodroffe, W. Woodroffe, Esq. A. N. Skirrow, Esq. &c. &c. The outer coffin, which was covered with purple velvet and richly furnished, bore the following inscription: "The right honourable Sir Nicholas Conyngham Tindal, lord chief justice of her Majesty's Court of Common Pleas, died July 8, 1846, aged 69 years." Having arrived at the cemetery, the coffin was taken out and conveyed to the chapel, where the funeral service was read in a very impressive manner by the Rev. Mr. Tyler. At the conclusion the coffin was moved to the family vault, where lay the remains of Lady Tindal, wife of the deceased, who died several years since, and the Rev. Mr. Tindal, one of his sons.

THE LATE CHIEF JUSTICE TINDAL.—The lamented Lord Chief Justice was a native of Chelmsford, and that town will ever feel an honest pride in having sent to the judicial bench a man over whose sudden demise all parties mourn, whose high and excellent qualities, independence, and integrity all parties admit, and whose name and authority will long be quoted and felt in British jurisprudence. He was descended from Dr. Matthew Tindal, a celebrated controversial writer of a former day, and from the Rev. Nicolas Tindal, a man of literary reputation, who was rector of Great Waltham in 1722, and who wrote a portion of a history of Essex, which, however, he gave up to undertake a translation of Rapin's History of England. The father of Sir Nicolas, as before stated, was a solicitor of this town, and the first seeds of that ripe and ready scholarship which soon after won for him distinction at the University, were sown at the grammar school here, then under the mastership of the Rev. Thomas Naylor. There are still living in this town and neighbourhood several of his schoolfellows, who speak of him as having when a youth given indications of those quick parts and that solid talent which afterwards marked his career, and enabled him to adorn the high office he so long filled.—*Chelmsford Chronicle*.

The late Right Hon. J. Walter, Earl Verulam, has left personally amounting to 25,000l. He has bequeathed to the countess 3,000l. per annum, and to each of the younger children 10,000l. each.

BOW-STREET.—Mr. James Wyld, the map engraver and publisher of Charing-cross, appeared to shew cause why he had failed to transmit to the British Museum copies of certain maps relating to the Oregon territory, the Punjab, &c. and published by him during the present year.

The charge was instituted by Sir H. Ellis, principal librarian of the Museum, in the name of the trustees, who were represented by Mr. Baldwin, the barrister.

The learned counsel, after calling attention to the provisions of the recently amended Copyright Act, under which the summons was taken out, examined a clerk in the service of the solicitors to the Museum, who deposed to having purchased the four maps which were the subject of the complaint, and stated the price he gave for each, as well as the date of each purchase.

Other officers in the institution gave evidence to the effect that no such maps had been deposited according to the Act. They could not say that a book containing one of them had not been received. There were no entries relating to the maps distinctly.

The defence of Mr. Wyld was, that inasmuch as the maps had appeared in a work before being published in a separate form, and that work had been duly deposited, the requisites of the Act had been complied with. It often happened also that maps were republished with the slightest possible alteration in a line or curve; but surely the publisher was not required to send a copy of every distinct issue. Neither the British Museum, nor any other building, would contain them if such a regulation were enforced.

The defendant's solicitor, Mr. Serjeant, discussed the terms and tendency of certain clauses in the Act at considerable length, but

Mr. JARDINE was clearly of opinion that the maps in question, as separate publications, ought to have been deposited. The Act gave him the power of fining the defendant the value of each publication, besides inflicting a penalty not exceeding 5l.

His worship then fined Mr. Wyld the value of each map (namely, 3s., 13s., 4s. and 14s. respectively), and inflicted the further penalty of 20s. upon each.

The fines were of course paid; but the defendant signified his intention to appeal, if he had the power.

CORRESPONDENCE.

CONVEYANCING PRACTICE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Although "Delta" requests the opinion of one of your "able correspondents" on the point submitted by him, yet I hazard the risk of being deemed presumptuous in venturing to give one both on that, and the questions propounded by a "Solicitor," and "An Original Subscriber," assuming that the word "retain," in Delta's letter, is a misprint for "return."

I never heard it doubted that a mortgagee, on being tendered the amount of his principal and interest, after a regular notice, was bound to deliver up the deeds to the mortgagor, or his solicitor. It by no means follows that a mortgagor would require a reconveyance, and it is certainly optional with him whether or not he would incur that expense, or suffer the inconvenience of leaving the legal estate outstanding. Should he require one, the mortgagee would, I conceive, be bound to execute it at any time, on his solicitor being paid the usual charges for the perusal of the draft, and obtaining the execution of the engross-

ment. He would, however, have no right to detain the deeds in the meantime, and I should consider it both "unjustifiable and unprofessional" to refuse to deliver them up.

With respect to the point whether, on a transfer of a mortgage, the solicitor of the mortgagor, or of the mortgagee, has a right to prepare an abstract of the mortgage-deed, I think it is clearly in favour of the latter, and for this, amongst other reasons, that it is he only who, by producing the mortgage, can satisfy the transferee of the correctness of the abstract. This point was mooted some time since in your valuable publication, and the general opinion of the profession is, I believe, in accordance with that which has received your sanction, a guarantee for its correctness more valuable than my own.

As to the question submitted by a "Solicitor," the Act of 7 & 8 Vict. c. 76, gave power to every person to convey freehold land by deed, but did not, like the Lease for a Year Abolition Act, require that any deed executed under its authority should be expressed to be made in pursuance of it. The absence of such a reference cannot therefore be a sound objection to its validity: neither is the absence of the word "convey." There is no magical effect given to that word by the Act in question. It is the power to convey by a single deed, without the formalities attendant on the assurances enumerated in the second section, which was given by that statute; and as a conveyance was to have the same effect as if made by lease and release, the word "release," I apprehend, was sufficient, it not being the professed object of the Act to abolish the forms of established assurances, such as a release, a feoffment, or a bargain and sale, if parties chose to adopt their technical phraseology, whilst they were at liberty to dispense with their inconvenient peculiarities.

I am, Sir, yours, &c.

THOMAS HENRY FIELD.

Gosport, May 14, 1846.

Heirs-at-Law, Next of Kin, &c. Wanted.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent impertinent curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount inclosed.]

190. HEIRS-AT-LAW, or NEXT OF KIN, of ANN EDWARDS, late of South Corney, county of Gloucester, widow (died Aug. 11, 1834).
191. NEXT OF KIN of ELIZABETH METCALF, late of High-street, St. Mary, Newington, spinster (died April 1833), intestate.
192. ROBERT DIXON or DICKSON, who went to Jamaica or elsewhere abroad several years ago, and who was the only child of John Dixon or Dickson, sometime grocer in Rothbury, Northumberland, deceased, and Mrs. Jane Spearman, his wife, also deceased, who was the daughter of Robert Spearman, of Warton, Northumberland, and Mrs. Jane Pilot, his wife.
193. NEXT OF KIN of WILLIAM GWILT, late of Barrapore, province of Bengal, East Indies, indigo planter (died April 1804).
194. JOHN DANIEL DRAYER, of Norwich, and RICHARD DRAYER, legates of Mrs. Sarah Wilhelmina Jones (relict of Mr. Frans Maurit Smit), who died at Rotterdam, in the Netherlands, 1st April, 1835.
195. STEPHEN PENSON, son of William and Harriet Penson, late of Birmingham, who left England by the *Martiner*, for New South Wales, in the year 1816. *Something to advantage.*
196. HEIR or HEIRS AT LAW, or NEXT OF KIN of SALOME TRUST, late of John-street, Tottenham-court-road, St. Pancras, Middlesex (died March 1835), or their Representatives.
197. NEXT OF KIN of ANN TAYLORSON, formerly of Sedgfield, Durham, Spinster (and who afterwards lived in service in London), deceased. *Something to advantage.*
198. NEXT OF KIN of MARGARET TAYLORSON (sometimes called MARGARET ROBINSON), formerly of Sedgfield, Durham, and afterwards of the United States of America, spinster, deceased. *Something to advantage.* In or about the year 1784, she went with a person named Robert Robinson to some part of the United States of America.
199. NEXT OF KIN of FRANCES CATHERINE GRAVES, late of Bristol (died Oct. 1832), wife of George Graves, esq. She was the only daughter of John Hunt, formerly of the parish of St. Paul, Bristol, who died in that parish, in 1803, and was born at Sellingle, in Kent, in 1759. In early life he entered the army, and in 1790, it is believed he resided at Swansea, Glamorganshire; and John Stokes, of Haverfordwest, merchant, is named as trustee in a settlement executed in 1790, after the marriage of the daughter of the said John Hunt. The maiden name of the mother of Mrs. Graves is not known, but it is believed that she was the widow of a Mr. James, and had a daughter named Ann James, who died unmarried, at Bristol, in 1823, and resided with Mrs. Graves, whom in her will she described as her sister of the half-blood.
200. ISAAC STRAFORD, son of Joseph and Diana Strafard, late of Tewkesbury, Gloucestershire. *Something greatly to his advantage.*
201. DAVID ROSS, who in the year 1834 resided in the parish of St. Pancras; GEORGE MILLER, who about the month of August, 1834, was paid off from his Majesty's

ship *Ocean*; WILLIAM YATES, or MARY his wife (who were married on the 28th of December, 1834, at the parish church of St. Pancras), or CHARLOTTE CARTER, who witnessed said marriage. *Something to their advantage.*

202. URIAN WINDSOR, one of the sons of Elizabeth Windsor, formerly of the parish of Ringwood, Hants, widow, deceased. He left this country in 1810, and went to the Cape of Good Hope, and in his passage enlisted in his Majesty's 73rd regiment of foot, then stationed at the Cape, and was last heard of at Cape Point, at the Cape of Good Hope.

203. NEXT OF KIN of ELIZABETH LAMBELL, formerly servant to Mr. and Mrs. Bracken, of Parker's-court, Coleman-street, London, afterwards of Hackney, but late of Chester-street, Lambeth, Surrey, widow, died 5th September, 1838. *Something to their advantage.*

204. WILLIAM FISHER, son of Gerrard Fisher, late of Maquire's-bridge, county Fermanagh, Ireland. *Something to advantage.*

(To be continued weekly.)

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

K.—He must complete the service by making up for the two years of absence.

G. H. D.—(Chelmsford).—We have seen many of these circulars from Ireland. We have some doubt whether they are objectionable. How can agents at so great a distance make themselves known, except by such a notification? W. R. and others are still postponed for want of room.

NOTICE TO SUBSCRIBERS.

The volumes of the LAW TIMES, neatly, strongly, and uniformly bound, for 5s. 6d. each, with the name and address of the owner on the cover, 1s. extra, if sent to the office. If the numbers for binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

The numbers comprising the first volume of the VERULAM REPORTS of Real Property and Conveyancing Cases may also be transmitted for binding in like manner.

INDEX TO THE LAW.

The LAW DIGEST for the half-year ending Jan. 1 is now ready. It forms a complete Index to the Law decided during the half-year, and contains upwards of 2,000 cases. Price 5s. 6d. in a wrapper. Being stamped, it can be transmitted by post.

SCALE OF CHARGES FOR ADVERTISEMENTS.

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N.B.—For Scale for Estate Advertisements, see JOURNAL OF PROPERTY.

THE LAW TIMES.

SATURDAY, JULY 18, 1846.

SIR FREDERICK THESIGER AND THE WATERMEN'S COMPANY.

A VERY curious affair has been agitated in the legal world, and has interested the general public, growing out of the disputes between the Corporation of the City of London and the Watermen's Company.

The latter had indicted the former for a nuisance, in obstructing the river, and Sir FREDERICK THESIGER, then Attorney-General, was retained to lead the prosecution. A long and heavy trial of some days was expected; the Court assembled, the witnesses were present, all was ready for a protracted fight, when the judge and jury were suddenly relieved from the painful prospect, by a movement among the counsel, and a statement by Sir F. THESIGER, that he had taken upon himself the responsibility of settling the dispute upon certain terms, which it is not necessary here to specify.

The next day an extremely indignant letter appeared in the *Times*, accusing Sir FREDERICK THESIGER of having acted without authority from his clients, and sacrificing their interests to his own convenience. The *Morning Chronicle* thereupon took up the matter, and the following article made its appearance:—

Within the last few days, a transaction that requires some sort of explanation, occurred at the sittings of the Central Criminal Court, and we trust that, for the honour of the English Bar, such an explanation it will at once receive. Sir Frederick Thesiger is the party whose conduct is arraigned. Considering his high character, and the general regard in which he is held by his brethren, we wish to confine ourselves as much as possible to a simple statement of facts.

Every one who has passed up or down the "ancient navigable river Thames," must have remarked that huge mass of timbers, close to Blackfriars-bridge, which obstructs the course of the navigation, under the pretence of purposes of utility as a landing-place. We need not enter into the story of the squabbles and dissensions between the Corporation of London and the Watermen's steamers. It has already been before the public *usque ad nauseam*, and every one will remember the transactions to which we refer. The last measure decided upon by the aggrieved watermen appears to have been to prefer an indictment against the Corporation and Citizens of London for obstructing the navigation of the river, and disturbing the public in their right of enjoyment of another landing-place, which was destroyed by the erection of the new pier. The grand jury, upon inquiry, found a bill for the prosecution, containing five counts, into the technical particularities of which it would be unnecessary to enter. In substance they simply alleged the grievances enunciated above. The case was placed by the prosecutors in the hands of Sir Frederick Thesiger, as leader, with whom, we believe, were Mr. Chambers and Mr. H. Hill. On the opposite side, for the Mayor and Corporation, there was a formidable array, consisting of the most eminent counsel at the bar. All matters had been settled and agreed upon, and the case was to come on early this week for trial. So lately as the 30th of last month there had been a consultation, in which various precautions connected with proof and evidence were taken, and not a word was then breathed by Sir Frederick Thesiger, of withdrawing the record, and confident anticipations were uttered, by no one more so than by himself, of a successful issue to the trial. Our readers may judge, then, of the surprise felt by every body, when Sir Frederick Thesiger, on the day of trial, without any previous consultation or notice, contrary to the entreaties of his clients, and, we believe, to the opinions of his juniors (both eminent men), expressed his determination to withdraw the record upon his own responsibility. His reason for doing so was this—he said that he had no doubt they should be able to obtain a verdict upon this trial, and compel the mayor and corporation to abate the nuisance; but the effect of this would be, that the mayor and corporation would turn upon the successful parties, namely, the watermen, and compel them, in turn, to take down their piers for the whole length of the river, the consequence of which would be that the shareholders in these Watermen's companies would be deprived of their only means of subsistence. Now, with all due deference to Sir Frederick Thesiger, as a mere question of law, it is, we apprehend, more than doubtful if the mayor and corporation could succeed at all in such a step; but in the next place, and this is a question of far more importance, this is not a point which he, in his professional capacity, was called upon to decide. It is quite true that it is the duty of counsel to call the attention of clients to the effects of any step which he may have to take on their behalf; it is also quite clear that he is fully justified in refusing to plead a cause, if he should disapprove of the line of prosecution, or of the propriety of continuing a prosecution at all. But here there is this important point to be considered, that such rejection of advocacy must take place *in time*; a barrister must not, either by actual consent, or by construction, induce a client, or a body of clients, to rely upon him until the twelfth hour, and then abandon them at the moment of their utmost need. This would be a fatal precedent to establish, utterly derogatory to, and subversive of, the high character and standing of the English Bar. What certainty could a client have that his interests would be safe in the hands of a body of men who constituted themselves arbitrary and irresponsible judges of the fortunes of their fellow-subjects?

As to imputing any thing like improper motives to Sir Frederick Thesiger, we beg to say for ourselves, most distinctly, that we have no such intention. It would take more than one act of indiscretion, or wrong judgment, to upset the respect due to a career so long and honourable as his has been. Nothing

would give us greater pleasure than having the means of rebutting for him the charge to which, at the present moment, he is considered to be amenable. Had it not been that a principle was at stake, as to the relations between counsel and client, we should have been glad to have passed the matter over without any kind of notice, but, as it is, we should not have felt justified in refraining from calling attention to it.

This called forth from a writer, who appears anonymously, but whose name was doubtless given to the editor, the letter which we next extract. Great prominence was given to it by placing it among the leading articles, and it was consequently presumed that it came from authority:—

TO THE EDITOR OF THE MORNING CHRONICLE.

SIR,—I have read with considerable astonishment, in the *Morning Chronicle* of this day, an article reflecting upon the conduct of Sir Frederick Thesiger, in reference to the late indictment against the City of London for a nuisance at Blackfriars-bridge; and as I am convinced that you were influenced by what you considered to be a sense of public duty in giving insertion to the article, I entertain no doubt that, on the other hand, as a matter of personal justice to Sir Frederick Thesiger, you will allow me, who was present upon the occasion of the trial, and who have not the slightest connection with the cause or any of the parties, to state the facts of the case as they actually occurred. The "transaction" to which you refer did not, as you state, occur at the Old Bailey, but in the Court of Queen's Bench, under the presidency of Lord Denman, and there was no "withdrawing of the record," an expression altogether inapplicable to the nature of the case. The jury having been sworn to try the indictment, Mr. Hugh Hill, the junior counsel for the prosecution (Sir Frederick Thesiger's junior), proceeded to the opening of the pleadings, upon which a consultation commenced between Sir Frederick Thesiger and his clients, the result of which was that Mr. Hill was requested not to proceed for a few minutes. The consultation between Sir Frederick and his clients was again resumed, and the final result was that he stated to Lord Denman and the jury that it was not proposed to offer any evidence in support of the indictment, and that the jury, therefore, would pronounce a verdict of acquittal. Occurrences of this nature are so familiar to every body acquainted with the proceedings of courts of criminal justice in this country, that no particular notice was taken by any body of the "transaction" at the time. The only "clients" whose wishes any advocate can recognize upon such an occasion, are the professional clients, that is to say, the solicitors, who are responsible for the proper conduct of the cause, and of whom there seemed to be several present upon the occasion; and it is so far from being true that the proceeding complained of was taken without consulting them, that such consultation actually took place in the presence of the whole Court, before the prosecution was given up. Indeed, the notion of any barrister giving up any cause in opposition to the will of his client seems, generally speaking, to be perfectly ridiculous, as we all know that barristers are every day compelled by their clients to go on with cases even after they become perfectly hopeless, and nothing can be more certain than that if the prosecutors upon the trial at Guildhall had uttered the smallest expression of discontent at the course recommended by their leader, Lord Denman would have allowed the parties to proceed without him.

Of the merits of the prosecution itself, or of the propriety of abandoning it, I say nothing at all; nor do I pretend to know what passed between Sir Frederick Thesiger and his clients, in the consultation which took place before he addressed the Court. With regard, however, to the highly respectable gentleman who acted as the junior in the case, I mean Mr. Hill, I can affirm, upon the authority of my own senses, that he not only did not express any dissent from the proceedings of his leader, but seemed to acquiesce altogether in the course which had been adopted.

I have the honour to remain, Sir, your obedient servant,
A BARRISTER.

Saturday, July 11, 1846.

It was presumed that with such an explanation the affair would have dropped. Not so, however. The volunteer defender had exceeded his instructions; he had said what was not quite true, and the next day there comes out the following letter from the attorneys in the case:—

TO THE EDITOR OF THE MORNING CHRONICLE.

THE QUEEN v. THE CORPORATION OF LONDON.

SIR,—The gratuitous letter of "A Barrister," in your paper of this day, compels us to state that Sir Frederick Thesiger had no authority whatever from us to consent to a verdict of acquittal, but written instructions strenuously to prosecute the cause were contained in his brief.

It was determined at the consultation, with Sir Frederick Thesiger's full approbation, that these instructions should be fully acted up to. At the same time it was agreed, by all the counsel then present, that the prosecutors would be entitled to a verdict, that in point of law the corporation of London had no defence, and that the cause in effect was undefended.

Sir Frederick Thesiger, in court, interrupted Mr. Hugh Hill on opening the case, and after conferring with the counsel for the Corporation, addressed some observations to an attorney in our office, who had the management of the proceedings, and also to one of the directors of the Watermen's Steam Packet Company, intimating to them the course he intended to pursue, but both distinctly refused to sanction it.

"A Barrister" alludes to other counsel for the prosecution. We can state that the course adopted by their leader took them equally by surprise.

We are, Sir, your obedient servants,

NEWBON and EVANS,

Solicitors to the prosecution.

1, Wardrobe-place, Doctors' Commons,
July 13, 1846.

In this position of affairs the matter has assumed a complexion of great interest to the Profession, as involving questions of large importance relating to the duties and authorities of counsel, and upon this question we venture a few observations.

Let us begin with entirely disclaiming the remotest imputation of unworthy motives on the part of Sir FREDERICK THESIGER. Happily he is a man of such high and unimpeachable integrity that no person who knows any thing of our bar would give the slightest credence to the dirty insinuations which have been so freely cast upon him. Whatever he has done, has been done with the best and purest intentions, with no other object than the benefit of his clients. The question really raised is, how far counsel is justified in taking upon himself to settle a matter in dispute in which he is engaged for one of the parties, without or against the consent of his client. It is a question of practical importance, and of more difficulty than at first sight appears.

It is quite clear what is Sir FREDERICK THESIGER's opinion. He looks upon counsel as the client's substitute for the occasion, his duty being to do whatever his own judgment may dictate as the proper course to be pursued in the matter intrusted to his charge, even if the proceeding should be without or against the consent of the client. Sir FREDERICK THESIGER has practically shewn such to be his views of the duties and office of counsel, and on such a matter he is certainly a very high authority. No man now at the bar has a finer sense of professional honour than he, not only from long experience, but because he is a gentleman by nature, and therefore gifted with that *instinct* of honour which decides more promptly, and usually more correctly, than reason. In the case now under consideration we are, however, compelled to differ from his judgment, but with great deference. The grounds of that opinion we submit.

The difference lies at the very foundation of the argument—the scope of the duties of counsel, and consequently the extent of his authority. Sir F. THESIGER assumes that the retainer of counsel is general, *quoad* the particular case—that the conduct of the case is intrusted to him on his sole responsibility, his duty being to do that which he deems most for the interest of his client. Now, it seems to us that the fallacy lies in overlooking the purpose of the retainer. It is *not* general—it is *not* to do whatever he may deem best in the whole management of the case. His engagement is more limited. *It is to carry the case through its trial.* There his duty begins and ends. He will of course *advise* his client on the whole matter, and if he thinks a compromise desirable he will recommend its adoption; but he can properly do no more than *advise*. He should *not act* save in that for which he was retained—the conducting of the trial. There he is absolute; there it is his right and his duty to use his own discretion without consultation or

consent; for with him rests the whole responsibility.

But it may be said that the power to conduct the trial includes a power to compromise the dispute. Here it is that we differ entirely from the view adopted by Sir F. THESIGER. The client has employed and paid the counsel to carry his cause through the Court. That he is bound to do, if the client desire it, whatever may be his own opinion as to the issue or the prudence of the proceeding. He may and he ought to advise his client as to the course which, in his opinion, would be the best; but it is entirely at the option of the client if he will adopt it. For counsel to settle a case untried without consulting his client or against his will, is, in our humble opinion, trespassing upon the province of the attorney. He has, in relation to the conduct of the case up to the time of trial and afterwards, the same absolute power which in the trial appertains to counsel. He may do, nay, he ought to do, any thing that he considers good for his client, while it is in his hands, even though it be contrary to the client's wishes.

For these reasons it appears to us that the course pursued by Sir F. THESIGER in the case that has given rise to the present controversy was wrong; but we have arrived at that conclusion with great hesitation and reluctance, seeing how high an authority is on the other side.

It is at least one of much practical importance to both branches of the Profession, and we should be glad to receive any objections that may be urged against the argument advanced above; in this, as in other matters, to ascertain the very truth is the object of the LAW TIMES.

VERULAM PUBLICATIONS.

THE fourth part of *Cox's Criminal Cases* is now ready. The numbers necessary to complete the first volume are in the press.

Cox and Atkinson's Registration Cases are in the press. No. IV. will be published on Tuesday, and No. V. on the Saturday following, when they may be had, sewn in a part with the numbers already published, and which will thus contain all the appeals decided from the commencement to the present time for 7s. 6d. only, the cost of the other reports of them being upwards of 30s. It should be observed, also, that this is the only report yet published that contains *all* the appeals hitherto decided.

Arrangements are in progress for the publication of a continuation of "*Chitty's Practical Statutes*."

Mr. SAUNDERS'S *Practice of Summary Convictions* is only the first of a series of works on the *Practice of the Law*. The subject was selected as one of very general interest and utility, as most country attorneys are engaged more or less in magistrates' law, or at least are consulted upon the matters of which this volume treats.

It will be followed by Mr. HUGHES'S *Practice of Sales of Real Property*, Mr. ALLNUTT'S *Practice of Wills*, and others of a like nature, required for the daily uses of the office.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

YATES.—On the 8th inst. in the Victoria-park, near Manchester, the lady of Joseph St. John Yates, esq. barrister-at-law, of a son.

TOMLINSON.—On the 10th inst. at Heysham, Lancashire, the lady of Thomas Tomlinson, esq. barrister-at-law, of a son.

JOLIFFE.—On the 12th inst. the lady of William Peter Joliffe, esq. barrister-at-law, of a daughter.

MARRIAGES.

OGLE, Robert, esq. of the Inner Temple, barrister-at-law, only son of Robert Ogle, esq. of Eglingham-hall, Northumberland, to Mary, daughter of Capt. Harvey, R.N. on the 15th inst. at Walmer.

LITTLE, Thomas Selby, esq. surgeon, to Charlotte Amelia Mary, only surviving daughter of the late Joseph Yates, esq. barrister-at-law, on the 11th inst. at St. Mary's, Chelsea.

FORD, W. Carwithen, esq. surgeon, of Knightsbridge, to Harriet Holman, relict of P. Jellard, esq. solicitor, on the 7th inst. at St. Olave's, Exeter.

HOUGHTON, W. esq. of 4, Verulam-buildings, Gray's-inn, to Emma, younger daughter of Mr. William Ibery, of Canton, on the 11th inst. at St. Mary's, Islington.

DEATHS.

MONTEITH, William, of the Temple, barrister, after a short but severe illness, on the 11th inst. at John Whitehead's, esq. 9, Hyde-park-street, aged 34.

MRS. Mary Elizabeth, the wife of William Meek, esq. solicitor, late of Melbourne, Port Phillip, on the 11th inst. at the residence of her brother-in-law, John Meek, esq. terrace, Camberwell.

MADDOCK, Augusta Charlotte, youngest daughter of the late Henry Maddock, esq. barrister-at-law.

PEMELL, William, esq. of the Middle Temple, eldest son of Peter Pemell, esq. Canterbury, after a long and painful illness, on the 7th inst. aged 39.

HARVEY, John Drew, youngest son of Thomas Harvey, esq. solicitor, on the 11th inst. at Duncan-terrace, Islington, aged three years and six months.

NOTICES OF NEW LAW BOOKS.

Precedents in Pleading: with copious Notes on Pleading, Practice, and Evidence. By the late JOSEPH CHITTY, Jun. The Second Edition, containing References to all the Cases decided upon the new Rules of Pleading, and short preliminary Observations on the more important subjects. By HENRY PEARSON, Esq. of the Middle Temple, Barrister-at-Law. In two parts. Part I. London, 1846. Benning and Co.

This work needs no critic. The Profession have chosen to adopt it as their authority and guide, and some years of practical experience of its trustworthiness have justified the preference. A new value has now been given to it by the labour and learning of Mr. PEARSON, who has corrected faults, supplied omissions, and introduced improvements. A more complete collection of precedents in pleading it would be difficult to frame. Almost every imaginable state of facts will find here, if not a form expressly provided, at least a case so nearly in point that a pleader of ordinary skill may readily adapt it to the variances in the circumstances. Mr. PEARSON has added further to the utility of his edition by a series of preliminary observations pre-facing each class of pleas, and also by copious notes, in which all the cases down to the present time bearing upon the matter in hand are collected, and their points put in terse, unmistakable language, with occasional reference to other works upon the subject, where the practitioner may obtain further information. From its nature, the publication does not admit of illustrative extract, and we cannot say more of it than that to the pleader it will be indispensable, and to the general practitioner useful.

A Dictionary of English Law, Ancient and Modern. By W. M. BEST, A.M., L.L.B. of Gray's Inn, Esq. Barrister-at-Law. Part I. Richards, 1846.

The part before us, although a very small portion of the entire work, extending only to the word "Assumpsit," promises well for the completeness, and therefore for the utility of this new Law Dictionary. It is got up with great diligence and research. It contains many words not found in other dictionaries. But a type so large and so leaded will surely expand the work beyond all convenient proportions, and place its entire cost without the bounds of prudent outlay. Here we have 95 pages reaching only to the word "Assumpsit," and the charge for this is 3s. 6d. Now, this is less than a thirtieth part of the entire work, which will thus contain upwards of 3,000 pages, of which the cost will be about five guineas. We do not mean to say that this would be in itself an extravagant price for a good Law Dictionary; but the objection to the present arrangement is, that by adopting a small type and double columns the same matter might well be got into a single volume, at 30s. And the objection to text-books in small type does not apply to a book of reference. Nobody would set himself to read a dictionary right through. It is only taken up for a moment to find some information that will be read as conveniently in small type as in large, especially when the cost is thus reduced by four-fifths. We would recommend Mr. BEST to incur the expense of reprinting this part rather than to proceed with an enterprise which, in its present shape, can scarcely hope for success. His labours are too valuable to be thrown away. Whatever he does, he does well; and it would be a pity if this ably executed work should fail of the support

its intrinsic worth deserves from injudicious arrangements in the manner of submitting it to the profession.

JOURNAL OF PROPERTY.

[ADVERTISEMENT.]

METROPOLITAN SEWAGE MANURE COMPANY.

THE House of Commons having referred the plan of this company to a Select Committee, to examine into its feasibility and probable success, the Committee has made the following report to the House:—
Veneris, 22^o die Maii, 1846.

Ordered, That a Select Committee be appointed to consider such plans as shall be laid before them for the application of the sewage of the metropolis to agricultural purposes, and to report their opinion to the House.

Ordered, That the Metropolitan Sewage Manure Company Bill, the reports of the Commissioners, and all petitions on the subject of the said Bill, be referred to the Committee.

Jovis, 28^o die Maii, 1846.

Committee nominated:—

Mr. Bingham Baring	Mr. William Hamilton
Mr. Hawes	Mr. Kemble
Colonel Fox	Mr. Brampton
Colonel Thomas Wood	Mr. Benjamin Smith
Lord Robert Grosvenor	Sir William Clay
Mr. Tower	Mr. Duncan
Sir De Lacy Evans	Mr. Redhead Yorke.
Mr. Bernal.	

Ordered, That the Committee have power to send for persons, papers, and records.

Ordered, That five be the quorum of the said Committee.

And this the Report:—

The Select Committee appointed to consider such plans as shall be laid before them for the application of the Sewage of the Metropolis to agricultural purposes, and to report their opinion to the House; to whom the Metropolitan Sewage Manure Company Bill and the Reports of the Commissioners, and all petitions on the subject of the said Bill, were referred; and who were empowered to report the minutes of evidence taken before them to the House: have considered the matters to them referred, and agreed to the following report:—

Your committee have directed their attention to the several documents referred to them by your honourable House; they have considered the scheme proposed by the Metropolitan Sewage Manure Company for carrying away the refuse of the Ranelagh and King's Scholars' Pond Sewers, and rendering it available for agricultural purposes; they have examined the objections made to that scheme upon public grounds in the several petitions referred to them; they have entered so far into the merits of the competing projects as to enable them to decide, whether on their account, and for their sake, the bill of the established company now standing for a second reading should be rejected or postponed; and after examining witnesses on the subjects connected with their inquiry, they have agreed to the following report:—

With regard to Mr. Wicksted, who proposes to carry off the entire sewage of London in a tunnel of from 8 to 12 feet in diameter, and at a depth of from 40 to 80 feet under the level of the streets of London, they believe that the first experiment of dealing with sewage water had better be tried upon a smaller scale, upon one or two sewers only, and at a less formidable expense. It appears, moreover, from the evidence of Mr. Wicksted himself, that the temporary concession of the two outlying sewers in question to other parties would rather facilitate than impede the ultimate development of his scheme.

Your committee therefore are not disposed to recommend the postponement or rejection of the present Bill for the sake of Mr. Wicksted's plan. Neither would they be influenced to adopt this course by the consideration of Mr. Higgs' project.

Mr. Higgs proposes to construct, at the mouth of a sewer, or in some convenient spot to which the water of the sewer might be made to flow, three tanks; each of which tanks is to be of sufficient dimensions to contain the maximum amount of sewage brought down in the space of twelve hours. The precautions which he proposes to deal with the sewage so accumulated would probably preclude the possibility of any deleterious or offensive consequences, but the public mind is not at present prepared to risk the establishment of any such reservoirs, and no company has as yet been formed to carry his scheme into execution.

Having thus discarded the objections which might possibly be urged against the Bill, on the ground of its interference with a preferable competing measure, your committee turn to those which have been either urged in the petitions referred to them, or elicited in the examination of witnesses.

The main ground of complaint advanced by the owners or occupiers of neighbouring lands and houses

is, that power has been taken in the Bill to construct reservoirs or tanks for the reception of stagnant and offensive sewage water. This power has now been unreservedly relinquished by the promoters. No reservoir, tank, or catch-pond can be constructed by the company under the proposed Act. The sewage will be conveyed in a covered shaft from the main sewer into the well, from which an engine will pump it into iron pipes. This process will be carried on in a closed building, and any foetid exhalations from the liquid during the short period it remains exposed to the atmosphere will be conveyed into the furnace of the steam-engine. Any silt deposited in the well by the running water will likewise be removed from the well within this covered building, and precautions may easily be taken for washing, and ultimately disinfecting it, before it is carried out. The practice at present is to shovel it by hand labour from the bed of the open sewer upon the bank, where it lies until it is purchased by the builders to make up into mortar. The witnesses generally concur in stating that no other solid matter will be deposited by the running water of the drain. At any rate, the quantity will be so small as to be easily disposed of, without annoyance to the neighbourhood. The station-house will act, therefore, be a cause of nuisance, and the liquid will be removed in a far less offensive state than that in which it is now found, when backed in the open sewer by the high tide, and stagnating for hours together in the immediate vicinity of an inhabited district, to be afterwards poured forth at low tide into the open bed of the river.

The only danger or inconvenience, therefore, which can accrue to the inhabitants is from the breakage of pipes, or from the ultimate distribution of the sewage water upon the land.

Your committee are convinced that sewage water is neither corrosive in its nature, nor liable to generate explosive gases. It may, therefore, be as safely conveyed in iron pipes as the water of the Thames now is by the several water companies; and the general testimony of witnesses, both favourable and unfavourable to the scheme, leads your committee to believe, that when pipes are laid down in a hard, solid road, fractures are of rare occurrence. With the exception of the new ground between the station-house of the Company and Belgrave-square, the proposed line is entirely of that character. With the view, therefore, of avoiding all new ground in public thoroughfares, your committee recommend that instead of pursuing the route proposed in the Bill, the pipes should be carried from the mouths of the sewers along the bank of the Thames, to or beyond Battersea Bridge, from whence they may strike off into the country, without exposing the more thickly inhabited part of the town to the unnecessary annoyance of having their roadways broken up.

With regard to the application of the metropolitan sewage water to the land, your committee are satisfied that it is diluted to so great an extent that its application to the land will be less offensive than that of manure in its solid state.

Having thus disposed of all serious objections to the proposal of the Metropolitan Sewage Manure Company, your committee cannot conclude their report without urging upon the House the importance of a project which proposes at all times to carry away the drainage at the level of low tides, and to remove from the Thames the daily increasing refuse of London. It is true that this measure has lost something of its efficiency, in consequence of the abandonment of the reservoirs. The result of this concession is, that no more sewage can be drawn at any time from the drains than can be disposed of at the moment to the agriculturist; but even this comparatively imperfect measure will try a great experiment, and if the confident expectations of your committee are accomplished, it will not fail ultimately to realise all the advantages which were originally contemplated. Mr. Dickenson has proved the efficiency of liquid manures. The meadows of Edinburgh and of Mansfield have shown the power of sewage water. Mr. Thompson, of Clitheroe, and Mr. Harvey, of Glasgow, have established the fact that liquid manure may be applied at a cheap rate, by means of the mechanical contrivance of service-pipes and hoses, to crops in every stage of their growth.

There will be found individuals, no doubt, in this country of enterprise, to give further development to each of these experiments; but it is only through the agency of a company that they may be all combined, and applied to the important purposes of cleansing our towns, purifying our rivers, and enriching our soil.

It is under these impressions that your committee recommend the proposed Bill, with the following modifications and provisions, to the favourable consideration of your honourable House:—

- 1st. That a line should be adopted for the main pipe along the bank or bed of the river, to or beyond Battersea Bridge, instead of the proposed line.
- 2nd. That the state should reserve to itself the power of resuming its entire property in the sewage, after a certain period, upon conditions to be specified in the Bill.

3rd. That the power now specially reserved to the Commissioners of Sewers should be extended to any authority which may hereafter be entrusted with the management of the sewers.

4th. That clauses be introduced into the Bill providing for the security of the public against any accidents arising from breaking or leakage of the pipes.

5th. That nothing contained in the Act shall exempt the company from liability to the present legal remedies against nuisances.

6th. That nothing contained in the Bill shall exempt the company from the supervision and control of any authority which shall hereafter be established for such purposes.

July 13, 1846.

A PRACTICAL COMMENTARY

ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.

(Continued from p. 314.)

Different construction of the same words when contained in a deed than when contained in a will.—The law has always allowed a more liberal construction in favour of a will than a deed; because, in the exposition of the former, the law has rather inclined to regard the intention of the testator, than the precise legal import of the terms he has employed to express it (*Loseacres v. Blight*, Cow. 326): wills being so often made when a testator is on his death-bed, and unable to obtain that professional assistance of which a party to a deed may generally avail himself. Hence, even previously to the late Wills Act (1 Vict. c. 26), which enables a testator to pass an estate in fee-simple without any words of limitation (sec. 28), an estate in fee-simple would, where the intent was manifest, have passed without words of limitation: an estate tail without words of procreation, and an estate either in fee in tail, or for life (*Tilley v. Collyer*, 3 Keb. 589; *Fowler v. Backwell*, Com. 353; *Moore dem. Pagge v. Heaseman*, Wils. 38; *Toovey v. Bassett*, 10 East, 460), in tail (*Langley v. Baldwin*, 1 P. Wms. 759; *Stanley v. Lennard*, 1 Eden, 87; *Attertony-General v. Sutton*, 3 Bro. P. C. 75; *Doe dem. Bean v. Halley*, 8 T. R. 5; *Mackel v. Wooding*, 6 Sim. 4), (Year Book, 13 Hen. 7, fol. 17; Bro. lev. fol. 521; 8 Ven. 214, pl. 5; 2 Freem. 270; *T. Jones*, 98; 1 Eq. Cas. Abr. 197; *City of London v. Garway*, 2 Vern. 572; *Hutton v. Simpson*, 1b. 723; S. C. under the name of *Simpson v. Hornsby*, Gibb. Eq. Rep. 115; *Dashwood v. Peyton*, 18 Ves. 40; *Dyer v. Dyer*, 1 Mer. 414; *Doe dem. Driver and Another v. Bowling*, 5 B. & Ald. 722), accordingly as the intention was apparent, might have been raised by implication, without any direct terms of devise whatever. Real property also may pass, although no mention whatever is made of it, as where a testator appoints a person to be his heir. (*Inkerdai's Case*, Bro. Dev. 38; *Taylor v. Webb*, Sty. 301; S. C. under the name of *Marret v. Sly*, 2 Sid. 75; *Tilley v. Collyer*, 3 Keb. 589.) The Will Act above alluded to (1 Vict. c. 26), has extended this liberal construction still further, as I shall by and by notice; but as this enactment does not affect wills made prior to January, 1838, it will be necessary, first of all, to ascertain how the law stands independently of that Act, in order to see how titles may be affected by wills made previously, as also to ascertain what important changes it has accomplished; and how titles will be affected by wills now brought within its operation.

When the fee would have passed without words of inheritance.—In a deed, if lands had been limited to a man generally without words of limitation, he would have taken a life estate only; with the single exception of a gift to a man and his wife in frankmarriage, which would have raised an estate tail (Lit. s. 17; Wood's Ins. 120); but no other gift or grant, even though it were expressive of the estate the grantor intended to pass, as to the grantee in fee-simple, would have conferred more than a life interest. But in a will, as Lord Coke observes (*Lord Cheyne's Case*, 5 Rep. 68), the intention of the testator is to be the pole star to guide the judges in the exposition; in which respect it differs from a deed, where the rule of construction is that the words must follow the intent of the testator. When, therefore, this intention has appeared, the courts have allowed terms descriptive both of the subject and the testator's interest therein to pass them both. In other instances they have allowed untechnical expressions to supply the place of proper words of limitation; and

where the intent has been manifest, the fee has been raised by implication. So where lands have been devised without words of limitation, but subjected to a charge; or the devise was directed to give or forego any benefit, it would have conferred the fee upon him; and whenever a testator directed a thing to be done, which a mere life estate might be unable to carry into effect, the fee would have passed in precisely the same manner as if the regular words of limitation had been annexed to the devise. And whenever lands were devised without words of limitation, but the devisee had an absolute power of disposition conferred upon him, he was construed to take an estate commensurate with his power.

Words capable of passing both the subject and the testator's interest therein.—A learned judge once said (*Wilmot, J. in Scott v. Alberry*, Com. 337), that whenever it appeared plainly that a testator intended to devise a fee, it is immaterial what words he makes use of. Hence certain words have been permitted not only to be descriptive of the subject, but also to embrace all the testator's interest therein. Thus the word "estate," (*Wilson v. Robinson*, 2 Lev. 91, 1 Mod. 100; *Reeves v. Winnington*, 3 Mod. 45; *Hyley v. Hyley*, ib. 228; *Moor v. Price*, 3 Keb. 49; *Carver v. Horner*, 1 Show. 349; *Lane v. Hawkins*, 1 Show. 396; *Bridgewater (Countess of) v. Bolton (Duke of)*, 1 Salk. 236; *Hopewell v. Ackland*, ib. 239; *Murray v. Wise*, 2 Vern. 564; *Beachcroft v. Beachcroft*, ib. 690; *Shaw v. Bull*, 12 Mod. 594; *Cliffe v. Gibbons*, 2 Lord Raym. 1324; *Scott v. Alberry*, Com. 337; *Barry v. Edgeworth*, 2 P. Wms. 523; *Chester v. Painter*, ib. 235; *Ibbetson v. Beckwith*, Cas. temp. Talb. 157; *Tanner v. Wise*, ib. 284, S. C. 3 P. Wms. 295; *Tuffnell v. Page*, 2 Atk. 38; *Timewell v. Perkins*, ib. 102; *Ridout v. Pains*, 3 ib. 486, S. C. 1 Ves. sen. 10; *Baileys v. Gale*, 2 ib. 48; *Macarree v. Tall*, Amb. 181; *Stiles dem. Rayment v. Walford*, 2 W. Blackst. 938; *Armiter's case*, Lloft. 95; *Chesteron v. Chesteron*, ib. 106; *Holdfast dem. Cooper v. Marten*, 1 T. R. 411; *Burkett v. Chapman*, 1 H. Blackst. 2231; *Fletcher v. Smiton*, 2 T. R. 656; *Doe dem. Morris v. Underdown*, Willes, 296; *Doe v. Woodhouse*, 4 T. R. 89; *Doe dem. Child v. Wright*, 8 ib. 64; S. C. 1 Bos. & Pull. N. R. 335; *Chichester v. Orenden*, 4 Taunt. 176; 4 Dow. 92; *Uthwaite v. Bryant*, 6 Taunt. 317; *Jongema v. Jongema*, 1 Cox, 362; *Doe dem. Dacre (Lady) v. Roper*, 11 East, 518; *Roe dem. Child v. Wright*, 7 East, 259; *Price v. Gibson*, 2 Eden. 115; *Roe dem. Allport v. Bacon*, 4 M. & S. 346; *Pettward v. Prescott*, 7 Ves. 541; *Wilkinson v. Robinson*, 1 Taunt. & Brod. 172; *Doe dem. Penwarden v. Gilbert*, 3 Bro. & Bing. 85; *Charlton v. Taylor*, 3 Ves. & Bea. 160; *Gardner v. Harding*, 3 Moore, 565), or any corresponding term, has been held sufficient to pass the fee; and although a local description be added, "as my estate in or at A" (*Barry v. Edgeworth*, 2 P. Wms. 523; *Ibbetson v. Beckwith*, Cas. temp. Talb. 157; *Tuffnell v. Page*, 2 Atk. 37; *Macarree v. Tall*, Amb. 181; *Holdfast dem. Cooper v. Marten*, 1 T. R. 140; *Doe dem. Child v. Wright*, 8 T. R. 64; *Uthwaite v. Bryant*, 6 Taunt. 317; *Randall v. Tuckin*, 6 Taunt. 410; *Denn dem. Richardson v. Hood*, 7 Taunt. 35); or my estate of A (*Chichester v. Orenden*, 4 Taunt. 176; S. C. on appeal, 4 Dow. 92; *Gardiner v. Harding*, 3 Moore, 565; *Pethward v. Prescott*, 7 Ves. 541), it will be insufficient to confine the devise to the subject, but will embrace the whole of the testator's interest therein. Neither would an additional description annexed to the word "estate," have restricted its general import, as "all that estate I bought of M" (*Baileys v. Gale*, 2 Ves. sen. 48), or, "all my freehold estate, consisting of thirty acres of land more or less, and all erections of the said farm, situate, &c." (*Gardiner v. Harding*, 3 Moore, 565), or, "all my estate, lands, &c. called or known by the name of the coal-yard, in the parish of St. Giles, London." (*Roe dem. Child v. Wright*, 7 East, 259.) The word "estates" in the plural number, whatever doubt may once have been entertained on the subject (as to which see *Goodwyn v. Goodwyn*, 1 Ves. sen. 226), it is now determined, will receive the same construction as the word "estate" in the singular. (*Macarree v. Tall*, Amb. 181; *Tilley v. Simpson*, in a note to *Fletcher v. Smiton*, 2 T. R. 656; *Fletcher v. Smiton*, ib.; *Jongema v. Jongema*, 1 Cox, 362; *Randall v. Tuckin*, 6 Taunt. 410; *Roe dem. Allport v. Bacon*, 4 Mau. & Selw. 366.)

When the comprehensive import of the word estate may be restricted.—But the word "estate," notwithstanding its comprehensive import, may yet be restricted to a more limited meaning when it is obvious that such was the testator's intent. Hence, where he confines it to an express life estate, as occurred in the case of *Price v. Gibson* (2 Eden, 115), where the testator devised all his estate at C H, to A for life, remainder to B and C, which was held to pass a life estate only to A. So where a devise was of "my real estate at B," with limitations in strict settlement. (*Hodges v. Middleton*, Doug. 415; *Brues v. Beisbridge*, 5 Moore, 1; 1 Bro. & Bing. 123.) The word "estate" may also be restrained to mean things of the same kind with which it is associated. If, therefore, it be coupled with articles of a personal kind, it will be considered to relate to personality only. Hence, where a testator, after a specific devise of a real estate called Whiteacre, devised "all the residue of his leases, mortgages, estates, debts, moneys, and other goods, &c." the word "estates" was held to be confined to the chattels only. (*Wilkinson v. Abernyland*, Cro. Car. 447; S. C. 1 Eq. Ca. Abr. 178.) In *Timewell v. Perkins* also (2 Atk. 102) a limitation of "all other, the rest, residue, and remainder of my estate, consisting of ready money, plate, jewels, leases, judgments, and mortgages," was confined to the kind of property with which it was thus associated, and of which the testator expressly stated it to have consisted. Yet, for all this, the mere circumstance of the word "estate" being in the same sentence with an enumeration of chattels, will not so inseparably connect itself with them as to deprive that term of its more comprehensive signification. If inserted so as to precede the enumeration it may yet relate to real estate not previously disposed of (*Fletcher v. Smiton*, 2 T. R. 656; *Tanner v. Morris*, Cas. temp. Talb. 284); and even if inserted after an enumeration or description of chattels sufficient to comprehend the whole personal property, the construction will be the same, and when thus extended to real estate it will comprehend the entire interest of the testator therein (*Terrell v. Page*, 1 Eq. Ca. Abr. 209, c. 11; *Scott v. Alberry*, Com. 337; *Tilley v. Simpson*, stated 2 T. R. 659, n.; *Jongema v. Jongema*, 1 Cox, 362; *Doe dem. Beane v. Evans*, 9 Ad. & Ell. 719), upon the principle laid down by Lord Chancellor Talbot in *Ibbetson v. Beckwith* (Cas. temp. Talb. 157), where he says that if the words of the will be general, and taking the testator's words in one sense will make the will to be a complete disposition of the whole; whereas, taking them in another, it will create a chasm, they shall be taken in that sense which is most likely to be agreeable to his intention of disposing of his whole estate.

Other words capable of passing both the subject and the testator's interest therein.—The word "estate," is not the only one which will comprehend both the subject and the absolute interest; for the word "property," unless restrained by the context, will be of equal force with the word "estate" (*Doe v. Lanchbury*, 11 East, 290; *Doe dem. Dacre v. Rohn*, ib. 518; *Nicholls v. Butcher*, 18 Ves. 193; *Roe v. Pattison*, 16 East, 221; *Patton v. Randall*, 1 Jac. & Walk. 189; see also *Doe, lessee of Wall v. Langlands*, 14 East, 371; *Noel v. Hays*, 5 Mad. 38). But the word "property," like the word "estate," when coupled and associated with chattels, will be construed to relate to personal property only. (*Bunney v. Rout*, 7 Taunt. 79.) A reversion (*Baileys v. Gale*, 2 Ves. sen. 48), or remainder (*Norton v. Ludd*, 1 Latw. 755) may also be devised by those appellations, which will pass, and the whole interest of the testator, as well as the subject. So a devise of "my moiety of the house in which A. lives," will pass the absolute interest of the testator. (*Doe dem. Atkinson v. Fawcett*, 7 Law T. 283.) As will also a devise of all my "right, title, and interest" (*Cole v. Rawlinson*, 1 Lord Raym. 331, 1 Salk. 234); or, "all my part, share, and interest" (*Andrew v. Southhouse*, 5 T. R. 592); or "all I am worth;" (*Hustep v. Brooman*, 1 Bro. C. C. 437; cited and approved of by Lord C. J. Gibbs, in *Doe v. Rout*, 7 Taunt. 81); or "all that I shall be possessed of, real and personal" (*Pitman v. Stevens*, 15 East, 505; *Wilce v. Wilce*, 7 Bing. 664; *Thomas v. Phelps*, 4 Russ. 348); or, "whatever else I have in the world, not before disposed of" (*Hopewell v. Ackland*, Com. 164, Cas. temp. Talb. 286), will pass the fee-simple in the property to which those words are annexed. But it must at the same time be kept in view, that none of the

terms last alluded to will pass the fee, unless they are contained in the devising clause of the will. If used simply in the introductory clause, they will not (as to wills made prior to 1838) vary the construction of a devise afterwards made, if the expressions in the devising clause are insufficient to carry the degree of interest contended for. (*Lovecree v. Blight*, Cow. 152; *Wright v. Russell*, cited ib. 659; *Wright v. Wright*, 2 Wils. 114; *Denn v. Gaskin*, Com. 659; *Right v. Sidebottom*, Doug. 734.) And, notwithstanding an estate in remainder or reversion will pass by that appellation, yet the usual terms, "rest, residue, and remainder," as relating to residuary property undisposed of by the will, will not (except as to wills made after 1838), be capable of enlarging any devise of real estate to which they may relate, beyond a mere life interest. (*Canning v. Canning*, Mosel. 240; *Denn dem. Moor v. Mellor*, 5 T. R. 502; *Doe dem. Small v. Allen*, 8 T. R. 147.) The word "inheritance" is sufficient of itself to pass the fee, (*Widlake v. Harding*, Hob. 2; *Purefoy v. Rogers*, 2 Saund. 388), as is also the word "fee-simple" (*Baker v. Raymond*, Anders. 51; Bro. der. C; Gilb. der. 18; Perk. s. 557; 2 Bla. Com. 108); but the word "hereditaments," though strictly applicable only to an estate of inheritance, will not have that effect (*Hopewell v. Ackland*, Salk. 338; *Canning v. Canning*, Mos. 240; *Doe dem. Palmer v. Richards*, 3 T. R. 356; *Doe dem. Small v. Allen*, 8 T. R. 147); neither will the word "lands" standing alone be sufficient, although the word freehold be adjunct to it. (*Lee v. Withers*, T. Jones, 10; *Wilson v. Robinson*, 2 Wilson, 91; *Denn dem. Moor v. Mellor*, 5 T. R. 558; *Doe dem. Norris v. Tucker*, 3 B. & A. 471; *Doe dem. Ashley v. Baines*, 2 C. M. & R. 23.)

Import of the word "effects."—The word "effects" is a term of rather equivocal import, yet, upon the whole, more applicable to personal than to real property (*Campfield v. Gilbert*, 3 East, 519; *Hick v. Dring*, 2 Man. & Selw. 455; see also *Doe dem. Chilcot v. White*, 1 East, 33; *Macnamara v. Whitworth* (Lord), Coop. 241; *Rawlings v. Jennings*, 13 Ves. 39); but if the term "real" (*Doe v. Clark*, 2 Bos. & Pull. N.R. 243; *Hogan dem. Wallis v. Jackson*, Cow. 29; *Doe v. Lainchbury*, 11 East, 290); or "testamentary" (*Doe dem. Penwarden v. Gilbert*, 2 Bro. & Bing. 85) be annexed to it; or from the general context it appears that the testator intended to apply it to real property, then not only will it be allowed to pass such property, but the absolute interest therein also. (*Doe v. Lainchbury*, 11 East, 290.)

(To be continued.)

SALE OF SHARES OF THE GLOBE EVENING NEWSPAPER.—On Thursday, nineteen shares of the *Globe Evening Newspaper*, the property of which consists of sixty-two shares, were disposed of by auction, by Mr. Edward Robins, at the Auction Mart, which attracted a large number of literary gentlemen, connected with the daily and periodical journals, the majority of whom, however, left the room, upon the sale of the first lot. The shares were the property of the principal proprietor, who, having reached the age of eighty-two, was desirous of relieving himself from the care of the pursuit of literature. The shares were severally divided into lots, of which the first four were purchased by Mr. Aldridge, and the remaining fifteen were bought by Mr. Ridgway, publisher, Piccadilly. The following were the prices each lot went for:—No. 1, 850 guineas; No. 2, 790 guineas; No. 3, 750 guineas; No. 4, 700 guineas; and the other lots at 660 guineas each. The pre-emption price per share, was in 1846, 1,540l. realizing a dividend of 180l.; in 1845, 1,230l. the dividend being 120l.; and in 1844, 872l. yielding a dividend of 100l. The total amount the shares produced was 12,990 guineas.

CAMBRIDGESHIRE.—In spite of the repeal of the Corn Laws, the estates of the late William Dykes, esq. at Roydon and Breasingham, were sold by auction, at Diss, on Friday week by Mr. Rix, at thirty-four years' purchase, on full annual rental.

Public Sales.

By Messrs. MUSGROVE and GADSDEN, at the Mart.
A residence, No. 31, Ladbroke-square, Notting-hill; held for 95 years from September, 1843, at 40l.; let at 120l. per annum—435l.

A residence, No. 33—435l.

A residence, No. 33—435l.

A similar residence, No. 34—435l.

A residence, No. 36; let for 10 years at a rent of 80l. per annum, and an agreement, at the option of the tenant, to extend the lease for a further term of 11 years at a rent of 100l. per annum; held under a separate lease for a term of 95 years from Michaelmas, 1843, at 40l. per annum—560l.

A residence, No. 37; held for the same term, at 40l. per annum—480l.

A residence, No. 73, Charlton-street, Some Town; held for 92½ years from September, 1793, at a ground-rent of 3l. per annum; held for 21 years from June, 1829, at 30l. per annum—325l.

A residence, No. 71, Guildford-street; held for 46½ years, at 100l. per annum—440l.

By Mr. MARSH.

Freehold waterside premises, situate at Bermondsey-wall, consisting of the fore and aft docks—3,800l.
A freehold house, No. 25, Bermondsey-wall—270l.

A ditto, No. 27—280l.

The following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

For the first 70 words 5s.
For every succeeding 30 words . . 1s.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	96	95½	95½	96½	96	95½
Three per Cents. Reduced	96	96	96	96	96½	96½
New Three & a-quarter per Cts . .	97	97½	97½	97½	97½	97½
Long Annuities	104	104	104	104	104	104
Bank Stock	206	206	207	207	207	208
India Stock	265½	264½	265½	265	265½	265½
India Bonds, prem.	27	26	26	25	25	25
Exchequer Bills, prem.	15	15	15	14	15	16
FOREIGN.						
Spanish Five per Cents.	244	244	244	244	244	244
Spanish Three per Cents.	364	364	364	364	364	364
Russian	111½	111½	111	111	112½	112½
Peruvian	384	384	38	38	37½	37½
Portuguese	47	47	46	46	46	46
Mexican	27½	27	27½	26½	26½	26½
—Deferred	164	164	164	164	164	164
Dutch Two-and-a-Half per Cents.	59½	59½	59½	60	59½	60
—Four per Cents.	93½	94	94	94	94	94
Danish	88	88½	88½	88½	88½	87½
Colombian	164	16	15½	15½	15½	15½
Chilian	98	97	96	96	96	96
Buenos Ayres	39½	39½	40½	41½	41½	41
Brasilian	85	85	85	85	85	85
Belgian	96½	96½	97	97	97	97

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, July 6.

Beattie and Co. merchants, last exam. passed.—*Boggs and Co. merchants*, fur. joint div. and sep. of Boggs next week. Pennell, London.—*Markham*, R. D. saw mills proprietor, last exam. Oct. 5.

Tuesday, July 7.

Brace and Allen, warehousemen, last exam. July 31.—*Cooper*, T. umbrells manufacturer, div. next week. Edwards, London.—*Crowe*, J. maltster, last exam. passed.—*Cummings*, G. G. tea broker, outlawed.—*Emanuel* and *Co. goldsmiths*, sep. div. next week. Edwards, London.—*Harwood*, J. lamp maker, div. next week. Whitmore, London.—*Herrick*, J. D. grocer, div. next week. Belcher, London.—*Hook*, J. brick merchant, div. next week. Whitmore, London.—*Martin*, A. (widow) draper, div. next week. Edwards, London.—*Rudman*, J. oilman, last exam. passed.—*Serry*, W. B. sailmaker, div. next week. Whitmore, London.

Wednesday, July 8.

Challen, J. brewer, div. next week. Edwards, London.—*Clarke*, D. merchant, fur. div. next week. Edwards, London.—*Knight and Co. stationers*, last exam. Sept. 17.—*Leaman and Co. timber merchants*, last exam. A. passed; L. outlawed.

Thursday, July 9.

Beaton, J. tailor, last exam. Sept. 23.—*Haynes*, J. woollen warehouseman, last exam. Sept. 23.—*Page*, R. H. innkeeper, last exam. Sept. 24.

Friday, July 10.

Bartlett, C. merchant, div. next week. Belcher, London.—*Boggs and Boyd*, hop merchants, last exam. Sept. 21.—*Ellerman*, C. F. agent, last exam. passed.—*Griffiths*, and *Co. tailors*, joint div. next week. Pennell, London.—*Hadden*, W. J. brewer, div. next week. Belcher, London.—*Harlow*, J. tobaccoist, div. next week. Green, London.—*Kearton*, W. cheese-monger, div. next week. Belcher, London.—*Locks*, W. timber merchant, last exam. Sept. 18.—*Roberts and Co. paper agents*, last exam. July 21.—*Rolfe*, F. tailor, last exam. Aug. 10.—*Stone*, W. laceman, div. next week. Green, London.—*Wood*, J. plumber, assignees, Aug. 11.

Saturday, July 11.

Avery, J. dealer in plate, last exam. passed.—*Cooper*, W. hardwareman, last exam. passed.—*Freeman*, G. grocer, last exam. passed.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Allen, E. T. apothecary, first, 1s. 10d. Young, Leeds.—*Aplin*, J. scrivener, first, 1s. 6d. Turquand, London.—*Balls*, J. livery stable keeper, 1s. 2d. Belcher, London.—*Chambers*, A. H. jun. banker, first and final, 2s. Green, London.—*Clark*, B. corn factor, first, 6d. Freeman, Leeds.—*Herrierson*, S. provision merchant, 7s. 6d. Belcher, London.—*Higson*, J. hatter, first, 2s. Freeman, Leeds.—*Holroyd* and *Co. cotton spinners*, first and final, J. H. 11s. 6d. and first and final R. S. 8s. Young, Leeds.—*Hughes*, O. draper, final, 6s. Casanova, Liverpool.—*Hutchinson*, S. stock

broker, first, 2s. 9d. Young, Leeds.—*Insell*, W. auctioneer, first, 2s. 6d. Whitmore, Birmingham.—*Leaman and Co. wharfingers*, first joint, 2s. 7d.; first of Bryan, 11s. Graham, London.—*Mathe and Moore*, merchants, first, 2s. 4d. Turner, Liverpool.—*Munkhouse and Gorman*, joint, 2s.; final G. 12s.; final M. 4s. 8d. Green, London.—*Owen and Owen*, merchants, further, 1s. 9d. and 4s. 3d. to new proofs. Young, Leeds.—*Palmer*, B. W. wine merchant, 12d. Follett, London.—*Parkins*, L. E. chymist, 1s. 7d. Belcher, London.—*Patchett*, T. worsted manufacturer, further, 8d. and 4s. 8d. to new proofs. Young, Leeds.—*Pickles*, R. linen manufacturer, first 1s. Freeman, Leeds.—*Radcliffe*, and *Co. glaziers'* diamond manufacturers, first, R. sen. 3s.; first, R. jun. 9s. Graham, London.—*Robinson*, T. grocer, first, 4s. 6d. Accraban, Bristol.—*Schommer*, H. and G. merchants, second of H. S. 10½d.; second of G. S. 1s. 8d. Freeman, Leeds.—*Snell*, E. chymist, first, 2s. 6d. Freeman, Leeds.—*Swinburne*, C. plasterer, first, 6s. Freeman, Leeds.—*Ward*, F. rag merchant, first, 4s. Freeman, Leeds.—*Wingfield*, B. brewer, first, 1s. 6d. Young, Leeds.—*Wolton*, J. C. ironmonger, first, 5s. Green, London.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, July 10.

Crozier, W. innkeeper, Oxford, June 4. Trusts: J. Scrofton, wine merchant, South Molton-st., W. Way, grocer, Oxford, and B. Castle, hay dealer, Oxford. Sol. Doyle, Bedford-row.—*Daking*, R., J. M. and W. tanners, Bocking, June 13. Trusts: G. Pool, farmer, Black Notley, and H. Harding, chemist, Sudbury. Sol. Andrews, Sudbury.—*King*, J. gent. Buckingham, June 29. Trusts: J. C. Ralston, gent. Buckingham, and J. Harrison, sen. auctioneer, same place. Sol. Kennedy, Chancery-lane.—*Morris*, M. chemist, Newport, May 15. Trusts: J. Drew, Bush-lane, and H. Hodge, Blackman-st. wholesale druggists, and H. M. Wavell, chemist, Newport. Sol. Sowton, Great James-st.

Gazette, July 14.

Amos, R. farmer, Whitstable, July 11. Trusts: W. Muxton, gent. Tunstall, and H. H. Read, farmer, Sheildwich. Sol. Bathurst, Faversham.—*Beavis*, J. W. builder, Southampton, July 7. Trusts: J. M. Allen and R. Driver, timber merchants, Southampton. Sols. Sharp and Harrison, Southampton.—*Bruce*, W. C. baker, Ipswich, May 28. Trusts: W. Codd, Martlesham, and J. Cooper, Winesham, millers. Sol. Lawrence, Ipswich.—*Hues*, W. farmer, Duntun-hall, Warwickshire, June 29. Trust: R. Jaggard, gent. Leek Wootton. Sol. Jones, Stoneleigh.—*Jackson*, G. carpenter, Ventnor, May 28. Trusts: J. Griffin, miller, Southford-mill, near Whitwell, and C. Dear, grocer, Ventnor. Sol. Cole, Ryde.—*Williams*, E. F. brewer, Farny, June 30. Trusts: G. Brown, clerk, Falmouth, and W. Phillips, clerk, Falmouth. Sol. Rimell, Falmouth.

Bankruptcy.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, July 10.

BARRETT, JAMES, innkeeper, Hastings, July 23 and Aug. 25, at two, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Steele, Lincoln's-inn-fields, sol. Date of fiat, June 29. A. R. Steele, attorney, Lincoln's-inn-fields, pet. cr.
BARLEY, ALFRED, grocer and cheese-monger, March, Cambridgeshire, July 17, at half-past one, Aug. 21, at two, Basinghall-st. Com. Fane; Alsager, off. ass.; Wright, London-st. sol. Date of fiat, July 1. E. Ronalds, cheese-monger, Upper Thames-st. pet. cr.
BRAILSFORD, EDWARD, music seller, late of 15, Old Steine, Brighton, July 17, at half-past twelve, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Chappell, Quality-court, sol. Date of fiat, July 3. T. and R. Alliston, pianoforte makers, Wardour-st. pet. crs.
BUTLER, FREDERICK, ironmonger, Stafford, July 28 and Aug. 25, at eleven, Birmingham. Com. Balguy; Valpy, off. ass.; Bowen, Stafford, and Smith, Birmingham, sols. Date of fiat, July 7. E. Butler, shopman, Stafford, pet. cr.
EVANS, ROBERT HARDING, and CHARLES, auctioneers and booksellers, 106, New Bond-st. July 21, at two, Aug. 25, at one, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Dean and Co. St. Swinith's-lane, sols. Date of fiat, July 6. Bankrupt's own petition.
HUTCHINSON, THOMAS, tea dealer and grocer, Sunderland, and Wingate, Durham, July 22 and Aug. 25, at twelve, Com. Ellison; Baker, off. ass.; Messrs. Wright, Sunderland, and Maples and Co. Bedford-row, sols. Date of fiat, July 7. W. and C. Richardson, millers, Sunderland, pet. crs.
JAMES, DAVID, licensed victualler, Cardigan, July 27, at twelve, Aug. 24, at eleven, Bristol. Com. Stephen; Miller, off. ass.; Treher and White, Bucklebury, and Sabine, Bristol, sols. Date of fiat, July 3. Bankrupt's own petition.
NICHOLLS, EDWIN COX, broker, Bristol, July 28, at twelve, Aug. 25, at eleven, Bristol. Com. Stephen; Hutton, off. ass.; Savery and Co. Bristol, sols. Date of fiat, July 2. T. F. Snow, broker, Bristol, pet. cr.
OSBORN, WILLIAM, jun. silversmith and jeweller, 22, St. James's-st. Piccadilly, July 23, at twelve, Aug. 25, at half-past two, Basinghall-st. Com. Goulburn; Green, off. ass.; Teague, Crown-st. Cheap-side, sol. Date of fiat, July 3. Bankrupt's own petition.
PAGE, PHILIP FLOOD and PHILIP NORRIS, builders, 14, King's-rd. Gray's-inn, July 17 and Aug. 21, at one, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Hall, Brunswick-row, Queen's-sq. sol. Date of fiat, July 8. G. Beard, painter, Carey-st. pet. cr.
PUSSELL, SENECA, draper, Cheltenham, July 24 and Aug. 21, at one, Bristol. Com. Stevenson; Accraban, off. ass.; Sales and Turner, Aldermanbury, and Messrs. Bevan, Bristol, sols. Date of fiat, July 8. S. and J. Wreford, and W. Dunstan, warehousemen, Aldermanbury, pet. crs.
ROBINSON, WILLIAM, dyer and cloth merchant, Spring-meadow, Saddleworth, Yorkshire, July 27 and Aug. 14, at eleven, Leeds. Com. Burge; Hope, off. ass.; Lever, King's-rd. and Barker, Huddersfield, sols. Date of fiat, July 24. H. B. Taylor, drysalter, Huddersfield, pet. cr.
SAVAGE, HENRY, apothecary, 34, Dorset-place, Dorset-sq. July 21 and Aug. 25, at two, Basinghall-st. Com. Goulburn; Follett, off. ass.; Mayhew and Son, Carey-st. sol. Date of fiat, July 2. D. Hayes, stock-broker, Throgmorton-st. pet. cr.
SCOTT, BENJAMIN, seedman and grocer, 24, Broad-st. Bath, July 27 and Aug. 24, at one, Bristol. Com. Stevenson; Miller, off. ass.; Packwood, Cheltenham, sol. Date of fiat, July 6. Bankrupt's own petition.

SPARK, JOHN MOSLEY, bookseller, and stock and share broker, Gainsborough, Lincolnshire, July 29 and Aug. 19, at eleven, Town-hall, Hull; Com. Barge; Kynaston, off. ass.; Taylor, Featherstone-buildings, and Robinson, Gainsborough, sols. Date of fiat, July 14. W. Duckie, jun. clerk, Gainsborough, pet. cr.

STILES, JOHN, soda-water maker, 52, Wells-st. Oxford-st. July 18, at two, Aug. 25, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Hill & Co. St. Mary-Axe, sols. Date of fiat, July 1. T. Hayward, A. Conway, and J. Phelps, grocers, Malden-lane, pet. crs.

WATTS, WILLIAM, millwright, machine maker, and iron founder, Doncaster, Yorkshire, July 21 and Aug. 11, at eleven, Leeds, Com. Barge; Kynaston, off. ass.; Milton, Southampton-buildings, Sheardown, Doncaster, and Dunning and Stawman, Leeds, sols. Date of fiat, July 6. Bankrupt's own petition.

Gazette, July 14.

BELLONI, FREDERICK, clock and watch maker, Shaftesbury, Dorsetshire, July 23, at half-past one, Aug. 28, at twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Gilbert and Co. Philpot-lane, and Chitty, Shaftesbury, sols. Date of fiat, July 11. Bankrupt's own petition.

BUNDY, WILLIAM, builder, Stamford-cottages, Stamford-bridge, Fulham-rd. July 21, at twelve, Aug. 31, half-past one, Basinghall-st. Com. Foulbanc; Pennell, off. ass. Husband and Wyatt, Gray's inn-sq. sols. Date of fiat, July 10. Bankrupt's own petition.

GARSD, JOSHUA, sen. and GARSD, JOSHUA, jun. flax manufacturers, Leeds, July 27 and Aug. 14, at eleven, Leeds, Com. Barge; Hope, off. ass.; Sudlow and co. Chancery-lane, and Lee, Leeds, sols. Date of fiat, July 10. Bankrupt's own petition.

GILLMAN, ADAM, draper and tea dealer, 23, Pomeroy-st. Old Kent-rd. July 20, at one, Aug. 26, at eleven, Basinghall-st. Com. Foulbanc; Pennell, off. ass.; Surr and Gribble, Lombard-st. sols. Date of fiat, July 7. J. Bowman and J. May, Wood-st. warehousemen, pet. crs.

GRAY, FREDERICK CLEMENT, boarding and lodging-house keeper, Melicent-cottages, Forrest-row, Dalston, July 23, at two, Aug. 29, at three, Basinghall-st. Com. Goulburn; Follett, off. ass.; Young and Son, Mark-lane, sols. Date of fiat, July 11. Bankrupt's own petition.

GROVES, WILLIAM, grocer and tea dealer, Huntingdon, July 28, at one, Aug. 29, at half-past two, Basinghall-st. Com. Goulburn; Green, off. ass. Fox and Britten, Basinghall-st. and Hannybun, Huntingdon, sols. Date of fiat, July 10. G. Groves, harness-maker, 243, Blackfriars-rd. pet. cr.

MACLEAN, DONALD, brick-maker and coke manufacturer, Upper Brook-st. Grosvenor-sq. of Witton Castle, Durham, and of Woodhouse-cloze Colliery, near Bishop Auckland, July 24, at twelve, Sept. 3, at eleven, Basinghall-st. Com. Evans; Bell, off. ass.; Innes, Billiter-st. sol. Date of fiat, June 30. W. Willmott, Nicholl's-sq. Hackney-rd. gent. pet. cr.

NICHOLLS, EDWIN COX, broker, Bristol, July 28, at twelve, August 25, at eleven, Bristol, Com. Stevenson; Hutton, off. ass.; Savery and Co. Bristol, sols. Date of fiat, July 2. T. F. Snow, linen draper, Bristol, pet. cr.

OSBOEN, WILLIAM HENRY, jun. silversmith and jeweller, 28, St. James's-st. Piccadilly, July 23, at twelve, August 28, at half-past two, Basinghall-st. Com. Goulburn; Green, off. ass.; Teague, Crown-court, sol. Date of fiat, July 2. Bankrupt's own petition.

PEASE, WILLIAM HENRY and JOHN ROBERT, and THOMPSON, WILLIAM HENRY, wine merchants, 2, Ingram-court, Fenchurch-st. and 42, Lime-st. London, July 24, at eleven, August 29, at two, Basinghall-st. Com. Goulburn; Green, off. ass.; Bird, Lincoln's-inn-fields, sol. Date of fiat, July 6. H. Butler and G. Greenwood, wine merchants, Fenchurch-st. pet. crs.

POLDEN, GERRARD, and LAPAQUE, ANTONIO HIPOLITO, ship owners and ship agents, 10, Gould-square, Crutched-friars, London, July 22, at eleven, August 22, at half-past two, Basinghall-st. Com. Goulburn; Green, off. ass.; Phillips and Son, Laurence Pountney-lane, sols. Date of fiat, July 11. J. H. Rudall, merchant, Gould-square, pet. cr.

READ, THOMAS, cigar dealer, Manchester, July 24, and August 27, at twelve, Manchester; Hobson, off. ass.; Abbott, Charlotte-st. and Atkinson and Co. Manchester, sols. Date of fiat, July 6. Bankrupt's own petition.

SPOONER, ROBERT, licensed victualler, Buckingham-st. Strand, July 21, at two, August 26, at twelve, Basinghall-st. Com. Foulbanc; Pennell, off. ass.; Bell, Craven-st. Strand, sol. Date of fiat, July 13. T. Munday, Hungerford-market, butcher, pet. cr.

WALLIS, THOMAS, builder and plasterer, College-st. Chelsea, July 23, at eleven, Aug. 29, at one, Basinghall-st. Com. Goulburn; Follett, off. ass.; Taylor, Lincoln's-inn-fields, sol. Date of fiat, July 6. J. N. Rooke and G. Rooke, cement manufacturers, Upper Ground-st. pet. crs.

WALTERS, JAMES SMITH, surgeon and apothecary, Bake-well, Derbyshire, July 28 and Aug. 25, at twelve, Manchester; Fraser, off. ass.; Falcon, Elm-court, Harker, Leek, and Oliver, Manchester, sols. Date of fiat, July 8. E. S. Walters, engineer, Leek, pet. cr.

WHITCHURCH, GEORGE SWAIN, hosier and glover, 92, Fleet-street, July 21, at two, Aug. 28, at half-past eleven, Basinghall-st. Com. Fane; Alsager, off. ass.; Lawrence and Reed, sols. Date of fiat, July 6. F. Most and W. Routledge, glovers, Wood-st. pet. crs.

Meetings at Basinghall-street.

Gazette, July 10.

Berry, J. draper, Church-st. Paddington, Aug. 1, at eleven, div.—**Bend, C. J.** tailor, Blackheath, July 31, at half-past one, aud.—**Burbridge, J.** and **J. jun.** cabinet makers, Tysoe-st. Clerkenwell, July 28, at half-past eleven, sep. div. of Burbridge, sen.—**Cooper, J.** wheelwright and smith, Stony-lane, Southwark, July 28, at twelve, div.—**Delley and Inskip**, leather manufacturers, Long-lane, Bermondsey, July 29, at eleven, aud.—**Fellhouse, G.** plumber, Fulham, July 31, at half-past eleven, aud.—**Furnival, J.** corn dealer and baker, Kettering, Northamptonshire, July 28, at eleven, div.—**Harding, W.** sen. mason and pavior, 8, Johnson-st. Westminster, and 23, Vincent-sq. Westminster, and also of West-wharf, Millbank, July 28, at half-past one, fin. div.—**Hay, W.** and **Titterton, J. A.** oil and colourmen, 103, London-rd. July 28, at twelve, sep. div. of Hay.—**Leaman, A. V.** and **Andrew, W.** wholesale mahogany, rosewood, and deal merchants, 110, Fenchurch-st. Aug. 1, at twelve, to aud. and Aug. 4, at one, divs.—**Pulcraft,**

T. gent. Wisbeach, St. Peter's, Isle of Ely, Cambridge-shire, July 31, at one (by order of the Court of Review, July 8), new div.—**Showell, T.** tailor, Ludgate-st. July 29, at twelve, aud.—**Smith, N. T.** jun. shipowner, Lime-st. City, July 28, at half-past twelve, final div.—**Winter, J.** plate-glass factor, Hatton-garden, July 21, at twelve, to choose assignees.—**Wood, H.** woollen factor and warehouseman, Basinghall-st. July 28, at half-past twelve, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Berry, J. draper, Church-st. Paddington, Aug. 1, at eleven.—**Leaman and Andrew**, timber merchants, Fenchurch-st. Aug. 1, at twelve, as to **Andrew**.—**Pitch, J. W.** tailor, Sackville-st. July 31, at eleven.—**Rudman, J.** oilman, Bath, July 31, at half-past eleven.

Gazette, July 14.

Arnatt, E. baker, Market-st. Oxford, Aug. 6, at half-past one, final div.—**Collins, C.** yarn agent, King William-st. and Adelaide-place, Kidderminster, July 28, at two (adj. June 19), last exam.—**Cooper, W.** hardwareman and haberdasher, Bury St. Edmunds, Suffolk, Aug. 6, at half-past one, final div.—**Emanuel and Emanuel**, goldsmiths, Hanover-square, July 24, at eleven. Proof of a debt of Messrs. M. A. Rothschild and Sons.—**Feaver, T.** draper and mercer, Ludgate-hill, Aug. 6, at one, final div.—**Frost, J.** goldsmith and jeweller, Grafton-st. Soho, Aug. 6, at one, final div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Avery, J. dealer in plate, Manchester-st. Aug. 8, at twelve.—**Cooper, W.** hardwareman, Bury St. Edmunds, Aug. 8, at twelve.—**Uford, J. G.** brewer, Holloway, Aug. 8, at one.

Meetings in the Country.

Gazette, July 10.

Barber, J. V. banker, Walsall, Staffordshire, July 31, at eleven, Birmingham, aud. and Aug. 4, at eleven, div.—**Carns and Telfo**, merchants, Liverpool, July 21, at twelve, Liverpool (adj. June 22), last exam.—**Clarke and Co.** bankers, Leicester, Aug. 4, at eleven, Birmingham, aud.—**Corbett, J. F.** coal merchant, Worcester, July 22, at twelve, Birmingham, choose new ass.—**Draft, T. B.** button maker, Birmingham, Aug. 1, at twelve, Birmingham, aud.—**Fawcett, H.** and **B.** timber merchants and ship and insurance brokers, Stockton-upon-Tees, Durham, Aug. 3, at half-past twelve, Newcastle, final joint div.—**Hill, E.** hosier, Stourport, Worcester-shire, Aug. 1, at twelve, Birmingham, aud. and div.—**Leadbeater, J.** manufacturer of shirtings, Manchester, July 23, at twelve, Manchester (adj. July 6), last exam.—**Nield, J.** woollen manufacturer, Manchester, July 23, at twelve, Manchester (adj. July 6), last exam.—**Taylor, T. M.** merchant, Newcastle, Aug. 3, at half-past ten, Newcastle, aud.—**Walker, W.** dealer in potters' materials, Eastwood, Aug. 5, at twelve, Birmingham (by adj.), last exam.—**Williams, E.** draper, Northop, July 22, at eleven, Liverpool (adj. June 22), last exam.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Bird, M. milliner, Cheltenham, Aug. 3, at one, Bristol.—**Lewis, R.** woollen manufacturer, Wootton-under-Edge, Aug. 3, at eleven, Bristol.—**Rowlandson, W.** surgeon, Wakefield, Aug. 4, at eleven, Leeds.—**Vaughan, P.** scrivener, Brecon, Aug. 4, at eleven, Bristol.

Gazette, July 14.

Boden, J. A. razor manufacturer and merchant, Sheffield, Aug. 7, at ten, Sheffield, aud. and div.—**Bull, W.** cloth merchant, Leeds, and Addie-street, London, Aug. 7, at eleven, Leeds, aud. and Aug. 11, at eleven, first div.—**Bulmer, J.** merchant, Hartlepool, Durham, Aug. 7, at one, Newcastle, final div.—**Cannell, J. F.** bookseller and stationer, Liverpool, Aug. 8, at eleven, Liverpool, aud. and Aug. 6, at eleven, div.—**Capleton, R. C.** tea dealer, Cheltenham, Aug. 6, at twelve, Bristol, aud.—**Clarke, J. Mitchell, R. Phillips, J.** and **Smith, T.** bankers, Leicester, Lutterworth, Leicestershire, and Melton Mowray, Leicestershire, and Uppingham and Oakham, Rutlandshire, Aug. 7, at eleven, Birmingham, div.—**Corwell and Croser**, merchants, Newcastle, July 28, at twelve, Manchester (adj. July 9), last exam.—**Draft, T. B.** button maker, Birmingham, Aug. 6, at twelve, Birmingham, div.—**Hand, W.** tanner, Leek, Aug. 7, at ten, Birmingham, aud.—**Hardisty, W.** whitesmith and ironmonger, Wakefield, Yorkshire, Aug. 8, at eleven, Leeds, aud. and Aug. 11, at eleven, second div.—**Hoy, S.** worsted manufacturer, Colne, July 28, at twelve, Manchester (adj. July 9), to choose assignees and last exam.—**Kendall, H. E.** and **J.** perfumers and toy sellers, Denton, Aston, near Birmingham, and other places, Aug. 13, at twelve, Birmingham, joint aud. and Aug. 15, at twelve, final joint div.—**Nash, T. jun.** builder, Stourbridge, Worcestershire, Aug. 5, at eleven, Birmingham, aud. and Aug. 6, at eleven, div.—**Newton, J., J. W.** and **F. J.**, spirit and porter merchants, Rotherham, Yorkshire, Aug. 7, at ten, Sheffield, aud. and div.—**Owen, J.** and **S. merch.** Sheffield, Aug. 7, at ten, Sheffield, aud. and eleven, third div.—**Rhodes, S.** worsted spinner and stuff manufacturer, Bradford, Yorkshire, Aug. 8, at eleven, Leeds, aud. and Aug. 11, at eleven, second div.—**Rodgers, H. A.** newsmen, Sheffield, Aug. 7, at ten, Sheffield, aud.—**Spencer, B.** baker and flour seller, Nottingham, Aug. 7, at ten, Birmingham, div.—**Stelling, H.** woolcomber, Aug. 6, at eleven, Leeds, aud.—**Tatham, T.** lime burner, coal merchant, and earthenware manufacturer, Burton-in-Lonsdale, Thornton-in-Lonsdale, Yorkshire, Aug. 8, at eleven, Leeds, aud. and Aug. 11, at eleven, first div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Capleton, R. C. tea dealer, Cheltenham, August 6, at twelve, Bristol.—**Cobban, E.** brewer, Liverpool, August 4, at eleven, Liverpool.—**Edmond and Co.** merchants, Liverpool and Bombay, August 6, at twelve, Manchester.—**Kelly, W.** brewer, Chester, August 6, at twelve, Liverpool.

Partnerships Dissolved.

Gazette, July 7.

Allan, J. B. Allan, J. and **Ritchie, D.** drapers, St. Paul's church-yard, so far as regards Ritchie, July 3. Debts paid by the remaining partners.—**Ayres, J.** and **Ayres, A. C.** surgeons, Ramsgate July 1. Debts paid by Snowdon and Pollock.—**Deweer, J.** and **Harrison, W.** wine merchants, Hull, July 1. Debts paid by Deweer.—**Drake, R.** and **Skinner, S.** carmen, Union-yard, Southwark, July 2.—**Harris, A.** and **Richardson, E.** coal factors, St. Dunstan's-hill, June 30.—**Hart, J. W., Beakbane, E. F.** and **Ockleston, W.** hide merchants, Liverpool, so far as regards Ockleston, June 30.—**Hindhaugh, N.** and **Veatch, G.** timber merchants, Newcastle, June 30. Debts paid by Hindhaugh.—**Hollins, J.** and

G. coal dealers, Middlewick, June 29. Debts paid by J. Hollins.—**Horne, R.** and **Allen, W.** retail house decorators, Gracechurch-st. December 28, 1842.—**Jiler, G. J.** sen. and jun. and **Davidson, S.** wine merchants, Liverpool, so far as regards Davidson, July 1.—**Jeffrey, R.** and **Horne, R.** retail house decorators, Gracechurch-st. July 1, 1841.—**Jeffrey, W.** and **Bathurst, R.** attorneys, Faversham, July 6.—**Jennings, F.** and **Daines, J.** nurserymen, South Lambeth, July 6. Debts paid by Jennings.—**Lawrence, J. P.** and **Cooper, J. N.** chemists, Bristol, July 1. Debts paid by Cooper.—**Lindley, W.** and **J.** cabinet makers, Brook-st. Grosvenor-square, July 4.—**Livesley, W.** and **Little, J.** cotton spinners, Heaton Norris, July 4. Debts paid by Little.—**Lord, Alice, Lord, Alice, Lord, Ann**, and **Lord, S. A.** woollen manufacturers, Rosendale, June 24. Debts paid by S. A. Lord.—**Paramore, M.** and **Copp, A.** attorneys, Bridgewater, June 30.—**Stocker, T.** and **E.** soda water manufacturers, St. Ives, July 6. Debts paid by T. Stocker.—**Tigar, P.** and **Champany, R.** paint manufacturers, Hull, January 1.—**Ward, J. Colbourne, W.** and **Gillett, J.** agricultural implement makers, Stratford-upon-Avon, so far as regards Ward, June 30. Debts paid by the remaining partners.—**Yates, T.** and **Mingaud, E.** estate agents, Liverpool, June 1.

Gazette, July 10.

Anderson, A. Dallas, A. and Campbell, W. (deceased) merchants, Bombay and Madras, as regards Campbell (deceased) Oct. 1845, and as regards the surviving partners, Jan. 31.—**Bainforth, J. T.** and **W. Barracough, J.** and **Vickers, W.** and **J.** iron masters, Ardwick, July 1. Debts paid by Barracough and Messrs. Vickers.—**Benash, M.** and **Benbury, J. C.** wholesale milliners, Addle-st. July 7.—**Bickerton, R. F.** and **Satchell, T. H.** hatters, Liverpool, July 6. Debts paid by Satchell.—**Bruce, R. Wadham, T. jun.** and **Soper, J.** jun. commission merchants, Bristol, June 30. Debts paid by Bruce.—**Collard, J.** and **Mears, E. H.** statuaries, Greenwich, July 7. Debts paid by Mears.—**Coltwell, E.** and **Kemp, G.** drapers, Warwick, July 3.—**Daniell, E.** and **Leung, A. L.** attorneys, Colchester, July 1.—**Dewes, G.** and **Marsden, J.** Horbury, and **Westerman, N.** spinners, Leicester, May 29.—**Evans, J. W.** and **A.** cotton spinners, Chipping, June 30.—**Frost, J. G.** and **Neppier, J. C.** Manchester, July 8.—**Gregory, W.** and **Morgan, A.** oilmen, Tabernacle-sq. July 4. Debts paid by Gregory.—**Hine, J.** and **Shields, T.** plumbers, Manchester, July 8.—**Ingham, T.** and **Bramwell, J. R.** surgeons, North Shields, April 15.—**Ingram, H.** Hickling, T. and **Cooke, H.** lace manufacturers, Nottingham, July 9.—**Jones, G.** Cooke, H. and **Green, T.** stock agents, Old Broad-st. July 3.—**Prentice, T.** Kenball, H. and **Squirrel, R.** jun. Ipswich, Sudbury, and Stowmarket, and Mistley and Colchester, June 30.—**Ransom, H.** and **Gardiner, T.** linen drapers, Hedgerow, Islington, July 3.—**Stringer, J. Mann, W.** and **Smith, B.** sawyers, Liverpool, July 1.—**Syer, R.** and **Peck, G.** painters, Liverpool, June 30.—**Tanner, J.** and **Eales, E. H.** saddlers, Shrewsbury, Feb. 1.—**Turner, J. R.** and **T. stone** delvers, Halifax, July 3. Debts paid by J. Turner.—**Waites, J. G.** and **W.** twine manufacturers, Wakefield, July 7. Debts paid by G. and W. Waites.

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, July 7.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Cooper, H. paymaster, Rochester, July 30, at eleven.—**Davis, J.** compositor, Charlotte-st. West, Chalk-rd. July 13, at twelve.—**Gingell, G.** beer-shop keeper, Chatham, July 16, at eleven.—**Hughes, W. P.** out of business, Park-lane, Liverpool-road, July 23, at eleven.—**Larkin, W. J.** boot maker, Hayfield-place, Mile-end-road, July 13, at twelve.—**Lower, J.** cook, Charlotte-st. Portland-pl. July 11, at one.—**Pearce, F. H.** painter, Clapham, July 23, at eleven.—**Scaplehorn, J.** out of business, Cambridge, July 23, at eleven.—**Spalding, J. E.** gent. Albemarle-st. July 14, at three.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, July 10.

Carriere, J. hair dresser, John-st. Berkeley-sq. July 15, at eleven.—**Chalk, T.** late livery stable keeper, Lewisham, Aug. 6, at half-past eleven.—**Compstone, J.** traveller to wine merchants, Trinity-sq. Tower-hill, July 27, at eleven.—**Farley, T. H.** clerk, Richmond-st. Walworth, July 10, at eleven.—**Farmilo, T. C.** plasterer, Graham-st. West, Pimlico, July 15, at half-past eleven.—**Holmes, J. B.** out of business, Union-st. Spitalfields, Aug. 6, at eleven.—**Hooper, J.** pocket book maker, Bridgeport-pl. New North-road, July 27, at eleven.—**Jones, T. R.** comedian and draper, Albert-place, Shepherd's-walk, City-road, Aug. 6, at eleven.—**Lang-caster, H.** artist, Havestock-hill, July 27, at eleven.—**Lef-ton, E. R.** out of business, Beale, July 16, at twelve.—**Marshall, G.** clerk, Wisbeach, July 27, at eleven.—**Purcell, A.** general shopkeeper, Land of Promise, High-st. Hoxton, Aug. 6, at eleven.—**Scovell, W.** plasterer, Colchester, July 27, at twelve.—**Thomson, C.** clerk, George-st. Minorities, Aug. 6, at eleven.—**Waterfield, S.** dealer in straw plait, Dunstable, July 15, at half-past eleven.—**Weston, J.** carpenter, Tucker's-pl. St. John's Wood, July 13, at one.

PETITIONS TO BE HEARD IN THE COUNTRY.

Atkinson, B. joiner, Leeds, July 16, at half-past eleven, Leeds.—**Bates, H.** victualler, Walsall, July 11, at eleven, Birmingham.—**Butterwick, G.** painter, Newcastle, Aug. 7, at twelve, Newcastle.—**Carrodus, R.** beer seller, Bradford, July 14, at eleven, Leeds.—**Crocker, E. N.** carpenter, Bristol, July 16, at half-past eleven, Bristol.—**Davies, T.** waterman and beer-house keeper, Monmouth, July 16, at eleven, Bristol.—**Dicks, C.** victualler and farmer, Swanses and Ostermouth, July 27, at eleven, Bristol.—**Dixon, J.** machine maker, Lincoln, July 15, at eleven, Hull.—**Harris, H. C.** laceman, Liverpool, July 17, at eleven, Liverpool.—**Hughes, C.** tailor, Cheltenham, July 17, at half-past one, Bristol.—**Jones, S.** grocer, Cerrig-druidion, July 17, at eleven, Liverpool.—**Moore, M.** jun. bricklayer, Alfreton, July 24, at twelve, Manchester.—**Parker, C.** civil engineer, Cursitor-st. July 11, at eleven.—**Prain, W.** printer, Tipton, July 22, at twelve, Birmingham.—**Shepherd, T.** late chemist, Swansea, July 27, at eleven, Birmingham.—**Soury, S.** tailor, Wakefield, July 16, at eleven, Leeds.—**Sutcliffe, J.** overlooker, Halifax, July 14, at eleven, Leeds.—**Taylor, J.** miller, Nottingham, July 17, at ten, Birmingham.—**Thomson, R. H.** bookkeeper, Liverpool, July 17, at eleven, Liverpool.—**Wilkinson, G.** shuttle maker, Barnsley, July 14, at eleven, Leeds.

From the Gazette of Friday, July 17.

Bankrupts.

Kempson, D. mattress-maker, Bermondsey-street.
Easton, R. H. rope-maker, Commercial-road, East.
Stepney.—**Beastad**, J. hosier, Fleet-street.—**Boult**, E. grocer, Isleworth.—**Hodges**, E. wine-merchant, Circus-street, Marylebone.—**Hunt**, W. printer, High-street, Marylebone.—**Gravem**, C. W. merchant, King's Arms-yard, Coleman-street.—**Broad**, W. H. maltster, Stourport.—**Cook**, R. surgeon, Gainsborough, Lincolnshire.—**Hodson**, R. ironmonger, Everton, Nottinghamshire.—**Hanks**, E. grocer, Leeds.—**Seyton**, J. farmer, Prickley cum Clayton, Yorkshire.—**Priestly**, E. grocer, Manchester.—**Lawrence**, J. coal-merchant, Butler.

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Tuesday, July 7.

HEMING V. DINGWALL.

Practice—Dismissal of bill for want of prosecution—114th order of May, 1845—Due diligence—Costs. Where it appears that the plaintiff has been diligent in prosecuting his suit during the latter portion of the time which has elapsed since filing the bill, and that the defendant cannot be delayed by giving the plaintiff leave to proceed with his suit, notwithstanding a slip in practice, which, in strictness, would entitle the defendant to have the bill dismissed, the plaintiff will be allowed to proceed upon the terms of paying all the costs incurred through his error.

This was a motion by way of appeal from an order of the Vice-Chancellor of England refusing the application of the plaintiff to enlarge the time to pass publication.

Willcocks, for the motion.—Publication had passed on the 14th of February, 1846; and on the 19th of February, the plaintiff gave notice of motion to enlarge publication, upon the ground that the solicitor had made a slip, from supposing that the calculation of time was to be made by calendar and not by lunar months, and also that the proceedings had in part been taken under the old practice. The solicitor's clerk stated by affidavit that he had been constantly and assiduously employed in prosecuting the suit; and that, having twelve witnesses to examine, he found no appointment could be made with the examiner before the 16th of March, and that no intention of delay existed. By the old rules of practice, publication would not have passed. The bill was filed by the executors of the late Mr. M'William, to restrain the defendant from prosecuting an action he had commenced against the plaintiffs to recover the sum of 13,000*l.* claimed to have been due from the testator to the defendant as a master builder. The bill alleged that the defendant was the mere servant of the late Mr. M'William, at a weekly salary, and sought an account and discovery of all transactions between them. The replication in the cause had been filed in June 1846, under the old orders. There had been found to be a difficulty in such cases under the new orders, which came into operation on the 28th of October, 1845, and the Court had directed new replication to be filed. Upon the appeal motion, a new affidavit had been filed, setting forth day by day what steps had been taken in the prosecution of the suit. The only effect of dismissing the present bill would be to compel the plaintiff to file a new bill. No time had been lost, for the motion had been heard before the Vice-Chancellor on the 25th of March, and the petition of appeal was presented on the 27th of March.

Romilly and Southgate opposed the motion.—They contended the case was not one for indulgence. The mistake by the plaintiff's solicitor in the practice of the court, by calculating lunar for calendar months, afforded no reason why the Court should interpose. Practitioners were bound to be acquainted with the

practice of the Court. By the 12th Order of May 1845, it was expressly provided that, "when the time for doing any act or taking any proceeding is limited by months not expressed to be calendar months, such time is to be computed by lunar months of twenty-eight days each." The answer of the defendant had been put in on the 10th of August, 1844, and on the 18th of December following the common injunction was dissolved, and no material step had been taken by the plaintiff till the 20th of December, 1845. Then he began to proceed actively, but great part of the subsequent time had been occupied by the plaintiff in examining the books, accounts, and papers produced by the defendant. These papers had all been scheduled to the defendant's answer, and the plaintiff might, at any time during the twelve months he allowed the suit to rest, have obtained production of them. The plaintiff's case, if true, was good as a defence at law, and in truth the great part of the time stated by the plaintiff to have been occupied in preparing evidence was with reference to the defence of the action.

The LORD CHANCELLOR.—I pay no attention to the apology for delay offered by the plaintiff, that his solicitor mistook the practice, and calculated the time by calendar instead of lunar months. It is the duty of solicitors to know what is the practice of the Court; and I wish the profession to understand, that whatever may be the consequence to their clients, an error in practice can furnish no claim to the indulgence of the Court. But what I go upon in this case is, that it does appear that there has been an accidental slip or error, and that the plaintiff has exercised all proper diligence during the latter part of the time in which this suit has been pending. Then, having regard to the period of the year, it does appear that the defendant could not possibly get rid of the suit sooner. Solicitors must not speculate upon indulgence in consequence of slips in practice, although, under the peculiar circumstances of this case, the indulgence will be granted on the terms of the plaintiff paying the costs of the motion; the publication to be enlarged to the first day of Michaelmas Term.

Romilly asked that the plaintiff should be required to pay the costs of a motion by the defendant to dismiss the bill for want of prosecution now pending before the Vice-Chancellor.

Willcocks.—That is not now before the Court; the question of the costs of that motion must be left to the Vice-Chancellor.

The LORD CHANCELLOR.—The defendant's notice of motion to dismiss the bill for want of prosecution was given on the 27th of February. Defendant was not bound to wait the result of this appeal; the plaintiff's motion had been refused by the Vice-Chancellor. The plaintiff should indemnify the defendant against all costs which have arisen from the plaintiff's error. I make the payment of the costs of the pending motion a condition of the present order. There will be but one order.

Order reversed.

HARDY V. HARDY.

Practice—Dismissal of bill not ordered where suit kept in abeyance upon a mutual understanding between the plaintiff and the principal defendant.

Time allowed by the plaintiff's solicitor to communicate with his client in a distant part of the world, when the defendant, in violation of the understanding, had moved to dismiss the bill for want of prosecution.

Fooks moved to discharge an order made by the Vice-Chancellor of England, by which the plaintiff was required to file a replication within a week, or otherwise that his bill should be dismissed, that the plaintiff should be at liberty to proceed with the cause, and that the costs of the motions should be costs in the cause.

The bill was filed in 1842 by the tenant in tail in remainder against his father, who was tenant for life in possession. The object of the suit was to get the title-deeds into court, for an account of wood sold by the defendant, and to have the produce invested according to the terms of the settlement. After the answer had been put in, and some of the requirements of the bill had been complied with by the father, certain explanations took place between the father and son, and it was felt not to be desirable to prosecute the suit, and it was understood that no further proceedings should be had therein on either side. The son, the plaintiff, then went to New Zealand, without leaving any instructions with his solicitor, or otherwise communicating with him save by a letter dated on shipboard off Gravesend, informing him of his intended departure. The plaintiff now remains in New Zealand. In Feb. 1845, the defendant, the father, moved to dismiss the bill for want of prosecution, and on the affidavit of plaintiff's solicitor to the effect above mentioned, the Vice-Chancellor allowed the motion to stand over for a year, to give him an opportunity of communicating with his client. In Feb. 1846, the defendant renewed the motion, and the Vice-Chancellor then made the order now sought to be discharged. The new orders direct only one replication to be filed, and here the answers of several defendants had not been got in. It was impossible to comply with the Vice-Chancellor's order. The suit was rendered necessary by the father's misconduct,

and then the father having done great part of what was asked for by the bill, the suit was suspended.

The LORD CHANCELLOR.—As you state the matter, the suit may never be disposed of.

Fooks.—The plaintiff's solicitor has now received instructions from his client to prosecute the suit, and it will be proceeded with without delay.

The LORD CHANCELLOR.—Your apology for the delay is, that in consequence of that understanding the suit was abandoned.

Fooks.—Yes. The defendant cannot proceed in violation of the arrangement he had assented to. (*Blandhard v. Drew*, 10 Sim. 240; *Stagg v. —*, 3 Harv's Reports, .)

Baily, for the defendant, offered that the bill should be dismissed without costs.

Fooks.—The plaintiff's solicitor has no authority to make such an arrangement; besides, the suit was again necessary, as the defendant was still improperly disposing of wood on the estate.

Baily.—It is useless to carry on the suit.

The LORD CHANCELLOR.—I cannot now enter into that; I cannot judge of the merits of the case. The case put by the plaintiff's counsel is, that the matter stood over on an understanding, and that the defendant took advantage of the plaintiff's absence, and moved to dismiss the bill for want of prosecution.

Baily.—Why should the defendant be kept before the Court for ever? The time elapsed was wholly unaccounted for by the plaintiff, and he was only entitled to the strict course of practice, which, under the new orders, was to require the plaintiff to file a replication within a week. The notice of motion goes to leave to amend; but it is now settled that application for that purpose must in the first instance be made to the Master.

The LORD CHANCELLOR.—What I want explained is, whether the defendant misled the plaintiff so as to prevent him from proceeding with activity. He knew the plaintiff had gone to New Zealand; and the several arrangements which took place sufficiently explain why the suit was not proceeded with. An arrangement having been made with the principal defendant, the plaintiff did not proceed to get in the answers of the other defendants. I don't see that the defendant sufficiently explains that. Something was done which disarmed the plaintiff.

Baily.—Nothing has been done since the defendant's answer was put in.

The LORD CHANCELLOR (after looking at the affidavit of the plaintiff's solicitor).—This affidavit was made on the application to the Vice-Chancellor, and there has been no other affidavit filed. The solicitor has received a communication, which is, that he is simply to go on with the suit. The affidavit merely says, that the solicitor had no instructions, the Vice-Chancellor yielded to that, and allowed the motion to stand over for a year.

Fooks, in reply.—The defendant's renewed misconduct has rendered it necessary that the suit should go on.

The LORD CHANCELLOR.—There is nothing to shew that there has been any delay since the plaintiff's solicitor has received a communication from his client. The Vice-Chancellor's order is, that the plaintiff reply within a week; that is impossible, and is tantamount to an immediate dismissal of the bill. There is reason to suspect, from the affidavit, that there is not much of substance left to be done in the suit, but there is nothing to prevent the suit from being put in a position to be prosecuted. The plaintiff must undertake to get in the answers and file a replication by the first day of Michaelmas Term. The plaintiff had to ask for an indulgence, and must pay the costs of the appeal. The costs before the Vice-Chancellor must be costs in the cause.

BUSINESS OF THE WEEK.

Wednesday, July 22.

The LORD CHANCELLOR stated, that, as the practice of not sitting after July had been established by his predecessor, he would, for this year, not sit later than the 31st of July; but that, in future, the period of sitting would depend upon the state of the business of the Court. His Lordship stated, that after all motions and petitions had been disposed of, he should proceed with the causes until the rising of the Court on the 31st of July instant.

VICE-CHANCELLOR KNIGHT
BRUCE'S COURT.

June 24, 25, 26, and July 11.

ATTORNEY-GENERAL V. PEARSON.

Parish officers—Application of parish funds. Where parish officers had placed an alleged lunatic pauper in the workhouse under circumstances which, in the opinion of the Court, justified their interference, and a verdict with damages had subsequently been obtained against them in an action for false imprisonment, and the damages and costs had been charged against the parish, and the accounts had been allowed in open ventry, the Court, under all the circumstances of the case, dismissed, without costs, an information filed against the officers upon the relation of two of the ratepayers, seeking to

charge the officers personally with the damages and costs in the action.

This was an information filed by Mr. Rae and Mr. Thain against the defendants, who were nine of the trustees elected by virtue of the 5th Geo. 4, c. 125—a local Act for the administration of the affairs of the parish of Islington—and Mr. Oldershaw, the clerk to the trustees. The object of the information was to charge the defendants with a breach of trust in applying the sum of 898*l.* 19*s.* 7*d.* out of the fund appropriated for the poor, in payment of the damages and costs of two actions brought in the Court of Common Pleas by James Eliot, who had been confined in the Islington workhouse as an alleged lunatic pauper. The following is an outline of the case:—On the 28th of November, 1842, Mr. Oldershaw received a letter from the clerk of Mr. Greenwood, the police magistrate, requesting his immediate attendance to the case of Eliot, stating that he was decidedly insane, and that Mr. Greenwood considered it a fit case for parochial interference. Mr. Oldershaw forwarded directions to Mr. Hicks, the relieving officer, to inquire into the case. Mr. Hicks having reported that the statements contained in the above-mentioned letter were correct, an order was made out for Eliot's admission into the workhouse. On the following day, Mr. Oldershaw directed a person in the employ of the parish to make further inquiries into Eliot's condition and circumstances, and to take him without violence to the workhouse. This person, accompanied by a man named Bevan took charge of Eliot and his furniture, and, it appearing to them necessary, a straight-waistcoat was obtained from the workhouse, and, after placing it on Eliot, they conveyed him there in a cab. The waistcoat was not removed until the following morning, when it was done by the order of the medical officer. At the end of the week, Eliot was released from the workhouse, and he afterwards brought an action for false imprisonment against three of the trustees, and other persons concerned in taking him to the workhouse, and also an action against Mr. Oldershaw, for having his goods removed from his house to the workhouse. The first action was tried before Chief Justice Tindal, on the 10th of May, 1844, when the jury found a verdict for the plaintiff, with 400*l.* damages. Upon a motion for a new trial, the Court, by consent, reduced the damages to 200*l.*, and a *stet processus* was entered in the second action. Mr. Oldershaw had been directed by the trustees to defend both actions, subject to the control of the committee for general purposes. The payment of these damages and costs was afterwards allowed in open vestry.

An objection was first taken by the defendants for want of parties, there being only nine of the trustees (who were sixty in number), made defendants, but the Court held, that, according to Lord Langdale's construction of the 32nd Order of August, 1841, the objection was not valid.

Simpkinson, Russell, and Skipwith, for the relators.
Swanston and Rogers, for the trustees.

Wigram and Warren, for Mr. Oldershaw.

The following cases were cited: *Re: The Inhabitants of Essex*, 4 Term Rep. 591; *Re: The Commissioners of Sewers for the Tower Hamlets*, 1 B. & Ad. 232; *Attorney-General v. Mayor of Norwich*, 2 Myl. & Cr. 406; *Cook v. Leonard*, 6 B. & C. 351; *Langford v. Wood*, 7 Man. & Gr. 625; *Attorney-General v. Compton*, 1 Y. & C. C. 417; and *Attorney-General v. the Corporation of Exeter*, 2 Russ. 45.

THE VICE-CHANCELLOR.—The information in this case is filed against certain persons, who, with others, were, during the years 1842, 1844, and 1845, or part of that period, concerned in the administration of the parish affairs of Islington, imputing to them a breach of trust in respect of the payment out of the parish funds of two sums of money for the damages and costs on each side in one action, and the costs on one side in the other action; which two actions were brought, in the year 1843, against various of the present trustees by one Eliot, who, in the year 1842, was an inhabitant of the parish, and who appears to have been a person connected with the legal profession, from having been a clerk in the office of a highly respectable solicitor. The answer of the defendants has not been read, and I do not consider it is evidence; but it is right, nevertheless, towards all parties on this record, to be aware and to take notice of the manner in which the defendants state their case on it, so far as relates to the origin of, and bringing, these actions. [His Honour here read the greater part of the defendants' answers, giving a complete history of their proceedings with regard to Eliot.] It has been contended that the suit is defective for want of parties; but as I stated at the close of the argument, having regard to the construction which the 32nd Order of August 1841 has received from one of the judges who signed those orders, it appeared to me then, and I still think, that to treat the suit as defective would be improper; and perhaps, independently of that learned judge's view, I should have come to the same conclusion, though I cannot say that on that point I am perfectly confident. Considering, therefore, that the suit is properly constituted, I do not think it would be right to refuse relief on the ground that the parties pro-

ceeded by information, and by information only. I do not think that I am bound to consider the judgment in the case of *Eliot v. Allen*, or in the other case, either independently of the consent to the rule by which the amount of damages was diminished, or upon the ground and with the aid of that rule, as being for the purposes of the present suit, evidence of the truth of any parts of the facts alleged in the declaration in that action, or of the untruth of the pleas pleaded in it. This question is of course distinct altogether from that of the effect of the judgment, or the rule, or either of them, as between Eliot on the one hand, and the defendants in the action on the other. I am of opinion that it would be equally contrary to principle and authority to say, that in this suit, and for the purposes of this suit, it ought, either on the ground of the judgment or of the rule, to be assumed and taken even *prima facie* that any fact whatsoever necessary to be proved, in order to sustain that action, had happened or existed. The legal record proves, that upon certain pleadings there was a trial between certain parties; that upon that trial a verdict for the plaintiff had been found, with 400*l.* damages, reduced afterwards by consent to 200*l.*, and that there was judgment accordingly, the costs following the result; but it does not prove the truth of the plaintiff's case for any purposes of the present suit, a suit in which Eliot's rights are not concerned, and with which he has nothing to do, unless so far as from his being, or his having been, a rated inhabitant of the parish, he might, merely as one of the general mass of persons so circumstanced, be said to have some interest; but, of course, when he sued at law, it was in a different right, and in a different character. If the Attorney-General had tendered in evidence what a witness who had been examined and cross-examined at the trial had sworn, for the purpose of proving, not merely that the witness had so sworn, but the fact to which he had sworn, the evidence would not, I apprehend, have been received as evidence of that fact in the present suit. This remark, I think it right to add, although in truth the Court knows little or nothing of the action, except from the charge of the honoured and venerated Chief Justice of the Common Pleas, whose recent loss the whole country with one mind now deplores;—that charge, by consent, has been added to the papers, not to prove any fact, except the mere circumstance that his Lordship did so charge the jury. The counsel for the information appeared to rely considerably upon the consent to reduce the damages to 200*l.*, which of course conceded to Eliot damages to that amount. I think that consent, under the circumstances, is not material. The verdict was not given by consent; its propriety has been disputed by the defendants at law; the rule placed Eliot in a worse position than if the verdict had been untouched. I think myself bound to consider neither the judgment, nor the rule, nor the learned judge's charge, as evidence of the justice or propriety of the action. The nature and effects of the information being such as I have stated, and such being the issues raised by the defendants, I must look for evidence on which to decide it; to the evidence in this particular case alone. Supposing my view in this respect to be correct, how stands the case with respect to Eliot? This part of the case is divisible into three portions in respect of time: the first relating to the interval between the 26th of November, 1842, and his being brought to the workhouse; the second relating to his stay there; and the third, his transit from the workhouse to the court of the police magistrate, and the proceedings there. The acts done during each of those periods, and on each of those occasions cannot, as it appears to be, be justly estimated without due consideration of certain points, which I will proceed to mention, with the view I take of them. First, as to Eliot's apparent state of mind. Upon a careful consideration of the evidence before me, I am satisfied from his language, demeanour, and conduct before and upon the 28th of November, 1842, and on former occasions, and in the interval between that day and the time of his liberation (if that is a correct expression) at the police court on the 6th of the following December, that he was during the whole of that interval, reasonably to be inferred and believed to be in a state of insanity, and likely, if unwatched and unrestrained, to do serious mischief, and unfit, as well on his own account as for the sake of others, to be left unwatched and unrestrained. The next point is as to his means at the time, and I am satisfied, from the situation he was in, and the circumstances in which he was at the time of his reception in the workhouse, and during the whole of his stay there, there was just reason to infer and believe that he was in a state of poverty and destitution; in such a state of poverty and destitution as would render him a proper object of parish relief as a pauper, in the form and manner in which the law then allowed parish relief to be administered to paupers. And as to the order for his admission into the workhouse, it is I think reasonable and unavoidable upon the evidence before me, and I believe and think, that it was granted and issued without any unlawful or improper intention whatever, but on the contrary, that the act of granting and using the order was not merely lawful and proper, but commendable. Having stated thus

much, I must address myself more particularly to the first period of time which I have mentioned, and with respect to that period I am satisfied that neither the trustees nor any one of their number, neither Mr. Oldershaw, Mr. Semple, or Mr. Hicks, directed or authorised, or in any sense participated in the act of placing Eliot under restraint for the purpose of removing him to the workhouse, or the act of carrying him to the workhouse; and I am of opinion that I am not bound judicially to believe that Ellis, the master of the workhouse, directed or authorised, or was in any sense a participator in any of those acts. If my view is correct, can it be said in the present case that, had Eliot not been admitted into the workhouse, the trustees, or any one of them, or either of the four persons whose names I have mentioned, could have been properly punished or sued by Eliot, whether sane or insane, unless it were for not admitting him? I exclude for the present all consideration of the question as to Eliot's household goods and apparel. But was it correct to admit him? That question must be answered in the affirmative, and, on the evidence, it was, in my judgment, reasonable and right to receive him into the workhouse on that occasion: his detention there is quite a different matter. Next, as to his stay in the workhouse; I do not believe he was treated there with either inhumanity or neglect, except such neglect as I believe was shown by permitting him the too free use of his hands. He was only 18 or 19 hours in the straight-waistcoat at the most; and it may reasonably be supposed to be a matter of some difficulty and delicacy to decide, without the presence of a medical man, as to the propriety of freeing him from restraint. Whether the continuance of that restraint, or rather his detention in the workhouse, was not strictly justifiable towards him in point of law, is a question on which my mind is perhaps not fully satisfied; but I am of opinion that the whole of these proceedings were taken from the most proper motives on the part of those who were instrumental in the matter, and who acted upon grounds which were reasonable in themselves, and who believed that they were required by law and the discharge of their duty so to act. But, however the case may stand with regard to the other defendants, I am entirely at a loss to conceive how it can be imagined that Mr. Semple had any thing to do with the matter. Mr. Hicks was not an inmate of the house, and had nothing to do with its management. With regard to Eliot's removal from the workhouse to the court of the police magistrate, some observations are applicable; but as I have already mentioned that subject, I shall not repeat them now. Judging, therefore, from the materials in this case, I cannot help doubting whether the action of *Eliot v. Allen* ought to have been brought; nor can I help thinking that the damages given by the jury were prodigious. In the case *Eliot v. Oldershaw*, the action was never tried. That action was brought by Eliot, in consequence of the removal of certain goods and wearing apparel belonging to the plaintiff from his house to the workhouse after he had been placed there. Now, that was an act, if not strictly justifiable, evidently done *bona fide*—an act which a man in Mr. Oldershaw's position would have thought it his duty to do under the particular circumstances of the case. It appears to me that the two actions, connected as the subjects of them were, fell properly under the same consideration. It has not been shown that Mr. Oldershaw acted unskillfully in either of those actions. The event of one action was very adverse, but it is not always right to judge by events, and I do not find that respectable attorneys guarantee verdicts. The resolution of the board was in favour of the defence of the actions, and that resolution was, in my opinion, reasonable and just, and, if it be not superfluous to add, I will say right. That resolution was followed by resolutions of competent parties, that the damages and costs should be paid, and they were paid accordingly. [All these several resolutions his Honour then read.] The object of the information being to compel Mr. Oldershaw and the other defendants to refund respectively, for the benefit of the parish, the sums which have thus been paid out of the parish rates, the question is, whether it is the duty of the Court to enforce that claim. The information was filed on the 3rd of September, 1845, but before that day two vestry meetings had been held, one on the 25th of March, the other on the 6th of June, at neither of which had the rates, out of which these costs and damages had been paid, been disallowed or repealed. Both upon the general law applicable to rates and overseers' accounts, and the 25th section of the Local Act, I am of opinion that it would be an erroneous construction of the general law and of that section, not to provide for damages paid to the plaintiff as well as the costs of the defendants. It is plain that Mr. Oldershaw acted as the officer of the trustees, who adopted his acts. Persons in the official situation of the trustees of their parish have public functions to execute, in the performance of which society is greatly interested. Those functions are frequently not free from difficulty. A great number of ill-judged persons are necessarily placed under their charge, of

whom they have to take care as well in sickness as in health, and in the discharge of those extensive functions the public have a right to expect from them prudent and proper conduct. Among the great number of persons placed by law under their care, and who must necessarily be subjected to some control, all must be liable to diseases of some kind—to disease from which neither rich nor poor are exempt: among these there may often be, and often is, the fearful calamity of madness—a disease of varying and uncertain symptoms, with respect to which any carelessness may lead to painful, to the most lamentable, consequences. The authority to be exercised in cases of this description presents the parties—to borrow a word from Lord Ellenborough—with a “hazardous alternative.” But what are parties in the position of these trustees to do? What is to be done by public officers in a case where the existence of this malady is suspected? If he were treated erroneously, he might, if insane, commit enormous and fatal extravagances for which, not he, but those who should have restrained him, would be amenable. The protection of men having to perform, and to the best of their judgment meaning to perform, a public duty under such circumstances, whether as principals or agents, ought not to be considered a matter of slight consideration, and ought to be the subject of provision by law as careful and complete as may be consistent with the rights of individuals who complain of being improperly treated. On these principles, I believe the acts of the defendants ought to be interpreted and considered. What I have now said will suffice to dispose of the case. It has been contended that relief must be granted against the defendants, if the case of the *Attorney-General v. Compton*, decided by me in 1842, was rightly decided. I have read the report of that case, and I wish to say that I am not certain whether I expressed myself exactly as the report shows that I am considered to have expressed myself; very probably I did so; but assuming that I did so, it appears to me that my decision in that case, and my decision in the present case, are perfectly compatible. The correctness of the case alluded to has not, indeed, been questioned at the bar, a circumstance fairly deserving attention, as may be also the fact that the defendant's counsel in that case declined stating a case for the opinion of a court of law, which I understood was declined after deliberation. The decree has not been appealed from. Whether, however, it is correct, both legally and equitably, is probably a question reasonably open to argument and to difference of opinion—a question not free from difficulty upon grounds including the fact that, as I believe, a rate had been made upon the foundation of estimates comprising a disputed payment, and had not been quashed, amended, or altered. I am not, however, by any means convinced that the decree was erroneous; nor, assuming its perfect correctness, does it, as I conceive, rule or govern the present case. I think the present information ought to be dismissed. I dismiss it, because I think the acts of which complaint has been made, were acts which, whether wholly legal or wholly illegal, or in part legal, and in part illegal, ought to be considered as the acts of the trustees of the parish of Islington in that capacity, and ought on the evidence to be considered as acts done, *bona fide*, without any wrong intended, either on the part of themselves, their agents, or their servants. I believe, on the contrary, that they have all acted with the best intentions; I believe that they acted justly, and in the execution of the duties which they considered incumbent upon them, under the local Act. I believe that they have acted with judgment, diligence, and honesty. Upon the question of the costs of the suit, I have doubted much; but upon the ground, mainly, if not solely, that the verdict in the action of *Eliot v. Allen*, and the result of the proceedings at law, created probably against the conduct of the trustees and their officers, an impression, which though in my judgment erroneous, I cannot consider as not excusable, I have determined to dismiss the information without costs; if the relators will consent that if, in the event of an appeal, the Court of Appeal shall deem it just to dismiss the information with costs, they will not bring a cross appeal. Whatever may be the fate of this information, in the Court of Chancery, or the House of Lords, I trust that there may be found, in this opulent parish, the will to indemnify, and, consistently with the law, the means of indemnifying the defendants from the expense of the suit out of its public funds.

Sir F. Simpsonson, on behalf of the relators, stated that they were willing to give the undertaking suggested by the Court, and the information was accordingly dismissed without costs.

VICE-CHANCELLOR WIGHAM'S COURT.

Thursday, July 9.

WEATHERBY v. ST. GEORGIO.

Alien—Probate duty—Legacy duty.

Legacy duty is not payable upon property in this country belonging to an alien when he is domiciled

abroad at the time of his death, and by his will bequeaths his English property to alien legatees residing abroad.

Probate duty is payable upon property of an alien in England, notwithstanding he may have died abroad and bequeathed the property to alien legatees.

This was a suit for the administration of the estate of a testator named John St. Georgio, under a decree of the Court. The testator, who was an Italian by birth, made his will, and appointed the plaintiff his executor of his estate and effects in England, and other persons executors of his estate and effects in Italy, and, after directing all his debts to be paid in England, he directed the plaintiff to transmit all the residue of his property in England to his executors in Italy, to be distributed with his other property there amongst certain legatees named in his will. The usual references were made to the Master to take the account and state special circumstances; the Master made his report, and, amongst other things, found that the testator was resident and domiciled at Monza, near Milan, in Italy, at the time of his death, and that the parties entitled to have the residue distributed amongst them were also resident in, and natives of, Italy. The cause now came on upon further directions, and one of the points raised was, whether both probate and legacy duty were payable in respect to the residuary estate transmitted from this country to Italy.

Kenyon, Parker, Tinney, Walker, and Rogers, appeared for the several parties.

The VICE-CHANCELLOR.—It being necessary to prove the will here for the purpose of collecting the estate, the residue in question is clearly liable to probate duty, but no legacy duty is payable upon that which is transmitted to Italy for distribution.

Friday, July 10.

HUNTER v. NOCKHOLDS.

Practice—Demurrer—Answer—Orders, 26th August, 1841—Exceptions.

Where a defendant, by his answer, makes a defence, which would support a demurrer to the discovery sought by the bill, and asks the same benefit of his defence, as if he had taken it by demurrer, he may decline to give the discovery sought.

The plaintiff in this suit, who is a creditor of Sir Francis Vincent, bart. filed this bill against the defendant Nockholds, Sir Francis Vincent, and others, and prayed, amongst other matters, an account of property which had been mortgaged, and also of other incumbrances charged thereupon, and an injunction to restrain Nockholds (who was the receiver of the rents) from paying any moneys which might have come to or remain in his hands since the year 1835, in respect of such rent, or in respect of timber sold without the order of the Court, and to restrain him from receiving any more of the rent, or cutting down any more timber, without the order of the Court.

The defendant Nockholds, by his answer, denied the existence of a certain alleged arrangement set out in the bill, and claimed the same benefit as if he had demurred, and declined to give discovery to the matter mentioned in the bill previous to the year 1843; the plaintiff took exceptions to the answer, and they were allowed by the Master; the defendant excepted to the Master's report, which were argued by

Romilly and Southgate, for the plaintiff; Schomberg, for the defendant.

The VICE-CHANCELLOR.—I consider this bill is demurrable; in *Adams v. Fisher*, 3 Mylne and Craig, 549, the Lord Chancellor decided that where a defendant denies the plaintiff's title, he has stated on the record that which, as long as it stands, protects him from giving the plaintiff the discovery he seeks; formerly, a defendant must have answered fully, but under the orders of August, 1841, more indulgence is allowed; and under the twenty-eighth of those orders, a defendant is at liberty, by answer, to decline answering any interrogatory or part of an interrogatory, from answering which he might have protected himself by demurrer, and he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill from which he might have protected himself by demurrer. Now, supposing I was right in the construction I put upon this order, in the case of *Kay v. Wall*, 9 Jurist, 128, where the defendant having answered some of the interrogatories, took objection for want of parties, and claimed the same benefit of his objection, as if he had demurred, and declined to make further answer, exceptions were taken to his answer, and allowed by the Master; the defendant excepted to the Master's report, and being of opinion that the bill was demurrable, on the ground stated in the answer, I allowed the exception to the Master's report. The objection there taken was want of parties; here the defendant denies the title, upon which the plaintiff seeks the discovery, and asks the same benefit as if he had demurred, and refuses to make further answer. Being of opinion that had this objection been taken by demurrer it would have been good, I must allow these exceptions to the Master's report.

Wednesday, July 15.

MORRISON v. MORRISON.

Practice—Contempt—Attachment—Arrest—Irregularity—Orders 26th August, 1841—Discharge—Action for arrest.

A party in contempt for disobedience of an order of the Court, made and served upon him previous to the 26th of August, 1841, cannot be arrested on the contempt until he is again served with the order indorsed in the form directed by the 12th Order of August, 1841.

Where a party in contempt is discharged from arrest, made under the order of the Court, on the ground of irregularity, the Court will exercise a jurisdiction, upon the facts of the case being fully laid before it, and will allow or restrain the party discharged from bringing an action at law for the arrest.

This suit related to a West India estate, of which a broker, named Wyllie, had been appointed receiver in the cause. In March, 1838, there was an order made directing Wyllie to pay a large sum of money he had received into court within four days of the service of the order. In May, 1839, Wyllie was duly served with the order, and neglected to perform it. He was afterwards made a bankrupt by other parties, and did not succeed in annulling the fiat in bankruptcy until October last. No proceedings were taken against Wyllie in consequence of his contempt in not obeying the order of the Court during the continuance of the fiat of bankruptcy. On the 7th of the present month he was taken into custody under an attachment for disobedience of the order of May, 1839.

Rolt now moved for his immediate discharge on the ground of irregularity, and contended that this proceeding should have been carried on under the old practice, as it existed before the orders of August, 1841, and therefore Wyllie was entitled to be served with another order to pay the money by a fixed day, or to stand committed; and that, even if supposed to be acting under the orders of August, 1841, Wyllie was entitled to receive a notice with the indorsement set forth in the 12th of those orders; therefore, in any case, this proceeding was irregular, and he was entitled to be discharged immediately from custody.

Tinney and Romilly, for the plaintiff, contended that the old practice before the orders of August, 1841, had been abolished; it was, therefore, impossible to proceed in that form, and that, with regard to the orders of August, 1841, the 12th order could only be held to apply to contempts committed after those orders were made; there was, therefore, no course left for the plaintiff to enforce this order but in the mode he had pursued, which was taken after careful consultation, and with the approval of the officers of the Court, and that to have served him with notice of the arrest would only have had the effect of giving him an opportunity of escape.

The VICE-CHANCELLOR.—The issue of the order and the arrest of Mr. Wyllie is altogether irregular. He ought to have been served with the order directed by the general orders of August 1841, before the order for his arrest issued. I shall, therefore, discharge him from custody, but reserve the costs.

After the above decision had been made, the plaintiff asked the protection of the Court by restraining Wyllie from bringing an action against him for the imprisonment, and contended that his undertaking not to do so ought to be made a condition of his discharge, for although it was now clear that his proceeding had been irregular, yet inasmuch as it had been taken under consultation with the officers of the Court, he was entitled to the protection he asked.

The VICE-CHANCELLOR.—I have looked into the practice of the Court on this point, and find that the Lord Chancellor would, on a proper case laid before him, assume a jurisdiction and decide whether it is proper that an action should be brought. The practice is to apply for leave to bring the action, and in one case where the party had proceeded at law without leave, the Court made him pay the costs of the action. There does not appear any reported case of the interference of the Court in a case of this sort in this country, except that of *Ex parte Vansandau*, in the first vol. of De Gex's Reports in Bankruptcy. There is another case decided by Sir Edward Sugden in Ireland, and reported under the name of *Whistler v. Aylward*, in 1 Drury's Rep. 1. That was an application to set aside an attachment which had issued against the petitioner, and under which he had been arrested, upon the ground of irregularity. The Lord Chancellor was of opinion that the execution could not be maintained, and made the following order:—"Let the petitioner, Terence Filtow, be discharged forthwith from custody under the attachment issued against him in this cause; and let the plaintiff pay the said petitioner his costs of this application when taxed; and let the Master, in taxing such costs, disallow all parts of the affidavit which do not relate to the irregularity alone of the commitment; let the petitioner be restrained from bringing an action against the parties in relation to the issuing of the said attachment, or the arrest or imprisonment thereunder." This is the only reported case in which such an order has been distinctly made; and it appears to me that the Court ought to

know very clearly all the circumstances of the case before it made such an order. In the present case I do not feel that I have all the facts sufficiently before me to make the order to restrain the action; but that the Court has jurisdiction, and exercises it when it has a proper case before it, I entertain no doubt. At present, however, I shall merely make an order to discharge the arrest with costs, and shall make no order to restrain the action at law for the arrest.

Common Law Courts.

EXCHEQUER CHAMBER.

ON ERROR FROM THE COURT OF EXCHEQUER.
(Before Lord DENMAN, C.J., PATTESON, COL-
LIDGE, COLTMAN, MAULE, and ERLE, JJ.)

WOODROFFE v. DOE dem. DANIEL.

Argued Feb. 6.—Decided June 18.

An estate being limited by marriage settlement to the use of R. W. and his wife, and the heirs of their bodies, and R. W. having died, leaving his widow and three children, viz. one son G. and two daughters L. and H. the widow by deed poll, bearing date September 13, 1735, in consideration of an annuity granted to her by her son and of natural affection, "granted, surrendered, and yielded up" the estate in question to the son in fee, and he afterwards during her life suffered a recovery. The widow died in 1767; G died without issue in 1779, having devised the estate to trustees to secure the payment of an annuity to W. the only son of his sister L. and subject thereto to B. the eldest son of W. for his life, with remainder to the plaintiff in error, his second son. In 1790, B. entered, on his father's death, into possession of the entirety of the estate, claiming under the will of G. In 1814 he suffered a recovery of one moiety, and in 1816 conveyed the entirety of the estate to mortgagees in fee. B. died in 1824 without issue, and on his death his brother, G. W. the plaintiff in error, entered into possession of the estates.—Held, 1. That the effect of the deed poll of 1735 was to pass a base fee to G. the son of R. W. and that this base fee did not merge, &c. in the reversion expectant on the determination of the estate tail created by the deed of settlement. 2. That the right of entry first accrued on the death of G. in 1779, and that the entry by B. in 1790 remitted him as to that moiety of the estate to which he derived a title as heir in tail under the settlement. 3. That as to the other moiety, viz. that to which H. was entitled, as co-heiress with L. after the death of G. the entry of B. did not work a remitter, and that to this moiety the plaintiff in error was entitled.

This was a writ of error from the judgment of the Court of Exchequer. The facts of the case are sufficiently stated in the judgment of this Court (*infra*), and will be found set forth yet more fully in the report of the proceedings in this case in the Court below. (See *Doe dem. Daniel, v. Woodroffe* 10 M. & W. 608.) The case was twice argued; the Court after the first argument directing that it should be re-argued with reference to this question, viz. whether, assuming that William Woodroffe was remitted as tenant in tail to the one moiety of the estate for the recovery whereof the ejectment was brought, the lessors of the plaintiff were shewn, by the special verdict, to be entitled to the other moiety. It has been thought necessary only to report very briefly the arguments, and to report them with reference to the point only which was suggested by the Court as proper to be re-argued, because both the facts and the law applicable to those facts have been stated at great length in the judgment, which has been fully reported below.

Humphry, for the plaintiff in error.—It may be conceded that the effect of the deed-poll of Hester Woodroffe, of 1735, was to pass a base fee to her son, George Woodroffe, the devisee, but inasmuch as George Woodroffe, the devisee, was heir-at-law of Robert Woodroffe, and, as such, entitled, under the settlement of 1710, to the reversion in fee expectant on the determination of the estates tail created by that deed, it is submitted, on behalf of the plaintiff in error, that the base fee so passed to George Woodroffe merged in the reversion to which he was entitled under the settlement. Then there was in this case no remitter to William Woodroffe, for William Woodroffe took his estate under the will of George Woodroffe, which took effect by virtue of the Statute of Uses, and could therefore have no other estate in the land than that which he had in the use. Besides, here William, having an interest under the devise in the will of George Woodroffe, the testator, must be considered to have elected to take under the will, and to have waived his claim to an estate tail. Lastly, it is submitted that the right of entry in William Woodroffe, as tenant in tail, was barred by the Statute of Limitations, and, consequently, that there could have been no remitter to him. Humphry argued at great length as to the effect of the different deeds mentioned in the special case, and especially of the recital in the recovery of 1814, which he contended was binding and conclusive on the lessors of the defendant in

error; he cited, in the course of his argument, the following authorities:—Co. Litt. 164 a, 243 b, 267 b; Litt. s. 661; Vin. Abr. Entry. F. pl. 2, and Release N. a, pl. 3; *Doe dem. Barnett v. Keen*, 7 T. R. 386; *Doe dem. Gill v. Pearson*, 6 East. 173; *Bensley v. Burdon*, 2 Sim. & Stu. 519; *Nash v. Turner*, 1 Esp. 217; 2 Smith Lead. Cas. 2nd ed. 456; *Right, on the demise of Jeffries v. Bucknell*, 2 B. & Ad. 278; *Cotterell v. Dutton*, 4 Taunt. 826; *Tolson v. Kaye*, 3 Brod. & B. 217; Fearne's Opinions in his Posthumous Works, 442, 444.

Hodgson, Q. C. for the lessors of the defendant in error.—The litigation in this case has arisen from a misapprehension as to the rights of the different parties interested at the time of executing the deed-poll of 1735. The recital in that deed, that by virtue of the settlement of 1710, Hester Woodroffe was tenant for life only, and that the remainder expectant on her death belonged to her son, George, was altogether erroneous, for George Woodroffe had at that time no estate whatever in the premises. The legal effect of the deed of 1735 was not to bar the estate tail, but to create a base fee in George Woodroffe, determinable on failure of the issue of Robert and Hester Woodroffe. (*Macbell v. Clarke*, 1 Ld. Raym. 778.) This base fee has, however, long since been determined, for on the death of Hester Woodroffe, in 1767, she left George Woodroffe her heir in tail, and the consequence of this was, that the estate tail then became vested in him in possession, subject to the estate created by the deed of 1735. Then again the entry of one coheir is, if unexplained, an entry by all the coheirs; and inasmuch as William Woodroffe and Mrs. Walker were parceners, the entry of William Woodroffe, so as to make him tenant in tail in possession, or else his entry, together with the subsequent possession, was, as to that moiety, an actual ousting of the other coheir, and had the effect of making William Woodroffe, as to this moiety, tenant in fee-simple by wrong, so as to defeat the base fee. With respect, therefore, to that moiety of the estate which Mrs. Walker was at one time entitled to have recovered, as well as with respect to the other moiety, it is submitted that the judgment of the Court below should be affirmed.

Humphry was heard in reply, and

JUDGMENT.

PATTESON, J. now (June 18) delivered the judgment of the Court as follows:—It appears by the special verdict in this case that Mr. George Woodroffe being seised of certain lands in fee simple, by a deed which was dated January 6th, 1710, settled the same to various uses, which are long since expired, and subject thereto, to the use of Robert Woodroffe, his brother and Hester his wife, and the heirs of their bodies issuing, and in default of such issue to Robert Woodroffe in fee. Robert Woodroffe died in the lifetime of George Woodroffe, the settlor, having by his wife, Hester, one son and two daughters, Lettice Woodroffe, afterwards Billinghamurst, and Hester Woodroffe, afterwards Caverley. George Woodroffe, the settlor, died in 1713; Hester Woodroffe died in 1767, and on her death the estate tail would have descended in the regular course to her son George, and on his death, in 1779, without issue, the estate tail would have descended in moieties, namely one moiety would have descended to William Billinghamurst, the son, the only son of Lettice; on his death, in 1790, to his eldest son, William, who assumed the name of Woodroffe, and on the death of this William, in 1824, without issue, to his brother George, who also assumed the name of Woodroffe, and is the plaintiff in error. The other moiety would, in like manner, have descended, on the death of George, the nephew of the settlor, to Hester Caverley; and on her death, in 1774, to her only daughter, Ann Walker; and on her death, in 1797, to her only daughter, Jane, who married first Dalhousie Waterston, and afterwards William Mordaunt Maitland. It will be convenient in this place to advert to some of the deeds which have been executed by the parties successively in possession of the estates. In September 1735, Hester Woodroffe, being then tenant in tail, in possession, executed a deed-poll, which operated as a covenant to stand seised, the effect of which was to pass a base fee to George Woodroffe, her son, who afterwards in the same year, and in the life of Hester, suffered a recovery to the use of himself in fee. George Woodroffe, dying in 1779, by his last will devised the land in dispute to trustees and their heirs, in trust to pay an annuity of 200l. a year to his nephew, William Billinghamurst, and subject thereto to his great nephew, William Billinghamurst, afterwards Woodroffe, for life, with remainder in trust to preserve contingent remainders, with remainder to the first and other sons of William Billinghamurst, afterwards Woodroffe, in tail male, and in default of such issue to the use of George Woodroffe, the plaintiff in error, for life, with other limitations which are not material to be stated. The devisees in trust of George Woodroffe, the testator, entered into possession, and so continued until the death of William Billinghamurst, nephew of the testator, and until about October, 1790, when they gave possession to the great nephew, William Billinghamurst, afterwards Woodroffe, who was then of age. The said William Woodroffe, or parties

claiming under him, continued in possession of the rents and profits of the entirety of the premises in question, and of other estates devised by the devisee, George Woodroffe, from the time when he came of age in October, 1790, up to the time of his death in 1824. It was agreed by the counsel on both sides, that the effect of the deed-poll of Hester Woodroffe, of 1735, was to pass a base fee to her son, George Woodroffe, the devisee, but it was contended by Mr. Humphry, for the plaintiff in error, that as George Woodroffe, the devisee, was heir-at-law of Robert Woodroffe, and as such entitled, under the settlement of 1710, to the reversion in fee expectant on the determination of the estates tail created by that deed, the base fee merged in the reversion in fee. No authority was cited in support of this proposition, but it was rested on the supposed analogy to the case where a tenant in fee levies a fine, the effect of which is to merge the estate tail and bring the reversion into possession. (*Hlands on Fines*; and *Symonds v. Cudmore*, 4 Mod. 1.) But it seems to us that the cases are not parallel, for, in the case of a fine, the estate tail is barred by force of the Statute of Fines, but in this case it is preserved by the statute *de donis*, and still subsists in point of right as an intermediate estate preceding the reversion in fee, and as long as that intermediate estate subsists the doctrine of merger cannot apply. But it was further contended that if the base fee were not merged in the reversion, still it would be sufficient to support the devise of George Woodroffe, the devisee, as long as it continued to exist, and it was argued that the base fee still continued to exist. It was agreed on both sides, and the law is clear, that there was no remitter to George Woodroffe, the devisee, the recovery suffered by him having effectually estopped him, and prevented him being remitted to his title under the estate tail, and it was contended by the plaintiff in error that there was no remitter to William Woodroffe on several grounds; first, on the ground that William Woodroffe took an estate by virtue of the Statute of Uses, and consequently could have no other estate in the land than what he had in the use, agreeably to the rule established in *Amy Townsend's* case, Plowden 111; and the dictum of Mr. Justice Patteson in *Doe dem. Cooper v. Finch*, 4 B. & Ad. 305, was cited. But those cases differ from the present. The estates tail in this case had been discontinued, and the issue in tail had consequently no right of entry. In the present case, the estate tail has not been discontinued, and it was upon this difference that the judgment of the Court below proceeded in conformity with the anonymous case, 3rd Leonard, 93, which was decided upon the same difference, and in conformity with Coke's Commentaries on the 693d section of Lyttleton, where the same difference is stated. The counsel for the plaintiff in error cited *Vavasor's* case, 2nd Leonard 222, as being inconsistent with the decision of the Court below upon this point. In that case, Nicholas Ellis being seised of the manor of Woodhall, leased it to William Vavasor and his wife, for the life of the wife, with remainder to the right heirs of the husband. The husband made a feoffment in fee to the use of himself and wife for their lives, remainder to the right heirs of the husband. The husband died, and the wife held the land, and did waste in the land. It was moved, "If the writ of waste shall suppose that the wife holdeth in *ex dismissione*, *Nichol, Ellis, or ex dismissione vtri*; and the opinion of the Court was, that the writ upon this matter ought to be general, namely, that she holds in *hereditate J. S. heredis*, &c. without saying *ex dismissione hujus vel illius*, for she is not in by the lessor nor by the feoffee, but by the Statute of Uses, and therefore the writ shall be *ex hereditate*, &c." It was also the opinion of the justices that the wife in that case was not remitted, but that she was in according to the form of the feoffment. This case cannot be considered as a decision on the point of remitter, there being nothing but an incidental discussion on the point in order to ascertain the opinion of the Court as to the proper form of making out the writ. If, however, the case is to be looked upon as a decision on the point, it is at variance with *Hautrey's* case, in 2 Dyer, 191, b, and must be considered as overruled by the subsequent case of *Duncombe v. Wingfield*, Hobart, 354. But, secondly, it was contended there was no remitter in this case, because the remitter was said to be subject to election, and in this case it was said that William Woodroffe had an interest, in claiming under the devise in the will of George Woodroffe, the testator, and must be considered to have elected to take under the will, and to have waived his claim to an estate tail. No authority was cited to shew that a party can waive the estate to which he would be remitted where the remitter would enure to the benefit of others as well as himself. *Littlton's* Treatise, section 695, is express that a disclaimer in *pari* is of no avail, and the reason assigned by Doddridge is stated in a note in Dyer, p. 381 b, explaining satisfactorily the ground of this rule of law. In that case, land of socage tenure was given to a husband and wife in tail, remainder to the right heirs of the husband in fee; they had issue; the husband alone levied a fine, with proclamations, which was to

his own use, and then by will devised the land for life to his wife, remainder over to a stranger in fee, with a condition to pay a rent out of the land annually, with a clause of distress. He died; the wife entered, claiming only an estate for life, and she paid the rent according to the will, and then died. The question arose whether the issue in tail or remainder-man was entitled to the land. The Court held, that the issue in tail was barred, partly because the mother had waived the estate tail, and, if she had not, yet his conveyance to the title and descent of the entail, of necessity, must be made as heir of the body of his father as well as of his mother, so that the fine with proclamations levied by the father only, barred the entail. In the margin of the case there is this note: "The wife in this case had election whether she would be in of her remitter or not: because if she had been remitted, it would not have been beneficial to any other, for the fine of the husband bars the issue and all others. This reason was given by Dodderidge." We agree, therefore, with the Court below, in thinking that the disclaimer was unavailing to prevent the remitter; but it was further objected that there could be no remitter in this case to William Woodroffe on the ground that the entry was barred by the Statute of Limitations. The answer given in the Court below to this objection appears to us to be satisfactory; for we agree with that Court, that the right of entry in this case must be considered as having first accrued on the death of George Woodroffe, the testator, in 1779; for up to that time there was never any available right of entry in any person; and it could not have been the intention of the statute to take away the right of entry, unless the available right of entry descended to some person who could, as against the party in possession, have taken advantage of it. The entry, therefore, made by William Woodroffe in 1790 was within the time limited by the statute. It appears to us, therefore, that if William Woodroffe had entered into possession under a defeasible title derived under his uncle's will, having at that time a right of entry in one undivided moiety as heir in tail of that moiety, he must be considered as having been remitted to the better estate as to that moiety, and as to that moiety a good title is deduced to the lessor of the plaintiff below. But it is next to be considered what is to be the effect of the state of circumstances appearing upon the special verdict upon the other moiety of the estate to which Mrs. Walker at that time, namely, in 1790, had a claim as heir in tail. It was contended on behalf of the defendant in error that William Woodroffe and Ann Woodroffe being parceners, and William Woodroffe being remitted to his better estate, Ann Walker was remitted also. No authority was cited to shew that where a defeasible estate in land is cast on a man who has in him an elder and better title to the moiety, the remitter of him to his elder title as to one moiety operates as a remitter to the other moiety of the other parties entitled as coparceners with him. If we consider the matter independently of authority, there is no ground for holding that there is a remitter in such a case. It is said in Littleton, s. 659, that a remitter takes place where a man has two titles to land, the one a more ancient title, the other a more late title, and if he comes to the land by the later title, the law will adjudge him to be in by force of the elder title, because the elder title is a more sure and worthy title. In the present case there is no such title, Mrs. Walker having no defeasible estate cast upon her, but simply a title to an estate tail by descent. It is said, with reference to estates discontinued (Litt. s. 661), that the principal cause why the heir in such cases shall be said to be in by his remitter is for that there is not any person against whom he may sue his writ of *formedon*, for, as against himself, he cannot sue, and he cannot sue as against any other, for none other is tenant of the freehold. But no reason for remitter exists in the present case, since Mrs. Walker could have asserted her title to the estate tail by a simple entry without more, so that the remitter seems to fail. It might be argued that after the entry of William Woodroffe, in this case, Mrs. Walker ought to be considered as being actually in possession of her moiety, for which the case of *Smales v. Dale*, Hob. 120, may be cited. In that case William Watson was seized of the lands in question, and had issue, Allen and Ann Watson by one wife, and William Watson by another, and devised the lands being holden by Knight's service of the Queen (Elizabeth) to his wife during her widowhood, with remainder to William; the younger William Watson died, and his wife entered into all the lands, and that Allen made no actual entry into the lands, but died without issue, and the question was, whether the entry of the widow into the lands did work an actual entry to Allen for his third part, whereof he was tenant in common with the widow. The entry in that case was made by the widow generally, but the Court did not confine itself to what was strictly necessary to the decision of the case; for it was said, "the entry of one tenant in common might be in three manners, either in the name of herself or her fellow, or gene-

rally, which shall always be taken according to right, as being under the construction of law, and therefore ever construed lawful; or lastly, an entry claiming all expressly, which yet cannot dispossess her fellow, for her possession is over all lawful, as well before such claim as after, so that there is no possession altered by such claim, and then a sole claim, without more, can never change the possession, and without a change of possession it remains as before, and therefore a copartner, a joint tenant, or tenant in common, can never be dispossessed by his fellow but by an actual ouster." And the Court held, upon these grounds, that the entry of the widow operated as an actual entry by Allen Watson so as to exclude his brother of the half-blood. The law is laid down differently in Coke Litt. 373, b, where it is said, "Here it is to be understood that when one coparcener doth generally enter into the whole, this doth not divest the estate which descendeth by the law to the other, unless she that doth enter claimeth the whole, and taketh the profits of the whole, for that shall divest the freehold in law of the other parcener." But even supposing the position laid down in *Smales v. Dale* to be correct to the full extent to which it is laid down, the relation of the coparcener has been varied by the statute of the 3 & 4 Wm. 4, c. 27, s. 12. By that statute it is enacted "that when any one or more of several persons entitled to any land as coparceners shall have been in possession of the entirety, or more than his or their undivided share or shares of such lands for his or their own benefit, &c. &c. or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession shall not be deemed to have been the possession of or by such last-mentioned person or persons, or any of them." This statute has been decided in the case of *Culley v. Doe dem. Taylerson*, 11 Ad. & E. 1016, to have relation back as far as relates to the object of the Act, and to have the effect of making their possessions separate from the time when they first became coparceners, joint tenants, or tenants in common. Since the passing of that statute the possession of land by one parcener cannot be considered as the possession of his co-parcener, nor can the entry of one have the effect of vesting the possession in the other. It remains to be considered whether William Woodroffe, by his entry and continuance of possession by which the right of entry of Mrs. Walker and her descendants was barred, is to be deemed to have gained a fee-simple by wrong to his own use. It may be admitted that, if a party enters on land by disseisin, &c. and holds it adversely to the party entitled for a sufficient length of time to bar the right, he will have gained an indefeasible estate in fee-simple by wrong to his own use, or to the use of another, for which see Littleton, s. 278, where it is said, "If two or three, &c. disseise, another of any lands or tenements to their own use, then the disseisors are joint tenants, but if they disseise another to the use of one of them, then they are not joint tenants, but he to whose use the disseisin is made is sole tenant, and the others have nothing in the tenancy, but are called condutors to the disseisin, &c." The present case is not to be likened to the case of disseisin, for William Woodroffe, when he entered as devisee under the will of George Woodroffe, entered under a title which, though defeasible, was good until defeated. The nature of the estate which George Woodroffe, the testator, possessed, and which he devised by his will, is explained in the case of *Machell v. Clarke*, Lord Raymond, 778, 782, where it is said, "That if tenant in tail conveys the lands entailed by bargain and sale, lease and release, or covenant to stand seised to the use of another in fee, and dies, a base fee passes by the conveyance, and the estate continues until it be avoided by the issue in tail by entry." The base fee, though defeasible, is not to be considered as a wrongful estate; and it has all the incidents of a rightful estate until it is defeated. If the issue in tail neglects to make an entry so long that his right of entry is gone, this continuance of possession by parties claiming under a base fee cannot alter the nature of the estate, but we think its effect is to bar the claim of the issue in tail, and so render the base fee indefeasible, and thereby confirm and corroborate the estates of those who, under the limitation to which the base fee is subject, are entitled to the subsequent portions of the fee, not to extinguish or vary those limitations. The result of our opinion therefore is, that as far as regards the moiety of the estate which Mrs. Walker was at one time entitled to have recovered, the base fee was never defeated; and as to that moiety the judgment of the Court below ought to be reversed, and judgment given for the plaintiff in error; but as to the other moiety, the judgment of the Court below ought to be affirmed.

Judgment accordingly.

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

Saturday, July 18.

(Before Mr. Commissioner GOULBURN.)

Re J. V. KING.

Right to prove costs.

Costs incurred in recovering a debt may be proved under 7 & 8 Vict. c. 96, s. 26, although judgment had not been signed, and the costs had not been taxed.

This was a sitting for a dividend. A creditor applied to prove, in addition to his debt, an amount of costs which he had incurred in suing for his debt. No judgment (interlocutory or final) had been signed, and the costs, though due at the time of filing the petition, had not been taxed.

The learned COMMISSIONER doubted whether, construing the Act (as the 73rd section directs) by analogy to the law of bankruptcy, he could allow the proof till judgment signed.

Cooke (amicus curiae) referred his Honour to the 26th section of statute 7 & 8 Vict. c. 96, which, after providing that the final order shall extend to all process, &c. for nonpayment of costs, &c. proceeds thus: "And that all persons as to whose demands for any such costs, money, or expenses as aforesaid, the final order obtained by the petitioner shall be adjudged to extend shall be deemed and taken to be creditors of such petitioner in respect thereof," &c.; subject nevertheless to subsequent taxation or investigation.

Proof allowed.

HUMPHRY V. ARTHUR.

Small Debts Act.

A defendant is entitled to be discharged from custody on payment of the instalment due, and the costs of the proceedings under the Act, without also paying the costs of the judgment in the original debt.

Defendant applied to be discharged, having paid the instalment for the nonpayment of which he had been committed.

Clark, for the plaintiff, objected that defendant was not entitled to his discharge without paying also the costs of the judgment.

His HONOUR, however, decided that on payment of the instalment due, and the costs of the proceedings under the Small Debts Act, the defendant was entitled to be discharged.

Tuesday, July 21.

(Before Mr. Commissioner GOULBURN.)

Re W. H. OSBORNE.

Witness's expenses.

A witness is not bound to attend at the court without tender of his reasonable expenses.

In this case Mr. Kerr, a solicitor, who had been subpoenaed as a witness, refused to give evidence unless he was previously paid for his attendance.

His HONOUR said that a witness so called was to be treated as one at *nisi prius*, and was entitled to demand his expenses.

The solicitor to the fiat said the Taxing-Master would not allow in taxing the bill, unless it was paid under the order of Court.

His HONOUR said that was wrong, and it ought to be understood to be the right of a witness to his costs of attendance.

Monday, July 20.

(Before Mr. Commissioner FONBLANQUE.)

Re FILBEY.

Where a creditor had been unable to attend to prove his debt, and therefore is not entitled to be heard in opposition at the last examination, and no other opposing creditor appears, the Court will pass the accounts, reserving permission to any creditor to question them upon the application by the bankrupt for the certificate.

The bankrupt came up on his last examination.

On behalf of one of the creditors it was stated that he had been prevented, by absence from home, from proving his debt, but that it was his intention to oppose the passing of the accounts.

No other creditor appearing, His HONOUR said, that no creditor appearing to oppose, the accounts must be passed; but he should reserve to any creditor the right of questioning the balance-sheet when the bankrupt should apply for his certificate.

Cor, for the bankrupt, then applied to his Honour to name a day for the certificate. Ordered.

(Before Mr. Commissioner HOLROYD.)

Ex parte H. EMANUEL.

Circumstances under which the allowance of certificate will be suspended.

Where a partner has used the name of the firm for his private accommodation in matters foreign to the partnership, the Court will suspend the allowance of the certificate.

His HONOUR gave judgment in this case as follows:—I have now to give judgment upon the appli-

cation made by Henry Emanuel for his certificate. No opposition was made by the assignees or any other person, and it was thereupon suggested by Mr. Lawrence for the bankrupt, that the Court was bound to grant the certificate as a matter of course, and it was intimated that there was no difference of opinion amongst the commissioners on this point. I thought it right to mention the subject to my brother commissioners before I finally disposed of the case. I am now authorized by my brother commissioners to state that they entirely concur in the opinion that it is the duty of the Court, on the question of the allowance of the certificate, whether opposed or not, to have regard to the conformity of the bankrupt to the laws of bankruptcy, and to his conduct as a trader, as well before as after his bankruptcy; and that, in the absence of any objection brought forward by assignees or creditors, the conformity and conduct of the bankrupt must be tested by the balance-sheet and examinations. In cases, therefore, in which the assignees express themselves satisfied with the bankrupt, and assent to the allowance of the certificate, the Court will not be astute in discovering impropriety in his conduct; but wherever fraud or gross misconduct is apparent, the bankrupt cannot be allowed to have his certificate forthwith. Now, in this case the bankrupts carried on a very extensive business as goldsmiths and jewellers, and the father and a brother had both retired with ample fortunes, and the circumstances of this case would have led one to believe that these bankrupts would have realized an independence in a few years. The misconduct of one of the bankrupts (Henry Emanuel) caused a sad reverse. He did not confine his attention to his own lucrative business, but unfortunately embarked too deeply in speculation and in accommodation, and as one false step often suggests a second more faulty, under the delusive hope of obtaining the desired end, he allowed himself to have recourse to means which must since have been to him the subject of bitter regret, involving in their consequence not only his own ruin but that of his partner and brother, as well as a great diminution in the amount of assets which might have been applicable exclusively to the payment of the *bond fide* partnership debts. The bankruptcy was, then, occasioned by Henry Emanuel accepting bills in the name of the firm to a very large amount (somewhat exceeding 50,000*l.*), for purposes not connected with the partnership, and this was done without the knowledge or consent of his partner. The greater portion (about 30,000*l.*) of the money raised on these bills was for the purposes of Henry Emanuel himself; and part of it, about 6,400*l.* was taken for the use of a speculation in the exportation of preserved provisions, in which Henry Emanuel was engaged with two other persons of the name of Blogg and Lyon Samuels, and the remainder (about 14,000*l.*) was a balance of liabilities incurred for the accommodation of this same Lyon Samuels. Thus the joint estate, by the act of Henry Emanuel, without his partner's knowledge or consent, is charged with the 50,000*l.* Such is the misconduct of Henry Emanuel appearing upon the face of the balance-sheet, and how is it answered? It is said, on his behalf, that the assignees believe he was the dupe and tool of others. Whatever palliation of his conduct such an excuse might afford in a poor, foolish, ignorant offender, it can have no weight in the case of one of the first traders in the city of London. Looking to the position of Henry Emanuel in the mercantile world, the Court must of necessity assume, that when he used the name of the firm for purposes foreign to the partnership, he was acting in direct contradiction to the clear evidence of his own understanding. He must have known and felt that he was committing an act of gross injustice and fraud towards his own partner, and the creditors of the partnership. The convenience of commerce may require that in certain cases one partner in trade should be able to bind another without his previous knowledge or consent, but the incalculable mischief which an abuse of this power may effect, and the facility with which a partner may create such obligations on a firm, make it imperative upon the Court, in regarding the conduct of a bankrupt, to visit severely any breach of the confidence thus unavoidably reposed in partners. Having then duly considered all the circumstances of this case, and bearing in mind the previous good conduct of the bankrupt, and the course he pursued in conjunction with his brother, for the general benefit of the creditors, as soon as he found the irrevocable ruin which he had brought upon the house, the Court does not feel called upon to refuse the certificate altogether, but "to do even law and execution right to all," the case is one which demands a long suspension. The judgment of the Court, therefore, is, that

The allowance of the certificate of the bankrupt, Henry Emanuel, be suspended for three years from the day of passing his last examination.

Circuit Reports.

HANTS SUMMER ASSIZES.

Wednesday, July 15.
(Before Mr. Baron PLATT.)
REG. v. NICHOLSON.

Variance.

An indictment for stealing a spade is not supported by evidence that the prisoner stole a shovel.

The indictment charged the prisoner with stealing a spade. It appeared, in evidence, that the instrument was a shovel. The prisoner was undefended, but PLATT, B. said that this was a fatal variance, and directed the prisoner to be acquitted, and a fresh indictment preferred, which was accordingly done.

REG. v. JOHNSON.

Depositions prior to committal.

It is highly improper and irregular for depositions against a prisoner to be taken in his absence, and then read over to him before they are signed. He ought to hear all the questions and answers.

In the course of the trial of this indictment, the prisoner stated that, when he was committed, his witnesses were not allowed to be present, and that none of the depositions against him were made in his presence.

PLATT, B. immediately made minute inquiries of the witnesses as to the truth of these statements. It then appeared, although not very clearly, that his witnesses were not refused admission, but that the other statement was quite true, for it was the usual practice to take the depositions of the witnesses in the absence of the magistrate and the prisoner, and when they arrived the depositions were read over to the prisoner, and he was asked if he had any questions to put, or any thing to say. His lordship, in summing up to the jury, expressed himself in very strong terms of indignation at the irregularity and extreme injustice of such a course of proceeding; and said, he trusted in future that the provisions of the law would be observed. It was most essential to fair play that any person charged should himself hear every thing that was alleged against him; for how could he collect himself to put such questions as might be necessary, when he heard, for the first time, a long beadrill of statements read over to him by the clerk? He was sorry to say that he had occasion to comment upon a similar practice upon the Oxford circuit, and the sooner it was put a stop to every where, the better.

The prisoner was acquitted.

Thursday, July 16.

(Before Mr. Baron PLATT.)
REG. v. HAWKEY.

Murder—Cause of death.

Where a wound is inflicted under circumstances that immediate death would make the person guilty of murder; Quære, is he guilty of murder if the death ensues from an operation thought necessary, and performed by competent medical advisers, who considered that the wound was dangerous?

Semble, per Platt, B. that he is, and that, therefore, evidence is not admissible to shew that the medical men were mistaken, and that the operation was unnecessary,—and that he might not have died had the operation not been performed, or that he would not have died from the same immediate cause.

Semble, per Platt, B. that under such circumstances it is sufficient to lay the wound as the cause of death.

The prisoner was indicted as principal in a duel with Lieut. Seton, in which the latter was killed. The second, Mr. Pym, was tried and acquitted at the last spring assizes. The same points were made now as then, and Mr. Baron Platt consented to reserve them, but mainly because Mr. Justice Erie had then reserved them (see *supra*, 6 Law T. 500), as he expressed his own strong opinion that a party under such circumstances would be indictable for murder, and that the wound might properly be laid as the cause of death.

Rawlinson and M. Smith for the prosecution.

Cockburn, Q.C. and Kinglake, Serjt. for the defence.—In addition to the cases and arguments before used, the counsel for the prisoner cited several passages from Alison's Principles of the Scotch law, p. 145, and distinguished the cases mentioned in Russell, p. 505, as having been all the physical effects of the wound, whereas here it was admitted that the death was caused by peritoneal inflammation, consequent upon the operation, and that had he died of the wound before the operation it would have been from hemorrhage or gangrene. The prisoner was however acquitted, so that these questions may still be considered open to doubt, although the opinions of Rolfe, B. Erie, J. and Platt, B. have been given against the objections. *Prisoner acquitted.*

NORFOLK SUMMER CIRCUIT.

Bedford, Wednesday, July 15.

NISI PRIUS.

(Before Mr. Justice WILLIAMS.)
TAYLOR, Clerk, v. PYE.

Rector—Last incumbent—Liability of for dilapidations to successor—Measure of claim.

It is the duty of the incumbent to keep the parsonage-house and outbuildings in good and substantial repair, and to hand them down to his successor in the same form and condition in which they were originally erected; and that duty extends, where necessary, to restoration as well as repair.

The plaintiff was the perpetual curate of Dean, in the county of Bedford, the defendant being the executor of his predecessor; and this was an action on the case for dilapidations to the parsonage-house and outbuildings attached thereto; the claim of the plaintiff being 140*l.* The defendant paid 50*l.* into court, denying his testator's liability *ultra* that sum.

Fitzpatrick, with him Rodwell, having called witnesses in support of the plaintiff's case, who shewed that the buildings in question were greatly dilapidated, and that it would take 140*l.* to place them in fit and proper repair.

Byles, Serjt. with whom appeared Birch and Tesser, *contra*, proved that the premises were originally of a most rough and rude construction, from being built of mud and studwork, and that the sum of 50*l.* was amply sufficient to repair them, which, as the learned serjeant contended, was the limit of the last incumbent's liability, as by law established.

WILLIAMS, J. in summing up the case to the jury, left it to them to say whether the sum of 50*l.* was sufficient to comply with the requisites of the law, which imposed on all incumbents the duty of keeping the parsonage-house assigned to the cure as a residence, and all the outbuildings, in good and substantial repair; and also to preserve them and hand them down to his successor in the same form and condition in which they had been originally built. This was an obligation larger than that contended for by the defendant, but such was undoubtedly the law. Each incumbent had a right to receive the buildings assigned as his residence in their original states, and if such dilapidations should exist as would render over their restoration necessary, the law laid the liability of rebuilding on the predecessor or his legal representative. The question now raised, therefore, was, whether in that rule of the law the sum of 50*l.* was sufficient; and on that question the jury would decide from the evidence before them.

Verdict for the defendant.

MIDLAND CIRCUIT.

LINCOLN SUMMER ASSIZES, 1865.

(Before Mr. Justice PATTERSON.)

SMITH v. NEWCOMB.

Recovery of deposits.

The principle of the case of Walstab v. Spottiswoode does not extend to cases where there is no evidence of the abandonment of the scheme by the committee. The project must have come to a conclusion before an action will lie to recover back the deposits.

This was an action to recover from the defendant, who was a provisional committeeman of the Nottingham and Peterborough Junction Railway, the amount of the deposit paid upon 35 shares which had been allotted to the defendant.

Whitcomb, Q.C. and Willmore, for the plaintiff.

Humfrey, Q.C. and Waddington, for the defendant.

The plaintiff's right to recover was sought to be maintained upon the grounds stated in an authority of the celebrated case of *Walstab v. Spottiswoode*. The circumstances of the present case will be clearly gathered by the evidence of Mr. H. Gridley, one of the solicitors to the line.

That gentleman deposed that the scheme was projected in September last. There were to be 27,500 shares, of 20*l.* each, issued, and the deposit thereon was to be 2*l.* 2s. A large provisional committee was formed, and the defendant's name was on the list, but he had never acted, and never applied for any shares. No application was made to Parliament for a Bill, though all the plans had been duly deposited, the traffic tables taken, and the other necessary arrangements put in a state of forwardness. The reason for not applying to Parliament was the deficiency of money, arising from the allottees not having paid their deposits. The number of shares originally intended to be assigned to the public were all allotted. The managing directors, as such, had none appropriated to them; but the provisional committee were to have 9,000, which was afterwards reduced to 6,000, in consequence of the number of applications from the public. The directors did not take up any shares; but when it was found that the allottees did not pay, and that heavy expenses had been incurred, they came forward and paid the deposits on the number that was originally to have been assigned to them. When it was found that the company had not the funds to go to Parliament, the following circular was issued by the secretary:—

"I am directed by the directors to inform you, that in consequence of the nonpayment of the deposits on a great number of the shares allotted, this project cannot be proceeded with in the present season. The directors have at great expense surveyed the whole line, taken the traffic, &c. and much regret the failure, at least for a time, of a scheme, likely to be profitable in itself, and fraught with great benefit to the country. They hope you will not hesitate to pay the amount of 3*l.* per share on the shares so

lotted to you, towards the expenses; and when this is done a meeting of the shareholders will be called to determine what course shall be pursued in future."

About 2,000*l.* had been paid in deposits by the directors. The defendant never applied for shares, but he had paid 210*l.* towards the expenses. Although the number of shares to be issued was only 27,500, up to the 14th of October more than 400,000 shares had been applied for. After that date several applications were received, but none were opened, it being impossible to attend to them. The plaintiff applied for 66 shares, but only 36 were allotted to him. The directors had not now abandoned their intention of going to Parliament; they would have gone this session if the money had been paid up by the allottees. Only 8,000*l.* had been hitherto paid by the public, and between 10,000*l.* and 11,000*l.* by provisional committee men and directors.

Hewitson submitted that no case had been proved, and that the plaintiff must be nonsuited. This was an action for money had and received, and could only be maintained on the ground that the consideration on which it was paid had altogether failed. It was quite clear that there was no evidence on which the plaintiff was entitled to recover back his money. Among all the cases that had been tried arising out of railway matters, there was not one like the present. That of *Walstab v. Spottiswoode* was quite different: there the plaintiff, who had subscribed money on the faith of receiving scrip, was told, on an application to change the banker's receipt for scrip, that none would be issued: in addition, there were to be 80,000 shares divided, but the committee allotted only 70,000; and when the plaintiff in that case sought an explanation, she was told by one of the provisional committee that the concerns of the committee would be wound up, and the surplus divided. It was consequently held that the scheme having proved abortive, the allottee was entitled to recover her deposit. Here all the shares were allotted; and it was only because the allottees had failed to pay their deposits, that the project had for a time stopped. The committee had contracted to do their utmost to render the scheme successful; and they had left undone nothing that it was their duty to do. He therefore submitted that, as this was a case in which the plaintiff could not say the consideration had wholly failed, he must be nonsuited.

Waddington, on the same side.—The striking fact in this case was, that every single share to be allotted was allotted; and every thing was ready to go to Parliament and to carry out the project, as soon as the allottees furnished the means. The company was not now defunct, but was waiting to see what could be done best for the interests of all concerned in it. There was no rescinding or breaking of the original contract, as in the *Spottiswoode* case; but the scrip was issued, and the shareholders (the plaintiff among the number) had opportunities of disposing of their purchases even at a premium.

Whitehurst and *Willmore* relied upon the doctrine laid down in *Walstab v. Spottiswoode*, and *Nockells v. Crooby*. The contract in the cases referred to was held to be abortive, because all the conditions originally set forth had not been complied with. It was not at all necessary to substantiate the claim of the plaintiff in this case to prove that the project was at an end. Whether the company intended to apply to Parliament or not was perfectly immaterial; they had promised to apply for a Bill during the present session; and, having neglected to do that, they had to all intents and purposes broken the contract. Precisely the same question had been raised in the Court of Exchequer, and the Chief Baron there held that it was not necessary to prove the dissolution of a company to entitle a party to recover, because if they could ward off an action by postponing the dissolution, they never would dissolve. When the parties to this project purchased their scrip, they did so on the faith of the prospectus, which promised an application to Parliament this session, and if that application was not made, there was an end of the scheme as originally propounded.

FATTESON, J.—I must say I think the action is premature; but I will not say that it should not go to the jury. I think that in the case of *Walstab v. Spottiswoode*, the scheme was most decidedly abandoned and at an end; but I do not think it can be said that the contract on the part of the present defendant should be confined to the existing session. There was something in the prospectus to the effect that the projectors would go with confidence to Parliament in the (then) ensuing session; but what they meant was, that the scheme was so likely to obtain the sanction of influential parties, that they would go to Parliament with a confidence that their measure would pass, supposing they complied with the standing orders. This seems to me altogether a different case from *Walstab v. Spottiswoode*, because there the shares were not all allotted, and the allottee was told, when application was made for scrip, that none would be issued, and that the scheme was abandoned. Here, on the contrary, all the shares were taken, and even the provisional committee gave up a portion of the number assigned to them. They made all preparations to go to Parliament, and were only stopped

from doing so because the deposits were not paid. I think this action is premature, and that the plaintiff has no right to bring it till the project has come to a conclusion. I shall put the case to the jury, as Mr. Whitehurst seems to require it; but I shall let them know my opinion, that there is no evidence to sustain the action.

Whitehurst said, that after the strong observations of his lordship on the case, he felt it would be ungracious to go to the jury, and should therefore submit to be nonsuited.

THE LEGISLATOR.

Summary.

THE small measure of Mr. HUME for grappling with the giant abuses of Charitable Trusts by requiring an annual account to be laid before Parliament has been met with as loud an outcry against it from the speculators as was raised against the larger measure of Lord LYNDHURST, and with equal success. The Bill has been withdrawn; but only on an express pledge from ministers that the entire subject shall be entertained next Session. Of the Conveyancing Bill and other crudities we hear nothing.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, July 17.

Taxation of Costs (Compensations for Land), Ireland—"to amend so much of the 'Lands Clauses Consolidation Act, 1845,' as relates to the Officer by whom the costs of inquiries holden under that Act, as to Compensation for Lands, shall be taxed in Ireland."

Adverse Claims, Ireland—"to enable Courts of Law in Ireland to give relief against adverse Claims made upon persons having no interest in the subject matter of such claims."

Prisons, Ireland—"to amend an Act of the 7th Geo. 4, for consolidating and amending the laws relating to prisons in Ireland."

Fisheries, Ireland—"for the further amendment of an Act of the 6th Vict. for regulating the Irish fisheries."

District Lunatic Asylums, Ireland—"to amend the Laws as to District Lunatic Asylums in Ireland, to provide for the expense of the maintenance of certain Lunatic Poor removed from the Richmond Lunatic Asylum, Dublin, for want of room therein, and to provide for the salaries and expenses incident to the office of Inspector of Lunatics in Ireland."

Grand Jury Cess Bonds, Ireland—"to exempt from Stamp Duty Bonds and Warrants to Confess Judgment executed by High Constables or Collectors of Grand Jury Cess, or their Sureties, in Ireland."

Mandamus, Ireland—"to improve the Proceedings in Prohibition and in Writs of Mandamus in Ireland."

Monday, July 20.

Militia Ballots Suspension—"to suspend the making of lists and the ballots and Enrolments for the Militia of the United Kingdom."

Public Cemeteries—"for providing Cemeteries, and promoting public health in towns and populous districts."

BILLS READ A SECOND TIME.

Monday, July 20.

Books and Engravings
Shannon Navigation
Prisons, Ireland
Fisheries, Ireland
District Lunatic Asylums, Ireland
Grand Jury Cess, Ireland
Mandamus, Ireland
Taxation of Costs, Ireland
Adverse Claims, Ireland.

Tuesday, July 21.

Manchester and Lincoln Union Railway.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A SECOND TIME.

Friday, July 17.

Matthysen's Divorce Bill
Pemberton's Estate.

BILLS READ A THIRD TIME.

Friday, July 17.

Cameron's Coalbrook and Loughor Railway
Howell's Charity Estate
Ladlow Charity Estate.
Newry, Warrenpoint, and Rostrevor Railway
York and North Midland Railway.

Monday, July 20.

Andover Canal Navigation
Derbyshire, Staffordshire, and Worcestershire Junction Railway
Sligo Ship Canal, by order
Tunbridge Wells Improvement, amendments to be proposed.

Tuesday, July 21.

Sligo Ship Canal.

SESSIONAL PRINTED PAPERS.

Public Income and Expenditure, Balance-sheet—Account
Halifax Mills, &c.—Paper
Parochial and Borough Rates, &c. England and Wales—Returns
Botanic Garden, Dublin—Paper
Revising Barristers—Return
Churches, Ireland—Paper
Railway Bills Classification—Twenty-fourth Report of Committee

Bridgeport Election Petition, W. Rockett—Report
Greenwich Park Railroad—Paper
Burdens on Land—Lords' Report
Bills—Lands and Companies Clauses Consolidation
Poor Removal—amended
Books and Engravings
Deductions Abolition, No. 2
Shannon Navigation, Ireland
Prisons, Ireland
Fisheries, Ireland
Mandamus, Ireland
Taxation of Costs (Compensations for Lands) Ireland
Slave Trade—Correspondence, Class A
Oregon Boundary—Treaty
Poor Law, Ireland, Returns
Caledonian Canal—Forty-first Report of Commissioners
Taxes, &c.—Account
Carrikmacross Union—Return
Wellington Statue—Return
Commons Inclosure, No. 2, amended
Slave Trade—Correspondence, Class C
Raja of Sattara—Paper
Iron, &c.—Accounts
Sugar—Accounts
Votes of Electors—Report of Committee
Larne, Belfast, and Ballymena Railway Petition—Report of Committee
Sutton Harbour and Docks, &c. Plymouth—Mr. Walker's Reports, &c.
Exclusive Privilege of Trading Abolition, Ireland—amended
Municipal Boroughs, Ireland—Paper
Ex-Raja of Sattara—Copy of Despatch
Slave Trade—Correspondence, Class B.

PARLIAMENTARY PAPERS.

TITHE COMMUTATION.—Wednesday the Parliamentary returns presented by the Tithe Commissioners were printed, of all agreements and of all awards for the commutation of tithes confirmed by them, as also of all apportionments confirmed from the 1st of July, 1845, to the 1st of January, 1846. The first branch of the return has reference to the agreements confirmed by the commissioners in the half-year mentioned, shewing the amount of rent-charges agreed to be paid in lieu of tithes. By the summary it appears that the compositions and rates amounted to 6,545*l.* 2*s.* 6*d.*; rent-charges, 7,143*l.* 14*s.* 4*d.*; increase of rent-charges, 604*l.* 10*s.* 0*d.*; decrease of rent-charges, 51*l.* 18*s.* 2*d.*; rent-charges for which compositions cannot be ascertained, 656*l.* 16*s.* 5*d.*; rent-charges of the present return, 7,800*l.* 10*s.* 9*d.*; rent-charges of former returns, 2,454,338*l.* 19*s.* 9*d.*; total rent-charges, 2,462,139*l.* 10*s.* 6*d.*. The result shews that the total increase in the present return is 598*l.* 11*s.* 9*d.*, and in the former returns 56,542*l.* 6*s.* 5*d.*, making the total increase 57,140*l.* 17*s.* 3*d.*. The second branch contains a return of all awards for the commutation of tithes which have been confirmed in the period specified, specifying the amount of rent-charge awarded to be paid in lieu of tithes, and shewing whether the same be payable to appropriators, improprators, or clerical incumbents. The total rent-charges of this part amount to 61,196*l.* 0*s.* 11*d.*; and of former returns, 1,088,282*l.* 8*s.* 4*d.*, making the total rent-charges 1,149,478*l.* 9*s.* 3*d.*. The third part shews the apportionments confirmed by the Tithe Commissioners in the six months from July to January. The document extends to twenty-two pages.

RAILWAY BILLS.—By a Parliamentary paper procured by Sir G. Grey a return is made of all railway bills which have been reported to the House of Commons during the present session, with a tabular statement of the maximum rates of charges and fares for goods and passengers respectively authorized by such bills. The document contains 138 bills, made up to the 29th of May. From an examination it appears that in the first class the highest sum per mile to be charged for passengers is to be 3*d.*, and the lowest in the same class 2*d.*, whilst in the third class the charge is to be 1*d.* and 1*d.*. In the second class the charge in some instances is to be 1*d.*, and in others 2*d.*, a mile. On some of the railways, when the speed is more than 25 miles per hour, an additional 4*d.* is allowed in the first class. The charges in some of the bills reported during the present session are to have reference to former acts. In the Great Western Bill no provision has been made with regard to charges of any description.

COUNTY RATES.—Bill authorizes justices to disallow rates in cases where there is reason to believe that a proper valuation of the parish has not been made. Overseers or other officers compellable to furnish copy of rate within fourteen days after application, under penalty, not exceeding 20*l.* Where new valuation made, poor-law commissioners to supply copy of same to clerk of the peace. A fresh assessment to be made every seven years.

BRITISH MUSEUM AND NATIONAL GALLERY.—The return states that, with the view of giving effect to the recommendations of the select committee on public monuments, the trustees of the British Museum have permitted artists and private parties of visitors, upon application to any of the officers of the establishment, to study and view the collections every Saturday after two o'clock. This regulation took effect in July, 1842. Since June, 1843, the synopsis of the Museum has been divided into six

parts, which are sold separately, at prices varying from one penny to three-pence each. The trustees of the National Gallery have made improvements in the ventilation of that building. The price of the authorized catalogues has been reduced from 1s. to 4d., and other catalogues are permitted to be sold in the portico at 1d. Facilities have been granted for the reception of pictures and other works of art, intended to be subsequently transferred as donations to the use of other museums throughout the kingdom; and twenty additional artists belonging to the Royal Academy, have been admitted to paint in the gallery on the days set apart for study.

PUBLIC PETITIONS.—The report contains a classified statement of the number of petitions (with the aggregate of signatures attached under each particular head) presented to Parliament during the present session. The principal are the following:—For the release of Mr. Smith O'Brien, thirty-six petitions, 72,056 signatures; for the better observance of the Lord's Day, 170 petitions, 38,602 signatures; for the Roman Catholic Relief Bill, 123 petitions, 33,825 signatures; against the Repeal of the Corn-laws, 1,958 petitions, 145,855 signatures; for the repeal, 466 petitions, 1,412,613 signatures; against the Customs and Corn Importation Act, 863 petitions, 53,046 signatures; for the measure, 102 petitions, 69,488 signatures; for substituting arbitration for war, eighteen petitions, 24,947 signatures.

Bills in Progress.

LAND COMPANIES CLAUSES CONSOLIDATION.—A Bill is now before the House of Commons, which, under the title of "Land and Companies Clauses Consolidation," offers further facilities by which the winding-up of railway companies may be brought about in cases where they either ought not to go on, or it is desired by the shareholders to suspend proceedings. This Bill, which comes into operation immediately on passing, requires that when a company has obtained an Act of Parliament, the whole of the capital required for defraying expenses shall be subscribed under contract within two calendar months after the passing of such Act; that within three months after the passing of such Act the register of shareholders shall be completed; and that within four months a copy of the register shall be deposited with the Registrar of Joint Stock Companies. It is further provided that within three months after depositing the copy register, a majority in value of the registered shareholders may dissolve the company. This Bill has given very great satisfaction to some of the more practical men in the city, who see in it a remedy for the deficiencies of former proceedings on the part of the Legislature.

POOR REMOVAL.—The Bill to consolidate and amend the laws relating to the removal of the poor, as amended by the committee, was printed on Saturday. It now contains only ten clauses, and was further considered on Monday in the House of Commons. It is proposed to add a new title on the third reading, calling it, "An Act to amend the Laws relating to the Removal of the Poor." The substance of the measure may be concisely stated:—Persons, after the passing of the Act, who have resided five years in a parish, are to be exempted from the liability to be removed. There are exceptions in cases of prisoners and others. Widows, during their widowhood, shall not be removed for twelve months next after the death of their husbands. Children, whether legitimate or illegitimate, under the age of sixteen, residing with their parents, are not to be removed from a parish from which their parents may not lawfully be removed, nor are sick persons to be removed unless it shall be certified that the sickness will produce permanent disability. A settlement is not to be gained by an exception to be removed. A penalty is provided for procuring the removal of poor persons out of a parish without the warrant of justices. The delivery of paupers at a workhouse or union is to be considered a good delivery. The Poor Law Amendment Act, which is to be construed as one with the present Act, which Act is only to extend to England, and may be amended or repealed.

HOUSE OF LORDS.

RELIGIOUS DISABILITIES BILL.

THURSDAY, July 23.—Lord LYNDHURST begged to call their lordships' attention to a bill which had been some time before them—the Religious Disabilities Bill. This bill had passed through committee, and an understanding had been come to that a communication should take place between him and the right rev. prelate (the Bishop of London), with a view of considering certain amendments proposed by the right rev. prelate. He had had an opportunity of meeting the right rev. prelate, and they had agreed upon two amendments; and what he now proposed was, that their lordships should go into committee *pro forma* for the purpose of committing those amendments, together with one or two other amendments. There was an understanding that her Majesty's Government were disposed to make this a Government

question, and if he went on with this measure, it was on this distinct understanding. He hoped their lordships would allow him to go into committee *pro forma*.—The Marquis of LANSDOWNE was extremely glad that the noble and learned lord had been induced to go on with the bill, and he had no objection to state, on the part of the Government with which he had the honour to be connected, that they would consider it a Government measure so far as being determined to give to its passing every facility in their power to afford.

HOUSE OF COMMONS.

DEATH BY ACCIDENTS COMPENSATION.

WEDNESDAY, July 22.—Mr. BOUVIER moved that the House should go into committee on the Bill for providing compensation in case of death by accidents. This, in connection with the Deodands' Abolition Bill, which stood for second reading, raised an interesting discussion. It was generally admitted that the law on this subject was in a very imperfect state, and required careful revision; and amongst other speakers, Mr. WAKLEY detailed the particulars connected with a well-known accident on the London and Birmingham Railway, in which the jury had awarded a deodand of 2,000l. In that case he had, as coroner, taken the greatest pains to have the verdict properly drawn up, and had acted on the advice of the present Attorney-General and other eminent legal authorities. Yet, notwithstanding the minute and anxious pains he had taken to have the verdict framed so as to render it impervious to all technical objection, it had been carried into the Court of Queen's Bench, and it was there quashed.—Sir GEORGE GREY advised Mr. Bouvier to adopt the suggestion which had been thrown out, of referring the Bill to a select committee, to which the Deodands' Abolition Bill might also be referred.—Sir JAMES GRAHAM thought that, as Lord Campbell had taken a great interest in the subject, the two Bills might be postponed until the Government came to a determination as to whether or not they would not refer them to the criminal law commissioners. It was true that the subject did not belong to the criminal law, but it was germane to it, and it could not be brought under the consideration of two more competent or able persons than Mr. Sturges and Mr. Amos, who were members of that commission. At that period of the session it was not likely that the Bills, in their present shape, could be brought to a successful termination.—The ATTORNEY-GENERAL admitted that the law should be carefully revised; but as it was desirable that deodands should be made the medium of affording compensation to the family of a person killed, the law, not merely of England, but of Scotland, should be taken into consideration. The criminal law commissioners were Sir E. Ryan, Mr. Bellenden Ker, Mr. Sturges, and Mr. Amos; and, therefore, if the subject were referred to them, some gentlemen practically acquainted with the law of Scotland should be joined with them.—Lord GRANVILLE SOMERSET thought that in any alteration of the law of deodand manorial rights should be taken into consideration. The two Bills were then postponed till Monday.

CHARITABLE TRUSTS BILL.

On the motion that the House go into committee on the Charitable Trusts Bill, Sir GEORGE GREY suggested to the honourable member for Montrose the propriety of withdrawing the bill. Last week the House affirmed by the second reading the principle of the measure, which principle was the accountability of persons holding charitable trusts to Parliament, through the Secretary of State for the Home Department. Since the second reading he had received a great number of communications from persons interested in the matter, not offering any objection to the principle of the accountability (on the contrary, they fully approved of it), but urging additions that had not been contemplated by the honourable member for Montrose, and making various suggestions of great weight and importance, which demanded and ought to receive the most serious consideration. (Hear, hear.) The Government desire to devote their best attention to the matter, and his noble and learned friend the Lord Chancellor would soon have under his consideration another measure, affirming the principle of the Bill introduced by the honourable member for Montrose, but more general in its import, and much more comprehensive in its details. (Hear, hear.) The principle of the Bill at present under consideration having been deliberately recognised by the House, he trusted that his honourable friend the member for Montrose, taking into consideration the lateness of the session and all the other circumstances of the case, would be induced to withdraw the Bill for the present, or at least postpone it on the understanding that a measure similar in object, but more comprehensive in detail, would be brought forward by Government at an early period next session.—Mr. HUMPHREYS signified his willingness to comply with the suggestion. Since last week he had received several communications on the subject of the Bill, all showing the necessity of the measure, but all requiring

more to be done than he had contemplated. The only object that he had been desirous of effecting was, that a balance-sheet, shewing the revenue and expenditure on account of these charitable trusts, should be laid before Parliament, thereby affording to that House and the public generally the means of obtaining that information for which they had for many years looked in vain. If Government would pledge itself to introduce next session a comprehensive enactment of this description, he would willingly accede to the suggestion of the right honourable baronet. It did not surprise him that a Bill of this description should have encountered very great opposition, for never had a Bill been introduced respecting the charitable trusts in this country that was not sure to encounter the fiercest resistance from interested parties, who could not endure the thoughts of letting the daylight in on their proceedings.—Mr. ESCOTT hoped that the Government would redeem their pledge by taking this matter into their consideration on their earliest possible convenience. If proof were required of the absolute necessity for some such measure as that introduced by the honourable member for Montrose, it was to be found in the extraordinary terror and consternation which the Bill had already produced in the minds of persons connected with charitable trusts.—Mr. BROTHERTON was inclined to think that some such simple enactment as that of the honourable member for Montrose would have been found quite adequate for the accomplishment of every desirable object.—Mr. STUART had objected to the Bill, not because he was hostile to its principle, but because he thought that a measure of the kind should have been brought forward at a time of year and under circumstances which could secure for it that degree of attention which, in his opinion, the importance of the subject demanded. The Bill of the honourable member for Montrose would not supply an adequate remedy for the evils complained of. The only proper remedy for the present faulty system was to establish a speedy, easy, and, as far as possible, an unexpensive tribunal for redressing abuses in cases of charitable trusts. He must say, however, that he could not approve of the Bill of the honourable member for Montrose, for he believed that it was open to a great constitutional objection. Any measure brought in on this subject ought, moreover, to be a Government measure.

THE MAGISTRATE.

SUMMARY.

No topic of interest has engaged public attention during the past week. The Summary of Magistrates' Cases during the two last Terms is continued in the present number.

REVIEW OF MAGISTRATES' CASES,

Decided during Easter Term and Vacation, and Trinity Term and Vacation.

(CONTINUED FROM P. 368.)

CHARGEABILITY.

Certificate under 7 & 8 Vict. c. 101.—Two very refined objections, both of which were disposed of summarily by the Court, were raised in *Reg. v. High Bickington*, 7 Law T. 83; 1 New Mag. Cas. 329; upon an order of removal as to the same paupers, who were attempted to be removed in the famous *High Bickington* case. The only evidence of chargeability was a certificate under 7 & 8 Vict. c. 101, which was in the usual form, and the copy sent to the appellants had the following note appended to it:—

This certificate was received in evidence by us, two of her Majesty's justices of the peace for the county of Devon, and acting therein, the 13th day of September, 1844.

JOHN DASH.
JAMES WESTON.

There were two objections made to the sufficiency of this evidence of chargeability: first, that the identity of the paupers removed and those named in the certificate was not shown; and second, that it did not appear that the certificate was produced to the removing justices. The Court, however, overruled both objections, and held the evidence of chargeability to be sufficient. (See *Reg. v. Ashburton*, *supra*, 84, 303.)

Reg. v. Bradford, 7 Law T. 156; 1 New Mag. Cas. 522; 1 New Sess. Cas. 330, is one of those unsatisfactory cases that sometimes occur, when it is impossible to state with accuracy the grounds of the decision. The examinations contained the following evidence of chargeability. Joseph Applegate said:—

I am a relieving-officer acting under the board of guardians of the Westbury and Wootton Bassett Union, and for the district of the said union in which the

township of Steeple Ashton is situated. I know Thomas Barrett and Ann his wife, the paupers. I have paid them parish relief in money for upwards of a year now last past, during which time I have paid them half-a-crown weekly, and every week, on account of the said township of Steeple Ashton, to which township they still continue chargeable; and I still pay them the same sum weekly on account of the said township of Steeple Ashton, out of the money in my hands belonging to the said township.

The pauper also stated, that "some time ago, being unable to work, I was obliged to apply to the parish officers of the township of S. for parish relief, and so became chargeable to the said township, and have continued chargeable to the said township ever since; and I receive weekly from J. A., the relieving officer of the district. I and my wife are still subsisting on the relief we received from him, the said J. A., on account of the said township." Under the ground of appeal, that there was no evidence of chargeability, it was objected, that it was not shewn that the pauper was in the parish when relief was given, and also, that it was not shewn that he, the relieving officer, relieved him as being chargeable to the parish, he being a relieving officer of the district.

Although present at the argument, we feel somewhat doubtful upon what ground the Court decided. Our own impression, in which also a very accurate friend concurred (see *Justice of the Peace*, May 9), was, that the omission to state that the pauper was in the parish when relieved was the ground of the decision, but it is right to state that some at least of the counsel engaged in the case took a different view. When decisions of this kind are given, we can only, with all submission, use the metaphor, *aliquando dormitat Homerus*. A similar point as to the relieving officer was decided in *Reg. v. Shillington* (6 Law T. 147.) The converse of the other objection, founded upon the same argument, that relief itself may be evidence of chargeability, as a settlement, was made in *Reg. v. Chatham* (7 Law T. 11; 1 New Mag. Cas. 518.) The examinations in support of an order of removal to the parish of Chatham, in the county of Kent, stated relief given by the parish of Chatham to the pauper whilst residing at Gillingham, in the same county; and it was objected that it did not appear that Gillingham was a separate parish, or that it was not in the parish of Chatham. And then the inference sought to be drawn of a settlement from the fact of relief would fail, as, whether settled or not, relief must be given to the poor in the parish. It was held, however, to be unnecessary to state that Gillingham was a separate parish, and that relief out of the parish of Chatham was shewn.

COMMISSIONERS OF TAXES.—CONVICTION.

Summons by one commissioner. 3 Geo. 4, c. 23, s. 2.—In *Jones v. Gurdon*, 2 Q. B. 600, the construction of 52 Geo. 3, c. 93, sched. L, rule 13, in connection with 3 Geo. 4, c. 23, s. 2, was considered with reference to the power of one justice and Commissioner of Taxes to hear and determine upon a complaint where another justice and commissioner issued the summons in respect of an offence against the Stamp Act. It was held that the 13th rule did not authorize any justice to hear the matter except the one to whom the information or complaint is made, and that the 3 Geo. 4 makes no difference, because it does not contain any enactment that one justice may summon and another hear, but only recognizes such a course of proceeding incidentally, which is quite legal where no provision to the contrary is made. In *Reg. v. Griffin*, 7 Law T. 225, upon the same principle, it was decided that one commissioner, not being a justice, cannot receive an information and issue a summons under the former Act, or under the latter. Not under the former, because the words are to be construed *redenda singula singulis*, that two commissioners must summon before them, or one justice before him, and not under the latter, because that only applies where no provision to the contrary is made.

COPIES OF EXAMINATIONS.

Stamp.—An ingenious objection was made in *Reg. v. Keighley* (7 Law T. 168; 1 New Mag. Cas. 527; 1 New Sess. Cas. 381), to the copy of a deed sent as part of the examinations under the 79th section of the Poor Law Act as imperfect, because the amount of the stamp was not stated, nor any description of it given. The Court were somewhat inclined to yield to it, but decided that it was unnecessary, because in fact the stamp is no part of the deed or document to which it is

affixed. It is rendered necessary to make it admissible in evidence, but the contents of a lost deed may be proved without any evidence that it was stamped.

If the parish to which the pauper is ultimately removed attend at the time of making the order, and offer evidence against the order being made, the justices are not bound to take such evidence down in writing, or to send any note or copy of it, with the examinations, after the order is made. This was decided in *Reg. v. The Inhabitants of Holme* (7 Law T. 204; 1 New Mag. Cas. 544.)

In giving judgment, PATTISON, J. said, "I by no means say that the justices have any discretion as to whether they will take down and send evidence offered by the removing parish; but in this case the evidence which they do not send was offered by the appellant parish, and the order was made notwithstanding it."

COSTS.

Frivolous objections.—*Reg. v. Justices of Surrey* (7 Law T. 204; 1 New Mag. Cas. 526) will, we hope, tend greatly to discourage the litigation of frivolous objections; although the ingenuity of counsel may have succeeded in persuading the justices at sessions to allow the objection. The objection had been made, and successfully, that a notice of appeal commencing "We, being a majority of, and acting for and on behalf of the churchwardens and overseers," was insufficient, and the parish officers opposed the rule for a *mandamus*, directing the Sessions to enter continuances and hear. The *mandamus* issued, and the appeal subsequently tried, and the order of removal quashed. The appellant parish then applied to the Court to compel the respondents to pay the costs occasioned by the *mandamus*. The Court, admitting the general rule that costs incurred by the mistake of a judge or Court are not usually indicted upon the party who endeavours to support that decision, asserted their right to give or withhold costs of motions, according to circumstances, and to mark their sense of the frivolousness of the original objection, and the impropriety of persisting in the endeavour to retain the temporary advantage gained at the sessions.

ESTATE SETTLEMENT.

Distance, how measured.—The construction of the 68th section of 4 & 5 Wm. 4, c. 76, has at length been settled in *Reg. v. Saffron Walden* (7 Law T. 264; 2 New Sess. Cas. 360.) That section is, "that no person shall be deemed, adjudged, or taken to retain any settlement gained by virtue of any possession of any estate, or interest in any parish, for any longer or further time than such person shall inhabit, *within ten miles thereof*." It is manifest that the word "thereof" is ambiguous. The question arose upon the following facts:—It was found by the Sessions that from the boundary of the parish of Furneux Pelham to the house which the pauper was inhabiting in Saffron Walden, the distance was ten miles and a quarter by the nearest mode of access; but, measured in a straight line on a horizontal plane from such boundary to such house, the distance was but nine miles. From the boundary of the estate and lands above-mentioned in the parish of Furneux Pelham to the house inhabited by the pauper in Saffron Walden, the distance was more than ten miles by the nearest mode of access; but, measured in a straight line, the distance was but nine miles; and from the boundary of the parish of Furneux Pelham to the boundary of the parish of Saffron Walden, the distance by either of the above modes of measurement was less than ten miles. The Sessions quashed the order of removal, considering that the measurement must be by a horizontal line from the residence of the pauper to the boundary of the parish in which his estate lay, and not by the nearest means of access, or by the distance between the boundaries of the respective parishes. In the discussion a statute was referred to on each side, as a statutory mode of measurement; but the Court held that an arbitrary rule must be laid down, and decided that the mode should be as adopted by the Sessions, and as was suggested by Parke, B. in *Leigh v. Hind* (9 B. & C. 774), viz. as the crow flies, or a horizontal line between the residence and the boundary of the parish where the estate is. The order of Session was accordingly confirmed.

HIRING AND SERVICE SETTLEMENT.

Exceptional hiring.—An exceptional hiring is one whereby, during some period of the time for which the contract is made, the servant is not bound to serve the master. Clear as this principle is, con-

flicting interests of parishes raise disputes as to its application. Each case must depend upon the words and plain intent of the parties; it will suffice, therefore, merely to mention two decisions in last Term. In the first (*Reg. v. North Howran*, 7 Law T. 183), an agreement by which A and B, owners of silk mills, hire C and D, for three years, to dress silk, with a stipulation that they should be paid so much a pound for the first three months, and after that, so much a pound, provided they did a certain quantity each week, and proportionately more, if more was done, but with deductions for less than that quantity, was held not to be an exceptional hiring. In *Reg. v. Walbottle* (7 Law T. 254), the Court decided that there was an exceptional hiring under a pit bond. The material provisions of the bond were, that the pauper was hired for a year to work in a pit; that he should on every working day, including pay Saturdays, do a full day's work, or such a quantity of work as should be deemed so; that the master should find as much work as would enable him to earn 28s. in a fortnight, under a penalty of 2s. 6d.; except for fourteen days at Christmas, during which he might lay the pits off work; but that during ten days at Christmas, and other days when the pits should be off work, the pauper should continue in the service, although not at work. The explanation of the decision is thus given by Lord Denman:—*R. v. Gateshead* must decide this case, unless the words of the 6th clause are general enough to make the pauper a servant of the employer during the whole time over which the hiring extends. They are calculated to create that impression in the first instance, but upon examination it is clear that they do not refer to the ordinary working days. That being so, there is such a limitation of the hours of work as in *R. v. Gateshead* was held to constitute an exceptional hiring.

E. W.

(To be continued.)

CONSECUTIVE IMPRISONMENTS.

MANY questions of importance having lately arisen as to the power of magistrates in cases of summary jurisdiction to inflict consecutive imprisonments for offences adjudicated upon on one and the same day, Mr. HALL, the magistrate of Bow-street, has taken the opinion of the late Attorney and Solicitor-General upon the point, and which was laid before the magistrates of Middlesex at the last Quarter Sessions. The following were the questions submitted:—

"1st. If two or more charges, punishable in a summary manner, be heard before a magistrate on the same day, and he convicts in both cases, can he lawfully issue one warrant only in the first instance, and commit the defendant to prison in respect of one of the offences, and when the imprisonment is about to terminate issue a second warrant in respect of the other offence, directing the gaoler to detain the defendant for a further period of imprisonment?—2nd. Whether, in hearing two cases on the same day, the magistrate who convicts in both can order in his warrant of commitment that the defendant should be imprisoned in respect of one of the offences for a stated time, and that at the end of such time he should be imprisoned for the second offence for a further period?—3rd. If a defendant be charged before a magistrate on the same day by two complainants with having committed distinct assaults on each of them at different times, namely, one on that day, and another on the preceding day, can the magistrate lawfully adjudicate upon one only of such charges, and suspend the hearing of the other until the imprisonment in the case heard shall have expired, and then, on summoning the defendant to appear, proceed to hear and adjudicate upon the other charge?"

And the following was the

OPINION.

"1st and 2nd.—We are of opinion, that where a magistrate has summary jurisdiction, he ought not upon convictions in several cases, to defer sentence in the second, until the imprisonment upon the first is about to expire, and then issue a warrant of detention for a second period of imprisonment. The proceeding of the magistrate in the present case was, therefore, erroneous; and we are of opinion, that if two or more charges be brought before a magistrate at the same time, it is his duty to adjudicate upon them in succession, and without delay. If he convict upon more than one, where the punishment is imprisonment, he should make out separate warrants upon each conviction, the second imprisonment to commence and take effect upon the expiration of the first.—3rd. The same rule applies to a case of two or more charges of assault. The proper course (and which is adopted by the superior courts), is that

which is above pointed out in answer to the 1st and 2nd questions."

JUVENILE OFFENDERS.—The following is the report of the committee of the Middlesex magistrates appointed the last county day, to prepare suggestions for checking the growth of juvenile crime, and promoting the reformation of juvenile offenders:—

"The committee have held several meetings, and have given to the subject their most serious consideration. They have been favoured with the printed and written suggestions of several Middlesex justices on the matter, and have agreed to the following resolutions on the first part of the subject referred to them—namely, the best means of checking the growth of juvenile crime:—

"1. That the fearful extent of juvenile depravity and crime in the metropolitan districts, and in large and populous towns generally, requires immediate interference on the part of the legislature.

"2. That a very long and painful experience has clearly shown that the great causes of this juvenile depravity and crime are the want of proper parental or friendly care, and the absence of a comfortable or a suitable home, and the consequent neglect of religious and moral training.

"3. That destitute and neglected children, of which there are great numbers, whose cases cannot effectually be dealt with under the provisions of the Poor-law, and who are suffering from either of the before-mentioned causes, require protection to prevent their getting into bad company, learning idle or dissolute habits, growing up in ignorance, and becoming a heavy and expensive burthen on the country as criminals.

"4. That it appears to this committee that the protection and instruction required for such children should be afforded by the state equally as a matter of economy and humanity.

"5. That for want of such protection and religious and moral training, it is from the ranks of these very children in after-life that the band of felons is principally recruited; and to deal properly with them at a moderate expense during their childhood, would prevent their becoming subjects for the far more expensive and difficult arrangement of transportation as adults.

"6. That this committee, in conclusion, recommends that a memorial be presented from the Court of Quarter Sessions of the county of Middlesex to the Secretary of State for the Home Department, praying that the government will forthwith originate some measure founded on the views embraced by the foregoing resolutions for the prevention of juvenile depravity in the county of Middlesex.

"The committee have not yet entered into the consideration of the subject of the reformation of juvenile offenders, but they will proceed in their inquiries, and report the result to the Court on some future county day. (Signed)

"HENRY POWNALL, Chairman.

"Sessions House, July 23, 1846."

SEPARATE CONFINEMENT FOR YOUNG OFFENDERS.—At the last Dorset Quarter Sessions, the proposition of the Marquis of Westminster for the separate confinement of juvenile prisoners again came under the consideration of the Court. The visiting justices of the gaol and house of correction had been instructed to inquire into the capabilities of the prison for such a purpose, and a special report from them was read. They reported,—1. That the gaol in its present state does not admit of the adoption of the separate system. 2. That no alteration in the existing building will effect the purpose. 3. That a limited number of prisoners (not exceeding 36) might be contained in a building to be erected between the south-eastern and south-western wings as standing at present. 4. That by the removal of the south-eastern and south-western wings two buildings may be erected to contain a further number of 54 prisoners on the separate system in each wing. The building for containing 36 prisoners was estimated to cost 4,000*l.* but "it appeared to the committee that, unless the separation was extended, a great many of the new cells would be ill-ventilated and badly lighted," and they, therefore, did not recommend the adoption of this plan. It also appeared that great inconveniences would arise from the construction of the buildings to contain 54 prisoners, and which were estimated at 5,500*l.* each. The committee therefore declined to recommend either of the plans, but unanimously declared that the plan of the county surveyor, for entirely remodelling the gaol, at an expense of 14,000*l.* was well calculated to carry out the system of separate confinement. The chairman, Mr. George Banks, M.P. said he had had some conversation with persons conversant with this subject since he last attended these sessions, more particularly with one of the worthy aldermen of the City of London, who had directed his attention to separate confinement, indeed had issued a publication on the subject; and certainly, as far as that publication went, it would induce them to postpone any discussion upon the matter, for it was the opinion of the writer that separate confinement,

where it had been tried, had not succeeded; and he asserted that in America, where it had been tried on a large scale, it had been found to fail so entirely that it had been given up. The writer also asserted that his statements were made on the authority of gentlemen of high attainments in the medical profession, who believed separate confinement to have an injurious effect upon the mental powers. He might further add, that there was now a bill on this subject before the Upper House, brought in by the Marquis of Westminster, very much at his (Mr. Banks's) request; for he believed, from the endeavours he had made in the other house of Parliament, that it was almost impossible for any independent member to propose with success in the Lower House any measure of the kind. This bill, however, which was entitled "An Act to provide for the speedy and summary trial and punishment of juvenile offenders in certain cases," had been favourably received by all parties, and its second reading was prevented only by the present position of the Ministry. Lord Devon, who was a high legal authority, had been consulted upon it; and it was understood, that the Lord Chancellor was not averse to it. The 19th clause of it proposed to make it imperative on magistrates to "appropriate" or "provide" some convenient place for the exclusive reception of offenders committed under this Act; and, under these circumstances, he thought it would be best to delay any scheme of their own until it was seen whether or not this bill passed into a law. Some conversation followed, and the matter then dropped, it being understood that it will be revived at the October sessions, when a larger number of magistrates is generally present.

DECREASE OF CRIME IN THE METROPOLIS.—The returns of the Commissioners of Police for the Metropolitan district shew a great diminution in the number of criminals apprehended by the police. In the year 1840 the police district under the control of the commissioners was greatly extended, in which year the number of persons taken into custody was 70,717, of whom 37,559 were discharged by the magistrates, 29,076 were summarily convicted, or held to bail, and 4,082 committed for trial. Of the number so committed 3,081 were convicted and sentenced, and the remainder were either acquitted or not prosecuted. In 1845 the number of persons taken into custody was 59,123, being a diminution of 11,594; 30,317 were discharged, 23,890 were summarily convicted, 4,916 were committed for trial; of the number sent for trial, 3,548 were convicted and sentenced, the remainder acquitted; of the number taken into custody in the year 1845, 39,884 were males, and 19,234 were females; the number of male prisoners who could neither read nor write was 8,875; 27,345 could read and write but imperfectly; 3,123 could read and write well; and 541 had received a superior education. Of the females 6,388 could neither read nor write; 12,314 could only read and write imperfectly; 493 could read and write well; and only 45 had received a superior education.

PAROCHIAL AND BOROUGH RATE.—A Parliamentary paper was yesterday issued given some useful information in respect to parochial and borough rates. The total amount of rates levied by the overseers of the poor in the year ending the 31st December, 1843, was 2,676,486*l.* 8*s.* 1*d.*, of which 2,600,995*l.* 2*s.* 8*d.* was levied in England, and 75,491*l.* 5*s.* 5*d.* in Wales. The rates for the metropolitan boroughs were in the year, 973,976*l.* 8*s.* 8*d.* It appears that the sums assessed for borough rates for the year ending at the period to which the accounts had last been audited amounted to 113,778*l.* 0*s.* 10*d.*, making the total parochial and borough rates in one year 2,790,264*l.* 8*s.* 11*d.*, of which 2,712,996*l.* 7*s.* 2*d.* was levied in England, and 77,268*l.* 1*s.* 8*d.* in Wales. In the five metropolitan boroughs, Finsbury, Lambeth, London City, Marylebone, Southwark, Tower Hamlet, and Westminster, the rates levied by the overseers were, respectively, 130,127*l.* 13*s.* 6*d.*, 66,760*l.* 19*s.* 9*d.*, 212,103*l.* 9*s.* 10*d.*, 197,647*l.* 5*s.* 10*d.*, 75,637*l.* 6*s.* 10*d.*, 166,818*l.* 9*s.* 9*d.*, and 126,481*l.* 3*s.* 2*d.*

LAW FOR THE LADIES.—A curious parochial discovery is going on at Lutterworth, Leicestershire, the parishioners having chosen a Mrs. Measure, the widow of a farmer, as overseer. It appears that this is quite legal, and instances are on record of the appointment of females as parish constables. The supposed ground for this apparently harsh proceeding—as the new "overseer" is 75 years of age—is, because she persists in keeping her name on the books, saving her son from taking the trouble on his shoulders. Her appointment has been confirmed by the magistrates; but she has resolutely withstood all persuasion to act, so that the board of guardians have no other legal alternative than to indict her at the sessions, and compel her.—*Derby Mercury.*

RETURNED CONVICTS.—The *Scotia*, hired convict ship, which lately left England for Bermuda, with convicts, has returned to Woolwich from the latter place, and at present remains at moorings, off the Royal Arsenal. She has brought home 120 convicts, whose term of transportation has nearly expired, and with the exception of two, retained on board in confinement, for having broken open the store-rooms on

their passage home, the convicts have been removed to the *Warrior*, convict hulk, where they will remain until liberated by an order from the Secretary of State for the Home Department.

THE LAWYER.

Summary.

A VERY provoking mistake was made last week in directing the attention of the reader to the great case relating to policies of insurance lately decided in the Exchequer Chamber, and there fully reported. It arose thus:—The MS. of this summary was sent to the printer's, with directions to extract the name of the case from the report then in type, in order that the names might be properly spelled. Unluckily, instead of copying the name of the case reported, *Clift v. Schwabe*, they copied the name of the principal case cited in the argument, *Borrodale v. Hunter*, and the error was not seen by the editor until the next morning when it was too late for correction. We hope it did not occasion any inconvenience, although it must have perplexed the reader at first.

Lord COTTENHAM is proceeding vigorously with his work. He settles more cases in a week than did his indolent predecessor in a month. His promptness of decision is, indeed, as remarkable as the vast extent of his knowledge and the soundness of his judgment. It proves the mischief of the present union of political and judicial functions in the Chancellor, that the country should be deprived of the services of such a man by the caprices of party. We are happy to see that Mr. Justice COLRIDGE is so much recovered as to be enabled to resume his judicial duties.

An extremely dolorous letter from a suitor in Chancery, complaining of the delay and expenses, having appeared in the *Times*, the following commentary was elicited from Mr. Commissioner FANE.

TO THE EDITOR OF THE TIMES.

SIR,—I observed in your paper of Thursday last, the 16th, a letter from a correspondent, complaining of Chancery delays. The substance of his statement was, that though amply provided with funds to pay for legal assistance though he had employed a most respectable solicitor—though he had given that solicitor directions to press the matter on with all diligence, and though the main point had been decided in his favour in 1831, he had been in Chancery *eighteen years*! had spent 2,500*l.* in costs, his original demand being only 2,000*l.*; that he had received nothing, and that he knew not when he should be out of Chancery.

The most startling part of his statement was, that in 1842, a written question was put by the Master in Chancery to a party in the cause, and that it was not finally decided whether that question should be answered till 1846. Is it surprising, that under such a system—a system which admits of a four years' discussion whether a question shall be answered or not—the cause of *Bulev. Stuart*, where the point was as simple, as one as ever arose, should have begun in 1793, and that 51 years after, on the 6th of March, 1844, there should have appeared in your columns a report of a step in the cause? In that case the House of Lords determined the main point in 1813, and in 1844 the successful party was still seeking the fruits of his success. Such is Chancery.

Your correspondent alluded to a publication of mine, which I have lately circulated amongst persons in authority, contrasting the methods of proceeding in Chancery and Bankruptcy to the advantage of the latter, and illustrating the bankruptcy method by the last banker's bankruptcy, which came before me, wherein 42,139*l.* 2*s.* 2*d.* was collected and distributed, not in eighteen years, but in nine months and a few days, the first dividend, amounting to 20,082*l.* having been made in two months and 16 days after the bankruptcy.

I profess myself a zealot for law reform, and especially Chancery reform, and I have ever thought that no Chancery reform would be of any real value that did not, to a great extent, assimilate the Chancery method of proceeding to the Bankruptcy method. I expressed this opinion four years ago to the Master of the Rolls and some other gentlemen, who were authorized by Government to consider the subject of Chancery process, and by their desire I wrote a paper, explanatory of the details of Bankruptcy proceedings, and pointing out, I think, seven main points in which the two methods were diametrically opposed to each other, by the adoption of one set of which principles Chancery produced ruinous delay and expense, whilst

by the adoption of the opposite set Bankruptcy produced speedy and cheap justice.

I desire now publicly to repeat that opinion, as the opinion of a person who was brought up as a Chancery lawyer, who has had 20 years' experience as a Bankruptcy Commissioner, and who, whether studying the law to practise it as a private practitioner, or studying it to administer it as a public servant, has ever considered that the best use he could make of his knowledge what the law is, was to consider, and, by careful reflection, satisfy himself, what it ought to be.

My motive in now addressing you is twofold. I wish to call public attention to the proposition, that the Court of Bankruptcy will furnish invaluable hints for a reform of Chancery process, and I wish to illustrate my view by shewing how Bankruptcy would have dealt with the above difficulty, which Chancery took four years to solve. If an examinant had refused in Bankruptcy to answer when required by the Commissioner, as he did refuse when required by the Master, it would have been the duty of the Commissioner to commit him, as a judge would have done on a trial at law. The examinant would have appeared by *habes corpus*, and, as a question of personal liberty would have been at stake, other business must have been suspended for the moment, and the point must have been decided in a few days. The Bankruptcy method would then have brought to issue in perhaps four days what the Chancery method kept in suspense four years. And why, I would ask, should a Master in Chancery not have the power which is freely conceded to a Commissioner of the Court of Bankruptcy?

Your obedient servant,
Upper Brook-street, July 18. C. FANE.

REVIEW OF CASES

IN THE EQUITY, BANKRUPTCY, ECCLESIASTICAL,
AND ADMIRALTY COURTS.

(Continued from page 356.)

JURISDICTION.

The Court of Chancery does not adjudicate on questions purely legal, unless they come before it in cases requiring, in some other respects, equitable interference; but an equity may be superinduced by the conduct of the parties upon a point strictly legal, so as to render it cognisable by a court of equity. Cases of this sort frequently arise out of disputes relating to contiguous property, and in such cases the remedy is to be sought in general in a court of law, and not in a court of equity; but there are some cases, however, of equitable interference.

Commission to ascertain boundaries.—The remedy for an encroachment on contiguous property is to be sought at law, and not in equity. The rule in such cases is, that a mere allegation of a confusion of boundaries will not support a bill for a commission to ascertain them, unless there is something arising out of the conduct of the parties, or that it appears the interference of the Court would tend to prevent a multiplicity of suits. Thus, in *Wake v. Conyers*, 1 Eden, 331, Lord Northington said, that "A court of equity will entertain a bill for a commission where there are some equities superinduced by the acts of the parties, such as particular circumstances of fraud or confusion, where a party has ploughed too near the land of another, or the like." So in *The Marquis of Bute v. The Glamorgan and Brecon Canal Company*, 6 Law T. 253, the defendants had gradually encroached upon the plaintiff's land, and had let their own land to as many as fifty persons, and that was held a sufficient ground for equitable interference.

A curious case, and one of great importance to the profession, has arisen out of the allotment of the duties of his office between his clerks by Master Lynch. No less than thirty-two of the suitors of the Court presented a petition to the Lord Chancellor, complaining of the course pursued by Master Lynch in the employment of clerks in his office, which they alleged to be injurious to the profession, and a violation of the Act of Parliament for the regulation of the Court of Chancery. The principal points were, the distinction between the offices of chief and junior clerk, the one being judicial and the other ministerial; the right of the Master to apportion them; and the control and supervision of the Lord Chancellor. Master Lynch assumed that he was himself accountable for the due discharge of the duties of the office, and that he had a perfect and unlimited right to apportion them as he thought fit, and that the Lord Chancellor had no right to control him. His Lordship, however, assisted by the Master of the Rolls, took a very different view of the question, and we refer to the case (*Re Whiting*, 7 Law T. 173) as one well worth perusal.

MARRIED WOMEN.

After the fetter, or anticipation clause, was first applied to the estates of married women, the doctrine underwent various changes, being almost frittered away by the various restrictions and limitations with which it was embarrassed, till at last, in *Tullett v. Armstrong*, 4 Myl. & Cr. 390, Lord Cottenham set at rest all the doubts and difficulties which have been raised, and established the true and broad principle, that the fetter, being a creature of equity, may be moulded by the Court to suit the varying conditions of life; to attach during successive covertures, and to fall off when coverture is determined. But after the principle was thus clearly established, the application of it to the cases occurring in practice again gave rise to much doubt and uncertainty. The Vice-Chancellor of England held, in *Berry-more v. Ellis*, 8 Sim. 1, that where a married woman had a power of appointment given to her over a fund, and an interest therein, in default to her separate use, with the anticipation clause interposed, she might assign the interest, though she could not exercise the power. And again, in *Brown v. Bamford*, 11 Sim. 127, the same judge held that an affirmative receipt clause did not put the fetter on the assignment of the interest; but to do so it was necessary to add that no receipts but the married woman's would be sufficient discharges. This latter case was appealed, but, pending the appeal, the cases of *Moore v. Moore*, 1 Col. 54; *Harnett v. M'Dougall*, Rolfe; *Baggett v. Meus*, V.-C. W. and other cases, were decided, all more or less at variance with *Brown v. Bamford*. The Lord Chancellor, however, at first affirmed *Brown v. Bamford*; but on its being represented to him that the profession were dissatisfied, he allowed it to be argued a second time, and (7 Law T. 249) reversed his own judgment, as well as that of the Court below; and the doctrine of anticipation is once more relieved from the doubts that were cast over it, by its being held to be necessary to have negative words in the receipt clause, the Lord Chancellor having expressly decided otherwise. But in giving judgment, his lordship professed to steer clear of *Barrymore v. Ellis*, though how he can be said to have done so it would be difficult to shew, when he declared that the decision of the case did not in any manner depend upon the receipt clause, but upon the restriction against anticipation extending to the whole gift.

PARTNERSHIP.

Few cases under this head have occurred which are worth noticing. The acts and course of conduct of parties may sometimes make it doubtful whether a partnership exists when it is attempted to be denied, and the circumstances alone of each case are to determine the question. There are some acts, however, which are so unequivocal as to put the onus on the party denying the partnership to prove the contrary—such as serving a notice to dissolve, or the like. In the case of *Smith v. Sherwood*, 7 Law T. 154, A filed a bill against B and C, representing them to be his copartners. B and C denied partnership, stating that A was their foreman; but as it was in contemplation to take him into partnership, the accounts had been made out in the joint names of the three, and the tools and utensils were marked in the joint names. They admitted having served A with a notice to dissolve, and that a specification of work they required to be done described the work as being done for the three. Held, that there was sufficient evidence of a partnership.

PIRACY.

Copyright.—The plaintiff, H. G. B. had become entitled to the entire copyright of "Illustrations of the Life of L. de M." The defendant, W. B. commenced a certain publication called "The European Library," the first volume whereof was intitled "A Life of L. de M." several passages of which were admitted by the defendant to have been copied from the "Illustrations." Held, that the defendant having, by so doing, materially lessened the price of the original work, by knowingly taking a material valuable part of it, this was sufficient to constitute a piracy from the "Illustrations," notwithstanding the passages copied were stated to be quotations, and were not so many nor so extensive as to make the work so pirated a substitution for the original one. (*Bohn v. Bogue*, 7 Law T. 277.)

PRACTICE.

The cases under this head have reference chiefly to the changes and alterations introduced by the late Orders, and many of them are entirely useless,

because inapplicable hereafter, inasmuch as they belong to the transition period at the time of the new Orders coming into operation. There are, however, some decisions which it may be useful to notice.

Varying decree.—It has been decided in *Jenkins v. Briant*, 6 Law T. 273, that a former decree cannot, upon further directions, be varied on a point of law, even as to a new party; but in such a case a rehearing is necessary.

Revivor.—Reviving a bill merely for the sake of costs is not admissible in practice; and, accordingly, where a decree, among other things, has directed one party to pay costs to be taxed, but the other party dies before taxation, all the rest of the decree having been performed, a bill of revivor will not lie; and when by the decree deeds are ordered to be delivered up, but there was no statement in the bill of revivor that they had been so delivered up, a plea, and not a demurrer, is the proper mode of defence. (*Andrews v. Lockwood*, 7 Law T. 250.)

Barristers' clerks' fees.—A case of considerable importance as regards the intercourse among the two branches of the profession, has arisen in reference to barristers' clerks' fees. It has been customary for solicitors to allow the clerks certain gratuities, but these gratuities have never been so far sanctioned by custom as to become the subject of regulation under the Orders of the Court. But till lately there had been no decision on the subject, except that, on taxation, most of the Masters in Ordinary were in the habit of allowing them. A late case, however, which arose out of the inactivity of a clerk, and his retention out of moneys in his hands of a larger fee than the ordinary table of fees justified, has settled the question of right; and it is now decided that barristers' clerks have no right to demand a fee from a solicitor who consults their masters. (*Ex parte Catton*, 6 Law T. 313.) In the same case it was held that the Court has no personal jurisdiction over barristers' clerks, as such; the only power that can be exercised over them is in reference to the disallowance of their fees on taxation. But nevertheless, in the case in question, though the Court dismissed the petition, it did so without costs, because of the misconduct of the clerk.

Parties.—It has been decided in *Davies v. Price*, 6 Law T. 274, that where one of the plaintiffs in an original suit, who was a female, married, the defendants to the original suit were necessary parties to the supplemental suit. And in *Sharp v. Day*, 7 Law T. 156, where no shares had been allotted in a railway company, and the scheme was abandoned, and one of the provisional committee on behalf of himself and all other parties (except the defendants) interested as partners in the company, filed a bill against some of the provisional committee, for the purpose of taking the accounts and winding up the affairs of the company, a demurrer for want of parties was overruled without costs, and without prejudice to any question in the cause.

Contempt.—Though a contempt may be discharged by a change or amendment in the pleadings, yet cases may occur in which that will not be so. A bill had been filed by the mother and next friend of an infant, a married woman, in her maiden name, and describing her as a spinster; it was allowed, under the peculiar circumstances of the case, to be amended by altering the name of the plaintiff, and by making the husband a defendant, without discharging the husband's contempt in the cause as it was originally filed, and without prejudice to the questions in a petition presented by him in the original cause. (*Newenham v. Pemberton*, 6 Law T. 409.)

Lunacy.—The first article of the 38th of the New Orders enables the Court to order the service of a subpoena on a defendant who is out of the jurisdiction, but it makes no provision for the case of the service on a person of unsound mind, not so found by inquisition. In *Biddulph v. Lord Camoys*, 6 Law T. 429, however, it was ordered that a subpoena should be served upon such a person, though out of the jurisdiction. Where a reference has been ordered in a suit in Chancery to inquire into the capacity of a trustee to transfer the trust found under the 1 Wm. 4, c. 60, and he has been reported incapable, that report will be adopted in lunacy without a fresh reference. (*Re Buckle*, 6 Law T. 469.)

Common injunction.—It appears to have been the practice for upwards of 50 years that where the defendants against whom the injunction has been

issued have obtained an order nisi to dissolve it, unless cause be shewn on a given day, the junior counsel of the plaintiff shall on that day hand in a half-guinea hand brief to the registrar, undertaking to shew cause on next motion day, and not appear in Court for that purpose; and the reason assigned by Mr. Smith, in his *Chancery Practice*, vol. 1, p. 616, is, that it should not be necessary to deliver full briefs in the first instance. In *Newman v. King*, 7 Law T. 277, the plaintiff's junior counsel did so, but on the day on which the order nisi was to be made absolute, the defendant's senior counsel moved that it should be made absolute unless cause shewn, and so indorsed his brief; and the defendant considering the injunction dissolved, but not drawing up the order nor applying at the registrar's office, proceeded at law. The defendant was held liable to be committed for breach of the injunction, on appeal, by the Chancellor overruling the judgment below.

New Orders.—The New Orders of May, 1845, which came into operation on the 28th of October last, have greatly modified, and, in many cases, wholly altered, the practice of the Court; and notwithstanding the great care with which they were prepared, they are not altogether free from the charge of containing clauses which are, or appear to be, conflicting. The construction of several of them has been already ascertained by judicial interpretation, and the practice has been so far settled, but there is still great uncertainty. The mode in which it has been customary to issue orders contributes very much to the unsettling of the practice; for, on the coming out of a new set of orders, the former orders are not all or only in part repealed; whereas if the former orders were entirely repealed, and so much of them as should appear requisite embodied in the new issue, there would be only one set of orders to be attended to, which having been drawn up systematically, and by a person having the whole of the subject before his mind, the chance of conflicting clauses would be greatly diminished, and the practitioner relieved from much embarrassment as to his course of proceeding.

But we must take the New Orders as they stand; and, in the first place, it may be observed that as they were promulgated in May, 1845, and did not come into operation till the 28th of October following, the profession and the public must be deemed to have had full notice of them; and consequently, where a step had been commenced in a cause under the old practice, it must, after the 28th of October, be carried on according to the New Orders. This has been decided on appeal from the Vice-Chancellor of England, in the case of *Christ's Hospital v. Grainger*, 6 Law T. 361.

New Orders.—Amendments.—By the Orders of 1829 it was required, on special applications for leave to amend, that the Court should be satisfied by affidavit that the matter of the proposed amendment was material, and could not with reasonable diligence have been sooner introduced into the bill; now, however, the practice is altered in that respect, or rather the requirements of the New Orders are more stringent, for the 68th Order, a special order for leave to amend the bill, is not now to be made, unless, in addition to the former requisites, there is also the affidavit of the plaintiff's solicitor, that the application is not made for the purpose of vexation or delay; and it has been decided in the case of *Christ's Hospital v. Grainger*, 6 Law T. 361, on appeal from the Vice-Chancellor of England, that the affidavit of the solicitor's clerk who has the management of the cause will not satisfy the Order; it must be made by the solicitor himself. In the same case also it has been held that all applications to amend must now be made to the Master in the first instance, the 13th Order of 1829, which required the application, if made to the Master, to be made in a limited time, being now abrogated by the New Orders, and the time, therefore, again left unrestricted. By the 66th of the New Orders, it is declared that no further order of course is to be obtained for leave to amend after replication filed, except in the case of a clerical error; and it has been held in *Hitchcock v. Jaques*, 7 Law T. 2, that it is irregular to obtain an order of course to amend by adding parties, thus in that respect altering the old practice. The 38th rule of the 16th Order applies to the case of amendments after answer, and the 14th rule of the same Order to amendments before answer; and if no answer has been put in, the clerk of records and writs will receive an answer to the original bill, though it has

been amended before the answer is presented. (*Rigby v. Pincock*, 7 Law T. 79.)

New Orders.—Answer.—The question as to the meaning of the words "last answer," occurring in the New Orders, has been as much agitated as it was under the old practice; but their meaning is now settled in the cases which most usually occur. In the 66th, and in the 33rd Art. of the 16th of the New Orders, they mean the last answer of the last of several defendants; but in the 114th Order, they mean the last answer of the same defendant. (*Lester v. Archdall*, 6 Law T. 477.)

New Orders.—Replication.—Several cases have occurred in which the pleadings in causes in Court before the New Orders came into operation were in such a state as not to come within them, and in such cases it has been necessary of course to follow the old practice. But this can only occur in a few cases which have been in court both before and after the 25th of October, 1845. In *Wheatley v. Wheatley*, 6 Law T. 429, a replication was filed on the 1st of November, 1844, and the subpoena to rejoin was served on the 28th of May, 1845, and nothing more was done till January last, when a motion was made to dismiss for want of prosecution, and it was objected that as the subpoena to rejoin was abolished by the New Orders, and as the replication filed was under the old practice, publication had not passed, and the motion to dismiss was wrongly made. And it was held that a fresh replication was necessary as well as an order for publication.

New Orders.—Service of subpoena.—It is at the discretion of the Court, and not as of right, that the plaintiff is entitled to have an order for service of subpoena upon a defendant out of the jurisdiction under the 33rd Order of May, 1845. And the jurisdiction of the Lord Chancellor to make orders for the administration of suits in equity cannot be questioned in the inferior courts of equity. (*Whitmore v. Ryan*, 7 Law T. 58.) Where an infant defendant resident out of the jurisdiction has been served with a subpoena, under an order made in pursuance of stats. 2 Wm. 4, c. 33, and 4 & 5 Wm. 4, c. 82, the Court will not order an appearance to be entered for such infant until a guardian has been assigned, under the 32nd Order of May, 1845, in precisely the same way and after the same notice as if the defendant had been resident within the jurisdiction. (*Anderson v. Stather*, 7 Law T. 77.)

PRODUCTION OF DOCUMENTS.

The leaning of the Courts is now against enlarging the boundaries of privileged communications; and the present Master of the Rolls is especially anxious to confine himself within the limits of the decided cases; and, indeed, it is well known that his own individual opinion is against privileged communications altogether. As, however, the rule, whether useful or injurious in practice, is, at all events, established, some of the more important cases that have lately occurred may here be noticed. The cases which most commonly occur, and which are productive of by far the greatest inconvenience, are those which arise out of the production of books, &c. that are in daily use in the business of the party against whom the motion is made. In such cases, however, the inconvenience is obviated in a great measure by the practice of merely ordering an inspection of the books at the place of business, at convenient times, and sealing up such parts as do not relate to the matters in issue. (*The Marquis of Bute v. The Glamorganshire Canal Company*, 6 Law T. 253.)

Title.—Where documents in the defendants' possession are sought to be produced as evidence of the plaintiffs' title to a commission to ascertain boundaries, it is not sufficient to prevent their production to say that they relate to and evidence the defendant's title, and do not evidence the plaintiff's title. (*The Marquis of Bute v. The Glamorganshire Canal Company*, 6 Law T. 253.) So in the case of a person claiming as son of the tenant for life under a marriage settlement to be entitled to a remainder, against the trustees, one of them admitted the possession of documents relating to the estate of the tenant for life, but did not admit the son's title, stating merely his ignorance whether he was a son, a motion for production was refused. (*Smith v. Dowling*, 6 Law T. 497.) The plaintiff's will in *Rigby v. Rigby*, 7 Law T. 25, contained an allegation of his title to an estate (the subject-matter of the suit), and prayed an amount of the rents and a discovery of documents, &c. relating to the estate. One of the defendants

pleaded in bar to the relief, and to a discovery of documents relating to the rents, setting forth in his answer a list of all the documents "in his possession or power relating to any of the matters in the said bill mentioned," except such documents as related exclusively to rents; the plea was overruled generally on the ground that the documents in question might in their recitals contain information to which the plaintiff was entitled on other points.

STOPPAGE IN TRANSIT.

The consignee of goods has a right to stop them in transitu any time before their coming into the actual possession of the consignee; and consequently a cargo shipped to a consignee may be stopped before its actual delivery to the consignee on the arrival of the ship; and in like manner goods sent by a carrier before actual delivery to the consignee may be stopped in transitu; but if the consignee is substantially the owner of the vessel in which the goods are shipped, the stoppage in transitu determines immediately on the shipment, for it is equivalent to a delivery to the consignee at his own store. (*Re Humberstone*, 6 Law T. 469.)

TITLE.

It is now admitted on all hands that if the object of the legislature in passing the late Statute of Limitations was the shortening the period for which titles were to be deduced, they have failed in arriving at the result that was expected. Even in tracing title to a leasehold for lives, a title must be shewn of the same length as in the case of a fee-simple. This was first decided in the case of *Cooper v. Emery*, 1 Phill. 388, and in such cases it is now necessary to shew a sixty years' title. In the case of *Hodgkinson v. Cooper*, 6 Law T. 451, the vendors of a lease for lives, held under an eleemosynary corporation, which had been granted in consideration of the surrender of a former lease, were held to be bound to shew that the grantee was legally and equitably entitled to the old lease at the time of the surrender, or, in other words, to shew a sixty years' title.

Conditions of sale.—A very strong case of forcing a bad title upon a purchaser under a condition to accept the vendor's title without dispute occurred in *Duke v. Bennett*, 6 Law T. 478. There, in an agreement for a lease, a further agreement was made for the purchase and conveyance of the inheritance upon the lessee's electing to take it, but he was, in such case, to accept the vendor's title without dispute. He did elect, but afterwards objected that there was an outstanding legal estate in part of the property by reason of an incumbrance which had been released, but he was compelled to take without the objection being removed, and would have been so, "though the title had been plainly bad."

(To be continued.)

PROMOTIONS, APPOINTMENTS, ETC.

Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

SWEARING-IN OF THE LORD CHANCELLOR.—The Right Hon. Maziere Brady, accompanied by Christopher Fitzsimon, Esq. clerk of the Crown and Hanaper, proceeded to Maryborough, to take the oaths of office as Lord Chancellor of Ireland, and to receive the Great Seal from Mr. Justice Burton, the commissioner. After the usual ceremonies, the members of the house bar waited upon the new Lord Chancellor, to convey their congratulations upon his appointment. After luncheon at the judge's lodgings, the Lord Chancellor and Mr. Fitzsimon took their departure from Maryborough, and arrived in town the following evening.

COUNSEL TO THE CHIEF SECRETARY.—Mr. Stephen Flanagan, of the Munster bar, nephew of the late Chief Baron Woulfe, a young man who promises to be a distinguished ornament to his profession, has been appointed counsel to the Chief Secretary.

Mr. Dundas took the usual oaths on his appointment of Solicitor-General, before the Lord Chancellor, on Saturday last, in his lordship's private room in Lincoln's-in Hall.

MR. SERJEANT STOCK.—The *Limerick Reporter* says that Mr. Serjeant Stock has been appointed to the vacant Mastership in Chancery. The learned Serjeant is at present Judge in the Admiralty Court in Ireland, a very minor appointment; the salary, I believe, not more than 600*l.* a year, represented the borough of Cashel in Parliament for several years, and up to a recent period, when, declining to take the repeal pledge, his constituents called on him to resign. Alderman O'Brien, M. P. a repealer, displaced Serjeant Stock at Cashel during the repeal enactment. Serjeant Stock is son of the

late Right Rev. Dr. Stock, who filled the see of Killala, in the west of Ireland, at the period of the landing of the French in 1798. Mr. Baldwin, assistant-barrister for Cork, has also been spoken of; so has Mr. James O'Brien, Q.C. Mr. Baldwin's present place is worth 1,200*l.* a year.

COUNSEL TO THE IRISH OFFICE.—The following paragraph appears in the Irish correspondence of a contemporary:—"There is a good deal of speculation here as to the appointment of counsel to what is called the Irish Office in London. It is understood that the new Lord Chancellor has a candidate, but his qualifications for an office requiring not only minute acquaintance with the technicalities of the profession, but some knowledge of the country and its politics, are not considered by any means such as would justify his appointment, and are at any rate thrown into the shade by those of a member of the English bar who has for many years taken an active part in Irish politics, and who is said moreover to possess very strong claims upon several members of the present government." The gentleman referred to is, we believe, Mr. David Leahy. It would be difficult to find a second person who could bring to the discharge of the duties of the office in question so many and such high recommendations as those possessed by Mr. Leahy. That he has done important services to the Irish branch of former liberal governments may not, perhaps, be considered as constituting a claim upon the present ministry; but the fact of his being eminently qualified to assist in carrying out the principles of Irish policy now professed by this cabinet, principles which Mr. Leahy has been greatly instrumental in rendering acceptable to the English public, will no doubt have its weight with a ministry which has displayed much judgment in the selection of its instruments.—*Morning Chronicle.*

MEMBERS RETURNED TO SERVE IN THIS PRESENT PARLIAMENT.

Borough of Dungarvan.—The Right Hon. Richard Lalor Sheil, Master of the Mint.

City of Edinburgh.—The Right Hon. Thomas Babington Macaulay, Paymaster-General; and Wm. Gibson Craig, esq. one of the Lords Commissioners of her Majesty's Treasury.

Borough of Hertford.—The Hon. William Francis Cowper, one of the Lords Commissioners of the Admiralty.

City of Liverpool.—Alfred Paget, esq. (commonly called Lord Alfred Paget) Clerk Marshal to her Majesty.

Borough of Richmond.—Henry Rich, esq. one of the Lords Commissioners of her Majesty's Treasury.

County of Lancaster—Southern Division.—William Brown, of Liverpool, in the said county, esq. in the room of Francis Egerton (commonly called Lord Francis Egerton), now Earl of Ellesmere, called up to the House of Peers.

County of Roscommon.—Denis O'Connor, esq. (commonly called the O'Connor Don), one of the Lords Commissioners of Her Majesty's Treasury.

COMMISSIONS SIGNED BY LORDS LIEUTENANT.

DORSETSHIRE.—J. C. Mansel, Esq. to be Deputy Lieutenant.

MIDDLESEX.—The Right Hon. the Earl Fitzhardinge, W. B. France, Esq. G. Bague, Esq. and J. Laurie, Esq. to be Deputy Lieutenants.

CARNARVONSHIRE.—The Hon. A. D. Wilmoughby and C. G. Wyane, Esq. to be Deputy Lieutenants.

LEGAL INTELLIGENCE.

THE CIRCUITS.

NORFOLK CIRCUIT.

HUNTINGDON, JULY 17.—Their Lordships arrived at an early hour this morning, and, having opened the commission and attended divine service, took their seats in their respective courts at twelve o'clock.

The business here is of its usual quality, there being one cause and eight prisoners. The cause occupied Mr. Justice Williams and four learned counsel for three hours, when, their united efforts being unequal to the task of wading through the subject-matter, which was one of a most tedious character, its further consideration and the adjustment of a long account between the parties was referred to an arbitrator. The prisoners were then taken in both courts, and by six o'clock the whole business of the Huntingdonshire sessions was concluded, though the calendar embraced three charges of cutting and stabbing, and two of arson.

CAMBRIDGE, JULY 18.—The commission has just been opened for this county.

The calendar contains the names of twenty prisoners, and we are sorry to observe that no fewer than twelve of these are charged with the crime of arson. With the exception of one case of manslaughter and another of rape, the rest of the calendar may be said to be trifling in the quality of the offences.

JULY 20.—Mr. Baron Alderson took his seat this morning at nine o'clock, there being a light entry of nine causes. Of these two were undefended, and two

special-jury causes. All the defended common-jury causes were disposed of in the course of the day, but neither of them involved any question or facts of importance or interest, save to those immediately concerned therein.

MIDLAND CIRCUIT.

OAKHAM, FRIDAY, JULY 17.—Mr. Justice Paterson arrived at half-past ten o'clock, and shortly after proceeded to the Castle. His lordship adverted to the light state of the calendar, which exhibited two cases only, one of which was for cutting and wounding, and the other for setting fire to a lock-up house at Oakham; there was not, however, evidence to go to the grand jury, whereupon the indictment was abandoned. On the *Nisi Prius* side there was no entry for trial whatever. The only case indeed expected to be tried at these assizes is that of the *Syston and Peterborough Railway Company v. Lord Harborough*, a case arising out of long standing disputes between Lord Harborough and the Syston and Peterborough Railway Company, and which have already formed the groundwork of two trials at Oakham. On the present occasion the cause was laid for Rutlandshire; it has, however, on account of the leading counsel on the Midland Circuit being detained at Northampton in a like case, been transferred to Nottingham.

NOTTINGHAM, JULY 23.—The cause list contains 11 cases; also an indictment at the instance of the Midland Counties Railway Company, against Lord Harborough and others, for a conspiracy in obstructing certain persons in the employ of the company from doing their duty. The calendar of prisoners for both town and county is light.

WESTERN CIRCUIT.

DORCHESTER, JULY 18.—The learned judges on this circuit arrived in Dorchester at a somewhat late hour last evening. The commission was then opened. Their lordships attended divine service this morning. After which the courts were opened and business commenced.

There is less business in this county than we have ever known, little as there generally is. There are but two causes on the civil side, whilst the calendar gives the names of eleven prisoners. It is consequently expected that all will be finished at an early hour on Monday.

DEVIZES, JULY 22.—The commission for the county of Wilts was opened yesterday in this place. After attending divine service at the church, the learned judges proceeded to the County-hall, the courts were opened, and business commenced.

There is very little to be done here. There are eight causes entered for trial, of which six are already disposed of. The calendar contains the names of twenty-five prisoners; of these, three are charged with the crime of arson, one with cutting and wounding, one for bigamy, one an assault with intent, &c. and one with false pretences. The others have been committed for minor offences.

HOME CIRCUIT.

MAIDSTONE, JULY 22.—The business for the county of Kent commenced yesterday morning. Mr. Baron Parke sat on the civil side, and Mr. Justice Coltman presided in the Crown Court. There were thirty-seven cases entered, five of which appeared to be special jury cases, but it is understood that three of them, which involved the question of gavelkind tenure, will not be tried. In the Crown Court there were fifty-three prisoners for trial, but most of the cases were of the ordinary description.

OXFORD CIRCUIT.

WORCESTER, JULY 18.—Yesterday afternoon Mr. Serjeant Gazelee opened the commission with the usual formalities, and then proceeded, with Mr. Justice Maule, to attend divine service at the Cathedral. In the calendar the names of 35 prisoners may be thus analyzed:—Perjury, 3; rape, 4; bigamy, 1; cutting and wounding, 7; burglary, 2; not surrendering for examination before a district Court of Bankruptcy, 1; sheepstealing, 1; robbery with violence, 5; uttering false coins, 1; wilfully destroying property, 1; larceny, 7.

There are 16 causes on the list, two of which are to be tried by special juries.

STAFFORD, JULY 23.—The commission of assize for the county was opened to-day by the right hon. Sir Thomas Wilde, the recently appointed Lord Chief Justice of the Court of Common Pleas. Mr. Justice Maule is expected from Worcester this evening. The calendar is light almost beyond precedent; at present it contains only twenty-seven prisoners. Of these, one is indicted for wilful murder, three for killing and slaying, three for cutting and wounding, one for concealment of child-birth, one for administering poison, one for forgery, two for burglary, one for embezzling a letter from the post-office, three for assaulting and stealing from the person, two for felony, &c. The cause list will, it is believed, be lighter than usual.

SUDDEN DEATH OF MR. WAKEFIELD, Q.C.—We regret to announce the sudden death of Mr. Daniel Wakefield, the well-known Queen's counsel, who was found dead in his shower bath at an early hour

on Tuesday morning. Mr. Wakefield was in perfect health on Saturday, and was to have replied in a cause in the Vice-Chancellor's Court on Tuesday.

THE LATE DANIEL WAKEFIELD, Esq. Q.C.

CORONER'S INQUEST.—An inquest has been held by Mr. Wakley, M.P. on view of the body of Daniel Wakefield, Esq. one of her Majesty's counsel, aged 69, who expired suddenly on the afternoon of last Sunday, the 19th instant. The court assembled at the Royal Standard public-house, in Sale-street, close by the residence of the deceased, No. 5, Cambridge-terrace, Edgware-road.

Mary Brind, housemaid to the deceased, deposed as follows:—Mr. Wakefield was a barrister-at-law, and resided at No. 5, Cambridge-terrace, Edgware-road. His age was 69. He expired at one o'clock on the afternoon of the 19th, in the presence of witness, Mr. Pearson, and Miss Clarke (his adopted daughter), both of whom resided in the house. First noticed his illness at a quarter-past nine on the same morning, having proceeded to his room in consequence of a remark from Miss Clarke to the effect that her master must be ill, or he would have come down stairs at his usual time for breakfast. Having knocked, without receiving any answer, witness entered, and found deceased in a bath chair, quite senseless. Witness then ran down stairs, and sent the male servant, Kilby, for Mr. Howlett, surgeon, who was quickly in attendance, and applied various remedies. Dr. Chowne was shortly afterwards summoned. Both gentlemen remained almost up to the last moment, but although Mr. Wakefield breathed in a laboured manner, he never spoke afterwards, and died at one o'clock. Up to about three weeks since the deceased had continued apparently in the enjoyment of good health. He then complained of some internal disorder. Dr. Chowne, at the request of Miss Clarke, visited him; but he declined his advice, and insisted upon doctoring himself.

Other witnesses were examined, and the jury returned a verdict of died from natural causes.

Mr. Wakefield was the son of the eminent Mrs. Priscilla Wakefield, the original promoter of Savings Banks—a lady who, it may be added, was cousin to the lamented Mrs. Fry, and nearly related to Mr. Wakefield, the author of some works upon Ireland, to Mr. Jerrold Wakefield, author of works on Australia, and to Mr. E. G. Wakefield, a member of the Senate House in Quebec, and a writer in the *Spectator* newspaper.

THE MASTERSHIP IN CHANCERY, IRELAND.—Amongst the persons named as likely to succeed the late Master Gould, are Mr. Sergeant Stock (now one of the judges of assize on the Munster circuit); Mr. Baldwin, assistant-barrister for the East Riding of York county; and Mr. Sergeant Howley, assistant-barrister for the county of Tipperary.

MEDICAL MEN AND LIFE ASSURANCE OFFICES.—At the Provincial Medical Association now meeting at Norwich several professional gentlemen complained of having been put to great inconvenience, and injured in their calling, in consequence of the authorities of life assurance offices giving up the confidential communications required from medical practitioners, as to the health of their patients about to effect insurances on their lives. The members present debated the subject of the propriety or impropriety of furnishing the necessary statements, and eventually resolutions were unanimously adopted to the effect, that the members were of opinion that the insurance offices had no claim whatever on the private medical attendant of any candidate for life assurance, for an opinion on the state of his or her health, every office having medical referees of their own, on whose opinion they ought to rely. It was also resolved, that copies of the resolutions should be sent to all the offices for life assurance.

We have authority for stating, that the old Scotch title of Viscount Preston is about to be assumed by Sir Robert Graham, Bart., of Esk, in Cumberland, who is now residing at Cheltenham. The father of this very ancient baronet succeeded his cousin Charles as fourth Viscount, in 1780, but not succeeding to the family estates (which are in the hands of Sir J. Graham, late Home Secretary) at his lordship's decease in 1774, his eldest son Charles allowed both the baronetcy and viscountcy to lie dormant; he dying in 1795, his next brother became heir, and in 1809 took up the inferior title of baronet. For cogent reasons connected with mercantile engagements in the City of London, Sir Robert has deferred assuming his dignity until the present period, when, at the earnest solicitation of his friends, he is induced to add to it, for the advantage of his family.

ARREARS OF BUSINESS IN THE LAW COURTS.—The amount of business in arrears in the Law Courts still continues undiminished. In the Court of Queen's Bench the following are the number of causes which remained undecided at the close of the last sitting, viz. for Middlesex, Special Juries, 50; Common Juries, 99; London Special Juries, 31; Common Juries, 62. The new trial paper contains 76 motions standing for argument, among which is

the important one of *Woolmer v. Toby and Others*, and there are also 15 motions which have been argued, but on which judgment has not yet been given. In the Common Pleas the arrears of causes are heavier than usual, there being, in Middlesex, Special Juries, 29; Common Juries, 48; London Special Juries, 74; Common Juries, 48. The principal reason of this increase arises from the fact that a great many actions respecting railways have been commenced in this court, in preference to the others, with the view of obtaining a speedier decision. The demurrer paper contains 14 causes, and there are 10 cases standing over for the judgment of the Court. Most of them, however, would have been decided, if it had not been for the death of the Lord Chief Justice. In the Court of Exchequer of Pleas there are 80 causes in arrear for London, 23 of which are Special Juries; and for Middlesex there are, Special Juries, 21; and Common Juries, 55. The causes in the peremptory paper have all been disposed of, 7 of them having been tried, and 7 struck out of the paper. In the special paper there are 40 matters remaining undecided, but two of them have been heard, although judgment has not been given, and 3 part heard. There are also 6 other motions standing for judgment. Of new trials there are only 10 remaining undecided, and 2 of these have been heard.

THE NEW COURT OF EXCHEQUER.—On Monday workmen commenced operations at Guildhall for forming a new Court of Exchequer. Until within the last few years the law courts were held in the chambers at Guildhall, but on the erection of the justice-room and other offices on the one side of the court-yard of Guildhall, the corporation also erected Courts of Queen's Bench and Common Pleas on the opposite side, the Court of Exchequer being held in one of the chambers. The complaints of want of accommodation in the court were frequent, and at last so urgent that it was resolved to improve the place. To effect the improvement, the foundation walls of stone, nearly three feet thick, are being cut away, in part, to form a new office for the town clerk.—*Globe*.

CLERKENWELL.—LORD BROUGHAM'S BANKRUPTCY ACT.—Mr. Jackson, a professional gentleman, attended before Mr. Greenwood, under the following circumstances. Mr. Jackson stated that his client, Mr. Baker, had filed a petition in the Bankruptcy Court, and obtained its protection. He had previously been summoned to the Court of Requests, and not having fulfilled the decision of that Court, Mr. Commissioner Heath had, notwithstanding the protection of the Court of Bankruptcy, issued a warrant for the incarceration of Baker, and he (Mr. Jackson) feared that, from some strange oversight of the framers of this Act, his client could be incarcerated. The present proceeding of the complainant was a mere trap to catch Baker, who had kept out of the way of the officers of the Court of Requests until Saturday night last, when he met Bruckley, who gave him into custody; he was, however, bailed out at the police-station. Mr. Greenwood inquired if Baker was present?—Mr. Jackson said he was not, but his bailmen were. The fact was, the officers of the Court of Requests were at that moment in the neighbourhood of this court, waiting to pounce upon him.—Mr. Greenwood said he could scarcely think those officers would venture to arrest him whilst answering a charge at this court *cum deo vel redendo*.—Mr. Jackson hoped the magistrate would consent to the postponement of the case until Thursday, without causing the recognizances which were entered into at the station-house to be estreated, as he wished to take the opinion of counsel. He was prepared with affidavits to show that the object was to capture the prisoner; in fact, Bruckley was the aggressor, and he was resolved to indict him.—Mr. Greenwood consented to the postponement.

ALTERATION IN THE NAMES OF STREETS.—The following streets have lately received different names from what they have generally been known by, causing a great deal of confusion to strangers, as well as the miscarriage of parcels, letters, &c. We therefore subjoin the more recent of the alterations, for the information and guidance of our readers:—Charlotte-street, Bloomsbury, and Plumtree-street, Holborn, are now called Bloomsbury-street; Hanover-street, Long-acre, Belton-street, and the Bowl-yard, are now united, and called Endell-street; Petticoat-lane, Whitechapel, now bears the name of Middlesex-street; Water-lane, Fleet-street, is now called White-fars-street; Monmouth-street, St. Giles's, is now Dudley-street; Leg-alley, Long-acre, is now Langley-court; and Phoenix-alley is Hanover-court; Shire-lane, Fleet-street, is Lower Serle's-place; and Charles-street, Covent-garden, is now called Wellington-street North.

A curious dog cause was tried on Thursday week, at Rouen. Some time ago a sporting dog entered voluntarily into the house of a lady, and made himself so completely at home that she fancied he must belong to one of her relations, or, at least, some intimate friend, and therefore did not drive him out. A little while afterwards a M. Lainé of the town, who was going away by the railroad, called upon the lady to take leave. Admiring the animal, he caressed it, and

the canine visitor, evidently sickle in his affection, left the lady, and followed M. Lainé to the railway station, jumping into the carriage with him. The people at the station, however, objected to his remaining, because he was not muzzled according to the regulations of the company. M. Lainé, therefore, finding that his chance friend was likely to be of more trouble than profit to him, and might make him lose his passage, turned him out of the carriage and drove him off. The disappointed beast dropped his ears, put his tail between his legs, and disappeared. After an absence of several days, M. Lainé returned to Rouen, and was almost immediately on his arrival served with a process at the suit of M. Hébert, an avoué, for damages for the loss of his dog, valued by him at 400 francs. At the hearing, the circumstances were fully gone into, and it was clearly proved that M. Lainé had not used any means, even in the first instance, to entice the dog to follow him; nevertheless, he was adjudged to pay M. Hébert 300 francs as the value of the lost dog, because he had not, as required by article 1374 of the Code Civil, conducted himself towards it *en bon père de famille*.

A DUEL SELON LES REGLES.—A letter from Munster states a duel took place close to that town, under the sanction of one of the tribunals of honour now established throughout the Prussian army. It appears that Baron de Denkhans, a lieutenant of the 11th regiment of Hussars, having, when playing billiards, used some insulting expression to Lieut. de Bounhart, of the 13th infantry, the latter brought the matter before the Tribunal of Honour of the place. The Court endeavoured to induce the offending party to retract the expression used; but finding this to be impossible, it authorised a duel with sabres between the parties. The meeting took place near the town, at three in the afternoon, in presence of an immense crowd. A stand was erected at one end of the lists for the judges, who took their seats, dressed in full uniform. On the arrival of the combatants, a new attempt was made to effect a reconciliation, but, on its proving unsuccessful, the opponents were directed to choose out sabres with their eyes blindfolded, and then, with head bare, and in their shirt-sleeves, to commence the attack. They fought with great determination, M. de Bounhart receiving two slight cuts on the arm; but soon afterwards giving M. de Denkhans a severe wound on the thigh, which prevented his standing; the fight was declared at an end. After the first medical aid was given, the judges recommended the disputants to be reconciled, which they consented to, and shook hands, amidst the cheers of the multitude. All the parties concerned then withdrew. This is the first duel authorised by any tribunal of honour, reconciliation having been effected in all the other cases brought before them.

WILLS LATELY PROVED.—The late Right Hon. T. Tibbitts, Viscount Hood, of Witley Abbey, near Coventry, left the interest of 4,000l. to his mother the Hon. Caroline Hood, for her life. The remainder of his personal estate, which was valued for duty at 35,000l. he leaves to his countess and younger children. To the former he has also left his carriages, horses, farming stock, furniture, books, and jewels, and the plate bearing the family arms to her during her life. He has left three sons and one daughter.

General Sir Henry Bayly, C.B. Colonel of the 8th Foot (King's regiment), who died in April last, at the advanced age of eighty, by his will, executed in August, 1845, has directed 2,000l. to be invested for the benefit of Hugh Forbes, late of the Coldstream Guards, and 3,000l. equally between Hugh Forbes the younger, and Archibald Forbes. The personal effects were estimated at 6,000l.

The late Sir William Boothby, bart. of Ashborne-hall, Derby, Receiver-General of her Majesty's Customs, had made his will in 1833, during the lifetime of his former wife, Lady Boothby, and, in the event of her surviving, had made a provision for her of 300l. a year; but Sir William did not alter his will on his intermarriage with Mrs. Nesbitt, nor has he made any testamentary disposition in her favour. To his daughters, Louisa, Caroline, and Maria, he leaves 3,000l. each; and as the late Earl of Liverpool has amply provided for two of his children, Cecil and Fanny, he leaves to them as a mark of affection, 100l. each. The residue of his property, real and personal, he leaves to his son, Sir Brooke William Robert Boothby, bart.

PROCEEDINGS OF LAW SOCIETIES.

YORKSHIRE LAW SOCIETY.

A general meeting of the Yorkshire Law Society, held at Wian's Hotel, York, on Monday, the 20th July instant,

E. N. ALEXANDER, Esq., the President, in the chair,
The following report of the committee of management was submitted to the meeting:—

The Committee have to report, that in compliance with a resolution of the general meeting of the society, held at the spring assizes of this year, they

forwarded copies of the resolutions adopted at that meeting, relating to Lord Campbell's Bill for the General Registration of Deeds in England and Wales, to the members of Parliament for the city and county of York, the boroughs of the county, and to many other members of the House of Commons, also to the Provincial Law Societies Association, the Local Associations, and to the Registrars of the three Ridings of Yorkshire. The Committee have also forwarded petitions to Parliament against the Bill, the one to the House of Lords having been presented by Lord Lyndhurst, then Lord Chancellor; they have also caused to be printed, and circulated in York and the neighbourhood, an address to the owners of real property on the subject.

In the West Riding of Yorkshire, in Gloucestershire, Somersetshire, and other places, a strong feeling of hostility has been manifested to this Bill, and, no doubt, a general opposition to it would have been shewn, but on account of its not being pressed forward with vigour, and the recent ministerial changes having rendered the passing of the measure into a law, in this session of Parliament, not very probable.

With whatever satisfaction the Committee may have observed the general disposition to resist this measure, their feeling is one of regret that the author of it should so repeatedly attempt to force it upon the public. It is a theoretical and impracticable scheme; and, although it might suit the views of the owners of very large estates, situate in various parts of the kingdom, to have their titles registered in one office in London, yet to the immense number of small proprietors such a central registration, with its attendant searches, would be so expensive as to render the transfer of small properties impracticable.

The Committee, on further consideration of the subject, are more than ever convinced that any system of registration (if adopted at all) in order to be useful and cheap, must be local, and for districts in extent not larger than the present counties.

The attention of the Committee has been directed to the Bill for shortening conveyances; they do not recommend any opposition to the Bill, as they are convinced their interests and those of the public are identical; but it would have been more satisfactory had the measure been prepared and conducted by parties well acquainted with the law of real property; from such persons, scientific and practical improvements might have been expected, instead of the clumsy contrivance of enacting that the marginal notes to a book of precedents in conveyancing shall mean all the words contained in the precedents themselves; and the Committee are of opinion that a proper adjustment of the stamp duties, and the abolition of the lease for a year stamp, are essential to a proper system of short conveyancing. While on this subject, the Committee cannot help referring to the extraordinary evidence lately given before the Committee of the House of Lords on the burdens on real property, that the average expense of conveyances of small properties is from 30 to 40 per cent. upon the purchase money; this statement, as is well known to the profession, is not founded in fact, the amount of expense being greatly exaggerated, and the disproportionate expense of conveying small properties is chiefly to be attributed to the unequal and oppressive scale of stamp duties.

Having regard to the just requirements of the public, the Committee are of opinion that a Bill for the more easy recovery of small debts ought to be passed, and they therefore do not recommend any opposition to the Bill now before Parliament, although the injustice of restricting the recompense due to the profession for their services to a sum utterly inadequate is repeated.

In conclusion, the Committee beg to assure the Society that their attention shall be directed to forwarding as much as is in their power all measures for the reform of the law by which the public may be benefited, as they are convinced that whatever changes in the law will be of advantage to the public will also be conducive to the interests of the profession; on the other hand, they will endeavour to counteract as much as possible the incessant endeavours to centralize all public offices in London, including the registration of deeds, and the proving of wills there, at great cost and inconvenience to the public at large.

CORRESPONDENCE.

STATE OF THE PROFESSION.

SIR,—I should like to be informed—if any one of your numerous readers knows, and will say—what is the use of the Incorporated Law Society.

Are the candidates for admission as attorneys really examined? Are any ever "picked?" Or is the examination little better than it used to be? Or is it such that persons may easily be crammed for it?

I have twice attempted to bring the society into what I assumed was its legitimate action in behalf of the Profession, and in vindication of its rights. But the Council declined to act or interfere.

I should like to know what they will do.
Do any of your readers suppose they would notice the case of a person in my neighbourhood who, through

not an attorney, is frequently advertised as such in partnership with a brother who is one?

The law-menders of the present day (who remind one of the scientific Solons of the first French revolution) seem to be utterly regardless of one great portion of their subject,—the lawyers,—the persons by whom their laws should be learned, administered, dealt with, and carried into effect. Why does not the association come forward in our behalf? Is it not as important to society to have good lawyers, as to have good laws? I suppose the most active men in these matters are a few persons who have little else to do, and are compelled by restless vanity to thrust themselves upon public notice in connection with the law. Why then do not those who are practitioners and know the evils of suddenly and hastily unsettling every thing and disturbing existing civil institutions and principles, and who know their own real importance in the community, and who pretend to represent the Profession,—why do not they exert themselves, not to oppose amendments of the law, but to control them in a proper manner, and preserve the existence of the present race of lawyers? Otherwise, the evils which the law-menders seem to destroy will be multiplied in other shapes, while infinite doubts and difficulties, and consequent litigation, will be reserved for the profit of a future generation of practitioners, not half so respectable as that which is now being sacrificed.

It would seem that there are to be but two classes, the judges and the suitors. Advocates and attorneys are to be rendered unnecessary. Every man is to be his own lawyer; and judges need not be selected from a class of men who have had either study or practice. Surely the men who contemplate such changes will not live to fill the offices which they are fitting for themselves!

I observe one of your correspondents has noticed that the probable effect of the statutory forms will be that auctioneers and schoolmasters will become the conveyancers of the country. I believe it. And he might have added, sheriff's officers. These men already have printed forms of bills of sale, by means of which they lend money to the necessitous tradesmen, and then whip them for their folly in placing themselves in the hands of any others than respectable attorneys. —I am, Sir, &c.

AN ATTORNEY.

SMALL DEBTS ACT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I take the liberty of calling your attention to the Bill now before Parliament, entitled "An Act for the more easy recovery of Small Debts and Damages in England," which professes for its object the administration of justice at a very cheap rate.

Its failure will be apparent, if attention be paid to some of the clauses of the Bill.

The first I notice is the 46th, which gives jurisdiction to the Courts to hold pleas in personal actions not exceeding 20*l.* whereby questions of difficulty, requiring the first legal talent to advocate and determine the rights of the parties, are to be confined to a Court consisting of one individual, who, by the 57th clause, is to be the judge both of the law and the facts, in every species of action, of assumpsit, covenant, case, debt, detinue, trover, and trespass; and from whose decision there is no appeal. This is implied by the 68th clause, and by the 110th and 112th clauses. It may be objected, that the Bill gives a remedy for any difficulty which may arise from the 78th clause by providing that, by leave of a judge of a superior court, upon terms, any action commenced in the local court, in which the debt or damages claimed shall exceed 5*l.* may be removed into the superior courts. In the majority of cases, this provision would be a dead letter, for it must continually happen that the parties will be poor, and unable to find the security required by the 78th clause; yet the case may be one which requires the gravest legal experience. The Bill also will work with great inconvenience and injustice to a plaintiff, who must adopt the same unsatisfactory method of obtaining a trial, in one of the superior courts, to avoid the certainty of being deprived of his costs, should he succeed on the trial, or of being compelled to pay costs, as between attorney and client, should the defendant be the successful party; for the certificate mentioned in the 120th clause would scarcely ever be granted, in the face of the 46th section, save in a very few actions *ex delicto*.

With respect to the jurisdiction, it does not by the Bill appear whether these Courts are to decide according to the common and statute law, or the rules of equity and good conscience; consequently, there will be no certain rule for parties to abide by; and whether a defence at common law, statute, or according to equity, will be set up, cannot be known until after action brought. The 64th clause mentions five statutory defences in answer to an action; but, surely, there are many other good and *bona fide* defences which a defendant ought to be permitted to set up, but which this Bill does not anticipate. The fair conclusion to be therefore drawn is, that every case will be determined according to the impulse of the judge, and without regard to any established rule of law or equity.

The 66th clause of the Bill is no answer to this objection; it empowers five of the superior judges to make rules to regulate the practice of the county courts, to frame the forms, and to keep books of account. It cannot surely be argued that the judges are thereby empowered to lay down what law shall be administered in these courts, and therefore the public will be in a state of uncertainty as to their rights and liabilities. If Court of Requests law is to prevail, this uncertainty will be a crying evil; it is but too generally known already how unsatisfactorily justice is administered in those courts. There will be an end to all law and justice in causes of action not exceeding 20*l.* The fact that the Bill in cases where the amount in dispute shall exceed 5*l.* gives either party the right of demanding a jury of five, or where the amount in dispute shall not exceed that sum, gives the judge the power of awarding a jury of a like number, upon the application of either party, does not obviate the objection to this summary jurisdiction. It is an assimilation to the practice of the Middlesex County Court, which is composed of three suitors or jurymen, and the judge or county clerk; and it is proverbial that cases are decided with such rail-road rapidity in that court, as to render the name of justice a farce. Hence, no doubt, the reason why the jurisdiction has never been extended beyond 40*s.*; and from the general tenor of this Bill, there is every reason to suppose that the practice of the Middlesex County Court will be substantially adopted in the courts intended to be established both with respect to taking the evidence of the parties and their witnesses.

The 79th clause vests a most arbitrary power in the judge, by giving him the discretion to say whether a party to a suit may be represented by counsel or attorney. This provision is at variance with the spirit, and inimical to the principles, of our present constitution, for, according to the intendment of this clause, the judge is to prejudge the merits of a cause before he has heard the facts on either side; besides which it has been a long-established principle of law to allow a plaintiff and defendant the absolute and uncontrolled right of employing any advocate or advocates to support their respective cases.

According to the 46th clause, before referred to, any action on a special or simple contract may be maintained in these courts to recover a balance of 50*l.* or 50,000*l.*, and if that balance exceeds 50*l.* it may be reduced to the latter sum for the purpose of sustaining an action in these courts. This clause will be productive of that great mischief which the legislature, in the instance of the City of London and Southwark Courts of Requests, expressly intended to prevent by prohibiting the bringing of actions to recover the balance of sums originally exceeding the sums for which they were thereby empowered to adjudicate. The citizens and inhabitants of the borough of Southwark, no doubt, felt the necessity of these prohibitory clauses to prevent difficulties in cases of complicated transactions.

That an amendment in the law for the recovery of small debts is needed, cannot be denied, but that this Bill will be the very opposite of an improvement, and ought not to be inconsiderately hurried through Parliament at the close of the Session, is very obvious. In addition to which, the very serious expense which the new offices to be created under the Bill will entail on the country should be also borne in mind.

Another absurdity in the Bill is, that by the 88th clause, the debtor after judgment may be summoned to pay by instalments or otherwise, notwithstanding the plaintiff's right to payment has been proved. So, to obtain an order for payment, the plaintiff must be personally present at the hearing of the summons after judgment, and for what useful purpose, it does not by the Bill in any way appear. From the many facilities afforded to debtors to transfer their property, or so to arrange matters as never to have the legal possession of any property, the present Bill will in many respects be wholly inoperative; many creditors would rather prefer losing their debts altogether, than be subjected to the annoyance and ordeal of a personal attendance in court.

I am, yours, &c.

8, Basinghall-street. W. R. BUCHANAN.

SELECTIONS FROM CORRESPONDENCE.

The following energetic letter from "One, &c." will, we hope, find an echo.

If I mistake not, you promised in some of your late numbers, in reference to the bills affecting conveyancing, which the Society for the Amendment of the Law have in hand, to offer some suggestions as to the proper course to be adopted by the Profession. I have anxiously looked at every subsequent number, but in vain. Probably you may be puzzled what course to suggest. The apathy exhibited by the Profession is certainly no encouragement to offer advice, but this apathy is to be accounted for. The Law Institution volunteered to head and protect the Profession, and having failed in its duties, it is not so easy a matter to get up a fresh combination. Still every one can do something. There is scarcely a town in

England without an attorney who acts as parliamentary agent to some M.P. or another. Pray, Sir, exhort these gentlemen to write, as I have done, to their representative, and request him, as a matter of justice, to check the headlong course of these legislative innovators; to point out the gross injustices done to the Profession, and to ask for protection, not as a favour, but as a matter of right. No great harm can accrue from suspending these Bills for a Session; and, in the mean time, perhaps the Law Institution may awake from its slumbers, or some other course may be suggested for meeting the exigencies of this case. A few words from you will have more weight than hundreds of letters from a correspondent, and, as you have promised to do something, pray hold him our deaf ears until you have ascertained whether our trance is only mesmeric and transitory, or whether it is a total paralysis.

"W" submits the following query on a point of practice:—

I should be glad if some practitioner would inform me, through your columns, whether, when conditions of sale are silent as to the place for completion, a purchaser's solicitor can insist upon the vendor completing the purchase at his office, instead of at the office of the vendor's solicitor (both offices in the same place), the latter having furnished the abstract, and approved of the draft conveyance.

Heirs-at-Law, Next of Kin, &c. Wanted.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent impertinent curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount enclosed.]

206. NEXT OF KIN OF W. KENT, late of Little Eastcheap, cork-outer, who left three children, Phillip, William, and Sarah Elizabeth Key. *Something to advantage.*
206. Mrs. CAROLINE CARTER (formerly Carolina Mooby), who lived with her husband, Henry William Carter, Church-road, in the parish of St. George-in-the-East, Middlesex, valuer, and who separated from her husband about the year 1815, and frequently afterwards sent to her husband at the Weaver's Arms, Baker's-row, Mile-end. *Something to her advantage.*
207. MARY WALL, daughter of James Wall, hatter, who in the year 1794 resided in Duke-street, Oxford-street. *Something to advantage.*
208. NEXT OF KIN OF Mrs. HANRIETTA JANE ELLIOTT, late of 26, Horseferry-street, Lioness Grove, Middlesex. *Something to advantage.*
209. HENRY WATSON SHELTON, who, it is supposed, formerly resided at Leicester, and afterwards in Drury-lane, London—legacy lately bequeathed to him.
210. NEXT OF KIN OF WILLIAM TATE, late of Queen's-row, Pentonville, Middlesex, gent. (died July 1867) or their representatives.
211. NEXT OF KIN OF the Rev. JOHN MONKHOUSE, Rector of Brambott, County Southampton, and Fellow of Queen's College, Oxford (died Oct. 1838), or their representatives.
212. HEIRS-AT-LAW AND NEXT OF KIN, and also the RESIDUARY LEGATEES AND DEVISEES OF ROBERT MARSHALL, late of the island of Jamaica, Esq. died Dec. 19, 1830, leaving Margaret and Elizabeth Wright, and George Wright, the son and daughters of Adam Wright, formerly of Spital Farm, near Kelsow, North Britain; Elizabeth Jeffery, Robert Jeffery, William Jeffery, Margaret Jeffery, Catherine Jeffery, and John Jeffery, the sons and daughters of Robert Jeffery, formerly of Hitchin Mill, near Kelsow, aforesaid, residuary legatees.
213. HEIRS-AT-LAW OF SAMUEL SHERMAN, late of Borthwell, otherwise Rowall, county of Northampton, gent. (died March, 1833).
214. HEIR-AT-LAW AND NEXT OF KIN OF THOMAS RICHARDS SPEARMAN, late a purser in the Royal Navy, and late a deputy to the treasurer of the Royal Hospital at Greenwich, residing at Plymouth, Devon (died 25th of September, 1834).
215. NEXT OF KIN OF ANN DAVIES, widow of James Davies the elder, gent. (formerly Ann Cooper, spinster), late of Park-street, in the Parish of St. Mary, Islington, Middlesex.
216. HEIR OR HEIRS-AT-LAW AND NEXT OF KIN OF JAMES MILNER, late of Crown Court, Old Change, City of London, calendarer, and of Bush-hill, Enfield, Middlesex (died April, 1830), or their representatives.
217. JOHN, MARY, and CHARLOTTE, son and daughters of JOHN and MARY NAFER, formerly of Beaconsfield, Herts. *Something to advantage.*
218. Two DEBTS dated in 1814, and one in 1817, relating to the King's Head Inn estate, in the East or High-street, Dorking, and Two DEBTS dated 24th and 25th April, 1818, being a Conveyance of the same estate from Mr. John Fort and others to Mr. John Peters (since a bankrupt), are missing.
219. HEIR-AT-LAW AND NEXT OF KIN OF DAVID PRICE (a person of unsound mind), who was son of the Rev. David Price, rector of Llanallan, in the County of Denbigh, and was captured in the church of that parish on the 8th of June, 1761. He left Wales at an early age, and passed the greater portion of his life in London. About the year 1830 he again visited Wales, and in January, 1831, resided at Holywell. (To be continued weekly.)

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATEVER.

S. S.—The examination varies. But usually either Latin, Greek, or French is required, at the option of the student. It is little more than a form.

A SUBSCRIBER will see an explanation of this very provoking mistake.

C. R. G.—Perhaps next week.

A. L. (Stockport).—It is not within the province of the LAW TIMES to answer legal questions. Its design is to maintain the rights and interests of the Profession, not to violate them.

HONESTAS.—The query had better appear in the Times, or some general newspaper. It is not one of professional practice or etiquette, to which queries here are strictly limited.

AN ATTORNEY (Chelmsford) justly complains of the evidence of Mr. Baxter before the Lords' Committee on the Burdens on Land.

A SUBSCRIBER FROM THE COMMENCEMENT (Dudley).—We do not profess to record the business transacted in the House of Lords, and, for this reason, the papers cannot be procured. They are not, like those of the Commons, sold to the public.

R. G.—The question is one of law, and, therefore, falls within our rule of exclusion.

Mr. Shapland's letter, and some other communications, owing to surplussage of matter, though in type, are necessarily postponed.

INDEX TO THE LAW.

The LAW DIGEST for the half-year ending Jan. 1 is now ready. It forms a complete Index to the Law decided during the half-year, and contains upwards of 2,000 cases. Price 5s. 6d. in a wrapper. Being stamped, it can be transmitted by post.

SCALE OF CHARGES FOR ADVERTISEMENTS.

Under 50 Words..... £0 5 0
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Advertisements from the Country should be accompanied with an order upon the Agent in Town, or a Post-office order (payable at 180 Strand) for the amount.

N. B.—For Scales for Estate Advertisements, see JOURNAL OF PROPERTY.

THE LAW TIMES.

SATURDAY, JULY 25, 1846.

THE SMALL DEBTS BILL.

We have no inclination to enter upon a minute criticism of the details of a measure against the entire plan and structure of which we entertain the very strongest objections. Nor is that hostility based upon any paltry professional jealousies; upon a fear of injury to professional interests, or upon irrational prejudices against reform or change. It is the result of the sober conviction of reason, aided by experience, that the measure will not accomplish the ends for which it is framed, and that it is fraught with incalculable mischiefs to the administration of justice, and consequently to the general public. Correspondents have directed attention to some of its faults of structure, and they are sufficiently alarming to make the Legislature pause before it passed into a law a measure so imperfectly considered, were there but a practical man in the House of Commons to point them out to our law-makers. But when we most want an advocate, we have not one; when an intelligent mouthpiece would be invaluable, the Lawyers have no organ to speak their opinions. In the Senate they are condemned to silence. Out of doors they have no point of union, no organization, no delegated body to protect their interests and concentrate their forces. The only oracle is dumb. It is worse than worthless, for it encourages a reliance upon a self-constituted guardian who slumbers at his post. The only Association that possessed the inclination to fight the battle of the Profession has been permitted to perish from want of support. Exhortation seems to be in vain. All applaud, all encourage us to the task of rousing the sleeping giant, all exclaim against the suicidal

folly of the Profession, in thus tamely submitting to invasions which by a little exertion might be so easily repelled; but none come forward to act, or shew themselves willing to aid those who are inclined to stir. Still, wearisome as is the task, and apparently hopeless, so long as a chance remains of averting the threatened mischiefs, even at the last hour, shall we continue to protest against the evils by which the Profession is menaced.

Nor is it unnecessary to repeat, over and over again, the repudiation of all selfish motives in this hostility to the Small Debts Bill. The public are only too ready to set down the opposition of the lawyers to any proposition for change, styled a reform, as the result of interested motives, as proceeding from a fear of curtailed profits. Again we say, that no such motive has influenced the opposition to this measure. We say, and we believe in doing so we represent the feelings of nine-tenths of the Profession, that to law reform, as such, we have no hostility; that to a good measure for facilitating the recovery of small debts, we should offer no objection; nay, we should welcome it with pleasure. It is to the scheme now before the Parliament that we are peculiarly opposed, for reasons often stated, but which cannot be too often repeated.

We object to the entire plan of establishing throughout the country hundreds of local courts, necessarily presided over by incompetent judges; and, from their very number, removed from the check which publicity imposes upon the proceedings of those who are engaged in the administration of justice. We appeal to all who have had experience, whether the present Courts of Requests are not the pests of the neighbourhoods in which they are planted—making a farce of justice, and a mockery of law?

But what will they be when their jurisdiction is extended to 20l.? For once that a tradesman is dragged into them now, he will be forced to undergo their ordeal five times. With really small debts, the sort of law administered there is a matter of comparatively trifling moment. But when 20l. are at issue—a sum that may, perhaps, involve a question of ruin to the one party or the other—will the tradesman be content to submit his fortunes to such a tribunal? Besides this, he must take himself from his business to turn lawyer (for he cannot appear by attorney or counsel without the consent of the judge); he must study the statutes, master the law of evidence, learn to address the jury, or be beaten by a more skilful, or more industrious opponent. Can this be a boon to the trader?

Then for the alterations in Court between the parties conducting their own cases! The scenes in the justice-room in a country town will convey some idea of the personalities that will be bandied about in the new courts. Hitherto the intervention of advocates has been deemed to perform the double service of substituting persons who have no personal differences to sway their tempers or their judgments for the embittered passions of the parties in the suit, and the scarcely less important purpose of placing upon an equality in the combat those whom nature may have unequally gifted. But these time-honoured and time-proved advantages are ruthlessly swept away by the Bill now before the Legislature.

Another mischief which it involves is the breeding of a race of pettifogging attorneys, who will practise, *sub rosa*, spite of the prohibition, or at least of a tribe of sham-lawyers, still more noxious, who, exempt from the jurisdiction of the Court, will be enabled to plunder the suitors with impunity.

A third objection to the passing of this measure without due deliberation, and a careful inquiry whether a better one might not be framed, is the certainty that, once done, it cannot be undone. So many interests will grow up under it in the form of officials, that it will be impossible for the Legislature to re-

trace its steps and substitute a better system, should the prognostications of the practical members of the Profession be verified. The details of a measure of such vast importance cannot receive the serious consideration they claim at the close of a busy Session. Time must be permitted for discussion; and if half a dozen members will insist upon being heard in examination of those details, the bill will be postponed to next Session, and then we trust the Profession will be prepared to submit a measure of their own which will accomplish the object sought by that now pending, while avoiding the manifold mischiefs with which it is fraught.

We have already indicated what that measure should be. We briefly repeat its outlines, that it may receive due consideration, and in the hope that, if approved, it will induce the Profession to take prompt and energetic means to procure the postponement of the Bill now before the House; in the full understanding, however, that the entire subject shall be resumed next Session, with purpose to bring it to a conclusion satisfactory to all parties.

The plan we have suggested, and which has been very generally approved by the Profession, is to remodel the Quarter Sessions Courts, by placing in their chairs well qualified judges, by enlarging their jurisdiction to the trial of all actions where the damages are laid under 20l, subject, of course, to a case, or an appeal, to the higher courts.

To lessen the costs, we would divide the country into circuits, as now; but the Quarter Sessions of each county in the circuit should be so arranged that it should not fall in the same week as those of any other county in that circuit. Thus, for instance, Hampshire might be the first week in October, Wiltshire the second, Dorset the third, and so on. Thus, instead of having, as under the present Bill, some hundreds of inferior judges, we should have only twelve good ones; much to the saving of expense, and greatly to the advantage of justice. Besides, there are weighty objections to resident judges. This evil would be avoided by the plan we propose.

If a quarterly court would not be sufficient for the wants of the district, the Judges might be empowered to hold monthly Courts, and to appoint them in various towns in the county, so as to "bring Justice home to every man's door."

One great object of the framers of the Small Debts Bill is to diminish the costs of actions for demands under 20l. This may be equally well effected by the measure we suggest. The fees of court should be a fixed per centage upon the sum sought to be recovered. The Attorney's costs may be on a scale regulated by the Judges, and as there would be no agency charges, he could afford a large deduction from the present scale; and the Bar might not unworthily consent to meet the general reduction by a regulation permitting the acceptance of a lower fee than that now sanctioned by its etiquette.

By these arrangements the costs of suitors would be reduced as low as by the pending Bill, but, instead of inferior judges and tribunals that would command no respect, we should have a regularly constituted Court, such as custom has made respectable in the eyes of the people, law administered by a lawyer, and justice by a jury—the watchful eye of the Profession upon its proceedings, and the substitution of calm advocates for angry parties. Law would not only be cheap but good; whereas, by the threatened courts, its cheapness would be purchased at the sacrifice of its character.

So great confidence do we feel in the superiority of some such plan as we have outlined to that now under consideration, that we believe, if it could be brought under the consideration of the Government or the Parliament, and the evils of the one and the advantages of the other pointed out, they are

so obvious that the substitution of the one for the other would be the result. But for this time is essential, and therefore the first aim—that to which all efforts should now be directed,—is to procure the postponement of the Small Debts Bill to the next Session. It would not be difficult for two resolute men to obstruct its progress. Have not the lawyers two friends in the House of Commons? Would not Sir FREDERICK THESIGER give us his help—or Mr. WATSON—or Mr. BODKIN—or Mr. CARDWELL—or Mr. BOUVIERE—or Mr. CHRISTIE?

And now let it be the express business of every member of the Profession who possesses influence with any M.P. (and who has not?) to use it promptly, and resolutely to insist that this mischievous measure shall not be hurried into a law until time shall have been allowed for a full consideration of its provisions—in other words, its postponement until next Session.

VERULAM REPORTS.

THE fifth number of *Cox and Atkinson's Registration Appeal Cases* is published to-day; the remainder, completing the reports to the present time, will be ready on Saturday next.

The fourth part of *Cox's Criminal Law Cases* is also ready.

SHAM LAWYERS.

THE doings of two more of these persons have been sent to us. The first is from a new firm at North Shields.

7, Tyne-street, North Shields.

SIR,—We are instructed by Mr. John Forester, of this place, to apply to you for payment of 12s. due to him for medicines, &c. supplied, and will thank you to pay same to us on or before Saturday first.

We are, Sir, Your obdt. servants,
July 1, 1846. BURDIS AND CHARLETON.
Mr. Hy. Morrison.

Saxmundham, July 20, 1846.

To Mr. Burrell.

SIR,—I am directed by Mr. D. Kemp to apply to you for the sum of one guinea, due to him; and, as it was for ready money he sold the 23 truss, he will not wait for the money beyond Thursday next; and if the amount is not paid then, it is his intention to take legal means to enforce the same without any further notice.

Remaining, Sir, Your's, &c.
JAMES KING.

NECROLOGY

OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

MR. THOMAS GOOLD.

Mr. Goold was, with one exception—Lord Plunkett—the last star in that galaxy of talent which shone forth with such a splendid and brilliant radiance in Ireland towards the close of the last century. The cotemporary, as well as the associate, of all the bright luminaries of that day in oratory, literature, and belles lettres—of Flood, Wolfe, Fitzgibbon, Ogle—he was the personal friend of Saurin, Plunkett, Grattan, and Bushe, and took his stand and played his part in all those brilliant displays and “keen encounter of men's wits” by which the Irish House of Commons, of which he was then a member, was characterized. In all the discussions upon the Act of Union—of which he was a fierce and incorruptible opponent, as well in his speeches as his writings—he took a distinguished part; and in that arena where the prize of talent was contended for by intellectual giants, and not scrambled for by such “puny whippers” as now bear off the garland, Mr. Goold maintained his reputation, and sustained his position. He was a native of Cork, and did not enter upon the active and laborious duties of the profession until many years after he had been called to the bar, and not before he had expended a very handsome private fortune in the fashion and frivolities of the day, and, amongst others, in extensive travels upon the continent, then not easy of access, as it is now, and when the fact of having made the “grand tour” was the recommendation and the passport to society. Mr. Goold was in Paris during the great French revolution, and by accident was located in the same hotel with Danton. On those who have heard his graphic and dramatic narration of the terrible scenes and circumstances of those terrible times, and of which he was an eye-witness, an impression was created that can never be effaced. With Mr. Goold, once resolved upon achieving a great object, action was immediate. His energies and his powers were put forth with a strength and a

vigour, and a perseverance and assiduity, for the possession of which few then gave him credit; and it may be said of him that *per saltum* he sprang into full business, and within a comparatively brief period established himself securely at the very head of that branch of the Profession which he selected as best suited to his tastes and capabilities. We have heard it stated, and by competent persons, that Mr. Goold was the best *mini prius* lawyer who ever held a brief at the Irish bar. Having been created king's serjeant several years ago, he was subsequently made Master in Chancery, when his zeal, his energies, and his whole time were devoted to the discharge of the duties pertaining to the office. We believe no man at the Irish bar, by his own individual labours, and unassisted by Castle or political favour, ever amassed or bequeathed so large a fortune.—*Dublin Evening Mail*.

THE EARL OF KILKENNY.

Died, at Ballyoonra, at six o'clock on the evening of Thursday, the 16th inst. the Right Hon. Edmund Earl of Kilkenny, in the 76th year of his age. The deceased nobleman had laboured many years under mental indisposition, but the illness which caused his death was only of a few days' duration. Dying without issue, the earldom of Kilkenny becomes extinct, but the title of Viscount Mountgarrett descends to Henry Edmund, son of the late Hon. Henry Butler, brother of the deceased earl.

SIR THOMAS GREY, F.R.S., F.L.S. &c.

This aged knight expired on the 17th instant, at his seat, St. Lawrence, Isle of Thanet, aged 72. He was the son of John Grey, esq. of Dryden, Selkirkshire, by the daughter of Thomas Stanant, esq. of Callisfordhill, Roxburghshire, and was born in 1774. At an early period of his life he entered the royal navy as surgeon, his date being so far back as 1794. In 1819, while in Ireland, he was knighted, for his professional services, by the Lord-Lieutenant of the period, and in the following month by the King. The deceased, in 1802, married the daughter of Richard Morrison, esq. of Middlesex. He, for upwards of thirty years, was in the commission of the peace for the county of Kent.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

MARRIAGES.

PRESTON, W. J. esq. surg. of Upper Berkeley-street, to Caroline, youngest daughter of the late William Messum, esq. solicitor, of Portsea, on the 21st inst. at St. Pancras.
PLUMMER, Mr. Stephen, jun. solicitor, of Canterbury, to Harriett, daughter of Mr. Alderman Neame, on the 16th inst. at Canterbury.

DEATHS.

GREY, Sir Thomas, knt. M.D. F.R.S. and for more than 25 years magistrate of the county of Kent and the Cinque Ports, at St. Lawrence, on the 17th inst.
WAKEFIELD, Daniel, esq. of Lincoln's Inn, one of her Majesty's Counsel, at his house, Cambridge-terrace, Hyde-park, on the 19th inst. aged 69.
WINTER, Mary Ann, widow of the late Roger Winter, esq. barrister of the Supreme Court of Calcutta, at Kensington, on the night of the 17th inst.

NOTICES OF NEW LAW BOOKS.

A Treatise on the Principles and Practice of the Action of Ejectment, and the resulting Action for Mesne Profits. Fourth edition, with additions. By JOHN ADAMS, Serjeant-at-Law. London, 1846. Benning and Co.

THIRTY years have elapsed since this work was first given to the Profession, and during that long period it has maintained its place in the estimation of practitioners as the highest authority on the subject to which it is devoted. Successive editions have not only adapted it from time to time to the manifold changes of the law, but have removed the defects invariably attendant upon first attempts. A fourth edition has now been called for by the exhaustion of the former ones, and the accumulation of new statutes and decisions. The “Limitations of Actions in Suits relating to Real Property,” and “Fines and Recoveries” Acts, have compelled the entire reconstruction of the chapter which treats of the title necessary to support the action, and the omission of the chapter relating to actual entry. The Wills Act, and the Act for Regulating the Action of Ejectment as between Landlord and Tenant, have led to considerable additions, and all the cases have been brought down to the present time.

A work so well known as this needs no description nor recommendation. Its name is its best advertisement. As likely to be useful to some of our readers, we make two extracts only. First, of the

EVIDENCE IN ACTIONS OF EJECTMENT.

The proofs by which a claimant in ejectment is required to support his claim, not only vary with the nature of his title to the premises, but are also dependent on the position in which he is placed, with respect to the defendant. When no privity has existed between the parties; that is to say, when neither the defendant, nor those under whom he holds, have been immediately or derivatively admitted into possession, either by the lessor of the plaintiff himself, or those under whom he claims, the lessor must establish a legal title to the premises; because, as has been already observed, it is by the strength of his own title, and not by the weakness of his adversary's, that he must prevail. But where there has been a privity between the parties, as where the relation of landlord and tenant has subsisted, or where the lessor claims as mortgagee, or where the defendant has been admitted into possession, pending a treaty for a purchase or the like, proof of title is not required; but instead thereof, the claimant should prove the circumstances under which the defendant, or those under whom he holds, were admitted into possession, and that their right to the possession had ceased; together also, when the privity is not between the immediate parties to the action, with the derivative title of the claimant from the party by whom the defendant was originally admitted into possession. In these cases the defendant will not be permitted to rebut this evidence, by shewing that the title of the claimant was originally defective and insufficient, for it would be contrary to good faith to permit a party to controvert the title of him by whom he has obtained possession; but he is allowed, notwithstanding, to prove the nature of such title, and to shew, that although originally a valid one, it expired before the commencement of the action, and that the land then belonged to another, for such a defence is not inconsistent with the terms of the original possession.

In considering this subject, we shall notice, firstly, the evidence applicable generally to actions of ejectment; and secondly, the proofs requisite in support of each particular title; subdividing this second branch into two parts, namely, the proofs requisite when no privity exists between the parties, and those required where such privity does exist; and in the latter branch, giving an epitome of those cases in which the parties originally let into possession, with the privity of the claimant or those whom he represents have, and have not been estopped from rebutting such claimant's title.

Nice questions have formerly arisen as to the competency of witnesses, having some real or imaginary interest in the event of the trial, to give evidence in this action, but these subtleties are terminated by stat. 6 & 7 Vict. c. 85, s. 1, which enacts that no person shall hereafter be excluded by reason of incapacity from crime or interest from giving evidence on any trial, with a special proviso that such privilege shall not extend “to any lessor of the plaintiff or tenant of the premises sought to be recovered in ejectment;” and these parties are therefore of course, now, the only persons not competent as witnesses.

Where the ejectment is brought on several demises, and the evidence shews that the title is exclusively in one of the lessors, the other cannot be compelled to be examined as a witness for the defendant, as all the lessors are jointly liable for the costs. But a joint defendant, who has suffered judgment by default, is a good witness to prove the other defendant in possession.

The title proved must not be inconsistent with the demise in the declaration. When, therefore, several lessors declare upon a joint demise, proof of a joint interest in the whole premises must be given. But, if a demise is laid by each of several lessors separately, they will be entitled to recover, whether they have a joint or several interest, for a several demise severs a joint tenancy. And in a case where a joint demise was laid by seven trustees of a charity, who were appointed at different times, and the tenant had paid one entire rent to the common clerk of the trustees, it was held that such payment of rent should enure in the most beneficial way for the trustees in support of their title as brought forward by themselves, unless the defendant expressly proved them to be entitled in a different manner. And it was considered that the circumstance of their being appointed at different times was not sufficient evidence for that purpose.

The locality of the premises as described in the declaration must be proved, but after the plaintiff has established his title to a verdict, the Court will not try the extent of his claim, as defined by particular metes and bounds.

Proof is not now in any case necessary of an actual entry on the premises. Since the statute for the abolition of Fines and Recoveries, and the provision in the 10th section of the statute 3 & 4 Wm. 4, c. 27, which enacts, that no person shall be deemed to have been in possession of premises, merely by making an entry thereon, the only two cases in which an actual entry was requisite, namely, where a fine with proclamations had been levied, and where the entry was necessary in order to preclude the operation of the Statute of Limitations, have ceased to exist.

It has already been observed, that the common consent rule dispenses, in all cases, with proof of entry and ouster by the defendant.

Notwithstanding the terms of the consent rule, it was formerly holden necessary to prove the defendant in possession of the premises in dispute, and plaintiffs were frequently nonsuited on subtle points arising out of this practice, quite independent of the merits of the case. But by orders of the different Courts, the consent rule is now altered, so as to include the confession of possession, as well as of lease, entry, and ouster; and no proof of possession is now required, unless there should be some dispute as to the identity of the premises, when the consent rule must be produced; but it does not satisfactorily appear from the last reported case, on which party the production rests. As, however, it ought in all cases to be annexed to the record, it is probable that the onus of the production will be thrown upon the plaintiff.

And this on the

RIGHT TO BEGIN.

The advantages incident upon the privilege of the general reply, and also upon the right of making the first address to the jury, frequently cause admissions to be made by the defendant's counsel for the purpose of obtaining them, and this practice has given rise to some decisions upon the subject, which it will be useful here to notice.

When the lessor claims as heir and proves his pedigree and stops, and the defendant sets up a new case, which is controverted by evidence on the part of the plaintiff, the defendant is entitled to the general reply. But if the defendant's case is met by a new case on the part of the plaintiff, as, for example, if the plaintiff originally claims as heir, and the defendant establishes a will, and the plaintiff sets up another will, the general reply rests with the plaintiff.

If, after the pleadings are opened, the defendant's counsel expresses himself ready to admit the lessor's whole case, as, for example, if the lessor claims as heir-at-law, and he undertakes to admit the pedigree, and that the ancestor died seised, or if he claims as devisee, and the defendant admits the will, and claims under a disputed codicil, it will entitle him to open the case, and also to the general reply, if witnesses are afterwards called on the part of the claimant. But a partial admission will not be sufficient, as, for example, where the real question was the legitimacy of the defendant, who was clearly heir, if legitimate, a proposition to admit that, unless the defendant was legitimate, the claimant was heir-at-law was insufficient. So also, where the question was the competency of the ancestor to execute a deed of conveyance, a proposal to admit the heirship, and that the ancestor died seised, unless the same was defeated by a conveyance made by him to the defendant, was considered insufficient. But in a case where the lessor claimed as heir-at-law of S. R. who was the heir-at-law of J. C. and took possession of the property at the time of the death of J. C. and continued in possession until his own death, and the defendant undertook to admit the seisin of J. C. and the heirship of the claimant, but proposed to defeat his title, by setting up a will of J. C. he was permitted to begin, Lord Denman, C. J. observing, "Here the defendant admits all the plaintiff requires to entitle him to a verdict, except the single fact of the descent to S. R. that he proposes to defeat by a will which he will have to prove, and on that will is the single issue in the cause." And in a case where the real question in dispute was the validity of a will, and the defendant undertook to admit the heirship of the claimant, but who contended that he was not bound to accept such admission, because he claimed part of the property as assignee of an outstanding term independent of the will, it was held, notwithstanding, that the defendant was entitled to begin.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY

ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.

(Continued from page 382.)

When untechnical expressions will supply the place of proper words of limitation.—There are also some instances in which words of limitation, although not technically correct, have been construed according to the intention, and have been held to pass either a fee-simple or a fee-tail, accordingly as such intention could be collected from the ordinary and general import of the terms employed. Thus, as I have already remarked, a devise to a man in fee-simple would pass that estate (*supra*), as will also a devise to a man and his executors (Gibb. dev. 19; Latch 30); or appointing a person his heir (*Inkerar's* case, Bro. dev. 38; *Taylor v. Webb*, Str. 301; S. C. under the name of *Marret v. Sly*, 2 Sid. 75; *Tilley v. Collyer*, 3 Keb. 589); or the executor or executrix

of his lands (*Marrett v. Sly*, 2 Sid. 95; *Doe dem. Gillard v. Gillard*, 5 B. & A. 785; *Doe dem. Crump v. Sparkes*, 1 Dow. & Ry. 497; *Noel v. Hoy*, 5 Mad. Rep. 38; *Hickman v. Hazlewood*, 6 Ad. & Ell. 167); or devising to a man in perpetuum (2 Blac. Com. 108), or for ever (*Whiting v. Wilkins* 8 Vin. Abr. 208; S. C. 1 Bulstr. 219; *Heath v. Heath*, 1 Bro. C. C. 148); or "to a man and his blood," for the blood runs through the collateral heirs as well as the lineal (Co. Litt. 6; 1 Prest. Estates, 84) will pass the fee simple. Whether a devise to a man and his posterity will pass the fee or an estate tail, is a doubtful point, though it seems clear that a devise to a man *et semino suo* will pass an estate tail. A devise to a man and his heir in the singular number (1 Roll. Abr. 833; Plow. 288; *Snell v. Read*, 2 Atk. 645); or to a man or his heirs (*Doe v. Stenlake*, 3 East, 515), will pass the fee, though a limitation in a deed in the same terms would not have passed more than a life estate (Co. L. H. 8 C. 1; ib. 214, a; 5 Co. 112; *Chapman v. Dalton*, Plow. 286); and a limitation to A and his heirs male, or female, which in a deed would have passed a fee-simple (*Abraham v. Twigg*, Cro. Eliz. 478; *Ide v. Cook*), when contained in a will, will pass an estate tail. (*Blaxton v. Stone*, 3 Mod. 133; *Denn v. Slater*, 5 T. R. 434.) A devise to A and his heirs for their lives will vest the fee in A, because there cannot be a succession of heirs for life estates (*Doe v. Stenlake*, *supra*); but a devise to a man and his assigns will pass an estate for life only (*Fisher v. Nicholls*, 3 Salk. 139), where the will is made prior to 1838; but a devise in those terms in a will made subsequently would create an estate in fee simple.

When the fee will arise by implication.—In some cases the fee will pass by implication—one instance is where an estate is devised to one generally without words of limitation, and is limited over on the contingency of the first devisee's dying under the age of twenty-one years (*Fowler v. Backwell*, Com. 353; *Moore dem. Fagg v. Heaseman*, Wils. 38; *Toohey v. Bassett*, 10 East, 460); for where an estate is directed to be taken from an institute upon a contingency that does not happen, it shall not be taken away by any other circumstance; and as it appears that the estate of the devisee is to determine only in the event of his death, under age, the intent of the testator will be construed to mean that the first devisee should have the fee. Nor will the circumstance of the first devisee being the heir-at-law of the testator be sufficient to vary this construction. (*Frogmorton dem. Bramston v. Holliday*, 1 Blac. Rep. 535.) But if the limitation over had been in case the first devisee should die without issue, he would then have taken an estate tail only. (*Dutton v. Ingram*, Cro. Jac. 427; *Roe dem. Scott v. Smart*, Fearn C. R. 473, n.; *Doe v. Fyldes*, Cow. 833; *Brice v. Smith*, Wils. 1; *Denn v. Slater*, 5 T. R. 336; *Fenny v. Agar*, 12 East, 258; *Dansey v. Griffith*, 4 Mau. & Selw. 61; *Raggett v. Beattie*, 5 Bing. 243.) And even where the words of limitation are sufficient to pass an estate in fee-simple; as a devise to A, his heirs, and assigns, subject to a charge, it may nevertheless be reduced to an estate tail, by a limitation over on failure of his issue, or heirs of his body. (*Dutton v. Ingram*, Cro. Jac. 427; *Roe v. Scott and Smart*, Easter, 12 Geo. 3, Fearn C. R. 473 n.; *Roe v. Avis*, 6 T. R. 605.)

Alterations in this doctrine effected by the recent Will Act.—Previously to the late Act 1 Vict. c. 26, it was considered as a settled rule of law that, in order to reduce a devise to a man and his heirs to an estate tail by means of a limitation over or failure of issue in the first taker, the failure of issue contemplated must have been an indefinite failure; for where the dying without issue was confined to the period within which an executory devise may be limited to take effect, viz. twenty-one years after the lifetime of a person or persons in being, the first devisee would have taken an estate in fee subject to a limitation over by way of executory devise. Thus in *Pells v. Brown*, Cro. Jac. 590, where a testator devised to his son B and his heirs for ever; but if he died without issue living A, then A was to have those lands to him and his heirs for ever; it was adjudged that B took an estate in fee-simple, and that the limitation over to A was good by way of executory devise. (See also *Hambury v. Cockerell*, 1 Roll. Abr. 835; *Porter v. Bradley*, 3 T. R. 143; *Doe dem. Bamfield v. Welton*, 2 Bos. & Pull. 324; *Sheers v. Jeffery*, 7 T. R. 589; *Doe dem. Smith v. Webber*, 1 B. & A. 713; *Doe dem. King v. Frost*,

3 B. & A. 646.) When, therefore, it appeared from the general language of the will that the devise over was only to take effect on an indefinite failure of issue of the first taker, to whom the property was devised in terms in other respects sufficient to have passed the fee, such first devisee would have taken an estate tail (*Dutton v. Ingram*, Cro. Jac. 427; *Roe v. Scott and Smart*, Fearn C. R. 473, n.; *Doe v. Fyldes*, Cow. 833; *Walter v. Drew*, Cow. 372; *Roe v. Avis*, 6 T. R. 606; *Fenny v. Agar*, 12 East, 258; *Dansey v. Griffith*, 4 Mau. & Selw. 61); and where it was restrained to his leaving no issue at the time of his own death, he would have taken an estate in fee-simple, subject to a limitation over by way of executory devise. (*Pells v. Brown*, Cro. Jac. 590; *Hambury v. Cockerell*, 1 Roll. Abr. 835, pl. 4; *Porter v. Bradley*, 3 T. R. 143; *Doe dem. Bamfield v. Welton*, 2 Bos. & Puller, 324; *Sheers v. Jeffery*, 7 T. R. 589; *Eastman v. Baker*, 1 Taunt. 174; *Doe dem. Smith v. Webber*, 1 B. & A. 713; *Doe dem. King v. Frost*, 3 ib. 546; *Glover v. Mockton*, 3 Bing. 15; *Goldin v. Lakeman*, 2 B. & Ad. 30.)

The following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

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THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
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Exchequer Bills, prem.	15	15	15	15	15	15
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Buenos Ayres	294	294	402	412	412	41
Brasilian	85	85	86	86	86	86
Belgian	96½	96½	97	97	97	97.

DORSETSHIRE.—The Chettle Estate, comprising the whole parish of Chettle, nearly adjoining the Great Western-road, between Salisbury and Blandford, Dorset, was disposed of by auction, at the Auction Mart, by Mr. Leifchild, which attracted a large attendance of capitalists. It comprised Chettle House, built in the style of Sir John Vanbrugh, about 1,113 acres of down, pasture, arable, and woodland, together with the perpetual advowson and right of presentation to the rectory and parish church of Chettle. The timber, with the live and dead stock, and the growing crops, to be taken at a valuation; the whole of which were stated to be in the finest possible condition. After very considerable competition, the property was sold for 24,400l.

SALE OF AN ADVOWSON.—The next presentation to the rectory of Ickenham, situated in a beautiful part of the county of Middlesex, about two miles from the market town of Uxbridge, was disposed of by auction, by Mr. Bullock, at the Auction Mart. The annual income of the rectory was estimated at 610l. which was subject to a deduction of about 44l. 1s. 3d. for land-tax, tithes, and parochial rates. It was sold for 2,000l.

SALE OF WOLSHINGHAM PARK ESTATE.—The Wolshingham Park estate, which is situated about fifteen miles from Durham, has been put up to auction, by Mr. Single, at the Auction Mart. It included about 2,413 acres, and comprised three farms, very extensive and flourishing woods and plantations, and the leasehold and minerals, which were held under the see of Durham. It was formerly the property of the Earl of Harrington. A slate and stone quarry had just been opened. The woods were to be taken at a valuation, and it is said they would be worth several thousand pounds. The estate was put up in one lot, when it was bought in, 11,000l. being the highest sum offered. It was then put up in three lots, upon which it realised 12,900l. but at which the auctioneer said it was not sold, as the estimated value was much higher.

THE PRESENT MARKET VALUE OF LAND AND HOUSES.—Several sales of property by auction took place on Wednesday, at the Mart. The following is a list of the prices realised:—A freehold estate, at Wareham, Dorsetshire, containing 1,413 acres, with villa residence and farm-house, sold for 11,950*l.*; leasehold house in Eversholt-street, Camden-town, let at 90*l.* a year, ground-rent 12 guineas, sold for 1,055*l.*; leasehold shop in the same street, let at 110*l.* a year, ground-rent 12 guineas, sold for 1,266*l.*

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, July 13.

Airs, C. innkeeper, last exam. passed.—Waller and Walter, grocers, joint div. next week. Turquand, London.

Tuesday, July 14.

Benns, C. miller, last exam. Sept. 15.—Bird, J. timber merchant, last exam. Sept. 16.—Clark, E. builder, last exam. passed.—Dewar, J. auctioneer, div. next week. Belcher, London.—Elkington, H. chemist, last exam. passed.—Hart, W. hat manufacturer, last exam. Sept. 8.—Hopkins, C. G. M. J. tailor, last exam. sine die.—Latham, S. M. banker, div. next week. Turquand, London.—Molyneux, W. innkeeper, assigns Aug. 11.—Pim and Payne, paper makers, last exam. passed.—Rothchild, B. L. M. diamond merchant, last exam. passed.—Shaw, H. china dealer, last exam. sine die.—Smith J. cheesemonger, last exam. passed.

Wednesday, July 15.

Perry, R. draper, last exam. passed.

Thursday, July 16.

Dixon, F. currier, div. next week. Follett, London.—Smithson, W. M. printer, last exam. Sept. 17.—Ward and Co. meat salers, div. P. next week. Follett, London.

Friday, July 17.

Giro, J. merchant, div. next week. Alsager, London.—Graham and Co. calico printers, joint div. and sep. G. next week. Follett, London.

Saturday, July 18.

Perkins, J. jeweller, div. next week. Follett, London.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Bhandell, J. pawnbroker, first, 14*d.* Pott, Manchester.—Bulmer, J. ship builder, first and final, 90*s.* Baker, Newcastle.—Christ, J. wine broker, second, 6*d.* Alsager, London.—Collins, J. brewer, first, 1*s.* 2*d.* Pott, Manchester.—Eneall, R. draper, first, 2*s.* Alsager, London.—Fricker, H. innkeeper, first, 2*s.* 7*d.* Turquand, London.—Gibbs, J. grocer, 2*s.* 5*d.* Turquand, London.—Headington, R. lace-maker, first, 1*s.* 10*d.* Morgan, Liverpool.—Payne, G. P. dealer in optical instruments, first, 3*s.* 11*d.* Morgan, Liverpool.—Pilling and Co. wine merchants, first and joint, 1*s.* 8*d.* Wakley, Newcastle.—Pitcairn, T. shipowner, second, 1*s.* 9*d.* Morgan, Liverpool.—Reis and Co. soap manufacturers, first, 3*s.* 9*d.* Alsager, London.—Snaith and Smith, ironmongers, first and joint, 5*s.* Wakley, Newcastle.—Taylor and Guy, hoisiers, second, 2*s.* 10*d.* Morgan, Liverpool.

Insolvents' Estates.

Carpenter, H. C. clerk, Coborn-road, first, 8*s.* Turquand, London.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, July 17.

Burden, J. N. grocer, Barnstable, May 23. Trusts, J. M. Fisher, maltster, Barnstable, and J. R. Delafosse, tea dealer, Fenchurch-st. Sol. Mortimer, Barnstable.—Millard, G. carpenter, Brighton, July 1. Trusts, W. Edwards, Brighton, and J. Lewis and T. Turpin, timber merchants, Brighton. Sol. Chalk, Brighton.—Naylor, R. innkeeper, Marlborough, June 15. Trusts, W. S. May, gent. and J. Hammond, innkeeper, both of Marlborough. Sol. Fyke, Marlborough.—Read, R. carpenter, Salisbury, July 13. Trusts, W. Harding, brick maker, Fisherton Anger, and W. Atkins, painter, same place. Sol. Lee, Salisbury.—Wright, C. merchant, Birmingham, July 18. Trusts, G. Dawes, iron merchant, and F. Matchett, iron founder, both of Birmingham. Sol. Snelling, Birmingham.

Gazette, July 21.

Feeler, H. general salesman, Leeds, July 9. Trust, J. Smith, woollen draper, Leeds. Sol. Shackleton, Leeds.—Kidd, W. grocer, Berkhamstead, May 21. Trusts, C. Teede and J. Bishop, wholesale tea-dealers, Crown-court, Philpot-lane. Sol. Tucker and Co. Threadneedle-st.—Knight, R. V. iron founder, Atherstone, July 13. Trusts, H. Kenny, tobacconist, Derby, and C. Rollason, agent, Sedgley. Sol. Alcock, Birmingham.—Long, R. stonemason, Taunton, July 15. Trusts, R. Herniman, merchant, and S. Coombs, spinster, Taunton. Sol. Street, Taunton.—Walton, J. woollen draper, Gerrard-st. July 3. Trusts, T. Cooke, warehouseman, Basinghall-st. F. Afford, cloth factor, Ironmonger-lane, and O. Roberts, woollen draper, Marylebone-street. Sol. Walters, Basinghall-st.—Watson, G. C. grocer, Whitehaven, July 17. Trusts, S. Dodgson, banker, P. Thompson, sharebroker, and T. Carr, ship broker, Whitehaven. Sol. Perry, Whitehaven.

Bankrupts.

STATE OF FIAT AND TRIBUTING CREDITORS' NAMES.

Gazette, July 17.

BENNETT, JOHN, hosiery, Fleet-st. July 28, at half-past one, Aug. 28, at half-past twelve, Basinghall-st. Com. Fane; Alsager, off. ass.; Reed and Langford, Friday-at. sole. Date of fiat, July 19. J. Mair, sen. and jun. warehousemen, Friday-at. pet. crs.

BOULT, EDWARD, grocer and cheesemonger, Isleworth, Middlesex, July 29 and Aug. 20, at one, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Dods, St. Martin's-

lane, sol. Date of fiat, July 10. J. A. Wells and J. Soane, cheesemongers, Lime-st. pet. crs.

BROAD, WILLIAM HENRY, maltster, Stourport, Worcester, July 31 and Aug. 25, at ten, Birmingham. Com. Balguy; Valpy, off. ass.; Watson, Stourport, and Hodgson, Birmingham, sols. Date of fiat, July 14. Bankrupt's own petition.

BUTLER, JOSEPH LAWRENCE, coal merchant, Liverpool, July 27 and Aug. 18, at eleven, Liverpool. Com. Ludlow; Bird, off. ass.; Keightley and Co. Chancery-lane, and Matthews, Liverpool, sols. Date of fiat, June 27. J. and W. Sudlow, accountants, Liverpool, pet. crs.

COOK, ROBERT, surgeon and apothecary, Gainsburgh, Lincolnshire, Aug. 12 and 26, at ten, Hull. Com. Burge; Kynaston, off. ass.; Bell, Bedford-row, and Galloway, Hull, sols. Date of fiat, July 11. W. Forrest, druggist, Gainsburgh, pet. cr.

EASUM, ROBERT HAYES, rope maker, Commercial-rd. East, July 24, at two, Aug. 26, at half-past one, Basinghall-st. Com. Fane; Whitmore, off. ass.; Church, Spital-sq. sol. Date of fiat, July 9. J. Catling, and J. Geeke, merchants, Fenchurch-st. pet. crs.

GRAHAM, CHARLES WILLIAM, merchant, 20, King's Arms-yd. Coleman-st. July 23, at eleven, Aug. 29, at three, Basinghall-st. Com. Goulburn; Green, off. ass.; Borradaile, King's Arms-yard, sol. Date of fiat, July 14. Bankrupt's own pet.

HANKS, EDWARD, grocer and tea dealer, 10, Briggate, Leeds, Yorkshire, July 30 and Aug. 20, at eleven, Leeds; Com. West; Young, off. ass.; Wiglesworth and Co. Gray's-Inn, and Upton and Clapham, Leeds, sols.

HODGES, EDWARD, wine and brandy merchant, and victualler, Royal Oak, Circus-st. New-rd. July 23, at one, Aug. 26, at two, Basinghall-st. Com. Fonblanque; Belcher, off. ass.; Harpur, Kennington-cross, sol. Date of fiat, July 14. C. and W. Webb, King William-st. wine merchants, pet. crs.

HOBSON, RICHARD, ironmonger, horse dealer, and farmer, Everton, Nottingham, July 31 and August 21, at eleven, Sheffield. Com. West; Freeman, off. ass.; Scott and Co. Lincoln's-inn-fields, and Plakitt, Gainsborough, sol. Date of fiat, July 6. H. Robinson and H. Hall, merchants, Gainsborough, pet. crs.

HUNT, WILLIAM, printer and stationer, No. 82, High-st. Marylebone, July 24 and Sept. 1, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Lawrence and Flews, Bucklebury, sols. Date of fiat, July 15. Bankrupt's own petition.

KEMPTON, DAVID, bed and mattress manufacturer, Brompton-st. Surrey, July 28 and August 28, at one, Basinghall-st. Com. Fane; Alsager, off. ass.; Wright, London-st. sol. Date of fiat, July 16. Bankrupt's own petition.

FRISLEY, ROBERT, grocer, flour dealer, and retailer of beer, Manchester and Widwick, July 28 and August 18, at twelve, Manchester; Pott, off. ass.; Gregory and Co. Bedford-row, and Law, Manchester, sols. Date of fiat, July 2. Bankrupt's own petition.

SEATON, JOHN, farmer and horse dealer, Wink-house, Frickley-cum-Clayton, Yorkshire, July 30 and August 20, at eleven, Leeds. Com. West; Young, off. ass.; Mitten, Southampton-buildings, Sheardown, Doncaster, and Carris, Leeds, sols.

Gazette, July 21.

ALEXANDER, ALEXANDER, and ALEXANDER, JOHN, opticians and mathematical instrument makers, No. 6, High-street, Exeter, August 5 and Sept. 11, at eleven, Exeter, Com. Bere; Hirtzel, off. ass.; Turner, Exeter, and Spyer, Broad-street-buildings, sols. Date of fiat, July 17. Bankrupt's own petition.

BRYANT, ISAAC, builder, No. 2, Victoria-grove, Stoke Newington, July 31, at twelve, Sept. 1, at half-past eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Jenkinson, Cannon-street, sol. Date of fiat, July 1. T. Hayward, A. Conway, and J. Phelps, grocers, Maiden-lane, pet. crs.

GREEN, WILLIAM, boarding housekeeper, 18, Dorset-place, Dorset-square, Middlesex, July 31, at eleven, September 1, at half-past eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Lawrence and Flews, Old Jewry-chambers, sols. Date of fiat, July 17. Bankrupt's own petition.

HOLDSWORTH, WILLIAM, apothecary, Ripley, York, Aug. 1 and 21, at eleven, Leeds. Com. Burge; Hope, off. ass.; Sudlow and Co. Chancery-lane, Stewart, Horbury, and Carris, Leeds, sols. Date of fiat, July 14. W. Statter, Wakefield, apothecary, pet. cr.

FULLMAN, CHARLES, hosiery, 234, Strand, July 31, at twelve, Sept. 4, at eleven, Basinghall-st. Com. Fane; Alsager, off. ass.; Reed and Langford, Friday-at. sole. Date of fiat, July 17. J. Carter, J. Varasseau, and J. Rix, Thames-st. warehousemen, pet. crs.

STENDALL, JOHN, baker, Hucknall-under-Huthwaite, Nottingham, July 31 and August 21, at eleven, Sheffield. Com. West; Freeman, off. ass.; Freeth and Co. Lincoln's-inn-fields, and Freeth and Co. Nottingham, sols. Date of fiat, July 14. Bankrupt's own petition.

TAYLOR, JOHN, rope manufacturer and slate merchant, Hollinwood and Manchester, August 6 and 27, at eleven, Manchester; Hobson, off. ass.; Johnson and Co. Temple, and Pollard, Manchester, sols. Date of fiat, July 11. T. M. Fisher, auctioneer, Manchester, pet. cr.

WARD, SAMUEL, lasting and shalloon manufacturer, Lilly-pot-lane, City, July 28, at half-past eleven, September 2, at eleven, Basinghall-st. Com. Fonblanque; Pennell, off. ass.; Smith, Barnard's-inn, sol. Date of fiat, July 16. J. and R. Davis, Shoreditch, bankers, pet. crs.

WOOD, WILLIAM, wine and spirit merchant, Shrewsbury, August 5 and 29, at twelve, Birmingham. Com. Daniell; Birtleson, off. ass.; Wace, Shrewsbury, and Smith, Birmingham, sols. Date of fiat, July 15. T. H. Beacall, Shrewsbury, pet. cr.

Meetings at Basinghall-street.

Gazette, July 17.

Brace and Allen, warehousemen, Mitre-st. July 31, at eleven, and—Bond, C. J. tailor, Tranquil-vale, Blackheath, Aug. 7, at half-past one, div.—Egill, T. L. and Douglas, T. cloth manufacturers, Vigo-st. Middlesex, Aug. 10, at twelve, joint and sep. divs.—Lawrence, B. merchant, Crown-st. Old Broad-st. Aug. 11, at twelve, joint div.—Marriage, J. jun. miller and coal merchant, Moulsham, Chelmsford, Aug. 10, at one, div.—Reay, J. and J. R. wine merchants, Mark-lane, Aug. 8, at two, joint div. and sep. of J. Reay.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Clark, E. builder, Mortimer-road, Aug. 10, at half-past one.—Holmes, J. R. brewer, Poplar, Aug. 10, at two.—Miller, J. painter, Whitelebury-st. Aug. 10, at half-past eleven.—Watts, J. wine merchant, Besset's-pl. Aug. 7, at eleven.

Gazette, July 21.

Best, W. and Snowden, J. printers, librarians, and stationers, Southampton, Aug. 14, at half-past eleven, joint div.—Godwin, H. M. and Lee, C. ship owners and insurance brokers, Bishopgate-st. Within, Aug. 14, at twelve, joint div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Onthhouse and Co., timber merchants, Lissou-st. Aug. 11, at half-past eleven.—Sheffield and Sheffield, grocers, Bag-niggo-wells-road, Aug. 18, at two.

Meetings in the Country.

Gazette, July 17.

Antrobus, D. Apothecary, Audley, Aug. 4, at ten, Birmingham (adj. July 10), last exam.—Boughtell, T. iron-monger and brasser, Lincoln, Aug. 12, at ten, Town-hall, Hull, second div.—Bower and Randle, cotton spinners, Heyrod and Black-rock mills, July 29, at twelve, Manchester (adj. July 6), last exam.—Chaloner, W. tailor and draper, High-st. Lincoln, Aug. 12, at ten, Town-hall, Hull, second aud. and div.—Delaman, H. merchant, Liverpool, Aug. 7, at eleven, Liverpool, aud.—Dethick and Kay, brewers, Newton-leath, July 28, at twelve, Manchester (adj. June 7), last exam.—Harley, E. S. grocer, Birmingham, Aug. 18, at ten, Birmingham (adj. June 19), last exam.—Hollowell, T. I. Northcliffe, J. and Hollowell, J. B. dyers, Thornhill Briggs, Halifax, Aug. 7, at eleven, Leeds, aud. and first div.—Lee, R. ironmonger, Wolverhampton, Aug. 11, at eleven, Birmingham, aud.—Meek and Gill, merchants, Liverpool, Aug. 7, at eleven, Liverpool, aud.—Neilson, W. Liverpool, Aug. 7, at twelve, Liverpool, div.—Perry, W. ironfounder, Wolverhampton, Aug. 18, at twelve, Birmingham, aud. and Aug. 20, at twelve, div.—Thomas, B. merchant, Liverpool, Aug. 7, at eleven, Liverpool, aud.—West, H. grocer and draper, Burgh, Lincoln, Aug. ten at twelve, Town-hall, Hull, aud. and first div.—Woodhead, J. and J. worsted stuff manufacturers, Bradford, Aug. 8, at eleven, Leeds, second aud. and Aug. 11, at eleven, second div.—Wright, J. scrivener and banker, Tamworth, Aug. 8, at eleven, Birmingham, aud. and div.

MEETING FOR ALLOWANCE OF CERTIFICATE.

Taylor, J. merchant, Aug. 11, at half-past ten, Liverpool.

Gazette, July 21.

Darton and Barton, copper roller manufacturers, Manchester, July 29, at eleven, Manchester, last exam.—Betty, W. carrier, Hull, Aug. 14, at ten, Hull, aud.—Bemley, B. printer, Woking, Aug. 13, at twelve, Bristol, aud.—Brock, A. grocer, Birmingham, Aug. 18, at ten, Birmingham (adj. July 10), last exam.—Crabtree, J. and Burnley, W. woollen manufacturers, Tunstall, Lancashire, Aug. 13, at twelve, Manchester, aud. and Aug. 14, one fin. jt. and sep. divs.—Davies, R. grocer, shopkeeper, and coal merchant, Abercane, Monmouthshire, Aug. 13, at twelve, Bristol, aud. and Aug. 14, at eleven, div.—Evans, J. cattle dealer, Haywood-lodge, Aug. 5, at twelve, Birmingham (adj. July 11), to choose assign.—Gales, T. Guest, W. J. Naisby, J. F. and Kirtley, M. ship builders and shipowners, Hylton, Durham, Aug. 13, at half-past eleven, Newcastle, fin. jt. div.—Godfrey, J. linen draper, Midsomer Norton, Aug. 18, at twelve, Bristol, aud.—Marrian, T. common brewer, Sheffield, Yorkshire, Aug. 14, at eleven, Sheffield, 2nd div.—Menries, W. draper, mercer, grocer, and tea dealer, Aug. 13, at twelve, Bristol, 2nd div.—Prattman, W. L. and Forster, M. timber-merchants, Coppley, Aug. 11, at eleven, Newcastle, prf. of sep. debts of Prattman.—Prior, J. and Brady, H. brush manufacturers, oil and colour merchants, Kingston-upon-Hull, Aug. 12, at ten, Hull, aud. and 2nd div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Baldock, W. flour dealer, Nottingham, Aug. 14, at ten, Birmingham.—Bull, S. A. dyer, Frome, Aug. 17, at twelve, Bristol.—Chapman, M. painter, Devonport, Aug. 18, at eleven, Exeter.—Howard, J. R. oil retailer, Llangunlud, Aug. 17, at eleven, Bristol.—Hill, S. boiler maker, Bolton, Aug. 12, at twelve, Manchester.—Mallett, W. milliner, Manchester, Aug. 13, at twelve, Manchester.—Wilkinson, J. grocer, Manchester, Aug. 18, at twelve, Manchester.

Partnerships Dissolved.

Gazette, July 14.

Birrell, A. and Morecroft, T. vinegar manufacturers, Liverpool, July 7.—Bruce, A. J. and Moore, R. C. medical shop fixture dealers, St. Mary-axe, July 9.—Clarke, J. and D. silkmen, Macclesfield, Eaton, and London, July 4.—Cooper, E. and Heap, W. grocers, Luttreworth, June 10.—Ellis, E. and Carr, R. jun. manufacturing chemists, Ossett, July 11. Debts paid by Ellis.—France, S. and Smith, T. wine merchants, Warrington, July 8. Debts paid by Smith.—Gill, T. Child, J. and Barker, W. railway contractors on the Manchester and Leeds Railway, July 6. Debts paid by Gill and Child.—Gibbert, W. and Farcher, R. engineers, Brett's-buildings, Finsbury-market, July 11.—Hammond, H. S. and Biddle, H. surgeons, Edmonton, Dec. 31, 1845.—Hinton, T. and Taylor, W. H. silk throwsters, Chalford, June 1.—Hodgson, S. and G. timber merchants, Sunderland, June 20.—Husbie, J. and Collins, J. S. surgeons, Westbury-upon-Severn and Newnham, June 25.—Kenworthy, E. and Ridgway, J. corn dealers, Stalybridge, June 1, 1845.—MacGill, T. and MacCall, J. O. J. and T. merchants, Liverpool, June 30.—Mackie, F. and Meredith, A. M. tailors, Southamptown-row, April 27.—Mills, J. and Smith, H. die sinkers, Birmingham, July 9.—Nelson, W. and Markendale, B. skinner, Manchester, March 18, 1844.—Norgate, M. and Leing, I. M. school-mistresses, Tavistock-sq. Aug. 12. Debts paid by Norgate.—Parish, T. and Guss, S. butchers, Banbury, June 30. Debts paid by Parish.—Rasson, J. and Eiche, J. A. milkers, Newcastle, May 16.—Savage, B. and Nock, J. wine merchants, Wolverhampton, May 2. Debts paid by Savage.—Selkirk, J. and J. painters, Newcastle, July 11. Debts paid by J. Selkirk.—Sheppard, T. and G. boot makers, Portsmouth, July 11. Debts paid by G. Sheppard.—Sidebottom, J. Ridgway, J. and Kenworthy, E. cotton spinners, New-mills, July 9.—Storey, B. and Baskford, J. flourdealers, Leeds, July 10. Debts paid by Storey.—Sutcliffe, S. Rawson, J. and McClellan, W. cotton warp manufacturers,

Bradford, so far as regards M'Clellan, June 30. Debts paid by the remaining partners.—*Wardle, T.* and *H. silk manufacturers, Macclesfield and Manchester, June 30.*—*Watts, E.* and *L. B. wine merchants, Bath, July 13.*—*Wheley, W. S. and Dross, J.* glass manufacturers, Kingwinford, June 24. Debts paid by Davis.—*Williams, J. S.* and *T. H. milkmen, Liverpool, July 13.*

Gazette, July 17.

Barlow, J. and *Messy, J.* steam boiler makers, Rochdale, July 3. Debts paid by Barlow.—*Biggs, T.* and *A. tobacco manufacturers, Birmingham, July 14.*—*Blanch, D.* and *T. coach smiths, Ham-yard, Great Windmill-st. July 18.*—*Carter, J., J. N.* and *H. C. cabinet makers, Poplar, May 22.* Debts paid by J. Carter.—*Cleaver, J.* and *Merry, W. L.* spelter makers, Ripley, June 30.—*Cockburn, A. A.* and *J. M. merchants, Mark-lane, so far as regards J. M. Cockburn, May 1.*—*Croom, R.* and *Whitaker, J.* woollen printers, Manchester, June 11. Debts paid by Whitaker.—*Douglas, J.* and *Brown, R. G.* surgeons, Knightsbridge, July 11.—*Dove, C.* and *Nelson, W.* maltsters, Cheltenham, July 15.—*English, J. W.* and *Fitch, R. A.* chemists, Poultry, July 1.—*Firth, T.* and *S. woollen yarn manufacturers, Huddersfield, July 14.*—*Giles, H. C.* and *Welch, S.* schoolmistresses, Chester, July 16.—*Hirst, S. W.* and *Yates, E.* milliners, Liverpool, July 11. Debts paid by either partner.—*Holland, J.* and *Wood, G.* engravers, Birmingham, June 30. Debts paid by Holland.—*Howe, A. Smith, W.* and *G. W. brewers, Sheffield, so far as regards Howe, April 27.* Debts paid by the remaining partners.—*Knot, R.* and *J. brick makers, Guide-bridge, Lancashire, July 1.*—*Lucas, A.* and *Ludlow, T. H.* Trinity-terrace, Southwark, July 4.—*McCallum, C.* and *Worley, B.* ship brokers, Mark-lane, July 16.—*Magway, W.* and *G. stationers, College-hill, June 24.*—*McLeod, R.* and *Wilson, J.* ship chandlers, Liverpool, May 29.—*Munn, W. H.* and *G. oil merchants, Maiden-lane, June 30.*—*Milnes, W.* and *Robinson, J.* coal factors, Lower Thames-st. July 16.—*Poff, S.* and *King, E.* bookbinders, Church-st. Hoxton, July 4. Debts paid by Poff.—*Sanderson, J.* and *Knight, T.* salesmen, Smithfield and Newgate-markets, July 16.—*Shorthouse, J.* and *Brown, H.* ship chandlers, Liverpool, May 28.—*Smith, J.* and *Minton, E. S.* stock brokers, Bradford, July 1.—*Subsah, W. F.* and *Hoyland, W. F.* stock brokers, Manchester, July 17. Debts paid by Field.—*Tucker, T.* and *J. sack manufacturers, Bridport, Debts paid by J. Tucker.*—*Watson, W.* and *Kirk, S.* stovers, Leeds, July 14. Debts paid by Watson.—*Whistler, W.* and *G. yeomen, Basingstoke, Oct. 11.*

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, July 14.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Anderson, A. dealer in bread, Baker's-row, Whitechapel-rd. July 27, at half-past one. Com. Shepherd; Turquand, off. ass.—*Clarke, J. H.* hatter, St. Andrew-rd. Newington, July 19, at half-past one. Com. Goulburn; Follett, off. ass.

PETITIONS TO BE HEARD IN THE COUNTRY.

Allesworth, E. provision dealer, Manchester, July 31, at twelve, Manchester. Com. Jemmett; Pott, off. ass.—*Barlow, G.* baker, Manchester, July 24, at twelve, Manchester. Com. Skirrow; Hobson, off. ass.—*Bartlett, C.* jun. labourer, Wells, Aug. 3, at one, Bristol. Com. Stephen; Hutton, off. ass.—*Booth, J.* innkeeper, New-mill, Holmfirth, July 24, at eleven, Leeds. Com. Burge; Hope, off. ass.—*Butler, J. W.* out of business, Walton-on-the-Hill, July 21, at eleven, Liverpool. Com. Ludlow; Bird, off. ass.—*Butterworth, B.* händler, Sutton in Ashfield, July 17, at eleven, Cutlers'-hall, Sheffield. Com. West; Freeman, off. ass.—*Drier, T.* cloth maker, Morley, July 24, at eleven, Leeds. Com. Burge; Hope, off. ass.—*Dumas, A.* lodginghousekeeper, Stockport-moor, July 21, at twelve, Manchester. Com. Jemmett; Pott, off. ass.—*Elsworth, R.* butcher, Halifax, July 23, at eleven, Leeds. Com. Burge; Kynaston, off. ass.—*Garthwaite, J.* meebanie, Leeds, July 23, at eleven, Leeds. Com. Burge; Kynaston, off. ass.—*Gregory, S.* artist, Altrincham, July 21, at twelve, Manchester. Com. Jemmett; Fraser, off. ass.—*Strickland, G.* out of business, Scarborough, July 24, at eleven, Leeds. Com. Burge; Kynaston, off. ass.—*Walker, J.* bookkeeper, Leeds, July 23, at eleven, Leeds. Com. Burge; Hope, off. ass.—*Weber, M.* artist, Derby, Aug. 1, at eleven, Birmingham. Com. Daniell; Whitmore, off. ass.—*Wood, J.* bookkeeper, Shaw, July 24, at twelve, Manchester. Com. Skirrow; Hobson, off. ass.

MEETINGS AT BASINGHALL-STREET.

Bremner, A. clerk, Bromley-st. Commercial-rd. July 18, at eleven, div.—*King, J. V.* artist, Chelsea and Queens-st. July 18, at eleven, div.

MEETINGS IN THE COUNTRY.

Coulson, W. publican, St. Oswald, Aug. 5, at half-past ten, Newcastle, aud.—*Lane, J.* excise officer, South Shields, Aug. 5, at eleven, Newcastle, aud.—*Lamb, J.* plumber, Berwick-upon-Tweed, Aug. 5, at half-past ten, Newcastle, aud.—*Lettings, M. S.* surgeon, Bishopwearmouth, Aug. 5, at eleven, Newcastle, aud.—*Taylor, T.* victualler, North Shields, Aug. 5, at half-past eleven, Newcastle, aud.—*Thew, J.* jun. butcher, Alnwick, Aug. 7, at half-past eleven, Newcastle, div.—*Thompson, W.* attorney, Newcastle, Aug. 5, at twelve, Newcastle, aud.—*Turner, F.* colliery viewer, Newcastle, Aug. 5, at half-past eleven, Newcastle, aud.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, July 17.

Dainty, T. clerk, Royton, Aug. 3, at half-past eleven.—*Eaton, J.* out of business, Hatfield Faversham, Aug. 3, at half-past eleven.—*Green, W.* green grocer, Clare-st. Drury-lane, Aug. 6, at half-past eleven.—*Gibber, S.* butcher, Ipswich, July 27, at one.—*Hammes, R.* sen. rigger, Wellington-pl. Back-rd. St. George's East, July 30, at twelve.—*Jeffreys, G.* clerk, Northfield, July 30, at twelve.—*Johnson, W. S.* master mariner, Collet-pl. Commercial-rd. East, July 30, at eleven.—*Kennedy, D.* brass worker, Wells-st. Oxford-st. July 30, at twelve.—*Matthews, S. J. P.* W. auctioneer, Forest-row, Kingsland, Aug. 6, at eleven.—*Nightingale, S. L.* tailor, Chesterton, July 30, at eleven.—*Payne, H.* clerk, London, City, Fitzroy-sq. Aug. 6, at twelve.—*Reed, J.* grocer, Elizabeth-st. Finsbury, Aug. 6, at twelve.—*Stear, R.* servant, Lower Brook-st. Grosvenor-sq. July 30, at eleven.—*Therrell, F.* carrier, Alfred-mews, Tottenham-court-road, Aug. 6, at twelve.

PETITIONS TO BE HEARD IN THE COUNTRY.

Horn, R. publican, Elvet-bridge, in or near Durham, Aug. 7, at half-past twelve, Newcastle.—*Jones, M.* maltster, Ragland, July 23, at eleven, Bristol.—*Morris, W.* beer-shop keeper, Camborne, Aug. 4, at eleven, Exeter.—*Rattenbury, W.* out of business, Exeter, Aug. 4, at eleven, Exeter.—*Richards, M.* beer retailer, Bristol, July 23, at twelve, Bristol.—*Sully, W.* jun. master builder, Bridgewater, Aug. 4, at eleven, Exeter.

MEETINGS AT BASINGHALL-STREET.

Brant, J. coach builder, Hatton-yard, Hatton-garden, July 29, at one, div.

MEETINGS IN THE COUNTRY.

Thurlow, V. J. out of business, Birmingham, Aug. 11, at eleven, Birmingham, aud.

From the Gazette of Friday, July 24.

Bankrupts.

Gerry, J. builder, Gilbert-street, Oxford-street.—*Cawdell, E.* dealer in toys, Kingston-upon-Hull.—*Garbunati, P.* curver and gilder, Charlton-vale West, Woolwich.—*Knight, T.* draper, Minorities.—*Syder, F.* grocer, Hitchin, Herts.—*Mayhew, H.* printer, Parson's-green, Fulham.—*Eaton, W. C.* flour-factor, Upper-Thames-street, City.—*Toul, T.* grocer, Ashburton, Devonshire.—*Lilley, E.* timber merchant, Hull.—*Newton, R.* cattle dealer, Fleet, Lincolnshire.—*Williams, W.* victualler, Brecon.—*Wreford, W. E.* Nichols, E. C. and *Wreford, W.* stock and sharebrokers, Bristol.

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THE REPORTS.

Equity Courts.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Friday, April 24.

CHAMBERS v. CHAMBERS.

Tenant for life—Remainder—Specific legacy in leasehold property.

A testatrix, by her will, gave her residuary property, consisting, among other things, of certain leaseholds, in trust for her daughter, A. C. for life, with particular directions respecting the comfort and happiness of A. C. with remainder over to J. C. his executors, &c. subject to the payment of annuities and legacies; Held, under the peculiar circumstances of the case, that A. C. was not entitled to enjoy the leaseholds as a specific gift, but that they ought to be sold, and the produce thereof invested.

The testatrix, Dame Frances Chambers, by her will, bearing date 30th December, 1837, gave and bequeathed a sum of 8,000*l.* and all the rest, residue, and remainder of her estate, whether real or personal, goods, chattels, and effects, whatsoever and wheresoever, and of what nature or kind soever, that she should or might be seized or possessed of, interested in, or entitled unto, at the time of her decease, including a sum of 10,000*l.* stock, therein described, upon trust, that, subject to certain pecuniary legacies and annuities thereinbefore given and bequeathed by her, the said testatrix, and the payment of her just debts, funeral, and testamentary expenses, and the costs, charges, and expenses incident to the execution of her will, the said trustees should stand possessed of and interested in her said residuary estate and effects, for the use, benefit, advantage, comfort, and happiness of her daughter, Annie Chambers, during her life. And the testatrix particularly directed and authorized her trustees to pay or allow to such companions and attendants as her said daughter Annie might wish to have, and particularly to certain persons therein named, such salaries and remunerations as her executors might think fit; and, inasmuch as it was her earnest wish and desire that her dear daughter Annie should have her own exclusive establishment, and, inasmuch as the testatrix deemed it necessary for her daughter's comfort and happiness that she should continue to live in the same style to which she had hitherto been accustomed, the testatrix directed her trustees to see that the whole of her said daughter's annuities, as well that possessed by her in her own right, and not derived from the testatrix, as that given by her will for her benefit, should during her life be applied and actually expended for her comfort, benefit, and happiness, and that no accumulations whatever be made therefrom; and for the purpose of insuring as far as she could that her will should in that respect be performed, she directed that any accumulations should go to a certain charity by her named. And save and

except such accumulations, if any, from and after the decease of her said daughter Annie Chambers, as to all her said residuary estate and effects, she bequeathed the same unto her son, Joseph Chambers, his executors, administrators, and assigns, subject to the payment of certain annuities, and legacies.

At the time of her death the testatrix was entitled to certain leaseholds under a lease which will expire in 1856, and the object of the suit was, for the Court to determine whether these leaseholds ought to be sold and the produce invested, and the dividends only arising from such investment paid to Annie Chambers (who was a lunatic) during her life, or whether the whole income of the said leaseholds ought to be made applicable for Annie's benefit, until the expiration of the lease.

Stuart and G. W. Collins urged that the property ought to be sold forthwith. (*Hove v. Lord Dartmouth*, 7 Ves. 137; *Sutherland v. Cooke*, 1 Coll. 498.)

J. Parker and Mahns, for the tenant for life, contended that the daughter, by reason of her incapability of conducting her own affairs, appeared to be the principal object of the testatrix's care, whose evident intention was, that she should enjoy the utmost extent of income that the property was capable of producing, and that, therefore, the general rule as to the property being sold was in this case displaced by the testatrix's intention. Moreover, it was a specific gift of the residue, the entire income of which was, in express terms, to be applied for the benefit of the tenant for life. (*Bethune v. Kennedy*, 1 M. & C. 114; *Collins v. Collins*, 2 M. & K. 703; *Daniel v. Warren*, 2 You. & Col. C. C. 290.)

Willcock and T. Turner appeared for the other parties.

The VICE-CHANCELLOR.—There appears to have been a certain degree of indecision exhibited in cases of this description. Lord Eldon laid down the rule; but the late Lord Chancellor seems to have shown an inclination to escape from it whenever he could; and in a certain case the Lord Chancellor thought that the enumeration only showed so much intention to give the thing in specie that the result must be different from that wherein the simplest words had been used; but this can only be sustained by the particular expressions contained in the will. Now, in the case of *Bethune v. Kennedy*, there was a reference to money in the funds, and for any thing I know to the contrary, there might be a very good reason for saying, that in that particular case Lord Eldon's rule ought not to be adopted. In the case of *Collins v. Collins*, 2 M. & K. 703, and *Alcock v. Slaper*, 2 M. & K. 690, which was before Sir J. Leach, there are words which might have justified a departure from the general rule. Then there was the case of *Daniel v. Warren*, before Vice-Chancellor Knight Bruce, where the testator directed, in the particular event of failure of issue, that the property should be sold; and there cannot be two sales of the same property. It is clear, therefore, that the pointing out a particular time prevented the application of the general rule that the property should be sold at the death of the testatrix. Now, according to the strict words of the will, the remainderman is to take something to be enjoyed by the tenant for life; for it is to be observed that, after giving all the rest, residue, and remainder of her estate, whether real or personal, goods, chattels, and effects, whatsoever and wheresoever, for the benefit of Annie Chambers, during her life, the testatrix goes on to say, "From and after the decease of my said daughter, Annie Chambers, as to all my said residuary estate and effects, I do hereby bequeath the same for the benefit of my son, Jos. Chambers." But how was he to take "the same," in respect of that part which might consist simply of leaseholds which may have expired in the lifetime of the tenant for life? My opinion, therefore, is, that the thing must be sold.

Friday, May 29.

LYON v. COWARD.

Will—Construction of—Issue of issue—Period of vesting.

T. A. by his will, gave certain property to such of the children of his sisters as might be living at the decease of his wife, and the issue of such of them as might be then dead, in equal shares and proportions; such issue respectively, however, only to take and be entitled to the share or shares which his, her, or their parent or parents would have been entitled unto and taken if living. Some of the children of the sisters died, leaving issue, which issue also died in the lifetime of the tenant for life: Held, that such issue took vested interests.

The question arose under the will of Thomas Ashton, which bore date the 5th March, 1890, whereby, after bequeathing as therein mentioned, he gave all the residue and remainder of his estate and effects, of what nature and kind soever, unto his wife, Lydia Ashton, James Trotter, John Bibby, and Thomas Trotter, their heirs, executors, administrators, and assigns, absolutely for ever, or for and during all his estate, term, and interest therein respectively; upon trust, to permit the said Lydia Ashton to receive the rents, dividends, and produce thereof for her life; and on her decease, then upon trust to sell and con-

vert into money all the said residue, and to stand possessed of the money so to arise upon trust, that they, the said James Trotter, John Bibby, and Thomas Trotter, or the survivors or survivor of them, his executors, or administrators, should divide the moneys so to arise unto and equally between and amongst such of the children of his sisters therein named as might be living at the time of the decease of his said wife, and of the issue of such of them as might be then dead, in equal shares and proportions; such issue respectively, however, only to take and be entitled to the share or shares which his, her, or their parent or parents would have been entitled unto and taken if living, provided all the children of his said sisters, or the issue of such deceased children, might then have attained the age of twenty-one years; otherwise only to pay or transfer unto such of them as might have attained the said age of twenty-one years, his, her, or their proportionate share of the said residue of his estate, paying only the interest and produce of the proportionate part or share of such child or children, or the issue of such deceased child or children as might not have attained the said age at the decease of his said wife, for the use and benefit of such child or children, or the issue of such deceased child or children, until they should respectively attain the said age of twenty-one years; and on their respectively attaining that age, then upon trust to pay to each of them respectively their respective shares of the said residue of his estate. Some of the children of the testator's sisters died in the lifetime of the widow (the tenant for life), leaving issue, who also died in the lifetime of the widow; and the question now raised was, whether such issue took a vested interest.

Stuart and Prior, for the plaintiffs, contended that the issue who died in the widow's lifetime took vested interests.

Cases cited: *Bennett v. Honeywood*, Ambler, 708; *Macgregor v. Macgregor*, 2 Coll. 192.

Jas. Parker and Follett, on the other side, submitted that, for the purpose of taking any share or interest in the gift, the issue must be living at the death of the tenant for life, and that this was all the testator intended.

Spurrier, for the other parties.

The VICE-CHANCELLOR.—I do not require a reply, for I must consider what the words themselves mean. If a contingency has occurred that may produce a division of property which the testator did not contemplate, yet the words must have their effect. The testator no doubt had it floating in his mind that such events would happen that with respect to a child, the child might survive the wife, or might die leaving issue; but in that case a question arises whether the testator did actually contemplate the event that a child might die leaving issue, which issue afterwards died in the lifetime of the tenant for life. The words are these:—"The money to arise, &c. unto and equally between and among such of his sister's children as might be living at the decease of his said wife, and the issue of such of them as might be then dead in equal shares and proportions." The latter words must then be applicable to the shares which such issue took. "Such issue, however, only to take and be entitled to the share or shares, which his, her, or their parent or parents would have been entitled unto and taken if living." I certainly admit that the latter part of the will shows a supposition in the testator's mind that a case might arise wherein the issue would not take, but if I find the share of a deceased child given to the issue of that child, it really appears to me that the children become entitled, as tenants in common to the shares which the parents themselves would have taken. Declare that the children of deceased children are entitled, whether living at the death of the tenant for life or not.

ROLLS COURT.

BENSON v. LAMB.

March 4 and 5.

Vendor and purchaser—Specific performance—Abandonment of contract—Parties.

A contract for the purchase of a mortgaged estate was entered into between the defendant and the plaintiff, the mortgagee, with a power of sale, &c. which was to be completed on the 29th of September, and it was provided that the conveyance should be executed by all requisite parties, and if the plaintiff should be unable to obtain their concurrence, and the defendant should insist upon it, either party should be at liberty by notice to rescind the contract; and it was understood between the parties that the assignees of the mortgagor, then a bankrupt, were to join in the conveyance. On the 24th of November, the concurrence of all the assignees was not procured, and notice was given by the defendant of his abandonment of the contract. No step was taken by the plaintiff till long after, and the defendant's money was otherwise invested. A bill for specific performance was dismissed with costs, but with liberty to bring an action. The mortgagee was held under the circumstances bound to procure the concurrence of the assignees; but quare, whether the assignees were necessary parties

to the conveyance, if the execution of it had not been a term of the agreement?

This was a suit to enforce specific performance of an agreement entered into between John Benson, the plaintiff, and H. E. C. Lamb, the defendant, for the purchase by the latter of a freehold house, of which the former was mortgagee, with a power of sale. J. C. Francis, the mortgagor, having become bankrupt in 1840, the mortgagee entered into possession, and the defendant occupied the premises as his yearly tenant. The principal remaining unpaid, and an arrear of interest having become due on the mortgage, the plaintiff employed Messrs. Newman and Lyon, as his solicitors, to sell the house and premises, and a negotiation was accordingly entered into between them and the defendant for the purchase thereof, and ultimately, on the 5th of June, 1843, it was agreed that the defendant should purchase the premises for 670*l.* including costs of conveyance. The articles of agreement, as drawn up by Mr. Charles Russ, who acted as clerk of Mr. Harry Russ, defendant's solicitor, and transmitted to the solicitors of Mr. Benson for his approval, were to the effect that the price should be 670*l.*; that plaintiff should, within a week, deliver an abstract of title to the premises, and that he should deduce a good title in fee thereto; that the purchase-money should be paid on the execution of the conveyance by all requisite parties, the conveyance to be prepared and executed at the expense of the plaintiff; that in case the said John Benson should be unable to obtain the concurrence of all the requisite parties in the deed of conveyance, or to deduce a title to the said premises, and the said H. E. C. Lamb should insist upon such concurrence, &c. then each of the parties should be at liberty, by a notice in writing, to rescind the contract, and at the expiration of ten days after notice the contract should be void. After the contract for the purchase, and before the draft of these articles was sent to the plaintiff's solicitors, a correspondence took place as to the conveyance, and in reference to the concurrence therein by the assignees of Francis; and in a letter of the 10th of July, 1843, the plaintiff's solicitors intimated to the defendant that they were disposed to assent to the concurrence of the assignees in the conveyance, on condition that power should be reserved to them to avoid the contract altogether if they did not obtain their concurrence; to which the defendant replied, that all he wanted was a good title.

On the 10th of July, 1843, Mr. Harry Russ inclosed the draft agreement to the plaintiff's solicitors; and in reference to the contract, the following letter passed between them:—

"Yeovil, 18th July, 1843.

"Dear Sir,—Benson and Lamb,—Make your contract reciprocal, and we will not quarrel about the terms of it. Mr. Lamb, being in the occupation of our client's premises, must either continue to pay rent, or consent to pay interest on his purchase-money to the day the purchase is completed. If the purchase goes off, he must pay you, and our client us, for business done under the proposed contract. Consent to these amendments, and we will consider the bargain struck. You may also name your own time, so that it be not more than six months, for the completion of the purchase. "NEWMAN and LYON.

"Harry Russ, esq."

To this Mr. Russ (on the 22nd of July) replied, stating his willingness to make the alteration, and naming the 29th of September for executing the conveyance. Nothing more was done, till the 26th of July, when the abstract of title was sent to Mr. Russ, with an intimation that Mr. Benson was the only necessary party to the conveyance, and on the following day a draft conveyance was sent to him. On the 29th of July another draft conveyance was sent, in which the assignees were made parties; but it was intimated by the plaintiff's solicitors, that they did not acknowledge the defendant's right under the contract to call for the concurrence of the assignees. To this Mr. Russ replied, that he would not approve of the draft, unless on the unqualified understanding that the assignees should concur, and wished to know whether the contract was to go off or not. The plaintiff's solicitors then wrote, desiring Mr. Russ to make the assignees parties, and to return the draft, which he did, having altered the conveyance so as to vest the property in Mr. Charles Donne and Mr. Charles Russ, the trustees of Mr. Lamb's settlement, by whom 500*l.*, part of the purchase-money, was to be advanced. The concurrence of only one of the assignees of Francis having been obtained, on the 24th of November Mr. H. Russ wrote to say that Mr. Lamb would not take the title; and on the same day notice in writing was given to Messrs. Newman and Lyon, that in ten days the defendant would rescind the contract, in consequence of the requisite parties not concurring in the conveyance. On the 26th November Messrs. Newman and Lyon wrote to Lamb, offering to indemnify him against any loss to arise from the want of the concurrence of the assignees, if he would waive it; but no answer was returned, and soon after the trustees of Mr. Lamb's marriage settlement invested the money in the purchase of other premises. Nothing more was done in the matter till

on the 9th of May, 1843, the plaintiff's solicitors wrote to Mr. Donne, threatening a bill for specific performance.

On the 1st of June, 1844, Mr. Benson filed his bill against Mr. Lamb, and the trustees, Donne and C. Russ, for specific performance. C. Russ, by his answer, stated that all he did in the matter was done in his capacity of clerk to H. Russ; and both defendants said that it had been arranged that H. Russ was to advance 250*l.* on mortgage of the premises to enable Lamb to complete and put the premises in repair; and they insisted, therefore, that there was no mutuality between them and the plaintiff, and claimed the benefit of this objection in the same manner as if they had demurred. They also insisted on the Statute of Frauds as a defence to the bill, and claimed the benefit of it as if they had pleaded it in bar.

Turner and Butler insisted that the letters of the 18th and 22nd of July and the articles of agreement constituted a perfect contract as against Lamb, and that it had not been abandoned. It was only for Lamb's own satisfaction that the plaintiff's solicitors exerted themselves to get the execution of the conveyance by the assignees, though they were not necessary parties, there being an absolute power of sale, and a receipt clause. Time was not of the essence of the contract, and Mr. Donne must be presumed to have agreed to the alteration of the conveyance by inserting the trustees' names as parties thereto. The assignees of Francis having ultimately executed the conveyance of the premises, the trustees ought to pay the costs of the suit. They cited *Seton v. Blade*, 7 Ves. 265.

Kinderley and W. R. Ellis, for the defendant Lamb.—If the contract is binding, it is a clear condition that the assignees of Francis should be conveying parties, and their consent to the suit was not obtained till long after notice of abandonment of the contract, and investment of the purchase-money in another purchase. There are authorities in favour of the right to abandon a contract where there has been improper delay on the other side, and especially in a case where the property purchased was for the express purpose of occupation by the purchaser, with a view to carry on his business; and here plaintiff's solicitors had treated the trustees, and not the defendant Lamb, as the real purchasers. They cited *Taylor v. Brown*, 2 Beav. 180; *King v. Wilson*, 6 Beav. 124; *Marquis of Townshend v. Bishop of Norwich*, 1 Sug. V. & P. 178, ed. 3.

Rudall, for the trustees.

THE MASTER OF THE ROLLS.—The correspondence which is admitted by the parties is not altogether free from doubt, and it is important to see what can be collected from it. Looking at the material letters which passed between the parties and their solicitors, and having regard to the question ultimately in dispute, it must be concluded that the intention was that the assignees of Francis should concur in the conveyance; one of the parties considering that it was necessary they should join, with the view of avoiding future litigation, and the other insisting that there was a good and complete title without any such concurrence. The agreement for the purchase had for one of its terms, that the plaintiff should procure the conveyance to be executed by all requisite parties, and from the correspondence it appears that it was well understood between the parties that the assignees of Francis were to join in the conveyance of the premises. It is not necessary to determine whether the assignees were or were not necessary parties to the conveyance, but it was one of the terms of the contract that they should join therein, and the plaintiff procured the consent of one of them. Soon after, the draft conveyance was prepared; and it is not to be forgotten what was the situation in life of the defendant Lamb, viz., that he was a schoolmaster. On the 26th of September, 1843, the concurrence of one of the assignees was procured by the defendant, C. Russ, at the request of the plaintiff's solicitors, and the plaintiff was desirous of procuring the assent of the other assignee, and had he succeeded in his efforts, he would doubtless have been entitled to specific performance of the contract. From that time, when the deed of conveyance was returned to plaintiff's solicitors, engrossed and executed by one of the assignees, down to the 24th November, 1843, whatever efforts were used by the plaintiff to procure execution by the other assignee, nothing effectual was accomplished. On the 26th November, notice of abandonment of the contract on the expiration of ten days was given. The contract was to have been completed on the 29th September, 1843, and the question is, whether the defendant Lamb had a right to take that course of proceeding? No step was taken on the part of plaintiff till long after the expiration of the ten days, and nothing was done to alter or affect the notice. No new negotiation was entered into between the parties, and I have sought in vain for evidence whereby to fix the trustees. The defendant, Charles Russ, who, it seems, was clerk to H. Russ, the solicitor of the defendant, and acted as such in the business relating to the contract, could not, in a case like the present, be held to bind his co-trustees by his acts. It was part of the agreement between the parties, that the assignees should join in

executing the conveyance of the property, and I must dismiss the bill with costs, but without prejudice to the plaintiff's right to bring an action, if so advised.

Friday, June 12.

WHICKER v. HUMB.

Practice—Production of documents—Inspection of documents.

If an order be made for production of documents to the Master's office, and another order is afterwards made for inspection of documents at the office of the solicitor of the party against whom the orders are made, the latter does not supersede the former, and the Master may act upon both.

This was an administration suit, and the usual preliminary inquiries were ordered. On the 11th of January, 1843, an order for production of documents in the Master's office was obtained by the plaintiff, and in the July following an order was made for inspection of documents by the plaintiff at the office of the defendant's solicitor. It now became a matter of importance to establish the domicile of the testator in the cause, one party contending that it was in Scotland, and the other insisting that it was in England; and long states of facts had been carried into the Master's office, and numerous affidavits made on both sides. And the Master, it appeared, had refused to order production of documents in his office, considering he had no jurisdiction to do so after the order for inspection, though in any case it would be necessary to have them in the office to be proved; and it might be necessary to examine witnesses in Scotland, and it would be necessary in such case to have them to produce to the witnesses.

Purvis (with him Bowen) now moved for production.

Turner and Bagshaw said an order was unnecessary; the Master might act on the order already made.

THE MASTER OF THE ROLLS.—There has been an order for production, and then an order for inspection, and I don't see why the two cannot stand together. You may inspect first, and then inform the Master which you wish produced. The Master thought the one order superseded the other, but that is not so. The order must be that the Master proceed on the first order of January 1843; costs to be costs in the cause.

VIC-CHANCELLER VIGNAN'S CASE.

July 3 and 14.

DOYLE and ANOTHER v. MUNTS and OTHERS. Original railway shareholder—Signature of the subscribers' agreement, &c.—Sale for value—Equitable rights of assignor and assignee after sale. An original shareholder in a joint stock railway company, who has paid the deposit on the shares allotted to him, and signed the subscribers' agreement and parliamentary contract, cannot, after sale of his shares for value to a stranger, file a bill in equity to interfere with the management of the company, unless he can show a personal interest in the concern secured by express contract, although, notwithstanding the sale, he is entitled by the rules of the company to vote at their meetings for the management of the concerns of the company, by reason of his having signed the subscribers' agreement and parliamentary contract in respect to the shares he has sold.

The object of this suit was to have the whole sum paid by way of deposit upon shares allotted in a railway company returned, the tokens having been abandoned.

The bill was filed in February of the present year, by Thomas Doyle and John Walter Scrivener, who had purchased shares and signed the subscribers' contract for the formation of the Southampton, Manchester, and Oxford Railway Company, against the defendants, George Frederic Muntz, Mr. Spooner, and others, who were the provisional directors of the company. It stated that a solicitor named Parsons originated the scheme of the company, the object of which was announced to supply the North of England, North Wales, and Scotland with a direct communication with Portsmouth and Southampton, and locally it was intended to supply the want of railway communication which existed in Wiltshire, Hampshire, and Buckinghamshire. It was proposed to branch miles in length, commencing at Andover, and from thence it was to be carried by two branches, one ending at Swindon, and the other at Didcot on the Great Western Railway. The capital was stated to be 900,000*l.* which was to be divided into 36,000 shares of 25*l.* each, and a deposit of 2*l.* 12*s.* 6*d.* was to be paid on each share as a first instalment; a provisional committee of the defendants was formed, and the shares were allotted in September 1845; twenty shares were allotted to the plaintiff Doyle, and ten shares were allotted to the plaintiff Scrivener, upon which they each paid deposit of 2*l.* 12*s.* 6*d.* on their several shares; and executed the subscribers' agreement and parliamentary contract. By the subscribers' agreement the plaintiff was bound to abide by and perform the several stipulations

therein contained, until an Act of Parliament was obtained. The bill, amongst several allegations and charges of misconduct by the defendants, charged that the original object and purpose of the company had been changed, that the best portions of the line, and that which was expected to pay best, had been assigned over to another railway company without the authority of the subscribers, that this was a surprise upon them and could not be legally done without the consent of the subscribers at a general meeting duly convened, and in consequence of such proceedings they prayed that the defendants might be declared bound to return and pay the plaintiffs the full amount paid as a deposit upon their shares, with interest upon the same from the date of such deposit, or if the Court should think the plaintiffs not entitled to such return, then that an account might be taken under the direction of the Court of all costs, expenses, and disbursements which had been properly paid or incurred by the defendants, and that the amount of such costs, expenses, and disbursements, when ascertained, might be divided ratably upon each share in the company, and that the defendants might be held entitled to represent, and be liable in respect to all such shares as were reserved or were not allotted by them, or which were improperly allotted, or upon which no deposits were afterwards paid, and that the defendants might be decreed to return and pay to the plaintiffs the residue of the moneys so paid by them by way of deposit, after deducting thereout what after making such division should appear to be the proportionate amount in respect to each deposit, or that an account might be taken of all the dealings and transactions of the defendants relating to the company during the time they had acted as the managing committee or provisional directors thereof; and that in taking the accounts they might be charged with the full amount of all deposits upon such shares in the company as had been reserved, or which were not allotted, and upon which the deposits had not been paid, together with the sum of £1,218*l.* so paid for the purchase of shares, and all other moneys which had been paid out of the assets of the company, as had been received by way of profit or commission upon the purchase and sale of such shares in the company, and that the defendants might be charged with all loss which had accrued, or had been incurred by the company, in consequence of the mismanagement, misconduct, or neglect of the defendants, that an account might be taken of the assets of the company, and that some proper person might be appointed as a receiver to get in such property, or any part thereof, and that the defendants might be decreed to deliver up to such receiver all moneys and securities for money, property, deposits, assets, and effects whatsoever of or belonging to the company, now in their possession or power, and all deeds, accounts, papers, documents, and writing in their possession or power, and that such parts of any of the property of the company as might require to be sold, should be sold under the direction of the Court, and that the defendants, and officers, and servants of the company might be restrained from receiving or intermeddling with the property of the company, and that an account might be taken of all the debts and liabilities of the company.

One of the defendants, named Benjamin Bacon Williams, made his defence by plea in bar, stating that before the bill was filed, the plaintiff, Scrivener, had, for a valuable consideration, well and effectually sold, assigned, and transferred the ten shares which he possessed, and that all right, title, and interest, by virtue of such sale, vested in one Heald, as purchaser for valuable consideration, and that Scrivener, at the time the bill was filed, had not, nor at any time since had, and had not now, any interest in the ten shares, as in any or either of them, nor in the company in respect to such shares, or any other liability.

The cause now came on before the Court, on the validity of this plea as a bar to the suit.

Remilly, James Parker, Spooner, and Bazalgette, supported the plea, and said that one of the plaintiffs having no interest in the subject-matter of the suit was fatal to it; he was under no liability; his assignee, Heald, ought to have been a party; he is not so either as plaintiff or defendant; and yet it is with his assets that these defendants have been dealing; the other plaintiff has a conflicting interest with his co-plaintiff; the object of the bill is to have protection against liabilities, which are not shown to exist, and may never exist, for there is nothing to be found in this bill to show that the company purposes carrying on its operations, or whether it has abandoned them altogether.

Kempson Parker, and Hetherington, for the bill.—Scrivener, although he has sold his shares, is still recognised by the rules of the company as a shareholder, by having signed the subscribers' contract, and is still liable for the amount of his shares; he alone, and not Heald, can vote at the meetings in respect to Heald's shares, so that he in fact is the trustee of Heald, and can alone represent those shares in all dealings with the company. Heald is a stranger to the company; he cannot vote at any of their meetings; how, then, is it necessary that he should be made a party? How is it that Scrivener,

who, by the rules of the company, can vote away thousands of the property of this company at any meeting duly convened, cannot come here to protect the same property from being dissipated, and the interests of the shareholders from being injured? The plea does not aver that Heald ever executed the subscribers' agreement or parliamentary contract; the bill states that Scrivener has done so; there is nothing, therefore, upon the pleadings to show that Heald is legally a shareholder in this company; there is everything to show that Scrivener still remains liable, and is recognized by the company by its rules as a shareholder; and therefore this plea is bad in not shewing that Heald has become a shareholder by signing the contracts according to the rules of the company.

Tuesday, July 14.—The VICE-CHANCELLOR (after stating all the facts set out in the pleadings,) said: The question is whether this is a good plea in bar? For the purpose of trying this I shall assume that when the bill was filed the ten shares, and each and every of them, and all right, title, and interest in and to them by virtue of the sale, were well and effectually vested in H. Heald for valuable consideration: two questions arise—first, did the fact, if well pleaded, deprive the plaintiff of all right to discovery and relief, that is, was the plea good in substance?—and, secondly, was it well pleaded? In considering the former question I shall assume the latter to be answered in the pleader's favour; the case would depend upon and abide by the same considerations as would apply if Scrivener were the sole plaintiff. If Doyle were to die before the hearing, and his representative did not revive the suit, Scrivener would remain the sole plaintiff. If that waiv of interest in Scrivener, which the plea stated, and that state of circumstances prevented him, as sole plaintiff, from obtaining relief at the hearing, the circumstances of Doyle having an interest would not alter the case, according to the decision in *King of Spain v. Machado*, and other cases; if the fact had been so stated in the bill it would have been demurrable; that ten shares were assignable as between Scrivener and Heald admitted of no doubt; that they were also assignable as between Scrivener and the company might, upon those pleadings, be assumed; there was nothing in the bill to exclude that, and nothing to make the assignment illegal in the abstract. *Young v. Smith*, 4 Railway Cases 69, was conclusive upon the point. Assuming that the ten shares were assignable, and so have been well assigned to Heald, what personal interest had Scrivener to enable him to sustain the suit? It was for Heald, not for Scrivener, to determine whether the arrangements alleged to have been come to between the Southampton, Portsmouth, and Gosport Railway, and the Southampton, Oxford, and Manchester Junction Railway, could be supported; whether they would reject or adopt the acts of the provisional directors, which the bill alleged to have been done by them without consulting the shareholders; and upon the same hypothesis the manner in which the provisional directors had dealt with the shares and the assets of the company was a matter in which Scrivener could have no personal interest so far as those acts of the provisional directors might have merely checked the prosperity of the concern; but it had been said that although Scrivener, as a retired shareholder, had no direct interest in the prosperity of the concern, he had an interest in seeing the assets properly applied to the discharge of the liabilities of the concern; but this argument, if admitted, would strike out every part of the bill, and would convert the bill into a bill of indemnity, merely giving to Scrivener a different character from that in which he appeared upon the record. It is necessary, however, in my view of another part of the case, that I should assume Scrivener, under some circumstances, to be entitled to some such indemnity as the argument suggested. The question is, did those circumstances exist here? Was the statement in the bill such as to entitle him to indemnity, treating the prayer of the bill as adapted for that purpose? I have read every word of the bill for the purpose of ascertaining whether such a case as that had been suggested on the record, but I do not find it suggested in any part of the bill. There was no suggestion of any deficiency of assets which, as between Scrivener and the other shareholders, would render him liable to contribution; nor was a case stated from which it was to be inferred that Scrivener had made himself personally liable for the demands of strangers against the company, if any such existed. The conclusive answer to this appeared to be the fact of the assignment of Scrivener's shares to Heald, and the absence of any express contract between them which would constitute Heald the owner of the assets of the company, and disentitle Scrivener to some indemnity out of those assets. A person who sold his interest in a concern could not, in the absence of an express contract, insist upon interfering with the conduct of that concern after the sale. If such a case existed, it was incumbent on Scrivener to shew it. The relief asked by the bill, unless warranted by some contract between Scrivener and Heald, was in derogation of the rights of the latter. My opinion is, that if Scrivener had

sold his shares to Heald, the bill did not state a case shewing that the former had any personal interest in the concern entitling him to relief in the suit in respect of such personal interest. I shall therefore allow the plea, and give the plaintiff leave to amend, reserving the costs of the plea to be disposed of until the hearing, or until further order.

Bankrupt and Insolvent Courts.

COURT OF REVIEW.

Wednesday, July 22.

Ex parte PHILPOTT, re MISKIN.

Assignment for benefit of creditors—Fiat issued on bankrupt's petition.

Where a debtor executed an assignment for the benefit of his creditors, and shortly afterwards a fiat was issued upon his own petition, under the 7 & 8 Vict. c. 96, s. 41, but at the time of issuing the fiat there was no creditor who could have issued one, the Court held that the assignment was valid as against the assignees under the bankruptcy.

In this case the fiat issued upon the bankrupt's own petition, under the 7 & 8 Vict. c. 96, s. 41. Previous to the issuing of the fiat, the bankrupt had executed an assignment of his property for the benefit of his creditors.

Chandler, on behalf of the petitioners, who were the trustees of the deed, contended that this deed was not affected by the bankruptcy; and that the bankrupt could not by his own act render the deed invalid. At the time the fiat issued there was not any creditor who had not assented to the deed, and who could sue out a fiat upon the deed as an act of bankruptcy. He cited *Tope v. Hockin*, 7 B. & Cr. 101; and *Burbridge v. Watson*, 4 Car. & P. 170.

Swanson, for the assignees, contended that the fiat related back, and that the deed, which was in itself an act of bankruptcy, could not be set up against the fiat. He cited *Simpson v. Sikes*, 6 Maule & Selw. 206.

The CHIEF JUDGE said that his impression was, that it was not necessary to give any opinion as to how this matter would have stood if, when this fiat issued, there had been any creditor capable of issuing one; but he thought that, as when this fiat issued there was no creditor who could have treated the deed as an act of bankruptcy, he must hold it good against the fiat. If the assignees had wished to bring an action upon the point, he would not have precluded them; but as they declined that opportunity, he must declare the deed valid; each party to pay their own costs; but in the event of the estate not realising sufficient to pay the costs of the assignees, they ought to be paid out of the fund obtained by the trust deed, for they were bound to raise the question which had been submitted to the Court.

Circuit Reports.

NORFOLK SUMMER CIRCUIT.

Bedford, Wednesday, July 15.

NIHI PRIUS.

(Before Mr. Justice WILLIAMS.)

BAILEY v. LANGLEY.

Evidence—Certificate of Apothecaries' Company—Seal.

A certificate of the Apothecaries' Company, purporting to bear the seal of that corporation, is a document which proves itself, and requires no authentication of the seal attached to it.

Assumpsit for an apothecary's bill.

Byles, Serjt. (with him *Keane*) for the plaintiff, put in a certificate from the Apothecaries' Company to the plaintiff, authorizing him to practise as an apothecary. This document bore a seal which purported to be that of the corporation, but none of the witnesses could profess to identify or authenticate it as being an impression from the seal of that body.

Worledge, for the defendant, thereupon objected that the case for the plaintiff had failed. The plaintiff was bound to shew that he had practised as an apothecary on the 1st of August, 1815, or that he had obtained a certificate to practice as such from the Apothecaries' Company. By the 6 Geo. 4, c. 133, s. 7, the common seal of the Company of the Apothecaries is deemed to be sufficient proof of the certificate, and that the person named therein is qualified to practise; but he submitted that it was incumbent on the plaintiff to go further, and to prove that the seal attached to the document was itself genuine and authentic. As far as the case went at present, it only appeared that the witnesses had seen and acted on copies of the same seal on other certificates, but that did not authenticate the seal in question as that of the corporation.

Byles, Serjt., and *Keane* contended that there was no necessity whatever for any proof at all. The mere production of the document, as the certificate required by law, and purporting to bear the seal of the company, was enough. In fact such a seal proved itself, as was enacted by the recent stat. 8 & 9 Vict. c. 113,

the 1st section of which, after reciting that, "by many statutes, various certificates, official and public documents, documents and proceedings of corporations, and of joint stock and other companies, and certified copies of documents, bye-laws, entries in registers and other books, should be receivable in evidence of certain particulars in courts of justice, provided they be respectively authenticated in the manner prescribed by such statutes, and that the beneficial effect of those provisions had been found by experience to be greatly diminished by the difficulty of proving that the said documents were genuine, and that it was expedient to facilitate the admission in evidence of such and the like documents," proceeds to enact, "that whenever, by any Act now in force, or hereafter to be in force, any certificate, official or public document, or document or proceeding of any corporation, or joint-stock or other company, or any certified copy of any document, bye-law, entering in any register or other book, or of any other proceeding, shall be receivable in evidence of any particular in any court of justice, or before any legal tribunal, or either House of Parliament, or any committee of either House, or in any judicial proceeding, the same shall respectively be admitted in evidence, provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone, as required, or impressed with a stamp, and signed as directed by the respective Acts made, or to be hereafter made, without any proof of the seal or stamp, where a seal or stamp is necessary, or of the signature, or of the official character of the person appearing to have signed the same, and without any further proof thereof, in every case in which the original record could have been received in evidence." The effect of this enactment was to do away with the very objection now before the Court; and it was therefore contended that no evidence at all was required to authenticate the document or the seal.

WILLIAMS, J.—That is so. This is the certificate of the Apothecaries' Company, and purports to bear the seal of that corporation. It therefore falls expressly within the letter and spirit both of the 8 & 9 Vict. c. 113, s. 1, and requires no authentication of the seal. I shall receive it.

The case then went to the jury on the merits, and terminated in a verdict for the defendant for 84. 4s. 6d.

ESSEX SUMMER ASSIZES.

Thursday, July 16.

(Before PARKER, B.)

REG. v. ALLUM.

Quarter Sessions—6 & 6 Vict. c. 38.

The grand jury at Quarter Sessions may find a true bill for rape, although persons charged with such an offence are not now triable at Quarter Sessions. The person against whom an indictment is so returned may be tried upon that indictment at the Assizes.

In this case the prisoner had been committed by two justices of the peace to take his trial at the Easter Quarter Sessions, for assaulting Mary Brown, with intent to commit a rape. The clerk of the peace, after reading the depositions, at the Easter Quarter Sessions, sent before the grand jury an indictment for the full offence of "feloniously ravishing and carnally knowing" Mary Brown, and that indictment was presented by the grand jury as a true bill. By the 5 & 6 Vict. c. 38, it is enacted "that neither the justices of the peace acting in and for any county, riding, division, or liberty, nor the recorder of any borough shall, at any session of the peace, or at any adjournment thereof, try any person for any 'of certain offences,' among which rape is included. The prisoner was, therefore, not tried at the sessions, but was now tried upon the indictment then preferred against him, and was by the jury found "guilty of an assault, with intent to commit a rape," and was sentenced to be imprisoned and kept to hard labour for the space of eighteen calendar months.

After the sentence, but during the assizes, Marsh, for the prisoner, applied to his lordship either to quash the indictment or to arrest the judgment. He submitted, in the first instance, that this application might be made at any time during the assizes.

PARKER, B.—As I may alter my sentence at any time before the conclusion of the assizes, I suppose it would not be too late to arrest the judgment.

Marsh.—Then it is submitted that all the proceedings are bad. Formerly the Court of Quarter Sessions had power to try cases of this description, and therefore, of course, indictments for such offences might be preferred, and bills found in their court; but they had not at that time any jurisdiction of perjury or forgery, and there are cases in which indictments found at sessions for those offences have been quashed. (*R. v. Babin*, 2 Str. 1088.) By the Act of 5 & 6 Vict. c. 38, rape would stand on the footing that perjury did under the old law.

PARKER, B.—In the cases of perjury or forgery, the Sessions had no jurisdiction to inquire at all about the matter. The question depends upon the words of the statute. [After referring to the statute.] I think it is very clear that the Sessions had authority to find the bill, although they had none to try it. I

shall leave you to your forlorn hope of a writ of error.

Hawkins, for the prosecution.

REG. v. SALLOWS AND ANOTHER.

A B, a married woman, as she was walking along a road, found a purse lying in the road. Shortly afterwards, and before she had reached her destination, the prisoners met her and robbed her of the purse: Held, that the purse was rightly described in the indictment as the property of C B, C B being the husband of A B.

The prisoners were indicted for assaulting Sarah Folkes, the wife of James Folkes, and feloniously and violently stealing from her person one piece of the current gold coin of the realm called a half-sovereign, of the value of ten shillings, and one purse of the value of one penny, of the goods and chattels of the said James Folkes. In the second count, the property was described as "the goods and chattels of a certain person to the jurors aforesaid unknown."

It appeared that Sarah Folkes was the wife of James Folkes, and that upon the day mentioned in the indictment she was on her way to Colchester, along a road called the Morsey-road. About three miles from Colchester she found a cotton net purse lying in the road, containing a half-sovereign. When she had proceeded about half a mile further along the road, she met the two prisoners, who immediately attacked her, and dragged her violently into a field adjoining the road, and after considerable resistance succeeded in taking the purse and its contents from her bosom, where she had placed and was then carrying it. No evidence was given as to who the person was who had lost the purse, or to whom it and its contents originally belonged. In this state of the case,

Marsh, for the prisoners, objected that the property in the things stolen was incorrectly laid in the indictment, and that, therefore, there was no evidence for the jury. The purse at the time really belonged to the person who had lost it; but the wife, Sarah Folkes, had a special property in the purse and its contents, altogether independent of her husband, and good against every one but the individual who had actually lost it. The possession had never become that of the husband; the wife's special possession and property in what she had found was quite distinct from any possession of the husband, who had nothing to do with the matter. This was like the case of *R. v. Radick*, 9 C. & P. 237, where a servant who was sent by his master to receive money was robbed of the money on his return home. There it was held, that the money was improperly described as the money of the master.

PARKER, B.—The property is rightly laid in the first count. The possession of a married woman, under all circumstances, is the possession of her husband. If the circumstances are such as to constitute only that special kind of property to which reference has been made, it is still the special property, not of the wife, who can in law have nothing distinct from her husband, but of the husband himself.

Charnock, for the prosecution.

Verdict, guilty upon the first count.

Friday, July 17.

(Before PARKER, B.)

REG. v. CONNOR.

1. To constitute the offence of arson at common law, the house set fire to must be a dwelling-house; and a common goal occupied by none but prisoners is not a dwelling-house for this purpose.

2. A common goal was kept in repair by rates levied upon the inhabitants of the liberty in and for which the goal was. S. S. the keeper of the goal, was appointed by the justices of the liberty. He did not reside at the goal, but kept the keys, and had the charge of it. He was also an inhabitant of the liberty, and liable to be rated for the repair of the goal: Held, that in an indictment under 7 & 8 Vict. c. 62, for setting fire to the goal, it should have been laid to be in the possession of S. S. but the intent of the prisoner should have been laid to be to injure the inhabitants of the liberty.

The prisoner was indicted for setting fire to the common goal of the liberty of Havering-atte-Bower, at Romford, in the county of Essex. It appeared that the goal was used at present only as a lock-up house, and that persons are never detained there more than a night or two, but are either discharged or conveyed to another goal. The liberty of Havering-atte-Bower is constituted by very ancient charters, and is under the government of a high steward and justices. The keeper of the goal is appointed and paid by the justices, and is at present Samuel Southey. He does not reside at the goal, nor is there any keeper's residence attached to it, but the keys are entrusted to his custody, and he has the charge of the prisoners. The court-house where the liberty sessions are held is under the same roof, but not otherwise connected with the goal. The goal is repaired by a rate upon the inhabitants, to which Samuel Southey is liable, as an inhabitant of the liberty. The indictment contained several counts. Some of them were framed under the recent Act, 9 & 10 Vict. c. 25, s. 7, for attempting to set fire, but as the evidence

showed that the fire had actually taken hold of the building, the consideration of them became unnecessary. The second count was framed under 7 Wm. 4, and 1 Vict. c. 69, s. 3 (amended by 7 & 8 Vict. c. 69), and charged the prisoner with setting fire to "a certain house in the possession of Samuel Southey, with intent thereby to injure the said Samuel Southey." In the fourth count, the house was said to be in the possession of the inhabitants of the liberty of Havering-atte-Bower, and the intent to be to injure them. In the sixth count, for the words "the inhabitants," the words "Thomas Mashiter and others, justices of the peace," were substituted. In the 8th count, the house was described to be in the possession of certain persons to the jurors unknown, and the intent laid to injure the said persons to the jurors unknown. Other counts were framed at common law, varying from each other in the description in the property. The eighteenth, for instance, charged the prisoner with setting fire "to a certain house of and belonging to the inhabitants of the liberty of Havering-atte-Bower," without alleging any intent. The facts having been detailed in evidence, it appeared that the prisoner was a common soldier, who was being conveyed back to his regiment as a deserter, and was lodged for a night in the goal. The circumstances throwing suspicion upon him were proved, together with the other matters previously mentioned.

PARKER, B.—It appears to me that there is no count in the indictment which quite meets the case. The real intent must be taken to have been to injure the inhabitants, and the house or building itself was in the possession of Samuel Southey, the keeper. I am not, however, quite convinced that this is a house at all.

Marsh, for the prosecution.—A common goal, within the meaning of the statute, is as much a house as a palace would be. Then, this is a house in the possession of Samuel Southey, the gaoler, and he is a rated inhabitant of the liberty, and, therefore, would sustain some injury, however slight, from the destruction of the place. The prisoner is answerable for the natural effect of his actions.

PARKER, B.—The intent would be to injure off the rated inhabitants, not to injure Samuel Southey in particular. In the case of *Res v. Donnan* (2 H. Black. 682), it was held that a goal was a house within the meaning of the words "any house" in the statute 9 Geo. 1, c. 22; but there the goal's house was part of the goal, and the Court gave that as the reason for their decision. A goal is not a house at common law.

Marsh.—It is not necessary, under the statute, that the house should be a dwelling-house; any house will do. If it were, this house is the place in which the prisoners dwell; and whether they dwell there under compulsion or not would be immaterial.

PARKER, B.—According to that view, you should have called it the house of the prisoners. You have no count for that.

Marsh.—There is no case to show that at common law, to constitute the offence of arson, the house burnt must be a dwelling-house.

PARKER, B.—There is no case directly to that effect. Still, I have no doubt that at common law the word house, with reference to this offence, would mean a dwelling-house. That is fairly to be gathered from a comparison of all the cases on the subject. However, I will, if you please, take the opinion of the jury upon the second count, and reserve the points.

His lordship summed up the evidence upon the second count accordingly. Verdict—Not guilty.

THE LEGISLATOR.

SUMMARY.

THE Small Debts Bill has been read a second time in the Lords without a dissenting voice. It seems there are to be about fifty or sixty Judges, instead of ten or twelve, which would have been sufficient under the plan here proposed of a re-modelling of the Quarter Sessions Courts. The patronage is for the first appointment to be vested in the Lords Lieutenants of the counties, afterwards in the government. This is an extraordinary set of self-denial on the part of Ministers, for which nobody will thank them. The fight upon the Sugar Duties having come to nothing, the Session will be brought to an early close.

The Poor Removal Bill, after an animated discussion, and two divisions on certain clauses, was read a third time and passed on Thursday.

Imperial Parliament.

ROYAL ASSENT.
Monday, July 17.

Mr. Speaker reported the Royal Assent—to Viscount St. John's Amendment—Lord George's Amendment—Queensland Societies—Western Australia—Coalwhippers, Port of Lon-

don—Spitalfields New Street—Coroners, Ireland—Dundee and Perth Railway—Caledonian Railway, Glasgow and Central Railway Branches—Sheffield and Manchester Railway—Wharfedale and Bradford Branches—North Union Railway—Birmingham, Lichfield, and Manchester Railway—Buckinghamshire Railway, Tring to Banbury—London and Croydon Railway, Thames Junction Branch—Newcastle and Darlington Junction Railway, Durham and Sunderland Railway and Wearmouth Dock—Great Western and Wycombe Railway—Aylesbury, Bideley of Weir, and Port Glasgow Junction Railway—Aberdeen, Newton, and South Devon Railway—South Wales Railway, No. 2—Gloucester and Dean Forest Railway—Hull and Selby Railway Purchase—Great North of England Railway Purchase—Midland Railway, Leicester and Swannington Railway Purchase—London and Birmingham Railway and Birmingham Canal Amalgamation—Newry, Warrenpoint, and Masterton Railway—Metwood, Preston, and West Riding Junction Railway—York and North Midland Railway, Widening and Enlargement—London and Birmingham Railway, Leamington Extension—Caledonian Railway, Carlisle Division—North Wales Mineral Railway, Denbigh and Branches—Shrewsbury, Oswestry, and Chester Junction and North Wales Mineral Railway Amalgamation—Guildford, Gloucester, and Portsmouth Railway, No. 2—Conventry, Nuneaton, Birmingham, and Leicester Railway—Midland Railway, Birmingham Extension—Midland Railway, Purchase of Oakham Canal—Tunley, three-fourths, and South Wales Railway—Lancaster and Carlisle Railway, and Lancaster and Preston Junction Railway Amalgamation—Eastern Counties Railway—Huddersfield and Manchester Railway and Canal, Huddersfield Division and Cooper Bridge Branch—Northern Counties Union Railway—Grand Junction Railway—Huyton and other places—Rotherham Municipal and Police, Hill's Estate, Lendow Quarry Estate, Howell's Charity Estate, and Ramsay Estate Mills—Leeds, Dewsbury, and Manchester Railway Deviations—Glasgow and Monklands Junction Railway—Newcastle and Darlington Junction Railway, Durham Railway and Wearmouth Dock Purchase—Blackburn and North Western Junction Railway—Blackburn and Preston Railway—Sheffield, Ashton-under-Lyne, and Manchester Railway, Peak Forest and Macclesfield Canal Purchase—Sheffield, Ashton-under-Lyne, and Manchester Railway Company, &c. Amalgamation—Dudley and Birmingham Canal Companies Amalgamation—Ely and Funtingdon Railway, Bedford Extension—Manchester, Bolton, and Bury Canal Navigation and Railway—Leeds and Bradford Railway, London and Blackwall Railway, Widening—Shrewsbury and Chester Junction Railway, Crickheath and Wem Lines—Shrewsbury, Oswestry, and Chester Junction Railway, Extension—East Lancashire Railway Deviation—Huddersfield, Sheffield, Manchester and Leeds Railway Amalgamation—Oxford, Worcester, and Wolverhampton Railway—Parnassus Railway Extension—Ipworth and Bury St. Edmund's—Norwich Extension—London and Brighton Railway, Waverley Branch—Liverpool and Bury, and Manchester and Leeds Railway Amalgamation—London and Brighton and London and Croydon Railway, Consolidation—Sheffield General Cemetery—Kilnarnock Waterworks—Haywood Waterworks—Chorley Waterworks—Aldridge and Coalfields Waterworks—Glasgow Municipal, Police and Statute Labour—Cromford Canal—Severn Navigation—Waterford Harbour, No. 2—Bury Improvement, No. 2—Belfast Improvement—Wash upon Deane Improvement—Pow of Inchistany Drainage—Black Slacks Drainage and Navigation—Lough Swilly and Lough Foyle Drainage.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, July 24.

St. Asaph and Bangor and Manchester Dioceses.

Monday, July 27.

Spirit Licences and Duties Bill. "To prevent the use of Stills in the manufacture of Spirit Mixtures, by unlicensed persons, and to regulate the sale thereof, and of Spirits of Wine, by persons licensed under this Act."

Consolidated Fund, 4,900,000.

Baths and Washhouses, Ireland, Bill. "For promoting the voluntary establishment, in Boroughs, Cities and Towns, in Ireland, of Public Baths and Washhouses."

Tuesday, July 28.

Insolvent Debtors Act Amendment.

Wednesday, July 29.

Episcopal Revenues and Dioceses Bill. "To provide for the better regulation of Episcopal Revenues and Dioceses."

Thursday, July 30.

Oath of Common Pleas Bill. "To extend to all Barristers practising in the Superior Courts at Westminster the privileges of Sergeants at Law in the Court of Common Pleas."

BILLS READ A SECOND TIME.

Friday, July 24.

British Ballots Suspension.

Monday, July 27.

Newfoundland

Deadweight Abolition, No. 2.

Wednesday, July 29.

Spirit Licences and Duties

Consolidated Fund, 4,900,000.

Baths and Washhouses, Ireland

Burial Service, No. 2.

BILLS READ A THIRD TIME AND PASSED.

Friday, July 24.

Baths and Washhouses

Commons Inclosure, No. 2.

Monday, July 27.

Books and Engravings.

Tuesday, July 28.

Sugar Duties, No. 2.

Wednesday, July 29.

Prisons, Ireland

Grand Jury Case Bonds, Ireland

Widowhood, Ireland

Adverse Claims, Ireland

British Ballots Suspension.

Thursday, July 30.

Post Removal

Art Unions

Newfoundland.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, July 24.

Lord Kenyon's (Congreve's) Estate
Cork and Waterford Railway.

Tuesday, July 28.

Monmouthshire Railway, No. 2
MacFarlane's (Glasgow College) Estate
Booth's Charities, Glasgow's Estate
Duke of Cleveland's Estate.

Thursday, July 30.

Horne's (Ferguson's) Estate
Jesus Hospital, Newcastle.

BILLS READ A SECOND TIME.

Friday, July 24.

Lowestoft Charity Estate
Bentley's Estate.

Monday, July 27.

Australian Agricultural Company
Bar's Estate Bill
Edinburgh Paving, No. 2
Fleming's Estate
Londonderry and Enniskillen Extension Railway
Philip's Charity Estate.

Wednesday, July 29.

All Souls' College (Oxford) Estate
Monmouthshire Railways, No. 2.

BILL READ A THIRD TIME AND PASSED.

Friday, July 24.

Dublin Cemetery.

Wednesday, July 29.

Dublin, Belfast, and Colerain Junction Railway
Baltimore Embankment
Shannon Navigation.

Thursday, July 30.

Tramore Embankment.

SESSIONAL PRINTED PAPERS.

Friday, July 24.

Electors, Ireland—Returns
Births, Deaths, and Marriages—Seventh Report of the Registrar-General
Mails—Further returns
Liverpool and Kingstown, &c. Mails—Return
Railways—Lords' Report
Metropolitan Sewage Manure—Report of Committee
Public Works, Ireland—Return
Sugar—Returns
Wares Unions—Supplementary Correspondence
Bills—Burial Service, No. 2
Art Unions, amended
St. Asaph and Bangor and Manchester Dioceses
Baths and Washhouses, Ireland
Spirit Licences and Duties
Public Cemeteries
Poor Removal, amended by committee, on recommendation, and on report
Wreck and Salvage, amended by committee, and on recommendation
Steam Navigation, amended
Colonies—Report for 1848
Dublin Wide Streets Bill—Minutes of Evidence
Milbank Prison, Baker's Petition—Report of Inspectors
Holyhead Harbour of Refuge—Return
District Asylums, Metropolitan—Report
Militia Estimates—Report

BILLS IN PROGRESS.

POOR REMOVAL.

A Bill, as amended by the committee, to consolidate and amend the laws relating to the removal of the poor.

New title for third reading: "An Act to amend the laws relating to the removal of the poor."

SECT. 1. *Persons exempted from the liability to be removed after five years' residence.*—Whereas it is expedient that the laws relating to the removal of the poor should be amended; be it enacted that from and after the passing of this Act, no person shall be removed from any parish in which he shall have resided for five years next before the application for a warrant for his removal from such parish: provided always,

that the time during which such person shall be a prisoner in a prison, or shall be serving his Majesty, as a soldier, marine, or sailor, or shall be confined in a lunatic asylum, or house duly licensed, or hospital registered for the reception of lunatics, or as a patient in a hospital, or during which any such person shall receive relief from any parish, or shall be wholly or in part maintained by any rate or subscription raised in a parish in which he does not reside, not being a bona fide charitable gift, shall for all purposes be excluded in the computation of time hereinbefore mentioned.

2. *Widows.*—No woman residing in any parish with her husband at the time of his death shall, during her widowhood, be removable from such parish for twelve calendar months next after his death.

3. *Children.*—No child under the age of sixteen years, whether legitimate or illegitimate, residing in any parish with his or her father or mother, stepfather or stepmother, or reputed father, shall be removed from such parish in any case where such father, mother, stepfather, stepmother, or reputed father, may not lawfully be removed.

4. *Sick Persons.*—No warrant shall be granted for the removal of any person becoming chargeable in respect of relief made necessary by sickness or accident, unless the justices granting the warrant shall state in such warrant that they are satisfied that the sickness or accident will produce permanent disability.

5. *Settlement not to be gained by occupation from*

removal *herein provided.*—Provided always, and be it enacted, that no person hereby exempted from liability to be removed shall, by such exemption, acquire any settlement in any parish.

6. *Penalty for procuring removals of poor persons without warrants of Justices.*—If any officer of any parish or union do, contrary to law, with intent to cause any poor person to become chargeable to any parish to which such person was not then chargeable, convey any poor person out of the parish for which such officer acts, or cause or procure any poor person to be so conveyed, or give directly or indirectly any money, relief, or assistance, or afford or procure to be afforded any facility for such conveyance, or make any offer or promise, or use any threat to induce any poor person to depart from such parish, and if, in consequence of such conveyance or departure, any poor person become chargeable to any parish to which he was not then chargeable, such officer, on conviction thereof before any two justices, shall forfeit and pay for every such offence any sum not exceeding five pounds, nor less than forty shillings.

7. *Delivery of paupers under orders of removal.*—The delivery of any pauper under any warrant of removal directed to the overseers of any parish, at the workhouse of such parish, or of any union to which such parish belongs, to any officer of such workhouse, shall be deemed the delivery of such pauper to the overseers of such parish.

8. *The Poor-law Amendment Act and this Act to be construed as one Act.*—The said Act of the fifth year of the reign of King William the Fourth, "for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," and all Acts to amend and extend the same, and the present Act, except so far as the provisions of any former Act are altered, amended or repealed by any subsequent Act, shall be construed as one Act; and all penalties and forfeitures imposed under this Act shall be recoverable as penalties and forfeitures under the said Act for the amendment of the laws relating to the poor.

9. *Act limited to England.*—This Act shall extend only to England.

10. *Act may be amended this session.*—This Act may be amended or repealed by any Act to be passed in this session of Parliament.

HOUSE OF LORDS.

ADMINISTRATION OF JUSTICE IN LONDON.

FRIDAY, July 24.—Lord BROUGHAM said he had a petition to present from an individual, complaining of one of the greatest grievances that existed in what would otherwise be the pure and correct administration of justice in this country. He meant that of magistrates entertaining questions before them in which they had by law no more right to interfere than they would have to enter their lordships' houses and seize their property. This was a practice that formerly existed not only in the city of London, but in the city and liberties of Westminster, and in the borough of Southwark, until he had himself, when holding the Great Seal, called the attention of his noble friend Lord Melbourne, who was then Secretary of State for the Home Department, to it, as it was in his noble friend's department and not in his that the matter lay. At the time to which he alluded, he addressed a letter to his noble friend, stating the gross abuses that this system gave rise to, and calling upon him seriously to represent to the magistrates of Westminster—he having no power over those of London, who were corporate magistrates—the nature of these abuses, and the grievances to which they led. A person came up with a complaint before a magistrate, who heard the case in the absence of the parties accused. But, unfortunately, the complainant told the case not only for himself, but against the other. That case was heard by the magistrate, and not only by him, but by others who were present and among these others were persons who reported for the newspapers—reported very accurately, for aught he knew, though they were in the habit of sometimes throwing very absurd ridicule on the person seeking for justice, but that practice had, he believed, been now done away with. Now, the accusation thus made in the absence of the party accused, went in this way all over the country, although it might be really and actually without foundation. He would mention an instance of this kind, of what was called complaining to, and taking the advice of the city magistrates, instead of that of a lawyer or solicitor in his chamber. A noble lord, a friend of his, who had at one time held the highest situation under the Crown in this country, made an unfortunate marriage, and after his death his widow was reduced to great pecuniary want and distress. A pension was awarded for her support by the Crown, and two noblemen were appointed trustees for the purpose of administering it to her at the rate of forty shillings per week, as she had deemed such associations after the decease of her husband that it was impossible to interest her with the whole amount once. When she wanted an additional sum, she went to the city magistrates, and gave out a story that these two noble lords, instead of paying her the

pension allowed her by the private munificence of his late Majesty George IV. kept it from her, and employed it for their own uses. The Lord Mayor, instead of saying "Go about your business, I have nothing to do with it," heard her whole story, and said, "Is it to be believed that this poor woman's consistent story can be true? Is it to be endured that those two noble lords, wallowing in wealth, should take this miserable pittance allowed to her from the bounty of the nation, and employ it for their own purposes?" The accusation then went abroad with the authority of the Lord Mayor of London against these two peers, and though it was so ridiculously absurd as apparently not to need contradiction, yet many persons believed it at the time, and he heard very lately that it was in one of the black lists against the House of Lords. In another case a charge was brought before the Lord Mayor against a noble duke for unjustly keeping a poor man out of a farm in the county of Northumberland, worth 150*l.* a year, and the Lord Mayor told the person, "Go to his grace and let him know my opinion upon his conduct." Instances of a similar kind formerly occurred in the city of Westminster, and in the borough of Southwark, as well as in the city of London; but his noble friend effectually put a stop to the evil by notifying to the magistrates that they would be struck out of the commission of the peace if they were again guilty of such conduct. Since 1832, consequently, the system was confined to the city of London, where it still went on. In the petition which he had now to present, the petitioner stated that he was on the 9th of March last brought before the Lord Mayor and another alderman on a charge of misdemeanor. After hearing the case, and without any authority whatever for so doing, they thought fit to adjudge him liable to a fine of 20*l.*, or if he could not or would not pay it, he was to be imprisoned and kept at hard labour for two months—a sentence which was utterly and absolutely illegal, as illegal, though not as enormous, as if they had ordered him to be hanged. The petitioner went on to state that his relatives, living at a distance from the metropolis, he was not immediately able to pay the fine, and he was imprisoned; but, at the suggestion of a friend, he had the matter brought before one of the judges of Westminster, who, on being made acquainted with the facts, ordered him to be set at liberty forthwith. This person could get no sort of compensation for the injury done him; and even if he brought an action, in consequence of the Lord Mayor having a jurisdiction in cases of misdemeanor to impose a fine up to 6*l.* he feared he could get no remedy. He hoped that her Majesty's government would be able to reform the jurisdiction of the police of the City of London, and place it on the same footing as it was at the west end of the town. He should say that these proceedings on the part of those corporators of the City of London were exceedingly hurtful, and tended very much to impede the administration of justice in its earliest branch.

SMALL DEBTS BILL.

TUESDAY, July 28.—The Lord Chancellor presented petitions from Barnsley, Halifax, St. Albans, and other places, in favour of the Bill for the more easy recovery of small debts. The noble and learned lord then moved the second reading of the Bill, and observed that measures to accomplish the same object had been before Parliament for a great number of years. The scheme of the present Bill had its origin in the report of the Common Law Commissioners of 1832. Two of the commissioners were the present Chief Baron and Mr. Justice Wightman, both of whom minutely examined the whole subject, and in an elaborate report they recommended the scheme which was embodied in the present Bill. It could not, therefore, have a higher authority. In 1838, a Bill was introduced into the House of Commons, who referred it to a select committee, by which the whole subject was again considered; the scheme recommended by the commissioners in 1832 was approved, and the Bill, as amended in committee, was adopted to their propositions. Pressure of other business prevented the Bill from being proceeded with in that session. In 1862 he himself introduced into their lordships' house a Bill founded upon the same principles, the progress of which was stopped on his being informed that the government of the day had a Bill of their own on the subject; and in June that year his noble and learned predecessor (Lord Lyndhurst) passed a measure which, with one variation, contained the identical propositions of his own. That Bill passed their lordships' house, and went down to the Commons, but in consequence of the pressure of business, he presumed, it was not further presented. In June of the present year the Bill to which he now called their lordships' attention was introduced by the noble duke, late the president of her Majesty's council; and upon examination, finding it correspond with the report of the commissioners of 1832, with the various bills brought in by successive governments, and knowing also how much such a measure was wanted by the country, knowing too that many applications for suits to establish local courts had been stopped by the expecta-

tion of a general measure, he had thought it his duty, notwithstanding the lateness of the session, to propose the present bill to their lordships. He would now shortly state the existing state of the law as to local courts, and what it was proposed to apply as a remedy. The county court was established so early as in the reign of Edward I. The amount of its jurisdiction was 40*l.* in those days no inconsiderable sum, and stated to be equal to 20*l.* of the present day. The original jurisdiction of the county courts had never been altered, but the expense of prosecutions in them had been largely increased, for the cost of recovering in them now a debt of 40*l.* often exceeded 6*l.* These courts, therefore, had entirely failed in the present day in their originally useful jurisdiction. There were many other courts for the recovery of small debts which had failed in the same manner. The necessity for some remedy had led to many applications to Parliament to establish courts where they might be found necessary. And unfortunately, at an early period, courts of conscience, or of requests, were established, over which there was no judge appointed competent to administer the law, but commissioners who were ignorant of the law, and not altogether unconnected with the suitors in those courts. Other courts had lately been established with a competent judge; and nothing could more distinctly shew the strong pressure for some jurisdiction of the kind than the number of private Acts obtained for the establishment of such tribunals. The local courts now in existence exceeded one hundred, and from the year 1801 up to the present time the Acts which had been applied for and obtained amounted to 146. As might naturally be expected, those applications had proceeded principally from the dense population of the manufacturing districts. The necessity of the case, therefore, was clear, and the question was how to apply a remedy. He had not been able to obtain the actual number of judges presiding over those several courts, because many of them were presided over by commissioners, and in some cases the same barrister presided as judge over several courts in the same district. It was quite obvious that throughout the country some local jurisdiction for the recovery of small debts was sought for; and, the county courts being found inadequate, there were only the superior courts to resort to. But those courts were even less applicable for the recovery of small debts. However useful they might be where the property was considerable, they were inadequate for small demands. In all the western Acts for the recovery of small debts, care had been taken to fix the amount of fees, so that there existed the means of recovery without any considerable cost. It was the evil of costs which it was the duty of Parliament to take the earliest opportunity to remedy. The scheme of the present bill, therefore, was to authorize the Queen in council to divide the country into districts, and to establish courts in those districts according to the wants of the inhabitants. To bring these courts within the reach of all who might have occasion to apply to them, there must be a large number of districts. He was not able to state the exact number, but it would be considerable. No man should have to go more than ten miles in order to obtain justice, which, of course, would necessarily make a considerable number of courts. But although it might be necessary to establish a considerable number of courts, it would not be requisite to have any comparatively great number of judges, because they would not be required to hold continued sittings in one court, and it would be quite enough in some districts to hold a court once a week, and in others once a fortnight. He should, therefore, have to suggest some amendments with this view when the bill went into committee. As the Bill stood, it would necessarily require a greater number of judges than according to the plan he should submit. He should propose that as these courts were to be established where they were required, according to the circumstances of the district, to appoint a judge who should sit alternately in all the different courts in the neighbourhood. He could not state to their lordships with any accuracy the number of judges which would be required by this mode of employing them, as it would depend upon the number of districts, and upon many peculiar circumstances. He had, however, reason to hope that it would not require more or many more than actually existed now. There were now between forty and fifty permanent judges, barristers properly qualified, presiding in these courts, and by employing them, as he proposed, he did not anticipate that any great additional number would be required. He proposed that the additional judges should be appointed, not by the lord-justices of the county, but either by the Lord Chancellor for the time being, or the Secretary of State for the Home Department. The mode of proceeding to be adopted under the Bill would be the same as that adopted under all the local Acts since the committee of 1832. Certain classes in it would re-enact the provisions of several Acts recently passed with reference to debts under 20*l.*; but in asking their lordships to pass the present Bill, he did not mean to say he approved of the law as it stood with regard to insolvency and bankruptcy. The noble and learned lord concluded

by moving the second reading of the Bill. The Bill was then read the second time.

REDEMPTION OF SMALL TITHES.

TUESDAY, July 28.—The Lord Chancellor laid on the table a Bill to enable persons who had very small sums to pay or receive as tithes, to redeem them. The noble and learned lord stated that the Bill had been approved by the right rev. bench; and he believed it would be beneficial both to the clergy and the tithe payers. The Bill was read a first time; and the second reading was fixed for Friday.

HOUSE OF COMMONS.

COURTS OF WESTMINSTER HALL.

MONDAY, July 27.—Mr. J. S. WORTLEY wished to put a question of some importance in connection with the administration of justice in the courts of Westminster Hall. It was generally known that the practice in the Court of Common Pleas was confined to the serjeants, but during Earl Grey's government a warrant was issued by the Crown to open that court to all barristers. On argument before the Privy Council, it was however held that that warrant was insufficient without the intervention of Parliament. He believed that the late government had been prepared to introduce a measure for the purpose, and he apprehended he was correct in saying that it had the sanction of the late Chief Justice of the Common Pleas. He wished to be informed, therefore, whether her Majesty's present ministers entertained the same views and intentions?—The ATTORNEY-GENERAL replied that the present Secretary for the Home Department had found in his office a bill prepared for the purpose referred to, in order that the courts of Westminster should be opened to the whole Profession. He was happy to be able to state that such a measure was fully approved by the present government, and that he would undertake to introduce it, though of course he could not promise that it would be passed in the present session.

COURTS OF LAW (SCOTLAND.)

Mr. HUME understood that it would be more convenient for him to put the questions of which he had given notice, not to the First Lord of the Treasury, but to the Lord Advocate of Scotland. They were these:—1. If it be the intention of her Majesty's government to give effect to the recommendations contained in the special report made by the Royal Commissioners appointed by Lord Grey's government in 1833, and continued by that of Lord Melbourne until 1838, having instructions to inquire into and report to the House as to the efficiency of the courts of law in Scotland? 2. If it be the intention of the government to carry out, at an early period, the special report made by the above commission, pointing out the expediency of revising and improving the laws which regulate the transfer of mortgage of land and house property in Scotland? 3. If it be the intention of the government to take measures for improving the law and practice of jury trial in civil suits in Scotland?—The LORD ADVOCATE spoke in so low a tone that we only collected that he said in answer, that the noble lord at the head of the government would take the matter into his earliest consideration.

CHARITABLE TRUSTS BILL.

WEDNESDAY, July 29.—Mr. HUME, adhering to the declared intention of the government to legislate early in the next session upon this most important subject, withdrew his Bill, for the present session. He had a few amendments to propose, which he wished to lay before the house, and would propose to go into committee *pro forma* to insert them in the Bill for the information of the public.—The ATTORNEY-GENERAL said he hoped the hon. gentleman would not pursue that course, because many gentlemen were absent who would have been present had they known that any step was to be taken with the Bill.—Mr. HUME had no hesitation to postpone the proceeding for a time.—Sir R. INGLIS strongly condemned the Bill, which he considered as one of a most inquisitorial nature, and one which would interfere with all existence of any kind whatsoever, from that which distributed and controlled thousands, down to the churchwardens, who, in virtue of his office, distributed 2*l.* in leaves to poor widows during the year of his office, and would include the universities, the Royal hospital, the charities belonging to the Church, and all those belonging to dissenting bodies. He moved that it be committed that day three months.—Sir G. GARTY understood that the Bill was to be postponed till the ensuing session. The government had the matter under consideration, and would be prepared early next session to state the course they intended to adopt. He trusted, therefore, the house would allow them to proceed with the other business which stood on the paper.—Mr. ESCOTT was very sorry that the Bill was opposed in so determined a manner because of its simplicity. He was sorry also that the most strenuous opposition to the Bill came from the representative of the University of Oxford; it looked bad, and appeared as if those he represented were afraid of being in daylight upon their transactions.—Sir G. GARTY again said that the government recognized the principle of account-

ability as applicable to all trustees of charitable trusts, but the whole question was under consideration; all he could say was, that, in his opinion, no measure would be perfect unless it carried out the principle of accountability.—After a few words from Lord H. Vane, Mr. R. Yorke, Mr. Henley, and Mr. Aglionby, Mr. Hume denied that he ever intended to include within the scope of the Bill any society supported by voluntary subscription. He only wanted an annual account of receipts and expenditure from all trustees of charities. He was satisfied with the promise of the government, and begged leave to withdraw the Bill.—Sir R. Peel thought, after the expression of feeling upon the part of the government upon the subject, the hon. gentleman had acted perfectly right. He begged to call the attention of the right hon. gentleman the Secretary for the Home Department to the necessity of having some uniform form of accounts, which all might follow.—He sincerely recognised the principle of accountability in its full integrity.—The Bill was then, by leave, withdrawn.

THURSDAY, July 30.—The Poor Removal Bill, after a long discussion and two divisions, was read a third time and passed.

PUBLICATION OF THE STATUTE LAW.

[A correspondent has forwarded the following facts and suggestions. The subject is one to which our attention has long been directed. We proposed a continuation of Chitty's Statutes as one of the publications of the Verulam Society. But out of the 750 members only 227 would take it, and that was not sufficient to pay the expenses.—ED. LAW T.]

Mr. Chitty, in the preface to his first selection of Statutes of Practical Utility (1820) says:—"The statutes before George the Third's reign did not constitute a fourth part of the present number. Since that time they have increased from six to twenty-five large quarto volumes. The evil is not a little enhanced by the purchaser being compelled to receive and pay for, not merely the Acts relating to England and Wales, but also those peculiar to Scotland and Ireland, and to local districts, and limited objects, together with those which have expired or been repealed."

At the end of only nine years, Mr. Chitty found the new statutes had increased to the extent of requiring an Appendix larger than the original work:

Eight years more have now elapsed, and the numerous body of practitioners and magistrates remain unsupplied with any further Appendix, or any new collection in lieu of that of Chitty.

It will surprise many of your readers to see a statement of the expense which must now be incurred to obtain the public statutes up to the present time.

They may be separated into two grand divisions; those before, and those after, the Union. There are Ruffhead's, Runninton's, and Tomlin's and Raithby's, in 18, 14, and 10 quarto volumes respectively; also Pickering's, and Tomlin's, and Raithby's, in 41 and 20 octavo volumes. Any of these may be had at moderate price, their bulk being their chief objection. But from the time of the Union to the present (with the exception of the selections hereafter to be mentioned) the lawyer's only resource is the editions in both cases put forth by the royal printers. And how formidable both in bulk and cost! The quarto edition occupies 17 volumes, and is charged at 52l. 6s. 6d.; the other extends to 42 volumes, and the cost 46l. 1s. 6d.!! These sums are as great as most commencing practitioners are in a condition to expend upon their whole library, considering that, from the very nature of legal lore, continual additions are inevitable.

But the *handic* essential to the actual use of these mighty collections, the royal printers do not condescend to supply. 6l. 6s. more must be bestowed upon Crabb's General Index, unless chance or favour puts the student in possession of the Index from 1801, printed by order of the House of Lords, *not for sale*; in which case, a copy of Raithby's Index for the statutes before the Union may be obtained at a small cost.

How large a portion of the printed mass above specified consists of the useless matter described by Mr. Chitty, may be estimated by the fact, that the mere enumeration of Acts wholly or partially repealed since 1800, occupies (at the rate of about a line and a half for each) 63 folio pages (H. L. Index.) Of these one half is before, the other subsequent to, the Union. (a) In addition to these are to be reckoned the Acts which have expired or been virtually repealed, together with those relating exclusively to Scotland, Ireland, or the Colonies, or to local districts and limited objects in England.

Since 1831, the royal printers have brought out a third annual impression of the current statutes, in royal 8vo. which edition is sold at about one half the

price of the quarto. I believe it originated from a complaint made in Parliament, that the patentees would neither print a cheap edition themselves nor allow any one else to do so. The edition in question is nominally published in single numbers at 2d. each; no facilities, however, are given (but the contrary) to the purchase of any separate Acts that may be desired, or to the selection of such numbers out of the whole series as may suit the practitioner's purposes. The accommodation which the public really wants is the *demio octavo* edition, printed and sold in separate Acts.

To obviate in some degree the serious tax and incumbrance of either of the official editions of statutes, two selections have been brought out.

1. "A Collection of Statutes connected with the general Administration of the Law, with Notes," by Sir W. D. Evans, subsequently edited by Hammond, 8 vols. demio octavo, the 3rd edition, down to 1829, with two volumes added by T. P. Granger, bringing the series to 1835 inclusive. In this collection the Acts are distributed into classes, and are compactly printed in long primer type.

2nd. "A Collection of Statutes of practical utility, with Notes, intended as a Circuit and Court Companion," by J. Chitty; vol. I. in 2 parts, royal 8vo. pp. 1310, extending to 1828 inclusive. This work does not embrace the Criminal Law, the summary jurisdiction of justices of the peace, or matters of police or fiscal regulation; it was proposed to publish these in a separate volume. Vol. II. also in two parts, pp. 1368, appeared eight years subsequently, bringing the Acts down to 1837 inclusive. The original intention was so far deviated from (probably through the great number of new Acts), that the Criminal Law was still excluded, and the Acts relating to the office of justice of the peace were limited to those passed since 1828. The type of all the volumes is *brevier*, and the greatest practicable compactness is adopted.

To supply the desideratum of a new selection of Statutes of general utility, and to keep up the value of that selection for a certain number of years, I proceed to state a plan, which (as it appears to me) would suit both the publisher and the public.

Extent.—I judge that six volumes, each containing as much matter as one of Chitty's half volumes, would contain the whole. Five classes of subjects would be contained in as many volumes; the sixth volume would be miscellaneous. The Acts in each volume in chronological order. A general index would form a seventh volume.

Form and type.—I select the *post quarto* size (that of the Law Journal Reports), as it combines width of page with a height not greater than that of royal 8vo. The type to be the same as Chitty's, but the form of printing to be like Bagster's Comprehensive Bible, i. e. a two columns of text, with a narrow column of notes in the middle. This is the peculiarity of my plan:—the two columns of text are to be stereotyped, but the middle column, which is to contain references from the earlier to the later Acts, is to be set up in *movable type*. In the first impression of the work, this middle column would be very slightly occupied; but as additional Statutes are passed year by year, these would be printed annually, as supplements to the several volumes, and the references to them would be inserted in their proper places in the middle column, in connection with the former Acts which they respectively repeal or modify. By these means each annual impression of the work would *practically be as complete, as if it were then brought out for the first time*; and the sale of the work would of course be increasingly maintained. And as regards the purchaser of any particular impression, he would have the opportunity not only of adding to it the annual supplements, but of inserting with the pen the proper references to those supplements, without at all disfiguring the work.

General Index.—For this I propose to take as a foundation the Index prepared for the House of Lords, adding thereto such Acts before the Union as are still in force, and striking out all those which relate exclusively to Scotland, Ireland, and the Colonies; it might be convenient to retain those which concern local districts or limited objects in England. The width of page (as stereotyped) should be such as to allow subsequent Statutes to be indexed by means of a narrow side column of movable type. The purchaser of any particular impression, also having (as in the case of the text) the means of keeping his Index noted up to the latest period, by references inserted with the pen.

I am disposed to think that, upon this plan, the original set of stereotyped plates might continue in use for twelve or fifteen years, a period long enough to remunerate amply the publisher.

I had collected materials for a much more minute account of the existing editions of the Statutes, but what is above stated will suffice for the present.

I am, &c.

Lewes, July 11, 1846.

J. W. W.

THE MAGISTRATE.

Summary.

THE past week has provided no subject of peculiar interest relating to the administration of the Law.

NAMES AND RESIDENCES OF ACTUARIES IN LONDON authorized to certify Tables, which may be safely and fairly adopted in England by Friendly Societies, for securing benefits depending on the laws of sickness or mortality, 9 & 10 Vict. c. 27, s. 13.

Ansell, Chas. F.R.S. Atlas Office, 92, Chesapeake Bidder, B. P. F.R.A.S. Royal Exchange Office, 39, Pall-mall and Cornhill
Brooke, H. J. London Life Association Office, 81, King William-street
Browne, W. M. Westminster and General Office, King-street, Covent-garden
Clement, J. T. Licensed Victuallers' Office, 444, Strand, and 4, Adelaide-place, London-bridge
Davies, G., F.R.S. Guardian Office, 11, Lombard-street
Downes, J. J., F.R.A.S. Economic Office, 34, Bridge-street, Blackfriars
Edmonds, T. B. Legal and General Office, 16, Fleet-street
Finlaison, J. National Debt Office, Old Jewry
Grut, N. Palladium Office, 7, Waterloo-place
Galloway, T. Amicable Office, Sergeant's-inn, Fleet-street
Goddard, J. British Commercial Office, 35, Cornhill
Gompertz, B. Alliance Office, Bartholomew-lane
Hall, Professor, Argus Office, 39, Throgmorton-street
Hardy, P. F. R. S. Mutual Office, 37, Old Jewry
Ingall, S. Imperial Office, Sun-court, Cornhill, and 5, St. James-street
Jamieson, Alex. L.L.D. Reliance Mutual Office, 71, King William-street, City
Jellicoe, C. Protector Office, 35, Old Jewry
Jones, D. Universal Office, 1 King William-street, City
King, J. North British Office, 4, Bank-buildings, and 10, Pall-mall, East
Kirkpatrick, G. Law Life Office, Fleet-street
Lewis, W. Family Endowment Office, 15, Chatham-place
Lewis, W. S. Rock Office, 14, New Bridge-street, Blackfriars
Morgan, A., F.R.S. Equitable Office, Bridge-street, Blackfriars
Neison, F. G. P. Medical, Invalid, and General Office, 25, Pall-mall
Pinchard, G. H. Clerical, Medical, and General Office, 78, Great Russell-street, Bloomsbury
Rainbow, J. M. Crown Office, 33, New Bridge-street, Blackfriars
Ratray, W. Victoria Office, 18, King William-street, City
Robinson, W. T. Minerva Office, 84, King William-street, City
Ryley, E. Australasian Office, 126, Bishopsgate-street
Smith, H. P. Eagle Office, 3, Crescent, Blackfriars
Smith, C. B. National Office, 3, King William-street, City
Terry, J. M. Hand-in-Hand Office, 1, New Bridge-street, Blackfriars
Tucker, R. Pelican Office, Lombard-street, and Charing Cross
Whitell, C. M. University Office, 34, Suffolk-street, Pall-mall
Woolhouse, W. National Loan Fund Office, 26, Cornhill

THE LAWYER.

Summary.

THE promised opening of the Common Pleas is the legal event of the week. It was reported that this measure had been abandoned by the present government: that their predecessors had prepared a bill for the purpose, but that the representations of Chief Justice WILDE had induced them not to proceed with it. The report was, it seems, without foundation. The Small Debts Bill has been read a second time in the House of Lords, and there seems to be a determination to pass it this Session. The giving of the patronage at first to the Lords Lieutenants of the counties is a sop that will smooth opposition, and facilitate the passage of the Bill.

The sham lawyer's case at Devizes has been commented upon elsewhere.

A few judgments yet remain to be reported, and we have a heavy arrear of other matter, waiting room.

REVIEW OF CASES

IN THE EQUITY, BANKRUPTCY, ECCLESIASTICAL, AND ADMIRALTY COURTS.

(Concluded from page 376.)

TRUST.

Investment.—What degree of care in the management of a trust fund will exonerate the trustee from the consequence of a breach of trust, in case of loss to the fund, must be determined according to the circumstances of each case; but it may be considered as a clear rule that any act, or series of acts, whereby the trustee substitutes other persons in the room of himself as guardians and trustees of

(a) To Chitty's 2nd vol. is prefixed a List of Statutes (within the scope of his selection) repealed or altered since his former publication (9 years.) It occupies 8 pages, and comprises 270 Acts wholly, and 170 partially repealed, together with 400.

the property, to exercise unlimited control over it, would be sufficient to make him responsible for any loss sustained by or through those persons. The trustee ought not to entrust any one with the trust property more than is absolutely necessary, even in the ordinary course of business. "Necessity," Lord Cottenham observes, "which includes the regular course of business, in administering the property, will, in equity, exonerate the personal representative, but if, without such necessity, he was instrumental in giving to the person failing possession of any part of the property, he will be liable." A striking illustration of the rule occurs in *Mathew v. Brice*, 7 Law T. 1, where Exchequer Bills had been left by a trustee in the hands of the brokers, who also acted to some extent in the capacity of bankers, pending a treaty for a mortgage, and had been sold by the brokers, who had applied the money to their own purpose; it was held, on failure of the brokers, that the trustee was liable to make good the loss to the trust estate.

Statute of Limitations.—The stat. 3 & 4 Wm. 4, c. 27, s. 40, enacts, "that no action, suit, or other proceeding, shall be brought to recover any sum of money secured by any mortgage, judgment, or lien charged upon, or payable out of, any land or rent, at law or in equity, or any legacy, but within twenty years next after a present right to receive the same shall have accrued to some person or persons capable of giving a discharge or release for the same;" and it is held that the provision only applies to cases in which it is sought to recover any sum from a person claiming adversely, and not to the case of a trustee, his possession being the same as the possession of the *cestuique trust*; and accordingly, in *Young v. Lord Waterpark*, 6 Law T. 517, it was held, on appeal affirming the judgment of the Vice-Chancellor of England, that a term for 500 years which had been vested in trustees, to raise portions for younger children, was a subsisting trust for such of the children as had not received their portions, though upwards of twenty years had elapsed since the portions had become payable, and the claimants had been under no disability. And the Chancellor observed that the term was still in the trustees, and there was nothing in the statute to prevent them from raising the residue of the portions; and that the statute had no application to a case of this nature between a trustee and *cestuique trust*, for the trustee did not hold adversely to the *cestuique trust*, but for him and for his use and benefit.

Voluntary Assignments.—In cases of voluntary assignments of property, which do not deprive the assignor of all interest in the property, immediately on executing the conveyance, it seldom happens that all the necessary formalities are observed, so as to render the assignment complete. Cases of this sort generally occur where the assignor is desirous of settling property, so as to have a life interest in it himself, with remainder to persons whom he means to benefit; and in such cases the difficulty constantly to be met is the incompleteness of the assignment, so as to vest the property in the assignee without the assistance of the Court; for the Court will not take an active part for that purpose, though it will give effect to a perfect and complete assignment, or carry out the trusts of a voluntary deed, if properly disclosed. Accordingly, in *Searle v. Law*, 7 Law T. 78, A. L. by a voluntary deed assigned certain turnpike bonds and shares in public companies, to a trustee, upon trust for himself (A. L.) for life, as he should appoint; and in default of appointment, and after his death, upon trust, for his great nephew; and he then delivered the bonds and certificates to the trustee, but took no further step to complete the assignment, and died. The Master, in his report, certified, that certain formalities which had not been observed were requisite to completely effectuate the assignment; and it was held, that the great nephew took nothing, but that the personal representatives of A. L. were entitled to the property.

WILL.

Few questions of construction have arisen involving any new principle; the points raised on wills being chiefly in reference to the formalities required to be observed for validating them when made in the execution of a power, or the like.

Publications, &c.—By the Wills Act, 1 Vict. c. 26, publication of a will is now no longer necessary; but where it is one of the formalities required in the execution of a power to will, like every other prescribed formality, except attestation, it must be

attended to. Accordingly, questions frequently arise, whether what has been done is in substance, or is equivalent to what is required by the terms of the power. A late case raised the question whether the words "We, the undersigned attest to have seen the above testator sign the above will," amounted to a sufficient attestation of publication of a will in exercise of a power which required the will "to be signed and published in the presence of," &c. And the Vice-Chancellor of England held, that it was. (*Anon.* 6 Law T. 362.)

Gifts inter vivos. *Donatio mortis causa*.—A very singular case may be noticed, under this head, of a gift of property, with a view to evade the legacy duty, and yet so made that the donor should retain his interest in the property during his life. The testator, two years before his death, put Dutch bonds and title-deeds of property in a tin box, on which he painted the name of the person in whose house he lived, and gave him the key thereof, but did not deliver the box itself till a short time before his death, when the testator's nurse delivered it. The property, according to a written paper on it, was for the landlord and his family, but they were not to have it till his death; and he stated, in a note to the landlord, that he gave it in the way he had done to avoid legacy duty, and recommended silence on the subject. This was held to be neither a trust nor gift, *inter vivos*, nor yet a *donatio mortis causa*, there being no complete delivery under an implied trust of returning it if the testator recovered. (*Farquharson v. Cave*, 6 Law T. 363.)

Legacy.—Portion.—No interest is payable on a legacy given to a person payable at a future time; but an exception to this rule exists in the case of a legacy by a parent to a child, in which case interest is given for maintenance of the child, on the principle that the parent did not mean to leave the child without the means of subsistence; but if the parent has provided for the maintenance of the child out of another fund, the rule is the same as in the case of a stranger, and no interest is allowed. (*Donnan v. Needham*, 7 Law T. 107.)

Revocation, power of.—Where a power of revocation is reserved to be exercised by "deed or writing," it has been decided, from *Black v. Brown*, 6 Law T. 412, that a revocation by will is a good exercise of the power. Before the Statute of Wills, 1 Vict. c. 20, the word "writing" included a will; and it is now decided that, since that Act, the meaning of the word is equally comprehensive.

Election.—The rule of law in Scotland, as is well known, is that a heritable bond has all the properties of real estate, and descends to the heir like real estate, and that too, notwithstanding the owner is a Scotchman domiciled in England, and may have taken the bond as a security for an English debt. In *Allen v. Anderson*, 6 Law T. 430, it was held that though the heir takes a beneficial interest in other parts of the testator's property under his will, he will not be put to his election in case of a heritable bond descending upon him, unless the testator has indicated an intention in his will to devise it.

Charge on real estate.—A question not unfrequently arises whether the effect of the will is such as to manifest an intention on the part of the testator to make his real estate liable to the payment of pecuniary legacies, in default of the personalty being sufficient. In the case of *Cress v. Kennedyan*, 6 Law T. 497, a testator gave certain legacies, payable after his wife's death, "when he charged his executors with payment thereof;" and he afterwards gave the residue of his real and personal estate to his executors; and it was held that the legacies were charged on the real estate.

Legacy.—Set-off.—Statute of Limitations.—The difference between the effect of the old and of the recent Statutes of Limitation is very material, for by the former only the remedy was taken away, but by the latter both the remedy is taken away and the right extinguished. Accordingly, though a simple contract debt is not recoverable after six years, nevertheless it is not extinguished, notwithstanding the legal obstacle to its recovery, but the remedy only is taken away; and if any circumstances exist through which the party having the claim can make the debt available to the estate entitled to the benefit of it, he is bound to avail himself of it. So that a debt due by a legatee to the testator, being part of the assets of the testator's estate, may, if not recoverable by reason of the statutory bar, be set off against his legacy, as a payment *pro tanto*. (*Courtney v. Williams*, 6 Law T. 517.)

Trust.—Precatory words occurring in a will in

connection with a bequest often create great doubt as to how far they convert an otherwise absolute gift into a trust; but the leaning of the Courts is now against a trust in such cases, and the doctrine, which has been pressed to its full extent, will not be extended beyond the decided cases, because it commonly defeats the testator's intention. The authorities have settled that the word "recommend" in a will, when uncontrolled by the context, creates a trust; but in a late case, the Lord Chancellor, overruling the decision of the Court below, held that the recommendation superadded by the testator to an absolute gift to his wife, was a suggestion only, and not a binding trust. (*White v. Briggs*, 6 Law T. 477.)

PROMOTIONS, APPOINTMENTS, ETC.

Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been pleased to approve of Mr. James Flora as Consul at Manchester for the United States of America.

The Queen has been pleased to approve of Mr. Thomas Haire as Consul at Gibraltar for the Grand Duke of Oldenburg.

The Lord Chancellor has appointed Charles James Fox, of the city of Canterbury, gent. to be a Master Extraordinary in the High Court of Chancery.

NEW QUEEN'S COUNSELL.—Francis Stack Murphy, esq. M.P. Sergeant-at-Law of the Northern Circuit, who was called to the Bar by the Hon. Society of Lincoln's Inn, on the 26th of January, 1833, has received a patent of precedence.

John Barnard Byles, esq. Sergeant-at-Law, Recorder of Buckingham, who was called to the Bar on the 18th of November, 1831, by the Hon. Society of the Inner Temple, has received a patent of precedence.

Joseph Humphrey, esq. the conveyancing counsel, who was called to the Bar by the Hon. Society of Lincoln's Inn on the 6th of July, 1831, has been promoted to the rank of Queen's Counsel.

NEW MASTER IN CHANCERY (IRELAND).—Mr. J. J. Murphy, Q.C. a new candidate, is spoken of for this office.

COURT PAPERS.

ATTORNEYS TO BE ADMITTED,

Michaelmas Term, 1846.

Ayre, John, jun. Bristol, articled to W. P. Hartley, Bristol.
F. G. Sheppard, Bristol.
Ashley, William Edward, 8, Elizabeth-street, Brompton; Newark-upon-Trent, and 2, Brompton-terrace, J. W. Lee, Newark.
Alkman, John Robertson, 60, Great Portland-street—G. Pearson, Guildhall.
Armistead, James, 35, Devonham-road, New North-road—J. C. Fenton, Huddersfield; J. Stevenson, King's-road.
Anderson, Wm., 1, Stafford-place, Finsbury; and Liverpool—C. Bardsley, Liverpool.
Adams, Henry, 34, Southampton-buildings; Weston-straw and Stoke Gabriel—G. Mitchell, Tetbury; G. Emsman, Basing-lane.
Brooks, Thomas, 18, Lower Galthorpe-street; Derby; and Burton-on-Trent—F. Jessop, Derby.
Bishop, Robert, Lichfield—J. Sargent, Lichfield.
Bell, Richard, Kingston-upon-Hull; J. Thorne, Kingston-upon-Hull.
Brown, Thomas Augustus, 14, Blenheim-street, Portman-square; and Tonbridge—W. Hartman, Bagnat.
Boddington, George Lester, Kidderminster—W. Boycott, jun. Kidderminster.
Boydell, Thomas Hebbert, 1, Belinda-terrace, Liffington—B. Smith, Chancery-lane.
Bromley, Thomas John, 7, New Oxford-street, and Hammersmith—G. M. Ford, Exeter; J. Mitchell, Wycombe.
Beck, John Grant, 3, Judd-place East, and Cambridge—G. F. Harris, Cambridge.
Burton, William, 52, Gloucester-street, Queen-square; and Manchester—B. M. Whitlow, Manchester.
Biddle, John Henry, 3, Portland-place, Camberwell—E. Brown, Bloomsbury-square.
Bury, John Johnson, Stoke-upon-Trent—John W. Wagh, Newcastle-under-Lyme.
Baker, Frederick, 28 A, Curzon-street, May-fair; and Derby—J. B. Simpson, Derby.
Barnett, Francis, 27, Festival-street, Northampton-square; and Newport—G. Russell, Newport; John Stevenson, King's-road.
Barron, Samuel Milner, 53, Gloucester-street, and Didsbury—T. Higson, Manchester.
Blackburn, Samuel Bender, Leeds—J. Blackburn, Leeds.
Brace, William, 61, Weston-garden, and Leeds—Richard E. Fyfe, Leeds.
Braham, Samuel Peeling, 15, Clarence-place, Kentish-town; Staple Inn, and Liverpool—S. Braham, Liverpool; R. Chester, Staple Inn.
Bowie, Richard, 11, Sergeants' Inn, Fleet-street; and Southwick—R. Brown, Sunderland.
Gunning, Walter, Belle Vue, Hanworth, near Birmingham—W. Fellows, jun. Dudley.
Cattell, Christopher William, 1, Brunswick-terrace, Bloomsbury—J. O. Hall, Brunswick-road.
Clarke, Robert, jun. 3, Albion-place, Hyde Park-square; Duke-street, and Bath—R. Clarke, Bath; E. Khan, Bath.
Crosman, William, 26, Swinton-street, Gray's Inn-road; and Berwick-upon-Tweed—T. Gilchrist, Berwick-upon-Tweed.

Cooper, Charles Sidney, Lewes—T. Cooper, Lewes; W. D. Cooper, Lewes
 Croft, John, 3, Jordan's Cottages, Lambeth—F. Smith, Basinghall-street
 Cooke, Robert, 3, Wilmington-square, and Symond's Inn—F. Stanier, Newcastle-under-Lyne; W. A. S. Pemberton, Symond's Inn
 Costello, John, Lichfield—E. Wyatt, Lichfield and Whittington
 Coad, T. Hodson, Lichfield and Whittington
 Chadwick, John Nurse, 3, Queen-square, and King's Lynn—B. R. Aldham, King's Lynn
 Gessie, John Maanary, 6, Nelson-square, and Stowmarket—A. Taylor, jun. Norwich; J. B. Ransom, Stowmarket; J. W. Flower, Broad Street
 Cole, George Henry, 3, Manchester-terrace, Liverpool-road; J. Platt, Church-court, Clement's-lane
 Campbell, Robert Murray, 11, Bell-yard, Temple-bar; and Nottingham—J. Brewster, Nottingham; G. M. Cowley, Nottingham; G. Hopkinson, Nottingham
 Dodd, Edward, 46, Swinton-street, and Warwick—T. Morris, Warwick
 Dalley, John, 13, Bowyer-street, Fleet-street; and Bridgton—M. H. Williams, Bridgton
 Davies, James, 10, River-street, Pontonville; and Hereford—T. Evans, Hereford
 Dain, Marston, 3, Walnut-tree Walk, Lambeth—W. Leslie, Devonshire-street
 Dart, Philip Francis, Saville-place, New Burlington-street—W. R. Bembest, Saville-place
 Dixon, Ralph, 5, Barnard's Inn; Gower-street; and Furnival's Inn—T. Brown, Newcastle-upon-Tyne; W. Cheek Bousfield, Gray's Inn Square
 Davies, John Pryce, 26, Canmore-place, Waterloo-road; and Welchpool—C. T. Wooman, New Town; Joseph Jones, Welchpool
 Dowson, John, 3, Sebbon's-buildings, Upper-street, Islington—W. Pringle, King's-road, Bedford-row
 Deoborough, L. jun. Grove-hill, Camberwell—L. Deoborough, Sise-lane
 Dimsdale, Frederick, 17, Ormeau's Inn, and Hadley—W. Borradaile, King's Arms Yard
 Driffield, Charles Edward, 53, Gray's Inn Road—W. W. Driffield, Prescott
 Dobinson, Henry, 14, Ampton-street, and Carlisle—W. Dobinson, Carlisle
 Dugman, William Henry, Walsall—G. B. Stubbs, Walsall
 Duff, Richard, Nottingham—G. Dawson, Nottingham; C. Butlin, Nottingham
 Duffell, William Ward, 9, Felix-terrace, Liverpool-road; and Great Baddow—E. S. Chalk, Chelmsford
 Daintrey, Adrian, 31, John-street, Bedford-row; Kew-green; Turnham-green; and Kenton-street—A. Daintrey, Potworth
 Dunn, John Morgan, 3, Frederick-place, Gray's Inn Road—A. S. Crowdy, Swindon; W. H. Smith, Bedford-row
 Eastwood, A. Greenwood, Todmorden; Halifax—W. Eastwood, Halifax
 Elders, Thomas William, York—G. Loeman, York
 Fowler, James, 25, Grand-terrace, and Birmingham—G. P. Wragge, Birmingham
 Ford, Henry, 23, Mount-street, Grosvenor-square; and Exeter—J. Geare, jun. Exeter; J. E. Fox, Finsbury Circus
 Foster, Lambert B. jun. Alfred-place, Blackfriars; and Norwich—C. W. Unthank, Norwich
 Foxwell, John Cleverley, 30, St. Stephen's-street, Regent's park; Queen's-street-place; and Camberwell—J. Foxwell, Newcastle-upon-Tyne; H. Shield, Queen's-street
 Gale, Edward Brown, 5, Montpelier-street, Brighton; and Kensington—R. Gale, Beccles; R. E. Burroughs, Norwich
 Garton, William Anthony, 14, Buckingham-street; Daglington; and Chancery—C. Lawrence, Chancery
 Gandy, Frederick Walter, 9, Great Ormeau-street, and Exeter—J. H. Terrell, Exeter
 Greenhalgh, James, Bolton-le-Moors—J. Cross, Bolton-le-Moors
 Green, Robert Yeoman, 28, Tavistock-place, and Newcastle-upon-Tyne—A. Donkin, Newcastle-upon-Tyne
 Gorden, William Piersen, 13, Finsbury-street, and Shrewsbury—T. H. Kough, Shrewsbury; E. B. Church, Southampton-buildings
 Gotes, Christopher Hill, 6, Frederick-street, Gray's Inn Road, and Grantham—G. Kewney, Grantham
 Grant, Groves Teley, Bradford—J. A. Busfield, Bradford
 Gunning, Jonathan Robert, Norwich—J. Whiter, Norwich
 Gunn, John Thaddeus, 31, George-street, Euston-square, and Glastonbury—R. James, Glastonbury; O. F. Shuter, Bedford-row
 Gubdel, Samuel Hawke, Calne, and Lombard-street—N. Lockyer, Plymouth
 Harvey, John William Henry, Marbury Cottage, Hammer-smith—E. Dyne, Lincoln's Inn Fields
 Heather, James, 14, College-place, Camden Town—W. O. Menckton, Bartlett's-buildings; F. H. Moger, Paternoster-row
 Harvey, Thomas Morton, 36, Carey-street, and Egham—T. Harvey, Egham
 Hamilton, Thomas William, Great Tower-street—Keith Barnes, Spring Gardens
 Hodgson, John, 14, Store-street; Newcastle-upon-Tyne; and Whitby-street, Russell-square—H. W. Foxwell, Newcastle-upon-Tyne
 Howson, Frederick, Writington, and Balham Hill—B. Holmes, New Inn; J. James, Writington
 Howkes, Henry, Birmingham—W. S. Harding, Birmingham
 How, Thomas Maynard, 10, Lincoln's Inn Fields, Shrewsbury, and York-street—W. W. How, Shrewsbury; Alfred Bell, Lincoln's Inn Fields
 Haddock, Thomas, 15, Clarence-road, Kentish Town; Prescott, and Sutton—W. Rowson, Prescott
 Harris, Albert Domett, 8, Canal-terrace, Camden Town; and Regent-street, Lambeth—F. Cantell, Basinghall-street
 Hodgson, Charles Bernard, Grove House, Kensington Mall; and Norfolk-street—T. H. Hodgson, Carlisle
 Hill, Walter, 6, Boxworth Grove, Hillingdon; and Leamington—R. Poole, Southampton
 Hibbet, Henry, 28, Canterbury-street, Waterloo-road; and Guildford—J. Hockley, Guildford
 Jones, John, 2, Camberwell-place, Upper Orange-road; and Epsom—G. Salter, Epsom
 Jones, Philip Frederick, 10, Gurnard-street, Islington; Hereford; and Thorne's Inn—J. L. Bodmans, Hereford
 Jones, John, 27, Whitehall-street, Regent-square; Nought-

upon-Trent; and Stamford—T. F. A. Burnaby, Newark-upon-Trent
 Knuckey, Francis Burdett, 41, Wilmington-square—G. Selby, 8, John-street Road
 Knighton, John, 1, Ann-street, Pontonville—J. Dolman, Clifford's Inn
 Lingard, Richard Boughby Monk, 7, Furnival's Inn, and Heaton Norris—R. E. Lingard, Heaton Norris; T. H. Bower, Chancery-lane
 Long, George Henry, Windsor—W. Long, Windsor
 Lloyd, Cornelius, 12, Greenhill-street, Branawick-square; and Aberavenny—E. L. Powell, Aberavenny
 Lake, George, Mortimer-road, De Beauvoir Town—J. Lake, Lincoln's Inn
 Lord, Charles Frewen, 26, East-street, Lamb's Conduit-st.—B. E. Willoughby, Clifford's Inn
 Lawrence, John William, 15, Marchmont-street, and Peterborough—W. Lawrence, Peterborough
 Long, Glas, 47, Nelson-square—W. Long, Nelson-square
 Lucas, Charles Frederick, 24, Alfred-place, Bedford-square; and Newport Pagnell—H. Lucas, Newport Pagnell
 Mallam, Charles, 9, Norfolk-street, Strand; T. Mallam, jun. Oxford
 Marston, Richard, 17, Upper Stamford-street, and Ludlow—W. Urwick, Ludlow
 Maud, Edward, 13, Lamb's Conduit-street, and 10, New Ormeau-street—G. P. Maud, Huntingdon; W. H. Twine, John-street, Bedford-row
 Morgan, Isaac, 53, New Bond-street, and Swansea—J. Trevelian Jenkin, Swansea
 Mantell, Alexander Houtoum, 59, Burton-crescent, and Faringdon—J. W. Wall, Devizes
 Maud, Edward, Leeds—J. Shackleton, Leeds
 Molineux, Joseph, 1, Queen-square, Bloomsbury—George P. Hill, Brighton
 Maskey, Christopher R. South Shields—C. Bainbridge, South Shields
 Mitchell, William Hope, 40, Upper Norton-street, Portland-place, and Portsmouth—W. Devereux, Portsmouth
 Moore, Robert Bendle, Carlisle—R. Bendle, Carlisle; Robt. Toulmin, Staple Inn; J. Mounsey, Carlisle
 Maddock, Charles, 50, Lincoln's Inn Fields, and Brunswick-row—A. Bell, Lincoln's Inn Fields
 Northover, Richard, 21, Frederick-street, Gray's Inn Road; Winchester; and Derby-street—J. H. Todd, Winchester
 Nevill, Richard, 8, Prince-street, Bedford-row—R. Nevill, Teworth
 Oliver, James, 4, Lansdowne-terrace, Notting Hill—Septima Davidson, Basinghall-street
 Orchard, William Henry, Horney, and Milton-on-Thames—E. Farn, 14, Gray's Inn Square
 Poole, William T. H. Stoke-under-Hamdon, and Gray's Inn Place—J. Slade, Yeovil; John Sherwood, King's Bench Walk
 Phillips, Joseph, jun. 7, Millman-street, Bedford-row, and St. Martin's, Stamford Barou—R. N. Thompson, Stamford
 Parker, Henry, jun. 3, Raymond-buildings, Gray's Inn—H. Parker, Raymond-buildings
 Phillips, William, Kingston-upon-Thames, and Chichester—W. Phillips, Chichester
 Powell, James, jun. 12, Chancery-street, Newgate-square, and Chichester—J. Powell, Chichester
 Pope, Edward Turner, 14, Harper-street, Queen-square, and Bath—H. Hayman, Bath
 Pollard, William Darley, Salford, and Manchester—H. Blair, Salford
 Pratt, John Forster, 7, Arthur-street, Gray's Inn-road; Berwick-upon-Tweed; Alfred-street; and Evescot-street—E. Weddall, Berwick-upon-Tweed
 Penfold, William John, 1, Gibson-square, Islington; and River-street—T. A. S. Clarke; and J. S. McWhinnie, Brighton
 Palmer, C. E. jun. 7, Harpur-street, Red Lion-square; Barnstaple; and Upper George-street—J. F. Kingdon, Barnstaple; C. E. Palmer, sen. Barnstaple
 Poole, Herbert Henry, 10, Golden Terrace, Islington—T. H. Poole, Tottenham-road; T. Poole, Bartholomew-cloze
 Price, Clement Uvedale, Clementhorpe—J. Blanchard, York; W. Richardson, York
 Piper, George Harry, 7, Ledbury; and Great Quebec-street—T. Jones, Ledbury
 Patrick, Charles, 29, Wilmington-square, and Soley-terrace—R. A. Davison, Bishop Wearmouth
 Powell, Frederick, 20, Newman-street, Oxford-street, and Knarsborough—S. Powell, jun. Knarsborough; C. Lever, King's-road
 Radcliffe, Thomas, 7, Park-terrace, Camden-town, and Blackburn—J. Neville, Blackburn
 Rowcliffe, Edward Lee, 32, Fitzroy-square, and Stogumber—C. Rowcliffe, Stogumber
 Robson, William W. jun. Bishop Wearmouth—G. W. Wright, Sunderland
 Robinson, Henry, Kirby Lonsdale—F. Pearson, Kirby Lonsdale
 Shelley, William Parker, 34, Queen's-square, Bloomsbury, and West Bromwich—J. G. Chaplin, Birmingham
 Spraggett, George, 18, Golden-square, Southampton, and Upper Stamford-street—T. S. Wright, and R. F. Welchman, Southampton, and Leamington Priors
 Shafto, John Cuthbert, 13, Clifford's-inn, and Sunderland—J. S. Kidson, Sunderland; J. Kidson, Sunderland
 Simpson, Robert John, 40, Commercial-road, Lambeth, and Newark-upon-Trent—W. W. Billyard, Budleigh, Salterton
 Smith, George Archer, 33, Devonshire-street, Queen-square, East Retford, and Store-street—W. Newton, East Retford
 Shaw, Richard, jun. 26, Abchurch-lane, and Burnley—R. Shaw, sen. and R. Artindale, Burnley
 Sherwood, Frederick, 31, Woburn-square—George Vincent, King's Bench-walk
 Stone, Joseph, Matlock; and Belper—J. Oldham, Swettenham, Belper
 Stacey, Robert, Newcastle-under-Lyne—F. Stanier, Newcastle-under-Lyne
 Stretton, George, Nottingham; and Everett-street—G. French, Nottingham; G. Rawson, Nottingham
 Simpson, Robert, 24, East-street, Red Lion-square; and Glastonbury-lane—J. Goodove, Raymond Buildings
 Sanderson, John, 25, Everett-street, Brunswick-square; Everton; and Rock Ferry—J. Sanders, Liverpool; J. Shaw, Liverpool

Sheppard, Shearman, 30, Northampton-square—C. Shearman, late of Gray's Inn-square; G. Capes, Field-court
 Shafto, George Dalton, 13, Clifford's Inn; and Durham—J. Burrell, Durham
 Somerville, Stafford Baxter, Doncaster—E. Baxter, Doncaster
 Snell, Silas, 6, Claremont-square, Pontonville; Stamford-street, and Great Torrington—H. A. Vallack, Great Torrington
 Tribe, Henry, 32, Melton-street, Euston-square—W. Tribe, Worthing; T. Loftus, New Inn
 Thompson, Richard, Barby Hall, near Selby, and Sheffield—A. Smith, Sheffield
 Turner, William Rawson, 50, Canterbury-street, York-road—H. Copeman, Kingston-upon-Hull
 Templer, William Force, 50, Lincoln's-inn-fields, Launceston, and Greenwich—C. Gurney, and J. L. Coward, Launceston
 Thom, Simon, Agnes Cottage, Kewal-green—J. Hamilton, Berners-street; T. F. Justice, Berners-street
 Tweed, George Taah, 4, Alfred-place, Bedford-square—C. M. I. Pollock, Parliament-street; H. H. Beckitt, Lincoln's Inn
 Voss, Robert, 28, River-street, Myddleton-square—H. Phillips, Sise-lane
 Unwin, Frederick George, 31, Bartlett's-buildings, Holborn, and Sawbridgeworth—T. Unwin, Sawbridgeworth
 Ward, Newman, 22, Portsea-place, Connaught-square—W. J. Norton, New-street, Bishopgate-street
 Walker, Edward, Bungay, and Hampstead-road—J. T. Margison, Bungay
 Welford, Edward Davison, 7, Wakefield-street, and Hexham—E. Welford, Hexham
 Wilkinson, Richard, 10, Rufford's-row, Islington—R. Moeck, Kendal
 Wing, William, jun. Huntingdon and Millman-street—C. Margetts, Huntingdon
 Watson, William, 3, Durham-terrace, Chelsea; Shawfield-street, Chelsea, and Shrewsbury—G. Harper, Whitechurch
 Wratialaw, Charles Edward, 10, Norfolk-street, Park-lane, and Rugby—W. F. Wratialaw, Rugby
 Wills, William Ridoub, 46, Great Ormeau-street, and Birmingham—W. Wills, Birmingham
 Wilmet, William Bendry, 6, Cloudeau-square, Felix-place, Islington, and Chippenhams—W. Wilmet, Chippenhams
 Willmott, Frederick, 83, High-street, Southwark—R. C. Smith, Bridge-street, Southwark; J. Wilkinson, Nichol-lane-lane
 Wells, Algernon, Upper Clapton—E. Daniell, Colchester
 Williams, George, 31, Alfred-place, Bedford-square—W. Williams, Alfred-place
 Ward, Alfred, Barnes—W. Williams, Alfred-place
 White, Charles Edward, 8, Cambridge-square, Hyde-park—E. White, Great Marlborough-street
 Woodroffe, George Thomas, 7, Staple-inn, and Great Coram-street—W. Woodroffe, Lincoln's Inn
 Whalley, George, 6, Spencer-street, Clerkenwell—G. L. Whalley, Mitchell Dean; G. Becke, Lincoln's-inn-fields.

Added to the List pursuant to Judges' Orders.
 Collier, Thomas George, 2, Adelaide-terrace, New Windsor—C. Hird, Upper Marybone-street
 Coleridge, Francis James, 8, Mill-street, Hanover-square; Ottery Saint Mary—F. G. Coleridge, Ottery Saint Mary
 Dean, John Joseph, 10, Essex-street, Strand—W. Dean, Essex-street, Strand.

EQUITY BAR.—We understand that Mr. Purton Cooper, Q.C. has attached himself to the Lord Chancellor's Court. We are glad of this, as it is fitting that the Profession should be able to rely on the presence of leading counsel in this tribunal. We shall be glad to be made acquainted with other similar arrangements.—*Legal Observer.*

LEGAL INTELLIGENCE.

REAL LAWYERS v. SHAM LAWYERS.
 The following discredited affair occurred at the recent assizes for Hampshire:—

Friday, July 24.
 (Before Mr. Justice ELLS.)
 Lewis Henry Osborne was indicted for having, by falsely pretending that one Mr. Warneford, an attorney-at-law, would appear to conduct a case before the magistrates at the petty sessions at Swindon, on the 11th of June, for and on behalf of James Stallard, obtained from him the sum of 12s. the property of James Stallard.
 Fitzgerald, for the prosecution.
 Smith, for the prisoner.

The evidence in this case is of so important a nature, that we give it in detail.
 James Stallard.—I live at Rodbourn Cheney. In May last I was summoned before the magistrates relative to my cottage, and I went to the prisoners and asked him if he was not a lawyer? He said he was not a lawyer, but that he was authorized as clerk to Mr. Warneford, who was a solicitor in London, and would give me advice. I gave him 2s. 6d. and he gave me advice; he said it was Mr. Warneford's money. I should not have given the money if I had not thought he was Mr. Warneford's clerk. I saw him again on the following Thursday, and he said, if I could pay Mr. Warneford's fees, Mr. Warneford would come from London and attend the court for me. He said the charge would be 12s. and I paid him that sum. He said Mr. Warneford would be sure to come down, and it was in consequence of that representation I paid him the money. Mr. Warneford never came down. I never saw Mr. Warneford. Cross-examined.—Nothing was said about returning the money. When the prisoner was before the

magistrates on the summons, Mr. Brown, the attorney for the prosecution, insisted upon it that the prisoner should not be heard, and he was not heard.

J. W. Brown.—I am an attorney at Swindon. On Thursday, the 2nd of July, I saw the prisoner before the magistrates. He said he was clerk to Mr. Warneford, an attorney of Symond's-inn, London. I went to London and saw Mr. Warneford.

Richard Warneford.—I am an attorney, at 6, Symond's-inn, Chancery-lane. I am attorney to the Duke of Brunswick. I know the prisoner. He never was my clerk. I was introduced to the prisoner in March last by a barrister, as a client. I had an interview with him. He mentioned to me business he wished me to attend to, and stated that he had several friends at Swindon who required business to be done for them, if I thought proper to attend to it. I said I should be very happy to do it. On his return to Swindon he wrote letters to me, stating several cases on which he wished my advice. I answered the letters. Sometimes there were six or seven different matters in which he required my opinion. Among them was *Stallard's* case, and he very much wished me to attend before the magistrates upon it. I positively refused to attend, because I could not have gone down without a large fee, and because I did not consider it required my attendance. On the 21st of June the prisoner wrote to me requiring to know what fee I would take for coming down. On the 25th of June he wrote to me to say he had received 2l. for me. On the 14th of June he wrote to me hoping that I would not object to his being my clerk. I received 1l. from him relative to another case.

By the JUDGE.—I was concerned for a plaintiff, and I sent to the prisoner to tell him how the defendant in the most economical way, could get rid of his debts. In one letter the prisoner stated to me that he had received 2l. for me from Stallard. My fee for going to Swindon would have been 5l.; if the prisoner had said he had received 5l. for me I should have gone down. In a conversation I had with the prisoner, he said I should attend at Swindon once a week or ten days, and I said I should be very happy to attend. There were no terms for this attendance.

The following letter was then put in and read:—

"6, Symond's-inn, Chancery-lane,
March 28, 1846.

"My dear Sir,—I was not in town yesterday so as to be able to reply to your letter of the 25th, but which did not come to hand until yesterday. I am sorry to hear of the accident, and hope you are now quite recovered. I shall be very happy to enter upon business in the way proposed, and have no doubt that it will, by attention, be found to answer very well. The inclosed note was forwarded to Mr. Horry, but I have not seen him for some days. I think the plan of a small office at Swindon may be found a good one, and I shall be happy to hear that you have set about it. I shall be able to attend without any inconvenience at the times which you stated to me, and shall hope by my best endeavours to gain the confidence of your friends and the inhabitants in general, and to be of real service to them on all occasions when they may require professional assistance. Many persons near you must have known the late Colonel Warneford, for he farmed extensively, and was much respected in the neighbourhood of Highworth. He was the son of my father's eldest brother. I used to visit him, but since his death I have not been to Sevenhampton. The estates are limited under the Colonel's will to my brother's children, on the death of Lady Wetherell, without male issue, so that you see I am quite interested in your part of the world. I am rather in haste; therefore will only add, that I remain,

"Yours, very faithfully,

"R. WARNEFORD.

"To Mr. L. R. Osborne, Albert-street,

"Swindon, Wilts.

"Perhaps at Blunsden."

The next letter was as follows:—

"No. 6, Symond's-inn, Chancery-lane,

"May 28, 1846.

"*Hoskins v. Ingram.*

"Dear Sir,—I have received the order for the 1l. I now inclose affidavit of service for you to make and transmit to me, as from your letter I take for granted that the defendant will not appear, but will suffer judgment to be signed against him by default. You can tell him that his present best course is to make out a list of his debts and credits, in the doing of which I presume you can be to him of great service, stating in such list where the different creditors reside on whom it will be requisite that notice should be served. You are aware that persons who can give bail need not now be in prison more than a fortnight, so that they are enabled not only to continue their occupation, but also to make up their accounts at their own homes, which is often the most convenient plan in all respects; if however Mr. Ingram cannot give bail, I must take care to effect his discharge with as little delay as possible. I cannot at this moment say what the expenses may be. The charity fund for the relief of persons in prison averages the expense at 10l. which is what they allow on all occasions to

proper applicants. It may be a little more or a little less, according to circumstances. He should also state fully the particulars of the different debts, and how they were incurred, and what for.

"I remain, dear Sir, yours truly,

"RICHARD WARNEFORD."

"Addressed, Mr. Osborne, Broad Blunsden, near Swindon, Wilts."

In another letter, dated July 1, 1846, Mr. Warneford wrote to the prisoner this sentence:—

"I congratulate you very much on your success in Stallard's matter, and hope it will have the effect of procuring you an increased number of friends."

The following are extracts from a letter written by Mr. Warneford to Mr. Brown (attorney for the prosecution), dated July 7, 1846:—

"Sir,—Mr. Osborne was introduced to me last March by Mr. Horry, the barrister, to whom he was formerly known professionally, and to whom he made proposals for business, which Mr. Horry, as a barrister, of course declined. He then asked Mr. Horry to name some attorney to whom he could safely recommend business, and Mr. Horry recommended me, who am his private attorney and solicitor."

"In his (Mr. Osborne's) last letter to me, which was on Saturday, he implores me to say that he had acted as my clerk. In one of my letters (a copy of which I happen to have preserved) I used these words,—'At present I do not wish you to regard yourself as my clerk. I have hitherto abstained from anything, as I thought, which might lead you to regard yourself in that light, and this because I wish before I have a clerk to ascertain how far there is any probability of business to employ one. I have no objection to do any business that may lie within the compass of your connections, for whom I see no reason why you should not act as a medium of communication, and any business—which your friends think proper to intrust to me, I shall be happy to do; but really at present I see no occasion for any clerk whatever. I cannot help your calling yourself my clerk, if you will do so; but I submit that your doing so cannot promote any good, either to me or to yourself.' I hope this letter will satisfactorily shew that I did not consider Mr. Osborne as my clerk. I shall be happy to attend when required as a duty, although these things are painful to me."

Mr. Justice ERLE here addressed the jury, stating that the question was, whether the prisoner represented himself as the clerk of Mr. Warneford, knowing that it was a falsehood, and whether he represented that Mr. Warneford would come from London, knowing that he would not do so. It was a question for them, but he certainly should not say but that the prisoner might have believed he was Mr. Warneford's clerk, and that he might have believed Mr. Warneford would have come down. If they were of that opinion, the case was at an end, but if they were not satisfied, the matter must proceed.

The jury said they should like to hear the whole case.

Mr. Warneford cross-examined.—I was engaged in an action brought by Greenaway. I employed the prisoner to serve the different notices for me, and to make the requisite affidavits. The plaintiff in that action employed me; the retainer was sent to me by the prisoner. I required a retainer. I have no doubt I sent down the form of a retainer to the prisoner. In the case of Pinniger and Bunce I gave an opinion through the intervention of the prisoner. The letters from the prisoner to me were similar to those I receive from any of my clerks at my own office when I am from home. My letters to the prisoner were such as a country solicitor would send to his London agents; that is as to the form. I expressed an intention of going to Swindon in April. The writ in *Hoskins and Ingram* was served by the prisoner. I was attorney for the plaintiff, and I gave instructions to the prisoner how to advise the defendant what steps to take. I have letters in London in which this case of Stallard is mentioned, but I did not think them material, and I thought I could relate all from memory.

Mr. Justice ERLE.—You ought to have known, Mr. Warneford, that the contents of letters cannot be given in evidence unless the letters are produced.

Witness.—The writ is indorsed with costs 3l.

The JUDGE.—Is not that 1l. more than you were entitled to charge?

Witness.—Yes, but I did not intend to take it.

The JUDGE.—But you charged it—why did you charge it?

Witness.—It would have been taken off upon taxation.

The JUDGE.—But an ignorant man would have paid you, and would not have gone to town to tax your bill.

Witness.—I have been in practice 25 years. If I could form a connection in the country I thought there was no harm in doing so. I never received more than 1l. from the prisoner. That was for the costs out of pocket for a writ. The actual costs out of pocket for a writ are 5s.

Mr. Justice ERLE.—What 300 per cent!

The Counsel.—Do you think that practice such as this would be adopted by a respectable solicitor?

Mr. Justice ERLE.—Surely you will not take Mr. Warneford's opinion upon that?

Witness.—I think it is.

The JUDGE.—Surely this sort of practice of keeping offices in the country by illiterate and unqualified persons, is not adopted by attorneys who have a respect for their character?

Witness.—I think it is. I see no harm in it at all. I keep only one office. I acted under the advice of Mr. Horry, the barrister. I have clients at Bridgewater and Leek in the same way, and I acted under the advice of a very respectable barrister.

The JUDGE.—But an attorney ought not to want advice of a barrister as to keeping an office. Did you not give the prisoner to understand you would attend at an office at Swindon?

Witness.—At first I did; but I never went there.

Counsel.—And I should think you never would.

Witness.—I shall not. I have had occasion to employ a man at Bridgewater to serve notices, &c. He is a schoolmaster. His name is Harbin. The person I employ at Leek is a farmer. I have acted entirely under Mr. Horry's advice with regard to the prisoner, and the Swindon office. I have never charged for advice in my life. I am only paid for letters.

The JUDGE.—Have you never received anything for advice without charging? will you swear that?

Witness.—I never have from Bridgewater or Leek. I have never asked for anything for advice in my life. I have received something as a gratuity. It is for instructions.

The JUDGE.—Then you do get something for instructions?

Witness.—I never charge unless the suit goes out. I pay my agents by the job. I have never paid the prisoner anything. I have paid Harbin at Bridgewater.

The JUDGE.—Have you ever given him some of your own money?

Witness.—I should say so.

The JUDGE.—My notion is that Harbin deducts it.

Witness.—No, he makes out a little bill. He never receives money for me. I mean to sue on that. I receive the debts and costs myself. I send the bill to the party, who sends me a post-office order for the amount. I do not give the parties who act for me at Bridgewater or Leek any salary. I pay them by the job, not a per centage. The amount here is paid through a friend.

The JUDGE.—What is the name of that friend.

Witness.—Am I obliged to tell?

The JUDGE.—Yes, you are.

Witness.—Then it is A. Heaneker, esq. the lord of the manor of Leek. I am his attorney, and the man who acts for me is one of his tenants. I have attended at Bridgewater and Leek. I should have paid the prisoner when I received money arising from his introductions, but I never did receive any money except the one pound. In the case of *Hoskins and Ingram*, the plaintiff has never received a farthing, and the action has not been proceeded with. Why, I do not know. I took money from the plaintiff to carry on the action, and from the defendant to take the benefit of the Insolvent Act.

Re-examined.—I heard something to the disadvantage of the prisoner, but I did not tell the prisoner. I abandoned my intention of going to Swindon in consequence of what I heard.

Smith then addressed the jury for the prisoner.

Mr. Justice ERLE, in summing up, said that it appeared to him that observations might be made upon the way in which this money had been obtained, but he would forbear making observations upon other persons while the fate of the prisoner was undecided. The question was, did the prisoner at the time he made these representations know that they were false representations? But he begged the jury not to let the consideration of the matter, being a most pernicious fraud, lead away their minds from the true question in the case.

The jury returned a verdict of Not Guilty.

Mr. Justice ERLE then addressed the prisoner.—I trust, Osborn, you will take care that you don't unite with other persons in representing that legal advice can be given in this way.

Fitzgerald then applied for all the letters to be impounded.

Mr. Justice ERLE said he thought, for the purpose of justice, that all documents which had been read should be detained until the parties had decided whether any steps should be taken.

WILL OF THE LATE CHIEF JUSTICE TINDAL.—Probate of the will and codicil of the late Right Hon. Sir Nicolas Conyngham Tindal, Lord Chief Justice of her Majesty's Court of Common Pleas at Westminster, has been granted to his executors, Charles John Tindal, James Whatman Besanquet, and Daniel Smith Bockett, esqrs. The personal estate was valued at 45,000l. His will was made in September, 1842. He has devised certain freeholds at Cholmondeston and Aylesbury to his eldest surviving son, Louis Symonds Tindal, and his only other son, Charles John Tindal.

and has directed his executors and trustees to dispose of and convert into money the rest of his freeholds, with all manors and hereditaments, and all other estates, real, leasehold, or personal. He bequeaths to his daughter, Merelina, wife of the said J. W. Bosanquet, a legacy of 2,000*l.* having amply provided for her on her marriage; directs his executors to invest 8,000*l.* for the widow of his son Nicolas, and their two infant daughters, and has also made provision for other members of his family; has left legacies to his servants, and by his codicil, made in February last, leaves to his faithful housekeeper, who has been thirty years in his service, an annuity of 40*l.* The residue of his property of every description to be equally divided between his two sons. His lordship was in his 69th year.—*Post.*

CURIOUS WELSH CUSTOM.—One day last week a gallant captain who stands in a high position in the civil force of the adjoining county of Carmarthen, took a walk into a hayfield, where the haymakers were pursuing their avocations. No sooner had he entered the field, than, in accordance with the custom which generally prevails in some districts in Wales of giving every new visitor, of whatever class, age, or sex, an initiatory tumble in the hay, two women of Herculean strength seized the military man, and instantly laid him prostrate in dried and well-seasoned herbage. Being entirely ignorant of this custom of times, to which, as the lawyers say, the memory of man runneth not to the contrary, our hero naturally imagined that he was about being visited with summary and condign punishment for his former active interference for the suppression of the Rebecca disturbances. Having disengaged himself from the fangs of his amazonian assailants, he lost no time in procuring an authority for their apprehension. The case accordingly came on for hearing before the magistrates at Carmarthen. The complainant having detailed his grievance amidst the merriment of the audience, the magistrates, at the conclusion, became immoderately convulsed with laughter, one of their worship observing, that he had been himself served out in the same way fifty times. Case dismissed.

COURT OF CHANCERY.—Lord Lyndhurst, upon his retirement from office, had twelve judgments of appeals to deliver; eleven of these appeals he dismissed, *i. e.* confirmed the decision of the Court below, and one allowed. Lord Cottenham had delivered judgment in thirteen appeals, up to the 24th July, eleven of which he has allowed, and two only dismissed. This is a strange contrast, the appeals to both Chancellors being from the same judges.—*Evening paper.*

THE GRAND JURY SYSTEM.—At a Court of Aldermen of the City of London, held for the despatch of public business, Alderman Wood submitted the following motion to the Court:—

"That it be referred to the Committee for General Purposes to inquire into the present state of the administration of justice in the Central Criminal Court, as regards the existence of grand jurors, and to report to this court whether or not they can be safely dispensed with. And should the committee entertain the affirmative, that then they do report to the Court what substitute, if any, should be adopted, or what course would be best adapted to secure the trial of prisoners, and by what means such recommendation should be carried into effect."

Sir PETER LAURIE seconded the motion, which was carried unanimously.

RAILWAY DEPOSITS.—Sessional Paper, No. 208, contains returns to two orders. The first is a return of all the monies paid to the Court of Chancery in England, the Court of Chancery in Ireland, and the Court of Exchequer in Scotland, under standing orders 33 and 39 A, on account of railway bills now before parliament; the second is a return of the aggregate amount paid to the account of the Accountant-General in Chancery, during the last session of parliament, on account of railway companies, with a statement of the portion invested in Exchequer Bills, and the sums charged as commission for sales and purchase; and similar returns for Scotland and Ireland. From the first return it appears:—That from the 10th of Jan. 1846, to the 6th of Feb. (inclusive), there was paid into the Court of Chancery, in England, on account of railways, 11,396,793*l.* 9*s.* 10*d.*; into the Court of Chancery, in Ireland, from 4th of December, 1845, to 6th February, 1846 (inclusive), 934,267*l.* 10*s.*; and into the Court of Exchequer, in Scotland, from 17th of January, 1846, to 5th of February (inclusive), 2,323,371*l.* 10*s.*; a total of 14,654,422*l.* 9*s.* 10*d.* The English deposits were paid in the names of 299 schemes; the Irish, in the names of 48; the Scotch, in the names of 94; a total of 441. The subjoined returns show that of 3,444,906*l.* 5*s.* paid into Chancery, in 1845, on account of railway companies, 113,018*l.* 3*s.* 8*d.* were invested in Stock, and 819,891*l.* 18*s.* 10*d.* in Exchequer Bills—rather less than a third of the whole; that of 337,819*l.* 10*s.* paid into the Court of Chancery in Ireland, not a penny was invested in Stock or Exchequer Bills, and that of 180,789*l.* 15*s.* paid into the Court of Exche-

quer in Scotland, the whole was paid into the Chartered Banks, and invested in Stock and Exchequer Bills.

CIVIL CONTINGENCIES.—An account of the sum expended under the head of civil contingencies in the year 1845; and an estimate of the amount required for 1846. The expenditure defrayed from the grant of civil contingencies in each of the three last years was as under:—

	1843.	1844.	1845.
1. Extraordinary disbursements of ministers at foreign courts	15,717	9,395	—
Special missions, foreign and Colonial	34,868	39,544	23,685
Outfit and equipage of ministers at foreign courts	6,690	4,905	760
Expenses on account of the Governor-General of British North America	—	6,673	—
	57,275	60,507	24,445
2. Expenses of entertaining and conveying persons of distinction, ambassadors, governors, &c.	11,855	9,503	5,321
3. Expenses defrayed by officers of the household, not being part of the Civil List	6,704	3,337	6,895
4. Various public services	37,798	32,138	35,076
Ditto, ditto, payments made in Ireland	2,791	3,313	13,907
	116,468	112,660	85,484

The estimate for the year ending 31st March, 1847, is 100,000*l.*

ARCHBISHOPS AND BISHOPS.—Returns of the gross and net incomes (in the years 1844 and 1845) of the Archbishops and bishops of England and Wales, whether arising from their archbishopricks and bishopricks, or from any other ecclesiastical preferment, or from any other lay or spiritual office held by them respectively, stating how much arises from each of such sources, and distinguishing all sums paid to or received from the ecclesiastical commissioners; also stating by how much such total income of each archbishop and bishop is greater or less than the incomes proposed in the preamble of the Act 6 & 7 Wm. 4, c. 77; of the name of each archbishop and bishop, and the date of their appointment to their respective sees. This return was moved for by Mr. Elphinstone, and is met by the intimation that it cannot be enforced. "The commissioners are only authorized by Act of Parliament to call for returns of episcopal incomes at the expiration of every seven years, and the last of such return was made to the end of the year 1843."

The order is however complied with, so far as it relates to the amounts paid to and received from each archbishop and bishop by the commissioners, which were in 1844 and 1845, as under:—

	Sums paid by the Ecclesiastical Commissioners for England.	1844.	1845.
Archbishop of Canterbury	£ s. d.	681 0 10	681 0 10
Bishop of London	£ s. d.	1369 3 4	1369 3 4
Bishop of Winchester	£ s. d.	885 4 3	885 4 3
Bishop of Exeter	£ s. d.	738 2 6	738 2 6
Bishop of Bath and Wells	£ s. d.	1116 9 3	1116 9 3
Bishop of Bristol	£ s. d.	2135 16 8	2135 16 8
Bishop of Gloucester	£ s. d.	1543 6 8	1543 6 8
Bishop of Hereford	£ s. d.	—	—
Bishop of Lichfield	£ s. d.	—	—
Bishop of Oxford	£ s. d.	—	—
Bishop of Peterborough	£ s. d.	—	—
Bishop of Ripon	£ s. d.	—	—
Bishop of St. David's	£ s. d.	—	—
Bishop of Worcester	£ s. d.	—	—
Durham	£ s. d.	10,573 6 8	10,573 6 8
Chichester	£ s. d.	3437 1 8	3437 1 8
Ely	£ s. d.	1106 17 3	1106 17 3
Hereford	£ s. d.	—	—
Lichfield	£ s. d.	—	—
Oxford	£ s. d.	—	—
Peterborough	£ s. d.	—	—
Ripon	£ s. d.	—	—
St. David's	£ s. d.	—	—
Worcester	£ s. d.	—	—

PORT OF LONDON.—A Parliamentary paper has been printed (procured by Mr. Hume), giving a good deal of information respecting the port of London. Returns are given as to the dues for harbour service for nine years, ending in 1844, in which year the receipts amounted to 13,207*l.* 18*s.* 7*d.* and the expenditure was 10,623*l.* 17*s.* 5*d.* The next branch gives the receipts in the same period (from 1836 to 1844) from fines or quit rents for permission to cut through the banks of the Thames, or to erect buildings, &c. below and above London-bridge. In 1844 the receipts were 1,657*l.* 15*s.* 6*d.* It appears, in relation to vessels, that in 1844 (returns are made for the period already mentioned) there entered the port of London 4,741 British vessels engaged in the foreign trade, the tonnage of which was 1,008,463, and 2,144 foreign vessels employed in the same trade, the tonnage of which was 353,346. In the coasting trade there were 9,816 colliers, with a tonnage of 1,783,683, and of other coasters, 12,922 vessels, with a tonnage of 1,106,713. Of steam-vessels, similarly employed, it seems that in the coasting trade 1,238, with a ton-

nage of 346,238, were entered as British in 1844, and in the foreign trade 634 British, with a tonnage of 145,470, and 125 foreign, with a tonnage of 34,961. In 1844 there were imported into the port of London (sea-borne coal) 2,507,709 tons of coal, the gross duty on which, at 1*s.* 1*d.* per ton, was 135,834*l.* 4*s.* 9*d.* and the net duty, 135,434*l.* 4*s.* 9*d.* Of coals brought landwise there were in that year 72,255 tons, the gross duty (1*s.* 1*d.* per ton) was 3,912*l.* 3*s.* 9*d.* and the net duty, 3,832*l.* 3*s.* 9*d.* Mr. Hume wished to know the quantity of ballast and rubbish raised from the bed of the river Thames in the nine years mentioned. It seems that of ballast 494,663 tons were raised below London-bridge in the year 1844.

THE MINT.—The Mint accounts for the year 1845 presented to Parliament, pursuant to the Act 7 Wm. 4, c. 9, have been printed. These accounts show, under twelve branches, the supplies remaining in the Mint of advances for the purchase of bullion for coinage; sales of coin, seigniorage arising therefrom; and repayments into the Exchequer on account of advances. The supplies remaining in the Mint on the 31st of December, 1844 (after deducting 18,410*l.* 10*s.* 7*d.* for uncurrent dollars unpaid), amounted to 228,443*l.* 4*s.* 3*d.* The sums issued out of the consolidated fund for the purchase of bullion in last year amounted to 850,000*l.* The purchase of silver, bullion, and dollars (including the sum mentioned as unpaid) came to 723,087*l.* 16*s.* 9*d.* The Mint value on the purchase value of 704,677*l.* 6*s.* 2*d.* was 774,350*l.* 13*s.* 1*d.* The loss on worn coin was 2,802*l.* 9*s.* 8*d.*, and the seigniorage (difference on the assay) was 72,475*l.* 16*s.* 8*d.* The purchase of gold in silver ingots, and remitted by commissariat, was 17,740*l.* 15*s.* 4*d.* The old worn silver coin received from the Bank of England in the past year, and purchased for recoinage, came in nominal value to 23,900*l.* The Mint value was 21,097*l.* 10*s.* 3*d.*, and the loss on the purchase was 2,802*l.* 9*s.* 8*d.* The sum of 5,864*l.* 0*s.* 10*d.* was laid out in the purchase of fine silver bullion, for medals to be struck in commemoration of the success of her Majesty's arms in China. There were coined in the year, gold moneys in amount, 16,929*l.* 14*s.* 1*d.*; in silver, 647,658*l.*; and in copper, 6,944*l.* The payment for gold, silver, and copper moneys amounted to 754,021*l.* 19*s.* 3*d.* The repayment of advances out of the consolidated fund for the purchase of bullion was 678,772*l.* 2*s.* 9*d.*, and 60,761*l.* 12*s.* on account of seigniorage on the purchase of bullion, and excess by tale on the coinage, from the 30th of September, 1844, to the 30th September, 1845. The remaining three branches exhibit the debtor and creditor accounts of bullion and coin, coin and cash, and the Master of the Mint in account with her Majesty's Exchequer. The assets remaining in the Mint on the 31st of December last were 408,769*l.* 8*s.* 5*d.*

PORT OF LONDON.—Returns in continuation of those in the Appendix to the Report of the Committee of 1836, on the state of the port of London. The dues for harbour service upon ships which entered the port of London in 1844, amounted to 13,207*l.* the average of the three preceding years having been 13,180*l.* The expenditure in 1844 was 10,623*l.* the average of the three preceding years having been 8,441*l.* The receipts by the corporation of London, for permission to cut through the banks of the Thames below London-bridge, in 1844, amounted to 1,028*l.*; above, 629*l.*; both sums, particularly the former, exceeding the average of preceding years. The tonnage hauled in 1843 and 1844, exclusive of fishing-vessels, which are not required to enter and clear at the Custom-house, was as under:—

	1843.	1844.
Foreign Trade:—	Tons.	Tons.
British Shipping	1,022,650	1,008,463
Foreign	295,121	353,346
Coasting Trade:—		
Colliers	1,815,806	1,783,683
Other Coasters	1,085,466	1,106,713

The tonnage of steam-vessels entering the port, in the coasting trade, being all British, is stated at 327,992 tons for 1843, and 346,238 tons for 1844. In the foreign trade, there entered British steamers to the extent of 158,310 tons in 1843, and 145,470 tons in 1844.—The quantity of coals brought coastwise into London, in 1844, was 2,507,709 tons; in 1843, 2,730,534 tons; the quantity brought by land was 72,255 tons in 1844, and 34,593 tons in 1843. The net proceeds of the dues (1*s.* 1*d.* per ton) were in 1844, on sea-borne coals, 135,434*l.*, and on coals brought landwise, 3,832*l.* The quantity imported by sea has not materially increased during the last nine years; while that brought landwise has been steadily increasing from 1,199 tons in 1836, to 72,255 tons in 1844.—The number of tons of ballast and rubbish removed from the bed of the Thames, below London Bridge, by the Corporation's lighters, has for some years averaged nearly 500,000 per annum. The quantity which has been so removed above the bridge is comparatively small; and during the three years ending 1844 the return is "nil."

SHIPPING.—Mr. Wawn has procured a return of sailing vessels registered at each port of the United Kingdom, including the Isle of Man, &c. in 1845; of vessels entered and cleared coastwise in 1846; of

number and tonnage of vessels registered at each of the ports of the colonies; of vessels built, registered, sold, wrecked, and broken up in 1845. These returns, comprised in one, extend to twelve printed pages. It appears that in England, Scotland, and Ireland, the sailing vessels registered on the 31st of December last numbered, under fifty tons, 6,216, and 10,953 above that tonnage; in England; the tonnage of the former was 182,429, and of the latter 2,093,409; in Scotland the number under fifty tons was 1,204, and above fifty tons, 2,187; the tonnage of the former was 38,114, and of the latter 434,618; in Ireland the number under fifty tons was 1,004, of which the tonnage was 28,312, whilst of 1,066 above fifty tons, the tonnage was 178,518. The vessels and tonnage of those of Guernsey, Jersey, and the Isle of Man, are given. There were of steam-vessels on the same day, 357 registered in England under fifty tons, and 337 above fifty tons; in Scotland thirty under and 109 above; and in Ireland eight under, and seventy-one above fifty tons. Of vessels that entered and cleared coastwise in the year ending the 31st of December last, there were in England 109,570 inwards, with a tonnage of 8,357,366; and outwards 122,763, with a tonnage of 9,136,731. Of steam-vessels in the same category there were 10,358 inwards, with a tonnage of 2,066,921; and 10,263 outwards, with a tonnage of 1,957,061. In Scotland the number of sailing vessels inwards was 19,680, the tonnage 1,185,507; and outwards 19,758, the tonnage 1,172,118. And of steam-vessels, 2,889 were entered inwards, with 748,674 tonnage; and 2,862 outwards, with a tonnage of 713,009. In Ireland, of sailing vessels there were 17,839 inwards, with a tonnage of 1,360,567; and 10,664 outwards, with a tonnage of 684,611; whilst of steam-vessels there were 3,653 entered inwards, and 3,797 outwards, of which the tonnage of the former was 923,021, and of the latter 866,121. The three next branches of the return show the number of vessels and tonnage to and from the colonies in the year, embracing several thousand ships, as well as those from and to foreign ports. A return is likewise given of the vessels entered at the colonies of the United Kingdom. These returns, which show the great commerce of the country, mention that 788 sailing and 65 steam-vessels were built and registered last year, and conclude with the information that 534 sailing and 5 steam-vessels were wrecked last year, and 81 sailing and 19 steam-vessels were broken up in that period.

PROCEEDINGS OF LAW SOCIETIES.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

COMMITTEE ON EQUITY AND THE LAW OF PROPERTY.

The following reference was made to these committees:—

"To consider the system of uses and trusts as regards real property, with the view to its improvement."

THE FIRST REPORT.

In order to enable the society to form a correct opinion on the present reference, it will be necessary briefly to consider the changes which have from time to time been made in the law affecting it.

The actual livery and entry on the land attornment or matter of record, were one or other of them essential to every disposition of corporeal hereditaments at common law.

These were rendered necessary because all lands were held under circumstances which do not now exist. "Every manor (to use the words of a recent writer,) presented a little society of warriors and husbandmen combined for mutual defence and support. As such a league naturally required that a new and perhaps unfriendly associate should not be introduced without the privity of the lord and his existing tenant, livery on the transfer of the feud was a solemn installation, witnessed and sanctioned by the feudal body. As the same compact equally required that a strange lord should not be imposed upon the tenants against their will, attornment on the transfer of the seignory was the open adhesion of the vassals to their new chief."

Attornments and assurances of record have been practically abolished, and feoffments have of late been rare, and their peculiar effect as having what was called a *terrible operation*, or operating by wrong, that is, by disturbing the seisin, is taken away by an Act of the last session.

These assurances, therefore, for conveying an estate at common law can now be said hardly to exist for future purposes. But the peculiarities as to limitations of estates which arose out of the former circumstances to which we have alluded are still in force, and the question frequently arises, whether an estate operates at common law or in some other way. And this state of the law remains unaffected by the Act of last session already referred to. (8 & 9 Vict. c. 106.)

By that statute, sec. 2, it is enacted, that after the 1st of October, 1845, all corporeal hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery. The grant will probably become henceforth the assurance most generally employed for the conveyance of all freehold hereditaments, as well corporeal as incorporeal, and all the fictitious devices to which conveyancers have been hitherto obliged to resort, to avoid the necessity of giving livery of seisin, and more especially the lease and release will become unnecessary. They are virtually superseded.

The grant, it should be observed, is a common law assurance. It is complete without any other ceremonies than those necessary to a deed, and the hereditaments conveyed by it pass by the mere execution and delivery of the deed. No peculiar words are necessary to its validity, not even the word "grant." The seisin to be acquired under it is a common law seisin, and estates under it, unless a grantee to uses be introduced, must take effect at the common law.

It is important, then, briefly to consider what estates may be limited at the common law. And it is to be remembered that where a use is declared to the same person as would take the estate at common law, such person will take by the common law. Thus on a limitation to A, to the use of A, A will take by the common law.

Let us see, then, what are the rules at common law which still exist, on some very simple and familiar matters, for it is only to these that we now wish to call attention.

An estate for years may be made to commence in *futuro*, but a lease for life cannot. No estate of freehold can at common law commence in *futuro*, because it cannot be created at common law without livery of seisin or corporeal possession of the land (2 Bla. Com. 144); but livery would pass an immediate interest. Livery of seisin, however, is not necessary to a lease for years, although for a thousand years. The lease vests no estate in the lessee, but only gives him a right of entry, and when he has actually entered, the estate is then vested in him, but he is not seised, he has only a possessory interest.

It is, then, essential to a conveyance at common law that it shall take immediate effect, or immediately on the determination of some preceding estate. The tenancy is not allowed to be vacant or in suspense for an instant, for if it were, the effect of the livery, which was made on the creation of the first estate, would be gone, and a new livery, or what is equivalent to it, must be made.

Again, by the common law, on the same principle, whenever either the whole fee or a particular estate in tail or fee life was limited, no condition or other quality could be annexed to this prior estate, which would have the double effect of defeating the estate and passing the land to a stranger; for as a reversion it was void, being an abridgment or defeasance of the estate first granted, and as a condition no one but the donor or his heirs could take advantage of the breach of it. Again, after a fee-simple once vested at the common law, there can be no remainder limited thereon; when the entirety is granted there can be no remainder, nor (which is, perhaps, the most important of all) can powers to persons with partial interest, far less to strangers, of revoking the estates limited and of creating new ones (which are now of such constant use in conveyancing), operate when reserved upon a legal estate at common law.

But so convenient were these rules as to limiting an estate at common law, that at an early period it was found necessary to evade them, and equitable interests under the name of uses (which it is supposed with great probability were first introduced to evade the statutes of Mortmain) were resorted to for this purpose. These equitable uses, up to a certain point, were turned into the legal estates by the Statute of Uses, and it is quite true that, by virtue of this statute, if rightly employed, the conveyancer is able to remedy all the inconveniences which we have mentioned. Under that statute, an estate of freehold may commence in *futuro* by a future use being turned into a legal estate. A conditional limitation which determines an estate on a given contingency for the benefit of a stranger, is valid. An estate equivalent to a remainder may be limited after the grant of a fee-simple under the name of a springing or shifting use, and powers either to persons having partial interests or to strangers, whereby uses may be revoked and new ones limited may be created. It is by the operation of the statute upon uses, and powers of the descriptions above adverted to, that some of the most familiar transactions in conveyancing are effected.

However, the Statute of Uses has been found to be a remedial measure of limited range, and has had very different effects from those which were contemplated by the legislature; it was the last of a series of attempts then made to amend the law of real property: the statute book proves that there had been several previous attempts within a very short period to legislate effectually in this matter, and the final effort (the Statute of Uses) failed in its great object, which was to make the *cestui que use* the real owner of the estate, through what Blackstone pro-

perly calls "the technical scruples of the judges." The legislature never afterwards made any further attempt to effect this purpose.

Owing to these scruples of the common law judges, there were equitable interests which were held to be unexecuted by the statute, and of which the parties in whose favour they were created would have derived no benefit, unless the Court of Chancery had interfered to secure it to them. Uses, therefore, under the name of trusts, were renewed. Cases of doubt arose as to whether a limitation was a legal estate, executed, as it was called, under the Statute of Uses, or an equitable interest, the right to which could only be enforced in the Court of Chancery.

Thus it has happened that, although much can be done by virtue of the Statute of Uses, the benefit to be obtained from it falls far short of the intention of the legislature and the necessity of the case; and, to prove this, it is here also necessary only to resort to the most familiar rules on the subject.

To illustrate what has been stated above—on the construction of the statute, it was held that no use could be limited on a use, and on a footmoot to A and his heirs to the use of B and his heirs, to the use or in trust for C and his heirs; the judges held that the statute executed only the first use in B and his heirs, and that the second use was a mere *reality*; "not adverting," says Blackstone, "that the instant the first use was executed in B he became seised to the use of C, which second use the statute might as well be permitted to execute, as it did the first, and so the legal estate might be instantaneously transmitted down through a hundred uses upon uses, till finally executed in the last *cestui que use*." It was, perhaps, still more absurd to hold that, when lands are limited to A to the use of A to the use of B, B takes no estate at common law. So again, where A bargains and sells for a pecuniary consideration to B, the legal estate, by force of the statute, passes to B, and the judges held, that if there was a further limitation to the use of C, C took nothing at all. Thus in construing common assurances different rules were introduced, and the intentions of parties were frequently defeated.

Again, the statute only mentions such persons as were seised to the use of others; this was held not to extend to existing terms of years, or other chattel interests, whereof the termor is not seised but only possessed; and therefore if a term of 1,000 years, already in existence, be assigned by the tenant to A to the use of B to the use of C, the statute does not execute the use.

Many other rules, showing the narrow construction of the Statute of Uses, might be mentioned. But it is sufficient to mention these to show that the object of the framers of the Statute of Uses, of uniting legal and equitable interests in land, have not been obtained, and that it has been left to a succeeding age to carry their intentions into effect.

Although the limitations to which we have adverted failed as uses, they were supported, as we have already mentioned, in courts of equity under the name of trusts. And thus it is that in very many deeds and wills we have some estates operating at common law, others operating by virtue of the Statute of Uses, and others operating in equity as trust estates. To determine in which of these three modes an estate operates is then always a question, and sometimes one of great nicety and difficulty.

The student and the practitioner have to bear in mind three several systems of law, and their respective effects and powers, which are frequently conflicting with each other. Now is this a matter of mere theoretical obstruction—it is frequently of great practical importance. Trust estates are not recognised at all in the courts of common law. But in bringing an action of ejectment, it is necessary to have the legal estate; and, in order to grant a valid lease, the legal estate must in most cases be in the lessor, and yet very frequently, and more especially in wills and deeds of an old date, it is very difficult indeed to determine in whom the legal estate is vested. The many cases in the books as to these points sufficiently prove this position.

Even if the practical difficulties as to this were much less formidable than they really are, it is conceived that the law on this point is needlessly perplexed and confused, that it is a source of doubt which should not, and need not, arise at all, and that it not only tends to confuse and bewilder the student, but has led, and may still lead, the practitioner into most serious difficulties and needless expense and delay, the chance of which has not been in this respect decreased by the recent statute.

It is impossible for the state to prevent the consequences arising from ignorance of the law. But it is one of its first duties to remove from the law all needless sources of doubt and difficulty. Neither are we without indications that the tendency of modern legislation and opinion is to get rid of these needless technicalities. The modern maxims of law wisely regard land as commercial property, and discountenance all undue restriction on its alienation.

The most eminent judges have deplored the present state of the law to which we have been adverting. As regards the meaning put upon the Statute of

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"many a time and oft" to encounter in the painful ordeal of the Masters' offices in order to establish the value of, and obtain their due reward for, past services. In many instances it may be that counsel confide for payment of their fees in the integrity of their professional clients, and of necessity in their integrity only, it being established that a counsel can maintain no action for his fees. (Davis, Pref. 22, 1 Chan. Rep. 38.) The recompense, therefore, to an English advocate appears to have been founded upon the principle which anciently regulated the positions of patron and client in the Roman judicature; and if we look further into it, we shall find it was one of the most distinguished characteristics of the compact between them, that they were never to accuse each other, which, perhaps, is to be understood in the sense that it gave the patron authority to compromise any matter in dispute affecting the client, even without his acquiescence and against his wishes; so that whatever might be the result or mismanagement of the suit with which the former might be intrusted, he should not afterwards be impugned for it in the form of a complaint. In short, the patron was considered in the light of having the care of the interest of his client and his child; yet with all the authority of the one and submission of the other, any deviation of either of them was deemed an offence as heinous as that of treason. This brings us to the question which has now arisen, involving as it does the right of counsel to make such compromise of a suit as he, in his sole discretion, may consider to be advantageous to his client under all the circumstances of the case. By the civil law a slave cannot make a compromise without the leave of his master, and with regard to compromises with us, it is said not to be allowed in marriage causes, in criminal affairs, or in state questions, nor in any thing where the public interest is more concerned than that of private individuals. In the present case, it appears that the course adopted in the settlement of the dispute between the Corporation and Citizens of London and the Watermen's Company does not come within the scope of any of those prohibited compromises. The power delegated to the eminent counsel which occasioned this discussion, then, must not be narrowed, or "cabin'd, cribb'd, bound down," by any inferior agency, which was the medium of his investiture of that power, for if so, it attacks that "sacred tie" of honour which is the bulwark of his condition. Nevertheless, it is not to be forgotten that counsel guilty of such compromise are punishable by the statute of Westm. 1, 3 Edw. 1, cap. 28, with imprisonment for a year and a day, and perpetual silence in the courts, a punishment said not to have been without instances of having been inflicted for gross misdemeanors in practice. (Raymond, 376.) It therefore appears unavailing and injurious to the honour of the Bar generally to indulge in public invective, unless the conduct complained of can be brought within the meaning of that statute.

"C. R. G." thus comments on the case of the *Watermen's Company v. Corporation of London*.

I am induced by the article in your last week's journal under this heading to offer a few observations on the subject, as a member of the fraternity so peculiarly affected by it; and I believe I shall only be stating the undivided opinion of ninety-nine out of every hundred solicitors in the kingdom in what I have to say.

I certainly have no objections (which you invite) to offer against the argument you hold as to the erroneous proceeding of Sir F. Theiger on the occasion alluded to (I mean of course professionally), viz. the undertaking, wholly against the wishes and instructions of his clients (as appears by a letter from them to you in the paragraph above-mentioned), to abandon the case entrusted to him; except, indeed, that you do not sufficiently deprecate such an impropriety.

No one will pretend for one moment to accuse that gentleman of improper motives, or want of zeal or energy in the interests of his clients, or to question his great ability to carry through any matters of business entrusted to him; but consider, Sir, for one moment what is the result of all this both to the solicitor and his client, and more, to the gentlemen of the bar themselves, for if the principle acted on by the learned gentleman be followed (and what is more likely, considering the authority whence it emanates?) what abuses might it not bring about, and what perversion of all right might it not generate? What satisfaction, I ask, is it for an attorney to say to his client, "Well, our case was clear enough, every thing in our favour; but Mr. Attorney-General would not listen to my entreaties to go on with the case." What is the consequence? In all probability the client ruses his attorney for neglect of his business. The least thing he expects is to lose his business for the future.

It must be recollected there is no remedy against a barrister for breach of professional duty. He, forsooth, may pocket a handsome fee, and go to Brighton for a month or two on the strength of it, leaving the cause to take care of itself, without the ghost of remonstrance being offered, or it appears he may gratify

his clients with a view of his person in Court, only when there to act in direct opposition to their wishes and express instructions, aye, and his own previous advice too. This is too bad, and cannot be too severely reprobated. I am speaking generally, not from a view of this particular case.

I am fully aware of the very valuable and ready assistance of counsel in all cases, and of their high sense of honour and justice; but it is rather too much to pay a gentleman almost any thing his clerk chooses to name for his advice and assistance, only that, when the time arrives for acting upon that advice, he may pursue a course in direct opposition to the instructions framed in accordance with it, and which renders his clients liable to the serious consequences pointed out. I submit that such conduct is wholly beside the scope and meaning of the authority and responsibility submitted to counsel. If I am singular in my views, some of your numerous readers will no doubt correct me.

"Alpha" (of Birmingham) thus comments on "Conveyancing Reforms and the Registration of Deeds":—

Your correspondent of last week, "A Devonshire Attorney," touches the key-stone of our professional difficulties when he says, "I do not feel competent to originate, but I shall be happy to follow in, any course calculated to sustain our rights." This indeed lays open the true state of our case, that, with the fact plain before us that something must be done, there is no practical hand amongst us who will venture to originate of himself, or even to shew forth the good and the useful, as contradistinguished from the feeble and the mischievous, in the originations of others. Were it not so, who would have heard twice of so glaring a monstrosity as the scheme for compelling a registry in London of all deeds relating to property, however small, in every part of the kingdom, however remote? Surely a more complete embargo upon minor transactions could scarcely have been devised! Yet, whilst it is well known that these transactions (proving, as they do, the great mass, or, if I may so express it, the every-day routine of business in country offices)—whilst, I repeat, it is well known that these transactions are already borne down and incumbered beyond measure by a scale of stamp duties, so framed as to be little otherwise than absolutely villainous for its inequality and consequent injustice, and notwithstanding the fact that the proposed amendment is actually that each of these transactions shall now be blessed with the necessity, in the first instance, of searching at some registry office in London (perhaps 40, 80, 100, or 300 miles distant), and then, aptly, finishing off with a registration in the same office by means of a memorial, whereon 20s. duty would be payable, to say nothing of the additional 1l. or so for preparing memorial, and another additional 1l. for registering, besides agent's attendance, carriage, and portage, &c. &c.!!! Now, Sir, I would cut short such inventions as these by declaring at once that their author must be either a great fool or a great rogue, for I can really find no medium language adapted to such evil Genii. Why, in the name of goodness, if we must have a public registry, and if the latter be in itself (as, possibly, it might be), a great good, why not have one in every county at the least? Why this mockery and mummery of general benefit in taking every thing to the great metropolis? As if, forsooth, it could in any way benefit the furthestmost work in Northumberland to have the title-deeds of property therein registered at the greatest possible distance from Northumbrian ken! Besides, who shall ever know that he is safe, in trusting to a registry at such a distance? Between the time of search and your proposed registration, it is possible that half-a-dozen other instruments may be enrolled affecting the property in question, and then who, I pray, shall be answerable for the consequences?

Surely, then, if we are to have a registry at all, let each have it established as nearly as may be to the locality of his estate; let towns with a given amount of population have a registry to themselves, and at all events, let no one have to search at a greater distance than the centre of the county where his property may be situate; let the memorial stamp be repealed on all transactions not exceeding 500l.; let a short form of memorial be laid down so as to insure that it be inexpensive; nay, let the production of the deed itself render a memorial altogether needless; and let the fees for searching and registering, in minor cases, be limited at from 1s. to 5s.; and when this be done, perhaps the public will have cause to rejoice (whilst the profession will have nothing to regret) over the facility to be thus given in the passing and security of titles.

If by the foregoing observations, hastily thrown together, upon the impulse of your correspondent's remarks, I shall be deemed to have originated any thing worthy of his or the general approbation, I may, perhaps, be emboldened to try my hand at some other branch or branches of the contemplated reforms.

Deaths-at-Law, Next of Kin, &c. Wanted.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent impertinent curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount inclosed.]

220. NEXT OF KIN of THOMAS MITCHELL, the younger, formerly of Hatfield, county York, yeoman (died 1814), or their representatives.
221. NEXT OF KIN or personal representatives of WILLIAM FRASER, son of James Fraser, late of Ipswich, Suffolk, hatter.
222. NEXT OF KIN of JOHN ECLES, late of Enfield-green, in parish of Egham, Surrey, deceased. Something to advantage.
223. CHILDREN of RICHARD WHEELER, PETER WHEELER, JOHN WHEELER, WILLIAM WHEELER, JAMES WHEELER, and ANN KINGSTON, brothers and sisters of Thomas Wheeler, formerly of Manton, in the parish of Reigate, county of Wilts, yeoman (died Sept. 1830), who were living at the time of the death of Mary Wheeler, daughter of said Thomas Wheeler, in Oct. 1822, and their representatives. And also CHILDREN of JOHN HIGGINS, formerly of Wootton Rivers, Wilts (died Feb. 1829), or their representatives.
224. ROBERT LEISHMAN, late a lieutenant in the Shropshire militia, who resided some years with his family at Falkirk (N.B.), previous to his departure from London about the year 1829, from which place he is supposed to have sailed to the Swan River, or to some other settlement, but since which period he has not been heard of. Entitled to a life interest in certain freehold estates.
225. HEIR-AT-LAW of CHARLES LEWIS, of the parish of Trelawny, Cornwall, in the island of Jamaica (died 17th June, 1832), or his personal representatives.
226. DAUGHTER of the late Mrs. LAVERICK. Something to advantage.
227. THOMAS DANTON, of Deal, who in the year 1809 entered as seaman on board a vessel (name unknown), then in the Downs, bound to Rio Janeiro, and who was last seen at Coquimbo in the year 1831. Something to advantage.
228. ELIZABETH PURCHISS, who in the year 1832 was in the service of Mrs. Mary Purvis, residing in the parish of St. Mary, London, or any person giving information will be rewarded.
229. HEIR of HEIR-AT-LAW and NEXT OF KIN of JAMES MILNER, late of Crown-court, Old Change, London, calendarer, and of Bank Hill, Enfield, Middlesex (died April, 1830), or their representatives.
230. NEXT OF KIN of THOMAS SHERR, formerly of Cheshunt, county of Hertford, farmer. Something to advantage.
231. CHILDREN of JOSEPH KINSKY, formerly of High Holborn, wine and brandy merchant, by Elizabeth his wife, formerly Elizabeth Jones. Both dead.
232. CHARLES DOWNE, a native of Llangondein and Penbry, Carmarthenshire, South Wales, son of Anthony Downe, formerly of Forest Farm, Llangondein, who left that place many years since, or any of his descendants. Something to advantage.
233. DAVID M'RICHE, son of Mr. Alexander M'Richie, confectioner, Edinburgh, or his descendants. Said D. M'Richie left Edinburgh in the year 1811, and has not since been heard of. Something to advantage.
234. NEXT OF KIN of BENJAMIN EATON, late of Rotherhithe, Surrey, ship caulker, and afterwards of Grove-place, Deptford, Kent, gent. and afterwards of Bishop Wearmouth, county of Durham, gent. (died 11th September, 1815, at Bishop Wearmouth). Property bequeathed to them by Isabella Eaton, his widow.

(To be continued weekly.)

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

W. V. B. (Lowestoft).—We have referred the communication to our reporter.

AN ARTICLED CLERK.—If the writer has preserved a copy of his letter, he will see that his question is wholly unintelligible.

T. W. (Kingwinford).—With the strongest disposition to oblige our correspondent, we cannot interfere with the privilege of the gentlemen who report for this journal, of selecting and reporting cases on the importance of them requires.

The SHAM LAWYER from the North will endeavour to find room for next week.

INDEX TO THE LAW.

THE LAW DIGEST for the half-year ending Jan. 1st, now ready. It forms a complete index to the LAW, decided during the half-year, and contains upwards of 2,000 cases. Price 6s. 6d. in a wrapper. When stamped, it can be transmitted by post.

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N.B.—For Scale for Estate Advertisements, see JOURNAL OF PROPERTY.

THE LAW TIMES.

SATURDAY, AUGUST 1, 1846.

SHAM LAWYERS — PROFESSIONAL MALPRACTICES.

THE attention of the reader is directed to the report of a trial of one OSBORNE, at the late Wilts assizes, for practising as an attorney without being really such.

The fellow was acquitted, because he brought forward the attorney in whose name he had been practising. But the remarkable feature of this case is not so much the charge against the defendant as the evidence that was elicited in the course of the trial, especially from Mr. WARNEFORD, the solicitor who had lent his name to the prisoner, and who was the principal witness for the prosecution.

It will be unnecessary to repeat here the substance of those disclosures. They will be read with eager curiosity in the report. The system, of which a glimpse is thus afforded, is, we believe, much more widely spread than it is supposed to be. The offence is not rare of London attorneys permitting unqualified persons in the country to practise in their names, under pretence of being their clerks. How this is done appears by the evidence of Mr. WARNEFORD.

But what shall be said of his friend and adviser, Mr. HARRY, the barrister, who figures so prominently in this report. Enough has here transpired respecting him to make it necessary either that he should relieve himself promptly from the imputations thus publicly flung upon his professional reputation, or that they should be made the subject of investigation by those to whom is entrusted the duty of protecting the honour of the bar.

And as for Mr. WARNEFORD, he has confessed too much against himself to permit the matter to rest with the mere exposure of his doings. Unhappily, the Association by whom the work of protecting the respectability of the Profession had been undertaken, and accomplished with so much energy and ability during its brief existence, has perished for want of the necessary support from those who are always exclaiming that something ought to be done, but will do nothing when action is proposed. It is to be feared that from the proper guardian of the reputation of the Attorneys no help is to be looked for. But there cannot be two opinions as to what ought to be done in the case now under consideration.

More reproof and exposure are wasted upon such persons as those, whose conduct has called for these remarks. They are callous to censure; nothing less than the stringent hand of power will prevent a continuance of similar practices; and it is devoutly to be hoped that a severe example will be made of the offending parties.

And let not the tribe of Sham Lawyers flatter themselves that the acquittal of OSBORNE insures impunity to them. He escaped through very peculiar circumstances, such as might rarely again occur. Mr. Justice ERLE concluded with an emphatic warning to the tribe, which they would do well not to disregard. They may be assured that eyes are upon them everywhere, and that they will follow the fate of LAWSON, at Birmingham, if they continue their illegal practices.

THE COMMON PLEAS.

CONTRARY to a prevalent rumour, it has been announced in the House of Commons by the Attorney-General, that it is the intention of the present government to adopt a Bill, which had been prepared by their predecessors, for throwing open the Court of Common Pleas. Thus, supported by the two great parties, it may be deemed a settled matter. The propriety of this course has been apparent for a long time, and great practical inconveniences have arisen from the monopoly of the business of one of the Courts. The result, like that of all monopolies, was to diminish the demand, and thus ultimately to damage all the parties concerned. The business of the Common Pleas has been scarcely enough to prevent its law from getting rusty; yet can its bench boast of more ability than that of any other court. The first effect of opening the Common Pleas will be to cause a rush; everybody will be resorting thither, calculating on the small amount of business as securing early hearings. Thus the source of the advantage will be speedily removed; and it is probable that, for a time, this court may labour under the opposite evil of being overtasked. But such a mischief will be temporary only. The tendency of the business will be gradually to equalize itself among the courts, unless when a bench of remarkable strength happens for awhile to attract a setting of the tide towards itself.

Since the above was written, the Bill has been brought into the House of Commons by the Attorney-General, and was read a first time on Thursday night.

VERULAM REPORTS.

The Registration Appeal Cases, brought up from the last revision, are now completed in three numbers, forming Part II. of all the cases from the commencement to the present time may be had complete, in one double part, price 10s.; the cost of others for the same period being upwards of 2l.

It should be stated that this is the only series of Reports of Registration Appeals which contains all the cases decided down to the present time.

NECROLOGY.

JOHN TROTTER BROCKETT, ESQ. F.S.A.
OF NEWCASTLE, SOLICITOR.

Manibus date lilia plenis:
Purpureo spargam flores,
His saltem accumulata donis, et fangar inani Munera.

THE life of a country solicitor, engaged from "morn to dewy eve" in the round of professional duties, does not ordinarily afford those incidents which render biography entertaining and instructive. And yet we not unfrequently see, in the faculty of the law, men with minds so constituted that, in the midst of the most pressing engagements, they can find ease and relaxation in the simple change of study, and grasp intelligence on subjects which, to an ordinary observer, seem alien to what has not inaptly been termed "a legal mind." Mr. Brockett, the compiler of this glossary, was emphatically a lawyer—a diligent and painful student of the law—of great and extensive practice in it—and yet, as matters of amusement and relaxation, he grappled, but always with the hand of a master, with general literature, antiquities and lexicography—he brought numismatics under searching criticism—he sounded the depths of constitutional learning, and displayed an acquaintance with political science, which, in another walk of life, would have led to distinction.

Mr. Brockett was the eldest son of the late Mr. John Brockett, formerly of Witton Gilbert, and afterwards, for a long series of years, the Deputy Prothonotary of the local Courts of Record of Newcastle-upon-Tyne. On the family removing to Gateshead, which town was conveniently situated for the elder Mr. Brockett's residence, young Brockett was placed under the care of the Rev. William Turner, then the preceptor of a limited number of young gentlemen. His proficiency under this admirable teacher was most gratifying, and laid the foundation of a warm friendship between the master and the pupil, which closed only at death. The elder Mr. Brockett was a profound mathematician, and when his son was

not engaged with Mr. Turner, he had him under his own care in the Prothonotary's office, studying with closeness and intense application the most exact of human sciences.

When the younger Mr. Brockett reached the proper age, he selected the law as the object of his pursuit, and was placed in the office of the late Mr. Carr, where he remained for a year or two, and then removed to the chambers of Messrs. Clayton and Brumell, at that time the principal solicitors in the North of England. I had been acquainted with Mr. Brockett since March, 1802, but it was not until he became a clerk to Mr. Carr, that a close intimacy was formed between us. The law, till then, had been a dry and barren field to me, and I had determined on forsaking it the moment I could have my articles cancelled. My friend suggested the propriety of our meeting on an evening in every week, after the labours of the day, and discoursing on law subjects only. We did so; we read—we disputed—we prepared pleadings, briefs, and assurances in supposed cases, the consequences of which was, the imparting of a taste for forensic subjects, and an impulse in the acquisition of legal knowledge, of which I yet feel the force, and experience the advantage. I have often seen Mr. B. at those meetings, wield the golden metwand of the law with admirable precision, and anticipate the status he was afterwards to take.

After Mr. Brockett had served his articles, he became managing clerk to Mr. Donkin, who was then rising into great eminence as a solicitor. Having spent a short time with Mr. Donkin, he was admitted an attorney, and practised as such for many years in Newcastle, with distinguished ability and success. In the early part of his professional career, he was extensively employed as an advocate in the Mayor's and Sheriff's Courts of Newcastle, then under the able presidency of the greatest of provincial lawyers, the late Mr. Hopper Williamson, and dealing with pleas, generally cognizable only in Westminster Hall. In the management of his causes, Mr. B. displayed that tact and discriminating judgment, aided by a manly and impressive eloquence, which, had he been called to the bar, would have secured to him the honours of the noble profession to which he belonged; but the turn of his mind was to tenures and conveyancing, and in both of those branches of recondite learning he excelled. No man could read an abstract with a clearer head, or with a sounder judgment than Mr. Brockett, and the conveyances which flowed from his pen, display a beauty, a compactness, and a harmony of parts, most delightful to the student of the *Formularum Anglicanarum*. But his highest praise as a professional man is, that his practice was marked by the strictest integrity and liberality, and that his numerous friends, with implicit confidence, committed their concerns to his guidance and direction.

When a very young man, Mr. Brockett took an active part in the affairs of the Literary and Philosophical Society of Newcastle, and in the various discussions that took place at the meetings of that body. The society soon appreciated his attainments, and placed him first on its committee of management, and then in the office of secretary, which situation he held until his death.

Mr. Brockett's passion for antiquities was excited by a friend presenting him with some duplicate coins, and he became, in consequence, a member of the local Society of Antiquaries, almost, if not quite, from its very commencement, and, for many years previously to his death, a member of the council of that body, and one of the most intelligent and best informed of the gentlemen who assembled at the meetings of the society.

Dr. Dibdin, in his "Northern Tour," very justly states that Mr. Brockett "may be considered the father of the Typographical Society established at Newcastle: his hints on the propriety of establishing such a society having appeared in 1818—a short tract of six pages." But he was not only the father of that society, but one of the principal contributors to the splendid series of tracts issued from its press—a series which has raised the typographical character of the town to a first-rate eminence in the Republic of Letters.

He translated and published, in connection with this society, Beauvais' celebrated "Essay on the Means of distinguishing Antique from Counterfeit Coins and Medals," to which he added many important notes and illustrations. Mr. Martin, in his Bibliographical Catalogue of privately-printed Books, has enumerated this and several others of Mr. B.'s beautiful productions. But the works by which he was most distinguished, are his "Enquiry into the Question whether the Freeholders of Newcastle-upon-Tyne are entitled to vote for Members of Parliament for the County of Northumberland," and his "Glossary of North Country Words." The first of those publications, replete with constitutional and antiquarian lore, received the high commendations of Mr. Hopper Williamson and other lawyers, and the latter is appreciated wherever the English language is known. Mr. B. had, at the time of his death, made considerable preparations for a third edition of the Glossary, and his only surviving son, Mr. William Edward Brockett,

with filial piety for the memory of his lamented father, and to satisfy the demand of the public for a new edition of the work, has brought the present edition through the press, availing himself of the kindly literary aid of Sir Cuthbert Sharpe; George Taylor, esq. of Witton-le-Wear; Francis Mewburn, esq. of Darlington; the Rev. Dr. Darnell, of Stanhope; Mr. John Turner, of Newcastle, and other respected friends of his late father, who have taken a lively interest in making the work as perfect as possible. But the general diffusion of education tends to make the English nation "of one language and of one speech;" and the time seems not to be far distant when the North Country words, which Mr. Brockett has collected with so much care, will, in the strictest sense of the term, be Archaisms even in Northumberland.

The health of Mr. Brockett, for the last twenty-five years of his life, was such as to preclude his going much into company, but he spent such portions of his time as he could spare from the laborious duties of his profession, in those literary and scientific pursuits, for which he had so very refined a taste and ability. He formed a splendid Cabinet of Coins and Medals, which, after a sale in June, 1823, of ten days' continuance, by Mr. Sotheby, of London, realized 1,760*l.* 13*s.* 6*d.* His library of scarce and curious books in the December following, was sold by the same gentleman. The sale continued fourteen days, and realized 4,260*l.* Mr. Brockett had a small collection of prints and portraits, which was, with that of the late Dr. Whittaker, the historian, sold by Mr. Sotheby in January, 1824, and realized 60*l.* 3*s.* 6*d.* A catalogue of the books, with the prices realized, was published, and is still referred to, as an authority for the value of the works comprised in it.* At those sales Mr. Brockett had the gratification of seeing the most gifted men of the day in competition for the beautiful works which he had displayed so much judgment in collecting. But he was not a bare collector. He knew the value of his books, in the intelligence and wisdom treasured in their pages, and the use of his coins and medals, for the illustration and confirmation of history.

Immediately after those sales, Mr. Brockett started *de novo* in his favourite pursuit of collecting. And he made such rapid progress in this delightful work, that when Dr. Dibdin visited him in 1837, the learned author of the Bibliographical Decameron seems to have been astonished at what he saw and heard at Mr. Brockett's house. The greatest of bibliomane thus expresses himself, "In fact, the zeal, activity, and anxiety of my friend, in all matters relating to the literary, scientific, and antiquarian welfare of his native (adopted) town, have no limits and know no diminution. They rise up and lie down with him. One thing particularly struck me, in his closely-wedged miscellaneous collection—the choice and nicety of each article:—A golden Nero, or a first Walton's Angler, was as well nigh perfect as it might be; and his Horsley was only equalled by his Hock." In another part of his book, Dr. Dibdin gives the reader the following graphic sketch of his visits to Mr. Brockett:—"More than once or twice was the hospitable table of my friend, John Trotter Brockett, esq., spread to receive me. He lives comparatively in a nut-shell—but what a kernel! Pictures, books, curiosities, medals, coins—of precious value—bespeak his discriminating eye and his liberal heart. You may revel here from sunrise to sunset, and fancy the domains interminable. Do not suppose that a stated room or rooms are only appropriated to his books; they are 'up-stairs, down-stairs, and in any lady's chamber.' They spread all over the house—tendrils of pliant curve and perennial verdure. For its size, if I except those of one or two Bannatyners, I am not sure whether this be not about the choicest collection of books which I saw on my tour. Mr. Brockett is justly proud of his Horsley;—he opened it with evident satisfaction. They are all at Newcastle necessarily Horsley-mad. I suffered him to enjoy his short-lived triumph. His copy was upon small paper: of most enviable size and condition. Were you ever at Belvoir Castle?" observed I.—"Never," replied he. "Then take care never to visit it; for there is a copy upon large paper such as

eyes never beheld. Having seen and caressed it, you will throw this into the Tyne." "I shall take care to avoid Belvoir Castle," was my friend's reply.

"Mr. Brockett may justly boast of a superb series of Roman gold coins, from Julius Cæsar to Michael VIII. Paleologus; and although his collection does not comprise every known variety, it contains all the specimens of any rarity and interest. What renders it more peculiarly valuable is the exquisite state of preservation of the whole. But here are also British gold and silver coins, of our Henrys and Edwards, and medals which illustrate in particular the local history of Newcastle. Nor is my friend a mere collector of these things. The numismatic blood tingles in his veins: he is deeply read in numismatic lore; at times evincing the taste of Eckhel, and the learning of Bœsch."

It only remains for me to state, that in domestic life, Mr. Brockett was a pattern of all that was amiable. His family participated with him in his favourite studies and pursuits, and his home was the abode of peace and happiness. Some years previously to his death, he lost his eldest son, when that son's genius was streaming forth in every direction, and indicating a career of no ordinary character. He sustained the shock with surprising fortitude, but it may have been the remote cause of his death, which occurred on the 12th of October, 1842, when our lamented Glossographer was only in the 54th year of his age. At the time of his death, Mr. B. was F.S.A. London, and, as I have already stated, of the Council of the Society of Antiquaries, and Secretary of the Literary and Philosophical Society of Newcastle-upon-Tyne. The Council of the Society of Antiquaries, and the Committee of the Literary and Philosophical Society, followed the remains of their old friend and associate to their resting-place, whilst his pall was borne by Dr. Headlam, Mr. Adamson, and other friends, who had enjoyed a closer intimacy with the eminently-talented and honoured individual, whose loss was so generally deplored.

JOHN FENWICK.

11, Ellison-place, Newcastle-upon-Tyne,
June, 1846.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5*s.*]

BIRTHS.
GRAY.—On the 24th ult. at No. 4, Lonsdale-square, the lady of John Gray, esq. barrister-at-law, of a daughter, SIMON.—On the 28th ult. at No. 11, Wells-street, Guildford-street, the lady of Henry A. Simon, esq. of the Middle Temple, barrister-at-law, of a daughter.

MARRIAGES.
GIBBENS, George, esq. late a Judge of the Hon. Company's Supreme Court of Judicature, Bombay, to Maria, second daughter of J. S. Smith, esq. of Park-hill, Reigate, on the 28th ult. at St. Mary's Church, Reigate, Surrey.

DEATHS.
BOYD, Thomas, youngest son of Thomas Wermald, esq. of Bedford-row, on the 26th ult.
GHEAM, Maria, the wife of the Rev. G. Gream, at Rotherfield Rectory, Sussex, on the 26th ult. aged 63.
HARMAN, L. esq. solicitor, of Chester-place, Kennington, on the 24th ult. aged 53.
LEGG, George William, eldest son of George Legg, esq. of Gray's Inn, and Maids-vale, Edgeware-road, on the 27th ult. aged 16.
WHITE, James Hobson, esq. solicitor, on the 23rd ult. at Cirencester.

NOTICES OF NEW LAW BOOKS.

A Treatise on Copyhold, Customary Freehold, and Ancient Demesne Tenure, with the Jurisdiction of Courts Baron and Courts Leet, &c. &c. By JOHN SCRIVEN, Serjeant-at-Law. *The Fourth Edition, embracing all the Authorities to the present period.* By HENRY STALMAN, Esq. of the Inner Temple, Barrister-at-Law. In two vols. London: Butterworth.

From the time of its first publication, *Scriven on Copyholds* has been a standard book—the recognised authority upon the subject of which it treats. The name is familiar to every lawyer, the work itself to most lawyers. Every student who desires to master his profession adopts this as a part of his course of reading. Every practitioner whose business is in any manner connected with real property law places it in his library. Commentary on such a work would, therefore, be impertinent.

But our purpose in this department of the *LAW TIMES* is, in truth, not so much criticism as description. Unlike books of general literature, a law-book could only be criticised properly by one who is better acquainted with the subject than the author. Such competent reviewers are not to be found, and without pretending to accomplish what we could not possibly perform, we have limited our labours to the humbler but more really useful task of preserving a sort of record of the progress of legal literature, as a portion of the intelligence in

which our readers have a peculiar interest. In the accomplishment of this duty, our aim has been to give such an account of law-books, or their appearance, as shall enable the practitioner to form his own judgment whether the volume under notice be in its subject and mode of treatment adapted to his requirements. To this end the course pursued is to describe faithfully the plan of the work (if a new one); its divisions and subdivisions; its completeness for reference in its Tables of Cases and Contents, and the conspicuousness of its Index; and then to exhibit the writer's manner by extracts which are selected with the double purpose of displaying the author and instructing the reader. When the book under notice is not a new one, but only a new edition, our duty is, necessarily, more limited; for, in such case, we have not to describe the plan and structure of the work, as far as the author's original form remains, but only to state what are the improvements introduced.

We take this present opportunity to explain the design of this department of the *LAW TIMES*, because some misunderstanding has occurred in some quarters with respect to the office here undertaken. As this was not unlikely to have been occasioned by the title formerly given to it, we have changed it for one more accurately descriptive of the design; and this explanation will, we trust, render any further reference to it unnecessary.

Mr. STALMAN, the editor of the present edition of *Scriven*, has effected very considerable improvements, by the application of great industry, guided by sound judgment. The reader is probably aware that Mr. SCRIVEN published a supplement in 1842, embracing all the authorities and statutes bearing upon his subject since the appearance of the third edition, together with some additional precedents. This the editor has incorporated, bringing down the cases and statutes to the present time.

It may be thought, by some readers, that with a statute for the enfranchisement of copyholds, a knowledge of the Law of Copyhold will be of less and less practical service every year. They will be surprised to learn that this *Law*, *as it was promulgated*, has been virtually a dead letter. Commissioners have been appointed, and all the machinery has been provided, and but one solitary instance has occurred of the adoption of the statute! The probable cause assigned for this by Mr. STALMAN is, that copyhold tenants require not commutation, which perpetuates, but enfranchisement, which extinguishes the tenure. We should be inclined from experience to say that the true cause of the failure of the Copyhold Enfranchisement Act is, that its provisions are not compulsory. On such a subject it is scarcely possible to find landlord and tenant agreeing. The Legislature must deal with copyholds as with tithes—enforce enfranchisement on terms to be arranged by the commissioners, with an option to the tenant to pay the commutation in the form of a rent-charge, redeemable on payment of a fixed sum.

The edition before us is an extremely handsome one. The labour that has been bestowed upon the successive editions, accumulating all the learning that continued research and new decisions could supply, is best shown by the Table of Cases prefixed, which alone occupies no less than seventy pages in double columns.

Another valuable feature of this treatise is an Appendix, containing rules for holding customary courts, courts baron and courts leet, forms of copy rolls, depositions, and copyhold assurances.

Had this been a *first* instead of a *fourth* edition, we should have been tempted to have extracted largely from its valuable contents; but the rule that restricts extract to new works must not be violated except under very special circumstances, as when the book is not so well known as it ought to be. In this case the name of SCRIVEN is as familiar as that of the subject the author has made his own.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY

ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.

(Continued from page 383.)

Thus stood the law, previously to the Operation Statute, 1 Vict. c. 26, and so it still remains with respect to wills made previously to that period;

* The late Earl of Durham, then John George Lambton, esq. purchased some of the brightest gems in the collection:—The following is a list of them, with the prices at which they were sold. They now constitute part of the library of Lambton Castle:—

Allen Tracts, Darlington (Collection of), 82*l.* 1*s.*
Edmonstone's Baronagium Genealogicum, 6 vols. 17*l.* 17*s.*
Gardner's England's Grievance, 1656, 20*l.* 7*s.* 6*d.*
Garland's (Right Choice and Merrie Collection of), made by William Garret, 6 vols. 10*l.* 10*s.*
Glossary of North Country Words, an Original Manuscript, compiled by Mr. Brockett, 8*l.* 2*s.*
Hogarth's Genuine Works, published by Boydell, 17*l.* 3*s.*
Holbein's Heads of the Court of Henry VIII. 2*vol.* 2*s.*
Holme's Academy of Armoury. Chester, 1673, 16*l.* 10*s.*
Magna Charta, printed in gold, 54*l.* 12*s.*
Northumberland Household Book, 1770, 16*l.* 10*s.*
Prynne's Works and Parliamentary Writs, 1837, 15*l.*
Mr. Lambton was much disappointed at this sale, in not buying the splendid copy of Bourne's History of Newcastle, on large paper, and illustrated with numerous drawings and prints, which was purchased by Mr. Jupp for 54*l.* 12*s.*



but with respect to those made subsequently, the 29th section of the Act has thrown considerable doubt upon the matter. That section enacts, "that in any devise or bequest of any real or personal estate, the words, 'die without issue,' or 'die without leaving issue,' or 'have no issue,' or any other words which may import either a want or failure of issue, of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue, in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or a preceding gift, being without any implication arising from such words, a limitation of an estate tail, to such person, or issue otherwise. Provided that this Act shall not extend to cases where such words as aforesaid import, if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age, or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue."

Construction of the New Will Act upon the terms "dying without issue," &c.—Now, as the above-mentioned Act confines the import of the terms "dying without issue" to the death of the party, it seems to follow, upon the authority of the cases in which the dying without issue has been construed to relate to that period (*Pelle v. Brown*, Cro. Jac. 590; S. C. 1 Eq. Ca. Abr. 187; *Hanbury v. Cockerell*, 1 Roll. Abr. 835, pl. 4; *Porter v. Bradley*, 5 T. R. 143; *Doe dem. Barnfield v. Wetton*, 3 Bos. & Pull. 324; *Sheers v. Jeffery*, 7 T. R. 589; *Eastman v. Baker*, 1 Taunt. 174; *Doe dem. Smith v. Webber*, 1 B. & A. 713; *Doe dem. King v. Frost*, 3 ib. 546; *Glover v. Menckton*, 3 Bng. 13; *Goldin v. Lakeman*, 2 B. & Ad. 30; *Stevenson v. Glover*, C. P. Apr. 1845); that if the preceding words of limitation were sufficient to pass the fee, a limitation over in default of issue would not, as to wills made subsequently to the operation of the Act now under discussion (31st Dec. 1837), extend to an estate tail but an estate in fee-simple, subject to a limitation over by way of executory devise. (*Stevenson v. Glover*, C. P. Apr. 23, 1845). But where the limitation over is in default of issue, where the devise has an estate for life limited in express terms, it becomes a far more doubtful matter. It appears from the words of the Act that under a limitation to one for life, and if he should die without issue then over, the first devisee will only take a life estate; although, as the law stood previously, he could have taken an estate tail by implication, in consequence of the limitation over in case of his dying without issue. Now the saving clause of the section above alluded to will not permit an implication arising from the words, "dying without issue," to be construed as an indefinite failure of issue, and by thus restricting the limitation over the first devisee would, it seems, take a mere life interest, and no more. (*Walter v. Drew*, Com. 372). Assuming, therefore, that the first devisee takes only a life estate, are his issue to take any thing? And if so, what? It should seem that they would take, and in fee-simple. There appears to be quite enough to raise an estate in them by implication. A limitation to the issue of A, where they took as a class as purchasers, would even before the Act have given to every single individual answering that description a life interest (*Cook v. Cook*, 2 Vern. 545); and as by the 28th section, a devise without any words of limitation, will pass the fee, the life interest they would formerly have taken, will, by the Act now under discussion, be extended to an estate in fee-simple, which it seems the issue would take *per capita* as joint tenants, upon the long established principle, that where an estate is given to a plurality of persons without adding any restrictive, exclusive, or explanatory words, it makes them immediately joint tenants (2 Bla. Com. 180.) But where lands are simply devised to A with a limitation over to B in case he shall die without issue, there seems to be no doubt but that A will take an estate in fee-simple subject to a limitation over to B by way of executory devise in case A should leave no issue at his death.

As to a limitation over after a dying without heirs generally.—It may be proper to observe that the new Will Act is silent upon the subject of a dying without heirs generally, which, being an event beyond what the law permits for the vesting of an executory devise, would be void for remoteness.

The only exception to this rule is where the person to whom the limitation over is made, is a relation of and capable of being the collateral heir of the first devisee, for then the first devisee would be construed to take an estate tail only, and the limitation over would be good; because the latter limitation plainly denotes that only lineal heirs could have been intended, as the first devisee could not have died without heirs as long as the remainderman or any of his lineal heirs existed. (*Morgan and Wife v. Griffith*, Cow. 224; *Tyte v. Willis*, Ca. temp. Talb. 1; *Brice v. Smith*, Willes 1; and see *Preston dem. Eagle v. Funnell*, ib. 164.) But to have this operation the person to whom the estate was limited over must not only be a relation, but also a relation of that character as could have inherited from the first taker (*Attorney-General v. Gill*, 2 P. Wms. 369); consequently, prior to the late statute, 3 & 4 Wm. 4, c. 106, if the person to whom the lands were devised over had been of the half blood to the first devisee, and, as such, incapable of inheriting it, must have been considered in the same light as a devise over to a stranger. (*Tilbury v. Barbat*, 3 Atk. 617; 1 Ves. 89); consequently, the first taker would have taken a fee-simple absolute, and the limitation over would have failed for remoteness. These cases also afford an example in support of the proposition I have before alluded to, that the same words will have a different operation when applicable to persons standing in a particular degree of relationship to each other, than they would when applied to strangers.

Distinction between half and whole blood, how far exploded by recent enactments.—It will be proper, however, to remark here, that the distinction between a brother of the half blood, and one of the whole, is now very justly and happily exploded, so that now a brother of the half blood will be entitled to inherit next after any relation in the same degree of the whole blood, and his issue, where the common ancestor shall be a male, and next after the common ancestor, where such common ancestor shall be a female. (Stat. 3 & 4 Wm. 4, c. 106, s. 9.)

Estates may arise by implication from other devices in the same will.—An estate may also arise by implication, by reason of words of direct and immediate reference to other devices in the same will. Thus in *Doe dem. Wight v. Cundall* (9 East. 400) a testator devised thus:—"I give and bequeath unto the two children, Elizabeth and Joanna, daughters of my brother, William Wight, deceased, the first four freehold houses next my dwelling, built by me in 1770, when they have attained the age of twenty-one years; but the executor or executrix shall be accountable for the profits of the said houses until the said children attain the aforesaid age of twenty-one, or day of marriage; but if either of them should die before the age of twenty-one years, then the survivor shall be heir to the other two houses. Likewise I give and bequeath to the two children, Robert and Rebecca, son and daughter of my late brother Robert, deceased, the next four houses adjoining the same, on the same conditions as my brother William Wight's children." It was held that the fee passed which would go over to the survivor in case one died under twenty-one, and would descend or be disposable if he died attaining twenty-one; and that a devise of the other land to the two children of Robert on the same conditions as his brother William's children, was to receive a similar construction.

A reference to a person, as heir, may create an estate by implication.—So where a testator refers to a particular person as his heir, though mistaken as to the fact, such reference will be sufficient to create an estate by implication to the party referred to, without any words of express devise. As in *Tilley v. Collyer*, 3 Keb. 589, where a testator having issue by C. three daughters, S., A. and E. devised to C. for life, all his freehold wherever, until S. his heir, came to twenty-one, paying to the heir 10s. during the term, and to the rest after fifteen years old 20s. a piece, and the heir to pay to A and E 100l. a piece, 40l. at the decease of the wife, &c. and if S. his heir, died without heir before twenty-one, so that the lands descended and fell to A, then A to pay to E, &c.; Lord C. J. Hale held, that notwithstanding the testator was mistaken in his intent that his eldest daughter was his heir, that he intended his lands should go according to that mistake; therefore, albeit there was no express devise to S, yet she being named his heir, was suffi-

cient to exclude the rest and make her sole heir. (See, also, *Taylor v. Webb*, Sty. 301.) And if a testator should refer to a disposition made by him, when, in fact, he has not made any such disposition at all, a devise may still arise by implication. *Bibbs v. Wilker* (Ambl. 661) is a case of this description. In that case a testator bequeathed one moiety of certain leasehold estates to E G, and, if he should die before twenty-one, to G S; and, if he should die before a certain event, to another person; and, after her death, to A; and provided that, in case A should die without issue, and E G or G S should be then living, or either of them, the said moiety of his leasehold messuages before given to the said A should go to E G and G S: Sir T. Sewell, M.R. said that, as there could be no doubt of the intention, and the words of gift being omitted by mistake, the Court would supply them, and would imply a gift to A and her issue, with contingent limitations over. But, generally speaking, a mere recital to give, without more, will not amount to a gift or demonstration of an intent to give. Thus, where B, by his will, reciting that he was entitled for life under the will of A to the advowson and rectory of D, with remainders over, "subject to a direction in the said will that my brother, J D, shall be presented to the said rectory when it shall next become vacant, which, it is my wish, may be complied with; now I hereby declare it to be my desire and earnest wish, that in case, upon the vacancy of the said living, the said J D shall not be then living, or in case the said rectory shall again become vacant, after the said J D shall have been presented to and accepted said presentation, then" A P was to be presented. The fact was, that under the will of A, J D was only entitled to the presentation on a contingency which had not happened. A question then arose, whether the expressions in the will of B raised a gift by implication so as to put the persons actually entitled under it to their election; and Lord Eldon, upon the grounds above alluded to, decided that they did not.

The same words operate differently when applicable to different kinds of property.—In order to ascertain the intention of the testator, the same words, when applied to different kinds of property, may receive a different construction with respect to the one, from what they would when applied to the other. Hence a limitation in the same terms which when applied to freehold property would have been considered to imply an indefinite failure of issue, when applying to leaseholds, have been construed to mean a dying without issue at the death of the first taker. The reason for adopting this construction is to give effect to the limitation over, which could not take effect in the case of leasehold property if the limitation over were only to take effect on an indefinite failure of issue in the first taker; for that would have been sufficient to confer an estate tail upon him in the case of freeholds, and would thus have brought the limitation within the long-established rule that where personal estate is bequeathed in terms that would have passed an estate tail in freehold property it will pass the absolute interest in leaseholds; the consequence of which would be, that all the ulterior limitations would be void. In order, therefore, to support these latter interests the Courts have adopted the principle above laid down. The case which best illustrates this doctrine is *Forth v. Chapman*, 1 P. Wms. 663. There a testator devised the residue of his real and personal estate to his nephews W. and G. and if either of them should depart this life and leave no issue of their respective bodies, then he gave the said premises to D; here Lord Parker observing that the devise carried a freehold as well as a leasehold interest, nevertheless thought it might be reasonable enough to take the same words in different senses as to the two different estates; and that as to the freehold the construction should be that if W. or G. died without issue generally, and as to the leasehold, the same words might be construed to mean a dying without issue living at the death. (*Fearn v. E. 476; Harris v. Lincoln* (Bishop of) 2 P. Wms. 140.) Since the statute 1 Vict. c. 26, it seems that this dying without issue would, in a devise subsequent to 1837, be confined to the death of the first taker in the freehold, as well as in the leasehold property (sect. 29); but as to wills made previously, the case of *Forth v. Chapman* affords an example in support of the proposition, that the same terms, even when used in the same instrument, if applied to different kinds of property, may pass a limited interest in the one case, and the absolute interest in the other.

Where lands are devised subject to a charge.—When lands are devised to a person without words of limitation, charged with the payment of a sum in gross (*Collier's case*, Cro. Eliz. 878; *Frank v. Lee*, 2 Show. 38; *Read v. Hatton*, 2 Mod. 25); or of debts and legacies, (*Doe dem. Palmer v. Richards*, 3 T. R. 356; *Doe dem. Whitley v. Holmes*, 8 T. R. 1); or of an annual sum (*Webb v. Hearing*, Cro. Jac. 114; *Spicer v. Spicer*, ib. 527; *Read v. Hatton*, 2 Mod. 25; *Smith v. Tendall*, 2 Salk. 685; *Jenkins v. Jenkins*, Willes, 635; *Badeley v. Leapingwell*, 3 Bur. 1553; *Goodright dem. Baker v. Stocker*, 5 T. R. 13; *Andrew v. Southhouse*, ib. 292; *Frogmorton v. Holliday*, 3 Bur. 1618); or the devisee is to give or relinquish a benefit, or to release a debt, or to buy an estate for another, he will take an estate in fee-simple (2 Rep. 21; 6 Rep. 16; 1 Roll Abr. 834; *Green v. Armistead*, Hob. 65); and it will make no difference whether the charge amounts to the annual rent or value of the land or not (*Webb v. Hearing*, Cro. Jac. 115; *Smith v. Tendall*, 2 Salk. 685); or the payment is only to continue during the life of another (*Jenkins v. Jenkins*, Willes, 635; *Badeley v. Leapingwell*, 3 Bur. 1553; *Goodright dem. Baker v. Stocker*, 5 T. R. 13; *Frogmorton v. Holliday*, 3 Bur. 1618); for the devise will be intended to have been designed for the benefit of the devisee; and if he had an estate for life only, he might die before he received the amount of the charges, and, consequently, might be a loser. But where the devisee was only to pay out of the rents and profits generally, or when, or as, or after they were received, it was considered unnecessary to extend the intention of the testator beyond the words of the will; consequently, he would have taken no more than a life estate; and the construction was the same where he was not to take until after the charges were satisfied. (*Dickens v. Marshall*, Cro. Eliz. 530; *Deacon v. Marsh*, Moor, 594; *Fairfax v. Heron*, Fre. Cha. 67; *Canning v. Canning*, Mosel. 240; *Merson v. Blackmore*, 2 Ask. 341; *Denn dem. Moor v. Mellor*, 5 T. R. 558; *Doe dem. Small v. Allen*, 8 T. R. 497; *Doe dem. Bowes v. Blackett*, Cow. 235; *Doe dem. Briscoe v. Clark*, 2 Bos. & Pull. N. R. 842; *Doe dem. Am. Paddy v. Paddy*, 4 East, 496; *Doe dem. Jackson v. Ramsbottom*, 3 Mau. and Selw. 516.) And if the charge is in a distinct clause, without any direction either expressly, or by construction, that the devisee is personally liable, a devise in fee would not be implied from such a charge. As, where a devise was to A, and B except 20l. to be paid out of E's part of the lands, it was held to pass an estate for life only; this being no charge on the estate in the hands of the devisee, but a charge antecedent to it. (*Roe v. Dav*, 3 Mau. and Selw. 518; see also *Doe dem. Briscoe and Wife v. Clark*, 2 Bos. and Pull. N. R. 343; *Compton v. Compton*, 9 East, 267.) And even where there is a personal charge on the devisee, and a testator may, nevertheless restrict the interest to a lesser estate than a fee, as by limiting his estate expressly for life or in tail; and even a devise to a man, his heirs, and assigns, subject to a charge, may be reduced to an estate tail by a clause which introduces another gift to commence on his death without issue. But this, it seems, it will not do as to wills made after 1837; because, by the express words of the new Will Act (sec. 29), the dying without issue must be construed as dying without issue at the time of the death of the party, which will create an estate in fee subject to a limitation over by way of executory devise, instead of an estate tail with a remainder over, which it must have been, had the limitation been construed, as it was formerly, to mean an indefinite purchase of issue in the first take.

(To be continued.)

Public Sales.

By Messrs. NEWTON and APPLETON, at Garraway's. Four residences, Nos. 7, 8, 9, and 10, Queen's-road, Richmond, distinguished as the Park Villas. A lease will be granted for 99 years, from Lady-day, 1844, at a ground-rent of 10l. 10s. per house, in four lots, produced 679l., 690l., 691l., and 715l.—total, 2,775l.

By Messrs. TOPLIS and SON.

A residence, No. 20, Richard-street, Islington, and stables, in Sermone-lane; held for a term which will expire at Lady-day, 1870, at 6l. 10s.—290l.

By Messrs. DAVIS and VIGERS.

A freehold and copyhold estate, comprising the Alstone Farm, containing 237 acres of arable, pasture, orchard, and wood land, with farm-house and agricultural buildings, seated on the eastern slope of the Oxenon hills, on the borders of Worcestershire and Gloucestershire, let at 470l. per annum, except 6s. 11d. of woodland in hand—10,000l.

By Mr. MOORE.

An improved rent of 37l. 10s. 8d. per annum, arising from a house and shop, No. 64, in the Hackney-road; held for 204 years—300l.

Ten houses, Nos. 1 to 4, Lansdowne-place, and Nos. 1 to 6, Ormsbury Cottages, Holloway-road; held for 572 years, at 33l.; let at 70l. 4s.—150l.

A house, No. 20, Hawkins-street, Mile-end; held for 54 years, at 2l. 8s. per annum—210l.

A house, No. 11, Jane-street, Commercial-road East; held for 544 years, at 3l. 7s. 6d.; rates, 14l.—145l.

A house, No. 4, Duckett-street, Stepney; held for 664 years, at 2l. 2s. per annum—90l.

Three freehold houses, Nos. 1, 6, and 7, Ship-street, Wapping—405l.

Twelve houses, Nos. 1 to 12, Edmond's-place, Cripplegate; held for 55 years, at 25l. per annum—85l.

A freehold house, No. 15, Devonshire-street, Mile-end—400l.

MARKET VALUE OF LANDED PROPERTY.—An estate in the parish of Cherry Hinton, in the neighbourhood of Cambridge, was sold by auction on Monday, in eleven lots. The greater part of it is freehold, or equal thereto, and tithe free. Lot 1, two fields of arable land, consisting of 41a. 3r. 36p. of which 32a. 0r. 31p. are freehold, and 9a. 3r. 5p. copyhold, brought 2,680 guineas. Lot 4, a freehold meadow, tithe free, containing 7a. 2r. 15p. sold for 520 guineas. Lot 10, an inclosure of strong arable ground, containing 9a. 1r. 21p. more or less, brought 500 guineas. The averages of the 11 lots gave a result of 7½ guineas, or 75l. per acre. On Wednesday the manor of Chardstock was offered for sale by Messrs. Farebrother, Clark, and Lye. This estate is situated at the western extremity of the county of Dorset, and bounded in part by Devonshire and Somersetshire, and the river Axe, about three miles from Axminster. It consists of several farms, and the manor of Chardstock, with heriots, quit rents, &c. the manor and estate being held under lease from the Bishop of Salisbury for twenty-one years, renewable. The entire property yielded a rental of about 1,546l. per annum; but the estimated annual value of the copyhold estates, for which head rents were paid, was about 2,699l. The highest bidding was 29,000l. which, being under the reserved price, the estate was not sold. A second lot consisting of a cottage, and five acres of land, let at 21l. per ann. brought 420l. The same auctioneers sold the manor of Tarring, the annual income of which, in fines, heriots, &c. on an average of 16 years, amounted to 138l. 16s. for 2,470l. On Tuesday, in pursuance of an order from the High Court of Chancery, the commuted rent-charges, payable annually instead of tithe, derived from the parish of Wingham, Kent, were offered for sale at the Gray's Inn Coffee-house, Holborn. The property, comprising 276 acres, yields an annual rent of about 148l. and was put up in three lots, the yearly rentals of which were 44l. 13s., 49l. 11s. and 54l. 10s. respectively. The highest bidding was 2,220l. which the auctioneer intimated was below the price reserved, and consequently there was no sale.—On Wednesday Mr. Leifchild sold the Kearney estate, Kent, by auction. The estate is divided into several farms, and contains some good timber; the extent of the land is about 938 acres. It was sold in 17 lots. The first lot put up included Kearney Abbey, and 112 acres of meadow and arable land, and about 40 acres of plantations. It fetched 9,200l. Kearney Court, and its privileges and rights, with 280 acres, was sold for 8,250l. The whole amount realized by the sale was 36,660l.—On Thursday Mr. George Robins offered Lyptatt-park, Gloucestershire, for sale. The mansion attached to this estate has some stories of interest connected with it; for it is of very ancient origin, and is said to have been the residence of Sir J. Throckmorton, the projector of the gunpowder plot; and within its precincts he held many of the secret meetings preliminary to the carrying out of that plan. During the Commonwealth the estate suffered severe injury, and it was left to Sir Paul Bagot, with the assistance of Sir Jeffery Wyattville, to make it a fit residence for a noble family. Attached to this fine mansion are 231 acres of land, full of fine timber. The whole was bought in for 18,000l.

SALE OF THE ROYAL NAVAL CLUB, BOND-STREET.—On Wednesday the Royal Naval Club-house, with its contents, was sold by public auction in consequence of the dissolution of the club, by Mr. Lahee. The premises were formerly the banking-house of Messrs. Chambers, from whose trustees the members of the Naval Club purchased the lease for the sum of 10,000l. and are held on lease for a term of forty years from the City of London, at a ground-rent of 29l. 1s. 10d. from 1813. The lease is held in perpetuity on payment every fourteen years of a fine of 145l. 9s. 3d. The first offer for the lease was 5,000 guineas, and was eventually knocked down to Mr. John Leslie for 6,900l. In addition to the lease, the fine pictures presented by different members to the club were also sold, but fetched very low prices, in consequence of their large size. A full-length portrait of his Grace the Duke of Wellington, by Marton, for which the duke gave sixteen sittings, sold for 155 guineas; a portrait of Nelson, and a full-length portrait of William IV. Duke of Clarence, both by the

same artist, sold for only 23 guineas. The most interesting lot in the day's sale were two autograph letters of Nelson, one written before the loss of his right arm, and the other afterwards, in an oak frame, made out of a plank of Nelson's ship *Victory*; it was purchased by Captain Sweeney for 7l. 10s.

THE following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

For the first 70 words 5s.
For every succeeding 30 words . . . 1s.

THE MONEY MARKET.

	8d.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	95½	95½	95½	95½	95½	95½
Three per Cents. Reduced	95½	95½	95½	95½	95½	95½
New Three-6-a-quarter per Cent. Long Annuities	104½	104½	104½	104½	104½	104½
Bank Stock	208	208	207½	208	208	208½
India Stock	265½	264	263½	263	263	262½
India Bonds, prem.	18	18	18	18	18	18
Exchequer Bills, prem.	18	18	18	18	18	18
FOREIGN.						
Spanish Five per Cents.	34½	35	35	35½	35½	35½
Spanish Three per Cents.	35½	36½	36½	36½	36½	36½
Russian	111½	111½	111	111	112½	112½
Peruvian	38½	38½	38	38	39½	39½
Portuguese	46	46	45	45	45	45
Mexican	26	26	26	27	25½	25½
—Deferred	16½	16½	16½	16½	16½	16½
Dutch Two-and-a-Half per Cents.	59½	59½	59½	59½	59½	59½
—Four per Cents.	93½	94½	94	94	94	94
Danish	88	88½	88½	88½	88½	88½
Colombian	104½	104½	104½	104½	104½	104½
Chilian	98	97	97	96	95	95
Buenos Ayres	39½	39½	40½	41	41½	41
Brazilian	60	60	60	61	60	60
Belgian	90½	90½	97	97	97	97

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The following amounts were declared on the 28th inst. The Assignments, when chosen, follow this statement.

Monday, July 30.

Fulley, W. coachmaker, last exam. passed.—Makin, J. R. tea dealer, last exam. Aug. 26.—Paine, J. D. publisher, last exam. passed.—Sheel, R. grocer, last exam. Aug. 26.—Weeks, E. hothouse builder, annulled.

Tuesday, July 31.

Daily and Co. leather merchants, last exam. Aug. 27.—Gardner, E. usury chemist, last exam. Aug. 27.—Fildes, T. coachsmith, last exam. Sept. 8.—Stannum, T. corn merchant, last exam. Sept. 22.—Watson, C. H. dealer in paintings, div. next week, Whitmore, London.—Wright, J. druggist, last exam. Sept. 11.—Wynne, J. brewer, last exam. Aug. 4.

Wednesday, July 31.

Shewell, T. tailor, last exam. passed.

Thursday, July 31.

Thorley, J. cabinet maker, last exam. passed.

Friday, July 31.

Ennum, R. H. ropemaker, assignees Aug. 11.—Moor, R. stationer, div. next week. Whitmore, London.

Saturday, July 31.

Beedell and Co. builders, last exam. Sept. 15.—Staines, J. C. tailor, last exam. Aug. 26.—Tomlinson, and Co. plumbers, last exam. Aug. 27.—White, W. builder, last exam. Aug. 27.

DIVIDENDS.

Bankrupt Estates.

Official Assignees are given, to whom apply for the Dividends.

Agars, R. draper, first, 4s. 3d. Kynaston, Hull.—Birkett, J. tanner, first and 2d. 4s. 10½d. Baker, Newcastle.—Brooks and Brooks, carriers, first, 4s. 2½d. Miller, Bristol.—Butler, E. iron merchant, first and 2d. 1s. 10d. Kynaston, Leeds.—Chambers, J. C. needle manufacturer, first, 2s. Whitmore, Birmingham.—Dewey, J. auctioneer, 2s. 4d. Belcher, London.—Hagood, W. merchant, first, 0½d. Fraser, Manchester.—Hadden, W. J. brewer, 2s. Belcher, London.—Hodgson, T. stationer, first and 2d. 7½d. Bird, Liverpool.—Linnit, J. goldsmith, first, 2s. Edwards, London.—Nicholson, J. draper, first, 4s. 10½d. Fraser, Manchester.—Pemberton and Co. merchants, fourth, J. H. F. 2½d. Bird, Liverpool.—Phillips, T. A. oil merchant, first and 2d. 1s. 8d. and 14-16ths of 1d. Kynaston, Leeds.—Robertson and Co. ropemakers, final, 1½d. Casanova, Liverpool.—Summers and Co. ropemakers, second, 1s. 10d. Fraser, Manchester.—Vernon, S. merchant, first, 1s. 6d. Casanova, Liverpool.—Westhead, J. small ware manufacturer, second, 7½d. first and second, 1s. 7½d. to now passed. Fraser, Manchester.—Wron, T. share broker, first, 1s. 4d. Fraser, Manchester.—Widdow, J. grocer, first, 2s. Whitmore, Newcastle.—Wood, B. jun. wine merchant, first, 4s. 2d. Kynaston, Leeds.

Insolvent Estates.

Brooke, J. copper, Liverpool, 1s. 4d. Casanova, Liverpool.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, July 24.

Arnold, T. bookseller, Paternoster-row, Feb. 17. Trans. G. Clark, printer, of Bedford-buildings, Fenchurch-street, 100. Gurr and Gribble, Lambard-street—Gurnea, A. 2nd ed. Fortnes, July 3. Trusts. B. W. Gabriel, wholesale draper,

Bread-st. and W. H. Williamson, wholesale tea dealer, Philip-lane. Sols. Messrs. Linklater, Leadenhall-st.—*Pratt, J. sen. and J. jun. grocers, Cliffe, near Lewes, July 15. Trust. R. Brown, gent. Lewes. Sol. Auckland, Lewes. Scattergood, W. draper, Birmingham, May 27. Trusts. F. Ramaden, wholesale warehouseman, Manchester, and R. Groncock, laceman, London. Sols. Reed and Langford, Friday-st.*

Gazette, July 28.

Blake, E. C. S. architect, Southampton, July 24. Trusts. T. Andrews, ironmonger, and S. Payne, china merchant, both of Southampton. Sol. Withers, Southampton.—*Schofield, E. Lister, J. G. H. E. Howarth, J. Whitehead, J. and C. Attensborough E. and Stone, T. ironfounders, Saddleworth, July 15. Trusts. J. Rhodes, timber merchant, J. Booth, ironfounder, and E. Jackson, timber merchant, all of Oldham. Sol. Barker, Manchester.—*Teasel, J. carpenter, Norwich, June 20. Trusts. T. O. Springfield, esq. and R. Cooke, timber merchant, both of Norwich. Sol. Woolbright, Norwich.—*Whitehead, J. victualler, Sutton in Ashfield, July 23. Trusts. R. Parker, currier, and W. Freeman, victualler, both of Mansfield. Sol. Moore, Nottingham.***

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, July 24.

CAWDELL, EDWARD, dealer in toys and hardware, 59, Queen-st. Kingston-upon-Hull, Aug. 4, at eleven. Sept. 4, at half-past twelve. Basinghall-st. Com. Fane; Whitmore, off. ass.; Goddard, King-st. Chesapeake. sol. Date of fiat, July 17. J. and E. A. Sewall, jewellers, Fore-st. pet. crs. MATON, WILLIAM CAMPION, flour wharfinger, flour dealer, and flour factor, Maidstone-wharf, Upper Thames-st. July 31 and Sept. 13, at one, Basinghall-st. Com. Goulburn; Green, off. ass.; Buchanan, Basinghall-st. sol. Date of fiat, July 31. Bankrupt's own petition.

GARRANAT, PAUL, carver and gilder, and picture frame manufacturer, Borroth's Cottage, Charlton-vale West, Woolwich, Kent, July 31, at two, Sept. 2, at twelve, Basinghall-st. Com. Foulblique; Pennell, off. ass.; Pooock and Marston, Norfolk-st. Strand, sola. Date of fiat, July 30. Bankrupt's own petition.

GERRY, JAMES, builder, 23, Gilbert-st. Oxford-st. July 31, at half-past twelve, Sept. 4, at half-past eleven, Basinghall-st. Com. Fane; Alenger, off. ass.; Watson and Sons, Bouverie-st. sola. Date of fiat, July 17. W. and J. Freeman, stone merchants, Millbank-st. pet. crs.

NIGHT, THOMAS, draper, 97, Minories, July 31, at half-past two, Sept. 3, at one, Basinghall-st. Com. Foulblique; Belcher, off. ass.; Sole and Turner, Aldermanbury, sola. Date of fiat, July 20. H. Sturt, B. B. Ward, J. C. Sharp, and J. Ward, warehousemen, Woodstreet, pet. crs.

LILLEY, EDWIN, timber merchant, Kingston-upon-Hull, Aug. 5 and 26, at ten, Hall, Com. Bury; Kynaston, off. ass.; Llewellyn, Noble-st. and Richardson and Lee, Hull, sola. Date of fiat, July 13. J. Brown, bill broker, Abchurch-lane, pet. crs.

MATHEW, HENRY, newspaper proprietor and printer, on Newbury, Parson's-green, Fulham, and Catherine-st. Strand, July 31, at eleven, Sept. 1, at twelve, Basinghall-st. Com. Goulburn; Follett, off. ass.; Barnard, Gray's-inn, sola. Date of fiat, July 16. F. Barnard, gent. Guildford-place, Kensington, and J. Wheeler, tailor, Great Titchfield-st. pet. crs.

NEWTON, ROBERT, cattle dealer, now or late of Fleet, Lincolnshire, Aug. 8 and 20, at twelve, Birmingham, Com. Daniell; Whitmore, off. ass.; Hepkinston and Co. Boston, and Griffiths, Birmingham, sola. Date of fiat, July 13. M. Oliver, farmer and brewer, Leek, pet. crs.

SEVER, FRANCIS, grocer, draper, and clothier, Fakenham and Wells, Norfolk, and Hilsam, Herts, July 31, at two, Sept. 13, at two, Basinghall-st. Com. Goulburn; Follett, off. ass.; Lawrence and Plews, Old Jewry-chambers, sola. TOUT, THOMAS, grocer and draper, Ashburton, Devonshire, Aug. 5 and Sept. 2, at eleven, Exeter, Com. Bere; Hirt, off. ass.; Windest, Totnes; Terrell, Exeter; and Taunton, Gray's-inn, sola. Date of fiat, July 13. J. Ferris, draper, Totnes, pet. cr.

WILLIAMS, WILLIAM, victualler, of the Watton, in the ship of St. Mary, Brecon, Aug. 13 and Sept. 4, at eleven, Bristol, Com. Stevenson; Hutton, off. ass.; Jones and Co. Crosby-square, and Peters and Abbotts, Bristol, sola. Date of fiat, July 31. Bankrupt's own petition.

WATFORD, WILLIAM, NICHOLLS, EDWIN COX, and WATFORD, WILLIAM ELLICOMBE, stock and share brokers, Bristol, Aug. 10 and Sept. 7, at eleven, Bristol, Com. Stephen; Hutton, off. ass.; Savory and Co. Bristol, sola.

Gazette, July 28.

BURROWS, CHARLES, and GLIDSON, JOHN, beer brewers, Plymouth, Aug. 11 and Sept. 8, at eleven, Exeter, Com. Bere; HERNIMAN, off. ass.; Little and Woolcombe, Devonport, Stopen, Exeter, and Makinson and Co. Temple, sola. Date of fiat, July 16. J. Norman and W. Hoops, bankers, Devonport, pet. crs.

CARLISLE, JOHN, builder and mason, Edge-lane, West Derby, Lancashire, Aug. 7 and Sept. 4, at eleven, Liverpool, Com. Ledlow; Turner, off. ass.; Rogers, Lincoln's-lane-fields, and Davies, Liverpool, sola. Date of fiat, July 31. Bankrupt's own petition.

CHADWICK, JOHN SMITH, calico printer, Manchester, Aug. 12 and Sept. 2, at twelve, Manchester, Pet. off. ass.; Johnson and Co. Temple, and Blair, Manchester, sola. Date of fiat, July 24. H. W. Capes, auctioneer, Manchester, pet. cr.

COATES, JAMES, tailor and grainer, Leominster, Herefordshire, Aug. 8, at one, and Sept. 8, at twelve, Birmingham, Com. Daniell; Whitmore, off. ass.; Woodhouse, Leominster, and Bartlett, Birmingham, sola. Date of fiat, July 23. Bankrupt's own petition.

FRANK, JAMES, silk mercer, 43, Park-st. Bristol, and West-lane-pet. crs. Somersetshire, Aug. 11 and Sept. 8, at eleven, Bristol, Com. Stephen; Acrassan, off. ass.; Savory and Co. Bristol, sola. Date of fiat, July 23. T. F. Hoops, linen draper, Bristol, pet. cr.

FLETCHER, THOMAS CHARLES, glass dealer, and salt and chemical manure merchant, Nottingham, Aug. 7 and Sept. 1, at ten, Birmingham, Com. Balguy; Valey, off. ass.; Brown, Nottingham, and Smith, Birmingham, sola. Date of fiat, July 16. Bankrupt's own petition.

LANE, EDWARD-JAMES, corn dealer, Drayton, Leicestershire, Aug. 16 and Sept. 10, at twelve, Birmingham, Com. Daniell; Whitmore, off. ass.; Rawlings, Market

Harborough, and James, Birmingham, sola. Date of fiat, July 18. Bankrupt's own petition.

INCHLEY, WILLIAM, coal dealer, Drayton, Leicestershire, Aug. 15 and Sept. 10, at twelve, Birmingham, Com. Daniell; Bittleton, off. ass.; Rawlings, Market Harborough, and James, Birmingham, sola. Date of fiat, July 18. Bankrupt's own petition.

KITTLE, FRANCIS BARBER, horse dealer, Brighton, Aug. 4, at twelve, Sept. 4, at one, Basinghall-st. Com. Fane; Whitmore, off. ass.; Stabiland and Long, Bouverie-st. sola. Date of fiat, July 23. Bankrupt's own petition.

MACQUEEN, FARQUHAR, merchant, 103, Leadenhall-st. Hong Kong, and Macao, Aug. 5, and Sept. 26, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Ashurst, Chesapeake, sol. Date of fiat, July 20. T. Howell and G. Hayter, merchants, Mark-lane, pet. crs.

MASON, ALFRED WILLIAM JOHN, builder, Monument-lane, Edgbaston, Warwickshire, Aug. 7, at half past ten, Sept. 1, at ten, Birmingham; Christie, off. ass.; Messrs. Ryland, Birmingham, sola. Date of fiat, July 21. M. Mason, Birmingham, widow, pet. cr.

M'DOWGALL, WALTER, and BROWN, RALPH, printers, Pemberton-row, Gough-sq. Aug. 4, at half past twelve, Sept. 4, at half past eleven, Basinghall-st. Com. Fane; Whitmore, off. ass.; Holme and Co. New-inn, sola. Date of fiat, July 23. J. Hodge, T. and H. Spalding, and J. Hodge, jun. stationers, Drury-lane, pet. crs.

SMITH, THOMAS SMALL, carpenter, joiner, and cabinet-maker, Wednesbury, Staffordshire, Aug. 7, and Sept. 1, at ten, Birmingham; Christie, off. ass.; Walker, Wolverhampton, sol. Date of fiat, July 16. William Walford, Wolverhampton, timber-merchant, pet. cr.

TAYLOR, WILLIAM GEORGE WALK, surgeon and apothecary, Tywardreath, Cornwall, Aug. 12, and Sept. 9, at eleven, Exeter; Com. Bere; Hirtzel, off. ass.; Coodes and Shilson, St. Austel, and Stogdon, Exeter, sola. Date of fiat, July 26. Bankrupt's own petition.

Meetings at Basinghall-street.

Gazette, July 24.

Crempers, J. B. coal merchant, City-basin, August 18, at eleven, audit. Gatehouse and Co. timber merchants, Upper Lion-st. August 14, at half-past eleven, audit.—*Macdonald, A. merchant, 102, Leadenhall-st. August 15, at two, joint div. by order of the Court of Review.—Pace and Pace, general merchants, St. Michael's-alley, August 18, at twelve, audit.—Salmon, J. carpenter, Beaumont, August 18, at eleven, audit.—Sims, J. wheelwright, Tollard Royal, August 14, at half-past one, audit.—Winton, J. hatter, Bishopgate-st. Within, August 18, at one, audit.*

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Brown, J. saddler, King's-cross, August 14, at eleven.—*Crempers, J. B. coal merchant, City-basin, August 18, at eleven.—Crawe, J. maltster, Crooked-lane, August 18, at two. Harris, H. carver, Leman-st. August 18, at twelve.—Mills and Fuchs, hog factors, Southwark and Corn-Exchange, August 18, at three.—Pace and Pace, general merchants, St. Michael's-alley, August 18, at twelve, as to H. Pace.—Pidd, G. porter, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, square, August 18, at one.—Roberts and Hazard, paper agents, College-hill, August 17, at twelve.—Thorley, J. cabinet maker, Newman-st. August 15, at one.*

Meetings in the Country.

Gazette, July 24.

Bickley, W. S. dealer in iron, Bilston, Aug. 15, at twelve, Birmingham, and—*Bulmer, R. and J. ship builders, South Shields, Aug. 18, at twelve, Newcastle, final joint div.—Cane and Telo, merchants, Liverpool, Aug. 6, at twelve, Liverpool (adj. July 22), last exam.—Fisher, T. linen draper, Selby, Yorkshire, Aug. 20, at eleven, Leeds, first div.—Hare, P. tailow chandler, Aug. 4, at eleven, Liverpool (adj. July 21), last exam.—Williams, H. apothecary, Llanwrst, Aug. 7, at twelve, Liverpool, last exam.*

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Buckley, R. woollen cloth manufacturer, Saddleworth, Aug. 30, at eleven, Leeds.—*Clark, D. leather dealer, Liverpool, Aug. 25, at twelve, Liverpool.—Maraden, R. draper, Brynmawr, Aug. 25, at twelve, Bristol.—Smith, J. G. grocer, Liverpool, Aug. 25, at eleven, Liverpool.—Smith, J. grocer, Stratford-upon-Avon, Aug. 15, at twelve, Birmingham.*

Gazette, July 28.

Clarke, J. Mitchell, R. Phillips, J. and Smith, T. bankers, Leicester, Aug. 24, at eleven, Leicester, (by adj.) div. by order of the Lord Chancellor of July 31.—*Crispin, P. carpenter, Bristol, Aug. 20, at eleven, Bristol, and—Foulkes, R. cattle salesman, milkman, and cowkeeper, Soughton, Northport, Flintshire, Aug. 25, at eleven, Liverpool, div.—Harrison, J. merchant and commission agent, Liverpool, Lancashire, Aug. 18, at eleven, Liverpool, and. Aug. 21, at eleven, div.—Maraden, E. linen and woollen draper, hatter, and hosier, Brynmawr, Brecknockshire, Aug. 24, at eleven, Bristol, and. Aug. 25, at eleven, div.—Pattinson, W. B. currier and leather seller, Liverpool, Aug. 25, at twelve, Liverpool, and. Aug. 27, at twelve, div.—Timmins, J. brick maker, Caynam, Aug. 18, at ten, Birmingham, and.*

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Reed, N. J. brewer, Marlborough, Aug. 24, at twelve, Bristol.

Partnerships Dissolved.

Gazette, July 31.

Bains, W. and Staine, T. machine-makers, Louth, July 15. Debits paid by Bains.—*Birkett, G. and Thirker, W. butchers, Toxteth-park, July 16.—Booth, J. and Croeland, J. manufacturers, Millhouse, Thurlstone, July 14. Debits paid by Booth.—Brown, M. and Buck, B. woolstaplers, Bradford, July 15. Debits paid by Buck.—Cowsey, G. and Hunter, W. woollen manufacturers, Tiverton and South Brent, July 18. Debits paid by Cowsey.—Elliston, W. and Eade, C. wine merchants, Ipswich, July 17. Debits paid by Eade.—English, T. and J. block makers, Liverpool, June 30.—Gilbert, T. and Hamed, F. electro platers, Liverpool, June 25.—Hudley, J. J. and Newcomb, E. J. surgeons, Birmingham, June 24.—Jones, D. and Francis, D. drapers, Bristol, April 24. Debits paid by Francis.—Moore, J. and Lister, J. surgeons, Doncaster, July 1. Debits paid by Lister.—Neal, C. and Ireland, J. wire-workers, Birmingham, July 16.—North, E. Austin,*

G. and Guttery, G. ironfounders, Kingswinford, June 6. Debits paid by North.—*Road, T. sen. and jun. and W. wine merchants, Bath and Suffolk-st. July 15.—Sampson, J. and Taylor, J. dyersalters, Birkenhead, June 30.—Walker, J., R. jun., and J. S. and Smith, R. and Hacking, R. machine makers, Bury, Jan. 1, 1845.—Walker, J., R. jun., J. S. and Hacking, R. ironfounders, Bury, Jan. 1, 1845.—Wilson, J. and Pratt, S. L. wood and stone carvers, Pimlico, June 20.*

Gazette, July 24.

Adams, J. Williamson, W. and Huest, G. trimming manufacturers, Coventry, July 23. Debits paid by Williamson and Hunt.—*Amos, W. and Bostock, H. J. sponge dealers, Walbrook, July 22.—Atkinson, J. and Howe, C. wine merchants, Penrith, June 12. Debits paid by Howe.—Clayton, S. and Wagstaff, G. lace dressers, Nottingham, July 18. Debits paid by Wagstaff.—Cleave, S. and Clarke, W. D. gas fitters, Theobald's-road, Sept. 18, 1845.—Cox, F. Haycock, S. and Crisp, J. wine merchants, Birmingham, July 16. Debits paid by Crisp.—Denton, W. Reed, W. and Taylor, J. ship-builders, Sunderland, July 20.—Groves, H. and Woolmore, H. N. seal engravers, Greek-st. June 30.—Hallas, G. sen. and jun. and J. coal merchants, Oldham, July 21. Debits paid by Hallas, sen.—Hall, A. and J. plumbers, Bramham, Jan. 1.—Holey, J. sen. and jun. plumbers, Manchester, July 23.—Jones, R. H. and Dansey, W. M. attorneys, Weymouth-st. July 13.—Killick, T. and J. millwrights, Strood, July 20.—Lawson, B. and Ochenden, A. ironfounders, Littlehampton, June 20.—Lawton, J. M. and Holden, J., T. G. and J. fustian manufacturers, Manchester, so far as regards Lewton, July 23. Debits paid by the remaining partners.—Naylor, W. and G. D. wine merchants, Enfield, July 23.—Nisraen, H. and Deane, T. sen. and T. jun. and Longhaue, T. yarn agents, Manchester, June 30. Debits paid by Messrs. Deane.—Pegler, I. H. and C. linen drapers, Leeds, July 22. Debits paid by G. Pegler.—Potter, T. and Lukis, J. printers, Sheffield, July 21. Debits paid by Potter.—Pridie, B. and Colin, H. cheese factors, Melton Mowbray, July 22.—Rust, J. Rashbrook, J. and Donnelly, P. so far as regards Donnelly, June 17. Debits paid by the remaining partners.—Speakman, D. and Woolley, H. oil manufacturers, Manchester, July 18.—Temperley, T. and Baker, T. fire brick makers, Todmorden and Walsden, July 22. Debits paid by Temperley.—Thomas, W. H. P. Francis, E. and Gardiner, G. N. merchants, Newfoundland, so far as regards Francis, July 2.—Toynbee, T. and Gibson, A. horse dealers, Heckington, July 20.—Walker, S. and S. wood letter cutters, Bartholomew-close, July 22.—Ward, J. and Newland, A. patentees of an apparatus for ventilating buildings, Stratford-upon-Avon, July 21.—West, B. and G. D. parchment makers, Wilby, July 15. Debits paid by West.—Wood, J. Stott, J. and H., and Whiteley, E. cotton warp makers, Halifax, so far as regards Whiteley, July 11. Debits paid by the remaining partners.—Wright, C. E., M. A. E. and B. confectioners, St. Helen's, July 21. Debits paid by C. E. and M. A. Wright.—Wrigley, R. and J. rope manufacturers, Hollinwood, July 22. Debits paid by R. Wrigley.*

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, July 21.

Burgess, R. stoepie keeper and smith, Garner's-lane, Westminster, July 30, at twelve.—*Coney, R. stone mason, Hicking-place, Baywater, July 20, at eleven.—Democh, W. blacksmith, Wyndham, July 23, at one.—Dow, J. H. accountant, King William-st. Strand, July 23, at eleven.—Hallett, G. linen draper, St. Helen's, July 20, at twelve.—Holmes, J. tailor, Hampstead-road, July 20, at one.—Howlett, W. foreman to a builder, Morland-terrace, Holloway-road, July 20, at half-past ten.—Manswaring, E. F. R. medical student, Kingsland-road, July 23, at half-past one.—Miller, W. lead merchant, Clifton-st. Finsbury, July 20, at half-past ten.—Pritchard, J. A. commander in the Navy, Little Hampton, July 25, at three.—Rowley, T. E. assistant to a warehouseman, Upper Islington-terrace, Islington, July 20, at half-past ten.—Sanderson, R. carpenter, Cambridge, July 25, at three.—Skellon, E. tailor, Norwich, July 25, at half-past two.—Smith, T. jun. agent, Bermondsey-sq. July 30, at twelve.—Yarrell, W. tailor, Union-place, New-road, July 20, at half-past ten.*

PETITIONS TO BE HEARD IN THE COUNTRY.

Brookes, T. assistant overseer, Manchester, July 20, at twelve, Manchester.—*Broomhead, C. brewer's labourer, Sheffield, July 24, at eleven, Sheffield.—Bury, W. corn dealer, Blackburn, July 23, at twelve, Manchester.—Gosier, F. P. wheelwright, Rushuton, August 6, at one, Exeter.—Green, R. sawyer, Manchester, July 20, at twelve, Manchester.—Hague, J. blade forger, Sheffield, July 24, at eleven, Sheffield.—Hargreaves, S. cloth maker, Holbeck, July 31, at eleven, Leeds.—Holmes, B. innkeeper, Carlisle, August 13, at eleven, Newcastle.—Iredale, W. in no trade, York, July 31, at eleven, Leeds.—Jacob, H. commission agent, Liverpool, July 27, at eleven, Liverpool.—Madden, G. gas fitter, Manchester, August 7, at twelve, Manchester.—Robinson, J. lace maker, Radford, July 24, at eleven, Sheffield.—Slate, J. book-keeper, Liverpool, July 20, at eleven, Liverpool.—Webb, G. grocer, Haselgrove, July 20, at twelve, Manchester.—Willday, G. merchant, Gloucester, July 24, at eleven, Bristol.—Withers, W. jun. horse dealer, Gloucestershire, August 17, at eleven, Bristol.*

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, July 24.

Parsons, G. attorney, Sylvan-grove, Old Kent-rd. Aug. 3, at one.

PETITIONS TO BE HEARD IN THE COUNTRY.

Barnett, J. baker, Bodminster, July 31, at half past twelve, Bristol.—*Broadbent, G. lead mason, Castleton, Aug. 8, at twelve, Manchester.—Willday, G. clerk, Gloucester, July 31, at one, Bristol.*

From the Gazette of Friday, July 31.

Bankrupts.

Bird, I. grocer, Harrow-on-the-Hill, August 11.—*Sueh, J. J. auctioneer, Bollingbroke-row, Walworth-road, August 11.—Wragg, J. iron merchant, Mellina-place, Westminster-bridge-road, August 11.—Palmer, J. painter, Worthing, August 8.—Elliot, W. corn merchant, August 8.—Clark, B. porter merchant, Kingston-upon-Thames, August 8.—Kil-*

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

July 8 and 11.

WATTS v. LORD EGLINTON.

Mortgage of turnpike-tolls—Local and General Turnpike Acts.—Demurrer—Form of order where leave to amend given.

By a local Turnpike Act the trustees were directed to keep down the interest of mortgages, provide a sinking fund for the gradual payment of the principal of the mortgage debts, and apply the balance in repair and improvement of the road; by the General Turnpike Act mortgages in possession were directed to apply the tolls, *pari passu*, for the benefit of the mortgages generally. Some new mortgages had been granted since the General Turnpike Act.—Held, upon demurrer to a bill filed by the trustees against mortgages in possession, whose securities were subsequent to the General Turnpike Act, that some of the prior mortgages under the local Act were necessary parties to the suit, because a question would be raised, at the hearing of the cause, whether a right to be first paid, which was given to them under the local Act, had not been abrogated by the General Turnpike Act.

Where a demurrer has been allowed on the ground of want of parties, it seems to be improper to obtain an order to amend generally.

The bill in this suit was filed by the plaintiff on behalf of himself and all other the trustees appointed under and by virtue of an Act made and passed in the 2nd year of Geo. 4, entitled "An Act for more effectually repairing and improving the Road leading from Hinwell vent, in the Parish of Tothurst, in the county of Sussex, to the Town and Port of Hastings," against the defendants, who, as mortgagees, had taken possession of the tolls and applied them, according to the directions of the General Turnpike Act, in disregard of the provisions of the local act, count, and refused to render to the trustees any authenticated account of their application of the tolls.

The local Act, 2 Geo. 4, after authorising the collection of certain tolls, and having vested all moneys which should arise therefrom in the trustees for the time being, directed the particular application of the tolls; and the local Act then provided, that if any mortgagee of the tolls should seek to obtain possession of the toll-gates and toll-houses, he might do so by action of ejectment, but such mortgagee in possession "should not apply the tolls which might be received by him to his or their own exclusive benefit, but to the use and benefit and in liquidation of the interest (but not the principal) due to all the mortgagees, *pari passu*, and in proportion to the amount of the interest which might be due to them."

By the General Turnpike Act (3 Geo. 4, c. 126, s. 47), it is enacted, "That every mortgagee in possession of any toll-gate or bar on any turnpike-road, or of any lands or tenements, the rents and profits whereof were appropriated to the repairs of any part of any turnpike road, should, within twenty-one days after

he should have received notice in writing from the trustees or commissioners, render an exact account in writing to such trustees or commissioners, or to such person as they should appoint, of all moneys received by such mortgagee, or by any person for his use, or by his authority." By a mortgage dated the 23rd day of March, 1838, five of the trustees mortgaged the tolls to the defendants for 800*l.* with interest at 5*l.* per cent. The defendants soon afterwards procured the assignment to them of three other mortgages for 100*l.* previously granted; and in April, 1840, they recovered possession of the toll-gates and toll-houses, and have ever since received the tolls. The bill stated that the tolls had been more than sufficient to pay the interest on all subsisting mortgages, and that a considerable surplus had accumulated in the hands of the mortgagees which ought to have been paid to the trustees of the local Act. By the local Turnpike Act, sect. 45, the trustees were directed to create a sinking fund by the payment of a sum not exceeding 50*l.* a-year from the passing of the Act (Sept. 1821), for the gradual payment of the principal sums then already or thereafter to be borrowed, such payment to be made rateably or by lot amongst the creditors; and after payment of all the principal moneys to existing creditors, then in payment of an equal amount of the principal money which, from and after the commencement of the said Act, should be borrowed upon the security of the tolls; and it was also enacted (sect. 46), that all moneys raised by the local Acts should be applied, first, in payment of the expenses of renewing the Act; secondly, in paying all arrears of interest on any sum of money which had been then already borrowed on the credit of the local Acts, and also the interest which should become due in respect of money then already due, or which should thereafter be borrowed on security of the tolls; thirdly, in providing for the sinking fund; fourthly, in paying a local charge; and, lastly, in making, erecting, and keeping in repair the toll-gates, &c. and in widening, improving, repairing, and preserving the said road. The bill then set out a correspondence between the trustees and the defendants in consequence of a notice, of the 9th of February, 1844, by the former required the latter, to render an account to Wm. Weller, of Battle, saddler, which resulted in a refusal on the part of the defendants so to account. "The bill prayed that the defendants might be decreed to account to the plaintiff, and the other trustees acting in the execution of the local Act, for all moneys received and disbursed by them as mortgagees, and to produce the vouchers and other documents necessary for the verification of such account; and that the accounts might be taken under the direction of the Court, and the balance found due might be paid to the plaintiff, or to the treasurer of the road.

To this bill the defendants demurred for want of equity and want of parties, and the Vice-Chancellor allowed the demurrer for want of parties, and gave the plaintiff leave to amend.

The plaintiff appealed from that decision.

James Parker and Lewis, for the appeal, contended that although the effect of the General Turnpike Acts (3 Geo. 4, c. 126, s. 4; 4 Geo. 4, c. 95, s. 88; and 9 Geo. 4, c. 77, s. 19) is to incorporate all the provisions of the local and particular Acts, and therefore that the provisions of the local Act, if inconsistent with the general Acts, must be construed to be superseded *pro tanto*, yet in this case the provisions of the local Act are not inconsistent with the general Act. They mentioned and referred to *The King v. The Trustees of the Northleach and Witney Roads*, 5 Barn. & Adol. 978; and *Pearce v. Morrice*, 2 Adol. & Ellis, 84; that the defendants, and all others who had lent their money subsequently, did so with full knowledge of the provisions of the local Act; that so long as the trustees kept down the interest on the mortgages, and appropriated the annual sum directed by the Act as a sinking fund, the mortgagees would have no right to enforce the payment of their principal by ejectment.

Wakefield and Wright, for the defendants, contended that the 4th and 47th sections of the General Turnpike Act (3 Geo. 4) enabled mortgagees in possession of tolls to retain possession until the whole of the principal and interest had been fully paid. The 49th section, after declaring that a mortgagee may maintain an ejectment upon his own demise without uniting the other mortgagees therein, declares that he should not apply the tolls to his own exclusive use, but for the use and benefit of all the mortgagees, *pari passu*, and in proportion to the several sums which may be due to them as such mortgagees. The trustees ought to have sued in the name of their clerk or treasurer, or of one of their trustees, but it was improper to make one trustee a plaintiff on behalf of himself and the others. The question, whether the general Act destroyed the priority the old creditors had under the local Act, will be raised at the hearing, and therefore both classes of creditors, or some of them to represent each class, ought to be parties. The defendants, as mortgagees in possession, are bound to account to all the mortgagees, and therefore they are entitled to have some of both classes present. None of them are represented by the plaintiff.

The LORD CHANCELLOR.—How does it appear on this bill that there are other creditors?

Wakefield referred to various other clauses of the local Act set out in the bill.

The LORD CHANCELLOR.—The order allowing the demurrer is general, and the permission to amend is also general. The permission to amend should have been confined to the particular object intended.

Parker.—No objection is taken on that ground. Wright read various clauses of the General Turnpike Act.

The LORD CHANCELLOR.—Is there any part of the general Act which directs the application of tolls in the hands of the mortgagees?

Wright.—By the 44th section the tolls are directed to be applied, not in liquidation of interest, but to interest and principal.

The LORD CHANCELLOR.—Does the Act direct what the mortgagees are to do with the tolls, after all interest and principal has been paid?

Wright.—No. They are to account for the surplus to the trustees.

The LORD CHANCELLOR.—It appears to me that the other mortgagees have nothing to do with the account. They may file a bill, and the question turns upon the provisions of the Act, as to the objection of want of parties.

Parker, in reply, insisted that the directions for suits by the trustees in the local Act were in substance the same as those of the general Act. The liberty to amend is not confined to adding parties; the latter practice has been when leave has been given to amend, by adding parties, that the plaintiff should obtain another order of course to amend generally.

The LORD CHANCELLOR.—That can't be so, because, by the allowance of the demurrer, the cause is out of court, unless leave is given to amend. There is only one demurrer, though for several causes.

Parker.—The other mortgagees have no interest in the account sought to be taken, because it is only the account of the balance after payment of the interest to the mortgagee, for which the bill prays.

The LORD CHANCELLOR.—I assume for the present purpose that the mortgagees in possession have nothing to do beyond the payment of the interest, as under the local Act. The local Act, then, is repealed, so far as it is inconsistent with the general Act; and it is unnecessary for me to come to any decision how the rights of the absent parties may be affected. The only question for me to decide on this demurrer is, whether the other mortgagees are necessary parties. I find the 47th, 48th, and 49th sections of the general Act directly attaches to the rights of mortgagees. The 47th applies to all mortgagees, whether under the local or the general Act. So in the 48th section the mortgagees there referred to are, beyond all doubt, mortgagees made before as well as since the passing of the general Act. The 49th also applies to all mortgages; there is no distinction made, but mortgages generally are mentioned. [The LORD CHANCELLOR read the section.] There can be no doubt that section applies to principal as well as interest. I am asked by the plaintiff to decide on the point in their absence. He assumes the point so clear, that he seeks to take an account in their absence. I cannot resolve the effect of these clauses to be that they have no interest is so clear, that I will decide in their absence. No objection has been taken on the point of form. I affirm the Vice-Chancellor's order with costs. The plaintiff may have three weeks time to amend.

VICE-CHANCELLOR WIGRAM'S COURT.

July 2 and 6.

GREEN v. PERTWEE.

Will.—Construction—Residue.

The general operation of the word "residue," as used in a will, may be restricted by the sense in which the testator uses it.

The word "residue" does not in all cases include that which is undisposed of by a will; a lapsed share of a residue does not accrue in augmentation of the residue, but goes to the next of kin.

Thomas Cooper, by his will dated in 1839, devised all his real estate to trustees therein named, to sell, and hold the produce thereof, together with the rents and profits, until the sale, upon trust for his executors therein named, to be held and applied by them as personal estate to the same uses as he afterwards directed in respect to his personal estate, and then bequeathed to his executors therein named all his moneys, securities for money, household goods, and farming stock, all other his personal estate whatsoever and wheresoever, upon trust, as soon as convenient after his decease to convert the same into money, and to stand possessed of the whole produce thereof, and the proceeds of the sale of his real estates, upon trust to pay all his just debts, funeral and testamentary expenses, and legacies given therein, or in any after executed codicil to his said will, and after payment thereof, to divide the residue of the produce of his real and personal estate into ten equal shares or parts, and pay the same to the several persons in his said will named; provided

always, and he declared that in case the residue should be found to exceed the sum of 10,000*l.* then, and in that case, he directed that only the sum of 10,000*l.* part of his residue, should be divided into ten parts or shares, and paid to the several persons therein-before named to take shares in the residue of his estate and effects; and the said testator directed the surplus of the said residue, after payment of the said sum of 10,000*l.* in ten shares, should be equally divided amongst his nephews and nieces who should attain the age of twenty-one years, share and share alike, and appointed the same parties trustees and executors of his will. The testator died in 1842, and left both real and personal estates, which were converted into money, and after all debts, funeral and testamentary expenses and legacies were paid, produced a residue exceeding the sum of 10,000*l.* One of the legatees, named in the will to be paid one of the ten shares, died in the lifetime of the testator, whereby 1,000*l.* lapsed, and a question arose after the death of the testator as to the disposal of that share between the heirs-at-law, the next of kin, and the nephews and nieces of the testator, in consequence of which the nephews and nieces filed the present bill against the trustees and executors, and other parties claiming an interest in the share.

The defendants filed a demurrer.

Wood and Bacon, for the heir-at-law, cited *Schrymsher v. Northcote*, 1 Swanst. 566; *Lloyd v. Lloyd*, 4 Beav. 231; *Attorney-General v. Johnston*, 2 Ambl. 577; *Davers v. Davers*, 3 P. Wms. 40.

Anderdon and Walpole, for the next of kin, cited *Harris v. Davis*, 1 Coll. Ch. C. 416; *Edom v. Appleford*, 10 Sim. 274.

Romilly and Hallett, for the plaintiffs, cited *Bland v. Lamb*, 1 Jac. & Walk. 402; *Leake v. Robinson*, 2 Meriv. 363.

Humphrey, for the trustees and executors.

THE VICE-CHANCELLOR.—The question here arises upon the effect to be given to the word "residue," as used in the latter part of this will, whether it is to be held to include the general residue of the testator's estate, or only the excess, if any, after deducting the sum of 10,000*l.*: the term in its general meaning comprehends everything left undisposed of by the will, but that general meaning may be restricted by the sense in which the testator uses the term, and when it is used in its restricted sense, the Court is bound to give it effect. In this case the testator appears to have used it in both senses: thus, in the beginning of his will he evidently means it to include the general residue of his estate, but in the event of his residue exceeding the sum of 10,000*l.* he restricts the operation of it to the excess of the residue above that amount, and in such a manner as to confine the operation of the term "residue" to the excess, and nothing else; for, under that bequest, had the general residuary bequest not have exceeded the sum of 10,000*l.* his nephews and nieces would have taken nothing, although all the legatees of the shares into which the 10,000*l.* was divided had died in the lifetime of the testator. The claim of the plaintiffs to this lapsed share must, therefore, be answered in the negative; and as it is clear from all the authorities that a part of the residue of which the disposition fails will not accrue in augmentation of the remaining parts, as a residue of a residue, but instead of resuming the nature of a residue, it devolves as undisposed of, this share which has lapsed must be held to have been undisposed of by the will, and the costs must be paid out of this share.

Saturday, July 25.

BURNEY v. ST. BARBE.

Will—Construction—Election.

A general devise of all the testator's lands upon trusts, amongst others, for the benefit of his son and heir-at-law, and it afterwards is accidentally discovered that some of the lands of which the testator supposed himself tenant in fee, he was only tenant in tail; and the same, on his death, descended, to his son and heir the latter is not bound to make his election, notwithstanding he gets more than the testator apparently intended him to have.

John Burney, by his will, dated the 18th of September, 1824, "devised all his manors, messuages, farms, lands, tenements, tithes, and hereditaments, whereof he had any power to dispose, and also all the rest, residue, and remainder of his goods, chattels, ready money, and all other his personal estate and effects wheresoever, unto Robert Smith and Charles St. Barbe, their heirs, executors, administrators, and assigns, upon trust, to pay thereout, by sale or mortgage, all his debts, funeral and testamentary expenses and legacies, bequeathed by his will; and in case any surplus should remain unsold, he bequeathed such surplus to the use of his son, John Burney, and his assigns, for life, with remainder to the use of the first or other son of the said John Burney, in tail male, with remainders over, as in his will mentioned. The testator died on the 11th of September, 1832, without revoking his said will, which was duly proved by the said Charles St. Barbe and Francis Burney, named executors therein. The testator was at the time of his death seised of real estates in the county of Southampton, called respectively the Milton

Estate, the Great Tithes of the Milton Estate, the Barton Estate, and a copyhold estate, held of the manor of Fern Hill, in the parish of Milton. The personal estate of the testator was insufficient for the payment of his debts and legacies; and the trustees, instead of selling the real estates, raised money by mortgaging the whole of the real estates for the payment of the debts and legacies. A deed was afterwards found, dated in 1691, by which the Barton estate had been entailed on an ancestor of the testator, and that the entail had never been barred; consequently, the testator being only tenant in tail of the Barton estate, it did not pass by his will—it descended to the present plaintiff under the entail; and he therefore filed the present suit to have testator's estate administered under the decree of the Court, and to have the Barton estate freed from the mortgages which had been charged upon it by the trustees of the executor's will. The cause came on for hearing, and was referred to the Master to make the usual inquiries and take the accounts. The Master by his report, amongst other facts, found those above stated, when the cause came on upon further directions.

Ansley, for some of the defendants, contended that the plaintiff should be put to his election, inasmuch as the testator, in making the provision he did in his will in his favour, acted under the supposition that the Barton estate was his own, in fee, and continued to entertain that mistake until his death; that it was by mere accident it was discovered that the estate was subject to the entail; that the plaintiff and all others had dealt with the estate according to the directions in the will until the deed had been discovered; and cited *Abby v. Gordon*, 3 Russ. 278; *Judd v. Pratt*, 13 Ves. 168; *Druce v. Dennison*, 6 Ves. 399; *Stratton v. Best*, 1 Ves. jun. 285.

Romilly appeared for the plaintiff, and contended that as no mention or reference was made in the will by the testator to the Barton estate, the plaintiff could not be put to his election.

THE VICE-CHANCELLOR.—This is no case of election. I know of no case which goes the length of deciding that a devise of "all my property" includes an estate tail; if it had stopped there, would the estate tail have passed? But then it is said there is a reservation of the life estate, and that shews the testator meant no other reservation. So it does, but out of what estate? The Milton estate. I do not think this is any case for election.

Common Law Courts.

COURT OF EXCHEQUER.

Saturday, June 6.

RAYNER v. JONES.

An action was commenced against M. J. (the defendant), who was then a widow, but who, pending proceedings in the action, married again; the plaintiff nevertheless proceeded with the action, signed judgment against the defendant by her former name of M. J. and on this judgment sued out a writ of *ca. sa.* against her alone. A judge at chambers having upon this state of facts ordered her discharge, the Court made absolute a rule for discharging this order, and directing the sheriff to re-take the defendant.

It has not been thought necessary to report at length the argument in this case, because the facts, as observed by the Lord Chief Baron at the commencement of the judgment, *infra*, are very simple, and these, as well as the grounds upon which the Court proceeded, are fully stated therein.

JUDGMENT.

POLLOCK, C.B. now (June 6) delivered the judgment of the Court as follows:—In this case my brother Rolfe having made an order for discharging the defendant, a married woman, out of custody, she having been taken in execution, a rule was obtained by Mr. Williams, for the plaintiff, calling on the defendant to shew cause why the order should not be discharged. The case was argued last Term, and there being no authority decisive of the point, we have considered our judgment. The facts are very simple. The plaintiff sued the defendant Margaret Jones in March 1845, when she was a widow. In April, 1845, she married a second husband named Davies. The plaintiff took no notice of this, but proceeded in the action, and on the 31st of May signed judgment against the defendant by her former name of Margaret Jones, and on this judgment sued out a writ of *capias ad satisfaciendum* against her alone. It is admitted that the defendant has no separate property, but the question is, whether Mr. Baron Rolfe, under these circumstances, did right in ordering her to be discharged. The whole practice of discharging married women who are in lawful custody upon execution against the person is of very recent date; and it certainly appears to us to rest on no principle whatever. The writ is the right of the plaintiff, as the result of his judgment. It is admitted that, under such a writ, the sheriff is bound to take the party against whom the writ is directed, whether she be under coverture or not. He is bound to do so not only where she is

sued with her husband, but also where, as in this case, she is sued alone as a *feme sole*. (*Dowley v. White*, Cro. James, 323.) Since, then, the plaintiff has a right to take a *feme covert* and detain her in satisfaction of a debt, it would seem, on all principles of law, that the Court cannot interfere to discharge her out of custody, unless there be some special circumstances requiring the Court to interfere and exercise its jurisdiction to prevent the plaintiff from availing himself of his legal right; and certainly in modern times the Court, where judgment has been recovered against husband and wife, and both have been taken in execution, have assumed the right of discharging the wife out of custody if she has no separate property, and on no other ground; for it would be hard to detain in custody a defendant who cannot by law acquire property wherewith to satisfy the debt. This, it must be admitted, is rather moulding the law according to particular circumstances than administering it. At the same time, the practice has prevailed so long in a judgment against husband and wife, that in such a case we should not probably feel ourselves justified in overruling what must be treated as established law. But in the case of a rightful judgment against a married woman alone, there is no decided case authorizing the Court to discharge her when she has been taken upon a *capias ad satisfaciendum*; and there is certainly a distinction between that case and the case of a judgment against husband and wife. In the former case the discharge of the wife deprives the plaintiff of all possible chance of recovering the debt; whereas in the latter case he has still the husband to whom he may resort. The distinction is not indeed at all satisfactory. There seems to be no more principle to warrant the Court in depriving the plaintiff of part of his legal right than in depriving him of the whole; but still it may be said that in this case the practical injustice is less than in the other; and, therefore, although finding the practice established in the case of a judgment against both husband and wife, we might not feel justified in refusing to act according to that practice; yet, seeing no principle to warrant its being admitted, and that no case can be found in which a married woman has been discharged where she has been the sole defendant, and been taken under a *capias ad satisfaciendum*, we do not feel warranted in discharging her in this case, and so altogether depriving the plaintiff of the fruits of his judgment. The consequence is, that the rule for discharging my brother Rolfe's order, and directing the sheriff to re-take the defendant, must be made absolute.

Rule absolute.

Saturday, July 4.

DEES v. THE GREAT NORTH OF ENGLAND RAILWAY COMPANY.

An award ordered, amongst other things, that the costs of the reference should be paid by the parties thereto in a certain proportion, viz. three-fourths by the defendant, and one-fourth by the plaintiff. In order to take up the award the plaintiff paid the whole of the costs, and the plaintiff's attorney advanced the money for the purpose of taking up the award.—Held, that the sum of money so advanced by the plaintiff's attorney was a sum awarded, for which the attorney had a lien upon the whole costs of the reference.

This case was argued last Easter Term (May 8) by Jos. Addison, for the defendants, and Borlill, for the plaintiff. The only point in the case worth reporting will be found clearly set forth in the judgment of the Court as delivered at the sittings after last Term, July 4.

JUDGMENT.

PARKE, B.—In this case the Court reserved for consideration one question, and on that question the rule will turn. It was an application to set off costs, and the attorney claimed a lien upon the costs for some sums of money that were awarded. The award made was, I think, in favour of the plaintiff (see *Law T.* May 2), and a sum was awarded, and the costs of the reference and of submitting it to the arbitrator were awarded to be paid, three-fourths by the defendants and one-fourth by the plaintiff. In order to take up the award, the plaintiff paid the whole of the costs, and the attorney advanced money for the purpose of taking up the award. Then he calls upon the defendant to pay the amount of the sum awarded, and also the amount of these costs; and upon an application to set off the costs of some other proceedings against these costs, the point on which the Court entertained a doubt, and took time to consider, was whether the sum of money which was advanced by the plaintiff's attorney was a sum awarded, and for which the attorney had a lien on the whole costs of the reference. The Court think it is to be considered as a sum of money awarded. There is no doubt that a sum of money which is by the award directed to be paid, is a sum upon which the attorney has a lien for costs; and the sum of money which is paid, whether it is paid by the attorney or by the party, makes no difference. It must be considered that the award was of a sum for which an attachment would be granted. It was decided by the Common Pleas, in the time of Chief Justice Eyre, that a plaintiff can enforce payment of a sum awarded by attachment, which must be only on the principle

that the sum of money is impliedly an award. The award here directs three-fourths to be paid by one party and one-fourth by the other; and if the whole be paid by one party, the other shall reimburse him the sum he is directed to pay. Consequently, we think, whether the sum is paid by the plaintiff himself, or advanced by the attorney on account of the plaintiff, it makes no difference. The sum so directed to be paid is a sum awarded. The attorney has a lien, not only on the sum expressly awarded, but on that impliedly awarded for the costs of the reference; consequently, the set-off in this case cannot take place with regard to the sum of money paid to take up the award, except on the terms that the attorney's lien on the same for the costs of the reference shall be satisfied. I believe that will dispose of the rule. I rather think it will follow that the rule is to be made absolute; I am not sure.

Bovill.—I understood your lordship to say the award was in favour of the plaintiff.

PARKER, B.—Whatever sum was paid in order to take up the award it must be considered as money awarded, and upon that sum the attorney has a lien for his costs. We will model the rule accordingly. I have not got the rule before me. The result, I think, will be, that the rule will be made absolute in its terms. The sum of money which is paid to take up the award, is a sum of money awarded, for which the attorney has a lien, and is in the condition precisely of a sum of money expressly by the award directed to be paid. We disposed of the whole case, except the question that occurred to the Court at the time, that it was only money paid, and that the defendant was liable to reimburse any money paid. *Mr. Bovill* cited a case in the Court of Common Pleas, and upon the authority of that case we consider it is money awarded. That case is *Hicks v. Richardson*, 1 Bos. & P. 98.

EXCHEQUER CHAMBER.

ERROR FROM THE QUEEN'S BENCH.

(Before *TINDAL, C.J.*, *CRESSWELL, MAULE, and ELLIS, JJ.*, *POLLOCK, C. B.*, *PARKER* and *ROLFE, B.*.)

BYNNER v. THE QUEEN.

Argued Feb. 2 and 3, and May 9. Decided June 13. On *scire facias* to repeal letters patent, the Court of Queen's Bench gave judgment that the said letters patent should be "revoked, cancelled, vacated, disallowed, annulled, void, and invalid, and be altogether had and held for nothing; and also that the enrolment thereof be cancelled, quashed and annulled, and that the said letters patent be restored into her said Majesty's Court of Chancery, at Westminster aforesaid, there to be cancelled." *Held*, that the Court of Queen's Bench had power to pronounce this judgment, and that it was not necessary that the record sent into the Queen's Bench should be returned with the *postea* into the Court of Chancery, for the purpose of enabling such last-mentioned Court to give judgment: for that, although the letters patent, with the enrolment thereof, which were adjudged to be cancelled, still remained in Chancery, yet the act of cancellation is the mere ministerial act of the officer of the Court of Chancery, done in pursuance of the judgment of the Court of Queen's Bench.

This was a writ of error from the Court of Queen's Bench, upon a judgment of that Court on a *scire facias* to repeal letters patent. The material part of the record was as follows:—"England, to wit,—Be it remembered that the Right Hon. John Singleton, Baron Lyndhurst, Lord High Chancellor of Great Britain, on, &c. before our sovereign lady the Queen, at Westminster, hath delivered here into court, with his own proper hand, a transcript of a record had before our said lady the Queen in her Chancery in these words." [The writ of *scire facias* was then set out, which recited certain letters patent, granted to Jeremiah Bynner, for certain improvements in the manufacture of lamps, containing the usual proviso for making them void in case the said grant was contrary to law, or prejudicial or inconvenient in general, or the said invention was not new.] This recital concluded thus:—"As by the said letters patent, enrolled in our said Court of Chancery, amongst other things, will more fully and at large appear." The *scire facias* then set out several counts or issues, "by means of which said several premises the said letters patent, so as aforesaid granted to the said J. B. are and ought to be void and of no effect in law." The writ then called upon the said J. B. "that he be before us in our Chancery, on, &c. wheresoever it shall then be, to shew cause, if he hath or knoweth of anything to say, for himself, why the said letters patent so granted to him as aforesaid, and the enrolment of the same, for the reasons aforesaid, ought not to be cancelled, vacated, and disallowed, and those letters patent restored into our said Chancery, there to be cancelled, and further to do and receive those things which our said Chancery shall consider in this behalf." The record then set forth the return of the sheriff to the writ of *non est inventus*: "And the said J. B. being solemnly demanded, by, &c. his attorney, comes, whereupon Sir Frederick Pollock, Knight, Attorney-General for

our said lady the Queen, who prosecutes for our said lady the Queen in this behalf, being present here in court in his proper person, prays, that the said letters patent so granted to the said J. B. as aforesaid, and the enrolment of the same, may be cancelled, vacated, and disallowed, and the said letters patent restored into her said Majesty's Chancery, there to be cancelled; and the said J. B. says, &c. [setting out several pleas concluding to the country, whereupon issues are joined]. Therefore, to try the several issues above joined, the sheriff is commanded that he cause to come before our said lady the Queen, on, &c. wheresoever she shall then be in England, twelve, &c. [setting out the *causæ*], at which time, to wit, on, &c. before our said lady the Queen, at Westminster, come, &c. [setting out the *distinguis juratores*]; at which time, to wit, on, &c. [setting out the *postea*]. Whereupon, all and singular the premises being seen and fully understood by the Court of our said lady the Queen, before the Queen herself, now here, and mature deliberation being thereupon had, it is considered by the same Court here that the said letters patent of our said lady the Queen, so granted to the said J. B. as aforesaid, be revoked, cancelled, vacated, disallowed, annulled, void, and invalid, and be altogether had and held for nothing; and also that the enrolment thereof be cancelled, quashed, and annulled, and that the said letters patent be restored into her said Majesty's Court of Chancery, at Westminster aforesaid, there to be cancelled. And the tenor of the said record so delivered by the said Lord High Chancellor into the said court of our said lady the Queen, before the Queen herself, and of all things had thereupon in the same court of our said lady the Queen, before the Queen herself, is remanded into the said Chancery of our said lady the Queen." The errors assigned were in substance that, the Court of Queen's Bench ought not to have given judgment upon this record, that the letters patent and enrolment should be cancelled; but that the record ought to have been returned and remanded into the Court of Chancery, that judgment might there be given upon the record by that Court, which alone had authority to pronounce the judgment. Joinder in error.

Webster, for the plaintiff in error.—It is submitted on behalf of the plaintiff in error that the judgment of the Court of Queen's Bench was erroneous, inasmuch as that Court had no power to pronounce final judgment, annulling the letters patent, and cancelling the enrolment thereof. The proper course would have been to have sent back the record after verdict into the Court of Chancery, in order that final judgment might there be given and the letters patent be cancelled. *Jefferson v. Morton*, 2 Wms. Saunders, 6th edit. 22, *whil no doubt be relied upon by the defendant in error*; the marginal note to that case is as follows:—"To a *scire facias* in Chancery on a recognizance acknowledged there against the tenants of the consour, some of the defendants plead to issue, and the others demur; the record is delivered by the Chancellor to the Court of King's Bench for the purpose of trying the issue, the whole record must come to the Court of King's Bench, which shall give judgment both on the verdict and demurrer, and the record shall not be sent back into Chancery." Now it may be conceded on behalf of the plaintiff in error, that this case is good law, but, then it is not applicable in the case of a *scire facias* to repeal letters patent, because the letters patent are enrolled in Chancery, and consequently, if the proceedings were to remain in the Court of Queen's Bench, the enrolment could not be cancelled. In order to cancel the enrolment the record must first be remanded into Chancery, and this shews that the case just cited cannot apply. The fact is, that only a transcript of the record is sent into the Court of Queen's Bench, the record itself remaining in Chancery, and the correct practice is to return this transcript together with the *postea* into the Court of Chancery, in order that the enrolment of the letters patent may be cancelled by the Chancellor, who alone has the power to cancel them. It is believed that there are only three cases to be found in which proceedings have been taken after verdict on a *scire facias* to repeal letter patent; the first is the case of *Reg. v. Nickels*, Hindmarsh, Pat. 419, 627 (b), in which judgment was given in the Court of Chancery, and a writ of error was brought upon that judgment, not to the Court of Exchequer Chamber, as in this instance, but to the House of Lords. Then there is the case of *Reg. v. Bynner*, now before the Court, and lastly, that of *Reg. v. Newton*, Hindmarsh, Pat. 427, in which likewise judgment was given in the Court of Chancery, and the Lord Chancellor, assisted by the Master of the Rolls, cancelled the letters patent. The first and last of these cases are clearly authorities in favour of the plaintiff in error, and shew that the record ought to be remanded into Chancery for final judgment. There are other arguments in favour of the position now contended for; for instance, in order to obtain the *fiat* of the Attorney-General, which is necessary to authorise the issuing of the writ of *scire facias*, the prosecutor must give security, by bond, to the chief clerk of the Petty Bag Office, the object of which is to prevent patentees from being vexatiously harassed

by actions of *scire facias*, in which they could not recover costs against the prosecutor. The condition of the bond, therefore, is, that if the defendant obtains a verdict and judgment in the action, the prosecutor shall pay him the amount of his costs after taxation as between attorney and client. Now this bond remains in the Petty Bag Office even after the record has been removed into the Queen's Bench, and even if that Court could give a final judgment, it is clear that it could in no way deal with the bond so given by the prosecutor, or with any proceedings which might arise out of it. Then, if the Court of Queen's Bench can legally give the judgment which they have assumed to give in this case, the patentee would be prevented from entering a disclaimer under the statute 5 & 6 Wm. 4, c. 83, s. 1, after such judgment, because the Chancellor would act in conformity with that judgment; whereas, if it be true that the Chancellor alone has power to cancel letters patent, a disclaimer might be entered after the verdict in the Court of Queen's Bench as to that part of the title of the invention or of the specification which could not be sustained. The point now before the Court is new, and could not have been raised prior to the statute just referred to, because formerly the proceedings to repeal letters patent virtually terminated with the verdict, the patentee having no power of amending in case of an adverse verdict; it is, therefore, very important to determine until what period the patentee can disclaim, and by so doing cure a defect in the original specification which would otherwise be fatal. It is provided by section 2 of the statute 5 & 6 Wm. 4, c. 83, that, even after verdict, the patentee, who has been found thereby not to have been the true inventor, may apply on petition to the Queen in Council to confirm the letters patent, and that the matter of such petition shall be heard before the Judicial Committee of the Privy Council; and it is further provided, that such committee may, after examining the said matter, report to her Majesty their opinion that the letters patent ought to be confirmed, or that new letters patent ought to be granted, and that the prayer of the petition should be granted, in which case her Majesty may, if she shall think fit, grant such prayer. Now, prior to this statute, the Chancellor had, it is conceived, a similar power, viz. to decline to cancel letters patent although the issues had been found against the patentee; but if the Court of Queen's Bench had jurisdiction to pronounce judgment in the form here adopted, the Chancellor would, in every such case, be deprived of his discretionary power, and a great hardship would thus be inflicted on the patentee. On the whole, it is submitted that the case of *Jefferson v. Morton* only applies where the entire cause, or "the whole record," comes into the Queen's Bench, and where that Court consequently can so act that nothing remains subsequently to be done. It is further submitted that, according to the authorities, the judgment of the Court below in this case was erroneous. He also cited *Richardson's Chancery Pr.* 394; 2 Wms. Saunders, 27, 72, u and x; 4 Inst. 72, 80, 88; Year Book, 24 Edw. 3, 73, b; 6 Vin. Abr. Court of K. B. G. pl. 1, 5; Brooke's Abr. Record, pla. 79; Petition, pl. 11; Bar. pla. 45; Brief, pla. 104; Judgment, pla. 135; and Jurisdiction, pla. 53; Conscience, pla. 61; Keilw. R. 94, b; *The Sackville College* case, Sir T. Raym. 178; Fitzherbert, Abr. Petition, pla. 19; 6 Mod. 245; 1 Rolle Abr. 534, Courts, G; Jenkins' R. 133, pla. 71; Id. 134, pla. 74; Corner's Crown Office Pr. 202; *Smith v. Upton*, 6 Man. & Gr. 256, a; *Digges's* case, 1 Rep. 157; *Stewart's* case, cited 9 Rep. 99; *Sarnesfield's* case, cited 8 Rep. 23 a; Rolle, Abr. Chancery, F. pla. 1; 4 Vin. Abr. Chancery, F. 1; *The Mayor of Liverpool v. The Chancellor of the County Palatine of Lancaster*, cited 1 Stra. 151; Id. 158; *Hunt v. Coffin*, Dyer, 197, b, which was a *scire facias* by the first patentee to repeal a subsequent patent of an office of parkership, and in which "judgment was given by Cardinal Wolsey, Chancellor, with the advice of the judges and king's sergeants, &c. that they should be revoked, &c.;" *Brewster v. Weld*, 6 Mod. 229; Lilly, Entries, 419, where is given the form of getting in a patent in order to cancel the enrolment; *Rex v. Butler*, 3 Lev. 220. He likewise referred to the forms of writs of *scire facias* given in Hindmarsh on Patents, to the recent cases reported in the same work of *Reg. v. Newton* and *Reg. v. Nickels*, and to the stat. 6 & 7 Vict. c. 20, as shewing that, in fact, the record itself is not sent from the Court of Chancery into the Court of Queen's Bench; but that only the tenor of the record is so sent; that is to say, only a sufficient statement of what occurred in Chancery to enable the Queen's Bench to dispose of the issues sent for trial. He also cited the above authorities to shew what was the practice in the Petty Bag Office, and what powers are delegated by the Court of Chancery to the Queen's Bench.

Hugh Hill, for the defendant in error.—The Court of Queen's Bench had power to give judgment upon this record; and the form here used is identical with that in *Jefferson v. Morton*. It is not necessary, on behalf of the defendant in error, to contend either that judgment may not be signed in the Court of Chancery, or that that Court does not possess the

power of giving judgment to cancel letters patent after trial of the issues raised between the parties. The practice will be found laid down correctly in Gilbert, History and Pract. of Chancery, 12, 13; 3 Bla. Com. 48, 49; Tidd. Pr. 9th ed. 1095. According to the practice of the Petty Bag Office, the record, when the parties are at issue, is made out in duplicate, one part being kept in that office, and the other sent into the Court of Queen's Bench. It is not, therefore, a transcript of the record, as contended for the plaintiff in error, but the record itself, which is sent to the Queen's Bench. Besides, no case shews in what manner the defendant can be coerced to bring back the record into Chancery in order that judgment may there be given to cancel the letters patent; but it is evidently necessary that final judgment should be given somewhere, so as to prevent the patentee from using the letters patent to the damage of the public. There are many authorities to shew that the practice has been to give judgment in the Court of Queen's Bench. The case of *The Mayor of Liverpool v. The Chancellor of the County Palatine of Lancaster* (*supra*), is not in point; it merely shews that the *scire facias* must issue out of Chancery in the first instance, which is not denied; and the case of *Brewster v. Weld*, relied upon by the other side, is in favour of the defendant in error, for it is there said, that the Court of Queen's Bench "seemed likewise to hold that a *scire facias* upon a record in Chancery was not returnable here. But clearly, after a writ issues out of Chancery returnable in another court, that court into which it is returnable has jurisdiction of it, and not the Chancery; nor can the Chancery supersede such writ; but all the irregularity, both in issuing it out and in the return of it, is solely examinable in the court in which the writ is returnable, which, if the writ be legal, will hold plea upon it, but otherwise will quash it." Even if it should appear to this Court that the Court Below has exceeded its jurisdiction in that part of their judgment which declares that the enrolment shall be cancelled, this Court will, by omitting those words, give such judgment as the Court of Queen's Bench ought, under the circumstances, to have given. Then with reference to the argument drawn from Lord Brougham's Act, this may be dismissed by observing that a patentee may, at any time pending the trial of the issues, apply to enter a disclaimer in accordance with the provisions of that statute, and such entry will be available, although made after issue joined between the parties; but it is submitted that no power is given to the patentee by that Act either to enter a disclaimer, or to make any memorandum of alteration after verdict. *Hill* cited Stanford's Pleas of the Crown, 77, b; Brooke Abr. Judgment, pla. 135; *Reg. v. Ailes*, 10 Mod. 258; *Reg. v. Holland*, Ayley, R. 14; Fitz. Abr. Petition, last pla. 11 Rep. 74, a; a record in the Tower, described as Gloucester, No. 47, which was a *scire facias* brought by the Abbot of Cirencester to repeal letters patent which had been granted to that town, and in which it appears that the Court of Queen's Bench gave judgment cancelling the letters patent; *Fazachary v. Baldo*, 1 Salk. 341; *Reg. v. Earl of Dorset*, T. Raym. 154, 177; *Arkwright's* case, Webster's Patent Cases, 74; Year Book, Mich. T. 11 Hen. 4, fo. 5, Trin. T. 21 Edw. 3, fo. 58 b, Mich. T. 3 & 4 Ph. & M. Roll. 16, which case was furnished by Mr. Robinson, one of the Masters of the Court of Queen's Bench; Rast. Entr. 461; *Molyneux v. Laron*, Cro. Jac. 12; *Blaxton's* case, Latch 3; *Reg. v. Mason*, 2 Salk. 447; *Richardson*, Pr. 393; *Sarnfield's* case, 8 Rep. 23, a; 2 Wms. Saund. 72, o, note; *Dacre's* case, 38 Edw. 3, Ro. 16.

Webster in reply.—The authorities cited on the other side merely shew that where a case comes regularly before the Court of Queen's Bench, from Chancery, the former Court is entitled to pronounce some judgment. (*Sarnfield's* case; *Reg. v. Holland*, *supra*.) Here it is contended that the judgment so pronounced is erroneous and cannot be sustained. [TINDAL, C.J.—Would not the proper course be for the patentee, if he thinks that the judgment of the Court of Queen's Bench will be against him, to enter a disclaimer before such judgment is actually given, and pray the Court to suspend their judgment; if this course had been adopted in the present case, the difficulty which undoubtedly exists would have been avoided.] In this case, judgment was actually signed before it was thought advisable to disclaim.

JUDGMENT.

TINDAL, C.J. (now, June 13), delivered judgment as follows:—This was a *scire facias* brought to repeal certain letters patent which had been granted to the plaintiff in error. The record before us, which is brought by writ of error from the Court of Queen's Bench, states that the Lord Chancellor had delivered into Court, with his own proper hands, a record had before our said lady the Queen, in her Chancery, being the record so brought into the Court of Queen's Bench, with the recital of the original writ of *scire facias* issued out of the Court of Chancery, returnable there, calling on Bynner, the plaintiff in error, to appear and show cause why the letters patent therein set forth, and the enrolment of the same, for the reasons therein given, ought not to be cancelled, vacated, and disallowed, and those letters

patent restored into her Majesty's Chancery, there to be cancelled. The record proceeds to state also the grounds upon which the validity of the letters patent is impeached; the appearance and pleas in bar of Bynner and the issues in fact joined thereon; the award of the writ of *venire facias* returnable in the Court of Queen's Bench; the appearance there of the Attorney-General on the part of the Crown, and of Bynner, by his clerk in court; the return of the *venire facias*, the award of the *distingas*, and the usual clause of *si prius*; the *postea* as returned by Mr. Justice Coleridge, who tried the issue; then follows the judgment of the Court of Queen's Bench, in these words: "That the said letters of our said lady the Queen so granted to the said Jeremiah Bynner as aforesaid be revoked, cancelled, vacated, disallowed, annulled, void, and invalid, and be altogether had, and held for nothing; and also that the enrolment thereof be cancelled, quashed, and annulled, and that the said letters patent be restored into her said Majesty's Court of Chancery at Westminster aforesaid, there to be cancelled." The record now brought before us concludes with these words: "The tenor of the record so delivered by the said Lord Chancellor into the said court of our lady the Queen, before the Queen herself, and of all things had thereupon in the same court of our said lady the Queen, before the Queen herself, and remanded unto the said Chancery of our said lady the Queen." The question raised before us upon this writ of error has been, whether the Court of Queen's Bench has the power of giving the judgment before stated. On the part of the plaintiff in error it has been contended that no more than a transcript of the record is sent down to the Queen's Bench for the purpose of enabling that Court to try the issue which has been raised in the Court of Chancery, and that after the trial of such issue, the record sent to the Court should be returned with the *postea* to the Court of Chancery, to enable that Court to give the judgment which has in fact been given by the Court of Queen's Bench, so as to make the act of cancelling the enrolment of the letters patent the act of the Court of Chancery, as being an act which that Court alone can carry into effect. On the part of the defendant in error it has been contended, on the other hand, that the record in the action of *scire facias* being sent to the Court of Queen's Bench, it is the duty of that Court to pronounce the judgment; that the tenor of the record, that is, an exact transcript of the whole record, is then transmitted to the Court of Chancery, to enable the Court to carry the judgment into effect by cancelling the enrolment. There are difficulties undoubtedly in the establishing of either of these positions with absolute certainty. There are conflicting authorities, which have been brought forward in favour of both. On the whole, however, we think the balance of authority is decidedly in support of the position contended for on the part of the Crown, namely, that the record is sent down to the Queen's Bench; that the Queen's Bench has authority to award the judgment, and afterwards to transmit either the record, or the tenor thereof, to the Court of Chancery, in order to be fully carried into execution there. In the first place, the proceedings before us state that the Chancellor has delivered here into court, with his own proper hand, a record; and this is not the form in this instance only, but the general form in other precedents. See Tremain's Pleas of the Crown, 652; and also *Jefferson v. Morton*, 2 Wms. Saund. 6. In this latter case, the great question between the parties was, whether the record itself had been properly sent down from the Court of Chancery to the King's Bench, inasmuch as upon the record there was an issue in fact, and also a demurrer in law, both joined in the Court of Chancery upon the same record; and no one appears to have doubted in that case that where there is an issue in fact only, the record must be sent down to the Court of King's Bench for the purpose of trying the issue; but it was said that after the trial of the issue so transmitted to the King's Bench to be tried, the record ought to be sent back to the Court of Chancery for the Chancellor or Keeper to give judgment upon it. However the whole Court delivered their opinions *seriatim* that the record of the demurrer and issue together were well and legally transmitted into the King's Bench, and the Lord Keeper of the Great Seal was also of the same opinion; and in the course of the argument, *Diggs's* case, 1 Rep. 157, and *Steward's* case, cited in the 9th Rep. were relied upon, where the record was transmitted into the King's Bench and several special verdicts found, and the Court of King's Bench retained the records, and did not send them back into Chancery, but gave judgment on the special verdicts. It was objected, that although this might be the practice where a final judgment might be given, and execution had thereon, in the Court of King's Bench, yet that in this case more remained to be done in the Court of Chancery, and which could not be done elsewhere, namely, that the letters patent, with the enrolment thereof, which still remained in the Court of Chancery, were directed to be cancelled. But it seems a sufficient answer to this objection, that nothing remains to be done in the Court of Chancery but a mere ministerial act by the officer of that court; and it is clear that there is no

difficulty in getting an exact transcript of the record of the judgment from the Chancery to the Queen's Bench by *certiorari* and *mittimus*. The point, however—the only point—to be determined by us is, whether the Queen's Bench had authority to give judgment in this case in the form in which they have given it; and we think they had. Many precedents have been found of judgments had in the Court of King's Bench to repeal letters patent, which records are still remaining. In the King's Bench, Michaelmas Term, 4 Philip & Mary, Roll 16, is a record of a *scire facias* to repeal letters patent returnable in the King's Bench; and the judgment thereon is, that the letters patent be cancelled. [His lordship here read a portion of the original judgment, which was in Latin, and the purport of which was, as stated, that the letters patent should be cancelled.] The case brought forward, in the course of the argument, of a record found in the Tower, Gloucester, No. 47, 5 Hen. 5, is strong to the same effect. It is a *scire facias* brought by the Abbot of Cirencester against the town of Cirencester, to repeal a charter which had been granted to that town, and judgment was given for the Crown. In that case the tenor of the judgment alone is certified by the Court of King's Bench to the Court of Chancery, a *certiorari* having been issued, to which the return is made, beginning with the words [his lordship here read a portion of the return, which was to the effect that the letters patent should be cancelled]; and we are informed by the officer in the Tower, that both in the Cirencester case and numerous other cases a writ of *certiorari* is tied or pinned to the record of the Court of King's Bench, at the head of it, with an endorsement by the Chief Justice of the King's Bench for execution of the judgment. Without commenting or referring to the other authorities cited in the course of the argument, we think these are abundantly sufficient to prove that the Court of Queen's Bench had the power of giving the judgment which they have given, and that the same must be affirmed.

Judgment affirmed.

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

(Before Mr. Commissioner GOULBUEN.)

Re ROGERS.

The Court has jurisdiction to withhold the certificate in cases where the granting of it was not opposed either by assignees or creditors.

The bankrupt, a draper at Lewes, applied for his certificate. Neither the assignees nor any other creditor offered any opposition.

His HONOUR said, it was still the duty of the Court to inform itself through the proceedings, and by any evidence in its power, as to the conduct of the bankrupt as a trader, upon which (by granting the certificate) it was about to pronounce a favourable judgment. He availed himself of this opportunity to express his dissent from a proposition made in argument, in a recent case heard before his learned brother Holroyd, and which the latter had mentioned to him, viz. that in cases where neither assignees nor creditors opposed the granting of the certificate, the Court had no jurisdiction to withhold its assent thereto. This doctrine, if acted upon, would defeat the chief object of the legislature in passing the late statute (5 & 6 Vict. cap. 122, sec. 39), by which the power over the certificate was taken from the creditors, and transferred to the Court. The reason for this transfer was obvious; it arose from the experience of the very undue motives, whether vindictive or mercenary, which were found to operate on the minds of creditors, in order to induce them to give or withhold their assent, and wholly unfitting them to exercise a calm and unbiased judgment on the punishment fit to be awarded against their debtors. It is true the statute directs the Court to hear and judge of the objections urged by creditors against the certificate; but it also directs the Court "to have regard to the conformity of the bankrupt's laws, &c. and to his conduct as a trader, as well before as since his bankruptcy." Now, how can a commissioner certify that such conformity and conduct are in all respects blameless, when the proceedings before him perhaps plainly showed the direct opposite? The learned commissioner had made it a rule in his court to call upon the official assignee for a report in each case as to a bankrupt's conduct and his accounts.

The report in the present case was then read, and the bankrupt's solicitor heard in answer to some objections appearing therein as to the bankrupt's excess of expenditure over his profits; and this being answered to the satisfaction of the Court, the certificate was granted forthwith.

Sitting Notes.

Sittings at Guildhall after Trinity Term.
COURT OF QUEEN'S BENCH.

(Before Mr. Justice WIGGATMAN.)

SIMPSON v. MARGETSON and OWNERS.

Meaning of the word "Month."

Where an agreement had been made between the parties.

off, an auctioneer, and the defendants, that the plaintiff's commission on the sale of a certain estate should be one per cent. if sold within two months, and one-half per cent. if sold after that time: Held, that the word "months," must be construed to mean, in such case, "calendar," and not "lunar" months.

Byles, Serjt. and Unthank, appeared for the plaintiff; and Watson, Q. C. and Palmer, for the defendants.

This was an action to recover the sum of 420l. claimed by the plaintiff under the following circumstances:—The defendants had paid 220l. and disputed the claim for the balance. The plaintiff was an auctioneer and land agent. The defendants were gentlemen, who, as trustees, were called on to sell an estate, and employed the plaintiff for that purpose. The contract between them was, that the plaintiff should receive one per cent. commission on the value obtained for the estate if sold within two months, and one-half per cent. if sold beyond that time. The estate was sold for 40,050l. and the plaintiff claimed 400l. on that sale as his commission. The remaining money was claimed as for money paid.

Watson and Palmer, for the defendants, contended, that the sale having taken place more than two lunar months after the agreement, the plaintiff was only entitled to one-half per cent. The question between the parties was, whether the word months, in the agreement, meant lunar or calendar months. The plaintiff tendered the evidence of auctioneers to show that they always understood in business the word month to mean calendar month, unless it was otherwise expressed, but the evidence was rejected. The defendants proved that the plaintiff had used the words "calendar months" in the catalogue issued by him, and, therefore, showed himself aware of the difference between a lunar and a calendar month, and must be taken to have made his contract with the defendants upon that understanding. It was further contended that the use of the word month with a meaning of a calendar month in bills of exchange and charter parties was an exception to the general rule of law, and depended entirely on the merchant law, which had no application to this case.

His lordship left it as a question of fact to the jury what was the intention of the parties when they entered into the contract.

The jury returned a verdict for the plaintiff, considering that the parties had not intended to restrict the meaning of the word "month" to a lunar month. The verdict was returned for the plaintiff accordingly.

Watson then applied to the judge for his opinion on the question, which he insisted was a matter of law, and not of fact.

WIGHTMAN, J. expressed his opinion, subject to a motion in the court above, that the verdict ought to be entered for the plaintiff.

Circuit Reports.

NORTHERN CIRCUIT.

Newcastle-on-Tyne Summer Assizes, 1846.
(Before Mr. Justice WIGHTMAN.)

LAMBERT v. KNILL.

Liabilities of provisional committees.

Where there is both a managing committee and a provisional committee, and an action is brought against a member of the provisional committee, who had never interfered in the concern, for expenses incurred by the managing committee, it is a question for the jury, upon the facts, whether the defendant authorized the committee of management to order such work to be done as was necessary for the undertaking in that stage, and to pledge his credit for the amount? If the jury find in the negative, the verdict must be for the defendant.

Martin, Q.C. and Robinson, for the plaintiffs. Watson, Q.C. and Warren, for the defendant.

Martin stated the case for the plaintiffs; they are lithographers, and the action was brought to recover from the defendant the sum of 1,039l. for certain lithographed plans and books of reference, which they had executed for the Oxford, Witney, Cheltenham, and Gloucester Independent Extension Railway Company, of the provisional committee of which the defendant was a member. Until the trial of a cause before Mr. Justice Cresswell, some days before, he would have looked upon the present case as substantially undefended. It was one of those cases of which so many had occurred within these few years. The success of a few of the leading lines of railway had brought forward a great number of new schemes. To induce persons to come forward and take shares in these undertakings, a number of persons gave their names to the world as provisional committee-men, on the faith of whose respectability others were expected to embark in the concern, and to whom persons engaged to do the work, preliminary to an application to Parliament, were to look for their remuneration. The present plaintiffs had been engaged on the authority of the managing committee of the line in question, through Mr. Nicholson, their engineer, to execute the maps and books of reference necessary

to enable the company to go to Parliament. The defendant was one of the provisional committee, and, according to many cases which had been decided in the Court of Exchequer, he, with the other members of such committee, would be liable for such preliminary works. Indeed, according to the provisions of the Act for the registration of joint-stock companies, they seemed to be the persons whom the law contemplated as the persons responsible for the expenses incurred preparatory to obtaining an Act. The parties who come forward to advance any such scheme are called the "promoters," an expressive and intelligible phrase. The Act provides for a provisional registration, and the granting of a certificate of such registration, and then empowers the parties to open subscription lists, and do other matters with a view to obtaining a bill. Many cases had been tried on the liability of these promoters, and the question left to the jury was, whether the provisional committee-men did not hold themselves out as persons who would be responsible to the various parties employed, and did such parties look to them for payment? This had been the view of the matter usually taken by the Courts, and this, he submitted, was the correct view, although the very learned judge to whom he had already referred had, in a late case, taken a different view. The learned counsel then went through the facts of the case, which in substance amounted to this, that the company in question was formed in the latter part of last year, and prospectuses were published, containing the names of thirty or forty provisional committee-men, among whom was the defendant. The plaintiffs were employed to do the work in question through Messrs. Albano and Nicholson, the engineers, who were authorized by the acting committee of management to engage them for that purpose. It would not appear that Mr. Knill had given any consent in writing to the use of his name as a committee-man, but he knew of it being so used, and described himself as such. References were made to him by some parties who applied for shares, and in these applications he was described as a provisional committee-man. On these applications he had indorsed his name approving of the applicants, and on one occasion he called at the office and asked to see the list of the parties who had referred to him, stating to the clerk that he was a provisional committee-man. In this case, as in most others, there were, it was true, two bodies—the provisional committee and the provisional committee of management, the latter being a selection of names from the former. He submitted that the latter was merely a more select body appointed by the others for convenience sake, but not the persons solely responsible to third persons. He would prove this party was a provisional committee-man, and shew the value of the work done.

Anthony Bustin, secretary to the company, proved that references were given to Mr. Knill. He is a wharfinger and merchant. Witness saw him at the office in Gracechurch-street in the latter part of September or the beginning of October. He said he was Mr. Knill, one of the provisional committee of the railway, and he had come to look over the applications for shares of the parties who had referred to him. Witness told him the lists for the provisional committee were not yet made out. He then went out of the room. As he went out, Mr. Hill, one of the committee of management, came in. Witness told Mr. Hill the object of defendant's visit. Mr. Hill called him back, and told him the list would be made out shortly. Mr. Knill then went away. There were nine on the committee of management. Cannot say if they took the office on themselves. It was done in the usual way. They were promoters of the scheme. They appointed themselves. There never was any meeting of the provisional committee apart from the committee of management. The latter was in existence before the provisional committee. Mr. Miller, the solicitor, is brother to Mr. Ambrose Miller, who is on the committee of management. Mr. Miller was not one of the original promoters. Messrs. Pontifex and Moginy are employed, advising the committee of management about winding up. The company had no funds, and the creditors were clamorous about their money. Mr. Moginy is acting as the solicitor for the plaintiffs in this case. The company began advertising in the early part of September. It was only a committee of management at first. The books of the committee of management are not here.

It appeared, from the prospectus put in, that it contains the following provisions:—

"Until an Act of Parliament is obtained the affairs of the company are to be under the control of the committee of management for the time being, to whom power is given to allot the shares, and to apply the funds of the company in payment of all the expenses incurred in its formation, and in the preparation of plans and sections to be submitted to Parliament.

"Power will be applied for in the Act, and in the meantime is hereby given, to the committee of management as above, to raise any additional capital, to abandon any part of the line, to make branch lines, or to enter into any arrangement with any other company, and also to nominate the first directors."

Evidence was then adduced to show that reference had been made to Mr. Knill by several persons applying for shares, in one of which applications he was described as a member of the provisional committee, and that he had endorsed such application with an approval of the parties.

At the close of the plaintiff's case, his lordship intimated an opinion that there was no proof of the retention of the plaintiff, according to the directions given by the committee of management. The clerk was directed, it was said, to write to Mr. Nicholson; but no proof was given of the receipt of such letter by Mr. Nicholson, which, were it produced, would shew the terms on which the parties were engaged, and from which it might perhaps appear that the committee of management were solely liable.

Mr. Nicholson was then called, and stated that he had no recollection of such a letter. He had received a great many. He recollected Mr. Potter, one of the acting committee of management, giving him verbal directions to employ Mr. Lambert, and, while the plans were being made, he frequently communicated with the committee of management on the subject.

Watson, for the defence, contended that this was not the action of the plaintiffs, but of the acting committee of management, who, having set the scheme on foot, before any provisional committee existed at all, and held themselves out to the world as the parties liable, were now seeking to throw the burthen of these liabilities on the shoulders of parties whom, like Mr. Knill, they had put forward as members of the provisional committee. No previous consent of Mr. Knill to make such use of his name had been shown, and any such subsequent assent was sought to be proved only by the most suspicious and ambiguous evidence. But the acting committee of management were the promoters of the scheme, and the parties liable, not the provisional committee. The latter did not appoint the committee of management. It was in existence before the provisional committee existed at all. Its members were originally the parties who, and not as the representatives or delegates of the larger body, set on foot the undertaking, and were responsible for the expenses.

His LORDSHIP summed up, and left the following questions to the jury:—

1. Whether the defendant was a member of the provisional committee, and suffered his name to be held out and used as such?

This the jury answered in the affirmative.

2. Did the defendant authorize the committee of management to order such work to be done as was necessary for the undertaking in that stage, and to pledge his credit for the amount?

The jury found he did not.

3. Did he give such authority to an individual member of the committee, Mr. Potter?—No.

4. Was the work done such as was proper and necessary for the undertaking in its then stage?—Yes.

5. Was the work done by the plaintiffs on the credit of the defendant as one of the provisional committee?—Yes.

On this finding, his LORDSHIP directed a verdict for the defendant, with liberty to move to enter a verdict for the plaintiff.

DURHAM SUMMER ASSIZES, 1846.

Durham, July 28.

(Before Mr. Justice CRESSWELL.)

WEBB v. WATTS.

Liabilities of provisional committees.

Where defendant had on the 15th of July written a letter stating his willingness to be a provisional director when the committee should be formed, but had never taken any active part in the business of the project, and the prospectus with his name appeared on the 16th of October, and on the 27th of September the plaintiff was employed by the acting manager to do certain work:—

Held, that such a mere consenting to the use of his name in the prospectus was not an entering into a partnership, nor did it render the defendant liable for all the acts done by other parties or committee-men, and that, therefore, the secretary, in the transaction shewn, had no power to impose upon the defendant this liability to the plaintiff.

This was an action of *assumpsit*, brought by Mr. George Hatton Webb, formerly an attorney's clerk, to recover the sum of 86l. alleged to be due for work, and labour, and money paid by the plaintiff, in the service of the Irish West Coast Railway undertaking; the defendant's liability to pay the demand being, that the latter had caused himself to be made a provisional committee-man to that railway.

Martin and Atherton, for the plaintiff.

Knowles, Addison, and Seymour, for the defendant.

Martin, in opening the plaintiff's case, said that the question upon the present inquiry would be very similar to that which had already arisen in other actions, in which it was said, some of the judges had expressed an opinion against those plaintiffs who claimed compensation of provisional committee-men. But, the learned counsel said, he had himself no doubt that such liability existed. He apprehended that every person who took any part in the establishing of a railway was to be considered as one of the promoters, and

that when a man became a provisional director, and thus put himself forward as a promoter of the scheme, he did, impliedly, by so participating in the scheme, and recommending it to the public, undertake to pay those things which, by the Parliamentary standing orders, were made indispensable to the obtaining of a Bill from the legislature. If a man would come forward before the public as one of a provisional committee in these cases, he must, in reason and in justice, be taken to make himself answerable for such expenses as were needful for the end in view. Besides which, a person assuming that character had peculiar advantages, which, it would be found, had been enjoyed by the defendant in this case; the provisional directors were in the habit of receiving a number of shares in the undertaking, which were allotted to them at the commencement of the scheme, and which they could sell at a premium without having before paid any thing for them. The present defendant was sued for a sum of money due to the plaintiff for wages as a clerk employed in the taking of traffic, a species of work without which it would be useless to attempt to get a Bill to establish the company. The work to be done by the plaintiff was, therefore, something without which the scheme could not be successful, and that being the case, he (Mr. Martin) anticipated that the plaintiff would be held entitled to recover. The plaintiff had been five or six weeks in Ireland, and was afterwards recalled, in consequence of the cessation of the scheme, occasioned by the panic.

A letter from the defendant was then put in. It was dated at Darlington on the 15th July, 1845, signed by the defendant, and addressed to Messrs. Reid and Robinson, solicitors for the railway, No. 10, Old Jewry Chambers, London. It purported to be in answer to an application from the solicitors, and stated that the defendant would allow his name to be placed on the list of committee-men, and requiring that he should have 50 shares allotted to him, and 50 more afterwards in case circumstances might so permit. On the 16th October the prospectus, having the defendant's name in it, was published. On the 27th September preceding, Mr. William Campbell, who was acting manager from August to October, gave the plaintiff a written appointment to go to Ireland, as taker of the traffic on the projected line. It was signed by Mr. Campbell, dated at 21, Thavies'-inn, and appointed plaintiff to act as taker of traffic, at 25s. a-day, exclusive of travelling expenses, from the 29th, then inst. the engagement to terminate in 60 days, or two months from that date.

Evidence was then adduced of Mr. Campbell having acted as managing director.

His LORDSHIP said that this was the first action of the kind which had been tried before him, and asked if it had not already been decided by Mr. Baron Parke, that where there was a managing committee the defendant could not be made liable?

KNOWLES submitted that the plaintiff had made out no case: first, because there was no evidence of any work performed by the plaintiff, at least not in Ireland; and secondly, because the plaintiff had failed in giving any evidence at all of a contract between him and the defendant.

His LORDSHIP intimated that there might be some question upon the former of these points; but considered that the evidence given did afford proof of something having been done by the plaintiff towards earning the wages contracted for.

MARTIN contended that although the taking of the traffic had never been proceeded with, yet the defendant could be called on, in this form of action, to pay the wages, and that the plaintiff was not bound to sue in any other form. It was the same as with any other person whose services might be engaged. If a servant were hired for a year, and ready to work, but not put to work, he might still make his demand as for work and labour. It was upon the second point, however, that he mainly insisted, and he said that the defendant never having taken any active part in the business of the project, the letter of appointment being on the 27th of September, and the publication of the names of the committee not until the 15th or 16th of the month following, there could be no contract between these parties. He submitted, whether the mere fact of a gentleman writing a letter, to say that he was willing to be a provisional director when the committee should be formed, could render him liable to this action by a person so appointed by Mr. Campbell? Mr. Campbell could not have written the letter now read upon the responsibility of the defendant, and the plaintiff could not have undertaken this employ on any credit given by him to Mr. Watts, as the contract had been entered into before the name of the latter had been made public.

MARTIN said that this view of the case was contrary to decisions in the courts above. In *Bennett v. Burdett*, before Mr. Baron Alderson, on the 28th of January last, it was held that the defendant was liable. There the defendant had merely signed a written consent to become a provisional director.

CRESSWELL, J.—But what was the other evidence?

KNOWLES.—Mr. Burdett was shown to have at-

tended meetings of the committee. He had consented to act, and he had acted. In this case the plaintiff had not acted on the authority of a secretary, but at the place where the defendant himself was attending as committee-man.

MARTIN.—Mr. Baron Alderson said that there could not be a doubt but that the defendant was liable for all contracts.

ATHERTON referred to the case of *Barnet v. Lambert* also in the Exchequer. There the plaintiff gave in evidence the defendant's letter, as here, but its terms were qualified by the writer saying that he would not incur any liability beyond the amount of his shares. The defendant then had attended one committee meeting, but the decision of the Court was upon the qualified expressions of the letter.

MARTIN was proceeding to quote the case of *Wild v. Hopkins*, when Mr. Watson exclaimed, "We are going to move for a new trial there."

His LORDSHIP then called upon Martin to say what question of fact he would wish him to leave to the jury.

MARTIN said that it would be this—"Whether the defendant, by giving his consent to be a provisional committee-man, and his consent to take shares, did not thereby hold himself out, or consent to have himself held out, as a party, to be responsible for the reasonable expenses of carrying the scheme before Parliament."

CRESSWELL, J. said that would be a question of law. He was at present of opinion that no contract with the defendant had been proved. It might be assumed that the defendant had seen prospectuses containing his own name, but his merely consenting to that use of his name was not entering into a partnership, nor would it render him liable for all the acts done by other parties or committee-men. His lordship thought that Campbell, in the transaction shewn, had not power to impose upon the defendant this liability to the plaintiff.

Plaintiff nonsuited.

DEVON SUMMER ASSIZES.

Exeter, July 29, 1846.

REG. v. CROYDON AND ANOTHER.

Evidence—Confession—Attorney.

The words "I dare say you had a hand in it; you may as well tell me all about it," constitute a sufficient inducement to exclude a subsequent confession.

An attorney engaged in the investigation of a crime, for the purpose of getting up a prosecution, is a person clothed with authority to offer such an inducement.

The prisoners were indicted for burglary. The facts are briefly, that, at a former assize, one Baker had been tried, found guilty, and transported for a burglary. After his conviction, the prisoner, who appears to have been connected with Baker in the transaction, went with Baker's daughter to Mr. Bartlett, the attorney who conducted Baker's defence, for the purpose of making some statement relating to the burglary. Mr. Bartlett admitted that he had said to him, "I dare say you had a hand in it; you may as well tell me all about it," and that he was then endeavouring to discover the criminals for the purpose of prosecution.

Cox, for the prisoner, objected that this was an inducement held out by a person having authority, and the subsequent statements of the prisoner were inadmissible. There was no case precisely in point. The words in the decided cases were, "It will be better for you to confess," or to that effect. But the Court would take the words, not according to their strict literal meaning, but according to the common understanding of them; and in this view, the expression, "You may as well tell me," is equivalent to "You had better tell me." It conveyed the same meaning to the prisoner, and the main question is, was it an expression calculated to operate as an inducement to him, what meaning may be fairly supposed to attach to it?

Cornish, for the prosecution, contended that the words themselves were not an inducement, and that, if they were, it was not held out by a person having authority. None of the cases went further than the words "You had better tell me," and the Court could not now carry those cases further; and certainly the words "You may as well" are not equivalent to the words "You had better." As to the second point, Mr. Bartlett was clothed with no such authority as was requisite to shut out any statement made to him, after an inducement which he had not the power to offer. He was not the prosecutor, or even his attorney or agent.

Cox.—But he was then engaged in an endeavour to get up a prosecution. He was seeking to discover a criminal. He did this either on his own account, or as attorney for another—in fact as attorney for the Bakers. In either case, he had the authority necessary to make any inducement by him a bar to the reception of the subsequent confession.

Mr. ROGERS said that the points being new, he would consult Mr. Baron Platt upon them. Having done so.

Mr. ROGERS said, "I have consulted Mr. Baron Platt upon the points raised, and he entirely agrees

with me that there was an inducement, and that the statements of the prisoner are inadmissible."

Verdict—Not Guilty.

Cornish, for the prosecution.

Cox, for the prisoner.

Attorneys:—Prosecution, Bartlett. Prisoner, Toms.

THE LEGISLATOR. SUMMARY.

THE Small Debts Bill has been read a third time and passed in the Lords. It is to become law this session. The Short Forms Bill and the Registration of Deeds Bill are withdrawn for the present session; but they are to be renewed next year.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, July 31.

Copyhold Commission—"to continue the Copyhold Commission."

Turnpike Acts Continuance—"to continue certain turnpike Acts."

Stock in Trade—"to continue the exemption of Inhabitants of Parishes, Townships, and Villages, from liability to be rated as such, in respect of Stock in Trade, or other property, to the Relief of the Poor."

Highway Rates—"to continue an Act for authorising the application of the Highway Rates to Turnpike Roads."

Loan Societies—"to continue the Act to amend the Laws relating to Loan Societies."

Monday, August 3.

Gauge of Railways.

Sugar Duties, No. 3.

Naval Medical Supplemental Fund Society—"to amend, for a time to be limited, the regulation of the Annuities and Premiums of the Naval Medical Supplemental Fund Society."

Religious Opinions.

Tuesday, August 4.

Judgment Creditors.

Wednesday, August 5.

Sites for Dwellings, No. 1—"to empower the Commissioners of her Majesty's Woods to sell, subject to conditions, Sites for Dwellings for the Poor, out of the Hereditary Possessions of the Crown."

Arms, Ireland—"to continue an Act of the sixth and seventh years of her present Majesty, intitled, 'An Act to amend and continue for two years, and to the end of the then next Session of Parliament, the Laws in Ireland relating to the registering of Arms, and the importation, manufacture, and sale of Arms, Gunpowder, and Ammunition.'"

Sites for Dwellings, No. 2—"to empower the Commissioners of her Majesty's Woods, to sell, subject to conditions, Sites for Dwellings for the Poor, out of Lands vested in them by the Acts for the Improvement of the Metropolis."

Contagious Diseases Prevention—"For the more speedy removal of certain Nuisances, and to enable the Privy Council to make regulations for the prevention of Contagious and Epidemic Diseases."

Lunatic Asylums, Ireland—"To continue an Act of the fifth and sixth years of her present Majesty, for amending the Law relative to private Lunatic Asylums in Ireland."

Turnpike Roads, Ireland—"To continue certain Acts for regulating Turnpike Roads in Ireland."

Forms, Assessed Taxes—"To provide Forms of Proceedings under the Acts relating to the Duties of Assessed Taxes and the Duties on Profits arising from Property, Professions, Trades, and Offices in England."

Militia Pay—"To defray the charge of the pay, clothing, and contingent and other expenses of the Disembodied Militia in Great Britain and Ireland; to grant allowances in certain cases to Subaltern Officers, Adjutants, Paymasters, Quartermasters, Surgeons, Assistant Surgeons, Surgeons' Mates, and Sergeant Majors of the Militia; and to authorise the employment of the Non-Commissioned Officers."

Thursday, August 6.

Small Debts

BILLS READ A SECOND TIME.

Monday, August 3.

Copyhold Commission

Turnpike Acts Continuance

Stock in Trade

Highway Rates

Loan Societies.

Wednesday, August 4.

Gauge of Railways

Sugar Duties, No. 3

Naval Medical Supplemental Fund Society.

Thursday, August 5.

Religious Opinions

Forms, Assessed Taxes

Militia Pay.

BILLS READ A THIRD TIME AND PASSED.

Friday, July 31.

Burial Service, No. 2.

Monday, August 3.

Consolidated Fund, 4,000,000l.

Joint Stock Banks, Scotland and Ireland.

Tuesday, August 4.

Court of Common Pleas

Spirit Licences and Duties

Baths and Washhouses, Ireland.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Monday, August 3.

Humphrey's Divorce

Scott's Estate
Cheeshire Returning Officer.

Duke of Norfolk's Estate.
Wednesday, August 5.

Bond's Estate.
Thursday, August 6.

BILLS READ A SECOND TIME.

Friday, July 31.
Lord Kenyon's (Congreve's) Estate

Tuesday, August 4.
Cheeshire Returning Officer
Booth's Charities, Clowes's Estate
Duke of Cleveland's Estate.

Wednesday, August 5.
Horne's (Ferguson's) Estate

Thursday, August 6.
Dublin Wide Streets.

BILLS READ A THIRD TIME AND PASSED.

Friday, July 31.
Sligo and Shannon Railway
British Guarantee Association.

Monday, August 3.
Lord Kinnaird's (Sir John Webb's) Estate
Metropolitan Sewage Main Company
Stamford and Spalding Railway
Wisbech, Saint Ives, and Cambridge Junction Railway.

Tuesday, August 4.
Moasmouthshire Railway, No. 2
Allhallows (Northampton) Tithes.

Thursday, August 6.
New Zealand Company
Galway and Kilkenny Railway.

SESSIONAL PRINTED PAPERS.

Public Houses, Scotland—Report from Committee
Postage Stamps, &c.—Return
Collieries—Report on the Gases and Explosions
China—Accounts
Bills—Insolvent Debtors Act Amendment
Episcopal Revenues and Dioceses
Court of Common Pleas
Copyhold Commission
Turnpike Acts Continuance
Stock in Trade
Highway Rates
Loan Societies
Drainage, amended
Gauge of Railways
Decadence Abolition, No. 2, amended by Select Committee
Death by Accidents Compensation, amended by Select Committee
Sugar Duties, No. 3
Cheeshire Returning Officer
Naval Medical Supplemental Fund Society
Religious Opinions
Tidal Harbours Commission—Second Report
French Claims—Account
Reproductive Loan Fund Institution, Ireland—Second Report
New Houses of Parliament—Dr. Reid's Reply to the Resolutions respecting Ventilation, &c.
Private Bills—Report from Committee
Inclosure Commission—Special Report
Metropolitan Turnpike Roads—20th Report
School of Design—5th Report of the Council
Railway Bills Classification—25th Report of Committee
Wellington Statue—Paper.

Bills in Progress.

EPISCOPAL REVENUES AND DIOCESES.—On Saturday a bill was printed (prepared and brought into the House of Commons by Mr. Frewen and Mr. Colquhoun), "to provide for the better Regulation of Episcopal Revenues and Dioceses." There are sixteen provisions in this measure, founded on the preamble, which is to the effect that it is desirable to enlarge the powers of the Ecclesiastical Commissioners, and to increase the number of bishops for England and Wales, and to distribute the dioceses of bishops more equally than they are now, and more justly to apportion episcopal revenues. It is proposed that all episcopal property shall vest in the Ecclesiastical Commissioners; that nineteen new bishops be created, the appointment to be by the Queen in Council; and that the archiepiscopal and episcopal dioceses in England and Wales be in future distributed as set forth in the fourth provision. A return of the incomes of the bishops to be made, and a fixed stipend to be paid, and on a deficiency of income, then to be paid out of the Consolidated Fund. It is proposed that bishops shall sit in Parliament under certain regulations. The Ecclesiastical Commissioners are to provide suitable residences for bishops; and by the 13th clause it is proposed that the Queen may remove or suspend any archbishop or bishop. This bill is to be read a second time on Wednesday next.

ADMINISTRATION OF JUSTICE.—Preamble recites inconveniences resulting from the present infrequency of holding sessions of the peace, as well as from the distance prosecutors, witnesses, and others, are compelled to travel to the sessions. Clause 1 authorizes the Secretary of State for the Home Department, on the requisition of twenty of the local magistrates, to cause an adjourned quarter sessions to be held in addition to the ordinary quarter sessions. Clause 2 requires that notice of such adjournment shall have been inserted in the *London Gazette*, and some local paper.

SMOKE PROHIBITION.—BILL TO PROHIBIT THE NUISANCE OF SMOKE FROM FURNACES OR MANUFACTORIES.—Preamble having recited the expe-

diency of providing for the public health and comfort by controlling the above nuisance, Clause 1 empowers the justices in any city, borough, or place, to appoint inspectors for their locality, with salaries payable from the county, city, or borough rate. Clause 2 defines the following terms:—"Opaque smoke" means smoke not transparent at the point of its exit from a chimney; "furnace" comprehends such only as are used for the heating of stationary steam-engine boilers; and by "occupier" is intended such person or persons as are in actual possession of any such furnace, either as owner or owners, or as tenant or tenants, or any person having the joint or separate use thereof. Clauses 3 and 4 enact that opaque smoke shall not be permitted to issue from any chimney of a furnace for any longer time than is *bona fide* necessary for the kindling of the fire of such furnace, under a penalty not exceeding 5*l*. Clauses 5-7 empower the justices to hear complaints which are to be preferred within a month after the commission of the alleged offence. Personal service of the summons is not required. The magistrates have power to compel the attendance of witnesses, and to imprison such as are refractory for not more than fourteen days. Clause 8 inflicts the penalty of perjury for giving false evidence under this Act. Clause 9 throws the *onus probandi* upon the party summoned. Clauses 10 and 11 provide for the recovery of penalties. Clause 12 enables the party convicted to recover in return from any one through whose negligence or wilful misconduct the offence has been committed. Clause 13 provides that the provisions of the Act are not to affect any nuisances at common law, though evidence of having paid the penalty of a conviction under the Act is to be received from all other proceedings, civil or criminal, for the same offence. Clauses 14 and 15 regulate the form of conviction, and give a power of appealing to the Quarter Sessions. Clause 16 prohibits actions being brought on account of any thing done in pursuance of this Act, until twenty-one days' notice in writing; or after sufficient satisfaction tendered; or more than two months from the time of such act having been committed.

HOUSE OF LORDS.

ROYAL ASSENT.

MONDAY, August 3.—Shortly before four o'clock the Lord Chancellor, the Earl of Shaftesbury, and the Earl of Minto, took their seats in front of the throne as Lords Commissioners, the Speaker, with several members of the Commons, having been summoned to the bar to hear the commission read for giving the Royal assent to sixty-one public and private Bills, the titles of which are subjoined, and to witness the proceedings. The Royal assent was then given, with the accustomed formalities, to the Bills in question. These are the titles:—The Sugar Duties, No. 2; New Zealand Loan; Ropeworkers; Battersea Park; Battersea Bridge; Sheffield and Lincolnshire Railway Junction; South Staffordshire Junction Railway, with Branches; Leeds and Bradford Railway, Junction at Bradford; Blackburn, Preston, and East Lancashire Railways Amalgamation; Newport, Abercavenny, and Hereford Railway; South-Eastern Railway, No. 2; Greenwich Railway to Chillingham, with Branches; Manchester and Leeds Railway Extension; Shrewsbury and Birmingham Railway; Shrewsbury, Wolverhampton, and South Staffordshire Junction Railway, No. 1; London and Birmingham Railway, Weedon and Northampton Branch; Blackburn, Darwen, and Bolton Railway; Midland Railways, Leicester and Swanington Railway Alteration and Branches; Liverpool and Bury Railway; Wilts, Somerset, and Weymouth Railway; Birmingham, Wolverhampton, and Dudley Railway; Trent Valley, Midlands, and Grand Junctions Railway; Strathsay and Breadalbane Railway; Londonderry and Enniskillen Railway Extension; Whitehaven and Furness Railway Extension; Sheffield and Lincolnshire Railway Extension; Dublin, Belfast, and Coleraine Junction Railway; Shropshire Union Railway and Canal, Chester and Wolverhampton Line; Shrewsbury and Herefordshire Railway; Shropshire Union Railway and Canal, Newtown to Crewe; Bristol and Birmingham and Midland Railway; Shropshire Union Railway and Canal, Shrewsbury and Stafford Railway; North Wales Railway; Birmingham, Wolverhampton, and Stour Valley Railway; Birmingham, Wolverhampton, and Derby Lines; Caledonian Railway, Glasgow, Garnkirk, and Coatbridge Railway Purchase; Newcastle and Darlington Railway, Pontop and South Shields Railway Purchase; London and Birmingham, Coventry to Nuneaton, Railway; Edinburgh and Bathgate Railway; Portbury Pier and Railway, No. 2; Surrey Iron Railway Company Dissolving Bill; Glasgow, Garnkirk, and Coatbridge Railway Extension; Caledonian Railway, Glasgow Terminal and Branches; Gravesend and Rochester Railway and Canal Sale and Purchase; Midland Railway, Birmingham and Gloucester Branches; Vale of Neath Railway; Cokermonth and Wokington Extension Railway; Sligo and Shannon Railway; Birmingham and Oxford Junction Railway; West Cornwall Railway; Cornwall Railway; Birmingham and Oxford Junction

Railway, Birmingham Extension; Cambridge Improvement; Billingsgate Market Improvement; Gorbals Water; Sheffield Improvement; Tunbridge Wells Improvement; Kennington Improvement; Barr's Estate; Fleming's Estate; Vale's Estate; Pelp's Estate; and Eden's Estate.

SMALL DEBTS BILL.

The house then went into committee on this bill.—Earl Powis suggested that the judges to be appointed in Wales should understand the Welsh language.—The LORD CHANCELLOR said it would be desirable if they could be found. The noble and learned lord then proposed an alteration in the 8th clause to the effect that the judges in existing courts of ancient tenure for recovering small debts, should be appointed to preside over the new courts. This alteration, as well as the remaining clauses, with some verbal amendments, having been agreed to, the bill went through committee, and the house resumed.

JOINT STOCK COMPANIES.

WEDNESDAY, August 5.—Lord SANDON wished to know in what state of progress was the measure for enabling joint stock companies to wind up their affairs.—Mr. M. GIBSON said he hoped the bill would be passed during the present session.

HOUSE OF COMMONS.

BANKRUPTCY AND INSOLVENCY BILL.

WEDNESDAY, August 5.—On the order of the day for the committee on this bill, Mr. BOUVIERIE observed at some length on the present deficiency of our bankruptcy law. Mr. Commissioner Goulburn stated that, after fifteen years' experience in the Court of Bankruptcy, he had come to the conclusion that there was great facility for evasion, and very little power of punishment. Mr. Commissioner Fane described the present system as "a law to encourage knavery with impunity," and it had been estimated that the amount of bad debts lost in consequence of the present system amounted to not less than 24,000,000*l*. per annum. It was said that the honesty of our trade was deteriorating year by year. This bill had for its object to remedy some of these evils. He had heard, however, that the subject was about to be taken up on a large scale by Her Majesty's government, and if that were the case, he should be ready to withdraw the bill.—Sir G. GREY said he had received from the Lord Chancellor an intimation that the Bankruptcy Laws were under his consideration with a view to consolidation and amendment. He hoped, therefore, the bill would be withdrawn. Bill withdrawn accordingly.

LOUGHBOROUGH MAGISTRACY.

THURSDAY, July 30.—Mr. CHRISTIE moved an address to her Majesty, praying for copies of the correspondence between the Home-office and the magistrates of the Loughborough petty sessions on the cases of Mary Ann Tyler, John Jarvis, and Catherine Stubbs, and of the report of the commissioner appointed to inquire into the case of Catherine Stubbs.—Sir G. GREY said, that it was not usual to produce the correspondence between the Secretary of State and the magistrates, or the reports of the commissioners; but in this particular case, as the magistrate had himself brought the subject before his brother magistrates at the late sessions for Leicestershire, although the course was unusual, yet the right hon. gentleman opposite (Sir J. Graham) having no objection, he would in this case agree to produce the correspondence and report, as the subject had been brought before the public by the magistrate; and if the newspaper report was correct,—the complete case made by the correspondence did not appear to have been shewn,—he would consent to the correspondence being laid before the house, but this must not be drawn into a precedent. The address was then agreed to.

THURSDAY, August 6.—On the motion of Lord CAMPBELL, the Interpleader Bill and the Mandamus and Prohibition Bill were read a first time. He said the object of the bill was to assimilate the practice in Ireland to that which now prevailed in England with much advantage.—Earl GREY moved the second reading of the Poor Removal Bill.—The Duke of RICHMOND said the measure was so very imperfect, that it would be better to postpone it until next session. It was one of those measures intended as a compensation to the agricultural interest for the passing of the Corn Bill; but in its present state it would be better for the agriculturists that it should not pass until next session, when a comprehensive measure of settlement would, he hoped, be brought forward by the Government.—Lord REDFERN supported the Bill, upon the express ground that it was so imperfect that it would compel legislation in the ensuing session of Parliament.—The Duke of GRAFTON said that the Bill in its present shape was so imperfect, and so practically useless without some further measure, that its postponement could not lead to any inconvenience.—The Marquis of LANSDOWNE said the Bill was an imperfect application of a sound principle; but, imperfect as it was, he thought it of great importance to

have that principle affirmed on their journals, as a guide to future legislation.—The Bill was then read a second time, and was ordered to be committed on Tuesday.

THE MAGISTRATE.

Summary.

THE Poor Removal Bill is to be hurried into a law, and a glance at it will shew how completely our legislators are defeating their own

object. Few and brief as are the clauses, they open a huge field for dispute and consequent litigation. The question, What is to be deemed a residence within a certain parish? will give rise to incalculable points of law, and interminable questions of fact. The truth is, that until the relief of the poor is paid out of a common fund, and the law of settlement abolished, there can be no peace between parishes. But from such a rational arrangement we are, as yet, far distant.

REVISING BARRISTERS.

A RETURN of Appeals from the Courts of the Revising Barristers to the Court of Common Pleas, made up to the 1st day of March, 1846, pursuant to the Act 6 & 7 Vict. c. 18.

Decisions of the Court of Common Pleas upon Appeals from Revising Barristers, Michaelmas Term 1845, and Hilary Term 1846.

I.—COUNTIES.

No.	Name of County or Division of County.	Place where the Court of Revision held.	Names of the Appellants and Respondents.	Decision of Court of Appeal.
1	Eastern Division of County of Gloucester	Cheltenham	Bishop, Appellant; Helps, Respondent.	For the Appellant.
2	Same	Same	Bishop, Appellant; Cox, Respondent.	For the Appellant.
3	Same	Same	Pruen, Appellant; Cox, Respondent.	For the Respondent, with costs.
4	West Riding of Yorkshire	Huddersfield	Alexander, Appellant; Newman, Respondent.	For the Respondent.
5	Middlesex	Hampstead	Wood, Appellant; Overseers of Willesden, Respondents.	For the Respondents.
6	Same	Same	Walker, Appellant; Payne, Respondent.	For the Respondent.
7	Southern Division of County of Lancaster	Rochdale ..	Riley, Appellant; Crowsley, Respondent.	For the Appellant.
8	Same	Manchester	Beswick, Appellant; Ashworth, Respondent.	For the Respondent.
9	Same	Same	Beswick, Appellant; Aked, Respondent.	For the Respondent.
10	Same	Liverpool	Rawlings, Appellant; Overseers of West Derby, Respondents.	For the Appellant.
11	Same	Same	Rawlings, Appellant; Bremner, Respondent.	For the Appellant.
12	Same	Manchester	Hoyland, Appellant; Bremner, Respondent.	For the Appellant.
13	Northern Division of Cheshire	Knutsford ..	Newton, Appellant; Overseers of Mobberley, Respondents.	For the Respondents.
14	Same	Same	Newton, Appellant; Overseers of Cruley, Respondents.	For the Respondents.
15	Same	Same	Thorneley, Appellant; Aspland, Respondent.	For the Respondent.
16	Same	Knutsford ..	Newton, Appellant; Hargrave, Respondent.	For the Respondent.
17	Same	Stockport ..	Murray, Appellant; Thorneley, Respondent.	For the Respondent.
18	Southern Division of Cheshire	Nantwich ..	Bayley, Appellant; Overseers of Nantwich, Respondents.	For the Appellant.
19	Same	Congleton ..	Hicklin, Appellant; Antrobus, Respondent.	For the Appellant.
20	Northern Division of County of Notts	Retford	Ashmore, Appellant; Lees, Respondent.	For the Respondent.

I. General Statement as to Counties.

Nos. 1 and 2.—In each of these two cases, the point raised for the determination of the Court of Appeal was precisely the same. The objector, in each case, had delivered his notice of objection at the post-office on the 24th August (observing all the requisites prescribed by the 100th section of the Registration Act, as to the form of such delivery), and the notices would, by the ordinary course of the post, be delivered at the place to which they were respectively directed on the 25th August, being the day on or before which the notice of objection is required by the 7th section of the same Act to be given both to the overseer of the parish and to the party objected to. But by reason of some cause, which was unexplained, the notices, instead of being delivered at the place to which they were respectively directed on the 25th August, as in the ordinary course of the post they ought to have been and would have been delivered, were not actually delivered until the 26th August, and whether these were valid and sufficient notices of objection was the question raised for the Court; upon which question the Court held, that the objector having done all that the statute required or made necessary on his part to be done, by delivering them at the post-office in the proper time, and in the proper form of delivery, the notices must be considered good and sufficient, and as the revising barrister had held the notices not to be sufficient, the Court reversed his decision, and directed the names of fourteen claimants mentioned in the case No. 1, and twenty claimants mentioned in the case No. 2, to be expunged from the register.

No. 3.—The appeal in this case also turned upon the sufficiency of the notice of objection. The notice described the objector's place of abode as "No. 398, High-street, Cheltenham," and in the "register of voters for the parish of Cirencester." The objection taken to the notice was, that in the register the objector was described as of "Cheltenham" only,

without any further particularity; but as this more particular description gave the true place of the objector's abode, the Court held the addition to the general description in the register of the particular street and number of the house where the objector resided could not invalidate the sufficiency of the notice, and affirmed the barrister's decision that the notice of the objection was good, with costs.

No. 4.—This case raised a very important question, namely the proper construction of the statute 7 & 8 Wm. 3, c. 25. By the 7th section of that statute, all conveyances are declared to be void which are made in order to multiply voices, or to split and divide the interest in houses or lands among several persons, to enable them to vote at elections of members to serve in Parliament. And the question before the Court was, whether a conveyance made to a large number of persons and their heirs as tenants in common, where the object and design of all the parties to the conveyance was avowedly that of multiplying voices at elections was, upon that ground only, necessarily a void conveyance; such conveyance being in the particular case made in completion of a *bond fide* contract of sale, under which the purchasers paid the purchase-money to the seller, and the seller gave up the possession of the premises to the purchasers who kept such possession, and in which transaction there was no secret reservation or trust of any kind for the benefit of the seller, and the Court held that the statute intended to declare void all such conveyances made for the object and purpose prohibited by the Act as were fraudulent and collusive, and such only, that is, conveyances where it was intended by the parties themselves that no money should pass to the grantors, or that the deed should be nothing more than a conveyance in form, not a conveyance in reality; but that in cases where the conveyance was really intended by the parties thereto to have the full operation which it purported on the face of it to carry, and where there was

no secret trust or reservation of any kind for the benefit of the grantor; as where, for instance, it was intended to be a real conveyance made in completion of a *bond fide* contract of sale; that in such cases the conveyance was not within the intention of the statute, although the motive or object of the parties might be that of creating qualifications to vote at elections, and thereby to multiply voices or split freeholds, and the Court accordingly affirmed the decision of the revising barrister who had directed the names of the claimants to be kept on the register.

This decision had the effect of retaining the names of fifty claimants on the register, whose cases were consolidated with this appeal.

No. 5.—This case related to the sufficiency of the description of the voter, and also of his qualification as it appeared on the register of voters for the county of Middlesex.

The description of the voter upon the register made in conformity with Schedule (A), No. 3 of the statute 6 Vict. c. 18, was this: "Henry Hall, of the Grove, Neasdon, in this parish;" and it was objected that Neasdon was no parish, and that it did not appear within what parish it was situated; but the answer given by the Court was, that the register as to this part of it appeared to be made out by the overseers of the parish of Willesden, and that the words "parish of Willesden" immediately preceded this list of voters, and stood as a heading of every page, so that of necessity "Neasdon, in this parish," must be taken to mean "in the parish of Willesden." The next question reserved was, whether the property was sufficiently described for the purpose of being identified? But as it appeared upon the face of the register that the place of abode of the voter was "the Grove, Neasdon," and that he claimed to vote "for house and land in Neasdon, of which he was the occupier," the Court thought the property was sufficiently described for the purpose of being identified, and affirmed the decision of the revising barrister for the respondents.

No. 6.—In this case also, as in the last, the objection taken was, that the place of abode of the voter was not sufficiently described upon the register; the column which was headed by the words "place of abode" was filled up with the words "travelling abroad," and it was insisted before the revising barrister that he ought to expunge the name of the voter, as directed by the 40th section of the Registration Act; but we thought the revising barrister had properly refused to expunge the name; for that this was not a case in which the place of abode was omitted as contemplated by the 40th section, but where the voter had no fixed place of abode, and consequently that the 40th section of the statute did not apply.

No. 7, &c.—The point raised in each of these cases respectively was the same as that raised in the case No. 4, and the Court of Common Pleas decided each of them in conformity with the principle laid down in their decision of the case No. 4, viz. that if it did not appear that the conveyance was fraudulent or collusive, but, on the contrary, if it was made in completion of a *bond fide* contract of purchase and sale, the case did not fall within the statute of Wm. 3, although made with the object of splitting freeholds, and multiplying voices at elections. In the cases No. 7, No. 11, and No. 12, the revising barrister having held the conveyance to fall within the statute, and to be, therefore, void, and having directed the names mentioned in these respective cases to be expunged, the Court of Appeal reversed those decisions, and directed the names of the 27 persons mentioned in the schedules in the case No. 7, the names of the 133 persons mentioned in the schedules in the case No. 11, and the names of the forty-three persons mentioned in the schedule to the case No. 12, to be restored to the register. And, on the other hand, with respect to the cases No. 8, No. 9, No. 15 and No. 16, the revising barrister having held the conveyances to be good, notwithstanding the objections taken thereto, the Court affirmed those decisions, and thereby continued on the respective registers the names of the thirty-one persons mentioned in the schedules in the case No. 8, the names of the one hundred and sixty-nine persons mentioned in the schedules in the case No. 9, the names of the nine persons mentioned in the case No. 15, and of the two persons mentioned in the case No. 16.

No. 10.—This was the case of an objection made by the overseers against the validity of the claims of forty persons whose names are enumerated therein, upon the ground that the notices of claims were left at the overseer's house on a Sunday. The revising barrister thought the objection good, and expunged the names. The court of appeal, however, was of opinion, that the act of delivering such notice was not void by the registration statute, which carefully excepts Sunday in various other instances from being a day on which certain acts can be done, but is silent as to this Act; nor is it void by any other statute, nor by the common law. The judgment of the revising barrister was therefore reversed, and the names of the forty claimants directed to be restored to the list.

Nos. 13 and 14.—These two cases arose upon the grant of rent-charges, the question of law in each

being virtually the same as that decided by the Court in No. 4, namely, whether the grants of these rent-charges were made void by the statute of Wm. 3, before referred to, as being made for the purpose of splitting freeholds and multiplying voices at elections; and the Court adhered to the same decision as before, and affirmed the judgment of the revising barrister.

No. 17.—In this case an objection was taken to the names of two persons being retained on the list of voters on the ground that they had not been in the actual receipt of the rents and profits for their own use for six calendar months at least before the last day of July, as is required by the sixth section of the statute 2 Wm. 4, c. 45. The property in respect of which the votes were claimed was a rent-charge created by deed, bearing date the 28th January, 1845; but, inasmuch as the first payment of this rent-charge did not become due until the 1st January, 1846, a day subsequent to the last day of July, the three judges who heard the case argued, held there had been no such actual possession for the period of time required by the Act, and affirmed the decision of the revising barrister to that effect.

No. 18.—The objection taken in this case before the revising barrister was, that the notices of the claims delivered by the appellant and twenty-four other claimants, were not proved to have been delivered in due time, and the revising barrister, thinking the objection well founded, directed the names to be expunged. But, inasmuch as it appeared by the case that the notices were duly posted at Manchester on such a day as was sufficient for them to have reached Nantwich within the time required by the statute, although, from some neglect in the Post-office, they did not reach Nantwich until after that day, we thought the same principle of decision which we had laid down in the case of a notice of objection applied also to a notice of claim; and that as

the claimants had done all that was necessary on their part and required of them by the statute, the notices were sufficient. We accordingly reversed the decision made below, and directed the twenty-five names to be restored to the register.

No. 19.—Is a case parallel in all its circumstances with the last, except that this relates to the posting of a notice of objection, instead of a notice of claim. And the revising barrister having held the notice of objection insufficient, and directed the claimant's name to stand on the register, we did, upon the principle laid down in the last case, hold his decision to be wrong, and reversed the same, directing the voter's name to be expunged.

No. 20.—In this case the claimant, James Ashmore, and sixteen other persons, whose cases are consolidated with that of Ashmore, claimed the right to vote for the Northern Division of the county of Notts, as inmates of the Shrewsbury Hospital, describing their qualification to be "freehold interest in lands, buildings, and corn-rents, in lieu of tithes." The question raised for our determination, and upon which our judgment ultimately turned, was, whether the inmates of the hospital, upon the proper construction of the constitutions and the private Acts of Parliament by which the hospital was governed, were entitled, either legally or equitably, to a freehold interest in any lands or rents to the amount of 10l. by the year. And we were of opinion, upon the proper construction of those constitutions and the Acts of Parliament, the inmates had an equitable interest in the lands and rents of the hospital to the amount of 3s. 6d. by the week, and to that amount only, that is, to a smaller amount than 10l. by the year. We, therefore, affirmed the decision of the revising barrister, that the names of the several persons should be expunged from the register.

livered to the claimant on Sunday the 24th; and it was objected by a claimant before the revising barrister, that the notice being delivered and served on a Sunday, such a delivery and service was altogether void, of which opinion was the revising barrister, who thereupon disallowed the notice of objection, and retained the name of the claimant on the list of voters. The Court of Appeal, however, thought the decision was wrong; that the notice of objection directed by this statute was not, as was contended by the respondent, in the nature of a writ or process, the service whereof is prohibited on a Sunday by the statute 29 Car. 2, c. 7, neither was it prohibited by the Registration Act, and they therefore reversed the decision.

The effect of this judgment was to expunge the name of the claimant, and those of twenty-two other persons, whose cases were consolidated with the present.

No. 5.—The claimant in this case described his qualification to vote to consist of two houses, but in the column of his notice to claim, in which the situation of his property ought to be described, he inserted the number of one of the houses in the street in which it was situated, but neglected to insert the number of the other house; and whether this was a compliance with the form prescribed by the 6th Vict. c. 18, schedule (B.), No. 3, was the question. The revising barrister held the notice of claim insufficient, and that the claimant was not entitled to have his name inserted in the list; and we think his decision right. This case disposed of the claims of seven other individuals, which arose under similar circumstances, and were consolidated with this case.

No. 6.—This case proceeded upon a statement of similar facts, and involved the same question with that which was decided by the Court of Appeal in the case of the borough of Dartmouth (No. 2); and three of the judges of the Court who heard the argument in this case, held the notice of objection to be sufficient, whilst the same judge who in the former case held the notice insufficient, retained his former opinion. The Court therefore affirmed the decision of the revising barrister, that the name of the appellant, and the names of five other individuals whose cases were consolidated with the present, should remain expunged from the list.

No. 7.—The question in this case was, whether the claimant, James Bishop, had been duly rated in respect of the premises which he occupied.

The name of Bishop did not appear upon the rate-book; the only name which appeared there was that of the landlord, John Scott; and there appeared upon the rate-book to be a sum of 3l. 2s. 6d. to be still unpaid for rates due on the 6th April preceeding. The revising barrister held that it was incumbent on the claimant (the occupier) to see that those rates had been actually paid on or before the 20th July; and that the evidence produced by him neither shewed actual payment, nor a legal tender of the amount of the rate, and that the claimant was therefore not entitled to vote; and we were of the same opinion, and affirmed his decision.

No. 8.—The objection in this case was taken as to the sufficiency of the description of the qualification in respect of which the claimant had delivered his notice of claim. He had described his qualification as "a house, No. 5, Much-lane, St. Peter-at-Arches, and previously in the occupation of a house, No. 21, St. Mary's-street, in the parish of St. Mary-le-Wigford, Lincoln." The revising barrister held this a sufficient description of two successive occupations, and we affirmed his decision with costs.

No. 9.—The respondent in this case claimed the right to vote in the election of members for the city of London, as a freeman of the city of London, and liveryman of the Company of Bakers. It was objected that he was disqualified, inasmuch as he had been admitted freeman since the 1st of March, 1831, "otherwise than in respect of birth or servitude," which, it was contended, was a disqualification under the 2nd Wm. 4, c. 45, s. 32. The revising barrister decided that the prohibition in section 32 was confined to those cases in which the claimant's right to vote was in respect of his being a Burgess or freeman of any city or borough, and did not extend to the present case, where the claimant's right to vote was that of a freeman and liveryman of the city of London. And the Court of Appeal held this to be the proper construction of the statute, and affirmed the decision.

No. 10.—The question raised upon this case was, whether the value of the house occupied by the appellant was sufficient to confer the right to vote. The revising barrister decided it was not sufficient, stating the facts upon which his decision was founded. The Court of Appeal held this not to be a question of law upon which they had authority to decide, but a question of fact only, for the decision of the revising barrister himself; and that, at all events, as nothing appeared upon the statement to show his decision to be wrong, it must be held by them to be right, and the Court accordingly affirmed the same.

No. 11.—The respondent in this case objected to the name of the appellant being retained on the list of voters for the city of London. The revising bar-

II.—CITIES AND BOROUGHES.

No.	Name of City or Borough.	Place where the Court of Revision held.	Names of the Appellants and Respondents.	Decision of Court of Appeal.
1	City of Lichfield	Lichfield....	Barton, Appellant; Ashley, Respondent.	For the Respondent, with costs.
2	Borough of Dartmouth	Dartmouth....	Knowles, Appellant; Brookings, Respondent.	For the Respondent.
3	Borough of Chatham	Chatham	Coville, Appellant; Overseers of Chatham, Respondents.	For the Respondents.
4	City of Rochester	Rochester	Coville, Appellant; Town Clerk of Rochester, Respdt.	For the Appellant.
5	Borough of Scarborough	Scarborough	Flounders, Appellant; Donner, Respondent.	For the Respondent.
6	Borough of New Sarum	Salisbury	Wills, Appellant; Adey, Respondent.	For the Respondent.
7	City of Westminster	Westminster	Bishop, Appellant; Smedley, High Bailiff, Respondent.	For the Respondent, with costs.
8	City of Lincoln	Lincoln	Hitchens, Appellant; Brown, Respondent.	For the Respondent, with costs.
9	City of London	London	Croucher, Appellant; Brown, Respondent.	For the Respondent.
10	Same	Same	Coogan, Appellant; Luckett, Respondent.	For the Respondent.
11	Same	Same	Bushell, Appellant; Luckett, Respondent.	For the Appellant.
12	Same	Same	Judson, Appellant; Luckett, Respondent.	For the Appellant.
13	Same	Same	Cook, Appellant; Luckett, Respondent.	For the Appellant.
14	Same	Same	Pariente, Appellant; Luckett, Respondent.	For the Appellant.
15	Same	Same	Luckett, Appellant; Knowles, Respondent.	For the Respondent.
16	Same	Same	Luckett, Appellant; Bright, Respondent.	For the Respondent.

II. General Statement as to Cities and Boroughs.

No. 1.—In this case the appellant had objected to the name of the respondent being retained upon the list of voters for the city of Lichfield, and, in his notice of objection to the overseers, had stated generally, "that he objected to the name being retained in the list of persons entitled to vote in the election of members for the city of Lichfield." But, under the statute, it is the duty of the overseers to make out two lists of voters; one of persons entitled to vote in respect of property occupied within the parish, and another list of persons, not being freemen, entitled to vote in respect of any right other than that of property. And as objection was taken, that the notice of objection delivered by the appellant was not sufficient, inasmuch as it did not specify in which list of voters the respondent's name was to be found; and the revising barrister was of opinion that the notice of objection was insufficient on that ground, and the Court of Appeal has affirmed his decision.

No. 2.—The question in the case No. 2 arose upon the form of the notice of objection sent to the appellant. The notice of objection was signed by the objector (the respondent), with the addition of the true place of his abode, as it was at the time of serving the notice; but this place of abode was different from that which appeared against his name upon the list of voters; and the question was, whether a notice of objection signed with the addition of the true place of abode was sufficient within the meaning of the

Act, or whether it was necessary, to constitute a valid notice of objection, that the objector should add the place of abode as it appeared on the list of voters. Three of the Judges of the Court of Common Pleas were of opinion that the description by the true place of abode of the objector was sufficient, contrary to the opinion of the remaining Judge, who held the description must be that of the same place of abode as is inserted in the list of voters. The judgment of the Court was therefore given that this notice was sufficient, and the decision of the revising barrister was thereby affirmed. The cases of eight other persons were consolidated with this appeal.

No. 3.—In this case the question reserved for the consideration of the Court of Appeal was, whether in the case of a person claiming the right to vote for a borough by reason of the occupation of a house as tenant, the fair annual rent was the proper criterion of value, without deducting therefrom the average annual expense of landlord's repairs; and the Court of Common Pleas was of opinion that the fair annual rent was to be considered as the clear yearly value within the meaning of the statute 2 Wm. 4, c. 45, s. 37, and affirmed the decision of the revising barrister to that effect. This decision disposed of the case of seventeen claimants, which were consolidated with the above.

No. 4.—In this case the notice of objection sent by the post to the claimant was put into the post by the objector on Saturday, the 23rd August, and was de-

rist expunged the name of the appellant, upon the ground that he had not been duly rated, as to which he reserved a question for the Court of Appeal. But the Court of Appeal, on consideration of the facts stated in the case, held that the appellant was rated duly in a rate of the premises made in September, 1844, and that such rate must be held in law to continue until a new rate was made, published and allowed, and that the objection therefore did not exist, and reversed the decision accordingly.

No. 12.—In this case the appellant claimed the right to vote in respect of a qualification which was described in the list of voters as "part of a house," and the first question reserved for the consideration of the Court of Appeals was, whether such description was sufficient in point of law; and we held that it was.

The next question reserved for us was as to the sufficiency of the rating. The landlord's name was on the rate with the house opposite to it, and the appellant's name was under that of the landlord, but nothing was carried out against the name of the appellant, nor were the two names connected by a bracket or otherwise; but it appeared to us that a rate so made must be construed to charge the appellant in respect of the premises placed opposite the landlord's name, and as the revising barrister had decided otherwise, we reversed his decision.

No. 13.—The question in this case turned upon the sufficiency of the rating of the defendant to the poor-rate in respect of the house in his occupation, which formed the qualification of his right to vote. But the Court held upon the facts stated in the case, that, notwithstanding the landlord had bargained to pay the poor-rate, and had actually paid it, yet, as the tenant's name was upon the poor-rate, he must be taken to have been *bonâ fide* called upon, and did *bonâ fide* pay the poor-rate, within the meaning of the 75th section of the Registration Act, so as to answer the objection, and the Court reversed the decision of the revising barrister.

No. 14.—In this case, also, the question turned upon the sufficiency of the rating of the appellant on the poor-rate. The revising barrister held the rating to be insufficient, but referred the question to the Court of Appeal. Upon consideration of the facts stated by him, that Court thought the name of the appellant did appear on the rate to be the person rated for the premises, within a reasonable construction of that instrument, or that at all events, both landlord and tenant were rated, which would be sufficient, and reversed the decision accordingly.

No. 15.—This case arose upon an objection made by the appellant against the name of the respondent being retained on the list of voters, on the ground of his place of abode inserted in the list being incorrect. The revising barrister corrected the mistake by inserting the true place of abode of the claimant. And the question reserved for our determination was, whether the revising barrister had the power to make that amendment under the 40th section of the Registration Act. And, upon consideration of that section, we were of opinion, that as he had the power of inserting the true place of abode, both where it was entirely omitted, and also where it was insufficiently described for the purpose of being identified, the present case was substantially within the latter branch of the provision. The decision of the revising barrister was therefore affirmed.

No. 16.—The objection raised by the appellant against the name of the respondent being retained on the list of voters for the city of London was, that he was not the occupier of the house in respect of which he claimed the right to vote. The revising barrister retained his name on the list. And as it appeared upon the facts stated, that the respondent, as one of the joint lessees of the house, had the right to occupy with them, and as there is nothing stated to shew the revising barrister to be wrong in his decision that the appellant did occupy, we held we could not do otherwise than affirm his decision.

III. Return of all Orders made by the Court of Common Pleas as to the Payment of Costs upon any Appeals, and of the Amount of such Costs.

The cases in which the Court of Common Pleas have ordered costs to be paid to the respondents, and the amount of costs taxed, are as follows:—

No. 3 in Return I.—Fruen, Appellant			
Cox, Respondent	10	7	6
No. 1 in Return II.—Barton, Appellant			
Ashley, Respondent	10	15	4
No. 7 in Return II.—Bishop, Appellant			
Smedley, Respondent	11	2	2
No. 8 in Return II.—Hitchins, Appellant			
Brown, Respondent	11	13	2

(Signed) N. C. TINDAL,
Lord Chief Justice of the Court of Common Pleas
at Westminster.

CRIME IN MANCHESTER AND LIVERPOOL.—The police returns of Manchester and Liverpool for the last year have recently been printed. A comparison suggests itself. The amount of property stolen in twelve months, in Manchester, was 13,213*l.*; in Liverpool, 7,852*l.* Recovered in Manchester, 9,532*l.*; in Liverpool, 2,860*l.* The Manchester amount is

swelled by a single item, 4,888*l.* The number of persons in custody in Manchester was 9,770; in Liverpool, 16,588. In Manchester, the summary convictions were 5,117; in Liverpool, 11,993; while the number sent to trial was pretty much the same in both places; 643 here, 667 there. In drunkenness we excel. With us, the number was 9,791; in Manchester, 4,188. The number of public-houses fined in Manchester was 227, and the fines 174*l.*; while the number of beer-houses fined was 483, and the penalties 319*l.* With us, the offending publicans were 176, and the penalties 297*l.* The beer-houses convicted were 250, and the fines 409*l.* In fines for offences against local Acts, the practice differs. The number of summonses in Manchester was 6,015, and the fines 541*l.*; here the summonses were 4,178, and the penalties 10,551*l.* The dock fines constitute the difference. Our neighbours are burdened with 194 habitual thieves, and 82 occasional ones. We have 297 confirmed thieves, and 371 who are only sometimes honest. The Manchester police consists of 435 men; and these were last year fined 168*l.* for misconduct, and rewarded for good conduct with 88*l.* We seem to manage things more liberally. Our force numbers 752 men; they were punished for misconduct to the amount of 101*l.* and rewarded with 458*l.* The number of constables admitted in Manchester last year was 162; in Liverpool, 268. The changes in both forces are rapid. About one-third of the men taken on in Liverpool in 1842 were on last Christmas; two-thirds, or 431, had resigned, or were dismissed. The case is similar in Manchester; the average duration of service hardly exceeds three years.—*Liverpool Journal.*

COURT OF ALDERMEN.—On Saturday a special Court of Aldermen was held for the purpose of receiving a deputation from the committee appointed relative to the building a new criminal gaol in the room of the present Compter. Mr. Wire, the chairman of the committee, said, that finding it would be impossible to purchase land in the city, except at an enormous rate, they had come to the resolution that the proposed gaol ought to be built out of the city, and that Holloway would be the best site. The cost of the ground for the intended building on the site of the old Fleet prison would be 132,000*l.* while the building would be 78,000*l.* and then only three acres would be obtained; whereas the spot fixed on at Holloway consisted of five acres, and could be purchased for 17,000*l.*—the prison to contain 400 persons. Several Aldermen spoke against this proposition, as being directly at variance with the former resolution of the Court of Aldermen, which was that the prison should be built in the city. After some discussion upon the subject of rather an angry description, Mr. Alderman Musgrove suggested that the deputation should write down their propositions to be submitted to the Court. The deputation then withdrew, and the remainder of the business was conducted with closed doors.

The following buildings are certified as places duly registered for solemnising marriages, pursuant to an Act of the 6 & 7 Wm. 4, c. 85:—Holloway Chapel, Camden-road, Holloway; William May, superintendent registrar. The Independent Chapel, situated at Hartshill, in the parish of Mancetter, in the county of Warwick, in the district of Atherstone. The Independent Chapel, or Low Meeting House, situated at Workington, in the parish of Workington, in the county of Cumberland, in the district of Cockermouth. The Adfa Chapel, situated at the Adfa, in the parish of Llanwyddelan, in the county of Montgomery, in the district of Newtown and Llanidloes. Bethlehem Chapel, situated at Peterstone, in the parish of Coychurch, in the county of Glamorgan, in the district of Bridgend and Cowbridge.

THE LAWYER.

Summary.

There has been a calm in the legal world during the past week. Every lawyer in London is looking eagerly for the emancipation of the vacation, and business slackens as the holidays approach. A large variety of legal intelligence occupies our columns to-day, and almost as much as is printed is deferred for want of room. It will be seen, on reference to our Parliamentary Report, that, on receiving an intimation from the LORD CHANCELLOR, that the bankruptcy laws were under his consideration, with a view to consolidation and amendment, Mr. BOUVIER withdrew his Bill; we may expect, therefore, the Government measure early in the next session. We invite attention to a report of the case of *Newton v. Belcher*, at Judge's Chambers (which we give in the proper place), where what we have more than once suggested has been attempted with success,

POLLOCK, C.B. having ordered a stay of proceedings in two of three actions, which had been brought for the same debt against different directors of a railway company, until the other of the three, on which issue had been joined, should be determined. In another column we present a report of an important meeting of the Profession, to concert measures for opposing the obnoxious clauses of the Small Debts Act, now before Parliament. The most effective of the propositions, that urged by Sir GEORGE STEPHEN, if energetically acted upon, can hardly fail to secure the reconsideration and alteration of this—to the Profession—illiberal and unjust measure.

It will be observed, that the very useful Review of Cases in Equity during the last half-year, has been completed, and that of the cases in the Common Law Courts in the two last Terms has been commenced. Thus arranged, they are more easily impressed upon the memory—more readily noted and referred to.

JUDGES' CHAMBERS.

TUCKER v. SLIGH.

A novel but important proceeding was taken in the above cause last Saturday.

A summons had been taken out to set aside a demurrer to the replication as frivolous. The matter was argued by counsel before the Chief Baron, and his lordship made an order, setting the demurrer aside on the ground of its being frivolous. The learned counsel for the defendant, when his lordship was about to make the order, stated, that, before his lordship made the order, he wished to inform him of the course the defendant intended to pursue. He said, that the defendant was desirous to place the point of the validity of the demurrer on the record, that he might be in a position to bring the matter before a court of error if advised to do so. That he, the learned counsel for the defendant, had considered the matter, and that the conclusion he had come to was, that the only mode of getting the matter on the record was by tendering to his lordship a bill of exceptions, under the Statute of Westminster 2 (13 Edw. 1, c. 31); that a bill of exceptions had accordingly been prepared. He then produced the bill of exceptions, engrossed on parchment, and handed it to his lordship, and requested his lordship to seal it. This the Chief Baron wholly refused to do, saying, that a bill of exceptions could not be tendered to a judge sitting at chambers; that his decision was conclusive; that the jurisdiction at chambers was a perfect tyranny. He at the same time added, that if the Court of Common Pleas (where the cause was depending) should be of opinion that he ought to have sealed the bill of exceptions, he would seal it *tunc pro nunc*. The learned counsel for the defendant then offered to shew to his lordship the authorities upon which the proceeding was founded, but the Chief Baron refused to entertain the matter at all. The defendant's counsel then said, that perhaps his lordship would be good enough to look at the bill, in order to see that it was truly and correctly stated. This, also, his lordship refused to do, and the parties then retired.

Considering the summary mode in which important matters are often disposed of at chambers, where a single judge settles in five minutes what the full Court would frequently not decide under as many hours, and then perhaps in a contrary way, it is highly important to ascertain whether or not the law affords any mode of bringing questions so summarily decided before a court of error. According to the present practice, the only appeal from a judge at chambers is to the Court in which the cause is depending. The objections to this practice are: that in the majority of instances the appeal is, partially at least, an appeal from the judge sitting at chambers to the same judge sitting in court, since it is only when the judges are on circuit that a judge of one court entertains applications in causes depending in another; and, which is the more serious objection, that a party may have judgment signed against him on the judge's decision, his property seized under a *f. fe.* or himself imprisoned under *ce. ss.* and detained in prison for months before he has an opportunity of appealing; in short, he may be completely ruined, and by the erroneous decision itself be deprived of

the means of procuring its reversal, and of endeavouring to obtain redress for the injury occasioned by it. Whereas, if the matter can be placed on the record, the defendant may, as soon as final judgment is signed, sue out a writ of error, and, by giving bail in error, stay the issuing of execution. And the statute of Westminster the Second seems adapted to meet this very case. It was passed when pleadings were conducted not as now, in the superior courts, in writing, but, *ore tenus*, in open court, as before a magistrate at the present day; and the evil it was intended to remedy was the summary overruling or disallowing by the Court of some matter alleged by either party by way of plea in the course of the argument, which, when overruled, was never entered on the record, and, consequently, could not be made the ground of a writ of error. And the course it points out is this: the party making the allegation which is disallowed is to write it down and require the judge to put his seal to it, which done, if the record did not itself contain the allegation, the bill of exceptions was taken as part of it, and judgment given upon it. According to the present practice, the bill of exceptions forms part of the record, and the whole is at once brought before a court of error.

Lord Coke, in his commentary on this statute (2 Inst. 427), says that it extends "not only to all courts of record but to the County Court, the hundred, and Court Baron, for therein the judges were more likely to err: and albeit of judgments given in them a writ of error lyeth not, but a writ of false judgment in the Court of Common Pleas, yet the case being in the same or greater mischief, the purview of this statute doth extend to those inferior courts." He also says that "it extends not only to all pleas dilatory and peremptory, &c. and (as hath been said) to prayers to be received, oyer of any record or deed and the like: but also to all challenges of any jurors, and any material evidence given to any jury which by the Court is overruled."

From this it is evident that its primary object was to remedy the mischief of overruling pleas, &c. rather than the rejection of evidence, to which it has been almost exclusively confined in modern practice. In the 9th vol. of his Reports, page 13, b, Lord Coke says that this Act was passed "to prevent precipitation of judges in overruling *ex improviso* questions in law." "For," he quaintly adds, "it is a good rule in the ninth chapter of Judges, consider, consult, and then give judgment."

It is to be hoped that this question will, before long, be fully and fairly raised, argued, and determined.

SERGEANT'S-INN.
(Before the Chief Baron.)
Wednesday, Aug. 5.
NEWTON v. BELCHER.

Where several actions are brought for the same debt, against different directors of a railway company, the judge will, on affidavit of the facts, make an order to stay proceedings in the causes where pleas have not been delivered until the action on which issue has been joined shall have been determined.

This was an application to the Lord Chief Baron to order all proceedings in two of three actions, which had been brought for the same debt against different directors of a railway company, and in which pleas had not been delivered, to be stayed until the other of the three, on which issue had been joined, should be determined.

Keane appeared to shew cause, and contended, first, that a judge at chambers had no power to make such an order; second, that the case of *Ross v. Jacques*, 8 M. & W. 135, was conclusive against an application that would, in effect, amount to the trying on affidavit an issue that should be raised by a plea; thirdly, that the affidavit in support of the application ought to confess the cause of action, and should also state that the defendant in the action that was to be proceeded with was within the jurisdiction.

POLLOCK, C. B. would not allow the question of jurisdiction to be argued, as the proper time for discussing it would be by an application to rescind his order. The affidavit he thought sufficient; and the injustice of allowing several actions to be proceeded with against several parties for the same debt was so great as to justify him in granting the application. The order would not be one "by consent; and, if the plaintiff was dissatisfied with it, he would not be precluded from applying to the Court to rescind it.

Order made.

The following article appears in the *Morning Herald*. We believe that is not the journal alluded to.

We find the following paragraph in the number of the *Law Magazine* for the present month:—

"Notwithstanding the abandonment of the resolution regarding the reporters by the Oxford and Western Circuits, the practice of excluding the names of many of the counsel who practise in London has been continued in the most inveterate and marked manner. Several instances have been made known to us, especially as relates to the practice before parliamentary committees. Remonstrance has been made, but with no effect."

The foregoing passage is conceived in precisely the same spirit that dictated the proscription of an entire class for the fault of an individual member with whom the retaliating party was too timid to grapple openly. In like manner we are here indulged with a libel upon the entire metropolitan press, solely because the writer cannot or dare not make a direct reference to the journal of which he complains. "The names of several counsel, &c. are excluded in the most inveterate and marked manner." But by whom? "Remonstrance has been made, but with no effect."

And to whom? Does the writer refer to the *Morning Herald*? or the *Morning Chronicle*? or the *Daily News*? If such be his intention, would it not be the fairer and more manly course to specify the act and the journal complained of, in lieu of a general accusation, omitting parties and circumstances, which cannot possibly admit of specific refutation? Nay, it would be only common honesty to "editors and proprietors" to do so, for in the latter part of the paragraph, which we have not quoted, it is implied that the obnoxious practice,—which, assuredly, if it exists, is justly condemned,—"arises from the trickeries of persons who are unfortunately members of the profession," meaning, of course, the reporters employed in the several courts and committee-rooms. Surely, if such be the fact, the offender ought to be held up to public reprobation, in the place of being really screened from detection and punishment by the general charge of misconduct upon the whole press, and which is manifestly and notoriously unjust. As the case has been made out, on the common principle of justice, we are bound to conclude that an accusation, couched in the vague general terms which Burke so forcibly describes as the *patois* of fraud, is devoid of foundation, and to dismiss it with contempt. It was, as we before intimated, precisely the same fear of grappling with the delinquent journal itself that led to the act of injustice which embroiled the bar with the entire press, and from which contest the former had to retreat, *par-mula non bene relicta*, to a more tenable position in the public estimation than that from which the attack was commenced. Let it not be supposed, at the same time, that our adherence to our own order blinds us to what is due to the learning, position, and character of the English bar. Let the *Law Magazine* bring forward, if it can, a direct and specific charge, supported by proof, and we promise it our hearty co-operation in reforming the abuse, if it exist; but until it does that we must treat the whole story, on which a superstructure so imposing has been raised, as unworthy of credit. We confess we are the more inclined to this incredulity, remembering the inconsiderate article in which the *Law Magazine*, avowedly as the organ of the Bar, recommended the circuits to adhere to their principle of proscription, and which was published, if we recollect rightly, within a few days of the meeting of her Majesty's counsel, presided over by the then Attorney-General, when the practice of reporting for newspapers was formally vindicated against the stigma with which it had been sought to be branded. We advise the *Law Magazine* to beware how it revive the controversy now so happily at rest.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

At the Court at Buckingham Palace, the 1st day of August, 1846: present—The Queen's Most Excellent Majesty in Council.

The Right Hon. Granville George Earl Granville was, by Her Majesty's command, sworn of Her Majesty's Most Honourable Privy Council, and took his place at the Board accordingly.

Her Majesty having been pleased to appoint the Right Hon. Thomas William, Earl of Leicester, to be Lord Lieutenant and Custos Rotulorum of the county of Norfolk, his lordship took the oaths appointed to be taken thereupon, instead of the oaths of allegiance and supremacy.

The Queen has been pleased to appoint Samuel Nicholas Rooks, esq. to be her Majesty's Solicitor-General for the Island of Tobago.

The Lord Chancellor has appointed Richard Langworthy Hington, esq. to be one of the Keepers of the Peace, in the borough of Clifton Dartmouth Hardness, in the county of Devon.

The Lord Chancellor has appointed Samuel Milner

Barton, of Manchester, in the county of Lancaster, gent. and William Frankish, of Kingston-upon-Hull, gent. and John William Cudworth, of Leeds, in the county of York, gent. to be Masters Extraordinary in the High Court of Chancery.

THE NEW MASTER IN CHANCERY.—The official notification of the appointment of Mr. J. J. Murphy, Q.C. reached the learned gentleman while in attendance at the Cork assizes. Mr. Murphy has returned all his briefs, and will at once proceed to Dublin to enter upon the duties of his new office. The new Master, as well as his immediate predecessor, was born in the "beautiful city" of Cork, and is nephew to the Right Rev. Dr. Murphy, one of the most learned and tolerant of the Irish Roman Catholic hierarchy, and, moreover, a decided anti-Repealer.

IRELAND.—Jeremiah J. Murphy, esq. the new Master in Chancery, has appointed James Watt, esq. the Queen's Proctor in Ireland, his examiner, an office worth 800*l.* a year.

COURT PAPERS.

CHANCERY ORDER.—The following order has been made and issued by the Lord Chancellor, appointing the last days for closing the books of the Accountant-General of the Court of Chancery, for the payment of money out of court, and for the purchase, sale, or transfer of stock, &c. and a copy of such order posted in the registrar's office, Chancery-lane:—

"Court of Chancery.

"Whereas it is proper that the accounts kept by the Accountant-General of this Court should be examined and compared, in order to settle the same. And whereas it will require considerable time to perfect such examination, and it is necessary that the time should be appointed for closing the books of the said Accountant-General for the purposes aforesaid. It is ordered that the books of the Accountant-General be closed from and after Saturday the 15th of August to Thursday the 29th of October, in order to adjust the accounts of the suitors with the books kept at the Bank. That, during that time, no draft for any money, or certificate for any effects under the care and direction of this Court, be signed or delivered out by the said Accountant-General, or any stocks or annuities accepted or transferred by him, relating to the suitors of this Court. That no purchase, sale, or transfer be made by the said Accountant-General, unless the order, request, or registrar's certificate be left at his office on or before Friday next, the 7th of August. That no order for the payment of any money out of court, which may be then in court, be received at the Accountant-General's Office after Monday next, the 10th of August. That, in order that the suitors may have notice hereof, and apply to the Court as there shall be occasion to have money paid to them out of the Bank, or stocks, or annuities transferred to them before the said 15th day of August, this order is to be affixed in the offices of the court."

JUDGES' CHAMBERS, SERJEANTS'-INN. — The Lord Chief Baron has issued a notice altering the time of sitting at his chambers as vacation judge for the remainder of the vacation, and on Monday sat at eleven o'clock instead of ten, as heretofore. Summonses will, therefore, be returnable and attendable at that hour for the future.

LORD CHIEF JUSTICE WILDE.—Sir Thomas Wilde entered upon his duties as Lord Chief Justice of the Court of Common Pleas at Staffordshire Assizes. His lordship, who sat in the *Nisi Prius* court, has made a most favourable impression on all parties who have witnessed his labours, which have been marked by great suavity and patience, as well as a clear and quick perception of the chief points of a case. His lordship is accompanied by Lady Wilde (lately Mademoiselle D'Este), who has attracted considerable attention, in consequence of her relationship to the Royal family, being a daughter of the late Duke of Sussex, by Lady Augusta Murray, to whom his Royal Highness was privately married at Rome. Her ladyship is almost portly in person, and bears considerable resemblance to members of the family of George the Third. Her ladyship and Sir Thomas did not occupy the apartments at the judges' house, but had lodgings in the house of Mr. Hughes, surgeon.—*Staffordshire Mercury*.

LEGAL INTELLIGENCE.

SMALL DEBTS ACT.—MEETING OF THE PROFESSION.

A MEETING of Members of the Legal Profession was held at the Gray's-inn Coffee-house on Tuesday last, to consider the best mode to be adopted for opposing certain clauses in the Small Debts Bill, which materially affect the duties and emoluments of attorneys and solicitors in England.

Mr. PRESTON (of the firm of Elmslie and Preston) took the chair. After stating that in common, he feared, with too many of his legal brethren, he was ignorant of the enactments of the proposed Bill, called upon Mr. Clarke, who had convened the meeting, to explain to them the nature and operation of the proposed measure.

Sir GEORGE STEPHEN, and several members of leading firms, here entered the room.

Mr. CLARKE was sorry it had devolved upon so young and humble a member of the Profession to perform a duty which he should have supposed many older and more influential attorneys would have been eager to discharge; but he found that no danger, however imminent, could induce the majority of the Profession to awaken from the lethargy which, in matters affecting their interest as a body, was unfortunately too proverbial. Like many others, he read in the papers of the numerous petitions from various parts of the country in favour of this Bill; he also saw that it was the determination of the Government, if not effectually opposed, to pass the measure this session, and his curiosity induced him to obtain a copy of the Bill. No sooner had he perused it, than he felt it his duty to inquire if any thing was doing amongst the Profession to check the progress of the measure. He had inquired of some twenty attorneys, and not one of them knew the contents of a single clause—they had all heard and read there was such a Bill—but “it was the old story over again, and, no doubt, it would not be allowed to pass *this session*.” He, however, felt persuaded it would pass *this session*; but whether this should be the case or not, he trusted such a Bill would not be allowed to proceed through all its stages without some remonstrance on their part; and when he had read to the meeting *seriatim*, as he should do, each clause of the Bill, he would leave his hearers to judge whether there was not only just ground for complaint, but also for alarm. Mr. Clarke then read to the meeting the various clauses which more materially affected the public and the Profession; amongst these he more particularly alluded to clause 51, whereby a plaintiff, if his claim was above 20*l*. could abandon the *assess*, and sue in this county court for 20*l*. and next to clause 53, which provides that if the unliquidated balance of any partnership or other account, however extensive or intricate, was under 20*l*.; it might be sued for in this court, so as not only to deprive the Profession of issuing process for debts under 20*l*. but also in many cases *above* that sum. He then more particularly dwelt upon clauses Nos. 62 and 67, where any plaintiff or defendant might appear themselves, or by any person on their behalf. By clause 79 a barrister or attorney must obtain leave of the Court to appear for either the plaintiff or defendant; but an unqualified person might absolutely, and as a matter of right, appear without any such leave; thus at once opening the court to a swarm of persons of whom he need not further remark. True it was that such persons could not, by clause 73, recover any fee for such attendance; but it was well known to all who were conversant with such matters, that the fee would be exacted *beforehand*, and the recovery rendered unnecessary. By clause 113, no future ejectments could be brought where the rental was under 50*l*. as the same summary mode was to apply in these courts, as under the Small Tenements Acts, to rentals not exceeding 20*l*. per annum. Mr. Clarke then adverted to clause 20, enforcing certain penalties where actions were brought in the superior courts; descanted on various other parts of the Bill; and concluded by stating that he thought it was the interest of the Profession to write letters to the framers of the Bill, pointing out the defects of these new enactments, before they had passed into law. There could be no doubt about the *principles* of the Bill; and certainly the terrible costs upon small debts had long ago convinced him that it would have been the duty and interest of the Profession to have promoted a graduated scale of costs upon debts of five, ten, twenty, fifty pounds, and so on; but the sluggish Profession refused to bestir themselves, and the Legislature had taken advantage of their supineness. Mr. Clarke then read to the meeting a petition to Parliament, which he had prepared, setting forth the injury this Bill was likely to entail upon the Profession, by curtailment of their duties and emoluments, unless certain clauses were altered and modified.

Mr. F. HARRISON said that he begged to differ

from Mr. Clarke in respect to one observation which had fallen from him, namely, that it was not the duty of the Profession to aid and assist the Legislature to make every measure tending to affect the public, as this Bill did, as perfect as possible, and he thought that the Profession ought to shew that they considered the interests of the public identical with their own.

Mr. CLARKE said the Profession were too rarely consulted upon practical measures, and they would have no credit given nor sympathy shewn them for any assistance they might proffer; in fact, there appeared to be a general leave and license to ruin the Profession—a consummation which was fast approaching.

Sir GEORGE STEPHEN next addressed the meeting.—He said, having heard of the meeting, he attended there out of a desire to aid his professional brethren; not that the Bill in question would much affect him, but it would no doubt affect the major part of attorneys. He could not advise any petition to Parliament, for from his parliamentary knowledge of petitions he knew how they were presented and “laid on the table;” but he thought that if a deputation was formed to wait upon the Lord Chancellor, who was a kind, considerate, affable, and liberal man, and also to wait upon the Attorney-General, Solicitor-General, Sir Fitzroy Kelly, Sir Frederick Thesiger, Mr. Watson, Mr. Stuart, and any other gentlemen of the House of Commons, and that such deputation would explain and shew in what respect certain clauses in this Bill bore hardly upon the Profession, that such representations would receive support and attention much beyond the mere presentation of a petition. Besides, there was no time to be lost; the Bill had passed through committee in the Lords, and in a few days would be in the Commons. Sir GEORGE then strongly commented upon the clause requiring a barrister or attorney to obtain leave of the Court to appear for plaintiff or defendant; he also stated he thought, in justice to the Profession, that a clause ought to be inserted that an attorney of ten years’ standing should at any future time be as eligible for the office of Judge, under this Bill, as a barrister of seven years’ standing. After some further appropriate remarks, Sir GEORGE concluded by proposing the deputation.

Mr. SCOTT next addressed the meeting.—He said that for the last sixteen years he had been watching the endeavours of the Profession to obtain the abolition of the certificate duty; and if ever there was a measure which entitled the Profession to demand the repeal of the certificate duty, it was the present. He then made some humorous remarks as to the free-trade system of the present day, remarking “we must all go with the times.” He certainly did not like many of the clauses of the Bill; and he thought the deputation proposed was preferable to the petition.

Mr. MASTERMAN followed.—The time, he thought, was come when they must be stirring, and he would cheerfully aid and assist to carry out any measure to obtain the modification of such clauses in this Bill as must tend to injure and degrade the Profession. He was in favour of the deputation.

Mr. CURLING said, as a commissioner of the Borough Court of Requests, he could testify to the good effect of the principle of such a Bill as this; and he thought that clause 119 was more in favour of the Profession than they were aware of. It certainly was ambiguous; but still, he thought, it gave the attorneys the right to sue in the superior courts under certain conditions.

The CHAIRMAN then made “a few observations before he put the question of Deputation or Petition,” and inquired whether any one could inform him what the Law Institution was about? Was it not monstrous, that instead of their Hall being thrown open for a meeting like this, and all requisite information, and every assistance given the Profession in a matter of such vital importance to their interests, nothing whatever was done? At least no intimation was given that the Law Institution moved at all in the matter; but, however, whether it moved or not, the Profession must move, or be severely injured.

The Chairman then put the question as to the adoption of Petition or Deputation, and the latter was carried unanimously.

A GENTLEMAN in the room, and a member of the Law Institution, as it was understood, said he thought the meeting were too hasty in supposing nothing had been done or was doing by the Law Institution

—he thought they were at work—but if he found they were not, after hearing the clauses of the Bill as read by Mr. Clarke, he should feel it his duty to withdraw from that Institution.

A Committee of five was then nominated for general purposes, with a view immediately to form the proposed Deputation.

After the usual vote of thanks to the Chairman, and a unanimous vote of thanks to Mr. Clarke for his active services in the cause of the Profession, the meeting, after three hours’ discussion, separated.

THE CIRCUITS.

WESTERN CIRCUIT.

EXETER, July 27.—There are twenty-seven causes entered for trial, six of which are special jury cases; and the calendar contains the names of fifty-two prisoners. The majority of charges are of a comparatively trifling nature; but there are several cases of burglary and three of arson, and also a charge of manslaughter, said to have been occasioned by the improper treatment of a patient. Mr. Baron Platt, in his address to the grand jury, commented with much earnestness upon the non-attendance of a very large majority of the gentlemen whose duty it was to appear. Out of some 150 persons summoned to attend, only sixteen answered to their names, and in order to complete the required number (twenty-three) of grand jurymen, the Court was reduced to the necessity of claiming the services of several gentlemen of the county who were qualified to appear, and who were present, though not called upon by summons.

BODMIN, Aug. 3.—The commission for holding the assizes for the county of Cornwall was opened here on Saturday night, about 11 o’clock, by Mr. Justice Erle, who had been detained at Exeter. The business is heavy for this county, there being 16 causes for trial and 23 prisoners in the calendar. It is hardly possible to conceive a reason for so short a time having been allowed for the assizes in this county; the usual time was a week; but now the commission day was last Saturday, and the assizes for Somerset commence on Thursday at Wells, a long distance off, and very difficult to be got at; business, must, therefore, of necessity, be much hurried.

NORFOLK CIRCUIT.

NORWICH, July 23.—Mr. Serjeant Byles opened the commission for this city and the county at large yesterday, on his arrival by the train from Cambridge, and their lordships having attended divine service in the cathedral this morning at ten o’clock, proceeded to the despatch of business in their respective courts at twelve o’clock, Mr. Baron Alderson presiding on the civil side, and Mr. Justice Williams in the criminal Court. The cause list is very light indeed, there being only thirteen causes in all the county, and not one in the city; and though the calendar contains the names of forty prisoners, none of the cases are likely to occupy much time. The calendar embraces one charge of administering cantharides, with intent to murder, which has been ignored by the grand jury; four charges of arson, four of rape, one of burglary, three of housebreaking, one of horse-stealing, one of uttering a forged order for the payment of money, and a variety of minor cases.

IPSWICH, July 29.—Their lordships opened the commission for this county, the last on the circuit, yesterday afternoon, after which they proceeded to partake of the hospitality of Sir William Middleton, at Shrublands-park. This morning the courts were opened at twelve o’clock. There being an entry of eight causes only on the civil court, and thirty-three prisoners on the criminal side, Mr. Justice Williams presided in the Nisi Prius court, and, having disposed of two undefended actions, took next a horse cause, which was only part heard at the rising of his lordship.

HOME CIRCUIT.

GUILDFORD, Friday, July 31.—The commission for the county of Surrey was opened here on Thursday, and business was proceeded with in both courts this morning at ten o’clock; Mr. Baron Parke presiding at Nisi Prius, and Mr. Justice Colman in the Crown Court. The business on the civil side is very heavy, there being 100 causes entered for trial, none of which are special jury cases. There are only twenty prisoners for trial, and it is expected that the criminal business will be got through to-morrow (Saturday), and it is arranged that Mr. Justice Colman shall then try the last thirty common jury cases. The first special jury cause is fixed for Wednesday, and the others will be taken afterwards in their order.

A case which occurred at the Southwark Police-office, on Saturday, furnishes one of a thousand instances which continually demonstrate the necessity of appointing in this country such an officer as exists in Scotland, for the purpose of completing the administration of criminal justice where the parties who have, truly or otherwise, been represented as the objects of illegal violence omit, for any reason, to put the law into motion upon their own account. It seems that a Mrs. Neveson charged a Mr. Innes with having assaulted her indelicately in one of the first-class

carriages of the Greenwich Railway. The gentleman having been taken into custody upon the spot, was conveyed to the police-station, and detained in the lock-up house all night; but was, of necessity, discharged on the following morning, upon the ground that the lady was not in attendance to prosecute the charge. Her absence was accounted for, partly by alleged illness, and partly by the fact that the circumstance of Mr. Innes having been kept a whole night in the lock-up house was, in her opinion, a sufficient punishment for the offence which he had committed. Supposing the complaint of Mrs. Neve-son to be well founded, she has endured an outrage for which she has received no appropriate or adequate redress from the deliberate decision of the law; whilst, upon the other hand, supposing Mr. Innes's conduct to have been either misrepresented, or exaggerated, or misunderstood, he is the object of an imputation which affects his character as a gentleman in a very serious degree, but of which he has had no opportunity to give even an explanation. We agree with the worthy magistrate that charges of this nature ought, for the safety of the public, to be thoroughly investigated, and a punishment inflicted commensurate with the offence. In the actual case, however, there existed no means of procuring such an investigation, and the prisoner was discharged as of course. It is true that the lady professed herself to be satisfied with the punishment which the accused party had suffered for his offence. But the punishment was the result, not of the offence, but of the charge; and all persons who have had any experience of actions for false imprisonment are aware that the punishment in question is one which is not unfrequently inflicted upon the innocent. Whether the accused party in the present case is innocent or not, or what, if he be guilty, is the degree of his guilt, are questions which it is impossible to decide, as there exist no means of procuring any further investigation. This would only be effected by a public prosecutor, possessing the power to take up the case upon the part of the public, who, in the present state of the law, pass for nothing in such cases. The propriety of appointing such an officer has been long felt, and is now, we believe, universally admitted in the profession of the law; and as we know scarcely any contemplated improvement in that direction which can be effected with so little disturbance of any part of the machinery of justice and with so much practical advantage to the public, we earnestly hope that it will form a portion of the improvements to be introduced into that department in the ensuing session of Parliament.—*Chronicle*.

NORTHERN CIRCUIT.

NEWCASTLE-UPON-TYNE, July 30.—The calendar of prisoners for the county of Northumberland contains the names of 20 persons, of whom 1 is charged with the crime of rape, 3 manslaughter, 1 burglary accompanied by maliciously wounding, 2 bigamy, 1 robbing and attempt at rape, 3 uttering forged orders for the payment of money, 1 uttering counterfeit coin, 4 larceny, 1 assault on a constable, and 2 rescuing a prisoner. The calendar for the town and county of Newcastle contains the names of 5: 1 charged with the wilful murder of her infant child, 1 burglary, and 3 larceny.

The cause-list for Northumberland contains 8 causes for trial; that for the town and county of Newcastle, 4 causes.

MIDLAND CIRCUIT.

NOTTINGHAM, July 23.—Mr. Justice Coleridge arrived here about 5 o'clock yesterday afternoon, and having opened the commissions for the county, and county of the town of Nottingham, proceeded to charge the grand jury for the town.

Mr. Justice Patteson, having been detained by the civil business at Lincoln, arrived at a much later hour.

Mr. Justice Coleridge proceeded with the trial of the town prisoners, as, after charging the grand jury for the county, did also Mr. Justice Patteson.

There were nine causes in the list for the county, of which *The Queen v. Lord Harborough*, to be tried here instead of at Okham, was one; and two for the town, of which one, *Keely and Another v. Wray and Another*, was marked for the special jury; and the other, *Levick and Another v. Flather*, was an action upon promises, arising out of railway transactions.

The town calendar presented the names of five prisoners only for trial, of whom one was charged with feloniously attempting to kill by suffocation her newborn female child; 1 with forgery; 1 with burglary, and the other two with bigamy.

In the county calendar there appeared the names of 15 prisoners, and 12 cases for trial, of which latter 1 was of burglary, 1 of arson, 1 of stealing from the person, 1 of bigamy, and 2 of rape. The remaining 6 were ordinary charges of larceny.

LEICESTER, July 31.—The commissions for this county and borough were opened yesterday by Mr. Justice Coleridge, at one o'clock. The borough calendar contained only three cases, and the prisoners all pleaded guilty. They were common cases of felony; but in one case, where there had been a pre-

vious conviction, the party was sentenced to 14 years' transportation. The calendar for the county, though few as to number, contains some serious charges. There are three cases of manslaughter, two of arson, one for rape, &c. There are ten causes, but none of them, we believe, will present any particular feature of novelty. Three of them are special juries.

OXFORD CIRCUIT.

STAFFORD, July 24.—The commission was opened for this county yesterday, with the usual formalities, by Lord Chief Justice Wilde, who afterwards attended divine service at St. Mary's church. The calendar, containing the names of 29 prisoners, may be analyzed thus:—Murder, 1; manslaughter, 3; rape, 2; forgery, 1; administering poison with intent to murder, 1; concealment of birth, 1; cutting and wounding, 1; robbery with violence, 5; burglary, 1; house-breaking, 1; larceny, 1. There are 15 causes (one a special jury case) on the list.

SHREWSBURY, July 30.—The judges of assize arrived here yesterday, and the commission was opened with the usual formalities. Lord Chief Justice Wilde on the Crown side, and Mr. Justice Maule on the civil side, commenced business at 10 o'clock this morning. The calendar contains the small number of 15 offences, all of a very ordinary character, whilst in the cause list there are but 8 causes, 2 only being special juries. Of the latter number, all, except the special jury cases, were either tried or withdrawn by one o'clock.

HEREFORD, Aug. 2.—The commission for this county was yesterday opened by Lord Chief Justice Wilde. There are 23 prisoners for trial, of whom 1 is charged with cutting and maiming, with intent to murder, 1 with assault and robbery, 10 with burglary, 5 with housebreaking, 2 with horse-stealing, and 4 with larceny. In the list there are 16 causes, of which 8 are special jury cases. This morning the Lord Chief Justice attended divine service at All Saints' Church, the repairs of the cathedral not being yet completed.

NORTH WALES CIRCUIT.

CHESTER, Aug. 3.—The business of these assizes commenced this day before Lord Chief Justice Deaman and Mr. Baron Rolfe. The calendar contains 31 prisoners, of whom 2 are charged with arson, 1 burglary, 4 cutting and maiming, 1 forgery, 2 horse-stealing, 4 manslaughter, 2 murder, 5 with rape, 3 receiving stolen goods, 4 with stealing from the person, 2 unnatural crime, and 1 with a minor offence. The cause list contains only 9 cases, 2 of which are special juries, and possess some interest. The whole of the common jury cases, which were of no public interest, were disposed of to-day.

SOCIETY FOR THE ABOLITION OF ECCLESIASTICAL COURTS.—On Wednesday evening a very numerous meeting took place at the Hall of Commerce, Threadneedle-street, for the purpose of hearing from the Rev. Edward Muscutt a lecture on the constitution and abuses of ecclesiastical courts. Earl Ducie presided, and in opening the proceedings said, they could not but come to the conclusion that it was folly to allow themselves to be over-ruled by courts which owed their origin to the superstition of the eleventh and twelfth centuries. Before we were a Protestant country these courts were borne with, but since the change of our religion they had been constantly reprobated by the country at large. These was no party in the state that supported them; on the contrary, the present Lord Chancellor, Lord Brougham, and Lord Lyndhurst, concurred in recommending their abolition. These courts had stood up against the opinion of the world in consequence of the sponging of the people. In addition to the three eminent lawyers to whom he had alluded, he found that the Archbishop of Canterbury, several of the bishops, and Dr. Lushington were in favour of sweeping away ecclesiastical Courts. From the abolition of them he did not believe any danger would accrue to the church. The only fear for her safety came from her own internal dissensions. The noble earl introduced the Rev. Mr. Muscutt to the meeting. The reverend gentleman, who said that in the movement they were making against the ecclesiastical courts they were influenced by no hostile motives towards the Established Church, gave a short history of the origin of the Peculiars, and adverted to this instance of their mischievous jurisdiction:—The parish of Wokingham, Berks, was a "peculiar" of the Dean of Salisbury. Some time since the church was to be rebuilt, but the chancel being claimed as the property of the dean, he would not allow it to be touched, and Wokingham Church remained to the present day a monument of the folly of perpetuating these peculiars. The first question that would naturally arise was, why the bishop should grant probates and letters of administration? It arose out of the errors of olden times. The church of Rome, in times past, said that as it had the care of a man's soul during his life, it was proper that it should manage his estate after his death, more particularly as they were enabled to give the soul repose. Testamentary power had nothing to do with episcopal duties. He

had no hesitation in saying that the bishops conducted the business in a most slovenly manner, dangerous to the state, and discreditable to themselves. For these services they were exorbitantly paid. In the diocese of Canterbury, a probate under 1,000*l.* cost 6*l.* 7*s.* 6*d.*; under 2,000*l.*, 9*l.* 10*s.* 6*d.*. In the diocese of St. David's, the charge was, under 1,000*l.*, 5*l.* 18*s.* 4*d.*; under 2,000*l.*, 7*l.* 3*s.* 4*d.*; while in the diocese of Gloucester, the charge was, under 1,000*l.*, 6*l.* 15*s.*; under 2,000*l.*, 9*l.* 18*s.* 6*d.*. These and other courts charged what they pleased, chancing whether or not they could get it, for by legal process they could not recover it. The lecturer proceeded to say that it appeared, by evidence taken by the commissioners, that the registrar in the diocese of Chester had his office given to him by his father, the Bishop of Chester, when he was about 14 years of age, and that the remuneration was about 4,000*l.* a year. In 1830 that gentleman had held his office forty years, and it was possible that, before he left this life, he would have derived from his court nearly, if not quite, a quarter of a million sterling. In many parts of the country the places in which the wills were kept were by no means fit for the purpose; in one of the dioceses in the province of York, the registrar was very fond of smoking; he always had a pipe in his mouth, even in the office. When he wanted a light, he was in the habit of going to the "wills," and from the corner of one of them he would tear a piece, exclaiming, "Here goes another testator." The rev. gentleman concluded his lecture by recommending the immediate abolition of these courts. A vote of thanks to Earl Ducie closed the proceedings.

MR. HAYWARD, Q.C.—(From the *Morning Herald*).—It is reported that the judges have adjourned the further consideration of Mr. Hayward's appeal against his exclusion from the bench of the Inner Temple, but that they are unanimous in their condemnation of the act of injustice of which Mr. Hayward was the victim. We possess no information beyond what is shared by the public, but we certainly feel little difficulty in believing the decision of the judges to be that which justice and reason alike demand from them. It is, we believe, incontestably established that the majority of the masters of the bench themselves were strongly opposed to the arbitrary act of the individual member of their body that has led to the present proceeding, and would be only too happy to avail themselves of any mode of escape that could be devised from the position in which they have been unwillingly placed. Unfortunately, as it seems, there exists no power inherent in the body of benchers themselves to remedy or obviate the mischief that may arise, and in this instance has arisen, without their consent; and if this view be correct, we can scarcely conceive a stronger argument against allowing the old constitution of the governing portion of the society to continue. We say nothing here of the claim or title of the individual who thought proper to fix a stigma upon a gentleman in all respects fully his equal, and, in professional experience, assuredly his superior, because we are willing to argue the question entirely on principle. Assuming, then, that the most distinguished member of the bench of the Inner Temple had committed the injustice of which Mr. Hayward complains, can the mode and manner of rejection be defended? Certainly not. Why, even in a club, to which the learned societies have been somewhat hastily assimilated, the exclusion, we believe, by a single vote is altogether unknown, and even where the number of dissentients is greater, the system, though to some extent necessary, has been often found practically oppressive and unjust. A candidate for admission to a club may be rejected in consequence of a private quarrel with a member, or by reason of a personal antipathy, or any other inadequate cause, and the wrong can scarcely admit of palliation; but still the rejection leaves such candidate free to apply elsewhere, affecting neither his character nor his position in society. But the case to which we refer is in no respect similar to that we have imagined. Mr. Hayward cannot apply elsewhere; his character and position are not unaffected by the sentence which has been pronounced against him. So far, then, as the suffering party is concerned, the analogy between a club and a society does not hold. Let us see whether, as regards the tenure of the authority of the benchers, their case is more plausible. The Inns of Court are private societies. Indeed! For what purpose? What one feature have they in common with other private societies to which they have been likened? What are their duties? They command, as has been well said, the avenue of the most lucrative of all the professions. Is this like the constitution of a private society? How are they supported?—by private subscriptions? No such thing—by property vested in them, not for their own benefit, but in trust for the common body, and by payments made to them by members of the Inns. Are these, we ask again, the ingredients of a merely private society? Clearly not. The masters of the bench are no more than trustees for the public, and ought to be accountable like other trustees, both as to the manner in which the powers and the funds with which they are intrusted have been exercised and employed. It is true that the Court of Queen's

Bench has refused, by *mandamus*, to assist a complainant against the authority of the benchers, although every vestry clerk in the kingdom may claim its aid if improperly deprived of his office; but the real truth is, that the authority and jurisdiction of the benchers of the inns of court are so anomalous and uncertain that no Court can know how to deal with them. We think that those who seek to preserve the undoubted abuse which is referred to will have but little reason to be grateful to the party whose conduct has directed to it the attention of the public.

WILLS.—The Right Hon. Lady E. T. F. Fielding, late of Lacock Abbey, Wilts, relict of the late Rear-Admiral Fielding, has bequeathed all the real estate, funds, stocks, and securities, and all the personal estate which she had the power to dispose of, to her daughter, H. H. M. Fielding, in exclusion of her other daughter, the Countess of Mount Edgumbe, the countess being amply provided for. Also bequeaths to her said daughter Henrietta all her own estate and effects, and has appointed her, together with her son, W. H. Fox Talbot, esq. executors. Barron Field, esq. formerly Chief Justice of the Supreme Court of Gibraltar, but late of Torquay, Devon, has bequeathed to his brother, F. J. Field, esq. of Regent's-park, the piece of plate which had been presented to their father by the City of London, and named in his will many persons to whom he wishes a mourning-ring or other token of remembrance to be given. To his sister-in-law, Mrs. A. Field, an annuity under certain provisions. The residue of his estate and effects he leaves to his wife and brother, who are his executors in trust, for his wife to receive the interest, and then to his godson, E. N. Swainson, and the principal when he is of age; but in the event of his not attaining a vested interest, the whole to be equally divided among the testator's brothers and sisters.

The Lords of her Majesty's Most Honourable Privy Council had a meeting on Wednesday, in the council chamber, to consider a petition of the provost and fellows of the College of Eton against a scheme of the Ecclesiastical Commissioners for carrying into effect certain alterations in the dioceses of Oxford and Salisbury. Mr. Bethel, Q.C. was heard by their lordships during the whole of the sitting. The lords present were, the Lord President, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Vice-Chancellor of England, and the Judge of the Admiralty Court. The Hon. William Bathurst was the Clerk of the Council in waiting. The case was adjourned.

RAILWAY ACTIONS.—The notion that any plaintiff would get a verdict, whatever might be the cause of action, against railway provisional committee men, received a severe check at Lincoln last week, where, in every case, the plaintiff was nonsuited. In one case the sanction of the party to the use of his name was not sufficiently proved; in another, an engineer made a lumping charge of 70*l.* a mile for his survey, and when called upon in chambers to furnish particulars, pleaded an agreement, but on the trial no agreement was proved. In the third case, the allottee had brought his action before the company, which was a *bond fide* one, had been dissolved. There is a rumour of an entirely new class of actions for next Term, where engineers will figure as defendants instead of plaintiffs; on the same ground that a medical man mistreating his patient, or an attorney misdirecting his client, is punishable in his purse; so it seems the engineer, who grossly blunders in his survey, is to be brought to book by the unfortunate shareholders victimised on "standing orders."—*Lincolnshire Chronicle*.

DISSOLUTION OF RAILWAY COMPANIES.—A correspondent thus answers some questions referring to the "winding up" of railways, which were inserted the other day:—"If the dissolution is carried as an act of bankruptcy, the official assignee will sift all the charges *ab initio*, and allow such only as are proper; and if the dissolution is carried as not constituting an act of bankruptcy, the funds will be distributed by the directors; but in either case a shareholder or shareholders may have the accounts passed before a Master in Chancery, who will allow such payments only as he may consider right. Shareholders have much more power over their directors if they can get the company dissolved than they otherwise have."—*Times*.

THE LICENCE OF THE BAR.—In an action brought at our late assizes, by one Henson against Mr. Barrow, late high sheriff, a young woman named Eleanor Wilson, was called to prove that the plaintiff had been arrested in the town and not in the county of Nottingham—a circumstance which formed the ground of action. During the examination of the girl, it came out that she and her two sisters, whose united earnings amounted to 14*s.* a week, supported their parents. The judge (Coleridge) demanded, "How came you by that black silk scarf, and the other things you have on?" The girl, bursting into tears, replied indignantly, "They are paid for. I do not know why I should be asked such a question." We confess we do not marvel at the girl's indignation, or

at her surprise that such an inquiry should proceed from the judicial bench. Mr. Justice Coleridge asked a very thoughtless and preposterous question. Why cavil at the decency of the young woman's appearance, or hazard a grave insinuation, when a moment's reflection must tell him that poor people, subpoenaed on a trial, if they cannot make what they conceive to be a creditable appearance out of their own stock of apparel, have recourse to friends or neighbours, that they may shew that respect to the Court, which, we imagine Eleanor Wilson will not henceforth be inclined to feel, or be anxious to disseminate. Mr. Whitehurst, the defendant's counsel, taking the cue which the judge had suggested, asked, "Where did she get that fine silk scarf, and bonnet decked out in flowers?" Unwarrantable insinuations we firmly believe them to have been—discreditable we know they were. We are given to understand that this girl, Eleanor Wilson, has been in the employment of a highly respected lace-manufacturer of this town for a period of eight years, and that that gentleman can give her a most unexceptionable character.—*Nottingham Mercury*.

PROCEEDINGS OF LAW SOCIETIES.

ANNUAL REPORT OF THE INCORPORATED LAW SOCIETY.

At the annual general meeting of the members of the Society, held in the Hall, on Tuesday, May 12, 1846, Michael Clayton, esq. in the chair; the following report of the council was read by the secretary:—

The council, in proceeding to state briefly the measures which have been adopted in the course of the past year in furtherance of the objects of the Society, and the general management of its affairs, have first to notice the numerous projects for the alteration of the Law and the practice of the Courts, which have called for much attention on the part of the Profession. The several Bills which remained under the consideration of Parliament at the time of the last annual meeting were duly considered with reference to their operation and effect on professional practice. Amongst the measures then pending, and which were passed at the latter part of the Session, were the Acts for the Amendment of the Law of Real Property, 8 & 9 Vict. c. 106; the Act for Rendering the Assignment of Satisfied Terms Unnecessary, c. 112; the Acts for Facilitating the Conveyance of Real Property and the Granting of Leases, c. 119 and 124; the Small Debts and Local Courts Act, c. 127; the Documentary Evidence Act, c. 113; the Act relating to the Testamentary Disposition of Funds, c. 97; the Act for Facilitating the Administration of Justice in Chancery, c. 105; and the Act for Abolishing the Seal Office, c. 34.

There were also other Bills before Parliament which did not receive its sanction: namely,—for the Consolidation of the Ecclesiastical Courts; for Regulating Charitable Trusts; for Amending the Law of Debtor and Creditor; for Enabling the Service Abroad of Common Law Process; for Amending the Law relating to Clerks of the Peace and Magistrates' Clerks; for Admitting the Evidence of Parties in Civil Actions; for Declaring the Rights of Parties in reference to Future Claims, and various other measures.

All these Bills received the attention of the council, and on many of them observations were submitted, and objections and suggestions made in the proper quarter. In the present session the council have also had under their consideration several Bills already before Parliament, namely, the Bills for Establishing a General Registry of Deeds; for Regulating Charitable Trusts; for Amending the Law of Bankruptcy and Insolvency; and several Bills for Establishing County Courts. These have already been under the consideration of several special committees, and the council will also bestow their best attention on the other Bills which have been announced to be brought before Parliament, relating to the Short Forms of Settlements, Mortgages, Leases, and other deeds and Instruments in Conveyancing Practice.

The proposed change which was suggested last summer in the time of holding the circuits, and the consequent alteration of some of the Terms, was, by the direction of the Secretary of State for the Home Department, brought before the council, and the sentiments of a considerable number of the members of the Society most interested in the subject having been collected, the council were prepared to make several suggestions; but, owing to the lateness of the session when the measure was introduced, it was postponed, and the proposition has not yet been revived.

In furtherance of the suggested removal of the courts from Palace-yard to the neighbourhood of the Inns of court, the council presented a petition to the House of Commons; and the special committee of the house on that subject having been revived, further evidence was adduced, and the plan of a new site suggested, situate west of the Institution, and extending

from Carey-street to the Strand. The evidence has been printed, accompanied by a map.

The council have received numerous complaints of mal-practice of attorneys, which they much lament, and to which they have paid due attention. They have also been informed of many unqualified persons acting as attorneys. In one of the instances of mal-practice, on an application to the Society, the Court struck the party off the roll; in several cases the council have been advised by their counsel that the evidence was insufficient; and in those cases they have not interfered; other complaints are still under consideration, particularly in regard to unqualified persons practising at the quarter sessions; and the council have pleasure in stating that the Court of Queen's Bench in the course of last Term decided the case of *Reg. v. Buchanan* in favour of the views of the Profession on this point. The Court said the defendant was indicted for practising as an attorney in conducting an appeal at the quarter sessions, namely, for practising in a manner which was forbidden by the second section of the recent Act (6 & 7 Vict. c. 73). Disobedience to the Act of Parliament was an indictable offence. The demurrer having been overruled, the defendant applied for leave to plead to the indictment, but the Court refused the application, saying, it was unreasonable where the Act of Parliament was very plain.

During the past year an application for re-admission as an attorney by a recent member of the Bar, who had been disbarred for misconduct, was successfully resisted by the Society; and several cases for the renewal of the certificates of persons who had ceased to practise have been investigated, and such steps adopted as the circumstances of each rendered necessary.

Various usages of the Profession have been under the consideration of the council; and, where any general usage could be ascertained, the result has been recorded in the usage book kept at the secretary's office, which is open to the inspection of every member of the Society.

Connected with this subject, may be mentioned the difficulties lately raised in the office of the Registrar of Deeds in Middlesex, as to the party by whom the memorial should be executed; and, though the registrar has, for the present, modified the rule which he at first laid down, and the inconvenience occasioned by it has been diminished, there are still some questions which it is highly desirable should be finally settled; the council are directing their attention to that object, and they think it probable that it will be expedient to make an application to Parliament to amend the Registry Act.

Amongst other matters of professional inconvenience which the council have been desirous of removing, were the delays which took place in passing accounts at the Legacy Duty Office. A memorial to the Commissioners of Stamps having been signed by many members of the Society, the council addressed the commissioners on the subject, and an interview was appointed with the chief commissioner, which was attended by the president; and the council have the pleasure of reporting that the chief commissioner expressed on the part of the board the strongest desire to accommodate the Profession in every respect, and to carry into effect a suggestion that the transaction of business might be considerably facilitated by a more extensive subdivision of the alphabetical arrangement of the books.

The subject of the Gratuities of Counsel's Clerks has been renewed, in consequence of a larger amount than is specified in the scale approved by the judges having been peremptorily retained by a clerk as a matter of right. Mr. Samuel Cotton, the solicitor in that case, petitioned the court, and conducted his case in person; and, though the Master of the Rolls decided, as the council had anticipated, that he had no jurisdiction over a barrister's clerk, his lordship expressed an opinion which will be satisfactory to the Profession, viz: that "clerks' fees can only be considered as gratuities, which the solicitor or party consulting counsel may pay or not at his own option; that there is no legal demand; but clerks' fees are usually by custom paid, and are allowed on taxation to the amount mentioned in the scale approved by the Lord Chancellor and the other judges."

It appeared, on the hearing of Mr. Cotton's case, that a larger amount than that mentioned in the scale had been paid by some solicitors. The council therefore deem it advisable to send the fixed scale of gratuities, not only to all the members of the society, but to every London solicitor, at the same time urging them to give positive directions to their clerks not to exceed the scale in any case; and they trust that this resolution will be strictly adhered to, and thus prevent all future unpleasant disputes and discussions with counsel's clerks.

The tax on the Profession of the *Annual Certificate Duty* has not been lost sight of, but the council have had no opportunity during the present session of Parliament of bringing the subject prominently forward with any prospect of success. It will, however, still engage their attention, and they trust that ultimately this unjust burthen will be removed.

The council have continued their communications

with the several provincial law societies, on such matters as seemed requisite for the general interest of the Profession.

Their attention having been called to a projected Company for executing Trusts, under wills and settlements, which was about to be chartered, the council directed a *caveat* to be entered, and a copy of the proposed charter to be obtained; but on ascertaining the terms of the charter, it was not deemed requisite to offer any opposition, and the *caveat* was withdrawn.

The examination of candidates for admission has been conducted in the usual manner; but a smaller number of candidates have presented themselves during the past than in any former year; 346 were examined, and of these, 37 were not passed, thus reducing the number in four terms to 309.

The business of the Annual Registration of Attorneys proceeds satisfactorily; and it affords great facilities in ascertaining who are entitled to practise, and in checking to a considerable extent the encroachment of unqualified persons.

Under the authority of the Charter and Bye-laws, the council proceeded to settle the Regulations for conducting the business of the Society in its various departments; and these regulations, with the Charter and Bye-laws, have been printed. They have also re-printed the rules and orders of Court, and the recent Acts relating to attorneys and solicitors; and the future rules and orders will be printed and circulated in the same form for the use of the members.

The lectures have been continued, as heretofore, on conveyancing; on common law and criminal law; and on equity and bankruptcy; and have been well attended.

Additional purchases have been made to the library to the amount of 311l. 19s. 6d.; and various donations of works have been received from their respective authors, and from several members of the Society, a list of whom is in the library.

The accounts for the past year have been examined by the auditors; and their report, which has been open for the inspection of the members since the 15th of April, will be submitted to the general meeting for approval.

Pursuant to the bye-laws under the New Charter, the council have agreed to let the rooms, cellars, and premises occupied by the club for the use of the members thereof, as tenants from year to year, subject to the rules and regulations submitted to and approved by the council, it being agreed that the council shall have power to determine the tenancy by giving six months' notice.

Since the annual meeting on the 24th of June last, sixty-three new members have been elected, and after deducting the number retired, the Society now consists of 1,363 members.

(Signed) MICHAEL CLAYTON,
President.

The following resolutions were passed at the annual general meeting:—

Resolved,—That Samuel Amory, Thomas Clarke, Richard Harrison, Bryan Holme, Edward Lawford, Robert Wheatley Lumley, Thomas Metcalfe, Charles Ranken, Charles Shadwell, and Richard White, be and they are hereby deemed and declared to be elected Members of the Council, in lieu of those who go out of office by rotation.

That Germaine Lavie be and he is hereby deemed and declared to be elected a Member of the Council, in lieu of John Teedales deceased.

That Edward Rowland Pickering be and he is hereby deemed and declared to be elected President of the Society.

That Charles Ranken be and he is hereby deemed and declared to be elected Vice-president of the Society.

That James Leman, William Sharp, and William Woodrooffe, be and they are hereby deemed and declared to be elected Auditors of the accounts of the Society.

Read the report of the council.

Resolved,—That the report be received and entered on the minutes.

That such parts of the report as the council think fit be printed for the use of the members.

Read the auditors' report of the accounts of the Society from the 31st December, 1844, to 31st December, 1845.

Resolved,—That the auditors' report be approved and signed by the chairman.

Resolved,—That the best thanks of this meeting be offered to those members of the Society who have so handsomely presented gratuitously their shares in the property of the Society, under the late charter.

(Signed) MICHAEL CLAYTON,
President.

And Resolved,—That the cordial thanks of this meeting be presented to Mr. Clayton for his able conduct in the chair.

(Signed) R. MAUGHAM, Secretary.

The following are the council:—

President.—Mr. Edward Rowland Pickering.

Vice-president.—Mr. Charles Ranken.

Mr. Samuel Amory, Mr. Benjamin Austen, Mr. Robert R. Bayley, Mr. Edward Smith Bigg, Mr. Thomas Clarke, Mr. Michael Clayton, Mr. John

Coverdale, Mr. W. Loxham Farrer, Mr. John Irving Glennie, Mr. Alexander William Grant, Mr. John S. Gregory, Mr. Richard Harrison, Mr. Bryan Holme, Mr. George H. Kinderley, Mr. Germaine Lavie, Mr. Edward Lawford, Mr. William Lowe, Mr. Robert W. Lumley, Mr. Thomas Metcalfe, Mr. Edward L. Pemberton, Mr. John Innes Pocock, Mr. Charles Shadwell, Mr. John J. J. Sudlow, Mr. William Tooke, Mr. Richard White, Mr. Robert Whitmore, Mr. Edward A. Wilde, Mr. Thomas Wing.

The following are the Auditors:—

Mr. James Leman, Mr. William Sharpe, Mr. William Woodrooffe.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

General Meeting, July 15, 1846.

Mr. Commissioner FONBLANQUE in the chair. The minutes of the last meeting (the 1st inst.) were read and confirmed. The following members were ballotted for and elected:—William Marratt, esq. solicitor, Thomas Metcalfe, esq. solicitor, John Lewis Prevost, esq. John Abel Smith, Esq. M.P. Samuel Jones Lloyd, esq. as representing Jones, Lloyd, and Co.; Bazett David Colvin, esq. and the Rev. Charlton Lane, M.A.

It was resolved, "That a committee be appointed to consider the best means of extending the range of the Society's operations, to consist of the following members:—The Earl of Devon, Lord Nugent, Mr. Commissioner Fonblanque, Mr. Commissioner Fane, Mr. Ewart, M.P. the Hon. E. P. Bouverie, M.P. Mr. Pitt Taylor, Mr. Symonds, Mr. Neale, Mr. Edward Cooke, Mr. Webster, Mr. Thomas Parker, Mr. Wilson, Mr. Ashton Yates, Mr. Ingram Travers, Mr. Vizard, and Mr. James Stewart.

The report of the Committee on the Law of Property on the following reference: "To consider whether, in connexion with a General Register, the principles of insurance of titles might not be introduced," was referred back to the committee to consider whether any and what alterations in the law were necessary, in order to carry the proposed plan into effect.

General Meeting, July 29, 1846.

WILLIAM EWART, Esq. M.P. in the chair. The minutes of the last meeting (the 15th inst.) were read and confirmed. The following members were ballotted for and elected:—Arthur Kett Barclay, esq.; W. G. Prescott, esq. banker; and Joseph Travers, esq. A communication from Mr. Gerrard, solicitor, as to the state of the Court of Chancery, was read.

Adjourned till Wednesday, the 12th of August, at half-past four o'clock precisely.

CORRESPONDENCE.

PROFESSIONAL MALPRACTICES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Your columns being always open to all instances of professional malpractices, I venture to forward to you the enclosed—one of a numerous class of offenders, including in its ranks two members of the Bar—who have, in the most polite and gentlemanly manner, forwarded a statement of their peculiar advantages for carrying on the system of cramming for the examination of articulated clerks. No sooner does the list make its appearance, than these harpies flock down, and carefully take each new name, and forthwith they forward their circulars; all are, if you may believe them, *very respectable and experienced*; in some the fees are "very moderate, and can be made contingent on the student's success, if required." (A form strongly to be recommended to the "no cure, no pay" doctors, *mutatis mutandis*.) Others have "prepared upwards of three hundred and ten gentlemen," and "continue to receive pupils." This form is very suitable for schoolmasters and others of that elementary branch of education. Others, again, "confidentially communicate," that they "systematically read (both privately and in class) with gentlemen both before their examination and after, &c.;" and "their method of study fully justify them in offering assistance for as moderate a remuneration as the custom of the Bar will admit." This last is particularly recommended to advertising barristers, i.e. such of that branch of the Bar as are desirous of whitewashing their consciences with an appeal "to the customs of the Bar," at the same time that they proclaim, by the heading "confidential communication," that they are fully aware of the dangerous position in which they would stand were their circulars to be published, as they deserve. Surely a barrister—*quid* barrister—can do no wrong! Then why, with such cowardice, do you acts under a veil?—which, by appealing to the generosity of the party addressed, prevents that exposure of the actual party committing such flagrant breaches of professional etiquette which their conduct clearly merits. For myself, I feel that no terms are to be kept with such parties, and therefore, while I may not declare the name, I feel I am quite justified in showing up the conduct. What is the difference between this and

advertising for briefs or applying for hire? Nothing but this—that the latter is general, whilst the circular applies directly to the party addressed; the one may pass over unnoticed by those interested in the matter—the other comes directly home to them. I doubt not these immaculate "confiders" would be duly horror-struck at the idea of the advertisement—"Wanted, a few briefs, by a barrister having a little spare time on his hands, and who thoroughly understands his business. Those who may entrust him with their commands may depend on a careful attention being bestowed, and every effort consistent with 'the customs of the Bar' will be made to ensure success. References to several Queens's counsel, judges, attorneys, solicitors, &c. &c. It may be said that the advertiser has taken his degrees at one of our Universities, and has been called several years;" or at the plying, as *Punch* some time back depicted it—"Want a barrister, Sir?—Barrister, Sir? here you are—now's your time!" and yet such men as these are actually playing dirtier tricks than any of these—quietly and treacherously undermining their brethren of the Bar. Surely, Sir, hugging attorneys is nothing to this; for that does not go the length of begging business as this does. I need not endeavour to prove it unprofessional, the covert way in which it is done clearly demonstrates the consequences are very clear; the benchers of the Inner Temple have already summoned one gentleman, who has figured in this style, before them, and disbarment is expected to be the effect of a repetition of the offence, when laid before the Bench. But now for a touch at the members of that branch of the Profession with which I am more immediately connected, who carry on this improper plan: the one I forward herewith is a specimen—a more perfect insult to any one of the slightest degree of gentlemanly feeling cannot well be devised. Does Z think that, if I have a particle of honesty about me, I would confide the interests of my clients and of myself to such a respectable practitioner as himself? Does he think I would barter those interests for my own instruction? Or does he think that I should look out the most proper man for the purpose, without regard to personal advantage? These questions carry their own answer, I shall not therefore attempt one; but merely add, that, if this be wrong in barristers, it clearly is the same in attorneys; they are covertly interfering with others, and playing equally dirty tricks. In a barrister, hedged in as he is with etiquette, it certainly stands forth more prominently; but, in an attorney, is it not teaching the young articulated clerk the way he should not go? Is it not at once bringing him into contact with the lowest of his Profession? And can we be afterwards astonished if he does not hesitate at taking the lowest and meanest advantages, both of his client and of his opponents? I must add, in fairness, that the one I inclose is the worst of the kind; but for that reason I venture to make it known, as showing the lengths to which the system leads. One of them, *lithographed* (showing the wholesale nature of the proceeding), refers me to a "Mr. J." at Saunders and Bennings, 43, Fleet-street; the letter bears a very suspicious resemblance to one in the third volume of the Law Times, p. 191, cc. 1 and 2; is it the same? I am, Sir, yours, &c.

A CANDIDATE FOR THE NEXT EXAMINATION.
London, Aug. 5, 1846.

(Copy.)

"A Solicitor of respectability and experience prepares Gentlemen for the Examination on a plan which is unfailing of success, tho' requiring only moderate industry."

"No pecuniary return is expected from Gentlemen who will become country practitioners."

"Address Z., Pigott's Library, Kennington-gate."

TO THE EDITOR OF THE LAW TIMES.

SIR,—I have lately been reading the first volume of "Lord Campbell's Lives of the Chancellors," and in the 275th page of that volume find the following paragraph:—"The qualifications of the Chancellor now became of great importance to the due administration of justice, not only from the increase of his separate jurisdiction, but from the practice for the common law judges, when any question of difficulty arose before them in their several Courts, to take the advice of Parliament upon it before giving judgment. In a case which occurred in the King's Bench, in the 39 Edw. 3, Thorpe, the chief justice, says, 'Go to the Parliament, and as they will have us do, we will, and otherwise not.' The following year Thorpe himself, accompanied by Sir Hugh Green, a brother judge, went to the House of Lords, where were assembled twenty-four earls, bishops, and barons, and asked them, as they had lately passed a statute of Jeoffails, what they intended thereby? Such questions, which were frequent in this reign, must have been answered by the Chancellor." To this paragraph the learned author has appended the following note:—"If the Lords were still liable to be so interrogated, they would not unfrequently be puzzled, and the revival of the practice might be a check to hasty legislation."

Now Sir, in my humble opinion, I really consider that in the last paragraph, Lord Campbell has applied the rod to his own back, and not merely lashed him-

self, but also given a cut to another Ex-Chancellor (equally fond with himself of legislation); for, if I err not, it is the pretty general opinion of the Profession that those two noble lords will ever be celebrated for the crudity and obscurity of the legislative measures introduced by them, or passed by their recommendation; measures which some of the judges have declared impossible to be understood. I hope Lord Campbell will bear his note (p. 275, Vol. 1, of the Lives of the Chancellors) in mind, whenever he brings forward any measure for the alteration of the law.

I am, Sir, yours, &c.
ONE, &c.

SELECTIONS FROM CORRESPONDENCE.

"G." thus complains of the apathy of the Profession:—

I most fully concur in the sentiments of your correspondent, "A Devonshire Attorney." The Profession is truly apathetic, spell-bound! Did the members of the Medical Profession take things so quietly when their interests were invaded? No; they rose to a man; called meetings in all quarters, petitioned, and adopted every legitimate means of defending and upholding their rights; and that, too, in a most systematic and business-like manner. The result is generally known. Let us follow their praiseworthy example, and promptly. Why should we, who are foremost in the fray when the interests of others are attacked, lie torpid as it were, and submit not only to wrongs but insult (for in no other light can I consider the certificate duty); and that, too, at the hands of clumsy craftsmen, to whose works we have but to refer to convince ourselves of their utter inaptitude to the task of conveying reform? One would really suppose the items "Attorneys" and "Solicitors" had been expunged from the social account, did we not know that their existence is essential to its arriving at a balance. I trust you will not cease to agitate until we evince some not-to-be-mistaken symptoms of returning animation.

"P. R. A." desires that something may be done with respect to the Certificate Duty. But what? and how? and by whom?

Allow me to ask, is it possible this Session to bring before the House of Commons the question of the Attorneys' Certificate Duty, so as to prevent the robbery of next November? Some of your fellow journalists seem to be congratulating themselves and the Profession on the very excellent sprinkling of lawyers in the new ministry, but, as you say, the attorneys have no representative to watch the ways and means.

"W. R." thus comments on the changes effected and threatened in the law and practice of conveying:—

A correspondent of the LAW TIMES, in one of its former numbers, has, I believe, answered the like inquiry now made by "an Old Subscriber," arising under Lord Brougham's Act "to facilitate the conveyance of real property," on the point raised with respect to the progressive duty; but not being able at this moment to refer to the number containing the answer, I venture to state my view of the Act in reference to the point in question.

The Act, whether framed by his lordship or not, carries sufficient marks on the face of it, and of its schedules, to show that it was prepared by a mind accustomed to analytical science, as the Satisfied Terms Act has been said to have been the lucubration of a metaphysician, affording an example of the saying that "nothing is but what is not." As the mathematical sciences proceed on surer grounds than mere speculative theory, so perhaps there is less reason for doubt in regard to the more important statute of the two. Its mathematical formation appears in the "directions" in the second schedule. There the author portrays his love of substitution, than which nothing is more frequent in the solution of algebraical questions; and by making Column No. 1 to represent or be the exponent of a larger number of fractional parts, the principle of induction becomes more apparent. A difficulty, therefore, is only like an unknown quantity in the latter science; and the following suggestions are offered by way of demonstration:—

Conveyances in the transfer of trust estates insert in the clause of reference where the trusts of them require confirmation that the property is to be held upon the same trusts as are in the deed by which they were originally created, as if the same were in such transfer repeated or re-enacted; yet it has never been considered that the progressive duty attached upon the words to which that reference applies, and for the obvious reason that by the Stamp Act no "matter" but such as is put or indorsed upon every deed is recognized in the ascertainment of that stamp duty. The Act under consideration states that the prescribed short forms are only to have the same effect and be construed as if the deed contained the longer forms; but, as far as regards the stamp duty, the Act regulating it enacts expressly that the pro-

gressive duty on every deed applies only to its internal written contents and its indorsements. The construction as surmised involves the absurdity that not only the long forms for which the short ones are substituted, but also the short ones themselves (and necessarily these, according to the Stamp Act) would require enumeration in regard to the progressive duty. However the 5th section contains a sovereign remedy for every defect of operation in a deed made under the Act, if in other respects it be valid. As the Act superseding the necessity of a lease for a year is still in operation, a short recital might be inserted in a deed made under the short form Act, referring to the former in the usual manner, so as to make it operate and take effect as a release to use; which reference, indeed, appears essential when made under the short form Act, when it is a conveyance to the usual uses to bar dower, or with any other limitations which are intended to take effect as legal estates. Thus made with a double aspect, the deed would have the benefit of the maxim "*Utile per inutile non vitiatur*." Nevertheless, where there is doubt, the legislature can alone, and ought to, apply a sufficient remedy as it did in 1813, to remove the defects of prior deeds conveying the equity of redemption in mortgaged estates without *ad valorem* duty.

Heirs-at-Law, Next of Kin, &c. Wanted.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where those particulars are preserved, and which will be communicated to any applicant. To prevent impertinent curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount enclosed.]

235. WIDOW OF OFFSPRING OF THOMAS BEAZLEY, formerly footman in a respectable family in Guilford-street, Russell-square. Something to advantage.
236. WILL OF WILLIAM PIPFARD, Esq. died 29th November, 1834, supposed to have left it with some person for safety.
237. NEXT OF KIN OF ROBERT M'KAY, late a seaman belonging to the merchant-ship *Pyramus*, who died at Batavia, 26th Dec. 1833. Something to advantage.
238. NEXT OF KIN OF the Rev. SPENCER ARDEN, late of Wolverhampton, Staffordshire, clerk, died 22nd Oct. 1833.
239. HEIR-AT-LAW AND NEXT OF KIN OF SARAH JANE NEVENHAM, late wife of William Burton Nevenham, late of North Bank, Regent's Park, formerly SARAH JANE WARING, spinster, of Fitzwilliam-square, Dublin, died 4th May, 1831.
240. NEXT OF KIN OF JOHN WALKER, late of Castle-street, in the parish of St. Saviour, Southwark, hat manufacturer, died March 1802.
241. Mr. BRADBROOK, who was in 1832 a partner in a retail store at 4, Bowry, New York, U.S. Something to advantage.
242. SARAH GRIFFIN (legatee in will of Hannah Stent, spinster), who was in service of Mr. Cotterell, of Gracechurch-street, and also of Camberwell Grove, linen-draper. Something to advantage.
243. HEIR-AT-LAW OF MRS. MARY JOWSE, late of St. George the Martyr, Southwark, who died sometime in the year 1797. Something to advantage.
244. NEXT OF KIN OF THOMAS PEARCE, of Millbank-street, Westminster, brewer, died 22nd March, 1836. Something to advantage.
245. NEXT OF KIN OF PETER WINKLER, who formerly lived in Warren-street, Fitzroy-square, and afterwards in Duke-street, Bloomsbury, died January 1835. Something to advantage.
246. NEXT OF KIN OF ELIZABETH CROWHURST, late of Little George-street, Royal Hospital-row, Chelsea, widow of William Crowhurst, formerly of Paradise-row, Chelsea, gent. died 23rd Oct. 1833.
247. RELATIONS OR NEXT OF KIN OF ANN POWER, late of Whitechapel Workhouse, spinster, died April 1834. Something to advantage.
248. NEXT OF KIN OF REBECCA WORTHINGTON CALLOW, late of Castor Mills, county of Northampton, spinster (died Aug. 1836), or their representatives.
249. NEXT OF KIN OF ROBERT SALMON, late of Hexham, Northumberland, gent. (died 16th Dec. 1786), or their representatives.
250. JOHN QUICK, son of John and Phoebe Quick, late of Mile-end, Middlesex, deceased, and who entered a common soldier into the 67th regiment of foot, some years ago, or his representatives. Something to advantage.
251. HEIR-AT-LAW OF MRS. MARY TOWES, late of the parish of St. George the Martyr, Southwark, widow, died 1797. Something to advantage.
252. NEXT OF KIN OF JOHN WILKINSON, otherwise WILKINSON, late of Hounslow, Middlesex, corn-chandler, died 25th Sept. 1794. Something to advantage.
253. BROTHERS AND SISTERS OF GEORGE HYDE, a lieutenant in the Bengal Invalid Establishment (died at Monghyr, in Bengal, Oct. 1827), and who was son of John Hyde, by Mary his wife, formerly Mary Wyde, or claiming to be children or grandchildren of the brothers and sisters of the said George Hyde.
254. CHILD OR CHILDREN OF SAMUEL HUNT, the son of, late of Moscow, in Russia, captain in the Russian military service (died 1824 or 1825), or their representatives. AND HEIR-AT-LAW OF the said SAMUEL HUNT the son, and of SAMUEL HUNT, his father, also late of Moscow, Doctor of Medicine, and which said Samuel Hunt, the father, was the brother of Charles Hunt, formerly of Soham Toney, county of Norfolk, gent. deceased.

(To be continued weekly.)

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

W. R. (Norwich).—The subject is not of sufficient interest for the space the communication would occupy.

W. W. (Norwich).—A report of a meeting of the Profession to oppose the objectionable clauses in the Small Debts Bill will be found in another column. We would recommend the Norwich deputation to call on the committee, at that meeting appointed, and to co-operate with them.

M. D. (Greenwich).—We make our acknowledgments for the draft of the proposed Bill, which shall have early consideration.

Mr. Best advises us that his "Law Dictionary" will not extend to the length we calculated in our notice of the book, in No. 172, but that it will be completed in about nine parts, at less than half the cost we supposed it would come to.

The enclosure from Ashton-under-Lyne should have been accompanied with a private letter to secure attention.

ERRATA.—In the review of Stalman's "Scriven," in our last number, page 400, column 3, line 41, for "entrenchment" read "commutation."

For "client and his child," page 398, column 1, fourth, read "client as his child."

NOTICE TO SUBSCRIBERS.

The volumes of the LAW TIMES, neatly, strongly, and uniformly bound, for 5s. 6d. each, with the name and address of the owner on the cover, 1s. extra, if sent to the office. If the numbers for binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

The numbers comprising the first volume of the VOLUMES OF Real Property and Conveyancing Cases may also be transmitted for binding in like manner.

INDEX TO THE LAW.

The LAW DIGEST for the half-year ending Jan. 1 is now ready. It forms a complete Index to the Law decided during the half-year, and contains upwards of 2,000 cases. Price 5s. 6d. in a wrapper. Being stamped, it can be transmitted by post.

SCALE OF CHARGES FOR ADVERTISEMENTS.

Under 50 Words..... 4s 5 6
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Advertisements from the Country should be accompanied with an order upon the Agent in Town, or a Post-office order (payable at 180 Strand) for the amount.

N.B.—For Scale for Estate Advertisements, see JOURNAL OF PROPERTY.

THE LAW TIMES.

SATURDAY, AUGUST 8, 1846.

CONTEMPT OF COURT.

AN incident is reported to have occurred at the recent Devon Assizes which involves questions of the highest moment to the liberty of the subject, and to the administration of justice.

At the close of the trial of a prisoner for a rape, the learned judge who presided (Mr. Baron PLATT) asked the jury whether they believed that two of the witnesses who had been called to prove an *alibi* had spoken the truth. The jury replied that they did not. Thereupon his Lordship said, "Neither do I. Not to speak the truth is a high contempt of this Court, and misdemeanour, and must be punished accordingly." And his Lordship immediately ordered the witnesses to be committed for this alleged contempt.

To make the matter more intelligible, it may, perhaps, be necessary to state, that the witnesses had agreed as to the main fact of the prisoner having been at his father's house on the day the crime was perpetrated, but on cross-examination they differed as to the company present at the dinner-table, and the order in which they sat.

The witnesses remained in custody until the close of the Assizes.

This, we believe, is not a solitary instance of

a committal for contempt on a similar charge. We think it was Mr. Baron PARKER who some time since adopted the practice which Mr. Baron PLATT has now followed.

But, after anxious consideration of the subject in all its bearings, we are compelled to the conclusion that the practice is one of very questionable right, and very doubtful expediency. It seems to us fraught with danger to the subject, unconstitutional, and unjustifiable.

Of its legality we have some doubt, but the difficulty is to determine how it could be contested. The definition of contempt is lodged in the bosom of the judge. It is enough, in plea to an action for the imprisonment, or on the return to a *habeas corpus*, to allege that the prisoner was committed for contempt, and if no description of the nature of the contempt be introduced, the answer is complete. It is the privilege of every Court to have power to preserve order; committal for contempt is the mode of exercising this privilege; each Court must determine for itself what is a contempt.

But withal we cannot help thinking that there must be somewhere a remedy for an abuse of this privilege. If not, the boasted liberty of the subject is a shadow; if a judge can at any time, on his own construction of a contempt, commit to prison any witness brought before him, it is plain that liberty has no stronger safeguard than the honesty of judges, and as we have had bad ones before, who can say that we may not have them again?

But if it be that such a power really belongs to the judges—that they are invested with so despotic a privilege—is it one that ought to be left to them unrestricted? In truth, this question is of vastly more importance to the public than the great privilege questions of the House of Commons. The latter was likely to affect only a few; in the former, every man and woman in the land is interested, for all are liable at any moment to be called into the witness-box, and subjected to be sent to prison at the will of the judge, without cause assigned, without trial, without appeal, and without redress.

Undoubtedly the power belongs, and properly belongs, to a judge to commit for contempt the disorderly—the disobedient—those who refuse to submit themselves to the jurisdiction of the Court. Inasmuch as it is necessary that witnesses should answer the questions put to them, it is a contempt to stand mute or to prevaricate, because these impede the business of the Court. But does the same argument extend to the case of perjury, actual or assumed? Perjury is a crime upon which the law has imposed a penalty. It is to be strictly proved, according to the rules of law, before that penalty can be inflicted. But what is the effect of the summary proceeding taken by Mr. Baron PLATT? The party is condemned without trial, and punished without opportunity afforded for shewing his innocence. Whatever the judge chooses to consider perjury is visited with instant vengeance.

The Cadis of Persia are not vested with a power more despotic, more extravagant, or more incompatible with free institutions.

But there is a consideration which should make even the learned judge pause before he repeats the practice. The process is for contempt. The power of committal for contempt is not limited to the assize courts, it belongs to all courts legally constituted. Therefore what Mr. Baron PLATT can do, may be done, upon the same plea, by every Quarter Sessions Court, Small Debts Court, or Magistrate's Court in the land. Who would be safe, if the example set at Exeter be followed by tribunals less satisfactorily presided over? Would the judges, we ask, entrust the power they have claimed for themselves to the commissioners of a local court, or the justices of a county town? Yet the plea that justifies them would justify also their imitators.

These objections are urged on the assumption

that in the particular case the learned Judge was right in his conclusion that the witnesses he committed for contempt had been guilty of perjury. But what, if it should turn out that they had been the witnesses of truth after all; that the main fact of their story, that which alone they came to prove, was strictly true; and that they were *not* guilty of wilful perjury? What, then, will be said of this arbitrary power? How, then, will it be justified? Yet is it more than probable that in this instance (we believe it is the second only), in which the Judge has taken upon himself to determine the question of guilty on his own view, the parties he has so severely punished will be proved to be innocent!

The very possibility of such an error of judgment is sufficient to condemn the practice. Its actual occurrence will so prove its danger to the liberties of the subject, that it will be suppressed by the unanimous verdict of public opinion.

Be it well understood that we have written this, not by way of complaint of the conduct of Mr. Baron PLATT in the particular instance, but in opposition to a practice which we believe to be fraught with wrong, based upon injustice, dangerous to the subject, and in violation of the principles of the constitution. It is a question of vast moment, not merely to the Profession, but to the public; and it is the duty of all the guardians of the liberties of the people, and especially of the lawyers, to enter their solemn protest against this practice of summarily committing for contempt a witness whom a judge or a jury may choose not to believe.

NOTES UPON CIRCUIT.

COMMITTALS—DUTIES OF MAGISTRATES.

THEY whom business or curiosity may have led to watch the proceedings of our Criminal Courts, must have remarked the frequency with which the counsel for prosecutions, and even the presiding judges, comment upon the omission of the prisoner to call witnesses in disproof of certain facts stated or inferred against him, urging such absence of contradiction as evidence of the truth of the fact so left unanswered. "Why is not JOHN SMITH put into the box?" is one of the stock phrases of the Bar and the Bench.

The argument in a civil cause is unanswerable. Where a man has the ability to refute, not to contradict is tacitly to admit. Very different is it in criminal cases. There the parties stand before the Court on very unequal terms. On the one side is the prosecutor, often wealthy, always backed by the public purse. On the other is the prisoner, usually a poor man, always thrown upon his own resources for his defence. In utter oblivion of what poverty means, the taunt is heartlessly, wrongfully insinuated, "why is not JOHN SMITH here?"

For what does the expression imply? Put into plain terms, it runs thus:—Why did not the prisoner, who earns seven shillings a week, and therewith supports seven children, employ an attorney, pay the cost of conveyance and maintenance of witnesses for a week at the assize town, with five shillings a day to each for his loss of time?

We have seen so many cases of grievous injustice resulting from the inability of prisoners to bring up witnesses in their defence, that any proposition for redress deserves attention. Manifestly there is moral if not legal wrong somewhere, and if the Law cannot provide a remedy, the Legislature should do so.

But is the law defective? or is there error in its administration? We suspect that in the latter lies the source of the mischief, and certainly by a small change in that the cause of complaint may be removed.

In the magistrates resides the power of correcting this wrong, and they may do so equally in accordance with law as with reason.

It is an opinion long entertained, and confirmed by daily experience, that magistrates misunderstand their duties in the investigations that precede the committal of a prisoner for trial on a charge of felony. The prevalent notion is, that they have only to see that a *prima facie* case is made out, and to bind over to appear only such witnesses as prove the case against the prisoner.

But we apprehend that their duty is properly by no means limited to this; that they ought to know nothing of "prosecution" or "defence," "prosecutor's witnesses" and "prisoner's witnesses." Their province is, as impartial judges, to hear all that belongs to the crime and its detection; to investigate the whole matter; to examine witnesses on both sides who speak to the transaction; and that it is their duty, as it certainly is the dictate of humanity and justice, to send before the superior Court every person who gives any testimony relevant to the crime, whether it be against or in favour of the prisoner, and so that the jury may be enabled fairly to decide upon the merits of the entire matter.

And in this view we are glad to have the sanction of Mr. Baron ALDERSON, from whom we once heard, on the Western Circuit, an observation in substance like the following. Prisoner's counsel having complained that a witness brought before the magistrates by the prisoner, to disprove the charge, had not been bound over to appear, and, consequently, that the prisoner was unable to produce him at his own cost, the magistrates' clerk remarked that he was not sent up because he was a witness for the defence. Whereupon the learned Baron, with generous indignation, exclaimed to this effect:—"What have the magistrates to do with the prosecution or defence? It is their duty to examine into the whole matter, and not to make out a case; and they are bound to send up here every witness who speaks to the transaction, whether his evidence tells for the prisoner or against him. It would be the height of injustice to compel poor men to bring up witnesses who can prove them innocent against a charge supported at the public cost."

We cannot pledge our memory to the very words, but that was the substance of his observations. And every day's experience shews the justice and propriety of the practice so alleged to be the law, by the repeated instances of grievous wrong resulting from the opposite practice.

Earnestly do we recommend the subject to the serious consideration of magistrates and their clerks.

REGISTRATION APPEALS, &c.

THE Appeals of the last year are now ready in Nos. 4, 5, and 6 of *Cox and Atkinson's Registration Appeal Cases*, or forming part 2. Parts 1 and 2, sewn in a double part, with index, contain all the appeals determined to the present time, price 10s.

Nos. 17 to 20 of *Cox's Criminal Law Cases* will be ready next Saturday, forming Part 5. The index to the first volume, now completed, is in the press. These reports have been cited throughout the new edition of *Roscoe's Criminal Evidence*.

The first part of the second volume (Part 7) of *Real Property and Conveyancing Cases* is in the press.

The sixth part of *New Magistrates' Cases*, completing the first volume, will be ready shortly. This volume will contain all the Magistrates' Cases decided during the last two years, price 3s. handsomely half-bound.

SHAM LAWYERS.

THE following is a curious specimen of Sham Lawyer correspondence from Bridlington Quay. This Mr. WM. PURDON affixes to his note a stamp, on which is inscribed "William Purdon, Stock and Share Broker, Auc-

tioner, and Sheriff's officer." Now, whether he be or be not the latter we are not informed; but, if he be, the sheriff ought at once to remove him from his office; if he be not, the employment of the title for the manifest purpose of giving additional awe to his proceedings, would afford further evidence of false pretences, should it be deemed desirable to institute any prosecution.

Bridlington Quay, 18th April, 1846.

Mr. William Berriman, of Quay-road.

SIR,—I am directed by Mr. John Chambers to apply to you for the payment of the sum of 4l. 10s. 6d. due from you to James Potts, and to inform you, that unless the same be paid to me on or before Saturday, 25th inst. I shall without further notice order a process under the provisions of the Act for better securing the payment of small debts, to compel you to shew cause why the same has not been duly discharged.

I am, Sir,

Your obedient servant,

WM. PURDON,

No. 10, Junction-street, Hull.

2, New Buildings, Bridlington Quay.

"And be it declared and enacted that no imprisonment under this Act shall in any wise operate as satisfaction or extinguishment of any debt or demand; but any person imprisoned under this Act who shall have paid or satisfied the debt or demand and all the costs incurred shall be discharged on application to the judge of the court in which the order of imprisonment was made."—*Small Debts Act, 7th Vic. Sec. 3.*

Final Application. No. 316.

Kingston-upon-Hull, 1 June, 1846.

Mr. William Berriman, of Q. Road, labourer.

SIR,—Information having been forwarded to me of your omission to pay the sum of 9s. 0½d. due by you to the estate of Mr. James Garton, I am therefore directed to acquaint you that unless you cause the same to be paid at my Office, or assign a satisfactory reason for such omission, before the 6th of June inst. being the day appointed for the settlement of the above account, a summons will be issued for the peremptory discharge thereof with costs.

I am, Sir, your obedient servant,

WM. PURDON,

10, Junction-street, Hull.

Attendance will be given for the arrangement of accounts, as under, viz.:

Market Weighton.—Wednesdays, from 2 till 6 o'clock, at the house of Mrs. Craven, Southgate.

Great Driffield.—Thursdays, from 2 till 6 o'clock, at the house of Mr. Jefferson, silversmith, Market-place.

Bridlington Quay.—Saturdays, at the Offices, No. 2, New Buildings.

"And be it declared and enacted that no imprisonment under this Act shall in any wise operate as satisfaction or extinguishment of any debt or demand; but any person imprisoned under this Act who shall have paid or satisfied the debt or demand and all the costs incurred shall be discharged on application to the judge of the court in which the order of imprisonment was made."—*Small Debts Act, 7th Vic. Sec. 3.*

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

YOUNG.—On Saturday, the 1st inst. at Champion-grove, the wife of Edward Young, esq. barrister-at-law, of a son.

MARRIAGES.

CROSS, William, esq. of Clifton, Bristol, to Marianne, eldest daughter of James Hore, of Lincoln's-inn-fields, and Dulwich, Surrey, esq. on the 1st August, at St. Giles's, Camberwell.

HARVEY, Bridges, esq. of Lincoln's-inn, to Ellen, third daughter of William Brown, esq. of Ipswich, on Wednesday, the 30th ult. at St. Nicholas Church, Ipswich.

HAYNS, Henry, esq. her Majesty's late Commissary Judge in Brazil, to Isabella, the only surviving daughter of George Townshend Fox, esq. of the city of Durham, on the 30th ult. at South Bailey Church, Durham.

TINDAL, Acton, esq. of Aylesbury, to Henrietta Euphemia, eldest daughter of the Rev. John Harrison, Vicar of Dinton, on Thursday, the 30th ult. at Dinton, Bucks.

PHILLIPS, Charles Palmer, esq. of Lincoln's-inn, barrister-at-law, to Eliza, eldest daughter of William Loftus Lowndes, esq. one of her Majesty's counsel, on Thursday, the 30th ult. at St. George the Martyr.

JAMES, William Milburne, esq. of Lincoln's-inn, to Maria, fourth daughter of the late Right Rev. William Otter, D.D. Bishop of Chichester, on Tuesday, the 4th inst. at St. James's, Westminster.

HOLCROFT, William Francis, esq. of Sevenoaks, to Frances Charlotte, second daughter of the late James Powell, esq. formerly of the Royal Artillery, on the 4th inst. at St. George's, Bloomsbury.

ROBERTSON, Major L. late of the Royal Artillery, to Emily, only daughter of E. Salmon, esq. barrister-at-law, August 4, at Bath.

DEATHS.

GODSON, Susannah Constantia, eldest child of S. H. Godson, esq. Batland-gate, Hyde-park, on the 27th ult. at Tenbury.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY ON THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.

(Continued from page 402.)

The fee will pass where a testator directs any thing to be done which a life estate may be insufficient to accomplish.—Another ground for holding the fee to pass where no words of limitation are employed, is when a testator directs any thing to be done which a mere life estate in the devisee might be insufficient to carry into effect; as a devise for the payment of debts and legacies (*Beezley v. Westerhouse*, 4 T. R. 89); or where trusts are to be exercised, in both of which cases the devisees or trustees would be held to take an estate of inheritance (*Shaw v. Weigh*, 1 Eq. Ca. Abr. 184; *Bateman v. Roach*, 9 Mod. 104; *Villiers v. Villiers*, 2 Atk. 71; *Gibson v. Montford*, 1 Ves. 485; *Challenger v. Sheppard*, 8 T. R. 597); and not an estate merely commensurate with the existence of the purposes of the will, or the objects of the trusts, which in many instances might have been effected by an estate *pur autre vie*; and this construction has been confirmed by the late Will Act (1 Vict. c. 26), by which devises of real estates to trustees or executors, except for a term or a presentation to a church, without any express limitation of estate, shall be construed to pass the fee, or such other estate or interest as the testator had the power to dispose of by will, and not an estate determinable when the purposes of the trust are satisfied (secs. 30, 31). Yet where lands are simply directed to be sold, but were not directly devised to be sold by the trustees, or executors, an authority only, and no interest, will be held to pass those terms (9 Ed. 6, b 25 a; Litt. sect. 169; *Latch*, 43; *Houell v. Barnes*, Cro. Car. 382; *Yates v. Compton*, 2 P. Wms. 308; *Lancaster v. Thornton*, 2 Bur. 1028); and, subject to the power of sale, the land would descend upon the heir; nor does the law in this respect appear to have been altered by the new Will Act, which only mentions, "where any real estate shall be devised to any trustee or executor" (sect. 30), or, "where any real estate shall be devised to any trustee, &c." (sect. 31).

Whether a power of sale can be exercised where some of the donees refuse to concur.—Formerly, where a power was given to executors to sell, and one of them refused the trust, the others could not sell. But the statute 21 Hen. 8, c. 4, provided that where lands were willed to be sold by executors, and part of them refuse to be executors, and to accept the administration of the will, all sales by the executors that accept such administration shall be as valid as if all the executors had joined.

Whether a renouncing executor can purchase.—According to Lord Coke (Co. Litt. 113, a), a renouncing executor could not purchase, because, notwithstanding his renunciation, he was still privy to the will. This doctrine has, however, been overruled at law (*Denne dem. Bowyer v. Judge*, 11 East, 288; *Mackintosh v. Barber*, 1 Bing. 50); but whether a purchase of this kind would be supported in equity will depend in a great measure upon the particular circumstances of the case. If it could be shewn that the sale was to the prejudice of the *cestui que trust*, equity would undoubtedly set it aside. Although executors renounce the probate of the will as to personal estate, they are not by such renunciation disqualified to execute a power of sale over real estate. (*Yates v. Compton*, 2 P. Wms. 308; *Keilw.* 45.)

Whether a power of sale to executors will survive.—When property is devised to be sold by executors, so that a mere authority and no estate passes to them, questions sometimes arise, as to whether, in case any of them die, the power can be exercised by the survivors, which it seems it cannot be where the authority is given to them by name: as where a testator directs that his executors, A, B, and C, shall sell the land. (Co. Litt. 113; *Peyton v. Bury*, 2 P. Wms. 626; *Attorney-General v. Gleg*, 1 Atk. 356.) But when the direction is that the estate shall be sold by the executors generally, then, if there be three or more, and one or two die, provided a plurality of executors still remains, so as to satisfy the description, the power will still survive even at law (Co. Litt. 3 a.; *Vincent v. Lee*, Co. Litt. 113, a.; *Dy.* 117, pl. 32; *Garbrand v. Mayot*, 2 Vern. 105); but it seems at least doubtful whether it would where one only

survives, for then the description of executors is no longer applicable (*Dy.* 219, side note, pl. 8); and although cases are not wanting to support the validity of the exercise of a power given to executors by a single survivor (*Houell v. Barnes*, Cro. Car. 3 S. C. nom *Barnes' case*, W. Jones, 352, pl. 2; *Anon.* 2 Leon, 220; *Milward v. Moore*, Sav. 72; *Anon.* *Dy.* 371, 6 pl. 3); still no purchaser would be warranted in accepting a simple conveyance from the surviving executor. In the case of trustees a still stricter rule prevails against the power surviving; which, unless directed to be exercised by the survivors, it seems it will not do where the instrument contains a power to appoint new trustees, notwithstanding the proceeds of the sale may be directed to be paid to the trustees or the survivor of them, his executors or administrators. (*Townsend v. Wilson*, 1 B. & Ald. 608; see also *Hall v. Dewes*, 1 Jac. 189; *Bradford v. Belfield*, 2 Sim. 264.)

Where property is directed to be sold, without stating by what persons the sale is to be made.—It occasionally happens that a testator directs property to be sold for certain purposes, without declaring by whom such sale is to be effected. Whenever this occurs, if the proceeds of the sale are to be distributable by the personal representatives, as where the purchase money is to be applied in payment of debts (Ram. on Assets, 105; *Anon.* 3 *Dy.* 371, C.; *Anon.* 2 Leon, 220; *Blatch v. Wilder*, 1 Atk. 420), or debts and legacies (*Anon.* 2 Leon, 220; *Hughes v. Collis*, 1 Ch. Cas. 179) or legacies only (*Anon.* Dalison, 106, ca. 56; *Carroll v. Carroll*, 2 Ch. Rep. 301), or by the terms of the will are to be confounded with the testator's personal property, and with it to form one fund for the payment of the legacies (*Tylden v. Hyde*, 2 Sim. and Sta. 238); then a power of sale will arise by implication in the executors, which power will be transmissible from them to their personal representatives. But no such implication will arise where the proceeds of the sale are not to be applied by the executors in the execution of their office. Hence, if a testator simply bequeaths the money to arise from the sale to certain persons named, this bequest does not cause the money to be applicable by the executors in the execution of their office, and, therefore, in this case, they are not, but the heir-at-law of the testator is, the party to sell and convey to the purchaser. (Ram. on Assets, 105; *Bentham v. Wilshire*, 4 Mad. 44; *Patton v. Randall*, 1 Jac. and Walk. 189.) But in any of the cases which have been alluded to, notwithstanding the power cannot be exercised at law, yet, certainly, a court of equity will, while the trust implied in it exists, enforce the execution of the trusts, by decreeing a sale pursuant to the testator's intention. (Ram. Assets, 101, referring to *Gவில்리ams v. Rowell*, Hard. 204; *Garfoot v. Garfoot*, 1 Ch. Cas. 35; *Ashby v. Doyl*, ib. 180; *Amby v. Gower*, 1 Ch. Cas. 283; S. C. 1 Lev. 304; *Loc-ton v. Loc-ton*, 2 Freem. 136; *Yates v. Compton*, 2 P. Wms. 308; *Witchot v. Louch*, Ch. Rep. 183.) Powers of this kind are defined to be powers in the nature of a trust, which differ from ordinary powers, because powers strictly as such are never imperative, but leave the act to be done at the will of the party to whom they are given (Wilm. 23); whereas trusts are always obligatory upon the conscience of the party entrusted. But in cases like those last alluded to, the trusts and powers are blended together. Until the power be exercised, the estate descends on the heir (*Warneford v. Thompson*, 3 Ves. 513; *Hilton v. Kenworthy*, 3 East, 553), who (if such power were extinguished by the death of parties to whom it was given without having executed it, or never arose on account of the testator not having appointed any person to execute it), would at law be entitled to hold it for his own benefit; but here equity, acting upon the trust, will compel the heir to concur in the sale, in order to carry out the purposes of the will. (*Hyer v. Wordale*, 2 Freem. 135, cited; *Loc-ton v. Loc-ton*, 2 Freem. 136; *Pitt v. Pelham*, 1 Ch. Cas. 176.)

When the legal estate is devised in fee, the party taking the beneficial interest will be entitled in fee also.—When the legal estate is devised in fee, and there is an apparent intent that all the beneficial interest in the estate should belong to a particular person, or to a class of persons (which will generally be inferred when the trust is declared directly in their favour without any restrictive terms), the fee in the trust has been held to pass without any words of limitation. (*Bateman v. Roach*, 9 Mod. 104; *Newland v. Shephard*, 2 P. Wms. 194, S. C. 1 Eq. Ca. Abr. 329, pl. 4; *Challenger v. Shep-*

ward, 8 T. R. 597.) So where there is a trust or direction to purchase land for another, it will be implied that the purchase is to be in fee-simple, unless the will expresses a different intention. (*Green v. Armistead*, Hob. 65.)

When a power of disposition will pass the fee.—It is also long been a fixed rule of law that where lands are devised to a man without words of limitation, but conferring on him an absolute power of disposition over the property, he will be construed to take the fee; but the construction will be otherwise where he has an express estate divided from the power. And the like doctrine prevails whenever the power is restricted to a particular mode of disposition, as by deed, or by will, or on the happening of a contingent event. Yet where an express estate for life is given in order to let in estates to strangers, and no specific mode is required to the disposition of the inheritance, then in the event of the mesne estates not taking effect, the devise will take the entire fee-simple. *Goodtitle v. Otway*, 2 Wills. 6, is a case of this description. There the devise was to the testator's heir-at-law for her life, and after her death to her lawful issue, and if she should have no issue, she should have power to dispose thereof at her will and pleasure. She died without issue, and the court were clearly of opinion that, as the contingent remainder to the children never vested, she had an estate in fee-simple. (See also *Turner v. Hardie*, 1 Leon. 283.)

Where the power of disposition is confined to particular objects.—But where an estate for life is not expressly given, but the property is devised generally to the devisee to such uses as he shall appoint, nevertheless, confining the power of disposition to particular objects, it seems difficult to decide whether the devise will take a fee-simple conditional, or an estate in fee upon trust, or an estate for life with power to dispose of the inheritance; but the more general opinion appears to be in favour of an estate for life, with a power of appointment over the fee, unless the will should contain sufficient words to negative such a construction.

The foregoing observations, it may be necessary for me again to remind my readers, are often applicable only to wills prior to the operation of the late Will Act (1 Vict. c. 26); for, as to wills made subsequently to the 1st of January, 1838, no words of limitation will be necessary to pass an absolute estate in fee-simple, when the subject-matter of the devise is sufficiently described to identify the property intended to pass by it. Still this does not render it the less necessary that a person in investigating a title should be thoroughly acquainted with the rules of law upon the construction of wills made previously to that period, as questions must continue to arise upon them for many years yet to come.

(To be continued.)

Public Sales.

By Messrs. DRIVER, at the Mart.

THE OATLANDS ESTATE, SURREY.—The remaining, and most eligible portion, containing 236 acres, of this celebrated Estate, the once favourite abode of his late Royal Highness the Duke of York, was, on Tuesday last, the 4th inst. submitted by Messrs. Driver, for public competition, at the Auction Mart, London. The Lots, from their possessing well known unrivalled capabilities as building sites, and this being the last opportunity afforded for obtaining such valuable spots for the erection of villas, a spirited competition was excited by those who were disappointed at the former sale and others. The lots, including the value of the timber, realised the following prices, viz.—Lot 1. A valuable building plot, and site of the stables, &c. containing 21a.—2,852l. 2. A ditto, with temple thereon, containing 12a. 2r.—1,247l. 3. A ditto, containing 11a. 2r.—1,481l. 4. A ditto, containing 17a. and the site of the house, 2,143l. 5. A ditto, containing 16a. 1,032l. 6. Oatlands farm, containing 27a. 20p.—1,973l. 7. The walled kitchen garden and land, containing 14a. 1r. 20p.—2,006l. 8. A valuable building site, containing 22a. 1r. 20p. including the far-famed grotto—2,598l. 9. A valuable parcel of land, containing 48a. 20p.—3,463l. 10. A valuable piece of land, containing 5a. 1r. 18p.—540l. 11. A building plot, containing 12a.—834l. 12. A ditto, containing 10a.—601l. 13. A valuable parcel of land, containing 5a. 3r. 13p.—710l. 14. A building plot, containing 8a.—602l. 15. A ditto, containing 2a. 2r.—317l. Total—22,998l.

By Messrs. SHUTTLEWORTH and SONS.

A freehold property, comprising the Garratt print works, two residences, with offices and pleasure grounds, containing together 11a. 3r. 6p. of land—2,450l.

A freehold meadow, consisting of 8a. 2r. 6p. adjoining the preceding lot—840l.

A freehold meadow adjoining, containing 5a. 3r.—400l. A residence, No. 17, Gloucester-place, New Peckham, held for 75 years, at 6l. 6s. per annum—530l.

The following scale of charges, reduced more than one-third, has been adopted for

Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

For the first 70 words 5s.
For every succeeding 30 words . . . 1s.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	96	96	96	96	96	96
Three per Cents. Reduced	96	96	96	96	96	96
New Three-and-a-quarter per Cts	98	98	98	98	98	98
Long Annuities	102	104	101	101	102	103
Bank Stock	208	208	209	208	208	208
India Stock	262	263	262	261	260	262
India Bonds, prem.	18	18	18	18	18	18
Exchequer Bills, prem.	13	13	12	12	11	11

FOREIGN.

Spanish Five per Cents.	26	26	26	26	26	26
Spanish Three per Cents.	36	36	36	36	36	36
Russian	111	111	111	111	112	112
Peruvian	38	38	38	38	39	39
Portuguese	43	43	43	41	40	39
Mexican	25	25	25	25	25	25
Deferred	16	16	16	16	16	16
Dutch Two-and-a-Half per Cents.	59	59	59	59	59	59
Four per Cents.	93	94	94	94	94	94
Danish	88	88	88	88	88	87
Colombian	16	16	16	15	15	15
Chilian	98	97	96	96	96	96
Buenos Ayres	39	39	40	41	41	41
Brazilian	88	87	88	88	90	90
Belgian	97	97	97	97	97	97

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, July 27.

Hill, J. C. grocer, last exam. Oct. 27.—Wilcox, J. tailor, last exam. Oct. 26.

Tuesday, July 28.

Bickerton, J. hat manufacturer, last exam. Sept. 11.—Burbidge and Co. cabinet makers, div. of Burbidge, sen. next week. Follett, London.—Collins, C. yarn agent, last exam. passed.—Cooper, W. hardwareman, div. next week. Whitmore, London.—Elphick, H. victualler, last exam. Aug. 17.—Everett, W. builder, last exam. Aug. 17.—Furnival, J. corn dealer, final div. next week. Follett, London.—Harding, W. sen. mason, final div. next week. Follett, London.—Hay and Titterton, oilmen, div. of Hay next week. Follett, London.—Smith, N. T. jun. ship owner, final div. next week. Follett, London.—Wood, H. woollen factor, div. next week. Whitmore, London.

Thursday, July 30.

Boddington, J. corn dealer, last exam. Oct. 5.—Court, T. boot maker, last exam. Sept. 23.—Gibbons, J. merchant, last exam. passed.—Morris, H. stonemason, last exam. Sept. 6.

Friday, July 31.

Eaton, W. C. flour dealer, assignees, Sept. 12.—Fowler, A. C. draper, last exam. passed.—Pulvertoft, T. ironmaster, div. next week. Belcher, London.—Fuller, E. baker, last exam. sine die. Garbanati, P. carver, assignees, Sept. 3.—Green, W. boarding-house keeper, assignees, Sept. 1.—Harper, J. commission agent, last exam. Oct. 30.—Smith and Co. printers, last exam. Nov. 3.—Soul, E. bookseller, last exam. passed.

Saturday, August 1.

Berry, J. draper, div. next week. Green, London.—Evans, S. R. gas meter manufacturer, outlawed.—Smith, S. miller, last exam. passed.—Wildy, A. hatter, last exam. Sept. 1.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Archer, S. woollen manufacturer, first, 1s. 3d. Fraser, Manchester.—Bell, W. merchant, first, 2d. Groom, London.—Burnell, E. merchant, first, 3s. Groom, London.—Carter and Co. woollen drapers, fourth joint, 8d.; first and 5s. sep. of Carter, 8s. Groom, London.—Clayton, E. victualler, 3d. Follett, London.—Dickman, G. farmer, first, 1s. 4d. Groom, London.—Dow, A. J. draper, 9d. Follett, London.—Dixon, F. carrier, 1s. 3d. Follett, London.—Far, R. G. wine merchant, first, 4s. 3d. Edwards, London.—Graham and Co. calico printers, joint, 9d.; sep. of Graham, 7s. 9d. Follett, London.—Green, G. C. stationer, 2s. 1s. Edwards, London.—Grosvenor, W. ironfounder, first, 8s. 9d. Whitmore, Birmingham.—Harrington, C. plumber, second, 3d. Christie, Birmingham.—Hoare, J. P. apothecary, first, 3s. 6d. Valpy, Birmingham.—James, J. P. draper, first, 8s. 9d. Herniman, Exeter.—Johnson and Co. bankers, final joint, 2d. Follett, London.—Latham, S. M. banker, first, 8s. Whitmore, London.—Miris, J. butcher, 3s. 4d. Hobson, Manchester.—Osborn, G. whip maker, first, 3s. 6d. Herniman, Exeter.—Pearson, J. baker, Newgate.—Pemberton, J. soap boiler, second and final, 6d. Hope, Leeds.—Parsell, S. ironfounder, first, 2s. Edwards, London.—Radbone, J. broker, first, 1s. 4d. Valpy, Birmingham.—Reesby, C. miller, second, 3d. Valpy, Birmingham.—Robinson, J. millwright, first, 5s. 3d. Fraser, Manchester.—Rogers, S. earthenware manufacturer, final, 9d. Valpy, Birmingham.—Rogers, W. draper, 8s. 3d. Follett, London.—Rowles, J. worsted manufacturer, second, 9d. Christie, Birmingham.—Smyth and Booth, ironmasters, third joint, 1s. 6s.; first sep. of Smyth, 2s.; second sep. of Booth, 2s. 6d. Kynaston, Leeds.—Stanthorpe, J. brewer, first, 2d. Wakley, Newcastle.—Standen, T. brewer, 4s. 3d. Follett, London.—Sugden, J. and D. cloth manufacturers, second and final, of J. S. 3s. 9d.; second and final, 1s. 1d. Kynaston, Leeds.—Ward and Co. meat salesmen, 13s. 4d. Follett, London.—

Wilks, W. builder, first, 7s. Hope, Leeds.—Williams, L. woollen draper, first, 2s. 10d. Groom, London.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, July 31.

Collins, C. J. tailor, Leytonstone, July 23. Trustees. W. Byers, High-st. Shoreditch, and R. Saunders, Leadenhall-st. woollen warehousemen. Sol. Linklater, Leadenhall-st.

Gazette, Aug. 4.

Anderson, J. corn dealer, Warwick, July 30. Trust. W. Rider, army contractor, Coventry. Sols. Handley and Co. Warwick.—Cook, T. printer, Leicester, July 31. Trusts. L. Pretymann and A. L. Rixon, stationers, Poultry, and R. F. Plant, bookbinder, Leicester. Sols. Sculthorpe, Leicester, and Kemp, Backlbury.—Crumpton, E. butcher, Lichfield, July 13. Trusts. T. Parr, farmer, Alrewas, and E. A. Ashmall, farmer, Lichfield. Sol. Hodson, Lichfield.—Higgin, T. H. and W. cotton spinners, Lancaster, May 29. Trusts. T. Osendale, cotton spinner, Preston, and P. Gould, cotton merchant, Manchester. Sol. Milne, Manchester.—Houston, J. saddler, Wokingham, June 6. Trusts. W. Smith, Reading, and J. Smith, Reading and City-road, carriers. Sols. Soames, Wokingham.—Jackson, T. Farmer, B. Slater, R. Denton, J. Slater, W. Hudson, J. Yeadon, B. Myers, W. Bolton, T. Yeadon, B. Booth, J. Roberts, S. Birch, G. Roberts, A. Coghill, T. Waite, R. Myers, L. Yeadon, B. Ambler, J. Gaisley, and Brown, J. Hartley, J. and Rycroft, W. Rawden, Gaisley, clothiers, July 14. Trusts. J. Ellerhaw, jun. and T. Bell, oil merchants, Leeds. Sol. Sangster, Leeds.—Puckering, S. Jan. and Makins, W. T. woollen drapers, Hull. Trusts. J. Stringer, and J. Hanesworth, woollen drapers, Hull. Sol. Bell, Hull.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, July 31.

CARNE, JOSEPH, jun. grocer, Falmouth, Aug. 12 and Sept. 9, at eleven, Exeter, Com. Bere; Herniman, off. ass.; Jones and Co. St. Swithin's-lane, Bull and Co. Falmouth, and Avery and Son, Exeter, sols. Date of fiat, July 21. S. J. Gibbons, W. Crookes, and S. Gibbons, wholesale tea dealers, St. Andrew's-hill, pet. ers.

CLARK, BENJAMIN, export ale and porter merchant, Kingston-upon-Thames, Aug. 8, at one, Sept. 10, at twelve, Basinghall-st. Com. Goulburn; Green, off. ass.; Lawrence and Piers, Old Jury-chambers, sols. Date of fiat, July 30. Bankrupt's own petition.

ELLIOTT, WILLIAM, corn merchant, Petworth, Sussex, Aug. 8, at one, Sept. 10, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Hill and Heald, Throgmorton-st. and Dainty, Petworth, sols. Date of fiat, July 28. Bankrupt's own petition.

GILL, RICHARD, grocer, Richmond, Yorkshire, Aug. 11 and Sept. 1, at eleven, Leeds, Com. Burge; Kynaston, off. ass.; Meggison and Co. King's-road, Langthorne, Richmond, and Atkinson and Co. Leeds, sols. Date of fiat, July 22. M. Branton, gent. Richmond, Yorkshire, pet. cr.

HEATON, JOHN, clothier, Park near Holey, Almsbury, Yorkshire, Aug. 11 and Sept. 1, at eleven, Leeds, Com. Burge; Hope, off. ass.; Van Sandau and Co. King's-st. Brook and Co. Huddersfield, and Horsfall and Harrison, Leeds, sols. Date of fiat, July 18. J. Brook, woolstapler, Huddersfield, pet. cr.

JAMIESON, JAMES, stock and share broker, Leeds, Aug. 10 and Sept. 3, at eleven, Leeds, Com. West; Young, off. ass.; Messrs. Upton, Leeds, and Few and Co. Covent-garden, sols. Date of fiat, July 29. Bankrupt's own petition.

KILPIN, EDMUND BURKE, jeweller, watch maker, and silversmith, Union-st. Ryde, Isle of Wight, Aug. 10, at two, Sept. 7, at eleven, Basinghall-st. Com. Shepherd; Graham, off. ass.; Watson, Basinghall-st. sol. Date of fiat, July 12. Bankrupt's own petition.

PALMER, JOHN, painter, plumber, and glazier, Worthing, Sussex, Aug. 8, at twelve, Sept. 8, at two, Basinghall-st. Com. Goulburn; Follett, off. ass.; Palmer and Co. Bedford-row, and Reed, Worthing, sols. Date of fiat, July 28. T. Palmer, farmer, Eastergate, Sussex, pet. cr.

RATNER, THOMAS INGHAM, apothecary, Birstall, Yorkshire, Aug. 11 and Sept. 1, at eleven, Leeds, Com. Burge; Kynaston, off. ass.; Jacques and Co. Ely-place, Batty and Co. Birstall, and Bond, Leeds, sols. Date of fiat, July 28. J. Buckley, shopkeeper, Birstall, pet. cr.

SUCH, JOSEPH JAMES, auctioneer and upholsterer, 20, Bolingbroke-row, Walworth-rd. Surrey, Aug. 11, at twelve, Sept. 4, at half-past one, Basinghall-st. Com. Fane; Whitmore, off. ass.; Smith, Basinghall-st. sol. Date of fiat, July 28. Bankrupt's own petition.

WHITE, DANIEL, potter and pipe maker, Baptist Mills, St. Philip and Jacob, Bristol, Aug. 11, at twelve, Sept. 7, at eleven, Bristol, Com. Stephen; Hutton, off. ass.; King, Bristol, sol. Date of fiat, July 24. Bankrupt's own petition.

WILKIN, ATKINSON, merchant, Camberwell, Surrey, Aug. 11 and Sept. 18, at one, Basinghall-st. Com. Shepherd; Graham, off. ass.; Espin, New Boswell-court, sol. Date of fiat, July 30. Bankrupt's own petition.

WILSON, THOMAS, grocer, Sheffield, Aug. 14 and Sept. 4, at eleven, Sheffield, Com. West; Freeman, off. ass.; Fernell, Sheffield, and Duncan, Featherstone-buildings, sols. Date of fiat, July 23. Bankrupt's own petition.

WRAGO, JONATHAN, iron merchant, Melina-pl. Westminster-bridge-rd. Aug. 11, at twelve, Sept. 9, at one, Basinghall-st. Com. Foulmanque; Belcher, off. ass.; Miller, Duke-st. and Hunt, Wednesbury, sols. Date of fiat, July 21. John Russell, Bloxwick, Staffordshire, iron master, pet. cr.

Gazette, Aug. 4.

ALDRIDGE, HENRY FRANCIS, music seller, Liverpool, Aug. 18 and Sept. 22, at eleven, Liverpool, Com. Ludlow; Bird, off. ass.; Maples and Co. Old Jewry, and Greene, Liverpool, sols. Date of fiat, July 29. Bankrupt's own petition.

BIRD, ISAAC, grocer and cheesemonger, Harrow-on-the-Hill, Middlesex, Aug. 11, at half-past one, Sept. 11, at half-past twelve, Basinghall-st. Com. Fane; Alsager, off. ass.; Lawrence and Piers, Old Jewry-chambers, sols.

BLANCHARD, WILLIAM, grocer and provision dealer, Pudsey, Yorkshire, Aug. 18 and Sept. 4, at eleven, Leeds, Com. Burge; Hope, off. ass.; Messrs. Ruabworth's, Staple-inn, and Sanderson, Leeds, sols. Date of fiat, July 23. Bankrupt's own petition.

CAINES, JOHN, corn dealer, Chilton Cantels, Somersetshire, Aug. 18, and Sept. 8, at eleven, Exeter, Com. Bere; Hermann, off. ass.; Trohorn and Co. Barge-yard-chambers, Terrell, Exeter, and Slade and Vining, Yeovil, sol. cr. Date of flat, July 25. J. T. Vining, attorney, Yeovil, pet. cr.

CLARK, THOMAS WILLIAM, licensed common brewer, High-st. Strood, Kent, Aug. 13, at twelve, Sept. 15, at two, Basinghall-st. Com. Goulburn; Green, off. ass.; Davies, Devonshire-sq. sol. Date of flat, July 24. H. Gurney and J. Nash, hop merchants, Duke-st. Southwark, pet. crs.

CORLESS, PRESCOTT, tea dealer and grocer, Wigan, Lancashire, Aug. 18 and Sept. 15, at twelve, Liverpool, Com. Ludlow; Bird, off. ass.; Cornthwaite and Co. Old Jewry, and Pemberton, Liverpool, sols. Date of flat, July 23. S. Ryder and G. Atkin, tea merchants, Liverpool, pet. crs.

COWIE, HENRY, and **CLARK, JAMES**, merchants, ship owners, ship brokers, and commission agents, Liverpool, Aug. 18 and Sept. 23, at eleven, Liverpool, Com. Ludlow; Turner, off. ass.; Norris and Co. Bartlett's-buildings, and Thompson, Liverpool, sols. Date of flat, July 29. Bankrupt's own petition.

COX, WILLIAM HENRY, barge and boat builder, College-ward, Belvidere-road, Lambeth, Aug. 13, at two, Sept. 9, at half-past one, Basinghall-street, Com. Fane; Whitmore, off. ass.; Rickson and Sons, Jewry-st. Aldgate, sol. Date of flat, Aug. 1. E. Chapman, College-st. Belvidere-road, Lambeth, pet. cr.

EDWARDS, ANTHONY TURNER, bricklayer and builder, Idol-lane, Tower-st. Aug. 11 and Sept. 9, at half-past twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Young and Son, Mark-lane, sol. Date of flat, Aug. 1. Bankrupt's own petition.

MORRIS, JAMES COVEL, cabinet-maker, Curtain-road, Shoreditch, Aug. 17, at eleven, Sept. 9, at two, Basinghall-st. Com. Fane; Alsager, off. ass.; Hine and Robinson, Charterhouse-square, sol. Date of flat, July 28. W. Smith, timber-merchant, Curtain-road, pet. cr.

PAYNE, JOHN, millwright and engineer, Tower-hill, Bristol, Aug. 18 and Sept. 23, at twelve, Bristol, Com. Stephen; Miller, off. ass.; Peters and Abbot, Bristol, sol. Date of flat, Aug. 1. Bankrupt's own petition.

PHILLIPS, EDWARD WEDGWOOD, dealer in glass and china, Bishopsgate-st. Aug. 11, at eleven, Sept. 9, at twelve, Basinghall-st. Com. Fane; Alsager, off. ass.; Hine and Robinson, Charterhouse-square, sol. Date of flat, July 27. J. Sowerby, glass manufacturer, Gateshead, pet. cr.

FRITCHARD JAMES, butcher, 17, Seymour-place, Camden-town, Aug. 11, at two, Sept. 11, at one, Basinghall-st. Com. Fane; Whitmore, off. ass.; Conyn, Lincoln's-inn, sol. Date of flat, July 30. H. Fritchard, butcher, Richard-st. Islington, pet. cr.

SAMUEL, SAUL and WALTER, woollen drapers and tailors, High-street, Birmingham, Aug. 13 and Sept. 17, at one, Birmingham, Com. Daniel; Bittleston, off. ass.; Messrs. Linklater, Lendenhall-st. and Hodgson, Birmingham, sol. Date of flat, July 28. J. P. Bull, woollen warehouseman, St. Martin's lane, pet. cr.

SIDDONS, THOMAS, ironmonger, Liverpool, Aug. 18 and Sept. 23, at twelve, Liverpool, Com. Ludlow; Turner, off. ass.; Gregory and Co. Bedford-row, and Rogerson and Radcliffe, Liverpool, sols. Date of flat, July 31. Bankrupt's own petition.

TIPPLE, SAMUEL, tailor and draper, Norwich, Aug. 13, at one, Sept. 9, at eleven, Basinghall-st. Com. Foulque; Pennell, off. ass.; Dickson and Overbury, Frederick's-place, sol. Date of flat, July 15. W. Barber, T. House, and W. H. Davis, warehousemen, St. Paul's Church-yard, pet. crs.

WATERS, FREDERICK, cheesemonger, Church-st. Hackney, Aug. 14, at half-past one, Sept. 10, at one, Basinghall-st. Com. Fane; Whitmore, off. ass.; Pile, Hatton-garden, sol. Date of flat, July 30. S. Pile, gent. Hatton-garden, pet. cr.

WATSON, WILLIAM, merchant, Ripon, Yorkshire, Aug. 19 and Sept. 16, at eleven, Leeds, Com. West; Young, off. ass.; Harris, Lincoln's-inn, Paget, Skipton, and Courtney, Leeds, sol. Date of flat, July 17. T. Lister, sen. tallow chandler, Addingham, pet. cr.

WINFIELD, THOMAS, potter, Baptist-mills, Bristol, Aug. 18, at one, Sept. 15, at eleven, Bristol, Com. Stephen; Hutton, off. ass.; Brown, Bristol, sol. Date of flat, July 30. Bankrupt's own petition.

Meetings at Basinghall-street.

Gazette, July 31.

Armistead, M. milliner, Crawford-st. Aug. 23, at eleven, and—**Guthouse, R., Dorch, R. and Wilkins, G.** timber merchants, Union Saw and Planing-mills, Upper Linton-st. Aug. 31, at half-past eleven, joint div.—**Lowe, J.** grocer, Broad-st. Golden-square, Aug. 30, at twelve, and—**Monte-Are and Montefiore**, merchants, Nicholas-lane, Aug. 11, at one (by order of the Court of Review), to choose assignees.—**Parr, J.** coal dealer and merchant, South Wharf-road, Fiddington, Aug. 23, at eleven (adj. March 24), div.—**Thorn, A.** oilman, High Holborn, Aug. 23, at eleven, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Davis, J. dentist, Pall-mall and Ladgate-st. Aug. 22, at one.—**Aburrow, W.** druggist, Liverpool, Aug. 23, at eleven.—**Armistead, M.** milliner, Crawford-st. Aug. 23, at eleven.

Gazette, Aug. 4.

Bradford, W. G. tailor, Buckenbury, Aug. 6, at half-past eleven, and—**Metcalfe, T.** carpenter, Princess-st. Red Lion-square, Aug. 6, at eleven, and—**Tubb, J.** draper, Basingstoke, Aug. 15, at twelve (adj. April 18, 1844), last exam.—**White, J.** wine merchant, St. Benet's-place, Gracechurch-st. Aug. 6, at eleven, and—**Whitlaw and Whitlaw**, builders, Lichfield-st. and Store-st. Aug. 6, at half-past eleven, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Ellerman, C. F. agent, Philpot-lane, Aug. 29, at twelve.—**Fibbey, W.** coachmaker, Wyndisbury, Aug. 26, at half-past eleven.—**Gisborne, J.** merchant, Coleman-st. Aug. 27, at two.—**Paine, J. D.** publisher, Hatcham, and copper-plate printer, Duke-st. Westminster, Aug. 30, at half-past one.—**Perry, R.** draper, Brighton, Aug. 27, at eleven.

Meetings in the Country.

Gazette, July 31.

Fidgen, T. boot and shoe manufacturer, Liverpool, Aug. 23, at eleven, Liverpool, and—**Aug. 27, at eleven, div.**

Jarmen, W. chymist, Wigton, Aug. 25, at eleven, Newcastle, and—**Morris, T. and Woodward, W.** drapers, Burslem, Staffordshire, Aug. 29, at twelve, Birmingham, and final div.—**Parton, J.** draper, Birmingham, Aug. 29, at twelve, Birmingham, and—**Rains, H.** boiler maker and innkeeper, Newton, Aug. 12, at twelve, Manchester (adj. July 28), last exam.—**Reid, J.** ship broker, Newcastle, Aug. 25, at eleven, Newcastle, and—**Rogers, T.** dentist, Bradford, Aug. 21, at eleven, Leeds, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Barton and Barton, copper roller manufacturers, Manchester, Aug. 22, at one, Manchester.—**Hughes, G. J.** commission merchant, Liverpool, Aug. 18, at eleven, Liverpool.—**Illingworth and Co.** worsted spinners, Bradford, Aug. 25, at eleven, Leeds.—**Jackson, T.** worsted spinner, Halifax, Aug. 24, at eleven, Leeds.—**Nield, J.** woollen manufacturer, Manchester, Ashton-under-Lyne, and Saddleworth, Aug. 24, at twelve, Manchester.—**Perry, R.** hatter, Leeds, Aug. 24, at eleven, Leeds.—**Souden, S. B.** share broker, Leeds, Aug. 25, at eleven, Leeds.

Gazette, August 4.

Belshaw, W. licensed victualler, Manchester, Aug. 27, at eleven, Manchester, and—**Aug. 28, at eleven, div.**—**Bemrose, T.** grocer, Spalding, Aug. 25, at ten, Birmingham, and—**Blundell and Falk**, merchants, Liverpool, Aug. 28, at eleven, Liverpool, and—**Smith, W. B.** ironmaster, Sedgley, Aug. 25, at ten, Birmingham, and—**Suckling, J. H.** ironmonger, Birmingham, Aug. 25, at ten, Birmingham, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Edwards, J. ironfounder, Birmingham, Aug. 29, at twelve, Birmingham.—**Shawson and Young**, chemists, Louth, Aug. 26, at ten, Town-hall, Hull.

Partnerships Dissolved.

Gazette, July 28.

Bertie, E. J. and Cole, M. C. milliners, Hanover-pl. May 23. Debts paid by Bertie.—**Case, G. and H.** button manufacturers and linen drapers, Milbourne St. Andrew and Bere Regis, May 1. Debts paid by B. Case.—**Corbett, G. and Lewty, E.** timber merchants, Stourport, June 24. Debts paid by Lewty.—**Galbraith, W. and Wilson, J.** publicans, Manchester, June 24. Debts paid by Galbraith.—**Girault, R. B. and Richardson, J.** silk manufacturers, Steward-st. July 25.—**Harris, G. and Redfern, J.** stock brokers, Manchester, July 24. Debts paid by Harris.—**Holebrook, S. and Sterling, S.** schoolmistresses, Maids-hill East, June 24.—**Lee, J. and Sore, W.** cotton merchants, Manchester, July 25.—**Lloyd, L. and Dawson, J.** stock brokers, Manchester, July 24.—**Mayger, E. and Connaught, W. H.** millwrights, New Brentford, July 23. Debts paid by Mayger.—**M'Dougal, T. Semboorne, E. M. and Bell, R.** warehousemen, St. Paul's-church-yard, July 28. Debts paid by Bell.—**Newton, W. and C. E.** cabinet makers, Vernon-st. July 24.—**Nicholls, J. and Hailson, T.** earthenware manufacturers, Longton, July 17. Debts paid by Nicholls and Cordon, the new partnership.—**Ovington, T. Warwick, C. Ovington, T. G. and M. Cheapside, July 27.**—**Philpott, M. L. and Joseph, H. A.** perfumers, Budge-row, May 1.—**Sewarcke F. and F. J.** brewers, St. Alban's, April 5.—**Shroove, W. S. and Trill, W. A.** linen drapers, Blackheath, July 22. Debts paid by Trill and Whitaker.

Gazette, July 31.

Ashby, H. and Dowker, J. plumbers, Tunbridge-wells, July 28.—**Betts, G. and A.** grocers, Swaffham, July 24. Debts paid by G. Betts.—**Bond, M. and Shuttleworth, T.** curriers, Ipswich, July 27.—**Bourne, J. T. and T. B.** cotton brokers, Liverpool, June 30. Debts paid by Newall.—**Cadman, W. and Winter, J.** cutlers, East Smithfield, June 27.—**Chorley, W. B. Ramsden, F. Ridge, J. C. Cope, C. H. and Chorley, J. R.** slate quarriers, Festiniog, June 30. Debts paid by W. B. Chorley.—**Cicotti, F. and Negretti, B.** barometer manufacturers, Brook-st. and Leather-lane, July 10. Debts paid by Rivolta, Bloomsbury-sq.—**Cooper, E. E. P. B. and J. A.** woollen manufacturers, so far as regards J. A. Cooper, July 29.—**Edmunds, L. and Roberts, J.** joiners, Liverpool, May 7, 1844.—**Gould, M. A. and Bradshaw, R.** designers to calico printers, Manchester, July 27. Debts paid by Bradshaw.—**Grakam, R. and Earl, H.** colourmen, King-st. Soho, Jan. 26. Debts paid by Graham.—**Jones, J. and D.** tailors, Portsea, May 1.—**Joyce, S. and Day, E.** stove manufacturers, London-wall, July 29.—**Mills, J. and G. B.** merino spinners, Nottingham, June 24.—**Mills, J. and Elliott, T.** cotton doublers, Arnold, March 31.—**Page, G. and C.** ironmongers, Bridge-rd. Lambeth, July 28.—**Fiery, R. A. Dickinson, J. Craven, H. and Middleton, W.** brewers, Leeds, July 29. Debts paid by Dickinson, Craven, and Middleton.—**Reynor, J. and H.** corn dealers, Manchester, June 24. Debts paid by J. Reynor.—**Rust, J. Rushbrook, J. and Donnelly, P.** so far as regards Donnelly, July 17. Debts paid by the remaining partners.—**Stannard, J. and England, J.** painters, Bayswater and Notting-hill, July 27.—**West, J. W. and Green, H.** corn merchants, Rutland-wharf, Upper Thames-st. June 30.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, July 28.

Ainsworth, G. baker, Chatham, Aug. 13, at twelve.—**Badden, J.** shopman, Bruton, Aug. 13, at half-past eleven.—**Binsted, J.** cabinet maker, Alton, Aug. 1, at two.—**Borer, R. B.** grocer, Whitecross-st. Aug. 13, at half-past eleven.—**Bray, T.** out of business, Fetter-lane, July 30, at half-past two.—**Cook, T.** watch maker, Howland-st. and Lombard-st. Aug. 13, at twelve.—**Davies, H.** carman, Elizabeth-pl. Commercial-rd. Old Kent-rd. Aug. 13, at twelve.—**Elliott, D.** merchant's clerk, Victoria-pl. Old Kent-rd. Aug. 13, at twelve.—**Holmes, W.** butcher, Clerkenwell-green, Aug. 13, at half-past eleven.—**Houghton, P.** sub railway contractor, Wood-st. Aug. 13, at twelve.—**Hurren, J.** grocer, Dalston, Aug. 13, at twelve.—**Kelly, J.** coal dealer, Deptford, Aug. 13, at eleven.—**M'Pherson, D.** auctioneer, Ipswich, July 30, at three.—**Matthews, G.** tailor, Deptford, July 30, at half-past two.—**Maynard, H.** baker, Long-lane, Bermondsey, July 30, at three.—**Porter, J.** shoe mercer, Sun-st. Aug. 13, at eleven.—**Stammers, J. E.** omnibus conductor, Aug. 13, at eleven.—**Ward, W.** sawyer, New North-st. Finsbury, July 30, at half-past two.—**Wardell, W.** chair maker, St. Giles,

Oxfordshire, July 30, at half-past two.—**Watts, W.** baker, St. George-st. St. George in the East, Aug. 13, at half-past eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Beaumont, J. cloth dresser, Mould-green, near Huddersfield, Aug. 7, at eleven, Leeds.—**Beaumont, J.** cloth finisher, Almondsbury, Aug. 4, at eleven, Leeds.—**Beardman, J.** flour dealer, Liverpool, Aug. 4, at eleven, Liverpool.—**Booth, C.** butcher, Manchester, Aug. 7, at twelve, Manchester.—**Boyle, P.** provision dealer, Liverpool, Aug. 4, at eleven, Liverpool.—**Brett, W.** hotel keeper, Liverpool, Aug. 6, at eleven, Liverpool.—**Carr, J.** coach smith, Cheltenham, Aug. 6, at half-past one, Bristol.—**Clark, W.** assistant plumber, Mells, Aug. 17, at eleven, Bristol.—**Crowdon, T.** small shopkeeper, Bowling-hall-lane, near Bradford, Aug. 4, at eleven, Leeds.—**Fox, T.** huckster, St. George, Aug. 18, at eleven, Bristol.—**Frobisher, G.** apothecary, Leeds, Aug. 4, at eleven, Leeds.—**Greaves, D.** woollen cloth merchant, Sheffield, July 31, at eleven, Sheffield.—**Hackney, J.** whitensmith, Liverpool, Aug. 7, at eleven, Liverpool.—**Hallows, J. S.** surgeon, Liverpool, Aug. 4, at half-past eleven, Liverpool.—**Harris, E.** out of business, Bristol, Aug. 6, at eleven, Bristol.—**Henrick, T.** is no business, Birkenhead, Aug. 6, at eleven, Liverpool.—**Marshall, J.** grocer, Horton, Aug. 7, at eleven, Leeds.—**Moss, S.** beer seller, Calverley-moor, Aug. 7, at eleven, Leeds.—**Parker, W.** stone deliver, Halifax, Aug. 4, at eleven, Leeds.—**Pell, J.** small shopkeeper, Horton, Aug. 7, at eleven, Leeds.—**Pepper, J.** pilot, Liverpool, Aug. 4, at eleven, Liverpool.—**Saville, C.** attorney, Sheffield, July 31, at eleven, Sheffield.—**Smith, C.** joiner, Derby, Aug. 11, at eleven, Birmingham.—**Wardle, T.** attorney, Liverpool, Aug. 6, at eleven, Liverpool.—**Watkins, W.** plasterer, Monmouth, Aug. 13, at eleven, Bristol.—**Watson, D.** stone mason, Guiseley, Aug. 4, at eleven, Leeds.—**Wilson, H.** confectioner, Sheffield, Aug. 7, at eleven, Sheffield.—**Withers, W.** jam. house dealer, St. George, Aug. 17, at twelve, Bristol.—**Yating, J.** sexton, Beverley, Aug. 5, at eleven, Hull.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, July 31.

Barker, J. baker, Brighton, Aug. 13, at eleven.—**East, S.** china dealer, Fulham-road, Aug. 12, at eleven.—**Gatfield, J.** chemist, Fordingbridge, Aug. 6, at one.—**Jermey, W. J.** tailor, Caston, near Watton, Aug. 12, at eleven.—**Lees, J.** merchant, Leman-st. Goodman's-fields, Aug. 1, at eleven.—**Marmaynes, G.** lithographic printer, Lisle-st. Leicester-sq. Aug. 13, at eleven.—**Wallace, J.** hatter, Chapel-st. Edgware-road, Aug. 12, at eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Broomhead, C. labourer, Sheffield, Aug. 7, at eleven, Sheffield.—**Cloves, T.** jun. saddler, Beverley, Aug. 13, at eleven, Hull.—**Davis, T.** butcher, Church-down, Gloucestershire, Aug. 24, at eleven, Bristol.—**Griceves, W.** out of business, South Shields, Aug. 26, at eleven, Newcastle.—**Hague, J.** blade forger, Sheffield, Aug. 7, at eleven, Sheffield.—**Hides, J.** scale presser, Sheffield, Aug. 7, at eleven, Sheffield.—**Jones, D.** publican, Merthyr Tydfil, Aug. 26, at eleven, Bristol.—**Middleton, T.** tinsmith, Barnsley, Aug. 14, at eleven, Leeds.—**Robinson, J.** lace maker, Radford, Aug. 7, at eleven, Sheffield.—**Sayner, J.** general shopkeeper, West Haddesley, Aug. 14, at eleven, Leeds.—**Schofield, J.** mechanic, Oldham, Aug. 13, at twelve, Manchester.—**Tatting, J.** sexton, Beverley, Aug. 5, at eleven, Hull.

From the Gazette of Friday, August 7.

Bankrupts.

Ashdown, W. ironmonger, Chatham.—**Millon, S.** sail-maker, Barking, Essex.—**Clark, H.** brush manufacturer, Watling-street.—**Pearce, T.** clothier, Bradford.—**Spence, T. H.** tailor and draper, Newcastle-upon-Tyne.—**Chambers, W.** shipwright and shipbuilder, Southwick.—**Hall, A.** innkeeper, Manchester.—**Russell, R. and Ramsbottom, R.** builders, Salford.—**Ward, J.** dealer in glass, Birmingham.—**Caines, J.** corn dealer, Chilton Cantelo, Somersetshire.

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

July 15 and 17.

WATSON G. PARKER.

Secondary evidence—Missing deed—Competency of witness—Voluntary deed—Entering evidence de bene esse—Inquiries which may be directed by decree—Practice—Form of decree.

Secondary evidence of the contents of a deed, of which performance is sought to be enforced, cannot be given until the existence and loss of such a deed have been proved by the best accessible evidence. A person taking an interest under a voluntary deed, assigned his interest without consideration, in order to become a competent witness to prove the contents of such deed, which had been lost; his competency was objected to, but it was held that until it had been shewn by the best evidence that such a deed had been executed, the question of the competency of the witness to prove its contents did not arise.

The Court below having held that an objection taken by the defendant that a lost deed must be proved before secondary evidence of its contents could be admitted, nevertheless allowed the secondary evidence to be read, and directed inquiries founded upon it: Held, on appeal, that such evidence was improperly received, and that when the decree is made, evidence received de bene esse ought to be expressly stated either as rejected or received.

This was an appeal by the defendants, the executors and trustees of Thos. Shipman, deceased, from a decree of Vice-Chancellor Knight Bruce.

The bill was filed in January 1843 by Thomas James Watson, on behalf of himself and all others the creditors of Shipman, and stated that in 1811 a marriage between Thomas Oswald and Sarah Simson was solemnized; that Oswald had from his youth been treated by Shipman as his adopted son; that Sarah Simson was the daughter of a very old friend of Shipman's, and that previously to such marriage Shipman agreed with Thomas Oswald and Sarah Simson to make such provision for them as was contained in an indenture of the 20th of August, 1811. That indenture was made between Shipman of the one part, and Oswald and Sarah his wife of the other part, which, after reciting the marriage, and the agreement before the marriage to make a provision for Sarah and the issue of the marriage, and in consideration of such marriage and performance of the agreement, Shipman, for himself, his heirs, executors, and administrators, did promise and agree with Thomas Oswald and Sarah his wife, and the survivor of them his, and her executors and administrators, that he, Shipman, would, in his lifetime, or by his last will and testament, give and appoint unto Oswald and wife, and George Lee and Joseph Thorpe Shipman, or unto some other persons by the said Thomas Shipman in such will or settlement to be named, 3,000*l.* Navy 5*l.* per Cent. Annuities, upon trust that Sarah, the wife of the said Thomas Oswald, should, after Shipman's death, receive the divi-

dends during her life to her separate use, independently of her husband; and after her death, that Thos. Oswald should receive the dividends during his life, so long as he should continue solvent; but in case he should become bankrupt or insolvent, upon trust that the dividends might be applied for the benefit of the children or child of the marriage who might be then living; and after the decease of the said Thomas Oswald and Sarah his wife, upon trust to divide the said 3,000*l.* stock amongst the children of the marriage; and if there should be no children of the marriage, in trust for the survivor of them, the said Thomas Oswald and Sarah his wife, or unto such person as the survivor of them should by will appoint. Sarah Oswald died in July 1813, having had one child, Jane, who died in her mother's lifetime, and thereby Thomas Oswald had become absolutely entitled to the said 3,000*l.* stock so covenanted to be paid by Shipman.

Thomas Shipman, by his will, dated the 4th of May, 1839, gave and devised certain real estates to the defendants, and bequeathed to them all his residuary personal estate equally, as tenants in common, and appointed the defendants his executors and trustees. Shipman died on the 5th of March, 1842, and his will was proved in April, 1842. The bill also stated that Shipman had died without having performed his covenant to settle or leave 3,000*l.* Navy 5 per Cent. stock, and that such stock having been converted into New 3*1*/₄ per Cent. stock, Thomas Oswald became and was a specialty creditor of Shipman for 3,150*l.* New 3*1*/₄ per Cent. Annuities. By indenture dated the 17th of December, 1842, Oswald assigned to the plaintiff the said sum of 3,150*l.* stock for his own benefit, but no consideration was given for such assignment. It was then stated that the deed of the 20th of August, 1811, was, some time after its execution, lent to Shipman, and remained in his possession at his death, and the deed, or some copy or abstract, thereof, had come into the possession of the defendants. The bill prayed an account of the estate, &c. of the testator, Shipman, and that the same might be applied in payment of what, on taking the accounts, should be found due to the plaintiff and the other creditors of the said Thomas Shipman, in a due course of administration, and if the personal estate should not be sufficient to answer such creditors, that the same might be raised out of the real estates.

The defendants, by their answer, insisted that Thomas Oswald did not become entitled to the 3,000*l.* stock, and that the said indenture of the 20th of August, 1811, did not exist, or if the same had ever existed, was no other than a voluntary deed without consideration, and that the covenants, if any, contained therein were executory only, and being voluntary and without consideration, the same could not be specifically enforced; and that it would only entitle the parties claiming thereunder, if they could sustain any claim, to nominal damages; and that Oswald, or his assignee, if the deed ever existed, would only be entitled to nominal damages. They insisted that Oswald had no sufficient claim on the testator's estate. Thomas Oswald was examined as a witness to give evidence of the contents of the deed. On the hearing of the cause, the Vice-Chancellor rejected the evidence of Oswald, and also the draft of the deed of 20th August, 1811, without prejudice to any question whether the same should, or should not, thereafter be admitted as evidence, and the rejection of the draft deed was not to prevent any party from tendering the same as evidence before the Master to whom the cause stood referred, or the said Master from receiving the same, if the same should, in the judgment of the said Master, be made evidence before him. And it was referred to the Master to inquire whether the deed, called a deed of gift to Mrs. Oswald, mentioned in the bill of costs of the testator's solicitor, which had been proved in evidence, was executed by Shipman, and under what circumstances, and whether the same was the testator's deed, and whether it was then in existence, and whether the same had been lost or mislaid, and further directions and costs were reserved.

From that decree the defendants appealed, insisting that the bill ought to have been dismissed with costs, and that the plaintiff was not entitled to have the depositions and exhibits entered and read as evidence on his behalf.

Jas. Russell and Chas. Hall, for the plaintiff, supported the decree, and contended that the settlement was properly proved by Oswald's evidence, after he had assigned his interest. The evidence had been rightly received *de bene esse*.

Wakefield and Steere, for the appeal, cited Evelyn v. Templar, 2 Bro. C.C. 148; Deale v. Hall, 3 Russ. 1, against the reception of the evidence.

The LORD CHANCELLOR.—In this case the witness was entitled to a chose in action, a right to recover it; and that right has been actually assigned to Watson, who claims the amount from the party owing the legal obligation. It was objected that such an assignment was void within the statute of Elizabeth. It is clear the party owing the obligation has notice, if not otherwise, at all events by this suit, and he objects to the competency of this witness. Deale v. Hall was cited, but that case has no appli-

cation. The party who was prior in point of time lost his priority by not giving the notice necessary to complete his title—he had done nothing. Here the party must come into equity, and I am of opinion that there is no legal objection to the competency of this witness.

I take this opportunity of observing upon an irregularity in this decree, which I have also remarked in other cases. It says this Court doth reject certain of the evidence which is mentioned. That is no part of the decree; it is proper that the Court should notice the evidence which has been offered and rejected, but that is only preliminary; it is no part of the decree. In many cases which have come before me in the House of Lords, it has appeared that evidence had been received *de bene esse*, and then it is stated that the evidence had been read, no further notice being taken of the evidence, and after that the Court proceeds to adjudicate. That is very improper. If evidence is received *de bene esse*, the Court must determine before pronouncing a decree whether it is to be admitted to be read or not. It ought not to stand in the decree as read, and then nothing further stated as to what was done with it. The proper course, where evidence has been received *de bene esse* and afterwards rejected, is that the Court should decide first on the reception of the evidence, and then it may be mentioned as having been tendered and rejected. This is not always done. I will receive this evidence *de bene esse*.

Hall then proceeded to read the evidence of Oswald to prove the contents of the deed.

The LORD CHANCELLOR.—I cannot receive secondary evidence of the contents until you have shewn by the best evidence that the deed ever existed.

Hall.—The attesting witness is stated by his father and sister to have gone abroad many years ago, and they do not know whether he is living or dead.

The LORD CHANCELLOR.—I cannot receive this as evidence of his death unless you shew me that no better evidence can be obtained.

Russell.—The letter by Shipman is evidence that he had executed the settlement. That is expressly charged in the bill. That letter is proved.

The LORD CHANCELLOR.—What is the date?

Russell.—Wednesday morning, there is no other date; but the expression, "in consequence of the alteration in my family," must allude to the death of his wife, which fixes the date.

The LORD CHANCELLOR.—He speaks of a will, but it is so very vague, it may or may not refer to this settlement. I look at this letter to see how far it will enable me to dispense with primary evidence, if it had clearly identified the deed, that might have been sufficient; but you have shewn that there were attesting witnesses, and you must shew what has become of them.

Russell.—He is only shewn to be a witness by the evidence of Oswald, and that they say is not admissible.

The LORD CHANCELLOR.—I can do no more than put this in course of inquiry.

Wakefield.—The plaintiff chose to bring the suit to a hearing with this defect, and must abide by the consequences. (Marten v. Whickelo, Cr. & Ph. 257.)

The LORD CHANCELLOR.—The parties come here for administration. The peculiarity of the case is that the party entitled to sue at law has assigned his interest to another person for the purpose of enabling him to come here. The party who claims under the assignment may come to this Court. The question is, whether the party can claim a benefit obtained by a scheme for changing the jurisdiction. Creditors come here on account of the mode in which debts are paid. The first question is, whether there is a legal debt, and then there is an ulterior relief to be administered in the event of the debt being established. But the debt must be established at law to entitle the party to administration. The plaintiff alleges that he deed exists in the custody of the defendants; but when I look at the evidence which has been offered about the deed, I find no evidence given that the witness who attested the execution of the deed cannot be produced. That is the only question; it therefore only remains to consider whether to dismiss the bill or retain it for a year with liberty to bring an action. The plaintiff's case rests on a legal demand. In the view I take of it, before he can tender this witness, he must, as a preliminary step, prove the existence of the deed by the best evidence. The cause has never gone far enough to make it proper to tender such witness. Retain the bill for a year, with liberty for the plaintiff to bring such action as he may be advised.

VICE-CHANCELLOR OF ENGLAND'S COURT.

April 21 and 22.

DE BEAUVOIR v. DE BEAUVOIR.
Will—Construction—Designatio personarum—"To my own right heirs for ever," in reference to real and personal property.
P. B. by his will gave his freehold, copyhold, and

leasehold estates, and all his estates in the funds of England, to E. B. for life, remainder to the first and other sons of the said E. B. severally and successively in tail male; remainder in like manner to C. B. in strict settlement in tail male; and for default of such issue, the testator gave and devised the same to his own right heirs for ever. The testator also gave to his trustees and executors a power, with the consent of the person in possession, to lay out and invest the residue and surplus of his said personal estate in the purchase of freehold messuages, &c. in England, to settle the same when purchased to the same uses as the other estates so settled as aforesaid. E. B. and C. B. both died in the lifetime of the testator without issue; but R. B. the devisee for life and the testator's heir-at-law, survived him. Upon a bill filed by the representatives of the testator's sole next of kin, praying to be entitled to all the personal property which belonged to the testator at his death:—Held that the testator's heir-at-law, and not his next of kin, was entitled to the personal property under the bequest "to my own right heirs for ever."

The Rev. Peter Beauvoir, of Downham Hall, in the county of Essex, being seised in fee-simple of large estates, and also possessed of leasehold and copyhold estates, and a considerable amount of money in the funds, by his will, bearing date 27th July, 1800, after directing as therein mentioned, gave and devised "all his estates in the funds in England, and all his said manors or reputed manors, messuages, lands, tenements, tithes, rents, hereditaments, and premises, both freehold, leasehold, and copyhold, and of what other kind and nature soever and wheresoever situate in the kingdom of Great Britain, and whereof he had power to dispose, and all his estate, right, title, and interest therein, in possession, reversion, or otherwise howsoever, with their and every of their rights, members, and appurtenances, unto Edward Benyon, in his said will described, since deceased, and his assigns, for his life, without impeachment of waste; with remainder to the defendant, Richard Benyon de Beauvoir, in the will called Richard Benyon, and Martin Whish, and their heirs, during the life of the said Edward Benyon, upon trust, to preserve the contingent remainders in the usual manner, with remainder to the first and other sons of the body of the said Edward Benyon, lawfully to be begotten, severally and successively, one after another, in order and course as they should be in priority of birth and seniority of age in tail male; and for default of such issue the said testator gave and devised the same unto Charles Benyon, in the said will described, but since deceased, and the first and other sons of the said Charles Benyon, under the same limitations as those thereinbefore mentioned to have been made for the benefit of the said Edward Benyon and his first and other sons; and for default of such issue, the said testator gave and devised the same to the said defendant Richard Benyon de Beauvoir and the first and other sons of the said defendant, R. B. de Beauvoir, in the said will called Richard Benyon, under the same limitations as hereinbefore mentioned to have been made for the benefit of the said Edward and Charles Benyon, and their first and other sons respectively; and for default of such issue the said testator gave and devised the same to his own right heirs for ever, with a power for the tenant in possession to demise all or any part thereof for the number of years therein specified." The testator appointed the defendant, Richard B. de Beauvoir and the said Martin Whish executors of his will; and for their pains and trouble therein he gave to the said Richard B. de Beauvoir and the said Martin Whish 1,000l. each. The testator moreover gave a power to his said trustees, "with the consent of the person who might be in possession, and entitled to the profits thereof, to lay out and invest the residue and surplus of his said personal estate in the purchase or purchases of freehold messuages, lands, tenements, and hereditaments within that part of Great Britain called England, and to settle and convey the same, when purchased, to, for, upon and subject to such and so many of the uses, estates, trusts, powers, provisoes and limitations thereinbefore limited, created, and declared of and concerning his said manors, or reputed manors, messuages, lands, tenements, rents, hereditaments, and premises devised by that his will as should be then subsisting, or capable of taking effect, and to and for no other estate, use, trust, or purpose whatsoever."

The testator also made two codicils to his will, but without affecting in any manner the before-mentioned limitations therein contained.

The testator died in September, 1821, leaving Mary M'Dougall, afterwards wife of the plaintiff, his sole next of kin, and the defendant, Richard Benyon de Beauvoir, his heir-at-law him surviving. Edward Benyon and Charles Benyon both died in the lifetime of the testator, without issue; and thereupon the defendant became first tenant for life under the will, and never had any son.

The plaintiff, in the year 1825, intermarried with Mary M'Dougall, and by her will dated the 23rd of July, 1827, she gave, devised, appointed, and bequeathed all her interest which she took under the

will of the testator, Peter Beauvoir, to her husband the plaintiff, and appointed him her sole executor. She died in February, 1831, and the plaintiff proved her will in the month of May following. The bill, among other things, prayed that the trusts of the testator's will might be carried out under the direction of the Court, and that it might be declared that under the limitations of all the said testator's leasehold estates in favour of the right heirs of the testator in case of the defendant dying without leaving any issue male, plaintiff, as executor of his deceased wife, who was sole next of kin of the testator, would be entitled to all the personal property which belonged to the testator at the time of his decease. No part of the personal estate had been invested in the purchase of real property, but remained in specie. To this bill the defendant demurred.

The only question argued before the Court (although another one was raised) was, whether, upon the true construction of the will, the ultimate limitation to the testator's own right heirs carried the personal estate along with the realty to the testator's heir-at-law, or whether it belonged to his next of kin.

James Parker, Lee, and R. Palmer in support of the demurrer, contended that in order that the plaintiff might sustain his case, it would be necessary for him to prove the proper construction of the will to be this, namely,—that upon a gift in a will of freehold, copyhold, leasehold, and money in the funds to different parties, in strict settlement, with a limitation over to the testator's own right heirs, these last words do not as it relates to the personality, mean right heirs, but next of kin. The case, however, of *Boydell v. Golithly*, 9 Jurist 2, entirely militated against such a construction. Several cases, it is admitted, go to shew that where in a will there is a bequest of personal estate to a man with an ultimate gift to his heirs, if at a particular time he should not be living there, the gift being substitutionary, the next of kin would take—a case totally different from the present one.

Cases cited:—*Mounsey v. Blamire*, 4 Russ. 384; *Gwynne v. Muddock*, 14 Ves. 488; *Wright v. Atkyns*, 19 Ves. 299; *Swaine v. Burton*, 15 Ves. 365; *Danvers v. The Earl of Clarendon*, 1 Vern. 35; *Pleydell v. Pleydell*, 1 P. Wms. 748; *Foster v. Sierra*, 4 Ves. 766.

Bethell, Hodgson, and Bagshawe, on the other side, contended that it was a case of succession, and that where persons are intended to take in the character of successors, the word "heirs" ought to be construed with reference to the nature and quality of the property given. It is not disputed that a testator may make the heir take as a purchaser; he may make him also take in the character of heir; yet he may make him take in the character of a successor, and in such a case the nature of the property is to be ascertained, and then the rule of law comes in to decide the question as to who the parties taking in succession shall be. If they thus take, and the heir is to take the real estate, not as a purchaser, but by descent by succession, why are not the next of kin by the same right of succession to take the personal property? In *Gittings v. M'Dermott*, 2 My. & K. p. 74, cited in support of the demurrer, Sir John Leach says, "With respect to the import of the word 'heirs,' its construction must be governed by the nature of the property; and the property being personal, those who succeed to it are not the heirs-at-law, but the next of kin." In the case of *Monsey v. Blamire*, the word "heir" was a mere word of description, and it is impossible to give to that word any other than its legal and technical signification.

THE VICE-CHANCELLOR.—I am of a different opinion, because it is perfectly true, as a mere proposition of law, that where freehold estates are devised to the heir-at-law (I am now speaking of what the law was before the late alterations), the heir-at-law, whether he be described only by the term "heir-at-law," or by his Christian and his surname, or by any description of the most whimsical adventitious character which fancy can devise, if he answer that description, he, I admit, takes by the description, but he takes according to the old rule by descent. Still, you must first consider whether there is a gift or not; and should you discover that the party does answer the terms of the gift, but happens to be heir-at-law, then I must admit the thing being intended to be given to him. The old law said, "You shall not take by devise, but you shall take by descent." About that doctrine there exists no doubt. Now, it is not my intention to enter into a criticism upon those cases, such as *Vaux v. Henderson*; that case shews upon the face of it to have been the language of a Scotch person who used the term "to him failing to his heirs." No one could read the will and not perceive that it was a mere substitution of the person entitled to the personal estate; but I cannot but think that if a testator has made use of an expression which shews that some individual is to take not merely freehold but also copyhold—though in the case before me I do not perceive any averment of seisin,—for notwithstanding the testator on the face of the will devises copyhold, yet there is no averment that he had any copyhold. It is stated that he was seised in fee-simple of divers manors, lands, and so on, and real estate; but the expression "seised

in fee-simple of real estate" excludes copyhold, because no man is seised in fee of copyhold unless indeed it be the lord of the manor, who, for the time being, has in him that which was demised or demisable by copy of Court Roll. I admit in that case he may, in a certain sense, be seised in fee-simple of it, otherwise nobody can be seised in fee-simple of copyhold. However, that point is quite immaterial. Now, upon the face of the will, the testator was possessed of freeholds, copyholds, and leaseholds, and he had also what he calls "his estates in the funds of England." And by the clause to which I am adverting he devises collectively all his freehold manors, messuages, lands, tenements, tithes, rents, and hereditaments, &c. And then he says:—"Now I do hereby give and devise, after my just debts and funeral expenses and legacies are paid (which I order to be paid out of my personal estate), all my estates in the funds in England, and all my said manors or reputed manors, messuages, lands, tenements, tithes, rents, hereditaments, and premises, both freehold, leasehold, and copyhold." Then he gives them in the same manner, and uses the same words as if he were making a mere limitation of freehold estates in fee-simple. Then there comes this expression upon which the question is so much raised:—"And after default of such issue." That is after the cessation or never arising of the preceding estates, "I give and devise the same to my own right heirs for ever." Now it has been questioned whether the testator did really mean that the person or persons who might answer the description of the "right heirs for ever," should take collectively in a given event the corpus of all this freehold and copyhold, leasehold and personal estate which is so previously given. It really appears to me next to an impossibility, if you regard the words alone, to hold that the testator had any other intention but that the same person or set of persons should take; and it really seems to my mind that if there be no doubt, as I apprehend in point of law there is not, as to what is the true legal construction of the words "my own right heirs for ever," that the moment you have ascertained, by applying the rules of law, and have discovered that a given individual does answer the description of the "right heirs," it seems to me as a necessary consequence that that person must be the ultimate taker of all that has been previously given. Now, if any doubt existed as to the construction of those words, the power which is subsequently given to the trustees seems to me of necessity to remove every doubt; because just observe this in the last clause: "and I do give a power to my said trustees, with the consent of the person who may be in possession and entitled to the profits thereof, to lay out and invest the residue and surplus of my said personal estate"—(now it is plain he had not previously given the whole of his personal estate)—"to lay out and invest the residue and surplus of my said personal estate in the purchase or purchases of freehold messuages, lands, tenements, and hereditaments within that part of Great Britain called England; and to settle and convey the same, when purchased, to, for, upon, and subject to such and so many of the uses, estates, trusts, powers, provisoes, and limitations, hereinbefore limited, created, and declared of and concerning my said manors or reputed manors, messuages, lands, tenements, rents, and hereditaments." Now these are the expressions which he had used to describe the freehold estates in the part of his will where he devises the freehold estate and "premises." But what are the "premises?" Some of the premises are freehold estate, some of them copyhold estate, some of them personal estate. Now, I should like to know in what manner the freehold estates, if any were purchased with the surplus of the personal estate, could be limited to the uses and trusts devised concerning his freehold estates and premises. If part of the estate was considered as going under the first clause to the heir-at-law, part was considered as going, with regard to the copyhold estate, to the copyhold heir; and part was considered as going, according to the construction contended for, to the person who might be the testator's next of kin. This conclusively shews that this testator did contemplate that there should be but one set of limitations and one set of takers, and that this individual who was finally to take the ultimate estate of inheritance in the freehold, should be that person who should also take the ultimate estate which there might be in the copyhold, and the ultimate interest which there might be in the leasehold, and in what the testator describes as his funded estates in England. Now, I do admit that this clause is not in itself very happily conceived; but it belongs to those who have to expound a will if they are able *ex furore dare lucem*, and here we have this foolish clause luckily so foisted in as to put beyond dispute the testator's meaning, upon which I entertain no doubt.

Demurrer allowed.

ROLLS COURT.

Jan. 28, 29, and 30.

HARRIS P. FARWELL.

Order of the Court of Review to consolidate the estates of two firms—Receipt of dividends out of consolidated

estates—Variation of contract—Proof afterwards against the separate estate of a deceased partner of one of two firms for the balance of a debt due from it. The Court of Review having ordered the consolidation of the estates of two firms, a creditor of one of them received a dividend on his debt out of the consolidated assets, but was nevertheless held entitled to payment of the balance of his debt out of the separate estate of a deceased partner of that firm; and the receipt of the dividends did not vary the original contract, or exonerate the estate of the deceased partner.

This was a suit instituted by James Harris, on behalf of himself and all other the creditors of Christopher Farwell, deceased (except the defendants, the creditors and official assignees of the bankrupts, Ashford Wise, William Searle Bental, and Robert Farwell,) against those defendants and against the executors and devisees under the will of Christopher Farwell, and against the creditors and official assignees of the bankrupts, Ashford Wise, Nicholas Baker, and William Searle Bental; and the relief prayed was (among other things) that the plaintiff and the other creditors of Christopher Farwell, deceased, other than such as were his partners, in respect of their partnership transactions, might be declared entitled to be paid their debts in priority to the debts due to his late partners. It appeared that previously to the year 1833 a banking firm had been established at Newton Bushell, in Devonshire, and another banking firm at Totnes, in the same county, and that the members of each firm were originally the same persons, viz. Ashford Wise, Christopher Farwell, Nicholas Baker, and William Searle Bental. On the 3rd of April, 1833, the Newton firm became indebted to the plaintiff in the sum of 200l. and interest thereon, on a promissory note, signed by William Searle Bental on behalf of the firm. In 1834 Baker retired from the Totnes firm, but continued a partner in the Newton firm. Interest was paid on the promissory note by the Newton firm up to the 7th of April, 1837, and in the following June Christopher Farwell died, having made his will, and thereby devised and bequeathed all his real and personal estate to George Farwell and Henry Richard Roe, defendants, on trust, after payment of debts, for his eldest son, Robert Farwell, and the other persons therein mentioned; and he appointed George Farwell and Henry Richard Roe his executors. Besides the 200l. and interest due to the plaintiff on the promissory note by him and his co-partners, the testator, at his decease, was indebted to the Totnes bank to a considerable amount. Subsequently, Robert Farwell, the son of Christopher Farwell, became a partner in the Totnes firm, which then and afterwards, till its becoming bankrupt, consisted of Wise, Bental, and Farwell, and in like manner the firm at Newton consisted of Wise, Baker, and Bental. After the decease of Christopher Farwell, the surviving partners of the Newton bank continued to pay interest to the plaintiff on the sum due on the promissory note till the year 1841, on the 20th of July, in which year a fiat of bankruptcy was issued against the Newton firm, and creditors' assignees were chosen, and an official assignee was appointed, who are all defendants in this suit. On the 23rd of the same month of July a fiat of bankruptcy issued against the Totnes firm, and creditors' assignees were chosen, and the same official assignee was appointed as in the case of the Newton firm, but the separate estate of Robert Farwell only vested in them, the joint and separate estate of the other partners having vested in the assignees of the Newton firm. The plaintiff duly proved his debt under the fiat issued against the Newton firm, and received from time to time in respect thereof such dividends as were declared. In May, 1842, petitions were presented by the separate creditors of both firms to the Court of Review, praying that the assets of the two firms should be kept separate; but the Court having referred the petitions to the commissioner, he, on the 1st June, 1842, certified that it was fit and proper that they should be consolidated, and an order was accordingly made to that effect. On the 30th of July, 1842, the plaintiff had received dividends amounting to 5s. in the pound on his debt, making in the whole 50l. 8s. 9d.; and on the 16th December, 1842, he presented the promissory note to the defendant, George Farwell, and demanded payment thereof, which was refused. It became necessary, therefore, to institute the present suit to obtain payment of the note out of the separate assets of Christopher Farwell. But, inasmuch as dividends had been paid to the plaintiff and the other creditors who had proved out of the general and consolidated fund, the defendants, the executors, and the other defendants interested under the testator's will, insisted that they had acquiesced in the order, and had therefore accepted the partners in the new partnership, and their estates, as the possessions and the fund liable for their debts, and this acceptance was a discharge of the old partnership firm and the assets of the testator from all liability in respect of their debts. The assignees of the Totnes firm also insisted that they were entitled to priority over the plaintiff in respect of the testator's debt to that firm.

Willcock and Beeson, for the plaintiff, contended that he had a right to go against the separate estate

of Christopher Farwell, notwithstanding he had received dividends under the fiat. They cited *Lane v. Williams*, 2 Vern. 292; *Rice v. Shute*, 5 Burr. 2611; *Devaynes v. Noble*, 1 Mer. 539.

Turner (with him Whitebread), for the representatives of Christopher Farwell, contended that as the plaintiff had accepted dividends under the order of the Court of Review, *pari passu*, with other creditors out of the consolidated fund, he had varied the original contract, and had adopted the surviving partners as his creditors, and discharged the old firm in the same manner as if it was a dealing by a creditor which would vary the contract of the debtor, and thereby discharge his surety. (*Ex parte Kendall*, 17 Ves. 514.) They cited also *David v. Ellice*, 5 B. & Cr. 196; *Hart v. Alexander*, 2 Mee. & Wels. 484; *Lodge v. Dicus*, 3 B. & Ad. 611; *Fisher v. Farrington*, Seton, Decr. 239, n.

Webster, for the devisees under the will of Christopher Farwell, cited *re Clarke*, 1 Ph. 562, overruling *Hall v. Smith*, 1 B. & C. 407.

Kindersley (with him Mallins), for the assignees of the Totnes bank, argued that the Court could only declare that the plaintiff was entitled in respect of the deficiency of the joint estates to pay his debt to stand as a creditor upon the surplus of Christopher Farwell's estate after satisfaction of the debts due from his separate estate, and the debts due from his estate to the Totnes bank.

Rouppell and Terrell, for the assignees of the Newton bank.

Willcock, in reply.

THE MASTER OF THE ROLLS.—The original partners in the concern were four, viz. Wise, Farwell, Baker, and Bental, and they carried on the banking business together as co-partners at Newton and Totnes till Baker's retirement from the Totnes firm, and, even after he retired, I am inclined to think, they continued co-partners as to strangers. But however that may be, while the four were partners in the Newton concern a promissory note was given by the firm to the plaintiff for 200l. This transaction took place on the 3rd of April, 1833, and interest was paid on the 200l. up to the 7th of April, 1837. In June, 1837, Christopher Farwell died, the debt of 200l. remaining unpaid. Now, I do not mean to enter into a discussion on the point, but shall merely state my opinion on the authorities. The plaintiff was a creditor of the surviving partners, and of the estate of the deceased partner; and the representatives of the deceased partner were liable to be sued by him. Now, the question is, how was the obligation due from the estate of the deceased partner satisfied? Those who deny the plaintiff's right to enforce payment of his debt in the present suit strove to shew that it was satisfied; how, then, does that appear? It is said that interest was paid by the surviving partners, but where there is a joint and several debt, as this is, and the creditor receives interest from some of his debtors without looking to the others, does that exonerate the latter? No; there is no evidence of any contract to exonerate them. Christopher Farwell's estate is not exonerated, but remains liable to the plaintiff's debt. Changes took place after the death of Christopher Farwell; the Newton bank consisted of only the three surviving partners, but Robert Farwell was introduced into the Totnes firm. A difficulty therefore arises in adjusting the equities between the parties, so as to place the whole on a proper footing; but, because there happens to be that difficulty in carrying out the plaintiff's rights, it is no reason why he should have no right at all. Well, after the bankruptcy, application was made to the Court of Review to administer the estates of the different partners, and that Court being competent, and having exclusive authority to do so, makes an order referring the consideration of the matter to the commissioner, who, notwithstanding the petitions, drew up his certificate recommending administration in a particular form. That is said to be a variation from the legal form of distributing bankrupts' estates. The order, however, was made, and the parties carried it into execution, and dividends were declared which were not the same as if that mode had not been adopted. This plaintiff, then, who has a right to proceed against the estate of the deceased partner, and also against the surviving partners, being informed that he may receive dividends on his debt, did receive them in the only way in which he could receive them; and this, it is said, therefore, amounts to a contract to forego his claim against the original debtor or his estate. But that is not so; he does not waive his right, nor is his acceptance of the dividend an exoneration of the estate of the deceased partner from his charge against it. If the objection raised to the plaintiff's claim were allowed to prevail, it would be unsafe for any one to act under the directions of a Court of competent jurisdiction, and the plaintiff could not in the present case, without having recourse to very expensive proceedings, obtain a variation of the order made in the bankruptcy by the Court of Review. The plaintiff, then, by the receipt of dividends payable out of the consolidated fund, in respect of his debt, did not vary the original contract or exonerate the estate of the deceased partner, although the payment was not primarily made in the same

manner as it would have been if no order had been previously pronounced; but, notwithstanding that circumstance, I am of opinion that the plaintiff ought to be considered a creditor of the testator, and entitled to be paid what remained due to him out of the testator's separate estate. On the questions of directions for working out the equities, between the parties, Sir John Leach declined to make any order, but I don't feel satisfied as to that, and I will consider how I can assist in working them out between the defendants.

Willcock, on the point of working out the equities, cited *Cowell v. Sykes*, 2 Russ. 191; *Thorpe v. Jackson*, 2 Y. & C. 553; *Henderson v. Wilkinson*, 1 My. & K. 583.

Monday, July 6.

MASSEY v. CARVICK.

Practice—Enlarging publication—Delay.

Publication having been twice enlarged on the application of the plaintiff, and the time having expired for which it was the second time enlarged, the plaintiff applied to the Master to enlarge again, but he refused on the ground that he had no jurisdiction. The Court, however, granted the application, though there was neglect on the part of the plaintiff, and the interrogatories were prepared before the expiration of the second enlargement; but only on the condition that the plaintiff paid the costs.

This was an application on the part of the plaintiff to enlarge publication. It appeared that the plaintiff, Mrs. Massey, before her marriage with her present husband, Mr. Massey, had lent 5,000l. on mortgage of certain freeholds, to Carvick, the defendant; and Carvick being about to pay off the mortgage, proposed that she should take a judgment debt for 1,100l. due to him from one Moore, in part payment of the mortgage money. Mrs. Massey at first objected to this, and said she preferred the money; but being told the security was very good, she at last consented. Carvick's solicitor, Mr. Montrieu, was also Mrs. Massey's solicitor. In 1832 Mrs. Massey was married to her present husband, having previously settled her property to her separate use; and Montrieu, her solicitor, was the trustee of the settlement. It further appeared that though Moore never paid any interest on the 1,100l. Montrieu himself paid Mrs. Massey regularly up to the year 1840, when he left this country, and now lives at Caen, in Normandy. The judgment debt turned out to be of no value, for after the judgment had been entered up, and before the assignment of the debt to Mrs. Massey, Carvick had agreed to discharge from it the only available property belonging to Moore; and as Mrs. Massey had released the mortgaged estate from all claims, she found herself without any security. In this state of things she filed her bill with a view to make Carvick answerable for Moore's debt, and in default of payment by him, to recharge Moore's estate. The bill was filed on the 20th of March, 1844; the answer was put in on the 7th of August, 1845; and a replication was filed on the 6th of January, 1846. On the 3rd of March, 1846, publication was enlarged till the first day of Easter Term, and then it was enlarged again for six weeks from the 15th of April, which time expired on the 26th of May. It appeared that the plaintiff had, before the second application, discovered the existence of a correspondence by Montrieu, and she alleged that it would be useless to go into evidence without those documents, and what she sought now was, to enlarge publication till Michaelmas Term, to enable her to obtain the documents; application had been made to the Master to enlarge, but as the second period of time allowed by him had expired before the application was made, he refused on the ground that he had no jurisdiction. It appeared, also, that interrogatories were prepared before the second application.

Kindersley and Lewis for the motion.

Turner (with him Giffard).—Replication was filed on the 6th of January last, and there have been two orders already to enlarge publication, and now a third is asked. The ground of the application by the plaintiff is, that it is of no use to go into evidence without these documents; but was there any search made for them from January to June? The question is, has the plaintiff made out any case entitling her to the indulgence? She had from the 3rd of March till Easter Term to think of the matter; and she knew, before making the second application for enlargement, that the documents in question were in existence. She ought to shew that she has used due diligence, and should assign some good reason for the present application being necessary, but she has not done so. The correspondence of Montrieu itself only can be useful; for if they had it at the taking of the evidence, all they could do would be to cross-examine him on his own letters.

THE MASTER OF THE ROLLS.—After the interrogatories were prepared it was found that a certain correspondence existed, and the plaintiff having to examine Montrieu on matters on which he had corresponded, wanted to let him see what was written. I think there has been neglect on the part of the plaintiff, who has not used due diligence. The time having expired, the Master had no jurisdiction; and the question is, shall I allow this motion where

there is want of diligence? It is material that the cause be not delayed, and the Court often sets down a cause to prevent this, and that might be done here. The evidence can't be said to be of no use; and, if possible, it is right to have it. I therefore grant the plaintiff's application on payment by her of the costs. Enlarge the time till the 6th of November next.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

April 24 and 25, and May 8.

TOMBS v. ROCH.

Distribution of assets.—Contribution between specific legatees and general devisees.

Where a testator by his will made a general devise of real estate, and gave specific and pecuniary legacies, and died leaving simple contract and specialty debts, for the payment of the whole of which the personal estate was insufficient, it was held that as between the specific legatees and the general devisees there should be contribution for the discharge of the specialty debts.

William Henry Scourfield, late of the Mote, in the county of Pembroke, esq. deceased, by his will, dated the 26th of September, 1840, devised his mansion, called the Mote, and all his real estate to trustees to certain uses, for the benefit of his wife for life, and after her decease, to the use of his sons successively in strict settlement: and the testator bequeathed certain pictures to his said trustees upon trust to permit the same to be held and enjoyed with his said mansion house, as far as the rules of law and equity would admit, by the persons for the time being entitled to the said mansion house by virtue of his will, &c. The testator then gave certain specific and pecuniary legacies, and appointed the said trustees executors of his will. The will was proved by the executors. The personal estate not specifically bequeathed, though sufficient for the payment of the testator's simple contract debts, was not sufficient for the payment of the testator's specialty debts. The suit was instituted by creditors against the executors for the administration of the estate, and the principal subject of discussion was as to the liability of the general devisees to contribute, with the specific legatees, towards the payment of the specialty debts.

Wigram and Pitman for the plaintiff.

Parry and Bevir, for the legatees.

Swanston and H. Clarke for the devisees.

The following authorities were cited:—*Long v. Short*, 1 P. Wms. 403; *Hazlewood v. Pope*, 3 P. Wms. 322; *Cornwall v. Cornwall*, 12 Sim. 298; *Young v. Hassard*, 1 Jan. & Lat. 466; *Mirehouse v. Seafie*, 2 Myl. & Cr. 695; *Manning v. Spooner*, 3 Ves. 114; *Gallon v. Hancock*, 2 Atk. 430; *Clifton v. Burt*, 1 P. Wms. 678; *Oneal v. Mead*, 1 P. Wms. 693; *Arnold v. Chapman*, 1 Ves. 108; *Silk v. Pryme*, 1 Dick. 384; *S. C.* 1 Bro. Ch. C. 138; *Jarmyn on Wills*, vol. 1, p. 547; and *Bythewood's Conveyancing*, by Sweet, vol. 5, p. 364.

The VICE-CHANCELLOR.—The will in question in this cause, which was made in the year 1840, and therefore after the recent Act for altering the law relating to wills had come into operation, does not charge the testator's real estate, or any part of it, with his debts. The assets are wholly legal, and it does not appear, nor is it alleged, that any portion of his property was, when he made his will, or at his death, in mortgage, or charged specifically with any debt. The will devises a portion of his real estate to his wife during her widowhood, and, so subject, devises the whole of his real estate to various uses in strict settlement, in language sufficient, I suppose, to include (though not in terms pointing to) such real estate, if any, as he acquired between his will and his death. But it has not been stated that there was any such acquisition. I assume that there was not; and without intimating any opinion either way. Now if there had been any such acquisition, the case would have stood as to the real estate so after acquired, or whether for any purpose now under consideration, there is a difference between a residuary devise of real estate, and a devise of real estate not residuary, I may say that, in my judgment, not any portion of the real estate in the present case ought to be treated as otherwise than particularly devised. The will also gives specific and pecuniary legacies. The personal estate not specifically bequeathed has been admitted to be more than sufficient for the payment of the simple contract debts, but it has proved insufficient for the payment of the specialty debts, and the question for decision is, whether the amount necessary in addition to the personal estate not specifically bequeathed to pay the specialty debts, is to fall wholly on the specific legatees, or rateably on them and the devisees, for the specific legatees do not deny their liability to contribute. That in a country such as England, a question probably of so frequent occurrence should at this day be remaining an open and arguable question—that it should not long since have been settled conclusively—does seem a very remarkable circumstance, if the fact is so. Assuming the point to be open, I must decide it as well as I can. Viewed otherwise than in a manner

merely technical, considered upon principles of abstract justice, the question is of course clear of difficulty, and must obviously be answered against the contention of the devisees. They, however, say that abstract justice has nothing to do with the matter, that the question is ruled by a branch of the positive law of the country, making, they say, the personal estate the first fund for paying the debts; an argument upon which it may not perhaps be improper to observe, that where the effect of pursuing a branch of law merely positive to its fullest extent and consequences, without exception or mitigation, must be a departure from natural equity, a desertion of all but the most artificial reason,—must for example be such as in the simple case of a testator giving a specific part of his property to one person, and another specific part of it to another, to throw as between them the debts upon either exclusively, but with solid and practical distinctions in this respect between a case of giving two perpetual annuities of 100l. per annum, part of the 3 per cent. Consolidated Annuities, and a case of giving two perpetual annuities of 100l. per annum, charged on a freehold estate; between a case of giving two horses, and a case of giving a horse and a stable owned absolutely by the testator; between immovable property belonging to him absolutely, and immovable property belonging to him for a term of 10,000 years; between immovable property limited to him and his heirs for their lives, and immovable property belonging to him for 99 years, if either of three lives shall last so long; distinctions which men, without our black letter reading, might perhaps find it difficult to state with gravity—it must surely be right not to submit, until thoroughly convinced of the necessity of submitting, to be driven to such an extremity. A great judge is represented by Mr. Ambler as saying of the rule of the Court in marshalling assets and funds, that "there is not a more useful power in this Court, for where there are creditors and legacies to children for their portions, if the law was to have its full force, though the reason of it was good when it was originally framed, yet in case the creditors were to exhaust the personal estate, it would be to the ruin of families." The civil law, too, says well, "Nulla juris ratio aut equitas benignitas patitur ut que subreptis pre utilitate hominum introducuntur ea nos duriore interpretatione contra ipsorum commodum produmsum ad severitatem." Now, it must be agreed that by our law the personal estate of a deceased debtor is *primò facto*, and generally the sole fund when sufficient; and when insufficient, the first fund for the payment of his debts. But it is equally true that this does not hold universally. The regulation is subject to exceptions founded on justice and reason. The familiar cases of marshalling in favour of legacies against freehold estates descended, against such devised freehold estate as the testator has by his will charged with his debts, and against a devised freehold estate which the testator has mortgaged for a debt of his own, occur to the mind at once as instances. Those cases in which a testator has in so many words actually said in what order his assets are to be arranged, have of course nothing to do with the present matter. The devisees, however, here assert that the instances of exception given are special cases; that special cases of such a kind do not, directly or in principle, affect or extend to the simple case now before the Court, which, as between a devisee and a general pecuniary legatee, has been directly decided, and is settled by authority against the legatee; and that for the present purpose there is no difference, no ground of distinction, between a specific and a general pecuniary legatee. In support of this argument the devisees rely very much on the statute of Fraudulent Devises and the statute of 1833, having been intended for the benefit of creditors only, and not intended to advance the rights or improve the condition of legatees; and I suppose it to be true that the Statute of Fraudulent Devises (a measure which it was not creditable to the English Legislature to have delayed until a period so late as the reign of William III. and which was so imperfect as to leave our law of debtor and creditor in that more than Millarian state in which the commencement of the 19th century found it)—that the statute of Fraudulent Devises, I say, and the statute of 1833, were passed with a view only to the payment of creditors. The force of that remark, however, against legatees for such a purpose as the present I have not been able to feel. I have not the capacity of seeing, for any purpose now under consideration, the materiality of the question how or why the creditors' rights became vested in them. A charge of debts on freehold estate by a will may be supposed generally to be intended, in fact, for the benefit of the creditors merely, but the consequences to others are admitted and obvious. A mortgagee's lien is generally intended only for the mortgagee's benefit, but has other ulterior effects. Why should I refer to a vendor's lien? Why mention the case of pecuniary legacies, where to one legatee only is given a right to revert to the real estate? That may seem justly intended, in fact, for the benefit of the single legatee only, but operates often farther. The equity

of marshalling arises from a creditor's power to resort, not from the form or mode in which he accounts the power of resorting, to each or either of two funds belonging to the debtors whose rights, subject to the debts, have become divided; and though I do not forget the passages found in the reports of *Gibbs v. Hancock* and *Forrester v. Lord Leigh*, it seems to me impossible, consistently with the principles of decisions of the highest authority, or consistently with any legal principle, to take the view of the effect and consequences of a liability to creditors created merely by statute, that the devisees take in this case. Certainly the liability in general of personal estate, in the first instance, to the debts of a deceased debtor, the intent of the Statute of Fraudulent Devises, and the intent of the statute of 1833 do not in my judgment establish this proposition. I have dwelt the more upon their arguments grounded on the nature and effects of the statutory liability to debts, because, if it is well founded, it seems in substance not to stop short of asserting that, inasmuch as it is by statute that copyholds are assets for creditors, and freeholds for simple contract creditors, therefore there cannot be marshalling of legacies against descended copyholds, or, in respect of simple contract debts, against descended freeholds. It will surprise me exceedingly to hear such a doctrine having met or meeting with support or acceptance. I proceed, then, to deal with the point immediately before me, as one that, notwithstanding the general objection to which I have been referring, was reasonably and properly arguable on behalf of the specific legatees. The question, as I have said, is one of contribution, which, if it differs from marshalling, does so in species rather than generically—in form rather than in nature. Marshalling and contribution are, each of them, the adjustment between several persons of their rights respectively *inter se* in respect of a charge or claim which, affecting all of them, or properties belonging to all of them respectively, has been or may be enforced in a manner not unjust as far as the person is concerned by whom it was or may be enforced, but not just as between the persons or properties liable; a branch of jurisprudence known to the civil law, and which could not but be long, in some form more or less extensive, to an enlightened system of laws. In our's it is well established and familiar. The first inquiry then is, whether we have here a case in which properties belonging respectively to the persons who are the specific legatees, and to the persons who are the devisees, are affected by a charge or claim which may be enforced in a manner such as I have just mentioned. They are so, certainly, for the properties given to them respectively by the will of the testator in the cause are liable, that is, every part of them is liable, to the debts remaining unsatisfied, and there must be some rule or principle according to which, as between the specific legatees and the devisees, that charge or claim must be by apportionment or otherwise borne—a rule or principle by which the creditors are not bound. The next inquiry is as to the nature of that rule or principle, or, in other words, what are the rights respectively of the specific legatees and devisees *inter se*, in respect of the debts to which the properties of each are, as I have said, liable—an inquiry that, in this case, can only be answered by looking at the testator's will, of which these rights, whatever they may be, are merely the creatures. Every thing claimed by each party is claimed under the bounty of the testator. It was for him to prescribe what each should have. His intention must be the sole guide here, and that must be collected from his will. What then was his intention? Making to different persons various specific gifts of moveable and immovable chattels and real estate. Did he wish, did he mean that portion of them, consisting of real estate, should be wholly indemnified from his debts by the rest? *That* is the question. Now we do not need to refer to the doctrine of what is called by us election, to be satisfied of the proposition that a testator must be considered to desire the fulfilment of all the provisions of his will, according to their apparent purport. If so, then where one mode of arranging his assets for the payment of his creditors must wholly or partially disappoint those provisions according to their apparent purport, while by another they stand whole or are less invaded, it must surely be right to attribute to him a wish and meaning in favour of the latter course, so far as the objects of these provisions are concerned. Accordingly, as we know, the mere fact that a testator by his will makes gifts, though he does not mention his debts, or allude to a debt or a creditor, has the effect of changing the order and manner in which his assets bear the burthen of his debts. If a man dies intestate, owning freehold and personal estate, and indebted by specialty and simple contract, all his debts, whether by specialty or simple contract, whether secured or not secured by mortgage, fall, in the first instance, on his personal estate, and, if that be deficient, on the various portions of his freehold estate rateably, so that, should it devolve in different lines of descent, each heir suffers equally, or in proportion. But let him leave a will making gifts, though wholly silent on the subject of his debts, and not alluding to a debt

or to a creditor, and the case is altered, for the portion, if any, of his freehold estate, which he has allowed to descend, though also not mentioned or alluded to, may, in relief of the personal estate, be practically subjected to debts with which, had there not been a will, it would not have been burdened, or would have been to a less extent burdened, and the portion of the freehold estate devised, if mortgaged by the testator for his own debt, may be made practically liable to that debt, in exoneration or relief also of the personal estate, though the will does not in any manner allude to the mortgage. All this, which is so trite and obvious as almost to render the mention, much more the repetition of it, mere waste of time, can, I apprehend, only be on the foundation of ascribing to the testator such an intention as I have stated, though the will is silent upon it. In truth, I consider it to be perfectly correct in principle to say that every will ought to be read as in effect embodying a declaration by the testator that the payment of his debts shall be as far as possible so arranged as not to disappoint any of the gifts made by it, unless the instrument discloses a different intention. And for authority, whether the cases upon election are for this purpose reckoned or omitted, I think it certain that the real ground, the true principle, of a set and series of decisions, bearing directly as well as indirectly on the present question, which are universally recognised as binding,—a principle not the less sound for being agreeable to natural equity,—is, that wills ought to be so read and construed. How, indeed, else is the bulk, not to say the whole, of the various cases in which marshalling clearly takes place under different circumstances, for general as well as specific legacies,—how else is the liability of descended freeholds to indemnify devised freeholds from debts, secured or not secured by mortgage, to be satisfactorily accounted for? I should thus express myself, had *Albion v. Cooper*, 5 Ves. 382, not existed; but I may add that, cautious and measured as was the language in which generally, and in that case especially, Lord Eldon spoke, he would not in my judgment have used the words "They shall not disappoint another person whom the testator intended should be satisfied," which are in page 398 of the Report, or in the next page, "as strong an inclination of the testator," and "that denotation of intention," had he taken a different view. It is equally unnecessary, I think, to refer to what Lord Hardwicke, in 1761, is reported as saying, "The Court will order it so that every body may have satisfaction, and the whole intention complied with." Such a declaration then being embodied, or considered as embodied, in a will must surely operate equally for the benefit of all upon whom the will professes to confer benefits; and, if the state of the assets does not allow complete effect to be given to it, ought surely to fail, so far as it does fail, to the equal prejudice of all, without any distinction between the gifts whether of moveable or immovable property, whether of real or personal estate. If a testator, giving specific legacies to A and B, and making particular devises to C and D, were to say "Neither A nor B, nor C nor D shall be called upon to pay any of my debts," could there be any doubt as to the equality? And what, substantially, is the difference? What good reason can the feudal lawgiver towards the feudal heir, can the more than unjust privilege, now no longer dishonouring our law, which was allowed to landed proprietors dying at once wealthy and insolvent, or can any other source supply, for giving any preference to a devisee over a legatee, in such circumstances as we are now considering? The general rule of construction, however, that I have stated, if I am right in supposing it to exist, is like most general rules, not wholly exempt from qualifications. The qualifications to which I consider it subject, and the reason on which I suppose them founded, I proceed to notice. The first is rather explanation than qualification, being that such an intention does not operate against or in favour of any of the creditors, their rights being regulated by law so far as the testator does not expressly exercise the power that he has now, less than formerly, of affecting them, though where simple contract debts and legacies are charged together on real estate, the former, from a presumed intention on a testator's part—a presumed intention, I say, on his part, to be just before being generous, were ultimately placed higher than the latter. Possibly also the doctrine on which Lord Rosslyn acted in the case of *Pearce v. Loman*, 3 Atk. 330, ought scarcely to be reckoned as a qualification. It does not perhaps interfere with the general rule that I believe to exist, but if it does, it is a qualification of a very particular and limited nature, resting on special and peculiar grounds. So is that as to charities created and established by a class of decisions which the policy of the statute, commonly called the Mortmain Act, was considered to render necessary, though I never felt any surprise that Mr. Justice Ashurst should have expressed himself on the subject as he did in the case of *Macham v. Hooper*, 4 Bro. Ch. Ca. 163. There may be noticed also the distinction, already to some extent referred to, which in particular circumstances has for certain purposes been introduced and established

between general debts of a testator and his debts standing secured specifically at the time of his death, or any particular portion of his property. In general, as between those who take under his will if he is silent on the subject, his debts secured are paid in the same manner as debts of the same rank not secured; but there are particular cases of deficient assets where specific legatees or devisees of property on which debts of the testator stand specifically secured are held to take the property with the burden. The reasons given for this, though the cases are not, I agree, to be questioned, are perhaps, if I may venture with deference to say so, not entirely satisfactory, supposing the general rule as to the mode of providing for secured debts to be well founded in principle as probably it is. The distinction, however, seems itself to have been introduced in each of its forms under an impression that it was a distinction required by the intention of the testator. There remains substantially, unless I mistake or forget, but one mere qualification, so at least I call it—the devisees here term it the rule—I mean the exclusion in ordinary cases of a general pecuniary legatee from marshalling against a devise. In this respect, whether truth lay between Lord Harcourt's course and that of Lord Maclesfield, it is perhaps not now material to inquire, as Lord Maclesfield's course is, I conceive, established. Its explanation is, I suppose, to be found in the fixed doctrine of law, that as between specific and pecuniary legatees the burden of the debt belongs to the pecuniary legatees exclusively, where a contrary intention is not manifested. The law considering a testator when giving specific and pecuniary legacies as saying by the very act, unless he declares himself in effect not to mean to say, that if there is a deficiency of the personal estate to satisfy all the legacies, the loss is as between them to fall wholly on the pecuniary legatees—of course I am not referring to a case of ademption. Thus Lord Maclesfield (when in *Clifton v. Burt*, differing from Lord Harcourt) observed that "every devise of land is as a specific legacy," as a specific legacy—"and that if one gives a specific legacy of a house, of a horse, or diamond, and also a pecuniary legacy of 500*l.* to B. and there are not assets to pay both, still the specific legatee shall be preferred and have his whole legacy." It has, as I have stated, been argued for the devisees here that the principle of the decision against pecuniary legatees in *Clifton v. Burt*, and the cases that have followed it, applies against a specific legatee. I cannot so view the matter. Lord Maclesfield appears rather to have refused relief to the pecuniary legatee because he was inferior to a specific legatee. If a testator ought, as he is considered *prima facie* to intend a preference of a specific legatee to a pecuniary legatee, to intend for the former a higher rank than for the latter, it may be thought not an unreasonable or unfair consequence that a similar intention should *prima facie* be ascribed to him as between a pecuniary legatee and a particular devisee in whose favour as well as in favour of the specific legatee the testator pointing out a specific individual portion of the property directs that he shall have that very thing—a gift incapable of being satisfied by any other means than the very thing pointed out,—and Lord Maclesfield may have thought that a particular devisee contributing for a general legatee would be entitled to call on a specific legatee to share the burden which would make the latter contribute to the general legatee, which would be absurd. Taking the judgment in *Clifton v. Burt* altogether, I am unable to think that I ought to draw from such expressions as "much less," "a portion," "more to be favoured," and "with more difficulty," which, I agree, occur in the report of it, the inference that Mr. Swanson wished me to draw. Neither can I adopt his suggestion that *Onal v. Mead* contains something unfavourable, or was meant unfavourably to the case of a specific legatee upon a question such as the present. In *Onal v. Mead* the specific legatee was wholly preferred to the devisee on a ground already mentioned, namely, by reason of the mortgage. Again, I am not satisfied that the 5th resolution in *Haslewood v. Pope* ought to be understood as Mr. Swanson wished me to understand it. The Lord Chancellor there seems to me rather to state a case of equality than one of inequality between a devisee and a specific legatee. I am rather disposed to agree with Mr. Roper's construction of that resolution—a resolution deserving certainly great respect, however it ought to be construed, although, probably, it was extra-judicial. I have a copy of the decree, dated 18th August, 1734, from which it does not appear to me that there was any specific bequest in the case, or any point for decision, except that described in the report as the principal point. On the whole, though I believe myself to feel as much respect and deference as any man for the knowledge and capacity of Lord Talbot, I do not consider that the fifth resolution in *Haslewood v. Pope* binds me. In *Middleton v. Seale* there is noticed particularly a case, which I have read repeatedly in Ambler and in *Dinkins*; the case, viz. reported in one book as *Handy v. Roberts*, in the other as *Hanley v. Fisher*. The expressions of Lord Hardwicke are differently given by the two reporters, and, probably, with some inaccuracy in each. Whether, upon the

whole, it would be safe to consider his lordship's manner of discussing that case as supporting the contention of the specific legatees here, I do not say, but I am satisfied that it would be wrong to draw from it a contrary inference. These remarks tend obviously to a conclusion, on my part, in favour of contribution between the devisees and the specific legatees in this case, and I should have made them probably had neither *Long v. Short* or *Silk v. Pryme* existed. But in *Long v. Short*, which was previous to *Clifton v. Burt*, as that preceded *Tipping v. Tipping*, 1 P. Wms. 729, and *The Duke of Devonshire v. Atkins*, 2 P. Wms. 383, and also preceded *Onal v. Mead*, which was followed by *Haslewood v. Pope*, it is well known that Lord Cowper expressly decided in favour of the contribution in such circumstances; nor was *Long v. Short*, in my opinion, I repeat, intended to be overruled or opposed in *Clifton v. Burt*, or in *Onal v. Mead*. The decree of Sir Thomas Sewell, at the Rolls, in *Silk v. Pryme*, was to the same effect, and, on this point, I believe, not appealed from. But having read a copy of that decree, sent to me from the registrar's office, I am not by any means convinced that the point was contested or called to the attention of Sir Thomas Sewell, though the decree may be thought perhaps at least to afford some evidence of the general sense of the profession at that time on the subject. I can add, if I may venture to speak of my own experience, that it having happened to me to become aware of the case of *Long v. Short* at a very early period of my professional life, and to have had occasion when at the Bar to consider it more than once, I do not recollect having at any time while at the Bar believed or suspected it not to be a governing decision upon the point now in question, or to have heard it mentioned as an overruled or a bad or doubtful authority on this point. These were my impressions before the case of *Cornwall v. Cornwall*. But in the summer of 1841 was decided that case, and so high is my respect for the legal knowledge and experience of the learned judge whose decision it is, that, notwithstanding all that I have said, if it had not been distinctly and strongly questioned by another learned judge, to whose legal knowledge and experience great weight also belongs, I should very possibly have followed it against all my former impressions. But the declared opinion of Sir Edward Sugden, in the case of *Young v. Hassard*, is pointedly and directly at variance with *Cornwall v. Cornwall*. That opinion has been described as extra-judicial, but certainly it is expressed in a very clear manner, and as, therefore, however satisfactory and agreeable it would be to me to place myself under the joint guidance of those two distinguished persons, that is for the present purpose impossible, as I cannot on this occasion become the disciple of one without deserting the other. I think that I must act independently of each of the two cases, that is to say, deal with this case as I should have dealt with it if *Cornwall v. Cornwall* and *Young v. Hassard* were not; consequently, as I continue to entertain an opinion conscientious upon the present point to that of Lord Cowper, I think I must follow *Long v. Short*, a course which, if not rendered more plainly right, is certainly, I conceive, not rendered less right by the statute of 1833 than it would have been before that statute. Therefore let there be contribution.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Jan. 19 and Feb. 11.

REG. v. THE CORPORATION OF MANCHESTER.
Clerk to magistrates—Compensation under 5 & 6 Vict.
c. 111, s. 1.

In the county of Lancaster, prior to 1839, petty sessions were held for the division of Manchester at Salford, and the general business of the division was there transacted; but petty sessions for limited purposes were also held at Worsley and Heaton Norris. The office of clerk to the magistrate at Salford had been filled for many years by Mr. Mylne. Under a local Act, a stipendiary magistrate for the division sat at Salford, to whom Mr. Mylne was also clerk under the Municipal Corporation Act; but Manchester and five other townships of the division were incorporated. In 1839, a separate commission of the peace was granted to the borough of Manchester. The borough magistrates appointed a Mr. Hickson their clerk. The business of the stipendiary magistrate, and also of the petty sessions, decreased, although their jurisdiction remained the same. By 5 & 6 Vict. c. 111, compensation was to be given to every officer of any borough, county, or division of a county in which such borough was situated, deprived of any fees and emoluments in consequence of the grant of incorporation and grants of separate courts: Held, that Mr. Mylne was not an officer of the division within the Act, and not entitled to compensation, either as clerk to the stipendiary magistrate or to the justices. A mandamus had issued commanding the town council of Manchester to award compensation to Mr. Oswald Mylne, for the diminution of the fees arising

from his offices of clerk to the magistrates in petty sessions for the Manchester division of the county of Lancaster, sitting at Salford, and clerk to the stipendiary magistrate appointed to act for the same division under a local Act passed in the 55 Geo. 3. To the writ a return was made which was traversed, and the case went down for trial, when it appeared:—that from the year 1813 downwards, Mr. Mylne had invariably acted as clerk to the stipendiary magistrate appointed under the local Act, and also to the magistrates sitting in petty sessions at Salford, where also the stipendiary magistrate sat, and that, with the exception of petty sessions occasionally held at Worsley and Heaton Norris, at which Mr. Mylne did not act as clerk, no such sessions had been held within the division of Manchester except at Salford. In 1835, the Municipal Corporation Act passed, and incorporated the township of Manchester and five other of the fifty townships, which, under the 9 Geo. 4, c. 43, composed the division of Manchester, into a borough. In the year 1839, a separate commission of the peace was granted to the borough, and from that time forward the business arising within the borough was transacted by the borough magistrates, who appointed a gentleman named Hickson to be their clerk. The jurisdiction of the county justices and of the stipendiary magistrate was not prejudiced by the grant of the separate commission, but the business at Salford fell off. The validity of the charters of incorporation became the subject of litigation, and while the proceedings were pending in the House of Lords, the 5 & 6 Vict. c. 111, passed to confirm them. The 66th section of the 5 & 6 W. 4, c. 76, did not provide for the compensating an officer subject to loss of emoluments in the manner above described; but the 1st section of the 5 & 6 Vict. c. 111, confirmed the charters of incorporation, "and all grants of separate courts of sessions of the peace," and the 2nd section enacted, "that every officer of any such borough, or of any county, or any such division of a county in which any such borough is situated . . . who shall have been deprived of any part of the fees and emoluments of his office, in consequence of any such grant, shall be entitled to have an adequate compensation," &c. The learned judge who tried the case told the jury, that if they thought that the sessions which had been held at Salford had been treated by all parties, magistrates as well as suitors, as the petty sessions for the division, and if they thought that Mr. Mylne had also been considered the clerk to the magistrates in such petty sessions, they ought to return a verdict for the Crown. A verdict was returned for the Crown, and subsequently a rule was obtained that called on the prosecutor to shew cause why the verdict should not be set aside and a new trial had on the ground of misdirection, because the learned judge ought to have told the jury, first, that Mr. Mylne was not an officer of a division of a county within the meaning of the 5 & 6 Vict. c. 111, s. 2; and, secondly, that if he were such an officer, still, as the jurisdiction of the county justices and of the stipendiary magistrate was still co-ordinate within the borough with that of the borough justices, the decrease of the business at Salford was the consequence of the preference given by the borough suitors to the borough magistrates, and therefore Mr. Mylne could not be held to have been "deprived" of any part of his fees and emoluments within the meaning of the 5 & 6 Vict. c. 111. Against the rule cause was shewn (Jan. 19) by

The Attorney-General, Starkie, Q.C. and Cowling, Martin, Q.C. and Crompton, contra. And, February 11, as to the first ground only, by *The Attorney-General.*

Martin, Q.C. and Crompton, contra.

The following authorities were cited: *R. v. Mayor of Bridgewater*, 6 A. & E. 339; *R. v. Mayor of Carnarvon*, 3 P. & D. 85; *R. v. Mayor of York*, 3 Q.B. 550; *Com. Dig. Courts, P. 4*; *Harding v. Pollock*, 6 Bing. 25; *R. v. Poole*, 7 A. & E. 730; *Ex parte Sands*, 4 B. & Ad. 843; 26 Geo. 2, c. 14; 5 Geo. 4, c. 96; 9 Geo. 4, c. 61, s. 15. *Cur. adv. vult.*

In sittings after Trinity Term judgment was delivered as follows:—

JUDGMENT.

LORD DENMAN, C. J.—This was an application for a *mandamus* to adjudge compensation to Mr. Mylne for loss of the profits and emoluments of the several offices of clerk to the justices for the division of Manchester and clerk to the justices for the time being, appointed under the 55th of George 3rd, and the profits of prosecuting criminals, and other business connected with the said division. The case went down to a new trial, on the return to a *mandamus*, at Liverpool, before Mr. Justice Cresswell, and a verdict was taken under his direction for the Crown. We were moved to enter the verdict for the defendant, or for a new trial for misdirection. The claim for compensation was founded on the 2nd section of the 5 & 6 Vict. c. 111, which was passed for removing doubts as to the validity of charters granted relating to certain boroughs in pursuance of the 5 & 6 Wm. 4, c. 76, and the Act subsequently passed to amend and confirm such charters, and amongst them was one that had been granted to the borough of Manchester. By the

second section it was enacted that every officer of every such borough, or of any county, or any division of the county, in which any such borough is situated, who was in any office of profit at the time of granting any such charter, whose office shall be abolished or be removed from that office, or deprived of any part of the fees or emoluments of such office in consequence of such grant, shall be entitled to compensation under the statute. Mr. Mylne must have been an officer of the borough, or of the county, or of the division of the county in which the borough is situated. He claims, in the first place, as having held the office of clerk to the magistrates acting for the division of Manchester, in the county of Lancaster. It appeared there was a division called the division of Manchester, consisting of forty-three townships, and that the general business of the division was done at the New Bailey, at Salford, and that Mr. Mylne acted as clerk to the magistrates; but it also appeared that the New Bailey is also attended by some of the justices of the division without Manchester, others within Manchester, both being townships in the division of the county for the petty sessions business; and that such justices employed different clerks on some occasions. Mr. Mylne does not appear at any time to have been clerk to the justices of the division generally through any appointment as such, but only to have acted as such to such of the justices as attended the New Bailey, at Salford, there being other persons who attended as clerks to the justices who appointed their own clerks. Without considering the very uncertain nature of the office he appears to have held, it is clear he did not hold it for the whole division. He was not clerk to the justices for the division of Manchester, but only to such of them as attended the New Bailey, at Salford. If Mr. Mylne is entitled to compensation as clerk to the magistrates of the division of Salford, it would be difficult to refuse it to those who acted at other times for some of the other justices by whom they were appointed, and who might also claim to be clerks for the justices acting for the division of Manchester; and we therefore think Mr. Mylne is not entitled to compensation as clerk to the justices for the division of Manchester. We also think there is still less ground for claim to compensation for loss of the profits and emoluments of clerk to the stipendiary magistrates, appointed under the 5 & 6 Geo. 3, which office Mr. Mylne still holds, and the claim is, therefore, only in respect of a diminution of profits. We think it unnecessary to consider whether the diminution is from causes that would entitle him to compensation; as we are clearly of opinion that the clerk to the stipendiary magistrates is not an officer of the borough, county, or division of the county, within the meaning of the 5 & 6 Vict. c. 111; he may be merely clerk; clerk to a single magistrate; and as such has no claim to compensation. The learned judge at the trial took a different view of the Act of Parliament and the evidence, and, under his direction, a verdict was found for the Crown. We are of opinion that verdict cannot be supported. We do not find any leave given to enter a verdict for the defendant. Therefore the rule for a new trial must be made absolute. We wish, however, to observe, that though the form of the issue made it necessary to take the opinion of a jury, the question being a clear matter of law on the facts themselves, they may suggest a statement of the case on the facts, as they appear on my learned brother's notes, which may be turned into a special case.

BRUNTON v. THOMPSON.

Sale-Agent—Broker.

Where an undisclosed principal sues upon a contract alleged to have been made with his agent, and which is proved by the agent, the proper question to be left to the jury is, whether it was really made by the agent for the principal, although in his, the agent's name, and not whether the defendant meant to contract, and did contract with the agent.

The declaration averred that the contract in respect of which the defendant ought to have indemnified the plaintiff, was a contract as usual among stock and sharebrokers, but did not aver that the person with whom it had been made was a stockbroker: Held, upon motion in arrest of judgment, that this sufficed as an averment as to the nature of the defendant's liability.

M. Chambers, Q.C. in Easter Term moved for a rule nisi, to set aside the verdict for misdirection, and in arrest of judgment. The facts are stated in the judgment, which was delivered at the end of the sittings after Term.

JUDGMENT.

LORD DENMAN, C. J.—This was a rule for a new trial, moved for by Mr. Chambers. The plaintiff was a stock and sharebroker, and sued the defendant for indemnifying him in respect of a contract for certain railway shares which he had employed the plaintiff to buy. In order to prove the contract, the plaintiff's son was called, who swore he was not himself engaged in business, although a sworn broker and a member of the Stock Exchange, and that he was not in partnership with his father, but only clerk to him, and made the contract in his behalf. The defendant

was not before the transaction in question personally acquainted with either the plaintiff or the witness; he was introduced by a mutual friend, saw the witness, and gave the order in question. A note of the contract was handed to the defendant; it was partly printed, and had the word "stockbroker" printed at the foot, and the name of the witness was written first above, and no notice of the plaintiff taken in it except the Christian name of the plaintiff and the witness being the same. The defendant called several times and never saw the plaintiff, nor does it seem that the plaintiff's name was ever mentioned. The learned judge put the question to the jury whether the contract was really made by the son as agent for the father although his own name was used, and they found it was, and the verdict passed for the plaintiff. A new trial was moved for on the ground of misdirection, it being contended that the learned judge ought to have put the question to the jury whether the defendant meant to contract, and did contract, with the son or the father. We are of opinion there was no misdirection. Assuming the plaintiff supposed himself to be contracting with the son, the father's name not being disclosed, still if the son was the agent only, it is clear the action may be brought by the father. The rule is general that where a contract not under seal is made with an agent in his own name on disclosing the principal, either the agent or the principal may sue on it, the defendant, in the latter case, being entitled to be placed in the same situation at the time of the disclosure as if the agent had been the contracting party. *Sims v. Bond*, 5 B. & Ad. There are many cases to the same effect; indeed, this being the undoubted rule of law, it was quite immaterial with whom the defendant supposed himself to be contracting, unless he shows any set-off which he might have, if the son had been the real contracting party. That was not contended. The only difference it was said to make was, that the son was called as a witness, which could not have been the case if he had sued as plaintiff. That is always the case where the question of agency arises. Another objection was, that the defendant had no notice from the plaintiff; this, in fact, depends on the question already discussed. It was further argued on that point, that there was no proof that Hitchcock, from whom the plaintiff bought the shares, was ready and willing to deliver them at the appointed time; the answer is, it was proved that they did deliver them to the plaintiff at that time; and, it was said, readiness and willingness included, having a title to the thing to be delivered. It was said that Hitchcock had not signed the Parliamentary contract or any deed respecting the shares. The answer is, they had the shares, and delivered them, and that they were what were contracted for. No point was made at the trial as to the law as laid down in *Young v. Smith*, in the Court of Exchequer. It was further argued in arrest of judgment that the declaration did not aver that Hitchcock was a broker, though it is averred the contract between the plaintiff and the defendant was that he should contract for shares in the manner usual among stock and sharebrokers. That averment does not mean that he should contract with sharebrokers, but that, as between him and the defendant, the contract he should make, and in respect of which the defendant was to indemnify him, should be made in the manner usual among sharebrokers; it is averred it was so. We think, therefore, on the whole no rule ought to be granted in this case. *Rule refused.*

LAWTON v. HICKMAN.

Railways—7 & 8 Vict. c. 110—Confirmation of Young v. Smith.

Declaration, for goods and chattels sold and delivered. Plea, that the said goods and chattels were shares in a joint-stock company (describing it) so as to bring it within 7 & 8 Vict. c. 110, s. 2, and negating the exceptions, and alleging that no complete registration had been obtained. Replication, that it was a company for the purpose of making and maintaining a certain railway to be called the Grand Union, under the powers of an Act of Parliament, and that the said railway could not be carried into execution without the authority of Parliament. It then averred provisional registration according to the statute.

Held on demurrer. 1. That the description of the objects of the company was sufficient to bring it within the proviso at the end of the 2nd section relating to railway companies.

2. That it was not necessary to aver that these objects were the sole objects of the company.

3. That railway shares were goods and chattels; and, 4. That the 26th section of 7 & 8 Vict. c. 110, does not apply to railway companies, for the effect of the proviso in section 2 is to exclude the companies therein described from the operation of the Act, except where they are expressly mentioned and brought within any particular clause, and that therefore the decision in *Young v. Smith* is correct.

This was a demurrer to a replication, which, together with the three following cases, raise the question decided in *Young v. Smith*, and also various points upon pleading the statute.

This was argued by *Cowling*, for the demurrer, and *Martin*, contra.

The argument against the decision of *Young v. Smith* was founded upon a minute analysis of the Act, and the comparison of the different sections, much in the same way as that adopted in the article upon the subject (*supra*, 6 Law T. 247). It is not thought necessary to give it at length.

JUDGMENT.

LORD DENMAN, C.J.—To a declaration for goods and chattels sold and delivered, and money due on an account stated, the plea is, that the goods and chattels are shares in the capital stock of a joint-stock company, illegally sold and delivered by the plaintiff to the defendant, by the delivery of scrip certificates after the 1st of November, 1844, contrary to the form of the statute; and that the account stated relates to the same illegal sale and delivery. The plea further states, that the said company was, before and at the time of such sale and delivery, a joint-stock company established in England, for the purpose of profit to the shareholders, proprietors, and subscribers agreeing thereto, and not as a banking company, school, scientific or literary institution, friendly society, or building society, and that it was a partnership whereof the capital was allotted and divided into shares, so as to be transferable without the express consent of the copartners; but it was not incorporated by charter or statute; and that it was commenced after November, 1844; and had not, at any time before the said sale and delivery, obtained a certificate of complete registration; and the plaintiff, before and at the time of the sale and delivery, claimed to be entitled to the said shares, and sold and delivered them to the defendant as being so entitled. The replication then seeks to bring the company within the proviso of the second section, alleging that it was established for the purpose of making and maintaining a certain railway, to be called the Grand Union Railway, under the powers of an Act of Parliament to be obtained for the purpose, the said railway to take certain powers usually given by Parliament to railway companies; and that the purposes of the said company, and of the said railway, could not be carried into execution, without first obtaining the authority of Parliament; and that the company was a company for executing the railway within the 7 & 8 Vict. c. 110, containing the said proviso; and it was averred that within twelve months after the said sale and delivery, the said company was provisionally registered, and obtained a certificate of provisional registration, pursuant to the statute. The special demurrer assigns for causes, first, the circumstance of the company being established for the purposes in the replication mentioned, will not make the sale legal; the second cause of demurrer is, that, consistently with the replication, the railway might be carried into execution without the authority of Parliament; that the powers requisite for its execution were not illegitimate, but that the description of the company in this respect is too general, and puts in issue matter of law. To this the answer is, that the description following the words of the Act appears to us perfectly sufficient. It seems that the objects of the railway company, for which the authority of Parliament is requisite, are set out in the defendant's replication; and furthermore, that we, like the Court of Exchequer, are so familiar with the nature of railway companies, that it would be impossible to decline taking judicial notice of them, and of the necessity of their obtaining an Act of Parliament. The third cause of demurrer is, that the execution of the railway was not said to be the sole purpose of the company. We think this is not necessary. The proviso in terms does not require it to be for the sole purpose, and the Court will not presume it to be authorised for any other. This, indeed, is not impossible, but if the railway company is charged with illegitimate objects, which were never contemplated under its Act, this ought to be averred. We think there is nothing in the last objection that railway shares are not goods and chattels. We revert now to the first cause of demurrer, which fairly raises the question whether the circumstance of the company being established for the execution of a railway, requiring authority of Parliament, prevents the 26th section from rendering the sale of shares illegal. Now that proviso is most remarkable in its terms, and it directly prevents the Act from operating on any railway company, which cannot be carried into execution without the authority of Parliament, except as the said Act has specially provided. The Act, therefore, does not operate on such company at all, unless there is a special provision, and then only as may be specially provided. This is not a proviso in the ordinary sense—something engrafted on the preceding enactment; but it is something that prevents every enactment of the statute from operating on such companies, except in a particular case, and that case is not the occurrence of any extrinsic fact which must depend altogether on the particular case, but it depends entirely on the contents of the Act itself, which the Court is bound to notice, to examine, and construe; and decide for itself whether a special provision is to be found in it; so that if such special provision applies to the matter in hand, the

proviso must have the same force in reference to every enactment as if it were repeated at the close of each clause, and is in effect a proviso that ought to be specially pleaded; and it is in the light of an exception, or rather an enactment, over-riding the whole, that to such companies the express enactment shall not extend, unless we discover in the Act a special provision which shall make it apply. We have carefully gone through the sections in which special provisions are made with respect to railway companies, several of which, the 4th, 7th, and 9th, were brought under the notice of the Court of Exchequer in the argument in the case of *Young v. Smith*; but the result of our investigation is, that they are not special provisions, which by necessary implication apply to the 26th section. The 25th section was fully commented upon, and was said to prove that the 26th must have been intended to apply to railway companies as well as others; and there is some weight in the argument for this intention, though Mr. Baron Alderson thought that different classes of companies are contemplated by this section. But if we consider the 26th section making the company to deal in shares before complete registration to be subject to the proviso in the second section, that it shall extend to no railway company except as by the said Act specially provided, we are driven to search for this special provision, and finding none, to say that the section does not extend to them. Whether this was intended by the Legislature, we do not propose to give any opinion. That they intended to deal with railway companies differently to others there can be no doubt; and the special provision respecting the sale of shares before registration may have been omitted inadvertently or by positive design; it is enough for a court of law to say it is omitted, and consequently the plaintiff is entitled to our judgment. Judgment for the plaintiff.

LOONIE V. OLDFIELD.

Plea under 7 & 8 Vict. c. 110—Railway companies. Where upon the pleadings it appears that the company is a railway company, a general averment that it cannot be carried into execution without the authority of an Act of Parliament is sufficient without a more particular specification of the objects and purposes of the company.

Demurrer to pleas.—This decided the general question as to the preceding case, but the pleadings were somewhat different. It was argued on the same day.

JUDGMENT.

LORD DENMAN, C.J.—The declaration was for money paid and for work and labour as brokers in purchasing shares and scrip certificates in a certain railway undertaking, and an account stated. Plea, that after the 2 & 3 Vict. and after the 1st of November, 1844, the plaintiff, broker and agent to the defendant, purchased on his account certain shares in a certain joint-stock company called the London, Worcester, and Rugby Railway Company, the formation of which was commenced after the 1st of November, 1844, and in England, but that it was a joint-stock company within the provisions and true intent and meaning of the said Act, setting out the particulars, and negating the exception in the second section, and that the money was advanced and the commission charged in the account stated, in and about the purchase of such shares before complete registration of the said company, and without any certificate of complete registration, or authority of Parliament having been obtained for carrying into execution any works of the said railway, of all which the plaintiff had notice, and which purchase was contrary to the statute. The replication is, that the said company was a company for executing works which could not be carried into execution without obtaining the authority of Parliament. This replication is demurred to, because it does not show the works cannot be carried on without the authority of Parliament. We are of opinion it sufficiently appears on the whole record to be a railway company, and we may properly take notice that a railway company cannot be carried into execution without the authority of Parliament, and, as we have stated in the former case, judgment in this case must be for the plaintiff.

FISHER V. AINS.

LORD DENMAN, C.J.—This was a similar replication to a similar plea in the same form, and our judgment will also be for the plaintiff.

O'NEIL V. BRINDLE.

A plea under 7 & 8 Vict. c. 110, must show how it is intended to be registered.

Demurrer to plea. This case was argued by *Cowling*, for the demurrer.

Barnie, contra.

JUDGMENT.

LORD DENMAN, C.J.—There will be the same judgment, because, though the plea avers the company was such a one as requires to be registered under the Act, it does not show why that is so.

RAY-C. HIRST.

7 & 8 Vict. c. 110.

A plea under 7 & 8 Vict. c. 110, must negative the exceptions in sec. 2.

Plea similar to the preceding, but omitting to negative the exceptions.

Sir John Bayley, in support of the demurrer.

Cur. adv. vult.

JUDGMENT.

LORD DENMAN, C.J.—The plaintiff clearly is entitled to judgment, because the exception in the 2nd section was not negated in the plea.

COURT OF COMMON PLEAS.

May 7, and July 6.

GAMBLE V. KURTZ.

In an action for the infringement of a patent for the manufacture of sulphate of soda, it appeared that the plaintiff's patent consisted of two retorts, connected by an inclined plane, and also connected with the rest of an extensive apparatus, consisting of receivers, &c. The plaintiff's claim, after describing by drawings the apparatus to be employed, proceeded—"I do not claim the exclusive use of iron retorts, but I do claim as my invention iron retorts worked in connection with each other, as above described." The jury found "that the invention of two separate chambers and furnaces was not new, but that the plaintiff's mode of connecting the same was new."

Held, that this amounted to a verdict for the defendant, upon the pleas, denying that the plaintiff was the first inventor, and the novelty of the invention. Held, also, that the material employed was no part of the essence of the invention, and that the defendant having used a contrivance similar to that patented by the plaintiff, except that one of the retorts was made of brick instead of iron, the plaintiff was entitled to retain his verdict upon the plea of not guilty.

This was an action on the case for the infringement of a patent, tried before Colman, J. at the sittings in London after Hilary Term, 1846. The jury found a special verdict, and cross-rules were obtained in the following Easter Term. Upon the argument, *Chamwell* and *Byles*, Serjts. (with them *Cowling*), appeared for the plaintiff; and *Talfourd*, Serjt. (with him *Webster*), for the defendant. The questions, as is nearly always the case in patent causes, were mainly questions of fact and mechanical science, and it would be quite impossible to set out the argument so as to make it intelligible, without drawings of the models to which reference was made throughout the discussion. All that is material appears in the judgment of the Court, which was now delivered by

COLTMAN, J. (a).—This was an action on the case for infringing the plaintiff's patent, granted for improvements in apparatus for the manufacture of sulphate of soda, muriatic acid, chlorine, and chlorides. The defendant pleaded, 1, not guilty; 2, that the plaintiff was not the first inventor; 3, that the alleged invention was not new, and several other pleas which it is not necessary to mention. At the trial before me it was proved by the plaintiff that the apparatus formerly used for making sulphate of soda was a brick reverberating furnace, consisting of a single chamber, with a fire at one end of it, the fire striking against the roof of the chamber reflected down to the floor, and the smoke and gas passed out at one end of the chamber. It also appeared that there was *Lutwyche's* patent, which was also a single chamber, one part of the floor of which was iron, the other brick, the whole of which was heated by the same furnace, and when the materials had been decomposed in the lower part of the chamber they were removed to the raised part, where the heat of the fire was greater than that at the other end of the chamber, and there dried or roasted. The plaintiff in his specification stated "instead of the brick furnaces hitherto employed for the decomposition of common salt and for its conversion into sulphate of soda, I have found that iron retorts constantly employed at an elevated temperature may be advantageously substituted for that purpose, the muriatic acid disengaged therefrom effectually, and condensed by the receiver hereafter described." He then by words and drawings describes his apparatus as consisting of two iron retorts, each having a separate furnace, one for decomposing the salt, the other for roasting or finishing the sulphate of soda. The materials, when decomposed, were to be pushed from one retort into the other along an inclined plane into which they were collected together. The specification then proceeded as follows:—"As the above operation proceeds, the muriatic gas, as expelled from the sulphate, passes off from the inner chamber and into the main pipe, and from that pipe into the first receiver." These parts of the apparatus were also explained by drawings, and at the end of the explanation the plaintiff thus describes his claim:—"I do not claim the exclusive use of iron retorts, but I do claim as my invention iron retorts worked in connection with each other as above described; nor do I claim the exclusive use of receivers, as the bulk of the acid can pass from one to the other, or can be cut off at pleasure, when strong acids are required." The defendant had used for making sulphate of soda two chambers, one of iron and one of brick, both connected by an opening, through which

(a) *Tindal*, C.J. was absent from indisposition.

the materials when decomposed in one could be pushed into the other for roasting, the finishing chamber being heated by a separate furnace. For the plaintiff a good deal of evidence was given to show that the object for which his patent was obtained was the use of two chambers with separate furnaces, which was not known before. But the defendant proved that a person of the name of Beswick had previously used two chambers connected by a spout ten or twelve feet long, through which the materials, when partially decomposed, ran from one to the other, in which state they were roasted or finished; and the original process was proved to have been carried on by the manufacturers of muriatic acid in a similar way. The jury found for the plaintiff on the issue of not guilty. As to the issue on the second and third pleas, they thought the alleged invention of these two chambers, with separate furnaces, was not new, but that the plaintiff's mode of connecting them was new. Each party had leave to move to have the verdict entered in his favour on this special finding, and the defendant had leave to move to have the verdict entered in his favour on the first issue also, if the use of two chambers, one of iron and the other of brick, would not be an infringement of the plaintiff's patent right. In Easter Term cross rules were accordingly granted. The latter question was very well argued, and we are clearly of opinion that the verdict for the plaintiff on the issue of not guilty must stand for the establishment of the plaintiff's improvement in making sulphate of soda, by the use of two chambers with separate furnaces for the two stages of the process, so that both could be kept in action at the same time, and at the different temperatures required for the different stages. That principle is equally acted upon, and the same advantage given whether both chambers are of iron, or one of iron and the other of brick. The materials of which the chambers are composed not being the essence of the invention claimed, the patent right might be invaded, though the chambers used by the defendant were not of the materials mentioned in the plaintiff's specification. The other question turns upon what is the true nature of the actual claim of the plaintiff as the inventor. If he claims the use of two chambers with separate furnaces as part of his invention, the jury said it was not new, and the verdict should be entered for the defendant, otherwise for the plaintiff. It seems to us that no reasonable doubt can be entertained as to the claim made by the plaintiff. After describing by the words and drawings the apparatus which he used, he claimed, as his invention, "iron retorts worked in connection with each other, as above described." It was contended, on behalf of the plaintiff, that the meaning was, that he claimed the use of two retorts, worked in connection with the whole of the apparatus for condensing the muriatic gas; although the words of the specification are "in connection with each other," not in connection with the whole apparatus; and he afterwards goes on to claim as his, that particular arrangement of the receiver which he had previously described. We can give no other meaning to this than that the plaintiff claimed, as part of his invention, the use of two chambers with separate fittings, worked in connection with each other, so that the metals might be decomposed in one; and removed to be roasted and finished in the other, and that the plaintiff understood such to be the nature of his claim appears to be clear from the disclaimer he has entered in this case, in which, after describing certain words as the description of his claim, he says; "I further declare that I do not intend the words to extend to any other retorts than iron retorts, described in my specification; as the words 'iron retorts, worked in connection with each other, in which the process of condensation is carried on in the retort, and the materials are finished in the other,' might be construed to extend to any other retorts, for which reason I am desirous to disclaim." This was the nature of the claim which the plaintiff endeavored at the trial to establish, and the jury having found the evidence did not establish that, the verdict on the special finding must be entered for the defendant. The effect will be, that the rule will be discharged in part (the defendant's rule), and made absolute as to so much as relates to the second and third issues. The rule obtained for the plaintiff will be discharged.

Rule accordingly.

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

COURT OF BANKRUPTCY, BASINGHALL-STREET.

(Before Mr. Commissioner GOULBURN.)

Tuesday, Aug. 11.

Re HENRY COWPER.

A petition for protection from process under the 7 & 8 Vict. c. 96, must state at the head thereof, not only the name, but also the address and quality of the petitioner, as directed by the form in the schedule of the Act; and it is not sufficient that those particulars, if omitted in the heading, appear from any

other part of the petition. The petition must in all respects, as well in form as in substance, be as prescribed by the schedule. If the petition is not in such form, it will be dismissed.

This was a petition under the 7 & 8 Vict. c. 96, the Insolvency Amendment Act, for protection from process, presented by Henry Cowper, late paymaster of her Majesty's German legion, and a non-trader.

Aspinall, who appeared for Miss E. King, an opposing creditor, objected that the petition was not in the form prescribed by the Act. It was headed only "The humble petition of Henry Cowper," and did not in that part of it set out his address or quality, trade or business. In other respects the petition was in the form given by the Act, and the residence of the petitioner did appear in subsequent parts of the petition. The form in the schedule of the Act runs thus: "The humble petition of

and then follow, between brackets, these words:—[Insert at full length the name, address, and quality of the petitioner, and also the description of the trade or business (or, if more than one), trades or businesses, which he carries or has carried on during his twelve months' residence within the district of the Court.]

The second section of the Act enacts that every petition shall be in the form specified in the schedule, and that if such petition shall not be in the form prescribed, it shall be dismissed. It was contended that, upon the ground above stated, the petition could not be held to be in the form prescribed, and must be dismissed.

Macduff, solicitor to the insolvent, contended that if the residence and quality appeared in any part of the petition it was sufficient; the trade and business are not applicable to this case, the insolvent not being a trader, and the residence and quality appear elsewhere. The petition is substantially in compliance with the Act.

The COMMISSIONER gave judgment without calling for a reply.—There may be some confusion in consequence of the forms given by this Act being more applicable to the former ones, but I am persuaded that the object of the Act was to avoid these questions of whether a petition was substantially sufficient, by giving a form to be adhered to in all cases. The 2nd section of the Act says, that unless the petition be in the form prescribed, it shall be dismissed. Even supposing, of which I am not convinced, that the residence and quality of this petitioner do appear in other parts of his petition, how can I say that the petition is in the form given by the Act? It may be the same in substance, but the Act says expressly it shall be the same in form. If I were to decide against this objection, I must hold that if the information required to be given by the Act at the beginning of the petition were placed at the end, that would be sufficient; and I should come to the conclusion, in direct contradiction to the Act, that any alteration might be made in the shape and form of the petition, provided the substance were retained.

Petition dismissed.

Circuit Reports.

WESTERN CIRCUIT.

DEVON SUMMER ASSIZES, 1846.

Exeter, July 31.

(Before Mr. Baron PLATT.)

REG. v. MARY ANN AUSTIN.

Plea of *autrefois acquit*.

Prisoner was indicted for stealing the goods of William Carr. It appeared in evidence that the proper name of the owner was John Wilson, and an acquittal was directed. The prisoner was again indicted for stealing the goods of "John Wilson, otherwise called William Carr."

The prisoner pleaded "*autrefois acquit*," with an averment that "the said William Carr was known as well by the name of William Carr as John Wilson."

Held, a good plea.

The prisoner was indicted for stealing a gold pin of the "goods and chattels of William Carr."

Elizabeth Carr, for the prosecution, proved that her husband, William Carr, was a private in one of her Majesty's regiments; that they had been married four years previously at Plymouth; they were not living together, the gold pin was taken from her by the prisoner. On her cross-examination, it appeared that the real name of her husband was John Wilson; by that name he was known in the regiment, and to his friends; but that he had married her in the name of William Carr.

Cox, for the prisoner, submitted that the property having been laid in the wrong name, the prisoner must be acquitted upon that indictment.

His lordship directed an acquittal accordingly.

The prisoner was on the following day again indicted for stealing a gold pin "of the goods and chattels of John Wilson, otherwise called William Carr."

Upon her arraignment,

Cox, for the prisoner, put in the following plea of *autrefois acquit*:—

"Devon to wit.—And the said Mary Ann Austin,

in her own proper person, cometh into court here, and having heard the said indictment read, with that our said lady the Queen ought not further to prosecute the said indictment against the said M. A. Austin, because she saith that heretofore, to wit, at this present assizes for the county of Devon, held on the 25th day of this present July, in the year of our Lord 1846, the jurors of our lady the Queen did, upon their oath, present that Mary Ann Austin, late of the parish of East Stonehouse, in the county of Devon, spinster, in the year of our Lord 1846, with force and arms, at the parish aforesaid, in the county aforesaid, one gold pin of the value of two shillings, of the goods and chattels of William Carr, then and there being found, then and there feloniously did steal, take, and carry away, against the peace of our said lady the Queen, her crown and dignity; and that she, the said M. A. Austin, was tried upon the said indictment at the present assizes, and was acquitted of the charge therein contained, as by reference to the record will more fully and at large appear; which said judgment still remains in full force and effect, and set in the least reserved or made void; and the said M. A. Austin, in fact saith, that she, the said M. A. Austin, and the said M. A. Austin so indicted and acquitted as last aforesaid are one and the same, and not other and different persons; and that the felony and larceny of which she, the said Mary Ann Austin, was so indicted and acquitted as aforesaid, and the felony and larceny of which she is now indicted, are one and the same felony and larceny, and not other and different felonies and larcenies; and that the said William Carr was known as well by the name of William Carr as John Wilson; and as to the felony and larceny of which the said M. A. Austin now stands indicted, she, the said M. A. Austin, saith that she is not guilty thereof, and of this she, the said M. A. Austin, puts herself upon the country."

PLATT, B.—You should have concluded with a verification, for your plea introduces new matter. But the Court will give you permission to amend, as it is only an informality. Now, it is for the counsel for the Crown to say whether he demurs, or upon which or all of the averments in this plea he takes issue.

Peard, for the prosecution, said that he had considered the plea, the draft of which had been shown him by his friend, but he could discover no grounds for demurrer. He should take issue.

PLATT, B.—My present impression is, that this plea cannot be supported; but I should wish to hear counsel upon it.

Cox, in support of the plea.—The test by which we try whether the plea of *autrefois acquit* is sufficient is this: would the evidence necessary to support the second indictment have been sufficient to procure a legal conviction upon the first? (*R. v. Clark*, 1 B. & B. 473; *R. v. Emden*, 9 East, 437; *R. v. Stoen*, 2 C. & P. 634.) Now, to apply this test to the present case. What evidence would be sufficient to support the second indictment? The property being laid in John Wilson, otherwise called William Carr, it would clearly be sufficient to prove that the owner's name was either John Wilson or William Carr; thus it would be enough to show that he was known by the name of William Carr. But proof that he was called William Carr would also have supported the first indictment. Therefore the test is strictly applicable in this case.

PLATT, B.—Can you shew any case at all like the present one?

Cox.—I cannot. The point has not been raised before. I put it upon the principle upon which the plea of *autrefois acquit* is based, and the test by which its sufficiency is tried. This plea endures that test in every particular.

PLATT, B.—My difficulty is this. Property must be strictly laid. You cannot lay it with an *alias*, as you may the name of the prisoner. I cannot recognise the *alias* as two names. I am bound to read it as if the name of the owner was "John Wilson, otherwise called William Carr"—one name of one person; and even if it were otherwise, upon the face of the indictment there is nothing to shew that John Wilson and William Carr are the same person. You cannot support your plea.

Cox.—The difficulty is removed by the averment in the plea, that John Wilson and William Carr are the same person. Even if the name of William Carr did not appear upon both indictments—and it has been only William Carr in the one and John Wilson in the other, without the *alias*—it is confidently submitted to your lordship that the averment in the plea is sufficient, "that the said William Carr was known as well by the name of William Carr as John Wilson," which at once raises the issue for the jury whether in fact they are the same person; and if found that they are identical, the prisoner upon this plea is entitled to an acquittal. In 2 Hawkins, c. 35, s. 2, this is expressly stated. I take it as cited in Chitty's Archbold, Crim. Plea, p. 89, which runs thus: "Where the offence is alleged in the two indictments to have been committed at different times or places, they are nevertheless sufficiently identified by the above general averment that they are one and the same offence. But if one of the indictments appears

to be for the murder of a person unknown, or for larceny of the goods of a person unknown, and the other for the murder of J. N. or for larceny of the goods of J. N. the plea should also aver that the person so described as a person unknown and J. N. are one and the same person, and not different persons. So if one indictment be for the murder of J. N. or for larceny of the goods of J. N. and the other indictment be for the murder of J. G. or for larceny of the goods of J. G. the two offences may be identified by an averment that the said J. G. was known as well by the name of J. N. as J. G."

PLATT, B.—Certainly, that dictum of Hawkins materially affects my impressions. But I will consult my brother Erle.

His lordship then retired. On his return, PLATT, B.—I have consulted my brother Erle upon this plea, and we are of opinion that it is a good plea. The next step is to proceed to trial upon it. Upon what does the prosecutor tender issue, as to the record or as to the identity?

PEARCE.—As to the identity. The jury were then sworn to try the issue thus raised.

PLATT, B.—The proof lies upon the defendant. COS.—The first trial having been had at the present Assize, no record is made up; the Court will, I presume, take judicial notice of the two indictments.

PLATT, B.—You must prove the acquittal, and the grounds of that acquittal. You may do so by any person present at the trial.

COS then called Mr. Herring, the prisoner's attorney, who proved that he was present at the trial of the first indictment, and that it appeared in evidence that the owner of the property was called John Wilson, and not William Carr, and that for this the Court had directed an acquittal.

PLATT, B.—That is sufficient. (To the jury)—The question you have now to try is, whether the prisoner has been in fact already tried for this offence. She has in her plea averred that the William Carr, for stealing whose goods she was yesterday tried and acquitted, is the same person with John Wilson, otherwise called William Carr, named as the owner in this indictment, and that the larceny charged in both indictments is in fact the same larceny. You will say upon the evidence whether you are satisfied that William Carr and John Wilson are two names assumed by the same person.

The jury found that they were the same person, and the prisoner was ordered to be discharged.

PEARCE for the prosecutor, COS for the prisoner.

ATTORNEYS.—Beer and Bundell, pros. Herring, contra.

[NOTE.—With deference to the learned judge, it is suggested that the evidence should have proceeded a step further, and that instead of proof of the grounds of the first acquittal, proof should have been required of the identity of John Wilson with William Carr. The evidence should support the averments of the plea, and nothing more is necessary. These averments are, 1st, the former trial and acquittal of the prisoner; 2nd, the identity of the prisoner; 3rd, the identity of the larceny; 4th, the identity of John Wilson with William Carr. The grounds of the acquittal are not in issue. Whatever they had been, the plea of *autrefois acquit* would be equally sustained by proof of the four averments above stated.—EDITOR.]

HANTS SUMMER ASSIZES.

Wednesday, July 15.

(Before Mr. Baron PLATT.)

REG. v. SKEATS AND BILES.

Coroner's inquisition.

In an indictment against the seconds in a prize-fight, they may be indicted as principals, although neither of the principals is included in the indictment.

An inquisition, to which is affixed a printed stamp opposite the signatures of the coroner and juryman respectively, and concluding with the usual averment that it was given under their hands and seals, is sufficient.

An inquisition was stated to have been held on the 15th of June, and, by adjournment, on several successive days; but it purported to have been signed and sealed on the day first aforesaid.—Held sufficient.

The principal was described in the inquisition as Thomas Williams, otherwise John Williams, omitting the word called.

Quære (per Erle, J. and Platt, B.) whether the inquisition was bad for uncertainty.

Manlaughter. The prisoners were indicted for feloniously killing and slaying George Travers. The deceased had died from injuries received in a prize-fight. The prisoners were the seconds, the principal not being in custody. It was objected, for the defence, that, when the principal was not included in the indictment, the seconds should be described as accessories. For the prosecution the *Stillingmort House* case was cited, from the last edit. of Russell on Crimes, vol. i. p. 537. Objection overruled.

The prisoners were also arraigned on the coroner's inquisition.

Missing for Skeats, and Sewell for Biles, objected. —To the inquisition three objections:—

1. That the inquisition was not under seal, there being only a printed stamp opposite the signatures of the coroner and juryman respectively.

2. The inquisition was stated to have been held on the 15th of June, and by adjournment on three succeeding days, but purported to have been signed and sealed on the day first aforesaid, so that it appeared to have been executed before the termination of the inquiry, viz. on the 15th of June.

3. The principal was described as Thomas Williams, otherwise John Williams, omitting the word "called."

Massey, for the prosecution, to the first objection answered that it was not competent to say that the impressions opposite the signatures of the coroner and jury were not their seals, against the averment in the inquisition that it was given under their hands and seals. To the second objection, the inquisition, though, in fact, holden on different days, was, in law, holden on one day. The allegation of adjournments might be objected as surplusage, at all events not sufficient to raise an intendment that a judicial officer and a court of justice had committed a breach of duty; that the allegation of the Court having arrived at certain conclusions after hearing the evidence was repugnant to the averment that they had executed an inquisition on the first day of a sessions which lasted several days, and therefore, in accordance with the established rule of law, the averment which was consistent with the presumption of public officers having discharged their duty would prevail. To the third objection, alias *dictus* is no doubt agreeable to precedent, but it is not indispensable. The description of the principal is still certain to a common extent. The omission of "called" is at most a misprision of the clerk.

PLATT, B. after consulting ERLE, J. overruled the two former objections, but reserved the last for the opinion of the fifteen judges.

The prisoners were afterwards tried and acquitted.

HOME CIRCUIT.

SURREY SUMMER ASSIZES.

NTSI PRIUS.

Wednesday, August 5.

WRIGHT AND OTHERS, Assignees, &c. v. WEBB.

Where two parts of an agreement are executed, one by each of the contracting parties, the two parts make up one agreement, and it is sufficient if the proper stamp be upon one part.

Quære, if the number of words in either part be more than two, but less than 1,000, will a stamp of 1l. be sufficient, or will a stamp of 1l. 15s. be requisite?

An agreement by the assignees of a bankrupt to refer to arbitration certain disputes connected with a building contract entered into by the bankrupt before his bankruptcy, is exempt from stamp duty under 6 Geo. 4, c. 16, s. 98.

This was an action brought by the assignees of a bankrupt to enforce the payment of a sum of 1,200l. due under an award made by an arbitrator, to whom certain matters in dispute had been referred. The agreement of reference recited that a contract had been entered into between the defendant and the bankrupt, whose assignees the plaintiffs were, for the building of certain premises for the defendant by the bankrupt; that the premises had been built, and that disputes had arisen with reference to the amount due to the bankrupt, or his assignees, in respect thereof, and that thereupon it had been agreed between the plaintiffs and the defendant, that all matters in dispute should be referred, &c. and that the arbitrator should award and determine what was due and payable. The declaration set out the agreement of reference, and that the arbitrator had found that the sum of 1,200l. was due from and payable by the defendant to the plaintiffs, and that thereupon, in consideration of the premises, the defendant promised to pay the amount. The declaration contained also a count upon an account stated. The defendant pleaded, first, *non-assumpsit*, and secondly, a traverse of the agreement to refer, upon which pleas issue was joined.

In support of the second issue, *Shee*, Serjt. and *Bovill*, for the plaintiffs, proved an agreement corresponding with that alleged in the declaration, signed by the defendant only, and duly stamped with a stamp of 1l. In order to prove that this agreement was also executed at the same time by the plaintiffs themselves, they tendered another part of the same agreement produced by the defendant under a notice to produce, and signed by the plaintiffs only, but not stamped.

Lush, for the defendant, objected that this was an agreement under 55 Geo. 3, c. 184, Sched. Part 1, *Agreements*, and therefore required a stamp.

Bovill.—In a case precisely similar, *Turner v. Hardey*, Carr. & Marsh. 449, Lord Abinger, C. B. held, that if the plaintiffs put in one part of a written agreement, which is signed by the defendant only and is duly stamped, the defendant may put in the other part signed by the plaintiffs, although not stamped. That was on the ground that there was

nothing in the Stamp Act to require that a counterpart must be stamped.

Lush.—It is put in not merely as a counterpart, but as an agreement binding upon the parties.

PARKER, B.—It seems to me to be like the case of a number of letters together forming but one contract, and one of which only need be stamped. As there is a case in point, I shall receive it in evidence.

Lush.—Then there is a second objection. The words in the two documents have been counted, and the agreement and counterpart together contain more than 1,080 words. The stamp of 1l. which would be sufficient for either document separately, will not suffice for the two. There should have been a stamp for 1l. 15s.

PARKER, B.—By statute 6 Geo. 4, c. 16, s. 98, all deeds, conveyances, &c. relating solely to any lands or tenements, being the estate of any bankrupts, and "all other instruments and writings whatsoever relating solely to the estates or effects of any bankrupt, or any part thereof, or any proceedings under any commission of bankrupt, are exempted from any stamp duty or any other government duty whatsoever." And it was held, upon the construction of this section, in *Flaith v. Stubbs*, 2 G. & D. 290, that a contract for the sale of real estate by the assignees of a bankrupt was exempt from stamp duty. I think that an agreement to refer matters in dispute relating to the bankrupt's estate is also exempted by this enactment. I shall not, therefore, reserve the point; for I do not much favour objections raised upon the Stamp Acts.

Lush declined addressing the jury.

Bovill submitted that the plaintiffs were entitled to a verdict not only for the sum of 1,200l. but also for interest upon that sum, at the rate of four per cent. from the date of the award until final judgment could be signed. In this case the money was payable by virtue of a written instrument.

PARKER, B.—The Act 3 & 4 Wm. 4, c. 42, s. 28, applies only to cases where the debt is payable at a certain time by virtue of a written instrument, or if payable otherwise, where a demand has been made. Has either of those conditions been complied with?

Lush.—No; there has been no demand; and the arbitrator not only has not ordered payment at a certain time, but he has not ordered payment at all. He had only the power to find as he has found, that a particular sum was due and payable.

PARKER, B.—Then the plaintiffs are not entitled to interest.

Verdict for the plaintiffs for the amount of the award.

Thursday, August 6.

SHERIDAN v. WHITTINGTON.

Provisional committee-man—Surveyor's expenses. In an action by a surveyor against a provisional committee-man, it appeared that upon the day before the prospectus of a railway company issued, the defendant consented to his name appearing in the list of the provisional committee: it did not appear that the defendant ever saw the prospectus, or took any part in the management of the company: the plaintiff did not procure a prospectus until he was anxious to know whom to sue. Held, that the defendant's liability was not made out.

This was an action for work and labour done and performed by the plaintiff for the defendant as a surveyor in and about surveying a certain line of railway. The defendant pleaded that he was never indebted.

It appeared that the plaintiff was a surveyor, and had been employed by a railway company to survey the line of a projected railway. There was no question that he had done a certain amount of work as a surveyor upon the line in question. The defendant's name appeared in a prospectus issued by the company as one of the provisional committee, but it did not appear that the defendant had attended any meetings, given any orders, or taken any part in the management of the affairs. It was proved, however, that application had been made to the defendant, by the solicitor of the company, for leave to insert his name in the list of the provisional committee; and that the defendant had written a letter, authorising its publication, which was received by the solicitor the day before that upon which the prospectus was issued. There was no evidence that a copy of the prospectus was sent to or was ever seen by the defendant. It appeared further, that there was no reason to suppose that the prospectus was seen by the plaintiff, until it was handed to him by the secretary of the company, to enable him to bring his action against the party whom he might deem liable.

Peacock, for the defendant, submitted, that the plaintiff had made out no case. No doubt, the orders were given by the managing committee with whom the defendant was not shown in any way to be connected. He said also that there had been a case on the Northern Circuit, very similar to this, in which Cresswell, J. had nonsuited the plaintiff. (a)

(a) *Semble*.—*Webb v. Watts*, Durham, July 23. 7 Law T. 409.

PARKE, B.—The question is, whether, by allowing his name to appear as one of the provisional committee, he authorises that committee to appoint another, the managing committee, and so empowers the managing committee to bind him by their acts? My impression is very strongly in your favour, that the case has not been made out. I think the plaintiff had better be called, and try if he can make out a better case hereafter.

M. Chambers, Q.C. and Petersdorff, for the plaintiff, submitted to be nonsuited.

Nonsuit accordingly.

THE LEGISLATOR.

Summary.

THE Small Debts Bill has passed into the Commons, and there has been received with hearty welcome. The measure for throwing open the Common Pleas is passing unopposed.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, August 7.

Commons Inclosure.—“To authorize the Inclosure of certain Lands, pursuant to a Special Report of the Inclosure Commissioners for England and Wales.”
Medical Practitioners.—“For the Registration of Medical Practitioners in Great Britain and Ireland.”

Saturday, August 8.

House of Commons Offices.—“To amend an Act of the 52nd year of his late Majesty King George the Third, relating to the Offices of the House of Commons.”
Naval and Military Departments.—“To provide for the preparation, audit, and presentation to Parliament of Annual Accounts of the Receipt and Expenditure of the Naval and Military Departments.”
Public Works Commissioners, Ireland.—“To extend and consolidate the powers hitherto exercised by the Commissioners of Public Works in Ireland, and to appoint additional Commissioners.”
Public Works and Fisheries.—“To empower the Commissioners for the issue of Loans for Public Works and Fisheries to make Loans in Money to the Commissioners of her Majesty's Woods in Lieu of Loans heretofore authorised to be made in Exchequer Bills.”

Monday, August 10.

Public Works, Fisheries, &c.—“To authorise the advance of money out of the Consolidated Fund for carrying on Public Works and Fisheries, and Employment of the Poor.”
Public Works, Ireland.—“To authorise the application of money for the purposes of Loans for carrying on Public Works in Ireland.”
County Works Presentments, Ireland.—“To authorise a further advance of money out of the Consolidated Fund towards defraying the expense of County Works presented by Grand Juries in Ireland.”

Tuesday, August 11.

British possessions.—“To enable the Legislatures of certain British Possessions to reduce or repeal certain Duties of Customs.”

Wednesday, August 12.

Private Bills.—“for making preliminary inquiries in certain cases of Private Bills.”

Thursday, August 13.

Sunday Trading.
Income Tax Deduction.—“for regulating the deduction at the Bank of England of Income Tax Duty in respect of certain offices.”

BILLS READ A SECOND TIME.

Friday, August 7.

Lunatic Asylums and Pauper Lunatics.

Saturday, August 8.

Contagious Diseases Prevention.

Monday, August 10.

Arms, Ireland.
Lunatic Asylums, Ireland.
Turnpike Roads, Ireland.
Commons Inclosure, No. 3.

Tuesday, August 11.

House of Commons Offices.
Naval and Military Departments.
Public Works Commissioners, Ireland.
Public Works and Fisheries.
Small Debts.
Public Works, Ireland, No. 3.
County Works Presentments, Ireland.
Medical Practitioners.

Wednesday, August 12.

Marriages, Ireland.
British Possessions.

BILLS READ A THIRD TIME AND PASSED.

Friday, August 7.

Copyhold Commission.
Turnpike Acts Continuance.
Stock in Trade.
Highway Rates.
Loan Societies.

Saturday, August 8.

Sugar Duties, No. 3.
Fisheries, Ireland.
Exclusive Privilege of Trading Abolition, Ireland.

Monday, August 10.

Forms, Assessed Taxes.
Militia Pay.

Tuesday, August 11.

Death by Accidents Compensation.

Wednesday, August 12.

Commons Inclosure, No. 3.
Wreck and Salvage.

Thursday, August 13.

Drainage of Lands.
Religious Opinions.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Monday, August 10.

Sir Richard Phillips's Estate.

Wednesday, August 12.

Farquharson's Divorce.

BILLS READ A SECOND TIME.

Friday, August 7.

Cork and Waterford Railway.
Scott's Estate.
Duke of Cleveland's Estate, Bathwick and Wrington.

Saturday, August 8.

Jesus' Hospital Estate, Newcastle.

Tuesday, August 11.

Bond's Estate.
Duke of Norfolk's Estate.

Thursday, August 13.

Farquharson's Divorce.
Sir Richard Phillips's Estate.

BILLS READ A THIRD TIME AND PASSED.

Saturday, August 8.

Naval Medical Supplemental Fund Society.

Monday, August 10.

Bishop of Jerusalem's Naturalisation.
Borthwick's Estate.
Clark's Divorce.
Lowestoft Charity Estate.
Matthysen's Divorce.
Pemberton's, or Gervis's Estate.

Tuesday, August 11.

Bishop of Norwich's (North Lynn) Estate.

Thursday, August 13.

All Souls' College, Oxford.

SESSIONAL PRINTED PAPERS.

- 570. Bills.—Judgment Creditors
- 576. Lunatic Asylums and Pauper Lunatics
- 581. Rateable Property, Ireland
- 580. Contagious Diseases Prevention, amended
- 582. Forms, assessed Taxes
- 583. Spirit Licences and Duties, as amended by Committee and proposed to be amended on Third reading
- 589. Commons Inclosure, No. 3
- 591. Medical Practitioners
- 595. Naval and Military Departments
- 596. Public Works Commissioners, Ireland
- 597. Public Works and Fisheries
- 577. Sites for Dwellings, No. 1
- 579. Ditto, No. 2
- 580. Contagious Diseases Prevention
- 581. Lunatic Asylums, Ireland
- 582. Turnpike Roads, Ireland
- 583. Ejectments, &c. Ireland, amended
- 578. Arms, Ireland
- 588. Steam Navigation, amended by Committee and on re-commitment
- 594. House of Commons Offices
- 587. Small Debts
- 593. Public Works, Fisheries, &c.
- 604. Public Works, Ireland, No. 3
- 605. County Works Presentments, Ireland, No. 2
- 608. Marriages, Ireland
- 609. Small Debts, amended
- 611. Lunatic Asylums and Pauper Lunatics, amended
- 612. British Possessions
- 554. Bromley Union Workhouse—Paper
- 575. Millbank Prison, Baker's Petition—Supplementary Report from Inspectors
- 473. Railways—List of Subscribers of 2000*l.* and upwards
- 590. Railway Acts Enactments—Report of Committee
- 615. Relief in Ireland—Return of Expenditure
- 563. Halifax and Boston Mails—Report of Committee
- Scarcity in Ireland (1822 and 1839)—Correspondence and Accounts
- Distress (Ireland)—Correspondence
- Drainage (Ireland)—Fourth Report of Commissioners
- Copyholds—Fifth Report of Commissioners
- 463(2). Game Laws—Report (Part 2, Session 1845)
- 549. Cerne Union—Paper
- 572. Poor Law Commissioners—Return
- 573. Convict and Transport Ships—Return
- 585. Revenue, &c. (Ireland)—Accounts
- 602. Navy—Supplemental Estimate
- 605. Miscellaneous Estimates—No. 8
- 574. Westminster Bridge and New Palace—Third Report.
- 534. Marlborough House (Peckham)—Paper
- 568. Rettle's Signals—Paper
- 569. New Churches—Account
- 584. Wheat, &c.; Cattle—Account
- 463 (1). Game Laws—Report (Part 1, Session 1845)
- 543. New South Wales—Paper
- Maynooth College—Report of a Visitation
- 286 (1). Metropolitan Building Act—Return
- 592. Navy—Return

HOUSE OF LORDS.

ROYAL ASSENT.

FRIDAY, Aug. 7.—The royal assent was given by commission to the following Bills:—The Militia Ballot Suspension; the Ordnance Survey; the Newfoundland; the Cheshire Returning Officers'; the Stamford and Spalding Railway; the Llynvi Valley and South Wales Junction Railway; the Sheffield, Rotherham, Barnsley, Wakefield, Huddersfield, and Goole Railway; the Wisbeach, St. Ives, and Cambridge Junction Railway; the Taw Vale Railway Extension; the Enfield and Edmonton Railway; the Manchester and Lincoln Union Railway, and Chesterfield and Gainsborough Canal; the London and Birmingham Railway (Birmingham Extension); the

Galway and Kilkenny Railway; the Argyll Canal; the Sligo Ship Canal; the Campbeltown Harbour Waterworks and Paving; the Edinburgh Paving (No. 2); the Dublin Cemetery; the Agricultural Companies; Lord Kinnaird's Estate; the Yeovil Borough Estate Bills.

SMALL DEBTS BILL.

THE LORD CHANCELLOR moved the third reading of the Small Debts Bill.—Lord LYTTELTON presented a petition from the Chamber of Commerce of Worcester in favour of the Bill.—The Bill was then read a third time and passed.

LAW OF ARREST.

THURSDAY, Aug. 13.—Lord DENMAN presented several petitions in favour of a measure for the abolition of unnecessary oaths.—Lord BROUGHAM said that he wished, in reference to that subject, to direct the attention of their lordships to a considerable grievance to which foreigners were liable, under the present mode of receiving oaths relating to debts alleged to be due by foreigners. A foreign gentleman of very great respectability, the intimate friend of a noble and gallant duke who was not then in his place, as well as of Lord Ashburton and the Earl of Lonsdale, was lately, on his return from Strathfieldsaye, arrested on the affidavit of a person whose occupation was making of pewter, but who called himself a civil engineer, as any one might call himself, and who swore that this foreign gentleman (Mr Ouverard), who was engaged in transactions involving between thirty millions and forty millions, owed him 1,050*l.* for work and labour done as engineer and surveyor; and that Mr. Ouverard had said he intended to leave the country. The individual who caused the arrest of this gentleman offered to let him off and abandon his claim upon him if he received forty guineas, but he stated in his affidavits that the debt was 1,050*l.* and the Chief Baron endorsed the writ for the whole sum. Mr. Ouverard was thus arrested, and remained in custody from Wednesday until Monday. He made an affidavit that he had not the slightest idea of leaving the country; and his niece, who, it had been alleged, had said that her uncle and herself were about to leave the country, stated in an affidavit that she never said any such thing. After a full consideration of the affidavits in reply, and of all the circumstances, the Chief Baron ordered the gentleman subsequently to be discharged. He (Lord Brougham) complained of the grievance which that foreigner had suffered; a grievance which might affect British subjects in France, for the law in France was, that whatever law of England was directed against a French subject in this country might be put in operation against a British subject in France, although such a law might not exist in France. In that case he (Lord Brougham), having a dispute with his agent, might be arrested on an affidavit for a debt of 1,000 guineas, and where he could not plead his privilege as a peer of Parliament. He would remark, that in a case where an application was made to Justice Wightman to endorse a writ on the ground that an individual was going to France, he asked the person if he had applied at the French passport-office to know if the individual had applied for his passport, and, being answered in the negative, refused to endorse the writ, as he said the person applying ought to have taken proper means to ascertain if the individual against whom he sought for the writ was really about to leave the country.—Lord CAMPBELL sincerely lamented the misfortune which had befallen Mr. Ouverard, but he should say that he considered the law upon this subject, as recently altered, had been placed upon a just, equitable, and satisfactory basis. The alteration was made in imitation of the Scotch law as regarded persons intending to leave the kingdom, and he had no doubt that the Chief Baron had acted in the case with the most perfect propriety.—Lord DENMAN said that whatever difficulty might be found as to the judge entering into the question of whether an alleged sum, say 500*l.* was really due for work or labour, there could be no doubt as to the capacity to enter into the question of whether an individual intended to quit the country or not.—The LORD CHANCELLOR asked his noble and learned friend what opportunity the judge had of ascertaining whether the amount claimed was really due.—The subject then dropped.

HOUSE OF COMMONS.

DEATHS COMPENSATION BILL.

TUESDAY, Aug. 11.—This Bill was read a third time and passed.

DEODANDS ABOLITION BILL.

Sir G. GREY moved the third reading of the Deodands' Abolition (No. 2.) Bill.—Lord G. SOMERSET called attention to the fact, that this Bill would not only affect the rights of many individuals and corporations, but would also materially affect the private interests of the Sovereign. He, therefore, thought that the House ought not to accede to it until it had received her Majesty's assent.—Sir G. GREY informed the House that the measure had already received that assent. The Bill was then read a third time, but on the question that it do now pass,—

Mr. HENLEY and Mr. S. WORTLEY both objected to the measure. The latter gentleman, after calling on the House to adopt the law of deadends to the present state of things, moved as an amendment, that a select committee be appointed to consider the present state of the law on the subject, and also that of actions for injuries to the person by accident or otherwise.—The ATTORNEY-GENERAL could not accede to the amendment, as the subject had already been carefully considered; and after a short discussion, in which Mr. WAKLEY, the LORD ADVOCATE, and Mr. HENLEY joined, the House divided, when the numbers for the motion were—Ayes, 51, Noes, 6; majority, 45. The Bill was then passed.

SMALL DEBTS BILL.

Sir G. GREY, in moving the second reading of this Bill, said the subject was not a new one to the House, having been brought before Parliament on many previous occasions by successive Governments; but circumstances had always prevented its receiving the sanction of the Legislature. It was known to the House, that the Law Commissioners of 1833, in their report, recommended that the whole country should be divided into districts in which courts should be placed, and competent magistrates appointed, and that the jurisdiction of these courts should extend to all cases of debt not exceeding 20*l.* except in some special cases. Now the present Bill was framed in strict conformity with the recommendation of the commissioners. It was drawn up by the late Government; and when the present administration succeeded to office, careful consideration was given to the question whether or no they would be able to proceed with a Bill having so many clauses during the present session of Parliament. A doubt was expressed on that point, and in consequence of that doubt most earnest representations were received from Manchester, Birmingham, and other large towns, urging Government not to delay the measure, but to proceed with it this session. The Bill was accordingly proceeded with. It had passed the House of Lords, and was now before that House, but was necessarily in an imperfect state, owing to the money clauses having been omitted by the Lords. If the House should on the present occasion agree to the second reading of the Bill, he would then propose that it be committed *pro forma* to-morrow, in order that the money clauses might be inserted. The Bill might be printed on Thursday, and on Monday next he proposed that it be re-committed.—Mr. WILLIAMS thought this was a most important Bill, and was glad that there was now some prospect of getting it carried. He begged to suggest to the Secretary of State that the machinery of the Bill might be used for effecting a most important improvement in another branch. It was proposed to divide counties into districts, with competent judges in each to preside over the local courts. Now, he suggested that the criminal jurisdiction of quarter sessions should be placed under the care of these local competent judges. The administration of the criminal powers of the quarter sessions was in a most unsatisfactory position, and the public had little confidence in them, the persons acting being very frequently entirely ignorant of the legal profession. There was no appeal from their proceedings, though an appeal was allowed from the decisions of the judges of the land. Most anomalous judgments were often given at these quarter sessions, and he thought the present Bill afforded an excellent opportunity of improving the system.—Mr. GREY was happy that there was some prospect of carrying the present measure; but he earnestly hoped the House would confine itself entirely to the Bill before them. The object of the Bill was in itself a matter of considerable difficulty; and if they added to it other questions of a different nature, those difficulties would be immeasurably increased. He simply rose to implore the House to confine itself to the subject before it.—Sir W. CLAY hoped the advice now given would be strictly adhered to. He must say that, so far as he had heard, the Bill had met with very general concurrence throughout the country.—Lord G. SOMERSET protested against the statement that the public had not the most perfect confidence in the equity and justice of the decisions given by the quarter sessions. So far as his experience went, there was as much confidence in the judgments of quarter sessions as in those of any other courts.—Mr. HENLEY defended the quarter sessions from the attack of the hon. member for Coventry.—Mr. SPOONER hoped no delay would take place in passing this measure, which was justly demanded by the trading community. Since the Act for the abolition of arrests had passed, the utmost difficulty had been experienced in the recovery of debts; and if the House knew the immense amount of debts of 5*l.* 7*l.* and 10*l.* which could not at present be recovered, he was satisfied that no delay would take place in passing the Bill. The present state of things was, in fact, a denial of justice to the small tradesmen, and the working classes suffered severely in consequence of the present unsatisfactory state of matters.—Sir G. GREY thought that if the House agreed to the second reading of the Bill, perhaps it would be better that it should be committed *pro forma* that very day, in order to receive the money clauses.—Mr. WAKLEY could not help feeling alarmed when he heard that the hon. member for Birmingham (Mr. Spooner) spoke in favour of the Bill. When he recollected the opinions which he held on the subject of the abolition of arrests, he could not but feel alarmed when he heard that he was in favour of this measure. If this Bill would increase the facilities of getting into debt for the poor, it would only increase their dependence and the other evils of their position.—Mr. B. ESCOTT expressed his high approval of the Bill.—Mr. MUNTZ thought it was absolutely necessary that such a measure should pass, and that with the least possible delay.—The Bill was then read a second time, the House went into committee *pro forma*. The Bill was reported and ordered to be re-committed on Monday next.

RAILWAY ACTS.

The following is the report from the select committee appointed to inquire whether, without discouraging legitimate enterprise, conditions may not be embodied in Railway Acts better fitted than those hitherto inserted in them to promote and secure the interests of the public:—

"1. That it is expedient that a department of the executive government, so constituted as to obtain public confidence, be established for the superintendence of railway business.

"2. That all proposals for the construction of new lines of railway, or for extensions or branches of existing lines, or for the amalgamation of lines already authorized with other lines or with canals, or for leasing railways or canals to railway companies, or for any other purposes relating to railways for which the sanction of Parliament is required, together with plans, sections, books of reference, and other papers required by the standing orders, should be laid before such department.

"3. That the department should test these plans, sections, &c. through its own engineers and officers, by means of local examination or otherwise, as it may think fit, and should inquire into and report to Parliament upon the particulars required by the standing orders to be specially reported upon by committees on Railway Bills; and that no committee on any Railway Bill should inquire further into such particulars, unless by the special order of the House.

"4. That this department should also inquire into the compliance with the standing orders, and how far the same, if not complied with in any particular case, ought to be dispensed with, and should report thereupon to Parliament.

"5. That the department should receive representations from local bodies, or from individuals, for or against any proposed line, whether such representations have reference to matters of public or private interests, and should hear the parties, and should make such inquiries on the spot, or otherwise, as they may think necessary, and should report the facts, and their opinion thereupon, to Parliament.

"6. That the department should report in each case what in its judgment would be a proper tariff of fares and charges.

"7. That all Bills for effecting any of the objects enumerated in the foregoing resolutions should be submitted to the department for examination and approval; and that it should be part of the duty of the department to enforce uniformity in the preparation of such Bills, as far as circumstances will allow.

"8. That no Bill for carrying any such proposal into effect should be introduced into Parliament without having the previous sanction of such department.

"9. That the department should be charged with a general supervision of all railways, and canals in any way connected with railways; and that for this purpose it should possess all the powers and execute all the duties now possessed and exercised by the Board of Trade, and such additional powers as may be necessary to enforce any regulations made from time to time for the accommodation and interests of the public.

"10. That the department should require from every railway company periodical returns, according to an uniform plan, approved from time to time by the department, and that it should annually lay before Parliament a report, giving the above returns, or abstracts thereof, together with such details and observations upon the state and progress of the railway system as it may deem useful.

"August 7, 1846."

THE MAGISTRATE.

Summary.

WE present below the report of the Select Committee on the Game Laws. The suggestions are numerous, but very unimportant. We have not leisure to comment upon them now; we shall probably review them in detail hereafter. The Poor Removal Bill is to pass, but avowedly only as a temporary measure

till there can be a general revision of the law of settlement.

REVIEW OF MAGISTRATES' CASES, Decided during Easter Term and Vacation, and Trinity Term and Vacation.

(CONTINUED FROM P. 373.)

HIRING AND SERVICE—SETTLEMENT.

WHERE there has been a continuous service for several years, a hiring has always been implied so as to give a settlement under 3 & 4 Wm. & M. c. 11; but the decision in *Reg. v. St. Anne's, Westminster*, 7 Law T. 225, shows that even then the examination must show that at the beginning of the year, residence during which is relied upon for the settlement, the servant was in the position required by the statute, viz. "unmarried, and not having child or children." The examination there stated a good hiring and service in 1827, but no residence in that year. It continued thus:—

I served the said Mr. Stroud, at his residence, which was in Crown-street, in the aforesaid parish of St. Anne, in the liberty of Westminster, under such yearly hiring, for about four years or more, and lived and lodged in the house of my master, the said Mr. Stroud, at his residence in Crown-street aforesaid, in the parish of St. Anne, in the liberty of Westminster, for more than forty days next preceding the termination of the said service.

This was held insufficient, as it did not show that the pauper was in a condition to gain a settlement by such service under the continuous hiring.

"In or about."—The examinations in the same case contained the statement of a hiring and service settlement, describing the hiring to have been "in or about the year 1832," and the service to have been for one year and five months. This was held bad for uncertainty, as it did not appear that the settlement was perfected before the 16th of August, 1834, when the settlement by hiring and service was abolished. This was in strict accordance with the principle to be deduced from *Reg. v. St. Paul's, Covent Garden*, 14 L. J. 135, M. C.; 1 New Mag. Cas. 327, that wherever a date is material with reference to the state of the law at or about the time when a settlement is alleged to have been gained, such date must be stated with precision.

JURISDICTION.

The perusal of the reports of cases upon settlements, and the number of orders that are upset for not shewing affirmatively the jurisdiction of the magistrates, coupled with the knowledge that, in fact, not hardly one of these orders was really made without jurisdiction, is, to our minds, one of the strongest arguments that can be used against the system which allows the waste of so much money in litigation. During the last Term several questions of this kind have been before the Court, and with varying success. The two most important have already been noticed in these pages, *supra*, 326; but attention may well be drawn to them again. We allude to *Reg. v. Radcliffe Culey*, 7 Law T. 182; and *Reg. v. Molesworth*, 7 Law T. 339. Each of these will be best understood by presenting the examinations which were held to be bad:—

County of Leicester, to wit.—The examination of James Deeming, now inhabiting in the parish of Melton Mowbray, touching the last legal place of settlement of himself and Mary his wife, and Arthur their son, aged eighteen months, taken upon oath before us the undersigned, two of her Majesty's justices of the peace in and for the said county, the 3rd day of December, 1844, at Melton Mowbray aforesaid, who saith, &c.

Taken and sworn before us,
W. E. HARTOFF,
ROGER MANNERS.

The second and remaining examinations were as follows:—

County of Leicester, to wit.—The examination of Anne Deeming, of Melton Mowbray aforesaid, widow, touching the above-named settlement, taken upon oath before us the said justices, the 3rd day of December, 1844, at Melton Mowbray aforesaid, who saith, &c.

Taken and sworn before us,
W. E. HARTOFF,
ROGER MANNERS.

It will be seen at once that none but the first examination, if taken by itself, appeared to be taken before justices having jurisdiction. The Court laid down the broad principle, that each examination should be perfect in itself, and held, therefore, all

the examinations but the first to be bad. It has been objected to this principle being applied to the copies of examinations sent with the order of removal, because the statute requires only "a copy of the examination." But we think there is nothing in this objection, as the Court has always held that examination in the statute means all the examinations, the word being used as *nomen collectivum*. (*Reg. v. Outwell*, 9 Ad. & El. 836.) And further, the object being that the appellants may know whether the pauper has been removed upon sufficient legal evidence, it is necessary, as it seems to us, that each distinct portion of that evidence should appear to be legal, i. e. to have been taken by justices having jurisdiction. If this be the correct principle, then *Reg. v. Moleworth*, 7 Law T. 339; 2 New Sess. Cas. 356, n., is quite in accordance with *Reg. v. Radcliffe Culey*, and probably the very brief and summary way in which it was decided arose from the recent occurrence of that case. It was there decided that each examination should shew that it was taken upon a complaint made by the parish officers. This complaint is as essential to legal removal as that the justices, who act upon it, should so act, within their jurisdiction, and shew that they do so according to the general principles of law, which protect the subject from any unauthorized infringement of his liberty. In the case in question the examination was headed as follows:—

Huntingdonshire, to wit.—The examination of Isabella Mantle, at present residing in the parish of Bythorn, in the said county, widow, &c. taken on oath, &c. before us, &c. touching the place of the last legal settlement of her the said Isabella Mantle, and her four children, naming them.

This is to be particularly observed, because in the useful works both of Mr. Archbold and that of Mr. Symons, the same omission occurs in the general form of examination there given. (See Archb. p. 551; Symons, 22.) But it does not occur in the late edition of Burns, title Poor, p. 1378.

Place of making the order.—The rule as to shewing affirmatively the jurisdiction of the justices was sought to be strained in *Reg. v. King's Lynn*, 7 Law T. 117; 2 New Sess. Cas. 334, so far as to upset an order, which shewed that the complaint was duly made to justices within the jurisdiction, but did not expressly state that the order was made by them within the jurisdiction, which very few orders until recently ever did state. Mr. Justice Coleridge thus disposed of the objection. After referring to the unwillingness, even of the full Court, to upset a long established practice (see 3 Q. B. 776) he continued:—

Taking the order, therefore, thus—"The churchwardens and overseers having made a complaint to us, two of her Majesty's justices of the peace in and for the said borough," (for I lay no stress on the word "upon"), and all the requisites necessary to making this order being stated, I say that no one can doubt that there is a sufficient averment of the complaint being made in the borough to justices acting in the borough. It is agreed, that, if we are to intend nothing for, we are to intend nothing against the order. Now let us make no intendment at all. The order then goes on to say "We, the said justices, upon due proof made thereof, &c. do adjudge the same to be true." Then, it is said, what was to prevent two justices going out of their jurisdiction to make the order? The answer is, that to suppose such a thing is to make an intendment against the order; and therefore we ought to adopt the more obvious meaning, and suppose that they made the order within their jurisdiction. As to the fact, that it is not stated at the foot of the order that it was given under the hands and seals of the justices within the borough, I think the fair inference is, as nothing is said as to the place, that the whole was done at the same time and place, and that the objection fails altogether. The rule, therefore, must be discharged, and with costs, as the order follows the usual form.

This doctrine of intendment may be illustrated by the case of *Reg. v. Newton Ferrars*, 7 Law T. 203. Where there is a manifest incongruity upon the face of the order, between the jurisdiction exercised and that which appears, then the order would be bad. Thus, an order made by the justices of Devonport, removing a pauper from Stoke Damarel, in the county of Devon, was held bad, because it did not shew in any way that Stoke Damarel was within their jurisdiction. A limit was expressly given to their jurisdiction by their description "as justices for the borough of Devonport," whereas Stoke Damarel was expressly stated to be within a county, and, as far as could be collected from the order, as little within their jurisdiction as if they had been described as justices of Dorsetshire or Yorkshire.

Police Magistrates.—Many orders of removal made by police magistrates have been objected to for want of shewing jurisdiction, and in *Reg. v. St. Giles*, 7 Law T. 206; 2 New Sess. Cas. 389, a discussion arose upon the sufficiency of the following:—"Whereas complaint has been made unto me, one of her Majesty's justices of the peace in and for the county of Middlesex (one of the police magistrates of the metropolis, sitting at the police court, Great Marlborough-street, in the parish of St. James, Westminster, within the metropolitan police district, by the churchwardens, &c." Patteson, J. certainly intimated a strong opinion that it was sufficient; but we did not understand that it was at all decided by that case, and it certainly was not necessary for the decision, as the order was clearly bad, upon the first objection, that it did not shew in the statement of the complaint that the paupers were actually chargeable.

LITERARY INSTITUTIONS.

Exemptions from rates under 6 & 7 Vict. c. 36.—We have already so fully discussed these cases upon this statute (*supra*, 7 Law T. 68, 145, 214), that we need only now state the points decided. In *Reg. v. Jones*, 7 Law T. 64; 1 New Mag. Cas.; 2 New Sess. Cas. 382, it was held that a distinct rule prohibiting "any dividend, gift, division, or bonus in money unto or between any of its members," is a condition precedent to any society being entitled to the benefit of the Act. The Court also expressed their unanimous opinion, that the Religious Tract Society was not a Society within the meaning of the Act "instituted for the purposes of science, literature, or the fine arts exclusively." A similar decision was given as to the British and Foreign School Society, which claimed exemption with respect of the buildings used for a Normal School in connection with it. (*Reg. v. Pocock*, 7 Law T. 206; 1 New Mag. Cas.; 2 New Sess. Cas. 372.)

Time for appeal.—But in the last case a question of more general importance was also decided, viz. the time for appeal, under the 6th section of the Act. It was held to give two periods from which the four months for appeal might be counted. First, after the first assessment of such rate made after the certificate filed; and, second, after the first assessment of such rate after exemption claimed by the Society. We cannot forbear again expressing our regret, that a statute so confessedly needing amendment, and so pointedly condemned by all the judges of the Court of Queen's Bench, should still remain upon the statute-book, in all its first obscurity and practical uselessness. Strange that, while crude, newfangled measures of doubtful utility are being hurried forward at this period of the session, with all the Government influence, no attempt is made to remedy the admitted defects of an Act well intended, but wholly ineffective.

MASTERS AND SERVANTS' ACT.

Conviction—Commitment.—Two important cases require notice upon the forms to be observed in drawing commitments or convictions under these Acts, which are so often put in requisition in some parts of the country. The words of the 3rd section of the 4 Geo. 4, c. 34, which bear upon the first question, are,

That if any servant in husbandry, or any artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer or other person, shall contract with any person or persons whomsoever, to serve him, her, or them, for any time or times whatsoever, or in any other manner, and shall not enter into or commence his or her service according to his or her contract (such contract being in writing, and signed by the contracting parties), or having entered into such service, shall absent himself or herself from his or her service before the term of his or her contract, whether such contract shall be in writing or not in writing, shall be completed, or neglect to fulfil the same, or be guilty of any other misconduct or misdemeanor in the execution thereof, or otherwise respecting the same, then and in every such case it shall and may be lawful for any justice of the peace of the county or place where such servant . . . shall have so contracted, or be employed or be found, and such justice is hereby empowered, upon complaint thereof made upon oath to him by the person or persons, or any of them, with whom such servant . . . shall have so contracted, or by his, her, or their steward, manager, or agent, which oath such justice is hereby empowered to administer, to issue his warrant for apprehending every such servant . . . and to examine into the nature of the complaint, and if it shall appear to such justice that any such servant . . . shall not have fulfilled such contract, or hath been guilty of any other mis-

conduct or misdemeanor as aforesaid, it shall and may be lawful for such justice to commit every such person to the house of correction, there to remain and be held to hard labour for a reasonable time, not exceeding three months.

The instrument under which the defendant Hammond had been imprisoned was apparently a warrant of commitment, but still it purported to convict him of the offence. After reciting generally the complaint against him, it proceeded thus—

We, the undersigned, . . . have duly examined the proofs and allegations of both parties touching the matter of the said complaint, they having come before us for that purpose, and upon due consideration had thereof, have on the oath of the said E. B. taken in the presence and hearing of the said John Hammond, adjudged and determined and do hereby adjudge and determine the said complaint to be true, and we do therefore convict the said John Hammond of the said offence, in pursuance of the statute in that case made and provided. These are therefore to command you the said constable, &c.

The objection that was held fatal was that this was in substance a conviction, and bad therefore for not setting out the evidence against the defendant. Mr. Justice Patteson further intimated that it was bad for not adjudicating the imprisonment. In answer to the ingenious objection that it could not be a conviction because not on parchment, the Court said that it was not shewn not to be on parchment, and that if that were necessary they would presume that the party who says he convicts and has authority to do so, has put it upon parchment. In *Turner's case*, 7 Law J. 205, the evidence was set out, but the instrument was held bad because it did not appear in the information and complaint that the absence was without the consent of the master, or without lawful excuse known to the master. It was held further, that it was necessary to set out the terms of the contract in the information, as otherwise it might be that the servant was not amenable to the provisions of the Act, for it is not every contract which is within the Act. Both these propositions depend upon the general rule, which we discussed at some length in our summary of last Michaelmas Term, *supra*, 6 Law T. 243, viz. "that where a certain act is made punishable by summary conviction, which act may be lawful under certain circumstances, these circumstances ought to be negatived in the conviction."

PARISHES, UNION OF.

Settlement not lost by union of parishes.—The cases of *Reg. v. Tipton*, 3 Q. B. 215; and *Reg. v. Hunsington*, 5 Q. B. 273, having decided that where a parish has been divided into townships, for the purpose of maintaining their own poor separately, a person, who has gained a settlement in the parish previous to the division, cannot be removed subsequently to any of the townships into which the parish has been divided; and that the settlement is extinct; the converse was argued in *Reg. v. St. Martin*, 7 Law T. 227; 2 New Sess. Cas. 416; and it was there contended that where the parishes were united the previous settlements in the respective parishes were extinct. The Court, however, at once overruled this argument, and decided that a pauper who had been settled in either of the parishes when separate, might now be removed to the united parishes. The difference between the two cases is clear. In the former case, the district sought to be charged had never been a district in which a settlement could be gained, it was only a part of a parish; whereas here, the former parish continued to exist, with the addition of the other parish, and both having agreed to share the benefits to be derived from a union, both ought also to share the burdens. E. W.

ALLOWANCE OF CONSTABLES' FEES BY JUSTICES.

(OPINIONS OF SIR F. THESIGER, SIR F. KELLY, AND MR. SWAYNE.)

THE magistrates acting for the division of Swindon, in the county of Wilts, entertained a doubt whether they could allow fees for service of summonses, &c. to police officers belonging to the constabulary force, established in the county, and they refused to allow any such fees, on the ground that the police were regularly paid for their services by salary, from the county-rate, and that the power which was given to justices to allow fees to parish constables did not authorize the magistrates to allow fees to police officers when they performed the duties of parish constables, and that any sum of money for such service could not be legally inserted in an order for payment of costs. The subject was brought under the

consideration of the justices in general quarter sessions, and they directed a case to be prepared for counsel. The questions which were submitted for the opinion of the counsel are stated below, and it will be seen that the then Solicitor and Attorney-General, and Mr. Swayne, were of opinion that such fees could not be allowed by the justices.

First. Whether, by the common law, or under the statute 18 Geo. 3, c. 19, or otherwise, justices were previously to the 5 & 6 Vict. c. 109, authorized to allow fees to constables for the service of summons and execution of warrants in proceedings between individuals and not on behalf of the parish, and to include such fees in the order for costs to be paid by either party?

Secondly. Whether as regards acts declared to be offences by statute, and cognizable before justices under their summary jurisdiction, and where the justices are empowered to award costs if they shall see fit, the justices could include in such costs a remuneration to constables for loss of time in serving preliminary process, and for attending before them to prove such services if necessary?

Thirdly. Whether, if police constables appointed under the provisions of the 2 & 3 Vict. c. 93, perform the duties of parish constables appointed under 5 & 6 Vict. c. 109, and for performance of which such parish constables are entitled to fees and allowances, the same fees and allowances are not under the 8th section of the former Act and the prospective effect thereof payable to the police constables, subject to their accounting for the same to the treasurer of the county?

OPINION.

We are of opinion, that justices had under 18 Geo. 3, c. 19, the power of allowing fees to constables for the service of summons and execution of warrants in proceedings between individuals, and to include such fees in the order for costs; subject, however, to such rules or regulations as might have been laid down by the justices in quarter sessions, and approved of by a judge of assize. But we are of opinion, that the powers and privileges of any constable, &c. given to police constables, appointed under the provisions of the 2 & 3 Vict. c. 93, by the 8th section of that Act, does not entitle them to receive fees and allowances for performing the duties of parish constables, appointed under the 5 & 6 Vict. c. 109.

(Signed) FRED. THESIGER.
FITE-ROY KELLY.
HENRY F. SWAYNE.

COPYHOLDS.—The following is a copy of the fifth report of the Copyhold Commissioners to her Majesty's Principal Secretary of State for the Home Department, pursuant to the Act 4 & 5 Vict. c. 35, s. 3:—

"Copyhold Commission, Aug. 3.

"Sir.—We have the honour of presenting to you our fifth report. The number of enfranchisements have again considerably increased.

"For the details of the business done we beg to refer you to the list which is appended.

"Some of the transactions included in it are large and important.

"Enfranchisements in manors held by ecclesiastics are steadily increasing, and in those manors there is a fair prospect of copyhold tenures being ultimately extinguished voluntarily.

"In manors held by laymen the progress is slower. Terminal of railroads, and the increasing population of the towns, lead to building speculations. Builders find that they can rarely sell with a copyhold title, and the number of enfranchisements from those causes will almost necessarily increase steadily.

"We believe, however, that it would be a public benefit if the Legislature were to sanction a compulsory extinction of some of the copyhold incidents, more especially of heriots.

"We have the honour to be, Sir,

Your faithful and obedient servants,

"W. BLAMIER.

"T. WENTWORTH BULLER.

"R. JONES.

"To the Right Hon. Sir G. Grey, Bart. M.P. &c."

PROPOSAL TO BUILD A NEW COURT IN MIDDLESEX.—The grand jury having finished their labours, came into court and presented the last bills they had found.—Mr. Serjeant Adair said he would detain them a few minutes, in order that they might view the court, and make personal observation of the inconvenience all parties were put to who attended the court. He was often obliged to give up his own private room for the use of females, who were sometimes compelled to attend the court while in a delicate situation, in order to preserve them from annoyances, consequent upon mixing with the crowd in the hall of the court. The ventilation of the court could not be worse; the temperature was, at the time he was speaking, so hot as scarcely to be borne. There was not a window in the court which could be opened without inconvenience to the judge, the jury, the barristers, or witnesses; that being the case, the heat was quite intolerable. Mr. Pownall said he would

shew the grand jury over the court, as he wanted them to make a personal inspection of the deficiency of accommodation in this court, and to convince them of the necessity of a farthing rate, which would realise about 6,000l. to build a court. He could not help saying that this court was a disgrace to the county of Middlesex; there was no accommodation for barristers who wished to speak to their clients. In fact, no parties who visited the court could be properly accommodated. The reason he wished to shew them the inconvenience of the court was, that the Government might know that the money entrusted to them was not thoughtlessly squandered away. When the grand jury inspected the court, he was quite sure that they would concur with him in the belief that a new court was very much required.

A MINIATURE PENTONVILLE AT KIRKDALE GAOL.—A small experimental prison has been erected, at a cost of about 3,000l. within the boundary walls of Kirkdale Gaol, upon the plan adopted at Pentonville. The interior has been fitted up with every regard to comfort and cleanliness. It contains forty-two cells, which might with more propriety be called dormitories; for, except that there are iron bars to the windows and a sheet-iron casing to the doors, there are no other indications that liberty is denied to their occupants. There is no fire-place, but the prisoner, by an ingenious contrivance, can obtain hot or cold air at pleasure. He has, besides, other indulgences granted him, being permitted, in the company of a keeper, at certain hours, to roam up and down the beautifully gravelled walk which encircles the chapel and adjoining lake. None are admitted except felons who have been found guilty and sentenced to various terms of imprisonment; and upon these the effects of religious and moral training are being tried, in the hope that, when the time of their liberation arrives, they may leave the prison better than when they entered it. What the results may be it is, of course, impossible to foresee; for, as the system has only been in operation about a month, it cannot yet be said to have been fairly tested.

A PAUPER JUROR.—At the Cork Assizes on Saturday, previous to discharging the grand jury, his Lordship called their attention to the necessity of a due performance of the duties of the high constables in regard to making out the jury list. These officers ought to be visited with the legal consequence for a non-performance of these duties. As his Lordship was about to adjourn the Court, Mr. Crofts, one of the jurors, said there was one of his fellow jurors who had not the means of affording himself the ordinary subsistence of life. The juror to whom he alluded had eaten but one meal on the previous day, and nothing that day with the exception of some biscuits. He was an aged man, and it was really melancholy to think that he would be without sustenance on Sunday, and be obliged to walk home a distance of twenty miles when his Lordship should have discharged them on Monday. Court.—What is the gentleman's name? Mr. Crofts.—John Lyons, my Lord. Court.—Gentlemen, I do not know what I can do now. Is there any one here from the Crown Solicitor? The sheriff replied in the negative. Court.—Under the circumstances, gentlemen, I will allow Mr. Lyons to go home, and discharge him from further attendance in this court this assizes. Mr. Crofts.—Really, my Lord, it is very hard that this poor man, whose case I have made known to the Court just as he had told it to me, should be brought all the way from Malton to attend on a jury, while numbers of independent gentlemen are left at home. Court.—Gentlemen, I have said a good deal on the point myself. I release the juror in question from further attendance; but he does not seem, gentlemen, to be in such an abject state as has been represented. The jury then made up 8s. 6d. by subscription amongst themselves, to enable the poor man to return home. —*Dublin paper.*

THE LAWYER.

Summary.

No legal incident of interest has occurred during the week. The judgments are now nearly completed, saving some half dozen in the Exchequer, which we hope to receive in a few days from the reporter, who is out of town. The coming vacation will be devoted to bringing up a large accumulation of arrears of New Statutes, Parliamentary Papers, Notes of Cases, Correspondence, Law Lectures, Notices of new Law Books, and other valuable material, which has been unavoidably omitted during the pressure of the reports of the late busy Terms.

The following remarks appear as a leading article in the *Morning Herald*:—

Our readers will have perceived, from our Oxford Circuit report in a recent publication, that the new

Lord Chief Justice Wilde, who presided in the Civil Court at Hereford, sat on Tuesday until nearly twelve o'clock at night, disposing of causes; and that notwithstanding this effort on the part of the judge, and although five causes were referred, yet one was made a remanet. It is true that the list was heavy, there being sixteen causes to try, eight of which were special juries; but, notwithstanding this pressure of business, we have no doubt Sir C. Cresswell, Sir E. H. Alderson, Sir William Erie, Sir J. Parke, or Sir R. M. Balf, could have got through the work by Wednesday night, in time to open the commission at Monmouth. Far are we from saying any thing against the inexhaustible patience—the laborious and investigating spirit—the great learning and lucidity, the constant impartiality, the inflexible integrity, and great professional attainments of Sir Thomas Wilde; but consciousness is not one of the learned knight's virtues; and on the bench, as when an advocate, he errs—from all the accounts we have heard—by excess of elaboration. We have no doubt this fault arises from a sensitive, and, perhaps, over-anxious desire to do complete justice. But though the object be laudable, the end is sometimes, from this excess of precaution, defeated. Better, far better, were it that the new Chief Justice should seek to emulate his eminent predecessor, who, though abundantly diligent and profoundly learned, was never too elaborate in his investigation of a point or a cause. To do enough is all that is needed for judge or even advocate, and he is the best judge or advocate who contents himself with doing enough, and not in overdoing. No man has known Sir Thomas Wilde longer or better, or is more capable of appreciating, or more desirous of extolling his really great powers than Lord Brougham, and in an article, attributed to his pen, in the *Law Review* just published, and which indeed bears internal evidence of his authorship, he has deemed it his duty to address the late Chief Justice Tindal's successor in terms of respectful and well-meant admonition. "Our drift," says his lordship, "is to remind Sir T. Wilde that even an advocate may err by excess of elaboration, because he may undo what he has done; may raise up indisposition in those whom he is addressing, and may weaken the very point which his over-laboriousness is directed to strengthen. How much more should the judge guard himself against falling into the same error; not, indeed, because he may fall thereby to convince, for the purpose of judicial rhetoric is not to convince, but only to declare the opinion, and to show the grounds it rests on; but because he must needlessly consume the public time and waste his own strength, and because he peradventure may raise doubts, shake his own judicial authority, and expose parties to the delay and vexation and cost of appeals, or, even where no appeal lies, may bring the law into question, and raise up a crop of future litigation."

These are just and judicious remarks, and well deserving the attention of the able and eminent person to whom they are addressed. It is in a spirit of respectful friendliness, and because we desire to see Sir Thomas Wilde a perfect as well as a great judge, that we should wish to see that diffuseness and over-elaboration, which is a real blemish, corrected and repressed.

A letter in *The Times* prefers a complaint so justly founded, that we extract it for the purpose of returning to the subject on a future occasion.

BUSINESS AT ASSIZES.

TO THE EDITOR OF THE TIMES.

SIR,—The assizes are now drawing to a close. Any one whom necessity has obliged, either as principal or attorney, to be present at a trial on circuit, will have caught the phrase, current with the Bar, "getting through the business." In its ordinary sense this phrase would imply a laudable effort on the part of the Judge and the Bar to fulfil the whole of their duty, and it is not until the particular business which concerns himself has been so "got through" that the unhappy subject learns the full meaning of the expression. Having just been initiated, I am able to give a correct explanation of the term. I went down from London a few days ago as the attorney for the defendant in a cause of considerable importance about to be tried at the assizes. The case had occasioned me much anxiety for three months previously. In addition to the services of a local agent in collecting evidence, I considered it necessary to go down to the spot several days before the commission day to examine the witnesses myself and to complete and deliver the briefs. This I did, and having spared no pains, I felt a reasonable confidence as to the result. The cause was to be tried by a special jury, and was appointed for the last day of the assizes for the county. The morning broke—I had all my witnesses early in court, and took my station, quite prepared, in the rear of my leader. Before the case was called on, he turned round and asked me carelessly, "If—if they should make any proposals to refer, would you feel inclined to—?" "Decidedly not," I replied; "the case must go to the jury." The anticipated proposal was made and rejected, and the cause was opened in form.

After the lapse of an hour, some discussion on a point of evidence gave occasion for the judge to express an opinion. Up starts my leader again. "Don't you see," he whispers to me, "his Lordship is dead with us? We had better confine ourselves to the first issue. Go to the jury upon that, and refer the other five." I did not see, and shook my head to express my infirmity. "You're mad; don't you see, the judge will say so and so; the jury will be sure to give us a verdict upon the first issue, and you know you can examine the parties before the arbitrator." By this time my two junior counsel had come to the charge—"You really are throwing away the case—well, if you don't take our advice, the whole responsibility rests with you." What could I do? In an evil hour I was overpersuaded, and gave way. The experienced judge patiently witnessed the deliberation; he knew what was coming, and felt as sure that he would leave by the 12 o'clock train as if his place had been booked a week. My leader made a short address to the jury, closed his brief, indorsed the words "Verdict for," and waited pen in hand for the jury to supply the remainder of the sentence. They did not tax his patience long—"Verdict for the plaintiff on the first issue, reference as to the rest." The briefs were handed to me in court; I was left, with a host of witnesses, to dispose of all the heavy part of the case as I best could before an arbitrator, while the judge and counsel went off by the twelve o'clock train in the highest possible spirits; and this is termed "getting through the business."

A YOUNG ATTORNEY.

NOTES ON NEW CASES IN EQUITY AND CONVEYANCING. No. II.

MORRALL v. SUTTON.

Rule as to the construction of wills in cases of contradiction or repugnancy.

Edward Lloyd, by his will dated in 1789, "gave and bequeathed unto A. R. Waring, S. Calcott the elder, and M. Spencer, all his leasehold estate in Gloucestershire, for their joint natural lives and the life of the survivor, but charged with the following annuities: 20*l.* to Esther Jorginson for life; 20*l.* to Sarah, daughter of Esther Jorginson, for life; and 10*l.* to Mrs. Addenbrooke. And from the decease of the said A. R. Waring, S. Calcott, and M. Spencer, he devised and bequeathed his said leasehold estate in Gloucestershire (subject to the said annuities) to S. Calcott the younger, if then living, *her executors, administrators, and assigns (subject to the said several annuities charged thereon), during the term of her natural life.* And if the said S. Calcott the younger should die in the lifetime of the said A. R. Waring, S. Calcott the elder, and M. Spencer, leaving any lawful issue of her body living at the death of the survivor of them, the testator devised and bequeathed the said leasehold premises, from the several deceases of the above-named three persons, to such child or children of S. Calcott the younger as should then be living, to be divided equally, if more than one; provided that if any child of S. Calcott the younger should be then dead, leaving issue then living, such issue should be entitled to the parent's share; but if S. Calcott the younger should die in the lifetime of the above-named three persons, or either of them, without leaving issue living at the decease of the survivor of them, he then devised and bequeathed his said leasehold estate, after their several deceases (but subject to the annuities), to Thomas Jorginson and Charles Morrall, their administrators, executors, and assigns, for all the then residue of the said leasehold interest.

The question in the case was, whether S. Calcott the younger, who survived A. R. Waring, S. Calcott the elder, and M. Spencer, took an absolute estate in the leaseholds, or only an estate for life.

The case was twice argued before the Master of the Rolls, who on both occasions held that she was entitled only to an estate for life. (4 Beav. 480; 5 Beav. 100.) On an appeal to the Lord Chancellor, his lordship called to his assistance Mr. Baron Parke and Mr. Justice Coleridge, before whom the case was heard. The learned judges, differing in their opinion, delivered separate judgments, of which we annex a summary.

PARKE, B.—The case depended upon the following clause in the testator's will:—"From and after the decease of the said three persons" (previously named), "I give and bequeath my said leasehold estate in Gloucestershire (subject to the said several annuities as aforesaid) to Sarah Calcott the younger, if she shall be then living, her executors, administrators, and assigns (subject to the said annuities charged thereon)"—in a parenthesis

—"during the term of her natural life." Under this clause, did Sarah Calcott the younger, who survived the three tenants for life, take an absolute or only a life interest? The rules of construction applicable to the question were, that technical words were *primâ facie* to be understood in their strict technical sense; that the clause was, if possible, to receive a construction which would give to every expression some effect; that all the parts of the will were to be construed so as to form a consistent whole; that the construction was to be preferred which would prevent an intestacy; and that where two provisions were irreconcilable, and there was nothing in the context of the will leading to a different conclusion, the last should prevail. In the present case all attempts at reconciling the contradictory expressions had failed, and the main question was, whether the context of the will afforded such clear evidence of the testator's intention as to justify a construction which would give the legatee the absolute interest. The provision in favour of Sarah Calcott's children, in case of her death in the lifetime of the three tenants for life, was relied on as evidence of the testator's intention to provide for them, which in the event that had happened (*viz.* Sarah Calcott's survivorship of the tenants for life), only could be done by their mother's interest extending beyond her own life. And (the learned Baron admitted) any satisfactory evidence of an intention to provide for S. Calcott's children, either generally or in the event which had happened, would be a ground for rejecting the words which only gave her a life-estate. But he could find no indication of any such intention. There was certainly an express provision in their favour in one event (*viz.* the death of their mother during the lives of the three tenants for life), but in one event only; and in that event, upon failure of issue, the testator gave an interest in remainder to other parties, to whom also he gave no interest if that event should not happen. The testator, besides, had not given the estate absolutely to the mother, which a desire to provide for the children would render probable, but had only given it to her if she survived the tenants for life; and he had given it her whether she had issue or not. There was, therefore, no consistent intention to provide for the children by giving an absolute estate to the mother; and it was mere conjecture whether the testator meant a benefit to the children in the event which had happened. It was not an unreasonable conjecture that he did so mean, nor were other conjectures which had been suggested unreasonable, but they were all mere conjecture; and it was the province of judges to expound the actual wills of testators, and not, upon conjecture, to make wills for them. In the cases upon the subject, either the intention of the testator had been clear (*Reece v. Steel*, 2 Sim. 233), or senseless words had been rejected in favour of sensible (*Smith v. Pybus*, 9 Ves. 566); or interlined words, presumably the last written, had been rejected because they were repugnant to the whole disposition. (*Boone v. Cornforth*, 2 Ves. 277.) In other cases, all of which were collected in Jarman's edit. of Powel, (vol. 1, 380, note), the language of the will had been altered, as by the change of "or" into "and," or the reverse, to suit the testator's clear intention; but here the intention to benefit the issue was not clear—it was mere conjecture; and the argument in favour of an absolute gift, founded upon the improbability of an intestacy, was answered by the fact that the residuary clause disposed of the remainder. The meaning of the words, therefore, could only be decided by the clause itself, according to the established rules of construction; and the learned baron, so deciding, thought that the apparent repugnance was best explained by understanding the gift to the executors as a gift to them after S. Calcott's death, of a fruit fallen during life, or (and he preferred the latter explanation) that the two provisions were absolutely repugnant, and being irreconcilable and unexplained, the latter must prevail, by which Calcott could take only a life estate.

COLERIDGE, J. agreed that no interpretation had been, or probably could be, suggested, by which the two apparently repugnant sentences in the clause under consideration could be reconciled, and, therefore, to give any effect to the clause, one must be rejected. Which was it to be? In answering that question, it was to be remembered that the present was not an inquiry into the meaning of the testator's language; but what words the testator must be supposed to have deliberately written—which sentence contained his last will;—a case

warranting a wider discretion in the Court than would a mere case of interpretation. The general rule in such an inquiry undoubtedly was, that the latter clause or phrase was to be preferred; but it must not clash with another paramount rule, that, before all things, they ought to look for the intention of the testator, expressed or clearly implied in the general tenor of the will. If, on satisfactory evidence, they found that intention, to it, without doubt, the inconsistent clause, whether it stood first or last, should be sacrificed; for, in a case of repugnant clauses, the latter was chosen, only because it was presumed to contain the last wish and intention of the testator, and if that presumption were overthrown by the better evidence of the whole scope of the will, the rule necessarily fell to the ground, and the first of the two inconsistent clauses or sentences was acted upon. This would be an where the repugnancy existed between two clauses, and *à fortiori* so, where, as in the present case, the repugnancy was between two sentences of the same clause, for a change of intention was more easily supposable between the penning of two separate clauses than of two sentences in one clause. The rule was well laid down by Mr. Jarman, in his book on Wills (chap. xv. vol. 1, p. 420), although in the opening of that chapter his language required qualification; and as to that rule there was no difference between himself (Coleridge, J.) and his learned brother. But as to the application of the rule they differed; and its application depended upon the evidence of intention furnished by the will. It was admitted that, if there were clear evidence of an intention to provide generally, or in the event which had happened, for the children of S. Calcott, the words, however placed, ought to be retained, by which alone that intention would effectuated; but it had been assumed that a clear intention to provide for them in certain events afforded no fair inference of an intention to provide for them in the event which had happened. This seemed to him unreasonable, and he, on the contrary, thought that a provision for children in three or four possible contingencies afforded a strong ground for inferring an intention to provide for them in a fifth; sufficiently strong, at least, to determine the choice between two inconsistent clauses, in one of which that intention was carried into effect without the necessity of adding or altering a word. Was conclusive evidence of intention, expressly embracing every contingency, necessary? No; because if there were sufficient evidence to negative one of the repugnant sentences, yet not sufficient absolutely to confirm the other, the latter, nevertheless, would stand, because the former must in such a case be rejected. The rule was a rule of evidence, and the reasons for its application or rejection should be cogent, but need not be conclusive. The degree of cogency could not be defined, but, from authorities in analogous cases, the Court would be warranted in rejecting the technical rule wherever it would be warranted in transposing clauses, altering words, or supplying devices unexpressed; to do which the Courts had not required evidence of necessary inevitable cogency, but only that which made the intention of the testator, and the alteration of the will, highly probable. (*Soule v. Gerrard*, Cro. Eliz. 525; *White v. Barber*, 5 Burr. 2703; *Ambler*, 701.) Was there not then strong evidence in the present case against the intention to limit S. Calcott's estate to an estate for life? Such limitation involved, in a certain event, an intestacy; at least in the contemplation of the testator; and the details of the will greatly strengthened the general presumption against intestacy. S. Calcott and her issue were near objects of the testator's bounty, and were to be provided for by the property in question; for if the mother were to die during the lifetime of the tenants for life, the children who survived them were to take absolutely; and if any child should die before the tenants for life, leaving issue who survived them, such issue was to take the parent's share absolutely. The ultimate remainder-men, too, were only to take if S. Calcott died before the tenants for life, leaving no issue. But if she survived them, what estate would she take? By rejecting the former of the two sets of words employed, her children were left unprotected for the ultimate remainders were defeated, and there was a virtual intestacy as to that part of the property, against the clear wishes of the testator. By rejecting the latter, the interests of the children were, as they safely might be, intrusted to the mother, and the supposition at once destroyed of the remainder-men. Could it be assumed that the testator intended to give all the property to the

children or remainder-men, if S. Calcott never came to it, but nothing if she did? No such supposition could be entertained; and was it to be adopted and acted upon because the words involving it were last written? The whole details of the will rebutted the presumption that between the first and last set of repugnant words a change of intention had taken place in the testator's mind—the greater portion of the details, too, having been written after the last set of such repugnant words had been employed. For these reasons the learned judge thought that S. Calcott took an absolute interest in the leasehold estates.

The LORD CHANCELLOR expressed his intention of requesting the assistance of the Chief Justice of the Common Pleas and the Chief Baron of the Exchequer; but, it is believed, the case has since been compromised.

The length to which our summary of the judgment (occupying in Mr. Phillips's Reports no less than twenty-two pages) has run, must necessarily abridge the few remarks we proposed to offer on the interesting question involved in the above case. The rule by which effect is given to the last of two repugnant clauses in a will (though to the first in a deed) was for a time doubted and disputed by many able lawyers, but is now settled law. It may be traced from the time of Lord Coke, who states it in the First Institute (Co. Litt. 112, b); and "it is curious," says Lord Brougham, in *Sherratt v. Bentley* (2 My. & K. 161), "to observe how he deduces it from the text." Littleton (s. 168) simply says, "that if a man at divers times make divers testaments and divers devises, &c. the last devise and will shall stand." His learned and subtle commentator then adds—"Hereby, &c. is to be understood also that in one will where there be divers devises of one thing, the last devise taketh place; cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est." And this doctrine (though not applied to the particular case mentioned) has received the sanction of all modern authorities. (See the opinion of Alvanley, C. in *Sims v. Doughty*, 5 Ves. 243, and in *Constantine v. Constantine*, 6 Ves. 100, and of Eldon, C. in *Wykham v. Wykham*, 18 Ves. 395; see also 2 Atk. 372; 3 Ves. 99; 1 Ball & Bea. 449; 4 T. R. 605; 2 My. & K. 161.) And in *Doe dem. Leicester v. Biggs* (2 Taunt. 109), the principle was extended by the Court of King's Bench to inconsistent expressions in the same clause, as well as to separate clauses of the same will.

But this rule, by which the latter of two repugnant clauses or phrases is preferred, can only be acted upon in cases of absolute and irreconcilable repugnancy. Where the words are only apparently repugnant, or where a construction can be put upon them by which effect will be given to all, the rule does not hold. Accordingly, where a consistent disposition can be deduced from the entire will, its clauses will be transposed for the purpose (Cro. El. 9; 15 East, 309; 1 B. & Ald. 137; 1 Atk. 419), or a later devise will be regarded as an exception out of a former, or the reverse (3 M. & S. 158; 16 Ves. 314; 7 Sim. 549; 7 Taunt. 105; 2 Bl. 979); or, in a devise of the same estate to different persons, the devises will take concurrently, either as tenants in common or as joint tenants. (2 Myl. & K. 165.) The last point was, for a time, doubted, and it was thought either that both the gifts were void, or that the latter must exclusively prevail—of which opinion was Lord Coke (as above stated); but subsequent authorities have applied to such a case the doctrine that all the gifts must (if they can in any way) be reconciled, and the devises (at least with regard to a divisible estate or chattel) now take concurrently, though whether as joint tenants or tenants in common seems doubtful. (See Mr. Butler's note to Co. Litt. 112, b, n. 1; *Parson v. Yardley*, Plowd. 539; *Ridout v. Pein*, 3 Atk. 486; *Sherratt v. Bentley*, *ubi supra*; 1 Jarman on Wills, 418.)

In these and in all the other variety of cases in which the Courts have endeavoured to reconcile the apparently repugnant devises of ill-drawn wills, the great object has been to ascertain and to give effect to the intention of the testator. It is naturally assumed that each clause and each sentence contains, in part, the expression of his wishes, and that those wishes are consistent with each other. And this assumption imposes upon the Courts the duty of giving effect, if possible, to every wish, and of attaching a meaning, if possible, to every sentence. In many cases, however, this is quite impossible. Not only inconsistent but directly contradictory

clauses and phrases are often, *per incuriam*, inserted; and to render the instrument sensible or consistent, some change in its phraseology is indispensable. That change the Courts, in pursuit of, and in obedience to, the testator's intention, have not hesitated to make. They reject words at variance with the context. (2 Ves. sen. 576; 7 Sim. 56; 2 Cox, 340.) They reject ambiguous words inconsistent with a clear prior devise. (12 East, 515; 9 Ves. 566; 2 Bligh, 1; 2 Sim. 233; 1 My. & K. 148.) They supply words to effectuate the intention, as collected from the context. (Cro. El. 248; Cro. Car. 185; Amb. 122.) They affix a devise to a certain object where the testator has left it without an object (2 Dowl. & R. 398; 2 Moo. & Pay. 490); and they change one word or phrase for another. (3 Ad. & El. 340; Cro. El. 525; 2 Ves. sen. 243; 2 Kee. 255; 4 Bligh, N. S. 329.) But this license of dealing with the will of a testator, the Courts have not taken, except where the intention is clear and manifest. (18 Ves. 368; 16 Ves. 46; 16 Ves. 27.)

And this brings us to the important question discussed in *Merrall v. Sutton*, what amount of evidence is necessary or sufficient to indicate the intention of the testator? Must the context shew a probability of intention, or is a certainty of intention required to justify any alteration of the will? This we believe to be the sole question; for we cannot recognize the distinction drawn by Mr. Justice Coleridge, between an alteration of the will, by supplying words necessary to effectuate the testator's intention, and an alteration of the will, by rejecting, in defiance of the technical rule, the latter of two repugnant clauses. The principle applicable to every case of alteration is the same; viz. obedience to the testator's intention; and there seems no reason why you should ascertain that intention in a different method, or be satisfied with less stringent evidence with regard to it, in one instance than in another. The particular rule is, that the last repugnant clause is to be preferred, unless the testator's intention directs the contrary; as the general law is, that every sentence is to be construed as it stands, unless (again) the testator's intention directs the contrary; and, under the particular rule, how can you be justified in preferring the former repugnant clause if you know not what the intention is, any more than you can, under the general law, be justified in applying changing or words without knowing what the intention is? And this observation tends to shew, not only that the same amount of evidence is required in the selection of the prior repugnant clause as in any other alteration in a will, but that that amount must be of the highest and most conclusive kind. For, to alter the will or to take the first of two repugnant clauses, you must have ascertained the testator's intention; and you cannot ascertain it by any thing short of conclusive evidence. In the cases relied upon by Mr. Justice Coleridge in support of his view, the intention of the testator seems scarcely to have been disputed. In *Soullie v. Gerrard* (Cro. Elis. 525), Glanville, counsel for the plaintiff, did not adopt the argument suggested, that the intention was not clear—only probable; on the contrary, he is reported to have argued "that the disjunctive 'or' should not be taken for the conjunctive 'and,' for that were to construe the intent against the direct words of the deviser, which never shall be." And in *White v. Barber* (5 Barr. 2703; Amb. 701), although the evidence of intention was, necessarily, of a "moral" nature, and, consequently, "fell short of demonstration," yet it was as conclusive as it well could be, and the terms in which the Court of King's Bench worded their certificate to Chancery shew that to their minds at least the evidence had been quite conclusive. And probably the nearest approach to a rule of which the subject admits, may turn out to be this, that, whatever be the evidence, it must carry to the minds of the Court an irresistible conviction that the testator intended the construction in favour of which they make any alteration in his will. Demonstration is out of the question, but the mind of the judge must be convinced of the testator's intention before he would be justified in introducing any change in the wording, or in rejecting the latter of two repugnant clauses, of the will; and though cogent evidence may strengthen the probability of a conjecture, evidence little if any thing short of conclusive can alone carry with it absolute conviction. And, with regard to the particular rule under consideration, it may not be immaterial to remark that if either of two repugnant clauses could be preferred upon the strength of

its superior probability, or upon evidence shewing merely that its selection was more likely to be in accordance with the testator's intention, no longer would any necessity exist for the continuance of the rule, for it is almost impossible to conceive a case in which a higher probability could not be shewn in favour of one, rather than of another, of two repugnant clauses.

For further information upon the construction of inconsistent or repugnant wills, see 1 Jarman on Wills, c. 15 and 16, pp. 411 to 459.

J. W. B.

THE PRACTICE OF WILLS.

By G. S. ALLNUTT, Esq. Barrister-at-Law.
BOOK II.

PROBATE OF WILLS.

CHAPTER I.—IN WHAT COURT A WILL MUST BE PROVED.

(Continued from page 437.)

With the exception of some few cases of special prescription (2 Black. Com. 494,) the Ecclesiastical Court is the only court in which wills of personal estate may be proved; and a probate granted by the prerogative court is conclusive evidence, in courts of law and of equity, of the validity of the will, as to personal property. (*Allen v. Dundas*, 5 Term Reports, 125; *Griffith v. Hamilton*, 12 Ves. 298, and the cases cited in Mr. Hargrave's Law Tracts, p. 459.)

The will, in case the whole of the testator's goods be within the jurisdiction in which he dies, must be proved before the ordinary of the place; but if the deceased had *bona movibilia* or chattels to the value of a hundred shillings, in two distinct dioceses or jurisdictions, then the will must be proved before the metropolitan of the province, by way of special prerogative, whereas the courts where the validity of such wills is tried, and the offices where they are registered, are called the prerogative courts, and the prerogative offices of the provinces of Canterbury and York. (2 Black. Com. 509.)

The ordinary is usually the bishop of the diocese, but there are districts exempt from his jurisdiction, and called peculiars, the officers of which have the power to grant probates of wills. Mr. Williams, in his valuable Treatise on the Law of Executors, says (vol. 1, p. 180, n. e), "Peculiar is of several sorts. 1. Peculiar of the archbishops, exclusive of the bishops and archdeacons, which spring from a privilege; they had to enjoy jurisdiction in such places where their seats and possessions were. Within the province of Canterbury there are more than a hundred such peculiars; but the term *curia episcopalis* is applied to thirteen parishes within the city of London, and the several parishes composing the deaneries of Croydon in Surrey, and Shoreham in Kent; of these the Dean of the Archies is judge: in the other peculiars, the jurisdiction is exercised by commissaries; from whose sentence an appeal lies to the Archies; (2 Glba. Cod. 978, n. 3.; *Aughtie v. Aughtie*, 2 Phillim. 201, note by the learned reporter.) 2. Peculiar of bishops, exclusive of the jurisdiction of the bishop of the diocese in which they are situated: of which sort, the bishop of London has four parishes within the diocese of Lincoln. (2 Glba. Cod. *ubi supra*.) 3. Peculiar of archbishops, exclusive of archidiaconal jurisdiction. 4. Peculiar of deans, and of deans and chapters, prebendaries, and the like, who have power to appoint commissaries for probate of wills, &c. (2 Glba. Cod. *ubi supra*.) Archdeacons have no power to grant probates *quatenus archidiaconi*, although they may do so as the bishops' commissaries for their respective archidiaconates, or by reason of peculiars, belonging to the fourth class of those above enumerated. (*See Adams v. Savage*, 6 Mod. 184.) There is also another sort of peculiar, more highly exempt than those already enumerated, viz., Royal Peculiars, which are exempt from the jurisdiction, not only of the diocesan, but of the archbishop also, and which anciently were immediately subordinate to the see of Rome. A royal peculiar is in no degree subject to the archbishop; it is independent of him; it is as much out of his province in point of jurisdiction as the province of York or of Dublin; it is co-ordinate. (*Smith v. Smith*, 3 Hogg 769.) By the statute 36 Hen. 8, c. 19, these were placed immediately under the jurisdiction of the Crown; and all appeals from them transferred directly to his Majesty in the High Court of Delegates. (*See Parkin v. Tupper*, 3 Phillim. 246; *Johnson v. Lee*, 5 Binn. 589; 3 Hogg. 763.)

The ordinary may exercise his jurisdiction of granting probates either by himself or by deputy,

and the power is not local, but annexed to the person of the ordinary (*Barnes v. Mordaunt*, Noy, 112.)

Upon the vacancy of a see, the dean and chapter have the power to grant probate.

The value of the goods of the deceased which were distinguished as *bona notabilia*, was, as we have before stated, formerly fixed at one hundred shillings, but different computations having been made of this amount, it was provided by the 63rd of the Canons, made in the first year of King James the 1st (A.D. 1603), that "no judge of the archbishop's prerogative shall henceforward cite or cause to be cited *ex officio* any person whatsoever to any of the aforesaid intents (viz., for the probate of wills or grant of administrations), unless he have knowledge that the party deceased was, at the time of his death, possessed of goods and chattels in some other diocese or dioceses, or peculiar jurisdiction within that province, than in that wherein he died, amounting to the value of 5*l.* at the least: decreeing and declaring that whoso hath not goods to the said sum or value shall not be accounted to have *bona notabilia*. Always provided that this clause here, and in the former constitution mentioned, shall not prejudice those dioceses where, by composition or custom, *bona notabilia* are rated at a greater sum." By this latter clause, the rating of *bona notabilia* in the diocese of London continues at 10*l.*, the sum at which they were there formerly fixed by composition. (2 Black. Com. 509.)

By the 92nd Canon, Jac. 1, it is provided "that if any man die *in itinere*, the goods that he hath about him at present shall not cause his testament or administration to be liable unto the prerogative court." (See *Dec. dem. Allen v. Owens*, 2 Barn. & Ad. 423.)

If a man, not being *in itinere*, die in one diocese, not having goods there, but has *bona notabilia* in another diocese, this will be sufficient for the Archbishop to grant probate or administration; because the ordinary where he dies, by the law, is to take as great care of the testator and of his goods as the other ordinary where his goods are. (11 Viner's Abridgment, Executors H, p. 80; citing from, though not referring to, 1 Roll. Abr. 909, tit. Executor, H, p. 7.)

Where a man dies out of the province, having no goods in divers dioceses, but in one only, probate in that diocese is sufficient. (*Griffith v. Griffith*, Beyer, 83; *Scarth v. The Bishop of London*, 1 Hagg. 625.)

Where a testator is, at the time of his death, possessed of goods in both the provinces of York and Canterbury, there must be probate in each province—or in the one province where the goods are in two of its dioceses, and in the diocese of the other province where the goods of the testator were in one of its dioceses only. (*Allison v. Dickenson*, Hard. 216; *Shaw v. Storton*, Freem. 101; S. C. 3 Keb. 163; 2 Lev. 86; and *Burston v. Ridley*, 1 Salk. 39.)

In *Scarth v. The Bishop of London* (1 Hagg. 625), it was decided that the Prerogative and the Diocesan Courts may, in some cases, have concurrent jurisdiction; as where the testator died out of the province, leaving goods in one diocese only, the probate might be granted by either Court.

Where there were *bona notabilia* in the diocese of an archbishop, and also in a peculiar within the same diocese, it was held that administration, *durante itinere astat*, of the executrix should be granted in both (*Price v. Simpson*, Cro. Eliz. 79); but in a recent case (*Lysons v. Barrow*, 2 Bing. N. C. 486), it was held that a metropolitan administration of goods within a peculiar, if not valid, is at least voidable only, and not void. It should, however, be stated that a probate granted by an inferior court, where the metropolitan has the right, is void.

If there be *bona notabilia* in several peculiars, or in a diocese, and in a peculiar within the diocese, the peculiars not being royal peculiars, probate shall be granted by the metropolitan. (*Parham v. Templer*, 3 Phill. 247.)

But where a testator was possessed of goods in two royal peculiars, in one of which he died, and also of goods in a diocese within the same province, the will was held to be properly proved in the royal peculiar in which he died. (*Parham v. Templer*, 3 Phill. 247.) The rule respecting *bona notabilia* lying within different jurisdictions does not apply to the several commissaries of the same bishop. (*Rex v. Younge*, 5 M. & S. 119.)

If A die in India, and B, one of his executors, prove his will there, and B's will be proved in

England by C, his executor, C is not the personal representative of A. This was decided in *Twynford v. Twail*, 7 Sim. 92. But in *Fowler v. Richards*, 5 Russ. 39, Sir J. Leach, M.R. held that the chain of representation was complete, whether the will of the executor was proved in the same court with the will of the original testator, or in a different court. In that case, A appointed executors, who proved his will in the Prerogative Court; B, the surviving executor, died, having appointed C his executor, who proved B's will in the Consistory Court of Llandaff, and the Master of the Rolls, after taking the opinion of Dr. Lushington, which was opposed to the decision, held that C was the personal representative of A. (See also *Jernegan v. Baxter*, 5 Sim. 568.)

The probate of a bishop's will, on granting administration of his goods, always belongs to the archbishop. (4 Inst. 335.)

CHAP. II.—OF BONA NOTABILIA.

Debts due to the testator, whether on simple contract or specialty, are *bona notabilia*; in the former case, in the place or diocese where the debtor lived, and in the latter, in the place or diocese where the specialty was at the testator's death. (*France v. Aubrey*, 2 Cas. temp. Lee, 534; *Byron v. Byron*, Cro. Eliz. 472; and *Loddington v. Draper*, 3 Keb. 438, pl. 50.) Judgments, statutes, or recognizances are *bona notabilia* in the place where they are given or acknowledged.

Stock in the public funds appears to be *bona notabilia* within the diocese of London, as well as in the Archbishopric of Canterbury. (*Scarth v. The Bishop of London*, 1 Hagg. 625.)

A lease for years of lands will be *bona notabilia* where the lands lie. (Com. Dig. Administrator, B. 4.)

As to property vested in trustees being *bona notabilia* of them, it may be mentioned that in *Crosley v. The Archdeacon of Sudbury*, 3 Haggard, 197 (Trin. Term, 1815), Sir J. Nicholl granted a limited administration to assign a satisfied term, situate in a different diocese to that in which the deceased's will had been proved, and the following passage appears in the report of the judgment (p. 201):—"It is said that the property is of no value; but the legal property was in the deceased, and his act if living would be necessary to make a title; and though, as a trustee, a court of equity would compel him to do such act, yet in law he is the proprietor. Still I should be sorry to hold that these naked trusts, in all cases, create *bona notabilia*, which would make the grant of other jurisdictions null and void: and it might be an inconvenience to the parties beneficially interested in the property to be obliged to take a prerogative probate, when a local jurisdiction might otherwise be competent; yet I suppose no conveyancer would be satisfied with a conveyance of property, situate in one jurisdiction, under an administration granted by the authority of another jurisdiction; for, manifestly, it would not be any conveyance, because the Archdeacon of Sudbury could not make any person legal representative *quoad hoc*, to make a valid title to premises in another jurisdiction. However, as an administration, limited to this particular purpose, is only prayed—not a general administration—the former grant will not be revoked, nor the other property of the deceased, nor his representatives, be thereby disturbed." (See also, *In the goods of Mary Powell*, 3 Hagg. 195.)

Where a canal was situated in both provinces, but the office for transacting the business of it was in the province of Canterbury, the will of a shareholder was held to be sufficiently proved in the province of Canterbury. (*Smith v. Strafford*, 2 Wils. Chancery Reports, 166.) So, where an Act for making a navigable canal provided that the shares were to be deemed personal estate, and to be transmissible as such, and the canal passed through parishes in the diocese of Worcester, and other parishes in the diocese of Lichfield and Coventry, but the transfers of shares in the canal were filed at the public office of the company in the diocese of Lichfield and Coventry, where the dividends were also paid, and books of account kept, it was held that, for the purposes of probate, the right of a shareholder to a share of the profits, being personal property, might be considered as locally situate in the diocese of Lichfield and Coventry, and that a probate granted by the Consistorial Court of the bishop of that diocese was sufficient. (*Ex parte Horne*, 7 Barn. & Cres. 632.)

It has been before stated, that, by the 92nd Canon

of James I. the goods which a man has with him, if he dies on his journey, are not to be considered *bona notabilia* in the place where he dies.

By the 4th of Anne, c. 16, s. 26, after reciting that great trouble and expense are frequently occasioned to the widows and orphans of persons dying intestate to moneys or wages due for work done in her Majesty's yards and docks, by disputes happening about the authority of granting probates of the wills and letters of administration of the goods and chattels of such persons, it is, for preventing such unnecessary trouble and expense, enacted "that the power of granting probates of the wills and letters of administration of the goods and chattels of such person and persons respectively is and is hereby declared to be in the ordinary of the diocese, or such other person to whom the ordinary power of probate of wills or granting letters of administration do belong, where such person or persons respectively die; and that the salary, wages, or pay, due to such person or persons from the Queen's Majesty, her heirs or successors, for work done in any of the yards or docks, shall not be taken or deemed to be *bona notabilia*, whereby to found the jurisdiction of the Prerogative Court."

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been pleased to confer the honor of Knighthood upon John Jervis, esq. her Majesty's Attorney-General.

The Lord Chancellor has appointed John William Cudworth, of Leeds, gent. to be a Master Extraordinary in the High Court of Chancery.

APPOINTMENTS IN THE EXCISE.—By the promotion of Dr. Bateman, the chief clerk in the Excise Office, to the office of solicitor to that department, the chief clerkship has become vacant. Mr. Procter, for many years engaged as assistant to the late Mr. Mayow, and who frequently conducted his judicial business before the commissioners, has become the successor of Dr. Bateman; and Mr. Dwelly, second clerk, has been appointed in the room of Mr. Procter. Several other changes are in contemplation, but the arrangements will not be made known for a few days.

REVIEWING BARRISTERS on the South Wales Circuit, 1846:—Brecon and Carmarthen—Mr. Serjeant Jones, Mr. Davison; Radnor and Gloucerglan—Mr. Vaughan Williams, Mr. Lloyd Hall; Cardigan and Pembroke—Mr. Nicholl Carne, Mr. Grove.

MEMBER RETURNED TO SERVE IN THIS PRESENT PARLIAMENT.

Borough of St. Alban—Benjamin Bond Cabbell, of the Middle Temple, London, esq. in the room of the Right Hon. William Earl of Listerwell, who has accepted the office of one of the Lords in Waiting on her Majesty.

COURT PAPERS.

IMPORTANT ORDER IN CHANCERY.—Saturday, the 8th of August, in the tenth year of the reign of her Majesty Queen Victoria, 1846:—

"In the matter of the sutors of the Court of Chancery, his Lordship doth order that, notwithstanding the order of the 1st of July made in this matter, all orders for payment out of moneys, transfer of stock, or delivery out of exchequer bills, paid in or deposited at the Bank of England, in the name and with the privy of the Accountant-General of this Court, under the provisions of an Act of Parliament, passed in the 1st and 2nd years of the reign of her present Majesty, intituled "An Act to provide for the Custody of certain moneys paid in pursuance of the Standing Orders of either House of Parliament, by Subscribers to Works or Undertakings to be effected under the authority of Parliament;" or of another Act passed in the 9th year of the reign of her said Majesty, to amend the said Act, may be received at the said Accountant-General's Office up to six of the clock of the evening of Friday, the 14th day of August instant. And that the said Accountant-General may be at liberty to carry out such order.

(Signed) R. O. WALKER, Registrar."

LEGAL INTELLIGENCE.

THE CIRCUITS.

MIDLAND CIRCUIT.

WARWICK, August 5.—The commission for this division of the county was opened last night. The present assizes will be heavier on the whole than has been known the last few years. The calendar contains the names of sixty-three prisoners. Among them we find one charged with administering poison, with intent to murder; one with manslaughter;

eight with burglary; two for bigamy; several for forgery, and uttering forged acceptances. Among the charges in the calendar we find one against a person of the name of Joseph Piercy Zeomans Welch, late treasurer to the guardians of the poor of the parish of Birmingham, for embezzlement. There were thirty causes entered, and among them are five special juries. Since the last assizes many improvements have been made in the two courts for the better accommodation of those whose professions compel their attendance. Mr. Justice Patteson presides in the Nisi Prius Court, and Mr. Justice Coleridge in the Criminal Court.

OXFORD CIRCUIT.

MONMOUTH, August 6.—Mr. Justice Maule having yesterday opened the commission for this county, attended divine service at St. Mary's church. There are eight causes, all for common juries, on the list. In the calendar there appear the names of 19 prisoners, who may be thus classified—burglary, 1; house-breaking, 1; sheep-stealing, 1; embezzlement, 1; robbery, with violence, 2; larceny, 13.

GLOUCESTER, August 9.—The commission was opened yesterday by the Lord Chief Justice Wilde. This morning his lordship attended divine service in the cathedral. Mr. Justice Maule has not yet arrived in the town. The calendar contains the names of 56 prisoners, who may be thus classified—murder, 1; infanticide, 1; manslaughter, 2; rape, 2; arson, 2; burglary, 1; house-breaking, 1; cutting and wounding, 2; assault with intent, &c. 5; assault, 1; robbery with violence, 2; stealing from the person, 2; embezzlement, 1; false pretences, 2; sheep-stealing, 1. There are 5 special and 15 common jury cases entered for trial, but as entries may be made up to 10 o'clock to-morrow morning, the list will no doubt be greater.

NORTHERN CIRCUIT.

CARLISLE, August 8.—The assizes for the county of Cumberland commenced here to-day. Mr. Justice Wightman sat on the Crown side, and Mr. Justice Cresswell in the Civil Court. The calendar contains the names of twenty-nine prisoners, the greater number of whom stand charged with petty thefts. There are two cases of rape, and four of burglary. On the Civil side eight causes are entered for trial; of these the greater number were disposed of in the course of the day. In several, verdicts by consent were taken; and in others the records were withdrawn. Of those tried, the principal were, an action for the value of some turnips, sold to the defendants; and another, in which the question was, whether a bill of sale of some farming stock was fraudulent or not: neither case presented any point of public interest.

APPELBY, August 10.—These assizes commenced to-day for the trial of both causes of a civil nature and prisoners committed within this county. The commission had been opened by the learned judges on Saturday evening, and, pursuant to arrangement, Mr. Justice Wightman presided in the civil court, and Mr. Justice Cresswell in the criminal court. The list of magistrates being read over, the Hon. Henry Cecil Lowther and twenty-one other magistrates were appointed grand jurors, to whom bills of indictment were, after an address from his lordship, referred. The prisoners to be tried are thirteen in number, and the causes are only four.

LANCASTER, August 12.—The commission was opened last night. To-day Mr. Justice Cresswell presides in the civil court; Mr. Justice Wightman in the criminal court. The cause list contains thirteen; the criminal cases are but eleven, and the calendar may be considered light.

WESTERN CIRCUIT.

WELLS, August 8.—The Assizes for the county of Somerset commenced here yesterday morning. Mr. Justice Erie presiding in the Crown court, and Mr. Baron Platt on the civil side. There are twenty-two causes entered for trial, but, with the exception of two, they are all common jury cases. The calendar contains the names of fifty-two prisoners, respectively charged with the following offences:—Murder, 1; maliciously wounding, 2; arson, 1; burglary, 4; house-breaking, 3; robbery, 2; larcenies, 35; endeavouring to conceal the birth of a child, 1; assault with intent, 3.

On Thursday, the Vice-Chancellor, Sir J. L. Knight Bruce, after having heard and disposed of a number of interlocutory applications in his private room at Lincoln's Inn, rose for the vacation; the Lord Chancellor, the Vice-Chancellor of England, and Vice-Chancellor Wigram, having also closed their sittings. Lord Langdale (the Master of the Rolls) will remain in town during the vacation, to hear applications for injunctions, and other cases of pressing emergency. From the books of causes entered for hearing before the Lord Chancellor, the three Vice-Chancellors, and the Master of the Rolls, there appears to be a large arrear of causes remaining undisposed of; the following are the numbers up to the present time, before each judge:—Lord Chancellor, judgments, 15; rehearings and appeals, 63; exclusive of seven causes heard, and waiting for judgment.

Vice-Chancellor of England, causes waiting for judgment, 5; pleas and demurrers, 4; causes, 179, including 4 heard and marked as waiting for judgment. Master of the Rolls—Causes standing for judgment, 6; causes not heard or undisposed of, 96. Vice-Chancellor Wigram—Causes for judgment, 4; objections for want of parties, only 1 (*Hunter v. Macken*, set down on the 23rd of July for hearing); causes for hearing, 76, including *The East India Company v. The Coopers' Company*, and several others marked for hearing in Michaelmas Term. The following causes are also marked as having been heard, and standing for judgment:—*De Sola v. Menard*; *Hurst v. Kemp*; *Hutchinson v. Pickering*; *Jackson v. Pickering*, *Faulding*, and *Newton*; and *Faulding v. Sheriff*. Vice-Chancellor Knight Bruce—Causes standing for judgment, 3; pleas and demurrers, and objections for want of parties, 2; causes not heard, 62. There is also an arrear of 342 appeals and causes for rehearing, which are either abated for want of parties, or ordered to stand over generally, 40 of which number are appeals, and the remaining 302 causes for rehearing.

FRANCE.—The Minister of Justice has just made his report for 1844 of the administration of civil and commercial justice in France. We extract from it the following facts:—The number of appeals in civil and commercial cases submitted to the Court of Cassation was 685. In 1841 it was 582, in 1842, 589; and in 1843, 643. Of the 685 appeals, 505 were tried, and in 131 cases out of that number the judgments of the lower courts were quashed. The number of appeals to the 27 Cours Royales was 11,069. In 1841 the number was 10,437; in 1842, 10,834; and in 1843, 10,191. If we add to the 11,069 new appeals in 1844 which remained on the list from the preceding year, we have a total of 17,544. The number of appeals tried in 1844 was 9,092, and 2,284 cases were struck off the roll for various causes. The number of new cases of the civil tribunals of premiere instance in 1844 was 119,928. In 1841 it was 111,109; in 1842, 114,090; and in 1843, 117,124. To the 119,928 new cases in 1844 we must add 55,279, which remained over from 1843, making a total of 175,207, of which 128,529 were tried during the year. 32,313 were struck off the lists for various motives. In 1844 the number of applications for separation *de corps* to the civil tribunals was 4,108. In the year 1841 the number was 987; in 1842 it was 962; and in 1843, 1,077. Of the 1,108 applications in 1844, 989 were by wives, and 119 by husbands; 999 of the cases in which females were the applicants were founded on allegations of ill-treatment, 64 on adultery by the husband, and 27 on the ground that the husbands had received sentences in criminal cases, which had deprived them of civil rights. On the part of the husbands, 52 were founded on allegations of adultery by their wives, 56 of violence and ill-treatment, and one of condemnation by a criminal court on the wife; 906 of these applications were tried by the Courts; 794 of them were granted, and 111 rejected. The remainder were struck off the lists for various causes, but chiefly on account of reconciliation. They were brought before the 220 civil tribunals of commerce, and the 170 civil tribunals which take cognizance of commercial matters, 179,504 causes. In 1841 the number was 159,188; in 1842, 165,814; and in 1843, 176,450. The number of commercial failures legally declared in 1844 was 2,081, representing a total amount of debt of 121,202,409fr.; in 1841 the number of failures was 1,651, and the amount of the debts 89,179,361fr.; in 1842, 1,780, and 114,116,436fr.; and in 1843, 1,829, and 105,116,436fr.

WIFE BROKERAGE.—The following paragraph, taken from the *New York Mirror*, shews the way in which some parties manage matrimonial matters in America:—"At Philadelphia, on Monday, one German sued another for five dollars, the price of commission for procuring the latter a wife. The objection was that the charge was too high. The plaintiff proved that the defendant stated his wish for a wife—the former, in half an hour, brought a German, to whom the defendant was married in three days. The plaintiff was allowed his whole claim."

CRIMINAL LAW IN PRUSSIA.—A new criminal law has just been promulgated in Prussia, bearing the date of the 17th of July, 1846, by which trials are to be conducted in public, and the accused have the right of choosing a counsel for his defence. In trials where the punishment in case of condemnation would exceed three years, the accused, being unable to pay for an advocate, has the privilege of exacting the nomination of his counsel from the Court. On demand of the accused, or by order of the Court, persons not interested in the case are obliged to retire.

PARLIAMENTARY PETITIONS.—There have been 710 petitions presented to Parliament, during the present session, connected with Ecclesiastical affairs, signed by 121,700 persons. Of these, one petition complained of the distribution of the patronage of the Irish Church; three were for the alteration of the Irish Church Temporalities Act; two were for Encouragement to the Church Education Society

(Ireland); 207 complained of the refusal, on the part of several landowners, to grant sites for free churches; 158 for the better observance of the Lord's day; two in favour of the establishment of the bishopric of Manchester; three for repeal of Maynooth College Act; three for abolishing minister's money (Ireland); one praying for an alteration of the Act affecting parish clerks; two for removing the disabilities affecting religious orders; four for alteration of the law affecting Catholic chapels; two against the Roman Catholic Relief Bill; 147 in favour of the Roman Catholic Relief Bill; two in favour of providing chaplains for Roman Catholic soldiers; 129 against the Union of the dioceses of St. Asaph and Bangor; one praying for an alteration of the Tithes Commutation Act; fourteen against the abolition of tests in the Scotch Universities; one in favour of the abolition of tests in Scotch Universities; and one complaining of the state of the church in Workingham parish.

CHARITABLE DONATIONS, IRELAND.—First Annual Report of the Commissioners for the year 1846. The commissioners state that they received from the late Board of Charitable Donations and Bequests, funded property as follows:—

Government Three-and-a-Quarter per Cent Stock	£91,458 7 11
Like in joint account with other trustees	7,386 16 0
Government Three per Cent Consols	75,344 18 2
Like in joint account	714 16 6

Also six debentures, value 400l. and a sum, unaccounted, in the hands of the treasurer; against which they had a debit, for costs due to the solicitors, of 5,926l. 18s. 9d. a claim for services rendered by the treasurer, and some other charges. The sum due from the treasurer was found to be 4,699l. 10s. 4d. of which 3,001l. 6s. 4d. had been paid. The report also states, that during the year thirty-one meetings had been held; and gives the names of the commissioners present at each. There is also a schedule of the rents, &c. under their guardianship—a return of the funds standing to their credit in the Court of Chancery (cash, 818l.; and stock, 12,998l.)—of the stock standing in their names at the Bank of Ireland (180,836l. 3s. three per cents.)—and of the sums received during the year; being cash, 15,631l. and stock, 8,379l. The report also states the registry of a deed, dated in May last, by the Hon. F. Ponsonby, conveying 3 roods and 11 perches of land for a residence for the parish priest of Gallica, in the King's county.

PROCEEDINGS OF LAW SOCIETIES.

UNITED LAW CLERKS' SOCIETY.

FOURTEENTH ANNUAL REPORT.

It has hitherto been the pleasing duty of the committee to report favourably of the progress of the society, and they are happy to state that the year just past has not been less prosperous than any which has preceded it. The claims made since the last anniversary have been numerous, and in meeting them a much larger sum than usual has been required, yet every demand has been fully satisfied, and a larger addition made to the capital of the principal fund than in any preceding year.

The chief expenditure of the society arises from the pecuniary assistance which it affords (out of the general fund) to its members in sickness, superannuation, and death. The number of claimants on the first account has been eighteen. Though this number is much less than the year preceding, a larger proportion than usual were cases of long-continued illness, whereby the expenditure has considerably exceeded that of the year before. The amount expended has been 228l. 16s. 6d. which added to the disbursements of previous years, makes the total sum thus expended 1,217l. 17s.

It is with regret that the committee report, that since the last meeting two members have, by severe indisposition, been rendered incapable of following any employment, and are now receiving the allowance granted on superannuation.

In one case the member has been incapacitated by long-continued nervous disease; in the other, by insanity; each of them is now in receipt of a weekly payment, amounting yearly to 31l. 4s. In almost all similar institutions, the right to receive this allowance is dependent on the age of the member, and rarely commences before sixty. The elder of these members is only forty, the other not yet thirty-two. The patronage of the Profession has enabled the society to grant this allowance irrespective of age, only requiring ample medical evidence that the member is permanently disabled from earning the means of livelihood. An allowance of this nature and amount, commencing at the customary period, is a great advantage, but the condition of these two afflicted members would be little improved by the assurance, that twenty or thirty years hence they would be in the receipt of sufficient pecuniary assis-

tance to place them beyond the reach of absolute dependence, provided they so long paid their subscriptions.

The last branch of the society's expenditure out of the general fund, consists of a payment of 50l. made to the family of each member on his death, and of a payment of half that sum to each married member on the death of his wife.

The committee report with regret, that of the cases of sickness already referred to five terminated fatally. One other case has also occurred, and the families of these six members have received altogether a sum of 300l.; three cases of death have occurred amongst the members' wives, and a sum of 75l. has been expended in meeting the claims that have thus arisen. The sum disbursed by the society on these accounts (alone) amounts to 1,662l. 10s.

The claims upon the casual fund, which is appropriated to the assistance of distressed clerks belonging to all branches of the law, and to their widows who may be in distress, have been less numerous during the last year. All such clerks are eligible, whether members or not. The only qualifications required are, that the applicants shall truly need the assistance, and also be deserving of it. This fund is also employed in assisting with small loans members who may suffer from temporary pecuniary embarrassment. The committee have received thirty-six applications for relief, of which twenty-three, after careful inquiry, were found to be proper cases for assistance, and the applicants received such relief as the society was enabled to afford: with one exception, not one of these persons had ever contributed to the funds of the society. Many members have also been accommodated with small loans to meet pressing and unavoidable emergencies. In granting these loans, (which are repayable without interest or charge of any kind,) all due care is exercised, and generally they have been punctually repaid. In these gifts and loans a sum of 368l. 10s. has been expended. The total payments thus made now amount to 1,833l. 10s.

The committee are fully aware that the demands, which are gradually increasing every year, will before long render any considerable saving impracticable; and they have therefore sought by all proper means to increase the capital of that fund which is charged with the payment of the greater benefits. The general fund in April, 1846, amounted to 7,423l. 4s. 8d. During the year the sum of 1,831l. 9s. 1d. has been received, and 673l. 13s. 9d. expended. The surplus, 1,167l. 14s. 1d. has been added to the invested capital, which on the 20th of May last amounted to 8,564l. 3s. 7d. It must be remembered that the liabilities of this fund are very heavy. Each of the two members now on the superannuation fund requires the interest of a sum of 1,000l. in the payment of his allowance alone, and there are now 455 members.

The small amount of the casual fund prevents the investment of any part of it. In April, 1846, this fund amounted to 66l. 2s. 4d. which has been increased during the year by the donations of the Profession, the subscriptions of the members, and receipts from incidental sources, to 498l. 5s. 6d. In gifts, loans, and necessary disbursements, a sum of 368l. 17s. 9d. has been spent. The balance of cash in hand of this fund amounted at the last audit to 142l. 18s. 3d.

The contributions of the members alone to both funds have, during the year, amounted to 1,050l. 17s. The committee trusts that this general statement of the operations of the society will prove satisfactory to the patrons and members. Every just claim has been liquidated. No deserving applicant for assistance from the casual fund has been sent away unrelieved; and notwithstanding a year of more than ordinary pressure has occurred, a considerable sum has been added to the invested capital. To the kind support afforded by the Profession is mainly attributable the present favourable state of the society's affairs, and its ability to meet all claims in a spirit of liberality. Without a continuance of that patronage its efficiency and benevolence would be greatly diminished. The welfare of the members has now become identified with that of the Institution, and the committee hope that it will not fail to receive a renewal of that support which has so essentially contributed to its usefulness and present flourishing condition.

Heirs-at-Law, Next of Kin, &c. Wanted.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent impertinent curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount enclosed.]

355. NEXT OF KIN OF WILLIAM MERRITT, otherwise MALLIN, formerly of Holton, in Oxfordshire, and lately of Windsor, Berks, labourer, and who died at Windsor in Oct. 1836. *Something to advantage.*

356. THOMAS DOUGHTY, chemist and druggist, late of George-street, Tottenham Court-road. *Something to advantage.*

357. NEXT OF KIN OF JOHN REDFERN late of Stockport, Cheshire, yeoman (died 27th Dec. 1830), or their representatives.

358. GEORGE RIDGE CHAPMAN, who, in February 1834, resided in Carnaby-street, Carnaby-market, Middlesex, and was a journeyman boot and shoemaker, and afterwards an in-patient of St. George's Hospital, confined with a swelling in the knee, and about four or five months after discharged as incurable. *Something to advantage.*

359. RELATIONS OF NEXT OF KIN OF GEORGE FLOTE, late of 19, Clayton-street, Kennington, Surrey (died 11th Dec. 1834, at his said residence, where he had resided for upwards of thirty years previously), and who was baptised at the French Protestant Church, in Threadneedle-street, London, on Jan. 3, 1750, as the son of Daniel Flote and Henriette Damont, his wife. *Something to advantage.*

360. HEIRS-AT-LAW OF PHILIP SMITH, the younger, formerly of Aldgate High-street, City of London, butcher, who died a bachelor, intestate, in 1818, and of ANN MARIA SMITH (afterwards the wife of John Sommers), who died in 1823, without issue; and which said P. Smith, and A. M. Smith, were the only son and daughter, and respectively devisees in fee in remainder of Philip Smith, the elder, formerly of Aldgate High-street, aforesaid, butcher. *Something to advantage.*

361. NEPHEWS AND NIECES OF SOLOMON LEVY, formerly of Sydney, in New South Wales, and late of Grove-end-road, St. John's Wood, Middlesex, and of Copthall-court, City of London, merchant (died 10th Oct. 1833), or their representatives.

362. CHILDREN OF PETER BOWIS, formerly of Henham, Essex, and afterwards of Great Bardfield, same county, brother of Thomas Bowis, late of Peterborough, Northamptonshire (died Feb. 1830), or their representatives.

363. MR. WILLIAM TUCKER, late of Charlotte-street, Bloomsbury. *Something to advantage.*

364. RELATIONS, OF NEXT OF KIN OF MARY FRENCH, formerly of Newport, Isle of Wight, and late of Newbury, Berks, widow, died about 26th March, 1838. *Something to advantage.*

365. RELATIONS, OF NEXT OF KIN OF CECILIA MARIA KATHARINE DE CASTELLAN, otherwise called CECILIA MARIA SOUTH, formerly of Wellington House, Cumberland-row, Islington, but late of 23, Percy-street, St. Pancras, Middlesex, spinster, died on or about 19th May, 1834. *Something to advantage.*

366. HEIRS, OR CO-HEIRS-AT-LAW, AND NEXT OF KIN OF MARY PENNELL, formerly of Horncastle, Lincoln, widow (died in the year 1808), or their representatives.

367. ANN FLEMARE, sister of Mrs. SUSANNAH FLEMARE, deceased, late of Stamford-hill, Hackney, Middlesex, or their descendants. *Something to advantage.*

368. WILL OF CODICIL OF the late BENJAMIN ANTHON, Esq. late of 11, Bruton-street, Berkeley-square, deceased.

369. ISAAC JENNISON, born at Woe, Norfolk, was a seaman belonging to H.M.S. *Dauntless*, and on the 16th Feb. 1815, was taken prisoner with *Chesapeake*, by the Americans, and has never since been heard of. *Something to advantage.*

370. WILL OF Mr. ROBERT CHALK, late of Linton, Cambridgeshire (died 19th Nov. 1834), supposed to have deposited it with some friend.

371. NEXT OF KIN OF ROBERT MITCHELL, late of Bristol, merchant (died Dec. 1812), or their representatives.

372. HEIR OR HEIRSSES-AT-LAW OF JAMES BIDDLE, late of Bishopsgate-street Without, City of London, shoemaker, died March 1834.

373. MISS KENWORTHY, sister of the late JOSHUA KENWORTHY, of Smithfield, London (died 1814), or her representatives. *Some property.*

(To be continued.)

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

A. B. C.—His suggestion is quite impracticable. Every man will prefer his immediate advantage to the general weal.

G. A.—We understand that the Conveyancing Bill is abandoned for the Session.

ONE, &c.—Is omitted for want of room. His arguments have been already urged in our columns over and over again. Besides, we insert no anonymous communication.

NOTICE TO SUBSCRIBERS.

The volumes of the LAW TIMES, neatly, strongly, and uniformly bound, for 5s. 6d. each, with the name and address of the owner on the cover, 1s. extra, if sent to the office. If the numbers for binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

The numbers comprising the first volume of the VERULAM REPORTS of Real Property and Conveyancing Cases may also be transmitted for binding in like manner.

INDEX TO THE LAW.

The LAW DIGEST for the half-year ending Jan. 2 is now ready. It forms a complete Index to the Law decided during the half-year, and contains upwards of 2,000 cases. Price 5s. 6d. in a wrapper. Being stamped, it can be transmitted by post.

SCALE OF CHARGES FOR ADVERTISEMENTS.

Under 50 Words..... 40 5 0

For every additional Ten Words... 0 0 6

Advertisements from the Country should be accompanied with an order upon the Agent in Town, or a Post-office order (payable at 180 Strand) for the amount.

N.B.—For Scale for Estate Advertisements, see JOURNAL OF PROPERTY.

THE LAW TIMES.

SATURDAY, AUGUST 15, 1846.

THE SMALL DEBTS BILL.

THIS dangerous measure is smoothly running its course through the Parliament, not merely without opposition, but with the approval of all parties. In the House of Commons are some seventy lawyers, and yet of them all not one is to be found lifting his voice in protest against a measure which will do more to degrade both the law and the lawyers than any act of legislation which the last half century has produced. Whence their silence at the moment when their active interference would be the most valuable it is difficult to conjecture. Probably it proceeds not so much from indifference to the subject as from their want of practical acquaintance with the abuses of local courts, and their entire ignorance of that which we may term the *physiology* of the Legal Profession,—its organization, and its functions. The Parliament lawyers are either amateur lawyers,—learned by courtesy,—barristers in name only, or successful advocates who enter it for the sole purpose of promotion, and who are too much burdened with private business to trouble themselves about public interests, beyond the giving of party votes, and, on special occasions, making a party speech. This removes the perplexity felt by everybody at the seeming anomaly of a multiplicity of lawyers in the Parliament with an entire neglect of the interests of the Profession. This has been obvious for many years, but never has it been so apparent as in the reception given to the Small Debts Bill, which has actually been applauded by the very men who ought to have led the opposition to it, not as a question of professional concern, but as one involving great public interests.

For, in truth, it is not for the advantage of the community that this Bill should pass. Bad law is even more noxious than dear law. It is not enough that the Courts should be easy of access; they are positive nuisances if they do not dispense both law and justice. Are the provisions of the impending measure such as to secure either the one or the other? Is there truth in the discovery it affects to have made that business is best conducted by the litigant parties in person? that justice is best secured by setting the clever against the stupid? that the endeavour to remove the inequality by the assistance of advocates is an antiquated absurdity? and that the notion of preserving decorum in a court, observing rules of evidence, and substituting the measured zeal of advocates for the passionate vituperation of the parties is a folly which it becomes this enlightened age to cast aside?

It is a great misfortune for the lawyers that up to this time they have been led by injudicious advisers. For years past they have been exhorted to resist all reform, instead of putting themselves forward to guide the changes which were inevitable. By the course pursued they have certainly impressed the pub-

lic mind with an idea that the lawyers are, as a body, hostile to improvements in the law, and guided only by motives of self-interest. The fact is far otherwise. The Profession, as a body, are not opposed to changes in a right direction; they recognize a truth which cannot be too often and too loudly uttered, that the real interest both of the public and of the lawyers is identical. Lawyers do not live by the provisions of the law alone; they are a necessity recognised by the practice of society. There is compulsion in their employment. In the business of life, men find that they want an intelligent adviser; in quarrels they require a third party, with a head unheated by passion, to conduct their differences to a settlement; in all the great affairs of life, the lawyer is summoned to the conference, not because the law requires his presence, but because men feel the want of a second mind, whose business it shall be to think for them, and with them, and whose interest it is to consult theirs. It is essential to the welfare of the community, that these advisers of the community should be intelligent and educated men, filling a position in society which should at once guarantee capacity and honesty, and secure the confidence of those by whom they are consulted. The effect of the Small Debts Bill is to lower this important class in the estimation of the world. It must inevitably breed up a race of wretched pettifoggers, who will discredit the Profession much, but be still more noxious to society.

We are confident that if, two years since, or last year, or even at the beginning of the present session, the Profession had bestirred itself, and frankly admitting the necessity for a cheaper administration of justice in small matters, had come forward with a well-devised scheme of its own, based, as it would have been, on practical knowledge of the requirements of the public, and the best mode of meeting them, they would have been received with cordial approbation; the Government and the Parliament would have been delighted to adopt any suggestions proceeding from such a source; instead of a scheme fraught with mischief to all parties, they would now have been in possession of a practical plan that would prove a benefit to all.

But we fear that remonstrance will arrive too late. The meeting of Solicitors, reported last week, would have produced important results had it taken place when first we urged it two years since, or even when we exhorted the lawyers to action at the opening of the present session. The only guardian of the interests of the Profession, the Metropolitan and Provincial Association, was suffered to perish of inanition, wanting the needful support of those who will now severely feel the absence of such a protector. The Bill will pass, and with little modification: that is certain. The next care will be to make the best of it. We have not loaded our columns with a reprint of it, because it is continually undergoing small alterations, and when it has become law it will be necessary to present it entire. In the meanwhile the sketch of its main provisions will be sufficient to shew what is intended, and to prepare our readers for a change which we cannot but regard as most disastrous; but whatever may be the result it will be attended to us with this consolation, that we have never ceased, from the moment of its introduction until now, earnestly to protest against this Bill, nor to exhort our readers to the exertions necessary to avert the threatened mischief.

RAILWAY LITIGATION.

SINCE the last commentary on this interesting topic some decisions have been made which fully confirm the views we had ventured to submit in former papers.

The first, and most important, of these is the order reported last week as made by Chief Baron Pollock at Chambers. It will, perhaps, be remembered that on former occasions we had recommended an immediate application to stay proceed-

ings in all actions but one, where many had been commenced against various members of a Provisional Committee for the same cause of action. Such an application has at length been made, and with the entire success we had anticipated. The order was made to stay proceedings in all save one.

The question as to the liability of Provisional Committee-men in cases where there was also a Managing Committee-men, has received further investigation, and the decision of Mr. Baron PARKE has been affirmed by Mr. Justice CRESSWELL, by Chief Justice WILDE, and by Mr. Justice WIGHTMAN. The principle has been explicitly laid down by all these able judges, that if there was a Managing Committee conducting the affairs and giving the orders without the intervention of the Provisional Committee, the credit may fairly be assumed to have been given to the former, and that the members of the latter could not be presumed to have given to the former authority to pledge their credit for debts contracted by them. Of course, whether in fact there was an intention on the part of the provisional committee-man to share the expenses, and to permit his credit to be pledged for them, is a question for the jury; but it may now be considered as settled, so far as the weight of authority goes, that the law presumes no liability from the mere fact that a man has given his consent to become a member of a provisional committee, where he has personally taken no part in the business, and there is a Managing Committee with whom the creditor's dealings were conducted. Accordingly, the defendant has obtained a verdict in almost all such cases.

This is so rational a decision, that it is surprising how the principle could have been overlooked by the judges, counsel, and juries, at the commencement of the late crusade of writs. The absurd verdicts that were at first given by juries, and sanctioned by judges, encouraged every pettifogging lawyer and rascally client to flood the land with writs, confident that, however monstrous their claims, it was enough that the defendant was a provisional Committee-man to secure a verdict. This wholesale litigation has received a wholesome check by the recent decisions, and if the attention which the LAW TIMES has devoted to the subject has been instrumental in bringing about the change, the research and thought bestowed upon the subject will not have been worthless. It is some gratification to observe that almost every proposition advanced in these papers, although hotly disputed at the moment, has been established by the subsequent decisions.

E. W. C.

SHAM LAWYERS.

THE following is an uncommonly rich specimen of the compositions of this fraternity:—

BANESTER *versus* BENNET.

July 3, 1846.

Sir,—I have this day received instructions from William T. Banester, of Manchester, to proceed against you for 4l. 0s. 10d. due to this deponent, which must be paid to them in three days, or I shall be under the necessity of commencing an action against you for the same; the exposure and expense attending it I hope you will prevent, by complying with this notice. I wish to point out to you my mode of Practice, which is, to receive no letters but from my Client; you will therefore address by letter, post-paid, to the above-named deponent, Mr. W. T. Banester.

I remain, Sir, your humble Servant,
JOHN ROBERT ERASMUS CURWEN.

London.
To Mr. Bennet, of Duckenfield, late Grocer, now Beer-shop keeper.

THE COUNTY COURTS BILL.

As soon as this Act is passed it will be added to the series of LAW TIMES Edition of Important Statutes, edited by W. PATRICK, Esq. Barrister-at-Law, who will illustrate it with useful practical notes, and a copious Index. Members of the Verulam Society will be entitled to it at the Society's prices.

JOURNAL OF PROPERTY.

Public Sales.

By Mr. MASON.

A freehold property, comprising the Castle public-house, with house and shop adjoining, in Long-alley, Moorfields;

also two tenements in the rear, in King's Head-court—1,685l.
Two freehold houses, Nos. 17 and 18, Long-alley, Moorfields—1,300l.
Four freehold houses, Nos. 1 to 4, Ball-alley, Moorfields—660l.
Two houses, Nos. 30 and 31, in front of Bermondsey New-road; held for forty-five years, at 16l. per annum—420l.
A house, No. 13, Mansfield-street, Kingsland-road; held for 73 years, at a peppercorn—246l. 15s.
A house adjoining, No. 14—230l.

By Mr. F. CHINNOCK.

A residence, No. 16, Henrietta-street, Cavendish-square, with coach-house and stable; held for 40 years from April 1831, at 110l. per annum—1,100l.
A house, No. 9, Westbourne Villas; held for 500 years, at a ground-rent of 12l.—900l.
Two houses, Nos. 5 and 6, Trump-street, Honey-lane, Cheap-side; let at 82l. per annum. The present lease will expire on the 19th of September, 1847, at 26l. per annum—255l.
Five residences, Nos. 5, 6, 8, 9, and 10, Princes-road, Notting-hill; also three houses situate in the Queen's-road, Notting-hill; held for 99 years from December 1841, at 8l. each house—240l.

THE following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

For the first 70 words 5s.
For every succeeding 30 words . 1s.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	96	95½	95½	95½	95½	95½
Three per Cents. Reduced	96½	96½	96½	96½	96½	96½
New Three-and-a-quarter per Cts .	98	98	98	98	98	98
Long Annuities	104	104	104	104	104	104
Bank Stock	208½	208½	208½	208½	209	209
India Stock	262	263	262	261	260	262
India Bonds, prem.	18	18	18	18	18	18
Exchequer Bills, prem.	11	11	11	11	11	11
FOREIGN.						
Spanish Five per Cents.	26	26	26	25½	25½	25½
Spanish Three per Cents.	36½	36½	36	36	36	36
Russian	112	112	112	112	113	113
Peruvian	38½	38½	38	38	39½	39½
Portuguese	43	43	42	41	40	39
Mexican	25½	25	24	23½	23½	23½
—Deferred	16½	16½	16½	16½	16½	16½
Dutch Two-and-a-half per Cents	94½	94½	94	94	94	94
—Four per Cents.	94½	94½	94	94	94	94
Danish	88	88½	88½	88½	88½	87½
Colombian	16½	16	15½	15½	15½	15½
Chilian	98	97	96	96	96	96
Buenos Ayres	39½	39½	40½	41½	41½	41
Brazilian	88	88	88	88	89½	89½
Belgian	97	97	97	97	97	97½

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, Aug. 3.
Beart, R. H. wine merchant, last exam. Sept. 24.
Tuesday, Aug. 4.
Knight, T. draper, last exam. sine die.—Leaman and Co. mahogany merchants, div. next week. Bell, London.—Woodbridge, J. saddler, last exam. Sept. 1.
Wednesday, Aug. 5.
Cooper, W. hardwareman, div. next week. Green, London.
Thursday, Aug. 6.
Arnatt, E. baker, final div. next week. Green, London.—Foster, T. mercer, final div. next week. Green, London.—Frost, J. goldsmith, final div. next week. Green, London.—Hart, T. R. victualler, last exam. Sept. 23.—Sewell, H. hatter, last exam. Sept. 24.
Friday, Aug. 7.
Burton, T. J. wine merchant, last exam. Aug. 23.—Bond, C. J. tailor, div. next week. Whitmore, London.—Carver, J. T. apothecary, last exam. passed.—Cook, T. A. carver, last exam. passed.—Hobbs, F. baker, last exam. sine die.—Kennett and Co. wax chandlers, last exam. passed.
Saturday, August 8.
Morel, D. A. dentist, last exam. Sept. 10.—Rogey and Co. wine merchants, joint div. and sep. of J. R. Green, London.

DIVIDENDS.

Bankrupts' Estates.
Official Assignees are given, to whom apply for the Dividends.
Bacon, J. carpenter, first, 114d. Young, Leeds.—Blacket, J. flax spinner, first, 5s. 2d. Baker, Newcastle.—Blacker and Earle, warehousemen, first joint, 5s.; sep. of B. 14s. 8d.; sep. of E. 4s. 7d. Graham, London.—Blacklock, R. innkeeper, first, 3s. 3d. Pennell, London.—Boggs and Co. merchants, third, 8d. Pennell, London.—Boggs, G. merchant, fourth, 2d. Pennell, London.—Brittain and Co. dealers and chapmen, first and final sep. 20s. Hobson, Manchester.—Buckwell, S. tannery, first, 1s. 1d. Graham, London.—Burbridge, J. and J. cabinet makers, sep. B. 5s. 20s. Follett, London.—Burton, S. and J. chemists, first joint, 5s.; first sep. of S. B. 6s. 8d. Kynaston, Hull.—Caswell and Co. leather sellers, first joint, 1s. 2d.; first sep.

of Tindall, 6s. 4d.; first sep. of Caswell, 2s. 6d. Graham, London.—*Chandler*, B. ironmonger, first, 4s. 9d. Graham, London.—*Cousen* and *Co.* worsted spinners, first joint, 5s. Kynaston, Leeds.—*Dalton*, J. grocer, first, 8s. 8d. Graham, London.—*Dykes*, E. S. basket maker, first, 8s. Green, London.—*Ebrey*, W. silk dresser, first, 83d. Graham, London.—*Fitzjames*, H. L. furrier, first, 1s. 9d. Miller, Bristol.—*Foothead*, H. H. milliner, first, 1s. 5d. Graham, London.—*Furnival*, J. baker, 5d. Follett, London.—*Garland*, R. corn chandler, first, 1s. Pennell, London.—*Gill*, F. hardware dealer, 3s. 6d.—*Hobson*, Manchester.—*Giro*, J. merchant, first, 5s. Alsager, London.—*Gore*, J. G. inn-keeper, 3s. 1d. Miller, Bristol.—*Gregson*, J. S. grocer, first, 11s. 8d. Hobson, Manchester.—*Griffiths* and *Pearson*, tailors, first, 4s. Pennell, London.—*Hansen*, P. merchant, second, 1s. Wakley, Newcastle.—*Harding*, W. sen. mason, 8s. Follett, London.—*Harley*, W. S. hatter, first, 74d. Hernaman, Exeter.—*Harvard*, J. lamp maker, first, 1s. 11d. Whitmore, London.—*Hay and Tiverton*, oilmen, sep. Hay, 4s. 6d. Follett, London.—*Hutton*, J. draper, second, 3s. 5d. Graham, London.—*Imray*, J. stationer, second, 23d. Whitmore, London.—*Jay*, J. builder, third, 2d. Whitmore, London.—*Kearton*, W. cheesemonger, 8s. Belcher, London.—*Kelly*, W. brewer, first, 2s. Turner, Liverpool.—*Kemp*, J. C. merchant, first, 3s. 6d. Turner, Liverpool.—*Leather and Wardle*, earthenware manufacturers, first joint, 4s. 4d.; first sep. Leather, 13s. 6d.; first and final sep. Wardle, 20s. Young, Leeds.—*Leach*, J. ironmonger, second and final, 23d. in addition to 3s. 4d. Baker, Newcastle.—*Massey*, J. grocer, first, 7s. 3d. Hobson, Manchester.—*Nicholls*, W. stable keeper, second, 6d. Graham, London.—*Oldham*, J. silk warehouseman, 4d. Follett, London.—*Perkins*, J. jeweller, 1s. Follett, London.—*Pritchett and Oridge*, drapers, first, 4s. Green, London.—*Sanderson*, W. W. baker, first, 9d. Whitmore, London.—*Staples*, J. surgeon, 8s. Miller, Bristol.—*Sterry*, W. B. sail maker, first, 6s. 9d. Whitmore, London.—*Taylor*, J. merchant, first, 5s. Turner, Liverpool.—*Smith*, N. T. ship owner, 4d. Follett, London.—*Starbuck*, R. shipwright, first, 5s. Pennell, London.—*Taylor*, T. grocer, first, 7s. 6d. Baker, Newcastle.—*Thompson*, J. grocer, first, 3s. 10d. Pennell, London.—*Ward*, H. paper manufacturer, first, 3s. 8d. Graham, London.—*Watson*, G. bookseller, first, 3s. 4d. Baker, Newcastle.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Aug. 7.
J. Hargreaves, Nabrougham Eaves, and T. Chaffer, Burnley, timber merchants. Sols. Aleck and Dixon, Burnley.—*Devies*, E. saddler, Tredgar, July 30. Trustees, G. Harry, manager of the Tredgar branch of the Monmouthshire and Glamorganhire Bank, and G. Illingworth, cashier of the Tredgar Iron Company, both of Tredgar. Sols. Waters, Tredgar.—*Hale*, R. M. draper, Fordingbridge, July 28. Trust. W. Smith, warehouseman, Old Change.—*Sal Jones*, Sals-lane.—*Johnston*, T. draper, Totness, July 10. Trustees, J. Duncan, Watling-street, and William M'Laren, Glasgow, warehouseman. Sols. Catlin, Ely-place, Holborn.—*Layton*, W. draper, Kingston-upon-Hull, June 10. Trustees, J. Sykes, cloth manufacturer, Huddersfield, J. H. Farrar, merchant, Halmforth, and R. Fawcett, book-keeper, Hingham-upon-Hull. Sols. Tindale.

Gazette, Aug. 11.
Marcer, T. grocer, Newport, Isle of Wight, Aug. 3. Trustees, E. P. Baker and E. Fincham, tea dealers, both of Portsea, and W. Rider, draper, Newport. Sols. Taylor, Portsmouth.—*Mead*, S. tailor, Tiverton, June 18. Trust. J. Cousins, woollen merchant, Bristol. Sols. Whittington, Bristol.—*Wilmshurst*, J. corn merchant, Cranbrook, Aug. 8. Trustees, R. Tooth and W. Esgue, gentlemen, Cranbrook. Sols. Wilson, Cranbrook.

Bankrupts.

DATE OF VIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Aug. 7.
ASHDOWN, WILLIAM, ironmonger, Chatham, Aug. 17, at half-past eleven, Sept. 18, at one, Basinghall-st. Com. Fane; Alsager, off. ass.; Whiteale, Aldermanbury, and Wickham, Stroud, sols. Date of fiat, Aug. 3. R. Stewart and J. J. Smith, stove grate manufacturers, Sheffield, pet. crs.
CAINES, JOHN, corn dealer, Chilton Cantelo, Somersetshire, Aug. 18 and Sept. 8, at eleven, Exeter, Com. Bere; Herdman, off. ass.; Trehora and Co. Backlbury, Terrell, Exeter, and Stale and Vining, Yeovil, sols. Date of fiat, July 25. J. T. Vining, attorney, Yeovil, pet. cr.
CHAMBERS, WILLIAM, shipwright and shipbuilder, Southwick, Durham, Aug. 14 and Sept. 10, at eleven, Newcastle, Com. Ellison; Wakley, off. ass.; Hartley, Durham, and Ebe Phillips, Gray's-inn, sols. Date of fiat, July 30. G. Charlton, shipwright, Southwick, pet. cr.
CLARK, HENRY, out of business, Stapleford Abbots, Essex, Aug. 22, at half-past one, Sept. 12, at half-past twelve, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Kinder and Sorrell, Jewry-st. sols. Date of fiat, Aug. 4. Bankrupt's own petition.
HALL, ANN, innkeeper and victualler, Manchester, Aug. 19 and Sept. 9, at eleven, Manchester, Hobson, off. ass.; Johnson and Co. Temple, and Bagshaw and Co. Manchester, sols. Date of fiat, July 30. S. Roebuck, grocer, Manchester, pet. cr.
MILTON, SAMUEL, sail maker, Barking, Essex, Aug. 13 and Sept. 19, at eleven, Basinghall-st. Com. Goulburn; Green, off. ass.; Shoubridge and Co. Bedford-row, and Griffin, Ilford, sols. Date of fiat, July 28. W. L. Williams, butcher, Barking, pet. cr.
FRANCE, ZACHARUS, clothier, Bradford, Wilts, Aug. 21 and Sept. 18, at eleven, Bristol, Com. Stevenson; Miller, off. ass.; Merrick, Bradford, sols. Date of fiat, July 23. R. Tarr, wool merchant, Trowbridge, pet. cr.
RUSSELL, ROBERT, and RAMSDEN, RICHARD, joiners and builders, Oldfield-lane, Salford, Lancashire, Aug. 19 and Sept. 9, at twelve, Manchester; Hobson, off. ass.; Gregory and Co. Bedford-row, and Makinson, Manchester, sols. Date of fiat, July 24. J. Mouncey, timber merchant, Salford, pet. cr.
SPENCE, THOMAS HENRY, tailor and draper, Newcastle-upon-Tyne, Aug. 14, at twelve, Sept. 10, at half-past one, Newcastle, Com. Ellison; Baker, off. ass.; Harle, Newcastle, and Chisholme and Co. Lincoln's-inn-fields, sols.

Date of fiat, July 31. I. Slater, widow, Gatehead, pet. cr.

WARD, JAMES, dealer in glass and glass cutter, Birmingham, Aug. 18 and Sept. 15, at ten, Birmingham, Com. Balguy; Valpy, off. ass.; Suckling, Birmingham, sol. Date of fiat, July 25. W. Smith, builder, Birmingham, pet. cr.

Gazette, Aug. 11.

BISHOP, JOHN, painter and house decorator, Cross-st. Manchester, Aug. 22 and Sept. 12, at one, Manchester, Pott, off. ass.; Cornthwaite and Adams, Old Jewry-chambers, and Pemberton, Liverpool, sols. Date of fiat, Aug. 6. Bankrupt's own petition.

HAYWARD, JAMES, and ADAM, DAVID, booksellers, 483, Paternoster-row, Aug. 22, at half-past two, Sept. 29, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Jerwood, Thavies-inn, sol. Date of fiat, Aug. 6. W. Mardon and W. T. Pritchard, gents. Newgate-street, pet. crs.

MITCHELL, WILLIAM, draper, Westerham, Kent, Aug. 19, at two, Sept. 19, at twelve, Basinghall-st. Com. Goulburn; Green, off. ass.; Ashurst, Cheapside, sol. Date of fiat, Aug. 3. W. White and S. Greenwell, warehousemen, Cheapside, pet. crs.

MORTIMER, WILLIAM HENRY, wood pavior and dealer in patent wood pavement, and also dealer in wooden blocks for paving, 12, Lower Harley-st. St. Marylebone, Aug. 20, at eleven, Sept. 25, at twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Berry, Verulam-buildings, sol. Date of fiat, Aug. 6. Bankrupt's own petition.

PARNELL, HENRY, auctioneer, Moorrate-street-chambers, City, Aug. 20, and Sept. 23, at eleven, Basinghall-st. Com. Fane; Whitmore, off. ass.; Warrand, Skinner-st. sol. Date of fiat, Aug. 6. S. Makepeace, calico printer, Mitcham, pet. cr.

SMITH, ALEXANDER, and IRVINE, THOMAS, merchants, Liverpool, Aug. 21, at twelve, Sept. 18, at eleven, Liverpool, Com. Ludlow; Bird, off. ass.; Baxendale and Co. Great Winchester-st. and Shackleton and Co. sols. Date of fiat, Aug. 7. Bankrupt's own petition.

TORLEY, WILLIAM, and PORTS, RICHARD SMITH, common carriers, Old Change, City, Aug. 19, at one, Sept. 18, at two, Basinghall-st. Com. Fane; Alsager, off. ass.; Farrar, Doctors'-commons, sol. Date of fiat, Aug. 6. Bankrupt's own petition.

TURNER, JOSEPH, jeweller, Ludgate-hill, City, Aug. 21, at half-past ten, Sept. 28, at one, Basinghall-st. Com. Fane; Whitmore, off. ass.; Fawcett, Jewin-st. and Hockley, sols. Date of fiat, Aug. 8. William King, jeweller, Bridgewater-sq. pet. cr.

Meetings at Basinghall-street.

Gazette, Aug. 7.
Dailoy and Inskip, leather manufacturers, Long-lane, Bermondsey, Aug. 17, at twelve (adj. July 31), last exam.—*Pittich*, J. W. tailor, Seckville-st. Aug. 28, at half-past one, and—*Walduck*, H. chemist, New Bond-st. Aug. 28, at eleven, and.

Gazette, Aug. 11.
Belloni, F. clockmaker, Shaftesbury, Aug. 21, at eleven, at eleven, new ass.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Fellthous, G. plumber, Dorcas-terrace, Fulham, Sept. 3, at half-past eleven.—*Rolfe*, F. tailor, Great Marlborough-street, Sept. 3, at eleven.

Meetings in the Country.

Gazette, Aug. 7.
Andrews, J. commission agent, Hill-house, near Huddersfield, Aug. 29, at eleven, Leeds.—*Corbett*, J. F. scrivener, Worcester, Sept. 1, at eleven, Birmingham.—*Evans*, J. cattle dealer, Haywood-lodge, Herefordshire, Aug. 29, at twelve, Birmingham.—*Joliffe*, J. E. H. chemist, Westbury-upon-Trym and Bristol, Aug. 31, at one, Bristol.—*Partridge*, J. coal merchant, Cheltenham, Aug. 31, at one, Bristol.—*Smith*, W. H. newspaper proprietor, Swansea, Aug. 31, at half-past eleven, Bristol.—*Waterhouse and Sutton*, calico printers, Salford, Sept. 1, at twelve, Manchester.

Gazette, Aug. 11.
Atley, J. nankeen and fustian manufacturer, Manchester and Whitfield, Sept. 3, at twelve, Manchester (adj. July 31), last exam.—*Ball*, C. linen draper, Lane-end, and Chesild, Aug. 29, at twelve, Birmingham (adj. July 31), last exam.—*Bird*, J. draper, Chester le Street, Sept. 4, at twelve, Newcastle, and—*Boulton*, J. carrier, Ashop-upon-Lyne, Sept. 3, at eleven, Manchester (July 29), last exam.—*Elcock*, E. ironmonger, West Bromwich, Staffordshire, Sept. 1, at ten, Birmingham, and, and the div.—*Leavis*, H. draper, Llandovery, Carmarthenshire, Sept. 3, at eleven, Bristol, and, and Sept. 4, at eleven, Bristol, div.—*Robinson*, A. draper and publican, Chester le Street, Sept. 4, at half-past twelve, Newcastle, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Buttrey, J. commission agent, Manchester, Sept. 3, at twelve, Manchester.—*Hase*, P. tallow chandler, Liverpool, Sept. 4, at eleven, Liverpool.—*Holt*, J. lace glove manufacturer, Castle Donington, Sept. 15, at twelve, Birmingham.—*Kirk*, W. stock broker, Leeds, Sept. 3, at twelve, Manchester.—*Longfield*, G. tailor, West Bromwich, Sept. 15, at eleven, Birmingham.—*Pearson*, J. fellsomgier, Newcastle, Sept. 4, at one, Newcastle.—*Philp*, J. stationer, Bristol, Sept. 3, at eleven, Bristol.—*Scott*, J. flour dealer, Sheffield Moor, Sept. 4, at eleven, Sheffield.—*Smith*, S. grocer, Bedminster, Sept. 7, at eleven, Bristol.—*Williams*, H. apothecary, Llanrwst, Sept. 1, at eleven, Liverpool.

Partnerships Dissolved.

Gazette, August 4.
Badger, T. and Worrall, W. silver platers, Sheffield, July 30.—*Blushop*, M. and Temple, E. drapers, Lambeth, August 4.—*Broadhurst*, R. and E. and Robinson, J. yarn dealers, Manchester, as far as regards Robinson, July 31. Debts paid by the remaining partners.—*Bush*, W. R. and Guy, E. E. clock makers, Devizes, April 30. *Cloughton*, J. (deceased), W. and H. and *Beddison*, J. chemists, Chesterfield, so far as regards Beddison, July 1. Debts paid by the remaining partners.—*Collett*, A. and Brown, W. share brokers and tobacco manufacturers, Leeds, July 28.—*Facey*, E. and Gor-

rell, G. saddlers, Pontypool and Aberysthach, July 31.—*Lee*, T. and G. K. ship brokers, Bishopwearmouth, July 31. Debts paid by T. Lee.—*McNeill*, W. and Arkwright, J. C. cotton spinners, Marlock and Cromford, July 1. Debts paid by Arkwright.—*Minshull*, J. L. and Barrow, B. surgeons, Liverpool, June 30.—*Owston*, R. J. Nicholson, W. and Knott, J. carriers, Glamford Briggs, June 30.—*Perry*, R. H. and J. grocers, Newcastle-upon-Tyne, July 1.—*Pierson*, J. H. G. and Thacker, R. G. attorneys, Tiverton, July 31.—*Rapley*, G. Baie, J. Leicester, P. Soddon, H. and Leather, J. first glass manufacturers, Eccleston, as far as regards Royle, July 1. Debts paid by the remaining partners.—*Sewell*, J. Dean, E. and Sewell, G. distillers, Upper Thames-st. so far as regards J. Dean, July 31.—*Skate*, T. Robson, W. and Hoyle, R. and J. T. colour manufacturers, Paradise, Northumberland; tar distillers, Bill-quay, and seed crushers, Fellingingham, Durham, so far as regards J. T. Hoyle, July 2.—*Spurr*, H. and Benson, C. type-founders, Manchester, July 25.—*Walker*, T. and Knight, W. butchers, Everham, August 1. Debts paid by Walker.—*Whalley*, W. and Thompson, E. H. stock brokers, Leeds, August 1.

Gazette, Aug. 7.

Barnard, T. and Clark, F. B. builders, Baker-st. Aug. 6.—*Brounger*, W. G. Wilks, C. and Tooke, W. H. engineers, Bordeaux, France, July 1.—*Geikie*, J. and Catling, J. Russia merchants, Fenchurch-st. Aug. 1. Debts paid by Catling.—*Hagen*, E. and Harvey, R. sugar refiners, Little Albe-st. Goodman's-fields, July 4.—*Hayward*, J. S. and Macdonald, W. Liverpool, Aug. 31.—*Hovells*, H. C. and Lee, G. E. stock brokers, Bristol, July 31.—*Jackson*, H. and W. H. watch manufacturers, Red Lion-st. Clerkenwell, June 30. Debts paid by W. H. Jackson.—*Marsball*, S. and W. underwriters, Lloyd's, Dec. 31, 1838.—*Moore*, J. and Sabin, H. pencil manufacturers, Birmingham, June 30. Debts paid by Moore.—*Peters*, P. and Andrews, A. button makers, Birmingham, July 21. Debts paid by Peters.—*Phipson*, S. R. and Toole, F. H. stock brokers, Birmingham, June 2.—*Rippper*, G. and H. and Tapscott, W. passenger brokers, Liverpool, July 31.—*Roe*, W. V. and T. outfitters, Gravesend, July 25. Debts paid by W. V. Roe.—*Shawell*, G. and Morland, W. and R. cotton spinners, Manchester, Aug. 5. Debts paid by Messrs. Marland.—*Shelton*, G. sen. and jun. hosiery, June 30.—*Smith*, J. W. and E. undertakers, Leeds, Aug. 1. Debts paid by E. Smith.—*Wade*, J. C. and E. H. men drapers, Deptford and Camberwell, Aug. 4.—*Whitehead*, S. and Waters, H. W. woollen drapers, Birmingham, Aug. 6. Debts paid by Whitehead.—*Wilkinson*, J. and Cottrill, W. cotton spinners, Rochdale, Aug. 5. Debts paid by Wilkinson.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Aug. 4.
Babinin, T. paper-hanger, Chancery-lane, City-road, Aug. 7, at half-past eleven, Com. Goulburn; Green, off. ass.—*Elger*, W. tobaccoist, Dockhead, Aug. 7, at half-past eleven, Com. Goulburn; Follett, off. ass.—*Harris*, H. manufacturer of glaziers' diamonds, East Greenwich, Aug. 7, at half-past twelve, Com. Goulburn; Follett, off. ass.—*Heath*, J. S. brush maker, Riddings-lane, Aug. 7, at twelve, Com. Goulburn; Follett, off. ass.—*Lewer*, J. beer-shop-keeper, Chapel-st. and Bell-st. Edgware-road, Aug. 7, at eleven, Com. Goulburn; Follett, off. ass.—*Malcom*, E. P. omnibus time-keeper, Hammer-smith, Aug. 7, at eleven, Com. Goulburn; Green, off. ass.—*Place*, J. T. out of business, Morton, Aug. 7, at half-past eleven, Com. Goulburn; Green, off. ass.—*Plew*, G. boot maker, Thurston, Aug. 7, at eleven, Com. Goulburn; Follett, off. ass.—*Rosell*, W. T. tailor, Sidmouth-st. Gray's-lane-road, at half-past twelve, Com. Goulburn; Green, off. ass.—*Watson*, H. plumber, Reading, Aug. 7, at twelve, Com. Goulburn; Green, off. ass.—*Welfare*, H. furrier, Union-st. Southwark, Aug. 7, at half-past twelve, Com. Goulburn; Green, off. ass.—*Wickham*, J. carpenter, Maidstone, Aug. 7, at half-past one; Com. Goulburn; Follett, off. ass.—*Williams*, W. S. clerk, Vicarage-place, Middlessex, Aug. 7, at half-past eleven, Com. Goulburn; Green, off. ass.

MEETINGS IN THE COUNTRY.

Green, J. Dudley, Aug. 25, Birmingham, at ten, and.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, August 7.
Harrild, H. engineer, Sun-row, Tibborton-sq. Ialington, Aug. 21, at ten.—*Wiles*, S. lodging housekeeper, Pumpington-place, Hercules-buildings, Lambeth, Aug. 24, at half-past twelve.

PETITIONS TO BE HEARD IN THE COUNTRY.

Alderson, J. grocer, Bradford, Aug. 12, at eleven, Leeds.—*Antkott*, J. carpenter, Wednesbury, Aug. 14, at ten, Birmingham.—*Bisby*, J. out of business, Leeds, Aug. 12, at eleven, Leeds.—*Collins*, F. attorney, Hereford, Sept. 13, at ten, Birmingham.—*Dibb*, W. furrier, Leeds, Aug. 11, at ten, Leeds.—*Jagles*, J. out of business, Aug. 14, at ten, Birmingham.—*James*, E. beer retailer, Aug. 25, at half-past eleven, Bristol.—*Leach*, R. sen. out of employ, Tontosh-park, Aug. 11, at half-past ten, Liverpool.—*Milligan*, R. J. commission agent, Bradford, Aug. 12, at eleven, Leeds.—*Pearce*, E. hatter, Scarborough, Aug. 11, at eleven, Leeds.—*Pain*, C. U. bookkeeper, Manchester, Aug. 19, at twelve, Manchester.—*Robinson*, J. auctioneer, High Harrogate, Aug. 12, at eleven, Leeds.

From the Gazette of Friday, August 14.

Bankrupts.

Bloomfield, J. B. jun. chemist and druggist, Poole.—*Holmes*, F. and J. ship-builders, Southtown, Suffolk.—*Stratton*, J. W. tailor, March, Cambridgeshire.—*Price*, J. M. innkeeper, Warminster.—*Knight*, T. U. grocer, Princess-st. Gravesend.—*Broune*, T. hatter, Southampton.—*Osborne*, R. and W. C. millers, Wansford, Yorkshire.—*Packer*, S. and Makins, W. T. woollen drapers, Kingston-upon-Hull.—*Ollard*, W. L. auctioneer, Upwell, Cambridgeshire.—*Birch*, J. tailor, Hull.—*Taylor*, C. brush manufacturer, Birmingham.—*Crase*, T. common brewer, Kegworth, Leicestershire.—*Naylor*, R. licensed victualler, Marlborough.—*England*, G. clothier, Brimscombe, Gloucestershire.

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THE REPORTS.

PRIVY COUNCIL.

Feb. 7 and 20.

(Present, LORD BROUGHAM, MR. BARON PARKER, SIR H. JENNER FUAT, and the Right Hon. T. PEMBERTON LEIGH.)

BARNES v. VINCENT.

Jurisdiction.

The Prerogative Court is bound to admit to probate a will disputed upon the ground that the execution had not followed the power, and to leave the question of the execution to be dealt with by the Court which might have to deal with the property passed under the will.

LORD BROUGHAM gave judgment in this case.—His lordship said this was the case of a will made by a married woman, but professed to be under a power in her marriage settlement, and the execution being alleged to be defective (inasmuch as the power required the will to be not only signed, but published by her, in the presence of witnesses, and the attestation did not set forth the publication), the question was raised below whether or not this execution sufficiently followed the power? Before allowing this question to be argued, their lordships directed that counsel should confine themselves to the preliminary question, whether, supposing no other objection to the will had existed, except that raised on the execution of the power, the Prerogative Court ought not to have admitted it to probate, and left the question of the execution to be dealt with by the Court which might have to deal with the property passed under the will. The question was one of great importance, and it was not unconnected with difficulty, arising chiefly from the practice which had for a considerable length of time prevailed in the ecclesiastical courts. Those courts had been accustomed of later times to deal with the question of the due execution of the power before admitting to probate, and they had, according to their judgment on that question, granted a probate or refused it. It was obvious that nothing could be more unsatisfactory than the state in which such a course left the law. If probate were granted, the grant did not bind the courts which had to deal with the property; such courts might still reject the instrument altogether, upon the ground of the power not authorizing the act, or although authorizing it, yet the power having been insufficiently pursued in the execution. The sentence, therefore, of the Court of Probate was not conclusive, and nothing could be more unfortunate than that the sentence of that Court granting probate being inconclusive, the sentence refusing probate should be held conclusive; and yet that must be the inevitable consequence of that Court entertaining the question respecting the power, because, if probate be refused, the Courts of equity never could know any thing of the will at all. His lordship then went on to discuss the various principles and considerations applicable to the case, as well as the authorities bearing upon it, and stated that their lordships had come to the conclusion that the Court of Probate had not jurisdiction

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to deal with the question of the due execution of the power, but only to say whether, if the testatrix had the power, her paper was testamentary. In this decision Lord Cottenham and Lord Campbell, who heard the argument, concurred, and also the Lord Chancellor of Ireland, who had been consulted upon the point. His lordship concluded by saying, that in now deciding this question, it was naturally a satisfaction that their determination tended to narrow, and not to extend the range of cases in which a conflict arose between different jurisdictions dealing with the same subject-matter. It was no sufficient reason for deciding against any known principle, or any current of consistent authority, that they might thereby be enabled to establish a more exact harmony between different Courts or systems of jurisprudence; but where matters hung evenly balanced, and still more where both sound principle and the better practice authorized their determination, they could not avoid feeling that it was highly desirable to place the law as administered by the different tribunals touching the same subject-matter in a state of uniformity and consistency.

Equity Courts.

LORD CHANCELLOR'S COURT.

July 15 and 22.

DIETRICHSEN v. CABBURN.

Demurrer—Positive and negative agreements—Mutuality—Specific performance—Injunction.

Where an agreement is so infirm that the Court can decree no substantial performance of it, there the parties will be left to their legal remedies. But where there is a clear negative agreement on the one side the Court will not refrain from enforcing that agreement by injunction, because there may be some positive stipulations which the Court cannot enforce against the plaintiff.

There is a different rule with respect to injunctions from that upon which the Court acts with respect to specific performance. Injunction will be granted in cases where there can be no specific performance.

This was an appeal from the decision of the Vice-Chancellor of England allowing a demurrer to the plaintiff's bill for want of equity. The defendant was the proprietor of a medicine called "Cabburn's Antidolorific Oil," used for the cure of gout and rheumatism, and the plaintiff was the proprietor of a cheap almanack of very great circulation, which therefore furnished a convenient medium for extensively advertising the medicine. An agreement was made between the parties, by which the plaintiff was to become wholesale agent for the sale of the defendant's medicine, which the plaintiff was to purchase at a discount of 40 per cent. from the selling price. The defendant on his part agreed not to sell or supply the medicine wholesale to any other person than the plaintiff at a greater discount than 25 per cent. The plaintiff was to pay the defendant every three months, and the agreement was to be continued for 21 years from its date. The bill set forth the agreement, charged that the defendant was in the constant habit of committing breaches of it by selling his medicine to various persons at greater discount than 25 per cent. and prayed that the defendant might account to the plaintiff for all the sums he had received from persons to whom he had sold medicine at a greater discount than 25 per cent. on such sales, and for an injunction to restrain the defendant from further sales at any greater rate of discount than 25 per cent. The Vice-Chancellor had allowed the demurrer, on the ground that where an agreement contains positive stipulations on the one side, and negative stipulations on the other, the Court won't enforce the negative if it cannot likewise enforce the positive part of the agreement. Here, the Court could not enforce the positive stipulations into which the plaintiff had entered, and it would not therefore enforce the negative part of the agreement against the defendant. From that decision the plaintiff appealed.

James Parker and Glasse, in support of the appeal, contended that this doctrine was founded on no sound principle of equity, and that it rested on no authority except the cases of *Kemble v. Kean*, 6 Sim. 333, and *Kimberley v. Jennings*, 6 Sim. 340.

The LORD CHANCELLOR.—It is not an agreement for selling at all, but for employing the plaintiff as agent; the defendant is not to employ any other agent at more discount than 25 per cent. As you have read the allegation it would leave it open to the defendant to sell.

Parker.—The agreement is, that he will not supply or sell wholesale to any person at a greater discount than 25 per cent.

The LORD CHANCELLOR.—How can you limit the use to which purchasers will apply it? Might not any person come into his shop and buy the medicine with the intention of selling it again?

Parker.—Not at a greater discount than 40 per cent. The injunction asked by the bill was to restrain the defendant from supplying or selling wholesale to

any person at a greater discount than 40 per cent. The Vice-Chancellor, in *Kemble v. Kean*, said, "There is no method of arriving at that which is the substance of the contract between the parties, by means of any process which this Court is enabled to issue; and therefore (unless there is some positive authority to the contrary), my opinion is that, where the agreement is mainly and substantially of an active nature, and is so undetermined, that it is impossible to have performance of it in this Court, and it is only guarded by a negative provision, this Court will leave the parties altogether to a court of law, and will not give partial relief by enforcing only a negative stipulation. I think that was what Lord Eldon said in the case of *Morris v. Colman*, which bears upon this." And Lord Eldon, in *Clarke v. Price*, had said that *Morris v. Colman*, turned upon the partnership articles, and upon its being a case of partnership. The Vice-Chancellor had since followed the same course in other cases, but it had not been adopted by any other judge of this Court; that it was very important to the jurisdiction of this Court, that a doctrine so narrow should not prevail, as it would greatly limit the power of the Court in granting injunctions, and the principle would extend to cases not at all contemplated. For instance, the restrictive covenants in farm leases were constantly enforced by injunction. So in the case of a mill, where all the tenants of a certain district were bound to carry their corn to be ground at that mill. There the law implies a duty to keep the mill in a proper state to grind all the corn brought. The defendant, in all these cases, may have a defence that the plaintiff has not performed his part. This principle has been affirmed in several cases. Thus, in *Morris v. Colman*, 18 Ves. 438, the bill prayed an injunction to restrain Mr. Colman from writing dramatic pieces for any other theatre than the Haymarket; and Lord Eldon said, "I cannot perceive any violation of public policy in this provision. The case of trade, to which it has been referred, is perfectly distinct. If Mr. Garrick was now living, would it be unreasonable that he should contract with Mr. Colman to perform only at the Haymarket Theatre, and Mr. Colman with him to write for that theatre alone? Why should they not thus engage for the talents of each other?" The Vice-Chancellor had referred to *Clark v. Price*, but Lord Eldon had said there that there were no negative terms, and put it expressly upon this, that if the contract was one which the Court would not carry into execution, the Court could not indirectly enforce it by restraining the defendant from doing some other act.

The LORD CHANCELLOR.—You say that is not an authority for the position that the Court will not interfere to enforce the negative, because it cannot enforce the positive?

Parker.—Yes. That is supported by *Rankin v. Hankisson*, 4 Sim. 13; *Williams v. Williams*, 2 Swanst. 253; *Barnett v. Thacker*, 5 Ves. 555.

The LORD CHANCELLOR.—There is also the case of the British Museum (*The Duke of Bedford v. Trustees of British Museum*, 2 Myl. & K. 554), and that of the Statute in Cockspur-street (*Squire v. Campbell*, 1 Myl. & Cr. 459).

Glasse.—The defendant is now seeking to escape from his agreement. It is not merely one of agency, but for the actual sale of the medicines, of which an account is to be rendered every three months. The whole of the law sought to be sustained depends on the Vice-Chancellor's own decision in *Kemble v. Kean*.

The LORD CHANCELLOR.—The ground it is put upon is, that the defendant could not compel the plaintiff to perform the agreement; that it was not mutual in that respect.

Glasse.—Here there is a clear contract not to do a certain act. (*Ball v. Coggs*, 1 Brown, P. C. 140.)

Walker and Bacon for the defendant, in support of the demurrer.—The bill asks for injunction; and an account of all oil sold at greater discount than 25 per cent.; also an account of all profit made by the defendant by violation of his agreement, and that the damages may be assessed. They cited and referred to *Scott v. Macintosh*, 1 Ves. & Bea. 503; *Clarke v. Price*, 2 J. Wilson's C. C. 157; *Baldwin v. Useful Knowledge Society*, 9 Sim. 393; *Morris v. Colman* (supra); *Hills v. Croll*, 9 Jurist, and 1 Ver. R. Prop. Rep. 541, where Lord Lyndhurst affirmed the principle of *Kemble v. Kean*; *Gervoise v. Edwards*, 2 Drur. & Warr. 80.

The LORD CHANCELLOR.—Do you contend that injunction is only co-extensive with specific performance? The rule with regard to injunctions is very different from the rule with regard to specific performance, though very generally confounded.

Walker.—*Rankin v. Hankisson*.

The LORD CHANCELLOR.—The tenants of the houses at the bottom of the Haymarket complained that the statue erected in the open space in Cockspur-street was a violation of the implied terms of their leases. So the case of the British Museum came before me, and I thought no case was made out. Both cases turned on the fact that there was no injury, but they came here on an implied contract, and there is no doubt that is an equity. There are cases in which the Court will interfere against one party by injunc-

tion without giving any relief to the other. If you can distinguish this case, do."

Walker.—What is asked for in this bill is solely matter for the consideration of a jury. Farming leases proceed on different grounds. (*Smith v. Fromont*, 2 Swanst. 330; *Barrett v. Blagrove*, 5 Ves. 555 and 6 Ves. 104.) There is no obligation on the plaintiff to order the medicine, and by abstaining from taking it he might stop the defendant's business altogether.

The LORD CHANCELLOR.—He may sell any quantity, but not for the purpose of re-sale.

Bacon.—The defendant has no means of enforcing the terms of the agreement, and consequently there is no mutuality.

Parker, in reply.—*Hills v. Croll* was a very complicated agreement, extending over a number of years, and the bill was for specific performance.

The LORD CHANCELLOR.—Was the discussion on the motion for an injunction?

Parker.—Yes. The whole question of specific performance was before the Court. *Geroise v. Edwards* was for specific performance, and an indemnity against future acts, and no injunction was sought; a bill for injunction is often sustained without an account in cases like the present, which is analogous to a partnership. An examination of the authorities proves this doctrine to rest solely on the decisions of the Vice-Chancellor of England.

The LORD CHANCELLOR.—This case raises an important point, and I will look at the authorities.

JUDGMENT.

Wednesday, July 22.—The LORD CHANCELLOR.—The plaintiff was only constituted the agent of the defendant, while, on the other hand, the defendant bound himself not only to employ the plaintiff, but to supply no other person with the patented medicine at a discount greater than 25 per cent. The bill alleges a due performance on the part of the plaintiff of his part of the agreement, and then states the violation of the agreement by the plaintiff in supplying other persons with the medicine at greater discount than that stipulated, and prays for an injunction and an account. The question is, whether the bill has stated a case which comes within the jurisdiction of this Court. Now, it has been stated at the bar that the Vice-Chancellor of England has expressly decided that this Court will not interfere by injunction to enforce the negative terms of an agreement where the positive terms of it could not be enforced. I cannot help thinking that the learned judge has been misunderstood, and that he only meant to say that the Court could not interpose where no part of the positive agreement could be performed, and not where the whole could not be enforced, which was the case of *Kimberley v. Jennings*, and to that proposition I subscribe. The rule respecting injunctions in this Court cannot be confined to cases where there is a positive agreement not enforced against the plaintiff. If there is such infirmity in the agreement that the Court cannot perform the whole, it may decline to interfere. But where there is a consideration paid for a negative agreement, or an agreement prohibiting certain acts, the Court will interfere by injunction. Thus, in the case of tenants, and many others, there was nothing to be done by the plaintiffs. In none of such cases was any equity administered against the plaintiff. So in suits to enforce legal rights, such as patents, copyrights, &c. With respect to the question of mutuality, the law has been clearly settled by Lord Eldon, in the cases of *Morris v. Colman* and *Clark v. Price*; for though it had been stated that *Morris v. Colman* proceeded upon the ground of a subsisting partnership, I cannot find such to have been the reason from the report. In *Barret v. Blagrove*, though the injunction was afterwards dissolved on the ground of acquiescence, I do not find any objection of want of mutuality was taken. It is clear that the Court will interfere in cases of partnership, which is an additional instance. Looking, therefore, at the whole range of cases respecting negative agreements, and seeing that the plaintiff is entitled to relief, there is no foundation for the reasoning that the Court will not interfere, as the plaintiff has stated by his bill, in a case which calls for the interposition of the Court. The agreement being distinct, and the defendant having violated it, I think that the plaintiff is entitled to the injunction asked by his bill, and that the demurrer must be overruled.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Saturday, July 4.

GILBERT v. COOPER.

Railway litigation—Breach of contract—Amalgamation of one line with another.

The directors of one projected railway company have no right, without the concurrence of the subscribers, to amalgamate themselves with another, notwithstanding there may be no mala fides in the arrangement, and from circumstances it would appear to the mutual benefit of both companies.

The provisional committee of directors for the time

being of the South and Midland Junction Railway Company, under the parliamentary contract for that purpose, were to have "full power and authority to fix upon, and from time to time to alter and vary the points or places at which the said intended railway should commence and terminate, and the intermediate course, route, or line thereof," &c. Under the subscription contract of the same date, the provisional committee of directors were to have "ample power to carry all or any parts of the undertaking, as described in the said parliamentary contract, into effect; and for that purpose to cause such surveys and estimates, and also to make such contracts and arrangements with railway and canal proprietors, landowners, and other persons, and generally to adopt all such measures as any such board or meeting of the provisional committee or directors as aforesaid might in their judgment think necessary or expedient, and particularly to apply to Parliament for an Act for the establishment and promotion of the said undertaking, with such arrangements and provisions as they might think expedient. That the said provisional committee of management or directors should have full power to apply all or any part of the moneys which should have been paid by way of deposit in payment of all salaries, and in making deposits, as might be necessary, for the purpose of complying with the standing orders of Parliament, in such manner as they might think proper. That the said provisional committee of management, or directors, should have full power to make all such contracts and arrangements with railway and canal proprietors, landowners, and other persons, as they should think proper, concerning or relating to the said undertaking.

The printed prospectus stated that the proposed line of rail was to originate at Bicester, by a junction, by joining the Oxford and Cambridge line, and passing many principal towns, such as Bristol, Bath, and Cheltenham, Devizes, Marlborough, Andover, Salisbury, &c. and to be carried as far as Southampton and Poole.

The directors of the South and Midland Junction Railway were unable, on or before the 30th Nov. 1845, to deposit their plans, according to the standing orders of Parliament, and therefore the committee of management of the South and Midland Company made arrangements to amalgamate themselves with another company, called the "Manchester and Southampton Company." This fact was made known to the allottees of shares towards the end of January 1846, by means of printed circulars. This company was formed for the purpose of making a railway from Swindon to Southampton, with a branch line from Ludgershall to Poole, and entered into the necessary measures for that purpose. Afterwards the directors of the Manchester and Southampton Company gave notice of their intention of applying to Parliament for two bills; one from Swindon to Southampton, the other from Ludgershall to Poole.

At a meeting, held on the 23rd of May last, of the scripholders of the "Southern and Midland Junction Railway," the directors admitted that they had, without any authority from the shareholders, taken upon themselves to enter into some agreement with the Manchester and Southampton Company, the effect of which would be to bind the South and Midland Junction shareholders to become partners therein. And, moreover, in consideration of such shareholders being entitled to a number of shares to the extent of 300,000l. in the Manchester and Southampton and Manchester and Poole Companies, they the said directors, with a view to the benefit of the last-mentioned companies, and in order to enable the latter company to apply to Parliament for an Act of Incorporation, paid into court the sum of 55,000l. in the names of three of the directors of the South and Midland Counties, and two of the Ludgershall and Poole directors. It was also agreed that the sum of 8,000l. should be paid to the Manchester and Southampton Company for expenses incurred in promoting and preparing the Ludgershall and Poole line, which sum was to form an item to the credit of the South and Midland Company.

The plaintiff, a subscriber for eighty shares, and many of the shareholders, were present at the said meeting on the 23rd May, and expressed their disapprobation at what they considered to be a misappropriation of the deposit fund, and threatened to institute proceedings against the directors of the South and Midland Counties for a fraud upon the House of Commons. The bill was in consequence withdrawn on the 25th of May.

On the 17th of June an order was obtained upon a petition presented by three of the defendants, James Walkinshaw, Henry Tootal, and Leonard Morse Cooper (the two former only being directors of the Ludgershall and Poole line), for the payment out of Court to them of the said sum of 55,000l. with the privilege and sanction as it was alleged, of the directors of the South and Midland Junction Railway. Under these circumstances the plaintiff filed his bill on behalf of himself and all other the shareholders in the South and Midland Junction Railway Company, praying that the directors of the said company might be restrained from receiving or possessing themselves of the said sum of 55,000l. and

that the said J. Walkinshaw, H. Tootal, and L. M. Cooper might be restrained from prosecuting the said order for payment of the said sum of 55,000l. and that the said three last-named defendants, with the two other defendants (in whose names the said fund was standing) might be restrained, either alone or in conjunction with any other persons, from proceeding to obtain payment of the said sum of 55,000l.; and that an account might be taken, and the funds of the company applied in satisfaction of their debts and liabilities, and for distributing the whole of the property among the shareholders rateably, and that the directors might pay the costs. The motion for the injunction was met by the joint affidavit of a Mr. G. N. Wright, the secretary, and W. B. James, the solicitor to the South and Midland Junction Company, stating, among other things, that the petition referred to by the plaintiff was to have the 55,000l. paid out of court for the purposes of the South and Midland Company. That in consequence of a breach of contract on the part of their engineer, they were unable to deposit their plans by the 30th of November, 1845, as required by Parliament. The directors of the South and Midland Company immediately directed their attention to some other company, to ascertain whether they could not, by some arrangement or amalgamation with such other company, effectually answer the objects of their own, and obtain with such other company an interest similar to that possessed by the South and Midland Railway Company. That the Manchester and Southampton Company was formed, of the highest credit and respectability, the shares of which were at a high premium. That the said last-mentioned company had changed the plan of their original scheme, and resolved to apply for two separate Acts of Parliament; one for the construction of the line from Swindon to Southampton, and the other for a branch from Ludgershall to Poole, the reasons for such alteration being lest they might not succeed in obtaining an Act for the whole scheme; and in order to prevent a failure in the principal scheme, the plans and sections of the Ludgershall and Poole line having already been deposited and approved of by Parliament; and as to the said plans and sections, it was also agreed that the sum of 8,000l. should be advanced to the said Manchester and Southampton Company, on account of the expenses incurred in promoting and preparing the Ludgershall and Poole line.

Bethell and Wickens, in support of the motion, contended that the misapplication of the funds of the company by the directors, without the sanction of the shareholders, amounted to such a breach of trust as would induce the Court to refuse the payment of the residue to them.

Stuart and Terrell opposed the motion, and contended that the powers entrusted to the Directors were sufficiently extensive to enable them to make such arrangements with other companies as they thought fit, and their right to amalgamate was virtually given them by the subscription contract. The directors were bound to get a bill in the present sessions of Parliament if possible; but that, through the bad faith of their engineer they were prevented from so doing, and adopted another line in a greater degree of advancement; and unless a case of fraud be made out, the Court will not interfere with the legal rights of parties. They contended, moreover, that the plaintiff was estopped by acquiescence, he having knowledge of the intended departure from the original intention in January of the present year, but did not signify his dissent until the month of May following.

The VICE-CHANCELLOR.—Now the question really is, as it appears to me, whether substantially what these managers of the South and Midland Company did was authorized by the subscribers' agreement. I do not want to go through every word of it, because it has been so often discussed; but it is perfectly true, that these gentlemen, who were so named to manage, were authorized in general terms to carry on all or any part or parts of the undertaking, as described in the Parliamentary contract, into effect; and for that purpose to cause surveys to be made, and so on preliminary matters; and generally to adopt all such measures whatsoever as any such board or meeting of the said provisional committee, or directors as aforesaid, or any committee of committees of management to be constituted or appointed in manner hereinafter mentioned, may in their judgment think necessary or expedient, or may be advised to adopt, and particularly to apply for, and seek to obtain, as early as may be, an Act or Acts of Parliament for the establishment and promotion of the same undertaking." Then the second proviso directed that the majority of members at any board or meeting should bind the rest; and then it was directed that the provisional committee should have power from time to time to add to their number from the subscribers, and so on; and then there is a general power given to them to suspend and remove officers; and then, by the 6th clause, it was provided that the provisional committee shall have full power to make all such contracts and arrangements with railway and canal proprietors, land owners and other persons, as they shall think proper, concerning or relating to the said undertaking." Then that they

shall have power to make by-laws, that is the 7th clause; and that they shall have power to invest such deposits as they may think fit in government or real securities. Now, it appears to me to be perfectly plain on this subscribers' contract, that it never was the intention of the parties who gave authority to this provisional committee that they should have power to take any such steps, as that, when taken, the original proprietors themselves of the South and Midland Company should no longer have in their own hands the dominion over the plan. In other words, it does appear to me that there was no power given here to these directors to surrender their power to any persons to take away the individuality of character which the South and Midland projectors of the scheme originally had, and to make them, as they might have been made in the progress of amalgamation sanctioned by Act of Parliament, altogether a distinct thing from what they originally contracted to be. They were to be a set of persons supplying themselves the capital necessary for the carrying into execution proposed purpose. They were to have the dominion over their own funds and over their own governors; and it does appear to me that, unless some express words can be found of larger import than any that I can see in this subscribers' agreement, the gentlemen who were entrusted with the provisional management had no power to do what they projected to do. Now, it is perfectly true that when an application is made to this Court for its interference in the transit of large sums of money in which several persons are interested, that a great deal of inconvenience may be produced by the interference of the Court, and I admit that there is great weight in Mr. Terrell's observations on that part of the case; but then it is to be considered, on the other hand, whether, if gentlemen contract to form themselves into a society to be governed by themselves, they are to be transferred, by a sort of Oriental despotism exercised by the provisional directors, into a company, a set of beings, I should rather say, of a totally different character. They contracted to be individuals, and spontaneously formed to govern themselves and their own affairs. The scheme which was aimed at by the directors was and I dare say very laudably. I am not speaking at all in any terms that can give the slightest offence to any human being; but mistaking their powers, meaning to act for the best, but, in my opinion, judging erroneously, they proceeded to destroy the original character, rights, and powers of the original proprietors of the South and Midland Company. My opinion is, that this Court ought not to allow such a thing, and I do not myself conceive that the party has applied too late. As long as the £5,000. was in Court, there it was safe; when an application is made to have it come out, then is the time to apply, and then the bill is filed. It appears, that in pursuance of the circular of the 19th of January, the meeting was held on the 23rd, and there was ample protest and a declaration that this gentleman, who is the plaintiff now, would file a bill, and so on; and I wished to see the order, that I might know, in the first place, what time the money was actually paid in, and what was the day of the date of this application to have it out. I suppose that was a few days ago. [Mr. Stuart.—The 17th of June, and the plaintiff has not thought it important to state when it was paid in, but I believe it was February.] I did not know those facts, and therefore I asked for the order, that I might be supplied with the information; but I cannot but myself think that this meeting having taken place on the 23rd of May, that the bill was filed quite in time for the purpose of intercepting the transit of the money back again, apparently on the face of the order, into the hands of the gentlemen who were never authorised by the projectors of the South and Midland Company to receive any part of their assets whatever. I dare say it is all perfectly right, and it was understood in the way of honourable proceeding, that those two gentlemen, the foreigners, Messrs. Walkinshaw and Tootal, will put the money in the possession of Mr. Cooper and those two other gentlemen, who were the three persons, provisional directors of the South and Midland Company, who joined in paying in the money; and I observe by the terms of the Act of Parliament, that the money can only be had out in a given form; that the parties who paid it in, or a majority of them, may apply to have it out, and the direction is, that it shall be paid to the parties applying, or those whom they may appoint. Well now then with respect to the payment of the £8,000. I take it as it stands, exactly on the joint affidavit of Messrs. James and Wright. There are two passages which relate to it: they first of all state, at folio 12, "It was also agreed that the sum of £8,000. should be advanced to the Manchester and Southampton Company, on account of the expenses incurred in promoting and preparing the Ludgershall and Poole line, in which the said South and Midland Company was about to acquire so large an interest, and which payment was to form an item to the credit of the South and Midland Company in the final adjustment of accounts between the two companies." Now, it appears to me that that agreement, simply as an agreement by trustees to pay their *cestui que trusts* money, not

for a definite demand, but so as to make it form an item of accounts, was not the proper mode of dealing with the money of *cestui que trusts*. And then there is this further thing to be observed, that what was stated in folio 15 is, as it appears to me, something rather different from what is stated in folio 12, because it is stated "that in consequence of such disapproval the said Manchester and Southampton Company, on the demand of the South and Midland Company, have consented to return to the directors of the said last-mentioned company the said sum of £5,000. and that the petition in the said plaintiff's bill mentioned for payment out of court of the said sum of £5,000. was for the purpose of effecting such return." I merely read that, because it forms part of the next sentence, "And they further say that the said sum of £8,000. so advanced to said Manchester and Southampton Company, for such plans, sections and expenses, is claimed by the defendants as directors of the South and Midland Company; but such claim is to some extent resisted, and the rights and liabilities of parties to the said sum of £8,000. have been made the subject of a reference to counsel." You will observe, that in the first instance it is stated that it was agreed that it should be advanced on account of the expenses incurred in promoting and preparing the Ludgershall and Poole, otherwise Manchester and Poole, line; and now it says that the sum of £8,000. so advanced to the Manchester and Southampton Company for such plans and sections and expenses is claimed by the defendants, so that it is left in this affidavit rather vaguely stated in respect of what the payment actually was. But I cannot myself think that it was a right thing to advance a solid sum, with a feeling that the whole was not due, on the speculation that the amount which was really due was to be settled in a future account. Now that does not appear to me to be a very wise or prudent mode of proceeding. If, indeed, it was the result of the agreements, why then the making of the agreement is one of the very things complained of, because it becomes a question, as I said before, whether it was a thing authorised by the subscribers' contract. Now Mr. Stuart particularly noticed that section in the subscribers' contract which related to making agreements with railway companies and other proprietors [Stuart.—Railway proprietors, or any persons]. Making all such contracts and arrangements with railway or canal proprietors, land owners, or any other persons. Now really, I should have thought that would have applied to this case. If, for instance, the Manchester and Poole people have constructed a portion of the projected line, and they had power to sell, and were willing to sell, it would have been quite within the purview of this sixth article of the subscribers' contract that the directors of the South and Midland Company should have entered into a contract to purchase it; that I can understand; but it is quite a different thing when no line was completed; but for the purpose of having some line completed not belonging to anybody, the directors of the South and Midland Company make a contract, by means of which they actually disable their own company from acting by itself. Now, I cannot but myself think that I am not at liberty, at present, to dissolve the injunction, but this thing has occurred to me—[Stuart.—It is for an injunction. Bethell.—A mere temporary order.] You move for an injunction? [Bethell.—Yes, Sir.] What I was going to say is this, that the mode of getting the money out is particularly described by the Act of Parliament, and it strikes me that if there was to be merely a stop upon the execution of the order, there may, for aught I know, arise some such circumstance as may prevent the money from ever being got out, unless a new Act of Parliament is passed; as, for instance, supposing three of the five should die. Therefore, it rather appears to me that, if the parties agree to it, the proper order will be this, not to grant an injunction, but to let the money be paid to the three, on their undertaking forthwith to pay it into court. I only throw it out for the consideration of the parties; if they will not do that, I must grant the injunction *simpliciter*. [Stuart.—We cannot agree to that; we think it would be a breach of trust; we cannot agree to it.] Then I must grant the injunction.

Motion allowed.

ROLLS COURT.

March 20 and 21, and April 20.

NELSON v. DUNCOMBE, AND DUNCOMBE v. NELSON.

Practice—Trustee and *cestui que trust*—Implied contract—Unsoundness of mind—Account—Allowance for maintenance, &c.

If a trustee be sued for an account in the Court of Chancery, and it shall appear that he had properly expended sums of money for the protection and safety, or for the maintenance, of his *cestui que trust*, at a time when the *cestui que trust* was incapable of taking care of himself, the Court will allow him credit for such sums of money, on his shewing, first, that his *cestui que trust* was incapable of taking care of himself; and, secondly, that he has properly expended the money.

In cases of persons actually found lunatic by inquisi-

tion, there is an implied contract for the payment of moneys expended for the protection and maintenance of such persons; and, semble, a contract might, if necessary, be implied for supporting a person who has been provided with such protection as the legislature has secured, in the absence of any finding by inquisition.

A B, a person of unsound mind, but not so found, was committed to prison for a violent assault, and upon the medical certificates required by law, and with the authority of the committing magistrate, C D, the trustee of A B's property, had him removed to a lunatic asylum, where he remained five years, and afterwards escaped. A B then filed a bill against C D for an account of his property, and a commission of lunacy was issued, whereby he was declared to be of sound mind. C D was held entitled to have a reference to the Master to inquire what sums of money were properly expended for the protection and support of A B in the lunatic asylum, and under what circumstances the commission of lunacy was sued out, and whether any and what agreement relating to the costs thereof was entered into between A B and C D, or their respective solicitors.

This was a case in which Thomas H. Duncombe, the defendant, had interfered for the protection of John Nelson, the plaintiff, a person alleged to be then and previously a person of unsound mind. Mr. Duncombe was a trustee of property for Mr. Nelson under his mother's will, and Mr. Nelson being imprisoned for a violent attack on a medical gentleman, Mr. Duncombe, upon the medical certificates and with the authority of the committing magistrate, had him placed in a lunatic asylum, and supported him there for five years, when he escaped. He then filed his bill for an account, and a commission of lunacy being issued, he was found to be of sound mind, and he then objected to allow Mr. Duncombe the sums expended for his maintenance in the lunatic asylum, or the costs of the commission, and Mr. Duncombe filed a cross bill. The facts of the case are fully stated in the judgment.

Kindersley (with him Bates), for the plaintiff, Nelson, contended that Duncombe was not entitled to any thing, on the ground that he was paying not for the support but the coercion and imprisonment of the plaintiff, who, though he had a slight tendency to unsoundness of mind, was, nevertheless, declared sane by the commissioners. Duncombe ought to have got the commission issued at first. But even if he was entitled, he ought not to have filed the cross bill, as he could have claimed equally under the original bill.

Turner (with him Taylor), for Duncombe, insisted that maintenance of persons of unsound mind would be allowed. *Williams v. Wentworth*, 5 Beav. 325; *Wentworth v. Tubb*, 1 Y. & C. C. 171; *Sherwood v. Sanderson*, 19 Ves. 280. As to filing the cross bill, the facts of Mr. Duncombe's case could not be put properly in issue without doing so.

Kindersley, in reply.

JUDGMENT.

THE MASTER OF THE ROLLS.—Mr. Nelson, the plaintiff, in the first of these two causes, is the son and residuary legatee of Elizabeth Nelson, deceased; Mr. Duncombe, the defendant in the first cause, and the plaintiff in the second cause, is her legal personal representative. Mr. Nelson filed his bill for the common account, and for payment of the residue of his mother's estate. The will of Mrs. Nelson was dated the 9th day of December, 1833, and she thereby appointed her son sole executor. She made a codicil, dated the 21st of February, 1834, and thereby appointed Mr. Duncombe an executor of her will, jointly with Mr. Nelson, the son; and she died on the 2nd day of the following month of June. The will and codicil were soon afterwards proved by Mr. Duncombe alone, power being reserved to the plaintiff to prove them afterwards, which, however, he has never done. Mr. Duncombe possessed and administered the estate, and he is bound and willing to account for it; but he claims to be entitled to credit in account for expenses which (as he alleges) he has properly incurred, for protecting and supporting the plaintiff, whilst of unsound mind, and of suing out and prosecuting a commission *de lunatico inquirendo* concerning him. The material facts to be considered with reference to this claim, which give rise to the only question in the cause, appear to be as follows:—Mr. Nelson, in the lifetime of his mother, had been considered to be of unsound mind; and upon the usual medical certificates, which were signed by Mr. Glendinning and Mr. Cohen, he was, in March, 1833, at his mother's request, placed in a lunatic asylum.

After being kept there for about three months he was removed. By the fact of his removal, and by his mother having appointed him first of all executor, and, subsequently, joint executor, with Mr. Duncombe, of her will, it must, I think, be presumed that she considered him to have recovered, and to have become of sound mind. After the mother's death, and in 1835, the defendant, Mr. Duncombe, offered to account and settle with Mr. Nelson, and by that offer he must, I think, be presumed to have considered Mr. Nelson to have been then of sound mind. Mr. Nelson took no notice of the offer to account, and he seems to have refused to hold any

communication whatever with Mr. Duncombe, who, nevertheless, had in his hands or power very considerable sums of money, which belonged to the estate of the testatrix, and of which Mr. Duncombe was then trustee for Mr. Nelson.

In this state of things, and in August 1839, Mr. Nelson was taken before a magistrate on a charge of having threatened to kill or do some bodily harm to a medical gentleman who had attended his mother in her last illness, and who appears to bear the same name as one of the medical persons on whose certificate Mr. Nelson had been placed in a lunatic asylum in his mother's lifetime. On this charge the magistrate required Mr. Nelson to find sureties to keep the peace, and, on his failing to procure such sureties, Mr. Nelson was committed to prison. Under these circumstances Mr. Duncombe was applied to, as the executor of Mrs. Nelson's will, and as Mr. Nelson's trustee in possession of his property to a considerable amount; he was informed of Mr. Nelson's imprisonment on a charge of threatened violence. It was suggested to him that a recurrence of Mr. Nelson's former malady had taken place; that he was not right; but that, for the sake of himself and others, he required protection and proper restraint. Mr. Nelson was without any relation, and, so far as appears, without any friend in the world. If the facts and the suggestions communicated to Mr. Duncombe were true and were well founded, it could hardly be doubted that Mr. Duncombe had at least a moral duty imposed upon him to inquire into the matter, and, if necessary, to adopt such means as were proper for Mr. Nelson's protection and support. Sad, indeed, would be the condition of men, if, under circumstances so painful, there did not rest in the law a duty to interfere. If Mr. Nelson had been a poor man, without resources, it would have been the duty of those who were near him to obtain from the law such protection and restraint as the law affords in such cases, and to obtain his release from the restraint to which he was subjected as an offender against the law; and it cannot, I think, be doubted that Mr. Duncombe had in his hands money properly belonging to Mr. Nelson, out of which Mr. Nelson might be protected and maintained, and he could not, consistently with his duty, remain a passive observer of Mr. Nelson's imprisonment for want of sureties; and Mr. Duncombe thought—in my opinion, rightly—that it was his duty to interfere. Whether he interfered in a proper manner, and did all and no more than ought to have been done under circumstances so difficult, may be questioned; but I must consider that it was right for him to interfere. He procured medical advice, and applied to the magistrate by whom Mr. Nelson had been committed; and upon the medical certificates required by law, and with the authority of the magistrate, Mr. Duncombe procured Mr. Nelson to be removed from the prison in which he was confined, to the lunatic asylum in which he had been formerly placed by his mother. To the restraint, to the regulations, and the means intended for protection which the law provides in such cases, Mr. Nelson was subjected for upwards of five years. In September 1844, he escaped (as it is said), upon a ground of convalescence which he exercised. He soon afterwards consulted the solicitors by whom this suit was prosecuted on his behalf, and they obtained medical opinions on the state of his mind, and they state, in their letter to Mr. Duncombe of the 12th December, that the medical opinions, though decisive of the existence of a mild form of insanity, shew that it would be improper again to place him in a lunatic asylum, and they afterwards expressed themselves as follows:—

"We made you acquainted with these circumstances, because you had been, as we had been informed, a friend of Mr. Nelson's late mother, that you are her executor, and hold, in that character, a considerable sum of money in trust for Mr. Nelson. We concluded that he, not having (as far as we can ascertain) any relations, you would be the most likely person to take an interest in him, and the most proper person to petition for a commission of lunacy, which seems to us the only course to be pursued."

Some subsequent correspondence took place between Messrs. Crosby and Compton, and Mr. Faithful, Mr. Duncombe's solicitor. Messrs. Crosby and Compton suggested, under the advice of counsel, that Mr. Duncombe ought not to hesitate about presenting a petition for a commission of lunacy; and if he declined to do so, they should call upon him to render an account, and pay over the money. To this Mr. Faithful answered, that Mr. Duncombe was ready to account to the party who could give him a proper discharge, but he could not require Mr. Duncombe to apply for a commission of lunacy; and on the 11th of the following month of November, Mr. Nelson's bill was filed. It is material to consider the medical opinions mentioned in the letter of Messrs. Crosby and Compton. The first is the certificate of Dr. Cohen, and it is dated the 27th day of September, 1844, and is in the following words:—"I hereby certify that I this day visited Mr. John Nelson, and consider him, after careful examination, to be of unsound mind. He is harmless at present, although, from his own account, I should conclude that at a

previous period he had been extremely violent. It is therefore necessary, to guard against any paroxysm to which he may be liable, to subject him to an effective and kind control; and, as his illusions are, to a very great extent, mixed up with lunatic asylums, it would not, in my opinion, be giving him a fair chance of recovery, were he re-committed to one. I would therefore recommend, that he should be placed under such subjection, as, while it will permit him his liberty, as far as is consistent with his state, and tend to free his mind from illusions under which he labours, will at the same time be ready to control any sudden excitement which may arise."

The next is the opinion of Dr. Glendinning, which is expressed as follows:—"I certify that, by desire of Messrs. Crosby and Compton, I yesterday visited Mr. John Nelson, and that I found him in possession of good physical health, and in a perfectly tranquil state of mind. But that a protracted interview and long conversation with him have convinced me that he labours under illusions characteristic of a mild form of mental disease, involving no immediate danger to himself or others, but requiring an habitual yet unobtrusive and gentle domestic care, with professional superintendence, in order that he may have a fair chance and reasonable expectation of being some future day capable of permanently enjoying his liberty, without risk or inconvenience to himself or others."

The result of those certificates seems to be, that Mr. Nelson, at the time when he was visited by those medical gentlemen, was deemed to be of unsound mind, but convalescent, and likely to recover by mild and gentle treatment—treatment, however, requiring vigilant attention, and, if necessary, an effective control. Messrs. Crosby and Compton are not to be blamed for wishing, under such circumstances, a commission of lunacy to be applied for, or for advising, as they did, that Mr. Nelson should be attended by a person experienced in cases of lunacy; and, on the other hand, I think Mr. Duncombe is not to be blamed for being reluctant either to apply for such a commission, or to account to a person not competent to give him an effectual discharge. In the course of a few days after this bill was filed, Mr. Duncombe was informed that it had been reported to the Lord Chancellor that Mr. Nelson was a violent lunatic, and unsafe to be abroad; and in consequence of an intimation which accompanied this information, some further communications on the subject of applying for a commission of lunacy took place between the solicitors, and in the end, Mr. Duncombe consented to sue out the commission; and having put in an answer to Mr. Nelson's bill, and thereby admitting funds and incomes to be in his hands, an order of transfer and payment of the money and funds into court was made on the 12th of January, 1845, on the motion of Mr. Nelson; and it being inserted in the order that it having been agreed between the solicitors of Mr. Nelson and the solicitor of Mr. Duncombe, that Mr. Duncombe should retain in his hands 500*l.* to meet the charge of procuring a commission of lunacy to be issued, the sum ordered to be paid in by Mr. Duncombe was reduced accordingly. In the course of the communication on the subject of the commission of lunacy, Mr. Faithful stated in his evidence that Messrs. Crosby and Compton uniformly urged the propriety, and, indeed, the necessity, of a commission being issued, as it was evident that Mr. Nelson was of unsound mind. They negatived the proposal made by Mr. Nelson that they should apply for a commission themselves, but he says that it was distinctly understood, if the application were made by Mr. Duncombe, no opposition would be offered, and Mr. Duncombe would be allowed the costs attending such proceedings; and this evidence seems to have been in accordance with the admitted facts and probabilities of the case; but I cannot say that facts so important, and which may be so important in this case, are so distinctly put in issue as to enable me to say that Mr. Nelson ought to be bound by the evidence in its present state. Under the alleged circumstances, however, Mr. Duncombe procured the commission. The inquest was held on the 22nd April, 1845. The evidence which was given on the occasion by a surgeon, one of the members of the asylum, has been proved in the case, and it is, I must say, in many respects most unsatisfactory. On the whole, the jury found that Mr. Nelson was then of sound mind, and capable of taking care of himself and his property. The verdict has not been impugned; and it must therefore be admitted that on the 22nd of April, 1845, Mr. Nelson was of sound mind, and there is nothing to shew now that he has not ever since continued to be so. Soon after the verdict, Mr. Duncombe offered to settle an account with Mr. Nelson; but the allowance of the expenses which he had incurred being refused, he filed his bill on the 3rd of June, 1845, and he thereby prayed a declaration of his right to the allowance, and that the allowance should be made in the taking of the accounts. Under the circumstances which have occurred, and having regard to the fact that the commission had been sued out and executed after the answer to Mr. Nelson's bill had been put in by Mr. Duncombe, I do not think that the filing of Mr. Duncombe's bill was un-

necessary for the due statement of his case. Mr. Nelson, of course, is entitled to the ordinary presumption of sanity, and upon that he insists that every thing done by Mr. Duncombe has been entirely done contrary to his interest, and in violation of his personal rights, and he is in no way indebted to Mr. Duncombe for supporting him in the asylum, or procuring the commission. On the other hand, presumption of sanity may be rebutted by proper evidence. The legislature has defined the circumstances under which persons may be treated and confined as insane, though not so found by inquisition; and upon the production of evidence which the legislature has determined, authority is given to subject persons to whom insanity is imputed to a species of confinement and control, to which Mr. Nelson was subjected. Mr. Duncombe insisted that, in the situation in which he was, and with the evidence he had before him, he acted in the discharge of a duty which he owed not only to Mr. Nelson but to society, or to those who were exposed to injury by the person of Mr. Nelson; and out of moneys in his hands he claims to be reimbursed the expenses he incurred in the discharge of that duty, and especially for applying for and procuring the commission, which he says he did in consequence of the request of Mr. Nelson's solicitors, acting for him, and upon the understanding that his expenses were to be paid. Whether Mr. Nelson, by his solicitors, suggested to Mr. Duncombe that if he applied for a commission his expenses would be allowed, is a distinct question, and not, perhaps, admitting of decision at this time, but free from the particular difficulties which attend the main question in this cause. If it should appear that Mr. Duncombe was induced to incur those expenses by Mr. Nelson's agents for Mr. Nelson's benefit, on sufficient ground of reliance that he should be allowed them in account, they would be allowed to him independently of the other question in the cause; and the circumstances are such, that if it be desired, I think there must be a special inquiry on the subject.

The principal question now to be determined arises on Mr. Duncombe's claim to be allowed in account the expenses which he incurred in maintaining Mr. Nelson in a lunatic asylum from August 1839, to September 1844. The question is not precisely the same as that which has arisen in cases of a lunatic so found by inquisition. There being no lunacy or unsoundness of mind, therefore the question of implied debt does not arise in the form in which it has arisen in those cases; there wants something of the solid and firm foundation on which Courts, both at law and in equity, have in those cases determined that a debt was incurred by implied contract. The question must be considered with reference to the special circumstances under which it arises; and it is not denied that Mr. Nelson was placed, detained, and visited in the asylum, in a manner authorized by law. No action has been brought against any party for any misconduct. There is no evidence of any harshness or carelessness on the part of Mr. Duncombe. Notwithstanding all that, I do not hesitate to say that if Mr. Nelson was of sound mind in August 1839, or if he was of unsound mind, and the manner in the asylum in which he was placed was not proper for his protection or for his recovery, and if he was detained longer than he ought to have been, or improperly treated, the forms of law were neglected and abused, and he was wrongly and unjustly imprisoned, and suffered an injury as great as any man could inflict upon another. But all this may possibly have been without any just imputation upon Mr. Duncombe. It may have arisen without his knowledge or acquiescence, from want of knowledge or skill of the medical advisers who gave the certificates on which he was sent, and those medical advisers under whose care he was placed, or for want of judgment or humanity of the keepers, or for want of due vigilance or attention by those who were appointed by law to visit the asylum. But if the outrage committed by Mr. Nelson in August 1839 was in truth the result of insanity,—if for want of capacity he was liable to injure himself and others,—if he was placed under proper protection and proper care taken of him, and he was properly treated,—the greatest service which could be rendered to him was to provide for his protection, and subject him to a restraining process; to this it may be owing that he became convalescent at the time of his escape, and to this it may be owing that he recovered so as to be found of sound mind in April 1845.

On consideration of the evidence, it does appear to me, that, under the circumstances which came to the knowledge of Mr. Duncombe in August, 1839, it was his duty to interfere for the protection of Mr. Nelson,—a duty of imperfect obligation, perhaps, but still a duty not to be neglected by any man who wished to conduct himself as he ought. I think that it was his duty to interfere either by his own act, or by procuring a bill to be filed in this Court for the purpose of obtaining directions for the application of Mr. Nelson's income for his protection and support. By applying to the Court he might have exempted himself from all but very slight risk; by taking upon himself to interfere without the sanction of the Court, he at the same time took upon himself the burden of

proving to the Court, if necessary, that the expenses he incurred by interfering were such as ought properly to be allowed to him in account. I conceive that if a proper application had been made, this Court, acting in conformity with that which Lord Eldon calls "its habit of taking notice of persons in such state of imbecility, for their protection," would have inquired in what way the income or the property (Mr. Nelson then appearing to be unable to take care of and to protect himself) could be best and most properly applied for his safety and protection. The Court might have caused a commission of lunacy to be applied for, or might have directed Mr. Nelson to have been taken care of in some proper asylum of the same nature as that in which he was placed. The proper course to be pursued might have been attended with some difficulty; it might have properly depended upon the particular circumstances decided by evidence, one of which would have been that Mr. Nelson had formerly recovered after being placed in such an asylum. But whatever might have been the directions given to Mr. Duncombe, or to any guardian who might have been appointed by the Court, I think, under any circumstances, that if Mr. Nelson, having afterwards become of sound mind, availed himself of the jurisdiction of the Court to compel Mr. Duncombe to account for moneys in his hands, this Court would, upon that occasion, have compelled Mr. Nelson to do justice and equity on his part, and to have allowed expenses, properly incurred, for his maintenance and protection at a time when he was unable to take care of himself; and if Mr. Duncombe had done no more than that which this Court would have directed him to do from the facts appearing in a suit properly instituted, there can scarcely be any good reason why he should not have the like allowance. The circumstances are not precisely the same, because by acting for himself, without first obtaining the sanction of the Court, he has necessarily assumed the burden of proving the propriety of all he did; but supposing him to have done this, is any sufficient reason given why he should not be allowed in account the moneys which he has properly expended for the protection and benefit of Mr. Nelson, at the time when Mr. Nelson was incapable of exercising any discretion, or in any way acting for himself? An objection is made to the jurisdiction. It is said, as no lunacy has been found, there can be no implied contract; and in the absence of contract, the Court has no jurisdiction to adjudicate upon any such claim as this. I think it is proved that in all the cases of implied contract, there has been a lunacy actually found, but it has not been determined that this Court will not take notice of what is due in respect of the property of persons lunatic, though not so found; or that a contract may not be implied for the expenses of persons so circumstanced; a bill may be filed in the name of the person alleged to be of unsound mind, though not found so by inquisition, by a next friend or guardian, and such a person may be sued as a defendant, and the Court appoints a guardian to answer for him. In such cases, Lord Eldon observes, "the Court imposes all the restraint proper to be used, and the party is bound by the act of the guardian so appointed." It is thus in cases where property of persons so situated is brought under the consideration of the Court, the Court being satisfied by proper evidence that the persons are incapable of protecting and dealing with their own interest for themselves, inferring insanity, though not found so by inquisition; and being satisfied that the next friend or guardian pays proper attention to their interest; nay more, inquiries may be necessary to ascertain not only what their rights are, but what is beneficial to them; or, if necessary to direct that a commission *de lunatico inquirendo* should be issued, it ultimately deals with their rights and property as justice may require. When the Court goes so far in adjudicating upon property belonging to persons insane, though not found so by inquisition, I own there does not seem to me to be any sufficient reason why a contract might not, if it were necessary, be implied for supporting a person who has been provided with such protection as the legislature has secured in the absence of any finding by inquisition, but it scarcely seems to me to be necessary to resort to the doctrine of implied contract. Lord Eldon did not do so in the case of *Sherwood v. Sanderson*, in which he ordered payment of the expenses of suing out a commission of lunacy to be paid concerning a person to whom insanity was imputed, and who was found not a lunatic, but of unsound mind. This was done on the general jurisdiction of the Court in a case pending a traverse, which prevented any exercise of jurisdiction over the property of the party in the matter of the lunacy. I think that the principle and practice referred to by Lord Eldon in that case authorises me in saying that if a trustee be sued for an account in this court, and it shall appear that he had properly expended sums of money for the protection and safety, or for the maintenance of his *cestui que trust*, at a time when the *cestui que trust* was incapable of taking care of himself, the Court will allow him credit for such sums of money. There are two things to be shewn: first, that the *cestui que trust* was incapable of taking care of himself; se-

condly, that the sums of money for which credit is asked were properly expended for his protection and benefit. I shall, therefore, think it right to refer it to the Master to inquire whether, in the month of August, 1839, the plaintiff, Mr. Nelson, was of unsound mind, or in such a state of mind as to be incapable of taking due care of himself; and if the Master shall find that he was either of unsound mind, or in such a state of mind as to be incapable of taking care of himself, then the Master is further to inquire under what circumstances Mr. Duncombe interfered to take care of Mr. Nelson, and to place him in a lunatic asylum; and under what circumstances, and for how long, Mr. Nelson was maintained in such asylum; and what sums of money were properly expended by Mr. Duncombe for the protection and support of Mr. Nelson while he remained in such asylum; and if it be necessary, I will direct an inquiry as to the agreement. I shall put that in the direction if the parties desire it; if not, I will leave it out. Next, let the Master further inquire whether Mr. Nelson was of unsound mind, or in such a state of mind as to be incapable of wholly managing his affairs, in the month of April, 1844, and from that time till the 9th of January, 1845, and under what circumstances the commission of lunacy in the pleadings mentioned was sued out and prosecuted; and then whether any and what agreement and understanding respecting the costs of procuring and suing out such commission was entered into or subsisted between Mr. Nelson and Mr. Duncombe, or their respective solicitors; and the Master is to be at liberty to state any special circumstances in relation to any of the matters referred to him.

Monday, March 23.

BROWNE v. HOME.

Practice—New orders—Taking bill *pro confesso*—Terms.

Glasse applied to the Court, under the 76th of the New Orders, to direct the bill in this case to be taken *pro confesso* against the defendant. An appearance had been entered for him in due course, and he was in custody under an attachment for want of his answer. Accordingly, in pursuance of the 76th Order, within three weeks after the execution of the attachment, and on the 23rd of June last, notice of the present motion was served upon him.

The MASTER of the ROLLS.—Let the clerk of records and writs appear with the bill at the hearing, and appoint a day on the first day of causes next Term.

SMURFIT v. BEGG.

Practice—Suppressing depositions.

This was a motion to suppress depositions taken in the cause, on the ground that the witnesses were not sworn at the execution of the commission.

Smurfit, who sued in *forma pauperis*, appeared in person to support the motion, and read several affidavits to prove the allegation.

Purvis, contra, read the affidavits of the commissioner and his clerk, both distinctly stating, with the utmost particularity of circumstances, that the witnesses were duly sworn.

Bates (with him) said the plaintiff was not asking to examine witnesses, but was endeavouring to suppress the depositions already taken, that he might be able to make an entirely new case.

The MASTER of the ROLLS.—I refuse the application; there is no ground whatever for making it. I never heard of a more improper application. The plaintiff is suing in *forma pauperis*, and, therefore, I can give no costs.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Tuesday, April 21.

JENKINS v. GOWER.

Will—Construction—Next of kin, when to be ascertained.

A testator, by his will, gave a fund to trustees upon trust for his wife for her life, and after her decease, upon trust to pay over and transfer the same to such persons, &c. as he should direct by a codicil; and in default of such direction, upon trust to transfer and make over the same unto such person or persons as would, under and by virtue of the statutes of distribution of intestates' estates, have been entitled to his personal estate in case he had died intestate. The testator did not make any codicil to his will, and it was held that the persons entitled to the fund upon the wife's decease were the next of kin according to the statute who were so at the time of the death of the testator, and not of the widow.

Rees Price, late of Cardigan, gentleman, by his will, dated the 10th of January, 1824, after certain devises and bequests, gave and bequeathed to Edwin Gower and David Powell Lucas, their executors and administrators, all his moneys vested in the public government funds or securities, whether standing in his name or in the name or names of any other person or persons, or in trust for or on his account, or to which he might be in any wise beneficially entitled, together with all dividends that might be due and unpaid

thereon, in trust, that they, the said E. Gower and D. P. Lucas, their executors or administrators, or the survivor of them, his executors or administrators, should collect and get in the said funds and the moneys arising from such public or government securities, and place out the same at interest in his or their name or names, either in one entire sum or in parcels, in government or real securities, and the same call in and place out again on such securities as often as he should think fit, and in trust to pay the dividends, interest, and annual proceeds thereof unto his wife during and so and in such manner that the receipts of his said wife, or of any person or persons to whom she might appoint the same when due, should be good and effectual discharges for the money which should thereby be expressed to be received; yet, nevertheless, so that his wife might not anticipate, charge, or assign all or any part of the same dividends, interest, or proceeds, before the same should become due and payable. And after her decease in trust to pay over and transfer all the stocks, funds, and securities, and the moneys secured thereon, unto such person or persons, in such shares and proportions, at such times and in such manner and form as should or might be expressed in any codicil or codicils to that his will; and in default of such direction or appointment, then should transfer and make over the same, or so much thereof whereof no such disposal should be made, unto such person or persons as would, under and by virtue of the statutes of distribution of intestates' estates, have been entitled to his personal estate in case he had died intestate. And the testator appointed his wife sole executrix. Shortly after the date of his will the testator died, without having revoked or altered his will; and the same was duly proved by Adeline Jane Price, his widow, in the Prerogative Court of Canterbury. The government funds or securities of which the testator was possessed at the time of his death consisted of the sum of 3,000*l.* Three per Cent. Consolidated Bank Annuities; and on the 27th of January, 1829, the said Adeline Jane Price transferred the same into the names of the said E. Gower and D. P. Lucas. On the 10th of March, 1829, the said A. J. Price was married to the plaintiff, Jonathan Jenkins. On the 10th of November, 1842, Mrs. Jenkins died, and her husband having taken out letters of administration of the estate and effects of his wife, instituted this suit to establish his right, as the personal representative of his wife, to a moiety of the said sum of 3,000*l.* Consols, under the will of Rees Price. The question in dispute, therefore, was, as to the time at which the next of kin of the testator should be ascertained—whether at the death of the testator, or at the death of his widow.

Russell and Stinton, for the plaintiff.

Anderson, Roll, Metcalfe, Swanson, Roe, and Hallett, for the several defendants.

The following cases were cited: *Smith v. Smith*, 12 Jur. 428; *Urquhart v. Urquhart*, 13 Sim. 613; *Cholmondeley v. Lord Ashburton*, 6 Bea. 86; *Withy v. Mangles*, 4 Bea. 358; *Davies v. Baily*, 1 Ves. sen. 84; *Garrick v. Lord Camden*, 14 Ves. 373; *Briden v. Hewlett*, 2 Myl. & Keene, 90; *Butler v. Bushnell*, 3 Myl. & Keene, 232; *Long v. Blackall*, 3 Ves. 486; *Jones v. Colbeck*, 8 Ves. 38; and *Clapton v. Bulmer*, 10 Sim. 426.

The VICE-CHANCELLOR.—The argument for those who were next of kin of the testator at his widow's death, seeks to have the words, "in case I had died intestate," construed as equivalent to the words, "in case I had died at the time of my wife's decease intestate." That is not the correct construction of the words; they cannot be so read, unless the context requires that they should be so read. I think that there is not any such context. The circumstance that the widow took for life is not sufficient for the purpose, as various cases have established. Here, in my opinion, there is nothing else. Sir Launcelot Shadwell says, in *Clapton v. Bulmer*, 10 Sim. 440:—"I quite agree with that set of cases which Sir Knight Bruce has quoted in support of the proposition, that if you find a gift, ultimately, of the residue of the personal estate of the testator to his relations or to his next of kin, or in words which are tantamount, and the tenant for life of the residuum happens to answer that description, it is nothing more than a paraphrased description of the person before mentioned. If A B was the next of kin, it is of very little importance whether the testator says, that, in the event of his dying without issue, the fund shall go to A B, and in the event of his dying without issue, the fund shall go to a person whom he designates by a multitude of words which point to A B." I think that the words, "in case I had died intestate," must be read and construed according to their ordinary and correct interpretation. In *Garrick v. Lord Camden* it was held that the words "next of kin" did not include the wife, which shewed that the will did not contain any provision or words justifying the Court in construing them otherwise than according to their ordinary and correct meaning. Here the words "person or persons as would, under and by virtue of the statutes of distribution of intestates' effects have been entitled to my personal estate," may include the widow. The

question whether there is any ground for construing them otherwise than according to the correct meaning, must be answered in the negative.

Tuesday, July 28.

CLEMENTS v. BERESFORD.

Practice—Interest—Receiver's accounts.

Where the executors of a receiver made default in payment of the sum found due from his estate, but no default had been made by the receiver in his lifetime, the Court charged the receiver's surety with 4 per cent. interest only on the amount to be paid.

In this case a receiver, after having regularly passed his accounts at the close of a year died during the following year, and, his executors being ordered to pass his account, it appeared that 1,200l. was due from his estate. The executors having made default in obeying the order for payment, it was sought to charge the amount and interest at 5 per cent. as upon a defaulting receiver's account, against the surety for the receiver, it being contended that the surety must pay all that the receiver would be liable to pay.

Gardner, for the parties in the suit, cited the Order of 23rd of April, 1797, 15 Ves. 278, and Dawson v. Raynes, 2 Russ. 466.

W. T. S. Daniel for the surety.

The VICE-CHANCELLOR said that his impression was, that if there was no default on the part of the receiver in his lifetime, the interest should be only 4 per cent.

Common Law Courts.

COURT OF QUEEN'S BENCH.

WAKEFIELD v. BROWN.

Covenant.

A, possessed of a house and premises for the residue of a term of sixty-one years, and B, who has no legal interest in them, and C, who has a reversionary interest in them subject to A's term, demise and confirm the premises to D, for a part of the term of sixty-one years, and D covenants with A, B, and C to pay thereat to A for a certain period, and afterwards to B. C dies, and D assigns her term to E. Held: that A and B might support an action of covenant in their joint names against E, although B had no legal interest in the premises, and that the privity of estate between A and E was sufficient.

The declaration was in covenant by Robert Wakefield and Benjamin Bingley, plaintiffs, against George Brown. It recited an indenture made between the plaintiffs and one Samuel Wakefield, deceased, of the one part, and Sophia Brown, of the other part, whereby the plaintiff, R. Wakefield, at and by the request and appointment of Samuel Wakefield and Benjamin Bingley, leased to Sophia Brown certain livery stables, with the dwellings over the same, together with the yard, coach-house, and appurtenances belonging or therewith usually occupied and enjoyed, situate, standing, and being at the corner of and on the south side of Old-street-road, near Shoreditch Church, in the parish of St. Leonard, Shoreditch, in the county of Middlesex, and known by the name or sign of the King's Arms Livery Stables (part of certain premises demised by one Sutton to Benjamin Bingley, describing them), for thirty-one years from Midsummer-day, 1826. And the said Sophia Brown, for herself, her heirs, executors, and administrators, did thereby covenant, promise, and agree, to and with the said Samuel Wakefield and Robert Wakefield, and with their respective executors, administrators, and assigns, and also with and to the said Benjamin Bingley, his executors, administrators, and assigns, that she should and would, from time to time, and at all times during the said term, thereby granted at her and their own charges, well and sufficiently repair, uphold, preserve, cleanse, empty, amend, and keep in good and workmanlike manner, with the best materials, and to the satisfaction of the said Benjamin Bingley, his executors, administrators, or assigns, and of the said Robert Sutton, his heirs or assigns, the whole of the said premises thereby demised, as well as the glass windows, doors, &c. &c. There were also covenants to paint outside and inside, &c. &c. The declaration then stated that by virtue of which demise the said Sophia Brown afterwards entered and was possessed thereof. It then proceeded thus:—

And the plaintiffs further say, that after the making the said indenture, and during the said term thereby granted, to wit, on the 30th day of November, in the year of our Lord 1830, all the estate, right, title, interest, and term of years then to come and unexpired, property, profit, claim, and demand whatsoever of the said S. Brown, of and in the said demised premises, with the appurtenances, legally came to and vested in the defendant, whereupon the defendant then entered into and upon all and singular the said demised premises, with the appurtenances, and became and was thereof possessed from thence for a long space of time, exceeding the period of five years, to wit, from thence until the commencement of this suit. It then alleged performances by B. Bingley,

and laid as breaches the non-repair, non-paving, &c. to the satisfaction of Benjamin Bingley and R. Sutton, and also the omission to paint the inside every three years, and the outside every five years. It concluded thus, and so the plaintiffs say, "that the defendant hath not kept the covenants made by said Sophia Brown, for herself and her assigns, with the plaintiffs, in manner and form, &c. to the plaintiffs' damage 300l." The defendant cravedoyer of the deed, which purported to be an "Indenture made the 24th day of November, in the year of our Lord 1830, between Samuel Wakefield, of the first part, Robert Wakefield, of the second part, Benjamin Bingley, of the third part, and Sophia Brown, of the fourth part. It recited an indenture of August 27, 1830, between Benjamin Bingley, of the first part, Samuel Wakefield, of the second, and Robert Wakefield and Benjamin Bingley, of the third part, whereby B. Bingley granted to S. Wakefield an annuity of 96l. charged upon (inter alia) the premises devised for the lives of six nominees mentioned in the last-mentioned indenture; and for better securing the same, B. Bingley thereby assigned the premises unto R. Wakefield, for the remainder of the term of sixty-one years then to come, granted by R. Sutton, wanting one day of the said term, and subject to the agreement for lease hereinafter mentioned." It then recited an agreement of May 30, 1826, by B. Bingley, to lease the premises to J. Brown, upon the terms hereinafter mentioned, and the concurrence of S. Wakefield. The indenture then witnessed that, in pursuance of the said agreement, &c. and 150l. paid by J. Brown, in his lifetime, and 100l. by Sophia Brown, his widow, he, R. Wakefield, by request and appointment of S. Wakefield and B. Bingley, devised and leased, and B. Bingley granted, demised, leased, ratified, and confirmed unto S. Brown, her executors, administrators, and assigns, all those livery stables, &c. (describing them) for thirty-one years, from Midsummer 1826, yielding and paying therefor yearly and every year during such part of the said term as the premises shall remain subject and liable to the payment of the said annuity unto the said Samuel Wakefield, his executors, administrators, and assigns, the rent or sum of 160l. of lawful money of Great Britain; and from and after the re-purchase, redemption, or cessation of the said annuity, yielding and paying yearly, and during the then residue of the said term, the like yearly rent or sum of 160l. unto the said B. Bingley, his executors, administrators, and assigns, the same to be paid by equal quarterly payments; on Michaelmas-day, Christmas-day, Lady-day, and Midsummer-day, without any deduction or abatement whatsoever thereout, or out of any part thereof, for or on account or in respect of any land tax, sewer-rate, or any other taxes, rates, tithes, charges, assessments, or impositions whatsoever, and whether parliamentary, parochial, or otherwise, the next quarterly payment of the said yearly rent to be made on Christmas next ensuing the date hereof, all rent having been paid up to Michaelmas-day last previously to the date and execution of these presents; and the said S. Brown, for herself, her heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said S. Wakefield and Robert Wakefield, and with their respective executors, administrators, and assigns, and also with and to the said B. Bingley, his executors, administrators, and assigns, in manner following; that is to say, that the said Sophia Brown, her executors, administrators, and assigns, shall and will, from time to time, and at all times during so much of the said term hereby granted, as the said premises shall continue chargeable with, and liable to the payment of the said annuity as aforesaid, well and truly pay, or cause to be paid unto the said Robert Wakefield, his executors, administrators, and assigns, and from thenceforth, during the then residue thereof, unto the said Benjamin Bingley, his executors, administrators, and assigns, the said yearly rent of 160l. of lawful money as aforesaid, on the days and times hereinafter appointed for the payment thereof according to the reservation aforesaid, and the true intent and meaning of these presents.

Then followed covenants to pay the taxes, &c. to repair to the satisfaction of Benjamin Bingley and R. Sutton, to paint, inside and outside, with powers to R. Wakefield and B. Bingley their respective executors, administrators, &c. to repair, and after notice, to insure in joint names of R. Sutton, his heirs or assigns, and B. Bingley, his executors, administrators, or assigns. There were various other covenants not material to mention. Then there was the following covenant by B. Bingley, that "the said S. Brown paying the rent herein reserved, and during the performance of the said covenants, should quietly enjoy and without interruption by him, or R. Wakefield, or R. Sutton, or any person or persons claiming, by, from, or under, or in trust for him, them, or any, or either of them; also a covenant by B. Bingley, to indemnify and save harmless S. Brown from the rent due under his indenture, and from the payment of the said annuity of 96l. and from any breach of covenant by B. Bingley, and his executors, administrators, and assigns. The defendant then demurred generally,

that the said declaration was not sufficient in law. The point mentioned in the margin was, that between the defendant as assignee of the lease declared on, and the plaintiff Benjamin Bingley, there does not appear to be such a privity of estate as is by law required to enable the said Bingley to sue the said defendant as such assignee upon the covenants of the lessee to and with the said Bingley, contained in the said lease, and also that, according to the interests of the plaintiffs appearing upon the face of the said lease, the said plaintiffs are not entitled to sue jointly in this action.

Watson, Q.C. (with him Peacock), in support of the demurrer.—Looking at the declaration, it is a demise by Robert Wakefield, but a joint covenant with Robert Wakefield, Samuel Wakefield, and Benjamin Bingley. It is a covenant in gross not running with the land. Webb v. Russell, 3 T. R. 393; Anderson v. Martindale, 1 East. No instance can be found where a joint covenant with three, one of whom only has an interest in the land, has been held to run with the land. Then is it a joint or separate covenant? In terms it is joint with the Wakefields, and separate with Bingley. Treport's case, 6 Co. 146; Serenite v. James, 10 B. & C. 410; Eccleston v. Cliphams, 1 Saund. were cited.

Crouder, Q.C. (with him Lush), contra, cited Anderson v. Martindale, 1 East, 497; Sorsbie v. Park, 12 M. & W. 146; Mills v. Ladbroke, 2 M. & G.; Bac. Abr. Leases, O; and contended that if the plaintiffs could not sue one another.

Watson, in reply, cited Hopkinson v. Lee, supra, vol. 6; Bradford v. Botfield, 14 L.J.

Cur. adv. vult.

In Trialty Term judgment was delivered.

JUDGMENT.

LORD DENMAN, C.J.—An action for covenant for non-repair, in pursuance of the terms of a lease made between Samuel Wakefield, of the first part, Robert Wakefield, of the second part, Benjamin Bingley, of the third part, and Sophia Brown, of the fourth part. By the recital it appears that Benjamin Bingley, having a term of sixty-one years, granted an annuity to Samuel Wakefield, and to secure it had assigned that term of sixty-one years wanting one day to Robert Wakefield; then by a lease Robert Wakefield, at the request of Samuel Wakefield and Bingley, demised and confirmed the premises to Sophia Brown for thirty-one years, yielding and paying a rent to Samuel Wakefield while the premises remained subject to him, and afterwards to Bingley. Sophia Brown then covenanted to and with the said Samuel Wakefield and Robert Wakefield, and their respective executors, administrators, and assigns, and also to and with the said Benjamin Bingley, to pay the rent to Robert Wakefield, and afterwards to Bingley, and also to repair and paint the premises outside once in three years, and inside once in five. The declaration alleges the premises came to the defendant by assignment, that afterwards she committed a breach of covenant, by not painting; to this declaration there was a general demurrer, the objection being that the action ought to be brought by Robert Wakefield alone, and there is no privity of estate between Robert Wakefield and Samuel Wakefield. Samuel Wakefield is alleged by the declaration to be dead; the indenture is strangely drawn, for it reserves the rent to Samuel Wakefield, and the covenant is to pay to Robert, the covenant is to surrender to Bingley at the expiration of the term of thirty-one years, and Bingley alone covenants for quiet enjoyment. There is also a provision for notice to repair, and a covenant with Robert Wakefield and Bingley, omitting Samuel Wakefield, to repair after such notice. The present question, therefore, arises on the general covenant to repair and to paint; that covenant is with the two Wakefields jointly and Bingley. If Samuel Wakefield had been alive, it is plain that Robert Wakefield could not have sued without joining him, because Samuel Wakefield had no legal interest in the premises, and the case is, therefore, within the authority of Anderson v. Martindale. Now, if this were a joint covenant with the two Wakefields, one of whom had no legal interest, it is difficult to say he could not covenant with Bingley in respect of his reversion if he dies, and so as regards him this covenant with the Wakefields must be considered separate, as perhaps it might have been if the assignment to secure the annuity had been with both. This case appears to come within the authority of Sorsbie v. Park, 12 Meeson & Welsby; Mills v. Ladbroke, 2 Manning & Grainger; and Bradford v. Botfield, 14 Law Journ. and so on, and is in no way inconsistent with the late case of Hopkinson v. Lee, in this court. The case which comes nearest to the present is Foley v. Addenbrooke, 3 Q.B. in which it was held that where the interest in the cause of action is joint, the action must be in the joint names of the grantee; which was not necessary in this case, any more than Bradford v. Botfield, to determine that one of several lessors can sue on a covenant to repair. That they may join is clear, from the case of K v. —, which is so far an authority for the plaintiff in this case. The other objection, that there is no privity of estate, is certainly not good. The covenant to repair or paint clearly runs with the land; and there is privity of estate between the defendant and one of

the plaintiffs, Robert Wakefield. Therefore judgment must be for the plaintiff.

Thursday, June 11.

TRIX and WIFE v. THORN.

Discretion of Court as to setting aside judge's order—Setting aside demurrer as frivolous—Action on bond—Replication to general plea of performance.

If a judge at chambers has set aside a demurrer as frivolous, the Court will take all the circumstances of the case into its consideration, in order to guide the exercise of its discretion in granting or refusing a rule to set aside the judge's order; and the time at which the application is made is one of those circumstances.

*Debt on bond for payment of a sum of money, with interest, on a certain day. Plea: performance generally. Replication: non-payment of the principal and interest on the day named (the day being laid under a *videlicet*), concluding with a verification. Demurrer: on the grounds, 1st, that the day being laid under a *videlicet*, it did not appear that the breach was before the commencement of the suit; 2nd, that the replication ought to have concluded to the country; 3rd, that it was double, for alleging non-payment of both principal and interest. A learned judge at chambers having set aside this demurrer as frivolous, the Court refused to set aside that order.*

*Advocate Smith, in Easter Term, had obtained a rule to shew cause why an order of Mr. Justice Gresswell, setting aside a demurrer as frivolous, should not be set aside. The declaration was in debt on a bond given to the female plaintiff, *dum sola*, conditioned for the payment of 300*l.* on a day certain, with a general breach. The condition was set out on *oayr*.*

Plea: that the defendant had in all things performed the conditions on his part.

*Replication: that he did not pay on the day; the day being laid under a *videlicet*, and concluding with a verification.*

Demurrer thereto. That demurrer was set aside by order of Gresswell, J. on the 9th March, and this application was made on the 27th April.

Bull, Q.C. shewed cause.—First, this application is too late. It ought to be made within a reasonable time in the Term next after the order made, if made in vacation. (Clement v. Weaver, 1 Dowl. N.S. 193.)

M. Smith.—No rule has been laid down as to the number of days within which a party must come to set aside a judge's order made in vacation. On the contrary, the rule being that he must come in the next Term, he has the whole of that Term for the application. (3 Chitt. Archbold's Practice, (6th ed.) 1224, citing R. v. Wilkes, 4 Burr. 2569.)

*Bull, Q.C. was then called upon to argue the rule.—The first ground of demurrer is, that the replication does not shew that the breach happened before the commencement of the suit, because the day is laid under a *videlicet*; but the answer is, that although laid under a *videlicet*, the date is not for this purpose immaterial, and the Court will take notice that it is a day previous to the commencement of the action. (Merckill v. Allen, 2 Cr. & J.) The second ground is that the replication is bad for not concluding to the country; and *Roakes v. Manser*, 1 C. B. 331, is cited in support of that objection; but it was only held there that a conclusion to the country might be sustained; not necessarily that a verification would be bad. The third ground, that the replication is double in alleging non-payment of both principal and interest, equally fails; for the condition of the bond is for the payment of both as an entire sum; and the case of *Dickenson v. Harrison*, 4 Price, 288, does not apply. (He also cited Stephen on Pleading, and *Jones v. Owen*, 5 Ad. & Ell. 222.)*

*M. Smith, contr.—First, the breach of the condition does not appear to have been before the commencement of the action. In *Parkinson v. Whitehead*, 2 M. & G. 329, the declaration stated that therefore, to wit, on the 31st May, 1825, by an agreement in writing, the defendant's testator agreed, within two years from Midsummer then next, to build certain houses, and alleged for breach that the houses at the commencement of the action (1839) were not built, contrary to the agreement; and it was held bad on general demurrer for not shewing that two years from Midsummer next after the making of the agreement had elapsed previous to the commencement of the suit. So here the day for payment being laid under a *videlicet*, is not binding; and the issue would be proved if the day for payment were after the commencement of the suit. (*Shaner v. Lambert*, 4 M. & G. 477; *Tucker v. Webster*, 10 Mees. & W. 371.) Secondly, the replication ought to have concluded to the country, as the Court of Common Pleas decided in *Roakes v. Manser*, 1 C. B. 331, upon the authority of *Bush v. Leake*, 3 Doug. 255, and the cases collected 1 Wms. Saund. 108, n. Thirdly, the replication is double, in assigning a breach of the condition to pay the interest as well as the principal, the principal and interest being separate debts. (*Dickenson v. Harrison*, 4 Price, 282.) The replication is also bad for not averring non-payment to the husband as well as to the wife.*

Lord DENMAN, C.J.—I think that the first ground

*of demurrer fails, and that the day of payment is so far material. This is not like the case of *Parkinson v. Whitehead*, where the contract was to be performed within two years next after a certain day; and where it became necessary to allege that those two years had elapsed before the commencement of the suit. Secondly, it is not double; for though the case in Price says that the principal and the interest may be treated as separate debts, it does not follow that they must be so treated; nor is it bad for not alleging to whom the money had not been paid. It is sufficient to shew that it was not paid according to the condition. Thirdly, with regard to the verification, I entertain more doubt. I am not prepared to say decidedly whether it ought not to have concluded to the country. Still the case of *Roakes v. Manser* leaves that point open. And here I think it very important to consider that this replication is pleaded to a bad plea in bar; for upon this application we have to exercise our discretion upon all the circumstances of the case. In my opinion the jurisdiction of a judge at chambers to set aside demurrers as frivolous is of very great value; and when a judge has exercised his discretion upon such an application at chambers, I for one should be very slow to disturb his decision. But we are to look at all the circumstances, and the time of the application is not immaterial. I consider that parties would do better to come on the first day of next Term if they wish to set aside the order of a learned judge made in vacation; I do not mean to say that they are precluded from coming after the lapse of a day or two, but it is always better to come promptly; and I doubt whether this rule would have been granted, if the lapse of time had been brought under our notice. Without laying down any precise rule, it is certainly a circumstance to be taken into consideration in every case. This rule will be discharged.*

PATTON, J.—It must not be forgotten that here is a good declaration, and a bad tricky plea, no doubt intended to invite a demurrer. Then the defendant having demurred to the replication, a learned judge exercising his discretion has set aside that demurrer as frivolous; and we ought not to set aside his order, unless upon a consideration of all the circumstances. Now, suppose the defendant had come to argue this demurrer, first, it is clear that he would not have been heard for a moment, because the plea is bad on general demurrer; but if he had he could not have maintained his first ground of demurrer; for, by rule of Court, the plaintiff, in making up the demurrer-book, might set out the bond; and so it would at once appear that the day of payment was before action brought. The case never got to that stage; but we have a right to consider how it would have been if the demurrer-book had been made up. With regard to the verification, the Court of Common Pleas has decided that a conclusion to the country would have been good; but it does not follow that a verification is bad. As to the ground of duplicity, I entertain no doubt that when the condition is to pay a certain sum with interest, on a certain day, the principal and interest form one entire sum; although it might be different if interest were payable in the interval. Neither is the absence of an averment of non-payment by the husband any ground of special demurrer; for the breach is the non-payment on the day; and that is alleged. The judge having exercised his discretion at chambers upon all these points, I see no reason for disturbing his decision.

Rule discharged with costs. [A few cases of last Term, unavoidably postponed during the circuit, will appear next week.]

ADMIRALTY COURT.

Wednesday, March 26.

(Before Dr. LUSHINGTON.)

Wages, pilotage and towage should be paid out of the freight, and not out of the cargo and freight rateably. As all the expenses incurred in cases of bottomry relate to the ship itself, the cargo cannot be charged with any part of them until the value of the ship and freight has been applied in liquidation of such demands.

The facts of this case sufficiently appear in the following

JUDGMENT.

Dr. LUSHINGTON said:—The parties to the act on petition, which set forth the question now to be determined, were the consignees of the cargo, and the holders of a bond, dated April 9, 1845; and the question was, whether the wages, pilotage, and towage, should be paid out of the freight, or out of the proceeds of the ship and freight rateably. He could not, however, take the point as an isolated point. He must proceed step by step. This Peruvian vessel left Lima on a voyage for London, with a cargo of guano and silver; she met with damage at sea, and put into Bahia. There those who had the command of her sold the silver, and applied the proceeds in payment of the necessary expenses of the ship. The fund so raised not being sufficient, further moneys were procured on the security of a bottomry-bond, which bound the ship only, and also on the security of ano-

*ther bond, which bound the cargo only. After the necessary repairs had been completed, the vessel left Bahia, and met with a collision at sea, which compelled her to return thither, and a third bond was then taken, which was solely on the ship. The latter bond, with the premium, amounted, in October last, to 362*l.* 2*s.* 2*d.* The ship having reached London in June, 1845, was arrested for the recovery of the moneys secured by this bond. The validity of all the bonds was not denied. That was a peculiar state of things; it was very unusual to grant a bond upon the cargo only. The validity was not questioned, but he could not determine the question now arising without considering the principle on which such validity must depend. As all the expenses which were incurred in cases of bottomry related to the ship itself, the cargo could not be made liable to any part of them, until the value of the ship and freight had been applied in liquidation of such demands. In principle the cargo could never be hypothecated for the benefit of the ship, it could only be done where the lender required such security, and only to the extent of any deficiency in the proceeds of the ship and freight, to pay the money advanced. He understood that to be the principle on which the judgment in the case of the *Gratitudine*, 3 Rob. 264, was founded. The case of the *Prince Regent* plainly established that the cargo could not be made liable till the proceeds of the ship and freight had been exhausted. Moreover, the judgment in the *Prince Regent* decided a point left doubtful in the *Gratitudine*, namely, that it was the duty of this Court, before it allowed the proceeds of the cargo to be applied in liquidation of the bond, to cause the whole proceeds of the ship and freight to be appropriated for that purpose, though the bond did not mention them. The principle did not apply to a bond on the ship only; for if the bondholder did not require the further security of the freight or cargo, he must abide by his own act. The bondholder had in no case a right to demand more than was due by the terms of his bond; where other funds were brought in to discharge the bond, it was the act of the law for the benefit of the owner of the cargo, and not for the benefit of the bondholder. He disclaimed giving any opinion as to the law if the very extraordinary case of a bottomry bond on the freight only should arise. In the case now before the Court there was a bond on the cargo alone, against which there was no opposition; the Court, as of course, pronounced for the validity of it, but that decree must be taken with an implied reservation that it could not be enforced against the cargo till the funds primarily liable were exhausted. The first two bonds bore the same date, and might be considered to a certain extent as one. How were the three bonds to be paid? The last dated bond must be paid first, and out of the ship only, and what remained of the proceeds of the ship was applicable to the payment of the other two bonds. But how? There was no priority between these two bonds; the proceeds of the ship, therefore, must first be applied to liquidate both bonds, then the freight to pay the second bond, and finally the cargo, if there were a deficit. The learned judge then entered into a variety of calculations to shew the effect which this decree would have in reducing the amount of the several bonds. But, he added, there were the wages, pilotage, and tonnage to be paid, and the question was, out of what fund? He had been asked to decree them out of the freight only. For what reason was the ship to be held exempted? *Prima facie* she was as much benefitted by those services as the freight. But he was desired to do it in order that he might save the holders of the first bond from total loss, and the holders of the second from partial loss. If he assented to it the owners of the cargo would be the sufferers, and thus he would do indirectly what he could not do directly. The peculiar interest of the owner and the cargo intervened, and that interest was, that the proceeds of the ship and freight should be applied first to discharge *part liens*, as wages, rateably; then to discharge the bond entitled to be first paid, and then all after demands standing in *pari conditione*. The result was that the 55*l.* 7*s.* 1*d.* the amount of wages, &c. which were liens entitled to priority of payment, must be paid out of the gross freight, 794*l.* 2*s.* and the proceeds of the ship 499*l.* 2*s.* 4*d.* rateably. The effect would be that 285*l.* 1*s.* 2*d.* would be left of the proceeds of the ship to be applied to pay the bond of the 9th of April, and 453*l.* 3*s.* 10*d.* the balance of freight, to pay the bond on the cargo, before the cargo was so applied.*

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

Friday, Aug. 14.

(Before Mr. Commissioner FANE.)

Re TAYLOR.

Where an insolvent has obtained his final order, and subsequently comes into the possession of property, and on whom a notice for the surrender of that property has been duly made, served, and filed by the

official assignee, pursuant to 5 & 6 Vict. c. 116, s. 9, the Court will not authorize the taking of such property by the assignee, if an assignment of it to other parties had been made by the insolvent prior to the date of filing the required notice by the assignee.

The insolvent in this case was an attorney, and an application had been made to Mr. Reed, on behalf of the official assignee, to "claim and demand" certain property to which the insolvent had become entitled upon the demise, and in pursuance of the will of a Mrs. Watts, of Brighton.

A lengthened argument upon that application having taken place, the learned Commissioner said the case was one of too much nicety and importance to be decided without mature consideration, and now proceeded to deliver judgment.—This insolvent petitioned the Court in 1843, and obtained his final order in the same year. In 1845 he became entitled to a legacy and other property under the will of Mrs. Watts, who died in that year. No creditor's assignee was ever appointed. Mr. Whitmore, the official assignee, having accidentally heard that the insolvent had acquired property, "claimed and demanded" such property from the insolvent personally, pursuant to the 9th section of 5 & 6 Vict. c. 116, on the 20th of July last; and on the same day filed a copy of his claim. Mr. Whitmore now asks that I should make an order authorizing him to take possession of the estate and effects which the insolvent acquired under the will of Mrs. Watts. Mr. Whitmore's application was opposed by Mr. Nicholls, as counsel for a Mr. Bertram, to whom the insolvent assigned his interest under Mrs. Watts's will, by way of security for a loan of 200l. by a deed dated the 13th of January, 1846. It was also opposed by a Mr. Edwards, as attorney to some trustees, to whom the insolvent, on the 1st of July last, assigned his property in trust for creditors who had become such since his insolvency. The question is, whether I ought to give to Mr. Whitmore the authority asked. It is clear that the 5 & 6 Vict. c. 116, was intended to secure to an insolvent, who obtained his final order, his personal liberty only, and that his future property was to be liable, if the Court thought fit, for the payment of his old debts. On the part of the official assignee, it was contended that the insolvent's future property became vested in his assignees by virtue of the 7th section of the Act, absolutely and at once on the passing of the final order; whilst, on the part of the respondents, it was contended that no future property vested in the assignees until such future property had been claimed and demanded by the assignees from the petitioner, and the claim had been served and filed pursuant to the 9th clause of the Act, and then only from the filing the notice, and to be taken possession of only under the direction of the Court. I have carefully considered the Act of Parliament, and I am of opinion that future property does not vest in the assignees until a claim has been duly made, served, and filed, and that nothing vests till the filing. The question turns mainly on the 7th and 9th clauses of the Act, which at first sight certainly seem to contradict each other, but they admit of being reconciled. The clauses to which I have referred are as follow:—It was argued that the words in the 7th clause, "that from and after the passing of the final order, the whole estate, present and future, should become absolutely vested in the insolvent's assignees," meant any property which might come to him at any time up to the day of his death; but if so, that clause would be utterly inconsistent with the 9th clause, which enacts that all "estate and effects acquired by him at any time after the final order shall have been made, shall be absolutely vested in the assignees, upon their filing a copy of a claim made by them," pursuant to that section. Understanding these clauses as the official assignee would have them understood, they are utterly irreconcilable; for how is it possible to reconcile the contradictory ideas of property absolutely vesting in a person at two totally different periods, the date of the final order and the date of a claim made, it may be several years after? The solicitor for the official assignee felt this difficulty, and endeavoured to get over it by attempting a distinction between the words in the 7th clause, "the whole estate present and future," and the words in the 9th clause, "any estate and effects acquired by him at any time after the final order shall have been made;" insisting that the first words related to property acquired otherwise than by personal industry. Such, however, in my opinion, is not the proper mode of reconciling the seeming contradiction—the proper mode is, to give a limited meaning in the 7th clause to the word "future," which appears to me clearly to mean "reversionary," that is, to mean "future," in the sense of the property vested or contingent, to which the insolvent is then entitled, but not receivable until a future time; and this construction is quite in conformity with the rest of the sentence, which seems to say, that, as regards the property of an insolvent having obtained his final order, the assignees shall hold such property, just as (in like manner as) bankrupts' assignees do the property of a certificated bankrupt. With this explanation all is clear and consistent. The assignees under the 7th clause take all the property of an insolvent having obtained his final order, which he acquires up to the moment of his

obtaining his final order. Just as bankrupt's assignees take all bankrupt's property up to the moment of his obtaining his certificate, and under the 9th clause they take, in a special way, what the assignees of a certificated bankrupt do not take at all; that is, property acquired by him after the Court has finally pronounced in his favour as to the final order. Taking this view of the case, I cannot authorize Mr. Whitmore to take any property which came to the insolvent after the date of the final order, which was not his property on the 20th day of July, when the claim was filed. It is represented to me that the insolvent had heard, in June or July, that the official assignee was going to make and file a claim under the 9th section; and that he lost no time in making the assignment of the 18th of July, expressly to defeat Mr. Whitmore's claim; if so, his conduct was most unfair towards his former creditors, and it is possible that the official assignee might, by proceedings in Chancery, set aside the assignment by the insolvent as fraudulent; and to assist him or any creditor in making out such case, I would execute an authority to Mr. Whitmore in general terms, authorizing him to take possession of any estates or effects acquired by the insolvent not effectually assigned away by him before the filing of the claim, subject, if necessary, to proper qualifications. The official assignee, or creditors under the old insolvency, might also procure redress against the insolvent for his improper conduct, by procuring a rescinding of the final order under the 12th section 5 & 6 Vict. c. 116, on the ground that he had not given due notice to his assignees of property acquired by him after the date of his final order.

Circuit Reports.

WESTERN CIRCUIT. BRISTOL SUMMER ASSIZES.

(Before Mr. Justice ERLE.)

Friday, Aug. 14.

NISI PRIUS.

SYKES v. COOPER.

Provisional committee—Engineer—Agency—Admissions.

An admission under judge's order of a newspaper containing an advertisement is no admission of that advertisement being inserted by the direction of the company to which it refers.

The directors of a railway company appoint an engineer to the company, and his name is advertised in the prospectus as the engineer to the company:—*Held, per Erle, J. that this does not constitute the engineer agent to the company, so as to make them responsible to persons employed by him in taking surveys; and therefore, in an action against one of the directors by an engineer who had been so employed by the engineer to the company, letters from the engineer to the plaintiff are not admissible without further proof of his authority to bind the company.*

This was an action brought by an engineer who had been employed by Mr. Higgins, the engineer to the South Midland Junction Railway Company, to take trial sections and preliminary surveys.

Crowder, Q.C. (with whom was Barstow) proposed to shew that Higgins had been held out to the world by the directors as engineer to the company, and put in a *Times* newspaper, admitted under a judge's order. This contained an advertisement of the prospectus of the company, in which Mr. Higgins was so designated. And

Cockburn, Q.C. (with whom were M. Smith and Phina) objected to this being read, as it was not shewn that the company had authorized the insertion. The admission is only of the *Times* newspaper.

ERLE, J. held the objection good.

Proof was then given of the advertisement being authorized; proof of the work being done under the direction of Mr. Higgins; and it was then proposed to put in various letters from Mr. Higgins to the plaintiff.

Cockburn objected.

Crowder and Barstow.—It is a question of agency. Mr. Higgins was appointed and advertised as the engineer of the company, and he was thereby held out to the world as their agent for matters which were absolutely necessary for the engineering department. The plans sent by the plaintiff were seen by the directors of the company, and by the defendant in his capacity of director. To reject this evidence would be to hold that he is legally incapable of binding the company, and that Higgins alone is liable.

ERLE, J.—I am clearly of opinion that the evidence is inadmissible. It is tendered to fix the company with the acts of a person as their agent, and no proof whatever of authority has been given. This disposes also of the case if no other evidence can be produced.

Plaintiff nonsuited.

PARFITT v. RAYDEN.

Insurance—Evidence—Log-book—Captain's statements.

In an action against the underwriters by the owner of a ship to recover freight; the defence being that the ship

was unseaworthy, letters from the captain to the plaintiff are not admissible against the plaintiff, without proof of his acquiescence in the correctness of the statements contained therein. Nor are entries in the log-book admissible for the same purpose, nor protests made by the captain as to the state of the ship, unless it can be shewn that the plaintiff has previously used these documents upon which to found a claim in respect of the ship.

Assumpsit upon an insurance for freight. The risk insured against was at and from the Malacossi river. The defendant pleaded an *assumpsit* and a special plea, that at the time the vessel left the river Malacossi she was unseaworthy.

Crowder, Q.C. (with him Stork) put in the policy, and called upon the defendant to prove his plea.

Cockburn, Q.C. (with him Greenwood), then addressed the jury, and opened the contents of a letter written by the captain to the plaintiff; the protest made by the captain as to the state of the vessel, and the log-book.

Crowder objected that these could not possibly be evidence.

ERLE, J.—I quite agree with you; but I can only put it to the learned counsel whether they think there is any chance of their succeeding either here or in another place in getting them in, and if they think that there is a chance of that, I cannot prevent the contents being stated.

The statements were then proceeded with.

An admitted copy of a letter from the captain to the plaintiff was then tendered, to which

Crowder objected.

Cockburn and Greenwood.—This is a statement of the plaintiff's agent, and it is a matter in the scope of his business, and within his usual authority. If a conversation between them had been overheard, evidence could have been given of it. The *Times* newspaper is often put in when it is proved that the plaintiff or defendant is in the habit of reading it. The question is not as to the weight to be attached to the letter, but whether it is admissible, and it is tendered mainly upon the ground that it was written in his capacity of captain, and in the course of his duty.

ERLE, J.—The *Times*, or other documents, may be admissible to prove the fact of knowledge that such a statement had been made, but not of the facts stated. The captain is not the plaintiff's agent to bind him by statements of this kind. It often happens that he is hostile to the owners. I consider the letter clearly inadmissible.

An admitted copy of the protest made by the captain before the ship was abandoned, and a copy of the log-book, were then tendered.

ERLE, J.—These are no evidence. They have never, that I am aware of, been put in evidence, and I shall reject them unless it can be shewn that the plaintiff has used them to found a claim upon, and so to have admitted them as correct.

The counsel for the defendants then proposed to prove that they had been used by the plaintiff in a former trial between the plaintiff and another underwriter, and called the attorney to the defendant.

Crowder objected, that the record of the former trial was the only legal evidence of any issue between the parties, and proof of that fact was necessary before any evidence of what then took place could be given.

ERLE, J. rejected the evidence.

Verdict was ultimately given for defendant.

THE LEGISLATOR.

Summary.

MR. MORISON, in the House of Commons on Tuesday, moved a series of ten resolutions for the future government of railways, the first and chief of which was to constitute a new department of the executive government for the sole control and superintendence of railways, and all business therefrom arising. This resolution was agreed to, and the nine others were withdrawn on an intimation from the CHANCELLOR of the EXCHEQUER that the Government would introduce a measure to that effect, which should transfer to the new department all the duties now discharged by the Board of Trade, with a great portion of the staff engaged on them. A Bill was, accordingly, on Wednesday, introduced to the Commons, and read a first time. As chroniclers of all that pertains to law and law appointments, we give particulars of an angry discussion between Lord GEORGE BENTINCK and other members, on the appointment of Mr. Commissioner POLLOCK to the Chief Justiceship of India.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Friday, August 14.

New Zealand Government—"to make further Provision for the Government of the New Zealand Islands."
New Zealand Loan Act Amendment—"to amend an Act of the present session for authorising a Loan from the Consolidated Fund to the New Zealand Company."
Court of Exchequer, Ireland—"for the further regulation of certain offices attached to the Court of Exchequer in Ireland."
Tithe Amendment.

Saturday, August 15.

Customs, No. 2—"to amend the laws relating to the Customs."

Monday, August 17.

Ecclesiastical Patronage
Registration of Deeds, Ireland
Sale of Encumbered Estates, Ireland
Real Property Management, Ireland
Tenants for Life, Ireland
Registration of Births, Ireland
Leasehold Tenures, Ireland
Tenants of Corporate Bodies, Ireland
Pawnbrokers.

Tuesday, August 18.

Consolidated Fund
Public Works, Ireland, No. 4
Ditto, No. 5.
Poor Employment, Ireland—"to facilitate the employment of the Labouring Poor for a limited period in distressed districts in Ireland."
Constabulary, Ireland—"to provide for removing the charge of the Constabulary Force in Ireland from the Counties, and for enlarging the Reserve Force; and to make further provision for the regulation and disposition of the said Constabulary Force."

Wednesday, August 19.

Railway Commissioners—"for constituting Commissioners of Railways."

Thursday, August 20.

Patent Commissioners
Waste Lands, Australia.

BILLS READ A SECOND TIME.

Friday, August 14.

Private Bills.

Saturday, August 15.

Income Tax Deduction.

Monday, August 17.

New Zealand Government
New Zealand Loan Act
Court of Exchequer, Ireland
Customs Duties, No. 2
Tithes Commutation.

Wednesday, August 19.

Consolidated Fund
Public Works, Ireland, No. 4
Ditto, No. 5
Poor Employment, Ireland
Constabulary, Ireland.

Thursday, August 20.

Ecclesiastical Patronage
Railway Commissioners.

BILLS READ A THIRD TIME AND PASSED.

Saturday, August 15.

Lunatic Asylums and Pauper Lunatics
County Works Presentation (Ireland), No. 2
Public Works Commissioners, Ireland
Public Works, Fisheries
Public Works, Ireland, No. 3
Judicial Possessions.

Monday, August 17.

House of Commons Offices
Contagious Diseases Prevention
Turnpike Roads, Ireland.

Tuesday, August 18.

Naval and Military Departments
Effectments, Ireland
Rateable Property, Ireland
Steam Navigation.

Wednesday, August 19.

Income Tax Deductions
Lunatic Asylums, Ireland.

Thursday, August 20.

New Zealand Loan Act Amendment
Customs Duties, No. 2
New Zealand Government
Tithes Commutation
Marriages, Ireland.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A SECOND TIME.

Tuesday, August 18.

Virgin Mary Hospital, Newcastle-upon-Tyne.

BILLS READ A THIRD TIME AND PASSED.

Saturday, August 15.

Horne's (Ferguson's) Estate

Monday, August 17.

Booth's Charities, Clowes's Estate
Duke of Cleveland's Estate, Hardwick Hart
" Bath and Wington
Scott's Estate
Jesus Hospital Estate, Newcastle.

Tuesday, August 18.

Lord Kanyon's (Congreve's) Estate.

Wednesday, August 19.

Bond's Estate
Farquharson's Divorce
Sir Richard Phillips's Estate.

Thursday, August 20.

Cork and Waterford Railway

SESSIONAL PRINTED PAPERS.

567. Post Office (Thomas Mitchell)—Papers
571. Railways, India—Report of Commissioners
583. Arms, Ireland—Copy of Act, 1843

567. Lunatics, Haydock Lodge—Return, &c.
599. British Museum, National Gallery, &c.—Returns
Lunatic Asylums, Ireland—Report
585. Post Office Directory, Post Office—Returns
598. Naval and Military Departments—Paper
Mining Districts—Report of the Commissioner
614. Railway Accidents—Return
613. Lighting of Towns, Ireland—Return
616. Savings Banks—Accounts
643. Newcastle-upon-Tyne and Carlisle Railway—Return
600. Winkfield Parish—Correspondence
621. Bills—Naval and Military Departments, amended
622. Rateable Property, Ireland—amended by Committee and on recommitment
623. New Zealand Government
624. New Zealand Loan Act Amendment
625. Court of Exchequer, Ireland
626. Ports, Harbours, &c.
627. Tithe Amendment
628. Customs, No. 2
617. House of Commons Offices, amended
618. Private Bills
629. Income Tax Deduction
Newcastle-upon-Tyne and Carlisle Branch Railway
631. Medical Practitioners, amended
640. Pawnbrokers
648. Public Works, Ireland, No. 5
648. Private Bills, amended
649. Railway Commissioners
649. Leases, Ireland—amended
619. Sunday Trading
632. Ecclesiastical Patronage
644. Small Debts—amended by Committee and on recommitment
645. Court of Exchequer, Ireland—amended
647. Public Works, Ireland, No. 4
649. Poor Employment, Ireland
650. Constabulary, Ireland

HOUSE OF LORDS.

TUESDAY, Aug. 18.—The Royal assent was given by commission to thirty public and private Bills. The Lords Commissioners were the Lord Chancellor, the Marquis of Lansdowne, and the Earl of Minto. The following are the titles of the Bills: The Sugar Duties Bill (No. 3); the Militia Pay Bill; the Forms (Assessed Taxes) Bill; the Highway Rates Bill; the Loan Societies Bill; the Turnpike Act Continuance Bill; the Stock in Trade Bill; the Copyhold Commission Bill; the Court of Common Pleas Bill; the Religious Opinions Relief Bill; the Grand Jury Cess Bonds (Ireland) Bill; the Prisons (Ireland) Bill; the New Zealand Company Bill; the Adverse Claims (Ireland) Bill; the Deodands Abolition (No. 2) Bill; West Riding Union Railways Bill; Manchester, Bolton, and Bury Canal, and Leeds Railway Amalgamation Bill; Caledonian, Pollon, Govan, and Clydesdale Junction Railways Amalgamation Bill; Huddersfield and Manchester Railway and Canal (Oldham Branch) Bill; Liverpool, Ormskirk, and Preston Railway Bill; Gauge of Railways Bill; Salthouse Embankment Bill; Wolverhampton Stipendiary Justice Bill; Books and Engravings Bill; Plymouth Great Western Docks Bill; Bowling Bay Improvement Bill; Brighouse Sewering, Draining, and Lighting Bill; Wexford Harbour Improvement Bill; Norfolk Estuary Bill; Duke of Cleveland's (Hardwick Hart) Estate Bill; Scott's Estate Bill; Clowes Estate (Booth's Charities) Bill; Horne's (Ferguson's Estate) Bill; and All Souls College (Oxford) Estate Bill.

HOUSE OF COMMONS.

TUESDAY, Aug. 18.—Lord G. BENTINCK called the attention of the House to a job which had been committed by the late Government with respect to the appointment of the present Chief Justice of Bombay. At the present, there were two chief justices of that presidency. On the 29th of June last, the late administration resigned the reins of government, but appointed on the 30th Mr. D. Pollock to the office of Chief Justice of Bombay. At that time, Sir H. Roper, the Chief Justice of Bombay, had not tendered his resignation to the Government. Sir H. Roper was in the seventh year of the performance of his duties as Chief Justice of Bombay. Five years' service entitled him to a retiring pension of 700l. a year; seven years' service to a retiring pension of 1,000l. a year. Sir H. Roper's period of seven years' service would not expire till the 2nd of next November; and yet to perpetrate a job, the late President of the Board of Control had superseded Sir H. Roper, and appointed Mr. D. Pollock as chief justice in his stead. By the law of the land, as soon as Mr. Pollock was appointed, the authority of Sir H. Roper as chief justice ceased; and the result was, that every trial which had since taken place before Sir H. Roper became illegal, and every criminal convicted and hanged in the interval was a murdered man. To remedy this illegality, a Bill, under the title of the "Patent Commission Bill," had passed the House of Lords, and would, in all probability, be introduced into that House that evening. The object of this job had been to make a vacancy in the Commissioners of Insolvency, and thereby to reward the private secretary of Lord Lyndhurst. He had nothing to say against the character of Mr. D. Pollock, but he was 65 years of age. Passing over the appointment of Mr. C. Phillips as successor to Mr. D. Pollock, an appointment,

however, which was attributable to the friendship of an ex-Chancellor, who had recently defended in another place all the tergiversation of the late government, he had no hesitation in denouncing, as a gross job, the appointment of Mr. Perry as the successor of Mr. C. Phillips. He called on the partisans of the late government to show him any precedent for so nefarious a job. The government was actually defunct when it made this appointment; and he therefore felt himself entitled to call for investigation into the manner in which this patronage of the chief justiceship had been disposed of. After one of his usual bitter attacks on the late administration, he called upon Sir J. Hobhouse to lay before the House all the information which he could produce with respect to this appointment.—Sir J. HOBHOUSE stated the facts of the case, and left the House to come to its own decision upon them. In February last, Sir H. Roper wrote to Lord Ripon, expressing his wish to retire from the chief justiceship of Bombay, not immediately, but on the 2nd of November next, when he would be entitled to a retiring pension of 1,000l. a year for seven years' service. On the 4th of May Lord Ripon, having taken her Majesty's pleasure on the subject, accepted the resignation of Sir H. Roper on the terms on which it had been tendered. On the 16th of June Lord Ripon requested Mr. Gladstone, the Colonial Secretary, to make out a patent for the appointment of Mr. D. Pollock as successor to Sir H. Roper. Mr. Gladstone, on inquiring into the matter, informed Lord Ripon that it was illegal to appoint a judge *in prospectu*. Lord Ripon thereupon ordered letters patent to be made out, appointing Mr. D. Pollock forthwith Chief Justice of Bombay. This was accordingly done on the 1st of July, and in the patent appointing Mr. D. Pollock there was a clause annulling the appointment of Sir H. Roper. As soon as he (Sir J. Hobhouse) saw that clause he consulted the Attorney-General upon it, and the Attorney-General, after examining into it, informed him that there was no remedy except an Act of Parliament, to legalize all that might take place in the interval between Mr. D. Pollock's appointment and the time of taking his seat as Chief Justice at Bombay, and an Act of Parliament had in consequence been drawn up and introduced into the House of Lords by the present Lord Chancellor.—The ATTORNEY-GENERAL had himself come to the opinion which Sir J. Hobhouse had communicated to the House, after mature deliberation, and he was happy to say that he had been fortified in it by the concurrent opinion of the present Lord Chief Baron, the present Lord Chancellor, the late Lord Chancellor, and the late Attorney-General. It was laid down in all our old law books, and especially in Comyn's Digest, that a judicial office could not be held in reversion. The object of the bill introduced into the other House was to cure altogether the inconvenience which had been felt in this case, and to make all letters patent in future take effect upon the arrival of the new judge in India.—Mr. S. WORTLEY agreed with the Attorney-General that a judicial office could not be granted in reversion, but was not sure that an appointment to a judicial office was illegal. Having expressed his satisfaction that the error committed in this case, and many similar cases, was about to be remedied, he proceeded to justify the appointments of Mr. D. Pollock and Mr. C. Phillips, on the ground of the eminent learning and acquirements of those gentlemen. He then read Lord G. Bentinck a severe lecture for the bitter personalities in which he was perpetually indulging against the members of the late administration.—Mr. HUME said that, if this was not a job, it was very like one. If the Government had appointed Mr. D. Pollock to his present office, after it had resigned, it was a case which called for particular animadversion. The manner, too, in which Sir E. Perry, who had executed his duties as a puisne judge in India to the satisfaction of all parties, had been passed over by this appointment of Mr. D. Pollock, who knew nothing of the practice of the law in India, was most objectionable. The House was much indebted to Lord G. Bentinck for bringing this matter forward, and the attack which Mr. S. Wortley had just made upon him was neither well-timed nor just.—After a few words from Mr. BERNAL, Mr. GOULBOURN, &c., the order for the day was read.

THURSDAY, August 20.—On the motion that the Small Debts Bill be committed, Lord G. BENTINCK said that the present ministers had inherited from their predecessors this measure, which threw more patronage into the hands of the executive government than any measure introduced for many years into Parliament; but still the House was entitled to a full explanation of the extent to which the patronage thus created went, and of the expense which it would entail upon the country. The second clause of the Bill gave the Government power to divide every county into as many districts as it thought fit. Each district was to have a separate judge; each judge was to have a salary of 1,200l. a year; and the Lord Chancellor was to have the nomination of all these judges. Each Court was to have a clerk with a salary of 600l. a year, and a treasurer with a salary not defined, but left to the discretion of the Lords of

the Treasury. The Solicitor-General had informed him, since he came into the House, that the number of these courts would not exceed sixty-five. Taking that to be the case, the salaries of the judges and the clerks would amount to 117,000*l.* a year, an immense addition to the patronage now at the disposal of the ministers of the Crown, and quite distinct from the other patronage which they would obtain in the appointment of treasurers, and other officers to be paid by fees. There were several points in the Bill which required amendment; but, as they were points in detail, he would reserve them for consideration in the committee. After stating that he did not consider this measure to be one which would bring cheap justice to every man's door, he declared that it was of too great importance to be proposed and carried in the last week of the session, both on account of the large amount of patronage which it conferred on the Government, and of the great revolution which it would make in the jurisprudence of the country.—Sir G. GREY observed, that although this Bill had originated with the late Government, several alterations had since been made in it; some in its progress through the House of Lords, and others by the present Government. No suggestions had been made to Government for the postponement of this measure, but many representations had been made to it of the importance of passing it into a law in the course of the present session. Lord G. Bentinck had assumed that each judge was to have a salary of 1,200*l.* a year, but that was a misapprehension on his part. The *maximum* salary was fixed at 1,200*l.* a year; but it did not follow that all the judges were to receive that amount. The question of patronage had been very fully considered. Ministers were of opinion that the patronage should be placed in the hands of the Lord Chancellor, acting under his responsibility as a Minister of the Crown, and subject to the control of public opinion. The question of compensation would be referred to the Treasury, which would apply the definite rules which had been established for its guidance in such cases.—Mr. M. SUTTON stated, that the present Government had made some important changes in this Bill since its first introduction into Parliament. The late government had relieved itself from the responsibility of appointing to so many judgeships at once, by giving the first nomination of them to the lords-lieutenant of counties, and by reserving to itself the power of filling up the subsequent vacancies. Again, by the bill, as originally framed, the judges of the existing courts were to be the first judges of the new courts.—The ATTORNEY-GENERAL thought it expedient that the Government should exercise this patronage rather than the lords-lieutenant of counties.—Mr. HENLEY stated that he did not think it wise to place so large an amount of patronage at once in the hands of the Crown.—The House then resolved itself into committee on the Bill. Several clauses were agreed to without discussion; on others certain verbal amendments were made. On the ninth clause considerable discussion took place.—Mr. WAKLEY moved as an amendment, that attorneys as well as barristers should be eligible as judges in these courts.—Sir G. GREY objected to the alteration.—The committee divided, when the amendment was negatived by a majority of 53 over 16 voices.—Colonel T. WOOD then moved as an amendment, "That the judges shall cease to practise as barristers, when they accepted office under this bill."—This amendment was negatived by a majority of 57 over 12 voices. The clause was then agreed to, as were the other clauses up to 15. The chairman then reported progress, and asked leave to sit again on Friday.

NEW STATUTES

Of the Session 9 Victoria.

(Continued from page 354.)

[In this record of actual Legislation, only the statutes and parts of statutes of peculiar importance to the Profession are given *verbatim*. Of the rest, the title, or a brief analysis only, is preserved here.]

CAP. XXX.

An Act to define the Notice of Elections of Members to serve in Parliament for Cities, Towns, or Boroughs in Ireland. (July 16, 1846.)

CAP. XXXI.

An Act to settle an Annuity on Viscount Hardinge, and the two next surviving Heirs Male of the Body of the said Viscount Hardinge, to whom the Title of Viscount Hardinge shall descend, in consideration of his great and brilliant Services. (July 27, 1846.)

CAP. XXXII.

An Act to settle an Annuity on Lord Gough, and the two next surviving Heirs Male of the Body of the said Lord Gough, to whom the Title of Lord Gough shall descend, in consideration of his important Services. (July 27, 1846.)

CAP. XXXIII.

An Act to amend the Law relating to Correspond-

ing Societies, and the Licensing of Lecture Rooms. (July 27, 1846.)

We present this statute entire:—

1. 39 Geo. 3, c. 79: 57 Geo. 3, c. 19. *Proceedings under recited Acts shall not be commenced unless in the name of the law officers of the Crown.*—Whereas by an Act passed in the thirty-ninth year of the reign of His Majesty King George the Third, intituled "An Act for the more effectual Suppression of Societies established for seditious and treasonable Purposes, and for better preventing treasonable and seditious Practices," and by an Act passed in the fifty-seventh year of the same reign, intituled "An Act for the more effectually preventing seditious Meetings and Assemblies," certain offences are created, and certain penalties are attached to the commission thereof: and whereas the provisions of the said Acts have given occasion to vexatious proceedings by common informers: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, it shall not be lawful for any person or persons to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information, in any of her Majesty's courts, or before any justice or justices of the peace, against any person or persons, for the recovery of any fine or forfeiture made or incurred, or which may hereafter be incurred under the provisions of the recited Acts or either of them, unless the same be commenced, prosecuted, entered, or filed in the name of her Majesty's Attorney-General or Solicitor-General in England, or her Majesty's Advocate in Scotland; and every action, bill, plaint, or information which shall be commenced, prosecuted, entered, or filed in the name or names of any other person or persons than is in that behalf before mentioned, and every proceeding thereupon had, shall be null and void to all intents and purposes.

2. *Act may be amended, &c.*—And be it enacted, that this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

CAP. XXXIV.

An Act to enable the Commissioners of Her Majesty's Woods to construct a New Street from Spitalfields to Shoreditch. (July 27, 1846.)

CAP. XXXV.

An Act to continue until the 31st Day of December, 1848, and to the end of the then next Session of Parliament, an Act of the 10th Year of King George the Fourth, for providing for the Government of His Majesty's Settlements in Western Australia, on the Western Coast of New Holland. (July 27, 1846.)

CAP. XXXVI.

An Act to continue until the 1st day of January, 1851, and to the end of the then next Session of Parliament, and to amend an Act for establishing an Office for the benefit of Coalwhippers of the Port of London. (July 27, 1846.)

CAP. XXXVII.

An Act to amend the Laws relating to the Office of Coroner, and the Expenses of Inquests in Ireland. (July 27, 1846.)

CAP. XXXVIII.

An Act to empower the Commissioners of Her Majesty's Woods to form a Royal Park in Battersea Fields, in the county of Surrey. (August 3, 1846.)

CAP. XXXIX.

An Act to enable the Commissioners of Her Majesty's Woods to construct an Embankment and Roadway on the north shore of the river Thames, from Battersea Bridge to Vauxhall Bridge, and to build a Suspension Bridge over the said river at or near Chelsea Hospital, with suitable Approaches thereto, including a Street from Lower Sloane-street to the northern extremity of the Bridge. (August 3, 1846.)

CAP. XL.

An Act to declare certain Ropeworks not within the operation of the Factory Acts. (August 3, 1846.)

CAP. XLI.

An Act for granting to Her Majesty, until the Fifth day of September, 1846, certain Duties on Sugar imported into the United Kingdom. (August 3, 1846.)

CAP. XLII.

An Act to authorize a Loan from the Consolidated Fund to the New Zealand Company. (August 3, 1846.)

CAP. XLIII.

An Act to suspend until the First day of October, 1847, the making of Lists and the Ballots and Enrolments for the Militia of the United Kingdom. (August 7, 1846.)

CAP. XLIV.

An Act to remove doubts as to the Election of Members to serve in Parliament for the County of Chester, the Boroughs situate therein, and for the County of the City of Chester. (August 7, 1846.)

CAP. XLV.

An Act to continue until the First day of September, 1847, certain of the Provisions of an Act of the Fifth and Sixth years of Her present Majesty, for Amending the Constitution of the Government of Newfoundland. (August 7, 1846.)

CAP. XLVI.

An Act to continue until the Thirty-first day of December, 1851, an Act of the Fourth and Fifth years of her present Majesty for Authorizing and Facilitating the Completion of a Survey of Great Britain, Berwick-upon-Tweed, and the Isle of Man. (August 7, 1846.)

THE MAGISTRATE.

Summary.

THE Deodands Abolition Bill has come down to the Commons with the amendments made in it by the Lords, which have received the approval of the Lower House, and the Bill now waits only the royal assent to become law. Nothing calling for special remark has occurred during the week.

THE GAME LAWS IN SWEDEN AND NORWAY.

The following information may perhaps be interesting to some of our readers. It is a copy of a law passed in Sweden, bearing date August 4, 1845, for the preservation of game in Norway. This law restricts the season for shooting; and, as it is not uncommon for English sportsmen to make shooting excursions into that country, they should be acquainted with the state of the law there. Hitherto no law has existed, with the exception of that relating to elks, either with regard to the season of shooting or the species of game shot:—

LAW FOR THE DESTRUCTION OF BIRDS AND BEASTS OF PREY, AND FOR THE PRESERVATION OF GAME.

We, Oscar, by the grace of God King of Norway and Sweden, the Goths and Vandals, maketh known, that there has been laid before us the following resolutions, passed the 12th of July this year, in the Storthing now assembled:—

Section 1.—For the destruction of the undermentioned beasts and birds of prey the following premiums shall be paid:—For every bear, wolf, tiger-cat, lynx, glutton, or wolverine, of whatever age, 3 specie dollars; for eagles (land and sea eagles), 60 skillings, and for mountain owls, 24 skillings; for the young of these birds the same; for hawks, if not killed by firearms, 24 skillings.

Section 2.—The provision from which these premiums are to be paid is to be assessed on the *enf* (province) in which the animal is slain. And in order to be entitled to the premium, the skin of the slain beast must be exhibited to the *foged* (sheriff) of the district, or to his deputy, who will cut from the right fore paw the two middle claws. The slain bird of prey is also to be produced, and the claws likewise cut off. To enable the claimants to receive the premium, a certificate or order is to be given gratis.

Section 3.—Elks and stags must in future only be taken from the 1st of August to the 1st of November, and during that time only by the proprietor of the ground, who is allowed to kill one elk and two stags on each separate property he may possess. The restrictions with regard to time and number do not refer to animals found on islands which are private property, or those kept within walled parks.

Section 4.—Wild reindeer must not be killed from the 1st of April to the 1st of August.

Section 5.—For the space of ten years after the promulgation of this law beavers must neither be snared, shot, nor killed, and after the expiration of that period only by the proprietor of the land.

Section 6.—Hares must not be killed from the 1st of June to the 15th of August. No one but the proprietor of the land on his homestead is allowed to follow a hare in the new fallen snow, or in any way whatever hunt, snare, or kill it, even dogs are not used.

Section 7.—The cock and hen capercaillie, black-cocks, and hazel-hens, must not be snared or shot

from the 1st of April to the 15th of August. Partridges not from the 1st of December to the 1st of September. With the exception of the provinces of Norway and Finland, no waterfowls used as food (birds of passage excepted) must be shot from the 1st of April to the 15th of July, or be deprived of their eggs after the 1st of June.

Section 8.—The occupier of fast property is entitled, without restriction as to time or number, to snare and kill stags on his homestead, when these animals injure his orchard, meadow, &c.

Section 9.—The violation of this law, inasmuch as a trespass has not only been committed on the rights of the ground proprietor according to section 6, for every snared or slain animal, will render the offender liable to the following fines:—elks, 40 specie dollars; stags and beavers, 20 specie dollars; wild reindeer, 10 specie dollars; hares, 2 specie dollars; and other game, 1 specie dollar; unlawfully depriving the nest of eggs, 60 skilling. Those who sell game which has been killed during the season that is prohibited are liable to the same punishment as those who have killed it.

Section 10.—Suits arising from offences for which punishments are provided by section 9, are to be settled in the police-courts. When information has been lodged for any of the above trespasses, the Inspector of the police or *foged* (sheriff) is to inquire of the accused if he submits to pay voluntarily the fine imposed by this law, at the same time acquainting him with the amount. Should the accused agree to pay the fine, and the money not be forthcoming, the amount shall be levied on him by execution. Should he deny having committed the trespass, or hesitate coming to an amicable adjustment, the officer will cause the case to be investigated, and, according to circumstances, will adjudge. The fines are to be divided between the informer and the poor-box of the district. If, in addition to an offence against this law, another person's rights in hunting, fishing, or preserves, have been prejudiced, reparation is reserved to him by the usual course of law.

Section 11.—The ordinances of the 8th of May, 1733, section 8, the law of the 22nd of June, 1816, as well as the regulations of the Norwegian law—5, 10, 1—regarding stags, are hereby repealed. As we have approved and confirmed, so we hereby approve and confirm, this resolution as law.

Given at our Palace at Stockholm, the 4th of August, 1845, under our hand and the seal of the kingdom,

OSCAR,
FREDERICK DUK,
SCHONBRAC.

The Gazette contains notice that the following places have been duly registered for the solemnisation of marriages therein:—Forton Chapel, Cockerham, Lancashire; St. Andrew's Church, Cambridge; Our Lady's Chapel, Halsall, Lancashire. Lawrence Wright, superintendent registrar.

THE LAWYER.

SUMMARY.

The Insolvent Debtors' Bill has been read a second time, and the Small Debts Bill is now in Committee. It does not yet appear that the suggestions of Mr. KEANE, in his able pamphlet upon the Bill, have been adopted. The proceedings of the Committee and Deputation appointed at the meeting at the Gray's-inn Coffee House, (reported in this journal a fortnight back,) will be found in another column. The death of that learned and eccentric advocate, Sir CHARLES WETHERELL, resulting from an accident, occurred this week; a memoir of him will be found under the head "Necrology." We invite attention to an important judgment delivered by Mr. Commissioner FANE on Friday—*Re Taylor*—and which appears in our report of the Courts of Bankruptcy and Insolvency.

PARLIAMENTARY EXPENSES OF RAILWAY BILLS.

The following extract from the recently delivered estimate of expenses before the Select Committee of the House of Commons on Railways, gives curious details respecting the Parliamentary expenses attending the passing of Railway Bills. Mr. Robert Stephenson is the witness examined:—"Can you give about the average of the Parliamentary expenses per mile on some of the greatest undertakings with which you have been concerned in this country?—I have known them vary from 800l. to 1,000l. per mile for Parliamentary expenses alone. That must depend entirely on whether it is an opposed line or not?—Yes; what is where. I draw the limits. The London and

Birmingham income we will take as about 800,000l. a year; there is about 50 per cent. of that spent in labour and in the materials, but a large proportion in labour. Do you include in the term 'labour' salaries to the clerks and the staff?—From the secretary down to the common porter; the whole staff. There is out of that 400,000l. probably 300,000l. positively paid in labour. If we could get that at the same value as we could labour in Belgium, the company ought to be able to give the public the advantage of that, and lower their fares 150,000l. a year. Do you say that the rate at which a company can carry, depends chiefly on the cost at which the railway is constructed?—Yes, and the traffic upon it. You say, and the traffic which is carried upon it?—Yes. Is it not true, that in general, where there is a very large traffic, the railway is constructed, from the circumstances of the country, at a very heavy expense?—There are cases of that kind. Generally?—Yes. The London and Greenwich; that was constructed at an enormous expense? Yes. And the Dublin and Kingstown at an expense of 100,000l. per mile?—Yes. In Belgium there has been a total absence of Parliamentary expenses?—I believe they are very small; they do not amount to more than 2,000l. or 3,000l. for a bill; and then they were all done by Government. Railroads in more thinly populated countries are constructed at a much smaller expense, than that?—Certainly. But they are obliged to charge higher rates of fares, because they have a smaller traffic?—Clearly."

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Lord Chancellor has appointed Frederick Hancock, of Shipton-on-Stour, in the county of Worcester, gent. and William Bowen, of Stafford, gent. to be Masters Extraordinary in the High Court of Chancery.

The Queen has been pleased to appoint the Most Hon. Constantine Henry Marquis of Normandy to be her Majesty's Ambassador Extraordinary and Plenipotentiary to the King of the French.

The Queen has also been pleased to appoint the Right Hon. John Viscount Ponsonby, G.C.B. to be her Majesty's Ambassador Extraordinary and Plenipotentiary to the Emperor of Austria.

Mr. Milman is appointed to succeed Mr. Secker, now one of the Metropolitan police magistrates, as a revising barrister on the Oxford Circuit.

Mr. Smirke, of the Western Circuit, will succeed Mr. Cockburn as Recorder of Southampton.

IRELAND.—Master Murphy has appointed Edmund B. Lawless, esq. to be counsel to his office in Chancery.

LEGAL INTELLIGENCE.

SMALL DEBTS BILL.

(From a Correspondent.)

The committee and deputation constituted at the meeting of the Profession at the Gray's-inn Coffee House, have, indeed, proved themselves worthy the thanks of every attorney and solicitor throughout the kingdom. Their labours have been incessant and well-directed, and prove what the Law Institution might do, when an "industrious few" can effect so much.

Not that the Profession, as a body, deserves perhaps even what little has been done for them, for a more apathetic class, in respect to their own interests, never existed. The deputation alluded to have been in attendance at the House of Commons nearly all the last, and during the present week, laying hold of every member whose support they could enlist. On Saturday last they had the honour of an audience with the Attorney and Solicitor-General at the chambers of the latter, when the principal objections to the Bill were discussed. Mr. BETHUNE, counsel for the Houses of Parliament, and by whom the measure has been partly drawn, went very courteously with the deputation through each clause *serialim*. The unrestrained option to a plaintiff, of being able to sue concurrently in the superior courts for a debt above 5l. has been a fluctuating and doubtful point, and at one time the deputation hoped they had succeeded; but a sudden change having come over the authorities in office, the boon held out at first, was at last denied.

However, for most of the modification of the Bill since it was printed on the 11th instant (and there have been three reprints since then), the Profession are indebted to the Gray's-inn deputation. Mr. F. Herbert, Mr. J. A. Jones, Mr. Scott, Mr. Heathfield, Mr. Curling, Mr. Martin, and Mr. Clarke, have all been indefatigable, and we only wish their example had been followed by the Profession generally, who will deeply regret, when too late, that they did not bestir themselves. If the present measure works well, in ten years we shall have the jurisdiction extended to debts of 50l. and in time the

common law practice will be superseded. Short forms for conveyancing will complete the affair, and the Profession of attorney and solicitor be but a beggarly calling, with this aggravation, that its ruin has been in a great measure brought about by the apathy and indifference exhibited by its own members. [We do not partake of the gloomy anticipations of the future, which our correspondent expresses; at the same time we agree with him, that were the Profession more united, and awake to their own interests, they would not be sufferers to the extent they now are.—ED. L. T.]

A new law on criminal procedure has just been promulgated in Prussia, the principal provisions of which are as follow:—"The accused will appear in person before his judges, and the proceedings will be oral. No means of constraint will be used to compel him to confess the crime of which he is accused. He will have the free choice of a counsel, and in case the crime be of a nature to lead to a punishment more severe than an imprisonment of three years, he will have a right to demand from the Court the appointment of a defender. The tribunal will only apply the sentence specified by the law. In the event of the Court finding extenuating circumstances, it will have the power of mitigating the sentence of death to imprisonment for life, and the sentence of perpetual imprisonment to a shorter term. Sentences will no longer be required to be submitted to the approval of the Minister of Justice. A prisoner acquitted of a charge cannot again be tried for the same offence, even should fresh proofs against him be afterwards discovered; but prisoners acquitted under reservation may be again tried for the same offence, but that only within a certain time prescribed by the law. Persons interested in the cause may be present at the trial, but those not interested must immediately leave the Court if called on to do so by the tribunal or by the prisoner under trial."—[We gave some particulars on this head, but less copious, in the last number of the LAW TIMES.]

PARLIAMENTARY PAPERS.

FEES FROM MISDEMEANANTS, TAKEN BY CLERKS OF THE PEACE AND CLERKS OF ASSIZE.

Abstract of a Return of all Fees or Payments whatsoever, taken or demanded from defendants in misdemeanor, by the clerks of the peace and clerks of assize at the four last quarter sessions, and at all the assizes which have been held in the present year [1845] respectively.—Ordered by the House of Commons.

[The total amounts only are given, not the receipts at each quarter sessions.—EDS.]

ENGLAND.

Bucks.—Fees demanded, 31. 19s. 3d.; fees taken, 31. 19s. 2d.

Cambridge.—Fees demanded, 31. 11s. 6d.; fees taken, 31. 11s. 6d. No fees were taken or demanded at the three last quarter sessions.

Chester.—Fees demanded, 16s.; fees taken, 16s. No fees whatever have been demanded or taken from defendants in misdemeanor at the four last quarter sessions, except a sum of 16s. from the inhabitants of the hundred of Macclesfield, upon an indictment for not repairing a hundred bridge. Under the provisions of the 55 Geo. 3, c. 50, fees amounting to 46l. 17s. 4d. have been received from the treasurer of the county, being those demandable (although not actually demanded) from defendants, and on their acquittal payable by the county.

Cornwall.—Fees demanded 26l. 17s. 4d.; fees taken, 51. 6s. 8d. The only other fees or payments taken or demanded from defendants were for subpoenas and testificandum, of which the clerk of the peace has kept no particular account.

Cumberland.—Fees demanded 31. 5s. 6d.; fees taken, 31. 5s. 6d. No fees were taken or demanded at three of the quarter sessions.

Devon.—Fees demanded, 15l. 10s. 4d.; fees taken, 15l. 10s. 4d.

Dorset.—Fees demanded, 10l. 14s.; fees taken, 51. 11s. 4d.

Essex.—Fees demanded, 11. 5s.; fees taken, 11. 5s. No fees were taken or demanded at three of the quarter sessions.

Gloucester.—Fees demanded, 50l. 18s. 6d.; fees taken, 48l. 15s. 8d. Most of the defendants being in indifferent circumstances, small amounts only were taken from each; the gross amounts demanded are not stated in the return.

Kent.—Fees demanded, 41. 16s. 2d.; fees taken, 31. 16s. 2d.

Lancaster.—Fees demanded, 69l. 13s. 10d.; fees taken, 61. 8s. 2d.

Lincoln.—Holland division, fees demanded, 21. 9s. 8d.; fees taken, 10s.; Kesteven division, fees demanded, 17. 11s. 6d.; total, fees demanded, 41. 1s. 2d. fees taken, 10s.

Middlesex.—Fees demanded, 25l. 1d.; fees taken, 24l. 3s. 5d. The clerk of the peace demands and receives on behalf of the clerk of the court 4d. for

taking or discharging every common recognizance, and accounts to him for the same. There have been a few additional cases in which subpoenas and copies have been issued, or copies of depositions have been made at the regular charges, but the clerk of the peace is unable to state whether they were cases of felony or misdemeanor. There are general sessions of the peace in Middlesex, not being general quarter sessions; but misdemeanors are tried equally at both sessions.

Nottingham.—Fees demanded, 2l. 8s. 8d.; fees taken, 2l. 8s. 8d. No fees were taken or demanded at three of the quarter sessions.

Salop.—Fees demanded, 1l. 5s.; fees taken, 1l. 5s. No fees were taken or demanded at three of the quarter sessions.

Somerset.—Fees demanded, 69l. 15s.; fees taken, 69l. 15s.

Southampton.—Fees demanded, 89l. 1s. 4d.; fees taken, 89l. 1s. 4d.

Stafford.—Fees demanded, 1l. 18s. 4d.; fees taken, 1l. 18s. 4d.

Surrey.—Fees demanded, 4l. 5s.; fees taken, 4l. 5s. In five cases the acquittal fee of 5s. was not demanded.

Wills.—Fees demanded, 14l. 12s. 6d.; fees taken, 12l. 7s. 6d.

York (East Riding).—Fees demanded, 5s.; fees taken, 5s. No fees were taken or demanded at three of the quarter sessions.

Total, England.—Fees demanded, 408l. 19s. 5d.; fees taken, 309l. 14s. 9d.

WALES.

Brecon.—Fees demanded, 2l. 10s.; fees taken, 2l. 10s.

Carmarvon.—Fees demanded, 7s. 6d.; fees taken, 7s. 6d. No fees were taken or demanded at three of the quarter sessions.

Denbigh.—Fees demanded, 7l. 5s.; fees taken, 7l. 5s. No fees were taken or demanded at three of the quarter sessions.

Total, Wales.—Fees demanded, 10l. 2s. 6d.; fees taken, 10l. 2s. 6d.

Total, Counties.—Fees demanded, 419l. 1s. 11d.; fees taken, 319l. 17s. 3d.

BOROUGHES.

Bath.—Fees demanded, 18s. 6d.; fees taken, 18s. 6d.

Bolton.—Fees demanded, 1l. 6s. 4d.; fees taken, 1l. 6s. 4d. No fees were taken or demanded at three of the quarter sessions.

Canterbury.—Fees demanded, 1l. 2s. 6d.; fees taken, 1l. 2s. 6d.

Doncaster.—Fees demanded, 7s.; fees taken, 7s. No fees were taken or demanded at three of the quarter sessions.

Gloucester.—Fees demanded, 1l. 1s.; fees taken, 1l. 1s.

Leeds.—Fees demanded, 3l. 1s.; fees taken, 3l. 1s.

Liverpool.—Fees demanded, 9s.; fees taken, 9s. No fees were taken or demanded at three of the quarter sessions.

Newcastle-on-Tyne.—Fees demanded, 17s. 6d.; fees taken, 7s.

Penzance.—Fees demanded, 2s. 6d.; fees taken, 2s. 6d. No fees were taken or demanded at three of the quarter sessions.

Southampton.—Fees demanded, 2l. 8s.; fees taken, 2l. 8s.

Worcester.—Fees demanded, 17s.; fees taken, 17s.

Total, Boroughs.—Fees demanded, 12l. 11s. 4d.; fees taken, 12l. 10d.

RETURNS FROM CLERKS OF ASSIZE.

Homes Circuit.—Fees demanded, 54l. 7s. 4d.; fees taken, 54l. 7s. 4d. In addition to these fees, fees for subpoenas and for copies of depositions may have been taken of defendants in cases of misdemeanor; but being small in amount, the clerk of assize has made no memorandum relating to them, probably not amounting to 1l. in the whole.

Midland Circuit.—Fees demanded, 58l. 3s. 8d.; fees taken, 26l. 9s. Of these fees about 3l. were taken from individuals, and the remainder from parishes under indictments for non-repair of highways.

Norfolk Circuit.—Fees demanded, 7l. 7s. 4d.; fees taken, 7l. 7s. 4d. These fees were received from the inhabitants of a parish, upon an indictment against them for the non-repair of a road.

Northern Circuit.—Fees demanded, 10l. 4d.; fees taken, 10l. 4d.

Oxford Circuit.—Fees demanded, 75l. 10s. 4d.; fees taken, 68l. 15s. 4d.

Western Circuit.—Fees demanded, 20l. 2s. 4d.; fees taken, 20l. 2s. 4d.

North Wales and Chester.—Fees demanded, 2l. 3s. 2d.; fees taken, 2l. 3s. 2d.

South Wales Circuit.—Fees demanded, 8l. 4s. 4d.; fees taken, 8l. 4s. 4d.

County Palatine of Lancaster.—Fees demanded, 1l. 4s. 6d.; fees taken, 1l. 4s. 6d.

Total, Assizes.—Fees demanded, 246l. 2s. 4d.; fees taken, 207l. 13s. 8d.

SUMMARY OF TOTAL AMOUNT OF FEES.

Counties, England and Wales.—Demanded, 419l. 1s. 11d.; Taken, 319l. 17s. 3d.

Boroughs.—Demanded, 12l. 11s. 4d.; taken, 12l. 10d.

Assizes.—Demanded, 246l. 2s. 4d.; taken, 207l. 13s. 8d.

Grand Total.—Demanded, 677l. 15s. 7d.; taken, 539l. 11s. 9d.

POOR LAW IN IRELAND.—The Poor-Law Commissioners, in their 12th report, state that they are enabled to report favourably of the progress of the Poor Relief Act in Ireland since the date of their last report. They then state that in four unions no rate had been made, and that the number of unions in which the workhouses still remained unopened was twelve. The only union in which no rate had been made at the commencement of the present month was the Clifden Union, the guardians of which had recently, at their urgent request, determined to open the workhouses and to make a rate. The total expenditure for the year ended December last, in 123 unions in which workhouses were opened, was 316,026l. and the number of paupers relieved 114,205. The average weekly cost per head of maintenance and clothing of the inmates of workhouses, for the half-year ended September, was 1s. 8d. The amount expended in vaccination in Ireland during the first half-year (March), in 108 unions, was 1,553l. 3s. 11d. and during the second half-year (September), in 112 unions, 1,813l. 8s. 2d. The Commissioners declare that the financial state of the unions has never been more satisfactory than at the present time. The Commissioners refer with satisfaction to the progress which has been made during the past year in the building of fever hospitals in connection with the workhouses. By a return made to the House of Lords during this session it appeared that the number of fever patients relieved in the workhouses, or in houses hired by the guardians, within twelve months ended the 31st July last, was 8,216; the number being exclusive of those sent to hospitals. Of 50 fever wards it appears that at the date of the report (1st May inst.) the number actually in occupation was 16; the number completed in addition, 6; the number in progress of building, 14; and the number determined upon, but not then begun, 14—making a total of 50.

TAXES IN GREAT BRITAIN.—A Parliamentary paper has been issued, giving an account of the gross receipt and net produce of the revenue from taxes in Great Britain, for each year ending on the 5th of January from 1836 to the 5th of January, 1846, distinguishing the amount collected under each head of duty, and also the amount of payments made out of the gross receipts in each year. For the year ending the 5th of January, 1837, it seems that the gross receipt was 3,226,550l. 16s. 6d. and the net produce 3,921,505l. 13s. 8d. The payments out of the gross receipt were 224,242l. 3s. 7d. In 1838, the gross receipt was 3,895,342l. 1s. 9d. and the net produce 3,890,146l. 6s. 0d. Payments out of the gross receipt 211,533l. 5s. 2d. In 1839 the gross receipt was 3,907,964l. 12s. 11d. and the net produce 3,903,065l. 13s. 9d. Payments out of the gross receipt 254,635l. 7s. 2d. In 1840 the gross receipt was 3,939,107l. 6s. 2d. and the net produce 3,932,689l. 9s. 5d. The payments out of the gross receipt were 214,361l. 13s. 9d. In 1841 the gross receipt was 4,157,422l. 16s. 11d. and the net produce 4,152,287l. 15s. 3d. The payments out of the gross receipt were 212,828l. 11s. 1d. In 1842 the gross receipt was 4,720,457l. 5s. 4d. and the net produce 4,715,358l. 8s. 0d. The payments out of the gross receipts were 224,028l. 10s. 5d. In 1843 the gross receipt was 5,072,462l. 17s. 10d. and the net produce 5,067,448l. 6s. 0d. The payments out of the gross receipt were 239,265l. 13s. 1d. In 1844 the gross receipt was 9,772,523l. 7s. 4d. The payments out of the gross receipt were 294,626l. 14s. 6d. In 1845 the gross receipt was 9,881,843l. 0s. 5d. and the net produce 9,759,470l. 18s. 1d. The payments out of the gross receipt were 363,630l. 17s. 0d. And in 1846 the gross receipt was 9,752,663l. 18s. 11d. and the net produce 9,624,396l. 17s. 11d. The payments out of the gross receipt were 370,432l. 11s. 7d. The property and income-tax in the year ended the 5th of January, 1845, only yielded (net) 582,656l. 17s. 11d. whilst in the year following it yielded 5,387,455l. 9s. 11d.

COURT OF CHANCERY.—By a return presented to Parliament, is shewn the state of the several funds standing in the name of the Accountant-General of the Court of Chancery, and the charges upon the same. Out of the Suits' Fund various salaries and expenses were paid, making, in the year ending on the 1st of October last, 99,524l. 1s. 4d. leaving a balance on that day in cash of 11,933l. 19s. 1d. and in stock 3,424,811l. 5s. 9d. The payments on the Suits' Fee Fund account, in salaries and compensations, amounted in the year, to the 24th of November last, to 139,439l. 0s. 2d. and the excess of charges above fees was 4,564l. 3s. 1d. The fees received in the Masters' offices in the year reached as much as 36,546l. 7s. 4d.

WINE AND SPIRITS.—The number of gallons of wine imported and retained for home consumption

during the year 1845, were as follows:—Cap. 357,793; French, 443,330; Portugal, 2,688,084; Spanish, 2,554,877; Madeira, 102,746; Rhine, 62,519; Canary, 20,260; Foyat, 69; Sicilian and other sorts, 506,454. The total number of gallons in bond in London and other places on the 5th January, 1846, was 10,230,946. The number of gallons of spirits imported and retained for home consumption during 1845 were of—Rum, 2,469,135; Brandy, 1,058,274; Geneva, 15,504; other foreign and colonial spirits, 6,907; spirits mixed in bond, 9; spirit of the Channel Islands, 50,965. The total number of gallons in bond on the 5th January, 1846, was 5,917,399.

CORRESPONDENCE.

SMALL DEBTS BILL.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I fully agree with you in the remarks on the Small Debts Bill, which appeared in Saturday's LAW TIMES. Very many of the country attorneys are glad to have some alteration in the present discreditable, dilatory, and costly system of recovering small debts, more particularly that prevailing in the country county courts, and other prescriptive small courts, however crude and amateur-like the present Bill may be. I have myself a mixed practice, and, from painful experience, I often counsel a client against attempting to recover a small debt, not only on account of the legitimate expense, but for fear of the "sharks," who are ever hovering around these courts for defences and plunder.

The attorneys cannot but be helpless in Parliament, when we find such want of energy, such dissension and jealousies prevailing among them. The day of reckoning and thinning of the almost countless and increasing ranks is fast approaching, as, amongst other causes, the community is becoming too wise to be forced into needless litigation. I am, &c.

W.

SELECTIONS FROM CORRESPONDENCE.

A correspondent puts the following query, and solicits a reply from some of his professional brethren:—

Whether it is prudent, in a transfer of mortgage, where no further money is advanced, to make the mortgagor enter into fresh covenants, provisos, &c. with the new mortgagee; but if it be not safer merely to take an assignment of the interest, covenants, &c. of the first mortgagee, I have some doubts whether the *ad valorem* duty for the entire sum would not attach as for a fresh security, when there are fresh covenants.

Reits-at-Lab, Next of Kin, &c. &c.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent importunate curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount enclosed.]

275. FIRST COUSINS OF THOMAS DEAN, formerly of Peterborough, afterwards of Newgate-street, London, bookseller (died at Demarara, West India, 31st Oct. 1806), being children of uncle and aunt on the father's side, or their representatives.
276. NEXT OF KIN OF WILLIAM DEAN, late of Chesapeake, City of London, linen-draper (died at Chamberwell, 1st April, 1784), or their representatives.
277. NEXT OF KIN OF PETER CARTWRIGHT, late of Liverpool, hop-merchant (died there, 2nd Feb. 1811), or his representatives.
278. NEXT OF KIN OF ISABELLA CARTWRIGHT, spinster, daughter of Peter Cartwright, late of Liverpool, hop-merchant (died in the year 1811), or their representatives.
279. NEXT OF KIN OF REV. W. RAYE, late rector of Weldon, Northamptonshire, died 3rd Oct. 1828.
280. HEIRS-AT-LAW OF WM. MARSON, late of Workney, Nottinghamshire, died Sept. 1835.
281. FIRST COUSINS OF ROBERT HENSHAW, parish of St. David's, Exeter, by his mother's side; or their representatives.
282. CHARLES JONES, named in the Will of Thomas Weston, of Clay-hill, Enfield, Middlesex (died on 21st Nov. 1816), or his representatives. Said Charles Jones was a midshipman on board H.M.S. *Incensant*, and subsequently served as midshipman on board H.M.S. *Shark*, and was, in Jan. 1815, discharged from said ship at Port Royal, West Indies.
283. WESTON WRIGHT, one of the residuary legatees named in the will of Thomas Weston, esq. of Clay-hill, Enfield, Middlesex (died 21st Nov. 1816), or his representatives. Said Weston Wright was, in 1806 and 1809, residing at the Cape Town, Cape of Good Hope, and from which place he sailed as chief mate of a brig, and afterwards went to, and was in 1813 residing in, Buenos Ayres.
284. DAUGHTERS OF LAWRENCE and MARY GARLICK (formerly MARY KIRKBUDE), who were living on 28th Dec. 1835. Something to advantage.
285. NEXT OF KIN OF HENRY BINGHAM, late of Little Newport-street, Soho, Middlesex, leather-cutter (died in

- Oct. 1896), living at the time of his death, or representative.
286. SUSAN HILLIARD, formerly in service in Great Wexley, or her Next of Kin.
287. FREDERICK WHITEHEAD, who enlisted as a soldier, and went out to India many years ago, and EDWARD WHITEHEAD, who went out from Plymouth on board a ship some years ago, sons of JOHN WHITEHEAD, formerly of Bristol, and for many years known as the Yorkshire coachmen there; or their representatives. *Something to advantage.*
288. NEXT OF KIN OF EDWARD GROVE, formerly of Prince-street, Lion-grove, but afterwards of Little Moor-place, Lambeth, Surrey, gentleman. *Something to advantage.*
289. ERIC-AT-LAW OF WILLIAM MARSON, late of Work-shop, Notts, surgeon, died Sept. 1835.
290. NEXT OF KIN OF JANE ANDERSON, formerly JANE RIORFRAN, of Colney House, St. Albans, Herts, wife of Alexander Anderson, of Union-street, Bond-street, Middlesex, tailor, living at the time of death of either (June 1814, and April 1827), or their representatives.
291. ERIC-AT-LAW AND NEXT OF KIN OF CHARLOTTE BUSH, of Hertford (died June 1828), or representatives.
292. NEXT OF KIN OF SARAH BENTON, formerly widow of John Kaye, West Ham, Essex, gentleman, deceased, but afterwards wife of James Benton, of Stratford, Essex, or her representatives (died Dec. 1834).
293. NEXT OF KIN OF JOHN KAYE, who formerly kept the Bird in Hand at Stratford, Essex, but who at the time of his death (April 1896) lived at West Ham, Essex; or their representatives.
- (To be continued.)

THE LAW TIMES.

SATURDAY, AUGUST 22, 1846.

THE INNS OF COURT, AND EDUCATION FOR THE BAR.

It remains, no doubt, still in the memory of our readers, that the Honourable Society of the Middle Temple, in the early part of this year, made an announcement, through our columns and in other ways, of their having determined upon founding a Lectureship on Civil Law and General Jurisprudence, and endowing exhibitions of liberal amount, as an inducement to the cultivation of those neglected but useful sciences. In our comment upon the able Report of the Committee of Benchers who recommended the adoption of this important and most valuable measure, we expressed a hope, and have since more than once repeated it, that the three other Inns of Court would act in concert with the Middle Temple, establish Readerships of their own, and give prizes for merit like that Society; and, more sanguine still, we wished, and did not despair, to see a great Legal University erected by the combination of the four Inns, which have stood isolated, or nearly so, as regards each other, up to the period when the Benchers of the Middle Temple first promulgated their views and intentions on the subject of Legal Education to the world.

The first and most ardent of our desires, we are pleased to say, has been concurred in by the Benchers of the Inner Temple, Lincoln's Inn, and Grays' Inn, who have resolved upon following the example of the Middle Temple, by themselves founding lectureships on some branch of the law; and it remains to be seen whether the other hope we entertained will not be eventually fulfilled, and we shall have a great Law University established in London. The promptness and earnestness with which the subject has been taken up, and the liberal conduct of the Honourable Societies who have thus answered to the call of the Middle Temple, while they do honour to the principles which actuate those learned bodies, prove also the inefficiency of the voluntary mode of Legal Education which to this time has obtained, and the consequent necessity there existed for the measures which have now been adopted.

To the exertions of Mr. BETHELL, who, if he did not first see the need for a change, certainly was the earliest who had the courage and industry to endeavour to effect it, we are indebted for the gratifying resolutions which the Inns of Court have passed. Heartily does he deserve the thanks—and something more than mere thanks, not only of every student preparing for the Bar, and who wishes to qualify

himself for the duties which he aspires at a future time to perform, but of the entire body of the Legal Profession, for its higher cannot be improved, without benefit also to its lower branch.

As further on we shall give a formal announcement of the result which followed the conferences of the four Honourable Societies, on the subject of Legal Education, we think it due to Mr. BETHELL first to make known the several suggestions which he submitted for their consideration; and it is gratifying to find in the minutes of the proceedings of the Honourable Societies (which we subjoin), that all the material points of his well-considered suggestions have been adopted. The following are Mr. BETHELL's proposals as given in the *Law Review* :—

1. That four readerships be established in addition to the readership on jurisprudence and the civil law already established by the Middle Temple; namely, a reader on constitutional and criminal law; a reader on the law of real property; a reader on the law of personal property and commercial law; and a reader on equity jurisprudence as administered in the Court of Chancery. Of these it is suggested that the reader on the law of real property be founded and endowed by the four societies conjointly; and the three other chairs by Lincoln's Inn, the Inner Temple, and Gray's Inn.

2. That the lectures of the several readers do commence in Michaelmas Term next.

3. That a standing committee or council be established, to consist of twelve members: three to be nominated by each of the four Inns of Court; of whom five shall be a quorum, and four go out of office annually. To this committee shall be intrusted the duty of making all such regulations as shall be necessary for completing the details of several measures which are hereby recommended.

4. That the lectures of the several readers shall be open to the students and barristers of all the societies, subject to the payment of such terminal fees to the several readers as the standing committee shall direct.

5. That a public examination shall be established, to be held three times a year, for the examination of all such students as shall be desirous of submitting thereto previously to being called to the Bar; and such examination shall be conducted by the five readers; and a standard of merit, as the condition of being entitled to the honours to be conferred and receiving the exhibitions to be distributed, shall be fixed by the committee; to which, if no student shall attain, no honour shall be awarded, nor shall any exhibition be adjudged; but the names of all the examinees who shall rise above the said standard of merit, shall be ranked in the order and according to the degrees of their respective attainments.

6. That the examinations be held three times in every year; namely, Hilary Term, Trinity Term, and Michaelmas Term.

7. That, as the examinations are intended solely for such students as are candidates for honours and rewards, no student shall be admitted as an examinee who shall not have diligently attended the lectures of three of the readers during one year; and of which readers, one shall be the reader on the law of real property.

8. That from and after Michaelmas Term, 1847, no student shall be eligible to be called to the Bar who shall not have attended during one whole year the lectures of any two of the readers; of which, the reader on real property shall be one.

9. That every student who shall have attended during one whole year the lectures of any two of the five readers (the reader on real property law being one), shall have the same privileges in point of admission to the Bar as are now allowed by any of the societies in favour of graduates of the English universities.

10. That exhibitions be founded by the several societies of Lincoln's Inn, the Inner Temple, and Gray's Inn, of the same number and amount as have been already established by the Middle Temple; and as there is reason to hope that a ninth exhibition may be added, it is trusted that the societies will be in a condition to award three exhibitions of one hundred guineas each at every one of the three public examinations, if a fitting standard of merit shall be attained to.

11. That every means be adopted for giving honourable notoriety to the names of those students who shall be deemed worthy of honours and rewards at each public examination; and that every encouragement be held out to the students to induce them to submit to the examinations.

12. That the standing council shall have power of granting dispensation to any students who shall have been prevented by inevitable accident from complying in all respects with the regulations as to attendance, &c., which shall be established.

Deputations from each committee of the several Inns of Court met at the Inner Temple, and the result of their conference is given in the following minutes. The resolutions then passed we hear have since been confirmed by the respective committees.—

Minutes of the result of the conferences of the deputations from the committees of each of the Inns of Court on the subject of Legal Education as approved the 3rd of June, 1846.

The deputations from the committees appointed by the several Inns of Court to consider the subject of legal education, have communicated together, and are of opinion that the following propositions should be offered for adoption to their respective societies.

That it is expedient to institute rewards, or honours, or both, by way of encouragement to students who may be willing to undergo examinations.

That for the purpose of preparing the students for such examinations, there should be established four lectureships in addition to that on civil law and general jurisprudence already established by the Middle Temple.

That the subjects of the additional lectures should be :—

1. Constitutional law, criminal and other crown law.
2. The law of real property and conveyancing, devises and bequests.
3. Those branches of the common law which are not included in the two last heads.
4. Equitable jurisprudence as administered in the Court of Chancery.

That the lectureship for constitutional law, criminal and other crown law, should be maintained at the joint expense of the four Societies.

That the lectureship of civil law and general jurisprudence, should be maintained, as now, at the sole expense of the Middle Temple.

And that the other three lectureships should be maintained at the expense of the three other Societies respectively,—one for each, as shall be hereafter arranged among themselves.

That no examination should be required of any student as a condition precedent to his call to the bar.

That every student should be required, as a condition precedent of his call to the bar, to produce a certificate of his having attended two of the courses of lectures, the selection to be determined by himself.

In this co-operation of the four Inns of Court, and particularly in the circumstance of their uniting to endow a lectureship for constitutional and criminal law, at their joint expense, we believe we see the foreshadowing of a great Faculty of Law for this country; it seems to us the first hearty concurrence and really serviceable connection of these learned bodies to effectuate a great and lasting benefit to our common profession; and we see no reason whatever why such a University should not be chartered to grant degrees in Civil Law in the same manner as at Oxford and Cambridge—a consummation we devoutly wish to see accomplished.

THE VERULAM SOCIETY.

THREE Numbers of the Reports—namely, No. XXI. *Criminal Law Cases*; No. XXII. *Magistrates' Cases*; and No. XVIII. *Practice Cases*, are in a forward state of preparation, and will be issued in a few days. The *Small Debts Bill* will be published, with full Notes and Comments, by Mr. PATERSON, with all practicable despatch after it receives the royal assent.

A COURSE OF LECTURES ON THE LAW OF CONTRACTS.

BY PROFESSOR CAREY.

Delivered at the University College.

LECTURE XV.

We now proceed to consider the cases in which the goods are left on the premises of the seller. These cases may be described under the following heads :—

First, where the goods are in a warehouse, and the keys of the warehouse are delivered to the buyer. There the delivery of the keys is a transfer of the corporeal power. It is true that the buyer may not be able to exercise this corporeal power, except under certain conditions, but what is more important is, that by the giving up the keys, the seller parts with the corporeal power, he can-

not have the goods without committing a trespass. There are one or two cases which bear upon this point. Where goods are locked up in a warehouse, and the key is given to you, that is a delivery to you, though there be another door to go through to the warehouse of which you have not the key, to which you have no right to go (and I think there is a case nearly on this point, that under such circumstances you have not necessarily a right to go upon the land, and if you go against the will of the owner, you are a trespasser), nevertheless the goods are yours.

Secondly, where there has been a delivery, whether by transmutation from hand to hand, or otherwise. It is clear the delivery is not affected by any subsequent delivery of the goods, if, after they have once come into his possession, the buyer leaves the goods with the person of whom he bought them; this is a perfectly independent transaction, having no relation to a contract of sale; it differs in no respect from the case of one who is the owner of the goods leaving them with a stranger. That was the case of *Elmore v. Stone*, 1 Taunt. So where, by any act of the parties, the man who sold the goods is treated as a mere third person, this has been held either to amount in itself to a delivery, or to be evidence from which the delivery may be inferred. For instance, a man buys a stack of hay, and leaves it in the yard of the man of whom he bought it; he afterwards cuts a part of it and takes it away, or he sells part of it to a third person, who cuts it and takes away the part so sold to him: here the whole stack has been held to have been the seller's. It was said, in *Chaplin v. Rogers*, 1 East, 195, "the buyer dealt with the commodity as if it was actually in his possession." The payment of warehouse rent is another act of the same kind. (*Mill v. Gwentley*, 4 Tyrwhitt, 275.) The effect of the warehouse rent depends upon the circumstances; if it is part of the original bargain that the warehouse rent shall not be paid till the goods are taken away, the rent so agreed to be taken might be considered as constituting only a part of the price. I give 100l. for goods, and 10s. a week for warehouse rent until they are delivered. But if, after a sale has been effected for 100l. instead of the actual delivery taking place, the parties agree that the goods shall be kept in the warehouse of the seller at a warehouse rent, by this act the seller may be turned into a warehouseman, and this will amount to a delivery; he will hold them then as the goods of another person. (*Hurry v. Mangles*, 1 Campb. 452.) So where the thing sold has been marked by the buyer, and then left with the seller, here the marking of the goods may be merely for the purpose of identifying the articles, or it may be merely that the seller has allowed the buyer to treat them as if in his actual possession; the act of marking is in itself ambiguous, and the effect of it appears to be, not so much a question of law as a question of fact, depending on the circumstances of the case and the intention of the parties. (*Dixon v. Yates*, 5 B. & Ald. 313; *Townley v. Crump*, 4 A. & E. 58.) The delivery of part may operate as the delivery of the whole; for instance, if ten barrels are in the custody of a warehouseman, and are sold, a delivery order for two, if acted upon, is no delivery of the other eight; if there is a delivery order for all the ten, and two are sent to the warehouseman, and two are actually taken, that is a delivery of all. Part delivery is an equivocal act that depends on the intention of the parties; delivery of part with a view to delivery of the rest is an inchoate delivery of all; delivery of part with intent to separate that part from the rest, is only a delivery of that part. (*Bunney v. Poyntz*, 4 B. & Ad. 569.) The effect of delivery in the case of transmutation from hand to hand, is evident with respect to the thing itself; it is no longer in the possession of the old owner; it is in the possession of the new owner; he can deal with it as any other thing that is his; the old owner has no more right to deal with it than any other thing that is not his. The buyer is liable for the price, either immediately, or (if credit has been given) at the expiration of the credit; the seller has no longer any hold upon the goods, and he can look only to the buyer personally; supposing the things delivered to be not according to the bargain, then the consequences result which I have already explained in speaking of validity; the principles are the same, and the application very little varied, when, instead of being a sale of specific articles, it is a general sale of the goods.

In the course of our inquiries into the effect of contracts of sale, I have pointed out the principal

rules relating to the vesting of property of the thing sold in the purchaser. One very important effect of such vesting of the property I adverted to incidentally, namely, that any increase or diminution in the value of the property is the gain or the loss of the owner. If the property rises in value, the owner has the benefit of it; if it falls in value, if any accident happens to it, if it is damaged and perishes, the owner must bear the loss; hence it follows that where a sale has been completed, when the property in the goods sold has been transferred, when they have ceased to be the goods of the seller, and become the goods of the buyer, the chance of profit and the risk of loss are also transferred. When the property is vested in the purchaser, if the thing perishes the loss is his, and he is bound still to pay the price. Noy's Maxims, 42:—"If a man sells a horse for money he may keep it until it is paid for, yet the property of the horse is by the bargain in the buyer, and if the horse die in the vendor's stable between the bargain and delivery, he may have an action of debt for the money, because by the bargain the property was in the buyer. If goods are sold, and the sale is completed, and afterwards the goods, whilst remaining with the seller, are accidentally destroyed by fire, the purchaser is still liable for the price; the goods became his at the time of the bargain, and having so become his, any accident, subsequent to that, he must abide by: and, on the same principle, for any damage that is done he is the party to sue. In the law of Scotland, the result is the same. If an agreement is made, but the sale is not completed, the goods are still the goods of the seller, and he must bear the loss; here the sale is still incomplete (2 Bl. Comm. 451). And where the quantity has not been supplied from the common mass, or where the price has reference to weight or measurement, or while the bargain is in reference to some test or criterion not yet applied, the risk then is not with the seller; and if the goods have perished, he has no claim for the price. The same rule applies where an order has been given for goods to be made; if in the progress of making the goods perish, the man who has to make them would have to begin over again; if after they are made, and have become in any way appropriated to the person for whom they were made, then if they perish the loss is his. The law in Scotland is different in this respect—it follows the law of Rome; by the completion of a contract the property does not pass, it passes only by delivery; but if the sale, according to the language of the Scotch law, is complete, there is a contract to deliver the thing sold in specie, and the results of it are nearly the same with respect to the vesting of the property.

We now come to the discussion of another subject, to which reference has occasionally been made in the course of these lectures. We have seen (except where goods have been sold on credit), the buyer has no right to the possession, until he has paid the price: until he has paid, the seller has the right to detain them; this right is frequently called a lien. A lien is the right to hold the goods of another, until he is paid what he claims for them. If cloth is sent to a tailor to be made into a coat, there is a lien on the coat for the price of making it. A seller is frequently said to have a lien on the thing sold for the price; it is similar to the right of lien. It is, however, said not to be correctly described as a lien, but to be a right springing from the original right of ownership—a remnant of the right of ownership. But besides this right of detaining goods, or the lien, as it is sometimes called, the seller has a still further right. If the purchaser becomes insolvent at any time before the goods come into his actual or constructive possession, the seller has a right to stop them; this is termed the right of stoppage *in transitu*.

Stoppage *in transitu* appears to be inconsistent with the ancient principles of the common law; the property by a sale, or delivery to a carrier, has become vested in the purchaser; the seller has no further control over the goods, as far as relates to the effect of the sale; the goods are vested absolutely in the buyer; the seller has a claim for the price. From this hardship the vendor appears to have some relief in the Court of Equity. The hardship is this; you send goods to a man who ordered them; if before they came into his possession he is a bankrupt, the assignees get the whole of the goods, and you have to come in and prove your debt under the bankruptcy, and get your dividend of perhaps one shilling in the pound. One of the earliest cases is *Painore v. Leighton*, 2 Vern. 203. Two mer-

chants of Leghorn consigned some silk to Bonnells, merchants in London; while the ship was still in port, or sailing, intelligence arrived of the failure of Bonnells. It appears that some Italian merchants altered the consignment, and instead of sending the goods to the Bonnells, they sent them to one Vandeput. A bill was filed in Chancery against Vandeput, by the assignees of the Bonnells; an action of trover was directed to be brought, in order to ascertain whether, by the first consignment, the property had been vested in the Bonnells; the jury found that it had been vested in them; the Court of Chancery, however, adjudged that the Bonnells having paid no money for the goods, if the Italians could by any means get them into their hands, or prevent them coming into the hands of the Bonnells, it was but lawful for them so to do, and very allowable in equity. In this case, the goods, under ordinary circumstances, supposing there to have been no bankruptcy, would have become (and did become, except for what occurred,) the property of the bankrupt; nevertheless, the seller was allowed to stop them, and so send them to somebody else. Supposing these parties to have remained solvent, and at the time when this act of stoppage took place an accident had occurred to waste or destroy the goods, the Bonnells would have been liable for the price; they would have been in the same situation that Dunn was in the case of *Richardson v. Dunn*. Supposing any accident had happened to them by the negligence of the owner of the vessel, an action would have been brought against the owner of the vessel by the Bonnells, as the property was in them; nevertheless, the goods not having come into their possession, the former holder was allowed to take hold of the property, and to give it another direction to the house of Vandeput. This principle was subsequently acted upon by Lord Chancellor Hardwicke in *Smee v. Prescott*, 1 Atkins, 245:—"If the defendant got the goods back again by any means, provided he did not steal them, I would not blame him." The same doctrine (that is to say the doctrine of stoppage *in transitu*) has since been adopted in the courts of common law, and was frequently enforced by Lord Mansfield:—"No point is more clear," says he, "than if the goods are sold, and the price has not been paid, the seller may stop them *in transitu*, I mean in the ordinary sort of passage into the hands of the buyer. There have been a hundred cases of this sort (ships in harbour have been stopped in port) where the goods are *in transitu* the seller has the proprietary lien." It is there called a "proprietary lien." I have hitherto termed it a "right only to stop the goods." There are two cases frequently referred to, *Levy v. Cuff* (quoted in *Lichbarow v. Mason*), 2 T. R. 66; and *Stokes v. Riviere*, 3 East, 181. This power of stoppage is not a privilege to be exercised according to the discretion of the seller; it exists only where the purchaser is insolvent, or becomes insolvent before the goods are delivered into his possession. It was said by Sir William Scott, in the case of the *Consentia*, 6 Rob. 321, "If the person to whom these goods are consigned is not insolvent, but from misinformation or excess of caution the party has exercised the right prematurely, he has assumed a right that did not belong to him, and the consignee will be entitled to the delivery of the goods, with an indemnification for the expenses he may have incurred. In the law of England, so far as I have looked at it, and in all the books which I have read, it is not an unlimited power that is vested in the consignor to vary the consignment at his pleasure, in all cases whatsoever; but it is a privilege allowed to the seller, for the particular purpose of protecting himself against the insolvency of the consignee. It is not necessary, however, that the person should be actually insolvent at the time when the stoppage takes place. If the insolvency happens before the arrival of the goods, it will be sufficient; and will be sufficient, I conceive, to justify what had been done, and to entitle the stopper to the benefit of his own provisional caution. But if the person is not insolvent, the ground is not laid on which such a privilege is founded."

It was rather argued in a recent case that non-payment might, under certain circumstances, justify the goods being stopped, after they were on their way; that point did not quite arise in *Witham v. Bowker*. The insolvency of the person to whom the goods have been sent does not of itself produce any effect upon the bargain; it only gives the vendor a right of stoppage, which he may exercise if he chooses. If he fails to exercise it, and consequently the goods come into the possession of the

insolvent, then the vendor must be content to stand in the same situation as the rest of the creditors. In order to exercise this right, it is not necessary that he should make an actual seizure; it is sufficient to give notice of his claim to the person who has the goods in his possession. One of the most difficult questions in point of form is to ascertain whether the *transitus* be still continuing, or is at an end; whether the goods are on their road, or have reached their final destination. They are considered to be in *transitu* as long as the person in whose possession they are can be deemed a middleman between the two parties, whether carrier, wharfinger, or warehouseman. And it is immaterial whether the carrier has been appointed by the purchaser or not; for though he may be his agent, he is the agent to carry, not to finally receive and appropriate; by whomsoever he is employed, he is merely the vehicle between the seller and the buyer. (*Mills v. Ball*, 2 Bos. & P. 457.) There, "A, living at N, in Devonshire, ordered goods of B in London, who sent them by ship *via* Exeter, consigned to A, and advised him thereof. On their arrival at Exeter, they were delivered to C, a wharfinger, who received them on A's account, and paid the freight and charges; after their arrival A wrote to B informing him that in consequence of his affairs being deranged, he should not take the goods, and telling him that they were at Exeter; at this time A. had committed an act of bankruptcy, upon which he was afterwards declared a bankrupt. B applied to C for the goods, and tendered him the freight and charges due; upon which C promised not to deliver them out of his custody, but afterwards did deliver them to the assignees of A, though indemnified by B. Held, 1st, that B had a right to stop the goods in the hands of C; and, 2ndly, that he might maintain trover for them against C. "The question is," says Lord Alvanley, "whether the goods in the hands of the wharfinger were in such a situation that the vendors could stop them. The cases cited for the plaintiffs have established that where there is a contract for the sale of goods, and a delivery has been made to a middleman, who is merely the vehicle between the buyer and seller, the latter, in case of the insolvency of the former, may stop them at any time before they have arrived in such a state as to be in the actual or constructive possession of the buyer. The only question is, whether these goods are to be considered as having been in the hands of a middleman, or as having been taken in the possession of the person for whom they were ultimately intended? If, in the course of the conveyance of the goods from the vendor to the vendee, the latter be allowed to exercise any act of ownership over them, he thereby reduces the goods into possession, and puts an end to the vendor's right to stop them. So, though it has been said that the right of stoppage continues until the goods have arrived at their journey's end, yet if the vendee meet them upon the road and take them into his own possession, the goods will then have arrived at their journey's end, with reference to the right of stoppage. I am of opinion that the wharfinger in this case not having been employed by the vendee, is to be considered as a middleman." But if a man, to use the words of Chambers, J. be in the habit of using the warehouse of a wharfinger, or other middleman as his own, and make it a depository of goods, and disposes of them there, the journey will be at an end when the goods have arrived at such warehouse. (*Richardson v. Goss*, 3 Bos. & P. 119; *Scott v. Pettit*, 3 Bos. & P. 469). The question generally in these cases is, were goods ordered to be sent? The principle is, that the *transitus* is not at an end until the goods have reached the place named by the buyer to the seller, as the place of their destination, unless he himself takes them out of his possession. To take the case I have been reading (Bos. & P.), if the order had been given to a man in these terms, "send me the goods to be delivered to me at the warehouse of so and so at Exeter," and they have got into a warehouse at C., that would have been a delivery to A. the purchaser, and the *transitus* would have been at an end; the warehouse at C. would have been the ultimate destination named by the one party to the other. There is a case to which reference is generally made, *Dixon v. Baldwin*, 5 East. 175. There goods were ordered to be sent to a particular place according to the order of the purchasers. "A and B, traders living in London, were in course of ordering goods of the defendants, cotton manufacturers at Manchester, to be sent to M. and Co. at Hull, for the purpose

of being afterwards sent to the correspondents of A and B at Hamburg; and on the 31st of March A and B sent orders to the defendants for certain goods to be sent to M. and Co. at Hull, to be shipped as usual: Held, that as between buyer and seller the right of the defendants to stop as in *transitu* was at an end when the goods came to the possession of M. and Co. at Hull; for they were for this purpose the appointed agents of the vendees, and received orders from them as to the ulterior destination of the goods; and the goods after their arrival at Hull were to receive a new direction from the vendees." "As to the first of these cases" (cited for the defendant), says Lord Ellenborough, "*Hunter v. Beale*, in which it is said that the goods must come to the *corporeal touch* of the vendee, in order to oust the right of stopping in *transitu*, it is a figurative expression, rarely, if ever, strictly true. If it be predicated of the vendee's own actual touch, or of the touch of any other person, it comes in each instance to a question whether the party to whose touch it actually comes be an agent so far representing the principal, as to make a delivery to him a full, effectual, and final delivery to the principal, as contradistinguished from a delivery to a person virtually acting as a carrier or means of conveyance to or on the account of the principal, in a mere course of transit towards him." "And if the transit be once at an end, the delivery is complete, and the *transitus* for this purpose cannot commence *de novo* merely because the goods are again sent upon their travels towards a new and ulterior destination." The case of *Scott v. Pettit* was decided on this ground, viz. that the *transitus* of goods is only not at an end upon their reaching the packer, where they remain with him for the purpose of being forwarded on to some ulterior appointed place of destination. But here, as in that case, the goods had so far gotten to the end of their journey, that they waited for new orders from the purchaser to put them again in motion, to communicate to them another substantive destination, and that without such orders they would remain stationary." Lawrence, J. agreed with Lord Ellenborough, that there was no right to stop them in *transitu*. Then there is the case of *Stovell v. Hughes*, 14 East, 308. The law, as laid down in *Dixon v. Baldwin*, has been recently acted upon in two cases, affirmatively and negatively. *Jackson v. Nichol*, 5 Bing. N. C. 508, where "M. purchased lead of plaintiff at Newcastle, without specifying any place of delivery. After a time, M. desired that it should be forwarded to him in London, and plaintiff gave M.'s agent at Newcastle an order on plaintiff's servant for its delivery. The agent indorsed the order to a keelman, who received the lead and put it on board a vessel for London. The vessel arrived in London on the 21st of June, and defendants, as wharfingers, undertook the delivery of the lead. M. failed on that day. On the 23rd and 24th M. demanded the lead of the captain of the vessel, who refused to deliver it, though the freight was tendered, alleging that the defendants had stopped it on account of the failure of M. On the 28th a letter arrived from plaintiff, ordering the lead to be stopped in *transitu*; it was then on board a lighter belonging to defendants: Held, that the *transitus* was not at an end, and that the plaintiff was in time to stop the lead." "The first question," says Tindal, C. J. "which arises upon this special case is, whether the *transitus* was at an end, either by the delivery of the lead from the premises of the plaintiff, to the order of Crawhall, the agent of the buyer, or by the putting of the same on board the *Est*; and upon this question we are of opinion that the *transitus* was not determined on either of those occasions." Then, upon the second question, "whether the *transitus* was at an end at the time the stoppage took place in the river," it not clearly appearing, from the statement of the case, whether the defendant's refusal arose from any adverse claim of their own against the purchasers, or simply as holding for them; he says, "in either case, the plaintiff's right of stoppage existed. For as the right of the vendor to stop in *transitu* is not defeated by any claim of the carrier for his lien for a general balance, or even by a foreign attachment laid upon the goods by a creditor (*Oppenheim v. Russell*, 3 B. and P. 42), it follows, that if any claim of lien for a debt due to the defendants existed, of which there is no statement in the case, it could not operate to defeat the plaintiff's right; and if the goods were in the lighter, not being subject to any such claim, they were still in a course

of *transitu* in order to be delivered, and were not actually delivered to the buyer, notwithstanding the defendants undertook the delivery by the order of Maltby and Co. (the purchasers)." Then there is the case of *Dodson v. Wentworth*, 4 Mann. & G. 1080. "Bales of flax sold by A in London to B, residing at Michley Mill, are addressed to 'B, Michley,' and are shipped for Hull under a bill of lading, making them deliverable at the port of *Boroughbridge* for B, Michley Mill. The bales are forwarded from Hull to *Boroughbridge* by water-carriage, and are deposited there in the warehouse of C, a party unconnected with the carriers, who was in the habit of receiving goods for B, and holding them at B's risk, and without charging warehouse rent, until fetched away by B or delivered to other persons by B's order." Held, that "the *transitus* is at an end, and the bales cannot be stopped by A, upon the insolvency of B, although B has exercised no act of ownership over them." "It appears to me," says Tindal, C. J. "that this case falls within the principle laid down in *Dixon v. Baldwin*, and that the *transitus* was at an end when the goods were lodged under the circumstances stated in evidence, in the warehouse of the Osse Navigation Company, at *Boroughbridge*." Colman, J. says, "I am of the same opinion. By the bill of lading, the goods are to be delivered at *Boroughbridge*; and the words 'Michley Mill, Ripon,' after the name of the consignee, do not point out the place of destination where the *transitus* is to end: they are merely a designation of the party to whom the goods are consigned. *Boroughbridge* is clearly the place at which the carriage of the goods is to terminate, and at which their delivery is to take place." It may also happen that if the thing sold is in the actual possession of the vendor, still the right of stoppage may be lost. This is the case where there has been something equivalent to a delivery to the purchaser, and the seller or agent continues to hold the thing sold only as a warehouseman on account of the purchaser. Such was the case in *Stone v. Elmore*, where the horse was retained by the original seller to stand at livery. And in the case of *Hurry v. Mangles*, 1 Camp. 452, the goods sold remained in the warehouse of the vendor, and he received warehouse rent for them. In this case Lord Ellenborough said, "The acceptance of warehouse rent was a complete transfer of the goods to the purchaser. If I pay for a part of a warehouse, so much of it is mine. This is an executed delivery by the seller to the buyer. If there was any conspiracy or contrivance on the part of the plaintiffs to cheat the defendants out of the price of the goods, proof of that will be an answer to this action; but it would be overturning all principles to allow a man to say, after accepting warehouse rent, 'the goods are still in my possession, and I will detain them till I am paid.' The *transitus* was at an end. The goods were transferred to the person who paid the rent, as much as if they had been removed to his own warehouse, and there deposited under lock and key." *Dixon v. Yates*, 5 B. & Ad. 313, was a similar case. Yates had sold a quantity of rum to Dixon; the rum was left in Yates's vaults; Dixon, the purchaser, sold to Collard forty-six puncheons; Collard accepted bills for the payment, and Dixon gave him delivery orders for two puncheons, but refused to give orders for the rest. Collard became insolvent, and the bills were dishonoured, and forty-four puncheons, for which no delivery orders had been given, were still in Yates's vaults; Dixon claimed them, and the question was, whether they were Dixon's or Collard's. The right of Dixon, the vendor, to retain the goods had been suspended by the bills given; when the bills were dishonoured the right revived, and Dixon was held entitled to the possession.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 6s.]

BIRTHS.

WOOD.—On the 18th inst. at Rhayader, Radnorshire, the wife of Richard Wood, esq. solicitor, of a son.
FOSTER.—On the 18th inst. at Champion-grove, Camberwell, the wife of P. Le Neve Foster, esq. barrister-at-law, of a son.
PEARSON.—On the 16th inst. at 56, Welbeck-street, the wife of Henry Pearson, esq. barrister-at-law, of a girl, still-born.

MARRIAGES.

HARDY, John, eldest son of John Hardy, esq. M.P. of Worthy Park, Hants, to Laura, third daughter of William Hallbank, esq. of Fernborough, Warrickshire, on the 15th inst. at Farnborough.

WILSON, Frederick, Great Russell-street, Bloomsbury, to Elizabeth, eldest daughter of James Howarth, esq. barrister-at-law, Camden Town, on the 13th inst. at St. Pancras New Church.

BAVLY, Robert, of the Inner Temple, esq. to Mary, eldest daughter of Thomas Bradbury Winter, esq. of Brighton, on the 18th inst. at St. Nicholas Church, Brighton.

HOLLAND, Frederick, esq. a lieutenant in the Royal Navy, to Anna, fifth daughter of Lord and Lady Denman, on the 18th inst. at Stony Middleton, in the county of Derby.

DEATHS.

FISCH, John, esq. of Woburn-place, Russell-square, and Doctors' Commons, on the 14th inst. aged 66.

WETHERELL, Sir Charles, on the 17th inst. at Preston-hall, Kent, the seat of Charles Milner, esq. in consequence of his late severe accident, aged 76.

NOTICES OF NEW LAW BOOKS.

The Law Magazine; or Quarterly Review of Jurisprudence. August 1846. Wm. Benning.

ALWAYS learned and sound, the contents of this number of the old Quarterly oracle of the Profession are more varied and not less readable and apposite to the circumstances of the times than usual. The literary division of the number contains nine articles on popular and vexed subjects. The first is a *resume* of the examination into "the Eighth Report of the Criminal Law Commissioners," by the same writer who handled the subject in a former number, which at the time we noticed. His strictures on the recommendations of the commissioners, and comments upon the facts they have laboriously gathered—not in every case to deduce the correct inference—are always judicious, and often shrewd; they betoken the writer to be a man of sound judgment and vigilant observation—whose experience of the working of our criminal law has been very extensive, and to whose opinion the attention of our legislators should be given. Speaking of the evil resulting from the multiplicity of counts in modern indictments, the writer differs from the commissioners, and indirectly advises a power of amendment.

We entirely agree with the commissioners in their reprobation of a multiplicity of counts; there is but one method, however, in which they can be got rid of, and that method the commissioners appear entirely unwilling to adopt. The strict accuracy now required is so great, that it is in practice found impossible to avoid variances with a single count. The commissioners adhere to this accuracy with the greatest tenacity, and will not listen to the power of amendment. If their opinion be followed, the same reprehensible practice of multiplying counts must of necessity continue.

The value of the subjoined suggestion of Lord DENMAN, C. J. on the subject of perjury, and of the remarks appended by the reviewer, will by all be acknowledged. It seems strange that the commission should have overlooked this—one of the most crying and frequent sins which beset our courts of justice.

With regard to perjury, Lord Denman, C. J. observes—"In any scheme for the improving the administration of justice, I should recommend the adoption of a simple and general form of indictment for perjury. The difficulties that now surround a prosecution almost operate as a guarantee for the impunity of that crime." No one, who has much acquaintance with proceedings in our courts, can doubt that perjury prevails in them to a frightful extent, and yet so great are the obstacles which stand in the way of a conviction, that we are hardly guilty of any exaggeration in saying that the crime is practically free from punishment. So few are the convictions in comparison of the number of false swearings, that the convictions may be rather considered as exceptions to the general impunity which prevails. In no indictments are more numerous special averments necessary, and in none is there more technical accuracy required; it is not therefore extraordinary that fatal defects should frequently occur, even if the materials for framing such indictments were before the party framing them. This, however, is rarely, if ever the case. Copies or extracts of the former proceedings are usually the best foundation on which such indictments are framed, and errors in such copies lead to errors in the indictment; (a) and it sometimes happens that the former proceedings are in the custody of an adverse party, and cannot be obtained. Whatever difference of opinion may exist as to the precise mode of remedying these inconveniences, none can exist that they require some remedy. The commissioners, however, do not advert to the subject. We venture to suggest that it would be better to provide that it should be unnecessary to

(a) In a recent case, where the indictment had been framed on copies of affidavits, when the original affidavits were produced several variances occurred in the setting out of the affidavits on the record, which, however, had been carefully examined and accurately corresponded with the copies themselves.

state the count or tribunal before which, or the proceeding in which, the perjury was committed, and that it should be sufficient to state that the defendant falsely and wilfully swore so and so, setting out the false evidence; that it should be unnecessary to have any special denial of the matters sworn, as instances not unfrequently occur where variances take place between the matter sworn and the special traverse of it; and that the power to amend the matter sworn, which now exists under the 9 Geo. 4, c. 15, where it is in writing, should be extended to all cases. It appears to us that, as all cases of perjury must be tried by a judge, there is not the slightest fear that he would permit any person to be convicted of perjury without the necessary formal proof of all the previous proceedings, and equally little that he will allow amendments, unless the case be one in which it is proper that they should be made. (a)

The next is an article on "The Discipline of the French Bar;" so amusing and replete with information, that as less is popularly known on this side the channel, of the history, regulations, and government of the French Bar than could be wished, we propose, in an early number, to transfer it to our columns.

The third subject discussed is, "The Results of Death Punishments." Here, the arguments in favour of retaining capital punishments are put in even a more convincing manner, and certainly backed by stronger statistical facts, than in the former article on this question, which made such a sensation, and produced such an outcry among the advocates of gallows abolition. The writer hurls his bolt with merciless vehemency; and, conscious of his strength, is less considerate of the humane, if mistaken, motives of those who advocate the opposite course, and scarcely as guarded in the epithets he applies to this section of society as could be wished. Give ear, if it be no more, to his sarcasm and irony, in the following passage:—

These (criminals who have died on the scaffold), are the people about whom all this philanthropic palaver is raised; Forty-one atrocious miscreants in six years sacrificed to the safety of the millions, of whose lives they proved themselves to be reckless! Why, as great a number of innocent lives are sacrificed every year for the sake of coals; and not one tithe of the same exertion is made to correct the negligence or punish the cupidity of colliery owners! Unknown thousands perish in our large towns, victims to the miasma of our kennels and gutters, and the parsimony of municipalities; and where is the philanthropic effort to abate this murderous nuisance? It is employing itself in bewailing the gallows, and shedding all its beautiful compassion upon the select portion of society who have strangled their wives or slaughtered their mothers; it is devoting its amiable sympathy to the rescue and reformation of twelve interesting murderers per annum, utterly regardless of the lives of tens of thousands who, not having attained a qualification for the halter, are left to batten unheeded on the vices of which our prisons are nurseries, giving society the benefit of their training in crime. The rest of mankind are of no consequence to your genuine gallows abolitionist. Every day gaol birds are unworthy of his philanthropic palate. The mercies of his benevolence descend not from the scaffold; its sympathies centre on assassins. True it is, that whilst shooting, stabbing and maiming were capital punishments, those offences amounted to 120 per annum, and that they now exceed 200; (b) but what of that, so long as the stabbers and maimers are rescued from all chance of the indignity of a halter! True it is that hundreds of obscure people are yearly shot, stabbed, ravished, or burnt out of house and home, in addition to the number of like victims previously to the modern victories of the abolitionists, but what enlightened mind regards their fate, whilst a dozen murderers are still in danger of hanging! The selfishness of society on this point is extremely shocking to the humanities of Exeter Hall; and the flood of its sensibilities and the hurricane of its charities, despising the interests of commonplace people and their every-day lives, betake themselves to the scaffold, and finding no one there but a select party of murderers, bestow upon them the full fervour of their impassioned philanthropy! Beautiful luxuriance of sympathy! Adorable tenderheartedness! How can the selfish multitude pit their personal safety against the progress of this soaring benevolence! True it is that the greatest moral lawgiver carefully abstained from any approach to this exuberant charity, and from any command from which it could be implied; but the philanthropists of Exeter Hall have im-

(a) There are two other great obstacles to prosecutions for perjury—First, the necessity of proving the original records. A certificate granted by the proper officer, similar to that authorized for the purpose of proving previous convictions, might properly be substituted. Secondly, the allowance of costs in such cases never equals the necessary expenditure, and the obtaining any costs in such cases is extremely precarious and uncertain.

(b) 463 in the last two years.

proceed upon the Christianity of Christ, and exaggerate the mercy, at the sacrifice of the justice, of the Gospel!

Far more to our taste are the purely argumentative parts of this article. And we feel called upon, by this allusion to the subject of capital punishments, to express our opinion that the facts, not to say the arguments, here set forth are conclusive against the abolitionists. Yet, notwithstanding this, we agree with Serjeant TALFOURD in the belief he somewhere expressed, that the office of hangman will not survive this century, so rapid is the growth of what are termed "humane principles." Whether real humanity lies in sparing the life of the criminal, and perhaps multiplying offenders, by affording comparative impunity to crime, or otherwise, we will not here dispute. As a specimen of the reasoning by this writer we give the following:—

That capital punishments are not reformatory, but merely preventive, is urged against them by those who at the same time admit that prevention is the chief object of punishment, inasmuch as security to society is entitled to precedence over the interests both of the wronged and the wronger. In the extreme cases to which capital punishments are alone applied, it is true that punishment attains only one of its objects; but that, according to the admission of those who urge this objection, is its primary object—namely, the security of society. From the necessity of the case it preponderates over every other, its importance being rendered paramount by the atrocity of the offence, and the vital interest society has in its prevention. It is therefore untrue that executions are "miserably defective" as a punishment, because they only protect society at large, and fail to reform a handful of the blackest criminals.

It is not denied that prevented crimes, being unrecorded, are liable to be far underrated; but it is retorted, that "if capital punishments are thus effective, we ought to apply them to the prevention of all offences; that if hanging will rid the world of petty larceny, we should hang for petty larceny, and have done with it; that if hanging will stop apple stealing, we have a specific for making orchards safe through all coming time. Why not? Because (we are made to say) the punishment is disproportionate to the offence. This answer (it is alleged) supposes proportionate infliction, and not prevention, to be the object of punishment. It reverts to the vindictive theory." It does nothing of the sort. It is very easy to impute a fallacy in order to refute it. The device is silly and short lived. It is not only because the punishment of hanging is disproportionate to the offence of apple stealing that apple stealers are not hung, but because the benefit to society by its prevention is inadequate to the penalty at which it is purchased. We do not hang the pickpocket, because the protection of pockets is not worth the sacrifice of life; and not because we have no faith in the preventive power of the punishment, as the abolitionist logicians pretend. "No one (they say) ventures to recommend the universal application of this specific. Till they do, we take leave to question their faith in its efficacy. [Indeed, you don't; your folly is not equal to any such question.] The prevention which would fail for apple stealing [your own assumption] cannot be infallible for rape and murder!!!" This solemn twaddle is too amusing. Because heavy artillery is not applied to the demolition of sparrows, it is powerless for the cannonading of castles! But no illustration can surpass the inordinate silliness of the argument itself; for, according to it, there must be no moderation of punishment; and imprisonment, the panacea of the abolitionists, ought to be perpetual. Any punishment is susceptible of exactly the same *reductio ad absurdum*, as that which they, in their dismal ignorance of the first elements of logic, fancied they were applying to the advocates of capital punishments for murder. We cannot waste further time or space in breaking this fly on a wheel.

There is no doubt that civilization abhors violence and reverence life, and that is the precise reason why it inflicts the heaviest penalty on those who commit the former and destroy the latter; and holds that they who will not allow others to live have forfeited a right to live themselves. Murderers invite and are the agents of their own death. They know the penalty before they commit murder. They create the necessity of the sacrifice of their lives, for in consequence of their own act they are put to death, that others who have not forfeited their right to live may enjoy it. There is no want of reverence for life in this, it is the necessary result of regard for its preservation. Mr. Bright says,

"If it were possible that the punishment of death did sometimes deter men from the commission of the crime of murder—which was by no means proved—he would ask whether it was not clear that the infliction of such a punishment tended to destroy reverence for human life."

It is, on the contrary, proved that executions do

prevent the worst crimes, as far as any statistics can prove it. This is the ground which crumbles under the feet of the abolitionists. They cannot get over their blunder on this material point.

This is an article which will attract a large share of notice, and we recommend it to the perusal of all who feel interested in this nice question; and whom does this not include?

A long essay on "The Law of International Domicile" follows next. The profusion and variety of foot-note references alone will convince those who may not look into the text which they illustrate, of the vast amount of learning and research the writer has brought to his subject.

The fifth article is a searching and able review of "Stephen's Commentaries;" the sixth a brief memoir of the late Chief Justice Tindal. The seventh article is a long, able, instructive, and interesting one in the form of a review of "Spence's Equitable Jurisdiction of the Court of Chancery." A brief history of this high court of judiciary, prefaced by a passing glance at the laws and customs of the Romans, Saxons, Danes, and Normans, is given in this review. To all students of our laws, and to those who would refresh their memories of early impressions when mastering the history of our jurisprudence, we recommend the perusal of this article. We can only find room here for a humorous and graphic picture of a lawyer's pillory—one of a kind which the dry details of law but seldom furnish, and we therefore enjoy it the more. If some of the most diffuse and wary of modern special pleaders were made like examples in Westminster Hall, it would certainly amuse the spectators, but, we fear, not cure them of their sin.

THE LAWYERS' PILLORY.

Some old decrees and orders preserved by Mr. Spence in his notes are by no means in accordance with what we are accustomed to consider within the province of the Court, or consistent with decorum. The Court seem to have laid considerable reliance on the personal credit of, and also personal acquaintance with, some of the parties. Thus, notice is taken of the good credit and upright dealing of the Countess of Huntingdon as well proved as known to this Court—of the great opinion that this Court had of the great discretion, circumspection and honesty of Mr. Plowden, a counsel in the cause—of the honour and integrity of Sir Ralph Sadler, as a Privy Councillor, so as that his estate was discharged by reason of a memorandum he had himself indorsed on a bill on which he was liable, that part of it had been paid. Counsel, on a motion to set aside a former decree, having asserted that such an order was without precedent, and several precedents having been afterwards found, the counsel was for such "his rash motion" committed to the Fleet. The Court constantly takes upon itself the office of a mediator or arbitrator, especially between persons of distinction, between persons nearly connected, or of great disparity of position. But one of the most curious is the punishment for impertinent length of pleading in the note, p. 377, in the case of *Myllward v. Weldon*, 8th February, 1596, Sir J. Puckering, Lord Keeper. Richard Myllward, the plaintiff's son, had confessed that he had "both drawn, devised and engrossed" a monstrous replication—

"Which did amount to six score sheets of paper, and yet all the matter thereof which is pertinent might well have been contrived in sixteen sheets of paper. * * * And because his lordship is of opinion that such an abuse ought not to be tolerated, proceeding of a malicious purpose to increase the defendant's charge and being fraught with much impertinent matter not fit for this Court: It is therefore ordered, that the warden of the Fleet shall take the said Richard Myllward into his custody, and shall bring him into Westminster Hall on Saturday next, about the hour of ten o'clock in the forenoon, and then and there shall out a hole in the midst of the same engrossed replication, which is delivered to him for that purpose, and put the said Richard's head through the same hole, and so let the same replication hang about his head and shoulders with the written side outwards, and then, the same so hanging, shall lead the said Richard bareheaded and barefaced round about Westminster Hall whilst the Courts are sitting, and shall show him at the bar of every of the three courts within the Hall, and then shall take him back again to the Fleet and keep him prisoner until he shall have paid 10*l.* as a fine to the queen and twenty nobles to the defendant in respect of his costs for the aforesaid abuse, which fine and costs are now adjudged and imposed upon him by this Court for his abuse aforesaid."

Articles on the "County Courts Bill," and on "Vexatious Legislation of Parish Settlements," follow, and make up the contents of the literary part of the number. Into them we have not space at

present to enter, but may recur to them at a future time. The usual quantity of "Notes on leading Cases," and a continuation of the Digest of Cases in Common Law and Equity, make up an excellent number of this Quarterly oracle of the Profession.

Bills of Costs in Chancery, for Plaintiff and Defendant, in conformity with the present Practice. By JESSE COLE, Solicitor. 8vo. London, 1846: Meldola, Cahn, and Co. St. Mary-axe.

THE novelty of this book lies mainly in its giving practical directions and notes as to the prosecution and defence of suits immediately under the several items of the charges. The "various orders of Court adapted to the present practice, including those which came into operation in October last, together with the recent decisions of the Courts in reference or applicable to such orders," are also introduced. Great pains have been bestowed on the various parts of the work, and the research evidenced by the author in collating authorities, and the vigilance with which he has watched and availed himself of the decisions on mooted or doubtful points, are no less remarkable than praiseworthy. The book, which is rendered complete by an Appendix of Forms and a copious Digest, will be a useful and acceptable one to the Profession, and we recommend it accordingly.

A Letter to the Right Honourable Sir George Grey, Bart. on certain Clauses in the "Small Debts Bill" (now in the House of Commons). By DAVID DEADY KEANE, Esq. Barrister-at-Law. London: Shaw and Sons.

THIS pamphlet contains some judicious strictures on several clauses of the Small Debts Bill, with shrewd practical suggestions for their reconstruction and improvement. The chief subjects on which the Author descends are,—balance of cross accounts; balance of cross judgments; commitment for fraud; conflicting claims for goods taken in execution; examination of parties on oath; forms of procedure; prohibition; protection from arrest; rent; sequestration of the person; writ of arrest, &c. &c. Mr. KEANE has brought to the analysis of this Act the experience of an industrious, clear-sighted, and able man; his objections and suggestions, whether they obtain consideration or not, most certainly deserve it. We could have wished, had space permitted, to have given the Author's remarks on writs of error, and prohibition after sentence, but must content ourselves with his comment on the 89th section of the Act, which runs as follows:—

The 89th section enacts:

"That no landlord of any tenement let at a weekly rent shall have any claim or lien upon any goods taken in execution under the process of any court held under this Act for more than four weeks' rent; and if any such tenement shall be let for any other term less than one year, the landlord shall not have any claim or lien upon such goods for more than the arrears of rent accruing during two such terms or times of payment; and if such tenement shall be let for a yearly or other holding for a longer period, such landlord shall not be entitled to have any claim or lien upon such goods for more than one year's arrears."

This varies from the 7 & 8 Vict. c. 96, s. 67, and, the substitution of "two" terms of payment for "four" such terms excepted, the variation is not an improvement. Even under the 7 & 8 Vict. c. 96, s. 67, which did not contain any provision corresponding to that which is printed in italics, it was contended that there was conferred on the landlord, as against the execution creditor, a claim to arrears of rent accruing during four terms of payment, even though those four terms should together exceed a year. Whatever force there was in the argument that supported that position, will be much increased by the passage above printed in italics, which points to the conclusion that the claims of the landlord shall be confined to the arrears for one year, only when the tenement shall have been let "for a yearly or other holding for a longer period." Doubt, even on such a point as this, ought to be prevented.

This section is founded on the notion that under the stat. 8 Anne, c. 14, s. 1, the sheriff is the party who ought to pay the landlord such arrears of rent as he may have claim to, not exceeding a year's rent; that the sheriff is entitled to remove the goods before the landlord is paid, and that the payment is to be made out of the proceeds of the goods. This, it is submitted, is a fallacy. In the case of *Cocker v. Musgrove*, judgment was pronounced in the Court of Queen's Bench on the 9th of June last (Law T. for June 20), and the true construction of the stat. of Anne was thereby determined to be, that where the sheriff in possession under a writ of *fi. fa.* receives notice, as well as the execution creditor, of rent being due,

not exceeding one year, it is not his duty to proceed to a sale, unless the execution creditor first of all pays the rent to the landlord, whatever may be the supposed value of the goods seized. The judgment was delivered by Lord Denman in the words that follow:—

"This was an action against the sheriff of Middlesex, for not levying under a writ of *fi. fa.* The declaration stated that there were goods out of which the defendant might and ought to have levied: one of the pleas traversed that allegation. The facts were, that five executions came into the sheriff's hands; that there was rent due from the execution debtor, of which the several plaintiffs had notice; but no one of them chose to pay the rent. The sheriff returned those facts; the jury found that there were goods sufficient to pay the rent and execution, and a verdict was found for the plaintiff under the direction of the learned judge. The defendants contend, upon the true construction of the stat. of 8 Anne, they were not bound or at liberty to sell the goods until the rent was paid by one of the execution creditors. The practice, undoubtedly, has been very general for the sheriff to sell in such cases, and out of the proceeds to satisfy the landlord in the first instance, and if he does so sell he is liable to an action if he does not pay the landlord. Many cases show this to be necessary. Some will be found cited in *Windle v. Freeman*, 11 A. & E.; and the statute is still more discussed in *Riseley v. Ryle*, 11 M. & W. 16. In the latter case, Parke, B. says: 'Construing the Act as it has hitherto been construed, it means that the sheriff is not to remove the goods until the rent has first been paid by somebody; if he does, he is liable to an action at the suit of the landlord, for whose benefit the Act of Parliament was made.' It is plain that the advance should be made by the execution creditor. If he neglects to make it after notice of rent being due (and it is not necessary to say whether notice be requisite) the sheriff cannot be called upon to sell the goods, let the value be what it will. Until the rent be paid, there are no goods out of which the sheriff is bound to levy, that is, bound to sell. We are, therefore, of opinion, that the rule for a new trial in this case must be made absolute."

Now, in that case it was sufficient for the purpose of the defendant to contend that the sheriff was not obliged to sell; but the words of the statute seem to prohibit even the taking goods liable to rent; and it is obvious, that if the right to take should be disputed, the case of *Cocker v. Musgrove* will tend towards a decision adverse to the sheriff. If there be no right to take at all until the execution creditor has satisfied the rent, then section 89 will be nugatory. If,—and to this the case of *Cocker v. Musgrove* must lead,—the sheriff is bound not to sell until the landlord has been satisfied his arrears of rent for two terms of payment, the provisions of section 89 will avail but little for the purpose of the Act. If it be still doubtful whether the true construction is not, that the sheriff is bound not to sell until the execution creditor has paid the landlord, then, as the sheriff is not bound to sell until the execution creditor has so paid, assuredly he will never sell until the execution creditor has paid the sum which the statute of Anne requires, not merely the sum which section 89 indicates. He will not risk a decision as to the possible effect of section 89 on the statute of Anne; and if an action be brought against him by the execution creditor he will rely, as safely he may, on the case of *Cocker v. Musgrove*. It is submitted, then, that section 89 must be modified.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY

ON THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.

(Continued from page 423.)

Effect of the late Will Act with respect to lapsed devises.—As the law stood previously to the recent enactment, 1 Vict. c. 26, a devise would have lapsed by the death of the legatee in the testator's lifetime (*Symson v. Hornsby*, Pre. Ch. 439; *Brett v. Rigden*, Plow. 340; *Hartop's case*, Cro. Eliz. 243; *Turner v. Kett*, 4 T. R. 601); and so it will still, unless in the case of estates tail, and gifts to children or other issue of the testator.

As to estates tail.—With respect to estates tail, the 32nd section of the above-mentioned statute enacts, "that where any person to whom any real estate shall be devised for an estate tail, or an estate in *quasi* entail, shall die in the lifetime of the testator, leaving issue, who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will."

Gifts to children or other issue.—With respect to gifts to children or other issue of the testator, the 33rd section enacts, "that where any child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed, for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any issue of such shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator." But this section of the statute, it has been determined, does not substitute the issue for the pre-deceased devisee, but the latter will take a fee-simple conditional, depending either on his surviving the testator, or on his leaving issue living at the time of such testator's death; and the devisee may dispose of such interest by his will, notwithstanding he should die in the testator's lifetime. (*Johnson v. Johnson*, 3 Hare, 157.) But this enactment, that a bequest to a child who died in the testator's lifetime, leaving issue living at the testator's death, shall not lapse, does not apply to a testamentary appointment. (*Griffith v. Gale*, 12 Sim. 327.)

Of the rule in *Shelley's case*.—It may not be improper in this place to give a brief outline of the rule in *Shelley's case*; but which, though so thus designated, was a fixed rule of law long before *Shelley's case* was decided, in which it was not a subject for the determination of the Court, or even of controversy, but is expressed in the arguments in clear terms as an acknowledged rule of law, and from thence it is presumed to have received this appellation.

When the rule will apply.—By this rule, whenever an estate is given to one generally, or for life, and afterwards, in the same instrument, a remainder is limited to his heirs, or the heirs of his body, such subsequent limitation vests immediately in the ancestor, and will not remain in contingency or abeyance. If the limitation be to his heirs, he will take an estate in fee-simple; if to the heirs of his body, an estate tail. This rule will apply equally, notwithstanding an intervening clause for life or in tail be interposed between the freehold of the ancestor and the subsequent limitation to his heirs: with this diversity: that where the devise is immediate, as to A for life, remainder to his heirs, or the heirs of his body, it becomes executed in the ancestor, forming, by its union with his particular estate, one estate of inheritance in possession; and where it is mediate, as to A for life, remainder to B for life, or in tail, remainder to the heirs, or the heirs of the body of A, it is then a vested remainder in the ancestor, not to be executed in possession till the determination of the preceding means estates. (*Hodgson v. Ambrose*, Doug. 337, 345; S. C. Dom. Proc. 3 Bro. P. C. edit. Toml. 416.) And notwithstanding the estate be limited to the ancestor expressly for his life (*Rudall v. Eiley*, Carth. 170; *Goodright v. Pullen*, Lord Raym. 1437); or it is declared to be without impeachment of waste (a restriction inconsistent with an estate of inheritance) (*Papillon v. Voice*, 2 P. Wms. 471; *Robinson v. Robinson*, 2 Ves. sen. 225; *Denn dem. Webb v. Puckey*, 5 T. R. 299; *Frank v. Slovin*, 3 East, 548; *Jones v. Morgan*, 1 Bro. C. C. 206; *Bennett v. Tankerville (Earl of)*, 19 Ves. 170; *Perrin v. Blake*, 4 Bur. 2579; 1 W. Blackst. 672; or trustees are interposed to preserve contingent remainders (*Colson v. Colson*, 2 Atk. 247; S. C. 2 Str. 1125; *Hodgson v. Ambrose*, Doug. 337, 345; S. C. 3 Bro. P. C. edit. Toml. 416; *Sayer v. Masterman*, Amb. 344; *Measure v. Gee*, 5 B. & Ald. 910); or the estate of freehold is limited to the separate use of the devisee (a *féme covert*) (*Lord Sey and Sele*, 8 Vin. Abr. 262, pl. 19; S. C. in Dom. Proc. 3 Bro. P. C. edit. Toml. 458; *Douglas v. Congreve*, 1 Beav. 59); or a power of jointuring is given to the first devisee (*King v. Melling*, 2 Lev. 58; S. C. 3 Keb. 42); or the testator even proceeds to impose a restriction against alienation (*Perrin v. Blake*, 4 Bur. 2579; 1 W. Blackst. 672; *Hayes dem. Foarde v. Foarde*, 2 W. Blackst. 698); or there is an express direction that the ancestor shall take for life only (*Thong v. Bedford*, 1 Bro. C. C. 313); the rule will nevertheless apply, and in every instance vest the inheritance in the first taker. Neither will the application of the rule be prevented by words of superadded limitation being engrafted on the devise to the heirs. As, for example, a limitation to A for life, and the heirs male of his body, and the heirs male of the body of such heirs male. *Shelley's case*

itself is indeed the leading authority in support of the latter construction in the case of a deed; and *Goodright v. Pullen* (Lord Raym. 1437) is an instance of the same doctrine applied to wills. (See also *Hayes dem. Foarde v. Foarde*, 2 W. Blackst. 698; *Denn and Gearing v. Shenton*, Com. 410; *Wright v. Pearson*, Amb. 358; *Minshull v. Minshull*, 1 Atk. 411.) Nor will a devise to the heir in the singular number (*Burley's case*, cited by Hale, C. J. Ventr. 230; *Whiting v. Wilkins Bulstr.* 219; *Pausy v. Lowdall*, 2 Roll. Abr. 794; *Miller v. Seagrove*, Rob. Gav. 96; *Dubler v. Trollope*, Amb. 453), (provided no words of limitation are superadded or engrafted on it), (a) prevent the application of the rule; although in the case of a deed the construction would be otherwise; for in the latter instance the ancestor would take a mere life estate, with remainder to the heir as a purchaser.

The particular estate being determinable on a contingency will not prevent the application of the rule.—The rule will also apply, notwithstanding the particular estate of freehold be determinable on an event which may happen in the lifetime of the first taker (*Merrill v. Ramsey*, 1 Keb. 888; S. C. Sid. 427; 4 Bac. Abr. 601); as where the particular estate of freehold is limited during widowhood, or the life of another person (*Curtis v. Price*, 12 Ves. 89); nor will it make any difference although the ancestor himself must die before the object of the gift to the heirs can be ascertained as to two persons as long as they jointly live, with remainder to the heirs of him that dies first (10 Rep. 30; 1 Roll. Abr. 839; *Highway v. Banner*, 1 Bro. C. C. 584); or the limitation to the heirs is on a contingency that may or may not happen; as for example, a gift to A. for life, and if she marries and has heirs of her body, then the heirs to have the lands. Neither is it of any consequence whether the estate of freehold is in the ancestor by express limitation or by implication (*Hayes dem. Foarde v. Foarde*, W. Blackst. 658), or results to him (*Pibus v. Mitford*, Ventr. 272; *Wills v. Palmer*, 5 Bur. 2615), as in either case the construction will be the same; for if the intention is once clear that the succession shall go and be confined to the heirs of the tenant for life, the notion that they shall take by purchase must be rejected for inconsistency; as all persons claiming in the character of heirs, must take in that quality, by descent and not by purchase.

Requisites to the application of the rule.—But in order that the rule may apply, it will be requisite, 1. That an estate of freehold be limited to the ancestor. 2. There must be a limitation to the heirs, or heirs of the body of the ancestor, in those terms, or by some equivalent substituted name; as issue for instance; and not the heirs as meaning or explained to be sons or children, or the like. 3. The heirs must take as the heirs of the ancestor to whom the freehold is devised, and not of him and another person. 4. Both limitations must give estates of the same quality. 5. Both limitations must be by the same instrument.

1. **An estate of freehold must be limited to the ancestor.**—In order that the rule in *Shelley's case* may apply, it is absolutely necessary that the ancestor should take an estate of freehold, either by express words or by implication; for if he takes no such estate, or merely a term of years, with remainder to his heirs, &c. the two estates will not unite in the ancestor, but will go to the heirs as purchasers. (*Roe dem. Nightingale v. Quartley*, 1 T. R. 630; *Harris v. Barnes*, 1 W. Blackst. 643.) Although the heirs will not derive their estate through their ancestor, they will so far take with reference to him as to pursue the same course of succession as if it attached and descended from him. (*Fearne*, Cont. Rem. 80.) An acquisition of this kind is styled an acquisition *per formam doni*, not being strictly a descent, because the estate never attached, or could by possibility attach, or be derived through him; and yet not operating as a purchase, because the estate goes in the same course of succession as it would have done under a descent, exclusive of persons to whom it would have gone if the heirs had taken absolutely by purchase. Thus a limitation to the heirs male of the body of B, where no estate is given to B himself, though it originally attaches in his heirs male under

that special description, and so far operates as words of purchase, yet it not only gives such heir an estate tail male, without any express words of limitation to the heirs male of his own body, but such an estate tail as will, on failure of his issue male, go in succession to the other heirs male of the body of B, in the same course as if the estate had descended from B himself. (*Manderly's case*, Co. Litt. 266; *Southcott v. Stowell*, 1 Mod. 236; *Wills v. Palmer*, 5 Barr. 2615.)

2. **There must be a limitation to the heirs, &c. of the person taking the previous estate of freehold by that or some equivalent substituted name, as issue for instance; and not the heirs as meaning or explained to be sons or children, or the like.**—When it appears from the general context of the will the testator did not mean to employ the word heirs according to their strict technical import, that intention must be allowed to prevail, notwithstanding he has used such technical words in other parts of his will. Hence, although a testator should devise to B. and the heirs of his body, he will not be precluded from explaining by subsequent words in what sense he intended the words "heirs of the body" to be taken; if, therefore, to the limitation to the heirs of the body he were to add "that is to say, his first, second, third, and every son and sons successively, &c." the subsequent clause would not be considered as contrary to the preceding general limitation to B.'s heirs lawfully to be begotten, but explanatory of what heirs, &c. were meant, consequently the rule would not apply, and B. would take a mere estate for life. (*Lisle v. Gray*, 2 Lev. 223; *Lowe v. Davis*, 3 Lord Raym. 1561; *Manderly v. Lackey*, 3 Ridd. P. C. 352; *Grothen v. Howard*, 6 Taunt. 94; *Goodtitle dem. Sweet v. Herring*, 1 East, 264; *Shorridge v. Croker*, 5 B. & C. 866; *Doe dem. Woodhall v. Woodhall*, 7 Law T. 322.)

3. **Effect of engrafted words of limitation varying the course of descent.**—It has been said that although words of engrafted limitation annexed to the limitation to the heirs will not prevent the application of the rule, yet that it will be otherwise if by such engrafted words the course of descent be altered. This doctrine appears to be founded entirely upon the supposed case put by Anderson, J. in *Shelley's case*, where he says, that if the words of engrafted limitation describe an estate descendible in a different course and to different persons, as to special heirs, from what the first would carry the estate to, viz. to females instead of males, or vice versa, it will prevent the application of the rule, for in such case the general effect of the first word, heirs, is abridged and qualified by such subsequent express words of limitation, as cannot possibly be satisfied by considering the first words as words of purchase. This point does not, however, appear to have been as yet judicially decided; whilst, on the other hand, it has been determined, over and over again, that notwithstanding the words of distribution are annexed to the limitation to the heirs of the body, which, if literally carried into effect, would create an estate descendible in a different manner, they will be insufficient to control the legal import of preceding words sufficient to create an estate tail, as, for example, a limitation to A for life, with remainder to the heirs of his body as tenants in common, and not as joint tenants. (*Doe dem. Chandler v. Smith*, 7 T. R. 531; *Pierson v. Fickers*, 5 East, 548; *Doe dem. Cole v. Goldsmith*, 7 Taunt. 209; S. C. 2 Marsh. 517; *Bennett v. Tankerville (Earl of)*, 19 Ves. 170; *Jesson v. Wright*, 2 Bligh, 58; *Doe dem. Bomall v. Harvey*, 4 B. & C. 610.)

4. **The heirs must take as heirs of the ancestor, and not of him and another person.**—It is essential to the application of the rule in *Shelley's case* that the heirs should be the heirs of the person taking the estate of freehold, and not of him and any other person. Thus in *Gosseage v. Taylor* (Yelv. 131, S. C.; Sty. 325), an estate was limited to the wife for life, remainder to the heirs to be begotten upon the body of the wife by the husband, no estate being previously limited to the husband; and it was held that the heirs took as purchasers. (See also *Lane v. Pannell*, 1 Roll. Rep. 258, 438; *Megmorton dem. Robinson v. Wherry*, 2 Blac. Rep. 728, S. C.; 3 Wils. 144.) But if the devise had been to the wife for life, and the heirs of the husband on her body to be begotten, she would have taken no more than a life estate. For there is a fixed distinction between the terms "heirs of the body," and "heirs on the body;" the word "heirs"

(a) That the rule will not apply when words of limitation are engrafted on a devise to the heir in the singular number, see *Archer's case* (1 Rep. 66); *Clark v. Clark*, or *Clark v. Day or Davy*, (Moor. 593; Cro. Elis. 313); *White v. Collins* (Com. 299).

making the heirs, &c. words of limitation, the word "on" converting them into words of purchase. And however light and frivolous this distinction may now appear, yet it having originally, upon principles now obsolete, obtained ground in judicial decisions, the Courts hold themselves bound to observe it. (*Fearne, C. R. 39 Litt. 26, 27, 28, 29; see Harg. note to 3 Co. Litt. 26, b.*) At a cursory glance, indeed, *Gossage v. Taylor*, above referred to, may seem to militate against this doctrine, for there, as we have already seen, the remainder was to the "heirs to be begotten upon the body of the wife by the husband," but the word "of" was there omitted altogether, and consequently not applicable to the heirs of either of their bodies; the heirs, in fact, were not required to be of either of their bodies, and were therefore construed as if they were to issue from both; which construction has been since recognised and adopted. (*Denn. dem. Trickett v. Gilloft, 2 T. R. 431.*) It must also be kept in mind, that although to come within the operation of the rule in *Shelley's case*, the heirs must take as the heirs of the ancestor, and not of him and any other person; still this doctrine will not apply unless the parties from whose bodies the heirs are to issue are married to each other, or may lawfully intermarry; for if they are both of the same sex, or by reason of proximity of kindred or affinity are disabled from lawfully intermarrying with each other, as in such case it would be impossible they could have common heirs of their two bodies, a limitation in these terms would, under the latter circumstances, be construed, as to one moiety, to give the inheritance to the ancestor, and an estate for life in the other moiety, with a contingent remainder, to the person who has not any previous estate of freehold. (*Huntley's case, Dy. 396; Bendl. 226; 1 Inst. 25; 2 Prest. Estates, 425.*) This last proposition, however, supposes that the persons forbidden to marry by reason of consanguinity or affinity have not intermarried with each other; for, if they have done so, notwithstanding their marriage may be annulled by suit in the Ecclesiastical Court; yet, until so avoided, all the consequences of a legal marriage attach; and should they either of them die before the sentence declaring the marriage to be void shall be pronounced, the issue of the marriage will be capable of inheriting. (*2 Prest. Estates, 433; 1 Thom. Co. Litt. 126.*) As long, therefore, as the marriage continues, a limitation to them would, it is apprehended, have the same operation as if applicable to parties against whose marriage there was no legal impediment.

5. Both limitations must give estates of the same quality.—Both limitations must give estates of the same quality; that is to say, the two estates must be either both legal or both equitable. (*Jones v. Sey and Sale (Lord), 8 Vin. Abr. 262, pl. 19; S. C. 1 Eq. Ca. Abr. 383; 3 Bro. P. C. edit. Toml. 458; Tiffin v. Cossin, Carth. 272; Hemy v. Purcell, 2 W. Blackst. 1002; Shapland v. Smith, 1 Bro. C. C. 75; Silvester dem. Law v. Wilson, 2 T. R. 444; Venables v. Morris, 7 T. R. 342, 438; Doe dem. Hallen v. Ironmonger, 3 East, 533; Curtis v. Price, 12 Ves. 89.*) Mr. Fearne, indeed, has carried this doctrine still further, for he expresses an opinion (*Fearne, C. R. 35*) that the rule has not any application in those instances in which the ancestor has the freehold as a trustee, and taking no beneficial interest. Mr. Butler, however, in his valuable edition of Mr. Fearne's *Contingent Remainders*, very justly remarks (p. 35, n. (p)) that, "as courts of law cannot take notice of any trusts charged on legal estates, the trusts or purposes for which the ancestor's estate of freehold, in the cases proposed by him, is charged, cannot be a subject of their consideration. Courts of law, therefore," he adds, "must treat the case merely as a limitation of a legal freehold to the ancestor, and a limitation of the legal fee to the heir of his body, and of course hold it to be a legal estate under the rule in *Shelley's case*." Mr. Preston, also, in his elaborate observations on the rule in *Shelley's case* expresses a similar opinion. (*See 2 Prest. on Estates, 311.*)

(To be continued.)

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The Freehold Manors of Byfleet, Weybridge and Walton Leigh, Surrey. Bought in for 10,500l.
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By Messrs. DANIEL SMITH and SON, at the Mart.
The Dell, one of the most admired spots of Windsor Park, and long distinguished for its verdant and surpassingly magnificent view of the Castle. The above delightful villa at Bishopsgate stands in a fine ornamental paddock of about 10 acres, with another field of six acres—7,700l.
The next presentation to the rectory of Idlicote, near Ship-ton-on-Stour, in Warwickshire, with a small parsonage-house, and the present incumbent in his 75th year—1,510l.
Two freehold meadows, known as Dangleys, containing 20 acres, adjoining Park estate, about five miles from Windsor—890l.
By Mr. PHILLIPS, at Garraway's.
A freehold house and shop, No. 253, Strand, let at 210l. per annum—3,600l.
By Mr. W. W. SIMPSON, at the Mart.
A residence, No. 8, Thurlow-place, West Brompton; held for 75 years, at a ground-rent of 10l. per annum—860l.
A residence, No. 10—950l.
A residence, No. 3, Montpelier-square; held for 99½ years, at a ground-rent of 12l. per annum—1,040l.
A residence, No. 19; held for 97½ years, at 10l. per annum—740l.
A similar residence, No. 21—760l.
A ditto, No. 22—760l.
A ditto, No. 24—760l.
A ditto, No. 25—750l.
By Mr. MOORE.
A freehold house and shop, No. 1, Bastock-street, St. George's-in-the-East—230l.
A ditto, No. 2—220l.
Two freehold houses, Nos. 5 and 6, Broad-street, St. George's-in-the-East, and two tenements in the rear—300l.
Four houses, Nos. 16 to 19, Halley-street, Dalston; held for 70½ years, at 30l. per annum—380l.
Five houses, Nos. 6 to 10, Robert-street, Mile-end; held for 55½ years, at 15l. per annum—445l.
A house, No. 1, Robert-street; held for 54 years, at 3l. per annum—90l.
Two houses, Nos. 5 and 6, Richardson-street, Mile-end; held for 54 years, at 6l. per annum—175l.
Three houses, Nos. 2, 3, and 4; held for the same term, at 9l. per annum—175l.
By Messrs. HOGGART and NORTON, at the Mart.
A beautiful freehold estate, chiefly extra-parochial, known as Prinkna Park, about four miles from Gloucester, with the ancient stone-built mansion, attached and detached offices of every description, lawns, pleasure-grounds and shrubbery, walks, park, and lands, the whole containing about 800 acres of arable, meadow, and orchard land—18,800l.
The manors of Byfleet and Weybridge, and Walton Leigh, forming lot 16 of the printed particulars of the Ostlands estate, for sale by auction on the 4th of August, the sale of which was postponed until yesterday, was bought in at 10,500l.
The ground rents in the Grange road were sold by private contract, yesterday, in one lot.
A freehold ground-rent of 55l. per annum, arising from six houses, Nos. 21 to 25, Grosvenor-place, Camberwell—1,418l.
A freehold ground-rent of 5l. from a pair of private houses not quite finished, in the rear of the above—150l.

A freehold house, No. 20, Grosvenor-place, Camberwell, with premises in the rear—850l.
A freehold house, situate in Windmill-row, Camberwell—612l.

SALE OF AN ADVOWSON.—On Tuesday, at the Auction Mart, Messrs. Smith sold the next presentation to the living of Idlicote, Warwickshire, for 1,510l. as a rectory, of the annual value of 300l. exclusive of the parsonage-house, subject to rates and taxes; and offered a landed property called the Dell, situated adjoining to Windsor Great Park, in the parish of Eggham. The whole comprised about seventeen acres, and inclosed with a wooden paling. The highest sum offered was 7,750l. but which was stated to be below the reserved price.

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, Aug. 10.

Evill and Co. cloth manufacturers, joint and sep. divs. next week. Alsager, London.—Marriage, J. jun. miller, div. next week. Whitmore, London.

Tuesday, Aug. 11.

Lawrence, B. merchant (with G. H. D. Lawrence) joint div. next week. Pollett, London.—Molynous, W. innkeeper, annulled.

Friday, Aug. 14.

Best and Snowden, printers, joint div. next week. Alsager, London.—Goswami and Lee, shipowners, joint div. next week. Alsager, London.—Goodale, M. builder, last exam. Sept. 8.—Kent, B. lodginghouse keeper, last exam. passed.—Wood, J. plumber, last exam. passed.

Saturday, August 18.

Mackdonald, A. merchant (with F. Macquon), joint div. next week. Pollett, London.—Rouse, W. baker, last exam. passed.—Tubb, J. draper, last exam. sine die.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Arnall, E. baker, final, 13d. Green, London.—Barber, J. V. banker, third, 6d. Valpy, Birmingham.—Berry, J. draper, first, 3s. 10d. Green, London. Bull, W. cloth merchant, first, 2s. Kynaston, Leeds.—Bulmer, J. merchant, first and final, 6d. and 3-4ths of a 1d. Baker, Newcastle.—Cannell, J. F. bookseller, first, 6s. 6d. Turner, Liverpool. Cooper, J. whiteman, second, 6d. Whitmore, London.—Cooper, W. hardwareman, first, 2s. 6d. Green, London.—Frost, T. merchant, final, 4d. Green, London.—Frost, J. goldsmith, final, 13d. Green, London.—Gillip, W. army gothier, sixth, 6d. Whitmore, London.—Harley, E. S. goods, first, 2s. Valpy, Birmingham.—Hoot, J. contractor, second, 1s. 6d. Whitmore, London.—Lathbury, J. mercer, fourth, 2s. 5d. Christie, Birmingham.—Reay, J. and J. B. wine merchants, second joint div. 1s. 6d. first sep. of J. R. 2s. 6d. Green, London.—Sutton, T. jun. draper, first, 8s. Valpy, Birmingham.—Waters, C. H. dealer in paintings, first, 1s. 6d. Whitmore, London.—Wenman, T. merchant, second, 6s. Valpy, Birmingham.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Aug. 14.

Kirkby, J. schoolmaster, Darlington, June 15. Trusts. W. Russell, plumber, A. Strother, surgeon, and W. Dixon, butcher, all of Darlington. Sol. Peacock, Darlington.

Gazette, Aug. 16.

Emmott, T. innkeeper, Boston, Yorkshire, July 29. Trusts. J. Bricknell, gent. Pontefract, T. Little, spirit merchant, Wetherby, and J. Rhodes, brewer, Wetherby. Sol. Coates, Wetherby.—Evans, T. H. saddler, Oxford, July 21. Trusts. W. Isaac, whipmaker, Piccadilly, and J. Coleman, currier, Oxford. Sols. Dudley and Son, Oxford.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Aug. 14.

BIRCH, JOHN, tailor and draper, Kingston-upon-Hull, Aug. 26 and Sept. 16, at ten, Hull. Com. Barge; Kynaston, off. ass.; Hicks, Gray's-inn, and Galloway, Hull, sols. Date of fiat, Aug. 8. J. Jones, sen. and F. J. Jones, jun. linen and woollen drapers, Kingston-upon-Hull, pet. crs.
BLOOMFIELD, JOSEPH BARTER, Jun. chemist and druggist, Poole, Aug. 28, at two, Sept. 26, at half-past two, Basinghall-st. Com. Fane; Whitmore, off. ass.; Knight, Basinghall-st. sol. Date of fiat, Aug. 12. Bankrupt's own petition.
BROWN, THOMAS, hatter and mercer, Southampton, Aug. 26, at eleven, Sept. 19, at one, Basinghall-st. Com. Goulburn; Pollett, off. ass.; Lloyd, Chesham, sol. Date of fiat, July 25. J. W. Barnett, E. Leaf, F. Scotland, J. Wynford, and T. Carrigal, warehousemen, Wood-st. pet. crs.
CRANE, THOMAS, common brewer, Kegworth, Leicestershire, Sept. 1 and 29, at twelve, Birmingham. Com. Bagny; Christie, off. ass.; James, Birmingham, sol. Date of fiat, July 30. R. Forman, hop merchant, Derby, pet. cr.
ENGLAND, GEORGE, clothier and cloth factor, Brimscombe, Gloucestershire, and Basinghall-st. London, Aug. 27 and Oct. 2, at eleven, Bristol. Com. Stevenson; Acraman, off. ass.; Paris, Stroud, sol. Date of fiat, July 30. Bankrupt's own petition.
HOLMES, FRANCIS, and HOLMES, JAMES, ship builders, Southtown, Suffolk, Aug. 28, at two, Oct. 2, at eleven, Basinghall-st. Com. Fane; Alsager, off. ass.; Storey, Gray's-inn, sol. Date of fiat, Aug. 12. W. M. Bond, gent. Little Tanworth, pet. cr.
KNIGHT, THOMAS URBAN, grocer, Prince-st. Gravesend, Aug. 24, at eleven, Sept. 25, at half-past eleven, Basinghall-st. Com. Fane; Whitmore, off. ass.; Coome and Co.

Church-ct. sals. Date of sat, Aug. 8. Bankrupt's own petition.

NAYLER, ROBERT, licensed victualler and stage coach proprietor, Five Ails Inn, Marlborough, Wiltshire, Aug. 31 and Sept. 29, at twelve, Bristol. Com. Stephen A. Aramas, off. ass. Blower and Co. Lincoln's-inn-fields, and Nash, Bristol, sals. Date of sat, Aug. 10. Bankrupt's own petition.

OLLARD, WILLIAM LUDLAM, auctioneer and scrivener, Upwell, Cambridgeshire, Aug. 22, at half-past ten, Sept. 28, at two, Basinghall-st. Com. Fane; Alsager, off. ass.; Hensman, Basinghall-st. Date of sat, Aug. 11. Bankrupt's own petition.

OXFORD, ROBERT, and **WILLIAM CHRISTOPHER**, millers, corn factors, flour merchants, coal merchants, spirit merchants, and seed factors, Wansford, Great Driffield, Scarborough, Bridlington, and Beverley, Yorkshire, Sept. 2 and 30, at ten, Hull, Com. Burge; Kynaston, off. ass.; Capen and Co. Gray's-in, and Robinson, Beverley, and Bell, Hull, sals. Date of sat, Aug. 4. J. Skilbeck, merchant, Hull, pet. cr.

PRICE, JAMES MEAD, innkeeper, Warminster, Aug. 28, at half-past one, Sept. 25, at half-past twelve, Basinghall-st. Com. Fane; Alsager, off. ass.; Stewart, New-lane, sol. Date of sat, Aug. 11. Bankrupt's own petition.

PECKERING, SIMON, and **MAKING, WILLIAM THOMAS**, woollen merchants and woollen drapers, Kingston-upon-Hull, Aug. 26 and Sept. 16, at ten, Hull, Com. Burge; Kynaston, off. ass.; Linklater, Leadenhall-st. and Ayre, Jan. Hall, sals. Date of sat, Aug. 6. J. P. Bull, woollen warehouseman, St. Martin's-lane, pet. cr.

SPRATTON, JOHN WILLIAM, tailor and draper, March, Isle of Ely, Aug. 28, at one, Sept. 28, at half-past one, Basinghall-st. Com. Fane; Alsager, off. ass. Meredith and Co. Lincoln's-inn, sals. Date of sat, Aug. 6. R. Phillips and J. De Near, woollen drapers, Norwich, pet. cr.

TAYLOR, CHARLES, brush manufacturer, Birmingham, Aug. 29 and Sept. 17, at eleven, Birmingham, Com. Daniell; Whitmore, off. ass.; Ivimey, Chancery-lane, and Wright, Birmingham, sals. Date of sat, Aug. 4. J. L. Hinks, wood turner and joiner, Birmingham, pet. cr.

Gazette, Aug. 18.

BALLINGER, WILLIAM, maltster, brewer, and grocer, Swansea, Sept. 2, at one, Oct. 1, at eleven, Bristol, Com. Stevenson; Hutton, off. ass.; David, Swansea, and Bridges, Bristol, sals. Date of sat, Aug. 8. Bankrupt's own petition.

BURT, PETER, calico printer, Manchester, Sept. 1 and 23, at twelve, Manchester, Fraser, off. ass.; Cunliffe and Co. Manchester, and Keightley and Co. Chancery-lane, sals. Date of sat, Aug. 13. Bankrupt's own petition.

BUTTERWORTH, JOHN HARTLEY, hotel keeper, 29 and 40, King-st. Champsade, Aug. 27, at eleven, Oct. 1, at twelve, Basinghall-st. Com. Evans; Johnson, off. ass.; Ashley, Shoreditch, sol. Date of sat, Aug. 8. Bankrupt's own petition.

CARNE, JOSEPH, son, provision merchant, Truro, Sept. 1 and 29, at eleven, Exeter, Com. Beane; Minter, off. ass.; Morgan, Old Jewry, Smith and Roberts, Truro, and Turner, Exeter, sals. Date of sat, July 20. J. Anderson, merchant, College-st. Downton-hill, pet. cr.

HARRIS, JOSIAH, grocer, Mevagissey, Cornwall, Sept. 1 and 29, at eleven, Exeter, Com. Beane; Hensman, off. ass.; Caryon, St. Austel, Bell and Co. Lincoln's-inn-fields, and Moore, Exeter, sals. Date of sat, Aug. 7. Bankrupt's own petition.

JONES, THOMAS EVANS, linen draper, Knightsbridge-ter. Knightsbridge, Aug. 27, at half-past twelve, Oct. 2, at one, Basinghall-st. Com. Fane; Alsager, off. ass.; Lloyd, Milk-st. Champsade, sol. Date of sat, Aug. 18. J. Hadland, T. Shillingford, and E. Essam, warehousemen, Champsade, pet. cr.

NORRIS, WILLIAM, builder, 11, Cambridge-villas, Great College-st. Camden New-town, Sept. 3 and Oct. 1, at eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Haynes, Arlington-st. Camden-town, sol. Date of sat, Aug. 14. Bankrupt's own petition.

PARKINSON, RUPERT, currier and leather cutter, Ashton-under-Lyne, Lancashire, Aug. 28 and Sept. 18, at twelve, Manchester, Hobson, off. ass.; Clarke and Co. Lincoln's-inn-fields, and Brooks, Ashton-under-Lyne, sals. Date of sat, Aug. 8. Bankrupt's own petition.

PATTERSON, JOHN, tea dealer and grocer, Tonbridge, Kent, Aug. 27, at half-past eleven, Oct. 2, at twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Tewenshead, Howland-st. sol. Date of sat, Aug. 18. Bankrupt's own petition.

THORNTON, JOHN, carpenter and builder, St. Saviour, Norwich, Sept. 2 and 30, at eleven, Basinghall-st. Com. Goulburn; Follett, off. ass.; Jay, Bucklebury, and Jay and Pilgrim, Norwich, sals. Date of sat, July 20. N. Ling, plumber, Norwich, pet. cr.

WARD, EDWARD, corn dealer, Medbourne, Leicestershire, Sept. 16 and Oct. 8, at twelve, Birmingham, Com. Daniell; Bittleston, off. ass.; Rawlings, Market Harborough, and James, Birmingham, sals. Date of sat, Aug. 11. Bankrupt's own petition.

Meetings at Basinghall-street.

Gazette, Aug. 14.

Hart, W. hat manufacturer, High-st. Whitechapel, Sept. 8, at eleven, and—**Heathorn, J. L.** shipowner, Abchurch-lane, Aug. 25, at one, proof of debts.—**Lemon, W. B.** ironmonger, Croydon, Sept. 4, at half-past one, and—**Miller, J.** painter, Whitebury-st. Sept. 4, at one, and—**Pitch, J. W.** tailor, 42, Sackville-st. Piccadilly, Sept. 4, at two, div.—**Woodbridge, J.** saddler, Reading, Sept. 10, at two, and—

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Smith, J. cheesemonger, Wellington-st. Newington-caneway, Sept. 8, at twelve.—**Soul, E.** bookseller, Tabernacle-walk, Sept. 8, at half-past eleven.

Gazette, Aug. 18.

Lemon, W. B. ironmonger, North-end, Croydon, Sept. 11, at half-past one, div.—**May, S.** watch manufacturer, Myddleton-st. Sept. 3, at twelve, proof of debts.—**Moir, R.** stationer and jeweller, West Cowes, Sept. 5, at eleven (by order of the Court of Review), last exam.—**Miller, J.** painter and glazier, Whitebury-st. Hampstead-rd. Sept. 11, at one, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Blurton, J. T. wine merchant, Piccadilly, Sept. 10, at eleven.—**Kent, B.** lodging-house keeper, Roeherville, Sept. 10, at two.

Meetings in the Country.

Gazette, Aug. 14.

Burroughs, B. M. ironmonger, Liverpool, Aug. 28, at eleven, Liverpool (adj. May 29), last exam.—**Cutcliffe, C. N.** surgeon and apothecary, Pilton, near Barnstaple, Sept. 9, at eleven, Exeter, and Sept. 19, at one, div.—**Gill, W.** corn merchant, Warrington, Aug. 28, at eleven, Manchester (adj. July 10), last exam.—**Griffiths, T.** joiner, Liverpool, Sept. 8, at eleven, Liverpool, and—**Heg, S.** worsted manufacturer, Colne, Aug. 25, at twelve, Manchester (adj. July 28), last exam.—**Hooke, W.** leather dresser, Sheffield, Sept. 11, at eleven, Sheffield, and second and fin. div.—**Jackson, T.** worsted spinner, Salte Hebble, Halifax, Sept. 8, at eleven, Leeds, and Sept. 11, at eleven, first div.—**Maguire, T.** draper, Birmingham, Sept. 16, at twelve, Birmingham, and—**Oliver, T.** livery stable keeper, Presbury, Sept. 14, at eleven, Bristol, and—**Senior, J.** brewer, Salford, Aug. 20, at twelve, Manchester (adj. Aug. 7), last exam.—**Wilkinson, J.** and Z. worsted stuff manufacturers, Clayton High-st. Bradford, Sept. 22, at eleven, Leeds, and, first div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Blackburn, J. cloth manufacturer, Birstall, Sept. 15, at eleven, Leeds.—**Bradley, W.** flax spinner, Leeds, Sept. 8, at eleven, Leeds.—**Bury, G.** dentist, Handsworth, Sept. 17, at twelve, Birmingham.—**Glover, E.** publican, Stoke-upon-Trent, Sept. 18, at eleven, Birmingham.—**Irvine, J.** ironmonger, Liverpool, Sept. 8, at twelve, Liverpool.—**Pitt, C.** victualler, Bristol, Sept. 8, at eleven, Bristol.—**Taylor, W.** share broker, Worcester, Aug. 17, at eleven, Birmingham.—**Willam, W.** rope manufacturer, Liverpool, Sept. 11, at eleven, Liverpool.

Gazette, Aug. 18.

Cerne and Telo, merchants, Liverpool, Aug. 25, at eleven, Liverpool (adj. Aug. 6), last exam.—**Davis, J.** miller and provision dealer, Broadway, Worcestershire, and Heaton Norris, Aug. 22, at eleven, Birmingham (adj. Aug. 7), last exam.—**Durden, E. H.** manufacturing chemist, Stan-dish, Oct. 2, at eleven, Bristol, and—**Garrod, J.** sen. and Garrod, J. jun. flax manufacturers, Leeds, Sept. 8, at eleven, Leeds, and Sept. 11, at eleven, first div.—**Hart, M.** victual-ler, Chesham Mendip, Sept. 21, at twelve, Bristol, and—**Lead, J.** wine merchant, Wellington, Sept. 1, at twelve, Birmingham (adj. July 31), last exam.—**Maguire, T.** draper, Birmingham, Sept. 17, at twelve, Birmingham, and—**Marah, J.** grocer, Brewsd, Staffordshire, Sept. 18, at twelve, Birmingham, and Sept. 18, at twelve, div.—**Parsons, J.** edge-tool manufacturer, Wolverhampton, Sept. 3, at eleven, Birmingham (adj. July 28), last exam.—**Pope, C.** copper, zinc, brass wire, and iron hoop manufacturer, Gloucester, Sept. 10, at eleven, Bristol, and Sept. 11, at one, Bristol, final div.—**Pradon, R. B.** coal dealer, Leigh, Gloucestershire, Sept. 22, at one, Bristol, and Sept. 28, at one, div.—**Rothchild, J.** watchmaker, Bristol, Sept. 21, at twelve, Bristol, and—**Russell, J.** coal-merchant, Kidderminster, Sept. 5, at twelve, Birmingham (adj. July 31), last exam.—**Sier, J.** baker, Cheltenham, Sept. 22, at eleven, Bristol, and—**Southern, T.** grocer, Gloucester, Sept. 18, at two, Bristol, last exam.—**Stanton, D.** grocer, Bristol, Sept. 10, at eleven, Bristol, and—**Tappin, W. G.** and **E. G.** hosiers and gloves, Liverpool, Sept. 17, at eleven, Liverpool, sep. and of Taylor, Sept. 18, at eleven, sep. div.

Partnerships Dissolved.

Gazette, August 11.

Barrow, J. and Welch, C. coal merchants, Whitefriars, Aug. 7.—**Brooks, W. and Fielding, H.** nickel refiners, Birmingham, Aug. 8. Debts paid by Fielding.—**Crawford, C.** and **A. confectors**, Hulme, Aug. 6. Debts paid by C. Crawford.—**Creed, J. and T. B.** lightermen, Great Hermitage and Sampson's-garden, Aug. 10.—**Dyson, J.** and **Jackson, J.** corn millers, Leeds and Oulton, April 23, 1844.—**Ferris, J. and Hawes, G.** shirt makers and hosiers, Piccadilly, July 21.—**Garrett, E. and Dulling, J.** attorneys, Wellington, Aug. 6. Debts paid by Dulling.—**Headfield, W.** and **Saunders, J.** machine makers, Manchester, Aug. 7. Debts paid by Saunders.—**Harden, W. G. and Howard, H.** farmers, Benenden, July 22.—**Horwood, J. and Monkman, J.** millwrights and cotton spinners, Oldham, Aug. 4. Debts paid by Monkman.—**Hoskins, T. and H. plumbers**, Tranners and Liverpool, Aug. 8. Debts paid by T. Houldin.—**Howell, T. and Warren, T. A.** surgeons, Princes Risborough, July 31. Debts paid by Warren.—**Jackson, J. and Smith, J.** confectioners, Nottingham, July 27.—**Kinnair, R. and Blum-feld, F.** surgeons, Gloucester, Aug. 5.—**Lazarus, C. and Major, H. M.** wine merchants, Mansell-st. Aug. 11. Debts paid by Lazarus.—**Newcome, J. W. Clemson, W. and Lewis, J. R. J.**, and **L. J.** under the firm of the Langley-field Colliery Company, Dawley, Aug. 3.—**Nichols, T. and Hepworth, W. S.** booksellers and printers, Nottingham, Dec. 5, 1844.—**Parkinson, T. and Peak, T.** joiners, Manchester, Aug. 1.—**Powell, E. and Bethell, J.** spindle and fly manufacturers, Manchester, Aug. 7. Debts paid by Bethell.—**Prole, W. W. and Seales, J.** wine merchants, Dunster-court, June 1. Debts paid by Prole.—**Ramsay, C. Barlow, G. Turner, J. and Williamson, R.** printers, Manchester, July 1. Debts paid by Ramsay and Barlow.—**Ray, R. and Wynne, T.** manufacturers of china, Stoke-upon-Trent, Aug. 10. Debts paid by R. Ray.—**Richford, T. and Bickham, C. C.** brewers, Reading, Aug. 8.—**Royce, R. and Worley, C.** brewers, Manchester, Aug. 7. Debts paid by Royce.—**Sanderson, C. and Murray, H.** wine merchants, Upper Thames-st. Aug. 8.—**Sparks, A. and R. S.** china dealers, Preston, Aug. 7.—**Steele, J. and Ray, R.** earthenware manufacturers, Stoke-upon-Trent, Aug. 10. Debts paid by Ray.—**Tyndall, T. H. W.**, and **W. attorneys**, Birmingham, so far as regards W. Tyndall, April 30. Debts paid by remaining partners.—**Warren, T. and Green, R.** sword cutlers, Curator-st. Aug. 10.—**Withers, J. and Wyatt, D. I.** hat manufacturers, Bristol, Aug. 8. Debts paid by Withers.—**Woodgate, J. and W. joiners**, Witton, May 29.

Gazette, Aug. 14.

Adcock, D. and A. woollen drapers, Watford, July 31.—**Allen, H. H. and Tyndall, E. J.** law stationers, Chancery-lane, July 27.—**Bayes, W. J. and F. P.** chemists, Clapton-aq. and King's Lynn, July 3. Debts paid by W. J. Bayes.—**Baxter, T. and Roberts, G.** rulers, Manchester, Aug. 7. Debts paid by Baxter.—**Brereton, T. and A. maltsters**, Frodsham, Halton, and Runcorn, Aug. 12.—**Carroll, J. and Blake, J.** advertising agents, Strand, Aug. 14. Debts paid by Carroll.—

Forrest, T. H. Earl-st. and Greenhithe, and **Walker, J.** Stone, corn merchants, Aug. 14. Debts paid by Walker.—**Gardiner, J. Nicholl, J. and Pettigrew, G. H.** ironmongers, King-st. Snow-hill, Aug. 12.—**Gray, W. C. and J. J.** Gilmen, Bridge-rd. Lambeth, Aug. 12. Debts paid by W. C. Gray.—**Hakewill, H. P. and M. L.** E. dress makers, New Bond-st. Aug. 8. Debts paid by Hakewill.—**Knight, G. and Drey, T.** Little Saffron-hill, Aug. 7. Debts paid by either partner.—**Leigh, R. and Warder, T.** attorneys, Bardon, 25th Oct. next. Debts paid by Warder.—**Lowry, E. W. and Brown, J.** general brokers, Liverpool, Aug. 8. Debts paid by Brown.—**Masters, J. and T.** drapers, Abing-gavenny, Aug. 12.—**Mejer, M. K. and Wallace, J.** merchants, Cotton's-wharf, Aug. 12.—**Mence, A. A. and E. D.** milliners, Argyle-st. Aug. 14. Debts paid by A. A. Mence.—**Mills, G. A. and Jay, C.** coal merchants, Blackwall, Aug. 6.—**New-house, I. and Foden, J.** drapers, Fox-hill-bank, Aug. 18. Debts paid by Foden.—**Oliver, J. Stobart, M. Hopkins, J. C. O'Brien, D. Robinson, J. Canfield, S. Rowlandson, S. Humble, F. Dommon, W. E. Borne, J. Shields, J. Reed, T. (deceased) and Middleton, J.** brewers, as the West Ancland Brewery Company, so far as regards John Oliver, July 1.—**Oliver, E. and Head, W. J.** builders, Brighton, Aug. 11.—**Perry, W. and Jackson, E.** corn dealers, Wombourne, Dec. 25, 1844.—**Shelton, G.** sen. and jun. hosiers, Nottingham, June 30.—**Sydney, S. and Bonell, T.** iron founders, Birmingham, Aug. 11. Debts paid by Bonell.—**Tucker, F. H. and Harrison, T.** surgeons, Halifax, Aug. 7. Debts paid by Tucker.—**Willetts, W. and Rogers, J.** file makers, Bilston, July 23.—**Wood, W. and Borne, T.** booksellers, Featherstone-st. Aug. 11.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Aug. 11.

Brigshaw, J. baker, Freetown, Aug. 24, at half-past eleven.—**Burgess, J.** chandler's shopkeeper, Lewisham, Aug. 24, at one.—**Cattle, H.** tailor, Great Queen-st. Aug. 24, at twelve.—**Chaplin, B. G.** butcher, Halesd, Aug. 24, at eleven.—**Choinard, G. J.** post. Brompton-st. April 2 and Aug. 2, at one.—**Comrie, J.** estate agent, Fulham, Aug. 28, at eleven.—**Crake, H.** carrier, York-road, Lambeth, Aug. 24, at three.—**Crookhurst, G.** wheelwright, Lambeth, Aug. 24, at twelve.—**Dallinger, J.** cooper's printer, Newark, Aug. 24, at eleven.—**Goode, R. E.** out of business, Great Tower-st. Aug. 13, at one.—**Gray, J.** cheese dealer, Maccombe, Aug. 12, at half-past twelve.—**Hill, G. F.** commission agent, Maiden-lane, Aug. 12, at half-past eleven.—**Mit-royd, E.** turner, Nottingham, Aug. 20, at half-past eleven.—**Mortimer, T.** plasterer, Westbourne-st. Finsbury, Aug. 12, at twelve.—**Overs, C. H.** out of employ, Foster-st. Horton New Town, Aug. 24, at eleven.—**Parsons, E.** carpenter, Cambridge, Aug. 12, at half-past eleven.—**Spillers, G.** waiter, Milton, Aug. 24, at eleven.—**Sperry, T.** out of business, Aston-st. Waterloo-road, Aug. 12, at twelve.—**Terrard, J. J.** tailor, Chancery-lane, Aug. 24, at half-past eleven.—**Wentham, H.** general shopkeeper, Marsh Bank, Aug. 13, at one.—**Whetton, W.** butcher, Duddington, Aug. 24, at twelve.—**Wooller, G.** shoemaker, Boddington, Aug. 24, at eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Beak, C. farmer, Lawrithton, Glamorgan-shire, Sept. 14, at eleven, Bristol.—**Hardisty, G.** cordwainer, Calverley, Aug. 21, at eleven, Leeds.—**Brama, J. P.** public-house keeper, Aug. 21, at eleven, Bristol.—**Gummarwall, B.** wool-comber, Tong, Aug. 21, at eleven, Leeds.—**Holmes, W.** milkman, Stoke-upon-Trent, Aug. 20, at eleven, Birmingham.—**Holt, W.** beer retailer, Huddersfield, Aug. 21, at eleven, Leeds.—**Ince, G.** hair dresser, Wigan, Aug. 17, at twelve, Manchester.—**Pickering, P.** retail butcher, Liverpool, Aug. 14, at eleven, Liverpool.—**Rapinolds, G.** rope-maker, Wakefield, Aug. 21, at eleven, Leeds.—**Saunders, J.** saddle-tree maker, Rotherham, Aug. 18, at eleven, Exeter.—**Trace, J.** butcher, Exeter, Aug. 18, at eleven, Exeter.—**Watson, H. T.** saddler, Gainsborough, Aug. 19, at eleven, Hull.—**Wyatt, W.** ginger beer manufacturer, Liverpool, Aug. 18, at eleven, Liverpool.

MEETINGS IN THE COUNTRY.

Rushforth, J. plasterer, Carlisle, Sept. 4, at twelve, Newcastle.

Gazette, August 14.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Boyle, H. brewer, Ryham, Aug. 22, at half-past ten.—**Seymour, R.** builder, Poole, Aug. 24, at half-past twelve.

PETITIONS TO BE HEARD IN THE COUNTRY.

Barlow, R. portmanteau manufacturer, Liverpool, Aug. 18, at half-past ten, Liverpool.—**Burge, J.** butcher, Bristol, Aug. 21, at eleven, Bristol.—**Burrows, B.** out of business, Cheltenham, Aug. 21, at half-past one, Bristol.—**Guest, E. H.** saddler, Leigh, Aug. 19, at twelve, Manchester.—**Hosmen, T.** tobacconist, Worcester, Aug. 20, at half-past ten, Birmingham.—**Jones, H.** provision dealer, Liverpool, Aug. 18, at half-past ten, Liverpool.—**Mickle, G.** tailor, Liverpool, Aug. 26, at twelve, Liverpool.—**Mills, J.** coal miner, Rochdale, Aug. 21, at twelve, Manchester.—**Napper, C.** clerk, Craike, near Easingwold, Aug. 18, at eleven, Leeds.—**Paget, J.** chairman, Bath, Aug. 20, at eleven, Leeds.—**Price, W.** coal agent, Cardiff, Aug. 20, at half-past twelve, Bristol.—**Smalley, R.** delphin, Oswaldtwistle, Aug. 19, at twelve, Manchester.—**Wakem, E.** butcher, Highweek, Aug. 20, at one, Exeter.—**Woods, J.** fishmonger, Manchester, Aug. 21, at twelve, Manchester.

From the Gazette of Friday, August 21.

Bankrupts.

Moore, J. C. bookseller, Strand.—**Carendish, G. A.** clerk, Finchley.—**Miller, J.** baker, Mary-street, Horton, Old-town.—**Mumier, L.** hotel keeper, Leicester-place, Leicester-square.—**Murrell, W. G.** surgeon, Leadenhall-street.—**Ten W. corn-dealer**, Halifax, Yorkshire.—**Sutcliffe, J.** and **J. and Berry, W.** cotton spinners, High-town, Yorkshire.—**Taylor, J.** manufacturer, Meltham, Yorkshire.—**Eberley, R. H.** stock and share broker, Halifax.—**Wood, C. T.** corn-factor, Liverpool.—**Mundy, E.** house agent, Liverpool.—**Tate, H. and Nash, R. L.** stock brokers, Bristol.

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

Wednesday, July 22.
Re WEBB, a Lunatic.

Practice in lunacy—Alleged lunatic abroad—Carriage of commission—Appointment of committee—Committee of the person—Liberty to attend the execution of the commission—Incumbrancer.

Remilly and Bask supported a petition for a commission of lunacy against Mr. John Webb, an alleged lunatic, who was then under medical treatment in a lunatic asylum in Paris. He was the illegitimate son of Sir William Webb, who had left three natural children, James, John, and Frederick. To James he had devised a large estate in Yorkshire, in strict settlement, with remainder in strict settlement to John, remainder in like manner to Frederick. To John he devised large estates in Lincolnshire, in strict settlement, with remainder to James, and the ultimate remainder to Frederick. To Frederick he devised estates in Northamptonshire, with remainder to James, and the ultimate remainder in strict settlement to John. James had died without issue and unmarried, and the alleged lunatic, John, was in the possession of the Lincolnshire and Yorkshire estates, as tenant for life. John had never been married, but a lady had lived with him as his wife for twenty-three years, by whom he had one daughter, Miss Clara Julia Webb, who opposed the issuing of the commission. Frederick had married and died, leaving one daughter, who was married to Captain Palmer; and a son, John William Webb, an infant, who was entitled in remainder to the Lincolnshire and Yorkshire estates, in the event of John Webb, the lunatic, dying without lawful issue. The petition was presented in the name of the infant. The yearly rental of the Yorkshire estate was 6,075*l.* and of the Lincolnshire estate, 5,870*l.*; together, 12,900*l.* John Webb had a passion for buying pictures, and in that way, before his insanity, had become indebted in 58,000*l.* which had been advanced by an insurance company upon a mortgage of the life interest and policies of assurance on John Webb's life. The interest on the mortgage, and the premiums on the policies of insurance, consumed about 5,000*l.* of the income; the expenses of management, repairs, and incidental outlays on the estate were, according to the affidavit of Mr. Walford, John Webb's solicitor and steward, 2,500*l.* Mr. John Webb had been residing abroad for many years. He had made a will several years since in favour of his natural daughter, of which Mr. Walford was appointed an executor, and about the validity of which there was no doubt. In November 1845 John Webb became insane, and was placed in a lunatic asylum in France, and intelligence of his illness was communicated to Captain and Mrs. Palmer, through Mr. Walford. At this time he had intervals nearly lucid, and hopes

were entertained of his recovery on his removal to another asylum, kept by Messrs. Barber and Froisart, where an improved treatment was adopted. This removal occurred in April 1846. The petition was first opened before Lord Lyndhurst, on the 29th of May last, when his lordship ordered it to stand over until the next seal after Trinity Term, in order to ascertain what effect the change of treatment might have upon the patient's health. It now appeared by the affidavits of Sir A. Chermide and an eminent French physician, that there had been no improvement, and the prospect of the patient's recovery was almost hopeless. He had improved up to the 24th of June, and since then had relapsed.

The LORD CHANCELLOR.—Then why this contest?

Remilly.—There is a petition by Miss Clara Webb to suspend the commission.

The LORD CHANCELLOR.—If the unreasonableness of mind is not disputed, and the alleged lunatic is not under such care as the Court sometimes trusts persons in that condition without a commission, the commission must issue as of course.

Parker and Walford, for Miss Clara Webb, admitted the unreasonableness of mind, and that no material improvement had taken place; but contended that, as the property was well taken care of, and the personal estate of the alleged lunatic consisted only of a quantity of pictures, not likely to realize more than 10,000*l.* it was desirable to avoid expense. The patient was in a state to be aware of the inquiry and its nature; and that knowledge, it was believed, would have a most injurious effect upon his health. The lady with whom he had lived so long, and his daughter, attended him with the most affectionate care, and the estate to which the petitioner was entitled in remainder could not in any way be injured by the suspension of the commission. That the petitioner was only the son of the natural brother of the lunatic. There would also be a difficulty in executing the commission, the alleged lunatic being abroad. That if his lordship decided that a commission must issue, then Miss Webb and her mother contended that they should have the carriage of the commission.

The LORD CHANCELLOR.—They may have an interest in shewing that he is not a lunatic.

Parker.—The petition is presented by Sir Samuel Scott, the lunatic's banker, as the next friend of Miss Webb, who is his sole residuary legatee. Sir S. Scott is an executor, with Mr. Walford, of Mr. Webb's will, which was made in 1840. They admit the lunacy.

The LORD CHANCELLOR.—They may apply to have the personal care of Mr. Webb.

Parker.—There had been much vexatious opposition by Captain Palmer in Paris to the removal of Mr. Webb into an asylum, where improved treatment was adopted, and it was only after an appeal to the French tribunals, by which Captain Palmer was condemned in costs, that such removal was effected.

The LORD CHANCELLOR.—All that relates to the state of his mind; I do not see that that is now material. The question now is as to the carriages of the commission.

Parker.—The persons who opposed measures calculated for the comfort of the alleged lunatic ought not to have the carriage of the commission.

Bacon, for the insurance office, being creditors on mortgage for 58,000*l.* offered that the company would undertake the carriage of the commission if the Court authorised them to do so.

Parker cited *ex parte Tomkinson*, 1 Ves. & Bea. 57, to shew that the nearest relations, though opposing the commission, will be intrusted with the carriage of it.

The LORD CHANCELLOR.—The only question is as to the carriage of the commission. It is admitted that he is in the same state of mind as in April last, when the petition of the petitioner, John William Webb, was presented. There is also a petition for the carriage of the commission by the West of England Insurance Company. But the directors of that office have no other interest in the matter, than from having lent money on the lunatic's life estate; they have no connection with the family, and they have no pretence for seeking the carriage of the commission. Then the natural daughter seeks to delay the issuing of the commission, and suggests that, with reference to Mr. Webb's state of mind, it is unnecessary. At any rate she seeks delay, and there is an indisposition, on her part, that the commission should proceed. The object is to bring the matter before the jury in the most unobjectionable mode. I think there is most chance of the matter being properly brought before the jury by the petitioner who is the next tenant in tail of the estate, though he is not by law related to the lunatic. It is another question who should have the care of the person and estate of the lunatic.

Bacon asked that the insurance company may have leave to attend the execution of the commission.

The LORD CHANCELLOR.—The company have that sort of interest that they may have liberty to attend upon the question of appointing the committee of the estate, but it must be at their own expense.

Walford.—It is the practice now to appoint the committees of the person and estate at the time of executing the commission; and it is an invariable rule to appoint the persons proposed by those having the carriage of the commission, unless a very strong cause is shewn to the contrary.

The LORD CHANCELLOR.—If that is the practice it is one which may be productive of great inconvenience; for if the finding of the jury should afterwards be contested, the property will have been taken away, although the person may eventually prove not to be a lunatic. It is a very improper practice, and I cannot permit it to exist.

Parker asked that Miss C. Webb might be at liberty to propose a committee of the person.

The LORD CHANCELLOR.—Such a proposal cannot be made without an order for that purpose; yet, if the practice said to have been adopted be allowed to exist, there is no opportunity of coming here for such an order. I cannot make an order for leave to propose a committee in anticipation of the finding of the jury. The only order I can make is, that she may be at liberty to attend the execution of the writ, and that no committee be appointed without a further order.

Parker asked for a direction that the estate may be managed in the same way as theretofore.

The LORD CHANCELLOR.—I have no jurisdiction to make any such order before the finding of a jury. There may be a commission to examine witnesses in Paris.

Bacon asked for the costs of the petition of the insurance company. The company have a large interest in the good management of the estate; there was a contest between the other parties, and the petition had put nobody to any unreasonable expense. They had offered to undertake the carriage of the commission.

The LORD CHANCELLOR.—This is the petition of a creditor coming in after petitions pending by members of the family. If any one incumbrancer may come in this way, twenty or thirty may come. The company presented the petition for their own protection, and must pay the costs of it.

ROLLS COURT.

Feb. 18, 19, 20, and April 17.

SPARLING v. PARKER.

Will—Construction—Charities—Mortmain Act—Tenant for life—Income in specie.

The testator in the cause, after directing the payment of his debts, gave certain sums to his executors in trust for certain charities, and then after making a specific bequest, he gave all the residue of his real and personal estate to his executors in trust to invest all such moneys as should be uninvested at his death, and also all his mortgages, shares in the Liverpool Gas Light, and other companies, &c. that could be immediately sold without disadvantage, and otherwise as soon as may be in such manner, whether in the purchase of lands as they shall judge most advantageous, and convenient to the estates "I already possess;" and he directed his executors to receive the interest, rents, and profits from all his real and personal (until converted into real) estate, and after deducting expenses to pay over the residue to Mrs. P. for life, and after her decease, &c. The pure personality was not sufficient to pay all the legacies, and there was a delay of four or five years in converting the personality.—Held that the shares of the testator in the several companies, whether incorporated by Act of Parliament or not, but by the constitution of which the shares were made personal estate, and to devolve as such, were applicable for the purpose of paying the charity legacies, and did not come within the Mortmain Act.—Held also, that Mrs. P. the tenant for life, was entitled to the income of the residuary estate in specie, till conversion.

Richard Sparling Berry, by his will dated the 5th of October, 1837, after directing the payment of his debts, and the interment of his remains in a private piece of ground, gave to William Sparling and two other persons whom he made his executors four several sums of 500*l.* sterling, on trust to invest the same in such manner as should be most advantageous, and pay the interest thereof on the 1st day of October in each year, in rewards to such poor, honest, and industrious people, resident within four several places therein mentioned, as should without parochial relief or assistance meritoriously educate their children, and train them to the path of piety and virtue. The testator then desired that his relations, Colonel and Mrs. De Whelpdale, should have power to select such of his household goods, furniture, &c. and personal effects not being moneys or securities for money which should be at his usual place of residence at his death. He then gave all the rest and residue of his real and personal estate and effects to his executors, "on trust; that they should invest all such moneys as should be uninvested at the time of his decease, after providing for the bequests thereby given; and also all the amount of all mortgages, shares, &c. as could be immediately sold without disadvantage and otherwise, as soon as might be, in such manner,

whether in the purchase of lands, as they should judge most advantageous and convenient to the estates he already possessed; and he directed that his said executors should receive the interest, rents, and profits yearly, or half-yearly, accruing from all and every part of his said real and personal (till converted into real) estate, as they severally should accrue due; and that, after deducting all charges and expenses in the management of the property, they should pay over the residue, yearly and every year, during the term of her natural life, to Eliza Helen (the wife of the Rev. William Parker, of, &c. heretofore Eliza Helen) Welch, youngest daughter of, &c." and the testator directed that her receipts should be sufficient discharges, and that the property should be to her separate use; and after her decease he devised to several persons in remainder, as therein mentioned. There was also, among others, a bequest to the executors of 500*l.* each.

The testator died soon after making his will, which was dated and signed in pencil only, and was not executed so as to pass real estate. Application being made to the Ecclesiastical Court for probate, it was refused, but this decision was reversed by the Privy Council, and probate was accordingly granted on the 2nd December, 1841, in the province of Canterbury, and on the 3rd of January, 1842, in the province of York. The executors then instituted a suit for the administration of the testator's estate; and on the 1st of February, 1843, a decree was made therein, referring it to the Master to make certain inquiries as to the state of the property, &c. On the 1st of March, 1845, the Master made his general report, whereby he found, among other things, that the testator's personal estate, not specifically bequeathed, consisted, at the time of his death, of mortgage securities, other chattels real, bonds, &c. but that there were no leaseholds. He also found that there were no chattels real but the mortgages and certain shares in railway and other companies, and that these shares were, by the constitution of the several companies, declared to be personal estate; and in the schedule to the report, the shares were fully described. They consisted of sixty 50*l.* shares in the Edinburgh and Glasgow Railway Company, forty-five 20*l.* shares in the Edinburgh, Leith, and Newhaven Railway Company, five 100*l.* shares in the Liverpool Gas Light Company, ten 20*l.* shares in the Lancaster Gas Light Company, and forty 100*l.* shares in the Harrington Dock Company. The Liverpool Gas Light Company was incorporated by Act of Parliament (58 Geo. 3), and was thereby empowered to purchase lands and buildings, and the shares were to be deemed to be personal property, and transmissible as such. The Lancaster Gas Light Company is a partnership, constituted by deed of the 20th of January, 1836, whereby the stock to be raised was to be assignable in a prescribed form, and it was provided that the shares in the lands, &c. should be deemed personal estate. The Harrington Dock Company is also a partnership, constituted by deed, and it is thereby provided that the shares shall be deemed to be personal estates, and transmissible as such.

Some of the mortgages had been realized under the decree of the Court, but part of them, together with the whole of the railway and other shares, was still outstanding. The pure personality, independently of the mortgages and shares, was insufficient to pay debts and legacies, and hence a question arose as to whether, under the 9 Geo. 3, c. 36, the charity legacies should abate in proportion to the amount thereof, payable out of the proceeds of the shares. Several sums had from time to time been paid to Mrs. Parker, the tenant for life, in respect of the income of the personal estate; and a second question arose as to her right to the actual income of the personality as it stood at the death of the testator till conversion and investment by the trustees, or only to so much thereof as would be equal to the dividends, interest, or produce arising therefrom, if converted and invested. The cause now came on upon further directions.

Turner (with him Gildart), for the plaintiff, contended that the shares in the companies in England were applicable to the payment of the charity legacies, it being admitted on all hands that the Scotch shares were so. (*Mackintosh v. Townsend*, 16 Ves. 330; *March v. Attorney-General*, 5 Beav. 483; *Attorney-General v. Giles*, 5 Law J. N. S. Ch. 44; App. Shel. St. Mortm. 988; *Du Houmelin v. Sheldon*, 1 Beav. 79; *Bligh v. Brent*, 2 Y. & C. Exch. 268; *Thompson v. Thompson*, 1 C. C. C. 38).

Purvis (with him Walpole) contended that though the shares, for the purpose of devolution, were to be considered personality, yet that being aliquot parts of an aggregate whole, consisting of (among other things) land, they must be real estate. They cited *Buckridge v. Ingram*, 2 Ves. jun. 652; *Knap v. Williams*, 4 Ves. 430, n.; *House v. Chapman*, 4 Ves. 542; *Re v. Bates*, 3 Price, 341; *Ex parte Lancaster Canal Company*, *Re Dilworth*, 1 Deac. & Chit. 411; *Bradley v. Holdsworth*, 3 Mee. & W. 422; *Baxter v. Brown*, 7 Mnn. & Gr. 198; *Barker v. Hay*, 9 B. & Cr. 489; *Attorney-General v. Mangles*, 5 Mee. & W. 120. The testator intended to give Mrs. Parker the income in specie till conversion. (*Barnard v. Sitwell*, 6 Ves. 520; *Bathune v. Kennedy*, 1 Myl. & Cr. 114.)

Revell (with him Whitmarsh, jun.) for Charles Sparling, the first remainderman, contended that the charities must abate, and that Mrs. Parker was not entitled in specie to the income. (*Harrison v. Harrison*, 1 Russ. & My. 71, 1 Tam. 273; *Alcock v. Soper*, 2 Myl. & Cr. 699; *Pickering v. Pickering*, 4 Myl. & Cr. 289; *Douglas v. Congreve*, 1 Kee. 410; *Caldecott v. Caldecott*, 1 Y. & C. C. C. 312; *La Zerrere v. Bulmer*, 2 Sim. 18.)

Tirney (with him Perry), for John and William Sparling, cited *Taylor v. Clark*, 1 Hare, 161, and stat. 38 Geo. 3, c. 60, s. 99, by which the land-tax is made personal estate.

Turner in reply.

THE MASTER OF THE ROLLS.—The question as to the Mortmain Act is one of considerable importance and great difficulty, and I must look into it further, and reserve my opinion upon it. As to the construction of the will, however, and the question raised as to the interest of the tenant for life, I do not think there is much difficulty. Every case of the kind must depend on its own peculiar circumstances. Questions of this kind continually arise, whether the tenant for life is entitled to enjoy property in specie, either during life, or during some particular limited period; and what is to be considered is, whether the tenant for life is entitled, under the circumstances of this case, to enjoy the property in specie, until the conversion is actually made. There is no point made here that this is perishable property, or that it is running out; though, it is true, it is not that sort of property in which the Court would direct investments to be made, it is, nevertheless, permanent property; and we are to find out what it is the testator intended should be done with it, till the time of conversion should arrive, which he himself has directed to be adopted. I find nothing in the will at all pointing to the notion that there was to be an immediate sale, and conversion and investment of the produce of the sale in stock, till it could be afterwards invested in land. What the testator says is this:—"I give, devise, and bequeath all my moneys, securities for money, and also all my real property," &c., to the trustees, "upon trust that they shall invest all such moneys as shall be uninvested, at the time of my decease, after providing for the bequests hereinbefore and hereinafter contained, and also all the amount of all mortgages, shares, &c. as can be immediately sold without disadvantage and otherwise as soon as may be, in the purchase of lands as they shall judge most advantageous and convenient to the estates I already possess." The estates were not devised by his will, because it was not duly executed, but he intended so to devise them, because he has so expressed it, and he has allowed a postponement of the time of sale with reference to the advantage of those estates which he intended to devise. He then directs the trustees to receive the interest, rents, and profits yearly, or half-yearly, arising from all and every part of his real and personal estate, until converted into real property. He does not direct an immediate sale; but having the word "immediately" connected with the words "without disadvantage," and having the words "so soon as may be" connected with the words "as they shall judge most advantageous and convenient to the estates I already possess;" and having regard to those causes of postponement which he had specially referred to, he directs that the interest, rents, and profits of his personal estate should be paid to this lady, Eliza Helen Parker, for her life, and then after her death he gives, devises, and bequeaths all his said real and personal estate not converted into real estate, to Charles (as he believed), the second son of William Sparling, then a captain in her Majesty's 15th Light Dragoons, and to his first and other sons in the usual mode of succession, failing whom he gives, devises, and bequeaths all his real and personal estate, until converted into real estate, to John, the third son of William Sparling, and so on, with another like limitation over. I cannot, certainly, collect from this will that the testator intended that there should be a conversion of his personal property into real immediately, come what might. Now, a trustee having a discretion to exercise his judgment in that way, and being called upon to exercise it, would not be allowed to do so in such a capricious manner as to be injurious; and a good deal of the discussion proceeded upon the supposition that there had been some want of discretion on the part of the trustees. That, however, is disavowed, and very properly; but the argument proceeded, in part, upon that footing. Nobody had any authority to sell for four years after the death of the testator, and therefore no fault is attributable to any one. The testator has said this:—"Let there be a conversion, if my estate requires it, but in the mean time, and until the conversion takes place, I give the profits to the tenants for life." The conversion which he contemplated could not take full effect, first of all, because his will was disputed and not proved, and then, when it was established, it did not affect the real estate; but that is no reason why we should try to escape from the intention which he has expressed, nor do I see my way, I confess, to escape from the direction which he gives. He expressly says, that he means to comprise all that he

possesses, or that in any way belongs to him, of what nature, kind, or description soever; and that being the property which he calls his said real and personal estate, it is said that the rule of this Court is so absolute, that I must consider it the duty of the executors, who were not existing, to have converted it into real property within the year. I think I have no occasion here to revert to that doctrine which has been so much contested in this court, and as to which there have been so many decisions of different judges. It is very much to be regretted that there is no rule that can be relied upon on that subject. I think I am not at present called upon to decide it, because it appears to me that on the construction of this will the words of the testator authorize me to say, that the tenant for life shall have the income of the property, as it stood at the testator's death, from the time of his death till it shall be converted; and I think there should be directions for that purpose.

April 17.—THE MASTER OF THE ROLLS.—In this case the testator bequeathed certain legacies for charitable purposes; and with a view to the question whether any abatement of those legacies ought to be made under the operation of the Statute of Mortmain, the Master was directed to distinguish such parts of the testator's personal estate "as at the time of his death consisted of leaseholds, mortgage securities, or other chattels, real or otherwise, arising from or connected with land." The Master has found that the testator was possessed of no leasehold estates, but was possessed of several mortgage securities; and that other parts of his personal estate consisted of chattels, real or otherwise, arising from or connected with land, which were particularized and stated in the second part of the third schedule to his report, and which are there particularized as consisting of five 100*l.* shares in the Liverpool Gas Light Company, sixty 50*l.* shares in the Edinburgh and Glasgow Railway Company, forty-five 20*l.* shares in the Edinburgh, Leith, and Newhaven Railway Company, ten 20*l.* shares in the Lancaster Gas Light Company, and forty 100*l.* shares in the Harrington Dock Company. It is admitted that the Scotch railway shares do not fall within the provisions of the Mortmain Act; but with respect to the others, viz. the shares in the Liverpool Gas Light Company, the Lancaster Gas Light Company, and the Harrington Dock Company, a question is made whether they are interests in land of such a nature as to render them inapplicable for the purposes of charity under the statute. [Here his lordship described the constitution and objects of the companies, &c.] Each of these companies, and the Harrington Dock Company to a very large extent, is possessed of and entitled to land and real estate as part of its joint stock or capital, and each shareholder having an interest in an undivided portion of the aggregate of the joint stock capital, has, or must be supposed to have, some interest in the real estate which constituted part of that aggregate stock, that is, an interest that so much of the joint stock as consisted of land should be employed with the rest of the joint stock for the best advantage of the joint concern, and an interest in the clear produce which might arise from the sale of the joint stock, including the land, in case the company should be determined, and the affairs wound up and settled. The question is, whether this is such an interest in land as was contemplated by, or such as can be deemed to be within the true intent and meaning of the 9 Geo. 2, c. 36, s. 3. Is it such an estate or interest in land as can be brought within the meaning of the Statute of Mortmain? A shareholder in one of these companies, whether incorporated or not, has a right to receive the dividends payable on his shares, that is, a right to his just proportion of the profits arising from the employment of the joint stock, consisting partly of land; and he has also a right to assign his shares for value, but whilst he continues to hold his shares he has no distinct or separate right to the land, or any part of it. He is, indeed, interested in the employment of the land, but he cannot proceed against the land directly for any thing which is due to him, or make any part of the land his own in part satisfaction of any demand or claim he may have as a shareholder. He is not in the situation of a mortgagee, who has a legal interest in the land, and which land he may make his own absolutely by foreclosure; nor is he in the situation of a tenant in common, or a joint tenant, who may make part of the land his own; and if upon a dissolution or determination of the joint concern, he should become owner of any part of the land, it is only upon a new transaction, and by requiring a new title and right as a purchaser. If he dies, nothing descends to his heir, and his legal personal representatives do not acquire any share or any interest in the land different from that which the deceased shareholder himself possessed; and on the administration of the estate of a deceased shareholder, the shares which he may have possessed in the joint stock company, in the absence of special directions or circumstances, to be sold and converted into money to be otherwise invested. The Courts have held that if a man directs lands to be sold and the produce applied, either by itself or as part of a mixed fund, in payment of legacies to charity, the legacies, so far as their payment is made to depend

on the produce of the real estate, must fall as being plainly contrary to the intent and policy of the Mortmain Act, and marshalling is not allowed; but no case has determined that such shares as are now in question are within the meaning of the Act; and on the whole I am of opinion that a shareholder in such joint stock companies as are now under consideration is not in that character, entitled to any such estate, or interest in the land, falls within the true intent and meaning and operations of the Mortmain Act of 9 Geo. 2, c. 36. If the company continues, the share is only transferrable for money, and the shareholder has no right to the land; if the company be dissolved the whole property is sold, and the concern is wound up, and the shareholder only obtains his share of any surplus which there may be after satisfying all the demands of the concern. I am of opinion in this case that so much of the testator's assets as consisted of shares must not be applied so as to cause an abatement of the charity legacies.

March 27 and 28.

HARGRAVE v. HARGRAVE,
Practice—Injunction—Receiver.

A person claiming to be entitled to an undivided moiety of certain hereditaments, in common with another person in possession and receipt of the rents and profits, having moved for an injunction against the latter to restrain him from such receipt, and to appoint a receiver, the Court after consulting the authorities granted the motion.

The plaintiff and the defendant are brothers, or at least are supposed to be, but the defendant, denying the plaintiff's legitimacy, refuses to allow him the rents, &c. of an undivided moiety in certain hereditaments to which he is entitled if legitimate; and this suit is to enforce the claims.

Turner (with him Keyle), on behalf of the plaintiff, now moved for an injunction to restrain the defendant from receiving the rents and profits, and for a receiver. He cited *Louder v. Baddington*, 3 Dan. Ch. Pract. 417, 7th February, 1805, and *Taylor v. Jardine*, Reg. Lib. 8th March, 1840, not reported.

Perry opposed the motion, as being contrary to all principle as well as practice. It would be very inconvenient if such a practice were to prevail; and besides it had not been shown that the defendant was excluded. He cited *Calvert v. Adams*, 2 Dick. 478, and observed that the only case in which such an order could be found was that of *Reely v. Reely*, 2 Dick. 800; and in *Tyson v. Fairclough*, 2 S. & St. 142, Sir John Leach refused the motion. The right of the plaintiff was denied, though there had been an issue tried and the verdict was in his favour.

Turner, in reply.
The MASTER of the ROLLS said he would read the authorities, but saw no reason why it should not be done.

March 28.—His lordship made the order.

VICE-CHANCELLOR WIGRAM'S COURT.

July 8 and 17.

RANKIN v. HANWOOD.

Judgment creditor—Writ of execution—Decree—Priority.

When a judgment creditor has taken out a writ of execution against his debtor, although it may not have been executed in his lifetime, he notwithstanding acquires a priority of claim over the assets of his debtor in the hands of his executor, and a decree in equity for the administration of the debtor's assets will not interfere with his right of priority. Judgment creditors, however, not using due diligence in enforcing their claims may lose their right of priority over creditors where there is a decree for the administration of the debtor's assets in equity.

This was an application by creditors under a decree in equity for an injunction to restrain the sheriff of Surrey from proceeding to sell certain goods belonging to the testator in the cause, whose estate was directed to be administered by the decree for the benefit of creditors; the question turned on the effect of a judgment obtained, and writ issued in the lifetime of the testator, though execution had not been levied until after the death of the testator, whether the judgment creditor had thereby obtained a title to the goods of the testator prior to the creditors under the decree, which had not been obtained until after the death of the testator, but prior to the taking of the goods by the sheriff.

Judgment had been obtained against the testator on the 9th of December, 1845, and on the 10th of December next following a writ of execution issued, and *nulla bona* returned, on the 6th of April, 1846, a writ of execution again issued, and on the day following the testator died; and on the same day the writ of execution was placed in the hands of the sheriff, it appeared from the affidavits that the executors of the testator had locked up and concealed the goods in such a manner near Streatham that the sheriff's officer did not succeed in executing the writ by taking possession of the goods until the 2nd of July instant. The suit in which the

decree had been obtained had been filed by a mortgagee against the testator, and when he died it was revived against his executor, and on the 6th of June, 1846, a decree was made by consent, which directed the mortgaged premises to be sold, and if they proved insufficient to pay the mortgage debt, then and then only, an account of the assets of the testator should be taken and distributed for the benefit of creditors. The executors gave the judgment creditor and the sheriff notice of this decree on the 2nd of July inst.

Romilly and Pole moved for the injunction.

Rolt and Taylor opposed the application, and contended that the title of the judgment creditor to the goods of the testator was complete on the issuing of the writ of execution; that the death of the debtor did not alter his right; and had it not been that the executor of the debtor kept the goods concealed, the sheriff's officers would have had them in possession on the 8th of July; that this decree was not sufficient for the Court to issue an injunction upon, even though the Court considered a decree in equity should not be thwarted by a proceeding under a judgment at law. This was not a decree for the general administration of the testator's effects, it was only provisionally so, in case the property held in mortgage proved insufficient to pay the mortgagee's debt. The decree, to justify the Court to interfere with the proceedings of a creditor at law, ought to be absolute and unconditional, which was not the case in this decree. It might so turn out that no account of the assets could be taken under it, and if an injunction was granted, the judgment creditor might lose his opportunity of securing his debt at law, and, after, all not have the power of coming in to prove it under this decree.

The VICE-CHANCELLOR.—In this case the writ is in the hands of the sheriff, having issued in the lifetime of the debtor; the goods are also in possession of the sheriff; and if I refuse the injunction, the goods are gone, as there is no appeal. Should the plaintiff desire to have the Lord Chancellor's decision, I shall not give judgment in order to enable him to do so. My opinion is, that the creditor has a right to have his judgment executed.

Rolt and Romilly both agreed that they would be satisfied with his Honour's judgment.

The VICE-CHANCELLOR (after stating the facts of the case).—At the death of the testator, Kirk, the judgment creditor had the option to sue out a *scire facias* against the executor, or take the goods of the testator. He adopted the latter course. The question, then, was, what was the position of the executor? Suppose the writ had been put into the hands of the sheriff in the lifetime of the testator, the goods would then have been bound at and ever since his death; there never could have been an instant of time during which the executor could have dealt with the assets, unless in market overt (an exception in favour of a purchaser only), so as to have prevented Kirk from taking them in execution; if the executor had sold them by private contract, to raise money for any purpose of administration, or had delivered them to a creditor of the testator in satisfaction of a debt, Kirk might have followed them without noticing the executor. It was therefore strictly true, whatever the consequences might be, that at the death of the testator, supposing the writ to have been then in the hands of the sheriff, Kirk had a dominion over the goods paramount to that of the executor; or, in other words, the amount of the assets of the testator over which the executor had dominion adverse to Kirk's right, was the amount of the gross assets, minus the amount of Kirk's claim. The circumstance that the writ was not put into the hands of the sheriff until after the death of the debtor did not in point of reasoning make any difference, because the writ, when put into the hands of the sheriff, took effect upon its date, and was effectual by means of the proceedings had in the debtor's lifetime. It is further to be observed, that the creditors have no equity independent of the decree, however Courts of equity might encourage suits for the general administration of estates, for the sake of equality amongst creditors. The equity arose wholly out of the decree, which was in the nature of a judgment for the benefit of all creditors, and proceedings at law were only stayed because the decree could not be carried if the creditors were allowed to proceed at law. These observations, however, were not conclusive upon all cases in which the question might arise. No doubt a creditor who at the death of the testator was in the same position as Kirk, might, for the purposes of a motion like this, be held to have lost his advantage by delay in prosecuting his right at law, and perhaps by other circumstances; but in this case the creditor having by diligence recovered judgment against the testator in his lifetime, in a way which gave him the option adverted to, the rights and powers of the executor were from the beginning subject to the rights which the diligence of the creditor had thus acquired, and the assets which the executor had the power to bring for administration were subject to those rights. My judgment is grounded upon the decision of the case of *Lee v. Park*, 1 Keen. There will also be some useful observations found in the case of *Vernon v. Thelluson*, 1 Phil. 466. Mr. Rolt's client must bear the costs of this motion

against Mr. Romilly's client, who will be entitled to be paid out of the assets of the testator in the cause.

July 18 and 22.

COVENTRY v. THE EARL OF LAUDERDALE.

Will—Construction—Unmarried—Next of kin.

The word "unmarried," when used in a will or settlement, is flexible in its meaning, and may be construed as meaning "never having been married," or "discovered at the time of the death," according as it appears to best carry out the intention of the parties.

Lady Coventry, by her will, dated the 21st day of July, 1838, under power reserved to her under her marriage settlement, devised and bequeathed all the rest and residue of her moneys, accumulations of income, stock, funds, and securities, and all her personal estate and effects whatsoever, over which she had power of limitation or appointment by will, unto the Earl of Lauderdale, and Viscount Maitland, and Sir Antony Maitland, upon trust to convert such parts as did not consist of money at her death into money, and invest the same in the public funds of Great Britain, and stand possessed thereof upon trust during the joint lives of her husband the Earl of Coventry, and her son Henry Aurelius Coventry, and to pay the dividends and interest to her said son, Henry Aurelius Coventry, during the life of her said husband; and after his decease, in the event of her said son surviving him, upon trust to invest the annual income of her said residuary estate during the life of her said son, and from and after his decease, upon trust for the child or children of her said son (other than his eldest son), equally between those who should live to attain the age of twenty-one years, or, being daughters, should attain that age or be married; and in case there should be no younger children of her said son, and there should be an eldest son, then upon trust to pay the whole of the said residuary estate and the accumulations to the eldest son of her said son on his attaining twenty-one years of age; and in case of the death of her said son without leaving any child or children who should attain twenty-one years of age, or, being daughters, should attain that age or be married, then upon trust to apply the annual proceeds to the separate use of her daughter, Lady Holland, during her life; and after her decease to apply the said residuary estate and accumulations amongst the children of Lady Holland in the same manner as she had directed them to be distributed amongst the children of her son, Henry Aurelius Coventry; and in case her said daughter should die, leaving no child who should attain a vested interest in her said residuary estate, she directed her trustees to stand possessed thereof in trust for the person or persons of her blood and kindred who would be entitled to the same as her next of kin under the statute for the distribution of intestates' effects in case she had died intestate and unmarried, and appointed the said Earl of Lauderdale and Sir Antony Maitland executors of her will.

Lady Coventry died on the 11th of September, 1845, without having revoked the above bequests in her will, leaving her son, the said Henry Aurelius Coventry, and Lady Holland, her daughter, her only children and next of kin surviving her.

On the 12th of February, 1846, letters of administration, with her will annexed, were granted to the Earl of Lauderdale and Sir Antony Maitland by the Prerogative Court of Canterbury.

Lady Coventry survived her husband. Henry Aurelius Coventry was married and had children at the death of Lady Coventry; there are six of those children now living, consisting of sons and daughters, all under the age of twenty-one years.

In consequence of several questions of construction, both upon the settlements and the will of Lady Coventry, having arisen, a bill was filed on the 20th of April, 1846, to have the trusts of Lady Coventry's estate carried into effect under the decree of the Court. The infant children (except the eldest son) of Henry Aurelius Coventry were the plaintiffs; and the executors of Lady Coventry's will, and other parties beneficially entitled under it, were made defendants.

On the cause coming on for hearing, it was ordered to stand over to amend the bill, by making Henry Aurelius Beauchamp Coventry (eldest son of Henry Aurelius Coventry) a co-plaintiff.

The bill having been amended, the cause again came on for hearing, when it was submitted to the Court by Mr. Rolt, who appeared for the trustees and executors, whether the bill should not be further amended by making the next of kin of Lady Coventry, other than her son and daughter, or her grandchildren, parties; in consequence of the peculiar limitation of the residuary estate after the death of her son and daughter, without leaving children who should attain twenty-one years of age, or daughter who should attain that age or be married, he considered that this was the proper time to decide that question. The words of the trust for the next of kin were,— "interest for the person or persons of her blood and kindred who would be entitled to the same as her next of kin under the statute for the distribution of intestates' effects, in case she had died intestate and unmarried." At the time Lady Coventry made her will she was married; she had two children living: at her

death she was unmarried, having survived her husband and never married again; so that the construction turns upon the meaning of the word "unmarried." His Honour, without having the case argued, took a note of the cases from counsel, and said he would look into them, and give judgment another day.

THE VICE-CHANCELLOR.—The question here, as I understand it, arises upon the residuary clause of the will of the late Lady Coventry. The will begins by reciting a settlement under which she had a power of appointment over 19,000*l.* and then the appointment concludes with this clause:—"And in case my said daughter shall die, leaving no child who shall attain a vested interest in my said residuary estate, I direct my trustees to stand possessed thereof in trust for the person or persons of my blood and kindred who would be entitled to the same as my next of kin under the Statute of Distributions of intestates' effects, in case I had died intestate and unmarried." This question has already been decided by Lord Cottenham, upon an appeal from the Vice-Chancellor of England, in the case of *Maughan v. Vincent*, 9 Law Journal, 329; the only difference there was, that that was a case upon a marriage settlement; the Vice-Chancellor decided that the word "unmarried" must be construed as "never having been married," to the exclusion of the children of the marriage. Lord Cottenham, on the appeal, did not consider the word "unmarried" of so inflexible a nature; and nothing but absolute necessity should induce the Court to adopt a construction which would have such an effect; he said that was not the necessary meaning of the word, which, strictly speaking, would mean not being in a state of marriage; and, according to the authorities, it has been construed to mean "never having been married," or, "unmarried at the time of death;" and from these shewed that it has a flexible meaning, and may be construed according to the obvious meaning of the parties using the term; and though he decided that case upon different grounds, it is impossible to read that judgment without seeing that he thought the word "unmarried" had a flexible meaning. In that case, as well as in this, if the lady survived the husband, the property was to go to her executors, and the next of kin would take; that she contemplates the case of her dying before Lord Coventry, when the property would have gone to him, and there is an obvious reason why he should be excluded; there is no such reason why her children should be excluded from taking, and thereby benefit the more remote next of kin. Lord Cottenham, in the case I have mentioned, concluded that the word "unmarried" meant discover. There is no difference between that case and the present; in both the parent is making a disposition for children. I therefore feel justified in deciding, as in that case, that there is no necessity for making the more remote next of kin parties to this suit.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Friday, June 12.

REG. V. THE GREAT NORTH OF ENGLAND RAILWAY COMPANY.

Indictment.—Corporation.

An indictment will lie against a corporation as well for a wrongful act, as for a wrongful mission; for omission, as well as for nonfeasance.

Indictment.—The first four counts were at common law for obstructing a highway, the obstruction being alleged in the 1st and 2nd counts to consist of a trench dug across the highway. In the 3rd and 4th, to consist of a bridge erected over the highway. The 5th, 6th, 7th and 8th counts charged the defendants with the violation of a provision (setting it out) of the Acts of Parliament, which authorised the construction of their railway, in erecting a bridge over the railway with an ascent exceeding one foot in twenty; and in making the approaches thereto with a greater ascent than one in twenty. The 8th count charged also the erection of a bridge for the purpose of carrying the highway over the railway, with an ascent which exceeded one foot in twenty; but did not set out the clause in the Act of Parliament; nor did it allege that the bridge was made in and upon the highway.

This indictment was tried before Mr. Justice Wightman, at the Spring Assizes (1845) for the county of Durham; when a verdict was taken for the Crown.

Worley, Q. C. In the following Term, obtained a rule to shew cause why that verdict should not be set aside, and a verdict entered for the defendants, or why the judgment should not be arrested. That rule was obtained upon the following grounds: First, that a corporation is not indictable for misfeasance, though it is for nonfeasance. Secondly, that the first four counts could not be supported, because the company, under their Acts of Parliament, had an absolute and independent power of entering upon and cutting up the road for the purpose of making a bridge; and the provision requiring the bridge to be built with a certain ascent was not a condition precedent to that

right; but was to be enforced by *mandamus*. Thirdly, that there was a variance as to certain counts; and fourthly, as to others, that they were bad in arrest of judgment, for not alleging that the bridge, which caused the obstruction, was erected in and upon the highway.

Oliver, Granger, and Bovill (on Tuesday, May 26, and Monday, June 8), shewed cause.—I. A corporation is as much indictable for a misfeasance as for a nonfeasance; no valid distinction can be drawn between the two cases; and *R. v. The Birmingham and Gloucester Railway Company*, 3 Q. B. 223, in effect decides the one point as well as the other. It cannot be disputed, that, for a private injury, trespass or trover will lie at the suit of an individual against a corporation; and if an action can be maintained for a private injury, an indictment will lie for a public wrong. (*R. v. Trafford*, 1 B. & Ad. 874.) [PATTERSON, J.—That decision was reversed in error.] But not as to the point for which it is now cited. (*Moxon v. The Monmouthshire Canal Company*, 4 M. & G. 452.) If the act be done in discharging their corporate duties, then the corporation is liable (*Yarborough v. The Bank of England*, 16 East, 6); for a corporation is just as capable of doing an act as an individual; they do the act by their servants; as, in this very case, the corporation is expressly formed for the purpose of making a railway; and actions are constantly maintained against corporations for acts done by their servants, as for wrongful distresses, and the like. *Smith v. The Birmingham Gas Company*, 1 Ad. & Ell. 526; *Matthews v. The West London Waterworks Company*, 3 Campb. 403; *Parnaby v. The Lancaster Canal Company*, 11 Ad. & Ell. 223; *Tilson v. The Warwick Gas Company*, 4 B. & C. 962; and *Henley v. Lyme Regis*, 5 Blig. 91, 108; and *S. C.* (in error) 3 B. & Ad. 77; in which last case it was argued, that though a corporation might be liable for misfeasance, they were not for nonfeasance—the converse of the argument used in the present case. Formerly, the rule that corporations could do no act except by deed, was very strictly acted upon; the exceptions were very few; but a change in the state of society, and the creation of a large number of trading corporations, have introduced new considerations and numerous additional exceptions to that ancient rule. This change is much discussed in *Beverley v. The Lincoln Gas Company*, 6 Ad. & Ell. 829, 838; and *The Mayor of Ludlow v. Charlton*, 6 Mee. & W. 815; and the principles there laid down are applicable here. This being a corporation, created by Act of Parliament, for the purpose of making a railway, they must confine themselves within the limit of the powers given by the Act (*Murray v. The East India Company*, 5 B. & Ald. 204); and if their agents exceed that limit, the ordinary rule of *respondent superior* must attach, and inasmuch as an indictment is no more than an action by the Queen for a public injury, there is no ground for contending that such a corporation is not liable to an indictment. No difficulty can arise as to the judgment, for the judgment may be fine or imprisonment, or both; and the fine may be levied by distress. In *R. v. The Severn and Wye Railway*, 2 B. & Ald. 646, an indictment would not have been an efficient remedy; and in the *Sutton's Hospital* case, 10 Rep. 1 a. 32 b, the *animus* was the gist of the offence. The dictum of Holt, C. J. in *Anonymous*, 12 Mod. 559, is of little weight without a knowledge of the circumstances under which it was uttered. [On this point they also cited *Salmon v. The Hamborough Company*, Cas. Chanc. 204; *R. v. Medley*, 6 Car. & P. 292; and *Hall v. The Mayor, &c. of Swansea*, 5 Q. B. 526.] Secondly, it is argued that the common counts cannot be maintained, because the Act of Parliament justifies the obstruction. Now the Act of Parliament (6 & 7 Wm. 4, c. 105), by s. 11, gives a general authority to cut the road, and to erect the bridge; but by s. 73 it is enacted, that "where any bridge shall be erected for carrying any public carriage road over the said railway, the road over such bridge shall be formed, and shall at all times be continued of such width as to leave a clear and open space between the fences of such road, of not less than fifteen feet, and the ascent of every such bridge for the purpose of such public carriage road (if a turnpike road) shall not be more than one foot in thirty feet, and, with respect to any public carriage road not being a turnpike road, shall not be more than one foot in twenty." That clause, therefore, limits the general power previously given; and according to the principles laid down in *R. v. Scott*, 3 Q. B. 543, the statute gives no protection, unless its provisions are complied with. A *mandamus* might, perhaps, be obtained to compel the erection of a proper bridge; but that affords no answer to this indictment, which it would not have afforded to that in *R. v. Scott*. Lastly, the 8th count is good; for first, it follows the words of the 73rd section of the Act; and, secondly, it does sufficiently allege that the bridge was made over the railway, and along and upon the highway.

Knowles, Q. C. Bliss, and Addison, contra.—Although an action may lie against a corporation for the acts of its servants, if done under the authority of the corporate seal, or if expressly directed to be done, and although an indictment for nonfeasance may

lie against a corporation, yet for misfeasance it will not; and the authority of *R. v. The Birmingham and Gloucester Railway Company* (3 Q. B. 223) was expressly limited to cases of nonfeasance, to the omission to perform some duty imposed by law. For an indictment against a corporation, charging the positive commission of a wrongful act with violence, as here, there is no precedent; and the distinction between the two classes of cases is founded in reason. If a corporation is bound to do a particular act, as to repair a road by prescription, the neglect to do it could not be made the subject of an indictment against any individual member; but with regard to the commission of a wrongful act, the law can always be put in force against him who does the act, and if the corporation employ a beggar, still the liability may be traced back to the individual who gave the order. A corporation has no visible existence, and cannot be guilty of felony or treason, as is admitted even by the other side; and it is laid down in Hawk. P. C. (lib. 1, c. 65, s. 13), that a corporation cannot be indicted for any offence involving violence. The dictum of Lord Holt (Anon. 12 Mod. 559), quoted by Patterson, J. in *R. v. The Birmingham and Gloucester Railway Company*, though meagre, is also an express authority in support of the same view. A corporation might have no property, and then no fine could operate; and certainly no former conviction or acquittal of the corporation could be pleaded to an indictment against an individual member for the same offence. A corporation cannot sue for force; it cannot beat or be beaten, or do any corporal wrong (see 4 Man. & G. 453, Note of Cases from the Year Books); but force is a necessary part of this indictment. It is argued that if an action will lie, the injury being private, an indictment will lie, the wrong being public; but that is not so. Trespass will lie for an injury done by a lunatic, but not an indictment; or for a personal injury done out of the kingdom; or if a party assent is a trespass for his own benefit. *Viner's Ab. Corporation* (2). The cases of treason and felony are sought to be distinguished, on the ground that they involve the *animus* or intention of the party charged; but the intention is involved in every criminal case. They also cited *Becker's case*, 8 Rep. 69; 2 Ben. Ab. Corporation, E. 2. In *Ducelin P.* Secondly, the common counts are not supported. They charge the obstruction of a highway in the course of erecting a bridge; but that obstruction is clearly justified by the 11th section of the company's Act; and it is no answer to say that a subsequent section requires certain gradients to be observed in the construction of the bridge; because the obstruction of the road is precedent to making the ascent of the bridge; it first takes place, before even the foundations of the bridge are laid. *R. v. Scott* was a very different case; because there, by the terms of the Act of Parliament, a new road of a certain kind was to be made before the obstruction of the old road was permitted. The question here is, whether the company had not a right in the first instance to obstruct this road, for the purpose of building a bridge thereon; because, although in some cases parties may, after the commission of an act, become trespassers *ab initio*, no act can be made criminal by relation. Lastly, the 8th count does not point out the offence with sufficient precision. It charges the defendants with causing a bridge to be erected for the purpose of carrying the road over the railway, which was not of a proper ascent according to the Act of Parliament; but it does not allege that the bridge was erected over the railway, and in and upon the highway; so that if the company, as they lawfully might, had caused an iron bridge to be constructed at some iron works for the purpose of carrying the road over the railway, the terms of that count would be satisfied. [Lord DENMAN, C. J.—*R. v. Scott* is evidently not precisely in point; because there the construction of the new road in a certain manner was expressly made a condition precedent to the right of obstructing the old road; but the question is, whether the general principle may not be drawn from it, that in cases like the present the Act of Parliament only authorises the obstruction in the particular mode pointed out.]

Our eds. sub.

JUDGMENT.

Lord DENMAN, C. J. now delivered the judgment of the Court. There was an argument the other day upon a rule for a new trial in this case, in which the whole point which arose on the discussion was, whether an indictment will lie at common law against a corporation for a misfeasance, it being admitted, and in conformity with undisputed decisions, that an indictment may be maintained for nonfeasance. Allowing that the preliminary difficulties as to service and execution of process and modes of appearing and pleading are, by this decision, removed, the argument was, that for a wrongful act the corporation is not amenable in an indictment, though for a wrongful omission it is, assuming, therefore, in the first place, that there is a plain previous distinction between the two species of offence. No assumption can be more unfounded. Many occurrences may be easily conceived even of annoyance and danger to the public involving blame in some individual or some corporation,

and in which the most acute person could not define the cause, or ascribe it more properly to one than the other, such annoyance or such an act being rendered improper by nothing but the want of some safeguard. If the company is authorized to make a bridge with parapets, but makes it without them, does that constitute no injury or neglect to secure it? But if the distinction were discoverable, why should the corporation be liable for one and not the other? The startling incongruity is too strong an argument against it. It is as easy to charge one person or a body corporate with erecting a bar against a public road, as with the non-repair of it, or breaking it up; and they may as well be compelled to pay a fine for one as for the other. Some *dicta* occur in old cases, that a corporation cannot be guilty of treason or felony; it might be added, nor of perjury, or offences against the person. In the Court of Common Pleas lately, it was held that a corporation might be sued in trespass, but nobody has sought to fix it with acts of immorality; they derive their character from the corrupted mind of the person who violates the social duties; but though a corporation, which, as such, has no such duty, cannot be so guilty, they may be guilty, as a body corporate, of commanding acts to be done to the nuisance of the community at large. We are told this remedy is not required, because the persons who interfere—whether those who order the act to be done or those who do it—may be made answerable for it by criminal proceeding. Of this there is no doubt; but the public knows nothing of the former, and the latter, if they can be identified, are persons of the lowest rank, and wholly incompetent to make the least reparation. There can be no effectual means of deterring parties from the improper exercise of power for the purposes of gain, except the remedy by indictment against those who really commit it, that is, the corporation acting by its majority; and there is no principle which places them beyond the reach of the law for such purposes. The verdict for the Crown, therefore, on the first four counts, will remain undisturbed.

Rule discharged.

Saturday, June 30.

BARRITT V. OLIVER.
Seduction—Loss of service.

As between parent and child, the very slightest acts of service are sufficient to entitle the parent to maintain an action for the seduction of his child.

Trespass for the seduction of the plaintiff's daughter, Elizabeth.

Plea.—That Elizabeth was not the servant of the plaintiff.

At the trial it appeared that the daughter Elizabeth had been in service, but had come home to Salskash to attend upon her aged mother; that when at home, she and her sister set up a school, but that she also was engaged in the management of the domestic affairs, and rendered numerous acts of service and attention to her mother; that the daughter and a son jointly paid the rent of the house in which the family lived, and that the mother went away to live at Plymouth about one month before the loss of the service occurred. Afterwards the school failed, and the daughter Elizabeth followed her mother to Plymouth, and lived with her there. Upon these facts the learned judge (Coleridge, J.) told the jury that they could not doubt that the relation of mistress and servant subsisted between the mother and daughter; and a rule nisi for a new trial had since been obtained, on the ground of misdirection.

M. Smith now shewed cause.—The question is, whether there was any evidence of service; for any evidence would be enough. It is not to be denied that some service must be shewn (*Grinnell v. Wells*, 14 L. J. N. S. C. P. 19; 8 Scott, N. R. 741); but the slightest acts of service are sufficient; per Buller, J. in *Bennett v. Allcott*, 2 T. R. 166; particularly in the case of parent and child. (*Rose. N. Pri.* 467). Occasional assistance (*Mann v. Barrett*, 6 Esp. 32); and even a right to service has been held enough (*Maunder v. Venn*, M. & M. 324; per Littledale, J.); but here the evidence is much stronger.

Crowder, Q. C. contra.—After the case of *Grinnell v. Wells*, the decision in *Maunder v. Venn* is not law; for the former decides that the loss of service is the gist of the action. Here, 1st, there is no evidence of service; but rather the contrary; and 2ndly, there is no loss of service, for the plaintiff had left one month at least before her daughter was confined. (He cited *Robert Marys' case*, 9 Co. R. 113). [WIGHTMAN, J.—Is there not a case in which the loss of innocence in a servant was held to be a sort of constructive loss of service, in the absence of proof of any actual loss of service? M. Smith mentioned *Joseph v. Cavander*, *Rose. N. P.* 467.]

Lord DENMAN, C. J.—The recent case in the Common Pleas (*Grinnell v. Wells*) only decides that the loss of service is the gist of the action, and that a declaration not averring it could not be supported. Of that there is no doubt; and that which is averred must be proved to the satisfaction of the jury; but where the relation of parent and child subsists, very little will suffice; for an aged parent has a certain

right to command the services of a child, and possesses a certain control over her; and here, though the plaintiff was not paying her daughter any wages, she was availing herself of the kindness and attentions, which the daughter, it appears, rendered to her. Then a question is raised whether there was any loss of the service; but after the service is once established, the loss may be said to follow almost as a matter of course. I am not disposed to say that Mr. Justice Littledale went too far in *Maunder v. Venn*, and that if there is the constant opportunity for a parent to avail himself of the services of his daughter, that is not sufficient, because the constant render of services in a family may make it impossible to shew service. Nor do I think that the being deprived of the services of a decent person is immaterial in considering whether the plaintiff has sustained a loss. Indeed, the practice of the law has been, for many years, to lay hold of any pretext, with the view of affording some remedy, however inadequate, for the greatest of all injuries.

PATTERSON, J.—The case is in the Common Pleas on a question of pleading is no authority here; and my only doubt arises as to the loss of service. It appears that the plaintiff left about a month before her daughter's confinement, and that the daughter afterwards followed her. That matter is not very satisfactorily explained; but at all events it is certain that the plaintiff required the attendance of some person during all the time; and that her daughter was unable to give that attendance.

WIGHTMAN, J.—In *Grinnell v. Wells* an attempt was again made which had been unsuccessful once before in *Sutterhouse v. Duerst*, 5 East, 47 (n.); where it was decided that service and the loss of service must be shewn. Very slight acts of service are enough; but here they were not very slight; and, as to the loss of service, is it not at all events an inference which the jury might draw, that even a month before her confinement she was less capable of rendering service than she would have been?

Rule discharged.

Friday, June 26.

WOOD V. COCKRELL.

Assignment of copyright.—Action by assignee.—Readiness and willingness—Variance.

In an action by the assignee of a copyright, upon an agreement for permission to publish, in which the declaration averred that the plaintiff was ready and willing, pursuant to the agreement, to deposit with a third person the deed of assignment, it was proved that the plaintiff offered to deposit the assignment, upon receiving an undertaking from that third person that he would not part with it until a certain event: Held, a fatal variance.

Semble, that letters offered in evidence to prove the terms of a contract, ought to be stamped, though they purport to refer to an agreement previously made, to terms previously accepted.

Quære, whether a licence to publish a book, granted by the assignee of the copyright, is a sufficient consideration for a promise to pay money, unless the assignment of the copyright be registered, and the licence be in writing.

Assumpsit.—The declaration, after reciting that one Charles Pope was the author of a book called the "Yearly Journal of Trade," and that he had assigned the copyright to the plaintiff for 100l. set out an agreement by the defendant, in consideration that the plaintiff would grant him his licence and permission to print and publish the said book, and would deposit with one W. the deed of assignment of the said copyright, to pay a sum of 30l. and to give a bill. It then averred that the plaintiff did grant to the defendant his licence and permission to use the copyright, and was ready and willing to deposit with W. the said deed of assignment; but that the defendant did not pay, &c.

Plea.—Non assumpsit; and traverses of the material allegations in the declaration.

At the trial it was opened, on the part of the plaintiff, that the agreement was by parol, but to be proved by letters; and those letters, when produced, contained either the proposal of terms only, or the acknowledgment that certain terms had been previously agreed upon; but did not themselves constitute the agreement, or contain any acceptance of terms. The verdict being for the plaintiff, a rule nisi for a nonsuit or new trial had since been obtained; and the four questions to be argued were settled between the parties.

Temple shewed cause.—1st. Were the letters inadmissible for want of a stamp? The Stamp Act only requires the note or memorandum of an agreement to be stamped, that is, the paper which contains the terms of the agreement; and it must be stamped, whether it be obligatory as an agreement, or as evidence of an agreement only; but a proposal in writing, accepted by parol, need not be stamped; and many cases shew the distinction between letters used as direct evidence of an agreement, and those used as containing an acknowledgment only of a previous agreement. (*Robinson v. Drybrough*, 6 T. R. 317; *Drant v. Brown*, 3 B. & C. 665; *Whelden v. Mathews*.

2 Chitt. 399; *Edgar v. Blick*, 1 Stark, 464; *Beeching v. Westbrook*, 8 M. & W. 411.) [Lord DENMAN, C. J.—Suppose a letter in this form: "You and I have agreed," &c.] That would be an acknowledgment only, and would not require a stamp. [WIGHTMAN, J.—Then do you contend that whatever terms are used, there must be the expression of consent by both parties, in order to render a stamp necessary?] Yes. [WIGHTMAN, J.—Suppose, then, one letter containing a proposal, and another letter in this form: "You having accepted in writing my proposal, let the agreement be so."] There a stamp would be necessary; the plaintiff could not upon that evidence call upon the jury to infer a previous parol contract, because he had himself admitted it to be in writing. [WIGHTMAN, J.—The question as to the necessity of a stamp arises before the jury can be called upon to draw any inference from the document tendered.] But the effect of the instrument must be considered in every case. [PATTERSON, J. referred to *Hughes v. Budd*, 8 Dowl. 478.] Secondly, was the plaintiff bound to shew, either on the record or by evidence, that the assignment of the copyright was registered pursuant to 5 & 6 Vict. c. 45? The objection is that there was no consideration for the promise, unless the plaintiff had title to the copyright; and that if the assignment was not registered he had none; but the omission to register does not affect the copyright, it only affects the right to sue for an infringement. [WIGHTMAN, J.—May not the registering take place at any time?] Certainly. (*Chappell v. Purday*, 12 M. & W. 303.) Thirdly, is the licence valueless to the defendant, because not in writing? Admitting that the defendant might be sued for infringement of the copyright, if the licence were not in writing, still there is a sufficient consideration for the agreement. The agreement is that if the plaintiff will suffer the defendant to publish a certain work, the defendant will pay a certain sum; and the declaration alleges that he did suffer him. That agreement, though not in writing, binds the plaintiff; and the adequacy of the consideration is not to be considered. (*Haigh v. Brooks*, 10 Ad. & Ell. 309.) A court of equity would restrain a plaintiff under such circumstances from proceeding for an infringement; and would decree a writing, if that should be necessary, for specific performance. (*Pemher v. Mathers*, 1 Brown, P. C. 51; *Lady Herbert, app., Ld. Powis, resp.*, 1 Brown, Parl. Ca.; *Aylett v. Bennett*, 1 Anst. 45.) Neither is there any thing to prevent the owner of the copyright from binding himself by parol not to publish that work; but in the present case there is the further consideration that the plaintiff is to part with the deed of assignment, and consequently with the means of registering it, if it had not then been registered. Lastly, is the allegation that the plaintiff was ready and willing to deposit the deed proved? [WIGHTMAN, J.—Can you contend that it is? The evidence was that he was ready to deposit the deed on W. giving him an assurance that he would not part with it until the bill was paid.] The original agreement was fulfilled, if he was there with the deed. [WIGHTMAN, J.—So far from being ready and willing, he refused to deposit the deed unless he got an undertaking.] That undertaking was involved in the word *deposit*, which implies that the thing deposited is to be kept in the possession of him who receives it. This is like an allegation of readiness to pay, with proof of readiness to pay upon a receipt being given; and would that be any variance? Further, it amounted to a request only, not a condition.

Pearson, contra, was not called upon. Lord DENMAN, C. J.—I do not see how a man can be said to be ready and willing to do an act, when he says I will only do it if you will give me a particular undertaking, that undertaking forming no part of the agreement, though it may be within the spirit of it. There is a clear variance between the declaration and the proof.

PATTERSON, J., and WIGHTMAN, J., concurring, Rule absolute for a nonsuit.

ADMIRALTY COURT.

Wednesday, March 25.

(Before Dr. LUSHINGTON.)

THE SARACEN.

A sailor proceeding against a ship to recover a demand due to him, and obtaining a decree in her favour, is not bound to submit to a distribution of the proceeds to liquidate other demands, of the same species as his own, in favour of claimants who had not proceeded till the decree was made, or who commenced their proceedings on the same day.

The facts of this case are sufficiently stated in the following

JUDGMENT.

Dr. LUSHINGTON said this was originally a cause of collision, and the Court condemned the *Saracen* in the damages occasioned by it, which were then sued for. The action was brought by the owners of the *Diligent*, and the owners of part of the cargo laden on board her. The owners of the rest of the cargo

were no parties to that action, but they claimed to share in the proceeds of the ship which were not sufficient to defray the amount of the value of the vessel and cargo destroyed. On the 6th of May, the Court, by interlocutory decree, pronounced for the damage and costs; and on the same day another action was entered by Mr. Bowdler, on behalf of the owners of the bulk of the cargo, in the sum of 2,500*l.* On the 24th June, Mr. Moore, in the action originally entered, brought in the proceeds, amounting to 1,037*l.* 15*s.* 6*d.* The proctor who first appeared prayed that the proceeds of the sale should be decreed to his party; but Mr. Bowdler, on behalf of his party, objected to it, and prayed to be heard by act on petition. Counsel having been heard thereon, it was now the duty of the Court to consider the grounds on which Mr. Bowdler's party claimed a right to participate rateably in those proceeds. That claim was, if well-founded, founded on the ordinary law and practice of this Court, or on the special circumstances of the case. Was it the law of this Court that a suitor proceeding against a ship to recover a demand due to him, and obtaining a decree in his favour, was bound to submit to a distribution of the proceeds to liquidate other demands, of the same species as his own, in favour of claimants who had not proceeded till the decree was made, or who commenced their proceedings on the same day? How did that question stand in analogy to the principles and practice of other courts? The class of cases which approximated most nearly were proceedings by the creditors of a testator to recover claims for his executors. In substance the proceedings were the same. The whole law, so far as it was necessary to examine it, for the elucidation of this case, would be found in Williams's Treatise on Executors, vol. 2, second edition, book 2, part 3, sect. 5. Without going through the law, as there stated, it was abundantly clear that the law in all the courts favoured those who were most active in seeking her aid. Amongst claims of equal degree the creditors who first obtained judgment must be paid first, and in preference to all others. To insure an equal distribution of the estate amongst creditors a bill must be filed against the whole. If the proceedings *in rem* in this Court were to be assimilated to those in courts of law and equity, then in this case the claimants of the bulk of the cargo must fall in their prayer. He would endeavour to find a distinction if there were one. No bill had been given on the present occasion; the vessel arrested had been sold under the decree of the Court; the party who had obtained a judgment gave what might be deemed nominal bill, when he received payment, to answer according to the usual expression, "all latent demands." He was not aware that any judicial construction had been put on the document that was then executed. To assist the present claimant it must mean that he was entitled to come in, and so far as the contents of the instrument were concerned, at any time, and share accordingly. He doubted whether the instrument applied to any such claims as this at all, either in equal or prior degree. He believed that the expressions referred only to original interests in the subject-matter as title to the ship where the proceedings had been had *in rem*, but it was not necessary to decide that point. Possibly the words might extend to prior liens, but assuredly he could not find expressions which, by any construction, however extended, he could interpret to mean that the *prior petens*, who had obtained his money, should bring it back to share with a subsequent suitor, who had no preferential claims. If he were correct in the interpretation he put on the instrument itself, there was no sufficient ground for this claim to be found within the four corners of it. But all reasoning might and ought to give way to established practice; that practice, however, must be proved, and he could discover none, nor had any cases been mentioned. Could there be an established practice without a single instance to prove it? He thought not. Reference, however, had been made to the 53 Geo. 3, c. 159, the Act for limiting the responsibility of ship-owners, and it had been argued that by the adoption of the principles of that Act, the Court might give the relief prayed for. That Act gave the owners power to file a bill in equity, and bring in the value of the ship, which value was to be distributed to the claimants proportionably; still he was met by a difficulty that he could not surmount—for the right of so filing a bill was given to the owners for their protection, and not to the claimants for their advantage. He was of opinion that he could not do that at the instance of co-claimants, if such they were to be called. The Court would have done it *de facto*, had application been made in due time, but not to deprive a party of the benefit of a decree already made. The whole of the discussion would receive a more satisfactory solution if he looked at first and simple principles. How stood the law originally? Where the owners were answerable for damage done by collision, they were bound to pay the whole amount, whatever might be the value of the ship which did the damage. Those whose ship and cargo had been destroyed or damaged by the collision, might proceed at common law, and recover the whole damage from the owners of the

ship occasioning it, be the damage what it might, and though ten times the value of the ship which occasioned it. The same persons might commence actions in this court by arrest of the ship, which in fact was only a proceeding to compel the owners to appear, and if they did not, also to afford the means of payment. But one suit in this court did not prevent another in it, save that the owners by leaving the ship to its fate left no means of obtaining further redress. If they bailed the action, he conceived that another party might arrest the ship; certainly they might sue at common law. The only preference in all those cases was the preference of *prior petens*. Why should he who was vigilant be compelled to surrender the benefit of it to another who was less active? When all were equally active, or so as to bring their suits before decree, it was possible that this Court might so have regulated its proceedings as to distribute the funds rateably to all having similar claims, but not after decree, which in itself conferred a preferable title. What made a difference in the present case? The *Diligent* was a foreign ship, and the owners abroad. The right of action remained to the parties injured; perhaps that right could produce no fruits, as the wrongdoers were not within the jurisdiction. Would that circumstance give a right to a party who had not availed himself of the law to proceed *in rem* to share with him who had? He was of opinion that it gave no such right. He knew of no shadow of ground for making a distinction in the case of a foreign vessel—a distinction which, if once introduced, would be bound by no limit which he could conjecture. But there was another ground alleged by the prayer, now preferred to the Court, on behalf of the owners of the bulk of the cargo, namely, an agreement between the proctors. He thought he had no jurisdiction to carry into effect such agreement; they were more fit for the cognizance of the Courts of Equity. If there were an agreement, the only proper course was for it to be alleged in acts of court, when it became the act of both parties, but he had never yet heard of the Court inquiring into any private agreement not evidenced by the minutes of the Court. The learned judge then referred to the statements made by the respective proctors, one of whom alleged, and the other denied, that there was any such agreement. He thought it no part of his duty to decide upon that alleged agreement, for he was of opinion that, if proved, he could not act upon it. He was called upon to alter a decree made by this Court, without opposition from the present party, to deprive those who had obtained such decree of a large part of the benefit to be derived therefrom; to deprive those who had been vigilant to support their own claims, and had run the risk of failure and the chance of costs, besides those which they themselves incurred. He was of opinion that he was not authorized so to do by law, or by the practice of this Court. As the question which he had had to decide had come before the Court in the present shape for the first time, he did not think that he was called upon to make any order for costs.

Ecclesiastical Courts.

PREROGATIVE COURT.

Saturday, June 20.

(Before Sir H. JENNER PUST.)

GREGORY v. THE QUEEN'S PROCTOR.
Circumstances under which the Court will hold certain papers to be testamentary, and executed in compliance with the Wills Act.

The Court gave sentence in this long cause. It respects the validity of certain papers brought forward as the last will and testament of Mr. John Thompson, who died on the 6th March, 1843. The deceased was about eighty-five years of age, and his property in freehold and personality was very considerable. He left behind him a niece or grand-niece, Mrs. M. Le Bas, and several great grand-nephews, or great grandsons, who would have divided the property had no will been brought forward. The documents of March, 1843, were opposed by Mr. Gregory, who had been admitted as a contradicter to a previous will, dated 24th February in the same year. The case had come before the Court under very extraordinary circumstances. The first parties in the case were Mrs. Le Bas and Mr. Gregory. During the proceedings in the cause Mrs. Le Bas and Gregory intermarried. An appearance had been given on the part of Frances, James, and John M'Collock (two of whom were minors), &c. The case was by no means free from difficulties. Mr. Gregory now rested on the plea of Mrs. Le Bas, as their interests were united. In proof of the will before the Court, three witnesses had been examined—Charlotte Thompson, a confidential servant of the deceased, Mary Clarke, and Mr. Amos Gann, the solicitor of the testator. It appeared to have been the intention of the deceased to give a large proportion of his property to the M'Collocks. The deceased was a very vacillating person, writing frequently his intention on slips of paper. The paper of the 24th February, 1843, was important. It appointed Mr.

Gregory executor, gave an annuity of 300*l.* a-year to Mrs. Le Bas, besides other annuities, legacies, &c.; but it was clear that if it stood the great bulk of deceased's property would centre in Mr. Gregory. By the other will, that of March, 1843, Commissioners May, the Rev. Webb Ellis, and Mr. Amos Gann were appointed trustees. It divided his estates, &c. into eight equal parts. To Francis M'Collock he gave three-fifths, to James one and a half eighths, to John five-eighths (the figures were in pencil), and "on the same terms and conditions I give, demise, and bequeath to all their children." The papers before the Court were all in the handwriting of the testator, and they made a full distribution of the whole property. They were executed provisionally, in case of the death of the testator, and it appeared that they were delivered to Mr. Gann in the same plight and condition as when handed to him. The Court then had to determine whether these papers contained the real testamentary intentions of the deceased, and if they were executed with the formalities and the requirements called for by the Act of Parliament. The two witnesses to the execution were Charlotte Thompson and Mary Clarke, and they differed as to the fact whether the last sheet was signed when they attested it. When the witness Clarke took up a pen to sign her name, the testator said a pencil would do, observing, "It will be all right on Monday." He said to these witnesses that the paper was his last will and testament. Both witnesses signed the paper in pencil. It was clearly established that the testator at this time was capable of any act of an important nature, and that he was not so on Monday. The question was one of simple fact—had there been due execution? The papers were all laying flat on the table when the deceased said, "This is my last will and testament;" and the witnesses state that they might have read their contents. On Sunday the deceased was not well. The Court, in a case like this, must judge for itself. What did the testator write to Mr. Gann after the two witnesses Thompson and Clarke had signed their names? He told Mr. Gann, in a letter sent to him, "I have made my will, and my maids have attested it in pencil, so that it may be altered." He could hardly have forgotten that he had made a will only a short time before. These were circumstances that led the Court to the conclusion that the will in question was signed before it was attested. According to the principles upon which the Court had been governed in former cases, where there was a combination of circumstances in proof of an act done, it must consider these circumstances altogether, to see if the requirements of the Act of Parliament had been complied with. Then there was a letter to Mr. Gann, in which he states that he had been coughing from ten at night until eight in the morning, and had strained every nerve to make a will that would please him. This proved that the act had been done. Then did the will consist of one or three sheets of paper? It was sufficient for the present purpose that all the papers were on the table, where nothing to the contrary was shown. The event to be guarded against by the testator, in making the provisional will—that of death—before a more formal one was completed, did occur. Mr. Gann, the confidential friend of the deceased, deposed to the handwriting; some of it in pencil. How could the Court hold the contrary in the absence of adverse testimony, and say the papers were not in the handwriting of the testator? The Court regretted that it had not more facts before it, and that it was left to find its way to a correct decision. Mr. Gann had sworn that the will was in the same plight and condition as when he received it from the testator. After great anxiety and doubt, the Court was bound to hold that these papers were testamentary, executed in compliance with the Wills Act; and it was, therefore, bound to pronounce for them. The costs to be paid out of the estate.

Notice of appeal was immediately given.

Circuit Reports.

NORFOLK SUMMER ASSIZES, CAMBRIDGE.

(Before Mr. Justice WILLIAMS.)

REG. v. BADLOCK.

Aron—Straw, sedge, and rushes.

Sedge and rushes are not "straw," within the meaning of the stat. 7 Wm. 4, & 1 Vict. c. 69, which is confined to the straw of wheat, oats, barley, and rye. The indictment charged that the prisoner maliciously set fire to a certain stack of straw, on, &c. at, &c.

Burchem, for the prisoner, satisfactorily proved that the prisoner set fire to the stack in question, but in the course of the case it was discovered that the stack was composed of sedges and rushes, the produce of the fens, which had been cut and stacked.

WILLIAMS, J. thereupon stopped the case. The property here proved to have been destroyed did not fall within the provisions of the statute under which the indictment was framed. The prisoner was charged with having set fire to a stack of straw; but

it appeared that the material of which this stack was composed was not straw, in the usual and legal acceptance of that term, which, as used by the legislature in that statute, meant the straw of wheat, barley, oats, and rye. Under these circumstances, therefore, the offence contemplated by the statute had not been committed, for the prisoner had not set fire to a stack of straw, but of sedge, which was a totally different thing, and no more straw than it was timber. It was sufficient, therefore, to say that the case did not fall within the terms of the Act, and the prisoner must be acquitted.

Tozer, for the prisoner.

Not guilty.

HUNTINGDON.

(Before Mr. Justice WILLIAMS.)

July.

NICHOLSON, Clerk, v. RICHMOND PARSONAGE.
Incumbent—Nominée, under 1 & 2 Vict. c. 106, s. 62—Right to sue for breach of contract, in whom vested.

Semble that where a loan has been raised to re-build a parsonage-house, and a nominee appointed under the provisions of statute 1 & 2 Vict. c. 106, s. 62, who has entered into contracts with a builder, the right to sue for a breach thereof is vested in the incumbent, and not in the nominee, who is a mere agent in the matter.

Accomplish for breach of a contract to build the parsonage-house of Great Paxton, according to certain plans and specifications, and with good and workmanlike materials.

Plan, inter alia—Non accomplish.

Dyke, Serjt. (with him Birch) stated that the plaintiff was the incumbent of Great Paxton, in the city of Huntingdon, and that this action was brought to recover compensation from him for the breach of a contract entered into by him with the Rev. Mr. Lee, as the nominee of the bishop (under 1 & 2 Vict. c. 106, s. 62), whereby he undertook to rebuild the house in question, according to certain plans, sections, and specifications, and with good, substantial, and workmanlike materials. The breaches assigned were that the defendant had departed from the said plans, sections, and specifications, and that the work had been done in a bad and unsubstantial manner, and with improper materials. It appeared that the vicarage, being greatly in want of a new house, application had been made for a loan to the commissioners under the statute in question; whereupon the Rev. Mr. Lee was appointed the nominee of the bishop, and the vicarage duly mortgaged in the usual way to the Commissioners of Queen Anne's Bounty, by whom the sum of 1,000*l.* was advanced. Mr. Lee thereupon entered into a contract in his own name with the defendant to do the necessary work. The old house was accordingly pulled down and a new one erected, but in so bad and improper a manner, as was alleged by the plaintiff, as to render it utterly worthless to him as a residence, and this action was brought to recover damages from the builder for such breach of his contract. It was understood that one defence would be that the action ought to have been brought by Mr. Lee, and not by the present plaintiff, who was the incumbent, and for whose benefit therefore the contract was made. As this question will turn on the terms of the statute, it might not be amiss to examine them now. The two sections applicable to this case are the 62nd and 66th.

The former of these renders it "lawful for the bishop to procure a plan or estimate of the work fit and proper to be done for building or repairing such house of residence, with all necessary and convenient offices, and thereupon by mortgage of the glebe, tithes, rent, and rent-charges, and other profits and emoluments arising or to arise from such benefice, to levy and raise such sums as the said estimate shall amount to." The 64th section enacts that "every such mortgagee shall execute a counterpart of every such mortgage, to be kept by the incumbent for the time being, and a copy of every such deed of mortgage shall be registered in the office of the registrar of the bishop of the diocese, after having been first examined by him with the original, which officer shall register the same and be entitled to demand and receive the sum of 5*s.* and no more for such register: and every such deed shall be referred to upon all necessary occasions; the person inspecting the same paying 1*s.* for every such search; and the said deed, or a copy thereof, certified under the hand of the registrar, shall be allowed as legal evidence in case any such mortgage deed shall be lost or destroyed." By the 66th section it is enacted, that "the money so to be raised shall be paid into the hands of such person or persons as shall be nominated and appointed by the bishop of the diocese, by writing under his hand, to receive and apply the same for the purposes aforesaid, in the form for that purpose contained in the said schedule, after such nominee shall have given a bond to the Ordinary, with sufficient security in double the sum so to be borrowed or raised, with condition for his duly applying and accounting for the same according to the directions of this Act. And the receipt of the person or persons so to be nominated shall be a sufficient discharge to

the person or persons who shall advance and pay the money; and the person or persons so to be nominated shall enter into contracts, with proper persons, for such buildings or repairs as shall be approved by the said bishop, and shall be specified in an instrument written upon parchment, and signed by him, and shall inspect and have the care of the execution of such contracts, and shall pay the money for such buildings and repairs, according to the terms of such agreement; and also the expenses of preparing the mortgage deed, and incident thereto, and of making such certificate, plan, and estimate, and copies thereof as aforesaid, and shall take proper receipts and vouchers for the same; and as soon as such buildings or repairs shall be completed, and the money paid, shall make out an account of his receipts and payments, together with the vouchers for the same, and enter them in a book fairly written, which shall be signed by him; and when allowed by writing under his hand, such allowance shall be a full discharge to the person so nominated in respect to the said accounts. And if any balance shall remain in the hands of such nominee or nominees, the same shall be laid out in some further lasting improvements in building upon such glebe, or shall be paid and applied in discharge of so much of the said principal debt as such balance will extend to pay, at the discretion of the bishop, by order signed by him; and an account shall also be kept, made out, and allowed, of such further disbursements, in manner aforesaid; all which accounts, when made out, completed, and allowed, shall be deposited, with the vouchers, in the hands of the said registrar, and kept by him for the use and benefit of the incumbents of such benefice for the time being, who shall have a right to inspect the same whenever occasion shall require, paying to such registrar or deputy registrar the sum of 1*s.* for every such inspection." It is submitted, that under the provisions of this statute, it is not necessary that the present action should have been brought by Mr. Lee; though it may be admitted that it might have been so brought. The question will be whether he alone can sue the defendant for the breach of the contract into which he, Mr. Lee, had entered, merely as a nominee, and without any personal interest in it at all, but as the legally appointed agent of the incumbent. Being an agent, it is clear that Mr. Lee had a right, if he saw fit, to sue in his own name; but if he chose to disclose his principal, and disavow any interest in the contract, that principal has an undoubted right of action on the contract so entered into by another for him.

Certain matters having been then proved by the plaintiff,

O'Malley, with whom was *Couch*, objected, on the part of the defendant, that the action had been improperly brought by the plaintiff. The learned serjeant had himself admitted that the bishop's nominee might have sued the defendant; and it had been proved that Mr. Lee paid the defendant some money on account of this contract, which he had himself received in the character of bishop's nominee, from the Commissioners of Queen Anne's Bounty. He was, therefore, clearly the only and most proper person to sue, as the case for the plaintiff assumed that the contract had been made with him and him alone. Indeed, the language of the section is too clear to admit of a doubt, for it requires that all contracts shall be entered into by the nominee in his own name, and the incumbent, though they may be for his advantage, has yet actually nothing to do with them. If not, why should the legislature have recourse to the intervention of a third party, by whom the money is to be administered and the Act carried out in all respects? Under these circumstances, and for these reasons, it is submitted that the plaintiff must be nonsuited.

WILLIAMS, J.—The point raised by the learned counsel for the defendant may admit of a doubt, and is one which ought to be raised for the opinion of the full Court above; but I cannot take upon myself to decide it here peremptorily by nonsuiting the plaintiff on it. It does not strike me that the admission of my learned brother, that Mr. Lee might have sued, is conclusive that he, and he alone, ought to have sued; and as I find that the plaintiff on the record is the vicar of the parish for the accommodation of the incumbent of which this work was done, and that the funds were raised by mortgage of the preferment to the Commissioners of Queen Anne's Bounty, it certainly does appear to me that the plaintiff is the party really and beneficially interested in the contract which was entered into for the performance of that work by the defendant with Mr. Lee, the nominee under the Act authorizing the loan. As such I think, as at present advised, though the question is by no means free from doubt and difficulty, that the action is well brought in the incumbent's name, and that the case ought to proceed.

Ultimately the questions in dispute between the parties were referred to a member of the Bar, with power to raise the point for the opinion of the Court, and a verdict taken by consent for the plaintiff.

THE LEGISLATOR.

Summary.

THE past week has been one chiefly of routine business in both Houses of Parliament. Yesterday the Session was closed by Royal Commission, and the few members remaining in town—whose self-denial and application to business as compared with those who are pursuing their pleasure are note-worthy—were released to the recreation which, after an unusually protracted Session, they have earned and deserved.

Imperial Parliament.

PUBLIC BUSINESS TRANSACTED.

BILLS READ A FIRST TIME.

Thursday, August 27.

Arrest on *Memo Process*—"to restore Arrest on *Memo Process* in Civil Actions, under certain limitations."

BILLS READ A SECOND TIME.

Friday, August 28.

Patent Commission
Waste Lands, Australia
Pawnbrokers.

BILLS READ A THIRD TIME AND PASSED.

Friday, August 28.

Court of Exchequer, Ireland

Saturday, August 29.

Consolidated Fund Appropriation
Private Bills
Ecclesiastical Patronage
Constabulary, Ireland.
Public Works, Ireland, No. 4
Ditto, No. 5.
Leasehold Tenures, Ireland
Poor Employment, Ireland.

Monday, August 30.

Railway Commissioners.

Tuesday, August 31.

Small Debts
District Lunatic Asylums, Ireland
Pawnbrokers
Waste Lands, Australia.

PRIVATE BUSINESS TRANSACTED.

BILLS READ A THIRD TIME AND PASSED.

Friday, August 31.

Duke of Norfolk's Estate.

Monday, August 31.

Virgin Mary Hospital Estate, Newcastle-upon-Tyne.

SESSIONAL PRINTED PAPERS.

551. Pauper Lunatics—Return
552. Standing Orders Revision—Report
Tithes Commissioners, England and Wales—Report
517. Public Income and Expenditure—Account
641. Sewers—Accounts
551. Navy—Copy of Plan of Retirement for 300 Captains
557. Van Diemen's Land—Return
553. Andover Union—Report
579. Poor Employment, Ireland, amended
Millbank Prison—Third Report of Inspectors
Prisons—Eleventh Report of Inspectors, Part 4—Scotland, Northumberland, and Durham
550. Holyhead and Portynylan Harbours—Paper
556. Railway Duty—Account
555. Shipping—Return
557. Cured Provisions—Account
558. Charities—Return
559. Doonan Prize Money—Return
570. Slave Trade—Return
593. Dublin Paving Board—Return
Education—Minutes of the Committee of Council
546. Army—Return
553. Greenwich Hospital Schools—Paper
555. Printing—Report from Committee
555. Bills—Patent Commissions
556. Waste Lands, Australia, No. 2.
579. Poor Employment, Ireland, amended
578. Small Debts, amended on Report.

PARLIAMENTARY PAPERS.

SLAVE TRADE.—By a parliamentary document procured by Mr. Hume, it appears that there were in the year 1845 (the return being made up for the 1st of July, as an average for the force employed for the whole year) 56 ships, of 886 guns, and 9,289 men, employed in the suppression of the slave trade; of which, 27 of the vessels, with 382 guns and 3,334 men, were employed on the west coast of Africa station. Although the ships were furnished with slave-trade instructions, they were only employed in cruising against slave vessels as the other duties of the station on which they were respectively employed would permit. By the second branch of the document it seems that the charge for the ships of war employed in the suppression of the slave trade in the course of last year was 706,454*l.* and the deaths of officers and men numbered 259, and others invalided to 271; making a total of deaths and invalids in one year 530. The mortality in vessels on the west coast of Africa was 166, and the invalids 104; and the vessels not exclusively employed on the west coast of Africa, respectively 93 and 167. Thus it will be seen that the expense of vessels to suppress the slave trade in one year was 706,454*l.* and the deaths and invalided officers and men 530.

BRITISH SHIPPING.—A return has been obtained by Mr. Bouverie, of the number and tonnage of British shipping entered inwards at ports of the United Kingdom, from British colonial ports and from ports of foreign powers in Europe, Asia, Africa, and America, and cleared outwards to such ports in each year since 1820. It appears, that in 1821 the ships entered inwards at ports of the United Kingdom from British colonial ports numbered 2,532, and their tonnage 656,213; whilst those cleared outwards numbered 2,698, and their tonnage 663,145. In the year 1845 the ships entered inwards were 5,685, and the tonnage 1,895,529; and those cleared outwards 5,046, and the tonnage 1,706,835. In 1821, the number of British vessels entered inwards from ports of foreign powers in Europe, Asia, Africa, and America, respectively, was 6,669, and their tonnage 863,891; whilst those cleared outwards numbered 5,766, and their tonnage 757,295. In 1845 the number of the first description was 13,817, and their tonnage 2,289,744; and of the second 14,008, and the tonnage 2,427,552.

STATISTICS OF VAN DIEMEN'S LAND.—On Saturday last some interesting tables were printed in a Parliamentary document respecting Van Diemen's Land. In 1844 the convict population was 24,824 males, and 4,367 females. The entire population in 1842, was 58,902. In 1844 the total colonial revenue was 109,452*l.* and the expenditure, 169,215*l.* The amount paid by the home government in the same year, towards the maintenance of convicts was 166,690*l.* and the amount paid by the colonial government for police and gaols, 32,954*l.* The value of the imports in the year was 449,988*l.* and of the exports, 408,799*l.* The coin or bullion in the banks amounted to 136,364*l.* and their liabilities to 448,820*l.* In 1844 there were 121,938 acres in cultivation, which produced 807,924 bushels of wheat, 174,405 of barley, 221,105 of oats, 13,349 tons of potatoes, and 29,880 tons of turnips. The live stock consisted of 15,355 horses, 85,302 horned cattle, and 1,145,089 sheep. There were 493 convictions in the year before the Supreme Court and courts of quarter session, of which 172 were crimes against the person, and 321 for crimes against property.

LEGACY DUTY.—A return obtained by Mr. Hume has been issued of the capital on which legacy duty has been paid, and amount of revenue received in the United Kingdom for stamp duty on legacies, &c. in the year ending on the 5th of January, 1846. The hon. member has procured similar returns for several years. It seems that in the last year the capital on which legacy duty was paid in Great Britain, was 45,599,714*l.* 3*s.* 3*d.*; the total amount since 1797 was 1,339,419,511*l.* 14*s.* 11*d.* In Ireland the amount of duty on legacies was 61,629*l.* 18*s.* 1*d.*, and on probates and letters of administration (both in the year 1845), the amount of duty was 66,862*l.* The revenue received in the year ended on the 5th of January last was, in England and Wales, on legacies, 1,178,866*l.* 6*s.* 9*d.*; and on probates, administrations, and testamentary inventories, 963,322*l.* 12*s.* In Scotland it was respectively 88,073*l.* 15*s.* 6*d.* and 68,821*l.* 10*s.*; in Great Britain, 1,266,940*l.* 2*s.* 2*d.* and 1,029,954*l.* 2*s.*; and in Ireland it was 61,629*l.* 18*s.* 1*d.* and 66,862*l.* The total duty received since 1797 in the United Kingdom on legacies now amounts to 39,725,493*l.* 18*s.* 8*d.*; and on probates, &c. 31,814,896*l.* 2*s.* 8*d.* In Ireland the stamps on legacies since 1797 amount to 899,494*l.* 8*s.* 4*d.*; and on probates and administrations, to 1,182,706*l.* 7*s.* 11*d.*

HOUSE OF LORDS.

WEDNESDAY, August 26.—The House met at two o'clock this day, when the Royal assent was given by commission to fifty-one public and private bills. The Lords Commissioners were the Lord Chancellor, the Earl of Minto, and the Earl of Shaftesbury. The subjoined are the titles of the various bills:—Spirit Licenses, &c. Duties; Income Tax Deductions; Ecclesiastical Patronage; Tithe Amendment Act; Naval and Military Departments; Patent Commissions; Poor Removal; Baths and Washhouses; Burial Service, No. 2; Death by Accidents Compensation; Commons Inclosure, No. 3, or Commons Inclosure Act Amendment; Public Works and Fisheries; Public Works, Fisheries, &c.; Lunatic Asylums and Pauper Lunatics; House of Commons Offices; Naval Medical Supplemental Fund Society; Marriages, Ireland, Act Amendment; Lunatic Asylums, Ireland; Exclusive Privilege of Trading Abolition, Ireland; County Works Presentments, Ireland, No. 2; County Works Presentments, Ireland, Amendment; Turnpike Roads, Ireland; Public Works, Ireland, No. 3; Public Works Commissioners, Ireland; Baths and Washhouses, Ireland; Joint Stock Banks, Scotland and Ireland; Citations, Scotland; New Zealand Loan Act Amendment; London and South-Western Railway, London-bridge Extension; Glasgow and Belfast Union Railway; Taff Vale Railway; Newcastle-upon-Tyne and Carlisle Branch Railway; Caledonian Railway, Clydesdale Junction Railway Deviations; East and West India Docks and Birmingham Junction Railway;

Cork and Waterford Railway; Metropolitan Sewage Manure Company; Legal Quays, London; Dublin Wide Streets; Sion College; All Hallows Tithes; Duke of Cleveland's Estate, Bathwick and Wrington; Duke of Norfolk's Estate; Lord Kenyon's, Congreve's Estate; Jesus Hospital, Newcastle Estate; Bond's Estate; Sir Richard B. Phillips's Estate; Virgin Mary Hospital, Newcastle-upon-Tyne, Estate; Dr. Macfarlane's, or Glasgow College, Estate; Farquharson's Divorce, India; and Humphrey's Divorce.

On the motion of the Earl of CLARENDON, the Bill for the Recovery of Small Debts was ordered to be printed as amended by the other House, and to be taken into consideration on Thursday.

THURSDAY, August 27.—The LORD CHANCELLOR, in moving the consideration of the Commons' amendments to the Small Debts Bill, observed that several amendments, not affecting the general principle of the Bill, had been introduced in the other House, but there was one clause which had been there introduced to which he wished to call their lordships' attention. That clause was, he believed, the 17th, and restricted the qualification for judges of the courts to be created under the bill to barristers-at-law. This was, he considered, a most satisfactory amendment. The jurisdiction of the Small Debts Courts was extended by this Bill, and though the sums involved in the cases brought under their jurisdiction might be comparatively small, the cases might involve legal questions of great difficulty. Now, though he (the Lord Chancellor) was perfectly ready to admit the qualifications, and learning, and ability, of many attorneys, yet undoubtedly the general course of education of that class of the Legal Profession did not render them equally well qualified with gentlemen who had been regularly educated for the law as barristers, to act as judges in matters involving doctrines of law. The noble and learned lord then proposed an amendment to enable several judges of existing courts for the recovery of small debts, who had practised as conveyancers, to continue their chamber practice (but not to practise in the courts), in the event of their being appointed judges of the new courts.—The amendment was agreed to, as were the amendments introduced by the Commons.

HOUSE OF COMMONS.

SMALL DEBTS BILL.

MONDAY, August 24.—The report on the Small Debts Courts Bill was brought up. Several amendments were then agreed to.—Mr. WAKLEY proposed, at page 7, line 41, after the word "pleader," to introduce the words "or as an attorney-at-law." His object was to render a class, possessed of great legal experience, eligible for appointments as judges of the new courts. Their exclusion stamped them with degradation. The choice of the Lord Chancellor ought not to be restricted to the class of barristers.—Sir G. GREY observed, that the House having already decided by a large majority against the amendment, he did not feel at liberty to agree to it now. He did not see that any degradation was cast upon attorneys by their exclusion. There must be some line drawn. It might as well be said that attorneys should be eligible to the office of Chief Justice of the Court of Queen's Bench. The amendment was then withdrawn.

LEGAL EDUCATION.

TUESDAY, August 25.—Mr. WYSE brought up the report of the select committee on legal education, which was ordered to be printed.

PUBLIC RECORDS.

Mr. PROTHERO then moved that it having been reported to her Majesty by the deputy-keeper of the public records, that all the record repositories in the metropolis are subject to such an amount of risk from fire that they could be insured only at the following premiums:—Rolls' Chapel, at 1*s.* 6*d.* per cent.; Chapter House, Rolls' House, and Wakefield Tower, at 2*s.* per cent.; Carlton Riding-house, and White Tower, in the Tower, at 5*s.* per cent.; it being observed of the latter repository by Mr. Braidwood, superintendent of the Fire Brigade, that no merchant of ordinary prudence would keep his books and accounts in the same situation in which the records are placed in the said repositories; that a large annual expenditure is incurred for temporary arrangements and repositories, and for watching the same; that the public records are justly deemed of such national interest and value as to occasion a large yearly grant of public money for their custody and administration; it is the opinion of this House that no further delay should take place in the erection of a suitable record repository, pursuant to the Act for keeping the Public Records, passed on the 14th day of August, 1838.—The CHANCELLOR of the EXCHEQUER promised the subject should have the immediate attention of the government.—Sir G. GREY said he believed the chief difficulty of providing a more suitable repository for the public records arose from the want of funds for that purpose. The motion was then withdrawn.

SMALL DEBTS BILL.

On the motion that this Bill be read a third time, Mr. WARBURTON inquired whether any alteration had been made in the Bill with reference to barristers holding judgeships under it being permitted to practise. If they were so permitted, he thought they should forfeit all right to compensation.—Sir G. GREY said the barristers were restricted from practising in the districts where their judgeships were situated, but at all events the Lord Chancellor was of opinion that their duties as judges would fully occupy their time. Bill read a third time and passed.

THURSDAY, August 27.—Mr. WARBURTON obtained leave to introduce a Bill to amend the law of debtor and creditor. The Bill was brought in and ordered to be printed.

SMALL DEBTS BILL.

This Bill was brought down from the Lords; the amendments made by their lordships were agreed to.

NEW STATUTES

Of the Session 9 Victoria.

(Continued from page 454.)

[In this record of actual Legislation, only the statutes and parts of statutes of peculiar importance to the Profession are given *verbatim*. Of the rest, the title, or a brief analysis only, is preserved here.]

CAP. XLVII.

An Act to apply the sum of Four Millions out of the Consolidated Fund, and the surplus of Ways and Means, to the service of the year 1846.

(August 13, 1846.)

CAP. XLVIII.

An Act for legalizing Art-Unions.

(August 13, 1846.)

CAP. XLIX.

An Act to continue until the 1st day of October, 1847, and to the end of the then next Session of Parliament, an Act for authorizing the application of Highway Rates to Turnpike Roads.

(August 18, 1846.)

CAP. L.

An Act to continue until the 1st day of October, 1847, and to the end of the then next Session of Parliament, the exemption of inhabitants of parishes, townships, and villages from liability to be rated as such in respect of stock in trade, or other property, to the relief of the poor.

(August 18, 1846.)

CAP. LI.

An Act to continue certain Turnpike Acts until the 1st day of October, 1847, and to the end of the then next Session of Parliament.

(August 18, 1846.)

CAP. LII.

An Act to continue to the 1st day of October, 1847, and to the then next Session of Parliament, the Act to amend the Laws relating to Loan Societies.

(August 18, 1846.)

CAP. LIII.

An Act to continue the Copyhold Commission until the 31st day of July, 1847, and to the end of the then next Session of Parliament.

(August 18, 1846.)

4 & 5 Vict. c. 35; 6 & 7 Vict. c. 23; 7 & 8 Vict. c. 55; Copyhold Commission continued till 31st July, 1847.—Whereas by an Act passed in the fifth year of the reign of her Majesty, intitled "An Act for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary Tenure, and in respect of other Lands subject to such Rights, and for facilitating the enfranchisement of such lands, and for the Improvement of such Tenure," it was amongst other things enacted, that no commissioner or assistant commissioner, secretary, assistant secretary, or other officer or person appointed under the said Act, should hold his office for a longer period than five years next after the day of the passing of the said Act, and thenceforth until the end of the then next session of Parliament; and whereas the said Act was amended and explained by an Act passed in the seventh year of the reign of her Majesty, and by an Act passed in the eighth year of the reign of her Majesty: and whereas it is expedient that the said commission should be further continued; Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That so much of the first-recited Act as is hereinbefore recited shall be repealed, and that no commissioner or assistant commissioner, secretary, or assistant secretary, or other officer or person so to be appointed, shall hold his office for a longer period than until the thirty-first day of July in the year one thousand eight hundred and forty-seven, and to the end of the then next session of Parliament.

2. *Act may be amended, &c.*—That this Act may be amended or repealed by any Act to be passed in this session of Parliament.

CAP. LIV.

An Act to extend to all Barristers practising in the Superior Courts at Westminster the Privileges of Serjeants at Law in the Court of Common Pleas. (August 18, 1846.)

Barristers-at-Law to have and exercise equal rights and privileges in the Court of Common Pleas as serjeants-at-law.—Whereas it would tend to the more equal distribution and to the consequent despatch of business in the superior Courts of Common Law at Westminster, and would at the same time be greatly for the benefit of the public, if the right of barristers-at-law to practise, plead, and to be heard extended equally to all the said courts; but, by reason of the exclusive privilege of serjeants-at-law to practise, plead, and have audience in the Court of Common Pleas at Westminster during Term time, such object cannot be effected without the authority of Parliament; Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act all barristers-at-law, according to their respective rank and seniority, shall and may have and exercise equal rights and privilege of practising, pleading, and audience in the said Court of Common Pleas at Westminster with the said serjeants-at-law; and it shall be lawful for the justices of the said Court, or any three of them, of whom the Lord Chief Justice of the said Court shall be one, to make rules and orders, and to do all other things necessary for giving effect to this enactment.

CAP. LV.

An Act to defray until the 1st day of August, 1847, the charge of the Pay, Clothing, and contingent and other expenses of the disembodied Militia, in Great Britain and Ireland; and to grant allowances in certain cases to subaltern Officers, Adjutants, Paymasters, Quartermasters, Surgeons, Assistant Surgeons, Surgeons' Mates, and Sergeant Majors of the Militia; and to authorize the employment of Non-commissioned Officers. (Aug. 18, 1846.)

CAP. LVI.

An Act to provide Forms of Proceedings under the Acts relating to the Duties of Assessed Taxes, and the Duties on Profits arising from Property, Professions, Trades, and Offices in England. (Aug. 18, 1846.)

43 Geo. 3. c. 99. *The forms contained in the schedule to this Act to be used in all proceedings under the Acts relating to the assessed taxes and the property and income tax.*—Whereas by an Act passed in the forty-third year of the reign of King George the Third, intitled "An Act for consolidating certain of the Provisions contained in any Act or Acts relating to the duties under the Management of the Commissioners for the Affairs of Taxes, and for amending the same," the duties of assessed taxes then under the management of the Commissioners for the Affairs of Taxes, so far as the same related to England, Wales, and Berwick-upon-Tweed, were directed to be assessed, raised, levied, and paid under the regulations of the said Act: and whereas divers Acts of Parliament have from time to time been passed for explaining, altering, or amending the said recited Act and the laws relating to the duties of assessed taxes: and whereas since the passing of the said first-recited Act divers duties of assessed taxes and duties on profits arising from property, professions, trades, and offices have from time to time been granted by Parliament, and directed to be assessed, raised, levied, collected, and paid under the rules and regulations of the said first-recited Act, and the several other Acts relating thereto, or for explaining, altering, or amending the same; and such of the said several duties as are now in force, and payable to her Majesty, her heirs and successors, are placed by law under the direction and management of the Commissioners of Stamps and Taxes: and whereas in and by the said several Acts hereinbefore recited, mentioned, or referred to, and other Acts relating to the said respective duties, the commissioners and officers acting in the execution of the said Acts are required and authorized respectively to make and allow divers assessments, and to make, sign, and issue certain warrants, certificates, notices, and other official documents in the assessing, levying, and collecting of the said duties, and otherwise in relation thereto; and it would tend to promote and facilitate the due and uniform execution of the said Acts, if proper forms of proceedings for that purpose were provided and established by law: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, in the assessing, charging,

levying, and collecting of the said several duties hereinbefore mentioned, and on all other occasions in the execution of the several Acts relating to the matters hereinbefore mentioned, or any of them, in England, it shall be lawful for the respective commissioners, officers, and other persons acting in that behalf to cause their respective assessments, duplicates, charges, warrants, orders, notices, and other proceedings to be drawn, prepared, and made out according to the several forms contained in the schedule hereunto annexed, or to the effect thereof, *mutatis mutandis*, as the case shall require; and every such assessment, duplicate, charge, warrant, order, notice, or other proceeding which shall be so drawn, prepared, or made out, shall be good and effectual to all intents and purposes whatsoever, without stating the case, or the facts or evidence, in any more particular manner than is required in and by such forms respectively; and no information, summons, conviction, or other preliminary proceeding shall be deemed to be necessary to authorize or justify the making or issuing of any warrant, order, or other proceeding, whereof a form is contained in the said schedule, other than such preliminary proceeding as is recited or mentioned in such form; and the said schedule, and the several forms, rules, and directions therein contained, shall respectively be deemed to be part of this Act.

2. *Proceedings not to be void or voidable for want of form, or affected by any mistake, &c. therein.*—Provided always, that no assessment, charge, warrant, or other proceeding which shall be made, or shall purport to be made, by virtue or in pursuance or in execution of the said several Acts hereinbefore recited, mentioned, or referred to, or any of them, or of any other Act or Acts relating to the said several duties hereinbefore mentioned, shall be quashed or deemed to be void or voidable for want of form, or be impeached or affected by reason of any mistake, defect, or omission therein, provided the person or property charged or intended to be charged or affected by any such proceeding be designated therein to common intent and understanding, and such proceeding be in substance and effect in conformity with or according to the intent and meaning of the said Acts.

3. *Construction of terms in this Act, or in schedule annexed: "Duties of assessed taxes," &c.*—"Commissioners of assessed taxes."—"Additional Commissioners of the Property and Income Tax."—"Additional Commissioners of the Property and Income Tax."—"Special Commissioners of the Property and Income Tax."—"Commissioners for Offices."—"Oath."—"England."—"Parish."—That wherever the terms and expressions following occur in this Act or in the schedule hereunto annexed, and wherever the same terms and expressions respectively shall occur or be used in any form of proceeding to be drawn, prepared, or made out according to the respective forms contained in the said schedule, the said terms and expressions shall be construed to have the meanings hereinafter assigned to them respectively; (that is to say,) the several expressions, "Duties of assessed taxes," and "Duties on profits arising from property, professions, trades, and offices," shall respectively mean and include as well the said respective duties as all compositions for the same, and all sums of money which may lawfully be included in or added to any assessment of the said respective duties; the expression "Commissioners of Assessed Taxes" shall be construed and deemed to mean commissioners for putting into execution the several Acts relating to the duties of assessed taxes; the expression "Commissioners of the property and income-tax" shall be construed and deemed to mean commissioners for the general purposes of the Act passed in the fifth and sixth years of the reign of her present Majesty, intitled "An Act for granting to her Majesty Duties on Profits arising from Property, Professions, Trades, and Offices, until the sixth day of April, one thousand eight hundred and forty-five;" the expression "Additional commissioners of the property and income-tax" shall be construed and deemed to mean additional commissioners for executing the powers of the said last-mentioned Act; the expression "Special commissioners of the property and income-tax" shall be construed and deemed to mean commissioners for the special purposes of the said last-mentioned Act; the expression "Commissioners for offices" shall be construed and deemed to mean commissioners for executing the said last-mentioned Act in relation to the duties chargeable under schedule (E) of the same Act, in respect of offices or employments of profit in any court or public department of office, or in any corporate city, borough, town, or place, or in any cinque port; the term "Oath" shall mean and include an affirmation in the case of Quakers or other persons entitled by law to make an affirmation in lieu of an oath; the term "England" shall mean and include England, Wales, and Berwick-upon-Tweed; the term "parish" shall mean and include any parish, ward, or place for which a separate assessment of the duties of assessed taxes, or of the duties on profits arising from property, professions, trades, and offices, may lawfully be made, or for which any assessor or collector may be lawfully appointed for the purpose of assessing or collecting the said respective

duties; and any word or words importing the singular number or the masculine gender only shall respectively be understood to include several persons, matters, and things, as well as one person, matter, or thing, and females as well as males, unless there be something in the subject or context repugnant to such construction.

4. *Act may be amended.*—That this Act may be amended or repealed by any Act to be passed in this session of Parliament.

The Schedule to which this Act refers, containing the Forms of Proceedings for carrying into execution the several Acts relating to the Duties of Assessed Taxes, and the Duties on Profits arising from Property, Professions, Trades, and Offices; (that is to say,)

1. Form of Appointment of Assessors.
2. Form of Certificate of Assessments of the Duties of Assessed Taxes, and of the Allowance thereof.
3. Form of Duplicate of First Assessments of the Duties of Assessed Taxes, and Abstract of Contracts of Composition for the said Duties.
4. Form of Collector's Appointment and Warrant to be annexed or subjoined to the foregoing Duplicate.
5. Form of Certificate of Assessments of Duties under Schedules (A) and (B) of the Act 5 & 6 Vict. c. 35, and of the Allowance thereof.
6. Form of Duplicate of First Assessments of Duties under Schedules (A) and (B) of the Act 5 & 6 Vict. c. 35.
7. Form of Collector's Appointment and Warrant to be annexed or subjoined to the foregoing Duplicate, Form No. 6.
8. Form of Certificate of First Assessments of Duties under Schedule (D) of the Act 5 & 6 Vict. c. 35, and of the Allowance thereof.
9. Form of Certificate of Assessments of Duties under Schedule (E) of the Act 5 & 6 Vict. c. 35, and of the Allowance thereof.
10. Form of Duplicate of First Assessments of Duties under Schedules (D) and (E) of the Act 5 & 6 Vict. c. 35.
11. Form of Collector's Appointment and Warrant to be annexed or subjoined to the foregoing Duplicate, Form No. 10.
12. Form of Special Commissioners' Assessments of Duties under Schedule (D) of the Act 5 & 6 Vict. c. 35.
13. Form of Duplicate of Special Commissioners' Assessments of Duties under Schedule (D) of the Act 5 & 6 Vict. c. 35.
14. Form of Collector's Warrant to be annexed or subjoined to the foregoing Duplicate, Form No. 13.
15. Form of Certificate of Assessments of Duties under Schedule (E) of the Act 5 & 6 Vict. c. 35, in respect of Public Offices, and of the Allowance thereof.
16. Form of Additional First Assessments of the Duties of Assessed Taxes, and of the Allowance thereof.
17. Form of Duplicate of Additional First Assessments of the Duties of Assessed Taxes.
18. Form of Collector's Warrant to be annexed or subjoined to the foregoing Duplicate, Form No. 17.
19. Form of Additional First Assessments of Duties under Schedules (A) and (B) of the Act 5 & 6 Vict. c. 35, and of the Allowance thereof.
20. Form of Duplicate of Additional First Assessments of Duties under Schedules (A) and (B) of the Act 5 & 6 Vict. c. 35.
21. Form of Collector's Warrant to be annexed or subjoined to the foregoing Duplicate, Form No. 20.
22. Form of Certificate of Additional First Assessments of Duties under Schedule (D) of the Act 5 & 6 Vict. c. 35, and of the Allowance thereof.
23. Form of Additional First Assessments of Duties under Schedule (E) of the Act 5 & 6 Vict. c. 35, and of the allowance thereof.
24. Form of Duplicate of Additional First Assessments of Duties under Schedules (D) and (E) of the Act 5 & 6 Vict. c. 35.
25. Form of Collector's Warrant to be annexed or subjoined to the foregoing Duplicate, Form No. 24.
26. Form of Supplementary Assessments of the Duties of Assessed Taxes, and of the Allowance thereof.
27. Form of Duplicate of Supplementary Assessments of the Duties of Assessed Taxes.
28. Form of Collector's Warrant to be annexed or subjoined to the foregoing Duplicate, Form No. 27.
29. Form of Supplementary Assessments of Duties under Schedules (A) and (B) of the Act 5 & 6 Vict. c. 35, and of the Allowance thereof.
30. Form of Duplicate of Supplementary Assessments of Duties under Schedules (A) and (B) of the Act 5 & 6 Vict. c. 35.
31. Form of Collector's Warrant to be annexed or subjoined to the foregoing Duplicate, Form No. 30.
32. Form of Supplementary Assessments of Duties under Schedule (D) of the Act 5 & 6 Vict. c. 35, and of the Allowance thereof.
33. Form of Supplementary Assessments of Duties

under Schedule (E) of the Act 5 & 6 Vict. c. 35, and of the Allowance thereof.

34. Form of Duplicate of Supplementary Assessments of Duties under Schedules (D) and (E) of the Act 5 & 6 Vict. c. 35.

35. Form of Collector's Warrant to be annexed or subjoined to the foregoing Duplicate, Form No. 34.

36. Form of Appointment of Assessors for making a Re-assessment of Duties pursuant to the Act 43 Geo. 3, c. 161, s. 56, or the Act 5 & 6 Vict. c. 35, s. 174, on the Default or Failure of the Collector.

37. Form of Certificate of Re-assessment under the Act 43 Geo. 3, c. 161, s. 56, or the Act 5 & 6 Vict. c. 35, s. 174, and of the Allowance thereof.

38. Form of Duplicate of Re-assessment under the Act 43 Geo. 3, c. 161, s. 56, or 5 & 6 Vict. c. 35, s. 174.

39. Form of Collector's Appointment and Warrant to be annexed or subjoined to the foregoing Duplicate of the Re-assessment of Duties, No. 38.

40. Form of Assessor's Appointment for making an Assessment pursuant to the Acts 43 Geo. 3, c. 99, s. 70, and c. 161, s. 85, to defray Costs incurred by the Commissioners in Actions at Law.

41. Form of Certificate of Assessment for raising the Costs incurred by Commissioners in Actions at Law, and of the Allowance thereof.

42. Form of Duplicate of Assessment for Costs incurred by Commissioners in Actions at Law.

43. Form of Collector's Appointment and Warrant to be annexed or subjoined to the foregoing Duplicate of Assessment, Form No. 42.

44. Form of Surveyor's Certificate of Charges of Assessed Taxes for Supplementary Assessment.

45. Form of Oath of Service of Notices of Charge, to be subjoined to the foregoing Certificate, Form No. 44.

46. Form of Allowance by the Commissioners of Surveyor's Certificate of Charges, Form No. 44.

47. Form of Surveyor's Certificate of Charges of the Duties on Profits arising from Property, Professions, Trades, and Offices, for Supplementary Assessment.

48. Form of Oath of Service of Notices of Charge, to be subjoined to the foregoing Certificate, Form No. 47.

49. Form of Allowance by the Commissioners of Surveyor's Certificate of Charges, Form No. 47.

50. Form of Certificate under the Act 43 Geo. 3, c. 99, s. 35, as to Duties of Assessed Taxes in arrear.

51. Form of Warrant to be annexed or subjoined to the foregoing Certificate, Form No. 50.

52. Form of Certificate under the Act 5 & 6 Vict. c. 35, s. 177, as to Duties in arrear.

53. Form of Warrant to be annexed or subjoined to the foregoing Certificate, Form No. 52.

54. Form of Certificate under the Act 5 & 6 Vict. c. 35, s. 155, as to Duties in arrear.

55. Form of Warrant to be annexed or subjoined to the foregoing Certificate, Form No. 54.

56. Form of a Schedule of Persons who have made Default in Payment of the Duties of Assessed Taxes to be delivered by the Collector, pursuant to the Acts 48 Geo. 3, c. 141, No. V. Rule 1st, and 3 Geo. 4, c. 88, No. III. Rule 4th.

57. Form of Collector's Affidavit, to be subjoined to the foregoing Schedule, Form No. 56.

58. Form of Collector's Affidavit, to be subjoined to the Forms Nos. 56 and 57, and to be made after the schedule has remained with the Commissioners of the Division for the space of 40 days, as directed by the Act 48 Geo. 3, c. 141, No. V. Rule 2nd.

59. Form of a Schedule of Persons who have made default in Payment of the Duties on Profits arising from Property, Professions, Trades, and Offices, to be delivered by the Collector, pursuant to the Acts 48 Geo. 3, c. 141, No. V. Rule 1st, and 3 Geo. 4, c. 88, No. III. Rule 4th.

60. Form of Collector's Affidavit, to be subjoined to the foregoing Schedule, Form No. 59.

61. Form of Collector's Affidavit, to be subjoined to Forms No. 59 and 60, and to be made after the Schedule has remained with the Commissioners of the District for the space of 40 Days as directed by the Act 48 Geo. 3, c. 141, No. V. Rule 2nd.

62. Form of Receiving Officer's Certificate, certifying the foregoing Schedules of Defaulters' Forms, No. 56 and 59, to the Court of Exchequer, pursuant to the Acts 48 Geo. 3, c. 141, No. V. Rule 2nd, and 1 & 2 Geo. 4, c. 113, s. 32.

63. Form of Receiving Officer's Certificate to the Court of Exchequer, pursuant to the Acts 48 Geo. 3, c. 141, No. V. Rule 3rd, and 1 & 2 Geo. 4, c. 113, s. 34, of Collectors who have made Default in accounting for Duties.

64. Form of Certificate to be made by Two Commissioners of Stamps and Taxes for Enrolment in the Office of her Majesty's Remembrancer of the Court of Exchequer, pursuant to the Act 5 & 6 Wm. 4, c. 20, s. 11.

65. Form of Collector's Warrant, which may be issued during the Period the Schedules of Defaulters remain with the Commissioners, under the Act 48 Geo. 3, c. 141, No. V. Rule 2nd.

66. Form of Return to be made by Collectors,

under the Act 43 Geo. 3, c. 99, s. 45, of Arrears of Duties which cannot be recovered by the Collectors.

67. Form of Oath to be made by the Collectors, and indorsed on the foregoing Schedule, Form No. 66.

68. Form of a Schedule of Defaulters to be made out by the Commissioners pursuant to the Act 43 Geo. 3, c. 99, s. 45, and to be deposited with the Commissioners of Stamps and Taxes, pursuant to the Act 5 & 6 Wm. 4, c. 20, s. 13.

69. Form of Revocation of the Appointment of a Collector, and Appointment of another Collector in his stead, under the Act 43 Geo. 3, c. 99, s. 40.

70. Form of a Warrant under the Act 3 Geo. 4, c. 88, s. 3, to imprison the Person and seize the Estate of a Collector making Default in payment of Duties collected.

71. Form of a Warrant to sell a Collector's Estate seized under the foregoing Warrant, Form No. 70.

72. Form of a Warrant under the Act 3 Geo. 4, c. 88, s. 3, to seize the Estate of a deceased Collector who has made default in Payment of Duties collected.

73. Form of a Warrant to sell a deceased Collector's Estate seized under the foregoing Warrant, Form, No. 72.

74. Form of public Notice of a Meeting of Commissioners required by 3 Geo. 4, c. 88, s. 3, to be held after the Seizure of a Collector's Estate.

75. Form of a Deed of Conveyance and Assignment of a Collector's Estate seized under the Act 3 Geo. 4, c. 88, s. 4.

76. Form of Warrant under the Act 43 Geo. 3, c. 99, s. 33, to break open a House for the Purpose of levying a Distress for Duties in arrear.

77. Form of Warrant under the Act 43 Geo. 3, c. 99, ss. 33 and 35, to break open a House for the Purpose of levying a Distress for the Duties of Assessed Taxes in arrear.

78. Form of Warrant under the Acts 43 Geo. 3, c. 99, s. 33, and 5 & 6 Vict. c. 35, ss. 155 and 177, to break open a House for the Purpose of levying a Distress for the Duties on Profits arising from Property, Professions, Trades, and Offices in arrear.

79. Form of a Warrant of Commitment under the Act 43 Geo. 3, c. 99, s. 33, for want of a sufficient Distress for Duties in arrear.

80. Form of a Warrant of Commitment under the Act 5 & 6 Wm. 4, c. 20, s. 16, for Want of a sufficient Distress for the Duties of Assessed Taxes in arrear.

81. Form of a Warrant of Commitment under the Act 5 & 6 Wm. 4, c. 20, s. 16, for Want of a sufficient Distress for the Duties on Profits arising from Property, Professions, Trades, and Offices.

CAP. LVII.

An Act for regulating the Gauge of Railways.

(August 18, 1846.)

CAP. LVIII.

An Act to amend an Act of the seventh and eighth years of the reign of her present Majesty, for reducing, under certain circumstances, the duties payable upon books and engravings.

(August 18, 1846.)

CAP. LIX.

An Act to relieve her Majesty's subjects from certain Penalties and Disabilities in regard to Religious Opinions.

(August 18, 1846.)

SECT. 1 specifies certain Acts and parts of Acts which are here repealed:—5 & 6 Edw. 6, c. 1, ss. 1, 2, 3, 4, 6; 1 Eliz. c. 1; 2 Eliz. c. 1 (1.); 1 Eliz. c. 2; 2 Eliz. c. 2 (1.); 5 Eliz. c. 1; 13 Eliz. c. 2; 29 Eliz. c. 6; 1 Jac. 1, c. 4; 3 Jac. 1, c. 1, s. 2, in part; 3 Jac. 1, c. 4; 7 Jac. 1, c. 6; 13 & 14 Car. 2, c. 4, s. 11; 17 & 18 Car. 2, c. 6, s. 6 (1.); 30 Car. 2, st. 2, s. 5, in part; 8 & 9 Wm. 3, c. 3 (S.); and all laws revived, ratified, and confirmed thereby; 11 & 12 Wm. 3, c. 4; 1 Anne, st. 1, c. 30; 2 Anne, c. 6, ss. 1 (1.) 3, 4; 11 Geo. 2, c. 17; 17 & 18 Geo. 3, c. 49, s. 5 (1.); 18 Geo. 3, c. 60, s. 5; 23 & 24 Geo. 3, c. 38 (1.); 31 Geo. 3, c. 39, ss. 12, 15, 16; 33 Geo. 3, c. 21, s. 14 (1.); 33 Geo. 3, c. 44.

2. Jews to be subject to the same laws as Protestant Dissenters in respect to schools and places of worship.—That from and after the commencement of this Act her Majesty's subjects professing the Jewish religion, in respect to their schools, places for religious worship, education, and charitable purposes, and the property held therewith, shall be subject to the same laws as her Majesty's Protestant subjects dissenting from the Church of England are subject to, and not further or otherwise.

3. Not to affect pending suits.—Provided, that nothing in this Act contained shall affect any action or suit actually pending or commenced, or any property now in litigation, discussion, or dispute, in any of her Majesty's courts of law or equity.

4. Disturbing religious assemblies.—That from and after the commencement of this Act all laws now in force against the wilfully and maliciously or contemptuously disquieting or disturbing any meeting, assembly, or congregation of persons assembled for

religious worship, permitted or authorised by any former Act or Acts of Parliament, or the disturbing, molesting, or missing any preacher, teacher, or person officiating at such meeting, assembly, or congregation, or any person or persons there assembled, shall apply respectively to all meetings, assemblies, or congregations whatsoever of persons lawfully assembled for religious worship, and preachers, teachers, or persons officiating at such last-mentioned meetings, assemblies, or congregations, and the persons there assembled.

CAP. LX.

An Act to exempt from Stamp Duty, Bonds and Warrants to confess Judgment executed by High Constables or Collectors of C and Jary Coss, or their sureties in Ireland.

(August 18, 1846.)

CAP. LXI.

An Act to amend an Act of the Seventh Year of King George the Fourth, for Consolidating and Amending the Laws relating to Prisons in Ireland.

(August 18, 1846.)

CAP. LXII.

An Act to abolish Doodands.

(August 18, 1846.)

Deodands and forfeiture of chattels moved to or causing death abolished from and after 1 St. 1846.
—Whereas the law respecting the forfeiture of chattels which have moved to or caused the death of man, and respecting doodands, is unreasonable and inconvenient: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of September, one thousand eight hundred and forty-six, there shall be no forfeiture of any chattel for or in respect of the same having moved to or caused the death of man; and no coroner's jury sworn to inquire, upon the sight of any dead body, how the deceased came by his death, shall find any forfeiture of any chattel which may have moved to or caused the death of the deceased, or any doodand whatsoever; and it shall not be necessary in any indictment or information for homicide to allege the value of the instrument which caused the death of the deceased, or to allege that the same was of no value.

CAP. LXIII.

An Act for granting certain Duties on Sugar and Molasses.

(August 18, 1846.)

CAP. LXIV.

An Act to enable Courts of Law in Ireland to give relief against adverse claims made upon Persons having no interest in the subject-matter of such claims.

(August 18, 1846.)

CAP. LXV.

An Act to provide for the more effectual Execution of the office of a Justice of the Peace, and the better administration of the Police, within the Borough of Wolverhampton, and certain parishes and places in the neighbourhood thereof, all in the county of Stafford.

(August 18, 1846.)

THE GAME LAWS.

The Select Committee appointed to inquire into the operation of the Game Laws, and to report their observations and opinions thereon to the House, and who were empowered to report the minutes of evidence taken before them, have considered the subject referred to them, and have agreed to several resolutions, which they beg leave to report to the House, together with the minutes of evidence taken before them.

1. Resolved, That it is the opinion of this committee, that the common law of England has always distinctly recognized a qualified right of property in game; and that, from a very early period, it has been found necessary, by statutory enactment, to make some special provision against the attempt to steal or destroy a species of property peculiarly exposed to depredation.

2. Resolved, That it is the opinion of this committee, that the stringency of the game laws has been from time to time materially qualified and relaxed.

3. Resolved, That it is the opinion of this committee, that the recent Act, 1 & 2 Wm. 4, cap. 26, vested the property in game in the occupier of the soil, and distinctly recognized in game, as the subject of sale, one of the essential qualities of private property.

4. Resolved, That under these circumstances, the tenant has at all times the power to secure the game to himself, or to reject the tenancy, if the proprietor of the lands insists on a reservation being made of the game in his (the proprietor's) favour.

5. Resolved, That it is the opinion of this committee that to exclude game from the protection of the

law would be inconsistent with a due regard to the security of other property.

6. Resolved, That it is the opinion of this committee, that the taking of game by persons who have no right of property in it should continue to be the subject of penal legislation.

7. Resolved, That in reviewing the statutes now in force with reference to the pursuit and sale of game, it appears to your committee that alterations may be suggested which, without impairing their efficiency for the repression of crime, would prevent the unequal or excessive punishment of persons who violate their provisions.

8. Resolved, That it is expedient to abolish summary penalties for poaching.

9. Resolved, That your committee are not, however, prepared to recommend such an alteration of the law as would exempt from more severe penalties those who, in the illegal pursuit of game, commit at the same time a breach of the revenue laws, or those who, in the day-time, being armed, and in numbers, are guilty of violence.

10. Resolved, That it is the opinion of this committee, that the penalty imposed by the statute 52 Geo. 3, c. 43, for sporting without a certificate appears excessive.

11. Resolved, That it is the opinion of this committee, that the space of three days allowed by section 44 of 1 & 2 Wm. 4, c. 32, for giving notice of appeal against any summary conviction under this Act, should be extended.

12. Resolved, That it is the opinion of this committee, that it is expedient that so much of 5 & 6 Wm. 4, c. 20, which allows a moiety of the penalty levied under 1 & 2 Wm. 4, c. 32, to go to the informer, should be repealed.

13. Resolved, That it is the opinion of this committee, that no person convicted of night poaching, under sec. 1, 9 Geo. 4, c. 69, whose offence is unattended by circumstances of aggravation, should be subjected to the punishment of transportation.

14. Resolved, That it is the opinion of this committee, that no person convicted of night poaching, under the first section of 9 Geo. 4, c. 69, should be required to find sureties for not repeating such offence.

15. Resolved, That it is the opinion of this committee, that, apart from considerations of revenue, every owner or occupier of land having the right to kill the game on that land, should have such right without being required to take out a game certificate.

16. Resolved, That your committee further recommend the abolition of certificates as regards the pursuit and destruction of hares by means of packs of hounds, or by greyhounds; and also to recommend the reduction of the duties on greyhounds to those imposed on common dogs.

17. Resolved, That your committee regret to find that great facilities still exist for the disposal of stolen game.

18. Resolved, That it has been suggested to your committee, that by imposing additional legislative restrictions upon the sale of game, such facilities might be diminished, if not altogether removed; but the practical difficulty of enforcing any such regulations appears to your committee to be almost insurmountable, and the regulations themselves would necessarily be of so stringent and vexatious a character, that your committee cannot recommend their adoption.

19. Resolved, That it is the opinion of this committee, that the powers of constables should be better defined and enlarged, in regard to the search and detention of persons found under suspicious circumstances with game in their possession; and that power should be given to constables to search public-houses and beer-shops (licensed to sell off as well as on the premises) for game, it having been proved before the committee that they are extensive receptacles for stolen game.

20. Resolved, That it is the opinion of this committee, that the present time fixed for the period at which feathered game becomes a marketable article, and saleable by the dealer, should be postponed; and they recommend that the sale of each species of game should be deferred until one day after the season for shooting it has commenced.

21. Resolved, that your committee has received evidence to show that the preservation of large quantities of game has been the frequent cause of damage to the neighbouring crops.

22. Resolved, That it is the opinion of this committee, that in cases where the damage done to the growing crops of the occupier is caused by game being to or reserved by the owner of the land, such damage may be made the subject of pecuniary compensation.

23. Resolved, That it is the opinion of this committee, that although instances to the contrary have been proved to your committee, evidence has been adduced before them which warrants the conclusion that, in general, a tenant's just claim for compensation is compelled by his landlord.

24. Resolved, That it is the opinion of this committee, that great difficulty must always exist in determining the amount of damage which has been

inflicted by game on growing crops, and that the estimate of such damage, however skillfully made, is rarely satisfactory to both parties.

25. Resolved, That it is the opinion of this committee, that where, from the vicinity of the preserves of adjoining proprietors, such damage must be attributed to the game bred and preserved therein, the reparation for such damage cannot generally be made the subject of previous agreement.

26. Resolved, That it is the opinion of this committee, that under these circumstances, cases of hardship may be expected to recur; but the extreme difficulty of establishing the liability of any particular party for the damage done, or correctly assessing the amount of such damage, have induced your committee to reject the suggestion that an action on the case would be a fitting or practical remedy for damage done to growing crops by game.

27. Resolved, That it is the opinion of this committee, that this species of damage is to be attributed mainly, if not entirely, to hares and rabbits, and that no appreciable proportion of such damage can be ascribed to feathered game.

28. Resolved, That it is the opinion of this committee, that the law in Scotland with regard to game differs from that in England in many essential particulars, and that little evidence respecting that part of the subject has been adduced before your committee.—July 6.

THE MAGISTRATE.

Summary.

THE Deodands Abolition Bill will be found in the division of our journal which comprises the New Statutes. It is singularly brief, therefore we have given it entire. The "Report of the Committee on the Game Laws" will be found subjoined. Another attack on these laws, we are informed, is contemplated by Mr. BRIGHT and his party next Session. In the meantime, the public mind is to be worked on by a learned Barrister, who, we know, is at this time preparing a pamphlet on the subject, with the co-operation, we believe, of Mr. BRIGHT.

THE LAWYER.

Summary.

THE Small Debts Bill has passed both the Lords and Commons, and will receive the Royal Assent by Commission this day (Friday). Some remarks on the subject will be found in a leading article. Mr. WARBURTON has brought in a Bill, which was read a first time on Thursday, to amend the Law of Debtor and Creditor. We believe that the leading feature of the intended measure is a proposition to restore arrest on mesne process in civil actions under certain limitations. The Bill, we presume, will be re-introduced to the House next Session. It is a step backward which we do not think the Legislature will consent to make.

THE PRACTICE OF WILLS.

By G. S. ALLNUTT, Esq. Barrister-at-Law.

BOOK II.

PROBATE OF WILLS.

CHAPTER III.—BY WHOM TO BE PROVED.

(Continued from page 440.)

THE executors named in the will are the proper parties by whom the will should be proved, and they may be cited, at the instance and on the oath of any person who has an interest, or, *ex officio*, by the Ordinary or party having the power to grant probate, to prove the will, and take upon themselves the execution of it, or to renounce the same. Where, however, the party at whose instance a citation issued concealed from the executor the fact of there being assets within the jurisdiction of the Court, he was compelled to pay the costs of the proceeding, which had been incurred solely by his conduct. (*Lyon v. Balfour*, 2 Add. 501.)

Administration cum testamento annexo.—If the executor appointed by the testator renounce or die before the testator, or before proving the will, or be incapable to act, the Court will grant letters of administration *cum testamento annexo*, and the will must be proved by the person to whom such administration is granted.

By the 21 Hen. 8, c. 5, s. 3, it is enacted, that "in case any person die intestate, or that the ex-

ecutors named in any such testament refuse to prove the said testament, then the said Ordinary, or other person or persons having authority to take probate of testaments as is abovesaid, shall grant the administration of the goods of the testator, or person deceased, to the widow of the same person deceased, or to the next of his kin, or to both, as by the discretion of the same Ordinary shall be thought good, taking surety of him or them to whom shall be made such commission for the true administration of the goods, chattels, and debts which he or they shall be so authorised to minister; and in cases where divers persons claim the administration as next of kin, which be equal in degree of kindred to the testator or person deceased, and where any person only desireth the administration as next of kin, where indeed divers persons be in equality of kindred, as is aforesaid, that in every such case the Ordinary to be at his election and liberty to accept any one or more making request where divers do require the administration."

The above statute, it will be observed, does not apply to any of the cases before mentioned, but that of the refusal of an executor to act; and therefore the Court was left to its discretion in the other cases as to the person to whom the administration should be granted.

In the exercise of this discretion, the Court considers the right of administration to follow the right to the property, and this it appears is now the rule, whether the case is within the statute or not. (*In the goods of Gill*, 1 Hag. 341; see also *Repton v. Holland*, 2 Cas. temp. Lee, 254; *Dodson v. Crackerode*, 2 Cas. temp. Lee, 326; *Elwes v. Elwes*, 2 Cas. temp. Lee, 573; *Weidrill v. Wright*, 2 Phill. 248; and *Tucker v. Westgarth*, 2 Add. 352.)

The residuary legatee, therefore, is the person to whom the Court will grant an administration *cum testamento annexo*, in preference to the next of kin (*Atkinson v. Barnard*, 2 Phill. 318); and if there be several residuary legatees, the Court will grant the administration to any of them. (*Taylor v. Shore*, T. Jones, 162; Com. Dig. "Administrator," B. b.)

In *Thomas v. Buller* (1 Vent. 217), it was observed by the Court (p. 219), that "the reason that the statute 21 Hen. 8 required that administration should be granted to the next of kin, was upon the presumption that the intestate intended to prefer him; but now the presumption is here taken away, the *residuum* being disposed of to another; and to what purpose should the next of kin have it, when no benefit can accrue to him by it; and it is reasonable that he should have the management of the estate, who is to have what remains of it after the debts and legacies paid." (See also *Pierce v. Perks*, 1 Sid. 281; *Linthwaite v. Galloway*, 2 Cas. temp. Lee, 414; *West v. Willby*, 3 Phill. 381; *Taylor v. Diplock*, 2 Phill. 276; and *In the goods of Gill*, *ubi supra*.)

The residuary legatee, whether there be a prospect of a residue or not, is entitled to this administration, and that, not only before the next of kin, but before legatees and annuitants named in the will. (*Atkinson v. Barnard*, 2 Phill. 316.)

Where a person claims as residuary legatee in trust, it appears that he is entitled to the administration (*Hutchinson v. Lambert*, 3 Add. 27); but see, *contra*, *Carymaker v. Chamberlayne*, 2 Cas. temp. Lee, 243; *Boddicott v. Dalzeel*, 2 Cas. temp. Lee, 294; and *Fawcener v. Jordan*, 2 Cas. temp. Lee, 327.)

The representative of a deceased residuary legatee has the same right to this administration as the residuary legatee himself. (*Jones v. Beytagh*, 3 Phill. 365); *Weidrill v. Wright*, 2 Phill. 243; *Ysted v. Stanley*, Dyer, 372, a; *Sparks v. Denne*, W. Jones, 225; Wentw. Off. Ex. 82; Godolph. pt. 1, c. 20, s. 2.) But where the deceased residuary legatee was a mere trustee, the administration is generally granted to the person who has the beneficial interest in the property. (*Hutchinson v. Lambert*, 3 Add. 27; and *Carymaker v. Chamberlayne*, 2 Cas. temp. Lee, 243.)

The residuary legatee has not, however, such a legal right to this administration as to be able to compel the ordinary to grant it to him. (*Rex v. Bettensworth*, 2 Strange, 956.)

Where the residuary legatee declines to take this administration, it is usually granted to the next of kin; but where he has no interest, he will be excluded, and the administration will be granted to any person who has an interest in the estate. (*West v. Willby*, 3 Phill. 381.)

If the next of kin decline the administration, it will be granted to a legatee or a creditor. (*Kooystra v. Buyskes*, 3 Phill. 531; *Snapes v. Webb*, 2 Cas. temp. Lee, 411.)

Custody of testamentary papers.—The Prerogative Court will order all testamentary papers, including the duplicate of a will, to be brought in when required. (*Killiam v. Parber*, 1 Cas. temp. Lee, 662.)

In a case of disputed wills, they should be lodged in the registry of the Court which has the right of granting probate; and if wills are withheld, the parties withholding them will be liable to the costs necessary to get them out of their possession. (*Cunningham v. Seymour*, 2 Phill. 250.)

Where another person than the executor once had the will in his possession, and it is so proved, the presumption is that he still holds it, unless he affirms by affidavit to the contrary. (Swiab. pt. 6, c. 12, pl. 2; Godolph. pt. 1, c. 20, s. 2; *Bethun v. Dinmore*, 1 Cas. temp. Lee, 158.)

Solicitor's lien on testamentary papers.—If a will be in the hands of the testator's solicitor, it appears that he cannot claim any lien upon it. In *Georges v. Georges* (18 Ves. 294), Lord Eldon said, "I never heard of a lien upon a will. The effect of it would go to a great extent. The executor having a right to retain his own debt, consider the use to which such a lien might be perverted by an attorney with a large debt, himself preparing the will, and a subscribing witness, under this doctrine of lien, keeping that will, and setting himself above the executor. He cannot refuse the production for the purpose of establishing the character of all persons claiming under the instrument." (See also *Balch v. Symes*, Turn. & Russ. 87.)

In *Ex parte Law* (2 Add. & Ell. 45), where a testator died indebted to an attorney for law expenses, including the preparation of his will, which was left in the custody of the attorney, the Prerogative Court having, at the instance of the personal representatives, cited the attorney to bring in the will and leave it in the registry of that Court, the Court of King's Bench refused, in that stage of the proceedings, to interfere by prohibition, on the ground of the attorney's claim to a lien on the will.

Spoilation or suppression.—Where an executor has destroyed a will, a legatee has a remedy in the Court of Chancery. In *Tucker v. Phipps* (3 Atk. 269), Lord Hardwicke said, "As to the *spoliation*, I consider it generally as a personal legacy, where the will is destroyed or concealed by the executor; and I think, in such a case, if the spoliation is proved plainly (though the general rule is to cite the executor into the Ecclesiastical Court), the legatee may properly come here for a decree, upon the head of *spoliation* and *suppression*. There are several cases where, if *spoliation* or *suppression* are proved, it will change the jurisdiction, and give this Court a jurisdiction which it had not originally; as in the case of Lord Hunsdon (Hob. 109).

CHAP. IV.—WHAT INSTRUMENTS NECESSARY TO BE PROVED.

As the Ecclesiastical Court has jurisdiction only in wills of personal estate, it is not necessary, where the will relates to real estate alone, that probate of it should be obtained. (*Anon.* 2 Salk. 22; *Habergam v. Vincent*, 2 Ves. 230.) Where, however, the will relates to both real and personal estate, the whole must be proved in the Ecclesiastical Court (*Partridge's case*, 2 Salk. 553), though the proof in that court does not establish the will of the real estate against the testator's heir-at-law. (*Netter v. Brett*, Cro. Car. 395). As a court of equity considers money directed to be laid out in land, as land, the Ecclesiastical Court has no jurisdiction over a devise of property so converted. (*Pullen v. Ready*, 2 Atk. 590.) In case of doubt, whether the whole of the testator's estate was real estate (which would occur where it was not known whether a portion of the property was freehold or leasehold), it has been considered that the Ecclesiastical Court ought to grant probate. (*Thorold v. Thorold*, 1 Phill. 8; *Durkin v. Johnstone*, 1 Phill. 8, n.) There is no occasion to prove the will in the spiritual court to entitle a legatee to recover a legacy out of real estate. (Lord Hardwicke, in *Tucker v. Phipps*, 3 Atk. 361.)

Will made in exercise of power.—Where a will made in execution of a power relates to personality, it must be proved in the Ecclesiastical Court. (*Hume v. Russell*, 6 Madd. 331; see Sugden on Powers, vol. ii. p. 21, 6th edition). This rule extends to the will of a married woman which is made

in execution of a power. In *Ross v. Ewer* (3 Atk. 156), Lord Hardwicke said (p. 160), "I am of opinion, that though, in the notion of law, a wife cannot make a will, yet where a *feme covert* has a separate power over her estate, and may dispose of it by will, whatever sort of writing she leaves, it ought first to be propounded as a will in the spiritual court." See also *Goldsworthy v. Crossley* (4 Hare, 140).

It may here be observed, that the Ecclesiastical Court has no jurisdiction to determine whether an instrument is a good execution of a power (*Watt v. Watt*, 3 Ves. jun. 246), but only to decide that the act is testamentary. In *Rich v. Cockell* (9 Ves. 369), Lord Eldon said (p. 376), "Where a *feme covert* had the power by will, according to the terms of the instrument requiring witnesses, to dispose of personal estate, it was necessary to prove, first, that the instrument was in nature of a will; secondly, if so, that it was attested *in modo*, in which the power required it to be attested. For the former purpose it has been hitherto deemed necessary that this Court should be satisfied by the judgment of the Ecclesiastical Court that the instrument is in nature of a will. But this Court has never been contented with that judgment, as to the circumstances of attestation; for after that proof in the Ecclesiastical Court, this Court always requires the witnesses to be examined, in order to prove that it is her act, and will not trust the Ecclesiastical Court with this conclusion; that because it is her act, and in nature testamentary, therefore this Court is of necessity to hold it an appointment."

Sealed packets.—Where a testatrix directed her executors to deliver certain sealed packets, unopened, to the persons to whom they were addressed, the Court held that the executors could not safely do so, on account of the inventory they had to deliver, and of the possibility of a *deceit*. The packets were, therefore, opened in the presence of the Registrar, and a schedule containing the amounts enclosed, and the names of the persons were added to the will, and probate was granted of the will and all the papers. (*Hughes v. Turner*, 4 Hagg. 30.)

Declaration of trust.—A declaration by deed or writing distinct from the will of the trusts upon which a legacy given by the testator is to be held, has not in particular cases been required by a court of equity to be proved in the Ecclesiastical Court. (*Inchiquin v. French*, 1 Cox, 1; and *Smith v. Atterall*, 1 Russ. 266.)

(To be continued.)

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

FOREIGN OFFICE, Aug. 22, 1846.—The Queen has been pleased to approve of Mr. Ernst Cesar Hartung, as Consul at Sierra Leone for the Free Hanseatic republic of Bremen.

The Lord Chancellor has appointed William Burton, of Manchester, in the county palatine of Lancaster, gent. and Thomas John Barstow, of Dedham, in the county of Essex, gent. to be Masters Extraordinary in the High Court of Chancery.

The Lord Lieutenant has appointed Edwin Lovell, esq. clerk to the Lieutenancy, to fill the office of Clerk of the Peace for the county of Somerset, vacant by the lamented death of Mr. E. Coles.—*Bath Herald*.

REVISING BARRISTERS.—The following gentlemen have been appointed by Mr. Justice Patteson to revise the list of voters for the ensuing year: Derbyshire (North), Mr. Serjeant Clarke; (South, and the borough of Derby), Richard Wildman, esq.—Lincolnshire (South), J. Mellor, esq.; (North, and the city of Lincoln), Edward H. Chamberlain, esq.—Nottinghamshire (South, and borough of Newark), R. Miller, esq.; (North, town of Nottingham, and East Retford), Graham Willmore, esq.—Leicestershire (South, and borough of Leicester), C. J. Gall, esq.; (North, and Rutlandshire), J. Hildyard, esq.

COURT PAPERS.

SITTINGS OF THE INSOLVENT DEBTORS' COURT.—This Court will again sit for bail cases on Friday next, and for cases on the 14th of September, when the sittings are appointed to be resumed.

LEGAL INTELLIGENCE.

ESSEX COUNTY COURT, August 4.

Practice of Attorneys.

A Court was held at the Shire Hall, Chelmsford, on Tuesday, before T. M. Gepp, Esq. as county clerk, and after some business, which possessed as public interest, had been disposed of,

Old applied for a summons for a party under the new Act.

Durrant, who happened to be present, took an objection to his appearing for the party, and submitted that it was neither respectful to the Court, nor fair to the regular practitioners that he should do so. Mr. Dennes, in whose name Mr. Old acted, was not in Chelmsford, and here was Mr. Old pretending to advise a client without, as he believed, his having seen the principal at all. The Court of Queen's Bench had said, it was a very disreputable thing for a person like this to give advice and act for a party without the personal intervention of the principal; and he quoted a case which came before Mr. Justice Erie, at the recent Hampshire assize, in which a person was indicted for making certain representations relating to a case in which he interfered as the clerk of Mr. Warneford, who was himself severely reprimanded, and his agent was not convicted through belief of the prisoner's ignorance of the wrong he was doing. He hoped that unless Mr. Old could show that this case had had the advice of Mr. Dennes, the Court would refuse to hear the application.

Gepp asked the result of a similar application to the Insolvent Debtors' Court.

Durrant said Mr. Dennes was present on that occasion conducting a case in person, and chose to say Mr. Old was his clerk. Mr. Dennes, in the present instance, was not in Chelmsford at all.

Old said Mr. Durrant made an application to Mr. Chief Commissioner Reynolds, and he turned away and treated it with contempt.

Durrant said that was incorrect. He made the application to Mr. Commissioner Law, who made some strong remarks and promised to report the matter to the other commissioners. That afterwards he asked another commissioner on circuit the result, but Mr. Commissioner Law had forgotten to mention the subject, and it consequently dropped. He (Mr. Durrant) had in the petty sessions, in this town, objected to the principle of clerks being heard in court at all, and been successful in resisting it. It was never allowed for clerks to appear, except in the metropolis, and there it was done under a special order of the Secretary of State.

Old said he had pleaded in cases before Mr. Gepp. Gepp.—But he had felt a strong objection to it; he thought it was wrong that a person should practise, never having seen the principal relative to the case.

Old asked if Mr. Dennes could come there for the fees of that court?

Gepp.—He should employ a professional gentleman as agent; I think it is irregular that you should make the application.

Old said in Mr. Knipe's time he practised.

Gepp.—But Mr. Knipe was much more in the town than Mr. Dennes was.

Durrant said it was laid down in a case in the LAW TIMES, that it was in the hands of the officer of the County Court to check this practice; and he strongly contended that as Mr. Old interfered with the rights of regularly educated professional men, and people were led by unqualified persons into all sorts of difficulties and absurdities, it ought to be checked by that Court.

Gepp said he had always disapproved of the practice; but he was rather taken by surprise on the present occasion, and he should let it stand over till the next court, and then decide what should be done.

Gepp, on looking over Mr. Old's papers, said the case was not in form. Mr. Old had not read the Act of Parliament he was afraid, or Mr. Dennes had not instructed him rightly. A request, of which a form was given in the Act, must be signed by the party, but that was not done here.

Durrant said this was a proof of the mischief which ensued to the unfortunate persons who were led into the place where Mr. Old lived by the name—"Dennes, Solicitor," on the door, and where no Mr. Dennes was to be found.

Gepp.—Mr. Dennes had better come here himself next time, or make this application through some solicitor as his agent; that will avoid all further discussion. But at the same time, I shall be prepared next court, if the matter is spoken to, to give my opinion on it.

The subject then dropped.

THE LATE SIR CHARLES WETHERELL.

INQUEST ON THE BODY.—Mr. Dudlow, the coroner for West Kent, held an inquest at the George Inn, Aylesford, on Wednesday afternoon, on the body of the late Sir C. Wetherell. Mr. W. Rudge deposed that he had been valet to the late Sir C. Wetherell for nineteen years. On Monday, the 10th instant,

he accompanied him in a phaeton from the Star Hotel at Maidstone, on their way to Rochester. Shortly after leaving the former town, the deceased remarked that he would get out and ride upon the box, as he wanted to talk to the driver. He did so, witnesses remaining inside. They then proceeded a short distance, when his attention was attracted to the deceased, who was calling out to the horses to stop, and was otherwise endeavouring to check it. He then felt the vehicle rise, and immediately it was overturned. The deceased was thrown to the ground, and, on raising him, saw that he was suffering much pain. On medical aid being procured, Sir Charles was conveyed to Preston-hall, the seat of C. Milner, Esq., where he remained up to the time of his death.—Eliza Jones, a labouring woman, said, going along the main road, she was overtaken by the phaeton that met with the accident. The horse was not going very fast when it passed her. It however went a little quicker immediately afterwards. She then noticed the phaeton overturn, and the gentleman riding with the driver thrown to the ground. She immediately, at the request of Rednor, proceeded to Aylesford, and procured Mr. Dennis, a surgeon, with whom she returned. She then saw Sir Charles supported by his valet.—John Brazier, a post-boy connected with the Star Hotel, Maidstone, stated that the deceased had been staying at the hotel, having come from Smarden. On Monday, Sir Charles hired a phaeton to take him over to Rochester. Witnesses was the driver. On leaving Maidstone, deceased directed him to go by the lower road, as he wished to see the country, and subsequently rode on the box, to have a better view. On passing the carriage-gate of Preston-hall, the reins got under the horse's tail. The deceased instantly stooped forward, and endeavoured to displace them. In his efforts, however, he unfortunately caught hold of the off-rein, and a sudden jerk he gave it caused the horse to run out of the roadway. The wheels of the vehicle then passed over a large stone, and the phaeton was overturned and much broken. Sir Charles pitched upon his head. They were going at the rate of about five miles an hour when the rein passed under the horse's tail. It then started and quickened its pace. When the accident happened, it was travelling at the rate of not more than eight miles an hour. The day was very sultry, and the flies had much troubled and irritated the horse.—Mr. Ralph Dennis, surgeon, of Aylesford, deposed that on being called to the deceased, he found him seated on the cushions of the phaeton. He immediately ordered his removal to Preston-hall. Deceased was labouring under a concussion of the brain. He attended Sir Charles up to his death, and the injury he sustained was quite sufficient to have caused it. The coroner said it was evident it was the result of pure accident.—The jury returned a verdict "That the deceased died from concussion of the brain, by being thrown to the ground by the accidental overturning of a phaeton." At 11 o'clock on Tuesday morning, the remains of the late Sir Charles Wetherell were interred in the church of the Inner Temple, in the vault appropriated to the interment of benchers, of which society he was the senior member. He was followed to the grave by his relations, the Rev. Richard Wetherell, the Archdeacon Wetherell, Mr. N. Wetherell, Rev. Edward Frere, — Spooner, Esq., M.P., Rev. E. Rowden, and also by Mr. Bosch, his clerk, and Mr. Rudge, his valet, who were in constant attendance upon Sir Charles from the time of the accident up to the moment of his death.

THE SMALL DEBTS BILL.

The following petition from the Incorporated Law Society has been presented "to the Right Hon. the Lords Spiritual and Temporal of the United Kingdom of Great Britain and Ireland in Parliament assembled."

"The humble petition of the Incorporated Society of attorneys, solicitors, proctors, and others, not being barristers, practising in the Courts of Law and Equity of the United Kingdom,

"Sheweth,—That very late in the present session of Parliament, a bill was introduced in your right hon. house, and is now pending, entitled 'An Act for the more easy Recovery of Small Debts and Demands in England.'

"That it is intended under such bill to create various courts for the purposes thereof, and to vest the appointment of judges of such courts in the Lord Chancellor.

"That various bills have from time to time been introduced into Parliament for the above purpose previously to the present session of Parliament, and that in such bills it was proposed and intended that the judges to be appointed should either be barristers-at-law or attorneys-at-law.

"That, by the bill now pending in your right hon. house, the Lord Chancellor is so restricted in the appointment of judges as to be prevented in future from the appointment of any attorney-at-law, however well qualified to be a judge of any court, to be

created under such bill in case the same should pass into a law.

"That new clauses have been introduced in such bill in the other House of Parliament, and various restrictions in the jurisdiction and powers of such intended courts, and of the judges to be appointed under such bill.

"That your petitioners humbly represent to your right hon. house that many attorneys-at-law are qualified to be appointed judges under such bill.

"Your petitioners humbly pray that in such bill the Lord Chancellor may be empowered to appoint any attorneys-at-law to be judges in the court to be created thereunder whom his Lordship may consider duly qualified to be such judges."

The Parliamentary Committee of the Corporation of London met on the 10th inst. at Guildhall, to take into consideration the proposed Act of Parliament "For the more easy Recovery of Small Debts and Demands in England." Mr. Hartley in the chair. After a considerable discussion as to such of the rights and privileges of the Corporation of London as were likely to be affected by the measure, its general principles were observed upon. Mr. Lott said this was one of the samples of the Free Trade System which was now trafficking in the construction of new Courts of Law; but how far the enactment proposed carried out the promise held forth in the title of the Act—namely, that it was a measure for the "more easy recovery of small debts"—he would leave to the judgment of the respectable merchants and traders of London (whom he then had the honour of addressing) to determine. He begged leave to draw the attention of the committee to the 40th clause of the Act, wherein it is propounded that the summons is to issue in the district in which the defendant dwells, or carries on his business. Now the effect of this legislation would be, that the London creditor, summoning his country debtor (for instance) residing at York, must, if the action be resisted, send down, at great expense, his whole *cortege* of travellers, warehousemen, porters, booking-office keepers, &c. &c. to York—perhaps taking his traveller off his journey to Cornwall, or elsewhere, for the purpose. In trials of referred issues, before the sheriff, in actions under 20*l*. it is amazing what a number of witnesses are sometimes required; and if a plaintiff has to follow a defendant to his own home, the expense would be enormous, and which ultimately might fall on the plaintiff—creditor, if the defendant avails himself of an escape through the loose meshes of the web of the Insolvent Court. In legislating upon "debtor and creditor," it was astonishing what partiality was shown to the former, who always appeared in the eye of the senator an aggrieved person, whereas statistics would show that ten out of every twenty defended actions were defended for vexation or delay. He (Mr. Lott) recollected that upon an interview with Sir James Graham, upon the subject of a County Courts Bill, the hon. baronet had stated that the principle of it was to bring justice home to every man's door; but he (Mr. Lott) took the liberty of telling Sir James that they brought the justice to the wrong door, viz. to that of the resisting instead of the complaining party. Mr. Lott thought it would prove anything but an "easy" mode of recovering debts, and ought to be opposed by the mercantile and trading interest.—Mr. Wood took a similar view of the subject, instancing the recent legislation as to bankruptcy, whereby the creditor was compelled to go to the district in which his debtor carried on his business to summon him.—Mr. Richard Taylor condemned this principle of the measure, as creative of expense in the pursuit of "fugitive vagabonds." A deputation was ultimately appointed to attend the Home Secretary, upon the clauses of the Bill affecting the city, consisting of the Chairman, Alderman Hughes, Mr. Lott, Mr. Wood, and Mr. Taylor.

The office of Chancellor of the County Palatine of Durham has become vacant by the melancholy death of Sir Charles Wetherell, as well as the recordership of Bristol.

JUDGE WILLIS.—The Governor (Sir G. Gipps) and Council of Australia having removed Mr. Justice Willis from his office, he appealed to her Majesty in Council. The report of the Privy Council having been laid before the Queen, her Majesty has been pleased to confirm the same, and has directed the order of removal by the Governor and Council to be reversed, on the ground that the appellant was not allowed an opportunity of being heard in his own defence. The hearing of this appeal has been postponed from time to time, until three years have elapsed since the colonial authorities committed this illegal act.—*Globe*.

EARNINGS BY CONVICTS.—In the year 1844, upon a daily average of 874 prisoners in Millbank prison, the earnings amounted to 3,748*l*. 6*s*. 3*d*.; and deducting the expense of the manufactory, 1,002*l*. 2*s*. 1*d*. the net earnings were 2,746*l*. 4*s*. 5*d*. showing the annual earnings per head to have been 3*l*. 2*s*. 10*d*. Last year, upon a daily average of 964 prisoners, the earnings amounted to 5,191*l*. 15*s*. 11*d*. of which 925*l*. 17*s*. 11*d*. were the expenses of the

manufactory, leaving a net profit of 4,265*l*. 18*s*. 0*d*. shewing the annual earnings per head to have been 4*l*. 9*s*. 5*d*. The inspectors of the Millbank prison, in their report for the year 1845, state that the conduct of the prisoners, taken as a body, has been orderly and submissive.

THE COMMERCIAL AND CIVIL TRIBUNALS OF FRANCE.—The *Monde* publishes a report, addressed by the Minister of Justice to the King, respecting the general administration of civil and commercial justice in France in 1843. According to that document the 27 Royal courts had to decide on 16,583 civil or commercial affairs, and terminated 10,620; 1,976 were amicably adjusted, and the remainder were not disposed of till 1844. The civil tribunals, 361 in number, had to try 117,134 new suits, independently of 54,173 lying over since 1842, in all 171,307, of which 123,650 were brought to a close in the year. The number of acts of adoption in 1843 was 88, and that of applications for divorce or separation, 1,077, or 115 more than in 1842; 80 of these applications were made by husbands, and 997 by wives. The marriages had endured—10 less than a year, 203 from a year to 5; 235 from 5 to 10 years, 328 from 10 to 20, 218 during upwards of 20 years, &c. Children were born of 573 of those unions, and 466 had been sterile. The tribunals pronounced on 906 demands, admitting 808, and rejecting 98; 171 had been struck off the list from various causes, 104 in consequence of a reconciliation between the parties. The commercial affairs brought before the tribunals in 1843 amounted to 183,326, including 6,876 remaining to be judged on the 31st of December, 1842. There were 3,071 failures in 1843, or one fifth more than in the preceding year. The liabilities of 1,829, which alone could be exactly ascertained, were 166,116,436*l*. The cases submitted to the decision of justice of the peace were 767,926, of which they succeeded in conciliating 568,000. The notaries in France were 9,846 in number in 1843.

DEODANDS.—On Tuesday next the Act of Parliament which received the Royal assent on the 18th inst., to abolish deodands will come into operation.

ANECDOTE BY COUNSEL.—At the Cork assizes Mr. G. Bennett, canvassing the term "temperate habits" in a policy of insurance, said, "The late Sir Hercules Langbrith was exceedingly fond of drinking, and being ill he consulted the celebrated Dr. Pjunkt, who advised him to drink only a glass of wine in the day. Sir Hercules promised to obey, but the doctor called in upon him a day or two after, and seeing his patient a little out of order, said to him, 'I hope you followed out my advice.' 'I did,' replied the other. 'Well,' says the doctor, 'I am anxious to see the size of the glass,' upon which Sir Hercules brought in a glass which contained two quarts! (Laughter.) The doctor then restricted Sir Hercules to a pint of wine in the day; and on the following one, having called on his patient told him to stick to that quantity, and it would lengthen his days. 'I believe you,' said Sir Hercules, 'for yesterday was the longest day I ever spent.'—*Globe*.

THE LONG VACATION.—A pastry-cook in Fleet-street, finding he did not sell a bun a day, has shut up shop, and written on his shanties, "Gone to America during the Repairs."—*Punch*.

THE CHARITY COMMISSION.—It appears from a return, that the expenses which have been incurred by the Charity Commission in each year, from the commencement, in 1818, to the final termination in 1838, amounted to 261,836*l*. 1*s*. 0*d*. Mr. Hume wished to know the expense incurred in each year, which could not be given, as the accounts were made up to certain periods. There are nineteen periods embraced in the return.

HEIR-AT-LAW, NEXT OF KIN, &c. &c.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The references, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent impertinent curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount enclosed.]

304. HEIR-AT-LAW OF WILLIAM MARSON, late of Wootton, Notts, surgeon, died Sept. 1835.

305. NEXT OF KIN OF ANN SAMPOON, of Harley-street, Marylebone, Middlesex (died 25th March, 1835), or their representatives.

306. MARGARET ELIZABETH WRIGHT & GEORGE WRIGHT, son and daughter of Adam Wright, formerly of Spital Farm, Kelso, N.B., ELIZABETH JAFFERY, ROBERT JAFFERY, WILLIAM, MARGARET, CATHERINE, and JOHN JAFFERY, sons and daughters of Robert Jaffery, formerly of Sitchell Mill, near Kelso, aforesaid, residuary legatees and devisees of Robert Marshall, late of the Island of Jamaica, died 19th Dec. 1829.

307. HEIR-AT-LAW AND NEXT OF KIN OF ROBERT MARSHALL, late of Island of Jamaica, died 19th Dec. 1829.

298. RELATIONS OF MARIA, otherwise MARY LUSTON, formerly WARROYS, but who passed by the name of MARIA LUSTICK, and resided, in Dec. 1835, at 36, Park-street, New-road, and was afterwards in the service of W. J. Hall, esq. Snarebrook, Essex. *Something to advantage.*
299. CHILDREN OF Mrs. ESTHER HILL, formerly Bingfield, who resided in Clapham, Surrey, in 1729, or their descendants. *Something to advantage.*
300. NEXT OF KIN OF ISABELLA ARCHALL, 55, Seymour-place, Bryanstone-square, Middlesex, deceased, formerly ISABELLA DAY, spinster. *Something to advantage.*
301. NEXT OF KIN OF MARY BRIGHT, late of Oxford, spinster (died 12th Sept. 1834), or representatives.
302. Mr. HENRY PERRIN, late surgeon H. C. S. who before 1837 resided at New York, and afterwards supposed to be in London. *Something to advantage.*
303. HEIR OF HEIR-AT-LAW OF GEORGE EATON, formerly of Shaftesbury-terrace, Fimble, Middlesex, and afterwards of Howick-place, Vauxhall-road, gent. died 11th April, 1828.
304. NEXT OF KIN OF JOHN PALMER, of Great Yarmouth, Norfolk, merchant (died 1805), or their representatives.
305. NEXT OF KIN OF ELIZABETH ASCROFT, wife of William Ascroft, late of Upholland, Wigan, Lancaster (died Aug. 1824), or their representatives.
306. NEXT OF KIN OF JOHN LORD, late of Callards, Rochdale, Lancaster, yeoman (died 5th Sept. 1828), or their representatives.
307. HEIR-AT-LAW AND NEXT OF KIN OF THOMAS EDDEN, of Blackwall, in the parish of Tredington, Worcestershire (died Feb. 1811), or their representatives.
308. PERSONAL REPRESENTATIVES OF JAMES BROWN, deceased, who was a baker in Holborn in and prior to Oct. 1827. *Something to advantage.*
309. CHILDREN OF JOHN COOPER, late of Harlestone, Suffolk, farmer (died Jan. 1819), or their representatives.
310. NEXT OF KIN OF SAMUEL BOARN, late of Castle-street, Oxford-street, Middlesex (died Sept. 1834), or their representatives.
311. CHILDREN OF DENNIS BURROWS, of Cirencester, Gloucestershire, and HANNAH, his wife (married in 1796), EDWARD TILLING BURROWS; DENNIS BURROWS; MARY ANNE CATHERINE, wife of Henry Humphreys; EUFOPA PERRY BURROWS; ANN PERRY, wife of Edward Miller, and WILLIAM PERRY BURROWS. The three former are supposed to have resided near Canterbury, and the three latter in Oxfordshire. *To claim.*
312. NEXT OF KIN OF TERESA HAYNES BYE, late of Prospect-place, Surrey-road, Southwark, Surrey, widow, deceased. *Something to advantage.*
313. JOHN MICHELSON, who in the year 1777 was described as a midshipman or other officer in the navy, and supposed to be a natural son of the then late General Nicholson. *Something to advantage.*
(To be continued.)

THE LAW TIMES.

SATURDAY, AUGUST 29, 1846.

NOTES UPON CIRCUIT.

CRIMES AND PUNISHMENTS.

THEY who, by their professional duties, are called into the criminal courts at the assizes and the quarter sessions, can scarcely fail to be struck with the extraordinary difference which exists between these tribunals in the amount of punishment inflicted by each for the same degree of crime. Whatever the cause, the fact is certain, that the judges are vastly less severe than the magistrates. The former wield with moderation and leniency the great power with which the law has entrusted them. The latter love to push their restricted power to its utmost limits. If a return could be procured by Parliament of the number of years of transportation and imprisonment inflicted both by the magistrates in quarter sessions and by the judges at the assizes, we are confident that the average of sentences for crimes of the same class would present a ratio of at least six to five in excess of magisterial over judicial punishment, even although the latter try only the more serious cases, and the trifling offences are chiefly entrusted to the former.

Why the magistrates should be generally so much more severe than the judges, is a problem rather for the ethical philosopher than for the jurist. We have to deal only with the fact. It is one of very great significance; for it serves to shew the propriety of placing in the judgment-seat only such men as have been trained by long practice of their Profession to that habit of viewing a case upon its intrinsic merits, without reference to extraneous considerations, which is essential to the due administration of justice. The magistrate is usually a resident in the neighbourhood. He knows or suspects a great deal more than

comes out in the course of the trial. He believes, it may be rightly, *but it may also be wrongly*, that the accused is a poacher and a thief. He punishes for the crime, of which he believes the prisoner to be guilty, in addition to that for which he has been convicted. Position naturally prejudices him, and he is not trained by a legal education to cast his prejudices away. The result is precisely such as might have been anticipated. His sentences are far more severe than those of the lawyer-judge, who punishes the particular crime, and not from the general reputation of the criminal.

This excess of severity by the magistrates is the more to be lamented, because from their decisions there is no appeal. When the judges, with all their learning, listen to a point raised in favour of a prisoner, which they deem to deserve consideration, they do not venture at their own view to decide it; they reserve it for the consideration of the whole Bench of Judges, who hear the arguments, and bring their united wisdom to the determination of the question. But the unlearned magistrate does that which the learned judges do not venture to do. He decides on the instant, and from that decision there is no appeal; for his wrong judgment there is no redress. This consideration alone should induce the magistrates to be more lenient instead of more severe than the judges, because they are more likely to err, and their errors are irretrievable.

We have directed attention to this subject with a twofold purpose. First, in hope that it may attract the notice of the Press generally, and thus lead the magistrates to adhere more to the example of the judges. Secondly, that the Profession may feel still more strongly the necessity for placing in the judgment-seat only trained and practised Lawyers. The proper business of a lay magistracy is that of a tribunal of the first instance, as it is termed in France. Judgment should always be the province of experienced judges.

Will one of the Lawyers in the House of Commons ask next spring for such a return of the sentences of the quarter sessions and assizes for the last two years as may set the question beyond dispute?

THE SMALL DEBTS BILL.

THIS important Bill, after amendments in both Lords and Commons, has passed both Houses, and probably by this time (Friday noon) has received the Royal Assent and become law. As the Statute cannot be printed until late to-morrow—perhaps not before Monday—we are unable to lay it before our readers in this number, as we wished to have done. The amendment proposed by Mr. WAKLEY to render Attorneys eligible for appointment as Judges of the New Courts, found in the House not a single friend to sustain it, and, meeting with an ungracious reception from Sir GEORGE GREY, the mover was compelled to abandon it. Nor was Mr. WARBURTON's suggestion that Barristers holding these Judgeships, and having permission to retain their chamber practice, should therefore forfeit all claim to compensation, entertained, much less adopted. The totally defenceless position of the Attorneys as regards the assaults of the Legislature was never made more apparent, than by the progress of this Bill through Parliament. Not only have they no champion of their own in the Commons to resist aggression, and protect them by the shield which their rights afford, but out of the House they have no centre round which to assemble, and where their counsel and energies may be united for the common good. The Law Institution, every one admits, does not answer this requirement. The supineness of this body with reference to the interests of the Profession, up to the last, has been unaccountable. On Tuesday, indeed, they presented a petition, praying for power to be delegated to the Lord Chancellor to appoint attorneys to the Judge-

ships of the new Courts; but the petition, unsupported by friends, was useless—it was even worse, since it gave evidence of the helplessness of the body whose prayer it offered. It is worthy of remark, too, that the petition did not find its way to the House until the night when the Bill was read a third time—a sure proof that an earnest desire to protect the interests of Attorneys was not at the root of it. In short, this was palpably a feint, and will do more to lower the Institution in the estimation of the Profession, than total silence and inaction could possibly have effected.

Unable as yet to obtain the Bill, of course we cannot speak positively to its enactments; but we believe the suggestion of the deputation from the meeting held at Gray's-inn Coffee-house, recommending the insertion of a clause to give concurrent jurisdiction in the superior courts, has not been adopted. Among the alterations which have emanated from Mr. KEANE's letter to Sir GEORGE GREY (noticed in our last number), are the removal of doubt as to the necessity for freeholders of the county attending to constitute the County Court; the abolition of writs of error by directing determination "according to equity and good conscience;" the giving an absolute inviolability to the rules and forms which the judges are to frame, thus getting rid of the clause empowering "search of the female;" and the withdrawal of all executions under this statute from the operation of 8 Ann. c. 14, s. 9, so as to avoid the difficulties threatened by the decision in the recent well-known case of *Cocker v. Musgrove*.

The assumption of the LORD CHANCELLOR, "that the general course of education of Attorneys does not render them equally qualified with gentlemen who had been regularly educated for the law as Barristers, to act as Judges in matters involving doctrines of law," would carry with it more weight, could assurance be given that only men who had so been educated, and who had furthermore seen practice, would be appointed. As it is, we hold that Attorneys of high and honourable standing, who are well acquainted with the wants of creditors, and the character and manœuvres of local practitioners, should be eligible to these judicial offices, especially as in some districts there will be difficulty of obtaining Barristers of competency and standing. When the Act is printed, we propose to go through its clauses *seriatim*, and shall make on them such comments as they appear to deserve.

SHAM LAWYERS.

THE following comprehensive and alluring advertisement appeared in the *Bristol Mercury* of the 22nd inst. We recommend Messrs. THOMPSON and Co. to the surveillance of the Profession in Bristol, whose province these worthies so boldly invade.

THOMPSON and CO. Accountants and Agents, having for many years been concerned in legal and commercial transactions in London and Bristol, and being familiar with the method and means of carrying out important operations of business to a successful termination with a single-eye view to the benefit of their employers, offer themselves as a convenient medium of communication, and their confidential services to persons desirous of obtaining efficient aid in any of the following matters, on moderate terms:—

Partnerships negotiated.—Partnership and disputed accounts adjusted, and the results deduced in a style perfectly intelligible to any capacity.

Petitions, memorials, statements, or letters, composed and written, in the best manner, for individuals who happen to be unacquainted either with the mode of addressing men of distinction, or who are unable to give proper expression to their ideas in becoming language—especially for persons seeking, through the medium of influential friends, to procure benefits from, or the patronage of, Members of Parliament, public boards, railway directors, and similar powerful companies; and for persons who have occasion to propitiate or apply to the Lords of the Treasury, Secretaries of State, Secretary at War, Commissioners of Customs or Excise, the Trinity Board, &c. for remission of penalties incurred under the revenue laws,

in mitigation of sentences, for information respecting absent naval or military men, prize-money, &c. or to obtain appointments of a subordinate kind under Government at home or abroad.

Wills made at any hour.—Contracts and agreements drawn.—Notices to quit prepared and served.

Deeds analysed, abstracted, and copied.

The accounts of trustees, executors, and administrators with beneficiaries, legatees or claimants under wills, &c. carefully prepared, and the items ranged with legal precision.

Residuary estate accounts and legacy receipts drawn up in conformity with the regulations of the Stamp-office.

Books of accounts opened and kept by double entry, systematically balanced, and proved by an ascertained profit and loss statement.

Builders and traders generally may be materially assisted by the friendly suggestions, and avail themselves of the advertisers' legal experience, respecting arrangements with mortgagees at the least cost—from whom it is most prudent to borrow money—adverse creditors—accounts—correspondence, &c.—without incurring danger by disclosures which, too frequently, are caught at by unprincipled men, and result in ruin.

Lengthy calculations of interest, discounts, &c. made.—Parliamentary stock and foreign moneys reduced into British currency and checked.

Club articles handsomely copied for framing, and club accounts adjusted.

Authors' manuscripts, estimates, specifications, accounts, averages, log-books, and every kind of writing copied with neatness and accuracy.

Rent and debts collected, and the proceeds promptly handed over.

A register kept of vacant situations for clerks, foremen, and respectable artisans.

Tailors'-court, Broad-street, Bristol.

LAW TIMES EDITION OF IMPORTANT STATUTES.

THE COUNTY COURTS BILL.

THIS Bill having received the Royal assent to-day, the edition of it announced in our last and preceding numbers, with practical notes, and a copious index by Mr. PATERSON, will be brought out with all practicable despatch. It will form one of the *Law Times Edition of Important Statutes*, will be carefully got up with an eye to facility for use, and may be expected in a few days.

A COURSE OF LECTURES ON THE LAW OF CONTRACTS.

By PROFESSOR CAREY.

Delivered at the University College.

LECTURE XVI.

In the last lecture we considered the right of stoppage *in transitu*, and we may consider delivery in a twofold point of view. When the goods go from the hands of the seller, into the hands of a middleman, they are delivered, as far as an action for goods sold and delivered goes; but they are not delivered so as to put an end to the right of stoppage till they have got out of the hands of the middleman to the end of their destination. If the goods in the course of their transit are sold to a third person, this in general does not affect the right of the consignor. A sells goods to B; before they are in his possession, B sells them to C; B can give no better right to C than he had himself, and if B become insolvent while they are *in transitu*, the goods being sold to C cannot affect the right to stop them. This is on the principle that the vendee of a chattel cannot stand in a better situation than the vendor. To this there is an exception in mercantile transactions, where there is a transfer by a bill of lading. Where goods are sold on board what is termed a general ship, that is, a ship that takes goods into port by virtue of a charter-party from several merchants, a bill of lading is given. A bill of lading is an instrument containing the terms of the contract between the master of the ship on behalf of the owner on the one hand, and the individual merchant on the other. It is given by the master, and contains a specification of the goods sent in the name of the merchant, and it also designates the person to whom they are to be delivered,—the consignee. Of this instrument there are several copies; one is transmitted by the shipper to the consignee, and this instrument gives notice of the consignment, and operates as a transfer of the property, but it has not the effect of vesting the possession of the goods in the consignee. It is not equivalent to a

delivery, so as to defeat the right of stoppage,—the goods are still *in transitu*.

Now it is a general rule that a chose in action cannot be assigned; a bill of lading is in the nature of a chose in action; it is a title to the property which is on board the ship, just as a bill of exchange for 20*l.* gives you a right to claim the 20*l.* from the person who is bound to pay it. To this there are several exceptions. First, a bill of exchange and promissory note by statute, and one or two other kinds of property. It has lately been decided that a dividend warrant, that is, a warrant for the receipt of dividends at the Bank of England, is assignable. Questions are raised upon this point, and very probably it may be held that railway scrip, or scrip in public companies, is assignable; but that, I do not think, is altogether settled. The question is involved in the case of *Ackermann v. Cooper*. So it is of a bill of lading. A bill of lading, like a bill of exchange, passes by indorsement, and thereby the property in the goods that are on board the ship passes; the person who is the indorsee of the bill of lading is entitled to the goods. The effect of this transaction is, that the master holds the goods that have been shipped for the benefit either of the consignee, or of any person who may, by indorsement, have acquired a right to the bill of lading; and thus, by indorsement of the bill of lading, the goods may be sold, and the right of possession immediately on their landing be transferred to the purchaser. There is an early case in which the transferability of this document is decided; *Evans v. Bartlett*, 1 Lord Raym. 271. You will observe that the goods are to be delivered "by E. F. merchant, there, to his assigns here, on the paying the freight for the same goods." Now, the question arises, what is the effect of that clause? E. F. the merchant, indorses the bill of lading for a valuable consideration to another person; that other person goes and gets possession of the goods. Is he here bound to pay the freight? and if he is, what is the nature of the obligation? He is no party to the original contract; the contract is between other persons, to deliver unto E. F. or to any person to whom E. F. shall assign; that person is no party to the original contract. And then there are two questions raised. First of all, does he make himself a party to the contract, so as in point of law, without any thing done on his part, that he is answerable for the freight? That is one question. If he merely becomes the indorsee of a bill of lading, and takes the goods, it is not a deduction of law from his doing that, that he is liable to pay the freight. But there comes another question. It has always been usual, as a matter of dealing between man and man, that the person who becomes entitled to the goods under the bill of lading, should pay the freight, and it is done, and that has become so usual a thing, and so much a matter of course, that this question arises—Does not the person who takes the bill of lading by indorsement, and who acts upon it by receiving the goods—does he not thereby, by implication, in fact, undertake to pay the freight? This is a question which draws a distinction, which is not often drawn, between a promise simply implied in law, and a promise to be inferred in fact from the circumstances. The Court held thus:—There is no promise implied in law, and the facts do not raise the implication. But there is a very strong implication of a promise, and the jury would, under all ordinary circumstances, find that there had been such a promise, and that he had by his action made the undertaking. There is the case of *Cock v. Taylor*, 13 East, 399. "The master of a ship having contracted by a bill of lading with a shipper to deliver goods to certain persons, or their assigns, he, on the paying freight for the same and demanding and taking of such goods from the master by a purchaser or assignee of the bill of lading without the freight having been paid, is evidence of a new contract and promise on the part of such purchaser as the intimate appointee of the shippers for the purpose of delivery to pay the freight, and he is liable for the amount in an action of *indebitatus assumpsit* brought against him by the shippers of the owner." Now, the interpretation to be put on that case by a very recent case is this—that the facts there stated do not of themselves create the liability; it is not held to overrule the other case (*Cock v. Taylor*), namely, that there may be more or less, according to the circumstances, evidence of a new promise. Then there is the recent case of *Saunders v. Venerula*, 4 Q.B. 267. The wool was transferred to the defendant Vanzeller, who had made advances upon it, and

when it came to his hands, it was found not to be wool such as he had ordered, and he said—"I do not accept this wool; I will sell it for the benefit of you, Bell, taking to myself first—to repay my advances." In point of fact, the wool, when sold, did not cover the advances. The jury said, "We do not know whether this defendant is liable to pay for the goods which he himself lost under these circumstances." The way in which they expressed it was this—"Whether the defendant promised the plaintiffs to pay them we do not know; we leave that to the consideration of the Court." Then the Court said, that raises simply this issue, and it is a matter of law to be inferred from the facts stated, that there was such a promise; it was for the jury to decide whether there was any evidence of a promise, and they had not done that. The Court of Queen's Bench gave judgment for the defendant. In error the Court said—"We are of opinion that the judgment of the Court of Queen's Bench is right, and that the special verdict was not defective, and that the defendant is liable to judgment in his favour. Such facts as are found by the jury are found without any ambiguity; and there is no defect in the verdict in that respect, and the question referred by the jury to the Court was one of law; viz. whether the law would, upon these facts, imply a contract by the defendant with the plaintiff to pay the freight at the rate specified. We are satisfied that it would not, even if this were the case of an indorsee of a bill of lading, which specified that the goods were to be delivered by the shipowner, or to the consignee or his assign, he or they paying a certain and specified sum for freight, without any reference to a charter-party, and the indorsee had received the goods by virtue of that bill; there would have been no evidence to warrant the jury in finding there was such a contract; and it has been so much the practice for the indorsee of such a bill of lading to pay the specified freight, if he accepts the goods under it, that there is little or no doubt that the jury would, upon such a question, have found in favour of the shipowner, if the indorsee received the goods without a disclaimer of his liability to the freight. But there is no authority for saying that under such circumstances there is a contract, *raised by law*, to pay the freight which another, viz. the consignor, has contracted with the shipowner to pay; upon principle, it cannot be contended that the contract runs with the property in the goods, and is transferred with it; and there is no decision to that effect. We do not dispute the propriety of the judgment in *Cock v. Taylor* which may be treated as the origin of questions of this nature; but that decision was merely that the receipt of the goods under the bill of lading was evidence of a new agreement; and it is so spoken of by all the judges. In the subsequent case of *Wilson v. Kymer*, the previous mode of carrying on business between the parties was held to be evidence of the same nature; and it was left to the jury to consider whether they would imply a promise from the former habits of dealing, by the evidence of the defendant having obtained the goods under orders from the consignee, but having paid the freight; and though some of the judges, particularly Mr. Justice Le Blanc, in the subsequent case of *Mooros v. Kymer*, speak as if the case of *Cock v. Taylor* had decided that *the law* would imply a promise, it is evident that the expression is an inaccurate one, and not justified by the case itself. The ground on which the latter case is distinguished from the former by all the judges except Lord Ellenborough, viz. that there was a remedy for the same freight by the shipowner against the consignee, cannot certainly be supported. We are therefore of opinion that *the law* would not imply any contract in this case, if the bill of lading had made no reference to the charter-party, but had specified a certain sum of money to be payable for freight, and consequently that our judgment should be for the defendant."

Supposing A consigns goods to B; B indorses the bill of lading to C, and afterwards B becomes insolvent; can C still exercise the right of stoppage *in transitu*? How does C acquire a right to the possession of the goods against A, the original vendor? A, as the vendor, has a right to stop the goods *in transitu*; and has any thing occurred to divest him of the right? C, as the indorsee of the bill of lading, has the right to take possession of the goods independently of the title of B; has any thing occurred to defeat that right? These rights cannot stand together; one of them must give way. That question can only arise

where the claim of C is valid and *bond fide*. If the bill of lading was indorsed or negotiated without consideration, the indorsement and negotiation confer no right of property. Again, if the indorsee was aware that the goods were unpaid for, or that the consignee was insolvent, or if there had been any other circumstance indicating fraud or collusion between the two, the indorsement or negotiation would confer no right against the original consignor. The question only arises where C, the indorsee, is a *bond fide* purchaser; where he has purchased for a valuable consideration, and without notice of the circumstance of the insolvency. Such a purchase having been made, B becomes insolvent; A claims the goods; A has sold the goods for the insolvent, and has not been paid for them; C has paid for the goods, and has not got them; which is to prevail? The case of *Lickbarrow v. Mason* is in point, in which this question was decided. Turing and Son purchased at Middlebourg goods, and shipped them to Liverpool, on account of Freeman, of Rotterdam. Freeman assigned the bills of lading to Lickbarrow, who indorsed them. Lickbarrow paid Freeman for the goods; Freeman became bankrupt. Turing and Son, the original shippers, had not been paid; Turing and Son indorsed their copy of the bill of lading to Mason, as their agent, and gave him a note, saying, "we have shipped these goods on account of Freeman, and Freeman has become insolvent; stop the goods." Mason, on the arrival of the vessel at Liverpool, produced the bill of lading, and took possession of the goods. Mason sold the goods on account of Turing and Son, and an action of trover was brought against Mason by Lickbarrow to recover the goods, or the value of the goods. Lickbarrow asserted that, by the assignment of the bill of lading, the property was absolutely transferred to him, and that he was entitled to the possession; that the goods were his, and that he was entitled to recover the goods themselves, or the value of them, in trover. Mason, the defendant, as the agent of Turing and Son, relied on the right of the consignor to stop the goods in their transit, on account of the bankruptcy of Freeman, the original consignor; and he contended that Freeman could convey to Lickbarrow no better title than he himself possessed. (2 T. R. 65.) In the King's Bench judgment was given for Lickbarrow, the plaintiff. It was held that, by the assignment of the bill of lading, the property in the goods was transferred to the purchaser; and that as the property is in the purchaser, and he has paid the price, he is entitled to the possession. Upon this writ of error was brought in the Exchequer Chamber, and the judgment of the King's Bench was reversed. (1 Hy. B. 357.) It was there held, that an assignment passes such right, and no better (as the person assigning it had); that, therefore, the right of stoppage *in transitu* still existed. Upon this judgment of the Exchequer Chamber a writ of error was brought in the House of Lords; the judges delivered their opinion; three were for reversing the judgment in the Exchequer Chamber, and six were for affirming it; that is, three were in favour of the judgment of the King's Bench (which was for Lickbarrow), and six were for the judgment of the Exchequer Chamber. However, a demurrer to the evidence was put in, the objection was put on record, and the demurrer was held to be informal; and upon that ground a *venire de novo* was directed to be awarded. The case was tried again, was again brought under the consideration of the King's Bench on a special verdict, and the Court then, understanding that the case was to be carried to the House of Lords, merely stated that they retained their former opinion; judgment was accordingly given for the plaintiff, that is, in favour of the bill of lading. A writ of error was brought on the judgment, but it was afterwards abandoned; and although on the former occasion a majority of the judges had held it as their opinion, that the right of stoppage still continued in that case, yet the King's Bench still persisted in holding that it was at an end. And the doctrine of the Court of King's Bench prevailed against the opinion of the majority of the judges; and it is now the admitted doctrine in our courts, that a consignee may, under the circumstances before stated, confer an absolute right of property upon a third person indefeasible without any claim on the part of the consignor.

It is a singular circumstance, that as a question of jurisprudence the actual nature of this right should have long remained a matter of dispute, and at this moment it should remain unsettled. What

is the effect of stoppage *in transitu*? Does the vendor retain his property in the goods, or does he merely retain possession of them? Upon the one hypothesis, the stoppage is said to rescind the contract; upon the other hypothesis, the right of stoppage has sometimes been denominated an *equitable lien*. The right of the vendor over the goods in respect of the price has sometimes been called a lien. As long as the goods continued in his possession, it was termed a legal lien; but, at law, the lien ceases, in all cases, with the right of possession, the actual right of property over the goods. When they have left the possession of the vendor and are in transit, it has been termed an equitable lien. The term *lien* does not seem to be correctly applied to the right of the vendor over the goods, either while they remain in his possession or after they have left. The term *lien* properly signifies the right which a man acquires over goods in his possession, by reason of something which he has done. The right which the vendor has, is the result of legal principles, with respect to the property in possession; and it is said in *Bloxam v. Sanders*, 4 B. & C. 948, "The seller's right in respect of the price, is not a mere lien, without which property would pass with the possession; but it grows out of his original ownership, and therefore the payment of the price is a condition precedent on the buyer's part, and until he make such payment or tender he has no right to the possession. This right is not like a lien, a right acquired by a person who is to exercise it, but it is a right to the possession, which he originally had as owner, of that which the purchaser has not yet put himself in a condition to claim: it grows out of the original ownership. If goods are sold on credit, and nothing is agreed upon as to the time of delivering the goods, the vendee is immediately entitled to possession, and the right of possession of property rests at once in him, but his right of possession is not absolute; it is liable to be defeated if he becomes insolvent before he obtains possession. (*Book v. Hollingworth*.) Whether default in payment, when the credit expires will destroy his right of possession, if he has not before that time obtained actual possession, and put him in the same situation as if there had been no bargain for credit, it is not now necessary to inquire, because this is a case of insolvency; in the case of insolvency the point seems perfectly clear. If the seller has despatched the goods to the buyer, and insolvency occurs, he has a right, in virtue of his original ownership, to stop them *in transitu*. Why? Because the property is vested in the buyer, so as to subject him to the risk of any accident; but he has not an indefeasible right to the possession, and his insolvency without payment defeats the right." According to this view, if the vendor sells for ready money he is not required to give up possession; the purchaser is not entitled to demand it until the price is paid or tendered; if the goods are sold on credit he may be required to give up possession, and the purchaser is entitled to demand possession immediately. If, before the goods come into the possession of the purchaser, he becomes insolvent, his insolvency defeats the right of possession. If the goods are in the hands of the seller still, the seller may retain them; if the goods are in the hands of a third person, the seller may stop them. And the question arises, where they are stopped, whose goods are they? How are they to be dealt with? If the contract has been rescinded by the stoppage, the goods are in the same situation as if there had been no sale; they are the goods of the vendor, and he may deal with them accordingly. If the stoppage does not rescind the contract, if it operates only as an equitable lien, then the goods are after the stoppage the property of the purchaser, or the assignee who stands in his place. If the purchaser agreed to give up the contract, or if by not claiming the goods such an agreement could be inferred, I apprehend the vendor would be authorised in treating the goods as his own. But in the first instance he is only entitled to hold the goods for the assignees in case they choose to claim them. There is the recent case of *Gibson v. Carruthers*, 8 M. & W. 321, in which it appears that if goods are still actually or constructively in the possession of the vendor, and the vendee becomes insolvent, the goods are still the property of the assignees, provided they choose to claim them. That is a case which seems still to leave the question very much open. The bench were not agreed, and there is a very learned argument by the Lord Chief Baron, who differed from the rest of the Court. The result, however, of

that would appear to be that until such an agreement has been made, or can be implied, the goods are the property of the assignees; credit is given, but still they may claim possession on payment of the price; and even where they have not claimed the possession, they may be still the owner's, so as to bring an action if any thing has been done contrary and inconsistent with their right. So it is with respect to goods upon which the vendor is said to have a lien; that is to say, which he is entitled to retain according to *Bloxam v. Sanders*. "The buyer, or those who stand in his place, may still obtain the right of possession, if they will pay or tender the price; or they may still act upon their right of property if anything unwarrantable is done to that right. If the original vendor sell when he ought not, they may bring a special action against him for the injury they sustain by such a wrongful sale, and recover damages to the extent of that injury; but they can bring no action, in which right of property and right of possession are both requisite, unless they have both those rights." (*Wentworth v. Owlhwaite*, 10 M. & W. 436; *Wilmshurst v. Bowker*, 15 Bing. 541.) This question may arise: goods are insured by a consignee; the consignee becomes bankrupt; the goods are stopped by the consignor; before the stoppage the ship was wrecked. Now you cannot recover upon goods unless you have an insurable interest in them: who had the insurable interest in the goods there? In *Clay v. Harrison*, 10 B. & C. 99, "the question was, whether the bankrupt had an interest in the goods insured at the time of the loss; and that depended on the effect which is to be given to the stoppage *in transitu*. It was argued, on the part of the defendant, that its effect was to rescind the contract, and to revert the property to the original owner; on the part of the plaintiff, that it only restored to the owners the right of possession, and placed them in the same situation as if they had not parted with the goods. There does not appear to be any case in which this point has been expressly decided." Supposing the goods to have been stopped *in transitu*, then if the stoppage rescind the contract, the goods from the beginning to the end have been the property of the person who sold them. If, on the other hand, it only gives to the vendor a right to retain them till he be paid the price, the goods still remain the property of the consignee, though he cannot claim them without payment. If the latter is the case, then he has an insurable interest; but if the contracts are rescinded, and the goods were as if they had never been sold to him, then he has no insurable interest. The judgment of the Court, having said that the question in this case depended upon the effect which is to be given to the stoppage, nevertheless goes on to say—"we are of opinion that, under the peculiar circumstances of the present case, the bankrupt after the stoppage *in transitu* had no property in the goods insured, and therefore this action cannot be supported." This judgment, although it seemed to proceed on the assumption that the contract was rescinded, leaves the question as doubtful as it was before. There is another question to which I have before adverted, on the general rights of the vendor, on which the language that is used, like the language in the case of *Bloxam v. Sanders*, seems to imply that the right exercised is one only of stopping the goods in order to hold them until the price is paid, and that its effect is not to rescind the contract. (*Dixon v. Yates*, 5 B. & Ad. 313.) The right of Dixon, as vendor, to retain the goods, had been suspended by the bills given: when the bills were dishonoured the right revived, and Dixon was held entitled to possession. No very strong conclusion can be drawn from that case, but it was strongly expressed that there was only a right to retain the goods.

NOTICES OF NEW LAW BOOKS.

Law Tracts. By J. MOSELEY, Esq. Barrister-at-Law. *Summonses and Orders, Practice of.* London: Stevens and Norton.

MR. MOSELEY has hit upon a happy thought in these tracts. There are many subjects of great importance to the practitioner, not sufficiently extensive to occupy a volume, and therefore upon which there is always extreme difficulty in procuring information when it is most wanted. A collection of tracts, treating of such brief topics as are of frequent reference in the office or in chambers, cannot but be acceptable to the Profession.

And the first of them gives ample assurance that not only will the subjects be in themselves attractive, but that they will be handled with due learning and labour. This little treatise on Summonses and Orders is an acquisition to the law library. All the practice is collected and arranged, so that the instructions required can be found with the utmost readiness. Having investigated the power of judges at chambers, Mr. MOSLEY proceeds to describe the summons, its form, its service, the proceedings at chambers, orders, and lastly, how the decision of the judge may be impeached.

As a specimen, we extract the introductory section on the

POWER OF JUDGES AT CHAMBERS.

The history of the authority of the judges at chambers is somewhat obscure and uncertain. (Vide per Wilmot, C.J. in *Res v. Almon*, Wilmot's Notes, 264.) It is said to have been exercised time out of mind, and to have arisen from the overflow of business to the court (Per Yates, J. in *Res v. Wilkes*, 4 Burr. 2571), so to be a constant and immemorial usage, sanctified and recognized by the Courts of Westminster Hall, and in many instances by the Legislature; and now become as much a part of the law of the land as any other course of practice, which custom has introduced and established. (Per Wilmot, C.J. in *Res v. Almon*, Wilmot's Notes, 264.) So it is said to be matter of tradition, to be learnt of the officers of the Court. (Per Lord Mansfield, 4 Burr. 566.) But, however ancient the power of a judge at chambers may have been, the extensive practice to which it is now applied is of comparatively recent date. Thus it is said by Wilmot, C.J. (in *Res v. Almon*, Wilmot's Notes, 264), that after careful search by himself and Mr. Denning, no account of the practice of summonses had been found, and the case of the Mayor of Maidstone (Fopham, 180) was the earliest in which mention was made of them, and that, though reference to them is made by Lord Coke, these appear to have been rather like highly irregular instances than an established lawful practice. (Vide per Wilmot, J. in Wilmot's Notes, 264.) And it would appear that summonses and orders did not form any important part of the practice of the Courts till the time to which Burnes's Notes in C.P. refer, for, except the case above referred to, there appears to be no mention of summonses or orders in any of the reports anterior to these. And indeed, on reference to Vin. Abr. (title, Venue.—Change of), it will be seen that up to the time to which those reports extend, the venue was changed by motion to the Court, and after that time by application to the judge at chambers. So it appears that amendments of pleadings were formerly made by motion to the Court, as late as the time of King William and Queen Ann. (Vide 10 Mod. 88.—Salk 47.) And there is no doubt that, till recently, whenever the Court were sitting, or in Term time, the proper course was to apply to the Court and not to a judge.

But at whatever time the practice of judges at chambers may have come into use, it is pretty clear for what object it was introduced, viz.: "for the ease and convenience of the suitors of the Court—to accommodate them at a much easier expense, and with less trouble in a great variety of cases, especially in vacation time when there was a great multiplicity of business; and the saving of the time of the Court in adjusting trifling matters, which might be so much better employed in momentous ones, was no inconsiderable motive in establishing it." (Per Wilmot, J. in *Res v. Almon*, Wilmot's Notes, 264.) And in adopting this easy and expeditious mode of regulating the proceedings in actions, the Courts only exercised their ordinary powers. For all judges have, by common law, authority to alter and modify the proceedings of their courts, a power so frequently used by them by means of rules and orders, &c. And this in pursuance of that general authority which they have by implication of law, of doing all things necessary for carrying out the jurisdiction which they hold, as of appointing necessary officers (*Metcalf v. Worsley*, 1 Roll. Abr. 526)—of issuing process (2 Roll. Abr. 277)—of granting imparlances (1 Salk. 408)—even where no such power on the creation of the Court is granted to them. And this probably in pursuance of the civil law maxim, *cuius jurisdictionis data est, ea quoque omnesque esse videtur sine quibus jurisdictionis explicari non possit*. D. 2, 1, 2.

And it is to this power, probably, to which Baron Bayley refers, when he says "that since the Uniformity Process Act, a judge at chambers is in a very different situation to what he was before that Act: a great deal of new business is now thrown upon him, and, though the Act does not certainly give power to a single judge in express terms, it seems impliedly given him in some cases, as where the declaration is delivered in vacation and is irregular, cannot an application be made to a judge to set aside the declaration with costs?" (*Hughes v. Brand*, 2 Dowl. 132.)

As to the light in which a judge, sitting at chambers, is to be considered, and whether he represents, or rather constitutes, a whole Court, or is to be

considered rather as an officer appointed by the Court to decide upon incidental questions which may arise in the course of an action, appears to be a point of difficulty. In *Res v. Almon* (Wilmot's Notes, 265, 266), the Court clearly seemed to hold, and indeed acted upon the first position, viz. that a judge at chambers exercised the full authority of the Court, and fully represented it the same as if the Court itself were there, and the same as he would at the side bar. So it was said by Tindal, C.J. that "The authority of a judge sitting in chambers to make orders, when considered on principle, is the authority of the Court itself, for no order which is made can be enforced by attachment until it has been first made a rule of Court; and the party who disputes the propriety of the order, has the opportunity, in the present instance, to question its validity by application to the Court. On any other principle it is difficult to account for the validity of many acts done by a single judge at chambers, such as setting aside irregular judgments, signed in vacation, which judgments are to be considered on principle the acts of the whole Court, discharging persons under writs of execution improperly taken out, and the like." (Per Tindal, C.J. in 9 Bing. 104; 2 M. & Sc. 119.) It does not, however, clearly appear in this last decision to have been held that the Court itself is to be supposed as actually sitting at chambers, for the judge's authority may be "the authority of the Court itself, and his judgments considered as the acts of the Court," as done through him as the deputy of the Court, without supposing the Court actually present, the same as many other acts done by the officers of the Court, as the masters, prothonotaries, &c. are considered substantially as the acts of the Court. The words, however, would appear, perhaps, on the whole, as confirming the principle laid down in *Res v. Almon*, and as such are liable to some objections. For if the Court must "adopt" the decision of the judge at chambers, by making it a rule of Court before they can act upon it, as by issuing an attachment for disobedience to it, it would appear that it was not originally the act of the Court. Again, if any one judge can thus completely represent the whole Court, the Court may be sitting in five different places at once. So if the decision of a judge at chambers is the decision of the whole Court, an appeal from his decision must be to a court of error. And lastly, as has been already observed, that originally a judge at chambers only had authority to act out of Term time, when the Court had no power to sit at all, much less by a judge at chambers, so that if his power were only that of the Court it could never have existed. The two first of these objections were adverted to in *Res v. Almon* (Wilmot's Notes, 264, 265), but scarcely appear to have been satisfactorily answered.

Besides this authority of a judge at Chambers by common law, they have an extensive authority cast upon them by various statutes, to act in certain matters not of sufficient importance to require the judgment of the whole Court, or of a nature requiring a speedy and summary decision. And whenever such power is conferred by statute, or otherwise, the judge will have just precisely so much original power as is contained within the words of the statute and no more, for all delegations of judicial power are construed strictly. And, therefore, if he exceed his authority in any degree, or do not act up to it in a manner pointed out, or in any way deviate from the authority as given, his acts will be void. (Vide post, "Summonses," by whom, at what time, in what form, granted.) But when once the extent of the original power granted is ascertained, everything necessary for carrying out that power will be implied. And, therefore, where an authority is given to a judge at chambers to hear and determine certain matters, he will have power of summoning the parties, &c. and doing all things necessary for carrying out the powers granted. (Vide ante, and *Metcalf v. Worsley*, 1 Roll. Abr. 526; 2 Roll. Abr. 277; 1 Salk. 408.) But probably only such powers as judges at chambers usually have in like matters.

As above remarked, the authority of a judge at chambers, whether it accrue to him by custom of the court, by statute, or rule of Court in pursuance of such statute, must be pursued strictly; and to do this, since the power which he holds is for the public benefit, he must exercise it up to the full limits to which it extends, and yet not one tittle beyond it. And when it appears from the practice, or from express or implied words of a statute (as where he is to use his discretion) that the decision of a judge at chambers is to be final, the Court above cannot and will not interfere. (*Parkes v. Edge*, 1 Cr. & M. 429; *Res v. Archbishop of York*, 1 Ad. & El. 397; vide post, Order, how impeached, by motion.) So, also, it must be used in the manner pointed out by custom or Act of Parliament, &c. by which it is created. And it is said by Lord Mansfield, that the practice of the judge at chambers is matter of tradition, resting on the memory of the officers of the court, of whom the judges, as in other matters of practice, will enquire. The books, however, such as the reports, are evidence, no doubt, of what the judges, by the advice of the officers, have heretofore determined to be the practice. And this practice is binding on the judge,

for though in deciding on the merits of the application, &c. he may and does in most cases use his discretion; yet so far as the bringing the application before him and dispensing it, &c. is concerned, he is bound by the practice of the Court, which is part of the law of that Court. So the power of a judge at chambers must be used in accordance with the line pointed out by the custom or statute creating it. And, therefore, where by a custom or statute a judge at chambers has power to grant an order only out of Term, an order made in Term time will be void. (Vide post, Summonses, at what time, &c.) So, no doubt, if the particular place for making a summons or order, as on circuit, or at chambers, were pointed out, it must be followed. (Vide post, Summonses, form of, where returnable.) So the power of judges at chambers, to grant summonses and orders, whether it accrues by statute or by custom, like all other powers in law, can be exercised only by those on whom, by statute or by custom, it is strictly conferred.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY

ON THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.

(Continued from page 469.)

6. Both limitations must be by the same instrument.—Both limitations must be by the same instrument; or, in other words, the ancestor must take an estate of freehold under the same instrument which contains the limitation to his heirs. Hence, if A be tenant for life under a deed, and the lands of which he is so tenant for life be granted by another deed, or devised by will, to the heirs of the heirs of his body, the two estates will not unite and vest the inheritance in him. (*Moore v. Parker*, 1 Lord Raym. 37; *Snave v. Cutler*, 1 Lev. 134; *Des dem. Fomerrey v. Fomerrey*, Doug. 487.) But a schedule, or a codicil annexed to or referring to a will in which an estate is limited to the ancestor, being considered to form a part of the will itself, does not prevent the application of the rule; notwithstanding the limitation to the ancestor should be in one paper, and the limitation to the heirs should be contained in another. (*Hayes and Forde v. Forde*, 2 W. Blackst. 693.)

As to instruments creating and executing powers.—Whether, when an estate is limited to a man by one instrument, and afterwards to his heirs, &c. in his lifetime under an execution of a power of appointment contained in such first instrument, the two limitations would unite, so as to vest the inheritance in the ancestor, seems, for a considerable time, to have been open to doubt; and, although the prevailing opinion of those best calculated to form one upon so important a subject, seems to have been in favour of the application of the rule (see *Ferne, C. R. 75*), no judicial opinion appears to have been ever delivered on the point, until the question again arose in the case of *Venables v. Morris* (7 T. R. 342, 439). The nearest case in the old books is *Pybus v. Milford* (1 Vent. 372), where a limitation to the heirs of the body of A was held to unite with an estate for life, which resulted to him by the same deed. In *Venables v. Morris* (ubi sup.), however, the precise question arose. In that case, under a settlement, the husband was tenant for life, remainder to trustees, to preserve, &c. (after several uses which never arose) to such uses as the wife should appoint. She appointed to the right heirs of the husband. The Court ultimately held that the fee-simple vested in the trustees, so that the estate under the power being merely equitable, could not unite with the limitation to the husband for life in the deed, which was a legal estate; but Lord Kenyon treated it as quite clear that the appointment was to be considered in the same light as if it had been inserted in the original deed, by which the power of appointment was created; and he therefore held, that if the limitation to the heirs of the husband had been a legal estate, it would have enlarged the estate of the ancestor, and have given him a fee.

Application of the rule as to equitable estates.—The rule in *Shelley's* case will comprehend equitable as well as legal estates; that is, provided both estates are equitable; but, with this exception, however, viz. that where the trusts are only executory, courts of equity, in order to effectuate the testator's intention, in framing the settlement of which the will is directory, more according to the spirit and intention than the strict letter of the will, have

so far departed from what would be the legal operation of the words limiting the trust, if reduced to a common law conveyance, as sometimes to construe the words "heirs of the body" into words of purchase, and not of limitation. As, therefore, questions occasionally arise upon this subject, it may not be improper to define the distinction between trusts executed, and executory trusts; which seems to be as follows, *e. g.* when the trusts are wholly and directly declared: as if lands are limited to the use of trustees in trust for B, and after his decease, in trust for the heirs of his body, such trusts being wholly declared will be executed in B, and the Courts will not, in that case, depart from the general rule of construction to effectuate the presumed purposes of a settlement, contravening the effect of the previous limitations. But where the trusts are only directory, and prescribing the intended limitations of some future settlement, they will be considered as executory: as, for example, where trustees are directed to purchase or convey lands; in which case the directions are not considered as complete and conclusive, but rather as minutes, from which more full and correct limitations are to be framed; and in such case the Court, in decreeing such settlement, will depart from the strict technical words in order the better to effectuate the general object which the testator had in view. Hence a clause exempting the ancestor from impeachment of waste, *Papillon v. Voice* (2 P. Wms. 471); *Glenorchy (Lord) v. Boveille* (Ca. temp. Talb. 3); *Ashton v. Ashton* (1 Coll. Jar. 525); the insertion of trustees to support contingent remainders, *Papillon v. Voice* (2 P. Wms. 471); *Earl of Stamford v. Hobart* (3 Bro. P. C. edit. Toml. 31); *Horne v. Barton* (Coop. 257); or any other clause which denies the power of barring the entail. *Leonard v. Sussex* (2 Vern. 525) furnishes evidence of such intention; in which case the Courts, in directing a conveyance, will order a strict settlement, and by that means confine the estate of the first taker to a mere life-interest, notwithstanding the words of limitation to his heirs, &c. would have been sufficient to have vested the inheritance in him in the case of a legal estate, or a trust executed. But even in the instance of executory trusts, there must be some expression in the will besides the mere limitation to the ancestor for life, to enable the Court to discover that the testator meant his heirs should not take in that right, and under the strict technical import of that term; for the Court must necessarily follow the testator's words, unless he has shewn that he did not mean to use them in their proper sense, and have never gone so far as to say that merely because the direction was for an entail they would execute that by decreeing a strict settlement. It must also be kept in mind that, in order to enable the Court of Chancery to interfere in directing the mode in which the trust is to be performed, it must appear in express terms that the trustees are to settle, convey, &c. for a mere direction to purchase has been holden to be insufficient. (*Seale v. Seale*, Pre. Cha. 421; S.C. 1 P. Wms. 290; *Austen v. Taylor*, Amb. 376; *Blackburn v. Stables*, 2 Ves. & Bea. 367.)

Of the cy pres doctrine.—And as on the one hand courts of equity, in order to effectuate the testator's intention, have restricted a limitation in terms sufficient to pass the inheritance to a mere life estate, so, on the other, they have for the same cause extended a limitation which in express terms would only have passed a life estate, to an estate of inheritance, in order to embrace more remote objects of the testator's bounty, whom, from the general tenor of the will, it is evident he intended should take, but the language employed by him has been such as, if construed literally, would be contrary to law, as being limited to take effect on a contingency that must not necessarily happen within the limits prescribed by law for the vesting of an executory devise; as where a devise is made to the issue of persons unborn as purchasers. In cases of this kind therefore, where the intent has been manifest, the Courts, rather than the intention should altogether fail, have so construed the devise as to vest the estate in the ancestor, and thus in the nearest practicable way bring all the parties intended to be benefited within the scope and operation of the will; and hence it is that this construction is called the *cy pres* doctrine—a doctrine only allowed in the case of wills (*Brudenell v. Blues*, 7 Ves. 390), and applicable only to real estate (*Routledge v. Dorrill*, 2 Ves. 357), or money directed to be laid out in lands, which in the eye of

a court of equity is transmissible in the same manner as the purchased property itself would have been, and has all the incidents of real estate. (*Pembroke (Earl of) v. Bowden*, 3 Cha. Rep. 115; S. C. 2 Vern. 583; *Otoay v. Hudson*, 10. 583; *Allen v. Allen*, Mosel. 123; *Chaplin v. Chaplin*, 3 P. Wms. 229; *Sweetapple v. Bindon*, 2 Vern. 536; *Lechmere v. Carlisle (Earl of)*, 3 P. Wms. 211; *Lingen v. Sowray*, 1 Eq. Ca. Abr. 175; S. C. 3 P. Wms. 221; *Crabtree v. Bramble*, 3 Atk. 680, 687; *Fletcher v. Ashburner*, 1 Bro. C. C. 497; *Broome v. Monck*, 10 Ves. 597; *D'Arcy v. Blake*, 2 Sch. & Lef. 388.) The case of *Humberston v. Humberston* (1 P. Wms. 332) has generally been considered as the leading authority in support of the *cy pres* doctrine. In that case lands were devised to trustees in trust to convey the premises to Matthew Humberston for life, and upon his death to his first son for life, and so to the son of that first son for life, &c.; and if no issue male of the first son, then to the second son of the said Matthew Humberston for life, and so to his first son; and in failure of such issue of Matthew, then to another Humberston, and his first son for life, &c. with remainders over to the other of the Humberstons for their lives successively, and to their sons when born for their lives, without giving any estate tail to any of them. Lord Chancellor Cowper said, that "though an attempt to make a perpetuity for successive lives be vain, yet so far as is consistent with the rule of law it ought to be complied with." He, therefore, to attain this object, let in all the sons of these several Humberstons then already born to take estates for their lives; but where the limitation was to the son unborn, then such limitation was to be in tail male. A similar construction has also been adopted in several subsequent cases. (*Hopkins v. Hopkins*, Ca. temp. Talb. 44; *Nicholl v. Nicholl*, 1 Blackst. Rep. 115; *Chapman and Oliver v. Brown*, 3 Burr. 1626; *Pitt v. Jackson*, ib. 51; *Mogg v. Mogg*, 1 Mer. 654; S. C. in Dom. Proc. 3 Bro. P. C. edit. Topl. 269.)

Application of the rule in Shelley's case to copyholds.—The rule in *Shelley's case* will operate on copyhold as well as on freehold estates. Hence the same words as would have been sufficient to have vested the inheritance in the ancestor in the case of freehold property, respect being had to the different nature of the instruments, will have the same effect upon a surrender or devise of copyholds; a surrender operating in the same manner as a deed of conveyance (*Lovell v. Lovell*, 3 Atk. 11; Wat. Cop. 108; Co. Cop. s. 49); and a will receiving the same construction as a devise of freeholds. (*Wright v. Kemp*, 3 T. R. 470, 473; *Widdowson v. Harrison*, 1 Jac. & Walk. 532.)

As to estates for years.—But as there can be no inheritance of a term of years, the general rule of construction with respect to property of that kind, is, that where the words used would have been sufficient to have passed the inheritance either in fee or in tail, it will pass the absolute interest in personal estate. The rule, however, is subject to some modifications, which I shall take care to allude to when I come to treat of titles to estates for years.

What words will be allowed to supply the place of heirs of the body.—In wills, the Courts, in order to effectuate the testator's intention, have allowed other terms to supply the place of the words "heirs of the body." Hence a devise to a man and his heirs male will pass an estate tail, though in a similar limitation if contained in a deed, will create an estate in fee-simple. (1 Prest. Estates, 526). The word "issue," also, when used in a collective sense, as extending to and comprehending the issue from generation to generation, will receive a similar construction with the words "heirs of the body." And even the words "sons, children," &c. although properly speaking descriptive only of persons filling those characters, and consequently words of purchase and not of limitation, may yet, when it is manifest the testator intended to use them in the latter sense, be allowed to receive that construction.

Issue, when a word of limitation.—The word "issue," although a word of limitation, whenever it is used in a collective sense, is yet of less determinate meaning than the words "heirs of the body;" the latter being mere technical words, admitting of but one meaning; whereas the word "issue," is capable of more; for in the statute *de donis* it is used both as synonymous with children, and as descriptive of descendants of every degree;

and notwithstanding the latter might be its *prima facie* meaning, yet the authorities shew that it will yield to the intention of the testator to be collected from the will; and therefore it requires a less demonstrative context to shew such intention than the technical expressions "heirs of the body" would do. (*Lees v. Mosley*, 1 You. & Coll. 589.) Where the word "issue" has been construed as a word of purchase, it has generally been where explanatory words have shewn that the testator meant to use the term in the same sense as children, sons, &c. Therefore, if a testator was to devise to "A and his issue," which standing alone would undoubtedly pass an estate tail, and was afterwards to go on and state "the eldest of such sons to be preferred to the younger," these subsequent words would explain the issue to mean sons, and no more. So a devise upon trust to transfer one moiety to the issue of S, to be paid to them at their respective ages of twenty-one, and if only one child, then to such one child, for his, her, or their benefit, would restrict the word "issue" to mean children. (*Carter v. Bentall*, 2 Beav. 551; see also *Ryan v. Cowley*, Lloyd & Goole, 10; *Macell v. Wedding*, 8 Sim. 4; *Pruen v. Osborn*, 11 ib. 142.) Generally speaking, however, the word "issue" will be considered as a word of limitation; and notwithstanding there are some decisions to the contrary, the weight of authority is decidedly in favour of the construction that words of superadded limitation engrafted on the limitation to the issue, and even describing a mode of descent inconsistent with an estate in the ancestor (as a devise to A. for life, with remainder to the issue male of his body, and their heirs for ever), will be insufficient to convert the issue into purchasers. The principal cases in favour of this construction are, *Shaw v. Weigh* (1 Eq. Ca. Abr. 184, pl. 28, S.C. 2 Str. 798); *Dodson v. Grew* (Wilm. 272, S.C. 2 Wils. 322); *King v. Burchell* (1 Eden. 424); *Denn dem. Webb v. Puckey* (5 T. R. 299); *Frank v. Stovin* (3 East, 544); *Hodson v. Merest* (9 Pri. 559); *Mogg v. Mogg* (1 Mer. 654); *Tate v. Clarke* (1 Beav. 100). Opposed to it are, *King v. Mellish* (1 Lev. 58); *Loddington v. Kime* (1 Salk. 224s S.C. Lord Raym. 203); *Backhouse v. Weir* (1 Eq. Ca. Abr. 184, pl. 27); *Doe dem. Cooper v. Collis* (4 T. R. 284); *Doe dem. Dwyer v. Burnall* (6 T. R. 30, S. C.), under the name of *Burnall v. Dewy* (1 Bos. and Pull. 215); *Doe dem. Gilman v. Elvey* (4 East. 313); *Lees v. Mosley* (1 You. and Coll. 589.)

When the words "children, sons, &c." will be considered as words of limitation.—Although the words "children, sons, &c." are, in their ordinary signification, words of purchase; yet where there is a manifest intent that they shall take under the will, which must altogether fail unless they can take through their parent, in that case either of those terms may become words of limitation; and be construed in the same sense as "heirs of the body;" and then, provided the parent takes a preceding estate of freehold, uniting with that estate will vest the inheritance in him. But this construction will only be allowed where the children can take in no other way. Hence a devise, "to A and his children," will, if A had any children at the time of the devise, vest a joint estate in all, both parent and children as purchasers; but if A had no children, he will then take an estate tail in order to let in the limitations in favour of the children, the latter of whom would otherwise be debarred from all benefit under the will; for they could not take as immediate devisees; not being in existence, nor by way of remainder, the devise being in express terms immediate to A and his children. (*Wild's case*, 6 Rep. 17; Bendl. 30; Bulstr. 219; *Davis v. Stephens*, Doug. 321; *Seale v. Barters*, 2 Bos. & Pull. 485.)

Son or sons, when a word of limitation.—The word "son" or, "sons," though generally speaking words of purchase, yet when used with a view to the whole class, and not as a strict literal description of them in their usual character, may become a word of limitation, and thus bring a preceding estate of freehold in the parent, within the rule in *Shelley's case*. As where lands are limited to A generally, and if he shall die without having a son, or sons, that the lands shall remain over, in which case the word "son" will be considered as *nomen collectivum*, and synonymous with heirs male of the body, and vest the inheritance in tail in A. (*Byfield's case*, cited by Hale, C.J. in *King v. Mellish*, 1 Vent. 231; *Milliner v. Robinson*, 1 Moor, 682; *Wild v. Lewis*, 1 Atk. 432; *Robinson v. Robinson*, 1 Barr. 38; S.C. 3 Bro. P. C.; under the name of *Robinson v. Hicks*; *Doe v. Mulgrave*, 5 T. R. 323; *Mellish v.*

Mellish, 2 B. & C. 520; *Garrod v. Garrod*, 2 B. & Ad. 87; *Doe dem. Jones v. Davies*, 4 Barn. & Ad. 43; *Ragget v. Beatty*, 2 Moo. & Pay. 612; *Doe dem. Jeorrad v. Bannister*, 7 Mees. & Wels. 292; *Doe dem. Burris v. Charlton*, 1 Man. & Grange, 429; S. C. 1 Scott, 290.) But if after devising to A for life, with remainder to his sons or daughters generally, or for life, or in tail, there is a devise over in default of issue of A, then the term "issue" will be construed to mean the kind of issue before described, and confine the word "sons" to its strict literal import. (*Doe dem. Bud-don v. Page*, 3 T. R. 87; *Doe dem. Phipps v. Mulgrave*, 5 ib. 230; see also *Bamfield v. Popham*, 1 P. Wms. 54; *Ginger dem. White v. White*, Willes, 348; *Comberbatch v. Perry*, ib. 484; *Res v. Stafford (Margus of)* 7 East, 521; *Foster v. Romney*, 11 East, 594; *Tooley v. Gennis*, 4 Taunt. 313; *Doe dem. Liverage v. Vaughan*, 5 B. & A. 646.) Yet if the testator, instead of running through the whole line of A's sons, had stopped short at some particular point in the enumeration, and had then inserted a limitation over in default or failure of issue, A. would have taken an estate for life with remainder to his first and other sons, either for life or in tail, accordingly as their estates were limited to them, with remainder to A. in tail by implication. (*Langley v. Baldwin*, 1 P. Wms. 755, n.; *Attorney-General v. Sutton*, ib. 753; *Robinson v. Robinson*, 1 Burr. 58; *Doe dem. Bean v. Halley*, 5 T. R. 5.) This construction is only applicable, however, to wills made previously to the year 1838, for under the late Will Act (1 Vict. c. 26,) as we have already seen, words importing a failure of issue are to be construed to mean a failure of issue at the time of his death; consequently, as to wills made subsequently, a devise to A. for life, with remainder to his sons, whether including the whole or stopping short at a definite number, with a limitation over in default of issue, will be restrained to the sons, and will not, therefore, enlarge the estate in their parent, who will take simply a life estate, with remainder to his sons as purchasers.

(To be continued.)

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A ditto, No. 42—530l. A ditto, No. 43—690l.
A residence, No. 3, Great Coram-street, Russell-square; held for 52 years, at 16l. 16s. per annum—470l.
A house, No. 16, Red Lion-square, Holborn; held for 8½ years, at 80l. per annum, let at 120l.—75l.

By Mr. SINGLE.
A house, No. 2, Eastern-place, Camberwell, held for 86½ years, at 2s. 12s. 4d.—211l.
A house, No. 2—190l.
A ditto, No. 4—168l.
Three houses, Nos. 1, 2, and 4, Queen's-place, Peckham, held for 67½ years, at a ground-rent of 4l. let at 44l.—510l.
A house, No. 5, held for the same term, at 4l.—206l.
A ditto, No. 5—198l.
Ten plots of building land, forming a portion of the site of the New Battersea-park, in 10 lots, produced from 50l. to 160l. a lot—sum total, 738l.
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An equitable policy for 3,000l. upon a life now aged 75, with the accumulations from 1840, amounting to 300l.; annual premium, 66l. 8s.—2,040l.
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A baker's shop, house, and premises, No. 19, Everett-street, Brunswick-square; held for 47½ years at 12l. 12s. ground-rent, let at 60l.—605l.
A house, No. 10, Frederick's-place, Goswell-street-road, let for 30 years at 30l. per annum; held for 29½ years at a peppercorn—390l.
A residence, No. 41, Spencer-street, Goswell-street-road, held for 38 years, at 7l.; let for 10½ years, at 40l.—430l.
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A residence, No. 9, Hornsey-road, Islington; held until December, 1862, at a ground-rent of 4l. 4s.—410l.
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A ground-rent of 27l. 5s. secured upon four houses on the east side of the Latymer-road—430l.
A ground-rent of 34l. 4s. 6d. arising from Nos. 1 to 10, Chapter-terrace—560l.
A ditto, of 35l. 10s. arising from a house situate at the north-eastern extremity of the Latymer-road, and known by the sign of the Globe—620l.
A ground-rent of 12l. 15s. secured upon three houses adjoining the preceding lot—160l.
A ground-rent of 69l. also secured upon ten semi-detached cottages on the west side of the Latymer-road, with ground sufficient for the erection of ten more houses—1,100l.
A ditto, of 30l. secured upon five houses, near Hatfield-terrace—680l.
A ditto, of 60l. secured upon two rows of five houses each, constituting a portion of Hatfield-terrace—870l.
A freehold ground-rent of 30l. arising from Nos. 11, 12, and 13, Hatfield-terrace, also Nos. 3 and 4, Park Cottages—425l.
A ditto of 10l. 16s. 6d. arising from Nos. 20, 21, and 22, Hatfield-terrace—155l.
A ditto of 41l. arising from Nos. 1, 2, 5, and 6, Park Cottages, and a row of three ditto, Nos. 7, 8, and 9, Park Cottages—470l.
A ground-rent of 79l. 10s. secured upon sixteen houses, constituting the entire range of houses known as Windsor-terrace—1,150l.

LIFE ASSURANCE.—A question of much importance to life assurance companies has lately been decided by the Judges in the Exchequer Chamber on a bill of exceptions in an action brought by the representatives of Schwabe against the Argus Life Assurance Company. The Judges have determined that a party assured holding his policy in his own hands who may commit suicide, forfeits his policy, and that the office is not bound to pay the amount. This decision settles the law on a point upon which doubts had heretofore existed. The Argus Company, who, before trial, had offered to return all premiums paid with interest, on the opinion of the Judges in their favour being declared, immediately renewed their offer, and have now repaid to Schwabe's representatives the whole of the premiums received, with interest at four per cent, amounting to 969l. 8s. 7d. The company have at the same time resolved in future to return to the representatives of any party assured in their office who may commit suicide the gross amount of premiums paid on the assurance.

VAN DIEMEN'S LAND.—The largest sale of land that ever took place in the colony by public auction, came off on the 27th of February, when the estates of the late W. M. Orr, esq. were offered for sale by the sheriff. The total amount realised was 20,370l.; W. J. T. Clarke, esq. being the principal purchaser. We subjoin the prices of the principal lots: 2,307 acres, Macquarie Plains, 3,000l.; 1,750 acres adjoining the last, 1,300l.; 2,180 acres, bounded on two

sides by Jones's Gully and the Derwent, 1,650l.; 2,400 acres, watered on the west boundary by the Clyde, 1,450l.; 2,126 acres, known as the Duck Marshes, for 710l.; 2,568 acres, near Hobart Town, known as Kangaroo Bottom, for 730l.; 640 acres at Glenorchy, for 140l.

The sworn amount of property in the will of the late Mr. Peter Purcell is under 41,000l. The bulk of his estates and property is left to his widow and two of his sons.

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared to the Pound. The Assignees, when chosen, follow this statement.

Thursday, Aug. 29.

Bratford, E. music seller, last exam. passed.—Joy, W. plumber, last exam. passed.—Mortimer, W. H. paviour, assignees, Sept. 25.—Reed and Powell, ironmongers, last exam. passed.—Farnell, H. auctioneer, assignees, Sept. 25.

Friday, Aug. 31.

Barley, A. draper, outlawed.—Bundy, W. builder, last exam. Oct. 31.—Gateshouse and Co. timber merchants, joint div. next week. Alsager, London.—Kingscote, R. A. F. merchant, last exam. passed.—Page and Page, builders, last exam. Oct. 16.—Woodthorpe, H. grocer, last exam. passed.

Saturday, August 31.

Clarke, H. brush manufacturer, assignees, Sept. 12.—Farrer, J. cabinet manufacturer, last exam. passed.—Holt, A. S. grocer, last exam. passed.—Felden and Co. ship owners, last exam. Sept. 24.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Arnell, J. miller, first, 2s. Acraman, Bristol.—Harford and Davies, ironmasters, second, Harford, 13s. 4d. Hutton, Bristol.—Harrison and Shiele, final, 8d.

Insolvents' Estates.

Alvains, C. carver, Baldwin-st. City-road, 2s. 3d.—Anderson, J. A. clerk in Greenwich Hospital, Greenwich, second, 5s.—Coates, R. C. grocer, Durham, 2s. 6d.—Davies, T. innkeeper, South Shields, 7d.—Defontaine, G. in no business, Quadrant, 6d.—Dewson, J. F. master in the navy, White Hart-street, Kensington, final, 6s. (making 30s.).—Griffin and Gilbert, publishers, Paternoster-row, 4d.—Harris, R. clerk in the Customs, Meadow-place, Kensington Oval, 4s.—Hewell, W. cheesemonger, Lower Marsh, 1s. 6d.—Jensen, J. C. veterinary surgeon, Lark-hall-lane, 10d.—Keating, G. D. P. bookseller, Seymour-place, Bryanstone-sq. 13s. 8d.—Knight, J. chemist, Luton, 2s. 1d.—Merritt, W. J. tailor, Durham, 1s. 0d.—Melchett, M. roofer, Plymouth, 5d.—Nogues, G. cheesemonger, Marlborough-street, 6d.—Noria, F. clerk, James-grove, Peckham, further, 4s. 4d.—Nottelton, J. innkeeper, Ossett, 4s. 4d.—Rawling, M. superannuated clerk in the East India Company's service, 2s. 10d.—Rhind, C. clerk in the Dock-yard, Chatham, 1s. 3d.—Richard, G. captain in the Marines, Ealing-lane, 4s. 2d.—Rogers, W. F. butcher, Cable-st. Whitechapel, further, 1s. 2d. (in addition to 1s. 10d.—Robinson, H. victualler, Coalingby, 2s. 6d.—Sheering, S. victualler, St. Philip and Jacob, 6s. 6d.—Stierow, J. farmer, Laseby, 2s. 11d.—Tregger, V. master in the Navy, New North-st. further, 6s.—Walker, T. fellmonger, Bermondsey-st. 2s. 6d.—Whitman, C. S. bookbinder, Littlemore, 2d.—Wiles, S. H. tea dealer, Norwich, 2s. 6d.—Wright, W. cabinet maker, Wivelscombe, 1s. 6d.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Aug. 21.

Page, G. and C. ironmongers, Westminster-bridge-rd. Aug. 10. Trusts. S. Lewis, nail manufacturer, Dudley, and W. Gould, commercial clerk, Upper Thames-st. Sol. Tip-pett, Pancras-lane.

Gazette, Aug. 28.

Bentley, T. draper, Bedworth, Aug. 13. Trusts. J. Gray, gent. Old Brompton, and W. White, warehouseman, Cheap-side. Sol. Roberts, Spring-gardens, Whitehall.—Callis, J. grocer, Mansfield, Aug. 19. Trusts. J. Bowmes, merchant, and J. Carter, gent. both of Mansfield. Sol. Woodcock, Mansfield.—Furniss, E. Westerdale, J. S. and Furniss, F. drysalters, Hull, Aug. 13. Trusts. J. T. Hill, J. Blundell, W. Ostler, and Henry Hubert, merchants, Hull. Sols. Holden and Son, Hull.—Goodall, D. and Carr, W. trimming sellers, Glasshouse-st. Regent-st. Aug. 19. Trusts. B. Spilsbury, warehouseman, Huggin-lane, E. Fox, silk manufacturer, Russia-row, Milk-st. and J. Scarratt, warehouseman, Milk-st. Sols. Parsons, Lincoln's-inn-fields, and Richards, Warwick-st.—Melton, E. plumber, Market Rasen, Aug. 14. Trusts. W. Rawson, agent to the Lincoln and Lindsey Banking Company, and E. Ward, builder, both of Market Rasen. Sol. Rhodes, Market Rasen.—Philpot, E. timber merchant, Ludlow, Aug. 15. Trusts. J. Sawyer, gent. and W. Davies, auctioneer, both of Ludlow. Sols. Messrs. Anderson, Ludlow.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Aug. 21.

CAVENDISH, GEORGE AUGUSTUS, lodging house-keeper, Church-end Finchley, Aug. 29, at eleven, Oct. 2, at two, Basinghall-st. Com. Fane; Whitmore, off. ass.; Hambury, Bedford-row, sol. Date of fiat, Aug. 13. Bankrupt's own petition.
HARTLEY, RICHARD HENRY, stock and share broker, accountant, and general agent, Halifax, Sept. 24, at eleven, Leeds, Com. West; Young, off. ass.; Jacques and Co. Ely-pl. Mitchell, Halifax, and Courtenay, Leeds, sols. Date of fiat, Aug. 18. Bankrupt's own petition.
MERRETT, WILLIAM GWILLIM, surgeon and apothecary, 49, Leadenhall-st. and Oliver's-grove, otherwise Oliver's-terrace, East, Bow-rd. Sept. 5, at half-past twelve, Oct. 8, at eleven, Basinghall-st. Com. Holroyd; Edwards, off. ass.;

Meers, Gole, Lime-st. vols. Date of fiat, Aug. 26. Bankrupt's own petition.

MUNICH, Louis, hotel keeper, Leicester-pl. Leicester-sq. Sept. 2 and Oct. 1, at one, Basinghall-st. Com. Holroyd; Groom, off. ass.; Harrison and Dobree, Hart-st. Bloomsbury, vols. Date of fiat, Aug. 17. Bankrupt's own petition.

MILLAR, JOHN, baker, 4, Mary-st. Horton Old-town, Sept. 2, at twelve, Oct. 1, at two, Basinghall-st. Com. Holroyd; Groom, off. ass.; Hare, Coleman-st. sol. Date of fiat, Aug. 19. Bankrupt's own petition.

MOORE, JESSE CORNELIUS, bookseller and publisher, 145, Strand, Aug. 29, at eleven, Oct. 2, at half-past one, Basinghall-st. Com. Fane; Alsager, off. ass.; Scott and Co. Lincoln's-inn-fields, vols. Date of fiat Aug. 18. Bankrupt's own petition.

MUNDY, EDWARD, house, land, and commission agent, Liverpool, Sept. 2 and Oct. 1, at eleven, Liverpool, Com. Perry; Morgan, off. ass.; Regerson, Lincoln's-inn-fields, and Davies, Liverpool, vols. Date of fiat, Aug. 6. Bankrupt's own petition.

SUTCLIFFE, JAMES and JOHN, and BERRY, WILLIAM, cotton spinners, High-town, Bristol, Yorkshire, Sept. 1 and 23, at eleven, Leeds, Com. Burge; Hope, off. ass.; Gregory and Co. Bedford-row, Wavell, Halifax, and Courtney, Leeds, vols. Date of fiat, Aug. 19. Bankrupt's own petition.

TATE, HARRY, and NAME, ROBERT LEON, stock and share brokers, Nicholas-st. Bristol, Sept. 4, at twelve, Oct. 16, at eleven, Bristol, Com. Stevenson; Acreman, off. ass.; Fox, Bristol, vols. Date of fiat, Aug. 11. Bankrupt's own petition.

TAYLOR, JOHN, manufacturer, Manor-house, Melbourn, Yorkshire, Sept. 8 and Oct. 1, at eleven, Leeds, Com. West; Freeman, off. ass.; Lever, King's-road, Laycock, Huddersfield, and Bond, Leeds, vols. Date of fiat, Aug. 8. M. Wood, spinners, Huddersfield, pet. cr.

TAY, WILLIAM, corn and flour dealer, Halifax, Yorkshire, Sept. 23, at eleven, Leeds, Com. Burge; Hope, off. ass.; Gregory and Co. Bedford-row, Wavell, Halifax, and Courtney, Leeds, vols. Date of fiat, Aug. 17. E. and T. Blynon, and J. Hunter, tea merchants, Manchester, pet. cr.

WOOD, CHARLES THOMAS, coin factor and share broker, Liverpool, Aug. 29 and Oct. 1, at eleven, Liverpool, Com. Perry; Cassels, off. ass.; Vincent and Sherwood, Temple, and Robinson, Liverpool, vols. Date of fiat, Aug. 14. Bankrupt's own petition.

BOLAND, JOHN, hardwareman, Manchester, Sept. 4 and 23, Manchester; Robson, off. ass.; Smith and Co. Bedford-row, Mottersam and Co. Birmingham, and Sale and Co. Manchester, vols. Date of fiat, Aug. 14. C. and J. Shaw, merchants, Birmingham, pet. cr.

BRINDLEY, JOHN, laceman, city of Coventry, Sept. 5 and Oct. 15, at ten, Birmingham, Com. Balguy; Velpy, off. ass.; Llewellyn, Noble-st. and Sutton, Birmingham, vols. Date of fiat, Aug. 11. S. T. Fells and E. Newby, warehousemen, Goldsmith-st. City, pet. cr.

HARVEY, JOSEPH, lamp manufacturers, King William-st. City, Sept. 5 and Oct. 6, at eleven, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Norton and Son, New-st. Bishopsgate, vols. Date of fiat, Aug. 21. W. and J. O. Borebus, glass manufacturers, Birmingham, pet. cr.

HUMPHRY, JOHN, coal, lime, and timber dealer, Heckley, Pockwood and Tunworth, Warwickshire, Sept. 5 and 20, at eleven, Birmingham; Com. Balguy; Christie, off. ass.; Rawlin, Birmingham, sol. Date of fiat, Aug. 17. B. Dickson, Bucklebury, and W. Pell, land agent, pet. cr.

FOUNELL, WILLIAM, grocer and cheese monger, High-st. Poplar, Sept. 3, at half-past twelve, Oct. 2, at half-past eleven, Basinghall-st. Com. Fane; Whitmore, off. ass.; Grainger, Bucklebury, sol. Date of fiat, Aug. 20. Bankrupt's own petition.

SUTCLIFFE, WILLIAM, warehouseman, Lawrence-lane, City, Sept. 3, at half-past one, Oct. 9, at eleven, Basinghall-st. Com. Fane; Abager, off. ass.; Hardwick and Davidson, Basinghall-st. sol. Date of fiat, Aug. 19. J. W. Walker, cloth merchant, York, pet. cr.

WOOLCOTT, HENRY, fringe manufacturer and trader, 19, Museum-st. Bloomsbury, Sept. 5, at half-past eleven, Oct. 2, at half-past twelve, Basinghall-st. Com. Fane; Alsager, off. ass.; Willoughby and Jacquet, Clifford's-inn, vols. Date of fiat, Aug. 20. Bankrupt's own petition.

YATES, RICHARD, and WILLIAMS, THOMAS HARTLEY, merchants and commission agents, Manchester, Sept. 8 and 29, at twelve, Manchester; Fraser, off. ass.; Sale and Co. Manchester, and Reed and Langford, Friday-st. sol. Date of fiat, Aug. 21. J. O., and R. Whittaker, cotton spinners and manufacturers, Hurst, pet. cr.

Meetings at Basinghall-street.

Barnes, M. chemist, Woodbridge, Suffolk, Sept. 12, at eleven, div.—Baister, G. currier, Church-st. Southwark, Sept. 1, at eleven (adj. June 12), last exam.—Beedel and Refold, builders, Reading, Sept. 15, at one, and—Bird, J. timber merchant, Club-row, Bethnal-green, Sept. 6, at half-past two, and—Burton, H. timber merchant, Ranelagh-wharf, Fimlico, Sept. 14, at eleven, and—Kennedy, L. pawnbroker, Sept. 10, at one, last exam.—Knight and Knight, stationers, Sept. 17, at two, and—Locks, W. timber merchant, Sept. 12, at twelve, and—M. Kinnell, C. wine merchant, Fenchurch-st. Sept. 10, at two, and—Mills and Puckle, hop factors, Southwark and Mark-lane, Sept. 12, at eleven, and—Moger, T. poulterer, Holborn-hill and Coventry-st. Sept. 10, at half-past twelve, last exam.—Perry, J. grocer and draper, Harlow, Sept. 15, at eleven, and—Prince, G. wine merchant, Romsey, Sept. 10, at twelve, last exam.—Salmon, J. carpenter and builder, Beaumont, Essex, Sept. 12, at two, div.—Smith and Mathews, glass merchants, Great Dover-st. Sept. 17, at one, and—Smithson, W. M. printer, Canterbury, Sept. 17, at half-past two, and—Stables, J. C. tailor, Oundle, Sept. 12, at half-past eleven, and—Wadsworth, G. B. apothecary, Broad-st. Golden-sq. Sept. 17, at twelve, and—Wilson, J. G. engineer, Standard Factory, Wenlock-basin, wharf-road, City-road, Sept. 12, at eleven, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Tear, R. commission agent, 10, Duddington-grove, Ilington, and 26, Wood-street, Chesapeake, Sept.

17, at eleven.—Hopkins, C. G. M. J. tailor, Portman-st. Sept. 11, at eleven.—Joy, W. plumber, Tonbridge, Sept. 11, at two.—Wall, J. H. builder, Tottenham-court-road, Sept. 17, at half-past one.—Reed, A. and Powell, S. J. ironmongers, Tottenham-court-road, Sept. 11, at twelve.—Taylor, J. J. tobacconist, Tooley-st. Sept. 17, at two.—Vale, J. silk printer, Manchester and Arndell Mottram, Sept. 12, at eleven.—Wootton, J. hatter, Bishopsgate-st. Sept. 14, at twelve.

Gazette, Aug. 25.
Airs, C. innkeeper, Newport, Sept. 18, at half-past twelve, and—Beattie and Macnaghten, merchants, Nicholas-lane, Sept. 18, at half-past twelve, and—Beaton, J. tailor, Upper-st. Islington, Sept. 22, at two, and—Biggs, J. undertaker, 41, Roundswich, Sept. 23, at eleven, div.—Brailford, R. common brewer, Enfield, Middlesex, Sept. 20, at twelve, div.—Bryant, J. draper and grocer, Mayfield, Sussex, Sept. 24, at twelve, div.—Cox, T. bootmaker, Brighton, Sept. 23, at half-past twelve, and—Crampton, J. B. coal merchant, 24, Wharf-rd. City-basin, City-rd. Sept. 15, at twelve, div.—Freeman, T. fringe manufacturer, Wood-st. Sept. 18, at half-past twelve, and—Hambridge, C. coachsmith, Curtain-rd. and Paddington, Sept. 23, at twelve, and—Hart, T. R. victualler, Lea-bridge, Sept. 23, at one, and—Haynes, J. wooden warehousman, Aldersnury, Sept. 23, at eleven, and—Page, R. H. innkeeper, Great Yarmouth, Sept. 24, at eleven, and—Sewell, E. hatter, Old Bond-st. Sept. 24, at half-past one, and—Simmons, T. corn merchant, Woburn, Sept. 23, at half-past one, and—Steales, J. C. tailor and draper, Oundle, Northampton, Sept. 15, at two, div.—Watkinson, H. carpenter, President-st. East and Macclesfield-st. South, Sept. 23, at half-past eleven, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Brailford, R. brewer, Enfield, Sept. 20, at eleven.—Duff, J. carpenter, Upper-st. Islington, Sept. 23, at twelve.—Hart, J. linen draper, New-st. Dorset-sq. Sept. 18, at eleven.—Kingscote, R. A. F. merchant, Nicholas-lane, Sept. 18, at twelve.—Morpheus, W. linen draper, Sevenoaks, Sept. 22, at one.—Oakley, T. farmer, St. Alban's, Sept. 24, at two.—Syer, A. A. dealer, Sudbury, Sept. 23, at two.

Meetings in the Country.

Gazette, Aug. 24.
Cooke, M. joiner, Manchester, Sept. 15, at twelve, Manchester, and—Nield, J. woollen manufacturer and dyer, Manchester, Ashton-under-Lyne, and Saddleworth, Sept. 16, at twelve, Manchester, and—Richardson, W. glass manufacturer, Sept. 16, at half-past eleven, Newcastle, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Hall, S. commission agent, Manchester, Sept. 15, at one, Manchester.—Harley, P. S. grocer, Birmingham, Sept. 29, at ten, Birmingham.—Hornfield, W. H. draper, Cardiff, Sept. 14, at eleven, Bristol.—Hughes, G. J. commission agent, Liverpool, Sept. 15, at eleven, Liverpool.—Raine, H. bottle maker, Newton, Sept. 14, at twelve, Manchester.—Scholer, J. dealer, Manchester, Sept. 15, at twelve, Manchester.

Gazette, Aug. 25.
Ball, C. linen draper, Lane-end and Cheadle, Staffordshire, Oct. 8, at twelve, Birmingham, and div.—Cooke, M. joiner, builder, and licensed victualler, Denton, Manchester, Sept. 16, at twelve, Manchester, div.—Edwards, J. ironfounder, Digbeth, Birmingham, Oct. 6, at twelve, Birmingham, and Oct. 8, at twelve, div.—Evans, J. cattle dealer and farmer, Haywood-lodge, Herefordshire, Oct. 6, at twelve, Birmingham, and Oct. 8, at twelve, div.—Lead, J. wine merchant, Wellington, Sept. 1, at twelve, Birmingham (adj. July 31), last exam.—Nield, J. woollen manufacturer, dyer, and printer, Church-st. Manchester, Bank-mill, near Lees, Ashton-under-Lyne, Lancashire, and Walker's place, Saddleworth, Yorkshire, Sept. 16, at twelve, Manchester, div.—Scott and Scott, merchants, Birmingham, Sept. 17, at twelve, Birmingham, joint and sep. J. Scott.—Seston, J. farmer and horse dealer, Wink-house, Frickley-cum-Clayton, Yorkshire, Sept. 24, at eleven, Leeds, div.—Tomkins, E. and T. fellmongers, Shrewsbury and Manchester, Sept. 19, at eleven, Birmingham, final div.—Wessons, T. merchant, Birmingham, Sept. 15, at twelve, Birmingham, and Sept. 17, at twelve, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Prestley, R. grocer, Manchester, Sept. 16, at twelve, Manchester.—Stark, J. M. bookseller, Gainsborough, Sept. 16, at ten, Hull.—Stonehouse, C. H. ship broker, Newport, Sept. 18, at twelve, Bristol.—Wharf, G. potatoe dealer, Boston, Sept. 23, at twelve, Birmingham.

Partnerships Dissolved.

Gazette, August 18.
Bowden, H. and Marshall, N. ale merchants, Plymouth, March 25. Debts paid by Marshall.—Bradbury, G. T. and Hemitt, D. cotton spinners, Ashton-under-Lyne, July 24.—Bullman, W. H. and Grant, J. grocers, Mildenhall, May 1. Debts paid by Bullman.—Copland, J. and J. drapers, Barnstable, Aug. 1.—Cryer, H. and Vitty, G. A. timber merchants, Manchester, Aug. 15.—Deudney, E. A. and Hurst, H. jun. brewers, Hastings, Aug. 5. Debts paid by Breeds, Hastings.—Dickinson, T. F. and Falkons, J. gas meter manufacturers, Newcastle, Aug. 15.—Howard, T. and Wardlow, G. cotton spinners, Glossop, Aug. 13. Debts paid by Howard.—Johnson, S. and T. publishers, Manchester, July 25.—Madden, J. and Malcolm, F. booksellers, Leadenhall-st. Aug. 13. Debts paid by Madden.—Owen, S. farmer, Frondley, Hughes, J. farmer, Llanfyllwys, Jones, W. merchant, Amwlch, Parry, R. farmer, Llanfyllwys, and Owens, W. master mariner, Llandabrig, Oct. 3, 1845.—Pratt, T. and D. thimble manufacturers, Birmingham, Aug. 14. Debts paid by T. Pratt.—Roby, J. jun. and Hadfield, G. varnish manufacturers, Seacombe and Liverpool, Aug. 13. Debts paid by Hadfield.—Shirley, T. and B. china ware manufacturers, Longton, July 30. Debts paid by T. Shirley.—Taylor, J. Plews, J. and Shaw, T. spindle makers, Woodley, so far as regards Taylor, July 14. Debts paid by the remaining partners.—Thompson, H. Mellor, J. Thompson, J. C. Hope, P. Pugh, W. Hunt, J. and Mayor, A. brewers, Liverpool, Aug. 4.—Vaughan, J. Clemens, J. and Jones, J. silk dyers, Horrocks, March 25. Debts paid by Vaughan and Clemens.—Welch, J. and Barnett, J. chemists, Birmingham, Aug. 4. Debts paid by Barnett.—White, T. E. and Luck, G. die sinkers, Macclesfield-st. Aug. 16. Debts paid by White.—Whalley, N. and Blenkinshorn, J. B. woollen

cloth manufacturers, Huddersfield, Aug. 15.—Whitney, J. W. and Webb, J. curriers, Birkenhead, Aug. 9.

Gazette, Aug. 21.
Ashmore, J. and Hall, W. gardeners, Westbury-upon-Trym, Aug. 18. Debts paid by Hall.—Bell, J. T. and Mendham, A. quill and pen manufacturers, Dewsbury-hill, Aug. 15. Debts paid by Mendham.—Beece, J. and Fines, more, J. steel pen manufacturers, Birmingham, Aug. 15. Debts paid by Evans.—Farrar, J. and Boscott, J. ham merchants, Huddersfield, Aug. 19.—Fitch, C. R. and Sargent, W. F. wine merchants, Fenchurch-street and Botolph-claydon, Aug. 18. Debts paid by Fitch.—Foster, H. and Leach, S. stock brokers, Leeds, Aug. 19.—Fry, J. jun. G. Griffiths, B. B. Fry, S. G. and Merriwell, T. G. colonial brokers, Fawcett church-st. so far as regards S. G. Fry, July 1. Debts paid by the remaining partners.—Greenleade, A. James, W. B. and Greenleade, W. T. corn merchants, Bristol, so far as regards James, Aug. 19. Debts paid by the remaining partners.—Hammond, S. and Gurnett, T. chemists, Dearne, March 18.—Hare, T. and Pilling, F. manufacturers, Huddersfield, Aug. 17. Debts paid by Hare.—James, W. and R. sheep dealers, of Westwell and Southrop, July 20. Debts paid by Street, auctioneer, Bedford.—Jones, E. Pades, G. and Wood, R. P. Liverpool and Pernambuco, so far as regards Wood, Dec. 31, 1845.—Kirkby, T. Glover, E. B. Kirkby, F. and Hirst, J. commission agents, Oporto, July 9.—Louth, J. and Madworth, H. grocers, Wincoboe Saint Peter, Aug. 18.—Marsh, J. and Bridge, J. quarry masters, Farnworth, Aug. 20. Debts paid by Marsh.—Pritchard, H. and N. hat manufacturers, Stamford-st. June 20. Debts paid by H. Pritchard.—Russell, R. and Martin, G. C. cottoners, Martin's-lane, Aug. 18.—Salisbury, W. and Jones, J. rope makers, Liverpool, Aug. 15. Debts paid by Salisbury.—Wood, G. and Joy, J. musical instrument makers, Great Compton-street, Aug. 21, 1845. Debts paid by Wood.

Insolvents

Petitioning the Courts of Bankruptcy.
PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Aug. 18.
Balls, W. H. out of business, Hornsey, Aug. 31, at one.—Benton, T. waterman, Ely, Aug. 31, at twelve.—Brown, J. victualler, Lombard-st. Southwark, Aug. 21, at eleven.—Bishop, J. machine ruler, Nicholas-lane, Aug. 21, at eleven.—Bull, H. milkman, Windsor-st. Islington, Aug. 31, at one.—Cardinal, J. bootmaker, Bloomsfield, Aug. 31, at twelve.—Caulfield, J. H. confectioner, Oakdale-st. Aug. 29, at eleven.—Globe, E. builder, Brighton, Aug. 31, at one.—Harris, J. baker, New-st. Gravel-lane, Aug. 31, at one.—Hayes, E. pavior, Hayes-place, Euston-square, Aug. 31, at half-past one.—Kym, J. B. clerk in the Audit-office, Ashington-st. Camden-town, Aug. 27, at half-past twelve.—Masters, G. A. sexton, Deptford, Aug. 31, at half-past one.—Pike, W. bricklayer, Platt-terrace, Old St. Pancras-road, Aug. 31, at eleven.—Shaw, J. blacksmith, Wetherfield, Aug. 31, at twelve.—Tennant, J. shawl fringe maker, Silver-st. Cheapside, Aug. 31, at twelve.—Thompson, J. window blind maker, Whitcombe-st. Pall-mall East, Aug. 27, at twelve.—Townsend, W. drilling master, Brighton, Aug. 31, at eleven.—Wingrove, W. jun. assistant gardener, Enfield, Aug. 20, at eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Archer, T. farming bailiff, Welland, Aug. 29, at eleven, Birmingham.—Benbow, J. labourer, Dudley, Sept. 3, at ten, Birmingham.—Bottom, J. hatter, Derby, Sept. 1, at ten, Birmingham.—Bradford, J. provision dealer, Liverpool, Aug. 29, at twelve, Liverpool.—Brown, F. J. clerk, Birmingham, Aug. 20, at ten, Birmingham.—Diggle, M. cotton spinner, Bury, Aug. 25, at twelve, Manchester.—Donking, J. dealer in cloths, Liverpool, Aug. 27, at eleven, Liverpool.—Edwards, E. T. grocer, Caerphilly, Sept. 1, at eleven, Bristol.—Finch, J. butcher, Liverpool, Aug. 29, at twelve, Liverpool.—Gregory, E. dealer in wines, Swansea, Sept. 8, at eleven, Bristol.—Lewis, H. baker, Shapton Market, Sept. 14, at eleven, Bristol.—Price, F. butcher, Dudley, Sept. 3, at twelve, Birmingham.—Rooley, W. innkeeper, West Ardley, Aug. 28, at eleven, Leeds.—Stephenson, J. mail maker's foreman, Edge-hill, near Liverpool, Aug. 27, at twelve, Liverpool.—Taylor, J. jun. clothier, Huddersfield, Aug. 28, at eleven, Leeds.—Watts, J. out of business, Caudon, Sept. 1, at eleven, Exeter.

Gazette, August 21.
PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Green, W. H. dyer, Bedford, Sept. 17, at eleven.
PETITIONS TO BE HEARD IN THE COUNTRY.
Broadhead, W. cloth drawer, Leeds, Aug. 25, at eleven, Leeds.—Crookes, J. quarryman, Ecclefield, Aug. 29, at eleven, Town-hall, Sheffield.—Gilling, J. tailor, Rotherham, Aug. 28, at eleven, Town-hall, Sheffield.—Greenwood, J. cordwainer, Bradford, Sept. 1, at eleven, Leeds.—Morley, I. butcher, Penistone, Sept. 1, at eleven, Leeds.—Norrie, T. accountant, Sneyton, Sept. 8, at twelve, Birmingham.—Stead, D. weaver, Dewsbury, Sept. 1, at eleven, Leeds.

From the Gazette of Friday, August 28.

Bankrupts.
Mercer, T. dealer, Albany, Surrey.—Grant, J. printer, Woolwich.—Smith, W. potato dealer, Tanners'-hill, Deptford.—Gardiner, J. and Crisp, F. R. T. printers, Wellington-st. Strand.—Pannell, W. grocer, High-st. Poplar.—Browne, H. surgeon, Ferdinand-terrace, Hampstead-road.—Wetenhall, G. stock broker, Bank-chambers, Leobury.—Brooks, T. boarding-housekeeper, Great Percy-st. Pentonville.—Webb, T. P. coal merchant, Balham, Cambridgeshire.—Burbridge, J. and R. grocers, Upper Whitecross-st.—Longhurst, W. carpenter, Old Brompton.—Fenton, J. T. brick maker, Park-st. Llanelli, Carmarthenshire.—Line, R. B. carpenter, Coxside, Devonshire.—Davie, C. currier, Chapetow, Monmouthshire.—Reading, S. button manufacturer, Birmingham.—Williams, E. and Roberts, T. builders, Birmingham.—Phillips, G. E. japanner, Birmingham.—Hawley, S. grocer, Ashton-under-Lyne.—O'Hanlon, P. draper, Liverpool.—Wilkinson, J. fruiterer, Liverpool.—Maddock, R. builder, Rock Ferry, Cheshire.—Jones, M. saddler, Liverpool.—Gill, B. brick and tile manufacturer, Darlington.

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

July 1846.

EDWARDS v. ALVEY.

Sale of lunatic's estate—Expenses incurred by husband of lunatic not so found by inquisition—Jurisdiction.

This matter was brought before the Lord Chancellor from the Court of Vice-Chancellor Wigram.

Green, for the defendant, stated that the suit had been instituted by the executor of a testator, to have the trusts of the will carried into execution under the direction of the Court. The testator, by his will, left his daughter, a married woman, the dividends of two sums of stock, for her maintenance during her life, to her separate use. She had become, and was still, insane; and her husband, who is a farmer in Essex in moderate circumstances, farming 100 acres of land, and having only an income of about 100l. a year, had maintained his wife and three children of the marriage ever since 1838, and, in addition, had expended nearly 400l. in extra expenses for medical advice for the benefit of his wife, and in taking her about for the benefit of her health. Although for some time the wife's interest under her father's will in the stock had become vested, yet it was not until March 1845 that she was entitled to the actual beneficial interest in it. Upon the cause coming on for hearing before Vice-Chancellor Wigram, the husband asked that a reference might be made to the Master to inquire and state what allowance he should be allowed out of the income of his wife's property, to reimburse him for the extra expenses he had incurred since the year 1838 in maintaining his wife, and what should be the allowance to him out of her property for her future maintenance, and whether any portion of the stock should be sold to satisfy the extra expenses he had been at for the benefit of the lunatic. The Master, by his report, recommended that 70l. a year should be for the future allowed to the husband for the maintenance of the lunatic; and that the extra expenses which the husband had incurred should be paid out of either a sale of some portion of the corpus of the fund, or that the surplus of the income of the fund should be applied in liquidating the claims of the husband. That surplus was 20l. a year, which would not reimburse the husband for a long time. Vice-Chancellor Wigram, this being the case of a lunatic, although not found to be so by a commission, thought he had no jurisdiction to confirm the recommendation of the Master's report, and he recommended that it should be brought before the Lord Chancellor.

Here appeared for the executor.

The LORD CHANCELLOR.—I cannot make an order to sell any part of the corpus of the fund to satisfy the claims of the husband for extra expenses beyond her maintenance incurred by him for the benefit of the lunatic. But as the whole of the income of the lunatic's property would have been enjoyed jointly by her and her husband had she not

become insane, I think I am justified in allowing 70l. a year to the husband for her future maintenance, and in directing that the annual sum of surplus income, namely, 20l. should be devoted to the repayment of the expenses incurred by the husband. To that extent the Master's report must be confirmed.

Friday, July 31.

Re JOHNSON, a Lunatic.

Practice—Allowance for expenses incurred for the personal accommodation of a lunatic wife.

Bacon supported a petition by the husband of the lunatic, who had a considerable separate estate. There were several residences, one at Brighton, and another in the country, and the husband, at the wife's particular request, had expended 6,000l. in purchasing and improving a residence at Spalding, in Lincolnshire. The petitioner sought to have that sum, or some part of it, repaid to him out of the wife's estate.

The LORD CHANCELLOR.—You may take an order for inquiring whether the house was necessary for her residence, and the Master must state all the circumstances, particularly with reference to the house at Brighton.

Re —, a Lunatic.

Practice—Payment into Court by committee of estate with prejudice to his accounting—Form of order.

A petition having been presented by the committee of a lunatic's estate for leave to pay a sum of money into Court,

The LORD CHANCELLOR observed, of course that must be without prejudice to his liability to account, and a provision to that effect must be inserted in the order.

Re DYCE SOMBRE, a Lunatic.

Petition to supersede commission by lunatic abroad without coming within the jurisdiction—Suspending commission—Order for commission to examine lunatic at Dover, with protection to him from molestation by the committee of his person—Practice in lunacy.

Roll, Shadwell, and P. Banks supported a petition by Mr. Dyce Sombre, now staying at Boulogne, to supersede the commission of lunacy against him, and for a commission to examine the petitioner without compelling him to return to this country. The affidavits shewed him to be perfectly competent to manage his own affairs.

The LORD CHANCELLOR.—When I before held the Great Seal, a case of this sort came before me, in which it was as clear as possible upon the affidavits that the lunatic had been restored to reason, but then I examined the party and found him quite insane.

Roll.—It would not be beneficial that he should be here during the proceedings. A commission of physicians might be appointed to examine him at Dover, and as the only ground against him formerly was his antipathy to particular persons, security might be given that he should not do any injury to such persons; there would then be no reason for his being subjected to any restraint.

Bethell and Calvert, for the committee of the person, objected that he ought to be examined by the same physicians who had been in the habit of attending him when his malady commenced.

Roll.—That examination might be easily arranged. The LORD CHANCELLOR.—Have you any evidence?

Roll.—There are affidavits by English and foreign physicians of eminence. The petition was presented in January last, and leave had been given by Lord Lyndhurst to amend it; the other side, therefore, had plenty of time to ascertain what is the actual state of Mr. Dyce Sombre's mind. The history of Mr. Dyce Sombre's life was stated as in the former petition, which has been reported in the LAW TIMES. The only ground on which he had been found lunatic consisted of a morbid jealousy which he entertained of his wife, and having been placed under the care of her family in charge of Mr. Grant, from whom he withdrew on the 9th of September, 1843, and on the 3rd had escaped to Paris. An application had been made to the French authorities to take possession of his person, but upon an investigation before the proper tribunal in Paris, he had been found to be sane. In the spring of 1844 a petition to supersede the commission was presented to Lord Lyndhurst, who objected to entertain it unless Mr. Dyce Sombre submitted to the jurisdiction. A minute was then drawn up between the counsel that the petitioner should not be restrained without the express direction of the Lord Chancellor. On that undertaking he came to this country; but was afterwards taken into custody, and was discharged after seeing the Lord Chancellor, and placed under surveillance. He was also seen by Drs. Bright and Southey. The case then made by the petitioner was, that he never had been a lunatic, and on that ground the commission was sought to be superseded. The present petition proceeded upon the ground that he had recovered from the peculiar delusions under which he had laboured. It was said that his mind was affected by the most

absurd jealousy; the answer to which was that he came to this country with Asiatic ideas of the conduct of women. His marriage had been twice broken off because he insisted on his wife conforming to Asiatic customs. The other side then and still insisted that he was of wholly unsound mind. He then read the affidavit of Lord Combermere, who had known Mr. Dyce Sombre from his infancy, and spoke to his Asiatic education and habits of thought. The family of his wife did not avoid a system of irritation, and Mr. Dyce Sombre again withdrew from their control, and has since remained abroad. Leave had been given by the Lord Chancellor that he might reside in some place abroad without interference with his personal liberty, unless he should make himself amenable to the constituted authorities. The committee was to be at liberty to appoint a person, who should have the superintendence of his pecuniary affairs, and to remove such person, or accept his resignation and appoint another. John Warwick had been appointed, who rendered an account, half-yearly, of the circumstances of Mr. D. Sombre's conduct, and through whom an allowance of 5,000l. was paid, to be applied for his maintenance, who was not to pay the money to him.

Mr. Prinsep, who had been political secretary to Lord William Bentinck, as the friend of the petitioner, had received from him his bills and transmitted them to Coutts and Co. through whom the allowance was paid. Mr. Prinsep, by his affidavit, stated that the petitioner was quite capable of managing his own affairs; he was consulted about the payment of pensions in India, and generally about the management of his estate. There were other affidavits to prove that the particular delusions do not now exist.

They submitted that he might be examined by a commission of physicians, either at Dover or Boulogne, and, if at the former place, that there should be an order that no person should interfere with him until after he had been examined; then he would readily submit himself to the Lord Chancellor's orders. The present application was only for a modified order. Several medical men stated that at present there was nothing insane in his manner or conduct, and that he constantly talked upon what had before been deemed his insane points.

The LORD CHANCELLOR.—How late do you bring down the medical testimony?

Roll.—The last affidavits were sworn on the 11th of July. They were made by English and foreign physicians residing in Paris and Brussels, and by the Hon. James Butler. They all proved him to be of sound mind. They referred to the case of *Re Bridges*, in 1841.

The LORD CHANCELLOR.—Perhaps the commission might be suspended; he appears to be quite competent to take care of his own person and property; the only danger, so far as there is any, seems to be to those few persons against whom he has a dislike, which might be provided for.

Roll.—That would be quite satisfactory. It was asked that a sum of money might be paid to him personally. The person appointed to watch over him had not followed him abroad. He was in the full capacity for the enjoyment of society abroad.

Banks cited several cases from medical works on insanity, bearing on the petition, and *Oxendon v. Compton*, 2 Ves. jun. 69, 261; *Ex parte Holyland*, 11 Ves. 10.

James Parker and Moore appeared for the next of kin.

Tinney and Lloyd for the committee of the estate.

Bethell and Calvert opposed the petition for the petitioner's wife, the committee of the person.—The former investigation had proceeded very much in the same manner, and the contest had cost the estate 4,880l. The Court would consider whether it would permit such an expense again to be incurred, and, at all events, ought to hold some one responsible for costs. Reasonable precaution ought also to be adopted, and the petitioner should be placed under some person's care whilst here. They read the affidavits made in answer to the former petition; then similar representations of the sanity of the petitioner were made.

The LORD CHANCELLOR.—To what time do those affidavits relate?

Bethell.—June and July 1844.

Roll hoped that he would not be placed under a state of surveillance.

The LORD CHANCELLOR.—That assumes that he is not in a sound state of mind; he appears to have been under extreme irritation on the ground of the delusions. In the case of *Bridges*, where the commission was suspended, I saw the person and was satisfied that course might be safely adopted.

Roll.—We only ask that physicians may be sent to Dover or Boulogne, and then the petitioner is prepared to submit to the jurisdiction.

The LORD CHANCELLOR.—Bearing in mind that ultimately I must see him myself, and the expense incurred in the former investigation, Doctors Southey and Bright, who formerly reported to the Lord Chancellor, will be directed to go and examine the petitioner. I think that the best order I can make is

that the medical men should first see the petitioner, and then that he should come before me.

Roll.—In *re Mitchell*, which is not reported, where the alleged insanity consisted of a delusion as to the conduct of his children, the Lord Chancellor refused a commission, and *Ex parte Turner* was a somewhat similar case.

THE LORD CHANCELLOR.—He may go to Dover and stay there until such examinations as the physicians may think fit have been made; there is to be no interference with him there.

The following minute, as settled by the respective counsel, was afterwards read and approved by the Lord Chancellor:—

“The Lord Chancellor will ascertain whether Dr. Southey and Dr. Bright can attend at Dover, and at what time, and Mr. Dyce Sombre undertakes by his counsel that he will attend at that time and so long as those gentlemen think necessary for the purpose of examination. No interference with him by any person during that time. The Lord Chancellor will give such directions to the medical gentlemen as shall be necessary to bring out all the facts, material not only to the question of lunacy, but also as to the propriety of allowing him to enjoy the income and management of his property on any and what terms.”

VICE-CHANCELLOR OF ENGLAND'S COURT.

Tuesday, July 14, 1846.

STRANGE v. BRENNAN.

Practice—*Solicitor's charges*—*Pleading*—*Demurrer*—*Maintenance*—*Misjoinder*—*Want of parties*—*Agreement void on grounds of general policy.*

A. B. the defendant, procured letters of administration to three different deceased parties, viz. E. B., M. B., and H. B. to be granted her out of the Prerogative Court of the Archbishop of Canterbury, whereby she became the personal representative of the said three different parties.

Before the granting of the said letters to A. B. she applied to the plaintiff S. an attorney in Ireland, to employ solicitors in England, and to supply to them the letters of administration, on account of the difficulty of obtaining the requisite evidence, and on account of the large amount of duties payable in respect of the fund. To this the plaintiff S. consented, on having a commission of 10l. per cent. on the amount to be received, independently of the professional charges which he might pay out of pocket to the solicitors in London in respect to the proceedings to be taken in this country.

Prior to granting the above-mentioned letters of administration, the Prerogative Court required the defendant A. B. to find two sureties of 18,000l. for the due performance of her duties as administratrix. Upon her applying to the plaintiff S. for that purpose, he prevailed upon the plaintiff R. to join him in three several bonds as surety for A. B. to the said Prerogative Court to the above amount, whereupon the letters of administration were granted to her; she having agreed to indemnify them in respect to such suretyship.

In order to carry out the said intention, a memorandum of agreement was executed by the plaintiffs S. and R. and the defendant, dated October 1845, reciting, among other things, that the defendant had agreed to permit S. and R. to retain out of the funds which should happen to be received, for the space of six years, a sum sufficient to bear harmless and keep them indemnified from any action at law or other responsibility which they might incur; and that the plaintiff S. had incurred much expense and professional labour in the management of the said administration. The said A. B. “had undertaken to pay to the said S. as a bonus, exclusive of the law costs, the sum of 10l. per cent. on such sum as might be recovered out of the fund as aforesaid, and to carry out the agreement in perfect good faith, &c.”

To a bill filed for a specific performance of the agreement, and an injunction to restrain the transfer of the stock, the defendant demurred on the ground of maintenance, misjoinder, and want of parties. Held, that the agreement was void upon the ground of general policy, and that therefore the demurrer ought to be allowed.

The bill stated, that in pursuance of a decree under the 13th of November, 1807, in a cause of *Ayres v. Butler*, the sum of 2,000l. Bank Three per Cent. Annuities, bequeathed to her by the will of one Thomas Gaul therein named, was transferred into the name of the Accountant-General of this court in trust in the said cause to an account called “Mary Whitehead the Annuitant's Account,” the dividends wherein were paid to her until her death.

Mary Whitehead died in the month of January 1811, whereupon the said sum of 2,000l. Bank Three per Cent. Annuities became divisible, under the said decree, between Honora Butler and Mary Butler, or their legal representatives, in equal proportions.

Honora Butler died in February 1816, having first made her last will and testament, bearing date 29th January, 1816, whereby, among other bequests to

different objects, she gave the sum of 200l. to her sister, Mary Butler; and the further sum of 200l. in case her brother, James Butler, could not be found, for the fulfilment of her said last will and testament; and she appointed her brother-in-law, Singwald Dugan, and her sister, Mary Butler, her executors.

Mary Butler departed this life about the 17th of June, 1821, having first duly made and published her last will and testament, dated 10th of May, 1821, and having given several legacies therein mentioned, she desired that her executors should be at liberty to withhold the payment of the legacies until they should have sufficient funds on hand out of her property for the payment of the same, and she gave the residue of her property, whether real or personal, with all benefit and advantage that might arise therefrom, unto her cousin, Rev. Edmond Brennan, and constituted him, together with Paul Carroll and Edmond Rice, executors thereof.

Rev. Edmond Brennan alone proved the will in the proper Ecclesiastical Court in Ireland. He died in June 1833; and by his will, dated 28th of May previous, appointed the Rev. John Baldwin his sole executor.

The said Edmond Brennan left the defendants, Margaret Brennan and Alicia Brennan, his only next of kin, him surviving.

John Baldwin having renounced probate of the will of the said Rev. E. Brennan, letters of administration, with the will annexed, were, about the 21st day of November, 1845, granted out of the Prerogative Court of the Archbishop of Canterbury to defendant, Margaret Brennan, who thereby became the sole legal personal representative of the said Edmond Brennan. Under the above-mentioned circumstances, the defendant, Margaret Brennan, becoming entitled to get in the residuary personal estate of the said Honora Butler and Mary Butler, letters of administration of the said Mary Butler, with the will annexed, were, on the 21st of November, 1845, granted to her out of the Prerogative Court of the Archbishop of Canterbury, and on the next day letters of administration, with the said will of Honora Butler annexed, were granted to her out of the same Court, and she thereby became the sole legal personal representative of Mary Butler and Honora Butler.

Before granting the defendants the letters of administration, and about the month of August 1844, the defendant, who had previously applied to several other solicitors in Waterford and elsewhere to act as her agent in procuring for her letters of administration, and the transfer to her of the said sum of 2,000l. Bank Annuities, but without success, made a similar application to the plaintiff, Thomas Fitzgerald Strange, an attorney in Ireland, but not in England, and for that purpose requested him to retain and employ solicitors in England, and to procure and supply to them the said letters of administration, on account of the difficulty of obtaining the requisite evidence, and on account of the large amount of duties payable in respect of the fund claimed, and also that there would be great difficulty in administering the said fund. That plaintiff Strange consented to undertake the said business, upon having a commission of 10l. per cent. on the amount to be recovered, exclusive of the law charges, which should be paid out of pocket by the plaintiff last named, to the solicitors in London, on account of the law proceedings which were to be taken in England, and otherwise, to which defendant consented; and the last-named plaintiff collected and procured the evidence of the facts necessary to establish the title of the said defendant.

That previously to granting the letters of administration, the Prerogative Court required the defendant to find two sureties of 18,000l. for the due performance by her of the duties of administratrix; but the defendant, not being able to procure such sureties, requested the plaintiff Strange to procure sureties for her, and offered to indemnify him in manner hereinafter mentioned; whereupon Strange procured the plaintiff, Joseph Michael Rivers, to join him in three several bonds as surety for the defendant to the said Prerogative Court, and plaintiffs accordingly executed the said three bonds to the said Prerogative Court, to the amount of 18,000l. as sureties for defendant's due performance of her duties as administratrix, and thereupon the letters of administration were granted to her.

That for the purpose of carrying out the said proposal, a memorandum of agreement was made and executed by the plaintiffs and the defendant, dated October 1845, reciting that it had become necessary that the said Margaret Brennan, in order to establish her claim as administratrix to certain moneys in the Bank of England, contingent on the death of Mary Webb, alias Whitehead, should take out three several administrations in the Prerogative Court of Canterbury, in England, and also should prove her claim with the said three wills; and as such administratrix under the further and other will of Thomas Gaul, of Sawbridgeworth, who died in or about the month of March 1801, and which said will had been the subject of a Chancery suit; and it had also become necessary for the said Margaret Brennan, under the said several administrations, to find sureties to enter into bonds on behalf of her, the said Margaret Brennan,

to the amount of 18,000l. for the due performance by her of the duties named therein, and she being unable to find or procure the same, had requested the said T. F. Strange to find and procure them for her; and in order to protect the said sureties from any loss or damage they might sustain by reason of the said bonds, and from having signed the same, she, the said Margaret Brennan, had consented and agreed to permit the said Thomas F. Strange and Joseph M. Rivers to retain and keep of the said funds, should the same happen to be recovered, and for the space of six years, a sum sufficient to bear harmless and keep indemnified the said sureties from any action at law, or other responsibilities which they might incur as aforesaid, the said sum to be so retained by the said T. F. Strange, Joseph M. Rivers, and Margaret Brennan, as trustees for the said Margaret Brennan, and whomsoever else and whatsoever person the same might be fairly and legally applicable to; and inasmuch as the said T. F. Strange had incurred much expense and professional labour in the management of the said administration, and had been obliged to advance and lay out on behalf of the said Margaret Brennan all the moneys requisite for the same, the said Margaret Brennan “had undertaken and agreed to pay to the said T. F. Strange, as a bonus or consideration, and exclusive of the law costs, the sum of 10l. per cent. on such sum or sums of money as might be actually recovered and realised out of the said fund as aforesaid; and she further agreed and undertook, for herself, her executors, &c. to carry out that agreement in perfect good faith and to do all other act or acts that might be necessary for carrying the same into effect. Dated at Waterford, October 1845, Margaret Brennan. Present, Alicia Brennan, Fras. S. Cheevers.”

In pursuance of an order of the Court, the said sum of 2,000l. Three per Cent. Annuities was transferred by the Accountant-General into the name of the defendant, in the books of the Governor and Company of the Bank of England, and the same is now standing in her name on the said books. The bill further stated that this was done by the procurement of the plaintiff Strange, on the understanding that the said agreement was to be carried into effect, but that the defendant refused to carry the same into effect, or to pay the plaintiff Strange any thing by way of remuneration for his trouble and risk. The bill charged, among other things, that if the defendant, as the plaintiffs had good reason to expect, were to misapply the said Bank Annuities, they, as her sureties, would be liable, under the said bonds, to make good to the other persons interested in the said fund, the deficiency arising from such application; and that, therefore, they were entitled to have the said Bank Annuities, or a competent part thereof, secured for the purpose of indemnifying the plaintiffs against their liabilities under the said bonds. The bill, therefore, prayed for a specific performance of the agreement; and that a sufficient part of the 2,000l. Bank Annuities might be secured for the purpose of indemnifying the plaintiffs against the risk incurred by them as such sureties as aforesaid. And if the plaintiff Strange should not be allowed his commission of 10l. per cent. then that he might be declared to have a lien on the said Bank Annuities for the payment of his costs, and of a suitable remuneration for his trouble in the matters aforesaid; and for an injunction to restrain the transfer of the said sum of 2,000l. Bank Annuities.

To this bill the defendants demurred upon three grounds, viz. for want of equity, misjoinder, and want of parties.

Bethell, in support of the demurrer.—The agreement is, that the plaintiff Strange should find another surety besides himself, and he was to have 10l. per cent. upon the fund to be got in, beyond his professional charges. Upon the face of the bill, this is gross act of maintenance. The bill states that the defendant, not being able to procure sureties, applied to Strange. Then, in order to carry out the agreement, this extraordinary proceeding takes place—a contrary to the policy of law.

Bird, with him.—The first part of the demurrer as regards the 10l. per cent. which amounts to maintenance or champerty; in the second place, objection to the bill is on the ground of misjoinder. In case of *Stanley v. Stanley*, 7 Bingham, 369, is at precisely in point, because there was in that case agreement to divide the thing in dispute. So far as the agreement to pay the 10l. per cent. extends, it is not to be sustained. Then, as to the indemnity against the plaintiff's liability in respect of the administration bond, that is against any loss in respect of a mal administration of the estate. Independently of this, the legatees ought to be made parties; and as to Strange and Rivers, there is a misjoinder. The two considerations in the agreement extend to the whole bill; if we find no part of the agreement can be carried into effect, it is bad for the whole. There is a distinction between a debt merely void to the excess and one void for illegality; thus, where a transaction is void at law, as in the case of maintenance, it is void for the whole. But if the bill be capable of being supported in this respect, then there is a misjoinder of plaintiffs.

Cases: *Wood v. Downes*, 18 Ves.; *Wait v. Jones*, 6 Bing. N.S. 662; 3 Scott, 73; *Cowley v. Cowley*, 9 Sim.

Jas. Parker, and *R. W. Kennion*, for the bill.—This bill is filed for two objects; one is for the claim of 10l. per cent. and the other is in respect of the surety bond. The administration cannot be carried on without the sureties. Now, where so regular agreement as the present one exists, there is an equity. If the surety is about to have his surety destroyed, is it not right that he should come into court to enforce his indemnity to sustain it? Therefore, the first part of the agreement can be carried into effect. As to the second part, does it amount to maintenance or champerty? There is none; because this fund is not in litigation. It can no more be said to be in litigation because standing in the name of the Accountant-General, than when in any other cause it is standing in his name. The parties are dealing with a fund which is not at all in dispute. The cases quoted by the other side are clearly cases of maintenance. Then we come to the question of Mr. Strange being the solicitor. But viewing that circumstance in reference to the transaction, it supposes no other agreement than what the law would have given him, in a lien upon the fund. But if a solicitor takes an improper security, it does not follow that he should be entirely deprived of his costs; and as to misjoinder, if two parties have a claim against some fund, and file a bill in respect of such fund, a demurrer for misjoinder cannot be sustained.

The VICE-CHANCELLOR.—I shall allow the demurrer. In the first place, the plaintiff, Mr. Strange, does not appear to be the solicitor in England, but in Ireland only. The mischief, however, is the same, whether it be found in either country. A lady consults her solicitor as to the fund, who says, "I will procure another solicitor to act in the affair, but you must pay me 10l. per cent. out of as much of the fund as may be realized, in addition to my professional charges in the business." The law, therefore, is as much applicable on the ground of general policy, whether Mr. Strange or any other person was the party implicated. Then the agreement cannot be sustained. (His Honour read the agreement.)

Demurrer allowed.

ROLLS COURT.

June 2 and 3.

MARTIN v. SEDGWICK.

Priority of incumbrances—Equitable interest—Assignment of policy—Notice.

By the deed of settlement of the Rock Life Assurance Company, every shareholder must insure his life to a certain amount, in proportion to the shares he holds. A B, who held shares to the amount he was entitled to do in respect of his assurance, bought shares in the name of C D, who was insured to the amount, and C D signed a memorandum acknowledging himself a trustee, but no notice of the transaction was given to the company, except the constructive notice arising from C D's own knowledge. Afterwards, C D mortgaged the shares to E F, holding himself out as the real owner, and formal notice of the transaction was served on the company by C D. C D became insolvent, and on a contest between A B and E F, the latter was held entitled to priority.

The Rock Assurance Company is a joint stock company, for effecting assurances for their common benefit, each shareholder having an interest in proportion to his shares; and by the deed of settlement it is requisite that each of the copartners should insure his own life, or that of a nominee, in 500l. for every 100l. shares he may hold. In 1822 Robert Buchanan Dunlop insured his life with the company for 500l. and held 100 shares of the joint stock in respect thereof. Being desirous of purchasing more shares without enlarging his assurance, he requested John Sedgwick, who was then insured to a considerable amount, to lend him his name. He did so, and 200 shares were purchased in the name of John Sedgwick, as trustee for Dunlop; and on the 6th of November, 1822, a memorandum of acknowledgment of the trust was drawn up and signed by Sedgwick, but no notice of the trust was given to the assurance office. So the matter stood till the 23rd of August, 1833, when John Sedgwick, representing himself to be the owner of 200 shares in the joint stock of the company, assigned the same to Mrs. Lucy Anne Sutherland, by way of mortgage, to secure to her the sum of 800l. advanced to him on loan, with a power of sale in default of payment at the time appointed. On the 26th of the same month John Sedgwick himself served the company with formal notice of the transaction, stating, however, that his shares should continue to stand in his name, notwithstanding the assignment, and he should continue to vote and act in respect of them as before. Subsequently Mrs. Sutherland made further advances to John Sedgwick, to the amount of 800l. and in 1834 she agreed to advance 500l. more, on having that sum and the 800l. properly secured. At this time John Sedgwick had standing in his name 400 shares in the Protector Fire Insurance Company, and had effected a policy

on his own life in the Palladium Life Assurance Office for the sum of 1,200l.; he had also, on the 1st of March, 1834, obtained a lease of certain premises, with a view and under a covenant to build thereon certain cottages, &c. By indenture of the 17th of October, 1834, reciting the mortgage of 1833, and the transfer into Mrs. Sutherland's name of the shares in the Protector Office, &c. John Sedgwick mortgaged the Rock shares, the Protector shares, the policy for 1,200l. and the leasehold premises to Mrs. Sutherland, as a security for the 800l. originally advanced, the 800l. since advanced, and the 500l. then advanced, and the indenture contained a power of sale over all the property comprised in it; and Mrs. Sutherland also thereby agreed to advance Sedgwick 250l. more, so soon as he had expended 250l. on the leasehold premises, according to the provisions of his lease. On the same 17th of October, formal notice of this transaction was served on the Rock Assurance Office. Afterwards, by arrangement with Mrs. Sutherland, the Protector shares were sold, and 560l. part of the proceeds, was paid to her, her debt being thereby reduced to 1,540l.; and Sedgwick having expended 250l. on the leasehold, she advanced to him the further sum of 250l. and by indenture of the 25th of November, 1835, this sum was charged on the mortgaged property, the whole debt being thereby increased to 1,790l. Mrs. Sutherland subsequently, in order to make the debt the even sum of 1,800l. advanced 10l. which was charged on the same property, by indenture of the 20th of May, 1841. In the same month of May, Mrs. Sutherland, in consideration of the additional security of certain banker's notes for 300l. allowed Sedgwick to sell the leaseholds, but without prejudice to her right to hold all the other property as a security for her debt, and the notes having been subsequently paid to her, the debt was thereby reduced to 1,500l. the sum now due. Notice of the deeds of 1835 and 1841 was not served on the Rock office. In January 1844 Mrs. Sutherland died, having appointed the plaintiffs, Charles Martin and John Townshend, her executors, who having proved her will, gave notice of their claim to the Rock Office. But John Sedgwick having become insolvent, his *cestui que trust* claimed to be beneficially entitled to the shares, and the Assurance Office was unable to act. It now appeared that John Sedgwick had received the dividends on the Rock shares, and accounted for them to R. B. Dunlop, down to 1837, in the beginning of which year the latter died, having appointed Thomas Loud Sedgwick (father of John Sedgwick), and Robert Buchanan Dunlop, the younger, executor of his will. Soon after an arrangement was made whereby the Rev. Charles Dunlop was to take the 200 shares in question as his share of his father's property; and the memorandum of trust of 1822 was delivered to him, and John Sedgwick at the same time gave him a promissory note for a sum a little more than the price of the shares. It was alleged, on the one hand, that this was an assignment of the shares for valuable consideration, and on the other that it was only a bungling way of making the beneficial interest available to John Sedgwick if he should require it, but that the trust continued. Subsequently, however, Thomas Loud Sedgwick, as was alleged, thinking it incumbent on him as executor to have the shares actually transferred into Charles Dunlop's name, and John Sedgwick being anxious, in order to keep up his influence with the office, that the shares should remain in his name, it was agreed that T. L. Sedgwick should, out of his own moneys, purchase 200 shares in Charles Dunlop's name, and, in consideration thereof, John Sedgwick should hold the shares in his name on trust for his father. This arrangement was carried into effect in April 1837, and the dividends on the shares were then received by John Sedgwick, and paid over to his father, except on one occasion, when the father received them in person by an order from his son. It further appeared that at the time of this arrangement Charles Dunlop delivered to T. L. Sedgwick the memorandum of trust, and indorsed over to him the promissory note.

The executors of Mrs. Sutherland filed their bill for the purpose of obtaining payment of the 1,500l. due to their testatrix's estate and the benefit of the securities in priority to the claim of T. L. Sedgwick. On the other hand T. L. Sedgwick, by his answer, insisted that the company had notice of his claim long before that of Mrs. Sutherland, John Sedgwick being a co-partner in the Rock Office, and that she had got and could get no equitable interest but by an actual transfer, nor had she, by her notice to the company, acquired any priority over Robert Buchanan Dunlop, Charles Dunlop, or the defendant himself, and he claimed as a purchaser for valuable consideration. He also claimed priority over one Edmund Maude, a judgment creditor, who, having recovered judgment in an action against John Sedgwick, had given notice thereof to the office in January 1844, and on the 25th of March following had obtained a judge's order to establish a lien on the shares in question.

The cause now came on to be heard.

Turner and Stevens, for the plaintiffs, relied upon the necessity of giving actual notice to the office to

guard against subsequent incumbrances, *Duncan v. Chamberlayne*, 11 Sim. 123, being since overruled by the same judge who decided it, in the case of *Thompson v. Spiers*, 13 Sim. 466. They cited *Dearle v. Hall*, 3 Russ. 1; *Elty v. Bridges*, 2 Y. & C. C. C. 486; *Foster v. Blackstone*, 1 Myl. & K. 297; *Greening v. Beckford*, 5 Sim. 195.

Teed and Hargrave, for Maude.

Gaselee, for the Rock Assurance Office.

Kindersley and Heathfield, for the defendant, T. L. Sedgwick, contended that he was entitled to recover on three grounds; first, that the shares assigned were not specifically stated by number or otherwise; second, that the effect of the original notice was done away with by the subsequent dealings with the mortgaged property of which no notice was given; and, third, that even if Mrs. Sutherland had a prior claim, he was entitled to a lien on the surplus after satisfaction of her claim. They cited *Pinkett v. Wright*, 2 Hare, 120; *Foster v. Cockerell*, 9 B. & C. N. S. 332; *Kennedy v. Green*, 3 Myl. & K. 699.

THE MASTER OF THE ROLLS.—This is one of those unhappy cases in which one of two innocent parties must bear the loss arising from the fraud of a third party. In the view which I take of this case I may assume that Thomas Loud Sedgwick has made out the claim stated in his answer, though I am not satisfied that it is so; and if the opinion I have formed had depended at all upon that fact I would have directed an inquiry; but that is not necessary now. The first question made here is whether, as by the constitution of the company a shareholder is a partner, it must be assumed that at the time when the transfer was made into the name of John Sedgwick the whole company had such distinct notice of the creation of a trust that there is the same advantage from it as if a regular formal notice in the usual manner had been given; and I am clearly of opinion that they had not. If that were so, it would put an end to the important doctrine relating to notice of the assignment of equitable interests, whereby such assignment with notice constitutes an equity preferable to that by a previous assignment without notice. Now there was nothing to hinder R. B. Dunlop from giving notice to the company, which would have perfectly secured to him the shares standing in the name of John Sedgwick, and would have prevented future dealings with them. But he did not do so, and the result was that 200 shares remained standing in the name of John Sedgwick in the books of the company unfettered by notice, and he was left at liberty, without the possibility of any other party guarding against his improper acts, to dispose of the shares in the manner the rules of the company allowed, and so be continued during the whole life of R. B. Dunlop. It is alleged, and I shall assume, that the dividends were paid by John Sedgwick to R. B. Dunlop till the trust in favour of T. L. Sedgwick. Now having these shares standing in his name unfettered, and being apparent owner of them, John Sedgwick applies to Mrs. Sutherland for a loan. [Here his lordship stated the transactions between the parties down to the death of Mrs. Sutherland.] It had been ingeniously argued that there was no specification in the assignment to Mrs. S. by number or otherwise, of the particular shares assigned, and that therefore the deed did not pass the shares in question, which were trust shares; but I cannot assent to that argument, for John Sedgwick had those shares and no others standing in his name, and he assigned absolutely "the shares of me, John Sedgwick," though if the whole circumstances relating to them had been known, it would have appeared that he held them subject to an equity for another person. Part of the property subject to the security was realized, and the proceeds applied in reduction of the debt due to Mrs. Sutherland. She had a right to have part of her pledge realized, and she did not by so doing in any degree exonerate the property not disposed of, though it must be admitted that if then she had had notice of Dunlop's claim, the case would have been different, and she could not have done so perhaps without rendering herself liable to account for what had been done with a view to see whether other parties might not, consistently with full satisfaction of her claim, have a right to marshal assets so as to diminish the loss arising from the fraud. But she had at the time no notice of Dunlop's claim, and therefore there was nothing to fetter the apparent right of John Sedgwick, and the real right of Mrs. Sutherland to deal with the property as they might think fit. Certain sums were realized, and the debt was reduced to 1,500l. Different securities were executed in the course of these transactions, of which no notice was given, but the result was to diminish the sum of all demands to 1,500l. Supposing T. L. Sedgwick's title to the benefit of the trust created to be made out, he has a right to have an account of all moneys paid to or received by Mrs. Sutherland, and he may have a right, consistently with her right, to be fully paid, to have the benefit of standing in her place. But I am of opinion that the plaintiffs have a clear right to an amount of what is due on their securities, and to be paid in priority to T. L. Sedgwick. Supposing the right of the latter to be fully estab-

lished, other questions may arise between him and his co-defendant, Maude. I cannot in this suit determine anything between them, but I do not mean to preclude the taking an account of what the mortgaged property consisted of, with a view to T. L. Sedgwick getting what he can out of it after an account and payment of what is due to the plaintiffs; and consistently with that he may have the inquiry if he likes. There must be an inquiry as to what is due to the plaintiff, and an account taken, and a declaration, that they are to have the shares converted into money.

Monday, July 13.

WHITCHER v. PENLEY.

Will—Construction—"Or" construed "and"—Absolute interest or substitution.

A testator gave the residue of his property "to be divided between his three sons and his daughter, or their children," and he directed "his daughter's to be kept in the hands of his sons for her or her children's sole use, free from the control of her husband."—Held, that the daughter took absolutely.

The testator in the cause by his will made several bequests, and, among others, he gave to his daughter, Mary Anne Astor, certain leasehold premises for life to her sole and separate use, free from the control of her husband, and, after her decease, then to her children. And as to the residue of his estate, the testator disposed of it thus:—"The overplus I leave to be divided between my three sons and my daughter, or their children; and I direct that my daughter's shall be kept in the hands of my sons for her or her children's sole use, free from the control of her husband." An administration suit being instituted, a decree was made therein, and a reference to the Master was directed in the usual way. The Master made his report in February last, and the only question remaining for the consideration of the Court was, whether the testator's daughter took an absolute interest or only an estate for life in her share of the residue.

Turner (with him Rogers), for the plaintiffs, contended that the daughter took only an estate for life, with remainder to the children, by substitution. One bequest, viz. that of the leaseholds, was given to her expressly for life, with remainder to her children; but the other is differently worded. By construing "or" to mean "and," however, the difficulty is removed; and for such construction there are numerous authorities. It must be admitted, at the same time, that the direction to keep the bequest in the sons' hands is inconsistent with an absolute interest. They cited *Newman v. Nightingale*, 1 Cox, 341; *Vaughan v. Marquis of Headfort*, 10 Sim. 639.

Kindersley and Bird, for the defendants, insisted that the daughter took an absolute interest; and cited *Jones v. Yorin*, 6 Sim. 255; *Giftings v. M'Dermott*, 2 My. & K. 69; *Montagu v. Nucella*, 1 Russ. 165; *Salsbury v. Petty*, 3 Hare, 86.

Berry and Babington, for other parties. Turner in reply.

THE MASTER OF THE ROLLS.—It is difficult to spell out the intention of a testator in cases of this kind. The argument has been pressed upon me that I must construe "or" to mean "and," and that I should thus get over the difficulty, and give effect to all the words of the will; but there is an obstacle to my doing this, and that is, I must be satisfied that there is something contemplated by the will which requires me to make such change. In *Giftings v. M'Dermott* the Court was clearly of opinion that the testator did contemplate substitution of the children, in place of their parents, at the death of the latter. In this case the testator makes a specific bequest to his daughter, and, in distinct words, gives it to her for life, to her separate use, free from the control of her husband, and afterwards to her children. Then, as to the residue, he says:—"the overplus I leave to be divided among my three sons and daughter, or their children, my daughter's share to be kept in the hands of my sons, for her and her children's sole use." If the daughter was to have it, it was to be for her separate use; and if the children were to have it, still protection was wanted, and therefore it was to be kept in the hands of his sons. Freedom to the daughter from her husband's control was what was wanted, though the testator might also wish to protect the children. But to induce me to convert "or" into "and," I must be satisfied that something was intended to be given which would not take effect unless such change were made; and I am not satisfied here that this is so. I think, therefore, the testator's daughter took an absolute interest in her share of the residue.

Tuesday, July 4.

ANSTET v. COTTON.

Will—Construction—Legacy—Legacy duty.

A testatrix by her will bequeathed to trustees all her personal estate and effects, &c. on trust to sell and pay debts, &c. and out of the residue to set apart or appropriate the sums of 40,000*l.* and 6,000*l.* or purchase stock to that amount, on trust for persons therein mentioned; and then she gave legacies to several persons, and directed that all such several legacies, as well as any thereafter given, should be paid immediately after her decease, free from legacy

duty; and the residue she disposed of on certain trusts:—Held, that the 40,000*l.* and 6,000*l.* were legacies to be paid free from legacy duty.

Miss H. A. Cotton, of Montagu-place, Marylebone, by her will bequeathed her leasehold house in Montagu-square, furniture, &c. and personal estate and effects, to Charles B. Cotton and George L. Curtis, on trust to sell (except the leasehold house, specifically bequeathed) and pay debts, funeral, &c. and out of the residue to set apart or appropriate two several sums of 40,000*l.* and 6,000*l.* or purchase stock to those amounts respectively, on certain trusts for Mrs. Cotton and Mrs. Anstet respectively as therein mentioned. She then gave and bequeathed to the several persons mentioned in her will "the following legacies," and directed "that all such several legacies, as well as any thereafter given, should be paid immediately after her decease, free from legacy duty;" and then the testatrix gave the residue on certain trusts. A question arose after the death of the testatrix whether the 40,000*l.* and the 6,000*l.* were to be considered legacies, and to be paid free from legacy duty; and Messrs. Cotton and Curtis, the executors, conceiving it to be unsafe to act without the sanction of the Court, this suit was instituted, and the cause now came on to be heard as a short cause.

Turner, for the plaintiff, contended that the two sums in question were to be paid free from legacy duty.

C. P. Cooper, contra, insisted that "legacies" did not include the two sums in question, for they were to be set apart or appropriated out of the residue, that is the residue after payment of debts and legacies. In the first place debts, funeral and testamentary expenses and legacies, are to be paid; and then comes the disposition of the residue, and out of it are to be appropriated those two sums. Then the bequest of the "several legacies following" is contained in a distinct paragraph, unconnected with any thing preceding, and she thereby directs "such several legacies" to be paid free from legacy duty. Why did she not say all legacies in the will, instead of "such several legacies?" The word "legacies," therefore, is used in a less extended sense than is usual.

THE MASTER OF THE ROLLS.—It is quite evident that a bequest of a sum of stock to be purchased is as much a legacy as any other bequest, and the only question in this case is, whether the two sums are exempt from the legacy duty; and that depends on the construction of the will. The testatrix, after giving directions as to the sale of her personal estate and effects, sets about disposing of the proceeds of the sale. She had in view the payment of debts and legacies, and the disposition of the residue, and her executors were to pay debts, funeral and testamentary expenses, and all legacies thereafter bequeathed; and they were to hold the leaseholds for the purposes expressed. First, then, she appropriates the two sums of stock, and then gives the several legacies following, and directs all such legacies (not pecuniary legacies) to be paid free from legacy duty. Then comes the residue; what is it? It is what remains after the appropriation of the stock and the payment of the legacies; and there is no way of avoiding the construction that the appropriation of the stock constitutes a legacy, and that it is to be free from legacy duty.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

Thursday, July 2.

WILKINSON v. GARRETT.

Will—Construction—Parties.

A testator gave real and personal estate to trustees upon trust, out of the annual proceeds to pay to his wife for her life an annuity of 400*l.* and subject to such annuity upon trust, as to the whole of his said real and personal estate, for his son A B, his heirs, executors, administrators, and assigns, when he should attain the age of twenty-five years; and in case he should die after the age of twenty-one years, but before the age of twenty-five years, then upon trust for such persons as A B should by will or deed appoint; but in case A B should not make any such appointment, or should die either before or after attaining twenty-one, and before attaining twenty-five, without leaving lawful issue, then upon trust for the testator's own heirs, executors, or administrators. At the time of the testator's death A B was his only son, heir-at-law, customary heir, and sole next of kin. Held, that the persons who would, if A B had not been living, have been the heirs and next of kin of the testator at the time of his death, were not entitled under the will, and were not necessary parties to a suit for the administration of the testator's estate.

Frederic Wilkinson, late of Newcastle-under-Lyme, gentleman, by his will dated the 8th of July, 1845, after making certain specific and pecuniary bequests, proceeded as follows:—"I give, devise, and bequeath all my real estate, of what nature or kind soever, and whether freehold or copyhold, and also all the residue of my personal estate, of what nature or kind soever, unto Spencer Thomas Garrett and Arthur Henry

Welch, their heirs, executors, administrators, and assigns, according to the nature thereof respectively, upon trust, out of the rents and profits of my said real estate, and the interest, dividends, and proceeds of my personal estate, to pay to my dear wife, Georgiana Wilkinson, yearly, during the term of her natural life, the sum of 400*l.* by quarterly payments, on the four most usual quarterly days of payment in each year, the first to be made on that next following my decease, for which her receipt alone shall be a sufficient discharge; and subject to such annuity upon trust as to the whole of my said real and personal estate, for my son, Frederic Sparrow Wilkinson, his heirs, executors, administrators, and assigns, according to the nature thereof respectively, as and when he shall attain the age of twenty-five years; and in case my said son shall die after the age of twenty-one years, but before the age of twenty-five years, then upon trust, as to such real and personal estate, for such person or persons, and in such manner as my said son shall, by his last will or by any deed duly executed, give, devise, limit, or appoint the same; but in case my said son shall not make any such appointment, or shall die either before or after attaining the age of twenty-one, and before attaining the age of twenty-five, without leaving lawful issue, then upon trust, as to my said real and personal estate, for my own heirs, executors, or administrators, according to the nature thereof respectively;" and he appointed the said Spencer Thomas Garrett and A. H. Welch executors.

The testator died on the 8th of July, 1845, leaving the said F. S. Wilkinson, his only child, heir-at-law, customary heir, and sole next of kin. At the time of the testator's death, *Suzannah Wilkinson*, his mother; *Thomas Sparrow Wilkinson*, his brother; and *Mary Stanier*, his sister, were, exclusive of F. S. Wilkinson, the next of kin; and the said T. S. Wilkinson was, exclusive of the rest, the heir-at-law and customary heir of the testator. This was a suit for the administration of the testator's estate, and the said T. S. Wilkinson, S. Wilkinson, and *Mary Stanier* and her husband, were made parties, as claiming an interest; and the question now argued was, whether, upon the construction of the will, it was necessary that they should be retained as parties.

Russell and Amphlett, for the plaintiff, cited *Uryhart v. Uryhart*, 13 Sim. 613; *Skight v. Bodham* (before the Master of the Rolls, not reported).

Wigram and Pitman, for T. S. Wilkinson, S. Wilkinson, and *Mary Stanier*, cited *Holloway v. Holloway*, 5 Ves. 399; *Jones v. Colbeck*, 8 Ves. 38; *Miller v. Eaton*, Coop. 272; *Bird v. Wood*, 2 Sim. & Sta. 400; *Briden v. Hrolett*, 2 Myl. and Keen, 90; *Bulter v. Bushnell*, 3 Myl. & Keen, 328; *Clepton v. Bulmer*, 5 Myl. & Cr. 108; *Godkin v. Murphy*, 2 Y. & C. C. C. 351; and *Booth v. Vickers*, 1 Coll. 6.

F. Bayley, for the executors.

Thorpe, for Georgiana Wilkinson.

Amphlett, in reply.

THE VICE-CHANCELLOR.—I think that there is not sufficient inclination in favour of any other persons than those who would be entitled to the property at the time of the death of the testator to justify the Court in acting on the supposition of the testator having had any meaning in favour of any such other class of persons. The testator had only one child, and no other issue at the date of his will, but possibly this son might have died in his lifetime, leaving children, and the testator might have had various other children living at his death. He might also have had an intention in favour of his widow, which would be disappointed by constraining the words to refer to the death of the son. Some stress was laid, in the course of the argument, on the words "my own heirs," &c. The testator, being a legal gentleman, might have had in view the 3 & 4 Wm. 4, c. 106, s. 5, by which it is enacted that when any land shall have been devised to the heir or the person who shall be the heir of such testator, such heir shall be considered to have acquired the land as a devise, and not by descent, and to have intended to exclude the heir on the maternal side from the succession. Whether he would have done so or not, I do not say. I think it would not be safe to say that any other persons were intended to be benefited but the son and widow.

The admissions by the parties as to the state of the testator's family at the time of his death were directed to be inserted in the decree, and the bill was directed to be dismissed against T. S. Wilkinson, S. Wilkinson, and F. Stanier and *Mary* his wife, and the usual accounts were directed to be taken.

June 30, and July 3 and 4.

Ex parte BARTLETT. Re 2 & 3 VICT. c. 74. Custody of Infants Act—Access by the parents to their infant children—Costs.

Where the wife, in consequence of an act of violence, separated from her husband, the Court, under the circumstances of the case, gave to her the custody of her daughter, who was of the age of between one and two years, but refused to give her the custody of her son, who was five years of age, although access to that son, and her children who were above the age of seven years, was allowed to her.

Mode of providing for access to infants by their parents who were living separate.

Whether the Court has jurisdiction under the 2 & 3 Vict. c. 74, to give costs upon a petition by a mother for the custody of, or access to, her infant children, quære?

This was a petition presented by Louisa Bartlett, wife of the Rev. Josiah Bartlett, of Broadwood, near Leominster, and it prayed that the said Josiah Bartlett might be ordered to deliver Stephen Bartlett and Emily Louisa Bartlett (two of the children of the said Josiah Bartlett and Louisa his wife) to the petitioner, to remain in her custody until they should respectively attain the age of seven years, subject to such regulations as the Court should deem convenient and just; and that the said Josiah Bartlett should also be ordered to permit the petitioner to have access to the other four children of the said Josiah Bartlett and Louisa his wife, at such times, and subject to such regulations as the Court should deem convenient and just; and that the said Josiah Bartlett should be ordered to pay the costs of the application and consequent thereon. It appeared that the petitioner and the said Josiah Bartlett were married on the 7th of July, 1831, and that there were six children of the marriage, two of whom were under the age of seven years, viz. the said Stephen Bartlett, who was born on the 25th of August, 1841, and the said Emily Louisa Bartlett, who was born on the 28th of November, 1844. Mr. and Mrs. Bartlett having separated in consequence of unfortunate differences between them, this petition was presented. Many affidavits were filed on both sides, and from them it appeared that an act of violence had been committed by the husband upon the wife, which was not denied.

Swanston and Sheffield, for the petition.

Wigram and Shebbear, for the respondent, contended that as the wife had voluntarily left her husband upon grounds which would have been insufficient as a defence in the Ecclesiastical Court to a suit for the restitution of conjugal rights, she was not entitled to that which was asked by this petition.

The following cases were cited:—*Need v. Need*, 4 Hag. 263; *Barlee v. Barlee*, 1 Addams, 301; and *Dysart v. Dysart*, 1 Robertson, 106.

The VICE-CHANCELLOR said that this was a case in which the husband and wife were living apart from each other, the husband appearing to wish, and the wife objecting to, a re-union. No imputation was charged upon her, beyond her having without sufficient cause, as her husband said, but with sufficient cause as she herself asserted, separated herself from him. That she was clearly or not clearly legally justified in living apart from him, it would be very imprudent for his Honour upon that occasion to say. But whether she was justified or not, it might safely be stated that she was not without excuse or apology. The statute in question did not as a condition of the interference of the Court require that the wife should have obtained, or should be entitled to obtain, a divorce *a mensâ et thoro* from her husband. He apprehended the existence of cases, in which it might be right for the Court to interfere without a divorce, must be considered as possible. He was of opinion that in the present case the wife ought to have the custody of the youngest daughter until the age of seven years, or further order, and access under proper regulations to the other children—the mother undertaking for the proper care, maintenance, and education of the child, and that she should not be removed without the leave of the Court. The husband should be allowed access to the child at convenient seasons, and in such a manner as might be fixed upon, and the wife should also be allowed access to the children who remained with the father, as might be fixed upon.

The VICE-CHANCELLOR, on a subsequent day, inquired whether Mr. Bartlett was willing to allow the petitioner to have the custody of the youngest boy, upon the petitioner's two brothers and herself undertaking for the proper care of the child.

Wigram, for Mr. Bartlett, stated that it was considered to be more for the benefit of the child that he should remain with the father.

The VICE-CHANCELLOR said, that in his opinion it would have been more for the benefit of the child and of Mr. Bartlett himself, and much to that gentleman's credit, if he had conceded the point. As he had not done so, the Court did not feel it to be judicially correct to remove that child from his custody.

The following order was then made:—Mr. T. Boulton, Mr. P. Boulton, and Mrs. Bartlett undertaking to take proper care of, and provide in a proper manner for the education and maintenance of Emily Louisa Bartlett, it is ordered that Mr. Bartlett do at six o'clock this evening deliver her to Mr. T. Boulton, he undertaking forthwith to deliver her safely to her mother, and let the child remain in that lady's custody until she attains the age of seven years, or during such shorter time as the Court may direct. The infant must not be removed from Clapton (where the petitioner was residing) without leave of the Court, except for occasional visits for change of air and for health to the coasts of England, or to any place in the country, not exceeding 120 miles from London,

and on every change of residence notice by letter, to be sent by post, to be given to the father Mr. Bartlett, or some member of his family, deputed by him to have access to the child, once in every six weeks, such interviews not to exceed two hours in duration, and to take place between the hours of ten in the forenoon and four in the afternoon, at the house of Mrs. Bartlett the elder, the mother of Mr. Bartlett, if she consents; that the child be sent there in the care of some responsible person, to be appointed by the mother, who shall bring the child back to the mother, Mr. Bartlett undertaking not to interfere with, or oppose, or obstruct its return: but in case Mrs. Bartlett the elder shall not consent to the interview taking place at her house, then Mr. Bartlett is to have access to the infant at the house where his wife may be then residing, and there in the presence of some responsible person, to be appointed as before mentioned. Mrs. Bartlett is to have access to the other five children once in every six weeks, such interviews not to exceed two hours in duration, and to take place between the hours of ten in the forenoon and four in the afternoon, and to take place (so long as the five children shall reside at, or within two miles of, Leominster) within two miles of that town or its suburbs, at some respectable place to be appointed from time to time by Mrs. Bartlett, at or within two miles of Leominster, and if resident elsewhere, except at or within one mile of Clapton, then to take place at some respectable house at or within one mile of the place where they are resident, to be appointed by the petitioner; but if resident or visiting at or within one mile of Clapton, then the five children to be brought to the then residence of their mother, under the care of some responsible person, to be appointed by Mr. Bartlett, such person to bring them back to their father; and Mr. Bartlett not to be present at any of the interviews, or to molest or annoy his wife upon any of those occasions. In case of the illness of the youngest child Emily Louisa Bartlett, notice to be given by letter, to be sent by post, to Mr. Bartlett, and if he shall be dissatisfied with the medical attendance, then he is to be at liberty to apply to the Court: the infant to be brought up as a Member of the Church of England: reserve the question whether the Court has jurisdiction, under the Act of Parliament, to give costs, and if it has, reserve the question whether, in this case, the Court ought to give them.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Friday, June 12.
WEISS v. LUMLEY.

Setting aside interlocutory judgment—Issuable pleas—Breach of agreement.

In a declaration upon an agreement, whereby the plaintiff agreed that his wife and her thirty-three pupils should dance at a certain theatre at certain times, and the defendant agreed to pay a certain salary by instalments on fixed days of payment, the breach was, that the defendant would not, though requested, suffer the wife and her pupils to dance at the said theatre according to the agreement; and that although the time for payment of three of the instalments had elapsed, the defendant would not, when they became due, pay the same or any part thereof. Plea, that the thirty-three pupils engaged by the defendant were certain pupils who had been trained together, and had acquired great celebrity at the said theatre in a former year, as well as elsewhere; that eight leading pupils of those thirty-three were absent abroad, and that the plaintiff had failed to procure the attendance of all the same thirty-three pupils. Held, an issuable plea.

The defendant also pleaded that the said instalments did not, nor did either of them or any part thereof, become or be due or payable modo et formâ. Held, not an issuable plea.

Assumpsit. The declaration stated that whereas heretofore, to wit, on the 31st day of January, in the year of our Lord 1845, by a certain agreement in writing then made in parts beyond the seas, to wit, at Paris, in the Kingdom of France, between the defendant of the one part, and the plaintiff by Josephine his wife and agent in that behalf of the other part, it was agreed as follows, that is to say, that the said Josephine Weiss should arrive in London on the 25th day of February then next, and should cause her thirty-three pupils to dance, with her costumes and music, at the Queen's Theatre or any other room in London, from the 28th day of February then next to the 3rd day of April following inclusive, three dances each evening; that the defendant should pay to the plaintiff, as salary for that period, the sum of 30,000 French francs, to be paid in equal instalments of 5,000 francs, namely, on the 3rd, 18th, 23rd, and 29th day of March, and 1st day of April then next; and that the sixth sum of 5,000 francs should be paid to the plaintiff then in Paris eight days before the departure of the said Josephine Weiss for London; and the defendant thereby reserved to himself expressly the

right of renewing the then engagement for a second month, namely, from the 4th day of April then next to the 6th day of May then next; and even for a third month on the same conditions; but that he, the defendant, would nevertheless hold himself bound to make declaration of the same to the said Josephine Weiss before the 25th day of March then next. And the defendant further thereby reserved to himself the right of renewing the then engagement on the same conditions for the season of the year 1846, he, the defendant, thereby holding himself equally bound to make declaration thereof to the said Josephine Weiss before the 3rd day of April then next; and that in the interval the said Josephine Weiss should not be at liberty to allow her pupils to dance at any other theatre in England; that the company of the said Josephine Weiss should travel and dance in the interior of England during the continuance of the then engagement; only the defendant bound himself to pay, besides the salary agreed on, to the said Josephine Weiss, the expenses of travelling and lodging for all her company, and for the whole time of her travelling and absence from London; that the plaintiff should give a benefit in the name of the children, and that the receipts thereof, except presents, should belong to the defendant. And it was thereby also agreed, that the pupils of the said Josephine Weiss, during the continuance of the said contract, should not dance at any other theatre, or place whatever, without the consent of the defendant. And whereas afterwards, to wit, on the 13th day of June, 1845, by a certain other agreement then made within the jurisdiction of this court, to wit, at London, between the defendant and the plaintiff, by the said Josephine, his wife and agent in that behalf, it was agreed by and between the said parties as follows, that is to say, that the engagement between the aforesaid parties, as aforesaid, was thereby renewed for the then present year, for one month, from the 10th day of June to the 10th day of July, in the year of our Lord 1845. That the price for the said month should be 20,000 francs instead of 30,000 francs, that the said Josephine Weiss had received till that time. That the said 20,000 francs should be paid to the said Josephine Weiss in four instalments, on the 13th day of June, the 21st day of June, the 28th day of June, and the 7th day of July, last past. That the aforesaid first-mentioned agreement should remain in full vigour for the then next year; but that the said Josephine Weiss should be at liberty to accept in the interval any engagement that she liked in the provincial towns of England, but not in London. That if the said Josephine Weiss should inform the defendant, any time before the 1st day of December, in the year of our Lord 1845, that she could not come during the year 1846 to London, the defendant thereby agreed to release her from her agreement. That the conditions for the year 1846 should be the same as in the contract first above mentioned, save that the said Josephine Weiss should be at liberty to travel, and let her pupils dance in all the cities of England except London; and that the engagement for the said year 1846 should be and was thereby fixed for two months, that is to say, from the 28th of February to the 4th of May, at 30,000 francs each month. And thereupon afterwards, to wit, on the said 13th day of June, 1845, in consideration of the premises, and that the plaintiff then promised the defendant to perform and fulfil all things in the said last-mentioned agreement contained on his part to be performed and fulfilled, the defendant then promised the plaintiff to perform and fulfil all things therein contained on his part to be performed and fulfilled. And the plaintiff further says that, confiding in the said agreement, he caused the said Josephine, his said wife, to, and the said Josephine did, arrive in London with her thirty-three pupils on the 25th day of February last, and that although the said Josephine was then, and from thenceforth until the commencement of this suit has been, ready and willing to cause her thirty-three pupils, and the said thirty-three pupils were then, and from thenceforth during all the time aforesaid, have been ready and willing to dance with the costumes and music of the said Josephine, three dances each evening, from the 28th February last inclusive, at the Queen's Theatre, or any other room in London or elsewhere, according to the tenor and effect, true intent and meaning, of the said agreement; of all which the defendant, during all the time aforesaid, had notice; and although the plaintiff has always been ready and willing to perform and fulfil all other things in the said agreement contained on his part to be performed and fulfilled, yet the defendant did not nor would, although he was after the arrival of the said Josephine with her pupils in London as aforesaid, to wit, on the said 25th day of February, in the year of our Lord 1846, requested so to do, suffer or permit the said pupils or the said Josephine, to dance at the said theatre, or at any other room in London or elsewhere, during all the time aforesaid; but on the contrary thereof the defendant then, and during all such time as aforesaid, wrongfully refused, and still refuses, so to do. And the plaintiff further says, that although the time for payment, according to the said last-mentioned agreement, of divers, to wit, three of the said instalments of 5,000 francs each, had elapsed before the com-

commencement of this suit, yet the defendant did not nor would, when the same respectively became due and payable according to the tenor and effect, true intent and meaning, of the said agreement, pay the same, or either of them, or any part thereof, although he was then by the plaintiff requested so to do, but, on the contrary thereof, the defendant wrongfully refused so to do, and the same and each of them and every part thereof now remains wholly due and unpaid to the plaintiff. And the plaintiff further says, that the said sum of 5,000 francs, being the amount of each of the said instalments, was, at the time of making the said agreement, and at the time the said instalments respectively became due and payable, and still is, of great value, to wit, the value of 700l. of lawful money of Great Britain. To the plaintiff's damage of 1,000l. &c.

The declaration was dated on the 9th of April, and on the 2nd of May the defendant, being under terms to plead issuably, obtained leave to plead several matters.

Pleas.—1st. Non Assumpsit.

2nd. And for a further plea in this behalf, the defendant says that the thirty-three pupils of the said Josephine Weiss, before and at the time of the making the agreement in the declaration first mentioned, for a long space of time before then elapsed, to wit, three years, had been trained, organized, and perfected by and under the said Josephine Weiss, to dance, with costumes and music, certain peculiar dances in groupings and evolutions, and which groupings and evolutions were led in the said dances by certain, amongst others, to wit, eight of the principal and leading pupils, being the most skilful and expert of the said thirty-three pupils, and the remainder whereof, being subordinate pupils, moved and danced in accordance with, and under the said leading and principal pupils. And the said thirty-three pupils, by reason of their efficient discipline, and long matured exercise, practice, and perfecting in dancing the said certain groupings and evolutions before, and at the time of the making of the agreement in the declaration first mentioned, had, in parts beyond the seas, to wit, at the Académie Royale de Musique, at Paris, in the kingdom of France, and in other parts, to wit, in Germany, attained to celebrity, public approbation and applause; and without the presence and aid of the said principal and leading pupils, the subordinate pupils were and are inefficient to dance the said dances in groupings and evolutions as aforesaid. And that by reason and in consideration of the said premises, he, the defendant, entered into said agreement in the said declaration first mentioned, for the engagement and hire of the said thirty-three pupils to dance at the Queen's Theatre as aforesaid, he, the defendant, paying to the plaintiff very large salaries and great remuneration for the same. And the defendant says, that under and by virtue of the said agreement, the same thirty-three pupils danced and performed their said peculiar dances at the said Queen's Theatre in and during the season or time that the same was open for theatrical representations there in the year 1845, and the defendant paid such large salaries and remunerations according to the said agreement in that behalf; and the said thirty-three pupils thereby there at the said theatre and in London acquired and received celebrity, patronage, and public applause; and the defendant, by reason and in consideration of the said premises, afterwards made and entered into the said agreement secondly above in the declaration in that behalf mentioned, and from the time of the making thereof thence always hitherto, he, the defendant, hath been ready and willing to receive, permit, and bring forward the said thirty-three pupils, being the same thirty-three pupils as aforesaid, to dance as aforesaid, at the said Queen's Theatre, during all the time the said theatre has been open for theatrical representations in and during this year 1846, pursuant to the said agreement secondly in the declaration above-mentioned, to wit, from the said 28th day of February last, when the said Josephine arrived, or was in London, thence always hitherto; nevertheless the plaintiff, and the said Josephine, his said wife and agent, from the time of the making of the said agreement secondly above in the declaration mentioned, thence always hitherto have failed to perform, and, on the contrary, have broken the said agreement in the declaration in that behalf secondly above-mentioned, by not procuring or causing to dance the same thirty-three pupils at the said theatre, for or during the said space of time in the said agreement in the declaration secondly above-mentioned, to wit, from the said 28th day of February to the commencement of this suit inclusive, and thence hitherto, or any part thereof, but by procuring and having a certain less part of the same thirty-three pupils, to wit, twenty-five only, ready and willing to dance during the time as last aforesaid; and therein failed and made default; and the remaining eight thereof, being eight of the said principal and leading pupils by and under whom the residue being subordinate pupils, were led and danced long before the time for payment, according to the said last-mentioned agreement in the said declaration, of any of the said instalments had elapsed, to wit on the 1st day of October, A.D. 1845, and thence continually, and during

the said space of time, to wit, from the said 28th day of February, following, to wit, hitherto were and have been, and still are, resident and absent in parts beyond the seas, to wit, in Germany, and have not been ready and willing to come to or be present in London, during all the said time aforesaid, or any part thereof, to dance at the said theatre, according to the said agreement in the declaration secondly above in that behalf mentioned, but wholly refused so to do; and the plaintiff and Josephine, his said wife and agent, as aforesaid, have been always, from the time of making of the said agreement in the said declaration secondly above-mentioned, thence, hitherto, and are wholly unable to procure the said principal and leading pupils of the said thirty-three to come to England to perform and fulfil the said agreement in the said declaration secondly above-mentioned, on the part of the plaintiff, to be by him performed and fulfilled, and thereby during all that time the plaintiff and the said Josephine Weiss, his wife and agent, therein have wholly failed and made default in fulfilment and performance of the said agreement on their part in that behalf to be performed and fulfilled, and have never been able to perform and fulfil the same; and the consideration by reason of which the defendant made and entered into the said agreement secondly above in the said declaration mentioned, has, by reason of the premises aforesaid, wholly failed; and this the defendant is ready to verify, &c.

The 3rd plea justified the refusal to permit thirty-three pupils, other than those who had danced in 1845, to dance in 1846, on the ground that the agreement was that the same thirty-three pupils should dance; and that eight of the thirty-three who were ready and willing to dance, were different pupils.

The 4th plea was a special traverse of the averment that the said Josephine was ready and willing to cause her thirty-three pupils, and that the said thirty-three pupils were ready and willing, to dance, &c.

The 5th plea was a simple traverse of the same averment.

The 6th, that the said instalments in the said declaration mentioned, did not, nor did either of them, or any part thereof, become or be due or payable *modo et forma*.

These pleas were delivered on the 9th of May; and interlocutory judgment signed as for want of plea.

A rule nisi having been obtained to set aside the judgment so signed,

June 11.—*Watson, Q.C. and Lush, shewed cause.*

The second plea is clearly not issuable. The declaration in substance charges a breach of agreement in not employing the plaintiff's wife and pupils to dance; and the plea is no answer. In effect it says that eight of the pupils who came in 1846 did not come in 1845; and it is therefore an attempt to put in issue the construction of the agreement, whether it meant thirty-three particular individuals, or only thirty-three dancers generally. It raises an issue more extensive than *non-assumpsit* before the new rules. Secondly, the last plea is bad, because it varies from the abstract of pleas allowed by the judge. In the abstract the plea was a traverse of the averment that three instalments had become due and payable; but the issue raised is different. [PATTERSON, J.—It is doubtful what is meant; whether to deny the non-payment, or that the payment was a condition precedent to the performance.] Further, it is pleaded to the whole declaration, but is applicable to part only. They cited *Parratt v. Goddard*, 9 M. & W. 458, 1 Dowl. N. S. 874; *Hughes v. Poole*, 6 Scott, N. R. 959; *Warner v. Theobald*, Cowp. 589; *Humphreys v. Earl of Waldegrave*, 6 M. & W. 622.

Hoggins, contra.—As to the last plea, the fault, if any, is in the declaration, which alleges two distinct breaches: one, the non-payment of the instalments; the other, the non-employment. The plaintiff will, no doubt, contend that the sixth instalment was payable in Paris before she was bound to appear with her pupils; and the issue will raise that question. He cited *Steele v. Harmer*, 14 M. & W. 156. The second plea, whether good or not, is at all events a plea to the merits, and therefore issuable.

Cur. adv. vult.

Lord DENMAN, C.J. now said—The interlocutory judgment may be set aside upon payment of costs; but the defendant must abandon his last plea, which is not issuable. *Rule absolute on the above terms.*

Thursday, June 25.

GILKETT v. BULLIVANT.

Defamation—Special damage.

In an action for words, imputing to the plaintiff, a governess, that she had had a child by her master, the declaration alleged, as special damage, that her master had dismissed her from his employment. The words were spoken by the defendant to the plaintiff's father, at a time when the plaintiff was visiting her father, and were repeated by the father to the master, who then declined to receive the plaintiff again, though he knew the charge to be false, on the ground that it might be injurious to her character to do so, and would be unpleasant to both of them. Held, that the special damage was the direct and natural and

legitimate consequence of the slander; and was therefore sufficient to support the action.

Held also, that there was sufficient evidence for the jury that the plaintiff was dismissed.

Case.—The declaration stated that the plaintiff before and at the time of the committing of the grievance by the defendant, as therein after-mentioned, used and exercised the business and employment of a domestic governess, &c.; that before and at the time, &c. the plaintiff had been and was retained and employed by one John Laxton, in his service, and was boarded and lodged by him, as a governess, to teach and instruct an infant daughter of the said J. L. for salary and reward to the plaintiff in that behalf. Yet the defendant contriving and wickedly intending to injure the plaintiff, heretofore, to wit, &c. in a certain discourse which the defendant then had with one R. G. the father of the plaintiff, of and concerning the plaintiff, and of and concerning her conduct whilst in the said service and employ of the said J. L. in the presence and hearing of the said R. G. and divers other persons, falsely and maliciously spoke and published these several false, scandalous, malicious, and defamatory words, of and concerning the plaintiff, and of and concerning her conduct whilst in the said service and employ of the said J. L. that is to say, "How is the child?" Whereupon the said R. G. asked the defendant "What child he meant thereby?" whereupon the defendant then falsely and maliciously, &c. replied, and spoke and published of and concerning the plaintiff, &c. these several false, scandalous, malicious, and defamatory words of and concerning the plaintiff, &c. that is to say, "Why! the child she (meaning the plaintiff) had by Mr. L. (meaning the said J. L.); I (meaning the defendant) can prove the fact, as the child was put out to a nurse about two years since;" and which said words were then, and still are, calculated to injure the plaintiff, and were injurious to her in her said business and employment. By means of the committing of which said grievance by the defendant as aforesaid, the plaintiff not only hath been and is greatly injured in her good name, fame, and credit, but also by means of the committing of the said grievance, and on no other account whatsoever, the said J. L. and who, but for the committing, &c. would have continued to retain and employ her as such governess, &c. hath afterwards to wit, &c. dismissed and discharged plaintiff from his said service and employ, and hath from thence hitherto refused to continue to retain or employ her, and thereby the plaintiff hath lost and been deprived of divers great gains and profits, &c. to the plaintiff's damage of 300l.

Pleas.—1. Not Guilty.

2. A denial of the plaintiff's employment as governess *modo et forma*.

3. A justification of all the words as true.

4. A justification of the words "Why the child she had" as true.

Issue joined on the 1st and 2nd; and replication, *de injuria*, to the 3rd and 4th pleas.

At the trial which took place before Coleridge, J. at the Surrey Summer Assizes, 1845, the father of the plaintiff proved the speaking of the words, and that he communicated them to Mr. Laxton; and Mr. Laxton proved that the charge was without foundation; but that he declined to receive her again, she being then absent from his house on a visit to her father, on the ground that after such a statement had been made it might be injurious to her character to remain, and would, at least, be unpleasant to both. The learned judge told the jury that there was evidence for them, and, in his opinion, abundant evidence both of the slander and the dismissal as laid; and they found a verdict for the plaintiff, damages 300l.

Chambers, Q.C. in last Michaelmas Term obtained a rule to shew cause why that verdict should not be set aside and a new trial had, or why judgment should not be arrested (See 6 L. T. 119). That rule now came on for argument; but no counsel appeared to shew cause against it. The Court nevertheless called upon

M. Chambers, Q.C. and Ogle, in support of the rule. First, the special damage is not proved; and the direction was wrong in that respect. The special damage must be the legal and natural consequence of the words spoken. (*Vicars v. Wilcocks*, 8 East, 1 Ward v. Weeks, 7 Bing. 211, 215; *Morris v. Langdale*, 2 B. & P. 284; 3 Stark. Evid. 637. [Lord DENMAN, C.J.—*Vicars v. Wilcocks* has been much shaken.] *McPherson v. Daniels*, 10 B. & C. 262, confirms *Vicars v. Wilcocks*. *Newman v. Zachary*, Ayles, 3, is the strongest case on the other side; and that decision cannot be supported now. (See *Green v. Bullen*, 3 C. M. & R. 713.) Here the dismissal of the plaintiff was not the natural or legal consequence of the words spoken; for, in the first place, they were not addressed to Mr. Laxton, but to the father; and if they had not been repeated by him, the consequence would not have ensued. (*Ward v. Weeks*, above cited.) *Knight v. Gibbs*, 1 Ad. & Ell. 43, differed in that respect; for there the words were spoken to the person who dismissed the plaintiff; but secondly, Mr. Laxton knew the plaintiff's innocence; and it would be a wrongful and illegal act in him to dismiss her on account of an unjust imputation. If

he did so, she would have a remedy by action against him. Secondly, in this case the special damage is the gist of the action, and must be proved as laid; for the words are not actionable *per se*; and there is no allegation that they were spoken of and concerning the plaintiff, in her character of a governess generally; or any proof that they were so spoken. Thirdly, assuming the allegation to be sufficient, there was no evidence that the plaintiff was a governess at the time when the words were spoken; and the introductory averments, when material to the defamatory character of the words must be proved as laid. (*Teesdale v. Clement*, 1 Chit. R. 603.) Lastly, the evidence failed to shew any dismissal of the plaintiff by Mr. Laxton.

Lord DENMAN, C.J.—This rule must be discharged. It seems to me that there was very reasonable evidence to be submitted to the jury, that the words were spoken of the plaintiff in reference to her conduct in Mr. Laxton's service, which is the allegation in the declaration; and also that she was in his service as a governess at that particular time, for that was indeed the very foundation of the charge. As to the special damage also, I think the evidence was quite sufficient. The repetition of the words by the father to Mr. Laxton was the natural consequence of the speaking of the words; and is very different from the case of an idle repetition by an indifferent person; so that, without questioning the authority of *Ward v. Weeks*, I am of opinion that here the special damage was the direct and natural consequence of the words spoken. But then it is said that they could not have occasioned the dismissal, because Mr. Laxton knew that they were not true, and a dismissal by him on that account would have been illegal; but that objection is removed by the case in this Court (*Knight v. Gibbs*, 1 Ad. & Ell. 43), where a woman who took lodgers dismissed the plaintiff, not because she believed the imputation, but because she was afraid that the character of her house might suffer, and the Court held that that was a legitimate and natural consequence of the imputation cast upon the plaintiff. So here it was perfectly reasonable and proper that the master should refuse to keep the plaintiff in his service after such a statement had been made, although he knew it to be untrue. One other point was made, that there was no dismissal, but that was a question for the jury upon the evidence. It appeared that the plaintiff was visiting her father at the time, and the master refused to receive her again; much the same thing, I should think, as if he had actually dismissed her.

WILLIAMS, J. concurring. Rule discharged.

JUDGES' CHAMBERS.

SERGEANT'S INN.

Tuesday, Sept. 1.

Re CROWTHER, a Prisoner.

A commissioner of bankruptcy has no power of awarding costs in the shape of damages for a seizure assumed to be illegal, nor to issue a warrant of committal for the non-payment of such costs.

This was an application to discharge the above-named prisoner, who is the bailiff of the Court of the Honour of Pontefract, in the West Riding of Yorkshire, and in that capacity he, in pursuance of a warrant of execution, duly issued out of that court, on a certain judgment recovered therein, by one William Cole against John Pickles, a hair dresser, proceeded to levy 12l. 18s. 3d. and costs. Upon the levy being made, Pickles stated that he had obtained an order of protection from the Leeds District Court of Bankruptcy, whereby his goods and chattels were protected from all process. Upon which Crowther (the prisoner) demanded to see the order, which was refused by Pickles; and as no messenger was in possession under the insolvency, he (Crowther) proceeded to execute his warrant, and ultimately removed the goods; immediately after which a complaint was made by Mr. Harle, of Leeds, the solicitor to the insolvent Pickles, to Mr. Commissioner Burge, who issued a summons on the 13th of August, directed to the prisoner, to shew cause why he so seized and carried away the goods and chattels of Pickles, they being protected from process by the order of the Court. This summons not being obeyed, a warrant was issued by the commissioner to apprehend and bring him before the Court to answer to the complaint, and on the 15th of August, he having been taken into custody was taken before the commissioner, who, after hearing all parties on the subject of the complaint, adjudged the prisoner to have been guilty of a gross contempt of his court, by seizing and taking away the goods of John Pickles, and also ordered the prisoner to pay the costs occasioned by the application (amounting to nearly 30l.), or, in default, to stand committed to York Castle. Mr. Crowther protested against the authority of the Commissioner to make such an order, and refused to comply therewith, upon which he was taken into custody, and taken to York Castle, there to remain until he had paid the costs and purged the contempt. Under these circumstances, an application was made to the Lord Chief Baron, on Saturday last, for a

writ of *habeas corpus* to bring up the body of the prisoner, in order to his discharge out of custody as to such commitment, when, after perusing the affidavit in support of the application, the learned judge granted his fiat for the issuing of the writ, in pursuance of which Mr. Crowther was brought up in custody from York Castle yesterday, before Mr. Justice Erle, who made an order directing Mr. Crowther to be discharged out of custody, on the ground that the warrant and commitment were bad, the Commissioner, Mr. Burge, having assumed a power of awarding costs in the shape of damages for a seizure assumed to be illegal, and of issuing his warrant of committal for the non-payment of such costs. The learned judge said he should give no opinion whether the seizure itself was a contempt or not, or whether, if it were, the commissioner had a legal power of committal in such a case. It was clear that he had no power to commit for non-payment of costs. Mr. Crowther was at once discharged.

ADMIRALTY COURT.

Wednesday, May 6.
(Before Dr. LUSHINGTON.)
THE NORDEN.
Collision.

When two vessels are approaching each other, with danger of collision, they must follow the rules of navigation, either as laid down by the Trinity Board, or as known to all seamen. But when there was no chance of collision the Trinity regulations did not apply, and a foreign ship ought to be governed by general rather than by any particular rules, by whomsoever laid down.

This was a case of collision. The *Countess of Errol* left Shields for London on the 21st of January last, laden with coals. On the morning of the 25th she was off the Dudgeon shoal, lying close hauled on the starboard tack with her head to the S.S.E., the wind blowing fresh from the S.W. About one a.m. the Russian ship *Norden*, of 468 tons burden, was seen about half a mile distant to the windward, standing towards the brig under all her sails, except studding sails, on the larboard tack, with the wind free and abaft the beam. A light was held up and the brig's helm put to starboard to give her more room, but before that took effect the *Norden* ran into her stem on, in consequence of which she sank in about twenty minutes. The *Norden* alleged that she was in ballast proceeding from London to Newcastle, and that on perceiving the brig she put her helm hard a-port, and on nearing her observed that she was bearing away or endeavouring to cross the course of the *Norden*. She attributed the collision to the brig starboarding her helm instead of putting it hard a-port.

Dr. Addams and Dr. R. Phillimore appeared for the *Countess of Errol*; Dr. Bayford and Dr. Deane for the *Norden*.

The learned JUDGE, in addressing the Trinity Masters, said, that in deciding the case of the *Columbine*, which occurred in the year 1843, he had laid down the rule, that when two vessels were approaching each other with a danger of collision they must follow the rules of navigation, either as laid down by the Trinity Board, or as known to all seamen, and to that principle he still adhered. But where there was no chance of collision the Trinity regulations did not apply, and a foreign ship ought to be governed by general, rather than by any particular rules, by whomsoever laid down. He would submit to them whether the *Norden* had done right or wrong in porting her helm, and whether the *Countess of Errol*, in starboarding her helm, had without a just cause acted contrary to the rules of navigation.

The Trinity Masters were clearly of opinion that the blame was solely imputable to the *Norden*.

The learned JUDGE said, that there could be no doubt as to what the decree of the Court must be. He must pronounce for the damage with the costs. But it was quite impossible for him to allow the particular facts which were apparent in this case to pass by without some observation. After the collision occurred, the crew of the *Countess of Errol* escaped on board the *Norden*, and then went back in a boat belonging to the *Norden* to ascertain the state and condition of their vessel. The Russian crew, knowing the danger, returned to their own vessel, and abandoned the whole of the British crew to the probability of utter destruction. More inhuman conduct it had seldom happened to him to witness. One or two cases had occurred in which his predecessors had had to express in strong terms their disapprobation of those who had been wanting in fulfilling the necessary duties of life. This was not a failure in fulfilling the duties of humanity, but it was the perpetration of an act of inhumanity. He thought it right, as an example to all others, to express his deep sense of indignation at such conduct having been pursued by the crew of any vessel belonging to any civilized nation whatever.

Bankrupt and Insolvent Courts.

COURT OF REVIEW.

Monday, Aug. 3.

Ex parte JERWOOD, re DOCKERY.

1 & 2 W. 4, c. 56, ss. 46 & 55.—Solicitor's bill—Practice—Service of petition.

Where an official assignee had paid 10l. and 20l. pursuant to the above statute, and had no further assets, and no creditor's assignee had been chosen, and the bankrupt's certificate had been allowed, the Court directed the bill of costs of the solicitor to the fiat to be paid out of the 30l. so paid in.

Semble.—On applications with regard to the sums of 10l. and 20l. paid under the above statute, it is not necessary to serve the accountant in bankruptcy with notice.

This was the petition of a solicitor who had been employed in suing out this fiat, and was presented for the purpose of having 20l. and 10l. which had been paid under the 46th and 55th sections of 1 & 2 W. 4, c. 56, repaid, in order that his bill of costs might be paid. The fiat was dated the 3rd of Sept. 1844, and on the 6th of Sept. adjudication was made. On the 14th of Sept., which was the day appointed for the meeting for the choice of assignees, no creditor attended, and the meeting was accordingly adjourned to the 18th of October, when no creditor attended, and the bankrupt passed his examination. On the 6th of December, 1844, the bankrupt's certificate was allowed. The petitioner's bill of costs was taxed at 26l. 3s. 5d. and the official assignee having paid the 30l. payable under the sections before-mentioned, and not having any further assets, this petition was presented.

Sturgeon for the petition.

The CHIEF JUDGE said that the solicitor's bill, as taxed, might be paid out of the 30l. He also allowed the petitioner 40s. costs, to be paid out of the same fund.

The Accountant in bankruptcy had been served with this petition, and, upon being informed of this, The CHIEF JUDGE said, that he wished it to be understood, that in such cases as this he had never desired this service to be made.

COMMISSIONERS' COURTS.

(Before Mr. Commissioner FANE.)

Wednesday, Sept. 2.

Re AYRES.

An interim order of the Court of Bankruptcy will not protect an insolvent from committal under the Small Debts Act, on a judgment signed against him before a final order of this Court. In such a case the commissioner will not interfere.

This insolvent obtained his final order from this Court on the 2nd of July last, and had inserted in his schedule a debt of 2l. 17s. due to Mr. Abercrombie. He was sued by Mr. Abercrombie, and judgment of the Palace Court was signed against him on the 2nd of May last. Summonses were taken out upon this judgment. He was ordered to attend the Palace Court, but thinking himself safe by his interim order, and in anticipation of his final order, he did not attend the Court as required. Subsequently he was taken to prison under the Small Debts Act, and he now applied to this Court for his release from custody.

It was now urged that the Court should interfere to give effect to the final order, which was a protection against the debt for which he had been summoned.

Mr. Commissioner FANE said he was not the party to interfere. After referring to the Act his Honour said the man must pay the debt or remain in prison, as orders made under the Small Debts Act, before a final order was made in this Court, could not be got rid of by a final order. Application refused.

THE LEGISLATOR.

SUMMARY.

BELOW will be found some serviceable information extracted from Parliamentary papers and returns. The report of the committee appointed to examine into the practice of carrying private Bills through Parliament, more especially those relating to waterworks, drainage, paving, and sanitary regulations, for towns, we give *in extenso*. It will be seen that the committee recommend the preparation of a statute during the recess, to secure uniformity of practice in these measures for the future. To one important recommendation we invite especially attention. The committee assume the

charges of solicitors and agents in promoting and opposing Bills to be usually exorbitant, and that as no scale for such charges has been established by Parliament, a taxing officer shall be appointed, under the authority of the Speaker, and a scale of taxation fixed and published, for the guidance of all parties promoting or opposing private bills. This is another onslaught on the Profession, and must be looked to. We have not yet been able to obtain "The Private Bills Bill" which received the Royal assent on Friday; but shall look with interest to its enactments when we receive it.

Imperial Parliament.

SESSIONAL PRINTED PAPERS.

856. Private Bills—Report and Evidence
671. Army—Return
667. Railway Acts Enactments—Second Report.

PARLIAMENTARY PAPERS.

PARLIAMENTARY PRINTING.—The report of the Select Committee on Parliamentary printing has been issued. The committee was appointed to assist the Speaker in all matters which relate to the printing executed by order of the House of Commons, and for the purpose of selecting and arranging for printing returns and papers presented in pursuance of motions made by members which might be referred to the committee. The committee express their hopes, that with the co-operation of the House, they may be enabled to improve the character of Parliamentary papers, and to effect a considerable pecuniary saving. The committee refer to the suggestions of the Library Committee in 1830 and in 1834, and also to the Printing Committee of 1841, to the resolutions of which last-mentioned committee they earnestly recommend the perusal, and call the attention of the House to the fact, that whatever saving has been effected by abstracting the papers hitherto printed, the greatest possible economy, as well as the most useful results, are to be expected from the manner of moving for accounts and papers in future. The committee remind the House, that in order to effect a practical reformation of the system of Parliamentary printing, the rule should be strictly adhered to of giving notice of any paper about to be moved for, in order that the House may have ample time to consider whether the information is already on the table, and whether the expenses of collecting it are not so great as to render it necessary for the House to de-liaise making their order for the production of the papers, and the House should, in extreme cases, require from the Government their opinion as to the expediency of incurring the expense of procuring the information required. "Many papers (it is stated) are moved for during each session on matters purely local; and it is suggested that great discretion should be used in sanctioning the production of such documents, and that if ordered by the House to lie upon the table, the rule should be strictly adhered to of leaving the manuscripts at all times open to inspection in the library, and of refusing to print them for general circulation." It seems that in little more than four years a saving of 7,100*l.* was effected in printing abstracts instead of the forms of some returns as presented, and the committee expect further reductions by extending more generally the system of abstracts. They are satisfied with the plan pursued, and wish it to be more fully carried out, for although an additional annual expenditure may be thereby incurred, it is confidently expected that a saving will be effected in the printing far greater than any which has been effected.

REVENUE, &c. IN IRELAND (1845-6).—The net produce of the revenue paid into the Exchequer, in the years ending 5th January, 1845 and 1846, was, respectively, 4,265,729*l.* and 4,478,791*l.* The total expenditure was 4,077,075*l.* 1*s.* 11*d.* and 3,842,505*l.* 8*s.* 10*d.* The balance in the Exchequer on the 5th January last was 791,504*l.* 8*s.* 7*d.* The duties of Excise, in the year ended 5th January, 1845, amounted to 1,366,492*l.* 5*s.* 10*d.*; and in the following year to 1,580,825*l.* 10*s.* 6*d.* The duties of Customs in the two years were 2,348,629*l.* and 2,323,802*l.* From the best accounts that can be procured it seems that there were retained for home consumption in Ireland, in the year 1845, 698,464 gallons of wine, and in 1846, 668,214 gallons. The total quantity of spirits was 6,681,251 gallons in 1845, and 7,638,993 in 1846. Of tobacco, 5,579,234 lbs. in 1845, and 5,871,888 lbs. in 1846. Of tea, 5,851,632 lbs. in 1845, and 6,518,211 lbs. in 1846. Of coffee, 941,511 lb. in 1845, and 994,521 lb. in 1846. Of raw sugar, 363,620 and 414,998 cwt. in the two years. Of cotton wool, 64,343 lbs. in 1846. Of silk, 21*lb.* in each year. Of iron (unwrought) 595 and 198 tons in the two years. Of timber, not sawn or split, 67,554 and 107,301 loads in the two years; of timber, sawn or split,

94,614 and 127,536 loads; and of battens and deals, 82 and 113 great hundreds. The consumption of coals cannot be exhibited. The exports are as follows:—of wheat and wheat flour exported to Great Britain, the quantity was in 1845, 440,152 qrs.; and in 1846, 779,113 qrs.; and of oats and oatmeal, 733,439 qrs., and 2,353,985 qrs. in the two years. There were paid into savings banks in Ireland by trustees in the year ended 5th January, 1845, 503,691*l.*, and in 1846, 485,326*l.*, making in the two years, 989,017*l.*; and there were drawn out by trustees in the two years, 302,148*l.* 1*s.* 1*d.*, and 624,810*l.*, making a total of 926,958*l.* 1*s.* 1*d.*

SAVINGS BANKS.—The following is a statement of the number of depositors in the Savings Banks, and of the sums deposited on the 20th of November, 1845:—Under 20*l.* number of depositors, 597,631; amount of deposits, including interest, 3,851,027*l.* Ditto 50*l.* number of depositors, 267,609; amount of deposits, &c. 8,247,340*l.* Ditto 100*l.* number of depositors, 113,727; amount of deposits, &c. 7,815,347*l.* Ditto 150*l.* number of depositors, 37,924; amount of deposits, &c. 4,563,790*l.* Ditto 200*l.* number of depositors, 21,302; amount of deposits, &c. 6,633,971*l.* Exceeding 200*l.* number of depositors, 3,001; amount of deposits, &c. 702,980*l.* Charitable Institutions, number of depositors, 11,695; amount of deposits, 630,898*l.* Friendly Societies, number of depositors, 10,041, amount of deposits, &c. 1,303,516*l.* The principal and interest received from, and interest credited to the trustees, from 6th August, 1817, to 20th May, 1846, from Savings Banks and Friendly Societies, in Great Britain and Ireland, amounted to 53,291,034*l.* The amount of principal and interest paid to the trustees, was 19,982,266*l.* 5*s.* 2*d.* The amount of principal and interest due to the trustees by the commissioners, on 20th May, 1846, was 33,308,768*l.* 9*s.* 7*d.* The value of the securities held by the commissioners at the same date, was 31,936,834*l.* 3*s.* 1*d.* The uninvested balance was 226,779*l.* 16*s.* 5*d.*

HOUSE OF LORDS.

FRIDAY, AUGUST 28.—The LORD CHANCELLOR, on taking his seat, announced that her Majesty had been pleased to empower several peers to grant the Royal assent to several bills, and also to prorogue Parliament.—The Lords Commissioners were the Lord Chancellor, the Marquis of Lansdowne, the Earl of Minto, Earl Spencer, and Lord Campbell.

ROYAL ASSENT.

The Speaker and members of the House of Commons having been summoned by Sir A. Clifford, the Usher of the Black Rod, attended at the bar, when the Royal assent was given, in the usual form, to the following bills:—Consolidated Fund, Appropriation; Customs Duties, No. 2; New Zealand Government; Waste Lands, Australia; Drainage of Lands; Railway Commissioners; Small Debts; Steam Navigation; British Possessions; Wreck and Salvage; Private Bills; Pawnbrokers; Contagious Diseases; Public Works, Ireland, No. 4; Public Works, Ireland, No. 5; Constabulary, Ireland; Leases, Ireland; Mandamus, Ireland; Fisheries, Ireland; Ejectments, &c. Ireland; Poor Employment, Ireland; Rateable Property, Ireland; District Lunatic Asylums, Ireland; Cameron's Coalbrook Steam Coal and Swansea and Loughor Railway; and the South Devon Railway amendments and branches, No. 2.

Her Majesty's Commission, adjourning the Parliament until Wednesday, 4th November in the present year, was then read, and in pursuance of it the Lord CHANCELLOR declared the Parliament adjourned until that day.

HOUSE OF COMMONS.

FRIDAY, August 28.—MR. AGLONBY gave notice that, early next session, he should move for leave to bring in a Bill to amend the law for the enfranchisement of copyhold tenures; also for a Bill to amend the Enclosure Act.

NEW STATUTES

Of the Session 9 & 10 Victoria.

(Continued from page 474.)

[In this record of actual Legislation, only the statutes and parts of statutes of peculiar importance to the Profession are given *verbatim*. Of the rest, the title, or a brief analysis only, is preserved here.]

We give the subjoined Act for the more easy recovery of Small Debts, before its turn in this list of new statutes, because it is of importance that it be in the hands of the Profession as early as practicable.

CAP. XCIV.

An Act for the more easy Recovery of Small Debts and Demands in England. (August 28, 1846.)

1. 7 & 8 Vict. c. 96. 8 & 9 Vict. c. 127. *Her Majesty may order this Act to be put in execution.*—Whereas sundry Acts of Parliament have been passed from time to time for the more easy and speedy recovery of small debts within certain towns, parishes,

and places in England: and whereas by an Act passed in the eighth year of the reign of her Majesty, intituled "An Act to amend the Laws of Insolvency, Bankruptcy, and Execution," arrest upon final process in actions of debt not exceeding twenty pounds was abolished, except as to certain cases of fraud and other misconduct of the debtors therein mentioned: and whereas by an Act passed in the ninth year of the reign of her said Majesty, intituled "An Act for the better securing the Payment of Small Debts," further remedies were given to judgment creditors, in respect of debts not exceeding twenty pounds, for the discovery of the property of debtors, and punishment of frauds committed by them: and whereas by the last-mentioned Act her Majesty is enabled, with the advice of her Privy Council, to extend the jurisdiction of certain courts of requests and other courts for the recovery of small debts to all debts and demands, and all damages arising out of any express or implied agreement, not exceeding twenty pounds, and also to enlarge and in certain cases to contract the district of such courts, and make certain other alterations in the practice of such courts in manner in the now-reciting Act mentioned; and it is expedient that the provisions of such Acts should be amended, and that one rule and manner of proceeding for the recovery of small debts and demands should prevail throughout England. And whereas the county court is a court of ancient jurisdiction having cognisance of all pleas of personal actions to any amount by virtue of a writ of justices issued in that behalf. And whereas the proceedings in the county court are *diffuse* and expensive, and it is expedient to alter and regulate the manner of proceeding in the said courts for the recovery of small debts and demands, and that the courts established under the recited Acts of Parliament, or such of them as ought to be continued, should be holden after the passing of this Act as branches of the county court under the provisions of this Act, and that power should be given to her Majesty to effect these changes at such times and in such manner as may be deemed expedient by her Majesty, with the advice of her Privy Council. *Enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for her Majesty, with the advice of her Privy Council, from time to time to order that this Act shall be put in force in such county or counties as to her Majesty, with the advice aforesaid, from time to time shall seem fit; and this Act shall extend to those counties concerning which any such order shall have been made, and not otherwise or elsewhere.*—Provided always, that no court shall be established under this Act in the city of London.

2. *Counties to be divided into districts.*—That it shall be lawful for her Majesty, with the advice aforesaid, to divide the whole or part of any such county, including all counties of cities and counties of towns, cities, boroughs, towns, ports, and places, liberties and franchises therein contained, or thereto adjoining, into districts, and to order that the county court shall be holden for the recovery of debts and demands under this Act in each of such districts, and from time to time to alter such districts as to her Majesty, with the advice aforesaid, shall seem fit, and to order from time to time that the number of districts in and for which the court shall be holden shall be increased until the whole of such county shall be within the provisions of this Act, and with the advice aforesaid to alter the place of holding any such court, or to order that the holding of any such court be discontinued, or to consolidate any two or more of such districts, and from time to time, with the advice aforesaid, to declare by what name and in what towns and places the county court shall be holden in each district; and if it shall appear to her Majesty that any part of any county, liberty, city, borough, or district may conveniently be declared within the jurisdiction of the county court of an adjoining county, it shall be lawful for her Majesty, with the advice aforesaid, to order that such part shall be taken to be within the jurisdiction of the county court holden for the purposes of this Act for such adjoining county in and for such district as her Majesty shall order, in like manner as if it were part of such adjoining county.

3. *Courts held under this Act to have the same jurisdiction as county courts, and to be courts of record.*—That every court to be holden under this Act shall have all the jurisdiction and powers of the county court for the recovery of debts and demands, as altered by this Act, throughout the whole district for which it is holden, and there shall be a judge for each district to be created under this Act, and the county court may be holden simultaneously in all or any of such districts; and every court holden under this Act shall be a court of record.

4. *Preserving the jurisdiction of county courts.*—That for all purposes, except those which shall be within the jurisdiction of the courts holden under this Act, the county court shall be holden as if this Act had not been passed; and all proceedings commenced in the county court of any county before the

time when any court shall be holden under this Act in such county may be continued, executed, and enforced against all persons liable thereunto, in the same manner as if they had been commenced under the authority of this Act.

5. *Her Majesty may order any court under Acts in Schedules (A) and (B) to be held a county court, and may assign a district to the same.*—That it shall be lawful for her Majesty, with the advice of her Privy Council, to order that any court holden for the recovery of small debts or demands within the provisions of any Act cited in either of the schedules annexed to this Act, and marked (A) and (B) respectively, shall be holden as a county court; and it shall be lawful for her Majesty, with the advice aforesaid, to assign a district to every such court, either greater or less than the district in which the court holden under the provisions of any such Act now has jurisdiction, and to alter the place of holding any such court, or to order that any such court be abolished; and every such court shall continue to be holden under the Act according to which it is now constituted or regulated until the time mentioned in any such order which shall be made with reference to such court; and from and after the time mentioned in any such order the Act or Acts under which such court is now constituted, so far as the same relate to the establishment or jurisdiction or practice of a court for the recovery of small debts or demands, shall be repealed, but not so as to revive any Act thereby repealed; and such court so ordered to be holden as a county court shall thenceforth be holden as a county court under this Act, and in all respects as if it had been originally constituted under the provisions of this Act.

6. *When a court shall be established under this Act, repealed Acts and all other Acts affecting its jurisdiction, repealed.*—That as soon as a court shall have been established in any district under this Act, and also at the time mentioned in any such order which shall have been made as aforesaid for holding any of the courts mentioned in either of the said schedules as a county court under this Act, the several provisions and enactments of the said Acts of Parliament of the eighth and of the ninth year of the reign of her Majesty, and of every other Act of Parliament heretofore passed, so far as the same respectively relate to or affect the jurisdiction and practice of the court so established or ordered to be holden as a county court, or give jurisdiction to any court, or to any Commissioner of the Court of Bankruptcy, with respect to judgments or orders obtained in the court so established or ordered to be holden as a county court, shall be repealed.

7. *Proceedings under former Acts to be valid.*—That all proceedings in execution of the said Acts or any of them commenced before the passing of this Act, or before the days severally appointed for the alteration of the constitution of the said courts, shall be as valid to all intents and purposes as if this Act had not been passed, or as if the said courts had not been altered, and may be continued, executed, and enforced against all persons liable thereto in the same manner as if they had been commenced under the authority of this Act.

8. *Orders in council to be published in the London Gazette.*—That any order in council made for the purposes of this Act shall be published in the *London Gazette*; and notice of the intention of her Majesty to take into consideration the propriety of making any such order shall be published in the *London Gazette* one calendar month at least before any such order shall be made.

9. *Appointment and qualification of judges. Provision as to attorneys acting as judges under Acts cited in Schedules (A) and (B).*—That the Lord Chancellor shall appoint as many fit persons as are needed to be judges of the county court under this Act, each of whom shall be a barrister-at-law who shall be of seven years' standing, or who shall have practised as a barrister and special pleader for at least seven years, or a barrister or attorney-at-law who, under the provisions of any of the Acts cited in the said Schedules (A) and (B), or under the provisions of either of the said Acts of the eighth year and of the ninth year of the reign of her Majesty, shall have been nominated or appointed to preside in or hold any court constituted or held under any of the Acts cited in either of the said Schedules (A) and (B), whether by the title of judge or barrister, or county clerk, assessor, or steward, or deputy steward, or by any other title or style whatsoever, or a person filling the office of judge of the county court, or county clerk, in the same county, at the time of the passing of this Act: provided always, that every attorney-at-law who shall be appointed a judge of the county court under this Act, and who shall be the partner of any other attorney-at-law, shall, within twelve calendar months next after entering on the said office of judge of the county court, dissolve such partnership or vacate the said office of judge, and shall not during his continuance as such judge enter into any new partnership; and that no attorney-at-law who shall be appointed a judge of any county court under this Act shall be, either by himself or his partner, employed or act as town clerk, or clerk of the peace of any county, city, or borough, or as clerk to any

bench of justices, or as clerk or secretary to any board of guardians or governors or directors of the poor, or of any vestry or local or parochial board of trustees or commissioners, or of any public company or corporation whatsoever, or directly or indirectly concerned as attorney or agent for any party in any court regulated by this Act, or, after the expiration of the said term of twelve calendar months, in any other court of law or equity.

10. *Judges at present acting in the courts of Bath, Bristol, Liverpool, and Manchester entitled to the first appointment under this Act for those places.*—And whereas, under the provisions of the several Acts cited in the schedule marked (A) annexed to this Act, barristers have been appointed and now act as salaried commissioner, or as assessor or assistant to the commissioners appointed to hold the several courts of request constituted or regulated by the said several Acts in the cities of Bath and Bristol, and in the boroughs of Liverpool and Manchester; be it enacted, That when any order shall be made for holding a court under this Act within the said cities and boroughs respectively, districts shall be constituted which shall comprise at least the whole of the said cities and boroughs respectively; and every such barrister who shall have been on the 1st day of June in this year the salaried commissioner or assessor, or assistant to the commissioners, appointed to hold the said several courts of request, and who shall continue to hold the same office at the time when such order as last aforesaid shall be made respecting their city or borough respectively, shall be entitled to be appointed the first judge under this Act of the court to be holden in and for the said cities and boroughs respectively.

11. *Stewards of the manors of Sheffield and Ecclesall appointed under 48 Geo. 3, c. 103, to be the first judges under this Act for those districts.*—And whereas an Act was passed in the 48th year of the reign of King George the Third, intitled "An Act for regulating the Proceedings in the Courts Baron of the manors of Sheffield and Ecclesall, in the county of York," under the provisions of which Act John Parker, esq. has been appointed and is steward of the manor of Sheffield, and Daniel Maude, esq. has been appointed and is steward of the manor of Ecclesall; be it enacted, That if the said John Parker shall continue steward of the manor of Sheffield when any order shall be made for holding a court under this Act within the liberty of Hallamshire, a district shall be constituted which shall comprise at least the whole liberty of Hallamshire, except the hamlet or bierlow of Ecclesall; and if the said Daniel Maude shall continue steward of the manor of Ecclesall when any order shall be made for holding a court under this Act in the manor of Ecclesall, another district shall be constituted under the provisions of this Act which shall comprise at least the whole hamlet or bierlow of Ecclesall; and in such cases respectively the said John Parker shall be entitled to be appointed the first judge under this Act of the court to be holden in the district comprising the liberty of Hallamshire, except the bierlow of Ecclesall; and the said Daniel Maude shall be entitled to be appointed the first judge under this Act of the court to be holden in the district comprising the bierlow of Ecclesall, and the districts of the said two courts shall not be reduced within the said limits respectively so long as the said John Parker and Daniel Maude respectively shall continue judges of the said courts; and the present deputy stewards of the said two courts shall be entitled to be appointed the first clerks of the said two courts respectively, or in case of the consolidation of the said two courts, to act jointly as clerks of the consolidated court, under such regulations as to the division of duties and emoluments of the office as shall be made by order of court, with reference to the duties and emoluments of their offices in the said two courts, before such consolidation, in case of difference between them; and the said John Parker and Daniel Maude shall have the same privilege of holding the said courts by deputy which they now have of holding the said courts by deputy, provided only that the appointment of every such deputy shall be subject to the approval of one of her Majesty's Principal Secretaries of State; and the said John Parker and Daniel Maude shall hold the said courts in all other respects according to the provisions of this Act.

12. *The present county clerk of Middlesex, appointed under 23 Geo. 2, c. 33, to be the first judge under this Act, and may continue to appoint a deputy, subject to approval of Secretary of State. Present registrar to be the first clerk.*—And whereas the county court of Middlesex is regulated under the provisions of an Act passed in the twenty-third year of the reign of King George the Second, intitled "An Act for preventing Delays and Expenses in the Proceedings in the County Court of Middlesex, and for the more easy and speedy Recovery of Small Debts in the said County Court," under which the county clerk is empowered to appoint a deputy to act for him in his said office of county clerk: And whereas the said county of Middlesex within the jurisdiction of the said court is so populous that it will be expedient that several dis-

tricts shall be constituted therein under this Act; be it enacted, That if the present county clerk of Middlesex shall continue county clerk of Middlesex when any order shall be made for holding a court under this Act within the jurisdiction of the said court, he shall be entitled to be appointed the first judge under this Act of such of the said districts as he shall select, and shall hold the said court in all respects according to the provisions of this Act, except that he shall be removable from the said office of judge only in the same manner as he is now by law removable from the office of county clerk, and that he shall have power to hold the court by his present deputy, and on vacancy of the office of deputy to appoint a deputy to hold the said court for him, provided such deputy be a barrister of not less than three years' standing, and shall be approved by one of her Majesty's Principal Secretaries of State; and the present registrar of the said county court shall be entitled to be the first clerk of the court holden in the district so selected by the county clerk; and all suits and proceedings commenced in the county court of Middlesex before the division of the said county into districts shall be continued, and may be executed and enforced, as if they had commenced under this Act before the said county clerk in the district so selected by him.

13. *Provisions for certain lords of manors having rights of appointment under the Acts hereby repealed.*—That whenever any order shall be made for holding a court under this Act within the several towns mentioned in the first column of the schedule marked (C) annexed to this Act, then, upon the next vacancy which shall happen after the passing of this Act in the several offices mentioned in the second column of the said schedule (C) in conjunction with such courts, the several lords for the time being of the manors and liberties mentioned in the third column of the said schedule (C) in conjunction with the said courts shall be entitled to appoint persons properly qualified according to the provisions of this Act, to fill the said offices respectively, subject nevertheless in each case to the approval of one of her Majesty's Principal Secretaries of State.

14. *Lords of manors, &c. may surrender courts, with consent of persons interested.*—That it shall be lawful for the lord of any hundred, or of any honour, manor, or liberty, having any court in right thereof in which debts or demands may be recovered, to surrender to her Majesty the right of holding such court (for any such purpose, with the consent of any steward or other officer, if any, having a freehold office in such court), or upon the next vacancy in any such freehold office; and from and after such surrender such court shall be discontinued, and the right of holding such court shall cease, and all proceedings commenced in such court may thereafter be continued, and shall be enforced and executed, as if they had been commenced under the authority of this Act in a county court holden for the district in which the cause of action arose; but no person shall be entitled to claim any compensation under this Act by reason of any such surrender: Provided always, that the surrender of the right of holding any such court for the recovery of debts and demands shall not be deemed to infer the surrender or loss of any other franchise incident to the lordship of such hundred, honour, manor, or liberty, and that the court thereof may be holden for all other purposes, if any, incident thereunto, as now by law it may.

15. *Appointments of judges who have previously officiated in any county court, not subject to 5 & 6 Vict. c. 122.*—That the appointment of any person who at the passing of this Act shall by any of the titles herein-before specified preside in or hold any court constituted or held under any of the Acts cited in either of the said Schedules (A) and (B), to be the judge of any county court, shall not be deemed an appointment to hold a public office or employment within the meaning of an Act passed in the sixth year of the reign of her present Majesty, intitled "An Act for the Amendment of the Law of Bankruptcy," so as to deprive him of any compensation to which he may be entitled under the said Act.

16. *For supplying vacancies among the judges of the county court.*—That from time to time when any judge appointed under this Act shall die, resign, or be removed, and the district for which he was appointed shall not be consolidated with any other district, another judge shall be appointed who shall be a barrister-at-law who shall be of seven years' standing, or who shall have practised as a barrister and special pleader for at least seven years, or who shall have been the county clerk of the same county at the time of the passing of this Act; and every such appointment shall be made by the Lord Chancellor, or, where the whole of the district is within the Duchy of Lancaster, by the Chancellor of the Duchy of Lancaster.

17. *Judges not to practise as barristers in their districts, except in certain cases.*—That no judge appointed under this Act shall during his continuance as such judge practise as a barrister within the district for which his court is holden under this Act, except those barristers already appointed to preside in or hold the said court, in Bath, Bristol, Liverpool, Manchester, Sheffield, Ecclesall, and Middlesex, and now

practising in chambers as conveyancing counsel, who may continue such practice.

18. *Judges of the county court removable for inability, &c.*—That it shall be lawful for the said Lord Chancellor, or, where the whole of the district is within the Duchy of Lancaster, for the Chancellor of the said Duchy, if he shall think fit, to remove for inability or misbehaviour any such judge already appointed or hereafter to be appointed.

19. *Districts of judges may be changed.*—That it shall be lawful for the Lord Chancellor or Chancellor of the said Duchy, within their several jurisdictions, to remove any judge from any district to which he shall have been appointed, for the purpose of appointing him to any other district in which the salary of such judge shall not be less than in the district from which he shall be so removed.

20. *As to the appointment of a deputy to a judge.*—That in case of illness or unavoidable absence, the cause whereof shall be entered on the minutes of the court, it shall be lawful for the judge appointed to hold any court under this Act, or, in case of the inability of the judge to make such appointment, for the Lord Chancellor, or, where the whole of the district is within the Duchy of Lancaster, for the Chancellor of the Duchy, to appoint some other person, who shall be a judge appointed under this Act, or who shall have practised as a barrister-at-law for at least three years, or as an attorney of one of her Majesty's superior courts of common law for ten years, but not then residing or practising as an attorney in the district for which the court is holden, to act as the deputy of such judge during such illness or unavoidable absence; and it shall also be lawful for the judge, with the approval of the said Lord Chancellor or Chancellor of the Duchy, to appoint a deputy, who shall be a judge appointed under this Act, or who shall have practised as a barrister-at-law for at least three years, to act for him for any time or times not exceeding in the whole two calendar months in any consecutive period of twelve calendar months; and every deputy so appointed, during the time for which he shall be so appointed, shall have all the powers and privileges and perform all the duties of the judge for whom he shall have been so appointed.

21. *Judges may act as justices if in the commission of the peace.*—That every judge of the county court whose name shall be inserted by her Majesty in any commission of the peace for the county, riding, or division of a county for which he is appointed judge of the county court may and shall act in the execution of the office of justice of the peace for the said county, riding, or division, although he may not have such qualification by estate or interest in lands, tenements, and hereditaments as is required by law in the case of other persons being justices of the peace for a county, provided that he be not disqualified by law to act as a justice of the peace for any other cause or upon any other occasion than in respect of the want of such an estate or interest as aforesaid.

22. *Judges, &c. appointed under this Act authorized to perform certain duties relating to matters depending in the Court of Chancery.*—That the judges and other officers to be appointed under this Act shall be authorized and required to perform all such duties in or relating to any causes or matters depending in the High Court of Chancery, or before any judge thereof, or before the Lord Chancellor in the exercise of any authority belonging to him, necessary or proper to be done in their respective districts, as the Lord Chancellor shall from time to time by any general order direct, and for this purpose, and subject to the general rules and orders of the said court, shall have and exercise all such authorities as may be duly exercised by the commissioners or other officers of the said court by whom such duties are now usually performed, and shall be entitled to receive the same fees and sums of money as are now payable in respect thereof, to be accounted for and applied by them as the other fees authorised by this Act to be received are directed to be accounted for and applied; provided always, that the future amount of such fees shall continue subject to the same authority for revising the same to which it is now subject.

23. *Treasury to appoint treasurers of courts holden under this Act.*—That the commissioners of her Majesty's Treasury of the United Kingdom of Great Britain and Ireland shall appoint so many persons as they shall think fit to be treasurers of the courts holden under this Act, and may remove any such treasurer, if they shall see occasion so to do, and appoint another person in his room; and every such treasurer shall be paid by salary in such manner and to such amount as the said commissioners from time to time shall order; and the salary of every such treasurer shall be paid out of the consolidated fund of the United Kingdom of Great Britain and Ireland: provided always, that the person appointed or acting as treasurer before the passing of this Act, to any court holden under any Act cited in either of the said Schedules (A) and (B) if not disqualified under this Act, shall be entitled to be the first treasurer of the same court respectively, when holden as a county court under this Act, in every case in which a separate treasurer shall be appointed exclusively for such court, and shall in such case continue to exercise his

office, subject to the power of removal provided in this Act.

24. *Appointment of clerks vested in judges, subject to approval of Lord Chancellor.*—That for every court under the authority of this Act there shall be a clerk, who shall be an attorney of one of her Majesty's superior courts of common law, and whom the judge shall be empowered to appoint, subject to the approval of the Lord Chancellor; and, in case of inability or misbehaviour, to remove, subject to the like approval; and, until otherwise directed by her Majesty, with the advice of her Privy Council, every such clerk shall be paid by fees as hereinafter provided; and in cases requiring the same, such assistant clerks as may be necessary shall be provided and paid by the clerk of the court.

25. *In populous districts Lord Chancellor may direct two clerks to be appointed.*—That it shall be lawful for the Lord Chancellor, in populous districts in which it shall appear to him expedient, to direct that two persons shall be appointed to execute jointly the office of clerk, under such regulations as to the division of the duties and emoluments of the said office, as shall be from time to time made by order of court, in case of difference between them, each of such persons being qualified as is hereinbefore provided in the case of a single clerk; and where under the provisions of any Act cited in either of the said Schedules (A) and (B) more than one clerk is now acting in and for the court holden under such Act, the same number of clerks shall be continued, unless it shall seem expedient to the Lord Chancellor to order that such number be reduced.

26. *In case of illness, &c. of clerk, a deputy may be appointed.*—That it shall be lawful for the clerk of any such court, with the approval of the judge, or, in case of inability of the clerk to make such appointment, for the judge to appoint from time to time a deputy, qualified to be appointed clerk of the said court, to act for the clerk of the said court at any time when he shall be prevented by illness or unavoidable absence from acting in such office, and to remove such deputy at his pleasure; and such deputy while acting under such appointment shall have the like powers and privileges, and be subject to the like provisions, duties, and penalties for misbehaviour, as if he were the clerk of the said court for the time being.

27. *Duties of clerks.*—That the clerk of each court, with such assistant clerks as aforesaid in cases requiring the same, shall issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of the said court, and keep an account of all proceedings of the court, and shall take charge of and keep an account of all court fees and fines payable or paid into court, and of all moneys paid into and out of court, and shall enter an account of all such fees, fines, and moneys in a book belonging to the court, to be kept by him for that purpose, and shall from time to time, at such times as shall be directed by order of the court, submit his accounts to be audited or settled by the treasurer.

28. *Offices of clerk, treasurer, and bailiff not to be conjoined.*—That it shall not be lawful for the clerk of any court holden under this Act, or the partner of any such clerk, or any person in the service or employment of such clerk or his partner, to act as treasurer or high bailiff of the court; or for the treasurer, his partner or clerk, or any person in the service or employment of such treasurer or his partner, to act as clerk or high bailiff; or for the high bailiff, his partner or clerk, or any person in the service or employment of such high bailiff or his partner, to act as clerk or treasurer of the court.

29. *Officers not to act as attorneys in the court.*—That no clerk, treasurer, high bailiff, or other officer of the court, shall, either by himself or his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the said court.

30. *Penalty of 50l. on non-observance of the two previous enactments.*—That every person who, being the clerk of any such court, or the partner of such clerk, or a person in the service or employment of any such clerk or of his partner, shall accept the office of treasurer or high bailiff of such court, or who, being the treasurer of any such court, or the partner of any such treasurer, or a person in the service or employment of any such treasurer, or of his partner, shall accept the office of clerk or high bailiff in the execution of this Act, or who being the high bailiff of such court, or the partner of any such high bailiff, or a person in the service or employment of any such high bailiff, or of his partner, shall accept the office of clerk or treasurer in the execution of this Act, and also every clerk, treasurer, high bailiff, or other officer of any such court who shall be, by himself or his partner, or in any way, directly or indirectly, concerned as attorney or agent for any party in any proceeding in the said court, shall for every such offence forfeit and pay the sum of fifty pounds to any person who shall sue for the same in any of her Majesty's superior courts of record, by action of debt or on the case.

31. *Appointment of bailiffs.*—That for every such court there shall be one or more high bailiffs, whom the judge shall be empowered by order of court to ap-

point, and in case of inability or misbehaviour, to remove by a like order; and every such high bailiff shall be empowered, subject to the restrictions hereinafter contained, by any writing under his hand to appoint a sufficient number of able and fit persons, not exceeding such number as shall be from time to time allowed by the judge, to be bailiffs, to assist the said high bailiff, and at his pleasure to displace all or any of them, and appoint others in their stead; and every bailiff so appointed may also be suspended or dismissed by the judge.

32. *Provision for the high bailiffs of Westminster and Southwark.*—That, until Parliament shall otherwise direct, the high bailiff of Westminster shall have the execution of all process issuing out of any of the said courts the jurisdiction of which shall include the city and liberty of Westminster or any part thereof, and shall be deemed the high bailiff of such courts; and the high bailiff of Southwark shall have the execution of all process issuing out of any of the said courts the jurisdiction of which shall include the borough of Southwark or any part thereof, and shall be deemed the high bailiff of such last-mentioned courts, and no other high bailiff shall be appointed for such courts.

33. *Duties of the high bailiffs, &c.*—That the said high bailiffs, or one of them, shall attend every sitting of the court, for such time as shall be required by the judge, unless when their absence shall be allowed for reasonable cause by the judge, and shall, by themselves or by the bailiffs appointed to assist them as aforesaid, serve all the summonses and orders, and execute all the warrants, precepts, and writs, issued out of the court; and the said high bailiffs and bailiffs shall in the execution of their duties conform to all such general rules as shall be from time to time made for regulating the proceedings of the court, as hereinafter provided, and, subject thereto, to the order and direction of the judge; and the said high bailiffs shall be entitled to receive all fees and sums of money allowed by this Act in the name of fees payable to the bailiff, out of which they shall provide for the execution of the duties for which such fees are allowed, and for the payment of the bailiffs and officers appointed to assist them, according to such scale of remuneration as shall be from time to time approved by the judge; and every such high bailiff shall be responsible for all the acts and defaults of himself and of the bailiffs appointed to assist him, in like manner as the sheriff of any county in England is responsible for the acts and defaults of himself and his officers.

34. *Provision respecting clerks and high bailiffs of courts under Act, cited in Schedules (A) and (B).*—That the persons holding the offices or performing the duties of clerks and high bailiffs in any court holden under any Act cited in either of the said Schedules (A) and (B) on the first day of June in this year, and who shall continue respectively to hold the same offices or to perform the same duties at the time when such Act shall be repealed under the provisions of this Act, whether or not qualified as hereinafter provided, shall be entitled, if not disqualified under this Act, to be the first clerks and high bailiffs of the same court, when holden as a county court under this Act, and shall continue to execute their several offices, subject to the power of removal provided in this Act, except that the clerks and high bailiffs already appointed to any court named in the said Schedule (A) shall be removable only for such cause as would have warranted their removal under the Acts according to which their court is now holden; and where, under the provisions of any of the said Acts, more than one clerk was on the said first day of June, and shall be, when such Act shall be repealed, under the provisions of this Act, acting in and for any of the said courts, or in and for any district or division of any court, the same persons shall jointly execute the office of clerk of the same courts as aforesaid, under such regulations as to the division of the duties and emoluments of the said office as shall be from time to time made by order of court, in case of difference between them: provided always, that if the clerk of any court cited in the said Schedule (A) shall, within one calendar month next after the repeal of the Act under which it is now holden, decline to accept the office of clerk to the same court as holden under this Act, it shall be lawful to the Commissioners of her Majesty's Treasury, if they shall think fit, to take into consideration the special circumstances of each case, and to award such compensation to be paid to such clerk as under the circumstances they shall think reasonable, in the manner herein provided in the case of persons whose emoluments will be diminished or taken away by this Act.

35. *Provision respecting the officers of the two courts at Bristol.*—And whereas the jurisdiction of the court of conscience in the city of Bristol, under the provisions of an Act passed in the first year of the reign of her Majesty, and cited in the Schedule (A) to this Act annexed, extends to the recovery of debts and demands not exceeding forty shillings: and the jurisdiction of the court of requests in the said city, under the provisions of an Act passed in the fifty-sixth year of the reign of King George the Third, and also cited in the said Schedule (A), extends to the recovery of debts and

demands above forty shillings and not exceeding fifteen pounds; be it enacted, That in case the persons now holding the offices of registrar and clerk and deputy registrar of the said court of conscience shall continue to hold the same offices respectively when a court shall be established in the said city of Bristol under the provisions of this Act, they shall be entitled to hold the office and execute the duties of clerks of any such court in all causes and matters relating to debts, claims, and demands not exceeding forty shillings, under such regulations as to the division of the duties and emoluments of the said office as shall be from time to time made by order of the court, in case of difference between them; and in case the person now holding the office of clerk of the said court of requests shall continue to hold the same office at the time when such court shall be established, he shall be entitled to hold the office and execute the duties of clerk of any such court in all causes and matters relating to debts, claims, and demands exceeding forty shillings; and the said persons severally shall be removable only for such cause as would have warranted their removal under the several Acts according to which the said courts are now holden.

36. *Treasurers, clerks, and high bailiffs to give security.*—That the treasurer, clerk, and high bailiff of every court holden under this Act who may receive any monies in the execution of his duty shall give security, for such sum and in such manner and form as the Commissioners of her Majesty's Treasury from time to time shall order, for the due performance of their several offices, and for the due accounting for and payment of all monies received by them under this Act (or which they may become liable to pay for any misbehaviour in their office).

37. *Fees to be taken according to Schedule (D) and tables to be exhibited in conspicuous places; fees may be reduced; appropriation of surplus fees.*—That there shall be payable on every proceeding in the courts holden under this Act, to the judges, clerks, and high bailiffs of the several courts, such fees as are set down in the schedule marked (D) to this Act annexed, or which shall be set down in any schedule of fees reduced or altered under the power hereinafter contained for that purpose, and none other; and a table of such fees shall be put up in some conspicuous place in the court house and in the clerk's office; and the fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, on or before such proceeding, and in default, payment thereof shall be enforced by order of the judge by such ways and means as any debt or damage ordered to be paid by the court can be recovered; and the fees upon executions shall be paid into court at the time of the issue of the warrant of execution, and shall be paid by the clerk of the court to the bailiff upon the return of the warrant of execution, and not before: Provided always, that it shall be lawful for one of her Majesty's Principal Secretaries of State, with the consent of the Commissioners of her Majesty's Treasury, to lessen the amount of the fees to be taken in the courts holden under this Act in such manner as to him shall seem fit, and again to increase such fees, so that the scale of fees given in the schedule to this Act be not in any case surpassed; and in every court holden under this Act in which the fees allowed to be taken by the judges, clerks, or bailiffs of the court shall appear to be more than sufficient, it shall be lawful for the said Secretary of State to order that a certain part only of their fees shall be paid to them respectively, not exceeding, in the case of judges and clerks, the sums hereinafter mentioned as the greatest salaries to be by them respectively received; and in such case, and so long as such direction shall be in force, the amount of the residue of the fees shall be accounted for and paid to the treasurer of the court, and shall form part of the general fund of the court; but no such order shall be made to reduce the fees of any of the judges, clerks, and officers of any court mentioned in the said Schedule (A) (so long as they shall be paid by fees) below the average amount of their fees or emoluments during the seven years next before the passing of this Act, with a reasonable increase for any increase of business which they may severally have to perform by reason of this Act.

38. *Compensation for persons whose rights or emoluments will be diminished.*—That every person who is entitled to any franchise, right of appointment, or office, under any of the Acts under which any court mentioned in the said Schedule (A) is holden, and every person who shall have been entitled to any fees or salary for his services in the execution of any of the same Acts, or for the issue of any writs to the sheriff out of the High Court of Chancery, and also every person who is entitled to any franchise or right of appointment to hold office in any court in any district in which the county court had not jurisdiction before the passing of this Act, and in which district a court shall be established under the provisions of this Act, and also every person holding any office in any such last-mentioned court whose franchise or right of appointment or office shall be affected, abolished, or taken away, or whose emoluments shall be diminished or taken away under the operation of this Act, shall

be entitled to make a claim for compensation to the Commissioners of her Majesty's Treasury within six calendar months after the passing of this Act, or after the alteration of such court; and it shall be lawful for the said commissioners, in such manner as they shall think proper, to inquire what was the nature of the franchise or right of appointment, and what was the tenure of any such office, and what were the lawful fees and emoluments in respect of which such compensation should be allowed; and the commissioners in each case shall award such gross or yearly sum, and for such time as they shall think just, to be awarded upon consideration of the special circumstances of each case; and all such compensations shall be paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland: Provided always, that if any person holding any office in any of the said courts shall be appointed after the passing of this Act to any public office or employment, the payment of the compensation awarded to him under this Act, so long as he shall continue to receive the salary or emoluments of such office or employment, shall be suspended if the amount of such salary or emoluments is greater than the amount of such compensation, or if not, shall be diminished by the amount of such salary or emoluments: Provided also, that nothing in this Act contained shall be deemed to entitle any person to compensation for the loss or diminution of the profits of any office to which he shall have been appointed under any Act containing a provision, either that he is not to be entitled to compensation for the loss or diminution of the profits of his office, or that such Act should cease on or within a limited time after the passing of any general Act for the recovery of small debts, or under the provisions of either of the said Acts of the eighth year of her Majesty and of the ninth year of her Majesty.

39. *Officers of courts may be paid by salaries instead of fees.* If court abolished, no compensation allowed except in certain cases.—That it shall be lawful for her Majesty, with the advice of her Privy Council, to order that the judges, clerks, bailiffs and officers of the courts holden under this Act, or any of them, shall be paid by salaries instead of fees, or in any manner other than is provided by this Act; and if her Majesty shall be pleased, with the advice aforesaid, to make such order, or to order that any such court shall be abolished, or that the district for which any such court is holden shall be consolidated with any other district, or if any Act shall be passed whereby it shall be provided that the said Courts or any of them shall be abolished, or otherwise constituted than is provided by this Act, no such clerk or bailiff, nor any judge, county clerk, treasurer, or other officer of any such court, shall be entitled to any compensation on account of ceasing to hold his office, or to receive the fees allowed by this Act, or on account of his emoluments being affected by such abolition or alteration, unless he shall have presided or acted as judge, assessor, county clerk, treasurer, clerk, bailiff, or other officer, before the passing of this Act, in any of the courts mentioned in schedule (A) to this Act annexed, in which case he shall be entitled to compensation for the loss of his fees or emoluments, in like manner and subject to the same regulations as he would have been entitled thereto under the provisions herein contained in case he had been deprived of any fees or emoluments by reason of the passing of this Act; and in such case all sums payable in the name of fees to such officers of the court as shall be paid by salaries shall be paid from time to time to the treasurer of the court, who shall pay the said several salaries out of the proceeds of such fees, and the surplus shall form part of the general fund of the court; and whenever the net amount of the fees shall not be sufficient to pay the said several salaries, the deficiency shall be made good and paid out of the consolidated fund of Great Britain and Ireland.

40. *Limiting amount of salaries to be paid under this Act.*—That the greatest salaries to be received in any case by the judges and clerks of the courts holden under this Act shall be twelve hundred pounds by a judge, and six hundred pounds by a clerk, exclusive of all salaries to his clerks employed in the business of the court, and other expenses incidental to his office, unless in the case of any judge or clerk of any such court acting in the same capacity before the passing of this Act in any Court mentioned in the said schedule (A), whose salaries shall not be limited to any sum less than the average amount of the fees and emoluments of their respective offices during the seven years next before the passing of this Act: provided always, that it shall be lawful for the Commissioners of her Majesty's Treasury to allow in each case such sum as they shall in each case deem reasonable to defray travelling expenses, with reference to the size and circumstances of each district.

41. *Fees and fines to be accounted for to treasurer.*—That the clerk of every court holden under this Act, from time to time as often as he shall be required so to do by the treasurer or judge of the court, and in such form as the treasurer or judge shall require, shall deliver to the treasurer a full account in writing of the fees received in that court

under the authority of this Act, and a like account of all fines levied by the court, and of the expenses of levying the same, and shall pay over to the treasurer, quarterly or oftener in every year, by order of the court, the monies remaining in his hands over and above his own fees, and such balance as he shall be allowed by order of the court to retain for the current expenditure of the court.

42. *Clerk's accounts to be audited and settled by treasurers.*—That the treasurer of every court holden under this Act shall from time to time, quarterly or oftener, as shall be directed by order of the court, audit and settle the accounts of the clerk and other officers of the court, and shall receive the balance of the various monies which such clerk and other officers shall have received under this Act, and shall pay over to the judge of the court the amount of his fees, and make all such other payments as it shall be requisite to make thereout in accordance with the provisions of this Act, and shall from time to time pay the balance remaining in his hands, or so much thereof as he shall be directed to pay, into such bank, or otherwise as shall be directed by the Commissioners of her Majesty's Treasury.

43. *Treasurer of the court to render accounts to audit board.*—That the treasurer of every court holden under this Act shall once in every year, and oftener if required, on such day as the Commissioners of her Majesty's Treasury from time to time shall appoint, render to the commissioners for auditing the public accounts of Great Britain a true account in writing of all monies received, and of all monies disbursed by him on account of every court holden under this Act of which he is treasurer, during the period comprised in such account, in such form, and with such particulars of receipt and disbursement, or otherwise, as the said commissioners of audit shall from time to time require.

44. *Commissioners of Treasury to direct how balances shall be applied.*—That the Commissioners of her Majesty's Treasury shall from time to time make such rules as to them shall seem meet for securing the balances and other sums of money in the hands of any officers of every court holden under this Act, and for the due accounting for and application of all such balances and other sums of money.

45. *Accounts of treasurers to be audited under powers of 25 Geo. 3, c. 52.*—That the accounts to be kept by the several treasurers on account of the said courts shall be examined and audited by the commissioners for auditing the public accounts of Great Britain, under the powers vested in them under an Act of the twenty-fifth year of the reign of King George the Third, intitled "An Act for the better Examining and Auditing the Public Accounts of this kingdom," and under any Act now in force, or otherwise howsoever, except so far as the same are varied by this Act.

(To be continued.)

REPORT ON PRIVATE BILLS.

THE select committee appointed to examine the applications for local acts during this session of Parliament; to examine especially in respect to the Bills for the erection of new waterworks, drainage, and paving, and improvements, according to the recommendations made by the commissioners of inquiry into the means of improving the health of towns and densely populated districts; and to ascertain how far the principle of their recommendations may be carried out in relation to the Bills proposed, and whether any and what measures may be recommended for adoption by the House thereon;—have considered the matters referred to them, and have agreed to the following report:—

"Your committee, in the first place, directed their attention to the Bills introduced this session, and specially referred to them, for the erection of new waterworks, for draining, paving, and town improvements; and after inspecting the reports made by the commissioners of inquiry into the means of improving the health of towns, and densely populated districts, and after examining several of the commissioners personally, taking other evidence respecting these matters, and carefully weighing and considering the same, they entirely concur in the general views of the commissioners: and your committee are of opinion that these local Bills, which have, to a certain extent, been improved by a partial adoption of the recommendations of the said commissioners, might have been still further improved by a fuller adoption of such recommendations, and by the introduction of provisions which have been shown by the reports of the said commissioners, and also by the evidence given before this committee, to be essential for the protection of the public interest.

"The commissioners, among other things, recommend that authority to construct such local works should not be granted without a previous local examination by competent and responsible public officers, in a mode analogous to that adopted by the tithe, the inclosure, and the tidal harbours commissions.

"That such works, both as to their construction and maintenance, should be subject to the super-

vision of some responsible public department, and should be authorized only upon pre-arranged terms and conditions of re-purchase on behalf of the public.

"That all waterworks, all works for drainage of towns, for sewerage and for paving, should, if possible, be carried out under one and the same local authority; and your committee entirely agree in these recommendations.

"Further, the commissioners recommend that the sanction of the legislature should be withheld from Bills for schemes which involve an undue competition between separate establishments for the same objects within the same district or field for supply; because experience has shown that the conflicting operations of such parties have been invariably attended with much needless expenditure, and, after a period of mutual injurious rivalry, have generally ended in coalition; and your committee are of opinion that considerable injury to the public interest has been sustained owing to that recommendation not having been adopted.

"It has been shewn to your committee that disease and excessive mortality (caused by defective drainage, want of properly distributed supplies of water, &c.), prevail often as intensely in the poorer towns and villages as in the more populous districts, for which Bills of this class are proposed, though such remedial measures are at present placed quite out of their reach.

"Your committee, however, while engaged in considering the matters specially referred to them, had their attention forcibly drawn to the fact, that most of the defects in the present mode of private legislation are not peculiar to those classes of Bills, but are general in their application to the whole system; and the difficulty of considering the defects of one or more such classes separately from the others became so apparent that your committee, instead of confining themselves to a limited view of the subject, found it necessary to extend their inquiry to the whole system of private legislation, with respect to which they would submit the following observations and recommendations to the House:—

"They would in the first place remark, that under the present system the expenses of maintaining the most necessary or desirable private Bill are grievously and needlessly heavy, while the great mass of these so-called private Bills (excluding those which are in their nature personal, such as divorce and estate Bills) materially affect public interests, and are, although local, essentially public Bills.

"That with respect to these local Bills, the chief imperfection of the present system of legislation arises from the fact that no provision is made for furnishing the committees which sit upon them with complete and trustworthy information, either with regard to the local evils requiring remedies, or with regard to the bearing which the provisions proposed in them may have upon the general law of the country.

"As the public are not represented before the committee by any competent or duly qualified person, the committee, when the Bill is unopposed, are wholly dependent for information on the interested representations of the promoters; and where it is opposed, they have, in addition, only the representations of parties not in the least more likely to be disinterested than the promoters; inasmuch as the expenses of opposition are such as to deter all parties from venturing to undertake it, except those whose interests are directly affected by the project, and who are also possessed of considerable means. The consequence is, that under the present system the interests of the public at large, who have neither the means of obtaining detailed information as to the proposed measures, nor the means of defraying the expenses of opposition, are often greatly prejudiced by local Acts. That besides this there are moreover often introduced into local Bills provisions of the most objectionable nature, some varying or interfering with the general statute or common law of the country; some, though ordinary in their nature, yet of a perplexing and needless diversity in form; and, finally, some so contradictory and mutually discordant as to render their enforcement impossible, and to make the law doubtful and embarrassing, even to those who are professionally versed in it.

"Your committee would further remark, that it appears, by reference to the index of the statutes, that in the period which elapsed from the union with Ireland to the termination of the last session of Parliament, near 9,300 local and personal Bills passed into law, and only 5,300 public statutes; but, to the pressure of private business, especially during the last two sessions, they prefer appealing to the experience of members of the House, rather than to the statements of witnesses, or the statistics of Parliamentary returns.

"Influenced by these considerations, your committee have come to the following resolutions, upon the two heads into which the subject seems naturally to divide itself:—

"The 1st. Relating to those cases in which the necessity of legislation to Parliament may be superseded by public general Acts, to be adopted and carried out under the sanction of a responsible department.

"The 2d. Relating to those cases in which it will still be necessary that the sanction of Parliament should be obtained.

I. PUBLIC GENERAL ACTS.

"Your committee are of opinion that it is desirable, in cases in which only ordinary powers are sought, that means should be afforded to the parties of carrying their projects into execution under the authority and supervision of one of the public boards or departments, without the necessity of applying to Parliament.

"That for this purpose, public general Acts should be passed on the several subjects of sewerage and waterworks, paving, lighting, police, and watching, markets, and every other class of private Bills, excluding those which are in their nature personal, on a principle similar to that which has been already carried into effect by the 3 and 4 Wm. 4, c. 90, for lighting in England; by the 9 Geo. 4, c. 82, for lighting, &c. in Ireland; and by the 3 and 4 Wm. 4, c. 46, for police in Scotland.

"That every such public general Act should set forth the conditions on which any corporation, parish, company, or other parties may be invested with the powers conferred by such general Act, and should also specify the public board or department of the government under whose authority such powers are to be conferred; such boards and departments being the Home Office, the Board of Trade, the Admiralty, the Commissioners of Woods and Forests, the Inclosure Commissioners, or others, as the case may be.

"That amongst the provisions so to be specified in each public general Act, the following seem to be expedient, namely,

"That a memorial, for authority to put in force the powers of the Act, be presented to the proper board or department.

"That such memorial shall state the objects of the promoters; the public utility of the measure; the local situation of the work; the estimated expense; the means by which the necessary funds are to be raised, and the periods over which the charges or repayments are to be distributed.

"That, within a limited time, similar information on those points shall be given to all parties interested, and to the neighbourhood, in the manner required by the standing orders in the case of private Bills; and that a printed copy of such memorial, together with plans and sections, estimates, subscription contracts, and all other appropriate information, shall, in a similar manner, be lodged at the office of some local functionary; and that duplicate copies of the same documents be likewise lodged with the department at the same time.

"That all parties interested shall be permitted, within a given time, to lodge, for public inspection, in the office of the local functionary, written suggestions, objections, or amendments to the measure proposed, which shall in due time be forwarded to the department.

"That the department shall thereupon depute one or more qualified inspectors (at the expense of the promoters) to proceed to the locality, and there, after due notice—

"1st. To inquire in open court, whether the provisions of the public general Act as to notices, deposit of documents, and all other legal requirements, have been duly complied with.

"2ndly. To inquire as to the merits of the case, both by evidence in open court, and by personal inspection;

"And then to make a written report on both points to the department.

"That the department, exercising its discretion on both the above points, shall thereupon determine whether authority shall be given for the exercise of the powers of the Act; and if so, upon what terms and conditions; and that such authority be conferred by a legal document, according to a form to be appended to the Act. But that in any case in which private property may appear to the department to be seriously interfered with, such authority shall be withheld, and the parties be left to the ordinary mode of proceeding by application to Parliament.

II. PRIVATE BILLS.

"That, in the opinion of this committee, it would be desirable that similar proceedings should be adopted in the case of all private Bills relating to the above-mentioned classes of subjects; by requiring—

"That all applications for such Bills should, previously to the session of Parliament, be referred to the proper board or department, as above; and,

"That such department should appoint one or more inspectors to proceed to the spot to take evidence, both as to compliance with the Standing Orders and upon the merits of the measure, in the manner above recommended, and to make a separate report upon each of these points; such reports to be referred respectively to the committee on Standing Orders and to the committee on the Bill. If, as would be most desirable, the House of Lords should think

proper to adopt a similar course of proceeding, the same inspectors might report to both Houses.

"That the committee are of opinion that such local investigation would be of incalculable advantage—

"1. In diminishing the great expenses now incurred by parties for the attendance of agents and witnesses in London.

"2. In saving a large portion of the time of members of the House, now consumed in the sub-committees on petitions for private Bills, and in the committees on Bills; and

"3. In supplying to committees on Bills that local and trustworthy information which, under the present system, appears to be so much wanted.

"If, however, the House should not be prepared, at the present advanced period of the session, for the immediate adoption of the system recommended, involving, as it would, the most extensive changes in the Standing Orders, the committee would urge the subject on the early attention of the House in the next session of Parliament, when its deliberations on this point might be materially assisted by having under its consideration the public general Bills above mentioned, which they hope will be prepared during the recess.

"That, with the view of an immediate saving of time and expense in the proof of Standing Orders, the committee recommend that, in the ensuing session of Parliament, the proof of Standing Orders now taken before the sub-committees shall be taken before an officer, or officers, to be appointed by the Speaker, who shall commence his sittings for that purpose on the 1st of January, 1847; that every petition for a Bill, with a copy of the Bill annexed, shall be lodged in the Private Bill Office on or before the 24th of December; and that no Bill be permitted to be read a first time until the report of such officer shall have been presented to the House; and further, that to facilitate this object, all plans, &c. shall be deposited, and all applications shall be made to landowners and occupiers on or before the 30th of November. It has been suggested that the officers above-mentioned might hold their sittings in other places beside London.

"That in case such report should allege compliance with the Standing Orders, it shall be final; and in case it should allege non-compliance, it shall be referred to the committee on Standing Orders, as at present; and the officer by whom the report was made shall attend before the committee, for the purpose of furnishing them with any additional information.

"That, in case such officer shall feel doubts as to the due construction of any standing order in its application to a particular case, he shall make a special report of the facts; which report shall be referred to the committee on Standing Orders, who, after hearing the opinion of such officer, as well as the arguments of the agents, on the point of construction, shall determine whether or not the Standing Orders have been complied with; and shall either return the report, with their decision, to the House, or shall proceed to consider the question of dispensing with the Standing Orders as the case may be.

"CONSOLIDATION ACTS.

"That great evil results from the want of a strict uniformity of legislation with reference to all private Bills, but more especially with reference to police Bills and Bills for the improvement of towns.

"That for the purpose of remedying this evil, it is expedient that Acts be passed upon the same principle as those passed in the last session, called the Lands Clauses Consolidation Act, and the Railway Clauses Consolidation Act.

"That such Acts be prepared during the recess, to effect the following objects:—

"Police and watching.

"Waterworks and sewerage.

"Lighting.

"Improvement of towns and regulation of buildings and streets and roads.

"Markets and fairs.

"Cemeteries.

"Bridges and ferries.

"Harbours, docks, ports, piers, and quays.

"Canals, rivers, and navigation.

"That there be a schedule attached to each of these Acts prescribing the form of private Bill, by which any place or party may be put under the provisions (in whole or in part) of any one or more of the above-named Acts.

"That all private Bills be drawn according to such form, except where the circumstances of the case require a deviation from it. That in all such cases the cause of such deviation be inserted in the preamble; and that it be the duty of the committee upon the Bill to decide and report specially upon the necessity of such deviation.

"That in the notices of any applications to Parliament for a Bill, wherein it is proposed to make such deviation, the intention shall be inserted in such notices.

"That as doubts and uncertainty, as to the provisions of the law, are caused by a multiplicity of Acts for the same object in any locality, it is desirable

ble that when any corporation, parish, company, or other parties, invested with the powers, or acting under the provisions of any existing local Act or Acts, shall apply to Parliament for a new Bill, with new and amended powers and provisions, having reference to the same matters, it shall be imperative on them to send their new Bill, together with all previous existing Acts on the same subject, in force within the same corporation, parish, or district, to the Board of Trade, who shall report their opinion to the House whether the new Bill shall be allowed to proceed, or whether all the existing Acts shall be repealed, and the powers and provisions of such repealed Acts, together with the new or amended powers and provisions sought for, should be consolidated, to the intent that only one local Act shall be in force at the same time, in the same place, with reference to the same object.

"TAXATION OF COSTS.

"That although the fees payable to Parliament on local and private Bills are fixed and known, yet the charges of solicitors and agents for promoting or opposing such Bills are very uncertain and often very extravagant; and as there is no scale established by Parliament for such charges, it is desirable for the protection of the public that a proper taxing officer, such as is attached to courts of justice, should be appointed under the authority of the Speaker, and a scale of taxation be authorized and published by him for the guidance of all parties promoting or opposing local and private Bills.

"That the taxing officer shall present to the House, at the commencement of each session, an account of the total amount of the expenses for promoting or opposing of each Bill taxed and sanctioned by him during the preceding session, distinguishing the amount paid as fees on each Bill to each of the Houses of Parliament, the amount for witnesses, and other expenses, and for professional services.

"In conclusion, your committee urgently recommended to the immediate attention of the House the propriety of taking, before the close of the session, preparatory measures for the adoption of the recommendations of this committee, in order to protect the public in future from the evils proved, by the concurrent testimony of all the witnesses examined by your committee, to exist in the present system of conducting private and local legislation.

"3rd August, 1846."

THE MAGISTRATE.

Summary.

NOTHING calling for remark has offered during the week. Some abstracts of new statutes governing the cases which fall under magisterial jurisdictions are given below.

PAWNBROKERS' SHOPS.—On Wednesday the Act to regulate the hours of business in pawnbrokers' shops, which was passed on Friday, was printed. It will take effect in the course of the present month. The following is the enacting clause:—"That from and after the 29th September next, after the passing of this Act, no pawnbroker shall receive or take in, or permit or suffer to be received or taken in, any goods or chattels, by way of pawn, pledge, or in exchange, before eight of the clock in the forenoon, or after seven of the clock in the evening, between the 29th September and the 25th March following; or before seven of the clock in the forenoon, or after eight of the clock in the evening, during the remainder of the year, excepting only until eleven of the clock on the evenings of Saturday throughout the year, and the evenings next preceding Good Friday and Christmas-day, and on every fast or thanksgiving day appointed by her Majesty; and in case any pawnbroker offend against the provisions of this Act, every such pawnbroker shall, for every such offence, on conviction thereof upon the oath of any one or more credible witness or witnesses, before any one or more of her Majesty's justices of the peace, having jurisdiction over the place where such offence shall have been or shall be committed, forfeit and pay not less than 20s. nor exceeding 5l. as such justice or justices shall adjudge; and every such penalty shall and may be levied, together with the costs attending the information, summons, and conviction, by distress and sale of the goods and chattels of the offender or offenders, or person or persons liable to pay the same respectively, by warrant under the hand and seal of any justice or justices before whom such offender or offenders, person or persons, shall or may be convicted; and every such penalty shall be applied and disposed of in like manner as forfeitures incurred for every offence against the last-recited Act" (the 39th and 40th Geo. 3, c. 99).

CONTAGIOUS DISEASES PREVENTION.—The Bill authorises any town council or other similar body having jurisdiction in a corporate town, drainage commissioners, or poor-law guardians, on receipt of two medical men's certificate vouching the existence

of any public nuisance, to lodge a complaint with two justices of the peace. The justices, on being satisfied with the validity of such complaint, are required to make an order for the cleansing, whitewashing, or purifying of any dwelling-house or other building, or for the removal of the nuisance complained of in the certificate. If this order is disobeyed, the complaining parties are to have the power of entering upon the premises and of themselves carrying these remedial measures into effect. The expenses so incurred may be recovered summarily from the owners of the property in question. The president of the council or any three members of that board (of whom the Lord President or one of the Secretaries of State is to be one) are empowered to issue orders at any time to prevent the spreading of contagious or epidemic diseases in England. All penalties leviable under this Act are to be applied towards the relief of the poor. All orders made by the Privy Council are periodically to be laid before Parliament. Provision is made for the payment out of the poor-rates of such expenses as are not defrayed by the owners of the property complained against.

EMPLOYMENT OF CONVICTS.—It was stated in the last annual report of the Inspectors of Millbank Prison, that arrangements had been made for supplying the convicts, both male and female, with work during their voyage to the places to which they were transported; and in the report just issued a very satisfactory account is given of the good effect which employment has produced upon the discipline of the ship and the health and conduct of the prisoners, as also of the amount of work executed. Several of the surgeons-superintendent have asserted that more than double the amount could have been executed, had sufficient materials been placed on board. An increased supply has, in consequence, been provided. It is added by the Inspectors in their last report, just printed, "These results of the experiments of furnishing work to the convicts during the long voyage to Australia are highly gratifying, and reflect much credit on the officers in charge of the ship, and on the prisoners."

The following buildings are certified as places duly registered for solemnising marriages, pursuant to an Act of the 6 & 7 Wm. 4, c. 85:—Queen-street Chapel, Aberystwyth. Hugh Hughes, superintendent registrar.—Independent Chapel, Bromyard, Herefordshire.

THE LAWYER.

Summary.

AMONG the subjects which will occupy the attention of the Legislature early next session, are those of the Acts for the Emfranchisement of Copyholders, and the Enclosure Act; to amend both of which Mr. AGLONBY proposes to bring in Bills shortly after the meeting of Parliament. What the changes are which he proposes have not transpired. As much of the Small Debts Bill as our columns this week will admit, may be found under the proper heading in the department "Legislator."

NOTES ON RECENT CASES IN EQUITY AND CONVEYANCING.

No. III.

Box v. Box, Box v. JACKSON,
1 Drury, 42.

What are the rights of the husband and wife over the wife's reversionary interest in personal chattels?

By indenture of settlement bearing date the 17th day of December, 1810, and made between E. Box, of the first part, T. Gurly and Sarah his daughter, of the second part, and P. Newton and E. Butler, of the third part, being the marriage settlement of E. Box and Sarah Gurly, two sums of 500l. were vested in P. Newton and E. Butler, upon trust for the said E. Box and Sarah, his intended wife, for their lives and the life of the survivor; and after the decease of such survivor, in trust for all and every the child and children of the marriage, to be paid in such shares as E. Box should by will appoint, and, in default of appointment, share and share alike. The marriage took place, and there was issue, three daughters, who became entitled to the principal sum of 1,000l. in equal shares (subject to their mother's life interest) in 1824, in which year the father, without having executed his power of appointment, died.

One of the daughters (Elizabeth) married Mr. John Wilmot, and attained her age on the 5th of May, 1834, and her sisters, Anne and Sarah, attained their ages respectively on the 3rd of September,

1840, and the 13th of July, 1842. At the beginning of 1843 (the fund being, in consequence of prior proceedings taken in Court, and the dividends being regularly paid to the widow) an arrangement was made by the three daughters to transfer the principal sum to their mother, and accordingly a consent was drawn up dated 4th February, 1843, to that effect, which was signed by the two unmarried daughters, *the married daughter and her husband*. An application having been made at the Rolls to make that consent a rule of Court, and refused by his Honour, a similar application was made before the Lord Chancellor (Sir E. Sugden), who, having referred to the facts of the case, and stated his impression to be, that, where all parties concurred, the consent of the wife might be taken, if her interest were dependent upon some collateral event, in fact, upon any event or contingency, except that of surviving her husband, declined, nevertheless, to decide so important a question upon a summary application, but gave leave to file a bill.

A bill was accordingly filed, setting forth the trusts of the settlement, and the facts of the case, and praying that the consent of the 4th of February, 1843, might be acted upon; that the trusts of the deed of settlement might be declared at an end, and that the Accountant-General might transfer the principal sum to Sarah Box.

The cause, coming on upon bill and answer, was argued at length before the Lord Chancellor, assisted by the Master of the Rolls (Ireland), who severally pronounced very elaborate decisions (occupying in the report thirty-two pages), and having reviewed all the cases bearing upon that subject, agreed in holding that the consent of the wife, even after an examination in Court, could not operate to bar, transfer, or affect her reversionary share of the fund, so as to preclude her right to it, in case she should survive her husband.

1. The first question which presents itself for consideration, as to the power of dealing with the reversionary interest of a married woman in personal chattels, is, whether the husband can, during the coverture, with or without the wife's concurrence, absolutely assign for a valuable consideration her reversion (not bequeathed or settled to her separate use), so as to preclude the right of the wife surviving? And this question, though far a long time vexed, is now satisfactorily settled.

The leading, though not the first, case upon the point, is *Purdew v. Jackson*, 1 Russ. 1. At the date and in the argument of that case, it was admitted that where the husband's assignment of his wife's reversionary interest in personal chattels was voluntary, or where it was a general assignment under the bankruptcy laws, its effect would certainly not be to debar the right of the wife surviving (*Grey v. Kentish*, 1 Atk. 280; *Gager v. Wilkeson*, 1 Bro. C. C. 50; *Mitford v. Mitford*, 9 Ves. 87, 99); and it was also not denied, that the husband's assignment would be equally ineffectual to defeat the right of his wife surviving where her interest could not by possibility accrue during the coverture—i. e. where it could only accrue after the death of the husband. (*Richards v. Chambers*, 10 Ves. 580; *Seaman v. Duill*, *ibid.*) But it was thought that the claims of the particular assignee, being a purchaser for valuable consideration, stood much higher than those of either a mere voluntary assignee or a general assignee by the operation of law; and that therefore, in all cases where the wife's reversionary interest could possibly accrue during the coverture, the title of the former under the husband's assignment would supersede the right of the surviving wife upon the accrual. And this was the very question discussed with great learning and ingenuity, and decided with no less talent and sagacity in *Purdew v. Jackson*. In a previous case, *Hornesky v. Lee*, 2 Madd. 16, the same, or nearly the same point had arisen, and had been disposed of; but there the assignment had merely been a collateral security, and the wife's reversionary interest was contingent; and an attempt was made to distinguish the two cases on those grounds. But the authority of *Hornesky v. Lee* was likewise called in question, and its soundness, according to the assertion of Sir Edward Sugden, was at the time generally doubted by the Profession. See, too, *Johnson v. Johnson*, 1 Jac. & W. 472, which Sir Thomas Plumer decided contrary to his subsequent opinion in *Purdew v. Jackson*. In the latter case it was contended with great, though not with a conclusive force of argument and authority, that the assignment by the husband for valuable consideration was binding upon the

wife surviving, and in favour of that doctrine the rule laid down by Lord Holt, in *Gage v. Grey v. Acton*, 1 Salk. 326, was cited, viz. "Where the wife hath any right or duty, which by possibility may happen to accrue during the coverture, the husband may, by release, discharge it; but where the wife hath a right or duty which by no possibility can accrue to her during coverture, the husband cannot release it;" and the following observations in the *Duke of Chandos v. Talbot*, 2 P. Wms. 608, were also relied on:—"Though a chose in action, as a bond, &c. was not, in strictness of law, assignable, yet in equity it was, as every day's practice shewed; that though the wife was an infant when the assignment was made, yet that could not be material, for if she had been of age and joined, the deed as to her would have been void, and she might have pleaded *non est factum*; but being a personal thing, the husband alone might assign it; and with regard to its being a contingency until the wife should come to her age of twenty-five, it had been determined that the possibility of a term, viz. where a term was devised to A for life, remainder to B for the residue thereof, such possibility might be assigned by the husband alone, as appeared from the case of *Theobald v. Duffay*, 2 Mod. 102, decreed first by Lord Macclesfield, approved afterwards by the present Lord Chancellor (King), and last of all by the House of Lords." So in the case of *Lord Cartaret v. Paschall*, 3 P. Wms. 197, before Lord Chancellor King, "it was agreed, that where the baron is thus (that is, in right of his wife), entitled to a chose in action, as he may release or forfeit it, so if he should assign it for a valuable consideration, it would be good." In *Bates v. Dandy*, 2 Atk. 108; *Grey v. Kentish*, 1 Atk. 280; and *Hawkins v. Obys*, 2 Atk. 549, Lord Hardwicke (it was said) had laid down *dicta* to a like effect; and of those *dicta* Sir W. Grant had expressed his approbation, (9 Ves. 99-102). Such were the principal authorities put forward in support of the husband's power to defeat, by assignment, the interest of the wife surviving; and upon principle it was contended that the assignment was tantamount to a reduction into possession of the chose in action,—a reduction into possession being capable of being effected, not merely by the actual receipt of the thing itself, but by the husband dealing with it as his own—by his altering the property in it.

But even a second argument, enforced with all the acumen of Mr. Sugden, assisted by the late Mr. Girdlestone, did not remove the impression which the Master of the Rolls (Sir T. Plumer) had (contrary, however, to his original opinion, *supra*) entertained from the commencement of the case; and that profound lawyer, in a judgment especially worthy of perusal, decided that the husband had no power to defeat by assignment, even for valuable consideration, the claim of his surviving wife. Borrowing the language of Mr. Roper (Law of Husband and Wife, 1, 202), he said "marriage is only a qualified gift to the husband of his wife's choses in action—viz. upon condition that he reduce them into possession during its continuance; for if he happen to die before his wife, without having reduced such property into possession, she, and not his personal representatives, will be entitled to it;" and he assigned as the reason for this rule, that the right of property in a personal chattel is inseparable from the possession. If you have not the possession, you may have an immediate right of action, but till you recover possession of the chattel, you have not the right of property." At the time, then, when the assignment was executed, the property was a chose in action; it was not, it could not be, in possession; and, consequently, it clearly was not the property of the husband. The assignment could not alter its nature, and could not, therefore, in any sense be tantamount to a reduction into possession. Such was the doctrine of the law, and the maxim of the Court of Chancery was, that equity followed the law. Authority, too, the Master of the Rolls asserted to be strongly against the husband's power to defeat the right of the wife surviving. Lord Holt's *dictum* in *Gage v. Acton* was on a point altogether different, and was laid down in support of an opinion upon which the majority of the Court were against him. Besides, it applied merely to releases—and between releases and assignments there was no close analogy. Many of the cases cited, also, referred, not to personal chattels, but to chattels real (as terms for years, &c.), but the interest in a term of years was not a chose in action, it was a legal interest

which did not lie in action, and might pass by assignment (see the subsequent cases of *Donne v. Hart*, 2 Russ. & M. 360; *Major v. Laneleg*, 2 Russ. & M. 355, *et infra*); and such cases ought, therefore, to be put aside as having in strict reasoning nothing to do with the question. *Grey v. Kentish* was in favour of the wife's right of survivorship, and the *dicta* of Lord Hardwicke by no means assisted the case of the assignee. As applied to the question before him, the Master of the Rolls was unable to recognise any difference between a particular assignment for valuable consideration, and a general assignment in bankruptcy; and the remarks of Sir W. Grant, in *Milford v. Milford*, applied to the one case as forcibly as to the other. *Woollands v. Croucher*, 12 Ves. 177; *White v. St. Barbe*, 1 Ves. & Beames, 405; *Richards v. Chambers*, 10 Ves. 580; and *Pickard v. Roberts*, 3 Mad. 385, all supported the conclusion to which, after repeated consideration, he arrived, "that all assignments made by the husband of the wife's outstanding personal chattel which was not, or could not be, reduced into possession, whether the assignment were in bankruptcy, or under the Insolvent laws, or to trustees for payment of debts, or to a purchaser for a valuable consideration, passed only the interest which the husband had, subject to the wife's legal right by survivorship." And the doctrine thus laid down has been followed and confirmed in *Honner v. Morton*, 3 Russ. 65, by Lord Lyndhurst; in *Watson v. Dennis*, 3 Russ. 90; and in *Stamper v. Barker*, 5 Madd. 157, by Sir John Leach; and by Lord Cottenham, in *Stiffe v. Everitt*, 1 Mylne & Cr. 37; and in *Bar v. Jackson*, the case before us, it is recognised as settled law.

As corollaries from, or as propositions involved in, the above rule, it has been held that,

Where personal property is bequeathed in trust for a person for life, with remainder as to a part, in trust for another person for life, with remainder to a woman who afterwards marries; and after her marriage and the death of the first taker, such property is settled upon her children, in pursuance of articles entered into before her marriage, when she was under age, and then before the property is transferred from the names of the executors of the will into the names of the trustees of the settlement, the husband dies, leaving his wife surviving, the trusts of the settlement do not bind that part to which the wife, at the time of the settlement, was entitled in remainder on the death of the second taker, nor are they binding even on that part to which, at the time of the settlement, the wife was entitled in possession in consequence of the death of the first taker, notwithstanding it might and ought to have been transferred into the names of the trustees of the settlement in the husband's lifetime, and notwithstanding the maxim, that equity looks on that as done which ought to have been done. (*Elwin v. Williams*, 7 Jur. 337; *Ellison v. Elwin*, 13 Sim. 309.)

And where a legacy is given to a woman, who afterwards marries, to be paid after the decease of another person, and she and her husband assign the legacy for valuable consideration in the lifetime of that person, and the husband survives such person, but dies leaving his wife surviving, without having reduced the legacy into possession, the assignment is void against the wife. (*Ashby v. Ashby*, 1 Coll. 553.)

Where, also, personal property is bequeathed upon trust for a person for life, with remainder to a woman who marries and afterwards separates from her husband, and by a deed of separation she assigns part of her reversionary interest to the husband, such assignment is not binding upon her after surviving her husband. (*Stamper v. Barker*, 5 Madd. 157.)

And where stock is limited by a marriage settlement upon trust for the separate use of the wife during the joint lives of the husband and wife, with remainder, in case she should survive him, upon trust for her, her executors, administrators, and assigns, but in case she should die in his lifetime, upon trust for such persons as she should by will appoint, and in default thereof upon trust for her, her executors, administrators, and assigns, and she executes a bond during the coverture, and survives her husband, it will not bind her property. (*Lee v. Muggieridge*, 1 Ves. & B. 118.)

Not an exception to the rule which governs all the above cases, but the converse of it, is the case of *Ripley v. Woods*, 2 Sim. 165; it being there held that where personal property is bequeathed to a

married woman, by way of remainder after a life interest in another, and the husband becomes bankrupt, and then the tenant for life dies, and afterwards the wife dies and the husband takes out administration to her, the property cannot be retained by the husband, but belongs to his assignees, because the husband had an incipient right to a chose in action at the time of his bankruptcy, and the event happened on which he was enabled to reduce it into possession.

The reader will not fail to have observed that in *Purdew v. Jackson*, and in the subsequent case the wife either joined with the husband in the assignment of her reversionary interest to a third person, or, as in *Stamper v. Barker*, herself signed it to the husband; and that, therefore, the rule is that the husband's assignment, with or without the wife's concurrence, cannot defeat the right of the wife surviving.

2. And this brings us to the question more immediately raised in *Bar v. Jackson*, whether as a mode of consent on the part of the wife, such as her consent in Court, or after an examination in Court, will induce a Court of Equity to transfer that right which it holds to be otherwise incapable of assignment by the husband, either with or without the wife's concurrence. But that question is well deserving of a separate consideration.

J. W. B.

AMERICAN OPINIONS OF THE ENGLISH LAW COURTS.

(From the *United States Law Journal*.)

Fertile as London is in places and persons of interest to an intelligent foreigner, there are, perhaps, no places more interesting to an American lawyer than the English Courts, and no persons whom he more desires to see than the high functionaries engaged in the administration of the English law.

Perhaps the most striking and noticeable characteristic of the proceedings of the English courts is the rapid and yet not hurried manner in which the business is despatched. There is no confusion, no bustle; but there is no pause. When a case is called on for trial, it must be at once tried or disposed of in some way. You rarely, if ever, see the counsel for one party rise at such a moment, with a pocket full of affidavits, and proceed to read them very much at his leisure, consuming the time of the Court, and keeping the business waiting. "Are you ready for the plaintiff, Brother Sharp?" asks the judge. "Yes, my lord," replies the barrister. "Is the counsel for the defendant ready?" No one answers. "Let a default be entered. *Brown v. Smith* stands next." And *Brown v. Smith* is on trial in a moment. The first witness takes the stand. The leader for the plaintiff rises at the same moment, and proceeds to interrogate him briskly and pointedly, and never sits till he is done with him. Meanwhile the junior is taking minutes, and there is no waiting for moving of pens, folding of papers, opening and shutting of tobacco-boxes, chatting with clients or the miscellaneous hangers on of a court-room, or laboriously reducing to writing every syllable uttered by the witness. As soon as the plaintiff's counsel has finished his interrogatories, the defendant's counsel is on his feet, and at work with great vigour; and the instant he concludes, the sharp cry of the usher, "Step down, sir," is uttered, and the witness vanishes in a second, and another takes his place.

The arguments of counsel, whether addressed to the Court on questions of law, or to a jury, are remarkable for brevity and point. There is no wandering from the question at issue, no waste of labour upon irrelevant or inconsequential points, no personalilities, no bombast, no high-flown flourishes of rhetoric, no long-winded and pointless stories, no wearisome iteration and re-iteration of the common-place axioms of the legal profession. Nothing can exceed the summary manner in which motions and questions of law are disposed of. It is the *ne plus ultra* of dispatch, consistent with thoroughness and accuracy. In citing authorities, a barrister would as soon think of reading the litany as reading the entire case. The book, page, and title of the action is given, and the sentence relied upon read, in general without more, the Court being supposed to recollect the facts, and to be familiar with the reasonings. Of course, at times, you hear the facts stated, but always succinctly and very briefly. The art of condensing into a nutshell a statement of facts which an American lawyer would feel justified in spending half an hour in narrating seems to be perfectly understood, and almost universally practised. The Court are fully awake, and the barristers speak as if the motto were ever in their minds—"Millions are behind us." If you would be impressed with a value of half hours and minutes, spend a day at Westminster-hall.

We are a people of many words, and love sincerely to hear the sound of our own voices, and to enjoy the surprise of discovering with what ease we can string sentences together, and the reputation of having

spoken for six hours, or ten hours at one time, and upon a single provocation. In England, however, whether at the bar or in the legislature, it is quite the reverse. The rule seems to be to use as few words as possible, and every one of them to the point.

In respect to elocution and all that comes within the phrase, "manner of speaking," the English bar can claim no superiority over our own, if, indeed, it be not decidedly inferior. An American is surprised to hear so few persons speak what he calls good English. The counsel for the plaintiff addresses the jury with an Irish brogue so thick and rich that you can scarcely understand what he is saying; while his antagonist replies in accents which so clearly indicate the "land o' cakes," that you can almost see its lakes and mountains. The different local dialects of England are not unrepresented, but Yorkshire responds to Devonshire, and Cornwall to Northumberland, and London to all of them, in the course of a single sitting. The gestures, too, are for the most part inelegant and awkward, the language less fluent and ready, the general air more laborious than we are accustomed to observe in our own advocates of the same relative eminence. It would seem, indeed, that very little attention had been given to the cultivation of a good style of speaking, and the utmost unconsciousness on the subject appears to prevail. So long as what he says bears upon the point, and takes the ear of the court or jury, as the case may be, the advocate seems to deem it of comparatively trifling importance how he says it. On he goes, cutting and slashing away at the Queen's English, nominative cases seeking in vain for agreeing verbs, parenthesis within parenthesis, broken sentences remorselessly left to gather up their *disjecta membra* as they can, but all the while never forgets a fact or point that makes for his own case, or which can be turned to advantage against his adversary. The argument is never lost sight of. With many of our speakers, on the contrary, it would be difficult to collect the fragmentary morsels of argument which float upon the rushing tide of their mellifluous eloquence, and we often feel inclined to repeat, in reference to their efforts, the criticism of the clown, who had read through the dictionary,—"the words are very good, but I don't quite understand the story."

Nor are the bar alone entitled to the credit of brevity and conciseness. The same characteristics distinguish the bench, and in an equally high degree. When the Court takes time to consider, the case is indisputably one of some intricacy. Motions involving the rights and franchises of cities, boroughs, and gigantic corporations, affecting immense sums of money, determining questions of the deepest public and private interest, and hinging often upon very nice points of technical law, are settled instantly upon the termination of the arguments, and judgment pronounced extemporaneously, and in the fewest possible sentences. No time is taken to draw up diffuse disquisitions upon every single point of law, which may have been mooted in the course of a hearing. Nor is it deemed necessary that the judge, on every occasion, should exercise his learning and attainments by fortifying each successive point, doubtful or not, with a long array of authorities. But he seems to feel that his time belongs to the public, and that he has no right to employ it but in their service. Business presses, and must be done—not talked about, but performed, finished. Great interests always stand waiting; great is the amount of property involved, the number of persons affected, and the legal principles at issue. Expedition, therefore, which is generally a convenience, and sometimes a virtue, is there a necessity. Yet is this expedition attained not by whipping and spurring, not by sharp and brilliant anticipations of what witnesses or counsel could say, not by arbitrarily cutting cases short and summarily silencing remark. The necessities of society, if nothing better, have taught all concerned in the administration of the law their true places and functions, and they seem to conspire harmoniously in effecting the grand results for which laws are made and courts of justice established. The "patience and gravity of hearing" which Bacon commends, his successors well illustrate. The natural consequence is, that they are addressed by the Bar with uniform courtesy and respect, and listened to with marked deference. Business is thus done pleasantly as well as expeditiously; and good temper and good manners may be learned not less than good law. Of course, these remarks are to be understood generally. Particular exceptions doubtless exist, but they do not deserve to be noted, as they do not mar the total impression upon the mind of a stranger.

On the whole, no lawyer can visit the courts of Westminster Hall, and watch the course of business day after day, without being as forcibly impressed with the learning, labour, and ability of the men who fill the high judicial stations of England, as with the magnitude and intrinsic importance of the causes which come before them for decision. Nor can he well depart without feeling that a wise and able administration of the law is one of the chief glories of an enlightened state, and that no expenditure can be deemed excessive which may be necessary to secure

the highest character and ability for the performance of the arduous duties of the judge. The English judges have "permanent and honourable salaries," and therefore they are what they are. To the citizen of Massachusetts, the reflection can hardly fail to occur that, in his own state, the amount of judicial compensation is carefully calculated and grudgingly doled out, and the retrenchment of a few hundred dollars in this item of public expenditure is thought to constitute a valid title to public gratitude on the part of its perpetrators. It is, however, somewhat consolatory to know that badly as our judges may be treated, and poorly as they may be paid, the judicial office has thus far fallen upon men of sufficient weight of character to resist these sinister influences, and that nowhere, perhaps, is justice more ably, wisely, uncorruptly, and mercifully administered than in the commonwealth of Massachusetts.

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

Her Majesty has appointed the Right Hon. Gilbert Earl of Minto, Lord Keeper of the Privy Seal, to be a member of the Committee of Council to superintend the application of any sums voted by Parliament for the purpose of promoting public education.

The Queen has been pleased to direct letters patent to be passed under the Seal appointed by the Treaty of Union to be made use of in place of the Great Seal of Scotland, nominating and appointing John Earl of Stair to be keeper of the said Seal.

The Queen has appointed O. Byrne, Esq. to be Surveyor for her Majesty's Settlements in the Falkland Islands.

The Queen has been pleased to appoint Edward Strutt, esq. to be one of the Commissioners of Railways, and also President of the said Commissioners.

The Queen has been pleased to direct letters patent to be passed under the Great Seal, granting the dignity of a Knight of the United Kingdom of Great Britain and Ireland unto David Pollock, esq. Chief Justice of the Supreme Court of Judicature at Bombay.

The Right Hon. Sir George Grey, Secretary for the Home Department, has appointed R. B. Crowder, esq. Q.C. Recorder of Bristol, in the room of the late Sir Charles Wetherell. The statement that Mr. Romilly, M.P. had received the appointment was erroneous.

LEGAL INTELLIGENCE.

PUNISHMENTS IN THE FRENCH ARMY.—An official report on punishments in the French army, during 1845, contains the following:—Of 334,091 men, comprising the municipal guard and the fire-brigade, such being the effective force of the army, 4,100 men had rendered themselves amenable to punishment, or a proportion of 1 in 84. Of this number 2,987 were sentenced, which gives a proportion of 1 to 112. The number of condemnations to *peines afflictives et infamantes*, that is to say, death, imprisonment, hard labour, solitary confinement, was 420. Condemnations to *peines correctionnelles* were 2,567. The *peines infamantes* inflicted were as 1 to 795. The *peines correctionnelles*, 1 in 130. Of 90 capital sentences, 85 were commuted by the royal mercy. Of the five who suffered death, one was for the assassination of a Frenchman in France, one for the murder of a Frenchman in Algeria, one for insubordination, in Algeria, and two for acting as spies against the French in Algeria. Among the volunteers the proportion is 1 accused in 27, and 1 condemnation in 35. Among the recruits the proportion is 1 accused in 103, and 1 condemned in 148. Substitutes, 1 accused in 51, and 1 condemnation in 68. In the cavalry, 1 condemnation in 134; in the infantry, 1 in 108. Artillery, 1 in 104; in the engineers 1 in 231. Among the veterans 1 in 177. Among the staff and scholars from military schools not a single case of reprimand. In the fire-brigade at Paris 4 condemnations in 653 men. The municipal guard only had 3 condemnations in an effective corps of 3,158 men. Among the gendarmerie, in 15,000 men there was only one case of reprimand and one condemnation.

The Civil Tribunal of the Seine has just been occupied with an application from the Duchess de Valencay, for a *separation de biens* from her husband, on the plea that her dowry was in danger from the losses which he had latterly experienced, from having entered into commercial speculations, and which had caused him to incur debts to the amount of nearly 1,000,000*fr.* Up to this time his creditors had refrained from pressing for the payment of their demands, as they had been assured that they would be settled with on the death of the Duchess de Montmorency. As that event had now taken place, law

proceedings had become imminent, and it was to secure the dowry of the Duchess de Valencay that the present application was made. M. Baroche, as counsel for the duke, stated that the position of that nobleman was excellent, and that it would be still more so at a future day, and that consequently the dowry of his wife was not exposed to the slightest danger. His debts, added the counsel, had been much exaggerated, and he had no reason to fear any legal proceedings. The tribunal, after due deliberation, gave judgment in favour of the demand of the duchess.

NEW POLICE COURT AT CLAPHAM.—A new police court is in the course of being erected in Larkhall-lane, Clapham; hitherto the police charges have been taken to Wandsworth.

THE NEW RAILWAY COMMISSIONERS.—By the second clause of the Act just printed (9 and 10 Vict. c. 105), the powers now vested in the Board of Trade respecting railways are to be transferred to the new commissioners "from and after the day which shall be so specified in the *London Gazette* as the day on which the said commissioners shall begin to act in execution of this Act."

Mr. W. Cole, formerly an attorney at London, died in Norfolk Castle, last week, in his 90th year. He was committed to prison for debt in January 1830, and remained there till the time of his death, never having been out of the walls of the prison sixteen years and eight months.

SUING A PASHA.—The *Gazette des Tribunaux* states that a cause was called on before the First Court of the Department of the Seine at Paris, on Friday week, in which his Highness Mehemet Ali, Pasha of Egypt, was defendant. It appeared from the pleadings that the Egyptian Government had engaged M. Solon, a former councillor of the Prefecture at Paris, to organize an academy of public administration in the city of Cairo. This project met with violent opposition from the Ulemas, and was, consequently, abandoned. M. Solon, on his return to France, cited Artim Bey, the representative of the Egyptian Government, before the courts of law. M. Solon demanded an indemnity of 90,000*fr.* and 12,000*fr.* for his travelling expenses. No person appeared for the Pasha of Egypt, and the Court condemned Artim Bey by default to pay to M. Solon the sum of 102,000*fr.*

STATISTICS OF PAUPER LUNATICS.—From a Parliamentary document, just printed, it seems that in January last there were as many as 16,310 lunatics and idiots chargeable in England, and 1,205 in Wales, making, with an estimate of 373 for places not in union with parishes, 17,887; of which number 9,719 were lunatics, and 8,175 idiots. The number in county asylums in England was 4,675; in licensed houses, 3,363; and in union workhouses, 4,397; whilst 3,873 were with their friends or elsewhere. In England 5 were under 5 years old, 61 from 5 to 10, 940 from 10 to 20, 3,158 from 20 to 30, 3,689 (the largest number) from 30 to 40, 3,584 from 40 to 50, 2,583 from 50 to 60, 1,575 from 60 to 70, and 699 from 70 years old and upwards. Of the 16,310 lunatics and idiots in England, 4,244 were dangerous to themselves or others.

BRITISH MUSEUM, NATIONAL GALLERY, &c.—The number of visitors to the British Museum during the years 1843, 4, and 5, has been as follows:—To the general collection, in 1843, 517,440; 1844, 576,758; 1845, 685,614. To the reading-room, 1843, 70,931; 1844, 67,511; 1845, 64,427. To the galleries of sculpture, 1843, 4,907; 1844, 5,436; 1845, 4,256. To the print-room, 1843, 8,162; 1844, 8,998; 1845, 5,904. For scientific and other purposes, on private days, 1843, 2,878; 1844, 2,823; 1845, 3,630. The number of visitors to the National Gallery in 1843 was 456,105; 1844, 681,945; 1845, 696,245. To the Tower there were, in 1843, 42,903; 1844, 43,948; 1845, 48,923. Hampton Court Palace, 1843, 176,334; 1844, 159,760; 1845, 160,791. The sum expended in the purchase of pictures for the National Gallery, up to the present time, is 114,804*l.* 16*s.*

NOTICE TO SUBSCRIBERS.

The volumes of the *LAW TIMES*, neatly, strongly, and uniformly bound, for 5*s.* 6*d.* each, with the name and address of the owner on the cover, 1*s.* extra, if sent to the office. If the numbers for binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

The numbers comprising the first volume of the *VERULAM REPORTS of Real Property and Conveyancing Cases* may also be transmitted for binding in like manner.

INDEX TO THE LAW.

The *LAW DIGEST* for the half-year ending Jan. 1 is now ready. It forms a complete Index to the Law decided during the half-year, and contains upwards of 2,000 cases. Price 5s. 6d. in a wrapper. Being stamped, it can be transmitted by post.

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

X. Y. Z.—We have not leisure for the search; if our correspondent has not the back Nos. of the *LAW TIMES* at command, he may easily get a sight of them at the office of some professional brother in his neighbourhood.

M. C. D. L. (Manchester).—We have again addressed our short-hand writer on the subject of the case alluded to; and he replies that the judgment certainly may have escaped him, but that he will apply to the proper quarter, procure and forward to the gentleman whose duty it is to appraise the argument with all practicable despatch.

P. R. A.—Had the communication not been so very long, we should willingly have given place to it; we commenced abridging it, but found they could not be done without nullifying the effect, and destroying the value, of the letter.

A. SUBSCRIBER (Bristol).—If our correspondent will refer to the *LAW TIMES*, No. 171 (for 11th July last), he will find that the unprofessional and even impudent circular to which he alludes has there been given, with caution to the profession not to be entrapped by it. Were the parties attorneys, we could shame them into propriety; as it is, we will consider if any and what steps can be taken to put an end to such audacious interference with the rights of the legitimate attorney.

G. M. (Leeds) will see that the space we can afford to such a subject is this week preoccupied. Attention, however, shall be given to his wishes in our next number.

H. H. B. (London).—The letter, though serviceable in parts, contains too much of personal history to be available.

SOLICITOR (Bradford).—The circular forwarded has already been commented on in this journal; and as another party has also complained of it, we have returned to it, as our correspondent will perceive, in this number.

* * Owing to an accident, we have been unable to give our usual list of *Heirs-at-Law* and *Next of Kin* this week; we shall, however, resume the publication of these notices next week.

SCALE OF CHARGES FOR ADVERTISEMENTS.

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N. B.—For Scales for Estate Advertisements, see *JOURNAL OF PROPERTY*.

THE LAW TIMES.

SATURDAY, SEPTEMBER 5, 1846.

THE SMALL DEBTS BILL.

The subject of most engrossing interest at present, and which, therefore, first demands our attention, is the above-named Bill. A reference to the clauses we have found space for in this number (the remainder shall follow with all possible despatch) will inform the reader that the Act does not come into immediate and universal operation, but when and where only the Privy Council shall determine—first giving a month's notice of their intention in the *London Gazette*. Nor can its machinery be put in motion at all until the rules of practice and forms of procedure for the Court shall have been framed and settled by the judges. We may, therefore, assume that none of these courts will be constituted for some weeks to come, consequently writs may be issued and debts recovered as hitherto, until these requirements have been fulfilled. It would seem from this deliberate mode of proceeding, and from the fact that the Act will only be extended to separate and perhaps remote districts at first, that its framers were not without misgivings as to its working, and that, after all, the scheme is but a tentative one, to be patched and "amended" (as the expression goes) hereafter, as circumstances may require.

One of the novel features of this Bill is the division of the country into districts for the

several courts irrespective of the boundaries of counties; and the direction of writs will disregard these limits and include the whole of the division belonging to the Court, even though it extend over two or more counties. This, among other provisions, is likely to give rise to much uncertainty and litigation.

The enactment that a judge shall not practise in the district wherein his court is situate, with the exception of recorders of certain cities and towns which are named, or as conveyancers, though it met, as might have been expected, an opposition in the daily journals by the Bar, was as necessary as it is proper. But the delegation of authority to the judge, empowering him to appoint treasurers, clerks, and high bailiffs to his court (all of whom must be attorneys), subject only to the approval of the Lord Chancellor—an exception that practically goes for nothing—we think perilous and undesirable, and could have wished to see this patronage confided to a higher, and less likely to be influenced, official.

In preference to commenting, however, on clauses which must have a trial, and making objections to them, which cannot at this time be productive of benefit, we think it best to give summarily, for the information of such of our readers as the Act has not reached, a glance at such of the most prominent features of this Act, as the clauses we have been enabled to insert this week does not comprehend.

First—,with regard to the jurisdiction of the Court, all suits must be by plaint; and summonses may issue from the court, though the cause of action may not have arisen in the district appertaining to it. Creditors may not divide any cause of action for the purpose of bringing two or more suits in these courts; but a plaintiff having cause of action for more than 20l. may abandon the excess in order to bring the cause into this court. This is an important privilege, and one which, if the law works well, will no doubt be largely turned to account when the excess is not large, as the costs in this court are extremely small. When parties require it, actions may be tried by a jury of five, on deposit of five shillings for the payment of such jury.

The courts will be held at such places within the district allotted to it, as shall be appointed by an order in council; and their jurisdiction embrace all actions of debt or damage up to twenty pounds, whether on balance of account or otherwise, with the exception, among others, of actions of ejectment, or involving title, for malicious prosecution, or for libel, slander, criminal conversation, seduction, or breach of promise of marriage. The provision admitting the recovery of twenty pounds on balance of account, it will be seen, opens the door to the trial of most important and heavy causes, since a balance of less than twenty pounds on a running or heavy account, of some hundreds, may involve inquiries of a very intricate nature.

Under this Act minors may sue for wages, and one of two or more persons jointly liable may be selected for suit. No evidence is to be given that is not in the summons; but parties to the action, their wives, and all other persons may be examined, and their evidence is admissible. Suits may be settled by arbitration, as heretofore. No actions may be removed into superior courts, unless the debt or damage exceed five pounds, and then only by leave of a judge of one of the superior courts. Orders for payment of debt and costs by instalments may be made by a judge of this court, who is armed with power to commit for contempt as well as fraud. Possession of small tenements may be recovered by plaint, and the landlord, having a lawful title, shall not be deemed a trespasser by reason of irregularity. Lastly, we may state, that by section 129, it is enacted that at the option of the party suing all actions and proceedings which, prior to the passing of the Act, might have been brought in one of the superior Courts of Record,

when the plaintiff lives more than twenty miles from the defendant, or when the cause of action did not arise within the jurisdiction of the court wherein the defendant dwells, may still be brought and determined in such superior court, thereby giving a power for concurrent jurisdiction, though not to the extent required by the deputation from the meeting of Solicitors at the Gray's Inn Coffee-house.

We have now particularized the most prominent features of this important Act; and in concluding our necessarily brief and imperfect notice of it, must candidly say, that, though it has been framed with any thing but liberality towards the heavily taxed body of Attorneys, it is a measure framed with excellent intentions, and calculated, with all its imperfections, to supply a want which has long pressed heavily upon the tradesmen of this country. It is impossible to foresee the full extent of the change this Act will eventually bring about in the economy of the Profession; whether, by means of it, Barristers, losing something of practice in the superior courts, may resort more to the provinces, or whether the Attorneys will not be almost the sole advocates who attend these courts.

SHAM LAWYERS.

AMONG the many who earn an unenviable subsistence by recovering debts without the authority of an attorney's certificate, and harassing and frightening simple people into payment of whatever may be demanded of them, is one Mr. DARLEY, of Stockport. Sometimes, we understand, his applications are issued in his own name, and sometimes as deputy for a Mr. FRAS. DICKIN, whose name we do not find in the *Law List*, and who, probably, is like Mrs. GAMP's friend, the notable Mrs. HARRIS—a personage who exists only in the imagination. At any rate, the proceedings of Mr. DARLEY are most irregular, and we warn him not to render himself in future obnoxious to the punishment which will visit him, if he persists in the course—we are advised he has now for some time followed. The following is one of Mr. DARLEY's menaces:—

Office, 179, Chestergate, Brinksway, Stockport, August 19, 1846.

SIR,—I am instructed by Mr. John Bradburn, to apply to you for the money you owe to him. And unless the same, together with the costs of this application, be paid into my hands on or before Saturday next, by twelve o'clock at noon, I shall issue a writ against you without farther notice.

I am, yours, &c.

FOR FRAS. DICKIN,
M. DARLEY.

Debt	£1	4	6
Costs	0	3	6
	£1	8	0

One Mr. KING GENN, of Cambridge, has taken upon himself the duties of an Attorney. We do not find his name in the last *Law List*, and have been assured that the party to whom the application for payment of the debt was made, never contracted the debt nor had a lever watch in his life. We publish Mr. GENN's letter.

13, Willow Walk, Cambridge, Aug. 21, 1846.

SIR,—A list of debts due to Mr. Joseph Hikman, watchmaker, &c. of Rose-crescent, having been placed in my hands, I beg to inform you that I find you indebted in the sum of seven shillings and sixpence, as per bill enclosed. The favour of the account in postage stamps, directed to me as above, within fourteen days, will oblige—Your most obedient,

KING GENN.

Crescent, Cambridge.

1843.	To J. Hikman.	s. d.
Ap. 28.	Repairing lever watch, and glass.	4 6
Nov. 23.	Cleaning a Geneva watch.....	3 0
		7 6

A firm at Islington, whose neatly lithographed circular, announcing their readiness to undertake the conduct in town of the miscellaneous business of an Attorney's office, "which is at present conducted by the agents

in London, at one-third the usual fees," we published in No. 171, July 11th, we find continue their practice of soliciting employment in the irregular manner we then censured. The distinction they have to observe between the strictly professional duties of an Attorney and those which may be discharged by a stock-broker or other agent, is so nice, that in the complexity of business transactions they will probably not always be vigilant enough to observe it. The first oversight of this nature they make, and which may reach us, shall assuredly be visited with that condign punishment which it deserves, and the recent narrow escape of OSBORNE should caution them to avoid.

LAW TIMES EDITION OF IMPORTANT STATUTES.

THE Edition of the Small Debts Act, by Mr. PATERSON, announced in our last and preceding numbers, with a careful Analysis and copious Index, is in forward preparation, and will be ready about the close of the week.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 6s.]

BIRTHS.

DICK.—On the 1st inst. in Cambridge-street, Hyde-park, the wife of Charles George Dick, esq. barrister-at-law, of a son.

WESTON.—On the 1st inst. at 5, St. John-place, Bath, the wife of Charles Henry Weston, esq. barrister-at-law, of a son.

MARRIAGES.

JERUWINE, George, esq. M.A. of Lincoln's-inn, to Mary, elder daughter of J. F. Hanson, esq. Kensington-gore, on the 1st inst. at St. Mary Abbott's, Kensington.

PITTS, Richard Waring, esq. eldest son of the late Samuel John Pitts, esq. of South-hill, county of Dublin, barrister-at-law, to Mary Anne, youngest daughter of the late Thomas Pendarves Smith, esq. M.D. on the 31st ult. at Walcot Church, Bath.

DEATHS.

LAMPERT, William, esq. of No. 19, Apollo-buildings, Walworth, and chief clerk of the Report-office, Chancery-lane, on the 29th ult. in the 64th year of his age.

SMITH, Charlotte Louisa, only daughter of Thomas Henry Smith, esq. solicitor, on the 29th ult. at Abbey-cottage, Hounslow, in her 15th year.

NOTICES OF NEW LAW BOOKS.

The Law of Extradition, comprising the Treaties now in force, &c. By CHARLES EGAN, Esq. of the Middle Temple, Barrister-at-Law. London: Robinson.

By the term Extradition is meant the arrangements made between nations for the mutual surrender, in certain cases, of persons fugitive from justice. It is a branch of law very ill understood by the Profession, and upon which information is difficult to be obtained when required. Mr. EGAN has, therefore, entitled himself to thanks for the publication of a little treatise, in which the entire subject is handled with much research and acumen. It comprises the treaties now in force between England and France, and England and America, with the recent enactments, and decisions thereon.

Mr. EGAN has added to the value of his work by the addition of some commentaries, pointing out the defects of that law as at present recognised, and its entire unfitness for the altered circumstances of society, with the rapid growth of facilities for locomotion.

The authorities differ upon the question whether the surrender of criminals by one civilized state to another, be an international duty. But all agree that the case of rendition must be one where the act done is equally a crime in both states. STORY contends that it is only a matter of comity.

In such a case of difference, it is most desirable that friendly nations should frame treaties upon the subject, by which any questions of right and duty may be avoided. Accordingly, those with whom we hold the most frequent communication, namely, France and America, have entered into formal arrangements with Great Britain, for the mutual surrender of fugitive criminals, greatly to the convenience of both the parties to the treaty. That with America was concluded in 1842; that with France in 1848.

The article in the American treaty is the 10th, and runs thus:—

Art. 10.—It is agreed that her Britannic Majesty

and the United States shall, upon mutual requisitions by them or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found within the territories of the other:—provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed; and the respective judges and other magistrates of the two governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

The Treaty with France is in the following terms. We extract the translation, or rather the English version of the duplicate treaty:—

Convention between her Majesty and the King of the French, for the mutual surrender, in certain cases, of persons fugitive from justice. Signed at London, February 13, 1843. (Ratifications exchanged at London, March 13, 1843.)

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and his Majesty the King of the French, having judged it expedient, with a view to the better administration of justice, and to the prevention of crime within their respective territories and jurisdictions, that persons charged with the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances be reciprocally delivered up:—

Their said Majesties have named as their Plenipotentiaries to conclude a Convention for this purpose, that is to say:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable George Earl of Aberdeen, Viscount Gordon, Viscount Foranish, Lord Uxbridge, Methuen, Tansley, and Kellie, a Peer of the United Kingdom, a Member of her Majesty's most Honourable Privy Council, Knight of the most ancient and most noble order of the Thistle, and her Majesty's Principal Secretary of State for Foreign Affairs;—

And his Majesty the King of the French, the Sieur Louis de Beaupol, Count of St. Aulaire, a Peer of France, Grand Officer of the Royal Order of the Legion of Honour, Grand Cross of the Order of Leopold of Belgium, his Ambassador Extraordinary to her Britannic Majesty;—

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:—

Art. 1.—It is agreed that the High Contracting Parties shall, on requisitions made in their name through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused of the crimes of murder (comprehending the crimes designated in the French Penal Code by the terms assassination, parricide, infanticide, and poisoning) or of an attempt to commit murder, or of forgery, or of fraudulent bankruptcy, committed within the jurisdiction of the requiring Party, shall seek an asylum, or shall be found within the territories of the other:—provided that this shall be done only when the commission of the crime shall be so established, as that the laws of the country where the fugitive or person so accused, shall be found, would justify his apprehension and commitment for trial, if the crime had been there committed.

Consequently, on the part of the French Government, the surrender shall be made only by the authority of the Keeper of the Seals, Minister of Justice, and after the production of a warrant of arrest or other equivalent judicial document, issued by a judge, or other competent authority, in Great Britain, clearly setting forth the acts for which the fugitive shall have rendered himself accountable;—and on the part of the British Government, the surrender shall be made only on the report of a judge or magistrate duly authorized to take cognizance of the acts charged against the fugitive in the warrant of arrest or other equivalent judicial document, issued by a judge or competent magistrate in France, and likewise clearly setting forth the said acts.

Art. 2.—The expenses of any detention and surrender made in virtue of the preceding Article, shall be borne and defrayed by the Government in whose name the requisition shall have been made.

Art. 3.—The provisions of the present Convention

shall not apply in any manner to crimes of murder, forgery, or fraudulent bankruptcy committed antecedently to the date thereof.

Art. 4.—The present Convention shall be in force until the 1st of January, 1844, after which date either of the High Contracting Parties shall be at liberty to give notice to the other of its intention to put an end to it; and it shall altogether cease and determine at the expiration of six months from the date of such notice.

Art. 5.—The present Convention shall be ratified, and the ratifications shall be exchanged at London at the expiration of three weeks from its date, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at London, the thirteenth day of February, in the year of our Lord one thousand eight hundred and forty-three.

(L.S.) ABERDEEN.

(L.S.) ST. AULAIRE.

It being considered that these treaties could not be legally enforced in England without violating the common law, two statutes were passed, namely, 6 & 7 Vict. c. 75, providing for rendition of criminals to France, and c. 76 of the same year, making a similar provision for American fugitives; which latter was amended by another statute of 8 & 9 Vict. c. 120.

Mr. EGAN then proceeds to review the cases that have occurred relative to the law of Extradition since these treaties have been in operation; the principal of which is *Reg. v. Clinton*, extracted from the LAW TIMES.

The following suggestion has our hearty concurrence:—

We would also suggest the propriety of Extradition conventions being entered into with Belgium, Holland, Austria, Prussia, and indeed, as far as possible, with every other civilized power; for, to use the language of an able and distinguished writer—

"In the whole extent of political states, there should be no place independent of the laws:—their power should follow every subject, as the shadow follows the body; sanctuaries and impunity differ only in degree; and, as the effects of punishments depend more on their certainty than their greatness, men are more strongly invited to crime by sanctuaries than they are deterred by punishment. To increase the number of sanctuaries, therefore, is to erect so many little sovereignties; for where the laws have no power, new wrongs will be formed in opposition to the public good, and a spirit established contrary to the welfare of the state."

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY

ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.

(Continued from page 463.)

When an estate tail will arise by implication.—In the case of a devise of real property, an estate tail may sometimes arise by implication, without any words of express devise. One of the instances in which this construction has been allowed has been where a testator devised his lands to a third party, in case a person who was his heir-at-law should die without issue (*Dy. 330; Walter v. Drew, Com. 372*), or without heirs (*Goodridge v. Goodridge, Willes, 369*); in which case the heir was held to take an estate tail by implication, and the limitation over was considered good as a contingent remainder. But this rule had no application where the devise over was in case a stranger should die without heirs, or issue, unless he takes some preceding estate under the will (*Gardiner v. Sheldon, Vaugh. 259; S. C. 1 Eq. Ca. Abr. 179, pl. 6*); and limitation over must have failed in the latter instance, as being an executory devise to take effect after an indefinite failure of issue. But with respect to wills made subsequently to 1838, as the 29th section of the new Act confines the dying without to the death of the party, the heir would not take an estate tail, but an estate in fee-simple, subject to a limitation over, by way of executory devise, which would now be good; the failure of issue under the construction of the above statute being restricted to the lifetime of a person in being. But it seems that the statute will not apply when the devise over is in case the heir should die without heirs, which would equally have raised the implication of an estate tail, as a limitation over, in case he should die without issue, would



have done (*Goodridge v. Goodridge*, Willes, 369); because the Act confines itself to the terms "dying without issue," which it limits to the death of the party, unless a contrary intention appears by reason of his having a prior estate tail or of a preceding gift, being without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise; neither of which occurs in the instance of a limitation over in case a party should die without heirs; consequently, it seems that a devise in the latter terms would receive the same construction now which it would have done previously to the passing of the Act.

Cross remainders.—Cross remainders between tenants in tail may also be ranked under the head of estates tail arising by implication without any direct words of devise. This happens when lands are given in undivided shares to two or more for particular estates, as a devise to A, B, and C, as tenants in common in tail, and for want of such issue to his testator's own right heirs; in which case the testator's intention would be construed to be, that the property should be enjoyed by A, B, and C, and their issue, as long as there shall be any such, and that on the death of either of the tenants in tail without issue, his share would go over to the survivors, so that nothing shall go over to the testator's heirs till after the determination of all the estates tail. In such case A, B, and C, take their original shares as tenants in common, and the remainders limited to them on the determination of the particular estates are known by the name of cross remainders. It has been said that as between two there is a stronger presumption in favour of cross remainders than between more persons, but no such distinction in reality exists: for cross remainders will not be raised between two unless an intention to that effect can be collected; and when that can be done, the same construction will apply equally to a greater number. (*Dy. 30; Wright v. Holford*, Cow. 31; *Phippard v. Mansfield*, Cow. 797). And notwithstanding it seems formerly to have been considered that the word "respective," or any word of similar import, was sufficient to repel the implication of cross remainders (*Comber v. Hill*, Str. 969; *Williams v. Brown*, ib. 996; *Davenport v. Oldis*, 1 Atk. 579; *Perry v. White*, Cow. 777), this doctrine has been since exploded, and it is now settled that the words "respectively," or "several and respective," or other words of similar import, are insufficient to prevent the implication of cross remainders. (*Watson v. Foxon*, 2 East, 36; *Staunton v. Peck*, 2 Cox, 8; *Doe dem. v. Webb*, 1 Taunt. 234; *Green v. Stephens*, 12 Ves. 419; 17 ib. 64). But in all the instances in which cross remainders have been raised by implication, the parties, though they took distinct shares, yet they all took them in the same property; for if a testator were to devise separate estates, as Blackacre to A, Whiteacre to B, and Greenacre to C, and afterwards to limit them over on all the devisees dying without issue, as the subject-matters of the devise would in that case be distinct and several, no cross remainders would be implied between them. (*Gilbert v. Wilby*, Cro. Jac. 655; S. C. Carth. 172; *Cole v. Levingston*, 1 Vent. 224; see also *Holmes v. Meynel*, 2 Roll. 1102; S. C. T. Jones, 172.)

Joint tenants and tenants in common.—The creation of an estate in joint tenancy, or in common, depends upon the particular wording of the instrument under which the tenant claims. In wills the construction is governed by the intent, and the leaning of the courts at the present day being against a joint tenancy, though formerly it was otherwise, they have allowed words to import a tenancy in common, which in a common law conveyance would have created an estate in joint tenancy. Thus, where the will contains any expressions importing a division, as equally to be divided (*King v. Rumball*, Cro. Jac. 448; *Blisset v. Cranwell*, 3 Lev. 371; *Bolger v. Mackell*, 5 Ves. 510); or to two or more equally (*Lewin v. Cox*, Cro. Eliz. 693; *Loveacree v. Blight*, Cow. 352; *Denn v. Gaskin*, ib. 957); or equally amongst them (ib. ib.); or part and part alike (*Heath v. Heath*, 2 A. R. 121); or "share and share alike" (*Campbell v. Campbell*, 4 Bro. C. C. 15); or "respectively" (*Ferret v. Frampton*, Sty. 434); or any other words which demonstrate an intention that the devisees shall take as tenants in common will create that estate (*Eltrecke v. Eltrecke*, Amb. 656; *Sheppard v. Gibbons*, 2 Atk. 444; *Perkins v. Baynton*, 1 Bro. C. C. 118). Still for all this,

unless there are some expressions in the will by which it can be made apparent that the testator contemplated a tenancy in common, the general rule of legal construction must prevail; consequently, a simple devise to persons will make them joint tenants, and this whether it be a devise of real property or a bequest of personal estate. (*Anon. Cro. Eliz. 131; Davis v. Kemp*, Carth. 4; S. C. 1 Eq. Ca. Abr. 207, pl. 7; *Shore v. Billingsley*, 1 Vern. 482; *Webster v. Webster*, 2 P. Wps. 347; *Willing v. Baine*, 3 ib. 113; *Barnes v. Allen*, 1 Bro. C. C. 181; *Campbell v. Campbell*, 4 ib. 15; *Morley v. Bird*, 3 Ves. 629; *Stuart v. Bruce*, ib. 632; *Whitmore v. Trelawny*, 6 ib. 129; *Crooke v. De Vandes*, 9 ib. 204; *Doe dem. Young v. Sotherton*, 2 B. & Ad. 628.)

As to executory trusts.—In the case of executory bequests, however, the construction would be otherwise; for there the Court will not direct a joint tenancy unless it is apparent on the face of the will that such was the testator's intention. (*Marryatt v. Townley*, 1 Ves. sen. 102.) And even where a testator has used the words "joint tenants," yet if an estate of that kind would be inconsistent with the general object of his will, the Court in decreeing a settlement would direct a conveyance to the parties as tenants in common, and not as joint tenants. Thus, where trustees were directed, as soon as the testator's daughters attained their respective ages of twenty-one, to convey to the heirs of their bodies, as joint tenants, and for want of such issue over, Lord Hardwicke decreed that the conveyance should be made to the daughters as tenants in common, with cross remainders between them, which he thought was the best mode of giving effect to the words. (*Marryatt v. Townley*, sup.)

When words importing a division will not create a tenancy in common.—Notwithstanding that a devise in words importing a division will, generally speaking, create a tenancy in common, yet this rule only prevails where the will contains no words to negative that intention; for where it has appeared that it was the intention of the testator that the share of any of the devisees should survive, an estate in joint tenancy has been held to pass, in order to carry out that intent, although words may have been employed which would otherwise have created a tenancy in common. (*Barker v. Giles*, 2 Ploms. 280; *Tuckerman v. Jefferies*, Holt, 370; S. C. 11 Mod. 108; *Frewin v. Relfe*, 2 Bro. C. C. 220; *Armstrong v. Eldridge*, 4 ib. 215.) Still, if there is an express gift to the survivor, the construction may be otherwise, as a tenancy with a benefit of a survivorship is a case which may exist without being a joint tenancy, because survivorship is not the only characteristic of a joint tenancy. (*Doe dem. v. Abey*, 1 Mau. & Selw. 128; see also *Blisset v. Cranwell*, 1 Salk. 226; *Stones v. Hewitly*, 1 Ves. jun. 165; *Cripps v. Wolcott*, 4 Mad. 11.)

On contingent remainders, conditional limitations, and executory devises.—In perusing an abstract, it will also be requisite to keep the distinctions between contingent remainders, conditional limitations, and executory devises constantly in mind.

Of the distinction between contingent remainders and conditional limitations.—A contingent remainder may be defined as an estate in remainder preceded by a previous estate of freehold, limited to take effect to a dubious and uncertain person, as to the eldest son of A, then unborn; or to the right heir of B, who is then still living; or upon an uncertain or dubious event, as to A for life, and in case B survives him, then with remainder to B for life, in tail or in fee, the very instant of its determination.

Distinction between a contingent remainder and a conditional limitation.—A conditional limitation renders it necessary that some act should be done, or that some event which will not certainly happen should take place before the limitation is to take effect, and which, when it occurs, has the effect of rescinding or destroying the preceding existing estate, and vesting the property in the party claiming under the condition. In this latter respect it differs materially from an estate in remainder, which, whether vested or contingent, never takes effect in abridgment of the preceding estate, but always awaits its original and regular determination. This distinction is very ably and accurately pointed out by Mr. Fearn in his valuable essay on contingent remainders, where he says (p. 14), "The true point of distinction, as I take it, be-

tween such conditional limitations over as are, and such as are not remainders in the strict sense of that word, lies here; the former are limited to commence where the first estate is, by the very nature and extent of its original limitation, to expire or determine; whereas the latter are limited so as to be independent of the measure or extent originally given to the first estate, and to take effect in possession upon an event which may happen before the regular determination to which that first estate is liable from the nature of its original limitation, and so as to rescind it. And in the latter case I apprehend it is the same thing, whether the whole is disposed of in the first limitation, or not. Thus, if I limit an estate to the use of A for life, or to the use of A indefinitely, provided that, when C returns from Rome, it shall thenceforth immediately be to the use of B in fee; here the first estate is an estate for the life of A (not an estate limited only till C's return); the remainder, therefore, of the whole fee in this case is what remains expectant on the determination of A's life estate, by such events as a life estate is liable to be determined by; and therefore, when, after such a limitation to A, I limit to the use of B till C's return to Rome, and so take up and make such new estate to commence and take effect in possession, not from any regular determination of the estate before limited to A (his estate being for life, and not merely until C's return from Rome), but from an event which may happen sooner, it is evident this limitation to the use of B is not confined to the remnant of the estate expectant on the particular estate before given to A, but may eventually interfere with, and in part repeal and defeat that first estate, instead of awaiting its final expiration or determination; and therefore it does not fall within the above definition of a remainder. But limitations of this nature are properly termed conditional limitations, to distinguish them, on the one hand, from conditions, of which only the grantor or his heir can take advantage, and, on the other, from remainders, in the strict and proper sense of the word, as above defined. And though these conditional limitations are not valid at common law, yet within certain limits they are good in wills and conveyances to uses."

Difference between an executory devise and a contingent remainder.—An executory devise differs from a contingent remainder in five essential particulars: 1st, because it is admitted only in wills, whereas a contingent remainder is admitted both in wills and deeds; 2nd, that an executory devise does not require any particular estate of freehold to support it, which is absolutely necessary to the existence of a contingent remainder; 3rd, that an estate by way of executory devise may be limited after an estate in fee-simple, which a contingent remainder cannot be; 4th, that as an executory devise does not, like a contingent remainder, require any particular estate to support it, it may be limited to commence in futuro, or by way of remainder expectant upon a term of years; 5th, that as the person who is to take under an executory devise has not a present but a future interest, his estate cannot be barred or destroyed by any alteration in the estate out of which, or after which, it is limited.

How contingent remainders might have been destroyed.—As it was necessary that a contingent remainder should be supported by a preceding particular estate of freehold, if that particular estate determined, the remainder determined also. Therefore, where there was tenant for life, with divers contingent remainders, he might not only by his death, but also by alienation, surrender, or other methods, have destroyed and determined his own life estate before any of those remainders became vested. As, for example: suppose A, tenant for life, with remainder to his eldest son unborn in tail, and A, before any son was born, had surrendered his life estate, he would thereby have defeated the remainder in tail to his son; for his son not being in esse when the particular estate determined, the remainder could not then vest; and as it could not vest then, it could never, according to the rules before laid down, have vested at all. This caused the introduction of trustees to preserve contingent remainders in settlements of real property, in whom the estate becomes vested in remainder for the life of the tenant for life to commence when his determines. If, therefore, his estate determines otherwise than by his death, the estate of the trustees for the residue of his natural life will take effect, and become a particular estate in possession sufficient to support the remainders depending in

contingency. (2 Blac. Com. 171, 172; Fearnie, C. R. 326.)

Recent enactments respecting executory devises and contingent remainders.—Formerly, contingent remainders were looked upon in a more favourable point of view than executory devises; the rule of construction being that whenever a future interest was capable of taking effect as a contingent remainder, it should never take effect as an executory devise. (*Purfoy v. Rogers*, 2 Saund. 380; *Walter v. Drew*, Com. 372; *Wealthy v. Bosville*, Rep. temp. Hardw. 258; *Carwardine v. Carwardine*, in Chan. 8 Jan. 1758; cited Fearnie, C. R. 388; S. C. 1 Eden, 27; *Tennyson v. Agar*, 12 East, 253; *Doe dem. Cholmondeley (Earl and Countess of) v. Masey*, ib. 589, 604; *Phillips v. Deakin*, 1 Mau. & Selw. 744.) But latterly, contingent remainders appeared to have been looked upon less favourably, and a recent Act of Parliament (7 & 8 Vict. c. 76, s. 8) actually went so far as to convert them all into executory devises. This singular legal metamorphosis which, during its ephemeral existence, excited no small amazement amongst the Profession, was, however, repealed in the following session, by statute 8 & 9 Vict. c. 106, but by the 8th section of which a very proper provision is made for protecting contingent remainders against the premature failure of the preceding particular estate. It is shortly as follows:—"That a contingent remainder, existing at any time after the 31st day of December, 1844, shall be, and if created before the passing of this Act, shall be deemed to have been, *etc.* capable of taking effect, notwithstanding the determination, by forfeiture, surrender, or merger, of any preceding estate of freehold in the same manner, in all respects, as if such determination had not happened."

(To be continued.)

THE WILL OF LORD CARBERY, late of Castle Freke, Ross Carbery, in Ireland, and of Laxton-hall, Northamptonshire, and of Belgrave-square, Middlesex, has just been proved in London upon the sentence of the Prerogative Court. The personal estate in England, within the province of Canterbury, was valued at 90,000*l.* His lordship from illness, and at his advanced age, having reached his 80th year, was unable to sign his name and title to his will, which was executed by procuration by the Very Rev. H. Newman, M.A. Dean of Cork, in his lordship's presence, and at his special direction, and in the presence of witnesses, on the 26th of April, 1845; his lordship died on the 19th of May following. The executors are, his relict Lady Carbery, and the Rev. J. Stopford, of Abbey Ville, Cork, and the Rev. J. Freke, of Kelscoe, Skibbereen, Ireland. He leaves to Lady Carbery the rents of his estates in England and Ireland for her life, and then to his nephew, G. E. Freke, eldest son of his late brother, P. E. Freke, who is to be permitted to occupy Castle Freke and Laxton-hall, and to receive 4,000*l.* a year, and increased to 5,000*l.* on marriage. The estates are entailed on his issue. Lady Carbery possesses a power of disposition over 6,000*l.* by will or otherwise, and to her is left the picture of Viscountess Sudley. The plate, jewels, books, and pictures, at Ross Carbery and Castle Freke to be held as heir looms with the Irish estates. The plate, books, jewels, pictures, prints, and paintings in England, together with the ring which was given by Queen Anne to G. Evans, who was created Lord Carbery in 1715, to be held and enjoyed as heir looms with the mansion-house of Laxton-hall. The possessor of his estates to obtain the royal licence to use the name and arms of Freke. Leaves to his nephews, P. E. Freke and F. E. Freke, 5,000*l.* each, from his estates in Ireland, on the demise of Lady Carbery; also legacies of 1,000*l.* each to other nephews at the same period. Immediate annuities, varying from 300*l.* to 500*l.* also to nephews; and to the Rev. J. Stopford, an executor, a legacy of 500*l.* Legacies to his steward, head gardener, and to his household servants. Directs that Castle Freke shall be the principal family seat and residence of the inheritor of his estates, who shall reside there at least four months in the year, with a suitable establishment, or he shall expend 2,000*l.* in each year he so neglects to reside thereon, to be laid out in the improvement of the estates. His seat in the cathedral church of Ross Carbery is to be kept in becoming repair, and leaves 1,000*l.* for the improvement of the church at Laxton. Any claimant of his estates becoming papist, or Roman Catholic, or shall intermarry with a Roman Catholic, their interest therein shall cease and determine, and go to the next in remainder, provided such party is a Protestant. The residue is left under the same trusts as the freeholds.

COST OF RAILWAYS.—The following is the cost per mile of some of the principal lines of railways in this country as given in the report of the Select Committee on Railway Acts Enactments just printed:—

	Average cost per mile.
Arbroath and Forfar ..	29,914
Chester and Birkenhead ..	34,108
Dublin and Drogheda ..	15,658
Dublin and Kingstown ..	59,128
Dundee and Arbroath ..	8,570
Durham and Sunderland ..	14,851
Edinburgh and Glasgow ..	35,924
Eastern Counties & North Eastern ..	46,355
Glasgow, Kilmarnock, and Ayr ..	30,607
Glasgow and Greenock ..	35,451
Greenland and Rochester ..	13,333
Great Western ..	43,985
Hartlepool ..	26,060
London and Birmingham ..	38,406
London and Blackwall ..	287,678
London and Brighton ..	55,981
London and Croydon ..	59,400
London and South Western ..	38,004
Manchester, Bolton, and Bury ..	70,000
Manchester and Birmingham ..	51,624
Manchester and Leeds ..	64,582
Midland ..	30,949
Newcastle, Darlington & Brandling ..	32,992
Newcastle and Carlisle ..	17,337
Newcastle and North Shields ..	14,323
Norfolk ..	13,150
North Union & Bolton & Preston ..	27,799
Preston and Wyrre ..	23,351
Sheffield and Manchester ..	49,543
South Eastern ..	44,413
Taff Vale ..	21,610
Ulster ..	14,394
York and North Midland, &c. ..	35,924

It is stated in the report that "the extravagant expenditure in England in buying off powerful landowners from whom opposition was anticipated, and in the proceedings before obtaining acts, no doubt swelled very much the outlay on many of the English lines."

The late Sir Charles Wetherell died intestate. Search for a will has been made without success at the residences of the deceased, in Berkeley-square, Stone-buildings, Lincoln's-inn, and Old House, Sussex. The personal funded property is estimated at upwards of 200,000*l.* principally invested in Venetian, Chile, and other foreign stock; and there being no surviving children, one-half of the same will be Lady Wetherell's share. The remainder will be equally divided among the brothers and sisters of the deceased. The landed and other property is valuable, and goes to the heir-at-law, the Rev. R. Wetherell. It consists of the mansion in Berkeley-square, a leasehold investment, purchased for several thousand pounds, from the Earl of Abergavenny, the residence and chambers in Stone-buildings, where he entertained the King of Hanover on two occasions during his last visit to this country, and lands in Sussex, Surrey, and Kent; the latter about 1,500 acres. For many years Sir Charles took a warm interest in agricultural matters; but on the passing of the Corn Law Repeal Bill, he expressed considerable fears as to its probable effects on the landed interest, and determined upon selling the farms which he possessed; but his fears after a short time subsided, and he resolved not only on retaining them, but on purchasing others; and it was while in the act of carrying out such intention that he met with the accident which in such a short time afterwards terminated fatally. The property in Sussex is situated near East Grinstead, and in Surrey near Chertsey.

Mr. Joseph Locke, the engineer to the London and South-Western Railway Company and the Yeovil line, is said to have become the purchaser of the manor of Honiton, including the whole of the borough. The purchase-money, it is believed, exceeds 80,000*l.*

The Glasgow, Kilmarnock, and Ardrossan Railway Company have recently purchased, for 208,000*l.* Ardrossan Harbour and Railway, from the Earl of Eglinton and other proprietors.

ATTEMPTED SALE OF SOUTHEAST PIER.—On Friday week this pier was put up to auction by Messrs. Shuttleworth and Sons, at the Auction Mart, by order of the Public Works Loan Commissioners, acting under the Act 5 Vict. 2, sec. 9, the commissioners being mortgagees in possession. The length of the pier is one mile and a quarter, and is broken into stages by stands, landings, and platforms, to enable steamboats and other vessels to land and embark passengers, at all periods of the tide. The company possessed the right of fishing and the use of forty bays of the pier for sea-baths, for twenty-five years from the Midsummer 1843, and they were empowered to take at the rate of 3*d.* per day, or 2*s.* per month, from each person, "for the liberty and privilege of walking on the pier." After much competition, the highest price offered was 16,900*l.* when the bidding was stated to be below the reserved sum.

The following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

For the first 70 words 5*s.*
For every succeeding 30 words . . . 1*s.*

THE MONEY MARKET.

	Bank.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols ..	96	96	96	96	96½	96½
Three per Cents. Reduced ..	94	94	94	94	94½	94½
New Three & a-quarter per Cts ..	98	98	98	98	98½	98½
Long Annuities ..	104	104	104	104	104½	104½
Bank Stock ..	200	200	210	210	210	210
India Stock ..	261	261	260	259	259	259
India Bonds, prem. ..	28	28	29	29	29	29
Exchequer Bills, prem. ..	20	20	20	20	20	20
FOREIGN.						
Spanish Five per Cents.	26	26	26	27	27	27½
Spanish Three per Cents.	30	30	30	30	30	30½
Russian ..	112	112	112	112	112	113
Peruvian ..	34	34	34	34	34	34½
Portuguese ..	47	47	47	47	47	47½
Mexican ..	25	25	25	25	25	25½
Deferred ..	16½	16½	16½	16½	16½	16½
Dutch Two-and-a-Half per Cents.	59½	59½	59½	59½	59½	59½
Four per Cents.	93½	94½	94	94	94	94½
Danish ..	88	88½	88½	88½	88½	87½
Colombian ..	16½	16	16½	15½	15½	15½
Chilian ..	96	97	96	96	96	96
Buenos Ayres ..	39	39	39	39	39	39
Brasilian ..	89½	89½	89	89	89	89
Belgian ..	97	97	97	97	97½	97½

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Monday, Aug. 31.

Knight, T. U. grocer, assignees, Sept. 25.

Tuesday, Aug. 25.

Ballard, J. innkeeper, last exam. passed.—Evans and Evans, auctioneers, last exam. Sept. 7.—Osborn, W. H. jun. silversmith, last exam. Nov. 7.—Parr, J. coal dealer, div. next week. Groom, London.—Savage, H. apothecary, last exam. Sept. 7.—Stiles, J. soda-water manufacturer, last exam. Nov. 7.

Wednesday, Aug. 26.

Boult, E. grocer, last exam. Oct. 10.—Gillman, A. draper, outlawed.—Hodges, E. wine merchant, last exam. passed.—Sponner, R. victualler, last exam. passed.

Friday, Aug. 28.

Belloni, F. clock maker, last exam. Nov. 7.—Benstead, J. hoiser, last exam. passed.—Easson, R. H. rope maker, annulled.—Kempton, D. bed manufacturer, last exam. Nov. 7.—Whitchurch, G. S. hoiser, last exam. Nov. 7.

Saturday, August 29.

Graham, C. W. merchant, last exam. passed.—Gray, F. C. boarding-house keeper, last exam. passed.—Groves, W. grocer, last exam. passed.—Pence and Co. wine merchants, last exam. Nov. 10.—Walke, T. builder, last exam. Nov. 10.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Gazette, Aug. 28.

Arkall, J. miller, first, 2*s.* Acraman, Bristol.—Harford, and Davies, ironmasters, second H. 13*s.* 4*d.* Hutton, Bristol.

Insolvent's Estate.

Kinning, E. victualler, Long-walk, Bermondsey-square, 4*s.* 10*d.*

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Aug. 28.

Ashworth, H. draper, Bury, Lancashire, July 23. Trusts. J. Spencer, gentleman, Bury, and J. Hunter, tea dealer, Manchester. Sols. Chapman and Roberts, Manchester.—Croft, W. draper, Kendal, July 6. Trust. S. R. Bloek, wool importer, Newgate-st. Sols. Read and Langford, Friday-st. Cheap-side.—Griffiths, J. lace manufacturer, Sheffield, July 10. Trust. H. Harben, accountant, Sheffield. Sol. H. Waterfall, Sheffield.—Howell, C. ironmonger, Warminster, Aug. 12. Trust. A. Warren, spinster, Warminster. Sol. H. Miller, Frome Selwood.—Leonard, W. baker, 446, Strand, July 6. Trusts. J. Leonard, farmer, West Wickham, and S. Cole, farmer, Helious Bumpstead. Sol. Good, Saffron Walden.—Sargent, H. draper, Arundel, July 20. Trusts. N. Mason, warehouseman, Wood-st. Cheap-side, J. Oldroyd, warehouseman, Bread-st. Cheap-side, and H. Salter, surveyor, Arundel. Sols. Reed and Langford, Friday-st. Cheap-side.—Wade, R. grocer, Plymouth, July 21. Trusts. S. Evans, grocer, Devonport, W. Sewell, grocer, King William-st. and W. Hopwood, accountant, Paternoster-row. Sol. H. H. Cross, Plymouth.—Waltow, W. plumber, Cublington, July 18. Trust. G. Hind, maltster, Cublington. Sol. W. Overall, Leamington Priors.

Gazette, Sept. 1.

Gill, J. M. draper, Dawlish, Aug. 19. Trust. W. White, warehouseman, Cheap-side. Sol. Ashurst, Cheap-side.—O'Neil, E. M. milliner, Bristol. Trusts. J. P. Foster, wholesale hoiser, Wood-st. and W. H. Tucker, wholesale warehouseman, Bristol. Sol. Haberfield, Bristol.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Aug. 28.

Browne, Henry, surgeon and apothecary, 8, Ferdinand-ter, Hampstead-road, Sept. 7, at twelve, Oct. 9, at half-past twelve, Basinghall-st.; Whitmore, off. ass.; Schultz, Staple-inn, sol. Date of fiat, Aug. 24. Bankrupt's own petition.

Brooks, Thomas, boarding-house keeper, 23, Great Percy-st. Lloyd-square, Pentonville, and 11, Abchurch-lane, Sept. 7, at two, Oct. 6, at half-past two, Basinghall-st. Com. Holroyd & Edwards, off. ass.; Heath, Nag's Head-court, sol. Date of fiat, Aug. 24. Bankrupt's own petition.

BURBRIDGE, JOHN and ROBERT, grocers and tea dealers, Whitecross-st. Sept. 7, at three, Oct. 13, at eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Baylis and Drewe, Basinghall-st. sola. Date of fiat, Aug. 20. T. Rowley, J. Stearns, and T. Davis, tea dealers, 78, Cannon-st. pet. crs.

DAVIS, CHRISTOPHER, currier, Chepstow, Monmouthshire, Sept. 11 and Oct. 9, at eleven, Bristol, Com. Stevenson; Miller, off. ass.; Baldwin and Co. Chepstow, and Messrs. Bevan, Bristol, sola. Date of fiat, Aug. 25. Bankrupt's own petition.

FENTON, JOHN THOMAS, brickmaker, and coal and ironstone merchant, Kidwelly, and Pontypridd, Llangendarn, Carmarthenshire, Sept. 13 and Oct. 12, at eleven, Bristol, Com. Stephen; Hutton, off. ass.; Bishop, Lincoln's-inn-fields, and Henderson, Bristol, sola. Date of fiat, Aug. 25. Bankrupt's own petition.

GARDINER, JAMES, and CRISP, FORTUNATUS ROBERT TOWNSEND, printers, Wellington-st. North, Strand, Sept. 3, at one, and Oct. 2, at two, Basinghall-st. Com. Fane; Alsager, off. ass.; Watson and Son, Bouverie-st. sola. Date of fiat, Aug. 19. J. Low, and J. and B. Fewtrell, stationers, Gracechurch-st. pet. crs.

GILL ROBERT, brick and tile manufacturer, Black-banks, near Darlington, Durham, Sept. 4 and Oct. 8, at half-past one, Newcastle, Com. Ellison; Wakley, off. ass.; Allison, Darlington, and Telson and Co. Coleman-st. sola. Date of fiat, Aug. 13. J. Todd, gent. Melsanby, Yorkshire, pet. cr.

GRANT, JOHN, printer, Wellington-st. and Powis-st. Woolwich, Sept. 5, at half-past ten, and Oct. 9, at half-past eleven, Basinghall-st. Com. Fane; Alsager, off. ass.; Steadman, Guildhall-chambers, sol. Date of fiat, Aug. 21. Bankrupt's own petition.

HAWLEY, SAMUEL, grocer and provision dealer, Ashton-under-Lyne, Lancashire, Sept. 10 and Oct. 1, at twelve, Manchester; Hobson, off. ass.; Clarke and Co. Lincoln's-inn-fields, and Brooks, Ashton-under-Lyne, sola. Date of fiat, Aug. 21. Bankrupt's own petition.

JONES, MAURICE, saddler, Liverpool, Sept. 10 and Oct. 6, at eleven, Liverpool, Com. Perry; Morgan, off. ass.; Vincent and Co. Temple, and Atkinson and Co. Liverpool, sola. Date of fiat, Aug. 25. J. and P. Wilson, curriers, Liverpool, pet. crs.

LINE, RICHARD BARBER, carpenter and builder, Cosside, Plymouth, Sept. 10, at one, and Oct. 6, at eleven, Exeter, Hirtzel, off. ass.; Laidman, Exeter, and Clowes and Co. Temple, sola. Date of fiat, Aug. 25. Bankrupt's own petition.

LONGHURST, WALTER, carpenter, builder, and undertaker, 8, Sussex-terrace, Old Brompton, Middlesex, Sept. 9, at eleven, and Oct. 6, at one, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Haynes, Symond's-inn, sol. Date of fiat, Aug. 25. Bankrupt's own petition.

MADDOCK, RICHARD, builder, Rock Ferry, Chester, Sept. 8, and Oct. 9, at twelve, Liverpool, Com. Perry; Casanova, off. ass.; Gregory and Co. Bedford-row, and Green, Liverpool, sola. Date of fiat, Aug. 23. Bankrupt's own petition.

MARCE, THOMAS, Albany, Sept. 5, and Oct. 9, at one, Basinghall-st. Com. Fane; Whitmore, off. ass.; Price and Co. Lincoln's-inn and Smallpice, Guildford, sola. Date of fiat, Aug. 15. Bankrupt's own petition.

O'HANLON, PATRICK, draper, Liverpool, Sept. 16 and 30, at twelve, Liverpool, Com. Ludlow; Turner, off. ass.; Gregory and Co. Bedford-row, Cooper, Manchester, and Frodham, Liverpool, sola. Date of fiat, Aug. 7. G. Horsfield, merchant, Manchester, pet. cr.

PANNELL, WILLIAM, grocer and cheesemonger, High-st. Poplar, Sept. 3, at half-past twelve, Oct. 2, at half-past eleven, Basinghall-st. Com. Fane; Whitmore, off. ass.; Grainger, Bucklersbury, sol.

READING, SAMUEL, hook and eye and button manufacturer, Birmingham, Sept. 15, at eleven, Oct. 15, at half-past eleven, Birmingham, Com. Balguy; Christie, off. ass.; Wright, Birmingham, sol. Date of fiat, Aug. 24. H. Jubson, oil of vitriol manufacturer, Birmingham, pet. cr.

SMITH, WILLIAM, potato dealer, 10, Tanner's-hill, Newtown, Deptford, Sept. 4, at half-past ten, Oct. 9, at twelve, Basinghall-st. Com. Fane; Whitmore, off. ass.; Govett, North-place, Gray's-inn, sol. Date of fiat, Aug. 13. Bankrupt's own petition.

WEBB, THOMAS FURKS, coal merchant, Balham, Cambridgeshire, Sept. 5, at one, Oct. 6, at two, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Ashley, Shoreditch, sol. Date of fiat, Aug. 26. Bankrupt's own petition.

WETENHALL, GEORGE, stock broker and stock and share agent, Bank-chambers, Louthbury, Sept. 7 and Oct. 9, at half-past two, Basinghall-st. Com. Fane; Alsager, off. ass.; Jordonson, St. Mary-at-hill, sol. Date of fiat, Aug. 26. J. G. Brown and J. Irving, coal merchants, Broken-wharf, Wapping, pet. crs.

WILKINSON, JOHN, fruiterer, Liverpool, Sept. 8th and Oct. 9, at eleven, Liverpool, Com. Perry; Morgan, off. ass.; Chester and Co. Staple-inn, and Tyrer, Liverpool, sola. Date of fiat, Aug. 23. Bankrupt's own petition.

WILLIAMS, ENOCH, and ROBERTS, THOMAS, builders, Birmingham, Sept. 10 and Oct. 6, at eleven, Birmingham, Com. Daniell; Blitstone, off. ass.; Wright, Birmingham, and Ivimey, Chancery-lane, sola. Date of fiat, Aug. 23. Bankrupt's own petition.

Gazette, Sept. 1.

BARKER, JAMES, joiner and builder, Sheffield, Sept. 11 and Oct. 16, at eleven, Town-hall, Sheffield, Com. West; Freeman, off. ass.; Moss, Sergeant's-inn, and Rayner and Broadbent, Sheffield, sola. Date of fiat, Aug. 21. Bankrupt's own petition.

CROMPTON, RICHARD, PRICE MOSES, and CROMPTON, TIMOTHY, brickmakers, Shrigley, Cheshire, Sept. 14 and Oct. 7, at twelve, Manchester, Pott, off. ass.; Baker, Manchester, Grimaditch, Macclesfield, and Bell and Co. Bow Church-yard, sola. Date of fiat, Aug. 20. J. Clegg, gent. Shrigley-hall, Cheshire, pet. cr.

GILL, JAMES, wine and spirit merchant and licensed victualler, Liverpool, Sept. 16 and Oct. 5, at eleven, Liverpool, Com. Perry; Casanova, off. ass.; Vincent and Sherwood, Temple, and Atkinson, Liverpool, sola. Date of fiat, Aug. 26. J. A. Bartlett, ship owner, and W. Schofield, brewer, Liverpool, pet. crs.

PHILLIPS, GEORGE ENSTONS, japanner, Hill-st. Birmingham, Sept. 10 and Oct. 6, at eleven, Birmingham, Com. Daniell; Whitmore, off. ass.; Roberts, Birmingham, and Austen and Co. Gray's-inn, sola. Date of fiat, Aug. 20. T. and J. Lane, gold beaters, Birmingham, pet. crs.

PATTHEBCH, JONATHAN, grocer and confectioner, Town-hill, Wrexham, Denbighshire, Sept. 14 and Oct. 6, at twelve, Liverpool, Com. Perry; Casanova, off. ass.; Po-cock and Marston, Norfolk-st. Strand, and Cunliffe, Chester, sola. Date of fiat, Aug. 28. Bankrupt's own petition.

RUSSELL, JABEL, jun. builder and millwright, Whittlesea, Isle of Ely, Sept. 9 at half-past two, Oct. 9, at two, Basinghall-st. Com. Fane; Whitmore, off. ass.; Church, Spital-square, sol. Date of fiat, Aug. 22. G. Benstead, iron-monger, Ely, pet. cr.

YATES, THOMAS, cotton manufacturer, Bolton-le-Moors, Lancashire, Sept. 11 and Oct. 2, at twelve, Manchester; Hobson, off. ass.; Gregory and Co. Bedford-row, and Rushton and Armistead, Bolton-le-Moors, sola. Date of fiat, Aug. 21. T. L. Rushton, banker, Bolton-le-Moors, pet. cr.

Meetings at Basinghall-street.

Gazette, Aug. 28.

Airs, C. innkeeper, Newport, Isle of Wight, Sept. 21, at eleven, div.—**Beattie, A.** and **Macnaghten, F.** merchants, Nicholas-lane, Lombard-street, Sept. 21, at twelve, div.—**Freeman, T.** fringe and trimming manufacturer, Wood-st. Cheap-side, Sept. 21, at one, div.—**Ser, G.** job master, Stone-cutter-st. Sept. 21, at eleven, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Billings, B. victualler, Harlow, Sept. 21, at half past one.—**Carter, J. T.** apothecary, Berners-st. Sept. 21, at one.—**George, L.** shawl warehouseman, Regent-st. Feb. 21, at two.

Gazette, Sept. 1.

Maclean, D. brickmaker, Upper Brook-st., Witton Castle, and Woodhouse-cloze Colliery, Oct. 22, at eleven (adj. Sept. 3), last exam.

Meetings in the Country.

Gazette, Aug. 28.

Austin, J. P. paper maker, Bristol, Sept. 21, at twelve, Bristol, and—**Barfield, A. T. A.** carrier, Bristol, Oct. 5, at eleven, Bristol, and—**Birch, A.** grocer, Birmingham, Sept. 29, at ten, Birmingham (adj. Aug. 19), last exam.—**Duke, J.** plaster merchant, Newark, Sept. 22, at Birmingham, and—**Gallimore, C.** button maker, Birmingham, Sept. 29, at ten, Birmingham (adj. June 17), last exam.—**Griffiths, S.** druggist, Wolverhampton, Oct. 2, at ten, Birmingham (adj. Aug. 14), last exam.—**Hand, W.** coal and culm merchant, Moleston, Pembrokeshire, Oct. 8, at eleven, Bristol, and; Oct. 9, at eleven, div.—**Heg, S.** worsted manufacturer, Colne, Sept. 11, at twelve, Manchester (adj. Aug. 25), last exam.—**Hornaby, G.** builder, Leabury, Sept. 10, at half-past twelve, Newcastle (adj. Aug. 25), last exam.—**Hutchinson, T.** tea dealer, Sept. 10, at eleven, Newcastle (adj. Aug. 25), last exam.—**Oliver, S.** provision dealer, Hyde, Sept. 10, at one, Manchester (by adj.) last exam.—**Simsone, I.** ribbon manufacturer, Oct. 24, at eleven, Birmingham (adj. Aug. 15), last exam.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Boatman, T. money scrivener, Pickering, Sept. 22, at eleven, Leeds.—**Holden, H.** dealer in Fuller's earth, Dewsbury, Sept. 23, at eleven, Leeds.—**Holdsworth, W.** apothecary, Ripley, Sept. 22, at eleven, Sheffield.—**Osborn, W. H.** stock broker, Leicester, Sept. 22, at eleven, Leeds.—**Senior, J.** brewer, Balford, Sept. 21, at twelve, Manchester.—**Walker, W.** miller, Butts-lane, Sept. 22, at twelve, Birmingham.—**Walters, J. S.** surgeon, Bakewell, Sept. 21, at twelve, Manchester.

Gazette, September 1.

Barfield, A. T. A. artist, Bristol, Oct. 5, at eleven, Bristol, and—**Delamain, H.** merchant, Liverpool, Sept. 22, at twelve, Liverpool, and—**Hand, W.** coal and culm merchant, Moleston, Pembrokeshire, Oct. 8, at eleven, Bristol, and Oct. 9, at eleven, div.—**Henry, T.** draper, Liverpool, Sept. 22, at twelve, Liverpool, and—**Jones, J.** ironmonger, Cheltenham, Sept. 24, at eleven, Bristol, div.—**Jones, E.** ironmonger, Liverpool, Sept. 22, at eleven, Liverpool, and—**Lloyd, W.** wine merchant, Liverpool, Sept. 22, at eleven, Liverpool, and (by order of the Court of Review).—**Lythgoe, J.** cooper, Liverpool, Sept. 23, at eleven, Liverpool, and—**M'Dougall, D.** factor, Liverpool, Sept. 23, at eleven, Liverpool, and—**Mack, J.** pawnbroker, Liverpool, Sept. 23, at eleven, Liverpool, and—**Parker, G.** spade manufacturer, Sheffield, Sept. 25, at eleven, Sheffield, and—**Stevenson, J.** tobacconist, Manchester, Sept. 11, at twelve, Liverpool, to choose new assignees.—**Thomas, B.** merchant, Liverpool, Sept. 22, at twelve, Liverpool, div.—**Thomas, E.** wine and spirit merchant, brewer, grocer, lodging-house keeper, Clifton, Sept. 25, at eleven, Bristol, div.—**Watson and Co.** booties, London and Nottingham, Sept. 17, at eleven, Birmingham, to choose new assignees.—**Williams, H.** apothecary, Llanrwst, Sept. 22, at twelve, Liverpool, and—**Wilson and Vasey, merchants**, Hull, Sept. 23, at ten, Hull (by order of the Court of Review of Aug. 19), last exam. of Vasey.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Ball, C. linen draper, Lane-end and Chesdale, Sept. 24, at twelve, Birmingham.—**Bates, W.** sharebroker, Manchester, Sept. 23, at twelve, Manchester.—**Bentley, B.** printer, Woking, Sept. 24, at eleven, Bristol.—**Broad, W. H.** maltster, Stourport, Sept. 20, at eleven, Birmingham.—**Cook, R.** surgeon, Gainsborough, Sept. 23, at ten, Hull.—**Carne, C. F.** and **Telo, M.** merchants, Liverpool, Sept. 23, at eleven, Liverpool.—**David, R.** draper, Newbridge, Sept. 24, at twelve, Bristol.—**Leadbeater, J.** merchant, Manchester, Sept. 23, at twelve, Manchester.—**Lilley, E.** timber merchant, Hull, Sept. 23, at ten, Hull.—**Read, T.** cigar dealer, Manchester, Sept. 23, at twelve, Manchester.—**Seaton, J.** farmer, Frickley-cum-Clayton, Sept. 24, at eleven, Leeds (and not to make a div. as before stated).—**Wilson, W. H.** and **Vasey, R.** merchants, Hull, Sept. 23, at ten, Hull.

Partnerships Dissolved.

Gazette, August 25.

Broadbent, J. and **Lees, J.** cotton spinners, Oldham, Aug. 20. Debts paid by Broadbent.—**Cadbury, T.** and **G. butter factors**, New Bond-st. Aug. 9. Debts paid by G. Cadbury.—**Clarke, R.** sea and jun. and **Clarke, T.** ship builders, Liverpool, so far as regards Clarke, sen. Aug. 13. Debts paid by the remaining partners.—**Day, W.** and **Stanger, J.** appraisers, Maidstone, Aug. 23. Debts paid by Day.—**Figgis, S.** and **Eyre, B.** general merchants, Crown-st. Philpot-lane, Aug. 8.—**Firth, S. D.** and **J. H.** cotton spinners, Oldham, June 30. Debts paid by J. H. Frith.—**Hartley, J.**

Great Lever, and Barrett, T. jun. Prestole, Lancashire, cotton spinners, Aug. 24.—**Higman, W. H.** and **Rees, R.** ironmongers, Crown-st. Finabury, Dec. 25.—**Housell, T. C.** and **Gundry, S. B.** Tinsler, J., **Budden, J. G.**, **Hill, J. H.**, and **Sparks, W.** hobbin net lace manufacturers, Chard, Aug. 15.—**Johnson, H. A.** and **Ditchett, W. D.** surgeons, Lough, Aug. 9.—**Kettlewell, W. C.** and **S. chemists, Leeds, June 1.** Debts paid by W. C. Kettlewell.—**London, J.** and **J. b. chers**, Norwich, Aug. 21.—**Morsh, J.** and **W. cabinet makers**, York, Aug. 20.—**Miles, D. Hudson, J. Scargill, B.**, **Spelding, T. Mitchell, S.**, **Lister, J.**, **Greaves, J. jun.**, **Baly, B.**, **Newcome, J. jun.**, **Rothley, B.**, **Richardson, J.**, **Randall, D.**, **Ward, G.**, **J. jun.**, **R. J. jun.**, **Greaves, J.**, **Baily, J.**, **Wharton, M.**, and **Blakley, T.** scribblers and fullers of cloth, Dewsbury, so far as regards Blakley, July 11.—**Moray, J.** and **Swift, J.** linen drapers, Sheffield, Aug. 4. Debts paid by Swift.—**Mott, C.** and **Abel, S.** surgeons, Albany-st. Aug. 13.—**Taylor, J.** and **Hewitt, W.** brewers, Great Driffield, Aug. 23. Debts paid by Hewitt.—**Taylor, S.** and **T. cotton spinners**, Bolton le Moors, Aug. 19. Debts paid by S. Taylor.—**Thomas, R. S.** and **Gillmore, T.** tailors, Manchester, Aug. 21. Debts paid by Adams and Bridgford, accountants, Manchester.—**Turncock, J.** and **Brooke, G.** drapers, S. d. upon-Trent, Aug. 19.—**Walker, T. L.** **Siddons, J.** and **W. thews, J. M.** coal masters, Nuneaton, so far as regards Siddons, Nov. 7, 1845.—**Wreford, W.** and **Pugh, R. H.** wholesale haberdashers, Aldermanbury, Aug. 17. Debts paid by Pugh.

Gazette, Aug. 28.

Davis, M. and **Hart, M.** job drapers, Somerset-st. and Houndsditch, Aug. 27.—**Doodall, R. B.** and **Ameslang, L.** sealing-wax manufacturers, Watling-st. Aug. 28.—**Duncan, W.** and **Owen, J. R.** surgeons, Tynemouth, Aug. 25.—**Drury, R.**, **Smith, O.** and **Swallow, J.** plumbers, Sheffield, so far as regards Swallow, Aug. 20. Debts paid by remaining partners.—**Fletcher, I.** and **Farley, A.** booksellers, Southampton, Aug. 14.—**Goodwin, J.** and **Gibson, S.** silk manufacturers, Leeds, Aug. 22.—**Gerrage, W. E.** T. n. bridge-wells, and **Hore, E.** Hastings, Chesham, Aug. 25. Debts paid by Hore.—**Hulbert, J.** and **J. apothecaries**, Bath, June 24.—**Jennings, R.** and **Congers, E. D.** attorneys, Great Driffield, July 6.—**Kipling, R.** and **Johnstone, M. C.** oil merchants, Lamb's Conduit-st. Aug. 22. Debts paid by Johnstone.—**Martin, T.** and **Hill, S.** cabinetmakers, Seven Abbot, Aug. 25.—**Muller, J.** and **Cam, J.** ship smiths, Wexham, Aug. 20.—**Overbury, B.** sea and **R. clothiers**, Wexham, July 25.—**Parker, W.** and **Cope, T.** soda-water manufacturers, Wolverhampton, Aug. 10. Debts paid by Cope.—**Topham, C.** and **Pawcett, E. A.** silk manufacturers, Derby, Aug. 28. Debts paid by Topham.—**Weldon, C. A.** and **Wells, A.** schoolmistresses, Stamford, June 24.—**Wheeler, J.**, **Jones, D.** and **Mamfold, J.** provision merchants, Liverpool, Aug. 27.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Aug. 28.

Baker, C. carpenter, Upper Ebury-st. Aug. 7, at two.—**Capes, E.** harness maker, Rutland-st. East, Commercial-st. East, Sept. 3, at two.—**Edwards, H. C.** out of business, Hammersmith, Sept. 3, at two.—**French, W.** harness maker, Bitchingley, Aug. 27, at two.—**James, H. J.** mail contractor, Hertford, Sept. 8, at two.—**Lancaster, J.** hair dresser, Baker's-buildings, Bishopgate, and of Houndsditch, Aug. 7, at two.—**Salmon, J.** baker, Wickford, Sept. 3, at ten.—**Tubott, P.** bootmaker, Hammersmith, Sept. 7, at eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Barter, R. G. hatter, Middleborough, Sept. 4, at eleven, Leeds.—**Brooks, S.** shoemaker, Bristol, Sept. 13, at eleven, Bristol.—**Chadwick, J.** retail beer seller, Kimberley, Sept. 4, at eleven, Sheffield.—**Dent, T.** joiner, Manchester, Sept. 1, at twelve, Manchester.—**Higman, J.** teacher of music, Blackburn, Sept. 4, at twelve, Manchester.—**Ktag, T.** hatter, Ross, Sept. 3, at ten, Birmingham.—**Mellor, G.** shopkeeper, Shipley, Sept. 4, at eleven, Leeds.—**Oliver, T.** spring knitter, Sheffield, Sept. 4, at eleven, Sheffield.—**Pringley, L.** pattern maker, Bradford, Sept. 4, at eleven, Leeds.—**Wickenden, W.** miller, Rendscombe, Aug. 31, at eleven, Bristol.—**Wilkins, J. M.** bootmaker, Frome Selwood, Sept. 3, at eleven, Bristol.—**Wilson, T.** out of business, Barnack, Sept. 4, at eleven, Leeds.—**Wright, J.** surgeon, Liverpool, Sept. 2, at eleven, Liverpool.

Gazette, Aug. 28.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Blake, W. linen draper, Bromley, Sept. 14, at eleven.—**Bloomfield, H.** surveyor, Queen's-row, Walworth, Sept. 18, at eleven.—**Chapman, J. W.** out of business, City-terrace, Old-st.-rd. Sept. 24, at eleven.—**Cox, M.** schoolmistress, Shirley and Testwood, Sept. 14, at eleven.—**Elliot, W. C. P.** lieutenant, Quadrant, Sept. 18, at eleven.—**Miss, J.** grocer, Rochford, Sept. 14, at half-past eleven.—**Fraser, S. J.** tinner, Cambridge, Sept. 14, at eleven.—**Taylor, S.** hair dresser, Finch-lane, Sept. 14, at eleven.—**Trimings, W.** plumber, Wellington-terrace, Wandsworth-road, Sept. 14, at half-past eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Buckle, J. labourer, Snape, Sept. 8, at eleven, Leek.—**Deacle, T.** out of business, Bristol, Sept. 22, at one, Bristol.—**Fiddian, R.** jun. farmer, Cradley, Sept. 3, at eleven, Birmingham.—**Gardiner, J.** tea dealer, Liverpool, Sept. 2, at twelve, Liverpool.—**Harper, I. W.** carpenter, Sheffield, Sept. 11, at eleven, Sheffield.—**Hardidge, W.** out of business, Littlehale, Sept. 8, at twelve, Birmingham.—**Heath, W.** victualler, Lawton, near Congleton, Sept. 2, at twelve, Liverpool.—**Swinnerton, J. W.** painter, Hunsley, Sept. 8, at eleven, Leeds.

From the Gazette of Friday, September 4.

Bankrupts.

Barber, R. F. licensed victualler, Bishopsgate-st. Without.—**Lake, W.** grocer, Henfield, Sussex.—**Mortimer, J.** wood-stapler, Bradford, Yorkshire.—**Watersright, T.** surgeon, Barnsley, Yorkshire.—**Hall, J.** chemist, Leeds.—**Firth, J.** sen. **Firth, J. jun.** **Dugdale, J.** and **Stott, W.** cotton spinners, Birstal, Yorkshire.—**Lewis, G.** apothecary, Wrexham, Denbighshire.

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

July 7 and 8.

RIGBY v. THE GREAT WESTERN RAILWAY COMPANY.

Specific performance—Covenant—injunction.
A bill having been filed, not seeking the specific performance of an agreement, by which the Great Western Railway Company agreed "that all trains carrying passengers, not being goods trains, or trains to be sent express or for special purposes, and except trains not under the control of the company, which should pass the Swindon station, should stop there for refreshment for a reasonable period of about ten minutes," an injunction to restrain the defendants from permitting trains advertised as express trains to pass the Swindon station without stopping, which had been granted, was dissolved, and a case for the opinion of a court of law on the construction of the agreement directed; the defendants being ordered, in the mean time, to keep an account. The plaintiffs' lessees of the station complained of injury to their sub-lessee, who refused himself to institute proceedings.

This was a motion by way of appeal from the order of Vice-Chancellor Wigram, restraining the Great Western Railway Company from permitting their express trains to pass the Swindon station without stopping.

The bill, filed the 10th of May, 1845, stated that by an Act made and passed in the session of Parliament held on the fifth and sixth years of the reign of his late Majesty King William the Fourth, entitled "An Act for making a Railway from Bristol to join the London and Birmingham Railway near London, and to be called the Great Western Railway, with Branches therefrom to the Towns of Bradford and Trowbridge, in the County of Wilts," certain persons and their successors were united into a company, and were constituted one body corporate, by the name of the Great Western Railway Company, and that such company are defendants hereto. And that the said railway was some time since completed, and is called the Great Western Railway, and that the same passes through or near Swindon, in the county of Wilts, and that the said railway has also been connected with another railway from Bristol to Exeter, and that a station for the stoppage of trains was formed by the said company, and is still existing at or near Swindon, adjoining the refreshment-rooms mentioned, and that such station has been and is called or known as the Swindon Station, and has been and is used as the regular and general place of stoppage for the purpose of refreshment of passengers. And that previously to the 18th day of December, 1841, the plaintiffs had, at their own expense, erected certain refreshment-rooms, waiting-rooms, and other rooms on land belonging to the said company, situate at Swindon, for the purpose of providing passengers by the Great

Western Railway with refreshments, and the same were erected under an agreement between the plaintiffs and the company, that the same should be demised to the plaintiffs in manner appearing by the indenture of lease of the 18th day of December, 1841, thereafter stated; and that in pursuance of such agreement and indenture of lease bearing date the 18th day of December, 1841, and expressed to be made between the said Great Western Railway, of the one part, and the plaintiffs of the other part, was duly executed by the parties thereto, and that by such indenture it was witnessed, that in consideration of the costs and expenses incurred by the plaintiffs in or about the erection of the buildings thereafter mentioned and thereby demised, being the buildings herebefore mentioned, and in consideration of the covenants, provisoes, and agreements thereafter contained, and which, on the part of the plaintiffs, their executors, administrators, and assigns, were to be observed and performed, the Great Western Railway Company demised and leased unto the plaintiffs, their executors, administrators, and assigns, the said refreshment-rooms, waiting-rooms, and other erections which were therein mentioned to have lately been erected by the plaintiffs at Swindon, and a parcel of land and other hereditaments therein mentioned, to hold the same unto the plaintiffs, their executors, administrators, and assigns, from the 25th day of December, 1841, for the term of ninety-nine years thence next ensuing, at the yearly rent of 1d.; and by the said indenture the company covenanted, promised, and agreed, to and with the plaintiffs, their executors, administrators, and assigns, amongst other things, in manner following: that is to say, that no general refreshment-rooms, or stopping-places for the purpose of enabling passengers to procure refreshments, other than and except refreshment-rooms agreed to be erected by the plaintiffs and those at the terminal at Bristol and Paddington respectively, or at any terminal station on the Great Western, or any branch or junction lines, or any intermediate station for the convenience of passengers joining or leaving trains at such stations, should be erected on the Great Western Railway, or by said company; and that, in case the Swindon Station should during the continuance of the lease be disused as the regular and general place of stoppage for the purpose of refreshment of passengers, the company should purchase of the plaintiffs the whole of the buildings on the said station at the full amount of the cost and expenditure. In respect thereof, in case such disuse should take place within five years from the date of the said indenture, but, if afterwards, then at a fair price to be fixed by arbitration, and that the said company should also make compensation (the amount thereof to be ascertained by arbitration) to the plaintiffs, their executors, administrators, and assigns, and their under lessees or leasees, or the tenant or tenants, occupier or occupiers for the time being of the premises, for the loss which they and each and every of them should sustain in consequence of being deprived of the future profits to arise from the businesses to be carried on upon the said premises; but in such case, unless the plaintiffs, their executors, administrators, and assigns should agree to settle with their under-tenant or under-tenants, for his or their loss the amount of any premium received by the plaintiffs should be made known to the arbitrators, and a proportional part in respect of any unexpired term should be deducted from the amount of such compensation, and moreover, that in case the said buildings and works should be paid for at the full amount of the costs thereof, such costs or expenditure should be ascertained by arbitration. And it was thereby declared to be the intention of the said company, and the understanding of the plaintiffs, that in consequence of the outlay to be incurred by them in erecting the said refreshment-rooms at Swindon, and preparing such works as therein mentioned, the company should give every facility to the plaintiffs for enabling them to obtain an adequate return by means of the rents and profits to be derived from the refreshment-rooms, and that all trains carrying passengers not being goods train or trains to be sent express or for special purposes, and except trains not under the control of the Great Western Railway Company, which should pass the Swindon station either up or down should, save in case of emergency or unusual delay arising from accidents, stop there for refreshment of passengers for a reasonable period of about ten minutes, and that as far as the company could influence the trains not under their control, the same should be induced to stop for the like purpose; and the company thereby engaged not to do any act which should have an effect contrary to the above intention.

That the refreshment-rooms, waiting-rooms, and other rooms and erections mentioned in the said lease have been duly completed and opened for the accommodation of passengers by the said Great Western Railway, and that the plaintiffs have expended the sum of 25,000*l.* and upwards in the erection and completion thereof; and that by an indenture of underlease bearing date the 24th day of December, 1841, and made between the plaintiffs of the one part, and Samuel Young Griffith, a defendant, of the other part, and which recited the indenture of lease on the 18th day

of December, 1841, and set forth the covenants and agreements contained in the same indenture of lease on the part of the company, the plaintiffs in consideration of the sum of 6,000*l.* paid by the said defendant, Samuel Young Griffith, demised the said refreshment-rooms and buildings to the defendant, Samuel Young Griffith, for the term of seven years, at the yearly rent of 1,000*l.* and covenanted with the defendant Griffith at all times during the continuance of the term thereby granted to do all such acts and things as should be necessary and proper for enforcing the fulfilment and performance of the covenants and agreements in the indenture of lease of the 18th day of December, 1841, contained on the part of the said company, for giving full benefit and advantage to the defendant, Samuel Young Griffith, of the said refreshment-rooms and premises, during the said term of seven years, in the same manner as if the defendant, Samuel Young Griffith, were the assignee of the said covenants.

That trains belonging to the said company have for some time past run daily from Paddington, near London, to Exeter, and from Exeter to Paddington, upon the said railways, and that such trains have regularly stopped at the said Swindon station for refreshment of passengers, according to the agreement; and that large sums have been received, and large profits have been obtained by the defendant, Samuel Young Griffith, by reason of the trains so stopping at the Swindon station; and that ever since the 10th day of March last, there had been daily (Sundays excepted), one train each way belonging to the said company, that performed the distance between Paddington and Exeter, in a less period than other trains of the said company; and that such trains have, in the train bills and advertisements of the said company, up to within the last few days, been described as quick trains, and not otherwise; and that such trains have from the 18th day of March, 1845, and up to the last few days, been advertised to start from Paddington at 30 minutes past 9, A.M. and from Exeter at 45 minutes past 11, A.M. and to arrive at Exeter at 30 minutes past 2, P.M. and at Paddington at 45 minutes past 4, P.M. the distance between Paddington and Exeter being advertised to be performed in five hours; and that the Great Western Railway Company had lately determined that the said trains, denominated quick trains, or other trains belonging to the said company in lieu thereof, should perform the said distance between Paddington and Exeter in four hours and a half instead of five hours, and that such trains should not stop for the refreshment of passengers at the Swindon station. That the said company, for the purpose of evading the performance of the agreement on their part, contained in the indenture of lease, had determined that the said trains theretofore denominated quick trains should thenceforth be denominated express trains, and that such trains would not be within the true meaning of the said trains "to be sent by express," contained in the lease, and that the permitting of such trains to pass the Swindon station without stopping for refreshment of passengers would be a breach of the agreement of the company. That on the 7th day of May inst. defendant, Charles Alexander Saunders, the secretary of the company, sent to the office of the *Morning Chronicle*, of the 8th day of May inst. an advertisement relating, amongst other things, to the said trains described as express trains, and that such advertisement purported to be signed by the said defendant, C. A. Saunders, as such secretary as aforesaid, and that such advertisement was accordingly inserted in the *Morning Chronicle* newspaper of the 8th day of May inst. and that the same was headed "Great Western Railway," and was in part in the words and figures following:—"The express trains will perform the journey between Paddington and Exeter, without stopping at Swindon, in 4½ hours; the down train will leave Paddington at 9 45, and arrive in Exeter at 2 15. The up train will leave Exeter at 12 o'clock, and arrive at Paddington at 4 30. For further particulars as to the trains, reference is requested to the new train bills which may be had on Saturday next, the 10th instant. Paddington, May 7, 1845. C. A. Saunders, Secretary." That in accordance with the said advertisement new train bills of the said company were issued on the 10th day of May instant. And that in such new train bills there are not any trains described as quick trains, but there are two trains between Paddington and Exeter, and each way described as express trains, the trains so described as express trains being substituted for the trains formerly called quick trains. And that the company intend regularly, and on each day, except Sunday, to run the trains of the company described as express trains, and to direct or permit the same to pass the Swindon station without stopping for the refreshment of passengers; and that the defendant, Samuel Young Griffith, will lose considerable profit which would have arisen from passengers by such trains taking refreshment at the refreshment-rooms aforesaid. And that the plaintiffs will be liable under their aforesaid agreement to make good such loss to the defendant, Samuel Young Griffith. That plaintiffs were not, until the 9th day of May inst. aware of the said advertisement in said *Morning Chronicle* newspaper, or of the intention of the

said Company to run trains from Paddington to Exeter, or from Exeter to Paddington without stopping at the said Swindon station, and that under the circumstances aforesaid the bill prayed the company might be restrained from directing or permitting the said trains so as aforesaid advertised as express trains, or any of them, to pass the Swindon station, either up or down, save in case of emergency or unusual delay arising from accidents, without stopping there for refreshment of passengers for a reasonable period of about ten minutes, and from directing or permitting any train, not being a goods train or a train to be sent express or for special purposes, or a special purpose, or a train not under the control of the said company, to pass the Swindon station, either up or down, save in a case of emergency and unusual delay arising from accident, without stopping there for refreshment of passengers for a reasonable period of about ten minutes.

On the 23rd of January, 1846, Vice-Chancellor Wigram granted an injunction in the terms of the prayer of the bill, and gave liberty to the defendants to have a case made for the opinion of the Court of Exchequer in the following form:—

On the 18th day of December, 1841, the defendants grant to the plaintiffs the lease mentioned in the bill, of which a copy is to be inserted in this part of the case. On the 24th of December, 1841, the plaintiffs granted to the defendant, Samuel Young Griffith, an underlease bearing date the 24th of December, 1841, of which a copy is to be inserted in this part of the case. The refreshment and other rooms mentioned in the said lease of the 18th of December, 1841, were completed and opened for the refreshment of passengers in the summer of 1842, and from that time until the month of May 1845, every train carrying passengers except the trains excepted in the covenant of the company, stopped at the said refreshment-rooms for the refreshment of passengers. Upon and ever since the 12th of May, 1845, the defendants, the Great Western Railway Company, have caused two trains, called express trains, carrying passengers, and not coming within the exceptions of the covenant of the company, to run on every day, except Sunday, between Paddington and Exeter—one train running from Paddington to Exeter, and the other from Exeter to Paddington. The defendants, the company, in breach of the covenant in that respect contained in the indenture of lease of the 18th of December, 1841, have caused their said express trains to pass the Swindon station without stopping there for refreshment of passengers. In consequence of these trains not so stopping, the defendant, Samuel Young Griffith, the under-lessee of the refreshment-rooms, has sustained a daily loss. The plaintiffs had notice of the intention of the company to commit such breaches of covenant before the commission of any of them; and also had notice of the commission of such breaches of covenant by the said company immediately after the commission. The plaintiffs, by filing a bill in equity for an injunction against the said company on or before the day of the committing the first or any other of the said breaches of covenant by the defendants, the Great Western Railway Company, might have obtained an injunction restraining the company from committing any further breach of their said covenant. *The plaintiffs have not been requested by the defendant, Samuel Young Griffith, to file such bill or to do any other act or thing necessary or proper for enforcing the fulfilment or performance of the said covenant of the company.* The plaintiffs have not filed such bill, or done any other act or thing necessary or proper for enforcing the fulfilment or performance of the said covenant of the company. The said defendant, Samuel Young Griffith, has brought an action against the plaintiffs for a breach of the following covenant contained in the said indenture of underlease (that is to say), "that they, the said plaintiffs, should and would, from time to time, and all times during the continuance of the term thereby granted, do all such acts and things as should be necessary and proper for enforcing the fulfilment and performance of the covenants and agreements thereinbefore particularly recited and set forth and in the said indenture of lease of the 18th of December, 1841, contained, on the part of the defendants, the Great Western Railway Company, for giving the full benefit and advantage to the said defendant, Samuel Young Griffith, his executors, administrators, and assigns, of the refreshment-rooms and premises by said indenture of underlease devised during the term thereby granted, in the same manner as if he, the defendant, Samuel Young Griffith, were the assignee of the said covenants." And the Vice-Chancellor directed that the question in such case should be whether the aforesaid action can be maintained by the defendant, Samuel Young Griffith, against the said plaintiffs, and that

the judges should be attended with such case, and that the judges by or before whom the said case shall be heard, should be at liberty to state any matter specially, but such case, if taken, should be set down for argument by the defendants, the company, within the first ten days of the then next Easter Term.

The defendants, the company, now moved, by way of appeal, to discharge the Vice-Chancellor's order.

Romilly, Stevens, and Unthank, for the company, contended that the plaintiffs had no right to maintain the suit.

Wood, and J. Bailey, contra.

Amphlett, for defendant Griffith.—During the argument, the Lord Chancellor asked whether the company was willing to indemnify the plaintiffs against all demands under their covenant to Griffith, to which the defendant's counsel answered in the affirmative.

The LORD CHANCELLOR ordered that the injunction should be dissolved, the company undertaking to pay such damages for the non-performance of their covenant, and to be ascertained in such manner as the Court should direct. The company to keep an account, and to give security if required. A case to be stated for the opinion of the Court of Exchequer, and that such case should be settled by the vacation Master.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Tuesday, July 14.

SANDERS v. KELSEY AND OTHERS.

Practice—Demurrer—Multifariousness—Want of equity—Misjoinder.

A testator, by his will, having given several pecuniary legacies, devises two estates, L. and D. to his children, as tenants in common in fee, and makes his wife residuary legatee of all his real and personal estates, and appoints K. and B. his executors. The testator died in July 1841, leaving his said wife, then encesta, and four children him surviving. The other child was born in the month of November following. The wife filed her bill against the two executors, K. and B. and also against the testator's five children, all of them infants, praying for an account of the personal property of the testator, and an account of the rents and produce of his real estates devised to the plaintiff, and also for an account of the rents, profits, and produce of the two estates, L. and D. which had been mixed by the said K. and B. with the personal estate of the said testator, and the rents and profits of the real estate devised to plaintiff, and the same secured; and in the mean time, that the whole of the moneys might be secured by the direction of the Court, for the benefit of plaintiff and the children of the testator.

To this bill the defendants, K. and B. having demurred, for multifariousness and for want of equity: Demurrer allowed.

The bill stated that Wm. Sanders, late of Burstow-lodge, the deceased husband of the plaintiff, being possessed of considerable property, consisting of real and personal estates, by his last will and testament, duly executed and attested, bearing date the 17th March, 1829, having given certain pecuniary legacies as therein mentioned, also a certain capital messuage, called Burstow-lodge, with the lands thereunto adjoining, to his wife Marianne, in fee, subject to an annuity of 200l. to the testator's mother, gave to his cousin John Sanders, son of his cousin Thos. Sanders, two estates, called Little Lake, and Daiseys, situate respectively in Horley and Burstow, aforesaid, his heirs and assigns for ever, provided that if the testator had any child or children living at the time of his decease, or in case any child or children should be born in due time afterwards, then he absolutely revoked the said devise so made to the said John Sanders, and his heirs, as aforesaid, and gave and devised the said two estates of Little Lake and Daiseys unto and equally among all and every his the said testator's children who should be living at the time of his decease, or born in due time afterwards, in fee-simple; but in case there should be but one such child, then unto and to the use of such only child, his heirs and assigns for ever. The testator afterwards gave and devised unto his said wife Marianne Sanders all the residue of his real and personal property not thereinbefore disposed of to his said wife, for her own use and benefit absolutely. The testator appointed the defendants H. Kelsey and Thos. Brooker joint executors in trust of his will.

That the said Wm. S. Sanders departed this life on the 31st day of July, 1841, without having revoked or altered his said will, leaving the plaintiff, his widow, then encesta, and four children then living, that is to say, Wm. Melancthon Sanders (his eldest son and heir-at-law), Thos. Sanders, Sarah Sanders, and Mary Ann Sanders, all of whom (being infants) were made defendants, and also Ann Sanders, the mother of the testator, the annuitant named in the will (since deceased) him surviving.

That in November 1841, the child of which plaintiff was encesta by the testator at the time of his death was born, and that such child was named Caroline Harriet Sanders, also a defendant.

That at the time of the decease of the testator, and for some time afterwards, the plaintiff was in a very delicate state of health, and altogether unable to attend to business of any sort; and that the defendants Henry Kelsey and Thos. Brooker entered into possession or the receipt of the rents, profits, and produce of the real estate devised to plaintiff by the said will, including the Horne-house Farm, and also of the said two farms thereby devised to the said defendants, the children of the said testator, and have ever since been, and now are, in such possession or receipt, and have mixed up the personal estate of the testator and the rents, profits, and produce of the real estates so devised to plaintiff, and the rents and profits of the said two farms so devised by the said testator to the defendants, his children, in one account, and they have from time to time retained in their hands divers large balances which ought to have been accounted for to the plaintiff, or invested upon some proper security bearing interest, and they have now in their hands a large sum of money composed of such personal estates, and the rents, profits, and produce of all such estates, as well those devised to plaintiff as those devised to the said testator's children, but which is not distinguished or separated, and that the sources from whence the component parts thereof arose cannot be ascertained.

The bill further stated, that after repeated applications made by the plaintiff to the defendants Kelsey and Brooker, for an account, they, in the month of August last, being upwards of four years after the decease of the testator, furnished a short summary of accounts, and some unsatisfactory statements in which the accounts of the said personal estate, and the rents and profits and produce of the real estates devised to the plaintiff, and to the children of the said testator, were mixed up together, and in such form as that the plaintiff was wholly unable to distinguish which sums received and paid by the said defendants Kelsey and Brooker belong to the personal estate account, or which belong to the account of the real estate so devised to her, or which sums, in fact, belonged and were to be attributable to the receipts and payments to the account of the rents and profits and expenditure of the said two farms so devised by the said testator for the benefit of the said defendants, his children.

The bill, moreover, charged that the accounts so furnished were, in many particulars, incorrect and erroneous, and that various sums which, in fact, had been received by the defendants Kelsey and Brooker, or one of them, or some person on their or one of their accounts, for the rents of some of the real estates so as aforesaid devised to the plaintiff, and also an account of the testator's personal estate, were not accounted for, or comprised in the said accounts.

The bill prayed for an account of the personal estate and effects of the testator, and that the clear residuary personal estate of the testator might be ascertained and paid to plaintiff; and that an account of the rents and profits of the real estates of the testator, devised to plaintiff by his said will, which had come to the hands of the defendants Kelsey and Brooker, or either of them, as to the said farm premises called Horne-house Farm, from the death of the said Ann Sanders, and as to the rest thereof, from the decease of the said testator. And that an account might be also taken of the rents, profits, and produce of the said two farms called Little Lake and Daiseys, which had been mixed by the said defendants, Kelsey and Brooker, with the personal estate of the testator, and the rents, profits, and produce of the real estate devised to plaintiff; and that the same might be secured by and under the direction and decree of the Court, and that in the mean time, and until such accounts should be taken, the whole of the moneys in the hands or power of the defendants, Kelsey and Brooker which, having arisen from the personal estate of the testator, and the rents, profits, and produce of the said real estates so devised to plaintiff, and the rents, profits, and produce of the said two farms, so devised to the said defendants, the children of the said testator might be secured by and under the direction of the Court, for the benefit of plaintiff and the defendants, the children of the testator, and that the defendants, Kelsey and Brooker, might be ordered to deliver up the title-deeds, &c.

To this bill the defendants, Kelsey and Brooker, demurred, on the ground of multifariousness, and for want of equity.

Jas. Parker and W. W. Cooper, for the demurrer.—There is no doubt the children would be necessary parties if the bill could be sustained, but if it is multifarious as to one of the parties, it is so as to all. Relief is sought against us in two distinct characters, and the matters are improperly joined in the same bill. The prayer is for an account of the personal estate with which the children have nothing whatever to do, shewing thus an incongruity in the relief which ought to have been confined to the personal estate, and to have it separated from the moneys received by the defendants on account of the real estate devised to the plaintiff. But the plaintiff had a right to pray for an account of the children's real estate, who might themselves file a bill for the same.

account. There is no doubt an equity in the bill, but we say you have no right to seek relief against us in two different characters, nor to mix up an account of personal with the real estates.

Cases cited:—*Attorney-General v. Goldsmiths' Company*, 5 Sim. 675; *Campbell v. Mackay*, 1 M. & C. 619; *Dunn v. Dunn*, 2 Sim.

Bethell and Glasse, in support of the bill, contended that the demurrer must be overruled, for that if there was any mixing up of accounts, it was the defendants' own mixing them up. And if the Court should be with the plaintiff on the general point, it ought not to allow even part of the demurrer to hold. It was impossible to make the principle more distinct than his Honour had laid it down in *Dunn v. Dunn*. In *Lewis v. Edmund*, 6 Sim. 244, there was a blending of two subjects. The proposition of this demurrer for multifariousness is, that the junction of the parties is improperly made. What could the plaintiff otherwise have done than mix the two properties together? The demurrer is not that of the children but of the trustees. If part of the demurrer be overruled, then it being a demurrer to the whole bill it cannot be allowed for any other part. Our proposition is, that where there is a demurrer for multifariousness you cannot sustain it if you can shew any matter in the bill in which the parties ought to be joined.

J. Parker, in reply.—The case of *Lewis v. Edmunds* is wholly different: for there the whole of the property was assets, whilst ours is an account of assets, and of an estate not assets.

The VICE-CHANCELLOR.—I am sorry that this demurrer is brought, because it answers no purpose. There is certainly an equity. I think that the children ought to be made parties. The bill states that the plaintiff, by reason of the unsatisfactory manner in which the demurring defendants sent in their accounts, "is wholly unable to distinguish which sums received and paid by the said defendants belong to the personal estate account, or which belong to the account of the real estate so devised to her, or which sums in fact belong and are to be attributable to the receipts and payments to the account of the rents and profits and expenditure of the two farms so devised by the testator for the benefit of the said children." The accounts cannot, therefore, be taken without the children. Then I perceive that there is an annuity mentioned, which in the will is to be given to the testator's mother, and it is stated here that the defendants paid out of the plaintiff's money to the annuitant in her lifetime, that which she was entitled to receive in respect of the said sum of 200*l.* per annum, and to her representatives the rents which accrued up to the time of her decease. Now a question here might arise whether there is not a case of election against the plaintiff. It really appears to me to be a fanciful demurrer, and that it must, therefore, be overruled. A demurrer ought not to be filed without good grounds to support it.

ROLLS COURT.

Thursday, July 23.

TEESDALE v. SWINDELL.

Practice—New orders—Referring exceptions for insufficiency—Common order—Irregularity.

Roupell moved to set aside, for irregularity, an order to refer exceptions for insufficiency, and to stay proceedings at law. The motion was made under the 25th article of the 16th of the New Orders of May 1845, whereby a plaintiff, having filed exceptions for insufficiency to a defendant's answer, is not to procure an order to refer them to the Master before the expiration of eight days from the filing of such exceptions, unless, &c. The bill alleged that the defendant, Swindell, was prosecuting an action at law against Teesdale, the plaintiff in equity. The answer was put in on the 24th of June last; exceptions thereto for insufficiency were filed on the 29th of the same month, and on the same 29th the order of reference complained of was obtained, though no leave whatever was given. [The MASTER of the ROLLS.—Then it is a question of time.] Yes; the exceptions were ordered to be referred the same day as that on which they were filed, and that ought not to be without special leave. The question is, was the party exempted from the observance of the General Order, without the leave of the Court. The 25th article is express.

Turner (with him *Giffard*), *contra*.—On the answer coming in, and being found insufficient, exceptions were taken thereto, and the order in question was obtained from your lordship, on affidavit, and is therefore not a common order, but an order on special leave.

Roupell.—Nothing is said in the order of an order in the affidavit.

Kindersley.—Yes; but it was made by the Court a special application, and here is the affidavit on which it was made.

The MASTER of the ROLLS.—The question, if any there be, is, whether the order ought not to have had the words "notwithstanding the General Order, the order is granted on affidavit." The order having

been made on affidavit is not therefore a common order.

April 22 and Nov. 10, 1845, and July 30, 1846.

SMITH v. SMITH.

Dower—Separate estate—Charge—Trust to sell—Lien—Subsequent advances.

A B, a married woman, entitled, in respect of a former marriage, to dower, which was settled to her separate use, conveyed the same to *C D*, on trust to sell, and pay thereout advances made, and to be made, by *C D* to *A B*, not exceeding a given amount, and to pay the surplus to *A B*. Advances were made beyond the amount by *C D*, who received the dower, and the sums received fell short of the sums advanced.

Held: that this receipt of dower could not be considered as indefinite payments, but only for the purpose of paying off the charge, and afterwards for the separate use of *A B*; and that the dower so received ought to have been applied in satisfaction of the charge, and the surplus, after such satisfaction, could only be applied as *A B* directed, and was subject to no lien except such as might be acquired by lending money to *A B*, independently of the deed of conveyance.

C D was nevertheless permitted to make a new claim for payment of what was due to him out of the surplus of the income of the dower in his hands, after satisfaction of the charge.

This case came on upon petitions for and against the Master's report; it was in reference to the claim of Mr. Gregory to a lien on the dower of Mrs. Johnson, for advances made subsequent to a conveyance of her dower on trust, to sell and pay off charges thereon to a given amount. The facts are sufficiently stated in the judgment.

JUDGMENT.

Nov. 10, 1845.—The MASTER of the ROLLS.—This case came on upon a petition of Ann Johnson, praying that the Master's report, dated the 7th Dec. 1844, might be confirmed, with consequential directions; and also on the petition of G. P. F. Gregory, praying, for the purposes therein mentioned, that the petitioner might be at liberty to except to the report, and that it might be referred back to the Master to review the same. In September 1820, Mr. Smith, the first husband of Mrs. Johnson, died intestate, leaving her entitled to dower, her right to which was established by proceedings in this court; and on the 10th January, 1827, she made some arrangement or agreement, as to part of her interest in the dower, with a person of the name of Kendall; and one question arose as to the performance of that agreement. In 1827, she contemplated a marriage, which took effect, between her and William C. Johnson; and on that occasion marriage articles were executed, whereby it was agreed that her dower should be conveyed to trustees in trust for her separate use, and enabling her to dispose of any arrears by deed or will. She married Johnson on the 19th of May, 1827; and in the course of the proceedings in the cause a receiver was appointed of the rents out of which her dower was to be paid. On the 2nd July, 1828, a deed was executed between Mrs. Johnson of the first part; the husband, William C. Johnson, of the second part; and David Lloyd Harris, of the third part. Harris had previously advanced two sums of 80*l.* and 20*l.*, and then lent her a sum of 50*l.*; and it being contemplated that he might make further advances, the dower was conveyed to Harris in trust to sell, and, after paying costs and expenses, he was to repay himself the three sums of 80*l.*, 20*l.*, and 50*l.*, and any further sums not exceeding 600*l.*; and Harris was entitled either to perform the contract of Kendall, or to resist the claim of Kendall under that contract, as should be expedient. In August 1830, the petitioner, Mr. Gregory, had advanced to Mrs. Johnson different sums amounting to 280*l.*, and he then lent her an additional sum of 50*l.*; and further advances being contemplated, a deed, dated the 20th of August, 1830, was executed between D. L. Harris, of the first part; Mrs. Johnson, of the second part; her husband, of the third part; and Mr. Gregory, of the fourth part; and thereby Mrs. Johnson's dower was conveyed to Gregory in trust to sell it and receive the purchase-money, and in the mean time to receive and take the dower, and out of the income to arise by the sale to pay the costs therein mentioned, and then what should be due to Harris, and afterwards to pay himself the 280*l.* and 50*l.*, and such further sums of money as he might lend and advance, or pay, or lay out, or expend for the use or on account of Mrs. Johnson, so as the same, together with the 280*l.* and 50*l.*, should not exceed the whole sum of 400*l.*; and he was to stand possessed of the surplus in trust for the separate use of Mrs. Johnson. A few days after the date of this deed, and on the 26th of the same month of August 1830, Gregory, at the request of Johnson and wife, paid to Kendall 150*l.*, and in consideration thereof Kendall undertook to assign his right and interest in the contract of the 10th of January, 1827, to Gregory, in trust for Johnson and his wife; and it was agreed between Gregory and Johnson and wife that the sum of 150*l.* and costs paid by Gregory should to all intents and purposes be considered as included in and

provided for by the trusts of the deed of the 20th of August, 1830, as if the agreement and release and assignment thereby contemplated had been made before the execution of the deed. By an order on the petition of Mrs. Johnson, on the 7th of August, 1840, it was referred to the Master to inquire whether any, and what sum was due to Harris under the deed of the 2nd of July, 1828, and if any sums of money payable to him had been, and by whom, and when paid; and the Master was to take an account of what had been expended by Gregory for principal, interest, and costs under the deed of the 20th of August, 1830, and of all sums received, or which, but for wilful default, might have been received on account of the dower of Mrs. Johnson; and also to inquire whether Gregory had made any other advances to, or made any payment for, or on account of Mrs. Johnson, and whether Gregory had any and what lien upon the dower, or the purchase-money thereof, with liberty to state special circumstances. The Master made his report on the 8th of December, 1842, and thereby found that the amount due on the balance of the account for principal money, interest, and costs, under the deed of the 2nd of July, 1828, to the 24th of May, 1839, to be the sum of 414*l.* 16*s.* 11*d.*, and that such sum had been paid by Gregory to Harris; and in taking the account of what was due under the deed of the 20th of August, 1830, he considered the limitation as to the sum therein mentioned to have been extended by the agreement of the 30th of August, 1830, which was to embrace the sum of 150*l.*, intended to be provided for by such agreement; and so considering, he found there had been expended by Gregory for principal money, interest, and costs, under the same deed, as extended by the agreement, 832*l.* 4*s.* 10*d.*; and he found that, under the deed of the 2nd of July, 1828, and also by the deed of the 20th August, 1830, Gregory received several sums, amounting together to 1,222*l.* 3*s.* 9*d.*, on account of the dower of Mrs. Johnson. The Master then added the amount of Gregory's expenditure, 832*l.* 4*s.* 10*d.*, to the balance paid to Harris, 414*l.* 16*s.* 11*d.*, and found the aggregate amount 1,247*l.* 1*s.* 9*d.*, from which 1,222*l.* 3*s.* 9*d.*, the amount of his own receipts, being deducted, 24*l.* 18*s.*, was left due to him on the balance. And he further found that Gregory had expended other sums for Mrs. Johnson to the amount of 465*l.* 7*s.* 10*d.*, for which he did not find that Gregory had any lien. It does not appear on the papers before me that Gregory took any step to impeach this report; but upon the 22nd April, 1843, and upon the petition of Mrs. Johnson, that the Master might be directed to review his report, it was referred back to him to review the same as to the 150*l.* included in the agreement of the 26th of August, 1830, and Mr. Gregory was to be at liberty to make such further claim as to the said sum of 150*l.* as he might be advised. The Master, by his report, dated the 8th December, 1844, has reviewed his former report, and has, consequently, found that the sum of 705*l.* 15*s.* 9*d.* instead of the sum of 832*l.* 4*s.* 10*d.* found by the former report, is due and owing to Gregory, under the indenture of the 20th of August, 1830, and the agreement of the 26th of August, 1830; and he has further found that in the result of his inquiry there is due from Gregory a balance of 101*l.* 11*s.* 1*d.* instead of there being a balance of 24*l.* 18*s.* due to him as found by the former report; and he further states that Gregory, pursuant to the liberty given him, brought in a state of facts and charges that the Master did not think fit to allow. This report was objected to, and it is the subject of the present petition, by which Mr. Gregory desires to have it considered that no part of the 1,222*l.* 3*s.* 9*d.* received by him on account of the dower, ought to be considered as received on account of sums due to him under the indentures of July 1828, and August 1830, till after the payment of the several sums amounting to 465*l.* 17*s.* 10*d.* found due to him, or that he may be considered as a mortgagee, or to have a lien under the agreement of the 26th of August, 1830, for the 150*l.* and interest on so much of the dower of Mrs. Johnson as shall remain in his hands after satisfying the debts or sums of money specified in the report of the 8th of December, 1842; and he desires either an order giving him the benefit of those claims or such other order as shall seem meet. There seems to me no doubt that Mr. Gregory has paid on account of Mrs. Johnson a greater sum of money than he received on account of her dower. The whole sum received amounts to 1,222*l.* 3*s.* 9*d.* The sums, as even now allowed, of principal, interest, and costs, under the deed, amount to 1,207*l.* 11*s.* 8*d.*, and the Master has before found the further sum of 465*l.* 17*s.* 10*d.* was advanced. Mr. Gregory was entitled to receive Mrs. Johnson's dower, and to apply the same in satisfaction of the sum which was due to him under the deed; and, as to the surplus of it, he was trustee to Mrs. Johnson for her separate use. Mrs. Johnson had no right to divert any portion of it from that first application to which Mr. Gregory was entitled, and if the directions of the deed had been simply followed, the question now made would not have arisen; but Mrs. Johnson was entitled to the surplus for her separate use, and seems to have been continually in want of money, and she repeatedly applied

to Mr. Gregory to supply her with money, or make payments for her, and he did frequently do so. It was held, on a former occasion, that with respect to any money advanced beyond the items stated in the deed, he had no claim or lien under the deed; but, if I correctly understand the arguments advanced for him, he now says that, having received the dower, which, subject to his own rights under the deed, belonged to Mrs. Johnson, for her separate use, he had a right, in its application, to postpone his right under the deed, and apply the receipts, in the first place, in satisfaction of new payments or advances made on account of Mrs. Johnson; and he insists that, if at any time any portion of the limited charge under the deed was paid off, he has a right to bring any subsequent advances to Mrs. Johnson under the deed in lieu of so much of the charge as had been paid off, and thus to keep up the amount of the charge, although some part had been paid off; and further he contended that, if not so entitled, he was in fact bound, under the trusts of the deed, to exonerate the dower before he applied any part of it to the use of Mrs. Johnson; yet, at all events, after the charge was satisfied, he was, at the request of Mrs. Johnson, entitled to apply any surplus for her use, according to her directions, and ought to be allowed, as, against the surplus, not only such sums as he paid by her direction out of her dower, but also such sums as he applied to her use under her authority, without special reference to dower, or the fund out of which such sums were to be paid. In other words, he contends that the surplus of the dower, after payment of the limited charge, was money in his own hands on account of Mrs. Johnson, which, under the circumstances, he had a right to apply to her use, whether she specifically directed the payment to be made out of her dower or not. The case, as argued, does not appear to me to be consistent with the case indicated by the objections carried in to the Master's present report; and it is not confined to the claim, which, by the terms of the Order of April 1843, was specially permitted to be made. Mr. Selwyn, who argued the case, has, therefore, not desired any decision in favour of Mr. Gregory at this time, but has requested special leave to make a claim in conformity with the case which he has argued. Upon the argument it does not now appear to me that Mr. Gregory has any claim under the deed beyond that which the Master has found. I think that his receipt of dower cannot be considered as indefinite payments. He had them only for the purpose of paying off the charge, and afterwards for the separate use of Mrs. Johnson; and, upon the true construction of the instrument, I think he was bound to apply the dower which he received in satisfaction of the charge, and could only consider the surplus, after such satisfaction, as subject to the disposition of Mrs. Johnson, or liable to such ordinary lien as he might acquire in advancing money to her. Supposing this to be so, the surplus was, at all events, subject to the disposal of Mrs. Johnson. It was apparently the only money which became, or was likely to become, payable by Mr. Gregory to Mrs. Johnson, the only sum in respect of which she had any right to draw, or any ground to ask him to pay money on her account; and when she drew a bill, as she afterwards did, with a direction to Mr. Gregory to charge the same to the account of her dower, or, even without that special reference, when she afterwards drew bills upon him with directions to charge or place the same to account, she probably meant, and Mr. Gregory had reason to believe she meant, that, besides satisfying the charge created by the deeds, she was to be entitled to credit for those sums in the account of the money which remained; and under these circumstances there seems to be some reason to think that Mr. Gregory may have been entitled to a lien on the surplus; and I think it would scarcely be just to leave the matter in its present state. Mr. Gregory is found a debtor in a case in which, in his payments for Mrs. Johnson, he excluded his receipts; and although he has, I think, very much mistaken his own case, first, in supposing he was entitled to the whole of his claim under the deed, and now in asserting he has a right to intercept moneys which ought to be applied in satisfaction of the charge, and to apply them, in priority to the satisfaction of sums due to him, which were not charged, yet, on his paying the costs occasioned by the claim which has been made by this petition, I think he ought to be allowed to make the claim, at least to the extent of the 150*l.* mentioned in the former order, for what he may allege to be due to him out of the surplus of the money, after applying so much as was required for the satisfaction of the charge. He has prayed relief which seems to me to be inconsistent with the principle of the order of the 22nd of April, 1843, but has not prayed to be relieved from it. When that order was made it seems to have been considered that the Master thought there was no lien except under the instruments of the 20th and 26th of August, 1830, and it does not appear from the papers before me that any attempt was made to disturb that part of the report. Considering the state of the fund, and the liability to costs to which Mr. Gregory is subject, it may not be worth his while

to adopt any proceedings for the purpose of obtaining relief from the limitation contained in the order of the 26th of April, 1843. If it were so, my present impression is, I should give him leave to amend this petition; but on the case as it now stands, Mr. Gregory paying the costs of the last report, of the objections, and of this petition, I think I ought to give him leave to carry in another claim, and, with reference to such claim, if made out to the satisfaction of the Master, to give the Master liberty to review his present report.

Thursday, July 30, 1846.—Mr. Gregory having, in pursuance of the leave given him to make a new claim, presented a new petition, the case came again before the Court; but it appearing that he had brought forward the claim in such a manner as to seek his relief under the deed of charge, and not in the way suggested by the Court, the petition was dismissed with costs.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT.

July 17 and 21.

STONE v. HARRISON.

Will—Construction.

A testator gave to A B, a married woman, an annual sum of 200*l.* during her life for her separate use, and after her decease he gave the sum of 6,666*l.* 13*s.* 4*d.* Consolidated 3 per Cent. Bank Annuities to be divided equally among such her children as should attain the age of twenty-one years. A B. died, leaving six children, five only of whom had then attained twenty-one. It was held that the residuary legatee was not entitled to the dividends on the sixth part of the stock becoming due between the death of A B and the minor attaining twenty-one.

By the will of George Harrison, late of the Herald's College, London, esquire, and which was in the form of instructions for a will, dated the 8th of April, 1821, he desired to give to Daniel Charles Rogers an annual sum of 200*l.* during the term of his natural life, and after his decease the same annual sum of 200*l.* to be continued to his wife during the term of her natural life, for her sole and separate use and benefit, and after the decease of both of them, he desired that the sum of 6,666*l.* 13*s.* 4*d.* Three per cent. Consols Bank Annuities be transferred equally among such of their children as should attain the age of twenty-one years, which sum of 6,666*l.* 13*s.* 4*d.* would produce an annual sum of 200*l.* The said testator also desired to give his great niece, Mrs. Stone, wife of Mr. Robert Stone, of High-street, Marylebone, an annual sum of 200*l.* during her life, for her separate use, and after her decease he gave the sum of 6,666*l.* 13*s.* 4*d.* Consolidated Three per cent. Bank Annuities to be divided equally among such her children as should attain the age of twenty-one years, and appointed his nephew, Samuel Harrison, and the said Daniel Charles Rogers and Robert Stone, executors. The testator died on the 16th of April, 1821, and the will was proved by all the executors on the 27th of April, 1821, in the Prerogative Court of the Archbishop of Canterbury. Mary Elizabeth Stone died on the 7th of May, 1845, leaving six children her surviving; and having had no other child who lived to attain the age of twenty-one years. At the death of Mrs. Stone, all her children excepting one had attained twenty-one, and five-sixths parts of the amount of stock which had been treated by the trustees for the purpose of answering this bequest, were sold out, and the produce paid to the five children who had attained twenty-one. The question now in dispute was as to the interest upon the remaining sixth part, until the youngest child attained twenty-one. The bill prayed, with regard to this question, "that it might be decreed that the remaining one-sixth of the said July dividend, and the dividend which became due in January 1846, and all future dividends which should, during the minority of the plaintiff, Georgiana Stone, become due, upon the said sum of 1,077*l.* 15*s.* 8*d.* Bank 3 per Cent. Consolidated Annuities, would belong to the said plaintiff in case she should attain her age of twenty-one years, and in case of her death under that age, would belong to the plaintiffs in equal fifth shares, and for investment and accumulation."

Russell and Campbell, for the plaintiff, contended that the gift was to a class which eventually might be less or more in number, but which class must eventually take the whole. At the time of the death of the tenant for life there were several persons then in being who took vested interests in the whole, defeasible only as between themselves.

Wigram, for the residuary legatee, argued that this intermediate interest was undisposed of, and that therefore it fell into the residue.

Moore, for the executor.

The following cases were cited: Wyndham v. Wyndham, 3 Bro. Ch. Ca. 58; Shaw v. Cunliffe, 4 Bro. Ch. Ca. 144; Harris v. Lloyd, 1 Turn. & Russ. 310; and Leake v. Robinson, 2 Mer. 363.

The VICE-CHANCELLOR said that his impression was, that as there were children who attained twenty-

one, the gift was to them, subject to opening in favour of those who should afterwards attain twenty-one. He then directed that the sixth part should be brought into court, and the dividends accumulated, with liberty to apply. He would, however, mention the case again in a few days, should his present opinion be altered.

Tuesday, July 21.—The VICE-CHANCELLOR gave to the parties a written judgment, of which the following is a copy:—

"I have considered the will in this case, and, in addition to the cases mentioned at the bar (Wyndham v. Wyndham, Shaw v. Cunliffe, Leake v. Robinson, and Harris v. Lloyd, of which I question neither), I have looked at various authorities of a different kind, the bearing of which, upon the construction of the will, appeared to me possible. Among them I may mention Taylor v. Johnson, 2 P. Wms. Ellison v. Airey, Shepherd v. Ingram, Mills v. Norris, Whitbread v. Lord St. John, Gilbert v. Boorman, Davidson v. Dallas, and Deffis v. Goldschmidt. It struck me that these or some of them might, as well as others which I need not enumerate, be thought perhaps relevant. On the whole, I remain of opinion that the testator's great niece, the wife of Mr. Robert Stone, having survived the testator, and having left, at her decease, children, of whom some, though not all, had attained majority in her lifetime, the residuary legatee is excluded from claiming any portion of the dividends subsequent to her decease upon 6,666*l.* 13*s.* 4*d.* three per Cent. Consols, given 'after her decease,' 'to be divided equally among such her children as shall attain the age of twenty-one years.' With any question, if there was a question, between the child who had not, and the children who had, attained majority in the lifetime of Mrs. Stone, the residuary legatee, has nothing, and had nothing, to do. I say 'if there was a question,' because the adult children have consented that the minor shall, in the event of attaining majority, be considered as entitled to an equal share, and this from the death of their mother, for which the decree is to provide. I collected that there was not any child of Mrs. Stone that died in her lifetime, having attained majority."

NORRIS v. NORRIS.

Will—Construction.

A testator, by his will, made the following bequest:—"To my beloved wife I give all my interest in my house at Lavender-hill, the furniture, books, pictures, wines, &c. &c."—Held, that the gift was not confined to the furniture and other articles in the house at Lavender-hill at the time of the testator's death. James Norris, the testator in this cause, by his will, dated the 14th of February, 1832, after making certain bequests, proceeded:—"To my beloved wife I give all my interest in my house at Lavender-hill, the furniture, books, pictures, wines, &c. &c." and then gave directions for the conversion and investment of the residue of his property. The testator died on the 1st of December, 1838, and the will was shortly afterwards proved.

This suit was instituted by the widow of the testator for the administration of the estate, and one of the questions which arose in the suit was, whether the gift of the furniture and other articles was to be confined to those in the house, or to be extended to all of which the testator was possessed at his decease, wheresoever situate.

Swanston and J. Bailly for the plaintiff, cited Colleton v. Garth, 6 Sim. 19; Land v. Decaynes, 4 Bro. C. C. 537.

Goldfinch, for the infant defendants.

Roll and Glasse, for the executors.

The VICE-CHANCELLOR said, that his impression was that it would be giving too strong an effect to the position of the words, and to the use of the definite article, to hold that the words were local. He thought that there was enough to create conjecture and suspicion that the testator meant to confine the gift of the furniture to the articles in the house, but he thought there was no more than that. His impression was, that it was a general gift; but if that impression should be removed, he would mention the case again.

July 21.—The VICE-CHANCELLOR gave a written judgment, of which the following is a copy:—"I have re-considered the will in this case and have not changed the opinion which I had at the close of the argument. There may be room to suspect or conjecture that in using the expressions 'the furniture, books, pictures, wines, &c. &c.' the testator had in his mind only such effects within the description as were then, or as, at his death, might be in the dwelling-house then occupied by him, especially when their place in the will is observed. But the expressions themselves have not necessarily so restricted a meaning—have not necessarily any local reference. It would, I think, be giving too much weight to the use of the definite article, and the particular position of the phrase, so to confine the construction. The language must, I conceive, be taken to have been used generally, not with regard to any particular place, nor with regard only to such 'furniture, books, pictures, wines, &c. &c.' as he had when he made his will."

COMMON LAW COURT.

ADMIRALTY COURT.

(Before Dr. LUSHINGTON.)
Salvo.*A claim for salvage may be diminished by subsequent misconduct, or want of due nautical skill.*

The facts of this case are briefly these:—The *Duke of Manchester*, of 369 tons, and valued, with cargo, at 10,500*l.* got upon the Goodwin Sands in December last, whilst on a voyage from London to Jamaica. The weather was obscured at the time. She was assisted by two boats, and one proceeded to Ramsgate and procured the *Copeland* steamer, of 100 horse power, and worth 4,500*l.* to lend more efficient aid. When the steamer came up, the *Duke of Manchester* was beating heavily upon the sands near the Gull Light. Measures were taken as soon as possible to get the barque off. She was in deep water, and the *Copeland* towed her towards the Downs. She, however, again struck on the sands at Sandwich Flats, and (as pleaded) in consequence of the want of skill by the crew of the *Copeland*. As usual, the evidence on both sides was of a most conflicting character; indeed, so much so, in this case, that the learned judge deemed it necessary to have the aid of the Trinity Masters. It was alleged, on the part of the *Duke of Manchester*, that the second striking was in consequence of her being unable to ply her helm. While on the flats two luggers came up and rendered aid, though in the first instance rejected, and took out some of the cargo, after which the barque again floated; but, having sustained much damage, she was taken into London for repairs, having got into the West India Docks on the 17th of the same month. The owners of the *Copeland* claimed high reward, as they alleged that the services rendered were at the risk of life and damage of their property. The owners of the barque pleaded the weather to be moderate, and the services comparatively slight. There was not any tender made in the suit.

The *Queen's Advocate*, for the owners, contended that, on the whole, some reward was due to the steamer and boatmen; but that no such services, as represented, had been performed.

Dr. Addams and *Dr. Bayford* contended, that nothing had been stated to derogate from the services of the steamer, which had been expressly called upon, and had rescued from danger a valuable property; and that, as the pilot was on board when the barque struck on the flats, and as he took that ordinary care that was required, the steamer had performed her duty.

The learned JUDGE said he might dismiss the questions raised as to luggers. As to the *Copeland*, the points must be divided into two classes. The assistance of the *Copeland* was asked; did she act rightly in the first and second instances, in getting a vessel, with so valuable a cargo, off the Goodwin, and also was there any improper conduct, as respected the striking on the Sandwich Flats? The learned Judge then referred to the main points of evidence. It was sworn that the steamer pitched so much, that the lives of all on board were in danger, and that the barque, with her cargo and crew, were in imminent peril. It was further stated, that if the steamer had touched the sand, she would have been in danger of total loss, in consequence of the weight of her engines. In connection with this branch of the case, he would put these questions to the Trinity Master:—"Was the *Duke of Manchester* in a state of imminent danger? Were the measures pursued by the *Copeland* proper, and was the barque got off in consequence of those measures, and was there any great danger to the *Copeland*, by pursuing such measures?" The learned Judge would not trouble the gentlemen by whom he was assisted to assess damages; that was the province of the Court. These were not all the material points of the case. After the *Duke of Manchester* had either been eased off or floated off, was the course taken by the pilot right in conducting the ship to the Downs? It had been decided in a previous case, that salvage service might be diminished by subsequent misconduct. Here it was said that the steamer had nothing to do with the steering of the *Duke of Manchester*. The case of the *Duke of Sussex* had been cited. In this case the Crown proceeded against the steamer, and he himself had decided that the pilot on board was responsible. Owners were not responsible if the orders of the pilot of the steamer were obeyed. In that case the Court held the *Chieftain* was not to blame, there being no negligence on the part of those on board the steamer. In the case of the *Diana*, where there was a pilot on board who did not do his duty, and the mate and crew had been negligent, the Court (and in its judgment it was supported by the Judicial Committee of the Privy Council) had pronounced that the owners were liable. It was the duty of the master of a vessel to look after the pilot, to see that he was competent—that he was not drunk, or that he did not pursue a course tending to place valuable property, and more valuable lives, in jeopardy. It was not

for a steamer to remain in sulky silence and not remonstrate against the conduct of a pilot in charge, in leading a ship into danger. The Court would next ask whether the ship getting on the Sandwich Flats was occasioned by the weather, or by the disabled state of the vessel? Secondly, could the stranding have been prevented by ordinary skill and vigilance, or was there a want of skill on the part of the *Copeland*? or did she knowingly run the vessel into danger? The Court thought it would be advisable for the Trinity Masters to retire and consider their answers to the questions.

The learned Judge retired with them, and after an absence of about half-an-hour entered the court again.

The learned JUDGE then read the questions over, and stated the replies of the Trinity Masters to be as follows:—They did not think the *Duke of Manchester* to be in such a perilous state as set forth by the owners of the *Copeland*, there being ten feet water; and if she remained staunch and tight, the next tide would have carried her into deep water. As to the second and third questions, the Trinity Masters held that the jerking of the ship had had the only effect that might have been expected, the carrying away the main chains, &c. As to the fourth point, the Trinity Masters were not of opinion that the *Copeland* had been exposed to danger. With respect to the remaining questions, the Trinity Masters were decidedly of opinion, that the getting on the Sandwich Flats was the result of the want of ordinary care and skill on the part of the steamer; and that there was, in their opinion, also a gross and culpable negligence on the part of the *Copeland*.

The learned JUDGE stated, that he concurred in the answers of the Trinity Masters, and considered that the grossest neglect had been exhibited by the steamer; the weather, and the knowledge of the coast which the crew must have had, being taken into account. The Court must pronounce against the *Copeland*, and with costs, allotting 5*l.* to each of the two first luggers, 10*l.* each to the masters, and 5*l.* each to the crew, the Ramsgate boats having 60*l.* to divide between them.

THE LEGISLATOR.

SUMMARY.

We give below some interesting and useful abstracts from Parliamentary Papers. No rumours of proposed measures for the next session have this week reached us.

PARLIAMENTARY PAPERS.

POPULATION, TAXATION, &c.—The population of Great Britain in 1801 was 10,942,646, and in 1845 it was 19,572,574. The national debt in 1796 was 301,861,306*l.* and in 1845, 768,789,241*l.* In 1796 the interest on the national debt, funded and unfunded, was 11,841,204*l.* and in 1845, 27,827,265*l.* The amount of county rates in 1796 was 229,390*l.* and in 1842, 703,526*l.* In 1843 the poor's rates were 5,348,205*l.* and in 1844, 6,848,717*l.* In 1813 there were 1,426,065 paupers in England, in 1843, 1,539,490. The declared value of exports from Great Britain to all parts, except Ireland, was in 1796, 25,130,624*l.* and in 1845, 150,645,801*l.* The imports, with the same exception, in the two years, were 20,422,440*l.* and 83,330,609*l.* In 1796 there were 879,197 quarters of wheat and wheat flour imported into Great Britain from all parts except Ireland, and 1,133,561 quarters in 1845, in which last-mentioned year the quantities of foreign and colonial wheat and wheat flour retained for home consumption were 308,493 quarters. The average price of wheat per quarter in 1796 was 70*s.* 3*d.* and in 1845 it was 50*s.* 10*d.* The fluctuation per cent. under the different laws is given. From 1842 to 1845 it was 14.31. In 1845 the duty on the average price was 20*s.* The number of acres enclosed (as far as returned) from 1800 to 1842 was 1,933,049 acres. The proportion per cent. of the population living on foreign corn was for the last fourteen years 5.73, and the number of days' consumption imported 34.35. Other returns were moved for by Mr. Francis Scott, and are given by the statistical department of the Board of Trade. The hon. member embraced six different subjects in his motion. They relate to wheat, exports, live stock, and the prices of meat. In London, in the past quarter, 1842, beef was 6*d.* per lb. mutton, 7*d.* and pork, 7*d.* whilst at Edinburgh picked meat was 6*d.* and common meat, 4*d.* per lb.

PUBLIC DEBT.—A Parliamentary paper has been issued giving an account of all additions which have been made to the annual charge of the public debt by the interest of any loan that hath been made or annuities created in the last ten years, pursuant to the Act 27th Geo. 3, c. 13. The first and last additions will show the nature of the document, and the application of "the Sinking Fund." In the year 1836, by virtue of the Act 6th and 7th Wm. 4, c. 82, the further sum of 3,432,974*l.* 0*s.* 1*d.* (on account of the

grant of 20,000,000*l.* for compensation to owners of slaves) was authorised to be raised to defray the compensations which should be awarded to owners of slaves in the colonies of the Cape of Good Hope, or the Mauritius, or the Virgin Islands, by placing an amount of stock in the 3*l.* 10*s.* per Centum Reduced Annuities, in lieu of the said sum of 3,432,974*l.* 0*s.* 1*d.* to the credit of the Commissioners for the Reduction of the National Debt, in the books of the Bank of England. The amount of capital in the Reduced Annuities at the rate of 100*l.* stock for 99*l.* 17*s.* 6*d.* sterling, being the average price on the 30th of July, 1836, on which day the certificate of award did commence to be issued for the colony of the Mauritius, was 3,437,270*l.* 11*s.* 10*d.* and the annual charge created in respect of the capital, including 1,031*l.* 3*s.* 7*d.* for management, at the rate of 300*l.* per million, was 121,335*l.* 12*s.* 11*d.* No specific provision was made for the above charge in 1836, but it was authorised to be defrayed out of the Consolidated Fund. There are many additions in the account from 1836 to the present year. The following is the last addition made:—In the year 1844, by virtue of the Act 9 Geo. 4, c. 92, s. 50 and 51, the Commissioners for the Reduction of the National Debt having applied the sum of 14,658*l.* 7*s.* 2*d.* in the purchase of Exchequer bills and the interest thereon between the 5th of July, 1843, and the 5th of April, 1844, and certified the said purchase to the Treasury on the 10th of April, 1844, became entitled to an amount of stock for the same to be placed to their account at the Bank of England, according to the conditions of the above-mentioned Act. The amount of capital thereby created in Three Pounds per Centum Consolidated Annuities, according to the quarterly average prices of Three per Centum Annuities, bought with the moneys commonly called the Sinking Fund during the said period of time, was 15,217*l.* 10*s.* 5*d.*; and the annual charge created in 1844 in respect of the said capital of 15,217*l.* 10*s.* 5*d.* Three Pounds per Centum Consolidated Annuities, including 4*l.* 11*s.* 3*d.* for management, at 300*l.* per million, was 461*l.* 1*s.* 9*d.* which charge was authorized to be defrayed out of the Consolidated Fund.

CIVIL LIST PENSIONS.—A list of all pensions granted between the 20th day of June, 1845, and the 20th day of June, 1846, and charged upon the Civil List (pursuant to Act 1 Viet. c. 2):—

20th July, 1845.—Mademoiselle Augusta Emma D'Eve	200
Additional pension, in consideration of her just claims on the royal household. In trust to Edward Majoribanks, esq. and Sir Edmund Antrobus, bart.	
30th September, 1845.—Dame Mary Archer Shee. The wife of Sir Martin Archer Shee, President of the Royal Academy, in consideration of his eminence as an artist, and of his service as President of the Royal Academy during a period of 14 years. In trust to Martin Archer Shee, esq. of the Middle Temple, Barrister-at-Law, and William Archer Shee, esq. on the Home Establishment of the East India Company's Examiners' Office, East India House.	240
14th October, 1845.—Alfred Tennyson, esq. In consideration of his eminence as a poet.	260
14th October, 1845.—James David Ferber, esq. Professor of Natural Philosophy at the University of Edinburgh, in consideration of his eminent attainments in science.	200
22nd April, 1846.—Jane Loudon. Widow of the late John Claudius Loudon, author of several works connected with botanical science; in consideration of his services and merits. In trust to Francis Ellerker Lewin, esq. and Bevis Ellerby Green, esq.	100

EDWARD CARDWELL.

Whitehall, Treasury Chambers, June 30, 1846.

MARRIAGES.—Sir Robert H. Inglis, as member of the University of Oxford, has obtained some interesting returns respecting the celebration of marriages, which were a few days ago made public. The first branch has reference to the number of places of religious worship in England registered for marriages under the Act 6th and 7th William 4, c. 85, since the 30th of June, 1842. The total number of places registered in the counties of England and Wales was 2,467, divided into eight classes:—Presbyterians, 196 places; Independent Congregationalists, 970; Baptists, 599; Methodists (Arminian), 267; Methodists (Calvinistic), 78; Roman Catholics, 301; foreign churches, 5; and miscellaneous, 52; making 2,467 places. In the second department returns are given of the number of marriages celebrated yearly from the 1st of January, 1841, to the 31st of December, 1844, inclusive. In the year ending the 31st of December, 1841, there were 122,496 marriages in England; 5,362 men and 16,285 women were not of full age; 39,954 men and 59,680 women signed with "marks." In the year 1842, the marriages were 118,825. There were 5,387 men and 16,003 women under age; 38,031 men and 56,965 women signed with "marks." In the next year the marriages were 123,818, of which 5,511 men and 16,403 women were under age; 40,520 men and 60,715 women signed with "marks." The marriages in the year 1844 were 132,249; 5,494 men and 17,362 women were under

age; 42,769 men and 64,816 women signed with "marks." In the metropolis in 1844 there were 2,438 men and 4,991 women who signed with "marks." The third part of the document states the marriages celebrated in the same years in each superintendent registrar's district. In 1841 the marriages so celebrated numbered 18,093, of which 272 men and 1,240 women were under age; 2,061 men and 4,294 women signed with their "marks." In 1842 the marriages were 18,493 in the superintendent registrar's district, of which 292 men and 1,390 women were under age; 2,035 men and 4,067 women signed with "marks." In 1843 the marriages celebrated in the same manner numbered 18,493, of which 319 men and 1,399 women were under age; 2,206 men and 4,417 women made their "marks." And in 1844 there were 20,126 marriages in the same manner; 294 men and 1,569 women were under age; 2,438 men and 4,991 women made their "marks."

MORTMAIN.—A "return of all deeds executed and enrolled under the 9 Geo. 2, c. 36, from the year 1840 to the year 1845, both inclusive." The whole number of deeds, &c. enrolled in the Enrolment-office in Chancery (including specifications of inventions and certificates for naturalization), for the several years above referred to, are stated below; but I am wholly unable to distinguish which of them are enrolled under the above-mentioned Act of Parliament, as the index does not give any information as to the Act under which deeds are enrolled.

The year 1840	3,499
" 1841	3,166
" 1842	2,419
" 1843	2,339
" 1844	2,420
" 1845	2,690

D. DREW,

Clerk of Enrolments in Chancery.

March 24, 1846.

NEW STATUTES

Of the Session 9 & 10 Victoria.

[In this record of actual Legislation, only the statutes and parts of statutes of peculiar importance to the Profession are given *verbatim*. Of the rest, the title, or a brief analysis only, is preserved here.]

SMALL DEBTS ACT.

(Continued from p. 495.)

46. *Clerk to send to commissioners of audit an account of all sums paid by him to treasurer.*—That the clerk of every such court shall once in every year, and oftener if required, on such day as shall be appointed by the Commissioners of her Majesty's Treasury, make out and send to the said commissioners of audit an account of all sums paid over by him to the treasurer of the court, including all unclaimed balances carried to the account of the general fund, as herein-after provided; and every such account, duly vouched by receipts given under the hand of the treasurer, shall be a voucher to charge the treasurer in his account before the said commissioners of audit.

47. *Accounts when audited to be sent to Treasury.*—That it shall not be necessary to declare the accounts of the said treasurers before the Chancellor of the Exchequer, but the said commissioners of audit shall transmit a statement of every account examined and audited by them under the authority of this Act to the Lord High Treasurer, or the Commissioners of her Majesty's Treasury for the time being, who, having considered such statement, shall return the same to the commissioners of audit, together with his or their warrant, directing them to make up and pass the account, either conformably to the statement, or with such variations as he or they may deem just and reasonable; and the account having been made up pursuant to such directions, and signed by two or more of the said commissioners for auditing the public accounts, shall remain deposited in the Audit-office, and shall have the same force and validity, and be as efficient in law for all purposes whatsoever, as if the same had been declared according to the usual course by the Chancellor of the Exchequer; and the said commissioners shall thereupon, as soon as conveniently may be, cause such or the like certificate thereof, in the nature of a *quietus*, to be made out and delivered, as is now practised by them with regard to declared accounts, and which shall be equally valid and effectual to discharge the accountants, and to all other intents and purposes.

48. *Treasurers, with approval of Secretary of State, to provide court-houses, offices, &c.*—That the treasurer of any court holden under this Act for which a court-house and offices, with necessary appurtenances, shall not have been already provided, or where such court-house and offices are inconvenient or insufficient, shall, as soon as conveniently may be, with the approval of one of her Majesty's principal Secretaries of State, build, purchase, hire, or otherwise provide messuages and lands, with all necessary appurtenances, fit for holding the court therein, and for the offices necessary for carrying on the business of the said court, or instead of providing separate buildings, may, with the like approval, contract with any person, being the owner of or having the control and management of any county or town-hall or other

building, for the use and occupation thereof, or of so much thereof as may be needed for the purposes of this Act, and subject to such annual rent, and to such conditions as to the repairs, alterations, or improvements of such hall or building, as may be agreed upon; and all lands, messuages, and other real and personal estates and effects belonging to the court shall vest in the treasurer for the time being, and in his successors in that office, in trust for the purposes of this Act.

49. *Where common gaols are inconvenient, prisons belonging to courts under Acts cited in schedules (A) and (B) may be used; 5 and 6 Vict. c. 98.*—That it shall be lawful for any court holden under this Act, with the approval of one of her Majesty's principal Secretaries of State, to use as a prison for the purposes of this Act any prison now belonging to any court holden under any of the Acts cited in the said schedules (A) and (B), in all cases where it shall appear to the said Secretary of State that the common gaol or house of correction of the county, district, or place in which the court is established is inconveniently situated, or is not applicable for the use of the said courts; and whenever any such prison shall be so allowed to be used it shall be deemed one of the common gaols of the county for which it shall be used, as if it had been provided, after presentment of the insufficiency of one common gaol for such county, under the provisions of an Act passed in the sixth year of the reign of her Majesty, intituled "An Act to amend the Laws concerning Prisons," or where such prison shall be situated within a borough having a separate court of sessions of the peace, it shall be deemed a house of correction for such borough.

50. *Power for purchasing land.*—That the provisions of the Lands Clauses Consolidation Act, 1845, shall apply to the purchase of lands by the treasurer of any such court for the purposes of this Act, except so much thereof as relates to the purchase and taking of lands otherwise than by agreement; and in construing the said Act the treasurer acting with the approval of one of her Majesty's principal Secretaries of State shall be deemed the promoter of the undertaking for which such lands are required.

51. *Treasurer empowered to borrow money for the purposes of this Act.*—That for the purpose of defraying the expenses of building, purchasing, or providing any messuages and lands for the purposes aforesaid, it shall be lawful for the said treasurer to borrow and take up at interest so much money as he shall find to be necessary, the amount thereof, and the rate of interest in each case, being first allowed by the said commissioners of her Majesty's Treasury; and the treasurer may enter into and execute such securities as may be required, and the securities so entered into shall be binding on him and his successors in the office of treasurer for securing repayment of the moneys borrowed, with interest for the same, out of the general fund hereinafter mentioned, and shall enter in a book belonging to the court, to be kept by him for that purpose, the names of the several persons by whom any money shall be advanced for the purpose aforesaid, in the order in which the same shall be advanced, and the moneys so borrowed shall be paid off in the same order.

52. *A general fund to be raised for paying off money borrowed.*—That for raising a fund for providing a court house and offices, and for paying off any moneys which may be borrowed as aforesaid, and the interest due in respect thereof, the clerk of every court holden under the authority of this Act, in which and while it shall be necessary to raise such fund, shall demand and receive from the plaintiff in any suit brought in that court the sum of sixpence when the debt or damage claimed shall exceed twenty shillings and shall not exceed forty shillings, and for every claim exceeding forty shillings one twentieth part thereof, neglecting any sum less than sixpence in estimating such twentieth part, or such other sum in either case, not exceeding the rates herein-before mentioned, as one of her Majesty's principal Secretaries of State, with the consent of the Commissioners of her Majesty's Treasury, from time to time shall order, which sum, if not paid in the first instance by the plaintiff upon suit brought in the court, may be deducted from the sum recovered for the plaintiff, and shall be considered as costs in the cause; and the clerk of the court shall keep an account of all moneys so paid to him, and shall pay over the amount from time to time to the treasurer of the court, and the amount thereof shall accumulate, to form a fund to be called "The General Fund of the County Court of _____ at _____"

and shall be applied in the first place toward paying the interest of the several sums so borrowed, and in the second place toward paying the rent and other expenses necessarily incurred in holding the court, and in the third place toward paying off the several principal sums borrowed, in the order in which they were borrowed, and in the fourth place toward defraying the other expenses herein charged on the said general fund, in such manner as the judge, with the approval of one of her Majesty's principal Secretaries of State, shall direct; and the surplus which shall from time to time accumulate, after providing for all the said expenses, shall be paid

over to the credit of the Consolidated Fund of the United Kingdom of Great Britain and Ireland; subject, nevertheless, to any charge which may arise from any future deficiency of the same fund.

53. *Property of courts in Schedules (A) and (B) to vest in the treasurer of the county court.*—That, as soon as a court shall have been established in any district under this Act, all messuages, lands, and tenements, and all real estates and effects, vested in or belonging to the commissioners, clerks, treasurers, trustees, or other officers of any of the courts mentioned in the said Schedules (A) and (B), which were holden in trust for the purposes of such court, shall vest in or belong to the treasurer of the county court for the time being, and his successors in the said office, in trust for the purposes of this Act, for the like estate and interest, and subject to all the covenants, conditions, and agreements on which the same were respectively holden; and the said commissioners, clerks, treasurers, trustees, and other officers, their heirs, executors, and administrators, shall be freed and discharged from all such covenants, conditions, and agreements, and from the consequences of their being unable to fulfil any covenants, conditions, and agreements into which any of them may have lawfully entered in execution of the provisions of any of the said Acts, as or before the repeal of such Act, with respect to their estate or interest in such messuages, lands, tenements, real and personal estates and effects, in consequence of the vesting thereof in the said treasurer; and all moneys and securities for money, and other property and effects of any kind whatsoever, in the hands of the commissioners, clerks, treasurers, trustees, or other officers of any such court, shall be paid, transferred, and delivered to the said treasurer, or to such person as he shall appoint to receive the same, and shall be applied in discharging all claims and demands to which the same were liable in the hands of such commissioners, clerks, treasurers, trustees, or other officers, and the residue thereof shall be applied to the same purposes to which the general fund is applicable.

54. *Provisions for outstanding liabilities.*—That it shall be lawful for the treasurer of the county court, with the approval of the Commissioners of her Majesty's Treasury, and upon the certificate of the expediency thereof under the hand of the judge, to sell and dispose of all messuages, lands, and tenements which may be vested in him under the provisions of this Act which shall not be needed for the purposes of this Act, or which the treasurers shall think ought to be sold, for the purpose of better enabling him to discharge any just debts on account of any court for which the constitution shall be altered under this Act, or to provide other and more convenient buildings for holding a county court; and the proceeds of all such sales, and also all moneys and securities for money which shall be paid, transferred, or delivered to him on account of any such court as aforesaid, shall be applied towards discharging such debts; and in every case in which at the time of the alteration of the constitution of the court there shall be any just debts owing on account of any such court, or any salaries or annuities legally or equitably chargeable upon it payable out of the fees of such court, or out of any fund to which such fees are payable, over and above what may be discharged by the moneys and effects so paid, transferred, or delivered to the treasurer on account of such court, and over and above the proceeds of the sale of any such messuages, lands, and tenements, in case the same or any part thereof shall be sold, such debts, salaries, and annuities shall be treated as if they were debts which had been incurred for the purpose of providing a court house for holding the county court for the district in which the place is included where such court was holden, and shall be liquidated out of the general fund hereinbefore mentioned, if the same shall be sufficient for that purpose, and any deficiency therein shall be paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

55. *Clerks to have the charge of the court houses, &c. and to appoint and dismiss serjeants, &c.*—That the clerk of every court shall have the care of the court house and offices of the court, and shall appoint and have power to dismiss the necessary servants for taking charge of such court house and offices, at such salaries as shall be from time to time authorized by the judge, with the consent of the Commissioners of her Majesty's Treasury; and the clerk of the court, under the direction of the said commissioners, and subject to such regulations as they may require to be enforced, shall make all necessary contracts or otherwise provide for repairing and furnishing, and for cleaning, lighting, and warming, the said court house and offices, and for supplying the said court and offices with law and office books and stationery, and for defraying all other necessary expenses not otherwise provided for incident to the holding of the said court, and the charge of the court house and offices, and expenses thereby incurred, shall be paid out of the general fund of the court: provided always that the treasurer or clerk of any court, or the partner of any such treasurer or clerk, or any person in the service or employ of any such treasurer or

clerk, shall not be directly or indirectly concerned or interested in any such contract, or in supplying any articles for the use of the said courts and offices: provided also, that no payment for any such charge shall be allowed in the clerk's accounts until allowed under the hand of the judge.

56. *Judge to hold the court where her Majesty shall direct.*—Notices for holding courts to be put up in a conspicuous place.—That the judge of each district shall attend and hold the county court at each place where her Majesty shall have ordered that the county court shall be holden within his district at such times as he shall appoint for that purpose, so that a court shall be holden in every such place once at least in every calendar month, or such other interval as one of her Majesty's principal Secretaries of State shall in each case order; and notice of the days on which the court will be holden shall be put up in some conspicuous place in the court house and in the office of the clerk of the court, and no other notice thereof shall be needed; and whenever any day so appointed for holding the court shall be altered, notice of such intended alteration, and of the time when it will take effect, shall be put up in some conspicuous place in the court house and in the clerk's office.

57. *Process of the court to be under seal.*—That for every court holden under this Act there shall be made a seal of the court, and all summonses and other process issuing out of the said court shall be sealed or stamped with the seal of the court; and every person who shall forge the seal or any process of the court, or who shall serve or enforce any such forged process, knowing the same to be forged, or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said court, knowing the same to be false, or who shall act or profess to act under any false colour or pretence of the process of the said court, shall be guilty of felony.

58. *Jurisdiction of the court.*—That all pleas of personal actions, where the debt or damage claimed is not more than twenty pounds, whether on balance of account or otherwise, may be holden in the county court, without writ; and all such actions brought in the said court shall be heard and determined in a summary way in a court constituted under this Act, and according to the provisions of this Act: provided always, that the court shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or for breach of promise of marriage.

59. *Suits to be by plaint.*—That, on the application of any person desirous to bring a suit under this Act, the clerk of the court shall enter in a book to be kept for this purpose in his office a plaint in writing, stating the names of the last known places of abode of the parties, and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it shall be entered; and thereupon a summons, stating the substance of the action, and bearing the number of the plaint on the margin thereof, shall be issued under the seal of the court according to such form, and be served on the defendant so many days before the day on which the court shall be holden at which the cause is to be tried, as shall be directed by the rules made for regulating the practice of the court, as hereinafter provided; and delivery of such summons to the defendant, or in such other manner as shall be specified in the rules of practice, shall be deemed good service; and no misnomer or inaccurate description of any person or places in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known.

60. *Summons may issue, though cause of action may not arise in the district.*—That such summons may issue in any district in which the defendant or one of the defendants shall dwell or carry on his business at the time of the action brought; or, by leave of the court for the district in which the defendant or one of the defendants shall have dwelt or carried on his business, at some time within six calendar months next before the time of the action brought, or in which the cause of action arose, such summons may issue in either of such last-mentioned courts.

61. *Processes out of district of court may be served by bailiff of any other court.*—That any summons or other process which under this Act shall be required to be served out of the district of the court from which the same shall have issued may be served by the bailiff of any court holden under this Act in any part of England, and such service shall be as valid as if the same had been made by the bailiff of the court out of which such summons or other process shall have issued within the jurisdiction of the court for which he acts.

62. *Proof of service of process out of the district, or in the absence of the bailiff.*—That service of any summons or other process of the court which shall require to be served out of the district of the court

may be proved by affidavit purporting to be sworn before any judge of a county court, or before a master extraordinary in Chancery, or any person now authorized by law to take affidavits; and the fee for taking such affidavits shall not be more than one shilling, and shall be costs in the cause; and in every case of the unavoidable absence of the bailiff by whom any summons or other process of the court shall have been served the service of such summons or other process may be proved, if the judge shall think fit, in the same manner as a summons served out of the district of the court, but without additional charge to either of the parties to the suit.

63. *Demands not to be divided for the purpose of bringing two or more suits.*—That it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said courts, but any plaintiff having cause of action for more than twenty pounds, for which a plaint might be entered under this Act if not for more than twenty pounds, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding twenty pounds; and the judgment of the court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

64. *Minors may sue for wages.*—That it shall be lawful for any person under the age of twenty-one years to prosecute any suit in any court holden under this Act, for any sum of money not greater than twenty pounds which may be due to him for wages or piecework, or for work as a servant, in the same manner as if he were of full age.

65. *Cases of Partnership and intestacy.*—That the jurisdiction of the County Court under this Act shall extend to the recovery of any demand, not exceeding the sum of twenty pounds, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will.

66. *Executors may sue and be sued.*—That it shall be lawful for any executor or administrator to sue and be sued in any court holden under this Act, in like manner as if he were a party in his own right and judgment, and execution shall be such as in the like case would be given or issued in any superior court.

67. *No privilege allowed.*—That no privilege, except as hereinafter excepted, shall be allowed to any person to exempt him from the jurisdiction of any court holden under this Act.

68. *One of several persons liable may be sued.*—That where any plaintiff shall have any demand recoverable under this Act against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction of the court; and every such person against whom judgment shall have been obtained under this Act, and who shall have satisfied such judgment, shall be entitled to demand and recover in the County Court under this Act, contribution from any other person jointly liable with him.

69. *Judge alone to determine all questions, unless a jury be summoned.*—That the judge of the County Court shall be the sole judge in all actions brought in the said court, and shall determine all questions as well of fact as of law, unless a jury shall be summoned as hereinafter mentioned; and no suitors shall in any case be summoned to hold or have any jurisdiction in any court holden under this Act.

70. *Actions may be tried by a jury when parties require it.*—That in all actions where the amount claimed shall exceed five pounds it shall be lawful for the plaintiff or defendant to require a jury to be summoned to try the said action; and in all actions where the amount claimed shall not exceed five pounds it shall be lawful for the judge, in his discretion, on the application of either of the parties, to order that such action be tried by a jury; and in every case such jury shall be summoned according to the provisions hereinafter contained: provided always, that the party requiring a jury to be summoned shall give to the clerk of the court, or leave at his office, such notice thereof as shall be directed by the rules made for regulating the practice of the court as hereinafter provided; and the said clerk shall cause notice of such demand of a jury, made either by the plaintiff or defendant, to be communicated to the other party to the said action, either by post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for either party to prove on the trial that such notice was communicated to the other party by the clerk.

71. *Party requiring jury to make a deposit.*—That every party requiring any jury to be summoned shall at the time of giving the said notice, and before he shall be entitled to have such jury summoned, pay to the clerk of the court the sum of five shillings for payment of the jury, and such sum shall be considered as costs in the cause, unless otherwise ordered by the judge.

72. *Who shall be jurors.*—That the sheriff of every county, and the high bailiffs of Westminster and Southwark, shall cause to be delivered to the clerk of the court a list of persons qualified and liable to serve as jurors in the courts of assize and nisi prius for their county, city, and borough respectively, within fourteen days from the receipt of the jury book from the clerk of the peace of the county or other officer, each list containing only the names of persons residing within the jurisdiction of the court, for which list the said sheriffs and high bailiffs shall be entitled to receive out of the general fund of the court a fee after the rate of two-pence for every folio of seventy-two words; and whenever a jury shall be required the clerk of the court shall cause so many of the persons named in the list as shall be needed in the opinion of the judge to be summoned to attend the court at a time and place to be mentioned in the summons, and shall administer or cause to be administered to such of them as shall be impanelled to try any cause or causes an oath to give true verdicts according to the evidence; and the persons so summoned shall attend at the court at the time mentioned in the summons, and in default of attendance shall forfeit such sum of money as the judge shall direct, not being more than five pounds for each default; and the delivery of such summons to the person whose attendance is required on such jury, or delivery thereof to his wife or servant, or any inmate at his usual place of abode, trading, or dealing, shall be deemed good service: provided always, that no person shall be summoned or compelled to serve on such jury more than twice within one year, or who shall have been summoned and shall have attended upon any jury at the assizes, or at any court of nisi prius, or at the Central Criminal Court for the same county, within six calendar months next before the delivery of such summons.

73. *Number of the jury.*—That whenever there are any jury trials five jurymen shall be impanelled and sworn, as occasion shall require, to give their verdicts in the causes which shall be brought before them in the said court, and being once sworn shall not need to be re-sworn in each trial; and either of the parties to any such cause shall be entitled to his lawful challenge against all or any of the said jurors in like manner as he would be entitled in any superior court; and the jurymen so sworn shall be required to give an unanimous verdict.

74. *Proceedings on hearing the plaint.*—That on the day in that behalf named in the summons the plaintiff shall appear, and thereupon the defendant shall be required to appear to answer such plaint; and on answer being made in court the judge shall proceed in a summary way to try the cause, and give judgment, without further pleading, or formal joinder of issue.

75. *No evidence to be given that is not in summons.*—That no evidence shall be given by the plaintiff on the trial of any such cause as aforesaid of any demand or cause of action, except such as shall be stated in the summons hereby directed to be issued.

76. *Notices to be given to the clerk of special defences, who shall communicate the same to the plaintiff.*—That no defendant in any court holden under this Act shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff, or to set up by way of defence and to claim and have the benefit of infancy, coverture, or any statute of limitations, or of his discharge under any statute relating to bankrupts, or any Act for relief of insolvent debtors, without the consent of the plaintiff, unless such notice thereof as shall be directed by the rules made for regulating the practice of the court shall have been given to the clerk of the court; and in every case in which the practice of the court shall require such notice to be given the clerk of the court shall, as soon as conveniently may be, after receiving such notice, communicate the same to the plaintiff by the post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the clerk.

77. *Suits may be settled by arbitration.*—That the judge may in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the court in dispute between such parties, to be referred to arbitration, to such person or persons, and in such manner, and on such terms as he shall think reasonable and just; and such reference shall not be revocable by either party, except by the consent of the judge; and the award of the arbitrator or arbitrators or umpire shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the judge; provided that the judge may, if he think fit, on application to him at the first court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid.

78. *Forms of procedure in courts to be framed by the judges.*—That five of the judges of the superior courts of common law at Westminster, including the

Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or one of the said chiefs at least, shall have power to make and issue all the general rules for regulating the practice and proceedings of the county courts holden under this Act, and also to frame forms for every proceeding in the said courts for which they shall think it necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the clerks of the said courts, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be observed and used in all the courts holden under this Act; and in any case not expressly provided for herein, or by the said rules, the general principles of practice in the superior courts of common law may be adopted and applied at the discretion of the judges, to actions and proceedings in their several courts.

79. *Proceedings if plaintiff does not appear or prove his case.*—That if upon the day of the return of any summons, or at any continuation or adjournment of the said court, or of the cause for which the said summons shall have been issued, the plaintiff shall not appear, the cause shall be struck out; and if he shall appear, but shall not make proof of his demand to the satisfaction of the court, it shall be lawful for the judge to nonsuit the plaintiff, or to give judgment for the defendant, and in either case, where the defendant shall appear and shall not admit the demand, to award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the judge in his discretion shall think fit, and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same court can be recovered: provided always, that if the plaintiff shall not appear when called upon, and the defendant, or some one duly authorized on his behalf, shall appear, and admit the cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the court, if it shall think fit, may proceed to give judgment as if the plaintiff had appeared.

80. *Proceedings if the defendant does not appear.*—That if on the day so named in the summons, or at any continuation or adjournment of the court or cause in which the summons was issued, the defendant shall not appear, or sufficiently excuse his absence, or shall neglect to answer when called in court, the judge, upon due proof of service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended: provided always, that the judge in any such case, at the same or any subsequent court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial of the cause, upon such terms, if any, as to payment of costs, giving security for debt or costs, or such other terms as he may think fit, on sufficient cause shewn to him for that purpose.

81. *Judge may grant time.*—That the judge may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit, and also may from time to time adjourn any court, or the hearing or further hearing of any cause, in such manner as to the judge may seem fit.

82. *Defendant may pay money into court.* Notice of such payment to be given to plaintiff.—That it shall be lawful for the defendant in any action brought under this Act, within such time as shall be directed by the rules made for regulating the practice of the court, to pay into court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment; and notice of such payment shall be communicated by the clerk of the court to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business; and the said sum of money shall be paid to the plaintiff; but if he shall elect to proceed, and if the plaintiff shall recover no further sum in the action than shall have been so paid into court, the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment; and such costs shall be settled by the court, and an order shall thereupon be made by the court for the payment of such costs by the plaintiff.

83. *Parties and others may be examined.*—That on the hearing or trial of any action or on any other proceeding under this Act the parties thereto, their wives and all other persons, may be examined, either on behalf of the plaintiff or defendant, upon oath, or solemn affirmation in those cases in which persons are by law allowed to make affirmation instead of taking an oath, to be administered by the proper officer of the court.

84. *Persons giving false evidence guilty of perjury.*—That every person who in any examination upon oath or solemn affirmation before any judge of the county court shall wilfully and corruptly give false evidence shall be deemed guilty of perjury.

85. *Summons to witnesses.*—That either of the parties to the suit or any other proceeding under this

Act may obtain, at the office of the clerk of the court, summonses to witnesses, to be served by one of the bailiffs of the court, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control, and in any such summons any number of names may be inserted.

86. *Penalty on witnesses neglecting summons.*—That every person on whom any such summons shall have been served, either personally or in such other manner as shall be directed by the general rules or practice of the courts, and to whom at the same time payment or a tender of payment of his expenses shall have been made on such scale of allowance as shall be from time to time settled by the general rules of the practice of the court, and who shall refuse or neglect, without sufficient cause, to appear, or to produce any books, papers, or writings required by such summons to be produced, and also every person present in court who shall be required to give evidence, and who shall refuse to be sworn and give evidence, shall forfeit and pay such fine, not exceeding ten pounds, as the judge shall set on him; and the whole or any part of such fine, in the discretion of the judge, after deducting the costs, shall be applicable toward indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the general fund of the court in which the fine was imposed.

87. *Fines how to be enforced and accounted for.*—That payment of any fine imposed by any court under the authority of this Act may be enforced upon the order of the judge in like manner as payment of any debt adjudged in the said court, and shall be accounted for as herein provided.

88. *Costs to abide the event of the action.*—That all the costs of any action or proceeding in the court, not herein otherwise provided for, shall be paid by or apportioned between the parties in such manner as the judge shall think fit, and in default of any special direction shall abide the event of the action, and execution may issue for the recovery of any such costs in like manner as for any debt adjudged in the said court.

89. *Judgments how far final.*—That every order and judgment of any court holden under this Act, except as herein provided, shall be final and conclusive between the parties, but the judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the judgment of the court, and shall also in every case where he has the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings.

90. *No actions to be removed into superior courts but on certain conditions.*—That no plaint entered in any court holden under this Act shall be removed or removable from the said court into any of her Majesty's superior courts of record by any writ or process, unless the debt or damage claimed shall exceed five pounds, and then only by leave of a judge of one of the said superior courts, in cases which shall appear to the judge fit to be tried in one of the superior courts, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he shall think fit.

91. *Who may appear for any party in the superior courts.*—That no person shall be entitled to appear for any other party to any proceeding in any of the said courts unless he be an attorney of one of her Majesty's superior courts of record, or a barrister-at-law instructed by such attorney on behalf of the party, or, by leave of the judge, any other person allowed by the judge to appear instead of such party; but no barrister, attorney, or other person, except by leave of the judge, shall be entitled to be heard to argue any question as counsel for any other person in any proceeding in any court holden under this Act; and no person, not being an attorney admitted to one of her Majesty's superior courts of record, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said court; and no attorney shall be entitled to have or recover therefor any sum of money, unless the debt or damage claimed shall be more than forty shillings, or to have or recover more than ten shillings for his fees and costs, unless the debt or damage claimed shall be more than five pounds, or more than fifteen shillings in any case within the summary jurisdiction given by this Act; and in no case shall any fee exceeding one pound three shillings and sixpence be allowed for employing a barrister as counsel in the cause; and the expense of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs in the case of a plaintiff where less than five pounds is recovered, or in the case of a defendant where less than five pounds is claimed, or in any case unless by order of the judge.

92. *Court may make orders for payment by instalments.*—That the judge may make orders concerning the time or times and by what instalments any debt or damages or costs for which judgment shall be obtained in the said court shall be paid, and all such moneys shall be paid into court, unless the judge shall otherwise direct.

93. *Cross judgments.*—That if there shall be cross judgments between the parties execution shall be taken out by that party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the remainder shall be entered, as well as satisfaction on the judgment for the smaller sum, and if both same shall be equal satisfaction shall be entered upon both judgments.

94. *Court may award execution against goods.*—That whenever the judge shall have made an order for the payment of money, the amount shall be recoverable, in case of default or failure of payment thereof forthwith, or at the time or times and in the manner thereby directed, by execution against the goods and chattels of the party against whom such order shall be made; and the clerk of the said court, at the request of the party prosecuting such order, shall issue under the seal of the court a writ of *fieri facias* as a warrant of execution to the high bailiff of the court, who by such warrant shall be empowered to levy, or cause to be levied, by distress and sale of the goods and chattels of such party, such sum of money as shall be so ordered, whosoever they may be found within the district of the court, whether within liberties or without, and also the costs of the execution; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant.

95. *Execution not to issue till after default in payment of some instalment, and then if may issue for the whole sum due.*—That if the judge shall have made any order for payment of any sum of money by instalments, execution upon such order shall not issue against the party until after default in payment of some instalment according to such order, and execution or successive executions may be issued for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the judge shall order, either at the time of making the original order, or at any subsequent time, under the seal of the court.

96. *What goods may be taken in execution.*—That every bailiff or officer executing any process of execution issuing out of the said county court against the goods and chattels of any person may by virtue thereof seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of five pounds, which shall to that extent be protected from such seizure), and may also seize and take any money or bank notes (whether of the bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to any such person against whom any such execution shall have issued as aforesaid.

97. *Securities seized to be held by high bailiff.*—That the high bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which shall have been so seized or taken as aforesaid, as a security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby, when the time of payment thereof shall have arrived.

98. *Parties having obtained an unsatisfied judgment may obtain a summons on charge of fraud.*—That it shall be lawful for any party who has obtained any unsatisfied judgment or order in any court held by virtue of this Act, or under any Act repealed by this Act, for the payment of any debt or damages or costs, to obtain a summons from any county court within the limits of which any other party shall then dwell or carry on his business, such summons to be in such form as shall be directed by the rules made for regulating the practice of the county courts as herein provided, and to be served personally upon the person to whom it is directed, requiring him to appear at such time as shall be directed by the said rules to answer such things as are named in such summons; and if he shall appear in pursuance of such summons he may be examined upon oath touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him; and as to the means and expectation he then had, and as to the property and means he still hath, of discharging the said debt or damages or liability, and as to the disposal he may have made of any property; and the person obtaining such summons as aforesaid, and all other witnesses whom the judge shall think requisite, may be examined upon oath touching the inquiries authorised to be made as aforesaid; and the costs of such summons and of all proceedings thereon shall be deemed costs in the cause.

99. *Commitment for fraud, &c.*—That if the party so summoned shall not attend as required by such summons, and shall not allege a sufficient excuse for not attending, or shall, if attending, refuse to be sworn, or to disclose any of the things aforesaid, or

if he shall not make answer touching the same to the satisfaction of such judge, or if it shall appear to such judge, either by the examination of the party or by any other evidence, that such party, if a defendant, is incurring the debt or liability which is the subject of the action in which judgment has been obtained has obtained credit from the plaintiff under false pretences, or by means of fraud or breach of trust, or has wilfully contracted such debt or liability without having at the same time a reasonable expectation of being able to pay or discharge the same, or shall have made, or caused to be made, any gift, delivery, or transfer of any property, or shall have charged, removed, or concealed the same, with intent to defraud his creditors, or any of them, or if it shall appear to the satisfaction of the judge of the said court that the party so summoned has then, or has had since the judgment obtained against him, sufficient means and ability to pay the debt or damages or costs so recovered against him, either altogether, or by any instalment or instalments which the court in which the judgment was obtained shall have ordered, and if he shall refuse or neglect to pay the same as shall have been so ordered, or as shall be ordered pursuant to the power hereinafter provided, it shall be lawful for such judge, if he shall think fit, to order that any such party may be committed to the common gaol or house of correction of the county, district, or place in which the party summoned is resident, or to any prison which shall be provided as the prison of the court, for any period not exceeding forty days.

100. *Power of judge to rescind or alter orders.*—That it shall be lawful for the judge of any court before whom such summons shall be heard, if he shall think fit, whether or not he shall make any order for the commitment of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before him for the payment, by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt or damages and costs forthwith, or by any instalments, or in any other manner as such judge may think reasonable and just.

101. *Power to examine and commit at hearing of the cause.*—That in every case where the defendant in any suit brought in any county court shall have been personally served with the summons to appear, or shall personally appear at the trial of the same, the judge at the hearing of the cause, or at any adjournment thereof if judgment shall be given against the defendant, shall have the same power and authority of examining the defendant and the plaintiff and other parties touching the several things hereinbefore mentioned, and of committing the defendant to prison, and of making an order, as he might have and exercise under the provisions hereinbefore contained in case the plaintiff had obtained a summons for that purpose after the judgment obtained as hereinbefore mentioned.

102. *Mode of issuing and executing warrants of commitment.*—That whenever any order of commitment shall have been made as aforesaid, the clerk of the said court shall issue under the seal of the court a warrant of commitment, directed to one of the bailiffs of any county court, who by such warrant shall be empowered to take the body of the person against whom such order shall be made; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant; and the gaoler or keeper of every gaol, house of correction, and prison mentioned in any such order shall be bound to receive and keep the defendant therein until discharged under the provisions of this Act, or otherwise by due course of law; and no protection, order, or certificate granted by any court of bankruptcy, or for the relief of insolvent debtors, shall be available to discharge any defendant from any commitment under such last-mentioned order.

103. *Imprisonment not to operate as a satisfaction for the debt, &c.*—That no imprisonment under this Act shall in anywise operate as a satisfaction or extinguishment of the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being anew summoned and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this Act, or deprive the plaintiff of any right to take out execution against the goods and chattels of the defendant, in the same manner as if such imprisonment had not taken place.

104. *How execution may be had out of the jurisdiction of the court.*—That in all cases where a warrant of execution shall have been issued against the goods and chattels of any party, or an order for his commitment shall have been made under this Act, and such party, or his goods and chattels, shall be out of the jurisdiction of the court, it shall be lawful for the high bailiff of the court to send such warrant of execution or of commitment to the clerk of any other court constituted under this Act, within the jurisdiction of which such party, or his goods and chattels, shall then be or be believed to be, with a warrant thereto annexed, under the hand of the high bailiff and seal of the court from which the original warrant issued, requir-

ing execution of the same, and the clerk of the court to which the same shall be sent shall seal or stamp the same with the seal of his court, and issue the same to the high bailiff of his court, and thereupon such last-mentioned high bailiff shall be authorized and required to act in all respects as if the original warrant of execution or commitment had been directed to him by the court of which he is the high bailiff, and shall, within such time as shall be specified in the rules of practice, return to the high bailiff of the court from which the same originally issued, what he shall have done in the execution of such process, and in case a levy shall have been made, shall, within such time as shall be specified in the rules of practice, pay over all moneys received in pursuance of the warrant to the high bailiff of the court from which the same shall have originally issued, retaining the fees for execution of the process; and where any order of commitment shall have been made, and the person apprehended, he shall be forthwith conveyed, in custody of the bailiff or officer apprehending him, to the gaol or house of correction or other prison of the court within the jurisdiction of which he shall have been apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of this Act; and all constables and other peace officers shall be aiding and assisting within their respective districts in the execution of such warrant.

105. *Power to judge to suspend execution in certain cases.*—That if it shall at any time appear to the satisfaction of the judge, by the oath or affirmation of any person, or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the judge, in his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action, for such time and on such terms as the judge shall think fit, and so from time to time until it shall appear by the like proof as aforesaid that such temporary cause of disability has ceased.

106. *Regulating the sale of goods taken in execution.*—That no sale of any goods which shall be taken in execution as aforesaid shall be until after the end of five days at least next following the day on which such goods shall have been so taken, unless such goods be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and until such sale the goods shall be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person approved by the high bailiff, to be put into possession by the bailiff; and it shall be lawful for the high bailiff, from time to time as he shall think proper, to appoint such and so many persons for keeping possession, and so many sworn brokers and appraisers for the purpose of selling or valuing any goods, chattels, or effects taken in execution under this Act, as shall appear to him to be necessary, and to direct security to be taken from each of them, for such sum and in such manner as he shall think fit, for the faithful performance of their duties without injury or oppression; and the judge or high bailiff may dismiss any person, broker, or appraiser so appointed; and no goods taken in execution under this Act shall be sold for the purpose of satisfying the warrant of execution, except by one of the brokers or appraisers so appointed; and the brokers or appraisers so appointed shall be entitled to have, out of the produce of the goods so distrained or sold, sixpence in the pound on the value of the goods for the appraisement thereof, whether by one broker or more, over and above the stamp duty, and for advertisements, catalogues, sale and commission, and delivery of goods, one shilling in the pound on the net produce of the sale.

107. *As to the liability of goods taken in execution under 8 Anne, c. 17; landlords may claim certain rents in arrear; bailiffs making levies may distrain for rent and costs; in case of replevins; 57 Geo. 3, c. 93.*—That so much of an Act passed in the eighth year of the reign of Queen Anne, intitled "An Act for the better Security of Rents, and to prevent Frauds committed by Tenants," as relates to the liability of goods taken by virtue of any execution, shall not be deemed to apply to goods taken in execution under the process of any court holden under this Act; but the landlord of any tenement in which any such goods shall be so taken shall be entitled, by any writing under his hand or under the hand of his agent, to be delivered to the bailiff or officer making the levy, which writing shall state the terms of holding, and the rent payable for the same, to claim any rent in arrear then due to him, not exceeding the rent of four weeks where the tenement is let by the week, and not exceeding the rent accruing due in two terms of payment, where the tenement is let for any other term less than a year, and not exceeding in any case the rent accruing due in one year; and in case of any such claim being so made, the bailiff or officer making the levy shall distrain as well for the amount of the rent so claimed, and the costs of such additional distress, as for the amount of money and costs for which the warrant of execution issued under this Act, and shall not proceed to sell the same or any

part thereof within five days next after such distress taken; and if any replevin be made of the goods so taken, such of the goods shall be sold under the execution as shall satisfy the money and costs for which the warrant of execution issued, and the costs of the sale; and the overplus of such sale (if any), and also the residue of the goods, shall be returned as in other cases of distress for rent, and replevin thereof; and for every such additional distress for rent in arrear the high bailiff of the court shall be entitled to have as the costs of the distress, instead of the fees allowed by this Act for making such distress, and keeping possession thereof, the fees allowed by an Act passed in the fifty-seventh year of the reign of King George the Third, intitled "An Act to regulate the Costs of Distresses levied for Payment of small Rents."

108. *No execution shall be stayed by Writ of Error.*—That no judgment or execution shall be stayed, delayed, or reversed upon or by any Writ of Error, or *superedeas* thereon, to be sued for the reversing of any judgment given in any court holden under the provisions of this Act.

109. *Execution to be superseded on payment of debt and costs.*—That in or upon every warrant of execution issued against the goods and chattels of any person whomsoever the clerk of the court shall cause to be inserted or endorsed the sum of money and costs adjudged, with the sums allowed by this Act as increased costs for the execution of such warrant; and if the party against whom such execution shall be issued shall, before an actual sale of the goods and chattels, pay or cause to be paid or tendered unto the clerk of the court out of which such warrant of execution has issued, or to the bailiff holding the warrant of execution, such sum of money and costs as aforesaid, or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages and costs, together with the fees herein directed to be paid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty.

110. *Debtor to be discharged from custody upon payment of debt and costs.*—That any person imprisoned under this Act who shall have paid or satisfied the debt or demand, or the instalments thereof payable, and costs remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order, and all subsequent costs, shall be discharged out of custody, upon the certificate of such payment or satisfaction, signed by the clerk of the court, by leave of the judge of the court in which the order of imprisonment was made.

111. *Minutes of proceedings to be kept.*—That the clerk of every court holden under this Act shall cause a note of all plaints and summonses, and of all orders, and of all judgments and executions, and returns thereto, and of all fines, and of all other proceedings of the court, to be fairly entered from time to time in a book belonging to the court, which shall be kept at the office of the court; and such entries in the said book, or a copy thereof bearing the seal of the court, and purporting to be signed and certified as a true copy by the clerk of the court, shall at all times be admitted in all courts and places whatsoever as evidence of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof.

(To be continued.)

THE MAGISTRATE.

Summary.

BELOW will be found the Report of the Tithe Commissioners for England and Wales, shewing the progress of commutation during the year 1845. The committee justly complain of the obscurity and unsettled state of the law on this subject. Other matter of interest follows.

Report of the Tithe Commissioners for England and Wales, to her Majesty's principal Secretary of State for the Home Department, pursuant to the Act 6 & 7 Wm. 4, c. 71:—1846.

Tithe Commission, 19th August, 1846.

Sir,—It is our duty to report to you the progress of the commutation of tithes in England and Wales, to the close of the year 1845.

We have received notices that voluntary proceedings have commenced in 9,623 tithe districts; of these notices 29 were received during the year 1845.

We have received 7,031 agreements, and confirmed 6,704; of these 67 have been received and 88 confirmed during the year 1845.

5,489 notices for making awards have been issued, of which 944 were issued during the year 1845.

We have received 3,916 drafts of compulsory awards, and confirmed 3,376; of these 592 have been received and 585 have been confirmed during the year 1845.

We have received 8,995 apportionments, and confirmed 8,660; and of these 657 have been received and 741 confirmed during the year 1845.

In 10,080 tithe districts, as will be seen from the above statement, the rent-charges to be hereafter paid, have been finally established by confirmed agreements or confirmed awards.

We have in our possession agreements and drafts of awards as yet unconfirmed, which will include 867 additional tithe districts; and make a total, when completed, of 10,947 districts in which the tithes will have been commuted.

We have to repeat the assurance which we have happily been able to give in all our former reports, that the processes of commutation are going on, on the whole, tranquilly and satisfactorily.

We have adverted, in two former reports, to the state of the law under what is called Lord Tenterden's Act.

We have to express our deep regret that that law remains as uncertain as ever. While this uncertainty continues, it is impossible for us to adjudicate with any justice to the parties in very many cases which await our decision, and in which proceedings are necessarily suspended.

We have before explained the very serious delay which must result from postponing these cases.

All the alterations and fresh powers which we have ventured to suggest in our two last reports will be carried out, if a bill now before the legislature should receive the royal assent this session.

We have the honour to be, Sir,

Your faithful and obedient Servants,

WM. BLAMIRE,
R. JONES.

To the Right Hon.

Sir George Grey, Bart. &c. &c. &c.
Home Office.

ADDITIONAL CORONERS FOR THE COUNTY OF GLOUCESTER.—An Act of Council, dated Osborne House, 27th August, 1846, directs that the county be divided into four districts, for the purposes of the Act 7th and 8th Victoria, "to amend the law respecting the office of County Coroner." The 1st district is to be called the Lower Division, and to comprise all the western parliamentary division on the south side of the Severn, except the parishes of Arlingham and Beverstone; the 2nd to be called the Stroud Division, and comprise the boroughs of Stroud and Cirencester; the southern part of the eastern parliamentary division of the county and the parishes of Arlingham and Beverstone; the 3rd to be called the Upper Division, and comprise the town of Cheltenham, and the northern part of the eastern parliamentary division, except certain parishes and hamlets on the north-west side of the Severn, and exclusive of the borough of Tewkesbury and the city of Gloucester; the 4th to be called the Forest Division, and to comprise the whole of the western parliamentary division of the county on the north-west side of the Severn, and the parishes or hamlets of Ashleworth Corse, Forthampton, Hasfield, Hartpur, Highleadon, Highnam, Over and Linton, Lassington, Malsemore, Tirley and Haw, and Twynning, part of the eastern parliamentary division, on the north-west side of the Severn. The Courts for the election of coroners in each division are to be held, and the polls taken, when necessary: for the Lower Division, at Wickwar; for the Stroud Division, at Stroud; for the Upper Division, at Cheltenham; for the Forest Division, at Newnam. Compensation (to be assessed by the Commissioners of the Treasury) is awarded to William Joyner Ellis, one of the present coroners, who had for seven years before the passing of the Act acted as coroner for the part of the Forest of Dean, and several parishes and places on the forest side of the Severn, which will be taken from his customary district. Neither of the other coroners has claimed or is entitled to compensation.

THE MILITIA.—The annexed communication, which was issued from the War-office, on Wednesday, September 9, will put at rest, at all events for the present, any further speculation and excitement regarding the embodying of the Militia. What the intention of the present Government may be with regard to the future it is impossible to say, but the fact that nothing can occur until the next meeting of Parliament should be generally known. The letter, dated September, 9, and signed by Mr. Fox Maule, Deputy-Secretary-at-War, proceeds:—"With reference to the circular communications from the War-office, dated 23rd of May and 27th of June last, on the subject of re-organizing the staff of the — regiment of Militia, under your command, I have the honour to acquaint you that it is not intended at present to take any further measures for revising the laws relating to the Militia, nor for assembling that force for training and exercise. I have therefore to request, that in all cases where any sergeant belonging to the corps under your command shall have been admitted to the out-pension list, you will be pleased to suspend the filling up of the vacancy, and also any vacancies which might have existed from other causes on the reduced establishment of the staff, until the course to be taken by her Majesty's Government in

reference to the Militia shall have been further considered."

PAUPER LUNATIC STATISTICS OF ENGLAND AND WALES.—A recent parliamentary return shews that in January last there were in England alone 16,310 lunatics and idiots chargeable; and in Wales, 1,295; which, with an estimate for places not in union with parishes, makes a total of 17,887—9,712 being lunatics, and 8,175 idiots. Of these county asylums contained 4,675, unions 4,397. In licensed houses, 3,363; and with their friends, or elsewhere, there were 3,873. The ages varied from 5 to upwards of 70; there being 5 under 5 years old, 61 from 5 to 10, 940 from 10 to 20, 3,158 from 20 to 30, 3,682 from 30 to 40, 3,584 from 40 to 50, 2,563 from 50 to 60, 1,575 from 60 to 70, and 699 from 70 years old and upwards. Of the whole 4,244 were dangerous to themselves. It will be seen by the above return that the malady prevails most between the ages of 20 and 30.

THE GAME-LAWS IN GERMANY.—According to a law promulgated in 1840, the gamekeepers of noblemen in Germany have the right of firing at poachers, if the latter do not throw down their guns upon the first summons.

SUPERINTENDENT OF CONVICTS.—By Act of last session (9 & 10 Vict. c. 26) male persons convicted in Great Britain, and sent out of England to labour either on land or on board a vessel, are taken out of the charge of the superintendent of convicts (Mr. Capper), and placed under the charge of the governor of the place. The office of "superintendent of convicts" in England under sentence or order of transportation is to be abolished on the next vacancy, and the convicts thenceforth to be under the care of a person or persons appointed by the Government.

TURNPIKES IN SOUTH WALES.—An abstract of the general statements of the income and expenditure of the turnpike-roads in South Wales, for the year 1845, has been printed in a Parliamentary paper. The total income was 9,917l. 5s. 5d. from the six counties, and the expenditure was 9,236l. 5s. 2d. The annuities payable in 1846 amounted to 11,046l. 17s. There is a column in the return for "law expenses;" but it seems that none were incurred in the year. The salaries of the clerks to county-roads' boards, amounted to 315l.; to district-roads' boards, 345l.; to surveyors, 1,365l.; and to pay-clerks, 60l.

The following buildings have been duly registered for the solemnization of marriages, pursuant to the Act of the 6th and 7th Wm. IV., c. 85:—Blackfriars Chapel, situated at Canterbury, in the County of Kent. The Independent Chapel, situated in Hartlepool, in the parish of Hartlepool, in the County of Durham, in the district of Stockton and Sedgfield. St. George's Presbyterian Church, situated in Myrtle-street, in the parish of Liverpool, in the county of Lancaster, in the district of Liverpool. Sardis Chapel, situated at Comun Coed Yr Ynis, in the parish of Llangunlodd, in the county of Brecknock, in the district of Crickhowell.

THE LAWYER.

Summary.

WE invite attention to a letter from Mr. DURANT, of Chelmsford, and the report of the decision of Mr. GEPP, the County Clerk for Essex (which will be found under the head "Correspondence"), on the circumstance of Attorneys lending their names to unqualified persons, who, thenceforth, practise under such sanction. There is both justice and truth in the subjoined letter, addressed to the "Editor of the Times," on the subject of the Certificate Duty. The last paragraph, we fear, unfolds the true reason why an energetic attempt is not made by the profession in one body to rid themselves of that partial and oppressive burthen—The Certificate Duty.

INEQUALITIES OF TAXATION.

THE CERTIFICATE DUTY.

To the Editor of the Times.

SIR,—Having read your remarks on the subject of the extremely heavy manner in which our system of taxation bears upon the professional man and the small tradesman, in which you instance especially the case of the country surgeon, may I be excused for bringing under your notice, and that of your readers, another case—that of the London attorney? It must be pretty generally known how peculiarly difficult it is for a young man in this profession to get into employment. It must also be known how small an amount of business can be transacted in any given space of time without the assistance of clerks; yet in this profession alone are its members obliged to pay an annual duty altogether distinct from the income-tax. A London attorney pays 6l. a year as such duty if he has not been admitted three years,

and 12l. after three years; if he spend the first three years of his professional career in a clerkship, he has to pay the 12l. a year from the commencement of his practising. Thus in his first year, in which he may make perhaps 200l. and in three or four subsequent years, during which, unless aided by extraneous circumstances, which fall to the lot of the few only, he can scarcely ever (though using great personal exertion and undergoing much mental anxiety) reach an income of 1500l. a year, he has, nevertheless, to pay an income-tax of—as the case may be—from double to quadruple, or even six or seven times the proportion imposed by Sir Robert Peel's Act! Is not this a crying injustice?

It may be asked, if this be so great a hardship on the profession, why has not their voice yet been heard exclaiming against it? The answer is, the senior and more influential members of the profession enjoying tolerable incomes (for I do not think, although the profession is a most laborious one, that the incomes of its members are ever large) do not feel it, and would rather perhaps that it should be continued, as it operates to the exclusion of junior competitors. Thus are the juniors crushed without remedy.

I am, Sir, your obedient humble servant,
Sept. 2. ONE OF THE SUFFERERS.

THE ORIGIN OF COURTS MARTIAL.

THE recent Hounslow flogging case having excited so much public attention, it may be interesting to our readers to know something of the origin and jurisdiction of courts martial. In tracing their origin it is necessary to advert to the court of chivalry (*curia militaris*), which, according to Coke, is said to have been the fountain of the martial law, and the only court military known to, and established by, the permanent laws of the land. It was formerly held before the Lord High Constable and Earl Marshal of England, jointly, but after the extinction of the former office, it has usually, with respect to civil matters, been held before the Earl Marshal only, who throughout exercised both a judicial and ministerial power, for he had not only to preside as one of the judges, but to see execution done. From the sentence of the court of chivalry there lay an appeal immediately to the King in person. Sir William Blackstone says that this court was in great reputation in the times of pure chivalry, and afterwards, during our connections with the continent, in the territories which our princes held in France; but in his time it had gone almost entirely out of use, on account of the feebleness of its jurisdiction, and want of power to enforce its judgments. The jurisdiction of this court is declared by statute 13 Rich. 2. c. 2, to be—"That it hath cognizance of contracts touching deeds of arms, or of war, out of the realm; and also of things which touch war within the realm, which cannot be determined or discussed by the common law, together with other usages and customs to the same matters appertaining." Without pursuing the inquiry further as to the court of chivalry, we may mention that though its authority was never objected to, even in criminal cases, till the post of high constable became forfeited to the Crown on the occasion of that officer, in the person of Edward Stafford, Duke of Buckingham, being attainted of high treason, in the year 13 Henry VIII., yet its jurisdiction was encroached upon much earlier; for by the statute 16 Henry VI., c. 19, desertion from the king's army was made felony, and by statutes 7 Henry VII., c. 1; 3 Henry VIII., c. 5, benefit of clergy is taken away, and authority given to justices of peace to inquire thereof, and hear and determine the same. And Rapin quotes an instance of Henry VII. having ordered those accused of holding intelligence with the enemy after the battle of Stoke, 1487, to be tried by commissioners of his own appointing, or by courts martial, according to the martial law, instead of the usual court of justice, which was not so favourable to his design of punishing them only by fines. This, however, seems to have been an avaricious, arbitrary, and illegal exercise of power, not authorized by any law of the land. From the time that the court of chivalry was abridged of its criminal jurisdiction by the suppression of the post of high constable until the revolution, there appears to have been no regular established court for the administration of martial law. For although the Earl Marshal still continued to hold the court of chivalry, yet its jurisdiction was confined to civil matters; and there are instances during that period of other courts being created for the administration of martial law, and not only military persons made subject to it, but many others punished thereby, some entirely at the discretion of the Crown, and others by the appointment of the Parliament only; and so repugnant to the spirit of liberty were such commissions regarded, that we find in the Petition of Right, 3 Charles I., c. 1, one clause to the effect that the commissions for proceeding by martial law should be dissolved and annulled, and no such commission be issued for the future. Though undoubtedly these commissions were unconstitutional, yet the necessity of subordination in the army, and the impossibility of estab-

Showing that subordination without martial law, soon became apparent; and the two houses of Parliament, in the beginning of their rebellion against Charles I. passed an ordinance appointing commissioners to execute martial law. This ordinance was passed in 1644, and afterwards renewed by the Parliament, and in process of time adopted as a model for the Mutiny Act, passed after the revolution. At the restoration, one of the first steps taken by the Parliament was to disband the army, and to regulate the militia, among whom a military subordination was established whenever they were drawn out, and fines and imprisonment imposed upon them for particular delinquencies. Charles II. however, kept up 5,000 regular troops, for guards and garrisons, by his own authority, which James II. by degrees increased to 30,000, and more numerous armies were occasionally raised by authority of Parliament; yet we find no statute for their government, nor was it till after the revolution that a regular Act of the whole legislature passed for punishing mutiny and desertion, &c. by courts martial. This Act was first occasioned by a mutiny in a body of English and Scotch troops, upon their being ordered to Holland to replace some of the Dutch troops which William III. had brought over with him, and intended to keep here. The king immediately communicated this event to Parliament, who readily agreed with him to give their sanction to punish the offenders, and on the 3rd of April, 1689 (1 William and Mary), passed an Act for punishing mutiny and desertion, which was to continue in force only until November following. It was, however, renewed in January, 1690, and has, with the interruption of three years only, from April, 1698, to February, 1701, been annually renewed ever since, with occasional alterations and amendments, as well in times of peace as war. Such is the origin of courts martial.—*Correspondent of Liverpool Mercury.*

THE PRACTICE OF WILLS.

By G. S. ALLNUTT, Esq. Barrister-at-Law.
BOOK II.

PROBATE OF WILLS.

CHAPTER IV.—WHAT INSTRUMENTS NECESSARY TO BE PROVED.

(Continued from page 476.)

Wills of foreigners, &c.—Where a testator has left no personal estate in England, it is not generally necessary that his will should be proved here. Thus in *Jouney v. Sealey* (1 Vern. 397), where A died beyond sea and made a nuncupative will, B took out administration here and brought his bill for a discovery of the supposed intestate's personal estate. The defendant pleaded the will, and that he was executor, and that A left no assets but what were beyond sea. The Court allowed the plea, and said, "the testator having left no estate in England, it was not necessary that the will should be proved here, no more than if a man died and left an estate in Scotland." See also *Currie v. Burcham* (1 Dowl. & Ry. 35).

In the case of *Logan v. Pairlie* (2 Sim. & Sta. 284), Sir J. Leach observed, "If a testator die in India, and his personal estate be wholly in India, and his executor be resident there, and the will be proved there, and the executor remit to a legatee in England, or to some other person in England for the specific use of the legatee, the amount of his legacy, I am of opinion that the legacy duty is not payable upon such remittance; inasmuch as the whole estate is administered in India, and the remittance is in respect of a demand which is to be considered as established there. But if a part of the assets of the testator is found in England in the hands of the agent of such executor without any specific appropriation, and a legatee in England institute a suit here for the payment of his legacy, then such assets are to be considered as administered in England, and the legacy duty is payable in respect of them." This statement was approved of by Lord Commissioner Peppys (1 Myl. & Cr. 67), and although the case principally relates to the payment of legacy duty, it may be usefully mentioned here.

Where a suit by a foreign executor is necessary to recover a debt due to his testator, administration *ad item* must be obtained from the Ecclesiastical Court here. (*Attorney-General v. Cockerell*, 1 Price, 179.)

A will made in a foreign country disposing of personal property in England, should, although proved in the country where it was made, be proved here also. (*Lee v. Moore*, Palm. 163; *Townton v. Flower*, 3 P. Wms. 369.) This second proof is made by means of a copy, duly authenticated, being transmitted from the court in which the will has been proved. (*Raymond v. De Willeville*, 2 Cas. temp. Lee, 358.)

Personal property having no *situs* of its own, follows the domicile of its owner (see *Thomson v. The Advocate-General*, 12 Cl. & Fin. 1), and therefore the rights of a person constituted here the representative of an individual deceased, domiciled in England, will extend to personal property wherever situated. (See *Spratt v. Harris*, 4 Hagg. 405.)

It should be mentioned, that the law of the testator's domicile is the rule by which the Ecclesiastical Court here is guided, in admitting a will to probate. (*Curling v. Thornton*, 2 Add. 21; and in *the goods of Maraver*, 1 Hagg. 498.) And this extends to the will of a British subject, domiciled in a foreign state (*Stanley v. Bernes*, 3 Hagg. 374), or in some part of the British dominions out of England. (*Hare v. Nasmyth*, 2 Add. 25; see also *Price v. Dewhurst*, 4 Myl. and Cr. 76.)

The validity, however, of the will of a British subject, who is resident in a foreign state, but not domiciled there, will be decided by the law of England. In *Anstruther v. Chalmers* (2 Sim. 1), a native of Scotland domiciled in England, having personal property only, executed during a visit to Scotland, and deposited there a will prepared in the Scotch form, and died in England; it was held that the will was to be construed according to the English law.

It is generally the practice to grant probate, upon production of an exemplified copy of the will, proved where the domicile was. (*Larper v. Sindry*, 1 Hagg. 382; in *the goods of Cringan*, 1 Hagg. 549; and in *the goods of Riobee*, 2 Add. 461.) But in the case of *Read* (1 Hagg. 474), Sir John Nicholl expressed some doubt as to the propriety of this course.

CHAP. V.—RENUNCIATION BY AN EXECUTOR.

The executors appointed by a testator may renounce (Bac. Abr. Executors, E. 9.), even though they have promised the testator to accept the office. (*Doyle v. Blake*, 2 Sch. & Lef. 239.)

The executor may, however, be conveyed by the ordinary, to the intent to prove or refuse the testament (21 Hen. 8, c. 5, s. 8); and upon his neglect to appear, he may be pronounced contumacious, and be punished according to the 53 Geo. 3, c. 127, s. 2. (See also 2 & 3 Wm. 4, c. 93.) The time for issuing this citation depends upon the discretion of the judge; but by the 55 Geo. 3, c. 184, s. 37, it is enacted that "if any person shall take possession of, and in any manner administer any part of the personal estate and effects of any person deceased, without obtaining probate of the will or letters of administration of the estate and effects of the deceased within six calendar months after his or her decease, or within two calendar months after the termination of any suit or dispute respecting the will or the right to letters of administration, if there shall be any such, which shall not be ended within four calendar months after the death of the deceased, every person so offending shall forfeit the sum of one hundred pounds, and also a further sum at and after the rate of ten pounds *per centum* on the amount of the stamp-duty payable on the probate of the will or letters of administration of the estate and effects of the deceased."

Where a person named as executor required time to consider whether he would prove the will or not, the ordinary, according to an old practice not now in use, granted in the meantime letters *ad colligendum*. (*Broker v. Charter*, Cro. Eliz. 92.)

Mode of renunciation.—The renunciation by an executor must be by some act entered or recorded in the Ecclesiastical Court. (Wentw. Off. Ex. 88; *Long v. Symes*, 3 Hagg. 776.) A letter sent by the executors to the ordinary renouncing the office has, upon its being recorded, been held to be a sufficient renunciation. (*Broker v. Charter*, Cro. Eliz. 92; S. C. Owen, 44; Moor, 272; 1 Leon. 135.)

The renunciation is usually before the ordinary; but if the ordinary be the executor, he may renounce before his commissary. (Wentw. Off. Ex. 89.)

An oath is usually taken by the person renouncing that he has not intermeddled with the goods of the deceased, and will not intermeddle therewith; but if the renunciation is by proxy, this oath is dispensed with. The refusal to take the usual oath is held to be a renunciation of the office of executor. (*Rees v. Raines*, 1 Raym. 363.)

The renunciation should be accompanied by the original will of the deceased. (*In the goods of Fenton*, 3 Add. 35.)

An executor of an executor may administer the goods of his own testator, and renounce administration of the first testator; but in all other cases, an executor cannot renounce an executorship in part only. (Shep. Touch. 464; *Hayton v. Wolfe*, Cro. Jac. 614, S. C. Palm. 156, Hutton, 30; *Wentford v. Wankford*, Freem. 521, S. C. 1 Sal. 309; *Paule v. Moodie*, 2 Roll. Rep. 132; 11 Vin. Abr. 139, pl. 10.)

What acts amount to an administration.—It has been before stated that if the executor administer, he will be liable to a penalty if he neglect to prove: it will be necessary, therefore, to consider what are the acts which amount to an administration. These acts may be stated to be such as evince an intention on the part of the executor to administer. Thus the taking possession of and converting the testator's goods, receiving or giving releases for debts due to the testator, taking possession without the assent of a co-executor of a specific legacy bequeathed to him, advertising for persons to pay debts due to the testator to the person by name as executor, may be mentioned as some of the acts which amount to an administration rendering it necessary for the executor to prove. (See Wentw. c. 3 pp. 93, 94; 1 Roll. Abr. 917, pl. 7, 8, 9, 12, 13; Bac. Abr. tit. Exors. (E), 10; *Pytt v. Fendall*, 1 Cas. temp. Lee, 553; and *Long v. Symes*, 3 Hagg. 771.)

In *Harrison v. Graham* (1 P. Wms. 241, 6th edit. note y), a testatrix appointed her mother, her two sisters, Margaret and Elizabeth, and her brother, executors. Margaret alone proved the will, and acted chiefly as executor; and in a letter of attorney, to empower her to receive some stock, and which was executed by the others described as executors, she was described as the only acting executor. The brother, by virtue of another letter of attorney executed by the other executors, transferred South Sea Stock belonging to the testatrix, received the money, and paid it over on the same day to Margaret. Margaret and the mother afterwards died, and left the brother their executor. The question in the case was, whether what the brother had done amounted to such an act of administration as to render his own estate chargeable. In giving judgment Lord Hardwicke observed:—"The question in the case is, whether or no this defendant had acted as an executor, and, consequently, whether he is chargeable? I agree that there may be cases where an executor may act as an attorney to the other executors. If an executor renounces, and then acts under a letter of attorney, it is no administration, for it depends on the nature of the act, accompanied with any other acts. Here is a will and four executors. The will is proved by one only, with a reservation of the rights of the other three. Here appear to have been acts done by them all, and a letter of attorney given by the defendant, together with the other executors, to Margaret, who, indeed, is described therein as the only acting executrix. But the defendant describes himself there as an executor. This was clearly acting as an executor. Then he afterwards accepts another letter of attorney from Margaret and the rest of the executors. Shall executors be allowed to discharge themselves at their pleasure from being liable to assets? Money comes into his hands, he pays it over to Margaret; this cannot discharge him."

An executor is not considered as administering by assisting a co-executor, who has proved the will, in writing letters to collect debts, or by writing to a debtor of the testator, requiring payment. (*Orr v. Newton*, 2 Cox, 274. See also *Dove v. Bervard*, 1 Russ. & Myl. 231; and *Stacey v. Elph*, 1 Myl. & Keen, 195.)

Consequences of renunciation.—The renunciation may be retracted at any time before administration is granted (*McDonnell v. Prendergast*, 3 Hagg. 212); and this has been allowed, all the parties consenting, where an executor has renounced in order to become a witness in a suit regarding the validity of the will. (*Thompson v. Dixon*, 3 Add. 272.)

After administration *cum testamento annexo* has been granted to another person, upon the executor's renunciation, the executor cannot be admitted to prove. (*Broker v. Charter*, Cro. Eliz. 92; S. C. Owen, 44; Mea. 272; 1 Leon. 135; Wentw. Off. Ex. 95; in *the goods of Thornton*, 3 Add. 273.)

Where, however, some of the executors renounce, and the will is proved by the others, those who have renounced may at any time afterwards come in and administer (*Hensloe's case*, 9 Co. 37, a; *Middleton's case*, 5 Co. 28, a; *Brookes v. Brookes*,

1 Salk. 3; and upon the death of the acting exco-
cutors, the right to the administration survives to
them. (*Pawlet v. Fresh*, Hardr. 111; *Brooke*
v. Stroud, 7 Mod. 39; *Wankford v. Wankford*,
1 Salk. 307; *Hewse v. Lord Petre*, 1 Salk. 311;
Rae v. Simpson, 3 Burr. 1463; S. C. 1 W. Bl.
456; *Hayward v. Dale*, 2 Cas. temp. Lee, 333;
Arnold v. Blencowe, 1 Cox, 426; and *Cottle v.*
Aldrich, 4 Mau. & Selw. 177.)

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will
oblige by regularly forwarding the names and addresses of
all new Magistrates who may qualify.]

COMMISSIONS SIGNED BY LORDS LIEUTENANT.
BANFFSHIRE.—J. Fraser, esq. to be Deputy
Lieutenant.

SUFFOLK.—East Suffolk Regiment of Militia.—
J. G. Shepherd, esq. to be captain.

SURREY.—R. W. Edgell, esq. to be Deputy Lie-
utenant.

IRELAND.—Letters patent having passed the Great
Seal of Ireland constituting and appointing the Right
Hon. David Richard Pigot, Lord Chief Baron of her
Majesty's Exchequer, he was this day sworn in
before the Right Hon. the Lord High Chancellor
accordingly.

COURT PAPERS.

REVISING BARRISTERS.—Mr. Arnold, appointed
revising barrister for the city, opened his court on
Tuesday the 15th inst. D. C. Moylan, esq. appointed
to revise the lists for Finsbury, will hold his court, at
the court of his Honour the Vice-Chancellor of
England, in Lincoln's-inn, on Thursday the 17th
instant.

On Wednesday the following notice was issued in
the city of London, pursuant to the 5th of Victoria,
c. 18, sec. 25. The overseers of all parishes in the
city of London are required to attend the sittings of
the revising barrister at the Court of Common Pleas,
in the Guildhall of the said city, on the 15th instant,
and to deliver to the revising barrister the several lists
made by them respectively, and also the original
notices of claims or objections under the said Act.
The parish lists and notices will be received according
to the order in which the parishes stand upon the re-
gister, i. e. according to the polling places. Upon
Wednesday, the 16th instant, the revision of the lists
of freemen will be commenced, and proceeded with in
alphabetical order till they are concluded. After the
lists of freemen are closed, the revision of parish lists
will be commenced, and proceeded with in the same
order in which they were delivered in. The clerks of
the respective companies and the overseers are re-
quired to attend the court upon the days upon which
their lists are respectively revised, of which public
notice will be given from day to day. No other busi-
ness than the receiving the lists and notices will be
transacted on the first day of the sitting.

THE INSOLVENT DEBTORS' COURT.—The sit-
tings of this court are appointed to be resumed for
the hearing of cases on Monday next for three weeks,
and then another short recess will follow. In the first
week, according to the rota, Mr. Commissioner Har-
ris will preside, Mr. Commissioner Phillips in the
second, and the Chief Commissioner in the third.

LEGAL INTELLIGENCE.

DEATH BY ACCIDENTS.—On the 26th ultimo,
the Act (9 & 10 Vict. c. 93), for compensating the
families of persons killed by accidents came into op-
eration. An action can now be maintained against
any person or company causing death by neglect or
default. It must be commenced within twelve months
of the person killed, and be brought in the name of
the executor or administrator of the deceased for the
benefit of the wife, husband, parent, and child of the
person killed. The Act does not apply to Scotland.

ART-UNIONS.—The Act passed last month to
legalize art-unions (9 & 10 Vict. c. 48) on complying
with certain regulations, extends the indemnity
granted by the 8 & 9 Vict. c. 57, against the penalties
incurred from the 1st of August last, as specified by
the rectified Act, to the 1st of November next.

GENERAL POST OFFICE NOTICE.—The following
notice has just been issued from the General Post
Office:—"By command of the Postmaster General.
—Much inconvenience having been occasioned in
some instances, owing to no person being in readiness
to receive the letters from the letter-carrier on his
morning delivery, and in others from parties refusing
to take in letters in consequence of not being pre-
pared with the means of paying the postage, or not
being properly authorized to receive them, the public
are requested to provide for the reception of letters
on the letter-carrier going his rounds, as if there are
no means of delivering the correspondence when first
presented, it may be taken back to the office to be
sent out by another opportunity."

A FINE OF 3,000l.—At a special Court of Com-
missioners of Sewers for the liberty of Westminster,
held on Tuesday, Mr. W. H. Jenkins, of Paddington,
builder, was sentenced to pay the large fine of 3,000l.
for contempt of the authority of the Commissioners.

THE TEMPLE GARDENS.—In consequence of the
noise and confusion created in the Temple on Sun-
days by visitors to the gardens, a notice was posted
on Sunday last on the principal entrance, intimating
that the gardens would not be open on Sundays.

Mr. Sheriff Laurie, who is now in Paris, where
he has gone for the purpose of inspecting the Parisian
prisons, was honoured with an invitation to dine with
King Louis Philippe at Neuilly, on Saturday.

THEFT OF BOOKS FROM GRAY'S INN.—On
Saturday information was received by the police that
a number of bound volumes of Acts of Parliament
had been abstracted from the library of Gray's Inn.

The Calcutta papers mention the death of Mr.
Charles Thackeray, barrister, and advocate of the
Supreme Court.

We learn by the Indian mail (just arrived) that the
appointment of Sir David Pollock to the Indian
Bench was approvingly spoken of at Bombay.

IRELAND.

THE LORD CHANCELLOR'S ASSISTANT RE-
GISTRAR.—We understand that an important ques-
tion has been raised with regard to the legality of the
late appointment by Sir Edward Sugden, of his son,
Henry Sugden, esq. to the office of Assistant-Regis-
trar to the Court of Chancery, in the room of Yel-
verton O'Keefe, esq. promoted to the full Registrar-
ship, vacated by the death of the late Francis Pren-
dergast, esq. The question has been raised by John
Kelly, esq. the Chief Clerk of the Chancery Regis-
trar-office, who, after thirty-seven years' service,
claims the appointment now filled by Mr. Sugden, by
virtue of the 6th and 7th Wm. 4, c. 74, and who has
procured the opinion of Mr. O'Connell and Mr. E.
L. Corbet in support of his claim. Mr. Henn, Q.C.
is stated to have given a contrary opinion; the matter
will, however, come before the Lord Chancellor upon
the first day of next Term, when both parties will
have an opportunity of having their rights fully dis-
cussed, and no doubt properly adjudicated upon.—
Saunders's News Letter.

PUBLIC DINNER TO MR. SERGEANT MURPHY.
—The *Cork Examiner* states that Mr. Sergeant Mur-
phy has arrived in that city for a few weeks of relaxa-
tion, and that he is to be entertained at a public dinner
by gentlemen of all shades of political opinion.

CORRESPONDENCE.

CURIOUS INSTANCE OF THE APPLICA- TION OF OLD LAW.

TO THE EDITOR OF THE LAW TIMES.
SIR,—One of the peculiar and most valuable prop-
erties of the common law of England is its expan-
siveness or elasticity. It is in a constant course of
development by the judges, and moulds and adapts
itself to meet the various and increasing wants of the
community. A recent example of this peculiar at-
tribute is afforded by the summary committal by
Baron Platt, on the Western Circuit, of some wit-
nesses who were said to have perjured themselves in
open court, in the presence of judge and jury, in the
course of a prosecution. If it were not for the known
predilection of that learned judge for British institu-
tions, some doubt might have been entertained whether
the peculiar mode of trial adopted by him was one of
them; but the character of the learned judge afford-
ing an unquestionable guarantee against the introduc-
tion of any novel or unconstitutional proceeding, any
doubt on the legality of the course may well be re-
ferred to a less profound and intimate acquaintance
with the vast resources of our law, and the institu-
tions we have inherited from our Saxon ancestors, or
to less dexterity in handling and applying them than
that learned judge is known to possess.

It may not, therefore, be unacceptable to offer one
or two suggestions of the probable sources from
which the mode of trial adopted by the learned Baron
was derived.

It appears from Blackstone that under certain cir-
cumstances, our law admits of a trial by inspection.
In the third vol. of his Commentaries, page 331, he
thus writes:—"Trial by inspection or examination is,
when for the greater expedition of a cause in some
point or issue, being either the principal question, or
arising collaterally out of it, but being evidently the
object of sense, the judges of the court, upon the testi-
mony of their senses, shall decide the point in dis-
pute."

This is a sufficient authority for the part the learned
judge took in the matter. It remains to see whether
there is not equal authority for the conjoint operation
of the jury. For, it will be remembered, that the
proceeding was a compound or complex one, of which
the act of the judge and the acts of the jury were
the simple elements. The judge and jury were
conjunctive in their conviction. The judge first saw
and condemned the perjury, and the jury afterwards
concurred.

This latter part of the proceeding would seem to be
a revival of the original function of the jury, which
was to speak the truth or give a verdict (*verum de-
tum*) from their own knowledge, and not as now
from evidence laid before them. The jury had direct
knowledge of the perjury—they saw and heard it.

From the above it will be seen that the proceeding
was not more summary than well founded.

The advantage of the proceeding is, that one pro-
secution for perjury need seldom give birth to a
other, since all the witnesses who perjured themselves
may at once be convicted and sentenced with the
original prisoner. Indeed, a prosecution for perjury
may be saved in many instances where the perjury
committed in open court.

I am, Sir, yours, &c.
QUILL.

SHAM LAWYERS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Amongst the many exposures of sham law-
yers in your journal, I have seen no case that on
equal the effrontery and success with which one of
these pests of society carries on business in this city.

The person I am alluding to is named William Jeffer-
son, and was, two or three years back, a writing
clerk in the office of a Mr. Edward Pate, a proctor,
carrying on business in the Abbey-square in this
city. Mr. Pate died, to the best of my recollection,
about two or three years since, and shortly before his
death Jefferson married his (Pate's) servant. Pate
made a will, leaving most of his property, which was
very trifling, to Jefferson, and left him executor.
Shortly after Pate's death, Jefferson announced him-
self as an accountant and collector of rents, &c.; and
though many cases had come under my notice in
which he had acted *quasi* lawyer, I did not think
it prudent to interfere till a poor Irishman named
Murphy called at my office, the other day, to com-
plain of a most shameful imposition that had been
practised upon him, and left documents in my hands
which fully satisfied me that Mr. Jefferson had made
himself amenable to the laws, and I considered it
would be advisable to publish a full statement of the
case in your valuable journal, and take the opinion of
the profession generally as to the best course to be
adopted for punishing Mr. Jefferson.

It appears that Murphy had an account owing him
of about 6l. and that he was recommended to go to
Jefferson, who would get him the amount. He
called upon Jefferson and placed the account in his
hands, and Jefferson informed him he would obtain
payment of the amount, and he saw him afterwards
several times upon the subject, and was at length
told that he (Jefferson) had succeeded in getting 2l.
on account, and that he would issue a writ to com-
pel payment of the balance. From the time that had
elapsed, and the shuffling manner in which Jeff-
erson had acted, Murphy thought all would be right,
and after calling repeatedly on Jefferson for the 2l. at
length succeeded in finding him in, and demanded his
papers, and also the 2l. that had been received as
account.

Jefferson refused to deliver the papers up, or the
cash, till he had deducted his bill. Murphy then
called upon me, and I advised him to demand the
papers and money again, and inform Jefferson that he
was not entitled to make any charge. Murphy, act-
ing under my advice, did demand his papers and the
money; and Jefferson then made out a bill, amount-
ing to 18s. for which he gave a receipt, and then
handed over all the papers (viz. the account due to
plaintiff, copy of application to defendant, and what
appears to be intended as a receipt for a writ and the
bill and receipt), and also 1l. 2s. the balance. I am
acquainted with Jefferson's handwriting, and can
speak to these all being written by him.

I send you copies of the documents alluded to, which
I should feel obliged by your publishing in your next
journal, together with this letter, and such remarks
as you may think the case requires.

I remain, Sir, your obedient servant,
A SOLICITOR.

Chester, September 7th, 1846.

P.S.—Since writing the above, I have seen the de-
fendant, who has placed in my hands two letters from
Jefferson, which are copied after the first application.
These clearly shew that he was representing himself
as an attorney. I have also been informed by the de-
fendant, that Jefferson threatened to commence pro-
ceedings against him a short time since, and he (the
defendant) told him the amount should be paid on a
day certain; but, before that time arrived, a writ was
issued by an attorney in Chester, and debt and costs
paid to him.

(Copy.)

"Abbey-square, 30th Aug. 1846.

"Mr. John Blagney—

"Dear Sir,—Thomas Murphy has placed his ac-
counts in my hands, with instructions to recover from
you (without delay) the balance now due to him for
work and labour done for your use.

"I have gone through the account item by item,
and find that the balance due to him is 6l. 2s. 10d.

and as he is staying in Chester entirely on your account (by reason of your not having settled with him), I must request that there be no delay in this matter, otherwise you will, of necessity, be put to further expense. I shall be happy to give you every information as to the account and balance claimed by Murphy, and I have only to add, that the balance must be paid to me by twelve o'clock to-morrow, at noon.

"I am Sir, yours obediently,
"W. JEFFERSON."

"Mr. John Blayney,
"Marble and stone-mason,
"The Northgate, Chester."

(Copy.)

"Abbey-square, August 20, 1846.

"Mr. Blayney,—I have seen Murphy with reference to the account. He says his statement is correct as to the prices of 5d., 11d., and 1s. 4d. and that he will not take less. He will attend here this evening (at my request), say six o'clock, and if you think proper you may meet him.

"Don't suppose he will let the matter drop by compromising; he is determined to proceed, and unless some arrangement be made forthwith, I must comply with my instructions the first thing to-morrow afternoon.

"Yours obediently,
"WM. JEFFERSON."

(Copy.)

"Saturday.

"Mr. Blayney,—You must let me have the money this afternoon, as I must be prepared to settle with Murphy on Monday morning, otherwise he will be for proceeding for the balance of his account.

"Yours respectfully,

"WM. JEFFERSON."

(Copy.)

"25th August, 1846.

"Thomas Murphy, of the parish of St. Oswald, Chester, marble and stone sawyer, plaintiff,
Against

"John Blayney, of Chester, marble and stone mason, for 6l. 5s. 7d. for work and labour done by the plaintiff for defendant."

(Upon the face and back of this there are some memoranda relating to the case.)

(Copy.)

"Abbey-square, Chester, August 1846.

"Mr. Thomas Murphy,
1846. "To W. Jefferson, Dr.

Aug. 20. Looking into and preparing your accounts (very long) against Mr. Blayney, for work done, and writing to him to discharge same, at your request. £0 7 6

Aug. 26. Several attendances upon you and Mr. Blayney, from the 20th inst. and on giving him a receipt for 2l. on account of the balance, and paid you the same (less these expenses), and on your taking away the papers. 0 10 6

£0 18 0

"Settled in account 31st August, 1846.

"WM. JEFFERSON."

TESTIMONIAL TO MR. WAKLEY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—It is with great pleasure I read in your last week's number the letter from "C. R. G." suggesting some testimonial or mark of respect from the Profession to Mr. Wakley. The Gray's-Inn deputation were about proposing the same thing, for of all the members of the House of Commons no one evinced a more earnest zeal to serve us, or was more indefatigable in our cause, and whose endeavours to modify and alter such clauses of the Small Debts Bill as were likely to operate to the disadvantage of the Profession, were in many instances attended with successful results; in fact, I may say Mr. Wakley was the only advocate we could rely upon, and had we possessed three members like him we could have carried any thing, or so divided the House upon every clause, that the Bill would have been shelved for the session. Both the legal and medical professions are deeply and equally indebted to Mr. Wakley. Lord G. Bentinck and Mr. Henley (the member for Oxfordshire), and even Sir Fitzroy Kelly, shewed every desire to aid and assist, and, to a certain extent, did us signal service; but there was a heartiness in our cause about Mr. Wakley, who sat down with us for nearly two hours, and went through the clauses *seriatim*. Well might Mr. Wakley say, "But why come to me, when there are so many legal men in the house?" and, added he, "I should say the lawyers united could do and carry any thing."

I need not perhaps tell you that we explained to him that the attorneys of England were the most supine, apathetic, selfish, unworthy, and disunited set of men, as a body, that ever existed; and as for the legal members in the House, like all other great men who have risen and made their way by and through

the patronage of the attorneys, they no sooner reach their wished-for elevation, than the attorneys may go to the devil, for aught they care. "Well," says Mr. Wakley, "I'll do the best I can for you," and truly he kept his word, and I hope that we shall not, as a body, be wanting in a creditable token and expression of gratitude for his exertions. There is yet much to be done, and the next cry must be, "Hurrah! for the repeal (not of the Union, but) of the certificate duty!" and the Palace-court must be thrown open, or abolished. Mr. Wakley is fully alive to it. Six attorneys in London are to have the privilege of a concurrent jurisdiction, and nearly 3,000 to be denied it. Such is the Attorney-General's notion of justice and fair play; and although he thanked me at the interview with the deputation at his chambers, and desired Mr. Solicitor-General to make an especial note of the Palace-court, which he said had been quite overlooked; yet, when we saw him in the lobby of the House of Commons, he said, "I can't help it, it cannot be interfered with, it is a Patent Office," &c. &c. Let us for once rescue our name from that ungrateful indifference towards our own interests, under which it has so long laboured, and shew the legal members of the House of Commons that, to their discredit and shame, it is not to them we can look for support.

A *shilling subscription*, as suggested by C. R. G. will do all that is wanted, and I shall be happy to form one of a committee for the purpose of carrying out the obtaining and presentation of the testimonial.

I am, Sir, yours, &c.

London, Sept 9, 1846.

PHULAX.

P.S. If those members of the Profession who have copies of the Small Debts Bill, as printed on the 6th, 11th, and 18th of August, will compare them with the Small Debts Act, they will at once see the (to us) important alterations effected mainly by Mr. Wakley's exertions.

[Though the want of unity and the inactivity of the Profession in matters regarding their interest as a body have more than once been lamented by us in these columns, we cannot subscribe to the character given of them by our correspondent to Mr. Wakley. Our correspondent has, of course, forwarded his address.]

ATTORNEYS' DEPUTIES.

DENNES AND OLD.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Enclosed I send you a report, taken from the *Chelmsford Chronicle* of Friday last, which shews my ultimate success in abating the nuisance of malpractice which I believe, in Old's instance, has existed since these thirteen or fourteen years past, so that in fact the man seems to have believed that, however originally wrong, he had at length acquired a prescriptive right to go on. Although I have incurred no inconsiderable trouble in this matter, I feel myself repaid by having satisfactorily shewn that these parties are not unassailable, and that any gentleman may, singlehanded, beat them from their supposed strongholds by an ordinary exercise of patience and perseverance.

I am, Sir, yours, &c.

GEORGE JOHN DURRANT.

Chelmsford, Sept. 10, 1846.

PRACTICE OF ATTORNEYS.—Mr. Durrant called attention to the case of Mr. Old, on which some discussion took place at the last court, and said he should be glad if the county clerk, in accordance with intimation on the last occasion, would give his opinion on non-professional men coming there, on the pretence that they were agents to solicitors residing at a distance, and practising in the names of persons not living, or being in any manner domiciled in the town. He stated at the last sitting, that he should be able to refer the Court to a number of cases, shewing that the superior Courts at Westminster, had repeatedly expressed their disapprobation of the practice. The first case was *Gill v. Lougher*, 1 C. and J. p. 170—in which Mr. Justice Bayley observed—"Now the debt here was small, the instructions were given through a person who was not competent, in contemplation of law, to give the party adequate advice." This was precisely the case that came before the Court at the last sitting, when he (Mr. Durrant) challenged Mr. Old, to say that Mr. Dennes had any personal knowledge of the application he was then making, and he did not venture to say he had. The fact was, Mr. Old received instructions from the party, he advised that party, and made the application; and therefore he came within the words of Mr. Justice Bayley, as "a person who was not competent, in contemplation of law, to give the party adequate advice."—Mr. Gepp. Mr. Dennes has intimated that Mr. Old is his clerk residing here; your case goes to not allowing a person to practise who has no ostensible head.—Mr. Durrant contended that Mr. Old came within the meaning of Mr. Justice Bayley as not being competent in law "to give the party adequate advice."—Mr. Gepp said, the question last time was whether a person would be allowed to practise not being a solicitor.—Mr. Durrant said, in the

case of *Hopkinson v. Smith*, 1 Bingham, p. 113, "where a person not an attorney carried on business in the plaintiff's name at a town five miles from the plaintiff's residence, where the attorney shewed his face only once a week, and never interfered in the business, it was held that he could not recover." In *Taylor v. Glassbrook*, 3 Starkie, p. 75, where the attorney stationed his *articled clerk* in a town at a distance from him, and all the business was transacted by the clerk, the result was the same. That, Mr. Durrant contended, was not so strong a case as the present, because there the party was in a course of legal training, but here it was not so—this was the case of a wholly unqualified person, and according to the rules of the profession he was excluded from practising.

Mr. Gepp.—It is unnecessary to go further. I shall certainly not allow any person to practice in the way Mr. Old desired to do. It is not likely this Court will long exist, but so long as it does I shall feel it my duty to prevent persons practising in that way. There may be cases where a hardship would be inflicted, if we were not to allow a clerk to come forward, but as a general rule I do not think it right that they should be allowed to do so to the prejudice of the suitors of the Court.

Deaths-at-Law, Next of Kin, &c. &c. &c.

[This is part of a complete list now being abstracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The references, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent impertinent curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount inclosed.]

314. Capt. HENRY GLYN, late of the Royal Spanish Lancers. Important communication.

315. EBERHARD BROWN, of Pennyquick, near Edinburgh, wright or house carpenter, who left Leith in 1809 for London, and from thence went to Chatham, where he was living at the "Bell on the Crook," in 1814. *Something to advantage.*

316. JOHN VICKERSMAN, formerly of Newsome, Yorkhire, clothier, since living at Mr. Lacey's, 20, Titchfield-st. Marylebone. Now aged about 37. *Something to advantage.*

317. Mr. GEORGE BUSH, a native of Fort Royal, Martinique, who left that island in 1819, with his father, Mr. Joseph Bush, to go to England. To claim 475,000*l.*

318. HENRY AT-LAW AND NEXT OF KIN OF CHARLOTTE BUSH, of Hertford (died in June 1835), or their representatives.

319. NEXT OF KIN OF ELIZABETH ASHCROFT, late of Upholland, Wigan, Lancaster (died August 1834), or their representatives. Said E. Ashcroft was formerly E. Arnold, and resided at Hoxton, Middlesex, and was married to Abraham Ashcroft, in St. James's, Clerkenwell, Middlesex, on 14th Oct. 1806.

320. NEXT OF KIN OF ROBERT ALEX. DAUCH, late of Cunningham-place, St. John's Wood, Regent's Park, Middlesex, gent. (died in June 1839), and formerly a clerk in the East-India Company, or their representatives.

321. Mr. HENRY PERBIN, late surgeon, H.C.S. supposed to be in London, and lately residing at New York. *Something to advantage.*

322. MARGARET SPENDING (formerly Margaret Simmons, spinster). *Something to advantage.*

323. Madame de la BATAT, who lately resided at Port Louis, France. To make claim on the estate of John Smithson, who died at Genoa, Naples, in 1699.

324. RELATIONS OF G. SERJEANT PIPER, who died in Jamaica some years back. *Something to advantage.*

325. NEXT OF KIN OF JOHN SMITH, late a seaman belonging to the merchant seaman Charles Keir (died 7th Nov. 1830). *Something to advantage.*

326. NEXT OF KIN OF JAMES SIM, formerly of Little Torrington-street, St. George's, Bloomsbury, afterwards of Tottenham-court-road, and subsequently of Woburn-square, Middlesex (died 28th Sept. 1833), or their representatives.

327. J. SOTTI, of Macadendro, who came over to this country from Frankfurt-on-the-Maine, about 1835, with the intention of returning to Greece by way of Malta. *Something to advantage.*

328. GRANDCHILDREN, "born in wedlock," of JOHN JORDAINE (who resided in Paternoster-row, and died in Feb. 1773), and who were living on 31st Feb. 1837. *A legacy.*

329. PERSONAL REPRESENTATIVES OF THOMAS BATTLE, late of Strixton, Northampton, deceased; of WILLIAM BATTLE, late of Woolaston, Northampton, deceased; and of JAMES BATTLE, late of Hale Weston, Huntingdon, deceased, legacies named in the will of Jeanne Battle, of Woolaston, and who died in August 1800. *Something to advantage.*

330. NEXT OF KIN OF BETSEY HALL, spinster, formerly of Laytonstone, Essex, then of Readington, Sussex, and afterwards of Brighton. *Something to advantage.*

331. THOMAS BARNARD DAVIES, formerly of Oak, Monmouth, surgeon. *Something to advantage.*

332. NEXT OF KIN OF LUDER AUBREY, a lunatic (died Oct. 1830), or their representatives. The lunatic resided many years under the care of his committee, first at Wootton-under-Edge, then at Clapham. His father was a merchant in Bush-lane, City of London, in 1728.

333. RELATIONS OF NEXT OF KIN OF JOHN BOWEN, formerly of Tottenham-court-road, and afterwards of Blenheim-street, Chelsea, Middlesex (deceased). *Something to advantage.*

(To be continued weekly.)

SCALE OF CHARGES FOR ADVERTISEMENTS.

Under 50 Words..... £0 5 0
For every additional Ten Words... 0 0 6

Advertisements from the Country should be accompanied with an order upon the Agent in Town, or a Post-office order (payable at 180 Strand) for the amount.

N. B.—For Scale for Estate Advertisements, see JOURNAL OF PROPERTY.

THE LAW TIMES.

SATURDAY, SEPTEMBER 12, 1846.

WHAT NEXT?

THE Small Debts Bill is law. We have our misgivings as to its working, but hope they they will be found visionary. Rather would we have the reputation of a false prophet than that the Profession should be subjected to such mischiefs as have foreshadowed themselves on our mind while contemplating the probable consequences of that measure. But the mortification which every reflecting man will feel at the hasty and ill-considered legislation of the session lately closed, is not less on account of the positive evils inflicted than of the good which will be prevented.

But lamentation is useless. The die is cast. The Small Debts Bill is law, and the question that ought now to engage the attention of the Profession is, how shall its mischiefs best be met; what next is to be done?

To this there can be but one reply. The change that has been begun must be carried out to its legitimate conclusions. The reform, if it deserve the name, which has been made this session is but a first step, and unless it be followed up, a grievous injustice will be inflicted both upon the Profession and their clients. There must be an entire and sweeping revision of the fees of court, an abolition of all taxes bearing exclusively upon the Profession, a reform of the stamp laws, and a more stringent protection of the qualified practitioners against the invasions of Sham Lawyers and Sham Conveyancers.

First, the lawyers must insist upon an entire revision of the fees of Court, with a view to their abolition or great reduction. These fees form no small portion of their bills of costs, so the lawyers reap all the odium without any compensating advantage, for the client cannot or will not distinguish between the items for fees paid and the items for work done. The impression we entertain at present, so far as we have had opportunity to investigate the subject, is, that fees in courts of justice ought to be entirely abolished. All officers should be paid by fixed salaries, and to prevent a resort to unsubstantial suits, we would substitute for fees a small per centage upon the money or value of the thing to recover which the suit is instituted, which should be paid by the plaintiff on issuing his writ, subject to the result of the suit, to be repaid to him by the defendant in case of the verdict going against him. In such a plan there are manifold advantages. It offers no impediment to the *bond fide* suitor, and it would be sufficient to prevent a wanton resort to legal proceedings. It would force the plaintiff to weigh well what amount of damages he is really entitled to, before he brings his claim into court, otherwise he will be likely to pay a great deal more than he can hope to recover. It would be an equitable apportionment of the burden of the Law Courts upon those who make use of them, and this in precise ratio to the amount of advantage they seek. The man who asks their help to recover a thousand pounds, will no longer, as now, pay the same as a man who procures through them fifty pounds. It will relieve the lawyers from much of the odium of costs that are not really theirs. It will give satisfaction to the client, for he would gladly pay a small fixed per centage for the recovery

of his debts and demands. And, lastly, it will yield a certain revenue, affording ample provision for all the officers, and expenses of the courts, the judges included.

We throw out this suggestion rather as a matter for serious consideration hereafter, than in the shape of a decided opinion. But that the present fee system is utterly indefensible will be denied by nobody. The eye cannot run over the list of fees in the Common Law Courts, without being struck by its absurdities. How many of them are charged for forms that are of no practical utility; that serve only to swell the cost of a suit, with the paltriest gain to the lawyer, the larger proportion of the item being paid in the form of a fee, as if it was for the sake of the fee alone that the form is maintained! But on this we need not now dwell, inasmuch as we purpose to go through the list, and exhibit its absurdities in detail.

The second duty of the Profession is to demand the concession of an act of simple justice, long denied, but now, we should think, armed with an argument that must be irresistible. The Certificate Duty is a tax utterly without justification—a tax levied upon the lawyers exclusively, upon the pretence that the law had secured to them certain profits of a large amount, and that, therefore, they could not object to a tax which would, on the other hand, be itself a shield against any attempt to reduce those profits. That argument, however plausible formerly, cannot be repeated now. Since it was made the pretence for imposing the tax, those profits have been reduced by three-fourths, but the tax is continued undiminished. True it is that for this the lawyers have chiefly themselves to blame, for they really have made no serious effort as yet to procure relief from the burden. The Small Debts Act will, however, compel them to exertion. They must no longer submit tamely to be cuffed and kicked on all sides. A little spirit and energy will yet save them. It will be a work of labour and perhaps of time, but it can be successfully done if it be resolutely done. Organization, union, systematic effort, and, above all, a representative in the next Parliament, will assuredly redeem much that has been lost, secure the concession of a large debt of justice due, and make more difficult than hitherto those wild schemes for changing the practice of the law, which, for some ten years past, have afflicted our amateur legislators like a mania.

SHAM LAWYERS.

THE good county of Devon, we perceive, is much infested by these worthies, and it is a duty the Profession there absolutely owe to the public, (who are often urged to the recovery of their money by these sharpers, and too often cajoled out of it afterwards,) to make a vigorous effort to put them down. We publish a threatening letter from one of this class; and a circular from one Mr. CHARLES ELLIOTT, which we strongly recommend him to desist from further distributing; and we caution him not to take upon himself the office of the Attorney.

Exeter, 26th August, 1846.

Sir,—I am requested by Mr. John Johnston, on behalf of Mr. James Kennedy, to apply to you for the payment of 9s. 5d. and unless the same is paid within three days from this date, with the expense of this letter, I am instructed to proceed against you.

THOMAS LAKEMAN & Co.
1, Salem-place, St. Sidwells.

The following is Mr. Elliott's circular:—

CHARLES ELLIOTT

Respectfully returns his sincere thanks to the Professional Gentlemen and others of the city of Exeter, for whom he has for many years past collected rents, &c. also to the tradesmen and his friends generally who have intrusted him with the collection of their outstanding debts; and he begs to inform them that his undivided attention will be given, on the most liberal terms, to the settlement of all accounts that may be placed in his hands.

Dated 8, King William-terrace,
St. Sidwell's, Exeter,

February 1st, 1845.

THE VERULAM SOCIETY.

THREE numbers of the Society's Reports are now ready, and will be forwarded to the members in the beginning of the week—namely, No. XXI. *Criminal Law Cases*; No. XXI. *Magistrates' Cases*, completing Vol. I.; and No. XVIII. *Practice Cases*. Another number of *Real Property Cases* is in a forward state of preparation.

LAW TIMES EDITION OF IMPORTANT STATUTES.

THE SMALL DEBTS ACT.

THE edition of this Act, by Mr. PATERSON, containing a complete analysis and copious index, will be ready on Tuesday. In reply to a correspondent, who suggests the incorporation of the provisions of 7 & 8 Vict. c. 96, and 8 & 9 Vict. c. 127, we may state that Mr. PATERSON has not deemed it necessary to give them, because these statutes, so far as affects the recovery of debts under 20l. are of no force in the districts where the recently past Act, 9 & 10 Vict. c. 95, shall be put into operation, consequently they are supererogative to an edition of "the Small Debts Act."

A COURSE OF LECTURES
ON THE LAW OF CONTRACTS.

BY PROFESSOR CAREY.

Delivered at the University College.

LECTURE XVII.

I have drawn to a conclusion what I have had to say with respect to the contract of sale. There is another contract, very general in its nature, which we will now consider—that of *bailment*. *Bailment* is defined by Blackstone "a delivery of goods in trust, upon a contract expressed or implied, that the trust shall be faithfully executed on the part of the bailee." The definition of Sir William Jones is perhaps preferable: it is, that "a *bailment* is a delivery of goods on a condition expressed or implied that they shall be restored by the bailee to the bailor, or according to his directions as soon as the purpose for which they are bailed shall be answered." This definition has been criticised in "Story on Bailments," apparently without sufficient reason. In the case of *Coggs v. Barnard*, six kinds of bailment are enumerated by C. J. Holt:—*Depositum*, *Commodatum*, *Locatio*, *Conductio*, *Pawn* (which he calls *Vadium*—not a word in Roman law), *Locatio Operam*, and *Mandatum*. Sir William Jones reduces these six heads to five, including the 5th under the 3rd, that is putting together *Locatio*, *Conductio*, and *Locatio Operam*. His reason is derived not so much from the nature of the transaction as from a simple want of precision in the language of the Roman law, in which two contracts, very different in their nature, are clubbed together under the same name, *Locatio*, *Conductio*. By C. J. Holt these two different contracts were distinguished, and as far as it may be necessary to adhere to the Latin nomenclature, I shall follow the distinction laid down in *Coggs v. Barnard*, in preference to that adopted by Sir William Jones.

It seems astonishing that so important a branch of jurisprudence should have been so long and so glaringly unsettled in a great commercial country, and that from the reign of Elizabeth to the reign of Anne the doctrine of bailments should have produced more contradiction and confusion, more diversity of opinion and inconsistency of argument, than any other part perhaps of judicial learning, at least any other part equally simple in its elements. And the means of dispelling this confusion have, however, existed during the whole of this time. It is to be found in Bracton, who wrote a learned work in the time of Henry III. a complete, finished, and systematic performance, giving a complete view of the law in all its titles, as it stood at the time when it was written.

Now it appears at the time when it was written the feudal law and the cumbersome machinery of the courts had been brought forth into a complicated system purely English, that is to say, without any elements of the Roman law in them. But many of the more ordinary transactions between man and man were little touched upon. The Roman law had always retained a considerable influence on the continent, and its study had lately

been prosecuted with new vigour. Teachers of the Roman Law, Varius and others, had published in English, and Bracton had evidently applied himself to the pursuit, improving thereby both his notions of general jurisprudence and his language. In those points of the subject in which materials failed him in the maxims of our own law, he applied at once to the Roman law (whether to the institutes of Justinian alone, or to what other of the older resources would be a matter of interesting inquiry); however that may be, he borrowed from that source largely in treating of the law of contracts. It is singular how little influence this part of the work of Bracton exercised upon the general condition of our law. The Roman principles with respect to bailments are there to be found nearly in the very words of the institutes. But they seem to have slept there. There is little or no trace in the year-books of his authority having been appealed to or recognized. The law of bailment continued down to a modern period a mass of confusion and contradiction; and we are rightly told by Mr. Jones, a case of difficulty occurs in the reign of Queen Anne: the whole doctrine is propounded at length by the Lord Chief Justice of the Queen's Bench in a judgment which has been ever since recognized as the leading authority on the subject, and the whole groundwork of that judgment is drawn from the so long neglected authority of Bracton (the case of *Coggs v. Barnard*). Barnard had undertaken to carry a cask of brandy for Coggs, and he did it so negligently that the cask was damaged, and the brandy lost. It was argued that an action would not lie unless Barnard was a common carrier, and so, by his public employment, under an obligation to use due care and skill, or unless he undertook the work for a consideration. A gratuitous bailment, it was argued, was under no liability, because it is *nudum pactum*, an undertaking without a consideration. With respect to instances of this kind, the expression of the Roman law is *re contra obligatio*: the contract is made *re* by the fact of the deposit, not *consensu*. The English judges adopted an expression much to the same import, that a trust creates an obligation; that a trust is a consideration. The rule, therefore, is now established thus: if a man promises to undertake any work without recompense, he cannot be compelled to do it; and if he refuses, the person to whom he made the promise has no right of action to recover damages (it is, *nudum pactum*); but if he does undertake a work, and by want of care or skill, damage is occasioned or loss sustained, he is liable to make it good. The question arises, what is the degree of care and skill (*diligentia*, in the Roman law) that is required? What degree of want of care or skill would make a bailee responsible? This depends upon the relative position created between the parties by the contract or bailment. Is the bailment for the benefit of the bailor? The bailee, though he receives no benefit by the bailment, yet, inasmuch as he has undertaken the duty, he is bound to execute it, but he is only responsible when guilty of considerable negligence. The bailor, having received the benefit of the bailee's labour without stipulation for giving him any remuneration in return, is not at liberty to call him to account for any slight degree of negligence. Is the bailment for the benefit of the bailee? Having the goods of the bailor entrusted to him for his own use without paying anything in return, it is but reasonable that he should take more than ordinary care of the things bailed; and it is said, however slight may be the negligence, it is not fair that the loss occasioned thereby should fall on the person who has lent him the goods gratuitously. Is the bailment for the advantage of both parties? There we have a contract entered into as a mere matter of business; both parties standing on equal ground, neither of them conferring a favour on the other—neither of them entitled to a greater favour than the other. A party who in such a case has in his keeping the goods of another, is bound to take ordinary and usual care of them, and no more. (*Dean v. Keate*, 3 Campb. 4.) In all cases of bailment it must be remembered that the bailee is empowered to deal with the thing only according to the nature of the bailment; if he employs it for any other purposes, he becomes himself answerable for the consequences. Whatever may be the nature of the bailment, the bailee is responsible for any loss that may be occasioned by his own wilful misconduct; whatever difference there may be as to the degrees of care and diligence, there is none as to the *bona fides* required. Even where

the degree of diligence required by the nature of the transaction is slight, a bailee may be relieved even from this limited responsibility by an express agreement; but no agreement will avail to limit his responsibility where he has been guilty of fraud. That is expressed in the language of the Digest—*Non valet si convenient sedotus praestetur*.

Bailments are, therefore, properly divisible into three heads; first, those in which the trust is for the benefit of the bailor; secondly, those in which the trust is for the benefit of the bailee; thirdly, those in which the trust is for the benefit of both parties. If I deliver goods to A. B. to keep till my return, without recompense, this is an instance of the first class. If I lend a horse to A. B. without receiving any hire, this is an instance of the second class. In either of these cases, if there is a recompense, if I am to pay for the rent of the warehouse, or if A. B. is to pay me for the hire of the horse, this is an instance of the third class. According to the language of the Roman law, which has been sometimes adopted in our own, in number three, where the transaction is a mere matter of business, ordinary diligence is required, and the party is answerable only for common culpa. In the second case, where the transaction is a matter of favour to the bailee, more than ordinary diligence is required, and he is answerable for a greater degree of culpa—*culpa levis*. In the first class of cases, where the transaction is a favour conferred by the bailor, he is answerable only for gross negligence, *lata culpa*. Taking the Latin names *mandatum* and *depositum*, so far as they ought to be considered, the terms come under the first head. *Mandatum*, according to the doctrine of the Roman law, is not essentially a bailment. *Mandatum* is the giving an order for the thing to be done. That may be giving an order for a thing to be done without a condition that any recompense is to be paid. *Mandatum*, strictly speaking, falls not within the head of bailments, but within the head of principal and agent; nevertheless, in the course of business, property and goods may be deposited as part of the thing to be done, and so accidentally it is brought within the contract of bailment. *Depositum* is where one person trusts goods with another to be taken care of without hire. In these cases the bailee is answerable according to the language of the Roman law only for gross negligence. He is answerable for gross negligence, in the language of our courts of law down to a very recent period. If there is not great or somewhat extraordinary negligence on the part of the bailee, to use the words of Lord Tenterden, he ought not to be made liable. That was in an action against a coachman, who undertook gratuitously to deliver a parcel, and lost it; the question was, was it negligence, or was it something more than ordinary negligence? unless there was he was not answerable. (*Beauchamp v. Powley*, 1 Mood. & Rob. 40.)

It has sometimes been said that all that is required is, that such gratuitous bailee should take the same care of the goods bailed as he does of his own: if he be a negligent man that is the bailor's own folly. But it has been held, that though he may keep the goods entrusted to him with as much care as his own, yet if he is in fact guilty of gross negligence he may be answerable. In the case of *Dorman v. Jenkins*, 2 Ad. & E. 256, money was deposited with a man: he put it in the same box with his own money, and it was lost or stolen, and the jury found that he was guilty of gross negligence, and being so guilty, though he took the same care of the money deposited with him as his own, he was held to be answerable. So that the doctrine of taking the same care as one's own is not the test: the test is simply negligence or not. The reason on which the older opinion rested was, that the gross negligence for which such a bailee was responsible was deemed hardly distinguishable from fraud (which is the doctrine of the Roman law); and if a man took as much care of another's goods as he did of his own there was no presumption of fraud; on the contrary, the keeping the goods as he kept his own was an argument of his honesty. When the gratuitous bailee or agent undertakes to do a thing to the best of his skill, when his situation or profession is such as to imply skill, an omission of that skill is imputable to him as gross negligence. That is stated in the case of *Shiells v. Blackburn*, 1 Hy. Bl. 158. There Blackburn was employed, gratuitously, to make an entry on a certain letter that was to be exported; he entered it, and in the entry he described it as of another sort of letter,

whereby he deceived the Custom-house by the misdescription. It was not his situation or profession, as a general merchant, to enter those things at the Custom-house; had he been a Custom-house officer, or a person who knew how those things were to have been done, by his profession, he would have been answerable; as it was, he was held not to be answerable. The doctrine here laid down in *Shiells v. Blackburn* has in effect been recently acted upon, though the language employed has been different. In *Wilson v. Brett*, 11 M. & W. 113, a man was asked to ride a horse to be shewn to a purchaser, without being paid for it; he rode the horse carelessly, and broke one of its knees; the man was a person conversant with and skilled in horses; it was held that there was no difference between that case and that of a borrower. It may be observed in this case, as to the distinction between negligence and gross negligence, the use of the terms is thrown down. "I cannot," says one of the learned judges, "see any difference between negligence and gross negligence, but that it is the same thing, with the addition of the imperative epithet." It is not meant by this that there is no distinction between the different degrees of liability of different kinds of bailees; what is meant is, that the distinction is not to be marked by any phrases to which it is, at least in the practice of our law, difficult to attach any definite meaning. Where does negligence begin to be gross? The distinction is to be marked by considering the different circumstances of different cases. A man is asked to ride a horse—does he do it for hire? If so, then it is his business to ride carefully and skilfully. He undertakes it as a matter of business; if so, it is his business to ride carefully and skilfully; if from want of skill the horse is damaged, he is liable. Does he do it without being paid for it? Then, if he is a skilful rider, his want of exercise of that skill which he has is clearly negligence in him, and makes him liable. If he is not a skilful rider, he is not answerable for his want of skill—he does not profess it to be his business; if he does his best, he does all that the other party can expect of him; still, if he fails to do his best, he becomes guilty of negligence, and makes himself liable. That is the doctrine—that is the law. You may call it in the one case negligence, in the other case gross negligence. You thereby use a technical expression, but you convey no very accurate idea, because the negligence does not depend upon the thing itself: it depends upon the man. That which is simple negligence, negligence of a light kind, or no negligence at all in the one, would be gross negligence in the other. One of the judges says, the distinction is, that the gratuitous bailee is only bound to exercise such skill as he possesses; whereas a hirer or borrower may usually be taken to represent to the party who lets, or from whom he borrows, that he is a person of competent skill. Another of the judges says, where a man is shewn to be a person of competent skill, there is no difference between that case and that of a borrower, because the only difference is, in the one case the party bargains for the use of competent skill, in the other, if the party is of such competent skill, the bargain becomes immaterial. A case of *commodatum* is the gratuitous lending of goods to be returned. The word "lending" in our language is equivocal; there are two words which refer to it, *commodatum* and *modatum*. *Modatum* is where you lend another man goods, the contract being that a like quantity of things of the same kind shall be returned to you again. There is no bailment there. The goods which are lent to you become your property as soon as they come into your hands, and they cease to be the property of the person lending them. In *commodatum*, the property still remains my own; I allow you the use of it, and when the purpose for which it is lent is at an end, you are to return me the same thing again. And in *commodatum*, the borrower, is required to take considerable care; according to the language of the Roman law, he is required to take the highest degree of care. It is his business, when the object for which the thing is lent is satisfied, or the time for which it is lent is out, to return the goods in as good a state as they were, reasonable wear and tear excepted, or inevitable accident.

I have said that the degree of care which a person may undertake to perform, in consequence of a bailment, may be modified by the agreement between the parties. Sir Edward Coke says, that in the case of a deposit, if goods are deposited with me, and I do not wish to be answerable for them,

at all events, I must undertake specially to take care of them only as my own goods, that if I undertake to keep them safely, I shall be bound to answer even for inevitable accident; and further, that if I undertake to keep them, and nothing more, that that will be undertaking to keep them safely, and make me liable for inevitable accident. That doctrine, however, is denied in *Coggs v. Bernard*; and I think there can be no doubt that, at the present time, if goods are deposited with a man, and nothing is said as to the degree of care he is to take of them, a reasonable care is all that will be required of him. I apprehend also, from some of the language that I have already adverted to, that a contract to take care of goods as one's own, would, in the present day, have a very doubtful meaning. There is a case in Willes's Reports in which an action of detinue was brought for certain valuable property. The declaration stated that the plaintiff had delivered the goods to the defendant, to be by him safely kept; the plea was, that the goods were delivered to the defendant to be kept as his own—that is, to be shewn for sale; that the defendant kept them as his own, and shewed them for sale, and that they were stolen. Issue was joined on the purpose for which they were delivered to him; and it was there held, that as they were delivered to him to be kept as his own, and for purpose of sale, he was not answerable for the loss which occurred in shewing them about. The doctrine, then, is not denied, that there may be a difference between the taking care of things as our own, and taking care of them safely; the doctrine there seems to be admitted. Nevertheless, it is very doubtful whether it could be acted upon at the present day; and if you look into the facts, the judgment there is sensible enough. If you deliver goods to a person merely for the purpose of being taken care of, his business is to put them into some safe custody; if he does not, he is guilty of negligence; but if you deliver them to him to be shewn about for the purposes of sale, if he does take them about for the purposes of sale, and so accidentally loses them, he loses them in doing the very thing which is the object of their being deposited with him. That which would be negligence if he was only to keep them, would not be negligence if his business was to take them about. In all these cases, probably, the way in which it would be looked at would be very different from that suggested by Sir Edward Coke in *Ratle v. Bower*. It is quite clear, I apprehend, now with respect to the main points, that if a person undertakes merely to keep goods, that he is not bound to keep them safely; in the words of Sir Edward Coke, that he is not bound to a warranty of their security, only to a certain amount of care. Then the whole question is, whether a person, undertaking to keep goods safely, is bound to be answerable for them? At all events, it is admitted here that he would be. It has never been decided precisely.

There is one other kind of bailment which requires a specific notice—*Pawn*, called by Holt, C. J. *Bailment*. I am not sure whether he got the word *Bailment* from Bracton; if he did, Bracton did not get it from the Roman law. Here the contract is a pledge, as where the goods are given as security for a debt, and there is an advantage on both sides, because the person who deposits gains credit, for he gets his loan, and the person with whom the deposit is made, gets a security for repayment; there is a benefit on both sides, and, according to the doctrine of the Roman law, a mutual degree of diligence was required of the bailee. If the goods perish without any fault of the bailee, then the bailor loses his security, but he does not lose his debt. Suppose a carriage is deposited as security for 50*l*. and the carriage is accidentally burned. Both parties then lose: the person with whom it is deposited loses the pledge, and the security it gave him; and the owner loses the property itself, but the debt stands exactly as it did before. If, however, the carriage should be destroyed by the negligence of the bailee, he would then be answerable to the bailor. With respect to gratuitous bailment, there is a case which throws some light on it in 1 B. & Ald. 59. A lent a horse for the night to B, who turned it out after dark into a pasture-field adjoining, though separated from the field of C by a fence which C was bound to repair. The horse, from the bad state of the fence, fell from one field into the other, and was killed. The plaintiff was simply a gratuitous bailee; but as such he owed it to the owner of the

horse not to put it in a dangerous pasture, and if he do not exercise a proper degree of care he would be liable for any damage the horse might sustain.

NOTICES OF NEW LAW BOOKS.

A Series of Observations, suggested on a perusal of the Eighth Report of the Commissioners on Criminal Law. By Mr. GEORGE E. WILLIAMS. 8vo. 1846. Stevens and Norton.

THE title of this tract so fully explains the writer's purpose, that nothing remains for us to do further than to shew the nature and value of the comments here made on the Report of the Criminal Law Commission. Mr. WILLIAMS is undoubtedly a man who has for some years occupied a position offering considerable advantages for observing the working of the Criminal Law, and consequently for arriving at a sound judgment as to the changes which are desirable. Mr. WILLIAMS prefers an unpaid to a paid magistracy, for reasons we think hardly clear and satisfactory. We give this opinion in his own words:—

It is not uncommonly supposed and suggested that a stipendiary magistracy would be more efficient than an honorary and gratuitous one, but in point of fact that does not seem so clear, if at least we may credit the reports of magisterial proceedings, as given in the newspapers of the metropolis, where undoubtedly with more power under the Metropolitan Police Act, and so with less personal responsibility, stipendiary magistrates do not seem, as a body, very superior to their brethren of the general commission of the peace.

This observation is not meant as any sneer at the stipendiary magistrates of London; though in any honest dissertation on this subject 'tis impossible to avoid drawing a comparison which may be censured on a matter of fact.

But, admitting any practical superiority at all, we must undoubtedly consider the advantage to the community generally, from the circumstance of a large body thereof, who are so directly interested in its social order, its property, and its prosperity, being officially employed in the administration of its laws.

This body is commonly known as the gentry of the country, who, it is much to be lamented, have no practical education in those laws, and who are indeed almost totally ignorant of the constitution of the peace for any knowledge of them at all. It is too true that from one end of the kingdom to the other persons are placed in that commission from personal favoritism or political predilection; but, in the main, the system is necessary, and I know of no member of society more meritorious and worthy than the country gentleman who industriously habituates himself to the duties of an useful and an active magistrate.

Mr. WILLIAMS is averse to the creation of "Public Prosecutor," and observes that it were far better to leave magistrates' clerks at full liberty, as they are now, to conduct to a class, at the assizes or sessions, prosecutions which they, under the superintendence of the magistrates, have been mainly engaged in establishing. We confess that the reasons here advanced against the creation of a "Public Prosecutor" have not changed our views on the subject, nor are they sufficient, we think, to satisfy the public.

That the following remarks on the short-sighted jealousy with which magistrates regard the county purse, and on the seals of allowances to witnesses, are just, we think all practical men will admit.

It has been the custom of late years in some counties, and especially in this county (Gloucester), for magistrates in quarter sessions to view the scale of allowances, not only to professional men, as counsel, barrister, and attorney, but to prosecutors and witnesses, with a very jealous and thrifty eye, out of a vigilant regard to the county rate. However disposed and determined I may be to discuss any subject with independence and freedom on which I may choose to write, I will not dilate upon the judgment of the magistrates, so far as any question connected with my own profession may be concerned, saving that it has frequently occurred to me that now and then fairness to that profession is sacrificed, either to a little love of popularity, or a very unwise or really unnecessary parsimony in reference to the public purse, which could not in its general contribution, feel the loss of the indefinable fraction which to the few would be but just remuneration and no more. But my present purpose is to refer to a recently brought about scale of allowances in this county in reference to prosecutors and witnesses, and from which the following is an extract:—

To each prosecutor or witness being a practitioner of the profession of law or physic, per day—Class 1..... £1 1 0

To each ditto, being a yeoman, farmer, master artificer, master tradesman, or person of similar or higher rank, except—
Class 1, per day—Class 2 0 7 6
To each ditto, being a person of lower rank of life than class 1 and 2, per day—
Class 3 0 5 6
To each ditto, if resident in Gloucester .. 0 3 6
To each prosecutor or witness for the expenses of travelling and subsistence going to and returning from the sessions, for a mile each way—Class 1 and 2..... 0 0 4
To each ditto—Class 3..... 0 0 3
But for such portions as can be travelled by railway, the amount of second-class fares only shall be allowed.

That a person in the profession of the law or physic is not reasonably compensated by a payment of one guinea a day, it is unnecessary to observe; but that persons high or low should in their compulsory attendance in the service of the public be made to travel in a second-class railway carriage, at the probable risk in an inclement season of injury to health, is, to my humble judgment, not a very reasonable requirement. I think such persons are entitled to the most liberal consideration; and it is a parsimony of this description which gives to criminal jurisprudence a contempt of caste which it ought not to bear, and of course suggests to prosecutors to evade a prosecution if they can.

When the public mind has long dwelt on a subject, and come to a pretty general conclusion, that conclusion will commonly bear the scrutiny of the most rational and rigid inquiry. I believe it may be affirmed that nearly all classes of professional life, and those out of that walk who look beyond mere forms, the utility whereof has long ceased, consider that the grand jury is an unnecessary interruption and hindrance in the progress of a prosecution. With respect to the prosecutor, or he who comes to promote the ends of public justice, the case (if a difficult one) stands a chance of defeat from the huddled assembly of the tribunal in its very formation and movement, and the opportunity, at least, of occult appeals to some one or other of those who form it. As to the accused, the evidence is purely *ex parte*, and with respect to him, no probable advantage of at least a fair kind can be predicted, and on the other hand a prejudice may be excited by the words "true bill." As to any purpose of inquiry, therefore, there is none, so that has already taken place in the face of open day before the public and in the presence of the nation, and he has or may have the whole of the evidence against him. I need hardly say that no word of disrespect by these observations is meant towards those who compose this tribunal, and many of whom I believe thoroughly condemn it.

With Mr. WILLIAMS's opinion on the subject of abolishing grand juries we must close our notice of a tract which, if the reasoning it offers in support of its author's views is not always as close and cogent as it might be, nevertheless offers some useful remarks and suggestions for the improvement of the Criminal Law.

It is most difficult to find any one reason for its continuance. It may be said that it brings the gentry of the country together, and that they receive an elegant and elaborate charge from the judge, but exactly in the same degree that any purpose is really useless, so is the solemnity of its more machinery ridiculous, and with all the reverence which I trust and know I do sincerely feel towards the highest and the purest class of men in this country, viz. its judges,—I must say, that I never knew any one practical benefit result from their charges, however beautifully oratorical and soundly sensible; but, on the other hand, with the common valedictory remark to the grand jury, ceased all the impression of the speech; and as to the public, they go to the assizes for more curious material. The truth is that criminal or civil trials should be viewed as mere matters of business, and the less that's merely said on them, the better,—at all events before the trial really commences.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY ON THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.
(Continued from page 508.)

Conditional limitations, how far barable.—A conditional limitation so far partook of the nature of an executory devise, that it could not have been barred by any act of the tenant for life. But where the limitations were after, or in defeasance, or in breach of a condition annexed to an estate tail, a recovery by the tenant in tail, before the event or condition happened, would have barred the estate

arising on that event or condition; and the same object may, it is apprehended, be now attained by a disentailing deed under the recent Fine and Recovery Substitution Act, 3 & 4 Wm. 4, c. 74.

Of the requisites to support a conditional limitation.—The validity of a conditional limitation will depend upon the legality and possibility of the condition, and its not being repugnant or inconsistent with the nature or quality of the preceding estate. Hence if lands were to be devised in tail, with a proviso that, if the devisee should alienate the lands, they should go over to another, such a condition would be void. And, upon the same principle, it has been long since determined, that, if lands are devised in tail, with a proviso that, if a tenant in tail suffered a recovery, his estate should cease, was a void condition, and, consequently, that the limitation depending on it must fail; the power to suffer a recovery being one of the inherent properties of an estate tail, and not to be restrained by condition (*Taiterum's case*, 18 Edw. 4, pl. 16; Co. Litt. 226 a, 224 b); limitation, custom (Cro. Jac. 96); recognizance, (*Taylor v. Shaw*, Carth. 6, 22; statute (*Poole's case*, Moor. 610); or covenant. (*Collins v. Plummer*, 1 P. Wms. 104.)

What conditions may be valid.—And although a proviso against alienation generally is void, yet it will be otherwise if it be restricted to a particular time (*Smith and Davis's case*, 2 Leon. 38; Moor. 271; Hob. 13, 261); or to a particular person. And even a condition not to alien unless it be to a particular person has been held good. (*Doe dem. Gill v. Pearson*, 6 East, 173, 180; 2 Smith, 295; and see also *Muschamp v. Bluel*, Bridg. Rep. 132.) According to Mr. Fearn, a condition to avoid the preceding estate must determine it altogether, and not in part only, leaving it good as to the residue; and that upon this principle it had been adjudged that a proviso to make the estate of the tenant in tail to cease during his life was void, for that although the whole estate may be determined by the condition, yet a part of it only during the tenant for life shall not; and that such a proviso is ineffectual on account of its repugnancy to a rule of law. This is certainly the case with respect to a condition properly so called; and of which none but the grantor and his heirs can take advantage, and which must therefore necessarily determine the whole estate to which it is subject; but there appears to be no reason why this construction should be extended to a limitation which operates in defeasance of a preceding estate, on the ground that it defeats the estate in part only; and it is observable in all the cases cited by Mr. Fearn in support of this doctrine (*Corbet's case*, 1 Rep. 83 b; *Jermyn v. Arscott*, cited 1 Rep. 85 a; *Mildmay's case*, 6 Rep. 40; *Fox v. Hinde*, Cro. Jac. 697), the limitation was either defective in the terms of its creation, or was repugnant to the nature of the incidents of the estate on which it was grafted, or was contrary to the rules of law fixing the period within which such interests must be limited to arise. When, therefore, these circumstances do not occur, it seems that a condition that on the happening of certain events an estate tail shall be reduced to an estate for life only may be good. This construction has been made in the case of a condition annexed to devise of an estate in fee-simple (*Wright v. Wright*, 1 Ves. sen. 409), and upon the same principle it seems that it would also be extended to a condition annexed to an estate tail. And where the limitation over is not to take effect until a certain period, the preceding estate will not be divested until that period arrives. Hence where there was a devise to a wife, provided she remained a widow, but in case she married a second husband then to testator's nephew when he should attain the age of twenty-three years, it was held that the widow had an estate till the nephew attained the age of twenty-three, though she herself got married before that time. (*Doe dem. Dean and Chapter of Westminster v. Freeman*, 1 T. R. 369; Fearn, C. R. 240.)

A conditional limitation will not be defeated where the preceding estate to which it was annexed never takes place.—When a remainder is limited to take effect on breach of a condition annexed to a particular estate, which never arises, as where it is limited to a person not in esse who never comes in being (*Jones v. Westcomb*, 1 Eq. Ca. Abr. 245; *Andrews v. Fulham*, 1 Wils. 107, cited; *Gulliver v. Wickett*, 1 Wils. 105; *Slatham v. Bell*, Cow. 40; *Murray v. Jones*, 2 Ves. & Bea. 313), or fails of effect; as by the death of the party to whom it is limited, in the testator's lifetime (*Scatterwood v. Edge*, 1 Salk. 229; *Hopkins v. Hopkins*, Ca.

temp. Talb. 44; *Avelyn v. Ward*, 1 Ves. sen. 420; *Doe dem. Wells v. Scott*, 3 Man. & Selw. 300), the limitation over will, nevertheless, take effect; the first estate being considered as a preceding limitation, and not a condition to give effect to the remainder, which, though it cannot operate strictly as such, the preceding estate which was to have supported it having failed, may still be good by way of executory devise. (*Scatterwood v. Edge*, supra; see also Fearn, C. R. 510, 512.)

Otherwise where such particular estate takes place and afterwards fails by any other event.—But where a preceding estate to which a condition is annexed actually takes place, an estate limited to take effect on breach of the condition will fail if the estate be determined by any other event; as where A devised his estate to his son in tail male, remainder to B for life, remainder to his (B's) sons in tail male, on condition he should change his name; and if he or any son of his refused to do so, then he directed the devise to be void, and gave the estate to D, &c. The son died without issue; B performed the condition and died without issue; and upon a question whether D should have the estate after B's death the judges of the King's Bench certified their opinion that D took no estate on the death of B, but that it went to the testator's heir-at-law by law; which opinion was afterwards confirmed by the House of Lords. (*Amherst v. Lytton*, 3 Bro. P. C. 486; Fearn, C. R. 238; see also *Sheffield v. Orrey*, 3 Atk. 282.)

Impossible conditions.—An impossible condition is a mere nullity. (Puff. lib. 3, s. 2; Co. Litt. 206.) If it be precedent to the estate, both the estate and the condition are alike invalid; if subsequent to the estate, then the estate will be absolute and the condition void. (1 Ins. 206; 9 Rep. 128.) Where, however, a condition is of two parts, the one possible and the other impossible, the condition will be good as far as the possible part is concerned, and void as to the impossible part. (Cro. Eliz. 780; 1 Roll. Abr. 44; 2 Mod. 202.) And if a condition becomes impossible by the act of God; as where an estate is devised to A, upon condition that within a certain time he intermarry with I. S. before the expiration of which period I. S. dies; or a devise on condition that he marry with the consent of C and D, who die before the marriage, the condition will be discharged, and the estate will become absolute. (*Thomas v. Howell*, 1 Salk. 170; *Payton v. Burry*, 2 P. Wms. 529; *Graydon v. Hicks*, 2 Atk. 16; *Lester v. Garland*, 15 Ves. 248; *Aislabie v. Rice*, 3 Mad. 256.) Nor can a condition be annexed to an estate created under a power without an express authority. (*Pawlett v. Pawlett*, 1 Wils. 224; *Alexander v. Alexander*, 2 Ves. sen. 640; *Lene v. Page*, Amb. 233; see also *Burleigh v. Pearson*, 1 Ves. sen. 281; *Daubeny v. Cockburn*, 1 Mer. 626, 645.)

Conditions in restraint of marriage.—Conditions in restraint of marriage have not, it is said, been generally favoured, being considered contrary to sound policy; and if the condition be such as amounts to an absolute injunction of celibacy, it will be void. But almost any restriction, unless it goes to that extent, may be supported. (Co. Litt. 42; *Williams v. Porter*, 1 Cha. Cas. 142; *Booth v. Booth*, 2 ib. 109; *Harvey v. Aston*, 1 Atk. 361; *Reynish v. Martin*, 3 ib. 350; *Reeves v. Heme*, 5 Vin. Abr. 343, pl. 31; *Pulling v. Ready*, 1 Wils. 21; *Scott v. Tyler*, 2 Bro. C. C. 431; *Stackpole v. Beaumont*, 3 Ves. 98; *Ellis v. Ellis*, 1 Sch. & Lef. 1; *Long v. Ricketts*, 1 Sim. & Sta. 179.) Hence a condition prescribing the ceremonies and place of marriage has been held good; so where the condition limits the prohibited time to twenty-one, or any other age, provided it be not used evasively as a cover to restrain marriage generally. (*Scott v. Tyler*, 2 Bro. C. C. 431.) An injunction to ask consent is also lawful. (*Sutton v. Jewkes*, Cha. Rep. 95; *Creagh v. Wilson*, 2 Vern. 572; *Astken v. Astken*, Pre. Cha. 226; *Chauncey v. Graydon*, 2 Atk. 616; *Hemmings v. Munckley*, 1 Bro. C. C. 304; *Dashwood v. Bulkeley*, 10 Ves. 230.) A condition prohibiting a widow from marrying is not unlawful. (*Barton v. Barton*, 2 Vern. 308.) Neither is a condition not to marry a particular person (*Stackpole v. Beaumont*, 3 Ves. 97); or one of a particular country, as a Scotchman, or the like. (*Perryn v. Lloyd*, 9 East, 170.) There is a diversity, however, in the construction of conditions of this kind depending, first, upon whether such conditions are subsequent or precedent; secondly, upon the nature of the property to which they are annexed. If subsequent, and attached to

a devise of real estate, and there is a limitation over on breach of the condition, then it will be a conditional limitation (*Stedfast's case*, Plow. 403; 3 Rep. 206, s; *Largy's case*, 2 Leon. 82; *Ramsdale v. Eiley*, Carth. 170; Dy. 127; *Fry's case*, 1 Vent. 199; *Anon.* 2 Mod. 7), on breach of which the party to whom the estate is limited over will become entitled without entry or claim. If no estate be limited over, then it will be a condition at common law, of which the heir of the testator can alone take advantage, which he must do by entry, and until this be done the estate will remain unaltered; and unless such entry be made within twenty years after breach of the condition, the estate will become absolute. (Stat. 3 & 4 W. 4, c. 27, ss. 2, 3). If a condition subsequent is attached to a bequest of personal estate, then, if there is a limitation over, the party to whom it is so limited over, will become entitled immediately upon such breach being committed; but if there be no limitation over, the condition will be considered as only in terrorem, to make the party careful, but not to avoid the gift (*Bellasis v. Ermine*, 1 Cha. Cas. 22; *Sutton v. Jewkes*, 2 ib. 95; *Hicks v. Penderves*, 2 Freem. 41; *Stratton v. Grimes*, 2 Vern. 337; *Astken v. Aston*, ib. 452; *Samphill v. Baily*, Pre. Cha. 562; S. C. 1 Eq. Ca. Abr. 213; *Piggott v. Thorne*, Sel. Cas. in Cha.; *Chauncey v. Graydon*, 2 Atk. 616; *Wheeler v. Bingham*, 3 Atk. 364; *Clarke v. Parker*, 19 Ves. 14); unless the marrying without consent be confined to the minority of the party, in which a marriage contrary to, or without such consent will be a forfeiture. (*Stackpole v. Beaumont*, 3 Ves. 98.) When conditions in restraint of marriage are annexed to portions charged on real estate, the same rules of construction will prevail as in the case of a devise of the lands themselves; if on personal estate, the same rules of construction as are applicable to bequests of personal property.

Where marriage is a condition precedent.—But in either case, if the condition attached to the gift is a condition precedent, that condition must be performed before the party claiming under it can become entitled; the performance of the condition forming, in fact, the essence of the gift. (*Gorbull v. Hinton*, 1 Atk. 381; *Ellis v. Smith*, 1 Sch. & Lef. 1; *Lloyd v. Branton*, 3 Mer. 116), consequently if the party die before the marriage, the donation must fail altogether. (*Harvey v. Aston*, 1 Atk. 361; *Astken v. Hicocks*, ib. 500; *Ellison v. Elton*, 3 ib. 504; *Reeves v. Heme*, 5 Vin. Abr. 343, pl. 31; *Stackpole v. Beaumont*, 3 Ves. 98; *Monkhouse v. Holmes*, 1 Bro. C. C. 300; *Lowe v. Manners*, 5 B. & Ald. 917; *Long v. Ricketts*, 2 Sim. & Sta. 179.)

Condition to avoid the estate in case of bankruptcy or insolvency.—A condition to determine the estate in the case of bankruptcy or insolvency may be either annexed to a devise, or a settlement of real, or personal property; but to be effectual it must determine the whole estate; for it will not be permitted to avoid it as to part, and leave it good as to the residue. (*Lockyer v. Savage*, 2 Str. 947; *Dummett v. Bedford*, 3 Ves. 149; *Poley v. Burnell*, 1 Bro. C. C. 274; *Shee v. Hale*, 13 Ves. 404; *Brandon v. Robinson*, 18 ib. 429; *Cooper v. Wyatt*, 3 Swanst. 515.)

When an estate may be enlarged upon condition or contingency.—As on the one hand an estate may be destroyed by the breach of a condition, or the happening of a contingency, so on the other it may arise or become enlarged by the performance of a condition, or the happening of some uncertain specified event; as, for example, if lands were limited to A for life, or in tail, and that if he perform such an act, or if some particular occurrence takes place, he shall have the fee; in either of these cases, A, on performing the condition, or on the happening of the contingency, will be entitled to the fee. (*Stafford's (Lord)* case, 8 Rep. 74; Fearn, C. R. 279.) But in order that an estate may be so enlarged, it must have the five following incidents:—1. The condition upon which it is to arise must be both possible and legal; for upon an impossible condition it cannot, and upon an unlawful one it shall not, increase. (*Shep. Touch. 129*.) 2. There ought to be a particular estate as a foundation for the increase to take effect upon, which particular estate Lord Coke held must not be an estate at will, nor revocable, nor contingent. 3. Such particular estate should continue in the lessee, grantee, or devisee, until the increase happens, without any alteration of privity of estate by alienation by such grantee, lessee, or devisee, though the alienation of

the grantor will not affect it; nor is it necessary that such increase should take place immediately upon the determination of the particular estate, for it may enure as a mediate remainder, subsequent to an immediate remainder for life or in tail in somebody else. 4. The increase must vest and take effect immediately upon the performance of the condition; for if an estate cannot be enlarged at the very instant of time appointed for enlargement, the enlargement shall never take place. 5. The particular estate and increase must take effect by one and the same instrument, or deed, or by several deeds delivered at one and the same time; because the particular estate and the increase thereupon, is only a grant to take effect out of one and the same root; and notwithstanding the increase vest at a different time, yet when it is vested it has its force and effect from the same grant. (Fearn, C. R. 179, 180.)

On the doctrine of election.—The doctrine of election is defined to consist in alternate donations, with an intention, either express or implied, that one shall be in substitution for the rest; not that the donee shall be entitled to both benefits, but to the choice of either (1 Swans, 395, n.); consequently, the second gift is only designed to take effect in case of his declining the first; and the substance of the gifts combined is an option, which, by an equitable arrangement, gives effect to a donation of that which is not the property of the donor, and over which he has no legal power of control. (*Boughton v. Boughton*, 2 Ves. sen. 12; *Streetfield v. Streetfield*, Ca. temp. Talb. 179.) Hence, where a person has a claim under a will, and also a claim altogether independent of it, he will be obliged to elect between his original and substituted rights, and will not be allowed to accept the former, unless he also consents to renounce the latter. Thus, in *Noyes v. Mordaunt* (2 Ves. 500), where a testator had several daughters who had a claim under marriage articles, and also a claim under the will, and one of the daughters claimed, not only under the latter, but under the articles also, when it was held that she must either acquiesce under the will, or renounce all benefit therefrom.

What will be sufficient to raise an election.—An absolute power of disposition, and an intention to exercise that power, seem in general sufficient to raise an election; therefore, a devise to a testator's heir-at-law, which, prior to the stat. 3 & 4 Wm. 4, c. 106, s. 3, would have been inoperative (as the heir, whether disputing or admitting the will, must have taken by descent, and not under the devise), would yet compel him to elect between the devised estate, and claiming adversely to the will, and the estate which descended upon the heir descended subject to this implied condition. (*Noyes v. Mordaunt*, 2 Vern. 581; *Whistler v. Webster*, 2 Ves. 370; *Thelluson v. Woodford*, 1 Dow. 249; *Welby v. Welby*, 2 Ves. & Bea. 187.) It also appears to be immaterial whether a testator in disposing of that which is not his own, is aware of the actual situation, or proceeds upon the erroneous supposition that he is exercising a power which actually belongs to him. Still, in order to raise a case of election, the intention must be clearly expressed; for equivocal or ambiguous terms will be insufficient; consequently it has been held that a general devise of real estate is not a sufficient indication of such intent, although the testator has no real estate of his own upon which the will can operate.

What persons will be bound to elect—Heir.—Where lands were attempted to have been devised by a will incapable of passing them on account of its not having been attested pursuant to the Statute of Frauds (29 Car. 2 & 3, s. 5), the heir claiming a benefit under it with respect to personal estate as to which it was valid and effectual, would not have been put to his election, unless the will contained an express condition not to dispute its validity. (*Herle v. Greenbank*, 3 Atk. 715; S. C. 1 Ves. sen. 306; *Boughton v. Boughton*, ib. 15; *Whistler v. Webster*, 2 ib. 371; *Carey v. Askew*, 8 Ves. 492; *Thelluson v. Woodford*, 13 ib. 223; S. C. in D. P. 1 Dow. 429.) This doctrine can now, however, only relate to wills made previously to the year 1838, as the same formalities are required in a will made subsequently to that time to pass the personal, as the real estate; and if incapable of passing the latter description of property, it will be equally ineffectual as to the former. (Stat. 1 Vict. c. 26, s. 9.) And no election will arise where a person under twenty-one years of age attempts to make any disposition of either his

real or personal estate. (1 Vict. c. 26, s. 7.) The doctrine of election, it has been decided, extends also to deeds as well as wills (*Llewellyn v. Mackworth*, Barnardist. 445; *Freke v. Barrington* (Lord), 3 Bro. C. C. 274; *Chetwynd v. Fleetwood*, 1 Bro. P. C. 300; *Moore v. Butler*, 2 Sch. & Lef. 249; *Birmingham v. Kirwan*, 2 Sh. & Lef. 266; *Green v. Green*, 2 Mer. 86.)

Issue in tail.—Issue in tail also will be put to their election where the entailed estates are devised, and they claim as legatees under the same will. (*Herne v. Herne*, 2 Vern. 555; and see 2 Ves. 14, 617.)

Widow.—A widow may be put to her election where she is entitled to dower or a jointure, and is likewise a legatee under her husband's will, and she claims her legacy and her jointure or dower also, in opposition to the will. (*Gosling v. Warburton*, Cro. Eliz. 128; Co. Litt. 366; 4 Rep. 4; *Birmingham v. Kirwan*, 2 Sch. & Lef. 444; *Chalmers v. Storil*, 2 Ves. & Bea. 222.) She has likewise been put to her election between a devise or bequest and the benefit to be derived from her marriage settlement, and this, notwithstanding the will, was incapable of passing real property. (*Newman v. Newman*, 1 Bro. C. C. 186.) In order, however, to preclude a wife from taking under her husband's will, there must be a plain intent to exclude her; the rule of equity being that a widow cannot be put to an election, except by an express declaration, or necessary inference from the inconsistency of her claim with the dispositions of the will (*Babington v. Greenwood*, 1 P. Wms. 533; *French v. Davis*, 2 Ves. 577; *Birmingham v. Kirwan*, 2 Sch. & Lef. 452); therefore if both may stand together, she will not be obliged to elect between them. Hence a mere gift by the husband to the wife of a larger amount than her dower, will not put her to her election, but she may claim both. (*French v. Davis*, 2 Ves. 572; *Brown v. Parry*, 2 Dick. 685; *Strahan v. Sutton*, 3 Ves. 249.) Nor does a bequest to a wife in bar and satisfaction of her thirds, exclude her right and title as next of kin. (*Foster v. Cooke*, 3 Bro. C. C. 350; *Middleton v. Cater*, 4 ib. 409.) Neither does a bequest of the residue of the personal estate (*Ayres v. Willis*, 1 Ves. sen. 230; *Thompson v. Nelson*, 1 Cox, 44; nor the bequest of an annuity (ib. ib.) bar her claim to dower. And notwithstanding a testator has given a provision to his wife expressly, in bar of any claim she might have against any other objects of his bounty; yet, if by any accident these objects should be unable to claim the benefit of that exclusion, no other person can set it up against the widow. Hence, where a testator gave his wife real and personal estate in bar of her dower and thirds, and bequeathed the residue to charities, which bequest was void under the statutes of mortmain, it was held that the widow should not be put to her elections. (*Pickering v. Stamford*, 3 Ves. 332.) Whether a rent-charge given to a widow, issuing out of the lands from which she is dowable, will be sufficient to put her to her election, still remains a doubtful point. Lord Northington (*Arnold v. Kempstead*, Amb. 466), Lord Camden (*Villa Real v. Galeway* (Lord), ib. 683; 1 Bro. C. C. 682), Sir Thomas Sewell (*Jones v. Collier*, Amb. 730), and Mr. Justice Buller (*Wake v. Wake*, 3 Bro. C. C. 255), seem to have considered a devise of this kind a satisfaction. But Lord Hardwicke (*Pitt v. Snowden*, mentioned 3 Ves. 252), Lord Bathurst (*Davis v. Edwards*, mentioned 1 Bro. C. C. 292), Lord Thurlow (*Foster v. Cooke*, 3 Bro. C. C. 347), and Lord Alvanley (*French v. Davis*, 2 Ves. 278), entertained a directly contrary opinion. Amidst such a variety of conflicting authorities, it is difficult to decide; but the prevailing opinion of the profession appears to be in favour of the wife. (See 1 Mad. Pract. 59, 2nd edit.) And even where a widow is bound to elect, she will, nevertheless, be allowed to ascertain which fund is the most beneficial for her to take; and, therefore, she may file a bill to have the debts and legacies paid, and the funds clearly ascertained (*Wake v. Wake*, 2 Ves. 255).

Children.—Children also may be put to their election between interests given them by will, and benefits which they are entitled to by settlement, when both claims are inconsistent. (*Whistler v. Webster*, 3 Ves. 367.) But it seems that children will not be bound by the election of their parents, where their interests are distinct and separate. (*Ward v. Baugh*, 4 Ves. 623.)

Creditors.—Creditors also may be put to their election by a bequest inconsistent with the claim of

their debts. (*Graves v. Boyle*, 1 Atk. 509.) It must be observed, however, that election is a doctrine inapplicable as to the funds out of which the debts are to be paid. They are payable first out of the personal estate, and if that should prove insufficient for the purpose, the creditors may then resort to any property liable to such payment. (*Kilney v. Cousmaker*, 12 Ves. 154.)

What acts will amount to an election.—The acts from which an election must be implied, must be decided rather by the particular circumstances of each individual case, than upon any general or fixed principle. (*Ardsioife v. Bennett*, 2 Dick. 463; *Wilson v. Townsend*, 2 Ves. 693; *Bor v. Bor*, 3 Bro. P. C. 167; *Northumberland (Earl of) v. Aylesford (Earl of)* Amb. 540; *Wake v. Wake*, 2 Ves. 255; *Buttrick v. Broadhurst*, 3 Bro. C. C. 88; *Rumbold v. Rumbold*, 3 Ves. 65; *Simpson v. Vickers*, 14 ib. 341; *Welby v. Welby*, 2 Ves. & Bea. 187, 200; *Stanford v. Powell*, 1 Ball & B. 1.) If the question of election is doubtful, it may be sent to a jury. (*Roundell v. Currer*, 2 Bro. C. C. 67.) Election may be compelled on the part of an adult, by a direction or a decree on the original hearing, that if he neglects or refuses to signify his election within some given time (six months, for instance), he shall be understood as having elected to take his paramount rights. (*Streetfield v. Streetfield*, Ca. temp. Talb. 176.) If the person is under restraint and cannot elect, his claim must be barred as long as his disability continues. (*Wilson v. Lord John Townsend*, 2 Ves. 697.) Where, however, the devisee is an infant, or a *feme covert*, the usual practice, if there be any doubt upon the matter, is to refer it to the Master to say which is most for the benefit, taking under or against the will (ib. ib.) Still it seems that where an infant is a heir, he will be allowed until he comes of age to elect. (*Boughton v. Boughton*, 2 Ves. 15.) The party bound to elect is also entitled first of all to ascertain the value of the funds; (*Hender v. Row* (3 P. Wms. 124, n.); *Pusey v. Desboursie* (ib. 315); *Boynnton v. Boynnton* (1 Bro. C. C. 443); *Buttrick v. Broadhurst* (3 ib. 88); *Wake v. Wake* (ib. 255; *Chalmers v. Storil*, 3 Ves. & Bea. 222); and for that purpose, may sustain a bill in equity to have all the necessary accounts taken; and an election made under a misconception of the extent of claims on the fund is not conclusive. (*Kilney v. Cousmaker*, 12 Ves. 136.)

Application of the devised property when the devise elects to take in opposition to the will.—When the party elects to take in opposition to the will, the interest given him by such will, will be applied in compensation to the disappointed devise. (*Anon. Gilb. Eq. Rep. 15*; *Ward v. Baugh*, 4 Ves. 629.) But the estate thus taken in opposition to the will vests in the party, with all the legal consequences attached to it. Hence, where a tenant in tail devised away the estate, and gave the issue in tail, who was a married woman, and also her husband, other benefits by his will, and she elected to take her estate tail, but her husband took under the will, some time after which the wife died, upon which he entered as tenant by the curtesy, when it was contended that as he took under the will he could not claim in opposition to it; but it was, nevertheless, ruled that the wife took the estate tail with all its legal incidents, and that, consequently, her husband upon surviving her became entitled to be tenant by the curtesy in right of her seisin, notwithstanding that he claimed in his own right under the will. (*Cress (Lady) v. Pulteney*, 2 Ves. 544; 3 ib. 384; and see *Brodie v. Barry*, 2 Ves. & Bea. 127.)

It must be ascertained in whom the legal estate is vested.—Another important point in investigating a title is to ascertain in whom the legal estate is vested. This will depend not only upon the terms in which the property is limited, but also upon the kind of instrument by which it is conveyed; for the same words, when contained in an ordinary conveyance by release, or in a will, would receive a different construction when found in an indenture of bargain and sale, or in a deed of appointment executing a power. Previously, however, to pointing out the operation of the various instruments, it will be advisable first of all to attempt a brief outline of the doctrine of uses as they stood originally at common law, in order to shew more clearly the alteration effected by the statute of uses (27 Hen. 8, c. 10), by which they were executed into possession.

Uses before the statute.—A common law use was a trust or confidence reposed in another, who was

tenant of the land, that he should dispose of the same according to the intentions of *cestui que use*, or him to whose use it was granted. This use did not arise out of the land as a rent, condition, or right of common, but was a thing collateral annexed in privity to the estate, and to the person concerning the land, that the *cestui que use* should take the profits, and that the *terre tenant*, or feoffee to uses, should make estates according to his directions, and plead such pleas as he should supply him with at the costs of the *cestui que use*; so that the feoffee had the seisin or sole property, whilst the *cestui que use* had neither the *jus in re* nor the *jus ad rem*—neither a right in possession, or in action, but only a confidence and trust, of which the common law took no notice, but for which relief might have been obtained by subpoena in Chancery. (Shep. Touch. 502; *Chudleigh's case*, 1 Rep. 121; Co. Litt. 271, b; *Delamere's case*, Plow. 346; *Brent's case*, 2 Leon. 14; Tr. Eq. lib. 2, ch. 1, s. 2; *Jones v. Morley*, 1 Lord Raym. 291; Gibb. Uses, 16; 2 Roll. Abr. 780.) Uses, it appears, were first instituted in this kingdom about the close of the reign of Edward 3 (Bac. Uses, 8; 2 Black. Com. 328), by means of foreign ecclesiastics, who introduced them for the purpose of evading the statutes of mortmain; which, as Sir William Blackstone observes (vol. 2, p. 329), though introduced fraudulently, afterwards continued to be used innocently, and was sometimes very laudably applied to a number of civil purposes; particularly as it removed the restraint of alienation by will, and permitted the owner of lands in his lifetime to make various designations of their profits, as prudence, or justice, or family convenience might from time to time require. Till at length, during our long wars in France, and the subsequent civil commotions between the houses of York and Lancaster, uses grew almost universal, through the desire that men had (when their lives were continually in hazard) of providing for their children by will, and of securing their estates from forfeitures—when each of the contending parties, as they became uppermost, alternately attained the other. But, on the other hand, uses were considered in many instances as opening a door to fraud and injustice; and Lord Bacon complains (Use of the Law, 153) that this course of proceeding was turned to deceive many of their just and reasonable rights. A man that had cause to sue for land knew not against whom to bring his action, or who was the owner of it. The wife was defrauded of her thirds; the husband of his curtesy; the lord of his wardship, relief, heriot, and escheat; the creditor of his extent for debt, and the poor tenant of his lease. To remedy these inconveniences abundance of statutes were provided, which made the lands liable to be extended by the creditors of *cestui que use* (50 Ed. 3, c. 6; 2 Rich. 2 Sess. 2, 3; 19 Hen. 7, c. 15); allowing actions for the freehold to be brought against him if in the actual enjoyment of the property (Stat. 1 Rich. 2, c. 9; 4 Hen. 4, s. 7, c. 15; 11 Hen. 6, c. 3; 1 Hen. 7, c. 1); made him liable to actions of waste (11 Hen. 6, c. 5); established his conveyances and leases made without the concurrence of the feoffees (1 Rich. 3, c. 1); and gave the lord the wardship of his heir, with certain other feudal perquisites (4 Hen. 7, c. 17; 19 Hen. 7, c. 15.) The provisions just alluded to all tended to consider the *cestui que use* as the real owner of the estate, and at length that idea was carried into full effect by the statute 27 Hen. 8, c. 10, usually called the Statute of Uses, which, after reciting the various inconveniences before mentioned, and many others, enacts, that "when any person shall be seised of lands, &c. to the use, confidence, or trust of any other person, or body politic, the person or corporation entitled to the use in fee simple, fee tail, or for life, or years, or otherwise, shall from thenceforth stand and be possessed of the lands, &c. of and in the like estates as they have in the use, trust, or confidence; and that the estate of the person so seised to use shall be deemed to be in him or them that have the use, in such quality, manner, form, and condition, as they had before in the use." The statute thus executes the use, or, in other words, conveys the actual possession to the use, and by that means in technical language transfers the use into possession; thereby making *cestui que use* complete owner of the lands, as well at law as in equity (2 Black. Com. 332, 333; Shep. Touch. 504; *Lutwick v. Mitton*, Cro. Jac. 604; *Isham v. Morrice*, Cro. Car. 110; *Saffyn's case*, 5 Rep. 124; *Barker v. Keat*, 2 Mod. 252.)

(To be continued.)

Public Sales.

By Mr. F. CHINNOCK, at the Mart.
A copyhold house and shop, No. 12, Church-row, Islington—1,000*l*.

By Messrs. HEWITT DAVIS and FRANCIS VIGERS.
Three houses, Nos. 4 and 5, Granby-terrace, Horsey New road, and No. 1, Queen's-road; held for 74½ years, at a ground-rent of 18*l*.—895*l*.

Two houses, Nos. 37 and 38, Wellington-street, King's-road, Chelsea; held for 64½ years, at 7*l*. 10*s*.—185*l*.
Three messuages, Nos. 11, 13, and 19, Arthur-street, King's-road; held for 54½ years, at 12*l*.—355*l*.

By Mr. ROBERTS.
Ten residences, Nos. 1 to 10, Culford-road, Kingland-road; held for 74½ years, at 3*l*. 10*s*. per annum each house, in separate lots—260*l*. each lot.
Two residences, in Laurel-street, Dalston; held for 73½ years at 8*l*.—600*l*.

A house, No. 1, Napier-street, City-road; held for 60½ years, at 3*l*. 10*s*.—230*l*.
A ditto, No. 2—235*l*.
A ditto, No. 3—230*l*.
Three houses, Nos. 3, 4, and 5, Lower York-street, Haggerstone Church; held for 72½ years, at 9*l*. per annum—360*l*.
A freehold house, No. 7, King-street, Cambridge-road—250*l*.
A ditto, No. 9—250*l*.

By Mr. MARSH.
A policy, or three shares of 200*l*. each, amounting to 600*l*. effected with the Amicable Society the 14th of November, 1827, on the life of a lady now in her 62nd year; annual premium, 31*l*. 6*s*.—160*l*.

A life interest of 100*l*. per annum, secured on the dividends arising from the sum of 2,000*l*. Three per Cent. Bank Annuities, receivable during the life of a gentleman now aged 38 years; also a policy for 900*l*. effected with the Family Endowment Society, on the life of the gentleman above referred to; annual premium, 53*l*. 2*s*. 9*d*.—880*l*.

A leasehold interest of 55*l*. per annum, arising from two houses, Nos. 42 and 43, Kenton-street, Brunswick-square—400*l*.

The absolute reversion to one-third part of 1,666*l*. 13*s*. 4*d*. Three per Cent. Consolidated Bank Annuities, on the decease of a lady aged 49 years—140*l*.

An annuity of 32*l*. per annum granted by indenture, dated April 8, 1844, for 99 years, of certain persons of the ages of 26, 23, 8, 4, 2, and 1 years, or either of them should so long live—380*l*.

A residence, No. 6, Halsey-terrace, Chelsea, let at 48*l*. held for 99 years from Lady-day last, at 8*l*.—500*l*.

By Messrs. ELLIS and SON, at Garraway's.
A house, No. 101, Tooley-street, Southwark, many years in the occupation of the late Mr. James Southey, auctioneer; held for 31 years from Midsummer, 1838, at the rent of 8*l*. per annum—260*l*.

By Mr. HENRY MURRELL.
A residence, with garden, &c., &c., Avenue-road, north, Notting-hill; held for 99 years from Christmas, 1843, at a ground-rent of 10*l*. per annum—400*l*.

By Messrs. SHUTLEWORTH and SONS, at the Mart.
The absolute reversion to two 14th parts of 9,000*l*. Three per Cent. Consolidated Bank Annuities, upon the decease of a gentleman now in the 84th year of his age—180*l*.

Five policies for the sums of 100*l*. each, effected with the Mutual Society, on the 29th Sept. 1838, on the life of a gentleman, then in the 34th year of his age; annual premium on each policy, 3*l*. 15*s*. 8*d*.—49*l*.

A policy, for 2,000*l*. with accumulations thereon, from January 1820, to January 1846, amounting to 2,500*l*. effected with the Equitable, on the 2nd June, 1815, on the life of a gentleman, now in the 75th year of his age; annual premium 75*l*. 14*s*. 6*d*.—3,740*l*.

150 shares in the Abney-park Cemetery—9*l*. per share.
A legacy of 200*l*. upon the decease of a lady now in the 73rd year of her age—105*l*.

Thirty shares of 10*l*. each in the Patent Galvanised Iron Company, paid in full—9*l*. per share.

The absolute reversion to 445*l*. 11*s*. Three-and-a-half per Cent. Bank Annuities, on the decease of a lady now in the 70th year of her age—290*l*.

The absolute reversion to four seventh parts of 2,000*l*. Three per Cent. Consolidated Bank Annuities, upon the decease of a lady, aged 64; and a similar interest in four seventh parts of 1,000*l*. New Three-and-a-Quarter per Cent. Reduced Bank Annuities, upon the decease of a lady aged 62—690*l*.

By Mr. MASON.

The Wenlock Barn Estate. Sixteen houses in Herbert-street, held for 95½ years, at a ground-rent of 6*l*. 6*s*.—367*l*. 10*s*. each house.

Nine houses in Wenlock and Herbert-streets, held for 55½ years, at 5*l*. 5*s*. per annum—315*l*. each lot.

SALE OF LAND.—The estate of Sydsen, in East Lothian (lately under litigation in the case *Waddell v. Hope*), was sold by auction on Wednesday last, in Mr. Cay's sale-rooms. It was knocked down at the sum of 10,370*l*. being 1,000*l*. above the upset price, and something more than thirty-seven years' purchase of the present rental.

The Ford Abbey Estate, together with the splendid monastery, was sold on Thursday at the Auction Mart, by Mr. George Robins, for 50,100 guineas; and Messrs. Osborne and Ward, of Bristol, it is believed, the leading bankers of that city, are the purchasers.

WILL OF THE LATE MRS. E. FRY.—The testatrix, wife of J. Fry, esq. of Upton, Essex, enjoyed a life interest over certain trust property, under the respective wills of her sisters, Priscilla Gurney and Rachel Gurney, with a power of disposition over the same, by deed, will, or otherwise, and of which there

was remaining unappropriated, and at her disposal, a sum of 11,000*l*. This she has directed to be applied for the benefit of her family in the following manner:—the interest of 6,000*l*. to her husband for life, and afterwards the principal to be divided equally amongst her children. To her daughter, Katharine Fry, who has always lived with her, but to whom no provision has hitherto been made, she leaves the interest of 4,000*l*. and 2,000*l*. on her marriage, and the remaining 1,000*l*. to her son, D. H. Fry. The bequests are entirely confined to the trusts under which she was empowered by the deeds of disposition. She executed her will in 1840, appointing her sons J. G. Fry and J. Fry, jun. esqrs. executors, to whom special letters of administration with the will was granted, the husband consenting. She was in her 66th year.

SINGULAR BEQUEST.—The will of Mary Anne Johnson, late of Well-walk, Hampstead, spinster, who died on the 16th ult. passed the seal of the Prerogative Court of Canterbury on the 1st instant. The personal estate of the testatrix is sworn under 25,000*l*. The will contains the following bequests:—"I give to my black dog Carlo an annuity of 30*l*. a year during the dog's life, to be paid half-yearly. Unto each of the cats, Blacky, Jemmy, and Tom, I give an annuity of 10*l*. a year for the three cats, to be paid half-yearly. Margaret Potson and Harriet Holly, my mother's old servants, to take charge of the dog and cats."—Query: What will the authorities at the Legacy Duty Office do? As it respects "legacy duty," the legatees are certainly "strangers in blood" to the deceased, and in that capacity are liable to a duty of 10 per cent. on the value of their life interest; but the Legacy Duty Act, on the other hand, says nothing about duty payable on legacies bequeathed to dogs and cats.—*Globe*.

THE following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

For the first 70 words 5*s*.
For every succeeding 30 words . 1*s*.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cent. Consols	96½	96½	96½	96½	96½	96½
Three per Cent. Reduced	96½	96½	96½	96½	96½	96½
New Three-and-a-quarter per Cent	98	98	98	98½	98½	98½
Long Annuities	104	104	104	104	104	104
Bank Stock	210	210	210	210	210	210
India Stock	259	259	259	259	259	259
India Bonds, prem.	28	29	29	29	29	29
Exchange Bills, prem.	20	20	20	20	20	20
FOREIGN.						
Spanish Five per Cent.	27	27	27	27	27	27
Spanish Three per Cent.	39	39	39	39	39	39½
Russian	112	112	111	111	110	110½
Peruvian	38½	38½	38	38	38½	38½
Portuguese	47	47	47	47	47	47½
Mexican	26½	26	26	26	26	26½
Deferred	16½	16½	16½	16½	16½	16½
Dutch Two-and-a-half per Cent.	59½	59½	59½	59½	59½	59½
Four per Cent.	94½	94½	94½	94½	94½	94½
Danish	88	88½	88½	88½	88½	88½
Colombian	16½	16	15½	15½	15½	15½
Chilian	98	97	96	96	96	96
Buenos Ayres	39	39	39	39	39	39
Braxilian	89½	89½	89	89	89	89
Belgian	97	97	97	97	97	97

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Saturday, August 29.
Cavendish, G. A. lodging-house keeper, assignees, Oct. 2.

Tuesday, Sept. 1.
Baxter, G. currier, last exam. passed.—Bryant, I. builder, last exam. Nov. 14.—Green, W. boarding-house keeper, last exam. passed.—Hunt, W. printer, last exam. passed.—Mayhew, H. newspaper proprietor, last exam. Nov. 9.

Wednesday, Sept. 2.
Garbanati, P. carver, last exam. passed.—Knight, T. draper, last exam. passed.—Ward, S. lasting manufacturer, last exam. Oct. 28.

Thursday, Sept. 3.
Maclean, D. brickmaker, last exam. Oct. 22.—Pannell, W. grocer, assignees, Oct. 2.

Friday, Sept. 4.
Cawdell, E. toy dealer, last exam. passed.—Gerry, J. builder, last exam. Nov. 5.—Kettle, F. B. horse dealer, last exam. passed.—McDonnell and Co. printers, last exam. passed.—Merrett, W. G. surgeon, assignees, Oct. 8.—Pitach, J. W. tailor, div. next week. Whitmore, London.—Pullman, C. hosier, last exam. Nov. 7.—Such, J. J. auctioneer, last exam. passed.

Saturday, September 5.
Mercer, T. assignees, Oct. 9.—Moir, R. stationer, last exam. passed.—Webb, T. P. coal merchant, assignees, Oct. 6.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Boden, J. A. razor manufacturer, first, 3s. 4d. Freeman, Leeds.—**Fisher, T.** draper, 33d. Freeman, Leeds.—**Fidgen, T.** boot manufacturer, first, 4s. 1d. Morgan, Liverpool.—**Footes, R.** cattle salesman, first, 1s. 3d. Morgan, Liverpool.—**Hutton, J.** surgeon, second, 4s. Casenove, Liverpool.—**Kewley, J.** tailor, final, 23d. Casenove, Liverpool.—**Marsden, R.** draper, 3s. 4d. Hutton, Bristol.—**Patinson, W. B.** carrier, first and final div. 30s. Morgan, Liverpool.—**Prior and Co.** brush manufacturers, joint, 5s. to new proofs. Freeman, Leeds.—**Woodhead and Woodhead,** worsted stuff manufacturers, second, joint, 6d. Freeman, Leeds.

Insolvents' Estates.

Barker, E. T. clerk in the Treasury, 10s. 4d.—**Hensman, T. S.** victualler, Liverpool, 3s. 4d.—**Holland, M.** (widow), Liverpool, 10s.

ASSIGNMENTS

To Trustees for the benefit of Creditors.

Gazette, Sept. 4.

Anthony, A. grocer, Royston, Aug. 12. Trusts: J. F. Wills, oil merchant, Shoreditch, and W. B. Usher, builder, Blunham, Bedfordshire. Sol. Thurnall, Royston.—**Dunnett, W.** innkeeper, Manchester, Aug. 21. Trust: J. Fletcher, auctioneer, and James Mottram, wine merchant, both of Manchester. Sol. Foster, Manchester.—**Grant, G. M.** grocer, Norwich, Aug. 11. Trust: J. Hardy, grocer, and J. Newbegin, tobacco manufacturer, both of Norwich. Sol. Freestone, Norwich.—**Knosley, S.** brewer, Exeter, July 6. Trusts: R. Sanders and B. Salter, gentls. Exeter. Sol. Stogdon, Exeter.

Gazette, Sept. 8.

Mills, W. plumber, Barnstable, July 21. Trusts: T. King, ironmonger, Barnstable, and R. Ainsworth, iron merchant, Bristol. Sols. Surr and Gribble, Lombard-st. and W. Gribble, Barnstable.—**Philpott, V.** shopkeeper, Alderton. Trust: W. Lawrence, grocer, Maidstone. Sol. King, Maidstone.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Sept. 4.

BARNES, ROBERT FRANCIS, licensed victualler, Sir Paul Pinder, 169, Bishopgate-st. Without, London Sept. 14, at one, Oct. 20, at half-past eleven, Basinghall-st. Com. Fane; Alsager, off. ass.; Hussey, Queen-st. Cheapside, sol. Date of fiat, Aug. 28. Bankrupt's own petition.

FIRTH, JOSEPH, sen. and jun. DUGDALE, JAMES, and STOTT, WILLIAM, cotton spinners, Hightown, Bristol, Yorkshire, Sept. 15 and Oct. 6, at eleven, Leeds, Com. Burge; Hope, off. ass.; Gregory and Co. Bedford-row, Wavell, Halifax, and Courtney, Leeds, sols. Date of fiat, Aug. 28. Bankrupt's own petition.

HALL, JAMES, chemist and druggist, Leeds, Sept. 16 and Oct. 7, at eleven, Leeds, Com. West; Freeman, off. ass. Sudlow and Co. Chancery-lane, and Shuckleton, Leeds, sols. Date of fiat, Aug. 31. Bankrupt's own petition.

LAKE, WILLIAM, grocer, Hensfield, Sussex, Sept. 14, at two, Oct. 9, at half-past two, Basinghall-st. Com. Fane; Whitmore, off. ass.; Rickard and Walker, Lincoln's-inn-fields, and Burnett, Brighton, sols. Date of fiat, Aug. 20. R. Rowley, I. Bass, and I. G. Bass, grocers, Brighton, pet. crs. LEWIS, GEORGE, apothecary, Wrexham, Denbighshire, Sept. 14 and Oct. 5, at twelve, Liverpool, Com. Perry; Morgan, off. ass.; Philpot, jun. Southampton-st. Hughes, Wrexham, and Evans and Son, Liverpool, sols. Date of fiat, Aug. 25. M. Guinmour, Wrexham, builder, pet. cr.

MORTIMER, JOHN, woolstapler, Bradford, Yorkshire, Sept. 10 and Oct. 7, at eleven, Leeds, Com. West; Young, off. ass.; Clarke, Chancery-lane, Tiltley and Watson, Bradford, and Bond, Leeds, sols. Date of fiat, Aug. 31. Bankrupt's own petition.

WAINWRIGHT, THOMAS, surgeon and apothecary, Barnsley, Yorkshire, Sept. 16 and Oct. 7, at eleven, Leeds, Com. West; Young, off. ass.; Wilkinson, Lincoln's-inn-fields, Marshall, Barnsley, and Carls, Leeds, sols. Date of fiat, Aug. 31. Bankrupt's own petition.

Gazette, Sept. 8.

ARNOLD, FREDERICK, stationer and perfumer, 23, New Bond-street, 9, Budge-row, city, and Perry-vale, Sydenham, Sept. 25, at one, Oct. 20, at two, Basinghall-st. Com. Holroyd; Groom, off. ass.; Gell, Carlton-chambers, Regent-st. sol. Date of fiat, Sept. 5. Bankrupt's own petition.

BARLEY, WILLIAM GEORGE, draper, Northampton, Sept. 25, at twelve, Oct. 20, at one, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Mardon and Fritchard, Christchurch-chambers, sols. Date of fiat, Sept. 7. J. Wilcocks, A. Caldecott, and W. J. Powell, warehousemen, Cheapside, pet. crs.

BIRLEY, JOHN, card manufacturer, Lower Bentcliffe-mill, Eccles, Lancashire, Sept. 21 and Oct. 14, at twelve, Manchester; Pott, off. ass.; Barker, Manchester, and De Jersey, Aldgate-st. sol. Date of fiat, Sept. 2. Bankrupt's own petition.

BROWNING, JOSEPH DODSWORTH, cabinet maker, Bristol, Sept. 24, at one, Oct. 23, at two, Bristol, Com. Stevenson; Hutton, off. ass.; Messrs Bevan, Bristol, sols. Date of fiat, Aug. 31. G. Ely, cabinet maker, Bristol, pet. cr.

COOKE THOMAS, plasterer, Bridge-terrace, Harrow-rd. Paddington, Sept. 24, at eleven, Oct. 20, at half-past twelve, Basinghall-st. Com. Fane; Alsager, off. ass.; Willoughby and Jacquet, Clifford's-inn, sols. Date of fiat, Sept. 3. T. Robeson, plaster manufacturer, Mountpleasant, pet. cr.

DITCHMAN, JOHN, builder, 1, Thurlow-place, Hackney-rd. Sept. 25 and Oct. 7, at eleven, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Overton and Hughes, Old Jersey, sols. Date of fiat, Sept. 3. Bankrupt's own petition.

GRAHAM, JOSEPH, wholesale stationer, Jewry-st. Aldgate, Sept. 25, at two, Oct. 20, at eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Walker, jun. Finsbury-circus, sol. Date of fiat, Aug. 31. J. E. Spencer and C. Foulton, paper manufacturers, Alton, Hants, pet. crs.

HIGNETT, JOHN, snuff manufacturer, Manchester, Sept. 21 and Oct. 14, at twelve, Manchester, Fraser, off. ass.; Nixie and Co. Barbett's-buildings, and Morris, Man-

chester, sols. Date of fiat, Aug. 31. G. Robinson, manufacturer, Leeds, pet. cr.

JOHNSON, CHRISTOPHER DIXON, victualler, Liverpool, Sept. 13 and Oct. 16, at twelve, Liverpool, Com. Perry; Casenove, off. ass.; Norris and Co. Bartlett's-buildings, and Toulmin, Liverpool, sols. Date of fiat, Sept. 2. Bankrupt's own petition.

SOTHERN, BENJAMIN CARRER, coal dealer, Liverpool, Sept. 24 and Oct. 15, at eleven, Liverpool, Com. Perry; Morgan, off. ass.; Kearns, Red Lion-square, and Todd, Liverpool, sols. Date of fiat, Sept. 2. Bankrupt's own petition.

TAYLOR, EDWIN AUGUSTUS WILLIAM, bookseller, printer, stationer, Kirkgate, Bradford, Yorkshire, Sept. 23 and Oct. 15, at eleven, Leeds, Com. West; Freeman, off. ass.; Jones and Co. John-st. Bedford-row, and Harle and Clarke, Leeds, sols. Date of fiat, Sept. 2. Bankrupt's own petition.

TUCKETT, JAMES, herbalist and apothecary, Exeter, Sept. 23 and Oct. 14, at eleven, Exeter, Com. Bere; Hirtzel, off. ass.; Terrell, Exeter, and Terrell, Gray's-inn-sq. sols. Date of fiat, Sept. 4. C. Tuckett, bookbinder, Little Russell-st. Bloomsbury, pet. cr.

WALTON, RICHARD, out of business, 27, Church-rd. Battersea, Sept. 17, at eleven, Oct. 20, at twelve, Basinghall-st. Com. Holroyd; Groom, off. ass.; Taylor, Lothbury, sol. Date of fiat, Aug. 17. Bankrupt's own petition.

WRIGHT, THOMAS, cheese factor, Derby, Sept. 14 and Oct. 24, at twelve, Birmingham, Com. Daniell; Whitmore, off. ass.; Smith, Derby, and Reece, Birmingham, sols. Date of fiat, Aug. 31. T. Yates, farmer, Sapperton, Derbyshire, pet. cr.

Meetings at Basinghall-street.

Gazette, Sept. 4.

Barker, F. D. banker, Cambridge, Sept. 23, at eleven, div.

Meetings in the Country.

Gazette, Sept. 4.

HARGREAVES, J. worsted spinner, Farnhill-hall, Kildwick, Yorkshire, Sept. 25, at eleven, Leeds, and Sept. 25, at eleven, second and final div.—**Hartop, H.** ironmaster, Hoyland, Wash-upon-Dearne, Yorkshire, Sept. 25, at eleven, Sheffield, second and final div.—**Miller, W.** manufacturer, Manchester, Sept. 18, at twelve, Manchester (by adjournment), last exam.—**Parker, G.** spade and shovel manufacturer, Sheffield, Sept. 25, at eleven, Town-hall, Sheffield, second and final div.—**Ratcliffe, G.** fender manufacturer, Sheffield, Sept. 25, at eleven, and final div.—**Smith, J.** grocer, Stratford-upon-Avon, Oct. 6, at twelve, Birmingham, and proof of debts.—**Tweedle, W.** soap manufacturer, Liverpool, Oct. 6, at twelve, Liverpool (adj. Aug. 29), last exam.—**Wainwright, J.** wine merchant, Birmingham, Oct. 10, at twelve, Birmingham, and—**Wood, W.** wine merchant, Sept. 23, at twelve, Birmingham (adj. Aug. 29), last exam.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Cassell and Tindall, leather sellers, Northampton and Sheffield, Oct. 3, at twelve.—**Illingworth and Co.** worsted spinners, Bradford Oct. 7, at eleven, Leeds.

Gazette, Sept. 8.

Ayton, J. J. linen draper, South Shields, Oct. 2, at half-past ten, Newcastle, and—**Bower, R.** cotton spinner, Heyrod and Blackrook-mills, Sept. 21, at twelve, Manchester (adj. July 29), last exam.—**Brook, W.** stuff merchant, Manchester and Goldsmith-st. London, Sept. 15, at twelve, Manchester (adj. June 15), last exam.—**Gill, R.** grocer, Richmond, Yorkshire, Oct. 2, at two, Leeds, and Oct. 3, at eleven, first div.—**Green, R.** watchmaker, Bristol, Sept. 28, at eleven, Bristol, and—**Hewley, T.** draper, Liverpool, Sept. 30, at twelve, Liverpool, div.—**Johnson, J.** timber merchant, Salford, Sept. 29, at twelve, Manchester, and Sept. 30, at twelve, fur div.—**Knight, J.** mercer, Preston, Sept. 14, at twelve, Manchester (adj. July 29), last exam.—**Lythgoe, J.** cooper, Liverpool, Sept. 30, at eleven, Liverpool, div.—**MacDougall, D.** factor, Liverpool, Sept. 30, at eleven, Liverpool, div.—**Marsland, H.** silk throwster, Boaden, Sept. 14, at twelve, Manchester (adj. July 29), last exam.—**Morris, J.** auctioneer and dealer in furniture, Manchester, Sept. 23, at twelve, Manchester (adj. July 23), div.—**Waterhouse, J.** Salford, and **Sutton, R.** Cheetham, calico printers, Sept. 29, at twelve, Manchester, and of Sutton, and Sept. 30, at twelve, first and final div. of Sutton.

MEETINGS FOR ALLOWANCE OF CERTIFICATES

Alexander and Alexander, opticians, Exeter, Oct. 6, at eleven, Exeter.—**Hobson, M.** corn merchant, Great Grimsby, Sept. 30, at ten, Hull.—**Parsons, J.** edge-tool manufacturer, Wolverhampton, Oct. 17, at eleven, Birmingham.—**Rayner, T. I.** apothecary, Bristol, Oct. 3, at eleven, Leeds.—**Stanely, J.** warehouseman, Manchester, Sept. 30, at twelve, Manchester.—**Sugar, T.** corn merchant, Hull, Oct. 7, at ten, Hull.—**Watts, W.** millwright, Doncaster, Oct. 2, at eleven, Leeds.—**Weaver, T. D.** ship broker, Liverpool, Sept. 30, at eleven, Liverpool.

Partnerships Dissolved.

Gazette, September 1.

Atharley, H. and **Nichols, W.** bricklayers, Manchester, Aug. 10. Debts paid by Atharley.—**Baileton, W.** and **Mac Adam, G.** Manchester, July 1.—**Black, W. F.** and **Foster, T.** linen merchants, Broad-street, Dec. 31.—**Dixon, J.** and **Reed, L. G.** carpenters, Jan. 14. Debts paid by Reed.—**Fell, J.** and **T. and Clark, C.** brass founders, Wolverhampton, Aug. 29. Debts paid by Fell.—**Fisher, F.** and **Robinson, C.** leather jaspers, Merton, Aug. 28. Debts paid by Robinson.—**Ford, W.** Sanson, T. Bute, A. and **Towncliffe, F.** manufacturing chemists, Derby and Draycott, so far as regards Ford and Sanson, Aug. 26. Debts paid by the remaining partners.—**Forster, W. E.** and **Fleam, W.** Bradford, and **Boddes, W.** New York, commission agents, July 10.—**Goodman, H.** and **Spoor, J.** tailors, Northampton, Aug. 31.—**Honiball, J.** and **Porter, W. H.** anchor manufacturers, Dunston, Aug. 26. Debts paid by Honiball.—**Law, J.** and **Harrison, J.** booksellers, Birkenhead, Aug. 24. Debts paid by Law.—**Sallows, E.** sen. and jun. wine merchants, Colchester, Aug. 26. Debts paid by Sallows, sen.—**Smith, G.** and **Parkinson, J.** linen manufacturers, Barnsley, Aug. 28.—**Smith, J.** and **S. coal merchants, March, Aug. 28.** Debts paid by J. Smith.—**Summers, J.** Johnson, W. and **Gurnell, F.** coach builders, Hounslow, Aug. 27.—**Twiston, J. G.** and **W. fancy man-**

acturers, Kirkheaton, Aug. 26. Debts paid by J. Twiston.—**Waylen, R.** and **Oliver, W.** oil warehousemen, Skinner-street, Bishopgate-street, Aug. 29.—**Wilson, T.** (deceased) **Midworth, J.** and **Wilson, J.** and **J. brass founders, Newark-upon-Trent, Aug. 19.** Debts paid by T. and J. Wilson.

Gazette, Sept. 4.

Ball, E., Bayley, R. and **Barrow, W.** merchants, Bawell, Aug. 31. Debts paid by Ball.—**Bessley, H.** and **Hartidge, G. B.** typographic printers, Liverpool, Sept. 2. Debts paid by Hartidge.—**Brownhill, J.** and **Neah, J.** brewer, Salford, Sept. 2. Debts paid by Brownhill.—**Chastrell, C. F.** and **Boyes, J. A.** stock brokers, Leeds, Aug. 31. Debts paid by Chantrell.—**Cockhill, J.** and **J. coach proprietors, Kirkstall, Aug. 29.** Collinge, I. and **Ashworth, G.** cotton spinners, Rochdale, Aug. 17.—**Davies, E.** and **Watkins, R.** oil refiners, Liverpool and St. Helen's, Aug. 31.—**Ge, I.** and **Fell, J.** tea dealers, Liverpool, Sept. 2.—**Gouldner, I.** and **J. watchmakers, Gloucester, Aug. 26.** Debts paid by J. Gouldner.—**Greenhalgh, N.** and **T. cotton spinners, Staples, July 4.**—**Halstead, J.** **Bowmer, T.** and **Lord, J.** manufacturers of moccasins de laine, Colne and Radcliffe, as far as regards Lord, Aug. 29. Debts paid by the remaining partners.—**Higginbottom, D.** and **Baker, S.** milliners, Piccadilly, Sept. 3.—**Hobson, R.** and **W. J. printers, Aahbham, April 4.**—**Holworth, S. B.** and **E. S. dealers in child-laid linen, Charles-st. Soho-sq. Aug. 31.**—**Lever, W. H.** and **Tickell, W.** jun. surgeons, Upper Norton-st. Aug. 31. Debts paid by Tickell.—**Morris, D.** and **W., Morgan, W. T., Davis, W.** and **Morris, J.** tin-plate manufacturers, Alcester, so far as regards J. Morris, July 18. Debts paid by the remaining partners.—**Raby, E., Houson, G.** and **Cartwright, R.** china figure manufacturers, Stoke-upon-Trent, Aug. 25. Debts paid by Raby and Houson.—**Redwood, F., Scowcroft, T. S.** jun., W., and M., and **Woods, W.** colliers, Hindley and Manchester, so far as regards Redwood, Sept. 1. Debts paid by the remaining partners.—**Tibberty, H.** and **W. brass manufacturers, Cleveland-cave, Marylebone, Aug. 11.**—**Walden, P.** Rudgwick, and **Walden, J.** Woborough-green, farmers, Aug. 29.—**Walker, J.** Wester Fintry, and **Smith, A.** Aberdean, land surveyors, Aug. 29.—**Warbrick, W.** and **Sin, W.** builders, Liverpool, Sept. 2.

Insolvents.

Petitioning the Courts of Bankruptcy.

Gazette, Sept. 1.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Brownson, T. chandler-shop keeper, Sept. 18, at twelve.—**Craker, E.** carpenter, Luton, Sept. 18, at one.—**Flem, J.** baker, Duke-st. Adelphi, Sept. 18, at half-past eleven.—**Holte, W.** out of business, Cavendish-road, Wandsworth-road, Sept. 18, at twelve.—**Nicola, J.** boot-shop keeper, Sept. 18, at twelve.—**Shalders, H.** traveller, Clapham, Sept. 18, at twelve.—**Stclair, J.** alster, London-road, Sept. 18, at half-past twelve.

PETITIONS TO BE HEARD IN THE COUNTRY.

Bassford, E. cigar dealer, Walton-on-the-Hill, Sept. 18, at eleven, Liverpool.—**Brooks, S.** shoe maker, Bristol, Sept. 15, at eleven, Bristol.—**Dyson, T.** out of business, Kendal, Sept. 9, at twelve, Manchester.—**Greig, W.** butcher, Leeds, Sept. 11, at eleven, Leeds.—**Perratt, T. W.** engraver, Bradford, Sept. 11, at eleven, Leeds.—**Pickles, J.** hair dresser, Bradford, Sept. 11, at eleven, Leeds.—**Simpson, R.** pavilion dealer, Halifax, Sept. 11, at eleven, Leeds.—**Thompson, R. E.** cart owner, Liverpool, Sept. 8, at eleven, Liverpool.

MEETINGS IN THE COUNTRY.

Harrie, H. C. Sept. 23, at twelve, Liverpool, mid.—**Sudlow, W.** Sept. 23, at twelve, Liverpool, mid.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, September 4.

Allen, T. cordwainer, Margate, Sept. 19, at half-past twelve.—**Bradley, G.** out of business, Romford, Sept. 18, at two.—**Cross, R.** boot maker, Filkins, Sept. 19, at half-past eleven.—**Dean, J.** dyer, Wandsworth, Sept. 18, at one.—**Eliska, E.** general shopkeeper, King-st. Cloth Fair, Sept. 19, at half-past eleven.—**Gregory, W.** ale merchant, Railway-pier, Fenchurch-st. Sept. 18, at one.—**Harvey, J.** grocer, Milton, Sept. 19, at half-past twelve.—**Jones, W.** ale merchant, East-chap, Sept. 18, at one.—**Mason, J. H.** painter, Mount-st. Bethnal-green, Sept. 19, at half-past eleven.—**Pitt, F.** commander in the navy, Berkeley-st. West, Paddington, Sept. 12, at two.—**Power, C. B.** agent, Southampton, Sept. 19, at half-past twelve.—**Stanbrough, H.** out of business, Raher, Sept. 19, at half-past twelve.—**Stephens, S.** tea dealer, Woolwich, Sept. 18, at one.—**Stone, J.** carpenter, Finsbury, Drury-lane, Sept. 24, at two.

PETITIONS TO BE HEARD IN THE COUNTRY.

Akers, G. bookkeeper, Liverpool, Sept. 10, at half-past eleven, Liverpool.—**Chisler, E.** widow, Manchester, Sept. 4, at twelve, Manchester.—**Coates, J.** cloth maker, Yeas, Sept. 16, at eleven, Leeds.—**Crocker, J.** tallow chandler, Bristol, Sept. 10, at half-past eleven, Bristol.—**Fisking, S.** stone getter, Glossop, Sept. 16, at twelve, Manchester.—**Fountain, W.** lodging house keeper, Selby, Sept. 16, at eleven, Leeds.—**Fraser, H.** draper's assistant, Chesham, Sept. 11, at half-past one, Bristol.—**Hewitt, T.** boot maker, Liverpool, Sept. 14, at eleven, Liverpool.—**Kitching, J. C.** joiner, Manchester, Sept. 16, at twelve, Manchester.—**Ogden, T.** provision-shop keeper, Manchester, Sept. 16, at twelve, Manchester.—**Price, S.** farmer, Llavell, Sept. 19, at eleven, Bristol.

From the Gazette of Friday, September 11.

Bankrupts.

Sutton, H. builder, Holland-crescent, Barrington-road, Brixton.—**Padson, C.** shop-seller, Charlotte-st. New-cd. Lambeth.—**Fowler, G. F. T.** printer, Illington-st. Finsley.—**Perkins, J.** cheesemonger, Wenlock-st. Hoxton.—**Pringle, P.** boot and shoe maker, Barley, Hertfordshire.—**Shackleton, M.** letterpress printer, Manchester.—**Copner, H.** sen. Ludlow, Salop.—**Morris, T.** linen draper, Newcastle Embsay, Carmarthenshire.—**Barrett, T.** wood turner, Scrood, Gloucestershire.—**Smith, E. B.** timber merchant, Scarborough, Yorkshire.—**Hardy, J.** estate dealer, Castle Donington, Leicestershire.—**Philpot, E.** timber dealer, Ludlow, Shropshire.—**Deverill, H.** corn factor, Stoke-upon-Trent.—**Wart, T.** maltster, Nottingham.—**Griffith, W.** dealer in chain and glass, Leeds.

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THE REPORTS.

HOUSE OF LORDS.

BRANDAO V. BARNETT.
Lien of Bankers.

Brandao v. Barnett (1 M. & G.) confirmed, and the judgment of the Exchequer Chamber reversed.

This was a writ of error in a judgment of the Court of Exchequer Chamber. The facts were as follows, as contained in a special verdict:—The plaintiff in error is a Portuguese merchant, residing in Portugal; the defendants in error are bankers in London. The plaintiff employed as his agent in London a Mr. Edw. Burn, a merchant; and, from time to time, remitted bills of exchange and money to him to invest in Exchequer bills. Edward Burn was also employed by other correspondents to purchase Exchequer bills for them, which he did through a broker, who dealt with him as a principal, not knowing on whose account the bills were bought. The defendants were Burn's bankers, with whom he kept an account as one of the firm of James Burn and Co. He kept several tin boxes at the banking-house, one of which he appropriated exclusively for Exchequer bills, himself keeping the key. It is the custom of bankers to receive the interest of Exchequer bills for their customers, and to exchange the Exchequer bills when necessary, and they performed these offices for Burn several times prior to December 1836. On the 1st of that month Burn handed to them out of the tin box about 10,000*l.* worth of Exchequer bills, belonging to plaintiff, and two Exchequer bills belonging to other parties. The defendants having received the interest on the bills, and placed it to Burn's account, exchanged them for new ones, which were deposited by Burn as usual in the tin box, where they remained till July 1837, when Burn stopped payment, owing a considerable balance on his drawing account to defendants, who in satisfaction of it detained the Exchequer bills which were the property of the plaintiff, and for which he brought his action in the Court of Common Pleas. He obtained the judgment of that Court, which the Court of Exchequer Chamber reversed. The writ of error in the latter judgment was argued in this House for several days in February and March last.—Lord Campbell now, in moving the judgment, went fully into the facts as set out in the special verdict. There was no doubt of the proposition that bankers had a general lien on deposits of their customers for all balances of account, but here that proposition did not apply, as the facts shewed the defendants in error never got a lien on these Exchequer bills. The keys were always held by Burn, and he gave out the bills for special purposes, and after those purposes were effected he locked the bills up again.—The other lords present having concurred, *The judgment of the Exchequer Chamber was reversed.*

Equity Courts.

LORD CHANCELLOR'S COURT.

July 30 and 31.

DAMER V. LORD PORTARLINGTON.

Mortgagor and mortgagee staying proceedings on the defendant's application.

Where the defendant offers to perform and afford all the acts and relief sought for by the prayer of the plaintiff's bill, the Court will stay proceedings, notwithstanding the plaintiff may have some interest in the subject-matter of the suit, which might be affected in the progress of the suit.

This was an appeal motion to discharge an order of the Vice-Chancellor of England, refusing a motion made on behalf of Lord Portarlington, to stay all proceedings in the suit, and that the Law Life Insurance Company might be at liberty, during the long vacation, to inspect and take copies of all deeds and documents relating to the Portarlington estates. It appeared that in 1832, two sums, one of 350,000*l.*, and the other of 50,000*l.*, were borrowed by the late Earl of Portarlington from several contributors, and the repayment of the amount secured by mortgages on the estates. Subsequently this suit was instituted to carry into execution the trusts of a deed executed by the late Earl of Portarlington for the benefit of the contributors, and other incumbrancers on the estate. The object of the present motion was to enable the present Earl of Portarlington, who had succeeded to the estates upon the death of his uncle, the late earl, and who had devised them to him, subject to the payment of the incumbrances thereon, to get rid of the heavy and ruinous law expenses which the estates were at present, in consequence of the numerous incumbrances thereon, subject to by taking upon himself the payment of such incumbrances. This he proposed to do by obtaining from the Law Life Insurance Company a loan of money sufficient for that purpose, and which they had consented to lend on being satisfied with the evidence of title to the estates. The motion was opposed by the plaintiff, Colonel Damer, who is entitled in remainder to the estates, in case the present Earl of Portarlington should die without leaving male issue, and he has also an incumbrance on the estates to the extent of 500*l.* The defendant offered to pay off the plaintiff's incumbrance. The Vice-Chancellor had refused the application with costs, upon the ground that he had no jurisdiction to do what was asked, and as this was not an application of a party who had the money in his hands to pay over the money to the plaintiff and incumbrances, but it was sought by the motion to obtain the interference of the Court to carry out the arrangement with the Law Life Insurance Office, on which the Law Life Insurance Company were to exercise their own judgment.

Stuart, Jas. Parker, and Toller, in support of the appeal.—The plaintiff, Colonel Damer, the uncle of the present Lord Portarlington, the defendant, was only an incumbrancer on the estates to the extent of the sum of 500*l.* interest and costs, and he was the only person who had opposed the motion made on behalf of Lord Portarlington to stay all further proceedings in this suit, by his paying off all the incumbrances on the estates, by raising the money necessary for that purpose from the Law Life Insurance Company, and thereby save the estates from the ruinous law expenses which they were now subject to, there being forty persons, incumbrancers on the estates, parties to this suit; and there were no less than fourteen solicitors engaged on their behalf in the suit. If the cause was taken into the Master's office, the expenses there would be enormous. At present it cost 1,500*l.* a year, the expenses of passing the receiver's accounts alone. All the other incumbrancers, to the amount nearly of 400,000*l.* had willingly consented to the application of Lord Portarlington, as the most beneficial arrangement for the interest of all parties. Colonel Damer was the only dissident, although he had been offered by Lord Portarlington to have the 500*l.* due to him, with interest and costs, paid at once.

Bethell, Follett, and Palmer opposed the application on behalf of Colonel Damer, who, they said, was not only an incumbrancer on the estates, but also had an equal interest in the equity of redemption of the estates with Lord Portarlington, being entitled to the estates in question in remainder, in the event of Lord Portarlington dying without leaving male issue, and therefore he was interested in seeing the incumbrances paid off with the utmost possible economy, in order that something might be saved out of those family estates if possible; and on these grounds he was anxious that the trusts of the trust-deed entered into by the late Lord Portarlington should be carried into execution under the decree of the Court.

Cooper, Bagshaw, Lovat, Beales, Glasse, and B. Maxwell appeared for the various contributors and incumbrancers on the estates, and consented to the application.

The LORD CHANCELLOR remarked that the number of counsel who appeared for the different parties to the suit shewed what the costs would be if this suit

was to go on. In order to induce the Court to interfere by granting this application, the counsel for Lord Portarlington must satisfy the Court that the case which he represented was substantiated by the proceedings in the case, and that all interest which Colonel Damer had in the suit Lord Portarlington was ready to satisfy and discharge at once.

Stuart, in reply.

The LORD CHANCELLOR.—Where a suit is instituted by one party against another, in order to have a particular interest satisfied, and the defendant comes into the court and tenders satisfaction to the plaintiff of all his claims in the suit, the Court, in such a case as that, had jurisdiction to put a stop to all further proceedings in the suit. The circumstances of this case are very complicated. If the plaintiff to the extent of his interest in the case is to be at once satisfied by the defendant, and the other parties to this suit having interest as incumbrancers, as well as the plaintiff, are to be also satisfied by the defendant, and they all consented that the further prosecution of this suit should be stayed, I am of opinion the Court in that case will not hesitate to grant the application now made to it. But, in order to do that, the Court must be satisfied that the case stated in the support of the application is made out on the face of the proceedings, and for that purpose I will read through the papers and the judgment of the Vice-Chancellor before I finally decide the matter.

JUDGMENT.

July 31.—The LORD CHANCELLOR.—The case is now reduced to the simple question whether, if all the allegations of the bill are true, and the defendant submits to do all that is prayed by the bill, the Court is not right in staying all further proceedings in the suit. I am unable to discover any relief prayed by this bill, except for payment of the sums alleged to be due to the plaintiff; and the defendant has offered to pay the plaintiff all principal, interest, and costs, as prayed by the bill. That comes within the principle of staying proceedings, on the defendant's affording all the relief sought by the bill, and it leaves untouched all other interests which the plaintiff may have in the subject-matter.

Stuart.—The order, then, will be, "that all proceedings in these suits be stayed, on payment to the plaintiff of all sums due to him as one of the contributors under the deed of 1832, and 500*l.* and interest, due to him, the amount of interest to be verified by affidavit; together with costs, charges and expenses properly incurred, and the costs of dismissing the bill in *Mahoney v. Lord Portarlington*, on producing the consents of all the other defendants."

Friday, July 31.

Re ———, a Lunatic.

Practice in lunacy—Expenses incurred by the committee of the estate without previous order.

Bacon supported a petition by the committee of the estate, which prayed, amongst other things, that several sums of money which he had expended in the improvement and enlargement of the farm buildings on the lunatics estate might be allowed. There were affidavits to shew that such expenditure was necessary in order to secure good tenants, and that the property had been benefited by the outlay.

The LORD CHANCELLOR.—There must be an inquiry whether these sums have been properly expended. The general rule is, that sums which have been expended without authority from the Court will not be allowed, and, at all events, the party so acting must pay the costs of putting it to rights.

Costs of the petition and inquiry to be paid by the petitioner.

Re ———, a Lunatic.

Payment into court—Form of order.

A petition having been presented by the committee of the estate, for leave to pay into court a sum of money he had received on account of the lunatic's estate.

The LORD CHANCELLOR.—Of course that must be without prejudice to an account by the committee for that sum; that must be inserted in the order.

VICE-CHANCELLOR KNIGHT
BRUCE'S COURT.

Saturday, July 18.

TOPPING V. HOWARD.

Practice—Appointment of guardian ad litem to infants without their appearing in court or commission.

Winstanley moved that William Topping, a defendant in this suit, might be appointed guardian ad litem to nine of the infant defendants, residing in different parts of England, without their appearance in court, and without a commission, on affidavit of the infancy, of the places of residence, of the respectability of the proposed guardian, and that his interests were not adverse to those of the infants.

Drant v. Vause, 2 Y & C. C. C. 524; and *Stillwell v. Blair* 13 Sim. 399, were cited.

The VICE CHANCELLOR made the order, observing that he considered the Lord Chancellor's decision in *Drant v. Vause* had settled the practice.

Thursday July 23.

RICHARDSON v. WICK.

Proceedings where the person whose name appeared to a bill as the plaintiff's solicitor had not taken out his certificate.

Toller, on behalf of one of the defendants in this suit, moved that the bill might be taken off the file for irregularity, with costs, Mr. Hadwin, whose name appeared on the bill as the plaintiff's solicitor, not being a solicitor of the court.

Cooper, for the plaintiff, asked for an opportunity to substitute the name of a solicitor for that of Mr. Hadwin, as the plaintiff was not aware, at the time of filing the bill, that Mr. Hadwin had not taken out his certificate.

Toller said, that if that were allowed, he should ask permission to withdraw his former appearance, in order that the defendant might have an opportunity of demurring.

Cooper objected that the other defendants were not represented on the present motion, and that if the bill were taken off the file, they would have no opportunity to obtain their costs.

The VICE-CHANCELLOR directed that the person whose name was to be substituted should personally appear and state his willingness to allow his name to be used; and that the Registrar should satisfy himself that the person so appearing was a solicitor of the court; the defendant moving to have his appearance dated as on this day, and the plaintiff and Mr. Hadwin to pay the costs of this application.

July 27.—Toller having mentioned to the Court that no solicitor had appeared in this case to have his name affixed to the bill,

The VICE-CHANCELLOR directed that all proceedings against the defendant should be stayed until further order, and that the costs should be paid as before ordered.

Wednesday, July 29, and Friday, July 31.

SMITH v. BARNEY.

Will—Construction—"My personal and not my real representative."

By the words "personal representatives," or "legal personal representatives," must ordinarily and prima facie be understood "executors or administrators."

A bequest made to a personal representative must generally be understood as made to that representative, not for his own benefit, but for the purposes for which he held or could hold the general personal estate of the individual of whom he was described as personal representative.

Thomas Newham, by his will dated the 8th of October, 1819, after reciting his marriage settlement, by which certain property was limited to him, his heirs, executors, administrators, and assigns, upon the decease of his wife and failure of issue by her, confirmed the said settlement, and devised all his freehold, copyhold and leasehold estates not comprised in the settlement, to trustees, upon trust as to certain portions of the estates, to raise money for the payment of a mortgage, and subject thereto, upon trust for his wife, Penelope, her heirs and assigns for ever. And as to all the other property devised or bequeathed to his said trustees, upon trust for the payment of the fines for renewals, chief rents, &c. and to pay the rents to his said wife, Penelope, and her assigns, for her life, or during the said testator's terms in the said property, with power to fell timber and sell the same, as there-in mentioned. And after the decease of his said wife he gave the said property, and after her decease and failure of issue he gave the property comprised in the settlement, to the said trustees, upon trust as to the freeholds, to pay the rents to his niece, Charlotte Elizabeth Steward, and her assigns for her life; and after her decease, in trust for her first and other sons in tail, with remainder to her daughters as tenants in common, with remainder in trust for his niece, Mary Ann Steward, and her sons and daughters, in a similar manner, with remainder in trust for his nephew, Thomas Steward, and his sons and daughters, in a similar manner; and in default of such issue, in trust for the testator's own right heirs for ever. And as to the said leasehold and copyhold property, the testator directed his trustees to stand possessed thereof upon such trusts, and for such intents and purposes, as, allowing for the different nature and qualities of the estates, would best and nearest correspond with the trusts, intents, and purposes thereinbefore by him declared of the freeholds, so that the said leasehold and copyhold estates might be enjoyed by the person or persons for the time being entitled under that his will to the said freeholds, and might go along with the same, so far as the rules of law or equity would permit; yet so nevertheless that the said leasehold and copyhold estates should not, as to the effect or purpose of transmission, vest absolutely in any child of any person thereby made tenant for life, unless such child should live to attain the age of twenty-one years, and so that in default of any person becoming entitled thereto, under that his will, the same should be in trust for his (the said testator's) personal, and not his real representative. The testator also gave to his said wife all his money and securities for money,

and all his personal estate not otherwise disposed of by his will, upon trust to pay his debts and funeral and testamentary expenses, and to raise the sums of 3,000*l.* and 1,000*l.*; and subject thereto, he gave the surplus to his said wife, her executors, administrators, and assigns, for her and their own use and benefit. Provision was then made for the raising of the 3,000*l.* and 1,000*l.* in case the residue of the personal estate should prove insufficient. These sums were to be applied as follows; the 3,000*l.* as a legacy to the wife, and the 1,000*l.* as a gift to the trustees upon trust to invest and pay the dividends to the wife for her life, and after her decease to transfer the principal to the said Mary Ann Steward, her executors, administrators, and assigns. The testator then appointed his said wife sole executrix of his will. The testator died shortly after the date of his will, and the same will was proved by his widow in January, 1820. In May, 1841, the widow died intestate. Mary Ann Steward, who married Henry Evans, and Charlotte Elizabeth Steward died without having had any issue. A question having arisen as to the title to the leasehold and copyhold property of the testator, this bill was filed by the trustees for the purpose of obtaining the judgment of the Court. The claimants were the administrators of the testator's widow, the persons representing the next of kin of the testator at the time of his death, and the persons representing the next of kin of the testator at the death of the last tenant for life under his will.

Swanton and White, for the plaintiffs.

Wigram, Campbell, Russell, Giffard, Teed, Faber, Lee, Rolt, Barber, and Hallett, for the several defendants.

The following cases were cited:—*Wheat v. Hall*, 17 Ves. 80; *Holloway v. Clarkson*, 2 Harc. 521; *Taylor v. Beverley*, 1 Coll. 108; *Price v. Strange*, 6 Madd. 159; *Saberton v. Skeels*, 1 Russ. & Myl. 587; *Daniel v. Dudley*, 1 Phil. 1; *Baines v. Otley*, 1 Myl. & K. 465; *Cotton v. Cotton*, 2 Bea. 67; *Smith v. Smith*, 12 Sim. 317; *Masters v. Hooper*, 4 Bro. Ch. Ca. 207; *Collier v. Squire*, 3 Russ. 467; *Wallis v. Taylor*, 8 Sim. 241; *Sanders v. Franks*, 2 Madd. 147; *Stocks v. Dodsley*, 1 Keen, 325; *Mounsey v. Blamire*, 4 Russ. 384; *Pyot v. Pyot*, 1 Ves. sen. 335; *Palin v. Hills*, 1 Myl. & Keen, 470; *Long v. Blackall*, 3 Ves. 486; *Minter v. Wraith*, 13 Sim. 52; *Walter v. Makin*, 6 Sim. 148; *Jennings v. Gallimore*, 3 Ves. 146; *Withy v. Mangles*, 4 Bea. 358; *Jones v. Colbeck*, 1 Ves. 38; *Clapton v. Bulmer*, 5 Myl. & Cr. 108; *Bird v. Wood*, 2 Sim. & Sta. 400; *Briden v. Hewlett*, 2 Myl. & K. 90; and *Butler v. Bushnell*, 3 Myl. & K. 232.

The VICE-CHANCELLOR.—Since the commencement of the argument, the opportunity which it has afforded me of considering the will and examining the authorities has enabled me to dispose of the case to my satisfaction now. It is likely that the draft of the will in this case, after it had been settled, was altered by some other hand,—that it was not submitted to the person by whom it was originally settled. However, whether that conjecture be well or ill-founded, the instrument to be considered is, of course, the will as it stands, the question in the cause being, what is the meaning of the words "in trust for my personal, and not my real representative," which that document contains? It is agreed on all hands that the word "personal" being an adjective, the substantive to which it belongs is "representative," understood or expressed; but, if instead of this word the substantive were "estate," that, I apprehend, would be a disposition against the claim of each class of the next of kin, as the widow was sole residuary legatee. Now, whatever may be thought of the singular word "representative," or of the word "representatives," or of the expressions "legal representative" or "legal representatives," I apprehend that by the words "personal representative," or the words "legal personal representative," must ordinarily and *prima facie* be taken to be understood "executors or administrators;" that is, representative in law as to the personal estate, not of kin or kinsmen, not a wife or husband, not a person entitled by the statute to claim distribution. Generally also, and *prima facie*, as I suppose, a bequest made to a personal representative (without the expression is to be so accompanied) must be understood as made to that representative, not for her or his own benefit necessarily, but for the purposes, whatever they might be—for the purposes for which either she or he held or could hold the general personal estate of the individual of whom she or he was described as "personal representative." Such being the effect and meaning of the language of the will before me, and in dispute in this cause, the case decides itself against the next of kin as classes, and in favour of the widow, who was sole executrix and sole residuary legatee. Of course, the context of the will containing the words "personal representative" may be such as to render it necessary or proper to read them as importing consanguinity, or as referring to a distribution, which would have taken place if there had been an intestacy. The question is, whether this will is to be considered in either of those two latter modes, and it lies on those alleging either of those modes of expression to shew that the testator's intention is plainly so; to shew more than a mere

doubtful sense, since causing only a doubt leaves an expression in possession of all its proper force. Having made a particular disposition of his real estate of which the ultimate limitation was in favour of his right heirs, the testator makes a similar disposition of his personalty, substituting only for the ultimate disposition one in favour of his personal representative. I cannot venture to infer merely, from this, as against the proper meaning of the expression "personal representative," that it must be taken to mean consanguinity, because heirship is by consanguinity. In a possible state of circumstances, the limitation in favour of his "right heirs" might have some operation and effect; but, as circumstances are and were the limitation has not, and never can have, any operation; has never had any, and could not have any by the happening of his death at any time, or at the time when he died, could it have any. The gift to his heirs, if it was a gift, was a specific gift or a specific bequest to the person or persons who would have taken an interest if there had been an intestacy of it. Applying the same or any analogous construction to the gift to the "personal representative," it confers on the widow one-half of the fund in dispute; but, in another sense, it confers on her, as residuary legatee and sole executrix, the whole; for if the limitation is to be read as a limitation in favour of any specific person, she is that person for every beneficial as well as legal purpose, notwithstanding the observations made on the form and language of the residuary bequest, since the widow was, generally, as well as solely, residuary legatee. What, in the event of the testator's having survived his nephews and nieces, and left no kindred—what, in that event, the claim might have been, it is unnecessary for me to say. Against the widow it has been contended that, had the testator meant her to take the interest in dispute, he would have given it to her by name, and that the form and language of the power of sale of the leaseholds and copyholds, the direction as to the mode in which the testator's property is to be held, and the provision as to the residuary legatee, support the claim of the next of kin of one class or the other. I have considered these remarks, and if the construction is in favour of the widow is right, they do not appear to me to be strong enough to support that purpose. Had the counsel for the various next of kin established that, of which together they had well-nigh persuaded me, namely, that the limitation is unintelligible, they would have in every way established the case of the widow as residuary legatee. This, I repeat, is the ordinary *prima facie* and correct meaning of the language used. The word personal representative may, as every one knows, be read in other senses if the context be such as to demonstrate the propriety of that reading. The question is, whether such a context is to be found in this will? I cannot discover it. I believe that to read the word personal representative as not being personal representative according to the proper import and general acceptation of the expression, would be, if not merely arbitrary, merely conjectural. I therefore think that the next of kin of each class are excluded in favour of the widow, who is the residuary legatee and sole executrix.

Common Law Courts.

COURT OF QUEEN'S BENCH.

Thursday, June 25.

YOVELL v. CROSS.

Bankruptcy—Evidence of subsequent promise—Stat. 6 Geo. 4, c. 16, s. 131.

*A letter from defendants to plaintiff contained the following expressions:—"We shall be happy to pay you the difference of the 100*l.* after you have taken a dividend on the estate," and "we hope you will make yourself comfortable, as we pledge ourselves to make every thing right with you."*

Held: that this was an unconditional promise to pay whatever remained due after payment of a dividend, and that it was sufficient evidence of a subsequent promise under stat. 6 Geo. 4, c. 16, s. 131, to support a replication to a plea of bankruptcy, that the defendants had in writing ratified and confirmed the promise after their bankruptcy.

*Assumpsit on a promissory note for 100*l.* Plea (inter alia), the bankruptcy of the defendants, after the note became due.*

Replication, that after the defendants became bankrupt, &c. they, the defendants, in writing signed by them, ratified and confirmed the promises in the declaration mentioned, and then promised the plaintiff to pay him the amount of the note in the declaration mentioned.

Rejoinder, that the defendants did not promise modo et forma.

At the trial, which took place before Mr. Justice Coleridge, at the Croydon Summer Assizes, 1843, the plaintiff put in evidence a letter signed by the defendants, which contained the following terms:—"We shall be happy to pay you the difference of the 100*l.* after you have taken a dividend on the estate."

ste. * * We hope that you will make yourself comfortable, as we pledge ourselves to make every thing right with you." Upon the part of the defendant it was submitted that that letter contained a conditional and qualified promise only; and that, therefore, the replication was not proved; but the learned judge thought otherwise, and a verdict was found for the plaintiff, the defendant having leave to move.

Chambers, Q.C. accordingly, in last Michaelmas term, (Nov. 12), obtained a rule to shew cause why the verdict should not be set aside, and a nonsuit entered, or a verdict for the defendant upon that issue. *Fleming v. Hayne*, 1 Stark. 370, was cited.

Lush now shewed cause. The objection here is, that the promise to pay the debt was conditional, and that performance of the condition was not shewn. *Lord DENMAN, C.J.*—The question is, whether the letter contains an unqualified promise? This letter clearly does contain an unqualified promise to pay; he only limitation is, as to the time of payment; and he real dispute between these parties is, whether the plaintiff might not have received another dividend. The promise is, that the whole amount shall be paid; and the time of payment is after a dividend has been received. In *Fleming v. Hayne*, 1 Stark. 370, here was no express promise reviving the debt, but only a proposal made by the debtor. In *Dodson v. Mackey*, 4 Nev. & M. 327; 8 Ad. & Ell. 225, n. which was a case decided upon the Statute of Limitations, it was held that the following expressions in a letter written by the defendant to the plaintiff within six years: "I can never be happy until I have not only paid you every thing, but all to whom I owe money. Your account is quite correct; and oh! that I were now going to inclose you the amount of it;" "it is impossible to state to you what will be done in my affairs at present; it is difficult to know what will be best; but, immediately it is settled, you shall be informed," contained an absolute unconditional promise, and not a qualified or conditional promise, and constituted a sufficient acknowledgment to take the case out of the statute. In that case, therefore, there was, at least, as much uncertainty as to the time of payment as here. At all events, the issue raised upon these pleadings does not let in the objection; it is not denied, that an action founded upon a promise to pay on request fails, if the period of credit has not expired; but the issue here is, whether, after the bankruptcy the defendant ever promised to pay at all; and that is clearly proved.

Montagu Chambers, Q.C. contra.—The question is, whether this letter contains such a promise as will revive the defendant's liability after his bankruptcy, under s. 131, of stat. 6 Geo. 4, c. 16 (repeated by s. 63, of 5 & 6 Vict. c. 123). To satisfy that clause the promise must be express, distinct, and unequivocal; it must not be conditional or ambiguous (*Fleming v. Hayne*, 1 Stark. 370); but here it is quite uncertain what is promised, both as to time and amount. Every thing is to depend upon the dividends. The same strictness of construction has been applied to similar words in the Statute of Limitations. In *Edmunds v. Downes*, 4 Tyr. 73; 2 Cr. & M. 459, the terms of the acknowledgment were, "I shall be happy to pay you both principal and interest, when convenient; I shall pay no more interest, till we have a fair settlement;" and it was held that the promise was conditional, and that the plaintiff was bound to shew that it was convenient to pay, and also, *semble*, that a settlement had taken place. In *Gardner v. McMahon*, 6 Jur. 712, the acknowledgment was held sufficient, because in express terms the defendant had declared his willingness to do any thing which would take the case out of the statute.

Lord DENMAN, C.J.—It seems to me that this is an unconditional promise to pay that part of the debt which would remain due after payment of a dividend. It is said, that is uncertain; but *certum est quod certum reddi potest*; and as to that part of the debt I think the promise is direct enough. Sometimes it is necessary to take the opinion of a jury as to the meaning of such letters, but generally speaking they raise only a question of legal construction for the Court; and that is the case here. We will, however, mention this case to my brother Patteson to-morrow, and ascertain whether he has any doubts upon the subject. *Cur. adv. vult.*

Afterwards, *PATTESON, J.* concurring,

Rule discharged.

Friday, June 26.

MITCHELL v. KING.

Goods sold and delivered.—Acceptance within the Statute of Frauds.

The defendant verbally agreed to purchase of the plaintiff sixty Stilton cheeses, and directed thirty to be sent to the warehouse of A for another person, and thirty to the warehouse of B for himself. The cheeses were delivered accordingly on the 28th Oct. and those sent to the warehouse of A were kept and resold to a third person; but about the 20th Nov. the other parcel of cheeses was returned to the plaintiff as damaged.

Held: that the contract for the sixty cheeses was one entire contract, and that the acceptance of the thirty

delivered at the warehouse of A was a sufficient acceptance to satisfy the Statute of Frauds.

Assumpsit, for 28l. 2s. 6d. the price of goods sold and delivered; and goods bargained and sold.

Plea, except as to 14l. 1s. 3d. *non-assumpsit*, and as to that, payment into court.

At the trial, which took place before Wightman, J. in Middlesex, on the 24th of May, 1845, it appeared that in October 1844 the defendant agreed to purchase of the plaintiff sixty Stilton cheeses, which were to be of the same quality as a lot previously purchased; and that by the defendant's direction thirty of them were sent to the warehouse of Messrs. Brown, of Watling-street, in whose employment the defendant then was as a traveller; and thirty to the warehouse of Messrs. Richardson, for a person named Faithfull, who had agreed with the defendant to take half the cheeses and share the profits. Both parcels were delivered on the 28th October; and the greater part of that delivered at Messrs. Richardson's was subsequently sold by Mr. Faithfull to a third person. The parcel sent to Messrs. Brown's was returned to the plaintiff about the 20th of November; and, according to the testimony of one witness, the defendant had expressed to the plaintiff his intention not to keep them on account of their damaged condition, at an interview, which took place about five or six days after they had been received. The question of fact turned principally upon the evidence of that witness. The learned judge left to the jury the question whether the defendant had accepted the goods; and said that if they believed the witness, who said that there was an offer to return the goods soon after they were received, they could hardly find that the defendant had accepted them; but the jury found a verdict for the plaintiff, damages 14l. 1s. 3d.

In the following Trinity Term (12th June) *Cleasby* obtained a rule to shew cause why that verdict should not be set aside, and a new trial had, on the ground that the learned judge ought to have directed the jury that there was no acceptance of the cheeses delivered at Brown's to satisfy the Statute of Frauds.

The following cases were cited:—*Kent v. Huskisson*, 3 Bos. & P. 233; *Hove v. Palmer*, 3 B. & A. 321; *Hanson v. Armitage*, 5 B. & A. 559; *Smith v. Surman*, 9 B. & C. 561; *Accebal v. Levy*, 10 Bing. 376.

Hindmarsh now shewed cause.—The 17th sect. of the Statute of Frauds (29 Car. 2, c. 3.) requires that the contract for the sale of goods above the value of 10l. shall be in writing, unless the buyer shall accept a part of the goods so sold, and actually receive the same; and to satisfy that statute there must be a delivery by the seller and an acceptance by the buyer of part, with the intention of taking to them as owner. Here there was clearly a sufficient acceptance, for there was but one contract, and the goods delivered at Richardson's were never returned; they were sold again; and money has been paid into court on account of those goods. In *Baldev v. Parker*, 2 B. & C. 37, the defendant went to the shop of the plaintiff and contracted for the purchase of various articles, each of which was under the value of 10l. but the whole amounted to 70l. A separate price for each article was agreed upon. Some the defendant marked with a pencil; others were measured in his presence; and others he assisted to cut from larger bulks. He then desired that an account of the whole might be sent to his house, and went away. A bill of parcels was accordingly sent, together with the goods, which the defendant refused to accept; and it was held that this was all one contract, and therefore within the statute; and that there was no sufficient acceptance. So in the present case the contract was one entire contract; but the distinction is, that the acceptance of that part which was delivered at Richardson's does take this case out of the statute. In *Elliott v. Thomas*, 3 M. & W. 170, it was also held that if a joint order be given for several classes of goods, the acceptance of one class is a part acceptance of the whole, under the 17th section; and the same principle was recognized and acted upon in *Scott v. The Eastern Counties Railway Company*, 12 M. & W. 33, where there was a joint order for goods already manufactured and goods to be manufactured, and an acceptance only of the manufactured goods. But, further, even if the contract as to the two parcels of cheeses can be treated as divisible, the parcel delivered at Brown's was not rejected within a reasonable time; and there was, therefore, even as to those goods, independently of the others, an acceptance sufficient to satisfy the statute.

Cleasby, contra.—It is true that the part delivered at Richardson's was ultimately accepted; but the other parcel had been distinctly rejected long before. There could not, therefore, subsequently be any acceptance of that part to satisfy the statute. There must be such an acceptance of the goods as affirms the contract, and precludes all subsequent objection to the quantum or quality of the goods. (*Hanson v. Armitage*, 5 B. & A. 559; *Smith v. Surman*, 9 B. & C. 561.) The case of *Baldev v. Parker* is an authority for the defendant in this case; for there it was held that there was no sufficient acceptance, although the defendant had seen the goods, and assisted in cutting them from the bulk when he bought them;

and it was held to be one contract, because the different goods were all purchased at one time, and all sent together to the defendant's house; whilst in the present case the cheeses were never seen by the defendant until after their delivery, and one half was delivered at one place, and the other at another. There was, therefore, a distinct contract as to each half, and that also distinguishes this from the other cases cited. *Kent v. Huskisson*, 3 Bos. & P. 223, is strong in support of this objection.

Lord DENMAN, C.J.—It is quite clear that there was evidence of delivery and acceptance sufficient to satisfy the statute.

PATTESON, J.—The only question is upon the Statute of Frauds, but it appears to me quite clearly that here there was but one contract; and if so, it is admitted that there has been an acceptance of part, which is all the statute requires.

WIGHTMAN, J.—If the verdict had been for the defendant, I should certainly have reserved leave to move. The defendant received the goods, and kept them for a month, before any were sent back; for the jury discredited the testimony of the witness as to the conversation five or six days after.

Rule discharged.

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

Saturday, Sept. 12.

(Before Mr. Commissioner FANE.)

Re FELTHOUSE.

Certificate refused for three years for obtaining goods to raise money upon, and upon pretence of paying immediately.

His HONOUR gave judgment in this case, which was before the Court a few days back, on an application for the certificate. The bankrupt had been opposed on the part of the assignees, on the ground that he had obtained goods from them for the purpose of pledging; and by a Mr. King, a licensed victualler, for obtaining some wine on a promise of ready money, and then treating him in a very improper manner. His debt was 115l.

His HONOUR said the question was, whether the certificate should be at once refused or postponed for a very long period. In March last the bankrupt had obtained goods from three tradesmen, and without unpacking them had sent them to an auctioneer to raise money on them. It had been contended that he had raised money on the goods to make a "purse" to go to America, but he (Mr. Commissioner Fane) was inclined to think that the expression to Mr. King about going to New York, was more an insulting jest than an intention to proceed to America. The case, however, of getting goods for the sole purpose of raising money on them was quite clear, and on that ground the certificate would be delayed for a period of two years. The bankrupt had obtained from Mr. King a quantity of wine, on the promise of paying cash on delivery, which he never intended, and for the complaint so proved his certificate would be delayed for one year. His Honour added, "he may have his certificate on the 18th March, 1849."

The bankrupt is understood to be in prison, and by a case decided in the Insolvent Debtors' Court it has been held that where a certificate is delayed for a fixed period, the Court would not hear the case, but where a certificate was refused, a judgment commensurate to the complaint would be given, but in that court parties who proved in bankruptcy cannot oppose.

Thursday, September 17.

(Before Mr. Commissioner EVANS.)

WILLOUGHBY v. POOLLY.

If a *fi. fa.* has been issued upon a judgment, and part levied thereunder, that fact should appear upon the judgment-roll, to enable the plaintiff to avail himself of the provisions of 8 & 9 Vict. c. 127. The defendant was summoned under 8 & 9 Vict. c. 127.

Mr. Hancock, for defendant, took an objection to the judgment on the following ground:—It appeared that plaintiff had issued a *fi. fa.* and levied part of the debt; the summons and judgment-paper did not contain that fact, and *Mr. Hancock* contended that plaintiff ought to have had the *fi. fa.* returned and entered on the roll, as sufficient might have been levied to have satisfied the judgment.

Mr. McKenzie, for plaintiff, put in a statement from the sheriff's officer, shewing what had been levied.

Mr. Hancock objected to its admission.

Mr. Commissioner EVANS.—I must allow the objection; the *fi. fa.* and return ought to be on the roll.

PALACE COURT.

COLLINS v. VIDLER.

Patent Medicines.

The plaintiff, who is a surgeon at Camden-town, and pleaded his own case, sought to recover the sum

of 4l. 13s. for medicines supplied to the defendant. Plaintiff said that in 1843 he carried on business as a chemist and druggist, but has since become a member of the College of Surgeons. He had invented a "specific," and to enable him to sell it, had taken out the usual license for the sale of patent medicines, and the defendant was supplied in due course with the different articles he asked for.

The plaintiff's brother was called, and proved the delivery of the medicine, but positively denied that he ever gave defendant any advice. He always sold what was asked for without inquiring what it was for. They took it on their own responsibility. Other witnesses were called to prove an admission on the part of the defendant and a promise to pay.

Hickins, for the defendant, contended that the license did not justify a druggist in selling his own specifics under colour of a patent, as there was advice given on the bottle, and it was therefore clearly an evasion of the Act, which was passed for the protection of the lives and health of the public. It was a very different case from where a person sold the goods of another for profit, and had no reason to give advice. On that ground, therefore, he had to submit that the plaintiff must be nonsuited.

The JUDGE said he felt of the same opinion, that it was an evasion, but would not nonsuit.

Hickins then insisted that, to prove the real value of the medicine, its ingredients ought to be disclosed.

The plaintiff refused, and said it was a patent article, and had the stamp and label required by law, and which he was entitled to sell. He did not claim it as a medical bill, but as for goods sold.

Hickins next urged that if it could be shewn that advice was given during any period, then the plaintiff would have been acting as an apothecary, and not being one would be liable to a penalty, instead of being able to maintain an action.

A witness was called who distinctly proved that advice was given.

The learned JUDGE summed up, and told the jury the question as to whether or not there had been an evasion of the Act, was one of law; but if, on the matter of fact, they believed that the plaintiff had not only sold the medicine, but given advice, they would find a verdict for the defendant.

The jury consulted for about ten minutes, and then gave a verdict for defendant.

Ecclesiastical Courts.

PREROGATIVE COURT.

In the goods of J. POWELL, deceased.

Adoption of foreign domicile.

The deceased in 1830, being then a clerk in an English house, left this country on account of his health, and went to reside at Lyons, where he established himself in the riband trade. He married a native of France, and subsequently removed with his family to St. Etienne, where he carried on business as a riband-merchant. From the time he left England till his death at St. Etienne, the 21st April, 1846, he revisited this country only for a fortnight or three weeks, at a time, to see his friends, but never took a permanent residence here. The bulk of his property was invested in business in France, and in mines and other undertakings in that country. The only property he had in this country consisted of two houses (worth about 250*l.*), which he held under his father's will. On the 11th April, 1844, he duly executed a will according to the law of France, probate of which was now sought in this Court.

Dr. Robinson, in support of the motion, submitted that it was clear the deceased had adopted France as the place of his domicile; and

The SURROGATE (Dr. Daubeny), being of the same opinion, decreed probate of the will to the executors.

THE LEGISLATOR.

Summary.

AMONG the measures which will occupy the attention of Parliament early in the next session, is the Bill (which was brought in by Messrs. WARBURTON and LEADER, and read a first time just before the recess) for restoring Arrest on Mesne Process under certain restrictions. The Bill is just printed, but reached us too late to be available for the purpose of examination this week. We give the preamble and some further particulars of the Bill, under the heading "Bills in Progress" and as the contemplated measure proposes to make an important movement in a retrograde direction, and it is desirable its clauses should have full consideration by the Profession, we shall give either the whole, or such parts of it as we deem

most require attention, in our next number. Some interesting Parliamentary returns, &c. are subjoined.

Bills in Progress.

ARREST ON MESNE PROCESS.—The preamble of this Bill states that "it has been found, by experience, that the abolition of arrest on mesne process has greatly increased the expense and difficulty of compelling the payment of debts, and has enabled debtors to continue to resist their creditors until the greater part of their assets has been wasted or concealed, or distributed amongst favoured creditors, and it is expedient to restore the power of arrest on mesne process in civil actions, with proper precautions to prevent such power from being abused." By this measure it is proposed that no arrest should take place except by order of the Court of Bankruptcy; that no commissioner is to issue an order unless the creditor first swear fully to the particulars of his demand, nor unless there is a *prima facie* case of debt due, and of two applications having been made for the same. On the debtor being taken on a writ of *capias*, he is to be brought immediately before the commissioner, with liberty to shew cause against the arrest, and the commissioner may either discharge the party or order him to find bail. The party arrested may be discharged on the payment of money into court, or on filing a declaration of insolvency, or a petition as an insolvent debtor. The suggestions will probably be considered by the Lord Chancellor, who has promised to give his attention to the law of bankruptcy and insolvency.

PARLIAMENTARY PAPERS.

VAGRANTS.—Return of the numbers received into the union workhouses of England and Wales during each of the years 1841, 1842, 1843, 1844, and 1845. In 1845 the males were 247,377; in 1841 they were 93,985. In 1845 there were 39,539 females, and in 1841, 24,095. The number of males between the ages of eighteen and forty, was 116,725 in 1845, and in 1841 they were 43,577.

EXPORTS AND IMPORTS.—A Parliamentary paper of 14 pages, obtained by Mr. Hastie, the member for Paisley, has been printed, containing accounts of the exports to, and imports from the British West India colonies, the East Indies, Ceylon, China, &c. for the year ending the 5th January last, as also of the number of ships that have entered and cleared in the places during the same period. The declared value of the exports to the British West India colonies in the year was 2,789,196*l.* and of the imports the quantities are given and not the value. The exports to the East India Company's territories and Ceylon amounted to 6,703,778*l.* The quantities of articles imported are given. The exports to China were in value 2,394,827*l.* The quantities imported are set forth. To the Mauritius the exports were valued 346,059*l.* The imported articles are mentioned. The exports to the British North American colonies were 3,555,954*l.* The imported articles are stated. To New South Wales and other Australian colonies they were 1,201,076*l.* To the United States of America the exports were 7,147,663*l.* To Cuba 695,379*l.* To Brazil 2,493,306*l.* and to Mexico, and the other states of central and South America, exclusive of Brazil, the exports were in value 3,485,880*l.* The average prices of sugar per cw. exclusive of duty, in the year ended the 6th of January last were,—mean average prices computed from the weekly averages published in the *London Gazette*.—British plantation, 32s. 11*d.*; Mauritius, 31s. 10*d.*; and British East India, 35s. 5*d.* The exports to the places mentioned, consisted of British and Irish produce and manufactures; they shew the immense commerce of the country. In the list of shipping it appears that 839 British ships, of 220,538 tons, entered and cleared for the British West India colonies; 443, of 201,291 tons, for the East India Company's territories and Ceylon; 121 for China, of 51,812 tons; 97 for the Mauritius, of 27,199 tons; 3,018 for the British and North American colonies, of 1,990,224 tons; 99 for New South Wales and the Australian colonies, of 36,158 tons; 368 for the United States of America, of 223,676 tons; 144 for Cuba, of 46,578 tons; 248 for the Brazils, of 58,119 tons; and for Mexico, 327 of 86,674 tons. For four of the places last mentioned the foreign ships entered inwards, in addition to the British vessels, numbered,—United States of America, 741, of 444,442 tons; Cuba, 59, of 12,757 tons; the Brazils, 14, of 3,888 tons; and Mexico, 14, of 3,418 tons. The vessels cleared outwards were, respectively, 954 British, of 263,273 tonnage; 492 British, of 243,358 tonnage; and foreign, 2, of 1,157 tons; 86 British, of 34,391 tonnage, and foreign, 4, of 1,396 tons; 71 British, of 21,418 tons; 2,510 British, of 917,423 tons, and foreign, 1, of 414 tons; 146 British, of 58,537 tons; 404 British, of 255,135 tons, and foreign 730, of 435,046 tons; 104 British, of 38,952 tons, and foreign 69, of 17,849 tons; 231 British, of 56,135 tons, and foreign, 94,

of 24,626 tons. And Mexico, 357 British, of 104,713 tons; and foreign, 15, of 2,933 tons.

NEW STATUTES

Of the Session 9 & 10 Victoria.

[In this record of actual Legislation, only the statutes and parts of statutes of peculiar importance to the Profession are given *verbatim*. Of the rest, the title, or a brief analysis only, is preserved here.]

SMALL DEBTS ACT.

(Concluded from p. 513.)

112. *Suitors' money unclaimed in six years to go in general fund.*—That the clerk or clerks of every such court shall in the month of March in each year make out a correct list of all sums of money belonging to suitors in the court which shall have been paid into court, and which shall have remained unclaimed for five years before the first day of the month of January then last past, specifying the names of the parties for whom or on whose account the same were so paid into court; and a copy of such list shall be put up and remain during court hours in some conspicuous part of the court house, and at all times in the clerk's office, and all sums of money which shall have been paid into any such court, to the use of any suitor or suitors thereof and which shall have remained unclaimed for the period of six years before the passing of this Act, and which are now in the hands of any commissioner, trustee, judge, or officer of such court, or otherwise held in trust for such suitors, and all further sums of money which shall hereafter be paid into any such court, to the use of any suitor or suitors thereof, shall, if unclaimed for the period of six years after the same shall have been so paid into court, be applicable as part of the general fund of the court, and shall be carried to the account of such fund, and no person shall be entitled to claim any sum which shall have remained unclaimed for six years; but no time during which the person entitled to claim such sum shall have been an infant or feme covert, or of unsound mind, or beyond the seas, shall be taken into account in estimating the said period of six years.

113. *Power of committal for contempt.*—That if any person shall wilfully insult the judge or any juror, or any bailiff, clerk, or officer of the said court, at the time being, during his sitting or attendance in court, or in going to or returning from the court, or shall wilfully interrupt the proceedings of the court, or otherwise misbehave in court, it shall be lawful for any bailiff or officer of the court, with or without the assistance of any other person, by the order of the judge, to take such offender into custody, and detain him until the rising of the court; and the judge shall be empowered, if he shall think fit, by a warrant under his hand, and sealed with the seal of the court, to commit any such offender to any prison to which he has power to commit offenders under this Act for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding five pounds for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine be sooner paid.

114. *Penalty for assaulting bailiffs, or removing goods taken in execution.*—That if any officer or bailiff of any court holden under this Act shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the court, the person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the court, or before a justice of the peace as hereinafter provided; and it shall be lawful for the bailiff of the court or any peace officer in any such case to take the offender into custody (with or without a warrant), and bring him before such court or justice accordingly.

115. *Bailiffs made answerable for escapes, and neglect to levy execution.*—That in case any bailiff of the said court who shall be employed to levy any execution against goods and chattels shall, by neglect, or connivance or omission, lose the opportunity of levying any such execution, then upon complaint of the party aggrieved by reason of such neglect, connivance, or omission (and the fact alleged being proved to the satisfaction of the court on the oath of any credible witness), the judge shall order such bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the bailiff shall be liable thereto; and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court.

116. *Remedies against, and penalties on, bailiffs and other officers for misconduct.*—That if any clerk, bailiff, or officer of the court, acting under colour or pretence of the process of the said court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act, it shall be lawful for the judge to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced,

and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs, as he shall think just; and also, if he shall think fit, to impose such fine upon the clerk, bailiff, or officer, not exceeding ten pounds for each offence, as he shall deem adequate; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court.

117. *Penalty on officers taking fees besides those allowed.*—That every treasurer, clerk, bailiff, or other officer employed in putting this Act or any of the powers thereof in execution, who shall wilfully and corruptly exact, take, or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively as aforesaid, for or on account of any thing done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall, upon proof thereof before the said court, and in the case of a clerk, treasurer, or high bailiff on allowance of the finding of the court by the Lord Chancellor, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as herein provided.

118. *Claims as to goods taken in execution to be adjudicated in court.*—That if any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any court holden under this Act, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, it shall be lawful for the clerk of the court, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a summons calling before the said court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any of her Majesty's superior courts of record, or in any local or inferior court, in respect of such claim, shall be stayed, and the court in which such action shall have been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the county court; and the judge of the county court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such court.

119. *Actions of replevin may be brought without writ.*—That all actions of replevin in cases of distress for rent in arrear or damage faisan which shall be brought in the county court, shall be brought without writ in a court held under this Act.

120. *Plaints where to be entered.*—That in every such action of replevin the plaint shall be entered in the court holden under this Act for the district wherein the distress was taken.

121. *How actions of replevin may be removed.*—That in case either party to any such action of replevin shall declare to the court in which such action shall be brought that the title to any corporeal or incorporeal hereditament, or to any toll, market, fair, or franchise, is in question, or that the rent or damage in respect of which the distress shall have been taken is more than the sum of twenty pounds, and shall become bound, with two sufficient sureties, to be approved by the clerk of the court, in such sums as to the judge shall seem reasonable, regard being had to the nature of the claim, and the alleged value or amount of the property in dispute, or of the rent or damage, to prosecute the suit with effect and without delay, and to prove before the court by which such suit shall be tried that such title as aforesaid is in dispute between the parties, or that there was ground for believing that the said rent or damage was more than twenty pounds, then, and not otherwise, the action may be removed before any court competent to try the same, in such manner as hath been accustomed.

122. *Possession of small tenements may be recovered by plaint in county court.* If tenant, &c. neglect to appear, or refuse to give possession, judge may, on proof of service of summons, issue a warrant to enforce the same.—That when and so soon as the term and interest of the tenant of any house, land, or other corporeal hereditament, where the value of the premises or the rent payable in respect of such tenancy did not exceed the sum of fifty pounds by the year, and upon which no fine shall have been paid, shall have ended, or shall have been duly determined by a legal notice to quit, and such tenant, or, if such tenant do not actually occupy the premises, or occupy only a part thereof, any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, it shall be lawful for the landlord or his agent to enter a

plaint in the county court to be holden under this Act, and thereupon a summons shall issue to the person so neglecting or refusing; and if the tenant or occupier shall not thereupon appear at the time and place appointed, and shew cause to the contrary, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent, it shall be lawful for such landlord or agent to give to the court proof of the holding, and of the end or other determination of the tenancy, with the time or manner thereof, and, where the title of the landlord has accrued, since the letting of the premises, the right by which he claims the possession; and upon proof of service of the summons, and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the judge to issue a warrant under the seal of the court to any bailiff of the court, requiring and authorizing him, within a period to be therein named, not less than seven or more than ten clear days from the date of such warrant, to give possession of the premises to such landlord or agent; and such warrant shall be a sufficient warrant to the said bailiff to enter upon the premises, with such assistants as he shall deem necessary, and to give possession accordingly; provided always, that entry upon any such warrant shall not be made on a Sunday, Good Friday, or Christmas day, or at any time except between the hours of nine in the morning and four in the afternoon: provided also, that nothing herein contained shall be deemed to protect any person by whom any such warrant shall be sued out of the county court from any action which may be brought against him by any such tenant or occupier for or in respect of such entry and taking possession where such person had not, at the time of suing out the same as aforesaid, lawful right to the possession of the same premises.

123. *The manner in which such summons shall be served.*—That such summons as last aforesaid may be served either personally or by leaving the same with some person being in and apparently residing at the place of abode of the person or persons so holding over as aforesaid: provided that if the person or persons so holding over, or any or either of them, cannot be found, and the place of abode of such person or persons shall either not be known, or admission thereto cannot be obtained for serving such summons, the posting of the said summons on some conspicuous part of the premises so held over shall be deemed to be good service upon such person or persons respectively.

124. *Judges, clerks, bailiffs, or other officers not liable to actions on account of proceedings taken.*—That it shall not be lawful to bring any action or prosecution against the judge or against the clerk of the court by whom such warrant as aforesaid shall have been issued, or against any bailiff or other person by whom such warrant may be executed or summons affixed, for issuing such warrant, or executing the same respectively, or affixing such summons, by reason that the person by whom the same shall be sued out had not lawful right to the possession of the premises.

125. *Where landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity.*—That where the landlord at the time of applying for such warrant as aforesaid had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither the said landlord nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act, but the party aggrieved may, if he think fit, bring an action on the case for such irregularity or informality, in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for such special damage, with costs of suit; provided that if the special damage so laid be not proved, the defendant shall be entitled to a verdict, and that if proved, but assessed by the jury at any sum not exceeding five shillings, the plaintiff shall recover no more costs than damages, unless the judge before whom the trial shall have been holden shall certify that in his opinion full costs ought to be allowed.

126. *How execution of warrant of possession may be stayed.*—That in every case in which the person by whom any such warrant shall be sued out of the county court had not at the time of suing out the same lawful right to the possession of the premises, the suing out of any such warrant as last aforesaid shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the warrant; and in case any such tenant or occupier will become bound, with two sufficient sureties, to be approved by the clerk of the court, in such sum as to the judge shall seem reasonable, regard being had to the value of the premises, and to the probable cost of such action, to sue the person by whom such warrant was sued out with effect and without delay, and to pay all the costs of the proceeding in such action in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action or become nonsuit therein, execution upon the warrant shall be stayed until judgment shall have been given in such action of trespass;

and if upon the trial of such action of trespass a verdict shall pass for the plaintiff, such verdict and judgment thereupon shall supersede the said warrant.

127. *Proceedings on the bond for staying warrant of possession, &c.*—That every bond given on the removal of any action out of the county court, or upon staying the execution of any such warrant of possession as aforesaid, or on moving for a new trial, or to set aside a verdict, judgment, or nonsuit, shall be made to the other party to the action at the costs of such other party, and shall be approved by the judge, and attested under the seal of the court; and if the bond so taken be forfeited, or if, upon the proceeding for securing which such bond was given, the judge before whom such proceeding shall be had shall not certify upon the record in court that the condition of the bond hath been fulfilled, the party to whom the bond shall have been so made may bring an action of debt, and recover thereon; provided always, that the court in which such action as last aforesaid shall be brought may by a rule of court give such relief to the parties liable upon such bond as may be agreeable to justice and reason, and such rule shall have the nature and effect of a defence to such bond.

128. *Concurrent jurisdiction with superior courts.*—That all actions and proceedings which before the passing of this Act might have been brought in any of her Majesty's superior courts of record where the plaintiff dwells more than twenty miles from the defendant, or where the cause of action did not arise wholly or in some material point within the jurisdiction of the court within which the defendant dwells or carries on his business at the time of the action brought, or where any officer of the county court shall be a party, except in respect of any claim to any goods and chattels taken in execution of the process of the court, or the proceeds or value thereof, may be brought and determined in any such superior court, at the election of the party suing or proceeding, as if this Act had not been passed.

129. *As to actions brought for small debts in superior courts.*—That if any action shall be commenced after the passing of this Act in any of her Majesty's superior courts of record, for any cause other than those lastly hereinbefore specified, for which a plaint might have been entered in any court holden under this Act, and a verdict shall be found for the plaintiff for a sum less than twenty pounds, if the said action is founded on contract, or less than five pounds if it be founded on tort, the said plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff the defendant shall be entitled to his costs as between attorney and client, unless in either case the judge who shall try the cause shall certify on the back of the record that the action was fit to be brought in such superior court.

130. *Penalties and costs to be recovered before as justice, and levied by distress.*—That all penalties, fines, and forfeitures by this Act inflicted or authorized to be imposed (the manner of recovering and applying whereof is not hereby otherwise particularly directed) shall, upon proof before any justice of the peace having jurisdiction within the county or place where the offender shall reside or be, or the offence shall be committed, either by the confession of the party offending, or by the oath of any credible witness, be levied, with the costs attending the summons and conviction, by distress and sale of the goods and chattels of the party offending, by warrant under the hand of any such justice; and the overplus (if any), after such penalties, fines, and forfeitures, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner of such goods and chattels.

131. *In default of security, offender may be detained till return of warrant of distress.*—That if any such penalties, fines, and forfeitures respectively shall not be paid forthwith upon conviction, it shall be lawful for such justice to order the offender so convicted to be detained in safe custody until return can be conveniently made to such warrant of distress, unless such offender shall give sufficient security to the satisfaction of such justice for his appearance before him on such day as shall be appointed for the return of such warrant of distress, such day not being more than eight days from the time of taking any such security, which security such justice shall be empowered to take by way of recognizance or otherwise as to him shall seem fit.

132. *In default, or distress, offender may be committed.*—That if upon return of such warrant it shall appear that no sufficient distress can be had thereupon, or in case it shall appear to the satisfaction of such justice, either by confession of the offender or otherwise, that he hath not within the jurisdiction of such justice sufficient goods and chattels whereon to levy all such penalties, forfeitures, costs, and charges, such justice may, at his discretion, without issuing any warrant of distress, commit the offender to the common gaol or house of correction for any time not exceeding three calendar months, unless such penalties, forfeitures, and fines, and all reasonable charges attending the recovery thereof, shall be sooner paid and satisfied.

133. *Penalties not otherwise applied, to be paid into*

the general fund.—That the moneys arising from any such penalties, forfeitures, and fines as aforesaid, when paid and levied, shall (if not by this Act directed to be otherwise applied) be from time to time paid to the clerk of the court, and shall be applied in aid of the general fund thereof.

134. *Justices may proceed by summons in the recovery of penalties.*—That in all cases in which by this Act any penalty or forfeiture is made recoverable before a justice of the peace, it shall be lawful for such justice to summon before him the party complained against, and on such summons to hear and determine the matter of such complaint, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall have been exhibited before him; and all such proceedings by summons without information in writing shall be as valid and effectual to all intents and purposes as if an information in writing had been exhibited.

135. *Form of conviction.*—That in all cases where any conviction shall be had for any offence committed against this Act the form of conviction may be in the words or to the effect following (that is to say):

"Be it remembered, That on this day of _____ in the year of our Lord _____ A. B. is convicted before _____ of her Majesty's justices of the peace for the _____ [or before a judge appointed under an Act passed in the _____ year of the reign of her Majesty Queen Victoria, intituled, here insert the title of this Act], of having [state the offence]; and I [or we] the said _____ do adjudge the said _____ to forfeit and pay for the same the sum of _____ or to be committed to _____ for the space of _____ . Given under _____ hand and seal the day and year aforesaid."

136. *Proceedings not invalid for want of form.*—That no order, verdict, or judgment, or other proceeding, made concerning any of the matters aforesaid, shall be quashed or vacated for want of form.

137. *Distress not unlawful for want of form.*—That where any distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity which shall afterwards be committed by the party so distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action upon the case.

138. *Limitation of actions for proceedings in execution of this Act.*—And for the protection of persons acting in the execution of this Act, that all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county where the fact was committed, and shall be commenced within three calendar months after the fact committed, and not afterwards, or otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money shall have been paid into court, with costs, by or on behalf of the defendant.

139. *Provision for the protection of officers of the court.*—That if any person shall bring any suit in any of her Majesty's superior courts of record in respect of any grievance committed by any clerk, bailiff, or officer of any court holden under this Act, under colour or pretence of the process of the said court, and the jury upon the trial of the action shall not find greater damages for the plaintiff than the sum of twenty pounds, no costs shall be awarded to the plaintiff in such action unless the judge shall certify in court upon the back of the record that the action was fit to be brought in such superior court.

140. *Act not to affect rights of Universities of Oxford or Cambridge.*—That nothing in this Act contained shall be construed to alter or affect the rights or privileges of the Chancellor, Masters, and Scholars of the Universities of Oxford or Cambridge respectively as by law possessed, or the jurisdiction of the courts of the Chancellors or Vice-Chancellors of the said Universities, as holden under the respective charters of the said Universities, or otherwise.

141. *Nothing to affect the courts of the scardens of the Stannaries.*—That nothing in this Act contained shall be construed to affect the courts of the lord warden or of the vice warden of the Stannaries of Cornwall; but this provision shall not be deemed to prevent the establishment of any court under this Act within the said Stannaries, or to limit or affect the jurisdiction of any court so established under this Act.

142. *Interpretation of Act.*—That in construing this Act all things directed or authorised to be done

by or with respect to the Lord Chancellor shall and may be done by or with respect to the Lord Keeper or the First Commissioner for the custody of the Great Seal of the United Kingdom of Great Britain and Ireland; and all things directed or authorised to be done by or with respect to the Commissioners of her Majesty's Treasury shall and may be done by and with respect to three or more of the said commissioners or the Lord High Treasurer; and the word "person" shall be understood to mean a body politic, corporate, or collegiate, as well as individual; and every word importing the singular number shall, where necessary to give full effect to the enactments herein contained, be understood to mean several persons or things as well as one person or thing; and every word importing the masculine gender shall, where necessary, be understood to mean a female as well as a male; and the words "county court" shall be understood to mean any court holden under this Act; and the term "landlord" shall be understood to mean the person entitled to the immediate reversion of the lands, or, if the property be held in joint tenancy, coparcenary, or tenancy in common, shall be understood to mean any one of the persons entitled to such reversion; and the word "clerk" shall be understood to mean "chief clerk," or "registrars," and the words "attorney-at-law" shall be understood to include a solicitor in any court of equity; and the word "agent" shall be understood to mean any person usually employed by the landlord in the letting of lands, or in the collection of the rents thereof, or specially authorised to act in any particular matter by writing under the hand of such landlord; and the word "bailiff" shall be understood to include high bailiff; unless in any of these cases there be something in the context inconsistent with such meaning.

143. *Act may be amended, &c.*—That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

SCHEDULES TO WHICH THIS ACT REFERS.

SCHEDULE (A).

Acts for the more easy and speedy Recovery of Small Debts within the Towns, Parishes, and Places under written, and other Parishes and Places adjacent; that is to say,

Ashton-under-Lyne, 48 Geo. 3, c. 98.
Bath, 45 Geo. 3, c. 67.
Beverley, 46 Geo. 3, c. 135.
Birmingham, 47 Geo. 3, c. 14.
Blackheath, 47 Geo. 3, c. 4.
Bolingbroke and Horncastle, 47 Geo. 3, sess. 2, c. 78.
Boston, 47 Geo. 3, sess. 2, c. 1.
Bradford, 47 Geo. 3, sess. 2, c. 39.
Bristol, 56 Geo. 3, c. 76; 7 Wm. 4, & 1 Vict. c. 84.
Brixton, 46 Geo. 3, c. 88.
Broseley, 22 Geo. 3, c. 37.
Canterbury, 25 Geo. 2, c. 45.
Chippenham, 5 Geo. 3, c. 9.
Cirencester, 32 Geo. 3, c. 77.
Codsheath, 48 Geo. 3, c. 50.
Deal, 26 Geo. 3, c. 18.
Derby, 6 Geo. 3, c. 20.
Doncaster, 4 Geo. 3, c. 40.
Dover, 24 Geo. 3, c. 8.
Ecclesall, 48 Geo. 3, c. 103.
Elloe, 47 Geo. 3, c. 37.
Ely, Isle of, 18 Geo. 3, c. 36.
Exeter, 13 Geo. 3, c. 27.
Faversham, 25 Geo. 3, c. 7.
Folkestone, 26 Geo. 3, c. 98.
Gloucester, 1 Wm. & Mary, c. 18.
Gravesend, 47 Geo. 3, sess. 2, c. 40.
Grimsby, Great, 46 Geo. 3, c. 37.
Hagnaby, 18 Geo. 3, c. 34.
Halesowen, 47 Geo. 3, c. 36.
Ipswich, 47 Geo. 3, sess. 2, c. 79.
Kidderminster, 12 Geo. 3, c. 66.

King's Lynn, 10 Geo. 3, c. 20.
Kingston-upon-Hull, 48 Geo. 3, c. 109.
Kirkby-in-Kendal, 4 Geo. 3, c. 41.
Lincoln, 24 Geo. 2, c. 16.
Liverpool, 6 & 7 Wm. 4, c. 135.
Manchester, 48 Geo. 3, c. 43.
Margate, 47 Geo. 3, sess. 2, c. 7.
Middlesex, 23 Geo. 2, c. 33.
Newcastle-upon-Tyne, 1 Wm. & Mary, c. 17.
Norwich, 12 & 13 Wm. 4, c. 7.
Old Swinford, 17 Geo. 3, c. 19.
Pontefract Honour, 2 & 3 Vict. c. 85.
Poulton, 10 Geo. 3, c. 21.
Rochester, 48 Geo. 3, c. 51.
Saint Albans, 25 Geo. 2, c. 38.
Saint Briavels, 5 & 6 Vict. c. 83.
Sandwich, 47 Geo. 3, c. 35.
Sheffield, 48 Geo. 3, c. 103.
Shrewsbury, 23 Geo. 3, c. 73.
Southwark and East Brixton, 4 Geo. 4, c. 123.
Stockport, 46 Geo. 3, c. 114.
Tower Hamlets, 2 Wm. 4, c. 65.
Westbury, 48 Geo. 3, c. 88.
Westminster, 24 Geo. 2, c. 42.
Wight, Isle of, 46 Geo. 3, c. 66.
Wolverhampton, 48 Geo. 3, c. 110.
Wragg, 19 Geo. 3, c. 43.
Yarmouth, Great, 31 Geo. 2, c. 24.

SCHEDULE (B).

Acts for the more easy and speedy Recovery of Small Debts within the towns, parishes, and places under written, and other parishes and places adjacent thereto; that is to say,

Aberford, 2 & 3 Vict. c. 86; 3 Vict. c. 33.
Ashby-de-la-Zouch, 1 Vict. c. 15.
Barnsley, 1 & 2 Vict. c. 90.
Belper, 2 & 3 Vict. c. 98.
Blackburn, 4 & 5 Vict. c. 67.
Blackheath, 6 & 7 Wm. 4, c. 120; 1 & 2 Vict. c. 82.
Bolton, 3 Vict. c. 18.
Brighton, 3 Vict. c. 10.
Burnley, 4 & 5 Vict. c. 83.
Bury, 2 & 3 Vict. c. 101.
Chesterfield, 2 & 3 Vict. c. 104.
Crediton, 8 & 9 Vict. c. 79.
East Retford, 4 & 5 Vict. c. 87.
Eckington, 2 & 3 Vict. c. 103.
Exeter, 4 & 5 Vict. c. 73.
Gainsburgh, 4 & 5 Vict. c. 86.
Glossop, 2 & 3 Vict. c. 88.
Grantham, 2 & 3 Vict. c. 89.
Halifax, 2 & 3 Vict. c. 106.
Hatfield, 4 & 5 Vict. c. 74.
Hinckley, 7 Wm. 4, c. 8.
Hyde, 3 & 4 Wm. 4, c. 119.
Kingsnorton, 4 & 5 Vict. c. 75.
Launceston, 4 & 5 Vict. c. 76.
Leicester, 6 & 7 Wm. 4, c. 123; 7 Wm. 4, c. 7.
Loughborough, 7 Wm. 4, c. 9.
Newark, 4 & 5 Vict. c. 79.
New Sarum, 4 & 5 Vict. c. 84.
New Sleaford, 4 & 5 Vict. c. 85.
Newton Abbott, 3 Vict. c. 25.
Nottingham, 2 & 3 Vict. c. 105.
Oakham, 1 Vict. c. 36.
Prestbury Division of the Hundred of Macclesfield, 6 Wm. 4, c. 13.
Prestwich-cum-Oldham, 2 & 3 Vict. c. 100.
Rochborough, 7 Wm. 4, c. 62.
Rochdale, 2 & 3 Vict. c. 90.
Rotherham, 2 & 3 Vict. c. 87.
Saint Helen's, 4 & 5 Vict. c. 82.
Staffordshire Potteries, 4 & 5 Vict. c. 81.
Tavistock, 3 Vict. c. 68.
Totness, 4 & 5 Vict. c. 80.
Warrington, 2 & 3 Vict. c. 91.
Westminster, 6 & 7 Wm. 4, c. 137.
Wigan, 4 & 5 Vict. c. 78.
Wirksworth, 2 & 3 Vict. c. 102.

SCHEDULE C.

Town.	Officer of the Court.	Person to whom the next Appointment is to belong.
Ashton-under-Lyne.....	Clerk of the Court to be holden at Ashton.	Lord of the Manor of Ashton-under-Lyne.
Birmingham.....	High Bailiff of the Court to be holden at Birmingham.	Lord of the Manor of Birmingham.
Cirencester.....	Clerk of the Court to be holden at Cirencester.	Lord of the Manor and Seven Hundreds of Cirencester.
Kidderminster.....	Clerk of the Court to be holden at Kidderminster.	Lord of the Manor of the Borough of Kidderminster.
Stourbridge.....	Clerk of the Court to be holden at Stourbridge.	Lord of the Manor of Old Swinford or Amblescoat, to whom, on the day before the passing of this Act, the next turn belongs to appoint the Clerk or Beadle of the Court of Requests for the Parish of Old Swinford.
St. Albans.....	High Bailiff of the Court to be holden at Watford.	Lord of the Hundred of Cashio.
Sheffield.....	Judge of the Court to be holden at Sheffield.	Lord of the Manor of Sheffield.
	Clerk of the Court to be holden at Sheffield.	Lord of the Manor of Ecclesall.
Stockport.....	Clerk of the Court to be holden at Stockport.	Lord of the Manor and Barony of Stockport.

SCHEDULE D. (a)

	AMOUNT OF DEMAND.					
	Not exceeding 30s.	Exceeding 30s. and not exceeding 40s.	Exceeding 40s. and not exceeding 50s.	Exceeding 50s. and not exceeding £10.	Exceeding £10.	
					Founded on Contract.	Founded on Tort.
JUDGE'S FEES.						
Every Summons	s. d. 0 3	s. d. 0 6	s. d. 1 0	s. d. 2 0	s. d. 3 0	s. d. 3 0
Every Hearing without a Jury	1 0	1 0	2 0	7 6	10 0	15 0
Every Hearing or Trial with a Jury	2 0	3 0	5 0	10 0	15 0	20 0
Every Order or Judgment or Application for an Order	0 3	0 6	1 0	2 0	3 0	3 0
CLERK'S FEES.						
Entering every Pleint and issuing the Summons thereon	0 3	0 6	1 0	2 0	3 0	3 6
Every Subpena, when required	0 3	0 6	0 9	1 0	1 6	1 6
Every Hearing, Trial, or Nonsuit, without a Jury	0 4	0 6	1 0	1 6	2 0	3 6
Adjournment of any Cause	0 3	0 4	0 6	1 0	2 0	2 0
Entering and giving Notice of Special Defence	0 3	0 6	1 0	1 6	2 0	2 0
Swearing every Witness for Plaintiff or Defendant	0 3	0 3	0 3	0 4	0 6	1 0
Entering and drawing up every Judgment and Order, and Copy thereof	0 3	0 6	1 0	1 6	2 6	3 0
Payment of Money in or out of Court, whether or not by Instalments at different times, including notice thereof, and taking receipt	0 3	0 4	0 6	—	—	—
Paying Money into Court, and entering same in books, and notice thereof, or of sum in full satisfaction having been paid into Court, each Instalment or payment	—	—	—	0 6	0 8	1 0
Payment of Money out of Court, and taking receipt, exclusive of stamp	—	—	—	0 9	1 0	1 6
Every search in the books	0 3	0 3	0 4	0 6	1 0	1 0
Issuing every Warrant, Attachment, or Execution	0 6	0 6	1 0	1 6	2 6	3 0
Supersedeas of Execution, or Certificate of Payment, or Withdrawal of Cause	0 3	0 6	0 6	1 0	1 6	2 0
Warrant of Commitment for an insult or Misbehaviour in Court	1 0	1 0	1 0	1 0	1 0	1 0
Entering and giving Notice of Jury being required	0 6	0 9	1 0	1 6	2 0	2 6
Issuing Summons for Jury	0 6	0 9	1 0	1 6	2 0	2 6
Swearing Jury	0 6	0 8	0 10	1 0	1 6	1 6
Every Hearing, Trial, or Nonsuit with a Jury	1 0	1 6	2 0	3 0	5 0	7 6
Taking Recognisance or Security for Costs.	—	—	—	3 0	3 6	3 0
Inquiring into sufficiency of Sureties proposed, and taking Bond on Removal of Plaintiff, or grant of New Trial, or other occasion	2 6	2 6	2 6	2 6	2 6	2 6
Taxing Costs	—	—	—	1 0	2 0	3 0
HIGH BAILIFF'S FEES. (b)						
Calling every Cause	0 3	0 3	0 4	0 6	1 0	1 6
Affidavit of Service of Summons out of the Jurisdiction	0 3	0 3	0 6	1 0	1 6	2 0
Serving every Summons, Order, or Subpena, within one mile of Court House	0 3	0 4	0 6	0 10	1 0	1 6
If above one mile, then extra for every other mile	0 3	0 3	0 3	0 4	0 4	—
Execution of every Warrant, Precept, or Attachment against the Goods or Body within one mile of the Court House	1 6	2 6	3 6	4 0	5 0	7 0
If above one mile, then extra for every other mile	0 3	0 3	0 4	0 6	0 6	0 6
If Two Officers be necessary in the judgment of the Court, then extra within one mile of the Court House	1 0	1 6	2 0	2 0	2 6	3 0
If above one mile, then extra for every other mile	0 3	0 3	0 4	0 6	0 6	0 6
Keeping possession of goods till sale, per day, not exceeding five days	1 0	1 6	2 0	2 0	2 6	3 0
Carrying every delinquent to prison, including all expenses and assistants, per mile	1 0	1 0	1 0	1 0	1 0	1 0
Issuing Warrant to Clerk of another Court	1 0	1 6	2 0	2 6	3 0	3 6

CAP. LXVI.

An Act to amend the Laws relating to the Removal of the Poor. (Aug. 26, 1846.)

1. No person to be removed from any parish in which he or she shall have resided for five years. Time during which persons are serving in the army or navy, &c. not to be computed as time of residence.—Whereas it is expedient that the laws relating to the removal of the poor should be amended: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act no person shall be removed, nor shall any warrant be granted for the removal of any person, from any parish in which such person shall have resided for five years next before the application for the warrant: provided always, that the time during which such person shall be a prisoner in a prison, or shall be serving her Majesty as a soldier, marine, or sailor, or reside as an in-pensioner in Greenwich or Chelsea Hospitals, or shall be confined in a lunatic asylum, or house duly licensed or hospital registered for the reception of lunatics, or as a patient in a hospital, or during which

any such person shall receive relief from any parish, or shall be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bond fide* charitable gift, shall for all purposes be excluded in the computation of time hereinbefore mentioned, and that the removal of a pauper lunatic to a lunatic asylum, under the provisions of any act relating to the maintenance and care of pauper lunatics, shall not be deemed a removal within the meaning of this Act: provided always, that whenever any person shall have a wife or children having no other settlement than his or her own, such wife and children shall be removable, whenever he or she is removable, and shall not be removable when he or she is not removable.

2. No widow liable to be removed for twelve months after death of husband.—That no woman residing in any parish with her husband at the time of his death shall be removed, nor shall any warrant be granted for her removal, from such parish, for twelve calendar months next after his death, if she so long continue a widow.

3. No child under sixteen years of age liable to be removed.—That no child under the age of sixteen

years, whether legitimate or illegitimate, residing in any parish with his or her father or mother, step-father or stepmother, or reputed father, shall be removed, nor shall any warrant be granted for the removal of such child, from such parish, in any case where such father, mother, stepfather, stepmother, or reputed father may not lawfully be removed from such parish.

4. Sick persons not liable to be removed except under certain circumstances.—That no warrant shall be granted for the removal of any person becoming chargeable in respect of relief made necessary by sickness or accident, unless the justices granting the warrant shall state in such warrant that they are satisfied that the sickness or accident will produce permanent disability.

5. Settlement not to be gained by not being removed.—That no person hereby exempted from liability to be removed shall by reason of such exemption acquire any settlement in any parish.

6. Penalty on persons unlawfully procuring removals of poor persons.—That if any officer of any parish or union do, contrary to law, with intent to cause any poor person to become chargeable to any parish to which such person was not then chargeable, convey any poor person out of the parish for which such officer acts, or cause or procure any poor person to be so conveyed, or give directly or indirectly any money, relief, or assistance, or afford or procure to be afforded any facility for such conveyance, or make any offer or promise or use any threat to induce any poor person to depart from such parish, and if, in consequence of such conveyance or departure, any poor person become chargeable to any parish to which he was not then chargeable, such officer, on conviction thereof before any two justices, shall forfeit and pay for every such offence any sum not exceeding five pounds nor less than forty shillings.

7. Delivery of paupers under orders of removal.—That the delivery of any pauper under any warrant of removal directed to the overseers of any parish at the workhouse of such parish, or of any union to which such parish belongs to any officer of such workhouse, shall be deemed the delivery of such pauper to the overseers of such parish.

8. 4 & 5 Wm. 4, c. 76, and this Act to be construed as one.—That an Act passed in the fifth year of the reign of King William the Fourth, for the amendment and better administration of the laws relating to the poor in England and Wales, and all Acts to amend and extend the same, and the present Act, except so far as the provisions of any former Act are altered, amended, or repealed by any subsequent Act, shall be construed as one Act; and all penalties and forfeitures imposed under this Act shall be recoverable as penalties and forfeitures under the said Act for the amendment of the laws relating to the poor.

9. Act limited to England.—That this Act shall extend only to England.

10. Act may be amended, &c.—That this Act may be amended or repealed by any Act to be passed in this session of Parliament.

CAP. LXVII.

An Act to remove Doubts concerning Citations, and Services, and Execution of Diligence, in Scotland. (Aug. 26, 1846.)

CAP. LXVIII.

An Act for better enabling the Burial Service to be performed in One Chapel when contiguous Burial Grounds shall have been provided for two or more Parishes or Places. (Aug. 26, 1846.)

1. Church Building Commissioners may direct that one chapel shall be used by the different parishes or places for which burial grounds contiguous to each other shall have been provided. Ministers of each parish may use the chapel. Same fees payable as are due in parishes for which ground has been purchased.

2. Bishop of the diocese may declare in the sentence of consecration that such chapel is intended for the use of such respective parishes or places.

3. One boundary fence sufficient, unless bishop direct bound stones to be put down for marking boundaries of each parish.

4. This Act not to authorize any church-rate for the repair of the chapel, &c. A sufficient fund for such repair or sustentation shall be set apart, and invested in the names of trustees. Vacancies amongst trustees to be filled up.

5. Interpretation of Act.

CAP. LXIX.

An Act to authorise, until the thirty-first day of July, 1847, and to the end of the then next Session of Parliament, the regulation of the annuities and premiums of the Naval Medical Supplemental Fund Society. (August 26, 1846.)

CAP. LXX.

An Act to amend the Act to facilitate the Inclosure and Improvement of Commons. (August 26, 1846.)

1. 8 & 9 Vict. c. 118.—Provisional orders of commissioners may be varied or amended. Copies of

(a) Where the plaintiff recovers less than his claim so as to reduce the scale of costs, the plaintiff to pay the difference.

(b) The several fees payable on proceedings in replevin to be regulated on the same scale by the amount distrained for, and on proceedings for the recovery of tenements by the yearly rent or value of the tenements sought to be recovered.

supplementary orders to be deposited for inspection.

2. Supplemental order not to take effect unless consent of certain parties be obtained.

3. If orders do not take effect, commissioners may suspend proceedings.

4. As to allotments for exercise and recreation, &c.

5. And allotments to Lord of Manor for right of soil, &c.

6. Award may be made by assistant commissioner, subject to approval of commissioners, in certain cases of intermixed copyhold, customary, or freehold lands.

7. Application of provisions of recited Act as to notices and dissents.

8. Boundaries of leaseholds may be declared in award setting out boundaries of copyhold or customary lands. Proviso.

9. Copyhold and customary lands may be exchanged. Consent of Lord of the Manor required.

10. Steward or deputy may consent in writing on behalf of the Lord.

11. Shares of land and cattle gates and stints may be exchanged.

12. Accuracy of maps to be certified.

13. An assistant commissioner may be appointed assessor.

14. Act deemed part of recited Act.

15. Act may be amended, &c.

CAP. LXXI.

An Act to amend an Act of the present session, intituled "An Act to authorize grand juries in Ireland, at the Spring Assizes of the present year, to appoint extraordinary presentment sessions; to empower such sessions to make presentment for county works; and to provide funds for the execution of such works; and also to provide for the more prompt payment of contractors for works under grand jury presentment in Ireland." (August 26, 1846.)

CAP. LXXII.

An Act to amend the Act for Marriages in Ireland, and for registering such marriages. (August 26, 1846.)

CAP. LXXIII.

An Act further to amend the Acts for the Commutation of Tithes in England and Wales. (August 26, 1846.)

1. 6 & 7 Wm. 4, c. 71. 1 & 2 Vict. c. 64.—Power to landowners to redeem a rent-charge not apportioned where the amount does not exceed fifteen pounds.

2. Upon payment of the consideration money, commissioners to certify that the parish is discharged of tithes, &c.

3. Power to redeem rent-charge erroneously apportioned on lands not chargeable therewith.

4. After redemption of the rent-charge erroneously apportioned, the apportionment of the remainder to be valid.

5. Separate rent-charges, not exceeding twenty shillings in amount, may be redeemed after apportionment. Extraordinary charge not to be affected.

6. Commissioners to certify the amount of consideration money for redemption.

7. Consideration money for redemption, how payable.

8. Consideration for redemption of rent-charges payable to spiritual owners to be paid to governors of Queen Anne's bounty, to be applied in augmentation of benefices.

9. Consideration money in case of owners under disability, how payable.

10. As to consideration money under 20l.

11. Power to persons entitled for limited interests to charge expenses of redemption.

12. Commissioners' certificates of redemption to show amount of consideration for the same.

13. Alteration of apportionment may be made after inclosure, &c. Such alteration when confirmed, to be valid.

14. Expenses of alteration of apportionment shall be borne by owners of lands to which it shall relate.

15. Supplemental apportionment of a rent-charge as made payable to one owner in respect of tithes belonging to several owners or held in separate rights.

16. Commissioners empowered to declare that lands to which doubts have arisen, shall be considered a separate district for commutation, and the residue of the parish to remain subject to the original award.

17. Place of deposit of copy of confirmed apportionment may be altered by Quarter Sessions.

18. Tithes or rent-charge in lieu thereof may be merged after agreement or award, but before apportionment.

19. Powers relating to the merger, &c. of any tithes may be executed by a person entitled in equity.

20. 1 & 2 Vict. c. 64, to be construed as part of the Tithe Commutation Acts.

21. Decisions concerning boundary not appealed against to be valid notwithstanding informality.

22. Glebe lands may be exchanged although no commutation be pending.

23. Act to be construed as part of 6 & 7 Wm. 4, c. 71, &c.

24. Act may be amended, &c.

CAP. LXXIV.

An Act to encourage the Establishment of Public Baths and Washhouses. (August 26, 1846.)

CAP. LXXV.

An Act to regulate Joint Stock Banks in Scotland and Ireland. (August 26, 1846.)

CAP. LXXVI.

An Act for the abolition of the exclusive privilege of Trading, or of regulating Trades, in Cities, Towns, or Boroughs in Ireland. (August 26, 1846.)

CAP. LXXVII.

An Act to amend an Act relating to the Offices of the House of Commons. (August 26, 1846.)

CAP. LXXVIII.

An Act to authorise a further advance of Money out of the Consolidated Fund towards defraying the Expense of County Works, presented in Ireland. (August 26, 1846.)

CAP. LXXIX.

An Act to continue until the Thirty-first day of July, 1847, and to the end of the then next Session of Parliament, an Act of the 5th and 6th years of her present Majesty, for amending the Law relative to private Lunatic Asylums in Ireland. (August 26, 1846.)

CAP. LXXX.

An Act to authorise the advance of Money out of the Consolidated Fund, for carrying on Public Works and Fisheries, and employment of the Poor. (August 26, 1846.)

CAP. LXXXI.

An Act for regulating the Deduction at the Bank of England of Income-Tax Duty in respect of certain Offices. (August 26, 1846.)

Income Tax duty to be deducted at Bank of England on payment of salaries, &c. charged upon the Suitsors' Funds accounts of Court of Chancery.—Whereas certain salaries, compensations, and pensions are by several statutes charged upon and payable without draft out of cash standing in the books of the Governor and Company of the Bank of England in the name of the Accountant-General of the High Court of Chancery to the respective accounts, intituled "Account of Interest arising from Moneys placed out for the Benefit and better Security of the suitors of the High Court of Chancery," and "Account of Interest arising from Securities purchased with surplus interest arising from Securities carried to an Account of Moneys placed out for the Benefit and better Security of the Suitsors of the High Court of Chancery." And whereas the Income Tax duty in respect of the dividends composing the cash standing to such several accounts is deducted therefrom at the Bank of England previously to carrying such dividends to the credit of the said Accountant-General, and it is therefore expedient that in paying such salaries, compensations, and pensions, an amount equivalent to such duty be deducted therefrom at the Bank of England: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, the proportionate amount of Income Tax duty which shall have been deducted from the dividends composing the cash standing to the credit of the said Accountant-General to the aforesaid respective accounts in the books of the Governor and Company of the Bank of England be deducted by the said Governor and Company, from all salaries, compensations, and pensions charged upon and payable without draft out of the said cash at the time of each payment thereof hereafter to accrue due, any thing in any statute contained to the contrary thereof notwithstanding.

2. *Act may be amended, &c.*—That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

CAP. LXXXII.

An Act to amend an Act of the present Session for authorising a loan from the Consolidated Fund to the New Zealand Company. (August 26, 1846.)

CAP. LXXXIII.

An Act to empower the Commissioners for the issue of Loans for Public Works and Fisheries to make Loans in Money to the Commissioners of her Majesty's Woods, in lieu of Loans heretofore authorised to be made in Exchequer Bills. (August 26, 1846.)

THE MAGISTRATE.

Summary.

NOTHING calling for especial remark has occurred during the week.

The *Gazette* contains notices that the following places have been duly registered for the solemnization of marriages therein:—Wesleyan Chapel, Watlington, Oxfordshire; Ebenezer or Independent Chapel, Sutton-in-Ashfield, Nottinghamshire; and the Independent Chapel, Meeting-house-lane, Bishop's Stortford, Hertfordshire, in the district of the Bishop's Stortford union.

THE LAWYER.

Summary.

BELOW we give a first instalment of our Review of Cases decided in the *Common Law Courts* during Easter and Trinity Terms and Vacations—a summary which has given universal satisfaction, and been found of extreme utility to the Profession. The remainder will follow next week.

We give below the Report of the Copyhold Commission. It will be seen that the enfranchisement of manors held by ecclesiastics is increasing, while, in the case of those held by laymen, the progress has not been so great. The Committee suggest that it would be greatly for the public good were the legislature to sanction a compulsory extinction of some of the copyhold incidents, and especially of heriots. We doubt whether Parliament will adopt this measure.

The following summary of the points recently decided in railway law we extract from *The Commercial Magazine*, and we do this in order to show what are the popular impressions on these questions—which this summary very well conveys—and not because the opinions here laid down are always sound, and supported by authority.

The parliamentary session having drawn to a close, and the fate of many of the railway projects being now ascertained, parties connected with them are naturally anxious to understand their legal position; and the numerous cases which have been investigated and decided in our law courts during the last few months render the present a favourable opportunity to present our readers with the following brief summary of the best established principles affecting the liabilities of the different parties who are concerned in railway proceedings:—

1. *Rights and Liabilities of Allottees in abandoned Schemes.*—It is now clearly established that an allottee who has paid his deposit upon shares in a scheme which is abandoned without applying to Parliament, can recover back his deposit from the promoters of the scheme, without any deduction for preliminary expenses. Thus, where the promoters have failed to alid the requisite number of shares, or having allotted them, have abandoned the scheme without applying to Parliament, or have induced the public to apply for allotments by means of fraudulent representations, in all these cases the entire deposit may be recovered back, and the expenses must fall upon the managers. In most of them the allottee may bring an action at law, or file a bill in Chancery, against any one of the promoters who has acted, or held himself out to the world as acting, in the formation and carrying out of the scheme. The allottee of shares in such an abandoned scheme cannot be sued for the payment of the deposit, if he have not paid it, nor can he be compelled to contribute towards the payment of the debts and expenses which the promoters have incurred.

2. *Rights and Liabilities of Allottees in Schemes which are not abandoned by the Promoters.*—The position of an allottee who applies for shares in a scheme which the projectors do not abandon, but carry out so far as by prospectus they may have contracted to do, or so far as the conduct of the allottees will enable them to do, is somewhat different in the position of those who have formed the subject of our first division. These allottees, if they make default, may probably be liable to an action to recover damages from them for the breach of their contract with the promoters, or to a suit in Chancery for the double purpose of recovering the deposit, and enforcing the execution by them of the parliamentary contract and subscribers' agreement.

3. *Rights and Liabilities of Allottees in Schemes which are rejected by Parliament.*—Before a scheme is brought into Parliament, the usual deeds are invariably signed by the allottees, and these deeds con-

fer upon the promoters ample powers to carry on or abandon the scheme, and to pay all necessary expenses attending the same. Therefore, in cases where the promoters have done all that is necessary to place the merits of the scheme before Parliament, but Parliament rejects it, the allottees must submit to the terms of the deed they have signed; and probably the only power they possess is that of checking the promoters in any improper payment or dealing with the funds of the company. But where the allottee has signed the usual deeds, but the proper number of shares are not subscribed, or any fraud was practised upon him by the promoters, or the scheme is abandoned in an unauthorised manner, he will have the same remedies against the promoters as if no deed had been signed by him.

4. *Rights and Liabilities of Scripholders.*—A mere purchaser of scrip, or of letters of allotment, or of bankers' receipts, has no rights against, and incurs no liabilities to the promoters. If the scheme in which he has acquired an interest be abandoned, he must look to the party from whom he bought, and it is very doubtful whether he has any implied rights against him. The case of *Thomson v. Sanders*, which appears to establish such rights, is not relied upon by lawyers, although it has not yet been expressly overruled. It is, however, possible that the holder of these documents may have a right to use the name of the original allottee for the purpose of proceeding against the promoters, but there are many difficulties in the way of such a step, and the point has yet to be decided.

5. *Rights of Creditors to sue the Promoters, Engineer, Solicitor, or other Officer of a Scheme.*—The creditors, like the allottees, may sue any one of the promoters who has acted, or held himself out to the world as acting, in the formation and carrying out of the scheme. These parties constitute the company, or project, or scheme; and each and all of them is or are liable for all debts properly incurred for the advancement of the common design. The engineer, solicitor, secretary, or other officer of the company, may, by their conduct, render themselves personally liable; but the mere circumstance of their holding office in the company, that is to say, being the servants of the company, cannot render them responsible for the debts of the company, their employers. On the other hand, they have no power to bind the company by virtue of their offices alone; such a power must be expressly conferred upon them. Therefore, the engineer's assistants or the solicitor's clerks, or any other sub-contractors, cannot sue the promoters or company. If this were suffered, the confusion it would cause would be indescribable. It would be just as absurd as to allow all a tailor's workmen to sue a customer who had ordered a coat from their master for wages due to them from him for making the coat.

6. *Rights of Directors or Promoters.*—The directors or promoters may recover contribution from each other for all expenses connected with the scheme which they are called on to pay. At law they may recover the proportionate part of each, with reference to the whole number of promoters, but without any regard to the solvency of the others; thus, if there are ten, and one pays a debt, only a tenth can be recovered from each of the others; but in equity an equal contribution can be enforced from all the solvent parties, without any regard to the original number of promoters. The promoters are the parties with whom all the contracts connected with the scheme are entered into. They must all of them sue for any breach of contract on the part of allottees, engineers, or others. As the promoters are generally very numerous, and have in most cases undergone changes, it will be difficult to maintain proceedings on such contracts; because the same parties must sue with whom the contract was made, and the mere fact that one director is elected to succeed another in a scheme which has no charter or Act of Parliament, will not give the party so appointed any power to sue upon his predecessors' contracts. Hence appears the indiscretion of entering into contracts by a general name of office, as "Committee," or "Directors," &c. It will be important for the future to have contracts with companies of this kind made with a certain small number of persons as trustees. After the Act is obtained, the directors have great and summary powers given to them to recover deposits from shareholders, and to act generally in the affairs of the company, which will be found in the general and special Acts relating to the subject. They must, however, be careful not to exceed these powers. The recent Act for facilitating the dissolution of certain railway companies (9 & 10 Vict. c. 28) will also require attention, but we must reserve our notice of its provisions for a future paper.

ANECDOTES OF LAWYERS.

The following, from an article in the *Edinburgh Review*, on the Life of Lord Eldon, has been for a long time in type, but we have been unable to find room for it:—

INFLUENCE OF ACCIDENT ON GREAT MEN.

"It is a curious coincidence, that the two greatest

Chancery lawyers of their day should both have been forced into the profession by incidental circumstances. Romilly says, that what principally influenced his decision was, the being thus enabled to leave his small fortune in his father's hands, instead of buying a sworn clerk's seat with it. 'At a later period of my life—after a success at the Bar which my wildest and most sanguine dreams had never painted to me—when I was gaining an income of 8,000l. or 9,000l. a year—I have often reflected how all that prosperity had arisen out of the pecuniary difficulties and confined circumstances of my father.'

"Wedderburn (Lord Loughborough) began as an advocate at the Scotch Bar. In the course of an altercation with the Lord President, he was provoked to tell his lordship that he had said as a judge what he could not justify as a gentleman. Being ordered to make an apology, he refused, and left the Scotch for the English Bar. What every one thought his ruin, turned out the best thing that could happen to him:—

" 'There's a divinity that shapes our ends,
Rough hew them how we may.'

"Lord Tenterden's early destination was changed by a disappointment. When he and Mr. Justice Richards were going the Home Circuit, they visited the cathedral at Canterbury together. Richards commended the voice of a singing man in the choir. 'Ah,' said Lord Tenterden, 'that is the only man I ever envied! When at school in this town, we were candidates for a chorister's place, and he obtained it.'

"It is now well known that the Duke of Wellington, when a subaltern, was anxious to retire from the army, and actually applied to Lord Camden (then Lord-Lieutenant of Ireland) for a commissionership of customs! It is not always true, then, that men destined to play conspicuous parts in the world, have a consciousness of their coming greatness, or patience to bide their time. Their hopes grow, as their capacity expands with circumstances; honours on honours arise like alps on alps, in ascending one they catch a glimpse of another, till the last and highest, which was veiled in mist when they started, stands out in bold relief against the sky."

RISE OF EMINENT LAWYERS.

"In about eight years from his call to the Bar, Lord Eldon was in the high road to its highest honours.

"We have minutely detailed his progress at the most critical periods, with a view to a few observations we have to offer regarding the difficulties and chances of the profession; but before venturing on them it may be as well to strengthen our conclusions by a parallel—to see how many of his great predecessors and contemporaries adopted the same method of study, or got on in the same manner as himself.

"Somers flourished a little before the period when legal honours ceased to depend principally upon intrigue and faction. He had made himself useful to his party by some well-written pamphlets, and the young Earl (afterwards Duke) of Shrewsbury was his fast friend; still, when he was proposed as junior counsel for the seven bishops, they objected to him as too young (he was then thirty-seven) and too little known. Sergeant Pollexfen insisted on their retaining him, and his speech for the defence laid the foundation of his fame.

"Lord Hardwicke, the son of an attorney, and bred up in an attorney's office, was fortunate enough to obtain the patronage of Lord Macclesfield, and that noble and learned but most unscrupulous personage, forced him at once into the front rank of the profession. He was only twenty-nine years of age, and five years' standing at the Bar, when he was called up from his first circuit to be made Solicitor-General. Having had little or no leading business, it was confidently expected that he would break down; but his talents and knowledge proved fully equal to the extraordinary call made upon them.

"Thurlow dashed into practice with the same suddenness, and was indebted for his first lift to patronage, though he certainly did not obtain it by the quality for which Lord Hardwicke was famous—bowling, smiling urbanity. His favourite haunt was Nando's Coffee-house, near the Temple, where a large attendance of professional loungers was attracted by the fame of the punch and the charms of the landlady, which the small wits said were duly admired by and at the Bar. One evening the Douglas case was the topic of discussion, and some gentlemen engaged in it were regretting the want of a competent person to digest a mass of documentary evidence. Thurlow, being present, one of them, half in earnest, suggested him, and it was agreed to give him the job. A brief was delivered with the papers; but the cause did not come on for more than eight years afterwards, and it was a purely collateral incident to which he was indebted for his rise. This employment brought him acquainted with the famous Duchess of Queensberry, the friend of Pope, Gay, and Swift, and an excellent judge of talent. She saw at once the value of a man like Thurlow, and recommended Lord Bute to secure him by a silk gown. He was made king's counsel in 1761, rather less than seven years after his call to the

Bar. He ran greater risks than Lord Hardwicke, because his business had been hitherto next to nothing; but he had far more of the *vis visida*, and the unhesitating self-confidence which enables an untired man to beat down obstacles.

"Dunning got nothing for some years after his call to the Bar, which was about 1756. 'He travelled the Western Circuit (says the historian of Devonshire, Mr. Polwhele), but had not a single brief; and had Lavater been at Exeter in the year 1759, he must have sent Counsellor Dunning to the hospital of idiots. Not a feature marked him for the son of wisdom.' He was, notwithstanding, recommended by Mr. Hussey, a king's counsel, to the chairman of the East India Company, who was looking out for some one to draw up an answer to a memorial delivered by the Dutch government. The manner in which Dunning performed this piece of service gained him some useful connections, and an opportune fit of the gout, which disabled one of the leaders of the western circuit, did still more for him. The leader in question handed over his briefs to Dunning, who made the most of the opportunity. His crowning triumph was his argument against the legality of general warrants, delivered in 1765. He was indebted for his brief, in this famous case, to Wilkes, whose acquaintance he had formed at Nando's, the Grecian, and other coffee houses about the temple, which, seventy years ago, were still the resort of men of wit and pleasure.

"Kenyon rose slowly and fairly through the general impression entertained at the Bar of the extent of his legal knowledge; but this impression was nearly twelve years in reaching the brief-bestowing branch of the profession. It has been said that he occasionally supplied Thurlow with law, and was brought forward by him out of gratitude.

"Lord Camden (a judge's son, Etonian and Cantab) went the western circuit for ten or twelve years without success, and at length resolved on trying one circuit more and then retiring upon his fellowship. His friend Henley (Lord Northampton) hearing of this determination, managed to get him retained as his own junior in a cause of some importance, and then absented himself on the plea of illness. Lord Camden won the cause and prospered.

"Lord Mansfield came to the Bar with a high reputation, but it was rather for literary taste, accomplishments, and eloquence, than law. He 'drank champagne with the wits,' as we learn from Prior; and Mr. Halliday relates, that one morning Mr. Murray was surprised by a gentleman of Lincoln's-inn, who took the liberty of entering his room without the ceremonious introduction of a servant, in the singular act of practising the graces of a speech at a glass, while Pope sat by in the character of a friendly spectator. It is from a couplet of Pope's we learn how he first became known in the profession:—

" 'Graced as thou art with all the power of words,
So known, so honoured, in the House of Lords,'

"A piece of bathos thus parodied by Cibber:—

" 'Persuasion tips his tongue when'er he talks,
And he has chambers in the King's Bench walks.'

"He is reported to have said that he never knew the difference between no professional income and 3,000l. a year; and the case of *Cibber and Sloper* is specified as his starting point. The tradition goes, that Sergeant Eyre being seized with a fit (the god who cuts the knot always comes in this questionable shape), the conduct of the defence devolved on Murray, who, after a short adjournment, granted by the favour of Chief Justice Lee, made so excellent a speech that clients rushed to him in crowds. The case was admirably adapted to his abilities, being an action of *crim. con.* brought by a conniving husband against a weak young man of fortune. But the story is apocryphal at best. There is no mention of the serjeant's illness in the printed accounts of the trial. On the contrary, a long speech by him is duly reported; and it appears that Murray was fourth counsel in the cause. He certainly made a speech, and probably spoke well; but we disbelieve the tradition that makes him the hero of the day. *Cibber v. Sloper* was tried in December 1738; Pope's lines were published in 1737. How could a man 'so known, so honoured' for his eloquence, be raised from obscurity by a speech? It was a stepping-stone, not the key-stone.

"When Lord Loughborough first came to London, he was a constant attendant at the green-room, and associated with Maclin, Foote, and Sheridan (the father of Richard Brinsley), who assisted him to soften down his Scotch accent. But the main chance was not neglected. It is stated in Boswell's *Johnson*, that he solicited Strachan, the printer, a countryman, to get him employed in city causes, and his brother-in-law, Sir Harry Erskine, procured him the patronage of Lord Bute. When a man of decided talent and good connection does not stand on trifles, there is no necessity for speculating on the precise causes of his success."

COPYHOLDS.

Copy of the Fifth Report of the Copyhold Commissioners to Her Majesty's Principal Secretary of State for the Home Department; pursuant to the Act 4 & 5 Vict. c. 35, s. 3.

PRESENTED TO BOTH HOUSES OF PARLIAMENT BY COMMAND OF HER MAJESTY.

Copyhold Commission, 3rd August, 1861.

SIR,—We have the honour of presenting to you our fifth report. The number of enfranchisements have again considerably increased. For the details of the business done we beg to refer you to the list which is appended.

Some of the transactions included in it are large and important.

Enfranchisements in manors held by ecclesiastics are steadily increasing, and in those manors there is a fair prospect of copyhold tenures being ultimately distinguished voluntarily.

In manors held by laymen the progress is slower. Termini of railroads, and the increasing population of the towns, lead to building speculations. Both find that they can rarely sell with a copyhold title, and the number of enfranchisements from those causes will almost necessarily increase steadily.

We believe, however, that it would be a public benefit if the legislature were to sanction a compulsory extinction of some of the copyhold incidents, especially of heriots.

We have the honour to be,

Sir, your faithful and obedient servants,

WM. BLAMIRE.
T. WESTWORTH BULLER.
RD. JONES.

To the Right Hon. Sir G. Grey, Bart. M.P.
&c. &c. &c.

COPYHOLD COMMISSION.—ENFRANCHISEMENTS.

Manor.	County.	Lord.	Nature of Copyholds.	Incidents of the Manor.	Terms for enfranchisement.	Progress made in Enfranchisement.
Ely Barton	Cambridge	Bishop of Ely	Copyholds of Inheritance	Fines arbitrary, and quit-rents	Fifty years' annual value	Signed and sealed
Wisbeach Barton	Ditto	Ditto	Ditto	Ditto	Four years' annual value	Same
Milton Hall, otherwise Middleton Hall	Essex	Messrs. Boone and Stratton	Ditto	Ditto	Six years' annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Same	Draft received
Ightenhill	Lancaster	Lord Montague	Ditto	Fines certain, and quit-rents	The land enfranchised being required for the site of a parsonage, 5 <i>l.</i> was taken for the consideration	Signed and sealed
Barnabury	Middlesex	Henry Tufnell, esq.	Ditto	Fines arbitrary, and quit-rents	One-sixth part of the value of the property was taken for the consideration, a private Act having been previously passed, reducing the fine on ground intended to be built upon to one-third of the annual value of the building erected	Same
Cantlowes	Ditto	Prebendary of Cantlowes (with consent of Ecclesiastical Commissioners)	Ditto	Fines certain, and quit-rents	The annual value of the land being very trifling, and the enfranchisement being effected for the purpose of widening a street, 1 <i>l.</i> was taken for the consideration	Same
Ealing	Ditto	Bishop of London	Ditto	Ditto	One year's annual value; quit-rents 28 years	Same
Ditto	Ditto	Ditto	Ditto	Ditto	One year's annual value; quit-rents 30 years	Same
Friern Barnet	Ditto	Dean and Chapter of St. Paul's	Ditto	Fines arbitrary, and quit-rents	Five years' annual value; quit-rents 30 years	Same
Fulham	Ditto	Bishop of London	Ditto	Fines certain, and quit-rents	One year's annual value; quit-rents 28 years	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Same	Same
Ditto	Ditto	Ditto	Ditto	Ditto	One year's annual value; quit-rents 30 years	Draft received
Ditto	Ditto	Ditto	Ditto	Ditto	One year's annual value; quit-rents 32 years	Same
Ditto	Ditto	Ditto	Ditto	Ditto	One year's annual value; quit-rents 28 years; freehold rent 30 years	Same
Hanwell	Ditto	Ditto	Ditto	Fines arbitrary, and quit-rents	Five years' annual value; quit-rents 28 years	Signed and sealed
Isleworth, Rectory of	Ditto	Provost and Fellows of Eton College	Ditto	Fines certain, and quit-rents		Draft received
Islington, Prebend of	Ditto	Prebendary of Islington	Ditto	Fines certain, and quit-rents	One-twelfth of the land enfranchised, two years' annual value of the ground-rents on houses enfranchised; quit-rents 28 years	Same
Ditto	Ditto	Ditto	Ditto	Ditto		Referred to the Master in Chancery to report
Knightbridge-cum-Westbourne Green	Ditto	Dean and Chapter of Westminster	Ditto	Fines arbitrary, and quit-rents	Land taken to complete a large building speculation, 150 years' purchase was given	Signed and sealed
Headington	Oxford	Rev. Thomas Henry Whorwood	Ditto	Fines arbitrary, heriots, and quit-rents		Same
Ditto	Ditto	Ditto	Ditto	Ditto		Draft agreement, and schedule of apportionment received
Condover	Salop	Edward Wm. Smythe Owen	Ditto	Fines certain, heriots, and quit-rents	Fines five years' purchase; heriots 2 <i>l.</i> ; quit-rents 25 years; farewell fee 5 <i>l.</i>	Signed and sealed
Bleaden with Priddy	Somerset	Dean and Chapter of Winchester	Copyholds for three lives	Fines arbitrary, heriots, and quit-rents	Rent-charge about one-sixth of annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Rent-charge about one-fifth of annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Rent-charge about one-seventh of annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Rent-charge about one-sixth of annual value	Same
Barton - with - Buddlegate	Southampton	Ditto	Ditto	Ditto	Rent-charge about one-fifth of annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Same	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Four years' annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Rent-charge about one-fifth of annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Six years' annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Five years' annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Land at five years; tenements at two years; quit-rents 30 years	Draft received
Ditto	Ditto	Ditto	Ditto	Ditto	Rent-charge about one-third of annual value	Same
Bransbury	Ditto	Ditto	Ditto	Ditto	Rent-charge about one-fourth of annual value	Signed and sealed
Chilbolton	Ditto	Ditto	Ditto	Ditto	Same	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Rent-charge about one-fifth of annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Same	Same
Crookall	Ditto	Ditto	Copyholds of Inheritance	Fines certain, heriots, and quit-rents	One year's annual value; quit-rents 28 years	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Same	Same
Exton	Ditto	Dean and Chapter of St. Paul's	Copyholds for three lives	Fines arbitrary, heriots, and quit-rents	Rent-charge about one-fourth of annual value	Same
Manydown	Ditto	Dean and Chapter of Winchester	Ditto	Ditto	Rent-charge about one-fifth of annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Same	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Same	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Rent-charge about one-fourth of annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Rent-charge about one-fifth of annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Rent-charge about one-fourth of annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Same	Draft received
Ditto	Ditto	Ditto	Ditto	Ditto	Same	Same
Ditto	Ditto	Ditto	Ditto	Ditto	One and half-year's annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Rent-charge about one-fourth of annual value	Signed and sealed
Ditto	Ditto	Ditto	Ditto	Ditto	Same	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Rent-charge about one-fifth of annual value	Draft received
Ditto	Ditto	Ditto	Ditto	Ditto	Rent-charge about one-fourth of annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Four years' annual value	Same
Wanstond	Ditto	Ditto	Ditto	Ditto	Three and a half years' annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Five years' annual value	Signed and sealed
Ditto	Ditto	Ditto	Ditto	Ditto	Rent-charge about one-fourth of annual value	Same
Ditto	Ditto	Ditto	Ditto	Ditto	Land at five years; tenement at two years' annual value	Draft received
Ash Biggotts and Pistrices, otherwise Over Pistrices	Suffolk	Hon. Mrs. S. North	Copyholds of Inheritance	Fines arbitrary, and quit-rents	Rent-charge about one-fourth of annual value	Same
					Five and a half years' annual value, quit-rents 28 years	Signed and sealed

Manor.	County.	Lord.	Nature of Copyholds.	Incidents of the Manor.	Terms for enfranchisement.	Progress made in Enfranchisement.
Barnes . . .	Surrey . .	Dean and Chapter of St. Paul's	Copyholds of inheritance	Fines arbitrary, heriots, and quit-rents	Five years' annual value; quit-rents 28 years	Signed and sealed.
Byfleet . . .	Ditto . .	Edward Hughes Ball Hughes	Ditto . .	Fines arbitrary, and quit-rents	Five and a half years' annual value	Same
Croydon . . .	Ditto . .	Archbishop of Canterbury	Ditto . .	Fines arbitrary, heriots, and quit-rents	Three and a half years' annual value; one heriot at 20l. and four heriots at 10l. each; quit-rents 28 years	Same
Ditto . . .	Ditto . .	Ditto . .	Ditto . .	Ditto . .	Three and a half years' annual value; heriots at 20l. quit-rents 28 years	Same
Ditto . . .	Ditto . .	Ditto . .	Ditto . .	Ditto . .	Three and a half years' annual value; one heriot at 20l.; quit-rents 28 years	Same
Epsom . . .	Ditto . .	John Ivatt Briscoe and Anna Maria his wife	Ditto . .	Ditto . .	Six years' annual value	Same
Ditto . . .	Ditto . .	Ditto . .	Ditto . .	Ditto . .	Six and three-quarter years' annual value	Same
Ditto . . .	Ditto . .	Ditto . .	Ditto . .	Ditto . .	Five and a half years' annual value	Same
Ditto . . .	Ditto . .	Ditto . .	Ditto . .	Ditto . .	Six years' annual value; quit-rents 25 years	Draft received
Ditto . . .	Ditto . .	Ditto . .	Ditto . .	Ditto . .	Six years' annual value; quit-rents 30	Same
Lambeth . .	Surrey . .	Archbishop of Canterbury	Ditto . .	Ditto . .	Three and a half years' annual value; composition for heriots 40l.; quit-rents 28 years	Signed and sealed
Ditto . . .	Ditto . .	Ditto . .	Ditto . .	Ditto . .	Three and a half years' annual value; composition for heriots 17. 1s.	Same
Ditto . . .	Ditto . .	Ditto . .	Ditto . .	Ditto . .	Three and a half years' annual value; one heriot at 20l.; quit-rents 28 years	Same
Ditto . . .	Ditto . .	Ditto . .	Ditto . .	Ditto . .	Four years' annual value of the ground-rents; two heriots at 30l.; quit-rents 28 years	Same
Brighton . .	Sussex . .	Frederick Shakerley Kemp, trustee of	Ditto . .	Fines certain, heriots, and quit-rents		Same
Ditto . . .	Ditto . .	Ditto . .	Ditto . .	Ditto . .		Same
Ditto . . .	Ditto . .	Ditto . .	Ditto . .	Ditto . .		Same
Oglebird . .	Westmoreland	The Earl of Thanet	Ditto . .	Ditto . .		Draft received
Ditto . . .	Ditto . .	Ditto . .	Ditto . .	Ditto . .		Same
Beechingstoke	Wilts . .	Dean and Chapter of Winchester	Copyholds for three lives	Fines arbitrary, heriots, and quit-rents	Rent-charge about one-fifth of annual value	Signed and sealed
Figgheldan .	Ditto . .	Bishop of Salisbury, and Edward Dyke Poore, esq. Lord Farmer	Ditto . .	Ditto . .	One-sixth part of the land to be enfranchised	Draft agreement for enfranchisement received
Wroughton . .	Ditto . .	Dean and Chapter of Winchester	Ditto . .	Ditto . .	Rent-charge about one-fifth of annual value	Draft received.

REVIEW OF CASES DECIDED IN ALL THE COURTS OF COMMON LAW.

During Easter Term and Vacation, and Trinity Term and Vacation.

The number of written judgments given at the end of the sittings after Term, some of which are still unreported, and other unavoidable circumstances, have prevented our usual summary from appearing so early as usual, but still the greater portion of it will, we hope, be contained in the present volume, and the whole will be more complete in consequence of the delay. We have followed in most respects our usual arrangement, and we hope that few cases of any practical importance will be found to have been omitted.

ABATEMENT.

Another action pending.—The railway mania, and the consequent litigation, has given rise to many curious and novel points, but none, perhaps, which excited more interest in Westminster Hall than the question, in *Henry v. Goldney*, 7 Law T. 211, whether the pendency of another action against a co-contractor, e.g. another member of the provisional committee, for the identical claim, was not a good plea in abatement. The decision in *King v. Hoare*, 13 M. & W. 494, that judgment against a co-contractor might be pleaded in bar to an action against another, seemed to favour strongly the argument in support of this plea in abatement. There were also some old cases (see especially that mentioned in Doctr. Pl. 10, which was not cited upon the argument), which tended to support the dictum of Lord Ellenborough, that such a plea would be good in an action of *tori* (*Boyce v. Douglas*, 1 Campb. 60), and the injustice of bringing a number of actions in respect of the same cause inclined many, who considered the subject, to think that the plea was good. This last ground seemed the more strong, as, after plea pleaded in one action, the judgment in another could only be pleaded *quod darrein continuance*, in which case the defendant would have to pay his own costs up to that time. The Court of Exchequer, however, overruled the plea. As it was impossible for those who heard the argument not to perceive that the learned barons had previously made up their minds, and as the most learned of their body, Mr. Baron Parke, was absent, we think it right to mention that a similar plea, upon which a demurrer was pending in the Common Pleas, was given up without argument. As our readers are aware, an application to the equitable jurisdiction of the Court, to stay the proceedings in all actions but one, has been successful at chambers, see *supra*, 415; and we trust that this proper exercise of their equitable power will be sanctioned by the Court.

Affidavit of verification.—The strictness with which all pleas in abatement, and the affidavits

verifying them, are scrutinised by the Courts, is illustrated by *Newton v. Stewart*, 7 Law T. 235, where an affidavit verifying a plea in abatement of the nonjoinder of twenty-four other defendants, was set aside as untrue, because it untruly stated the number of the house in Gower-street, where one of the defendants lived. Wightman, J. said, "Perhaps Gower-street alone would have sufficed, but the number being given, the plaintiff was not bound to inquire any where else than at that number."

Coverture.—*Bendis v. Wakeman*, 12 M. & W. 97, decided that the coverture of the plaintiff is in plea in bar to an action of covenant on a deed between the defendant and the plaintiff, but only in abatement; and so also to an action on a promissory note given to the wife during marriage, the same defence is matter only of abatement. (*Guyard v. Sutton*, 7 Law T. 185).

AFFIDAVITS.

Jurat.—Although the Court of Exchequer, in *Empey v. King*, 13 M. & W. 519, held that an affidavit sworn at chambers, and signed by a judge, was good, notwithstanding the jurat did not state that it was sworn *before him*, yet this was on account of the invariable practice as to such affidavits, and accordingly the Court of Queen's Bench, in *Reg. v. Norbury*, 7 Law T. 139; 15 L. J. 262, Q. B., adhered to their decision in *Reg. v. Bloxham*, 6 Q. B. 528, that an affidavit taken by a commissioner, in the jurat of which the words "before me" did not appear, was a nullity, and quashed a writ of *certiorari* that had been obtained upon such affidavit, although two years had elapsed.

Lord Denman, C. J. also further intimated that Pattenon, J. doubted whether he had done right in *Ex parte Smith*, 2 D. P. C. 607. There the names of the deponents had been omitted from the jurat by a mistake of the judge's clerk, and Pattenon, J. said, "as that appears to be only an omission of my clerk, let a new jurat be written, and I will sign it." That case therefore must be considered if not as overruled, as one of very doubtful authority.

The case of *Reg. v. Bloxham* was again referred to in *Reg. v. Ratcliffe Caley*, 7 Law T. 182, and Lord Denman, C. J. said the decision was perfectly correct.

Sufficiency of description.—An affidavit of the defendant in support of a rule to compel the plaintiff to give security for costs is sufficient if it can be collected from the context that the deponent is the defendant in the cause, although he is not so described in terms. (*Loutreuil v. Phillippe*, 1 B. C. R. 87.(a)) We mention this case; at the same time the usual averment as to the deponent being the plaintiff or defendant in the cause should not be omitted. Here it was stated that the deponent had

(a) These are a new series of reports of cases in the Bail Court only, by T. W. Saunders and Edward Lawes, esqrs.

been served with a writ at the suit of the plaintiff out of the same Court.

Prior affidavits.—Affidavits sworn in a previous stage of the cause may be used upon a subsequent application in the same cause (*Hilman v. Chitty*, 7 Law T. 138); but if the proceeding for which it was intended to be used did not take place, it cannot afterwards be used in support of a distinct matter. (*Compton v. Tamlyn*, 7 Law T. 235.)

ANIMALS.

Liability of owner of mischievous animals.—The two cases of *May v. Burdett*, 7 Law T. 254, in the Queen's Bench, and *Jackson v. Smithson*, in the Exchequer, define the law very clearly as to the liability of the owners of mischievous animals. It was objected in arrest of judgment, in each case, that there was no averment that the animals, in the former a monkey, in the latter a ram, had been negligently kept by the defendant. The doctrine laid down, after time taken to consider by the Queen's Bench, and acquiesced in in the subsequent case, is, "That whoever keeps an animal accustomed to attack and bite mankind, with a knowledge that it is so accustomed, is *prima facie* liable in an action on the case at the suit of any person attacked and injured by the animal." The gist of the action is the keeping of the animal after a knowledge of its mischievous propensities, or, as it was said in another part of the judgment, that a person keeping a mischievous animal, with knowledge of its propensities, is bound to keep it secure at his peril, and that if it does mischief the negligence must be presumed, without an express averment of it. The negligence is in keeping the animal after knowledge. It would seem also, from other parts of the judgment, that there would be the same presumption of negligence, even if the injury had been inflicted by the animal after it had escaped, for that the owner is bound to keep it secure "at all events." No doubt circumstances might arise which would form an answer to such a presumption, but the rule as above laid down is explicit as law, and satisfactory in principle.

Impounding under 5 & 6 Wm. 4, c. 59.—The construction of the fourth section of this Act was considered in *Layton v. Hurry*, 7 Law T. 83; 15 L. J. 244, Q. B. as to the power of sale given thereby, for the purpose of reimbursing the party who impounds animals, damage feasant, the expenses which, under that Act, he is compelled to incur to prevent them from starving, which, according to the perfection of wisdom—"the common law"—might have been the case. The statute only authorises as many to be sold as are necessary for such indemnity, and not all that are impounded. The order for repayment by a justice, and the power of sale contemplate the same object, viz. indemnity.

ARBITRATION AND AWARD.

Finding on all the issues.—The rule established by *Kilburn v. Kilburn*, 13 M. & W. 671, is, that where a cause is referred, "the costs of the cause to abide the event of the award," all the issues must be found specifically by the arbitrator, has been further discussed in *Adam v. Rowe*, 7 Law T. 93, with reference to the plea *non-assumpsit*, which as other forms of the general issue pleaded to a declaration containing several counts, is a plea to each count. The award was sought to be set aside upon this ground. The pleas were *non-assumpsit*, except as to part, tender of that part, and set-off and payment, except as to that part. The finding was for the plaintiff on the 1st, 3rd, and last issues, but reducing the verdict, and for the defendant on the second. The cases relied upon were satisfactorily distinguished, because the general issue had not been specifically found either way; and as Mr. Justice Coleridge said, in discharging the rule, that the objection being founded upon the supposed inability of the Master to tax the costs, it was clear, that, as in this case, the arbitrator had intended to find for the plaintiff upon each count, it was immaterial that the amount upon each was not found, as the Master could tax the costs, whether the sum due upon each count was large or small. We would add, that in fact he did find upon all the issues raised upon *non-assumpsit*. (See Review of Cases, 4 Law T. 458.) Any objection of this kind might be provided against by a clause in the submission deed, that it shall be sufficient for the arbitrator to award in favour of the plaintiff or defendant generally, unless either party shall request him to find on some particular issue or issues.

Moving to set aside.—The rules laid down in the books of practice, in accordance with the elaborate judgment of Coleridge, J. in *Allenby v. Proudlock*, 4 D. P. C. 54, is, that where a verdict is taken at *nisi prius*, and the cause only referred, the motion to set aside the award in ordinary cases, should be made as in motions in arrest of judgment, or for a new trial. This has been confirmed in the Bail Court, by Wightman, J. who refused a rule *nisi*, moved for more than four days after the publication of the award in *Term* (*Riccard v. Kingdon*, 7 Law T. 142); and also by the full court, consisting of Lord Denman, and Patteson, J. in *Parson v. North of England Railway Company*, 7 Law T. 137. There the arbitrator awarded that the verdict should stand, unless "the Court should order otherwise;" then stated various questions for the opinion of the Court, and awarded that, if the Court should be of a certain opinion, the verdict should be for the defendant on certain issues. This was held to be, to all intents, an award by the arbitrator standing simply in the place of the jury, and a motion to enter the verdict for the defendants upon the facts stated was refused, because made more than four days from the publication. Sometimes, however, the successful party may enter final judgment, according to the award, without waiting the four days. Thus in *Cromer v. Chart*, 15 L. J. 263, Ex.; 7 Law T. 88; a verdict was taken at *nisi prius* by consent, subject to the certificate of an arbitrator, and the certificate was given in vacation after more than four days from the return day of the *distringas juratores*. The certificate was held to have relation back to the date of the verdict, and the successful party to be entitled to sign judgment immediately, without waiting until after the first ten days of the next term. The same principle would seem to apply, whether the certificate was given in *Term* or vacation. An application should therefore be made in all such cases to the Court, or to a judge at chambers, without delay, to compel the postponement of the entering of the judgment, so that the validity of the award may be disputed.

Arbitrator's notes.—An arbitrator cannot be compelled to produce his notes to the Court, nor will the Court allow them to be used, or a copy of them verified by affidavit, for such a course "would break in upon the rule very properly observed by gentlemen of the Bar of refusing to make an affidavit with respect to what takes place upon arbitrations." (*Doe dem. Huxby v. Preston*, 1 B.C.R. 77; 7 Law T. 117.)

Costs of taking up award.—*Lien of attorney.*—Where an award ordered that the costs of the reference should be paid by the parties in a certain proportion, viz. three-fourths by the defendant, and one-fourth by the plaintiff, the plaintiff's attorney, to take up the award, paid the whole amount of costs; and the question in *Dees v. The*

Great North of England Railway (7 Law T. 406), was, whether this sum was to be treated as money awarded, and therefore one for which the attorney had a lien on the whole costs of the reference, or only as money paid. The Court held that it was money awarded, and a set-off, which was claimed, was therefore refused by the Court, except upon the terms that the attorney's lien was satisfied.

Reference of cause to Master.—If a cause is referred at *Nisi Prius* to a Master who is to decide all matters in difference, and direct by whom, to whom, and how the costs are to be paid, he need not find as to the costs of the reference, his decision being rather a certificate than an award. (*Lewis v. Curlewis*, 7 Law T. 67.)

ATTORNEY AND SOLICITOR.

The more important decisions as to the rights and liabilities of professional men, are those of *Reg. v. Buchanan*, and *Walbancke v. Masterman*, the former of which has already been noticed at length (*supra*, 87), and we need only therefore repeat, that it is now clear that an indictment will lie against a person practising as an attorney without being duly qualified under 6 & 7 Vict. c. 73. The other case is noticed below.

Bill of costs.—*Bowen v. Hodges*, 7 Law T. 91, is a decision, if a decision were needed, to shew that the non-delivery of a signed bill is a matter of defence only when pleaded; and *Englemart v. Moore*, 7 Law T. 211, confirms our view of the application of the decision of *Lewis v. Primrose*, 13 L.J. 269, Q.B. (see 6 Law T. 440) to an attorney's bill under the present Act; and the consequent necessity that the bill should clearly shew, either in the heading, or some other part of it, in what court the business was done. An attempt was made in *Scadding v. Eyles*, 7 Law T. 227, to establish that stating an account with an attorney, in respect of his bill, would bar the client from the power to tax such bill, by giving an independent right of action, upon the account so stated. The Court at once gave judgment against such an answer to the plea of no signed bill, and apparently on the ground that it would defeat the statute. At first sight it seems to clash with the acknowledged sufficiency of an account stated as a ground of action; but we apprehend the decision was correct, in accordance with the rule of public policy, which invalidates an agreement between an attorney and his client that the bill shall not be taxed. It may be mentioned here that the right of an outlaw to obtain taxation of a bill has been again decreed in *Re Ford*, 7 Law T. 142, as it had been before in *Re Mander*, 4 Law T. 355. (See 5 Law T. 540.)

Lien for costs.—*Pauper plaintiff.*—The general rule, that the defendant may not collude with the plaintiff to settle an action in fraud of the plaintiff's right to costs, is well known; and therefore *Wright v. Burrowes*, 7 Law T. 259, which was a plain case of collusion, need hardly have been mentioned here, but for the observations of Tindal, C. J. as to cases where the plaintiff sues in *forma pauperis*. He said it must be a very strong case to justify a compromise with the plaintiff alone, for it is only from the result of the suit that the attorney is able to look for any remuneration. In such a case, therefore, we may be sure that the Court would require very little positive evidence of the intention of the parties. The case cited in the argument from 1 B. & Ad. 660, was, it is to be observed, an action for unliquidated damages, and the application to set aside a plea of *puis darrein continuance* was refused for that reason. In the principal case the plea was set aside, although pleaded on the 22nd of April, and the motion not made until the 8th of June.

Negligence.—*Money paid out of pocket.*—On the effect of negligence in conducting a suit, the cross motions, in *Lewis v. Samuel*, 7 Law T. 15; 15 L.J. 218, Q.B. are instructive. The attorney had agreed to conduct a prosecution for costs out of pocket only. Pending the proceedings the client advanced money for the expenses, and it was, up to a certain point, properly expended. The prosecution failed because the indictment stated that the affidavit, upon which the perjury was assigned, was sworn before George Rich. Pye, instead of George Richard Pye. The attorney then sued the client for the balance of expenses. The jury found that the prosecution failed through his gross negligence, and under the direction of the judge deducted from his claim all money paid subsequent to the neglect. Upon motion the Court held that this was right, for it could not be money paid to the use of the client, when the prior fatal mistake had rendered all

future payments useless. The defendant, who at the trial had sought to set off, as money had and received, the sums paid to the attorney prior to the act of negligence, then took the opinion of the Court upon this point, but they held that it could not be set off, as money had and received to the defendant's use, for it had been advanced for a particular purpose, and laid out in pursuance of it, by the plaintiff.

Liability upon undertaking.—We so recently noticed the several principles by which the Court is governed in enforcing their officers to do what is morally right (*supra*, 6 Law T. 440), that we will only mention the further illustration given by the case of *In re Swann*, 1 B.C.R. 99, where an attorney was ordered to pay money pursuant to his undertaking and the costs of the application, though three years had elapsed since it became due, and is stated in his affidavit that by reason of the delay in the application he should probably lose the whole of the money.

Liability for wrongful execution.—The cases run very fine as to the amount of interference which will render an attorney liable where a wrongful execution is put in force on behalf of his client, and *Roules v. Senior* is, therefore, of importance. (15 L. J. 231, Q.B.; 7 Law T. 60). The London agent of the attorney indorsed a writ of *fi. fa.* in a case of *Gandell v. Dore*: "The defendant resides at Wolverton, and is an innkeeper, lvy 1771, &c." D. the defendant, resided at Wolverton, and conducted the business of his mother-in-law, who kept an inn there, and the goods on the premises were her property. The sheriff seized these goods under the *fi. fa.* The Court held that there was evidence to go to the jury of the defendant having, through his London agent, directed this seizure, and therefore of his being liable in trespass. The dictum of Lord Kenyon, therefore, in *Sedley v. Sutherland* (3 Esp. 202, and see *Codrington v. Lloyd*, 8 A. & E. 449), that the attorney must be proved to have gone beyond the line of his duty, is not to be considered as correct, for, in the principal case, the attorney was clearly acting within his duty to his client, &c. as he informed the sheriff where the defendant lived, and it was as slight an interference as possible. A mere indorsement of his name would not, indeed, make him liable (*Sowell v. Campion*, 6 A. & E. 407), for an execution levied out of the jurisdiction; but, on the other hand, an attorney indorsing his name upon a warrant of commitment, which turned out to be void, was held liable (*Green v. Elgie*, 5 Q.B. 99), because this seemed a taking an active part in the proceeding. It is to be remembered, the client is also answerable as well as the attorney (*Persons v. Lloyd*, 3 Wils. 341; *Jermain v. Hooper*, 1 D. & L. 769; 2 Law T. 293), for "he should have employed a more skilful attorney."

Liability to Sheriff's Officer.—There has been some doubt as to the liability of the attorney in the cause to remunerate the sheriff's officer employed in the execution of the writ, where the attorney has not specially appointed him as the officer for the occasion. (See per Bayley, J. in *Foster v. Blakelock*, 5 B. & C. 328, and *Newton v. Chambers*, 1 D. & L. 872). However convenient that the officer should not have a claim against the client, there seemed a difficulty in raising any implied contract, as he was, in fact, the servant of the sheriff. In *Walbancke v. Masterman*, 7 Law T. 184, the Court of Common Pleas, however, settled this question in the affirmative, upholding the ruling of Erle, J. that the attorney is personally liable to the sheriff's officer, just as much as to the officers of the court for their fees. (See *Robins v. Bridge*, 3 M. & W. 114).

BAILMENTS.

Safely and securely.—*Ross v. Hill*, 7 Law T. 112; 15 L.J. 182, C.P. although a decision as to the meaning of the words "safely and securely," used in pleading to describe the promise of the defendant, a cabman, in respect of the luggage conveyed in his cab, deserves notice, as it points out the nature of the evidence requisite to support a charge of negligence against a bailee. It was objected that there being no proof of an express promise, the law would not imply a promise of this nature; the objection would have been valid, had the words meant an absolute freedom from damage or loss; but as the Court decided that they meant merely due care according to the nature of the bailment, the objection was overruled. It is therefore sufficient to show the relation between the parties, and it will be for the jury to determine whether

the facts amount to such negligence as, under the direction of the judge, would render the bailies liable, according to the various degrees of care required from bailies of different classes. E. W.
(To be continued.)

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been pleased to appoint Francis Partridge, esq. to be Deputy Commissary of Police for the Island of Mauritius.

The Queen has also been pleased to nominate, constitute, and appoint the Right Hon. Sir James Robert George Graham, bart. to be one of the Ecclesiastical Commissioners for England, in the room of the Right Hon. Sir George Grey, bart. resigned.

The Queen has also been pleased to nominate the Right Hon. Sir George Grey, bart. being one of her Majesty's Principal Secretaries of State, an Ecclesiastical Commissioner for England.

CROWN OFFICE, Sept. 14.—Members returned to serve in this present Parliament.—Borough of Derby, Edward Strutt, esq.

CEYLON.—JUDICIAL APPOINTMENTS.—The last *Ceylon Gazette* contains the following:—"His Excellency the Governor has been pleased to direct letters patent to be passed under the public seal of the island, constituting and appointing the Hon. W. O. Carr to act provisionally as Chief Justice of the Supreme Court, in the absence of the Hon. Sir A. Oliphant, bart. The Hon. J. Stark to act provisionally as senior puisne justice of the Supreme Court, in the room of the Hon. W. O. Carr, and the Hon. C. Temple to act provisionally as second puisne judge of the Supreme Court, in the room of the Hon. J. Stark. By his Excellency's command,

J. EMERSON TENNENT, Colonial Secretary.
"Colomba, July 8, 1846."

COURT PAPERS.

COUNTY OF MIDDLESEX.—SHERIFFS' COURT, RED LION-SQUARE.—The following days are appointed for the execution of writs of trial and inquiry in Trinity Vacation:—Thursday, Sept. 17; Thursday, Oct. 1; Thursday, Oct. 15; and Thursday, Oct. 29. Cases intended for trial in either of the above sittings must be entered for trial three days before the particular sittings on which they are to be heard.

LEGAL INTELLIGENCE.

THE CONSULAR SERVICE.—A document, presented to the House of Commons by command of her Majesty, in pursuance of their address of the 23rd July last, has been printed, containing a return, in a tabular form, of all the consuls-general, consuls, vice-consuls, and consular agents in her Majesty's service, with the amount of their salaries, the date of appointment, the place of residence, and the countries and districts to which they are appointed. The document extends to 14 folio pages, and contains a list of 215 consular officers, who with two exceptions are paid, and of two others paid by the East India Company. The list contains in addition 130 British vice-consuls who receive no salary from her Majesty's Government, and who are appointed by the superintending consuls. Various salaries are paid to consuls, from 25l. to 1,800l. a year. There are 14 consular officers in France; the highest salary in France is 650l. and the lowest 50l. There are 15 in Spain, and 9 in Portugal, and no fewer than 22 in Turkey, and 10 in the United States of America. There are 9 in China. The consul at Canton (Francis C. Macgregor, esq.) has a salary of 1,800l. 3 others have 500l. each, one 1,200l. three 750l. and another 500l. In Egypt there are five paid consular officers. The Consul-General at Egypt (the Hon. C. A. Murray) has a salary of 1,800l. The smallest salary (25l.) is paid to the Vice-Consul of Otranto, in the Two Sicilies. The consuls paid by the East India Company are Major Rawlinson, the consul at Bagdad, whose consulate is in Turkish Arabia, and Captain Hamerton, at Zanzibar, in Muscat. In the list of British vice-consuls appointed by the superintending consuls, 27 reside in France, 39 in Spain, 19 in Portugal, 34 in Italy, 13 in Greece, 14 in Turkey, and 10 in the United States of America.

CAUTION TO JURORS.—At an inquest held on Thursday by Mr. Carter, the coroner for Surrey, the Court was delayed for a considerable time by the absence of a gentleman who had been summoned on the inquest. The serving of the summons having been proved on oath, the coroner fined the absentee 40s. and said he would take care the money should be paid.

TORTOLA.—A suit for libel has been instituted by the Hon. R. V. Shaw, second Puisne Judge of this island, against the Hon. Dean Rogers, Chief Justice, and James Isidore Peter Lyach Dyett, M.D., stipendiary magistrate. Damages 5,000l.

SOCIETY FOR THE ABOLITION OF ECCLESIASTICAL COURTS.—A public meeting was lately held at the School-house, Denmark-street, Pentonville, to hear from the Rev. Edward Muscutt, M.A. an address on the subject of Ecclesiastical Courts, and the means to be adopted for their abolition. The rev. gentleman's observations were attentively listened to, and his recommendation to strive for the abolition of Ecclesiastical Courts was cordially welcomed by the meeting.

JURY LISTS.—On Sunday the lists of persons qualified to serve as jurors for the ensuing year, commencing the 1st instant, were posted on the doors of the different metropolitan churches, as required by the 6th of Geo. 4, c. 50; they will be kept open for inspection till the 21st instant. All objections will be heard by the justices in petty sessions, for the parishes in the county of Surrey, at Newington-green, the 25th instant; for Westminster, at the Broad Sanctuary, the 24th instant; and for the Holborn Union, at the Board-room of the Workhouse, Little Gray's-inn-lane, on the 29th instant.

SMALL DEBTS ACT.—The Marylebone vestry has lost no time in taking measures to have this Act applied forthwith to that important district, and the other extensive districts of the metropolis will follow the example in eagerly applying for the establishment of courts under the Act; an example which will be followed by every important district in the kingdom, where the absence of facilities for the recovery of small debts cheaply and expeditiously has hitherto operated so injuriously, particularly on persons engaged in trade.

OFFICIAL LOANS.—It having appeared upon the investigation of the case of an officer at one of the outposts, in the service of the revenue, who had been involved in pecuniary difficulties, that he had at various times borrowed money from an officer and clerk, and that those officers had exacted an exorbitant rate of interest for the same, the authorities have expressed their strong disapprobation of the conduct of the parties who had required usurious interest from a brother officer on the establishment, and have deemed it expedient to warn the whole of the officers and clerks throughout the service, that in the event of any similar case coming under their notice, they will take occasion to mark the offence severely.

PROCLAMATIONS OF OUTLAWRY.—Thursday being the County Court day, Mr. Hemp made the usual proclamations, and the following persons were declared outlaws:—William Mullingar Higgins, George Rutherford, William Cunningham Burton, J. R. Udney, the Rev. James Staughton Money Kyrie, Thomas Harries Wilson, J. L. Wellesley, John Twyden, Lady Frances Twyden, Richard Augustus Seymour, William Robert Gardner, Henry Lacey, Mary Anne Perryman, J. W. Gudge, Thomas Flower, George Hicks, Arthur Wellesley Walter, Samuel Bertie Ambrose, George Pitt Rose, Richard Samuel Montague Spray.

PROFESSIONAL PRIVILEGES.—By the Act of last session (9 & 10 Vict. c. 84) throwing open the Court of Common Pleas to barristers generally to be heard in Term time, they have the privilege of signing pleas and other matters, which before the alteration could only be done by the serjeants. The Act came into operation on the 18th of August, when it received the Royal assent, and "audience" will be given to the bar generally at the commencement of next Term.

CRIMINAL JUSTICE.—By an Act of last session (9 & 10 Vict. c. 24), an important alteration was made in the administration of criminal justice. Before the 26th of June, on which day the Act received the royal assent and came into operation, in certain cases of felony a Court was not empowered by law to award sentence of transportation for a less period than the term of the offender's life, or some long term of years, or sentence of imprisonment for any shorter term than two years; but by the first section it is provided, "that in all cases where the Court is now empowered or required to award a sentence of transportation exceeding seven years, it shall be lawful for such Court, at its discretion, to award a sentence of transportation for a term of not less than seven years, or to award such sentence of imprisonment for any period not exceeding two years, with or without hard labour, as shall to the Court, in its discretion, appear just under all the circumstances."

PROPERTY LEFT IN PUBLIC VEHICLES.—Since the 22nd of May last, up to the 8th inst. 69 umbrellas, 63 parasols, 61 coats, 7 parcels, 3 pocket-books, 11 cloaks, 8 opera glasses, a prize oar, and 326 articles of different descriptions, have been left in cabs and hackney coaches.

PUBLIC DEPARTMENTS.—By a Parliamentary return it appears that there were 47 persons on the redundant list of the several public departments, at the commencement of the year 1845, of whom 7 died or became incapable of service during the year; that 13 were added to the list during the year, making 53

persons on the redundant list of the several public departments at the close of the year—consisting of 10 from the Paymaster-General's department; 3, Admiralty; 7, Ordnance; 7, Customs; 12, Excise; 3, Stamps and Taxes; 2, Woods and Forests; 7, Audit-office, 1, National Debt-office; and 1, Exchequer, Scotland.

The *Augsburgh Gazette*, of the 27th ult. announces that Prince Paskewitch has brought back with him the complete plan for doing away with the feudal services of various kinds to which the inhabitants of Poland are subject. It is supposed that this alleviation will be favourably received throughout the kingdom.

THE ROYAL COMMISSION to inquire into the laws of the Channel Islands, held its first sitting, according to the *Jersey Herald*, on Thursday last. The immediate object of the Commissioners was to ascertain the legal acquirements of the members of the Jersey bench and bar; and the *Herald* says that the inquiries were conducted with great courtesy and urbanity.

HACKNEY CARRIAGES.—The number of licenses for hackney carriages at present in use is 2,650, of which only 100 are employed for the old-fashioned hackney coaches, which are now and then to be seen on the stands, or lingering about the railway stations and steam wharfs. The remaining 2,550 are used for "working" cabs.

CORRESPONDENCE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—What a miserable time is the long vacation passed by the unlucky wight who is obliged to spend it in London! Indeed, to him it is long, and that it is vacation, is expressed in the countenances of those friends who honour him with a vacant stare at seeing him still pacing his usual road to his place of business. All the chancellors are fled, except those chance-sellers the auctioneers. The Master of the Rolls has gone to enjoy the flowers of the country, except that master of the rolls, the baker, who is compelled to stay in town amidst flowers of another kind, earning his daily meat by making daily bread. The conveyancer, too, has settled the conveyance which shall waft him on the wings of the wind out of all drafts, and nobody is left in town but two or three unlucky solicitors' clerks, who, however solicitous to get away, find it impossible. Even most of these have said their last Amen, and have betaken themselves to Greenwich, Gravesend, or Heme Bay—the office-boy to the first place, the half-dead copying clerk to the second, and the senior clerk, who has earned more than the others, to the third. Now, Sir, could you or any of your correspondents suggest any way of passing the hours, besides either the labour, unfitted for the occasion, of trying to throw a light upon Coke, or polishing up Blackstone, or else sitting upon our high stools, cracking jokes and walnuts, you would be conferring the greatest benefit upon the profession, not at large, but those who are not able to get at large? It might be as well, when we are unable to go to the moors in the country, to shoot through that most prolific of moors—Shakespeare's Othello; and if we are destined not to bag partridges, pheasants, and hares, as something slightly savouring of the occupation, to study the Game Laws, or pore over Hare's Reports. But these suggestions do not please us; but your paper being the LAW TIMES, and of all law times the present being the most dull, we think it quite legal and right to lay the case before you for your opinion. The fee—our best thanks. We are, Sir, yours, &c.

THE CLERKS OF MESSRS. CAPLAS, POUNCE, AND LATITAT.

Chancery-lane, Sept. 12.

[It is not often that the subjects we have to handle and supervise, are treated humorously; we, therefore, willingly, at this season, give place to this amusing and ingenious letter.—ED. LAW T.]

TO THE EDITOR OF THE LAW TIMES.

Abbey-square, Chester, 14th Sept. 1846.

SIR,—Reading a letter, published in your journal of the 12th inst. signed "A Solicitor," with a reference to me and my business, I consider it a duty incumbent upon me to reply to the calumniations therein contained, and, as a matter of course (for the reasons I will shortly state), I must request you to insert this.

Your correspondent has taken very great pains to explain who and what I am (but has omitted to subscribe his name), and has also made very many misstatements in his letter, some of which I hand to the public, it being my wish to court, and not avert, inquiry.

He says that I was a writing clerk in the office of the late Mr. Pate, and enters into other matters quite irrelevant to the subject-matter of his grievance. Now I beg to inform you that I was serving under articles to Mr. Pate at the time of his death, and that, not

withstanding your correspondent's spiteful observation as to his (Mr. Pate's) dying worth very little money, that little will be sufficient to pay his just debts. This, however, is irrelevant, and a subject upon which I consider we need not dwell; neither should I have mentioned it but for your correspondent.

Through your correspondent omitting his name, and the facts recently come to my knowledge, I believe that he is not "A Solicitor," and, in fact, that he is no other than a clerk not yet out of his apprenticeship: indeed there can be little doubt but your correspondent, in subscribing himself "A Solicitor," had no business to do so; but having done so, and, as such, brought my name in question, I now beg, fearlessly, to state, that I shall continue to conduct my business on the principles I have hitherto done, without consulting your correspondent, or any one else, save the party who may employ me, in similar matters to the one in question,—matters, though, with which I have very little to do, being principally employed in proctorial matters, as for some years accustomed to.

As to your correspondent stating that Murphy called upon and demanded from me the 2l. in question, it is incorrect; he called upon me on his return from Manchester, and I told him that I had 2l. for him, and that the remaining 3l. (the balance theretofore agreed upon to be taken) would be paid on the following morning; and I most emphatically deny that I was ever asked for the money; the fact being that I absolutely pressed the man to receive the amount I had obtained, and to settle, of course, with me for my trouble, and to get rid of him and his pestering business, finding that he would not wait till the following morning for the remainder of his money.

There are many other *mis-statements* which I have not time to expose, neither will I trouble you with, but I leave the matter in your hands to do me justice by inserting this, and, if necessary, I can refer to many respectable proctors, solicitors, and others, who are well acquainted with me, and will testify as to my general correctness in matters of business.

I am, Sir, yours, &c.

WILLIAM JEFFERSON.

P.S.—To shew that the publication of your correspondent's letter is calculated to injure me, I beg to inform you that I received a letter this morning (16th Sept.) from a highly respectable office in Wigan, relative to making some searches, and in a postscript I was referred to the letter in your journal which I now complain of.

W. J.

[In justice to Mr. Jefferson we give place to his letter, but he has not answered the material part of the charge, which was that of undertaking that which strictly is the duty only of an attorney.—ED. LAW. T.]

SMALL DEBTS ACT AND WRITS OF SUMMONS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As there appears to be considerable doubt in the minds of many of the Profession as to whether a writ of summons can now be issued to recover a debt under 20l. without running the risk of the plaintiff losing his costs, I beg leave to refer your readers to the 129th section of the Small Debts Act, by which it plainly appears that "after the passing of this Act" it is only where a "plaint might have been entered in any Court holden under this Act" that the plaintiff runs any such risk; and until there be a Court appointed to be holden under this Act, in which a plaint (instead of a writ) might have been entered or issued, there can be no question but that a writ in the superior courts will lie, and that the costs of the same may be recovered by the plaintiff.

I am, Sir, yours, &c.

A LONDON SOLICITOR.

STATE OF THE PROFESSION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I cannot agree with your correspondent "Phulax," that the attorneys are the most supine, apathetic, selfish, discontented, and unworthy set of men, as a body, that ever existed. The attorneys are scattered throughout England, and, except in London, meet but little, if at all, in bodies. Even in the metropolis, they have no common focus or point of centralisation, and until within the last twenty years there have been few subjects calling for their attention as a body. It was then found to be a desideratum that the attorneys should have a local habitation and a name, and the Law Institution was supposed to have supplied what was wanted. Unhappily this association has utterly disappointed the expectations and hopes of the Profession. That it is no easy matter to form a fresh combination was proved by the failure last year to establish a more general institution under the presidency of Sir George Stephen. But unless a fresh association can be made, nothing will be done, as it cannot be expected that a few public-spirited individuals can take on themselves so heavy a task as is implied in watching over and protecting the interests of the Profession. Pray, Sir, urge upon us the necessity of combining together for general purposes. I should be most happy to subscribe for a testimonial

to Mr. Wakley, but who will receive my subscription or act for others? I do hope that those gentlemen who stood forward at the last moment of the past session will call on the Profession at large to rally round and assist them. I will most cheerfully give my subscription and do all that a country attorney can do. No time should be lost—much is to be done, and as the Latin proverb has it, *Dimidium qui bene capet habet*.

I am, Sir, yours, &c.

ONM, &c.

PERJURY IN WALES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Perhaps some of your readers will inform me, whether it is absolutely necessary on a trial for perjury to prove, in addition to the fact of the party administering the oath being properly qualified to administer such oath, that the prisoner was sworn upon the "Four Evangelists," or generally speaking, the "New Testament," as containing the "Evangelists." I mean absolutely necessary to secure a conviction. If so, no witness at the assizes or sessions in the county of Carmarthen, let him have perjured himself ever so dreadfully, need be alarmed at being detected; inasmuch as the book upon which all witnesses are sworn in this county is "The Book of Common Prayer," which does not contain the "Four Evangelists."

I can now easily account for the awful perjury committed throughout the principality, both at sessions and assizes. The witnesses appear to me to look upon an oath as a mere form, and in no wise blinding them to tell the truth. Probably they are aware of the circumstance before alluded to. I asked the question of a county magistrate, and he, without hesitation, stated the fact as I have given it, viz. that the Book of Common Prayer was invariably used at Carmarthen. The judges almost always complain of the extent to which perjury is committed in this and the neighbouring counties. I have heard them myself complain in Glamorganshire and Carmarthenshire.

I am, Sir, yours, &c.

A WELSH ATTORNEY.

Llanelli, Sept. 14, 1846.

SELECTIONS FROM CORRESPONDENCE.

A Correspondent, who signs "Vindex," puts the following queries to his brother professionals:—

May I be permitted to avail myself of the suggestion thrown out in the LAW TIMES a few weeks ago, as to legal authors seeking for practical legal information through the medium of that journal?

I am preparing for publication a small work for office use; and as I shall have occasion to give in it the allowed, or customary, fees for ordinary conveying business, will you, or any of your readers, be kind enough to inform me where I can see the last settled table of conveying fees? Or, if no such table exists, to give me the usual fees for the following business?

Drawing conveyances, wills, &c.; copying draft for perusal by the attorney who prepares the original; fair copy of conveyances, wills, &c.; Perusing conveyances, &c. on behalf of a purchaser, &c.; Engrossing on parchment; examining engrossment; making attested copies; drawing abstracts; copying same; perusing same; comparing abstracts with deeds.

Is the fee 6s. 8d. strictly legal, when charged for instructions for an abstract?

Heirs-at-Law, Next of Kin, &c. Quaints.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent impertinent curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount inclosed.]

334. RICHARD KNOWLES, formerly of Nailstone, Leicester, farming bailiff. *Something to his advantage.* If dead, information of his death required.

335. NEXT OF KIN OF SAMUEL BOWEN, late of Castle-street, Oxford-street, Middlesex (died Sept. 1834), or their representatives.

336. CHILDREN OF DENNIS BURROWS, of Cirencester, Gloucester, and HANNAH BURROWS (formerly Hannah Pitman), his wife, and who were married in the year 1726. To claim as Next of Kin of one Samuel Bowen, late of Castle-street, Oxford-street, London.

337. NEXT OF KIN AND HEIR-AT-LAW OF ANN WILLIAMS, of Tottenham, Middlesex, widow of Thomas Williams.

338. HEIR-AT-LAW AND NEXT OF KIN OF THOMAS EDEN, late of Blackwell, in the parish of Tredington, Worcester (died Feb. 1811), or their representatives.

339. NICE OF MR. GEORGE WILLIAMS, of Southampton-street, Covent-garden. *Something to her advantage.*

340. ROBERT RICHARDSON, CATHERINE RICHARDSON, CHARLOTTE RICHARDSON, MARIA KERR, Baron FERDINAND HOMPSCH, Mrs. KERR, The Hon.

CHARLES ST. JOHN, Mrs. HOSAM's servant MARY, commonly called "Good Mary," GEORGE ASHALL, formerly servant of the below-mentioned testator, ASHMAN, brother of George, PETER SCHNEIDER, servant of testator's brother, and Count FERDINAND HOMPSCH, legatee under the will of Charles Joseph Aston, Baron Hompsch, late of Rossmore, near Datchet, Bucks, Lieut.-general (died June 1812), or their personal representatives.

341. Mr. CHARLES GEORGE WILSON, who was in Italy in 1831, with his wife, MARIA THERESA SEBASTIANI, likewise Mr. JAMES BURGESS, or their heirs. *Something to their interest.*

342. PARKINS, JOSEPH WILFRED, Esq. T. BLACKBURN Esq. and SIMON CLARKE, Esq. or if dead, the HEIRS-AT-LAW. *Something to advantage.*

343. WILL OF SARAH COLLARD, deceased, of Walton-upon-Thames.

344. NEXT OF KIN OF MARGARET BUCKLER, formerly of Turners-square, but afterwards of Joy-lane, Hoxton, Middlesex, spinster, deceased. *Something to her advantage.*

345. MARY DAVIS, legatee under the will of THOMAS TERRY, her son, late of Bishop's Stortford, Essex.

346. NEXT OF KIN OF SARAH PIKE, formerly of Ken Surrey, spinster (died 19th May, 1824).

347. ELIZABETH BLANCHARD, who is entitled to a house under the will of SARAH PIKE, formerly of Ken Surrey (died 19th May, 1824).

348. CHILDREN OF JOHN COOPER, late of Harlow, Suffolk, farmer (died Jan. 1819), or their representatives.

349. NEXT OF KIN OF ALICE SAVIGNAC, widow (died 16th Aug. 1805), formerly the wife of PETER BLEVET of Dover-street, Middlesex, upholsterer, and at the time of her death was living at Paddington-green, Middlesex, or their representatives.

(To be continued weekly.)

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

J. W. C. (Devonport).—Thanks for the suggestion, and shall receive due consideration.

W. W. R. (Preston).—The utility of such announcements is obvious, therefore we will endeavour to find room for the notices.

AN OLD SUBSCRIBER.—If anything could induce us to break through the necessary rule of declining to give opinions in cases involving law, we should do it in favour of our esteemed correspondent. We regret to deem compliance with the request preferred.

G. M. (Milton-street).—Were the letter less diffuse we should insert it for the sake of the subject; as it is, we cannot spare space does not permit of its admission.

T. C. (Uttens).—Probably in our next.

A SUBSCRIBER.—The reason why the cases alluded to are not given in the first vol. Real Property Cases, Vernon Society, is, most probably, because they were decided before those Reports were undertaken.

W. S. (Tottenham, Wolverhampton).—The Tithe Amendment Act is so long that we cannot give it in extenso. The subject-matter of each clause, however, will be found among the New Statutes in this number.

NOTICE TO SUBSCRIBERS.

The volumes of the LAW TIMES, neatly, strongly, and uniformly bound, for 5s. 6d. each, with the name and address of the owner on the cover, 1s. extra, if sent to the office. If the numbers for binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

The numbers comprising the first volume of the VERULAM REPORTS of Real Property and Conveyancing Cases may also be transmitted for binding in like manner.

INDEX TO THE LAW.

The LAW DIGEST for the half-year ending Jan. 1 is now ready. It forms a complete Index to the Law decided during the half-year, and contains upwards of 2,000 cases. Price 5s. 6d. in a wrapper. Being stamped, it can be transmitted by post.

THE LAW TIMES.

SATURDAY, SEPTEMBER 19, 1846.

THE PROFESSION OF AN ATTORNEY.

WHILE deprecating the numerous invasions of the fair and reasonable emoluments of the Attorney which the Legislature has been so unsparingly making for some years past, especially while they are unaccompanied by a re-

mission of the tax specially imposed upon him in consideration of those emoluments; and although we cannot but see in the Small Debts and the Short Conveyances Acts more serious inroads upon those profits than any before effected, still we cannot share the alarm expressed by some of our correspondents, who anticipate from them nothing less than the ruin of the Profession. We agree rather with our correspondent "LEX," whose letter in the *LAW TIMES* of the 29th ult. correctly indicates the source of the apathy with which the progress of the Small Debts Act was viewed by the Solicitors. The truth is, that the nature of their business has of late years experienced a great change. It may have been formerly that an Attorney was that which the name implies, and nothing more. His business was almost limited to the practice of the law—that is, to the conducting of suits for clients, with some occasional conveyancing. But with the vast changes that have occurred in society, from the increase of commerce and the consequent complications of property, the duties of an Attorney have changed also. That which originally formed the larger and most important portion of his business has come to be the least in value, and so little esteemed that every practitioner is desirous to emancipate himself as soon as possible from the practice of the common law, and dedicate himself wholly to the more profitable and agreeable work that comes under the title of the "general business" of his office. The successful Attorney's ambition is, that he may never again issue a writ. And he is right. The profit does not repay the time, the skill, and the anxiety expended upon the work. The Attorney who consults his interest rarely brings a cause into court; he knows well that his gain can be but trifling, while his toil will be great, and he incurs no small risk of losing his client into the bargain, for a defeated suitor is the most unreasonable being in the world, as doubtless many of our readers have experienced to their cost. Certainly this is much to be lamented. The conduct of suits has consequently fallen into the hands of an inferior class of practitioners, who are less scrupulous of resort to those irregular means of making up profits which others decline. It was mainly because it offered new and greatly increased encouragement to such a class of practitioners that our strongest objection to the Small Debts Act was founded.

If it were possible to make anything like a computation of the profits accruing to the Attorneys from that which is strictly their business as Attorneys, as well as of that proceeding from other sources, the latter would doubtless be found to exceed the former by fifty fold.

And it is a satisfaction to those who are just entering upon practice to reflect, that not only is this change in the character of the business of an Attorney certain to grow more and more amid the present rapid progress of society, and consequently that he will become continually more independent of the practice of the common law for his income, but it will carry with it an advantage which cannot be estimated too highly. With each succeeding year the Attorney will become less of an Attorney, and more of a general adviser. Dull and idle men will employ him to think for them, busy men to act for them. To do these duties well, he must enlarge the sphere of his education, and learn the business of life as well as the practice of the law. But they who have done this become the masters of those for whom they so think and act. They obtain an influence in society which ensures to them a position more so be coveted even than money. They must be honoured because their usefulness will be felt; and so far from anticipating, from any conceivable legislation, that the Profession will be lowered in its social position, we are satisfied that nothing but the most grievous neglect of its own interests can prevent it from taking a far higher place than it has yet held—a place accordant with the new and loftier duties which

it will be required to fulfil in supplying the altered wants of society.

But to this end its education must be moulded, and that is a topic upon which we hope to take an early opportunity of directing the thoughts of our readers. It is too important to be dealt with now, and we expect to be aided by the report of Mr. Wyse's Committee on Legal Education, which will contain much valuable suggestion. Our present purpose is merely to remove the alarms which have been felt by many at the possible effects of recent measures upon the prosperity of the Profession, by reminding them of a fact not sufficiently borne in mind by those who treat of its state and prospects, namely, that an Attorney is now a very different personage from the mere lawyer who once bore that name; that in our generation the least part of the business of an Attorney is that which properly belongs to him as an Attorney; that while preserving the old name, he has become a different man, with duties altogether different; that he is, and henceforth will yearly be more and more, the general adviser—the second head and hands of his clients in the management of their affairs; that this change not only opens a new source of emolument, to which the other practice is insignificant, but inevitably raises him in the social scale, by commanding for him who performs those duties well and honourably the respect of those to whose wants he ministers faithfully.

These fair prospects, however, should not justify supineness when unjust attacks are threatened, nor lull the Profession to submit tamely to be taxed upon pretence that they enjoy peculiar profits, when in truth the legislature has so curtailed those profits, that but for these other and better resources they could not subsist. The Certificate Duty must not be suffered to continue through another Session.

APPOINTMENTS UNDER THE SMALL DEBTS ACT.

THE evil anticipated when, in a former article, we deprecated the delegation of authority to the Judges of the County Courts to appoint whom they might please to fill the offices in their courts, created by the Act, is already manifest. In the morning papers of this week appeared an advertisement, which we give—suppressing only the reference, that we may by no means further the wishes of a "Solicitor of long standing," who thus seeks to provide for his son:—

SMALL DEBTS ACT.—To BARRISTERS and Others.—A Solicitor of long standing is desirous of procuring for his son, who is admitted an attorney, and well qualified, the appointment of CLERK to one of the Judges under the Act.—If any person who can aid the advertiser in this object, will address to X. Y. a personal interview shall be appointed, if required, or any further information given.

Now this advertisement suggests, as plainly as such an intimation can decently be conveyed through a newspaper, that the "Solicitor of long standing" is open to treat with any Barrister who has strong chance of appointment to a judgeship of the county courts, or already holds that office, for the purchase of an appointment for his son. The inconveniences that are likely to arise from the sale of these offices are obviously such that in "the Amendment" which this Act will assuredly call for next session, there should be inserted a clause which shall remove from the judges of these courts a temptation such as they are now exposed to, and vest the power of appointment in some official whose position removes him altogether from the chance of contact with the parties whom he has benefitted.

SHAM LAWYERS.

ANOTHER of this fraternity, which, like the fabled Hydra of the mythology, seems to multiply with blows, is the following. We commend Mr. SPENCE to the care of the Profes-

sion at Leeds, who, if they are disposed to protect themselves and are vigilant, may no doubt soon find an opportunity to put down most of those who encroach upon their undoubted province.

Leeds, Sept. 2nd, 1846.

Mr. Robert Wood,
SIR,—I am instructed by Mr. Merryweather, to apply to you for the sum of One Pound Ten Shillings, and unless the same be paid to me before three o'clock to-morrow, I shall issue a county court summons against you without further notice.

I am, Sir, yours, &c.

GEO. W. SPENCE.

P.S.—Apply for me either at No. 1, Upper Albion-street, or at Mr. I. R. Rhode's, latter, No. 3, Kirk-gate, Leeds.

THE LAW TIMES EDITION OF IMPORTANT STATUTES.

THE SMALL DEBTS ACT.

THE Edition of this Act, by Mr. PATERSON, containing an analysis of the clauses, observations, and a copious Index, has been retarded by an unavoidable circumstance, but is now printing, and will be ready on Monday. Orders therefore should at once be given.

A COURSE OF LECTURES ON THE LAW OF CONTRACTS.

By PROFESSOR CAREY.

Delivered at the University College.

LECTURE XVIII.

As I mentioned in the last lecture, it is sometimes a question how far the ordinary liability of a bailee may be altered by an express agreement in the case of a deposit of goods; that if the bailee promises only to take care of the goods *as his own*, he is only bound to take ordinary care; but if he promises to keep them *safely*, then he would be answerable for any accident that may happen to them; and in *Southgate's case*, 4th Reports, 83, it is said "to keep" and "to keep safely" are the same thing. Keeping *safely* is making a man answerable for accident, and if the bailor would limit the responsibility he must do it expressly.

In modern times the *dictum* in that case has been much called in question. It is to a certain extent received in *Kettle v. Browner*, in Willes's Reports. That was an action for goods, where the plea stated the goods were to be "kept as his own," and to be shown for sale. The effect of the plea appears to be that the goods were not deposited for safe custody, but to be shown for sale; and if they had been deposited to be kept, it might have been gross negligence in the bailee to show them about; but as they were deposited for sale, such showing about was part of the purpose for which they were left. Sir Edward Coke seems to think there is no difference between an undertaking to *keep* and an undertaking to *keep safely*, and that in either case the bailee must be responsible if the goods are stolen, though without any negligence on his part. In *Cogge v. Barnard* this was denied to be law. If a bailee promises simply to *keep* the goods of another, and would not be answerable for such loss as might arise, it may be a question whether an undertaking to *keep safely* would not increase his liability. "In all these instances," says Blackstone, in speaking of *Bailment*, "there is a special property transferred from the bailor to the bailee together with the possession. It is not an absolute property because of his contract for restitution; and the bailor hath nothing left in him but the right to a chose in action, grounded upon such contract, the possession being delivered to the bailee. And on account of this qualified property of the bailee, he may (as well as the bailor) maintain an action against such as injure or take away these chattels." (2 Bl. 452.)

With respect to the expressions here used, some observations may be made. The bailor's right is not a right to the chose in action. It seems to follow from Blackstone's definition, the chose in action not being in possession, that when goods are put in the possession of another person, they are, as far as the simple goods are concerned, things in action; that is, however, not the case, from which you may infer that Blackstone's definition is not a correct one. If you deposit goods with another person, he may sell those goods, and the selling is not a sale of the thing in action; the bailor's right is not that of a chose in action. Again, the right to

receive them back is not founded upon a contract; they are his own goods, and he is entitled to possession of them. Jones on Bailments, 80: "Every bailee has a qualified property in the thing delivered to him, and has therefore a possessory action against a stranger who may damage or peril them." This is not a correct expression, unless by "possessory action" is meant an action founded on the right of property—an action to maintain possession. But the rule is, I apprehend, in substance, that the bailee has a qualified property in the things delivered to him; he has a right analogous to the right of ownership, subject only to the superior claim of the actual owner. There is no right of property attached to the bailee as against the bailor; the bailee may exercise the simple rights of ownership against a stranger. I borrow a horse of A B; as between me and the bailor, the horse is mine: I may ride the horse for a time, but am bound to restore him; but as against other persons my right is not distinguishable from that of the owner. If any one injure the horse I may bring an action against him; if any one turns the horse into a field, or if the fences are bad and he is lost, I may recover the value of the horse. If the horse gets into the possession of another person, who refuses to restore him to me, I may bring an action of trover. I am answerable to the lender for any damage that happens to the horse, and against a wrong doer I have the same remedy as if I had been the actual owner. This is deemed special property. It is said in a very old report, as old as the Year Book the 21 Hy. 7th, that a bailee has a property in the thing bailed against a stranger, for he is chargeable to the bailor, and, therefore, reason is that he shall recover against the stranger who takes the goods out of his possession. This doctrine appears to be disputed by Storey, but it is supported by most of the authorities which he himself adduces. His ground for disputing the doctrine appears to me to be a want of a precise view of what is meant by the use of the terms "special property." The question, as he states it, is, who is to be deemed the owner or proprietor of the thing during the period of the loan? or, in other words, he raises the question whether the borrower has a special property in it or only a naked possession? This seems to imply that by "special property" is meant some sort of ownership and right of property, valid as against the real owner. The question raised is, is there a special property or only a naked possession? The answer to that appears to be this; he has both—he has a special property as against strangers; as against the owner he has only a naked possession. The special ownership of the bailee is a fiction in no degree diminishing the original ownership of the bailor. So in the case I have put of a horse lent to me, and injury done to it, I may treat the horse as my own against a wrong doer, and bring an action to recover damages; still, if the original owner chooses to take the trouble on himself, he may bring an action; my possession under his right of property is deemed his possession. Trover will lie upon the special property, as in the case of a carrier (1 Lord Raymond, 275); and if a bond is transferred by an obligee to a third person, that is a third person who has an interest in it, that third person may maintain trover, and allege the bond to be his. In 2 Wms. Sanders, it is stated if a man uses the cattle of J. S. to plough his land, and a stranger takes them away, J. S. may maintain trover or trespass against him; trespass for the goods which were in his possession, or trover to recover the goods which he claims as his property. So if goods are sent to a shopkeeper on sale or return, in that case the property is still in the person who sends the goods, but the shopkeeper has a special property which, coupled with the possession, will enable him to bring trespass in his own name against any one who takes them away. (*Colwill v. Reeves*, Campbl. 575.) So in the case of *Rooth v. Wilson*, where a horse died from the insufficiency of the fences. There the original owner, whose the horse actually was, might also have brought an action; the person who caused the loss made himself liable to an action, both by the bailor and the bailee; but if judgment was obtained against him by one, that would be a bar to an action by the other; and when it is said either the one or the other may bring an action, it is to be understood the original owner must have a right of immediate possession, or he cannot maintain trover or trespass. (*Ward v. Mallinder*, 5 T. R. 489.) It must be understood that the party

who is the bailee does not part with the rights of ownership as to the enjoyment of the things bailed. The mode in which they are to be treated depends upon the purpose for which they are bailed. It only extends to give the bailee against wrong doers the same remedy which he would have if he had been the right owner: he cannot sell or pledge them. In *Hops v. Hoare*, 3 Atk. 44, jewels were deposited in a sailing packet, and one S. brought home the packet, and pawned the jewels. Hope brought an action of trover against Hoare to recover; the bailee was said to have only a custody and no property, that is to say, he had no such property as to convey a title to another. The jewels had been sold to Hoare, who had paid for them; they were nevertheless still adjudged to be the property of the original owner, because the person of whom he had taken them had no right to sell them.

We have seen that if a bailee, for a particular purpose, without authority, pledges the goods of the bailor, or if he sells them, the bailee has still a property in them, and he may claim them of the person in whose possession they are; except in market overt, or where the owner had proved the bailee to deceive the stranger by appearing in the character of owner. The answer to the argument sometimes raised as to release of ownership, is, that he who advances the money ought to take care to protect himself against the frauds of the person to whom he advances. If persons will advance their money to those who ask for it, without exercising a little caution, they must take the consequences of their own indiscretion. That was the view of the common law of England. A very different opinion is expressed by Best, C.J. not very long afterwards, in *Williams v. Barton*, 3 Bing. 139: "Had I authority to alter the law, as the mode of carrying on commerce has altered, I would say that, when the owner of property conceals himself, whoever can prove a good title under the person whom the concealed owner permits to hold it, should retain the property against the owner. But this is not yet the law of England. Possession is not proof of property. Our ancestors kept their goods in their own possession. If agents were employed by them to deal with their property, they did not keep themselves out of view, and the extent of the authority of the agent was so well known, that no one dealing with those agents could be imposed upon; but, as little credit was given, and as men could not trade beyond their capital, they were seldom reduced to the necessity of pledging their stock in trade; the sales of merchandise were made in market overt, and if the buyers conducted themselves honestly, the law protected them from suffering by purchasing in market overt property that did not belong to the person of whom they bought. This exception in our law proves, that if a person acquire the possession of property in any mode other than that of sale in market overt, he cannot keep it against the owner; it proves at the same time that, as commerce is now carried on, the purchaser or pawnee should have the same protection against him who permits another to deal with his property as if it were his own."

The law with respect to sale in market overt affords little protection to those engaged in commerce. As the law stands, if the pawnor of goods have no authority to make the pledge, the pawnee cannot hold them against the owner. This doctrine of our law has important reference to mercantile transactions. In the year 1823 an Act was obtained for the benefit of persons dealing with factors. The provisions of this Act are incorporated in the Act 6 Geo. 4, c. 94, and these provisions have been further extended by the recent Act 5 & 6 Vict. 39. One of the great objects of the statute 5 & 6 Vict. was to extend the same protection to persons who had advanced money on goods.

These are all the observations I have to make with respect to bailment in general. There are two kinds of bailees who are distinguished from other bailees by the extent of liability which they are under by the common law. The one is an Innkeeper. An Inn is a house where a traveller is furnished every thing he has occasion for while on his way. (*Thompson v. Lacey*, 3 B. & Ald. 283). In this case Best, C. J. said, "An inn is a house, the owner of which holds out that he will receive all travellers and sojourners who are willing to pay a price adequate to the sort of accommodation provided, and who come in a situation in which they are fit to be received." Under these reasonable limitations it is the duty of an innkeeper to take in any

guest; if he refuses he is liable to an action, an action on the case for the breach of his duty, an action of *assumpsit* for the breach of the promise that is implied in the existence of the duty: or it may be indicted. The principle upon which the liability rests is, that he is a person who undertakes to exercise a public employment, to which are attached certain rights and certain liabilities. The guest has the protection of the law for the security of his goods if they are lost or stolen, or for the security of money which he has in the house (*Cayle's case*, 8 Coke, 32; and *Kent v. Shuckard* 2 B. & Ad. 803). The landlord is *primæ facie* liable for any loss, not occasioned by the act of God, or of the King's enemies, though he may be exonerated where the guest chose to have the goods under his own care. In the case of *Kent v. Shuckard* the guest had package taken to the travellers' room and it was he. The goods were usually put in the guest's bed-room and it was urged that the traveller, by having a package put in the travellers' room instead of a bed-room, took it under his own protection, and made himself responsible; it was, however, held that the landlord was responsible. If it had been intended by the landlord not to be responsible so long as the guest chose to have the goods placed in his bed-room or some other place selected by him, he should have said so; by something in the nature of the contract, he should have limited his responsibility. If the guest is not a mere traveller or sojourner, but leaves property for a purpose foreign to the ordinary purposes of the inn, in this case the duty of the innkeeper does not arise. Thus, when a landlord had granted to a guest a private room for the purpose of exhibiting his goods for sale, he told him there was a key and he might lock the door, but he did not, and some of the property was lost. The judge told the jury that though *prima facie* the innkeeper was responsible, yet the guest himself, by his own misconduct, discharged him from that responsibility, and the Court refused a new trial. (*Burgess v. Clements*, 4 M. & S. 304.) This responsibility is not confined to things *intra ædificium*. If a guest delivers his horse to the landlord, or the ostler, and requires him to put the horse to pasture, and that is done accordingly, and the horse is stolen, the innkeeper is not answerable for the loss. If it had been put in the stable which was under the innkeeper's authority, then he would be answerable like any other bailee. A guest travelling to an inn on the day of a fair, the landlord took in the horse; he put the guest into a room in the house, and placed the gig in the open street when the gigs of the other guests were placed one above another; the gig was stolen; was the innkeeper liable? It was argued that the street was no part of the inn, and if the landlord was liable for the loss occurring there, he might be liable, if the guest had had his pocket picked, on which it was held he continued liable for its safe custody. If the landlord chooses to use the street as his yard, he must himself be answerable for the loss. In *Cayle's case*, it was said, if the guest send his horse to grass, the landlord is not answerable; but the case goes on to say, if the owner does not require it, and if the Innholder, of his own head, puts the guest's horse to grass, he shall be answerable, if it be stolen. That is on the same principle as his being liable for the loss of the gig in the street. If the goods are lost by the default or neglect of the guest, he must bear the loss. That is admitted in *Burgess v. Clements*. The liability of the landlord extends to the goods brought into the inn. If a man goes into an inn, and is treated there as a guest, the innkeeper is bound to take care of the goods of the guest, without their being specially entrusted to his charge. (*Barnett v. Miller*, 5 T. R. 273). In that case the guest came to the inn, and asked leave to have the goods left for a week; that leave was refused to be given by the landlord. The guest set down at the Inn as a guest, with the goods, but left them, and during the time he was away, the goods were taken away; it was held the landlord was liable. As long as the guest and the goods were there, the landlord was bound to take care of them; his having refused to take the care of them for a week did not affect it one way or the other.

The benefit conferred by the law upon the innkeeper is, that he is allowed to retain the goods of the guest to insure the payment of his demand. The guest cannot recover possession of the goods, without paying the amount of the landlord's lien. (*Thompson v. Lacey*, 3 B. & Ald. 283). There

is an older case in which it is said that an innkeeper has a right also to detain the person of his guest as a security for payment, but that case has been overruled.

Analogous to the rights and liabilities of an innkeeper are those of a common carrier. A common carrier is a person who undertakes to transport from place to place the goods of such persons as think fit to employ him. As his is a public employment, he is bound to accept the goods, unless there be some reasonable excuse. If he carries his fare, then like the innkeeper he has a lien on the goods for the price of the carriage; and like the innkeeper he has a common law responsibility for injury except such as is occasioned by the act of God or the King's enemies. This was the position in which they stood at common law. A carrier is not released from responsibility by giving notice that he will not be answerable for the amount of the specified value, unless he were informed of the real value, and paid a larger sum by way of insurance. This notice, if it was proved to have been communicated to the person who sent the goods, was a protection to the carrier, otherwise not. (*Mayhew v. Emans*, 3 B. & C. 601; *Kerr v. Willan*, 6 M. & S. 150.) That is to say, supposing a carrier to prove that the notice he had given was known to the person who sent the goods, he was then not answerable for the safe carriage, at all events unless their value was declared, and the larger sum paid. Still he was liable in some cases. He was liable if he did any thing contrary to his duty; if he was guilty of actual misfeasance. If he had taken a valuable glass and dashed it against the ground, his misconduct would not have been protected, and it also appears probable, from the majority of cases, that in case of gross negligence he would have been answerable. He would be protected from the effects of ordinary negligence, but if he be guilty of gross negligence or actual misfeasance, in those cases he would be still liable. (*Riley v. Horne*, 5 Bing. 217.)

Now it is said by Best, C.J. that at common law carriers are responsible for the value of the goods they undertake to carry, but they limit the responsibility by making a special contract, by giving public notice that they are not accountable for parcels of a certain description. In order to shew that they are not subject to the common law liability, they must prove that the party sending the goods had knowledge of the notice; when goods are sent to a carrier, they are no longer under the eye of the owner, who seldom follows them, or sends any servant with them to their place of destination. If a loss occurred, the owner would be unable to prove the loss; his witnesses must be the carrier's servants; and they, knowing that they could not be contradicted, would excuse their master. An ordinary bailee, for instance a carrier, not being a common carrier, is answerable for reasonable diligence. A common carrier is more than that; he is answerable for all accidents at common law. In the one case there is a contract and liability to take reasonable care; in the other there is another liability, which is in the nature of an insurance, not only that he will undertake to carry the things carefully, but that he will answer for their being carried carefully; that is the common law liability of the carrier. As the common law makes the carrier an insurer of the goods he carries against accidents, he is as much entitled to be paid a premium for insurance, and their delivery at their destination, as for the labour and expense of carrying them; for, besides the risk he runs, his attention is more anxious, and the journey more expensive in proportion to the value of the load. A carrier has a right to know the value and quality of what is committed to his care; if the owner will not tell him what they are, and what they are worth, the carrier may refuse to take charge of them. If he waives the right to know their contents and value, it is the interest of the owner of the goods to give a true account of the value of the goods, but he cannot recover more than their real worth, whatever value he may have put on them. Nay, it has been said that if he answers improperly so as to deceive the carrier, there is no contract between the parties: it is a fraud which renders the contract altogether invalid, so that he has no claim for recovery at all. There are some cases on this subject which are stated in *Waller v. Jackson*, 10 M. & W. 161. On the other hand it is the carrier's business to make inquiries, and if the carrier neglects to make any inquiries of the owner as to the value of the goods, or to make a special agreement that he will not undertake to ensure the

safety of the goods unless the owner pay an insurance, and cannot prove a notice limiting his responsibility, he is responsible for the full value of the goods, however great that may be. This is a convenient rule that imposes no difficulty on the carrier; he knows his own business and the law relating to it. He must make a particular and special bargain, or a general notice, and prove the owner had knowledge of it. Although he may have limited his responsibility by a sufficient notice, yet if the loss is occasioned by gross negligence on his part, the notice will not protect him. Every man who undertakes to do a service obliges himself to use due diligence in the performance of that service, namely, the responsibility of an insurer. A carrier is liable for gross negligence: what is the amount of gross negligence is a question for the jury. These points establish that a carrier is the insurer of the goods he carries; that he is obliged for that reason to take all reasonable care of the goods that are committed to his care; that he is required to inform himself of the contents and value of the parcels he carries, and if he is not informed by the owner and does not ask for this information, but takes the goods, he is answerable for the value whatever it may be, but he may limit this responsibility by notice that he will not be answerable for any accident not occasioned by gross negligence. (*Bodenham v. Bennet*, 4 Price, 31; *Wyld v. Pickford*, 8 M. & W. 443.)

By the statutes 11 Geo. 4 and 1 Wm. 4, introduced for the protection of carriers by land, no common carrier is answerable for loss or injury to gold, silver, jewellery, silks, and a variety of articles chiefly of small bulk, but of great value, above 10l. unless at the time of delivery the nature of the articles delivered be declared, and an increased charge made, or an engagement to pay the same, is accepted by the person receiving the parcel. Carriers may charge all such parcels at an increased rate above the fixed duties specified by the Act. On other goods not enumerated in the Act carriers are not protected from being answerable for loss occasioned by the acts of their servants, nor are their servants protected from being answerable for their own neglect or misconduct. Supposing a carrier to be guilty of wilful misfeasance, and were to be indicted, the statute would be no protection to him. Suppose the case of gold or silver, or any of the enumerated articles, being sent to a carrier, and no declaration made of its value, and no insurance paid, in that case the carrier is protected by the Act. It was at one time considered that the statute was a protection only against the effects of ordinary negligence; that, if the carrier was guilty of more than ordinary negligence, he might be held liable. The Court of Queen's Bench, however, have held, partly from acknowledging no difference between negligence and gross negligence, and taking the same view of negligence and gross negligence as the Court of Exchequer in a case that came recently before our notice, and also from a consideration of the objects and the language of the statute, that, where the act has not been criminal, no negligence, whether simple or gross, will make the carrier liable for the goods. (*Hinton v. Dibdin*, 2 Q. B. Rep. 646.)

In the two cases that I have here considered—that of an innkeeper and a carrier—there is a greater liability than in the case of any other bailee, that liability being in the nature of an insurance. A landlord might, by a special agreement or notice, diminish his liability. In point of fact that is not done, because circumstances do not require it, but with respect to a carrier by land it has been done. The effect of it was in itself doubtful, but the Legislature have passed an Act which seems to have put it upon a clear and intelligible basis, which is, that if people do not choose to declare the value of their goods, they will have no claim against the carrier of them unless for actual misfeasance, and no amount of negligence will make him answerable.

NECROLOGY

OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

SIR JOHN WILLIAMS.

THE subject of this notice was at his country residence, Livermore-park, near Bury, in Suffolk, enjoying that needful relaxation which this period of the year usually places at the disposal of the over-wrought lawyer, where his earthly career was unhappily brought to a close. The age of Sir John Williams was not much short of 70 years, but those who knew him considered that his state of general health was sufficiently

good to warrant the hope that he might be destined to enjoy as long a life as ordinarily falls to the lot of a successful lawyer. The learned personage just deceased had been for the last twelve years one of the judges of the Court of Queen's Bench; and if he did not display in that distinguished position talents and attainments of the very highest order, he at least brought to the discharge of its onerous and important duties great integrity, a sincere and earnest desire to administer justice in exact conformity with the existing state of the law and the acknowledged principles of British jurisprudence. The subject of this memoir reached the dignified station which he occupied at the time of his death without much aid from that species of connexion which in the present day is deemed almost essential to forensic success; for he began life at the bar with scarcely any means of procuring clients beyond that which a distinguished university reputation may be supposed to confer. Sir John Williams was a native of Banbury in Cheshire; his family, however, were settled in Merionethshire, and Sir John was always very careful to have it understood that he belonged to the principality. His father was rector of a parish in Merionethshire, but he was also vicar of Banbury, and was residing there when his son John was born. At the well-known grammar school of Manchester, Sir John Williams received the early part of his education, and he proceeded thence to Trinity College, Cambridge, eminently qualified by the instruction and discipline of his boyhood to avail himself of the advantages and acquire the honours which a university presents to men of diligence and ability. He went to Cambridge in the year 1794, and obtained a scholarship the first time that he sat. Mr. Williams took his bachelor's degree in 1798, and during his undergraduate course obtained several prizes; but the chief object of his youthful ambition—that to which he attached much more importance than to any advancement in after life—was a fellowship. In hoping for that distinction he was not destined to encounter disappointment; and it is rather a remarkable proof of his peculiar opinions upon this subject, that he has sometimes been heard to say, he considered the honour of a fellowship, obtained in the face of that competition against which he contended, as an acquisition superior even to the dignity of the emine. Mr. Williams, in getting his fellowship, very modestly acknowledged that he achieved success over a competitor superior to himself in general scholarship. That gentleman was obliged to struggle through life as he best might on the scanty pittance which a poor clergyman receives, while a more favourable fate awaited Mr. Williams; but to his infinite honour be it recorded, that when professional success and considerable opulence rewarded his labours, he generously remembered his college rival; and considering him hardly used by fortune, allowed him an annuity in aid of the scanty income which that learned and estimable person derived from a small church living. It is understood that the annuity has been continued to his widow.

Long after Mr. Williams quitted college, he devoted his time occasionally to classical studies, as the pages of the *Edinburgh Review* amply testify, for they contain articles written by him on the orations of Demosthenes and on several Greek plays. Even still later in life his classical attainments attracted attention; and Lord Tenterden, a high authority on such subjects, as well as upon the laws of the land, pronounced Mr. Williams to be the best scholar throughout the whole profession.

Sir John Williams was called to the bar in the year 1804, and although he did not rise to the highest rank of the profession, he still obtained a very respectable amount of business. Mr. Williams chose the northern as his circuit, and the Liberal party as his political friends. Both were bold steps; for the magnitude of the circuit rendered success more problematical in that quarter than in any other, while certainly no prudent man could in the early part of the present century see a prospect of silk gowns, or ermine robes, by connecting himself with Whigs, Liberals, and other adversaries of the church, the state, and Lord Chancellor Eldon. Slowly, but securely, did Mr. Williams advance in the arduous profession of the law; accident never seemed to have procured for him a client, and accident never deprived him of one. It could not be said that he enjoyed a first-rate business; but he scarcely ever lost a client, and though a man of ardent temperament, his discretion in the conduct of a cause was pre-eminent. In proof of this, it may be stated that the late Sir John Bayley has been heard more than once to declare that if he were to be tried for his life he should desire to be defended by Mr. Williams. Even the present generation need scarcely be reminded that the proceedings against Queen Caroline formed by far the most important occasion upon which any lawyer has been employed during the present century. The Attorney-General of that Princess became Lord Chancellor, her Solicitor-General, Chief Justice of the Queen's Bench, two of her counsel, successively, Chief Justices of the Common Pleas, and a fourth one of the judges of the Ecclesiastical Courts. Amongst those eminent men Mr. Williams took a conspicuous part as one of her

Majesty's advocates; and the almost unrivalled powers of cross-examination which he displayed upon that memorable occasion fully realized the expectations of his friends. His skill as a cross-examiner was generally acknowledged by the Profession, but it was not until after he had exercised that astonishing power upon the notorious Theodore Majoeci that the public at large became aware of his matchless talents in that branch of an advocate's duty. Soon after "the Queen's trial," as it was called, his clients became more numerous, and his name considerably more public. An opportunity for getting into Parliament presented itself in the year 1822, when he stood upon the Liberal interest for the city of Lincoln, and was returned. The most remarkable use which he made of his powers and privileges as a member of Parliament was to co-operate with Mr. Michael Angelo Taylor in denouncing the abuses of the Court of Chancery; but it must be admitted that the share which he took in the deliberations of the House of Commons, did not very greatly add to the reputation which he had previously acquired; but upon the whole, he made rather a favourable impression on the House, and he certainly assisted in laying the foundation, or at least preparing the way, for several of the improvements which, since that time, have been effected in the Court of Chancery. A change of the ministry at length procured for him that professional position to which he had for some years been fairly entitled. He received a silk gown, and soon after the accession of William IV. her Majesty, now Queen Dowager, appointed him her Attorney-General. In February, 1834, he became one of the Barons of the Exchequer, and having sat in that court only one Term, was transferred to the Court of King's Bench, where he remained until the period of his lamented death. It is well known that Sir John Williams appeared to considerable advantage as a judge in criminal cases; and that he laboured unceasingly in every case that came before him, to reconcile his strong sense of justice with, perhaps, his still stronger feelings of mercy. Although Sir John Williams had been for some weeks past indisposed, he was not thought to be in any imminent danger, and he had, we understand, been considered by his physicians as labouring under some affection of the liver. On Monday last, however, he complained of increased pain in the chest, and to the great regret of that very numerous circle of society who could appreciate his many estimable qualities, his valuable life was on that day brought to a close.—*Times*.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

BOYLE.—On the 14th inst., the lady of W. R. A. Boyle, esq. of Coleshill-st. Eaton-square, and of Lincoln's-inn, Barrister, of a daughter.

TATHAM.—On the 13th inst. in Cambridge-street, Hyde-park, the wife of Montague John Tatham, esq. of Doctor's Commons, of a daughter.

MARRIAGES.

COX, Charles J. Esq. H. M. C. to Sidney, daughter of Edward William Morse, esq. of Drayton-lodge, near Ealing, on the 17th inst. at Chiswick.

GUY, Henry, esq. solicitor, Carlisle, son of the Rev. Thomas Guy, vicar of Howden, to Eliza, daughter of Mr. Lawrence, solicitor, Ipswich, on the 9th instant, at St. Margaret's church, Ipswich.

JOHNSON, Saffery William, esq. of Gray's-inn, to Maria Louisa, second daughter of George Buckton, esq. of Oakfield, Middlesex, on the 15th inst. at St. Mary's, Hornsey.

PERKIN, J. esq. Barrister-at-Law, eldest son of the Right Hon. L. of Rutland-square, one of the Judges of the Court of Queen's Bench in Ireland, to Penelope, eldest daughter of J. Hatchell, esq. of Merion-square, Sept. 9, at St. Peter's Church, Dublin.

RUSSELL, J. A. esq. of Gray's-inn, Barrister, to Martha, younger daughter of T. E. Bower, esq. of Doughty-street, and Chancery-lane, Sept. 15, at St. Pancras-church.

STEVENS, John, esq. of Kensington, to C. W. Thorley, only daughter of Joseph Thorley, esq. of Croes Howell, Denbighshire, on the 11th instant, at Gresford.

DEATH.

WILLIAMS, the Hon. Mr. Justice, one of the Judges of the Court of Queen's Bench, very suddenly, at his residence, Livermere, Suffolk, on the 14th inst.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY

ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.
(Continued from page 523.)

Operation and effect of the statute.—The object of the statute of 27 Hen. 8, c. 10, undoubtedly was to annihilate uses altogether; but so far from attaining this end, it became the means of introducing a new mode of conveyancing admirably adapted to the exigencies of mankind. Hence the judges began very soon to depart from the rigour and simplicity of the common law, and to allow a

more minute and complex construction upon conveyances to uses than upon other assurances. Thus, says Blackstone (vol. 2, p. 334), it was adjudged that the use need not always be executed the instant the conveyance is made; but, if it cannot take effect at that time, the operation of the statute may wait till the use shall arise upon some future contingency, and in the meanwhile the ancient use shall remain in the original grantor. As where lands are conveyed to the use of A and B after a marriage shall be had between them (1 Roll. Abr. 797), which doctrine, when devises were again introduced, and considered equivalent in point of construction to a declaration of uses, was also adopted in favour of executory devises. But these springing uses differed from executory devises, because, in the former instance, there must be a person seised to such use at the time the contingency happened, otherwise the statute could not have executed them; and the destruction of the estate of the feoffee before the happening of the contingency, would, as we have already seen, have destroyed the use for ever; whereas, by an executory devise, the future freehold is transferred to the future devisee. And now, as I had shortly before occasion to remark, the recent statute of the 8 & 9 Vict. c. 106, has for the future abolished the distinction between springing uses and executory devises, so far as the destruction of the former is concerned by failure of the preceding particular estate, by enacting that a contingent remainder shall not, after the 31st of December, 1844, fail of effect on account of the premature determination of the preceding estate. (Sect. 8.)

What persons may be seised to a use.—Neither the king nor the queen (whether consort or regnant) could have been seised to a use on account of their royal dignity (Bac. Uses, 56, 57; 2 Blac. Com. 331); nor could a corporate body have been seised to any use but their own. (Bac. Uses, 337; Plow. 102.) But all other persons capable of taking lands by feoffment might have been feoffees to uses, and may be so still. Hence a feme covert, or an infant, may be a feoffee to uses (Bac. Uses, 58), as may also a tenant in tail (*Seymour's case*, Plow. 557; 10 Rep. 95), or for life (*Crawley's case*, Cro. Car. 567); but then the use to arise out of these limited estates will determine with them, because a *cestui que use* cannot have an estate of greater extent than that out of which it is raised. (Dy. 186; And. 130; Cro. Car. 231.)

What description of property may be limited to uses.—Nothing can be limited to a use whereof the use is inseparable from the possession; consequently, the statute does not extend the copyhold estates, the seisin of which is in the lord of the manor, and therefore the uses declared of a surrender of copyholds are mere equitable trusts. (1 Wat. Cop. 100; Gilb. Ten. 170; *Rowden v. Master*, Cro. Car. 44; *Doe v. Rouleage*, Cow. 709.) And as the statute only mentions such persons are seised to the use of others, it will not include terms of years or other chattel interests, whereof the termor is not seised, but only possessed. (Bac. Uses, 335; Jenk. 444; 2 Blac. Com. 336; Poph. 76; Dy. 396.) Therefore if a term of 1,000 years be limited to A, to the use of, or in trust for B, the statute executes the use in A, and not in B, the latter of whom takes only an equitable estate. But a term of years may, nevertheless, be created in the first instance by way of use out of an estate of freehold, as there is then a seisin to support it (Co. Litt. 271, b; 1 Pres. Abs. 140; Gilb. on Uses, 67, n. (2)); such, in fact, being the ordinary mode by which the possession is executed in the bargainee for the year to uses, as a foundation for a release under the usual conveyance by lease and release. It appears also that incorporeal hereditaments, such as advowsons and tithes, are within the operation of the statute (1 Sand. Uses, 107; 1 Cru. Dig. tit. ii. c. 3, s. 20); as also liberties and franchises visible or local, and commons and ways, when appendant, but not, it seems, when in gross. (Sand. Uses, 107; *Beudley v. Brooke*, Cro. Jac. 189.) It appears, also, that rents in esse, and, it seems, a rent-charge *de novo*, is within the statute (Bac. Uses, 43); but annuities, or other personal inheritances of which no seisin can be given (Cro. Eliz. 401), are not.

To whom the use may be limited.—All persons capable of taking by conveyance may take by way of use; and by the words of the statute, corporations, though incapable of being seised to, are yet capable of taking by way of use. According to Bacon, also, a use may be limited to the king; but in such case both the declarations of the use and the conveyance itself must be by matter of record,

because the king's title is compounded of both. (Bac. Uses, 60.)

How the use is executed into possession.—The Statute of Uses transfers the estate to the use in the same manner as if the feoffees or trustees to uses after the conveyance to them had actually conveyed their estate to each respective *cestui que use*, then passing to them a legal instead of an equitable estate (1 Atk. 592; Bac. Uses, 45), such uses in fact taking effect out of the seisin of the feoffees or trustees immediately on the execution of the conveyance, they being considered a mere conduit-pipe to the uses. (1 Rep. 120.) Thus, under a limitation to A and his heirs, to the use of B and his heirs, the seisin is conveyed to A, the trustee, and out of his seisin the use is limited to B, and the instant the deed is executed, A's seisin is divested, and B takes the legal estate under the statute, without entry or any other act. (*Green v. Wieman*, 10 Vin. 213.) Nor is it actually necessary that the terms "to the use" should be employed; for a limitation to A "in trust," or "in confidence," for B, will have the same effect. (*Bare v. Howard*, Pre. Cha. 345; *Broughton v. Langley*, 2 Salik. 679; Fonbl. Eq. 143, n. (e); Sand. Uses, 124, 155; *Doe dem. Terry v. Collier*, 11 East. 371.) And a use may be limited by a will, as well as by a deed. (Sand. Uses, 195; *Popham v. Bayfield*, 1 Vern. 167; *Hopkins v. Hopkins*, 1 Atk. 569; *Wright v. Pearson*, 1 Ed. 119; *Perry v. Phillips*, 1 Ves. 255; *Thompson v. Lawley*, 2 Bos. & Pull. 311; *Carr v. Erroll* (Earl of), 6 East. 58.)

What persons may take under the statute, who could not have taken at common law.—At common law, a grantee to take an immediate estate must have been named in the granting part, for if named only in the *habendum* he could not have taken, so that it could not have been limited to a person unborn to take the first estate; but now, under limitations to uses, such persons may take the first estate, the uses to support it in the meantime resulting to the grantor. (13 Rep. 55; 2 Prest. Convey. 475.) Neither at common law could a man have conveyed to his wife, on account of the unity of person; but under the statute a limitation to another to the use of his wife is good. (Co. Litt. 3, a, 114, s; 2 Vern. 385; 2 Atk. 271, a; Co. Litt. 112, a; 1 Sand. Uses, 130; 1 Prest. Convey. 476.) Under conveyances to uses also, a fee may be limited to take effect after a fee (*Carpenter v. Smith*, Pollard 78; *Marks v. Marks*, 10 Mod. 423); because, though that was forbidden at the common law, in favour of the lord's escheat, yet when the legal estate was not extended beyond one fee-simple, such subsequent uses (after a use in fee), were before the statute permitted to be limited in equity; and then the use executed the legal estate in the same manner as the use before substituted. It was also held that a use, though executed, may change from one to another by circumstances *ex post facto*; as where A makes a conveyance to the use of his intended wife and her eldest son for their lives. Upon the marriage the wife takes the whole use in severalty, and upon the birth of a son the use is executed in them both jointly. (Show. P. C. 137; Bac. Uses, 131.) So also in the instance of a proviso frequently inserted in marriage settlements and wills, that in case the person who is to take under the limitations shall become entitled to the family estate, the estate settled on him shall cease and go over to some other person. (*Nicholls v. Sheffield*, 2 Bro. C. C. 215; *Carr v. Erroll* (Earl of), 6 East. 58; 14 Ves.; *Stanley v. Stanley*, 16 ib. 491; *Doe v. Heneage*, 4 T. R. 13.) Limitations of this kind are sometimes called secondary, sometimes shifting uses, and being to take effect upon the occurrence of events that may not happen, are properly classed under the head of conditional limitations. And when the use thus limited expires, or cannot vest, it returns back to him who raised it, and is then styled a resulting use. As for example, suppose a man executes a marriage settlement, limiting the lands to the use of his intended wife for life, with remainder to the use of his first-born son in tail. In this case, until he marries the use results back to himself; after the marriage it is executed in the wife for life, and if she dies without issue, the whole results back to him in fee. (1 Rep. 120.) So also where a person seised in fee-simple made a feoffment, levied a fine, or suffered a recovery without any consideration, or declaration of uses, the use would have resulted back, and he would have been seised in fee-simple in the same manner

as before. If any particular uses are declared, so much of the old use as is not declared to be vested in some other person, results back to the original owner. (*Clere's case*, 6 Rep. 176; *Woodliffe v. Drury*, Cro. Eliz. 439; *Beckwith's case*, 2 Rep. 58; *Godbold v. Freestone*, 3 Lev. 406; *Penhay v. Hurrell*, 2 Vern. 370; *Wills v. Palmer*, 2 W. Black. 687; *Armstrong v. Wolsey*, 2 Wils. 19.) And where a tenant in tail suffers a recovery of his estate, by which it is converted into a fee-simple, without consideration or declaration of the use, it seems it will result to the tenant in tail in fee. (9 Rep. 8, 6; *Gilb. Uses*, 61; *Dewentwater's (Lord) case*, cited 1 Atk. 9; *Nightingale v. Ferrers*, 3 P. Wms. 206; *Stapilton v. Stapilton*, 1 Atk. 2, 9; *Doe dem. Crow v. Balduere*, 5 T. R. 110.) But where there is any consideration expressed, though purely nominal, and no use is declared, it will not result; for what draws the use out of the feoffor or grantor is either the consideration or the expressing it to be to the use of another. (*Shortridge v. Lamplugh*, 2 Lord Raym. 798; 7 Mod. 71; 2 Salk. 678; *Lloyd v. Spillett*, 2 Atk. 148; *Barnardist*, 384.) Yet where there is a consideration, and part only of the uses are declared, the residue will result to the feoffor or grantor. (2 Fonb. Eq. 134, n. (m).) In the case of a covenant to stand seised, the late Mr. Fonblanque, in a note to his valuable Treatise of Equity (vol. 2, p. 134, 135, note (n)), remarks, that "one difference between a feoffment to uses and a covenant to stand seised, is, that in a covenant to stand seised to uses not only so much as the covenantor does not dispose of remains in him, but also such uses as do not and cannot take effect; as if A covenant, in consideration of blood, to stand seised to the use of B, his son, for life, and in consideration of 1,000l. to stand seised to the use of C in fee, after the death of B, and B refuse the use, A shall retain, and C shall not take immediately; whereas, if A had made a feoffment to the use of B for life, and afterwards to the use of C for life, and B refused, in that case C should take his estate presently; the reason of which distinction is, that in the latter case the feoffor by his feoffment hath put his whole estate out of him, and all the uses are created out of it, as out of one and the same root; and therefore, so long as any of the uses can take effect, the feoffor shall not meddle with the land; but in the former case, a covenant raising an use, there the consideration, which is the cause which raises every several use, is several, and all the uses grow and arise out of the estate of the covenantor; and therefore, if one refuses, he who is next in remainder shall not take presently, but the covenantor shall keep it." (*Rector of Chedington's case*, 2 Mod. 207; *Page's (Lord) case*, 1 Leon. 200.) In order to raise a covenant to stand seised to uses, it is necessary that the covenantor should be seised at the time of making the covenant; that the covenant should be by deed, and not by parol, and that it should be on sufficient consideration (as natural love and affection, which is for advancement of blood, or marriage, which is for advancement of the blood and marriage together, for other considerations, as money, are insufficient (*Carter*, 138; *Lill. Abr.* 358), otherwise no use will arise. (*Com. Dig. Cov. (A 4)*; *Garratty (A)*; *Bac. Abr. Cov. (B)*; *Vin. Abr. Cov. (G)*.) But where there is a sufficient consideration, a defective conveyance, and incapable of operating as such, may yet be effectual as a covenant to stand seised; therefore a deed of bargain and sale from a father to his son, which (money forming no part of the consideration) could not operate by way of bargain and sale, has been allowed, in respect of the intent of the parties, to operate by way of covenant to stand seised. (*Crossing v. Scudamore*, 2 Lev. 9; *Walker v. Hale*, ib. 213; *Osman v. Sheafe*, 3 Lev. 370; *Mudge v. Mudge*, Com. 334; *Thompson v. Atfield*, 1 Vern. 40; *Thorne v. Thorne*, ib. 141.) So also a defective feoffment has been allowed to operate as a covenant to stand seised. (*Habergham v. Vincent*, 2 Ves. 226.)

(To be continued.)

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Three per Cents. Consols	96½	96½	96	96	95½	95½
Three per Cents. Reduced	96	96	96	96	96	96½
New Three-R-a-quarter per Cts	98	98	98	98	98½	98½
Long Annuities	104	104	104	104	104	104
Bank Stock	210	210	210	210	210	210
India Stock	250	250	250	250	250	250
India Bonds, prem.	28	28	28	28	28	28
Exchequer Bills, prem.	13	13	13	13	13	13
FOREIGN.						
Spanish Five per Cents.	27	27	27	27	27	27
Spanish Three per Cents.	30	30	30	30	30	30½
Russian	112	112	111	111	119	110½
Peruvian	38½	38½	38	38	39½	39½
Portuguese	47	47	47	47	47	47½
Mexican	25½	25½	25½	25½	25½	25½
Deferred						
Dutch Two-and-a-Half per Cents.	59½	59½	59½	59½	59½	59½
Four per Cents.						
Danish	95	95	95	95	95	95
Colombian	88	88½	88½	88½	88½	87½
Chilian	16½	16	16½	16½	15½	15½
Buenos Ayres	96	96	96	96	96	96
Brazilian	39	39	39	39	39	39
Belgian	89	89	89	89	89	89
	97	97	97	97	97	97

THE METROPOLITAN SEWAGE MANURE COMPANY.

The first half-yearly general meeting of the Metropolitan Sewage Manure Company was held on Thursday, at the British Hotel, Cockspur-street, Charing-cross. This company was founded on the plan, so long before the public, proposed by Mr. John Martin, and was incorporated by Act of Parliament this session. Mr. J. C. Blair Warren, of Horkesley Hall, Essex, the chairman of the company, presided.

Mr. J. J. Moore submitted the Directors' Report, which, in the outset, congratulated the proprietary on the sanction which their enterprise had received from the legislature in the late session of Parliament. It had been deemed expedient to modify the original plan to meet the prejudices of the public against so novel a scheme, but this would not materially affect its efficiency. The grand object contemplated was to render the whole of the sewage of the metropolis available for fertilising the adjacent country. The directors deemed it expedient to commence with the King's School-pond, and Ranelagh sewer, and from this the first section of the great plan to carry a main pipe as far as Hounslow, from which the liquid will be distributed by "service pipes" over an extensive tract of country. It was highly encouraging to find that the owners and occupiers of land extending over a surface of 40,000 acres in that district had represented to Parliament that the measures proposed by the company would be of great service to them, both on account of the highly fertilising qualities of the manure, and of the cheapness with which it can be supplied. The project led to the appointment of a select committee of the House of Commons, who had reported highly in favour of the objects laid down by the company. The directors also thought it worthy of remark, that though the project was only brought out shortly before the railway panic of last year, it had received very warm support from the public. Mr. James Smith, of Deanston, had been appointed civil and agricultural engineer in chief, Mr. W. C. Mylne, engineer, and Professor Brande, consulting chemist. It was resolved that the question of salaries should be deferred till February next, but there was one claim to compensation which could not now be passed over so lightly, and that was some reward to Mr. Martin, the gentleman who had so long and zealously devoted himself to the subject. Mr. Martin only asked to share in the success of the undertaking, after they had realized a profit to the shareholders of at least four per cent. After that, he left the question of recompense entirely in the hands of the proprietors.

Mr. NISON, after expressing the extreme gratification he felt at the statement made by the directors, moved the adoption of the report.

Mr. PROBERT seconded the resolution, which was agreed to unanimously.

Mr. SMITH, of Deanston, and several other gentlemen, including one or two practical farmers, spoke warmly as to the beneficial effects to be anticipated for agriculture, after which the meeting adjourned till the month of December next, having first passed a cordial vote of thanks to the chairman and directors.

Public Sales.

By Messrs. WINSTANLEY, at the Mart.
A freehold estate, consisting of an elegant Italian villa, known as Westerfield House, situated at Worthing, Sussex—*bona fide* sale at 1,800l.

By Mr. V. J. COLLIER.
A residence, No. 90, Upper Stamford-street, Blackfriars, let at 534. per annum; held for 42½ years, at an annual ground-rent of 74. 12s.—410l.

Five houses, Nos. 181 to 185, Long-lane, Bermondsey, held on lease for a term of 500 years granted the 8th of September, 1711, at a peppercorn-rent—1,720l.

By Messrs. HOGGART and NORTON, at the Mart.
A copyhold property at Crouch-end, Hornsey, divided into 8 lots, as follow, viz. :—
A residence, with lawn, pleasure-grounds, and paddock of meadow land, containing altogether 5a. 16p.—4,460l.
A plot of building ground adjoining, having a frontage to Maynard-street of 230 feet—310l.
A similar plot, frontage 208 feet—250l.
A ditto, frontage 160 feet—200l.
A ditto, with frontage of 160 feet—170l.
An enclosure of meadow land, in the rear of the preceding lots, containing 2a. 3r. 8p.—500l.
A house and shop, No. 29, Compton-street, Brunswick-square; held for 604 years, at a ground rent, of which, with the insurance, amounts to 231. 17s. per annum—390l.

THE GAZETTES.

AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the *Powerd. The Assignees*, when chosen, follow this statement.

Monday, Sept. 7.

Brooks, T. boarding-house keeper, assignees, Oct. 6.—Browne, H. surgeon, assignees, Oct. 9.—Kilpin, E. B. jeweller, last exam. passed.

Tuesday, Sept. 8.

Palmer, J. painter, last exam. Nov. 9.

Wednesday, Sept. 9.

Cox, W. H. barge builder, last exam. Nov. 9.—Edwards, A. T. bricklayer, last exam. passed.—Morris, J. C. cabinet-maker, last exam. sine die.—Phillips, E. W. glass dealer, last exam. passed.—Tippie, S. tailor, last exam. Oct. 23.—Wragg, J. iron merchant, last exam. Dec. 2.

Thursday, Sept. 10.

Clark, B. ale merchant, last exam. Oct. 16.—Elliott, W. corn merchant, last exam. Nov. 14.—Waters, F. cheesemonger, last exam. passed.

Friday, Sept. 11.

Bird, I. grocer, last exam. Sept. 21.—Lemon, W. B. ironmonger, div. next week. Whitmore, London.—Miller, J. painter, div. next week. Whitmore, London.—Pritchard, J. butcher, last exam. passed.

Saturday, Sept. 12.

Barnes, M. chymist, div. next week. Edwards, London.—Clarke, H. brush manufacturer, last exam. passed.—Eaton, W. C. flower dealer, last exam. sine die.—Salmon, J. carpenter, div. next week. Edwards, London.—Syder, F. grocer, last exam. Nov. 21.—Wilson, J. G. engineer, div. next week. Edwards, London.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Searle, R. woolstapler, Tavistock, Sept. 16, at twelve, Tavistock, final div.

Insolvents' Estates.

Shadgett, B. general dealer, Maidstone, Ga. 4d.—Tyler, E. farmer, Exton, 18s. 6d.

ASSIGNMENTS

To Trustees for the benefit of Creditors.
Gazette, Sept. 16.

Chawner, J. grocer, Northampton, July 20. Trusts. J. Chawner, hosier, Leicester, T. Archer, grocer, same place, and W. J. Pierce, upholsterer, Northampton. Sol. Cooke, Northampton.—Eddy, J. blacksmith, Ilfracombe, Aug. 18. Trusts. T. L. Wiltshire, ironfounder, Bishop's Tawton, and W. Gammon, yeoman, Ilfracombe. Sols. Messrs. Bancraft, Barnstaple.—Ward, S. farmer, Kneass, Notts, Aug. 30. Trusts. W. Peatfield, farmer, Laxton, and H. Morris, merchant, Causton. Sol. Smith, Carlton-upon-Trent.—Westlake, W. grocer, Plymouth, Sept. 8. Trusts. D. Milward, grocer, and J. D. Tuckett, cheesefactor, both of Plymouth. Sol. Cross, Plymouth.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.
Gazette, Sept. 11.

BARRETT, THOMAS, general wood turner, Ham-mills, Stroud, Gloucestershire, Sept. 21, and Oct. 27, at eleven, Bristol, Com. Stephen; Acraman, off. ass.; Philippe, Caircross, and Messrs. Bevan, Bristol, sols. Date of fiat, Sept. 5. Bankrupt's own petition.

CORNER, HENRY, mercer and draper, Ludlow, Sept. 22, and Oct. 13, at twelve, Manchester; Hobson, off. ass.; Sale and Co. Manchester, and Reed and Langford, Friday-st. sols. Date of fiat, Sept. 3. J. Todd, merchant, Manchester, pet. cr.

DEVERILL, HENRY, corn factor, Steaks-upon-Trent, and Congleton, Chester, Sept. 29, and Oct. 15, at ten, Birmingham; Valpy, off. ass.; Mottram and Knowles, Birmingham, sols. Date of fiat, Sept. 1. J. Smith, corn factor, Nottingham, and J. Jackson, corn factor, Heddingly Hill, near Leeds, pet. crs.

FLITTON, PETER, boot and shoe maker, Barley, Hertford, Sept. 25, at eleven, Oct. 20, at half-past one, Basinghall-street, Com. Fane; Whitmore, off. ass.; Brocukhorst, Basinghall-st. and Burdett, Saffron Walden, sols. Date of fiat, Aug. 31. J. D. A. Jackson, currier, Saffron Walden, pet. cr.

FOWLER, GEORGE FREDERICK TOWN, printer and publisher, and newspaper proprietor, Lillingdon-st. Mimlico, Oct. 1, at eleven, Oct. 27, at one, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Browne, Walbrook, sol. Date of fiat, Sept. 9. Bankrupt's own petition.

MORRIS, THOMAS, linen and woollen draper and grocer, Newcastle Emlyn, Sept. 29 and Oct. 27, at twelve, Bristol, Com. Stephen; Miller, off. ass.; Lemon, Bristol, sol. Date of fiat, Aug. 28. E. M. Cole, linen merchant, Bristol, pet. cr.

PADDON, CHARLES, slop-seller, Charlotte-terrace, New-cut, Lambeth, Sept. 23, at two, Oct. 10, at eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Lloyd, Milk-st. sol. Date of fiat, Sept. 4. O. Wood, F. W. Coates, and T. Ingle, warehousemen, Wood-st. pet. cr.

PARKINS, JAMES, cheesemonger, Wenlock-st. Hoxton, Sept. 23, at half-past two, Oct. 27, at twelve, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Ashley, Shore-ditch, sol. Date of fiat, Sept. 5. Bankrupt's own petition.

PHILIP, EDWARD, timber dealer, Salop, Sept. 20 and Oct. 15, at ten, Birmingham; Christie, off. ass.; Wright, Birmingham, sol. Date of fiat, Sept. 2. P. Shingler, pattern-manufacturer, Birmingham, pet. cr.

SHACKLETON, MICHAEL, letter-press printer, Manchester, Sept. 23 and Oct. 13, at twelve, Manchester; Fraser, off. ass.; Perkins, Regent-sq. and Parry, Manchester, sol. Date of fiat, Sept. 5. Bankrupt's own petition.

SMITH, EDWARD BOAS, timber merchant and sawyer, Scarborough, Yorkshire, Sept. 24 and Oct. 16, at eleven, Leeds, Com. Bunge; Kynaston, off. ass.; Messrs. Rushworths, Staples-lane, and Sanderson, Leeds, sol.

SUTTON, HENRY, builder, Holland-crescent, Barrington-road, Brixton, Surrey, Sept. 23, at one, and Oct. 30, at two, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Kaye, Surrey-st. sol. Date of fiat, Sept. 5. Bankrupt's own petition.

WARD, THOMAS, maltster, Nottingham, Sept. 23 and Oct. 20, at twelve, Birmingham; Com. Daniell; Whitmore, off. ass.; Cann, Nottingham, and James, Birmingham, sol. Date of fiat, Sept. 7. M. Ward, spinster, Leechby, Leicestershire, pet. cr.

Gazette, Sept. 11.

DEVREILL, HENRY, corn factor, Stoke-upon-Trent, Stafford, and Congleton, Chester, Sept. 20 and Oct. 15, at ten, Birmingham. Com. Balguy; Valpy, off. ass.; Wadsworth, Nottingham, and Mottram and Knowles, Birmingham, sol. Date of fiat, Sept. 1. Joseph Smith, Nottingham, and John Jackson, Huddersley-hill, Leeds, corn factors and late partners, pet. cr.

DEYSDALE, HENRY, auctioneer, Lamb's Conduit-st. Sept. 23, at three, Oct. 27, at one, Basinghall-st. Com. Holroyd; Groom, off. ass.; Van Sanden and Cumming, King-st. Cheap-side, sol. Date of fiat, Sept. 8. Walter Gray Shuttleworth and Richard Willey, silk mercers, Lodgate-st. pet. cr.

HARDY, JOHN, cattle dealer and maltster, Castle Donington, Leicester, Sept. 17 and Oct. 13, at twelve, Birmingham. Com. Daniell; Bittleston, off. ass.; Scott and Taboridin, Lincoln's-lane-Fields, and Smith, Birmingham, sol. Date of fiat, Aug. 31. Bankrupt's own petition.

HIGGINS, WILLIAM MULLINGER, laceman, Birmingham, Oct. 31, at ten, Birmingham; Valpy, off. ass.; Everett and Co. Hatton-garden, sol. Date of fiat, Sept. 10.

ROBERT JENKINS, surveyor, Huntley-st. Bedford-sq. pet. cr.

MILNES, JONES, LANG, JOSEPH, WILBY, JOSEPH WILBY, and **BRACK, THOMAS**, scribbling millers, Littletown, Yorkshire, Sept. 20 and Oct. 24, at eleven, Leeds, Com. Bunge; Hope, off. ass.; Jacques and Edwards, Ely-place, Batsy and Firth, Birstal, and Bond, Leeds, sol. Date of fiat, Sept. 9. Bankrupt's own petition.

M'SHANE, PETER, cattle dealer, Dundalk, Ireland, Sept. 25, and Oct. 20, at twelve, Liverpool; Com. Perry; Casanova, off. ass.; Gregory and Co. Bedford-row, and Green, Liverpool, sol. Date of fiat, Sept. 9. Bankrupt's own petition.

WARBURTON, WILLIAM, grocer and tea dealer, Newcastle-upon-Tyne, Oct. 2, at half past ten, and Nov. 5, at half past one, Newcastle, Com. Ellison; Baker, off. ass.; Jobling, Newcastle, and Bell and Co. Bow Church-yard, sol. Date of fiat, Sept. 9. William Parker, share broker, Newcastle, pet. cr.

Meetings at Basinghall-street.

Gazette, Sept. 11.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Beater, G. carrier, Southwark, Oct. 2, at ten.—**Freeman, G.** grocer, Croydon, Oct. 3, at half-past eleven.—**Green, W.** boarding-house keeper, Dorset-pl. Dorset-sq. Oct. 3, at eleven.—**Grubben, C. W.** merchant, King's Arms-yard, Oct. 3, at half-past twelve.—**Grove, W.** grocer, Huntingdon, Oct. 3, at twelve.—**Hunt, W.** printer, High-s. Marylebone, Oct. 3, at half-past ten.—**Wyllie, J.** brewer and coal merchant, Ockham, Oct. 3, at one.

MEETINGS IN THE COUNTRY.

Gazette, Sept. 11.

Blacket, J. flax spinner, Stokely, Oct. 6, at half-past eleven, Newcastle, and.—**Bone, R.** grocer, Durham, Oct. 6, at eleven, Newcastle, and.—**Buller, F.** ironmonger, Stafford, Oct. 13, at ten, Birmingham (adj. Aug. 25), last exam.—**Gill, W.** corn merchant, Warrington, Sept. 23, at twelve, Manchester (adj. Aug. 26), last exam.—**Goodbridge, R.** baker, Exeter, Oct. 6, at eleven, Exeter, and.—**Gribben, W.** dealer in glass, Leeds, Sept. 24, at eleven, Leeds. (pfr. of debts and to choose new assignees.)—**Hattersley, G.** stove-grate and fender manufacturer, Oct. 9, at eleven, Sheffield, and first div.—**Scott, J.** beer-dealer, South-st. Sheffield-moor, Sheffield, Yorkshire, Oct. 9, at eleven, Sheffield, and first div.—**Smith and Smith, A.** ironmongers and plumbers, Oct. 6, at twelve, Newcastle, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Bone, R. grocer, Durham, Oct. 6, at eleven, Newcastle.—**Cerne, J.** jun. grocer, Falmouth, Oct. 6, at eleven, Exeter.—**Edwards, T.** surgeon, Llanainfrail, Oct. 3, at eleven, Liverpool.—**Scott, J.** beer dealer, Sheffield-moor, Oct. 9, at eleven, Town-hall, Sheffield.—**Sudlow, W.** warehousekeeper, Liverpool, Oct. 6, at eleven, Liverpool.—**Taylor, W. G. W.** surgeon, Tywardreath, Oct. 6, at eleven, Exeter.

Gazette, Sept. 11.

Ayton, J. J. linen draper, South Shields, Oct. 9, at half-past ten, Newcastle, final div.—**Blacket, J.** flax spinner, Stokely, Yorkshire, Oct. 6, at one, Newcastle, further and final div.—**Bone, R.** grocer, beer dealer, and dealer in provisions, Silver-st. Durham, Oct. 8, at eleven, Newcastle, div.—**Burrows, J.** carrier, Ashton-under-Lyne, Oct. 2, at twelve, Manchester (adj. Sept. 2), last exam.—**Cassidy, A.** merchant, Manchester, Oct. 8, at twelve, Manchester, and Oct. 9, at twelve, final div.—**Fordyce, W.** bookseller, Newcastle, Oct. 8, at eleven, Newcastle, and.—**Coates, E.** brewer, Liverpool, Oct. 6, at eleven, Liverpool, and.—**Cor-**

dary, F. hatter, Liverpool, Oct. 5, at eleven, Liverpool, and.—**Gaskell, W. B.** draper, Birmingham, Oct. 8, at twelve, Manchester, and.—**Moyle, C.** linen draper, Whitechurch, Oct. 9, at twelve, Manchester, and.—**Priestley, R.** flour dealer, Manchester and Ardwick, Oct. 7, at twelve, Manchester, and.—**Riky, J.** merchant, Liverpool, Oct. 6, at eleven, Liverpool, and.—**Roe, H.** goldsmith and jeweller, Liverpool, Oct. 6, at eleven, Liverpool, div.—**Simpson, J.** shipowner, Talentire, Oct. 9, at half-past eleven, Newcastle, and.—**Smith, T.** and **G. ironmongers** and plumbers, Bishop Auckland, Oct. 8, at twelve, Newcastle, joint div.—**Stevenson, J.** tobaccoist, Manchester, Oct. 6, at twelve, Liverpool, and div.—**Taylor, J.** coal fitter, Middlebush, Yorkshire, Oct. 9, at half-past eleven, Newcastle, fin. div.—**Taylor and Hackey**, ship builders, Monkwearmouth Shore, Oct. 8, at half-past ten, Newcastle, and.—**Taylor, J.** rope manufacturer, Hollingwood and Manchester, Oct. 8, at twelve, Manchester (adj. Aug. 26), last exam.—**Westmore, R.** joiner, West Derby, Oct. 7, at eleven, Liverpool, and.—**Wilkinson, J.** grocer, Manchester, Oct. 7, at twelve, Manchester, and.—**Williams, G.** watchmaker, Bristol, Oct. 8, at eleven, Bristol, and.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Antrobus, D. apothecary, Audley, Oct. 18, at eleven, Birmingham.—**Burrows and Giddon**, brewers, Plymouth, Oct. 6, at eleven, Exeter, as to Burrows.—**Coates, J.** tailor, Loominster, Oct. 6, at twelve, Birmingham.—**Davis, J.** miller and provision dealer, Broadway and Heston Norris, Oct. 18, at ten, Birmingham.—**Evans, J.** silk mercer, Bristol and Weston-super-Mare, Oct. 13, at eleven, Bristol.—**Hall, A.** innkeeper, Manchester, Oct. 8, at twelve, Manchester.—**Kirby, W.** hotel keeper, Liverpool, Oct. 6, at half-past eleven, Liverpool.—**Knight, J.** mercer, Preston, Oct. 7, at twelve, Manchester.—**Lorenson, W.** wine merchant, Liverpool, Oct. 6, at twelve, Liverpool.—**Purser, S.** draper, Cheltenham, Oct. 9, at twelve, Bristol.—**Wonnacott, W.** grocer, Bath, Oct. 9, at twelve, Bristol.

Partnerships Dissolved.

Gazette, September 8.

Baker, G. and **Wilkinson, J.** corn merchants, Beverley, Aug. 15.—**Bayley, J.** and **Wood, S.** milliners, Hanley, Sept. 4. Debts by Bayley.—**Burton, M.** and **Shoen, B.** cotton spinners, Manchester, Sept. 3.—**Davis, R.** and **Prebble, W.** grocers, Hertford-terrace, Haggerstone, Sept. 4.—**Denham, J. E. Clark, J.** and **Smith, J.** ship agents, Padding-lane, Aug. 31. Debts paid by Denham.—**Fridlington, D.** Louth, and **Kemp, S. R.** North Eltham, farmers, Sept. 7.—**Grudwell, G.** and **Pyke, J.** corn merchants, Liverpool, Sept. 1.—**Gray, G.** and **Byron, R.** builders, Nottingham, Sept. 5.—**Hancock, W.** and **Mirfin, M.** scale pressers, Sheffield, May 15. Debts paid by Hancock.—**Lawrence, R.** and **S. Cullen, W. H.** and **E. milliners, Frederick-place, Old Kent-road, June 25.**—**Mosley, J.** and **Watson, W.** linen drapers, Bradford, Sept. 1. Debts paid by Watson.—**Thomson, E.** and **M. A. schoolmistresses, Croydon, Sept. 2.**—**Wheeler, M.** and **A. coach smiths, Wednesbury, March 24, 1844.**—**Wilkin, M.** jun. and **Perceval, S.** ship brokers, Philpot-lane, Sept. 8.—**Wilson, W.** and **Morgan, J.** painters, Carmar, Sept. 3.

Gazette, Sept. 11.

Barlow, A. and **Clode, E.** brewers, Shirley, Feb. 10.—**Cheshire, S.** and **Little, J.** tea dealers, Chester, Sept. 7. Debts paid by Little.—**Coombs, W. H.** and **J. builders, Reneta-hill, Jan. 31, 1843.** Debts paid by W. H. Coombs.—**Corbett, J.** and **G. farmers, Croft, Aug. 21.** Debts paid by J. Corbett.—**Oughton, M. J.** and **W. machine makers, Manchester, July 1.** Debts paid by J. and W. Oughton.—**Egan, W.** and **Scully, A.** ironmongers, Bradford, Sept. 5. Debts paid by Scully.—**Gemmell, J.** sen. and jun. merchants, Liverpool, Sept. 8. Debts paid by Gemmell, sen.—**Higgin, J.** and **R. wine merchants, Salford, July 18.** Debts paid by J. Higgin.—**Horne, H. W. B.** and **F. engineers, Sheffield and Manchester, Sept. 3.**—**Kestner, M.** and **Dent, W. Y.** land surveyors, Leeds, Sept. 8.—**Knight, W.** and **Payne, F.** printers' block makers, Vinegar-walk, Clerkenwell, Sept. 1.—**Lambert, A.** and **Whitefield, F.** dress makers, St. James's-st. Sept. 10.—**Leader, J.** and **Dooley, T.** joiners, Liverpool, July 1. Debts paid by Leader.—**Lloyd, T.** and **S. timber merchants, Liverpool, Sept. 1.** Debts paid by S. Lloyd.—**Preston, R. C.** and **Moody, F. H.** woollen drapers, Sidney-alley, Leicester-sq. Aug. 29. Debts paid by Moody.—**Ragg, T.** and **Hunt, B.** and **W. E. printers, Birmingham, July 26.**—**Reynolds, A. Collins, F. W. M.** and **Gregory, C.** engravers, Charterhouse-sq. so far as regards Gregory, Sept. 4.—**Shenton, E.** and **Easther, E.** brewers, Winchester, Sept. 7.—**Simpson, W. S.** Downham, and **Briggs, C. Ferry,** railway contractors, Sept. 5.—**Wight, R.** ironfounder, Sunderland, and **Forster, T.** forgerman, South Shields, Dec. 31. Debts paid by Wight.

Insolvents

Petitioning the Courts of Bankruptcy.

Gazette, Sept. 6.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Callen, J. artist, Southampton, Sept. 24, at two.—**Edmond, T.** cabinet maker, Abingdon, Sept. 18, at half-past eleven.—**Martin, G.** clerk to a printer, Dorset-place, New-Kent-road, Sept. 19, at two.—**Purey, W.** mariner, Meridian-place, Dockhead, Sept. 19, at twelve.—**Smith, W.** coach maker, Shouldham-st. Bryanstone-square, Sept. 19, at half-past eleven.

PETITIONS TO BE HEARD IN THE COUNTRY.

Bell, J. cordwainer, Naburn, Sept. 23, at eleven, Mansion-house, Hull.—**Brackell, R.** cotton spinner, Haalingdon, Sept. 18, at twelve, Manchester.—**Collins, F.** attorney, Hereford, Sept. 18, at eleven, Birmingham.—**Fenwick, W.** painter, Halifax, Sept. 23, at eleven, Leeds.—**Fenwick, J.** worsted spinner, Haworth, Sept. 23, at eleven, Leeds.—**Geor, F.** miller, Tiverton, Sept. 23, at eleven, Exeter.—**Goddard, J. R.** labourer, Diseworth, Sept. 17, at ten, Birmingham.—**Goulden, W.** joiner, Leeds, Sept. 23, at eleven, Leeds.—**Harrison, R.** wool comb, Masham, Sept. 23, at eleven, Leeds.—**Henry, D. J.** civil engineer, Liverpool, Oct. 27, at eleven, Liverpool.—**Johnson, T.** draper, Blackburn, Sept. 18, at twelve, Manchester.—**Kirk, W.** auctioneer, Market Weighton, Sept. 23, at eleven, Mansion-house, Hull.—**Waddington, J.** out of business, North Brerly, s. pt. 23, at eleven, Leeds.—**Wharton, S.** out of business, Carlisle, Sept. 26, at eleven, Leeds.—**Williamson, T. G.** linen draper, Preston, Sept. 18, at twelve, Manchester.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, September 11.

King, J. B. carpenter, Old Broad-st. Sept. 24, at ten.—**Rowlinson, P.** clerk, Frederick's-place, Mile-end-road, s. pt. 24, at two.—**Wilson, J.** foreman to a furniture dealer, s. pt. 24, at two, Stoke Newington, Sept. 24, at two.

PETITIONS TO BE HEARD IN THE COUNTRY.

Auden, J. carrier, Exeter, Sept. 23, at eleven, Exeter.—**Coomes, J.** butcher, Weston-super-Mare, Oct. 6, at eleven, Bristol.—**Kerrison, C.** provision shop keeper, Hyde, Sept. 2, at twelve, Manchester.—**Robson, J.** furniture broker, K-castle, Oct. 2, at half-past ten, Newcastle.—**Scargill, J.** cabinet maker, Trowbridge, Sept. 20, at eleven, Bristol.—**Tustin, J.** chairman, Cheltenham, Sept. 23, at half-past ten, Bristol.

From the Gazette of Friday, September 12.

Bankrupts.

Fryer, J. J. stockbroker, Birch-lane, Cornhill.—**Radcliff, L. A. V.** merchant, Sunderland.—**Seaton, J.** grocer, Basingstoke.—**Hatchler, J.** butcher, Fock, J. E. C. East-India merchant, Winchester.—**Seaton, J.** shirt-maker, Manchester.

ADVERTISEMENTS.

METROPOLITAN SEWAGE MANURE COMPANY.

The Company having obtained the Act of Incorporation, the Directors are prepared to receive applications for the unappropriated shares. An early allotment will be made.

FORM OF APPLICATION FOR SHARES.

To the Directors of the Metropolitan Sewage Manure Company.

Gentlemen,—I hereby request you will allot me shares of 20l. each in the above Company; and I undertake to accept the same, or any less number that may be offered to me, and to pay the deposit of 1l. per share thereon, and to execute the necessary deeds when required.

Name.....
 Address.....
 Profession or Business.....
 References.....

Address to Messrs. Shaw, Bailey, and Smith, solicitors, Berners-street, London.

Extracts from the Report of the Select Committee of the House of Commons:—

"Your Committee cannot conclude their report without urging upon the House the importance of a project which has been proposed at all times to carry away the drainage at the low of tide, and to remove from the Thames the daily increasing refuse of London."

"If the confident expectations of your Committee are accomplished, it will not fail ultimately to render all the advantages which were originally contemplated. St. Dunston has proved the efficiency of liquid manure. The meadows of Edinburgh and of Mansfield have derived power of sewage water. Mr. Thompson, of Chichester, at Mr. Harvey, of Glasgow, have established the fact that liquid manure may be applied at a cheap rate, by means of the mechanical contrivance of service pipes and hose, a crop in every stage of their growth."

"There will be found individuals, no doubt, in the country, of enterprise, to give further development to some of these experiments; but it is only through the agency of a Company that they may be all combined, and applied to the important purposes of cleansing our towns, purifying our rivers, and enriching our soil."

CHURCH OF ENGLAND LIFE AND FIRE ASSURANCE INSTITUTION.

LOTHBURY, LONDON.

Empowered by special Act of Parliament, 4 & 5 Vict. c. 7.

SUBSCRIBED CAPITAL, ONE MILLION.

(A List of the Proprietors enrolled in the High Court of Chancery.)

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THE REPORTS.

Equity Courts.

LORD CHANCELLOR'S COURT.

July 30 and 31.

Re MANCHESTER AND POOLE RAILWAY.
Injunction—Railway amalgamations—Powers of directors.

Where directors of a railway company had misapplied funds in their hands in effecting an amalgamation under a mistake as to their powers, that circumstance will not operate to prevent them from being nominated to carry out an arrangement with respect to the funds come to under the sanction of the Court.

Rolt and Terrell applied to the Court in this matter for the payment out of court to the three gentlemen, Messrs. Cooper, Fisher, and Shaw—who were the present petitioners, and who were all three directors of the South and Midland Railway Company, and were now the proper parties in conformity with the Act of Parliament to receive the money—of the sum of 55,000*l.* which they, together with two of the directors of the Manchester and Poole Railway Company, with which the South and Midland Company had, by the proceedings of its directors, been amalgamated, had paid as a deposit to the account of the Accountant-General, to the credit of the Manchester and Poole Railway. The 55,000*l.* so paid in was a portion of a sum of 90,000*l.* received by the directors from deposits on shares in the original scheme of the South and Midland Railway Company. In *Lewis v. Cooper* there had been an appeal from an order of the Vice-Chancellor of England, who had granted, on the application of the plaintiff Lewis, an injunction to restrain the five directors of the South and Midland Railway, and the Manchester and Poole Railway, who had paid in the money, from receiving it out again; the plaintiff alleging against the directors of the South and Midland Railway Company a breach of trust on their part, in amalgamating that company with the Manchester and Poole Railway Company, and thereby misappropriating the funds of the shareholders of the South and Midland Company, by applying them towards an object which was never contemplated by the shareholders of the South and Midland Company. Both schemes have failed, and the directors of the amalgamated lines, the Manchester and Poole Railway Company, being anxious to wind up the affairs of that company, and to distribute the deposits rateably among the shareholders, applied for the payment of the 55,000*l.* out of court, when they were stopped by the injunction which the plaintiff Lewis had obtained. Upon appeal, the Lord Chancellor varied the order for an injunction, so far as it restrained all the five directors, who had paid the money in, from applying to have it paid out to them, but confirmed the injunction so far as it restrained three of the directors, who had applied by petition to have the money paid out to them, they not being the proper persons in conformity with the Act to apply for or receive it, two of them being directors of the Manchester and Poole Railway Company, and only

one of them being a director of the South and Midland Railway Company, while the money so paid in was the money of the shareholders in the South and Midland Company. The Lord Chancellor having given to the three directors of the South and Midland Railway Company leave to present a petition to have it paid out to them, that petition had been presented and was now heard.

Bethell opposed the application, on the ground that an injunction was in existence and in force, confirmed on appeal by his lordship, as to three of the joint directors of this amalgamated line, the Manchester and Poole Railway Company, restraining them, on the grounds of breach of trust and misapplication of the funds of the shareholders of the South and Midland Company, from receiving the 55,000*l.* or of misapplying any of the funds of the company which had found its way into their hands. The Court would, therefore, not permit these three persons now petitioning the Court as directors of the South and Midland Company to receive this sum of 55,000*l.* which might be irreparably misapplied by them to the injury of the shareholders of the South and Midland Company.

The LORD CHANCELLOR.—The difficulty I had in the case was this, that the order of injunction granted by the Vice-Chancellor, and confirmed by me, in that part of it which restrained the three directors from receiving the money; and one of the parties so restrained is now one of the three petitioners in this new petition, asking to have the money paid out to them. That is the difficulty I feel upon this application. Has Mr. Rolt's client given notice to discharge the order of injunction as to that one director, or all the three of them?

Rolt.—They have not moved to discharge that order. He contended that this one director being restrained by the order of the Vice-Chancellor was not such an imputation upon him as to prevent him from coming before the Court with two other directors in conformity with the directions of the Act of Parliament, and ask to have the money paid out to them. He read to the Court a list of the directors of the South and Midland Company, all of whom were respectable and responsible men, resident in London, and he proposed that the money should be paid out to any three of them who might be selected from amongst them, and approved of by the Court, as the nominees of the three petitioners; the petitioners undertaking that those gentlemen, when appointed, should receive and pay the money only to the parties properly entitled to receive it.

Bethell consented, upon the results of an inquiry as to the responsibility of the directors, that they should receive the money out of court, they undertaking to apply it to its proper and legitimate objects.

The LORD CHANCELLOR.—Such an arrangement would obviate the objection and difficulty which arises in paying the money to three petitioners. There is not the slightest imputation on the honour or characters of the three persons who, as directors of this company, asked to have the money paid out to them on this petition; but the only allegation is, that perhaps they erroneously used their powers in making an amalgamation with another company.

July 31.—The matter having stood over was mentioned again this day, when

The LORD CHANCELLOR said: I have no hesitation in ordering the money to be paid to the three directors, or any they may appoint, on the petition of the five in whose names the money has been invested.

VICE-CHANCELLOR OF ENGLAND'S COURT.

Friday, July 31.

JACKSON v. STANHOPE AND ANOTHER.
Practice—Execution upon a judgment at law—Injunction.

The plaintiffs having placed goods and chattels constituting farming stock, upon the land of J. J. and a writ having issued under a judgment against the property of J. J. the sheriff seized not only the goods of J. J. but also of the plaintiffs, by virtue of the same writ. The Court nevertheless dissolved an injunction which had been obtained by the plaintiffs against the sheriff and a creditor from proceeding at law.

The plaintiffs in this case were farmers in the county of Lincoln, and not having convenient buildings for farming purposes upon their own land, they entered into an agreement with their father, J. Jackson, to have with him jointly the use of a certain barn and stackyard appurtenant to the farm, which had been till then occupied by the father alone; but the plaintiffs were to have the exclusive use of the stables, waggon-house and cart-house belonging to the farm. The pleadings stated that, by virtue of a writ issued upon a judgment obtained by the defendant, J. Harrison, against the father, J. Jackson, the sheriff of Lincolnshire, J. B. Stanhope, took in execution not merely the goods and chattels the property of J. Jackson upon his said farm, but also the goods and chattels of the plaintiffs, which had been so deposited there as aforesaid. The plaintiffs now

filed their bill against the sheriff and John Harrison, praying that the sheriff might be directed to deliver up to the plaintiffs the possession of the goods and chattels which had been seized by him, the property of the plaintiffs, and might be restrained from putting them up for sale. The plaintiffs accordingly obtained an injunction, and the defendants having answered the bill, now moved to dissolve the injunction.

J. Parker, and Hishop Clarke, who appeared in support of the motion, contended that this was not the case of a trust, and, therefore, the Court would not interfere; that whatever remedy the plaintiffs had it was obtainable only in a court of law? In *Garsten v. Asplin and Another*, 1 Mad. 150, which was a case for an application for an injunction to restrain the sheriff of Essex from executing a *f. f. a.* against the furniture and effects of the defendant Asplin, which, with a house and land, had been let by him to the plaintiff Garstin (who was in possession), during the said Term, Sir T. Plumer, V. C. said—"In this case there has been a legal contract for a ready-furnished house and land, and the party has a possessive right. If his possession is intruded upon, he has a remedy at law. The sheriff has no right to seize; if he does seize, it may be very injurious to the plaintiff, and it is to be regretted; but this Court cannot interfere when there is a legal remedy. The right to take in execution is a question of law. Injunctions would be applied for every day when executions were improperly issued, if the Court were to assume a jurisdiction in such cases. There is no instance of this Court stopping a proceeding at law under such circumstances." His Honour, therefore, refused this injunction.

Bethell and Metcalfe in opposition.—This is a case of implied trusteeship; where the case is one purely between landlord and tenant this Court will not interfere; in other cases it will.

J. Parker, in reply.—The other side has not made out any case of implied trust. John Jackson was a mere bailer.

His HONOUR, at the time the motion was made, thought there was some sort of equity, but on consideration he held that no case of trusteeship had been made out, and that unless the matter brought before the Court were by way of trusteeship the Court would not interfere. The injunction would therefore be dissolved.

BLAKE v. LORD WALLSCOURT.

July.

Jurisdiction of the Court over children—Power of the father—Alleged misconduct and cruelty on the father's part.

The Court, out of respect to the privacy of families, will not interfere to deprive a parent of the custody of his children whenever, in the usual course of treatment and discipline, he does something that may to a third party appear an act of cruelty; therefore, notwithstanding there may have been certain improprieties, and occasionally violent outbreaks exhibited on the part of a father towards his children, the Court will not take from him the custody of their persons, which is given him by the common law and the law of nature, especially where the alleged grievance has been suffered to exist for a considerable time without any application for the judicial interference of the Court. This does not, however, prevent the Court, in cases of excessive cruelty, from interposing its authority on behalf of children, by removing them from the father's custody and control.

The Court of Chancery in England will not, under the stat. 2 & 3 Vict. c. 54, interfere on behalf of Irish parents residing generally in Ireland.

The arguments in this case having occupied several days are too long for insertion, even in an abbreviated form; but the main features of the case, so far as they are necessary to be known, will appear in his Honour's judgment. The two daughters of the defendant presented one petition for the purpose of being removed from the custody of their father. And Lady Wallscourt presented another petition, praying that she might be allowed to have the custody of her infant son. The bases of these several applications were, that the conduct of Lord Wallscourt towards his children was cruel and immoral, and that he was not a fit person to have the care and management of them. Affidavits were read on both sides.

The VICE-CHANCELLOR, in giving judgment, stated that he should doubtless have been very much influenced by the probability of the daughters of Lord Wallscourt suffering from cruelty and ill-treatment, provided there had been a case made out of cruelty and improper conduct which had recently taken place on the part of his lordship towards them; but a very important feature characterised the transaction, namely, that no application was made for the interference of the Court until some time in the month of September 1845. Grievances were alleged to have existed many years ago; and one circumstance, in particular, was said to have taken place with respect to indecent conduct towards the young ladies so far back as in the year 1839. He had been requested to communicate with the young ladies themselves upon that subject, but he did not consider it to be a proper course to question them upon a transaction that

transpired when they were seven years younger, and when, in fact, they might have been sleeping at the time. He could not see the advantage of speaking of them upon a subject which involved the degree of pollution their minds had received. Moreover, it was now too late in the day to be inquiring into facts of this nature which had been suffered to lie dormant for so long a period, and upon which even Lady Wallscourt herself was silent. As to the circumstances of ill-treatment and cruelty, they might doubtless, in some respects, be so designated; but is the Court to interfere with every father who, in the course of education and in the treatment of his children, might do something that appeared to be cruelty in the eyes of third persons? His Honour was of opinion that unless the cruelty was proved to be excessive, he ought not to interfere; for it was clear that any such general interference would be the means of entirely breaking up the privacy of families. It is true there was one act which, even as explained by Lord Wallscourt, could hardly be said to be defensible, namely, that which related to his interfering with his daughter's ablutions, who had, during his Honour's interview with them, confirmed the fact as stated; but it was impossible to examine them minutely as to all the circumstances mentioned in the affidavits on his lordship's behalf; neither did the evidence go far enough to shew that there had been any improper exposure in that part of the affidavits which related to his lordship's dress. This circumstance transpired in 1845, but still there was no complaint made of it, nor was it until Lady Wallscourt had withdrawn herself from the house and society of her husband that the present application had been made to this court. In taking up the general demeanour of Lord Wallscourt, no person, it appears, had so far considered him insane as that it would be proper to take out a commission against him; at any rate, no such step had ever been suggested, notwithstanding there were certain general statements made that he was not in his senses. His lordship certainly appeared to be a very singular compound; but some consideration must be had for what he would call the want of balance of mind to be found occasionally in the Irish character. No one, his Honour remarked, could be more delighted than himself with the society of Irishmen; but it was impossible not to see that, from their breeding rather than their birth, there were modes of viewing things, and there were actions tolerated amongst them which were quite abhorrent to the minds, and, he might say, the more geometrical view which Englishmen took of such things. It had been said, that the conduct of Lord Wallscourt had assumed the character of barbarity towards his daughters, but for his own part he thought the young ladies, from their exceedingly healthy appearance, had suffered but little from such behaviour. Their education, moreover, had been, as it appeared, very properly attended to; for they were proficient in music and drawing, and they had also acquired considerable skill in the French, German, and Italian languages, and they had even been taught to read the Bible, and particularly the New Testament in Greek, which he conceived was one of the wisest and kindest things that a father could do for his daughters; for it enabled them to read the sacred oracles of truth, and judge for themselves, which was far more profitable than perusing a hundred volumes relating to the book itself to which they were all so much inferior. Lord Wallscourt, it was plain, was a very methodical person, and did not approve of any individual breaking through the rules he laid down. The journal of the young ladies weighed considerably on his Honour's mind; and though it had been contended that this had been written in such a manner as to meet the father's eye, and therefore contained nothing against him, yet there were certain passages which never would have been written had they been intended for his lordship's perusal; and that, to his Honour's mind, the style and contents of the journal were calculated to mitigate very much the influence of the severe treatment complained of. Then, with regard to those menial offices which the young ladies were said to be occasionally called upon to perform, this, doubtless, would be repugnant to their feelings; but it was a part of Lord Wallscourt's system of education to teach them what in future life they would have to superintend in their own household. It was evident that Lord Wallscourt's mind was imbued with a considerable deal of proper feeling, but occasionally breaking out into what might be called violence of temper; there was not, however, sufficient to call upon the Court to interfere. His Honour stated, that having himself seen the young ladies, he felt the greatest interest in them, and he had also evidence that the father was liable to sudden outbursts of temper; but he did not see that there was such an overwhelming case of necessity as ought to induce the Court to break in upon, not only the common law rights of the father to have the custody of his own children, but he must add, the most sacred rights and duties of a father; the common law of our country was only ancillary to the law of God and nature in declaring that, during the state of infancy, the father should have the custody and guidance of

them. With respect to the other petition, by Lady Wallscourt, for the custody of her infant son, under Mr. Serjeant Talfourd's Act, it was plain that the Act contemplated that an English case should be dealt with by an English Court of Chancery, and an Irish case by an Irish Court, and that the Court had, consequently, no jurisdiction over Lord Wallscourt, who appeared to be residing chiefly in Ireland, and it was only for a particular purpose that he happened to be living in England. His Honour was not prepared to make any order for giving up the children to Lord Wallscourt; but if his lordship were still in a disposition to enter into any arrangement which had for its object the placing his children with some respectable person, it would be the greatest act of mercy and justice; and in that case the children might be placed in such a situation as would afford an opportunity for both parents to have access to them.

Bankrupt and Insolvent Courts.

COMMISSIONERS' COURTS.

Monday, Sept. 14.

(Before Mr. Commissioner HOLROYD.)

Re KITTLE.

Jurisdiction of the Court.

The defendant, Kittle, who some time since took the benefit of the Insolvent Act, and who obtained his final order by paying 15s. a week for the gradual liquidation of his debts, was summoned to this court, under the Small Debts Act, for the payment of a certain debt and costs obtained in an action upon a bill, in favour of Mr. Gambridge.

Hughes, for the defendant, contended that the Court had no jurisdiction in the matter, by the fact, that the debt on the bill upon which his client was sued had been inserted in the petition under which the final order was granted.

Sturgeon, *contra*, submitted, that inasmuch as the name of the person (which was known) in whose hands the bill was at the time of filing the petition was not inserted in it, the Court had jurisdiction.

His HONOUR considered that the Court had jurisdiction in the matter, and, under all the circumstances of the case, the defendant must pay 1l. a month.

Saturday, Sept. 19.

Re MASSON.

Disqualification.

The Court will not permit the appointment of an assignee who is an Atheist, and disbelieves in a state of future rewards and punishments.

J. R. Masson, who had been a printer in Mount-street, Bethnal-green, came up for examination. He was opposed by Buchanan, of Basinghall-street, on the part of Mr. Blunt, typewriter of St. Luke's.

Buchanan said he saw nothing at present to complain of in the bankrupt's accounts, but he thought his client ought to be appointed assignee.

Mr. Blunt was about being sworn, but he objected, stating that he did not believe in the Scriptures.

His HONOUR.—Are you then a Deist or an Atheist?

Mr. Blunt.—I neither believe in future rewards nor punishments, and perhaps I may be considered an Atheist.

His HONOUR.—Whichever may be your belief, you are not eligible for assignee, as you will be called upon to take an oath in accordance with the Christian creed.

Mr. Blunt.—I am a creditor, and here claim against the bankrupt's estate, according to law, and according to the amount due to me I ought to be an assignee.

His HONOUR.—But we cannot take your oath.

Mr. Blunt.—Am I on account of my religious tenet to be deprived of my civil privileges?

His HONOUR.—As a Christian, I feel that I can neither take the oath nor even the word of an Atheist, and I therefore cannot accept you as an assignee, and consequently the appointment of assignees must stand adjourned till the next meeting.

Monday, Sept. 21.

(Before Mr. Commissioner SHEPHERD.)

Re BEATTIE, MACNAUGHTON, and Co.

The mere fact of the appendage of an official seal to an affidavit, unsupported by confirmative evidence, will not admit a creditor residing abroad to proof of debt.

This day was appointed for the declaration of a dividend, but none took place, the official assignee stating that the assets at present realised amounted to little more than would meet the expenses hitherto incurred in the course of the proceedings.

In the course of the day Maynard sought to prove a debt on the part of a client who resided at Vienna, the affidavit bearing the "seal" of the British Minister at that court, and the signature was that of Mr. Foster, whom he (Maynard) supposed to be attached to the embassy.

His HONOUR said he knew nothing of the "seal,"

nor had he before him any evidence as to who "Mr. Foster" was.

Maynard urged that the "seal" of the "ambassador" was of more consequence than mere signature of a minister, and if the Court refused the proof upon objection of mere formality, it would put the party to considerable inconvenience and expense. The affidavit of debt was in court since June last, and it is only now in September that it was objected to, not then upon the merits.

His HONOUR saw no inconvenience beyond trouble of writing another letter to Vienna. He must be governed in this as in all other similar cases, the terms of the Act of Parliament.

Lawrence suggested that the Foreign-office would attest the genuineness of the seal, and give every information as to who Mr. Foster was.

The proof stood over for this purpose.

Irish Reports.

QUEEN'S BENCH.

Tuesday, April 25.

REG. v. CHARLES GAVAN DUFFY, Esq.
(Before the full Court.)

Practice—Indictment for seditious libel—Justices—Pleading—6 & 7 Vict. c. 96—Pleading of Occasional Bar—Demurrer cannot be opened by member of Inner Bar, except the Attorney-General.

The special plea of justification given by the *def. &c.* 4 Vict. c. 96, s. 6, cannot be pleaded in an indictment for a seditious libel.

Such plea can only be pleaded in justification of a private or personal libel.

The Court will not permit a demurrer to be opened even in a prosecution at the suit of the Queen, by any member of the Inner Bar, except the Attorney-General.

In this case an indictment having been found against the traverser, for composing and publishing in a Nation newspaper, "a certain false, defamatory, malicious, and seditious libel," of and concerning Her Majesty's government, and the administration thereof, and the Parliament of the United Kingdom, with intent to create in the minds of her Majesty's Irish subjects disaffection and hatred to her Majesty's government and the Parliament, and to cause to be suspected and believed that their interests were neglected in the administration of her Majesty's government, and with intent to excite the Irish subjects of the Queen to resist and forcibly oppose such of her Majesty's troops as might be employed in Ireland, in the support and maintenance of the laws and constitution of this realm, and of peace and good order, and to encourage such subjects to use, as means of resistance, the materials of railways in Ireland, and to make the same into weapons of attack and resistance, and with intent to foment jealousy, discord, and ill-will between the said subjects and their fellow-subjects in the other parts of the United Kingdom. The indictment contained four counts, the first charging the composing and publishing the article in question, setting it out with innuendoes; the second was the same, omitting the innuendoes; the third count charged the printing and publishing of the libel, and was the same in other respects as the first; the fourth was the same as the third, omitting the innuendoes.

To this indictment the traverser put in a plea in abatement (see 7 Law T. 9, for a copy of the plea) which having been set aside by the Court, and the traverser ordered to plead over (7 Law T. 10), forthwith he pleaded as follows:—

"And now, &c. comes the said Charles Gavan Duffy, by John Mitchell his attorney, and having heard the said indictment read, protesting that he is not guilty of the premises above laid to his charge, or any or either of them, or any part thereof, for plea nevertheless thereto, pursuant to the statute in such case made and provided, says that the same ought not to be prosecuted against him the said Charles Gavan Duffy, and that he should be discharged and dismissed of the premises therein specified, because he says, that heretofore and before the composing and publishing of the supposed libel in the said indictment mentioned, entitled 'Threats of Coercion,' to wit, on the 15th day of November, in the year of our Lord 1845, to wit, at Dublin, in the county of the city of Dublin aforesaid, threats of coercion had been made use of against a large portion of the Irish people, to wit, that portion of the very said of her Majesty in that part of the United Kingdom called Great Britain and Ireland called Ireland, hereinafter mentioned, in certain articles in public newspapers, to wit, in the articles of the newspapers hereinafter mentioned, to wit, at the time and place aforesaid, and the said Charles Gavan Duffy further says, that the said supposed libels in the said indictment mentioned, to wit, at, &c. in certain newspapers published at London, in that part of the United Kingdom of Great Britain and Ireland called England, to wit, at Dublin, &c. to wit, in certain newspapers called respectively *The Morning Herald* and *The Standard*, directed to wit, four articles, had theretofore; to wit, the

and there been published, declaring respectively that the agitation then and now pending in Ireland for the purpose of obtaining constitutionally the repeal of the Act passed in the session of Parliament holden in the 6th year of the reign of his late Majesty King George the Third, entitled 'An Act for the Union of Great Britain and Ireland,' ought to be declared high treason, and threatening unconstitutional and military coercion against all such of her Majesty's subjects in that part of the United Kingdom of Great Britain and Ireland as should attempt to procure by legal and constitutional means a repeal of the said Act, and pointing out the advantages and facilities which he then projected railways in Ireland when made and completed would afford for the speedy and expeditious transport of troops in Ireland from one part thereof to the other, for the purpose of using said troops to carry into effect such unconstitutional and military coercion as aforesaid, to wit, at Dublin, &c. aforesaid; and the said Charles Gavan Duffy further says that, before and at the time of composing and publishing the said supposed libels in the said indictment mentioned, to wit, at, &c. from long observance of the character, nature, and contents of the articles theretofore contained and published in the said *Morning Herald* and *Standard* newspapers, and from long observance of the course of public affairs, and the conduct of the government hereinafter mentioned, he, the said Charles Gavan Duffy, had reasonable and probable cause to suspect and believe, and did then and there actually suspect and believe, that the said *Morning Herald* and *Standard* newspapers were what are commonly called the organs of the government, to wit, the government of Sir Robert Peel, and expressed their sentiments, to wit, the sentiments of the said government, in respect of such unconstitutional and military coercion as aforesaid, to wit, at Dublin, &c.; and the said Charles Gavan Duffy further says that he, the said Charles Gavan Duffy, published the said supposed libels in the said indictment mentioned, in a certain newspaper called *The Nation*, and not otherwise or elsewhere, to wit, at the place aforesaid, and that the said supposed libels, and all the matters therein contained, were occasioned by, and were so as aforesaid published by him, the said Charles Gavan Duffy, in answer to the said last-mentioned articles in said *Morning Herald* and *Standard* newspapers contained, and as commenting on them in the exercise of the constitutional right of free discussion, and of the liberty of the press, to wit, at Dublin, &c.; and the said Charles Gavan Duffy further says, that it was for the public benefit that the matters charged in the said supposed libels in the said indictment mentioned, should be published as aforesaid, and that the particular facts by reason whereof it was for the public benefit that the said matters should be published as aforesaid, were and are the several matters, facts, and publications hereinbefore mentioned; and this the said Charles Gavan Duffy is ready to verify, wherefore he prays judgment of the Court here, and that he may be dismissed and discharged of the premises in the said indictment above specified, and so forth."

The traverser, secondly, pleaded not guilty.

To the first plea, demurrer and joinder. On the second, issue joined.

Napier, Q.C. (with whom were *Greene*, A.G., *Henn*, Q.C., *Marthy*, Q.C. and *Smyly*) now appeared on behalf of the Crown, and was about to open the demurrer.

BLACKBURN, C.J. observed that a demurrer could not be opened except by a member of the Outer Bar.

Napier contended that her Majesty had a right to be represented by whatever counsel she chose.

BLACKBURN, C.J.—If her Majesty's Attorney-General desires to open the case for the Crown, he may do so undoubtedly.

Greene, A.G. accordingly proceeded to support the demurrer. The plea of justification in this case purports to be founded on the statute 6 & 7 Vict. c. 96. At common law, in the case of a civil action, a defamatory libel might be justified by a plea setting out its truth; but in a criminal prosecution, a justification was no ground of defence. The legislature by the stat. 6 & 7 Vict. have to some extent modified the law in that respect, and have accordingly provided that in certain cases where the public benefit justified and required the publication of slanderous or defamatory matter affecting individuals, the party charged should be allowed to plead that the matter charged as libellous was true. But the 6th section, upon which this plea purports to be founded, is confined to the case of private libels, and does not extend to blasphemous or seditious libels; the sixth section only extends to the case of private libels prosecuted criminally the same means of offering a justification as if the defendant had been sued in a civil action for damages; it is quite a misconception to suppose that the legislature meant the provisions of the Act to extend to cases of seditious or blasphemous libels. In the article charged as a libel there are but few matters of fact stated, it consists chiefly of comments and observations; and assuming for argument sake that the statute of 6 & 7 Vict. c. 96, does apply to seditious libels, still the plea is bad, for what the statute

allows to be pleaded as true are the facts and matters put forward in the libel; the traverser does not state that either the *Morning Herald* or the *Standard* are the organs of the government, he merely gives his opinion of the fact, and does not set out any specific fact to excuse or palliate the publication; the word "true" is not contained in the entire plea. There is no such thing as "the government of Sir Robert Peel." The allegation that the article was published in the exercise of the right of free discussion is open to the traverser on a plea of the general issue. Upon common law principles it would be a bad plea even in a private prosecution; it is too vague and uncertain; it says that four articles appeared in certain public newspapers, which articles justified the publication of the libel, not setting them out, not stating what those articles were; the plea, besides, does not justify the whole libel (*Smith v. Parker*, 13 M. & W. 459), and is therefore bad; it ought to plea the truth of all the facts, so that the Court and jury might be enabled to see whether the inferences sought to be derived from them were well founded or not.

Robert Holmes and *M. J. Barry*, for the defendant.

—The operation of this Act is not confined to any class of libels. The title of the Act is general, "An Act to amend the Law relating to defamatory Words and Libels." The word "libel" is a general term, and there cannot be a more comprehensive one used. The preamble contemplates three objects; "the better protection of private character," "the more effectually securing the liberty of the press," and the "better preventing abuses in exercising said liberty." The entire object of the sixth section of the statute seems to be that where a party is prosecuted for a defamatory libel, he shall be entitled to plead that it was published for the public benefit. If the public benefit is a ground for the publication of a private libel, it is of much more importance that the press should be free in commenting on public bodies, who have the power of doing much more public injury than private individuals. The words of the sixth section are, "Be it enacted, that on the trial of any indictment or information for a defamatory libel," &c. Now a libel may be both seditious and defamatory, and does not cease to be defamatory because it is directed against Sir Robert Peel's government. There is nothing in the 6th section to confine the words to private libels. The eighth section is conclusively demonstrative that the object of the Act is general. It provides that in case of "a prosecution by a private prosecutor, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained." It then proceeds to say, that upon "a special plea of justification to such indictment or information, if the issue be found for the prosecutor, he shall be entitled to the costs of such plea. Not saying private prosecutor, which omission of the word private, in the latter part of the clause, in contradistinction to the former part, seems to shew strongly that public as well as private libels come within the object of the statute. As to the non-allegation of the truth of the several facts contained in the libel, it is not necessary to allege that every one of them is true; it is enough to justify the substantial charge. In the article charged as a libel, there are two classes of facts, some of which are clearly not libellous; such as the assertion that "there is hot haste in the dockyards;" and again some are of a metaphorical kind, and it would be absurd to allege the truth, for instance, of the fact that "the growl of England's dogs of war had begun to sound across the Irish Sea." Taking the whole statute together, by all the rules of construction, it must be held to apply as well to public as private libels.

Napier, in reply, was not called on.

BLACKBURN, C.J.—In this case the demurrer of the Crown ought to be allowed. A plea has been filed by the defendant (against whom an indictment has been found for the publication of a seditious libel), alleging that he is privileged so to do by the statute 6 & 7 Vict. c. 96. We are of opinion that the plea in this case does not fall within the statute, and that even if it did, it is defective in itself. The first section of the statute applies altogether to actions brought for personal injuries; the second also is confined to actions for libel; by the sixth section, the power of pleading a justification is extended to cases of private prosecution, by way of indictment or information. The benefit which was withheld from defendants in criminal prosecutions for libel, of pleading a justification, has been extended to those cases by this statute. [His lordship read the sixth section 6 & 7 Vict. c. 96.] But on reference to the terms of the statute itself, it requires very little consideration to see that the privilege to plead the truth of the facts charged is given, where it is for the public benefit that the facts should be published; that is, it makes the individual liable to have the truth stated where it was for the public benefit; but the public benefit is the only object the statute has in view in such case; and no one can contend that libels of a blasphemous, or treasonable, or seditious nature, can come within this statute, for such never can be of any public benefit. Even if it were necessary to refer to the plea itself, it is clear that it does not comply with the requisites of

the statute, by putting forward the truth of any of the specific matters of fact contained in the libel; the plea must therefore be overruled, and the demurrer allowed.

BURTON, J. was of the same opinion.

CRAMPTON, J.—I concur in the opinion pronounced by my Lord Chief Justice and my brother *Burton*, and entertained also by my brother *Perrin*. I am of opinion that it is perfectly clear that, upon the grounds which have been urged by the Attorney-General, the defendant's plea must be overruled. In the first place, the case does not come within the terms of this Act of Parliament. The indictment charges the publication to be a seditious and defamatory libel; now my opinion coincides with that of the rest of the Court, that this statute is applicable only to personal libels—it would be narrowing it too much, I think, to say that it only applied to private libels. The justification allowed by this statute to be put in is just such a one as would be a justification in a civil action for libel, before the statute, shewing that it was personal libels which were intended by the legislature to be affected by the Act. But it is said, why use the words "private prosecution" in the 8th section, unless to distinguish such from public prosecutions, and unless public prosecutions also were referred to? Now I apprehend that a very sensible reason may be assigned for the use of these words. The 8th section (6 & 7 Vict. c. 96) says, "In the case of any indictment, information by a private prosecutor for the publication of any defamatory libel, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the said defendant by reason of such indictment or information; and that upon a special plea of justification to such indictment or information, if the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by the prosecutor by reason of such plea." Now why say this if it was intended to refer to Crown prosecutions, for the Crown neither takes nor gives costs? But the Attorney-General may, and often does, institute a prosecution for the defamation of an individual of high rank or authority, as the Lord Lieutenant suppose, or the Lord Chancellor; and if in such case the issue be found for the prosecutor, he shall be entitled to his costs, or the defendant shall be entitled to his if the issue be found for him; that appears to be the reason why these words were used; but I do not think that seditious libels were contemplated by the legislature in making this enactment.

PERRIN, J. was also of opinion that the demurrer must be allowed. It is quite clear that this Act refers only to defamatory libels either of public or private persons; but even if the case were within the provisions of the statute, the plea does not allege the truth of any one fact contained in the libel.

Judgment for the Crown.

Friday, May 1.

(Before the full COURT.)

REG. v. TAGGART.

Marriage law—Celebration of marriage between Protestants by a Roman Catholic priest, felony.

Under the stat. 7 & 8 Vict. c. 81, a Roman Catholic priest celebrating a marriage between two Protestants is guilty of a felony, and does not come within any of the exemptions contained in the 45th section of the Act.

Semle, that marriages which are invalid by the 19 Geo. 2, c. 13, are also unlawful.

The traverser, a Roman Catholic priest, was tried before Mr. Justice *Burton* at the last assizes for the county of Down, upon an indictment charging him with having celebrated in an unlicensed place a marriage between two persons of the Protestant religion. A doubt having arisen as to whether the facts charged amounted to a crime or not, a special verdict was taken upon the second, third, fourth, and fifth counts of the indictment, which were founded upon the 45th sect. of the stat. 7 & 8 Vict. c. 81, and now the case came on for argument, the only question being, whether or not the traverser came within the exemptions contained in the 45th section of the Act respecting marriages celebrated by Roman Catholic priests.

Hanna, for the Crown, contended, that though the early statutes which from time to time imposed the various penalties of transportation, death, and a fine of 500l. upon Roman Catholic priests celebrating marriages between two Protestants, or between a Protestant and a Roman Catholic, had been repealed by the 3 & 4 Wm. 4, c. 102, as far as the pains and penalties were concerned, still that such marriage remained void by the 19 Geo. 2, c. 13, and the celebration of it an illegal act, and one which could not be taken to come within the exemption in the 45th section of the statute 7 & 8 Vict. c. 81, which only extended, in the case of marriages by a Roman Catholic priest, to such marriages as might at the time of the passing of that Act "be lawfully celebrated," and that therefore it was manifest by the plain words of the statute, that the prisoner was guilty of a felony.

The following authorities were cited or referred to:

Stat. 6 Anne; 12 Geo. 1, c. 3; 19 Geo. 2, c. 13; 23 Geo. 2, c. 10; 33 Geo. 3, c. 21; 3 & 4 Wm. 4, c. 81; *Reg. v. Milles* (Jebb & B.).

Napier, Q.C. and O'Hagan for the traverser.—The statute in question arose in consequence of the long-continued discussions about Presbyterian marriages, and it is conversant about those marriages only, and marriages by clergymen of the Established Church. When the 7 & 8 Vict. was passed, it was not illegal for a Roman Catholic clergyman to celebrate such a marriage; and if the celebration then were not illegal, the inference is almost inevitable, that the late Act does not constitute it a felony. A series of penal laws were made for the prevention in two ways of marriages between two Protestants, or mixed marriages, by a Roman Catholic clergyman; one by making the celebration unlawful, and the other by making the marriage void; but in none of those penal laws was there to be found a distinct prohibition of the celebration of such marriages; the prohibition was involved in the penalty, but was not independent of, or capable of existing without the penalty during the existence of the penal laws, though the priest might be hanged or transported for celebrating it, the marriage remained good by common law; but then by 19 Geo. 2, c. 13, the marriage was made void, and all the penalties imposed being found insufficient, subsequently came the 23rd Geo. 2, c. 10, which, after reciting the former Acts, and that doubts had arisen whether, the marriages being void, the priest could be guilty of a felony for celebrating them, then enacts, that notwithstanding their invalidity, he should be liable to the penalties of felony. If, therefore, while the old penal laws were in force the mere making void the marriages rendered a distinct Act necessary to prevent the penal effects of the other statutes being wholly done away, can it be fairly contended now, that while the voidness of the marriages remains, but all the enactments against the celebrant have been abolished by the 3 & 4 Wm. 4, c. 102, a priest could, upon the loose, obscure, and equivocal words of the 7 & 8 Vict. c. 81, be held guilty of a felony for celebrating such void marriages? This act was not unlawful at common law, nor by statute, for when all the penalties were abolished, the prohibition ceased. All unlawfulness involves in its nature the incidents of retribution or punishment; an act civilly unlawful gives to individuals a right to compensation; and a criminally unlawful act is the subject of an indictment. The unlawfulness of the act of the celebrant is, if it exists at all, the creation of positive law, it has nothing to do with the moral law or the law of nature, and as no action could have been maintained against the priest for it,—as no indictment would have lain against him for it,—that act which at common law was lawful, but had become unlawful by the statute law, was again rendered lawful when the statute law ceased to operate, the penalties which it had imposed being removed.

CRAMPTON, J.—Then you would contend that a man may lawfully do an unlawful act?

O'Hagan.—Confusion is created by the use of the word "unlawful." It would be more correct to say that a priest might lawfully celebrate an invalid marriage. Since the passing of the 3 & 4 Wm. 4, c. 112, no prosecution has been instituted or attempted for the celebration of a void marriage by a Roman Catholic priest; the fact that such prosecutions have wholly ceased until the present time, affords a strong presumption that the opinion entertained by persons competent to advise on the subject is not in favour of the possibility of sustaining them. The Presbyterian Marriage Act was produced by discussions between Protestants and Presbyterians as to their own marriages, and the mischief it was framed to remedy was the uncertainty of the law in relation to them; all its provisions regard Protestants and Presbyterians, and are framed for their benefit, and, regarding the whole statute law, and its entire machinery and objects, no one could confidently say that the legislature really meant to alter the position of the Roman Catholic priesthood. The law does not favour the repeal of a statute by implication, and such repeal has ever been confined to doing away with as little as possible of the preceding statute; no penal law is to be extended by construction, and the general words of such an Act are to be restrained for the benefit of him on whom the penalty is to be inflicted. It is sought to construe the words "unlawfully celebrated" as if they were "invalidly celebrated." The exemption in the statute 7 & 8 Vict. is that all persons celebrating marriages under the circumstances described in the Act should be guilty of a felony, save in cases where a Catholic priest might celebrate a marriage without doing an illegal or punishable act. The validity of the ceremony and the legality of the act of the celebrant are different things; being a penal statute, it is to be taken *mitiori sensu, favore amplianadi odia restringenda*. If a reasonable construction can be given to the Act in favour of the traverser, the Court are bound to give it, and are bound not merely not to strain the law against him, but to give him the advantage of any doubt or difficulty which may arise in their minds. The question is, whether the act

of the celebrant of a Protestant or mixed marriage, before the passing of the 7 & 8 Vict. was unlawful? The Court should not create a felony by construction on the vague, equivocal, and doubtful words in that statute, which are relied on by the counsel for the Crown, and deprive the traverser of the protection which he enjoyed by the common law and the antecedent statute law of the country. The Roman Catholic priest should not be put in a worse position than a Presbyterian clergyman would be if he celebrated a marriage between two Protestants. A clergyman is not to be reasoned into a felony by a subtlety, where the legislature could, by a few simple words, have cleared up any doubts on the subject; and at most, this case is not free from doubt; therefore there ought to be judgment for the prisoner upon this case. (*Reg. v. Dye*, 4 Mod. 174; *Dwarris* on Stat. 677; 2 Hook, c. 25; *Blackst. Com.* iv. 5; 6 Anne, c. 16, s. 6; 8 Anne, c. 5; 12 Geo. 1, c. 3; 19 Geo. 2, c. 13; 3 & 4 Wm. 4, c. 102.)

Greene, A. G. replied.

BLACKBURN, C.J. (delivering the judgment of the Court).—In this case a special verdict has been found upon an indictment which, as far as it has been brought before us, is founded on the 45th of the stat. 7 & 8 Vict. c. 81. The charge against the traverser is, that he (a Roman Catholic priest) had solemnized a marriage between two Protestants in a place not one of those described in the 49th section of the statute, the fact is clearly established, and that the traverser comes within the provisions of the 45th section. There is, in arriving at this conclusion, no straining of the words of the statute, it is plain, clear, and explicit. The only question is, whether the traverser has celebrated a marriage which is not within the operation of the statute; and I must here say that this is not a case where the Court is spelling out the guilt of a prisoner. I must say that it is a great misapplication of terms to say that the Court is called on to punish the prisoner, or pronounce him guilty by an *ex post facto* interpretation of the statute. The Court are called on to interpret an Act of Parliament which received the royal assent in August 1844, and every act to be afterwards done in contravention of its provisions was to be visited with the declared consequences of such acts. The act of the traverser, for which he was prosecuted, is an act done after the statute was in full operation, done in direct violation of the existing law, and therefore there is no *ex post facto* interpretation of the law resorted to in this case. Now, the words of exception in the 45th section of the statute, and upon which the entire case turns, are, "except in the case of marriages by a Roman Catholic priest, which may now be lawfully celebrated, or a marriage between two of the Society of Friends, commonly called Quakers, according to the usages of the said society, or between two persons professing the Jewish religion, according to the usages of the Jews." Thus there are two kinds of marriages which come under the exception; marriages which might have been previously lawfully celebrated by a Roman Catholic priest, and marriages between members of the Society of Friends, and Jewish marriages, as has been stated by the learned counsel; originally, a marriage celebrated by a Roman Catholic priest between two Protestants, or between a Protestant and a Roman Catholic, was valid; then came the Acts under which a party celebrating such a marriage (12 Geo. 1, c. 3; 23 Geo. 2, c. 10, and 33 Geo. 3, c. 21) was made liable to the penalty of death, and by the latter statute to a fine of 500*l.*; and, besides, the Act of 19 Geo. 2, c. 13, made the marriage itself absolutely void. Then came the statute of 3 & 4 Wm. 4, c. 102; by it all the Acts imposing penalties were abrogated, but the ceremony remained an invalid marriage, as it was before, leading to the direct consequences of a violation of the laws of God and man. Though the Roman Catholic clergyman was relieved from the penalties, the act remained invalid, just as it was before the passing of the statute of 3 & 4 Wm. 4, attended by all the same evils, in a religious, social, and moral point of view; the relation of man and wife never subsisted, it was merely concubinage, and the issue were bastards. Such was the state of things from 1833, until the passing of the recent statute. Whether, in the interval after the passing of the 3 & 4 Wm. 4, a Roman Catholic clergyman could have celebrated a marriage between two Protestants, without being liable to be indicted, is not now for the Court to pronounce; we have a narrower duty to perform, to decide whether the present case comes within the exemption contained in the 45th section (7 & 8 Vict. c. 81). The privileges given by that section are not personal privileges, but for the benefit of the Roman Catholic community; they are not personal in their nature, they are not privileges conferred for the benefit of the priest. Now, this exposition of the words used in the 45th section receives strong confirmation from the language of the third section, which provides, that "nothing in this Act shall affect any marriages by any Roman Catholic priest, which may now be lawfully celebrated, nor extend to the registration of any Roman Catholic chapel, but such marriages may continue to be celebrated in the same manner, and subject to the same limitations and restrictions, as if this Act had not been

passed." That is, this Act is made, not for the protection of priests in the celebration of invalid or unlawful marriages, but to uphold the validity of the ceremony when performed by a Roman Catholic priest between members of his own communion. It is not a statute passed to affect the Roman Catholic subjects of the realm, to affect their worship, or their marriage ceremonies, they are to remain precisely as if this Act had never been passed; but a marriage celebrated by a Roman Catholic priest between two Protestants, or between a Protestant and a Roman Catholic, is absolutely null and void. My brother Crampton has referred me to the 13th section of the statute, in which there is a passage strongly illustrative of what I have been stating. After providing that a prescribed notice shall be given to the registrar, except in certain cases, the section proceeds to say, "provided always, that no such notice shall be required for any marriage by a Roman Catholic priest, which may lawfully now be celebrated, or when the marriage is intended to be solemnized between two Presbyterians, both or one of whom is a Presbyterian, in a Presbyterian meeting-house certified as aforesaid." This is a further confirmation of the argument that the exception in the statute only refers to marriages which might have been lawfully celebrated heretofore. It is now admitted by the traverser's counsel, that a marriage ceremony performed between two Protestants by a Roman Catholic priest is void, and does not create the relation of legal matrimony. Now the question is, is it intended by the legislature by this Act to protect a person performing an invalid ceremony? Nothing could justify the Court in putting such a construction upon the statute, except the most explicit words. The word "marriage" in the Act does not, in my opinion, mean any thing but a valid matrimonial contract, and the words of the exception which has been relied on by the traverser's counsel seem to me to be used to restrain the general words of the Act. I am, therefore, clearly of opinion, and the rest of the Court are also, that the case is free from all doubt and difficulty, and that the meaning of the statute is that a priest celebrating such a marriage shall be deemed guilty of an offence, without interfering with the rites, or privileges, or ceremonies of the Roman Catholic subjects, and preventing no marriages from being now celebrated, which were legal before the passing of this Act; but, like clergymen of other persuasions, who they celebrate illegal marriages, Roman Catholic clergymen celebrating such marriages as Mr. Tugart has done, are guilty of the offence contemplated by the statute, and therefore there must be

Judgment for the Crown.

THE LEGISLATOR.

Summary.

THE Bill for restoring arrest under *Messe* Process, which we last week promised to give in this number, will be found, *in extenso*, beneath. We invite attention to it, and any suggestions upon its proposed clauses which the experience or sagacity of our readers may contribute. Among the measures of importance proposing to effect material changes in the law, affecting the duties or interests of the Profession, introduced last session, but not carried through Parliament, were the following:—

In Conveyancing Reform:—The General Registry of Deeds Bill, and the Short Forms of Conveyances Bill.

In the law of Debtor and Creditor:—The Bankruptcy and Insolvency Bill, and the Judgment Creditors' Bill.

The Amendment of the Highway and Turnpike Acts.

In Criminal Law:—The Bills relating to Juvenile Offenders, and the Punishment for deterring Prosecutors, Witnesses, &c.

The Game Law Amendment Bill.

All of these measures will, most probably, be re-introduced next session.

Bills in Progress.

The following is the Bill to restore Arrest on *Messe* Process, prepared and brought in by Messrs. Warburton and Leader, to which we made allusion in our last number:—

A Bill to restore Arrest on *Messe* Process in Civil Actions, under certain Limitations.

1. *Preamble.* *Repeals partially 1 & 2 Vict. c. 116.*—Whereas it has been found by experience, that the abolition of arrest on *messe* process has greatly increased the expense and difficulty of compelling payment of debts, and has enabled debtors to continue to resist their creditors, until the greater part of their assets have been wasted or concealed, or distributed amongst favoured creditors; and it is expedient to restore the power of arrest on *messe* process in civil

NEW STATUTES

Of the Session 9 & 10 Victoria.

(Continued from page 532.)

[In this record of actual Legislation, only the statutes and parts of statutes of peculiar importance to the Profession are given *verbatim*. Of the rest, the title, or a brief analysis only, is preserved here.]

CAP. LXXXIV.

An Act to amend the Law concerning Lunatic Asylums and the Care of Pauper Lunatics in England.
(August 26, 1846.)

8 & 9 Vict. c. 126. *In what cases justices and others are to issue orders for confinement of lunatics.*—Whereas doubts have been entertained whether under provisions of an Act of the last session of Parliament, intituled "An Act to amend the Laws for the Provision and Regulation of Lunatic Asylums for Counties and Boroughs, and for the Maintenance and Care of Pauper Lunatics in England," it is incumbent on justices of the peace, and others therein specified, to issue orders for the reception into a lunatic asylum, or house licensed, or hospital registered for the reception of lunatics, of all persons who shall be brought before them, or whom they shall visit in the manner prescribed by the said Act, and of whose lunacy they shall be satisfied, or only of those persons of whose lunacy they shall be satisfied, and whom they shall deem proper persons to be confined, according to the tenor of the order set forth in the form numbered one in the schedule marked (E.) annexed to the said Act: Be it declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall not be deemed incumbent on any justice of the peace, or upon any clergyman, overseer, or relieving officer, to sign or issue such order as aforesaid, in all cases in which the physician, surgeon, or apothecary whom he or they shall have called to his or their assistance shall have signed the certificate according to the form numbered one in the said Schedule (E.) as provided by the said Act; but that every justice, clergyman, overseer, or relieving officer by whom any such order shall be signed or issued, in the case of every such person of whose lunacy he shall be satisfied, shall be bound, before signing the order, to satisfy himself of the propriety of confining such lunatic in a lunatic asylum, unless a medical certificate that such lunatic is a proper person to be so confined, in the same form as the medical certificate in the said Schedule (E.) number one, shall have been signed by the medical officer of the union or parish to which the lunatic belongs, as well as by the said physician, surgeon, or apothecary, in which case such two medical certificates shall be received by every such justice, clergyman, overseer, and relieving officer as conclusive evidence that such lunatic is a proper person to be so confined.

2. *Committees of justices appointed, or who may hereafter be appointed, for providing lunatic asylums, deemed to have been legally appointed.*—And whereas by the said Act it is enacted, that a Committee of justices to superintend or to treat and enter into an agreement for the erecting or providing an asylum for the pauper lunatics of any county or borough which has no asylum for the pauper lunatics thereof shall be appointed at the time and in the manner prescribed by the said Act, after public notice of the intention to appoint such committee given on or before the general or quarter sessions for such county or borough next after the 20th day of December, 1845; but the objects of the Act have not been in all cases fully attained, and doubts have been entertained as to the power of the justices in the appointment of such committees, and as to the powers of such committees when appointed; be it declared and enacted, that a committee as aforesaid may and shall be appointed in every county and borough which has no asylum for the pauper lunatics thereof, and in which a committee has not been already appointed, or in which a committee once appointed has ceased or shall hereafter cease to exist without carrying into effect the purposes for which it was appointed, or, if appointed for the purpose only of treating and entering into an agreement, has reported, or shall hereafter report, that it is not practicable or expedient to enter into an agreement, or to that effect; and that, notwithstanding any committee already appointed, or hereafter to be appointed, may have been appointed, either for the purpose only of superintending the erecting or providing an asylum, or for the purpose only of treating and entering into an agreement for erecting or providing an asylum, or for effecting the one or the other of the said purposes, as to the said committee may seem best, such committee shall be deemed to have been legally appointed under the said Act, and duly empowered to carry into effect the purpose for which it has been or may be so appointed; and in any case in which the occasion for the appointment of a committee for any of the purposes aforesaid now exists or shall hereafter arise, public notice of the intention to appoint the same shall be given in the manner prescribed by the said Act, on or before the general quarter session of

the peace to be holden for such county or borough next after the passing of this Act, or next after the occasion for the appointment thereof shall have arisen, as the case may be: provided, nevertheless, that notice at any subsequent general quarter session of the peace for such county or borough of the intention to appoint any such committee, and the appointment of a committee in pursuance thereof, shall be valid.

3. *Powers of committees may be enlarged by justices.*—That when any committee hath been or shall hereafter be appointed for one of the aforesaid purposes only, it shall be lawful for the justices, if they shall think fit, at any general quarter session of the peace after the like public notice as is required in the case of the first appointment of the committee, to enlarge the powers of the committee, so as to authorise the committee to effect the one or the other of such purposes, as to the said committee may seem best, and, if necessary, under the provisions of the said Act, to appoint additional members of the said committee; and every such committee shall be deemed to have been legally appointed under the said Act, and duly authorised to carry into effect the one or the other of the said purposes, as to the said committee may seem best.

4. *Until committees of visitors shall be appointed for any county, &c. the committee appointed for providing an asylum shall act as such.*—That until a committee of visitors shall, under the provisions of the said Act, or of this Act, be appointed on behalf of any county or borough, counties or boroughs, the committee appointed, or hereafter to be appointed, either for superintending the erecting or providing, or for treating and entering into an agreement for erecting or providing an asylum, or for effecting the one or the other of those purposes, as to the said committee may seem best, shall have, on behalf of the county or borough by which such committee shall have been appointed, all the powers, as well of contracting with the proprietors of any house licensed for the reception of lunatics, as otherwise, of a committee of visitors appointed under the said Act, save that a committee for the purpose only of treating and entering into an agreement as aforesaid shall not have power to take measures towards erecting or providing a lunatic asylum for the sole use of the county or borough for which it shall have been appointed.

5. *Committee of visitors to be appointed by justices and subscribers to lunatic asylums.*—That whenever any agreement shall have been entered into, signed, and reported, as in the said Act is mentioned, the justices of every county to which such agreement shall relate, assembled at the general or quarter sessions to which such report shall be made, and the justices of every borough to which such agreement shall relate, shall, at a special meeting to be held within twenty days after such agreement shall have been reported as aforesaid, and the subscribers of every lunatic asylum to which such agreement shall relate, or the majority of such subscribers, present at a meeting to be holden within twenty-eight days after the signing of such agreement, and of which notice shall have been given by public advertisement in some newspaper circulated within the place in which such lunatic asylum shall be situated, shall appoint a committee of visitors, in the same manner and under the regulations and with the powers mentioned in the said Act in respect of a committee of visitors appointed for the like purpose at the times mentioned in the said Act, and all the provisions in the said Act relating to committees of visitors shall apply to the said committee, as far as the same may be applicable.

6. *Further provision for the temporary care of pauper lunatics.*—And whereas certain powers are given by the said Act to every committee of visitors to contract for certain purposes, for a limited time and under certain restrictions, with the proprietors of any house licensed for the reception of lunatics: and whereas it is expedient to enable further provision to be made for the temporary care of pauper lunatics; be it enacted, that it shall be lawful for any committee of visitors to make provision, either in manner mentioned in the said Act or otherwise, for the temporary care of pauper lunatics, subject to the approval, restrictions, limitations, and provisoes mentioned in the said Act with respect to such contracts as aforesaid, in as far as such limitations and restrictions and provisoes are applicable to any provision other than a contract with the proprietor of a house licensed as aforesaid, and the expenses of making such provision shall be paid out of the same moneys or funds and in the same manner as is provided in the said Act in the case of contracts with such proprietors as aforesaid; and it shall be lawful for the guardians and overseers of any union or parish, with the consent of the poor law commissioners for England and Wales, to contract with any such committee of visitors for the use and occupation of all or any part of a workhouse as a temporary asylum for pauper lunatics; and during such temporary occupation such workhouse, or the part of it so occupied, shall be subject to the same law as a workhouse taken for the reception of pauper chronic lunatics under the provisions of the said Act.

7. *Separate committees to be appointed for every*

actions, with proper precautions to prevent such power from being abused; Be it enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, that so much of an Act passed in the first and second years of her Majesty, intituled, "An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the Laws for the Relief of Insolvent Debtors in England," as abolished arrest on mesne process, shall be and is hereby repealed.

2. *No arrest on mesne process, except by order of commissioner of Court of Bankruptcy.*—That no writ of *capias ad respondendum* shall issue against any person, except upon the order of one of the London or district commissioners of her Majesty's Court of Bankruptcy.

3. *No commissioner to issue order unless creditor first swears fully as to the particulars of his demand.*—That no commissioner of the Court of Bankruptcy shall issue such order unless the creditor applying for the same shall file in court an affidavit, stating the particulars of his debt; and if the debt shall be on balance of account, or shall consist of more items than one, then annexing to his affidavit an account, commencing with the time when the account was last stated and agreed between himself and his debtor, if ever, and shewing every subsequent item, and the balance.

4. *Nor unless, secondly, creditors' case a clear prima facie case, and creditor has twice demanded payment.*—That no commissioner shall issue such order unless the party applying for the same shall shew to him a clear *prima facie* case of debt due, and shall make affidavit that the payment thereof has been twice demanded by letter, sent by post, addressed to the debtor at his last known place of residence, according to the usual and ordinary course of business; and that the second letter was sent not earlier than one week after the first letter, nor earlier than three weeks before the day of application to the court.

5. *Commissioner to make careful inquiry before issuing order; and require production of books, &c. and creditor's attendance.*—That the Commissioner, before issuing such order, shall be careful in examining into the reality of the debt alleged to be due, and into its nature and consideration; and shall, for that purpose, require of the creditor demanding such order, the production of such books and papers and writings as may be necessary to evidence the reality of the debt; and shall also require the personal attendance of the creditor, or, in cases where the debt is alleged to be due to more persons than one, of one of such creditors, unless under special circumstances he shall think fit to dispense with such attendance.

6. *Debtor to be brought immediately before the commissioner, with liberty to shew cause against arrest. Doubtful case to be left to law. Commissioner may discharge or order bail.*—That as soon as the alleged debtor shall be taken under such writ of *capias*, he shall be brought forthwith before a Commissioner of the Court of Bankruptcy, and shall be at liberty to shew either that the debt or any part thereof is not due, or that there is so much doubt about the reality of the debt as that the creditor ought to be left to establish his right in the proper court of justice before being permitted to issue a *capias* against the debtor; and for such purpose shall have liberty to examine the person or persons at whose instance the *capias* issued, and to produce such books, papers, and writings as he may think necessary to explain his case, after which the Commissioner may either discharge the party arrested, or order him to give bail, with two sufficient sureties, in such sum as shall appear to the Commissioner to be actually due, for the payment of such sum as may thereafter be adjudged to be due, pursuant to such judgment when made.

7. *Debtor to be released on payment into court.*—That the party arrested shall be entitled to his discharge on payment into court of any sum for which the Commissioner shall order him to give bail.

8. *Or on filing declaration of insolvency: or petitioning as insolvent debtor.*—That the party arrested shall be released, if, being a person liable to the bankrupt laws, he shall have signed or shall sign a declaration of insolvency, pursuant to an Act passed in the fifth and sixth years of her Majesty, intituled "An Act for the Amendment of the Law of Bankruptcy;" or if not being a person liable to the bankrupt laws, he shall have presented or shall present a petition for relief pursuant to certain Acts passed in the fifth and sixth years, and seventh and eighth years of her Majesty, intituled, respectively, "An Act for the Relief of Insolvent Debtors," and "An Act to amend the Law of Insolvency, Bankruptcy, and Execution."

such asylum. Justices may appoint the same committee for two asylums.—And whereas by the said Act provision is made that in certain cases therein specified more than one asylum shall be erected or provided in a county or borough, and it hath been doubted whether a separate committee of justices should be appointed in reference to every such asylum; be it declared and enacted, that the true intent and meaning of the said Act is, that a separate committee of justices be appointed in every such county or borough for every such asylum, each of which committees shall have all the powers and be subject to all the provisions of the said Act, with regard to the asylum for which it is appointed, as if it were the only asylum for that county or borough provided always, that it shall be lawful for the justices of the county or borough, if they shall think fit, with the approval of one of her Majesty's principal secretaries of state, to appoint the same committee for two or more such asylums.

8. *For recovering money under orders made by justices under provisions of 9 Geo. 4, c. 40.*—That all the powers and remedies given by the said Act of the last session of Parliament, and the provisions therein contained for recovering money ordered by justices of the peace, under the provisions of the same Act, to be paid by the overseers of any parish, shall extend to the recovery of any money which may have been ordered by any justices of the peace under the provisions of an Act passed in the ninth year of the reign of his late Majesty King George the Fourth, intitled "An Act to amend the Laws for the Erection and Regulation of County Lunatic Asylums, and more effectually to provide for the Care and Maintenance of Pauper and Criminal Lunatics, in England," to be paid by the overseers of any parish, and which at the time of the passing of this Act may be due, or may thereafter become due by virtue of any such order.

9. *Extending powers of borrowing money.*—That the powers given by the said Act to the justices of every such county and to the council of every such borough, to borrow money toward defraying the expenses of carrying into effect the purposes of the said Act, or of any Act thereby repealed, whenever it should appear, as therein provided, that such expenses would exceed the several sums of five thousand pounds, or two thousand pounds, in the several cases therein specified, shall be extended to all cases in which it shall appear to the said justices or council respectively, expedient to borrow money toward defraying such expenses, whether or not it shall appear that such expenses will exceed the sum of five thousand pounds, or two thousand pounds, as the case may be; and such money may be raised in any sum or sums at any rate of interest not exceeding the yearly rate of five pounds in the hundred.

10. *Construction of terms.*—That the words "furnishing and completing" the asylum, in the said Act, shall be held to include the purchase of clothing sufficient for opening the said asylum for the reception of patients.

11. *Act to be construed with 8 & 9 Vict. c. 126.*—That this Act shall be construed with and as part of the said Act of the last session of Parliament.

12. *Act may be amended, &c.*—That this Act may be amended or repealed by any Act to be passed in this session of Parliament.

CAP. LXXXV.

An Act to authorize the Application of Money for the purposes of Loans for carrying on Public Works in Ireland. (August 26, 1846.)

CAP. LXXXVI.

An Act to extend and consolidate the powers hitherto exercised by the Commissioners of Public Works in Ireland, and to appoint additional Commissioners. (August 26, 1846.)

CAP. LXXXVII.

An Act for promoting the voluntary Establishment in Boroughs and certain Cities and Towns in Ireland of Public Baths and Wash-houses. (August 26, 1846.)

CAP. LXXXVIII.

An Act to remove Doubts as to the Legality of certain Assignments of Ecclesiastical Patronage. (August 26, 1846.)

CAP. LXXXIX.

An Act to continue certain Acts for regulating Turnpike Roads in Ireland until the Thirty-first Day of July, One thousand eight hundred and forty-seven, and to the End of the then Session of Parliament. (August 26, 1846.)

CAP. XC.

An Act to prevent the use of Stills by Unlicensed Persons. (August 26, 1846.)

CAP. XCI.

An Act to continue certain Patent Commissions until the Exhibition of the Commissions revoking them. (August 26, 1846.)

CAP. XCII.

An Act to provide for the Preparation, Audit, and Presentation to Parliament of Annual Accounts of the Receipt and Expenditure of the Naval and Military Departments. (August 26, 1846.)

CAP. XCIII.

An Act for compensating the Families of Persons killed by Accidents. (August 26, 1846.)

CAP. XCIV.

An Act to enable the Legislatures of certain British Possessions to reduce or repeal certain Duties of Customs. (August 28, 1846.)

CAP. XCV.

An Act for the more easy recovery of Small Debts and Demands in England. (August 28, 1846.)

This statute was printed out of its turn in this list, in order that it might, as early as possible, reach the hands of our subscribers. (See *supra*, p. 37.)

THE MAGISTRATE.

Summary.

THE only particulars of interest which have offered for this department during the week are given below. We invite attention to a leading article on the subject of the Game Laws, which will be found in another column.

THOUGH extravagant in parts, the following essay on the Police Courts and Police Magistrates of the metropolis, contains many true remarks and useful suggestions; therefore we borrow the article from the *Spectator*, in whose columns it appeared:—

POLICE-COURT JUSTICE.

There is just now a run of censure on the magistrates of the police courts. Politics are flat and trite, writers are at a loss for piquant topics, and they fly to the standing resource of the police reports. Happy the people whose annals are dull: the annals of the police courts are not dull. Ever and anon the monotony is enlivened by some brilliant misdeed, some amiable act of arbitrary authority, some extra-decorous respect of persons in the magistrate:—

... *From Tyndal's* ... he knows the difference between a "friend," whom he has met at dinner, and any common person charged with uttering base coin.

It is to be observed, however, that the misconduct alleged against the functionaries is seldom that of violating the law, so much as that of violating substantial justice in the manner of administration. The last complaint is a case in point. A shopman called at an hotel in Leicester-square to duan an inmate, Lord William Paget, for three pounds; Lord William was denied; the young man was obstinate in staying for his money; and, ultimately, Lord William appeared, with menacing language and a knife! The indignant shopman went off to obtain the advice of a magistrate; who told him that he ought not to seek payment by means that tended to a breach of the peace, and advised the young man not to go to the hotel again. The case, therefore, stands thus. A tradesman may ask for his money; but he must not ask for it very much, because the debtor, if "aggravated," might add assault, homicide, or murder, to non-payment. There seems to be something absurd in such a state of the law; but such, it appears, is the law; and Mr. Hardwicke cannot be blamed for declaring it. If he was to blame at all, it must have been for something in his manner, that was understood to imply graver censure of the wronged tradesman than of the person who met a demand for money with bad language and a naked knife.

We suspect that the root of the mischief lies in our Police-Court system as a whole. We form too low an estimate of its requirements: we establish it on a low scale, and must not complain if its fruits are not always exalted. Perhaps no public servant is called upon to perform a more important function in the social polity than the Police Magistrate: he it is, conspicuously, whose duty it is to see justice done between man and man—to curb vice as it raises its hideous head, to check injustice in the bud, to render justice, and preserve the peace. The subject-matter of the disputes that come before him is often trifling, sometimes momentous; but the whole scope and drift of his function is never trifling—it is to watch over the flaws and accidents that mar the smooth working of the huge social engine, and to hinder mischief. The importance of his office is not so much desecrated from what he does actively, as from that which, in consequence of what he does, is prevented from happening. The Police Magistrate, with his subordinates, is the conservator, in daily life, of that vital element in society, the confidence in peace and justice. It is impossible, therefore, to form too high an estimate of the importance of the office.

The men chosen to fill it should, without exception, display certain qualifications. It does not suffice that they should possess a competent knowledge of the law, nor even that they should be honest and respectable and intelligent men: they should be men of imperturbable temper, of a nice sense of justice, and of such comprehensive understanding as would enable them to see in each case, besides the dry law, the substantial merits and the contingent questions; so that by their manner of administering the law they might soften its asperities, strengthen its weaknesses, and supply its defects. The Metropolitan Magistrates often obtain deserved commendation for their behaviour: we believe that on the whole they mean well; but it cannot be said that they always display the qualities necessary for the daily representative of justice—the tutelary guardian of society.

Nor is the choice of magistrates the sole deficiency. The whole machinery of the police courts is of a low order. The subordinate functionaries are to be said without personal disparagement—not of a class to exalt the administration of justice, or to redeem it from the debasing influences with which it comes in contact. The very structure of the court adds to the debasement. They are small and ill contrived—sometimes clumsily manufactured out of private houses. If they attain a pitch of decency, it is as much as they do. In all outward attributes the dignity of the law is starved. Judge, clerk, baristers, witnesses, and prisoner, are huddled together in a coageries of penfolds breast-high. The court is "open," and therefore "the public is admitted," but the space reserved for the said public is so close that few decent people venture into it. The ordinary aspect of a police court is banishing. As the desk lounges a respectable gentleman, the teller takes his case at his inn, or a member of the Commons in committee-room, could not exhibit more indifferent, devil-may-care nonchalance, than his worship. Barristers who have not attained the higher walks of their profession are the "Bar," and smile in the low litigation. Doorkeepers and other subordinates, whose vulgar fustian is tempered by the ennui of irksome routine, are perpetually struggling with the difficulties of keeping the doors quiet and making way where there is no way. And as to the public—that little mass of perpetual motion, humming in the confined space, is responsible by its influence on the atmosphere which open windows cannot conquer. It is impossible for human nature, even in the barrister of 30 many years' standing, to resist the depressing effects of these untoward circumstances. Squalor and corruption cannot but infect the very air he breathes without exercising a nightmare influence on his faculties, his tastes, his self-respect.

Instead of reviling the men, then, it would be much more judicious were we to clean out the Augean stable. Build a "temple of justice" adequate to its purpose, with such space as to place due distance between injured innocence, imprisoned vice, and the majesty of justice; make it possible for the real "public" to be present, without contamination; introduce the best men to represent justice; and then, if they go astray or slumber at their posts, call them to a stern account.

The following buildings have been duly registered for the solemnization of marriages, pursuant to the Act of the 6 & 7 Wm. 4, c. 85:—The Independent Chapel, situated at Stratton St. Mary, in the county of Norfolk, in the district of Depwade. The Tabernacle, situated at Sykes-street, in the parish of Southcoates, in the borough of Kingston-upon-Hill. The Croft Unitarian Chapel, Southworth with Croft, Warwick: J. F. Marsh, superintendent registrar.

THE LAWYER.

Summary.

It will be seen, on reference to the last "Court Papers" in the present number, that the LORD CHANCELLOR, in consideration of the heavy amount of Bankruptcy business arising in the northern division of the counties of Derby and Nottingham most distant from Birmingham, and the heavy expense added upon estates of bankrupts by the necessary attendance of parties concerned in their settlement at the court in Birmingham, has ordered that the Birmingham District Bankruptcy Court hereafter hold sittings at Nottingham, and that one of the official assignees of the court do in future reside at

least hold his place of business, at Nottingham. This will be found of great convenience to the Profession in the neighbourhood of Nottingham, and is at the same time a boon to the creditors and other parties interested in the estates of Bankrupts.

The Attorney-General has declined, and the Solicitor-General accepted, the *puisse* judgeship, vacant by the death of Mr. Justice WILLIAMS. Now, although as regards the competency, integrity, and distinguished attainments of the Solicitor-General, the public has every reason to be satisfied with this appointment, we cannot forbear expressing our belief that if the Government had nobly made a concession to a political opponent by offering the judgeship to Sir FREDERICK THESIGER, who, by the manner in which he conducted the duties of his late office of Attorney-General, won golden opinions from all ranks and parties, it would have been received by the Profession and the public at large with yet greater satisfaction than the offer of it to any—even the most deserving Lawyer, in silk or stuff, who treads the courts of Westminster Hall. Precedents of concessions of this nature there are enough, and even of officials, who possessing a claim to the offer of such an appointment, have generously waived it in favour of a displaced rival, especially where no serious risk of loss of emolument or standing was likely to accrue to the conceder. It is rumoured—upon how good an authority we cannot say—that Mr. ROMILLY will succeed Mr. DUNDAS as Solicitor-General.

REVIEW OF CASES DECIDED IN ALL THE COURTS OF COMMON LAW.

During Easter Term and Vacation, and Trinity Term and Vacation.

(CONTINUED FROM P. 537.)

BANKING COMPANY.

Notice to shareholders, is not notice to the company.—The most important question of the relative position of partners in a joint stock bank with reference to the doctrine of notice, has been distinctly decided for the first time in a court of law by the Common Pleas, in *Powles v. Page*, 7 Law T. 247; 15 L. J. 217.

The facts were as follows:—One Dixon was a shareholder and director of a joint stock bank, and attended the weekly meetings of the Board; but his being a director gave him no management or right of interference in the banking accounts, which, together with the business of the bank, were managed by the manager. Dixon was also member of a copartnership which had opened an account with the bank, and of which the defendant was also at that time a member; the defendant having afterwards retired from the copartnership, and having given no notice to the bank of his retirement, and the copartnership having become indebted to the bank, it was held that the defendant was liable to the bank for the debts of the copartnership, and that Dixon's knowledge of the defendant's retirement was not an actual or construed notice of that fact to the bank.

If the old doctrine of notice to one partner being notice to all had applied, the defendant would not have been liable. The Court took time to consider, and then held, as had already been intimated by Parke, B. in *Steward v. Dunn*, 12 M. & W. 664, that a joint stock banking company established under 7 Geo. 4, c. 46, and 1 & 2 Vict. c. 96, made perpetual by 5 & 6 Vict. c. 85, and suing in the name of a public officer, is not to be considered as an ordinary copartnership, but a *quasi* corporate body, and that such joint stock company is not affected by that which may be known to its individual members. The fact that Dixon was a director did not make any difference, as the case found that he had no management or interference in the banking accounts. The principle of this decision will, of course, apply to a great variety of cases arising between banks and other joint stock companies.

BANKRUPTCY.

Power of Commissioners—Committal of Bankrupts.—The similarity of the powers given by the recent Small Debts Act, to commit parties not giving satisfactory answers to those possessed by the Bankruptcy Commissioners, render decisions upon

the latter subject of more general importance than they otherwise would be. (*Ex parte Ward*, 1 B. C. R. 126; 15 L. J. 233, Q. B.; and *Ex parte Bull*, 1 B. C. R. 141; 15 L. J. 235, Q. B.) The former, decided by Coleridge, J. the latter, by Wightman, J. shew the mode in which the warrant should be drawn, and hence the reasons which would justify its being issued. In both these cases it was held sufficient that after the questions and answers had been set out, the warrant should state that the "said answers are not, nor are any of them, satisfactory to me, the said Commissioner," although there were some answers which were manifestly unobjectionable when taken alone. It is always necessary that the questions and answers should be set forth; and it would appear, from these cases, that if the Court can see, upon the whole, that the bankrupt answered in an unsatisfactory manner, the warrant would be upheld.

Oath.—It should, however, be observed, that a bankrupt cannot be committed for unsatisfactory answers taken upon oath, as 8 and 9 Vict. c. 48, which substitutes a declaration for an oath, is imperative. (*Ex parte Ramsden*, 1 B. C. R. 133; 15 L. J. 234, Q. B.) But such declaration need be made, only at the commencement of the examination, and not repeated at the subsequent examinations. (*Ex parte Bull*.)

Rules under 5 & 6 Vict. c. 122.—It is to be borne in mind that in bringing any of the proceedings of the Bankruptcy Court before the courts at Westminster, the rules, &c. made under 5 & 6 Vict. c. 122, must, if requisite, be brought specifically before them, or they cannot take judicial notice of them. (*Ex parte Ramsden*, *ibid.*)

Reputed possession—Fraudulent purchase by bankrupts.—The doctrine of reputed possession is much elucidated, and a new and important point decided by the case of *Load v. Green*, 7 Law T. 114; 15 L. J. 113, Ex. The bankrupt had fraudulently purchased goods on the 1st of July of the plaintiffs, without any intention of paying for them. On the 4th they were delivered, and upon the 8th they were seized by his assignees under a fiat upon an act of bankruptcy subsequent to the 6th. The vendors brought trover, and their right to recover hinged upon whether the goods could be said to be in the reputed possession of the bankrupt by their consent and permission. As fraud vitiates all contracts, the plaintiffs could have brought trover against the bankrupt (see *Earl of Bristol v. Willemerre*, 1 B. & C. 514); but no decision as to the effect of the bankruptcy statutes can, we believe, be found. Mr. Baron Parke, in delivering the elaborate judgment of the Court, after commenting upon the cases bearing upon it, proceeds to explain the meaning of the statute so well that we give the passage at length:—

The meaning of this statute was well explained by Lord Redesdale, in *Joy v. Campbell*, 1 Scho. & Lef. 336. In construing the analogous Irish Act, his lordship says, it refers to chattels, "where the possession, order, and disposition is in a person who is not the owner, to whom they do not properly belong, and who ought not to have them, but whom the owner permits, unconsciously as the Act supposes, to have such order and disposition. The object was to prevent deceit by a trader from the visible possession of property to which he was not entitled; but in the construction of the Act, the nature of the possession has always been considered, and the words have been construed to mean possession of the goods of another, with the consent of the true owner." In order, therefore, to bring the case within the statute, there must be the real owner, distinct from the apparent one; the real owner must consent to the apparent ownership, as such; but, in this case, the plaintiffs never did consent to the apparent ownership as such; they never contemplated permitting the bankrupt to obtain a credit by means of possession and ownership of the property which really did not belong to him; they intended to part with the property itself, and to divest themselves altogether of all right to it; and although, in consequence of the bankrupt's fraud upon them, they had the right to annul the contract, and again to become the real owners, that right they did not exercise until after the bankruptcy, and, consequently, at the time of the act of bankruptcy, on which the title of the assignees depends, the bankrupt was not apparent owner, but real owner, and the statute does not apply.

It is therefore established that a bankrupt cannot, by fraudulently possessing himself of goods, render them available to the payment of his creditors under a fiat upon a subsequent act of bankruptcy. That they would not be available, under a fiat upon a prior act of bankruptcy, whether obtained fraudulently or not, is also decided in this case (see the

judgment), and by *Fawcett v. Fearn*, 6 Q. B. 261, for at the "time he becomes a bankrupt" means at the time of committing the act of bankruptcy. This case, and the observation of Pollock, C. B. suggests still further doubt upon the correctness of *Parker v. Patrick*, 5 T. R. 215, in which the vendee of a party who had obtained goods by fraud was held to have a good title against the owner, although he would not have had such title if the goods had been obtained by felony. (See 2 Saund. 47, n.)

This decision will, of course, give rise to questions in which fraud will be imputed when the insolvent state of the purchaser is discovered, and then will come the difficulty as to the time within which the vendors should rescind the contract after knowledge of the fraud, or of the circumstances from which they seek to infer fraud. The decision, however, plainly accords with the principles of justice.

Subsequent Promise.—*Kirkpatrick v. Tattersall*, 13 M. & W. 766, *supra*, iv. 458, established that a bankrupt may bind himself personally to pay a debt in full either before or after his certificate. It is only requisite that the promise be distinct and unconditional, and the usual rule of *certum est quod certum reddi potest*, will apply equally here. Thus, a letter from the bankrupts, stating that "We shall be happy to pay you the difference of the 100l. after you have taken a dividend upon the estate," and "we hope that you will make yourself comfortable, as we pledge ourselves to make every thing right with you," was held to be an unconditional promise to pay whatever remained due after the dividend. (*Youell v. Cross*, 7 Law T. 526.)

BILLS OF EXCHANGE AND PROMISSORY NOTES.

Notice of dishonour in wrong name.—No better instance could perhaps be given of the infinite diversity of circumstances, which raise new points of law, than that in the year 1846 the effect of a notice of dishonour given in a wrong name should remain to be decided. (*Harrison v. Ruscoe*, 7 Law T. 87; 15 L. J. 110, Ex.) That a notice need not state at whose request it is given, or who is the owner, was held in *Woodthorpe v. Lawes*, 2 M. & W. 109, and that the holder may avail himself of notice given in due time by any party to the bill, was settled in *Chapman v. Keane*, 3 A. & E. 193, *due time* meaning such time as would have enabled the party to give it, if he was suing as a principal, and had not been discharged by the laches of the holder. The facts here were different, but admitted the application of the principle which governed those decisions. The action was on a bill of exchange, drawn by the defendant, payable to his order, and by the defendant indorsed to W. H. Vaughan, and by W. H. Vaughan to the plaintiff. To this the defendant pleaded that there was no notice of dishonour. The bill, which in the body of it was made payable in London, became due on the 24th of April; and on the 26th, an attorney of Chester, who acted for the plaintiff, gave notice of dishonour to the defendant, stating in his letter that he was required by Vaughan to desire payment of the defendant's dishonoured bill; but he swore that he was not authorized by Vaughan to give that notice, and that he gave it in a wrong name by mistake. The only question, therefore, was the effect of this wrong statement. The answer is contained in the following extract from the judgment:—

What then ought to be the result of that mis-information? It is to be recollected, that whether the party is misled or not, as to the person giving notice, the object of a notice was answered by information of dishonour of the bill, and the person to whom notice is given is thereby enabled to withdraw his effects from, or to take his remedy against the prior parties; and we think it reasonable to hold that the misrepresentation of the name of the person on whose behalf notice is given, ought not wholly to avoid the notice, but only to place the party giving it in the same situation as to the party to whom it was given, as if the representation had been true; and therefore the defendant ought to have every defence against the plaintiff, that he would have if the notice had been really given by the party named; and this is in analogy to contracts with factors acting for principals in similar cases, where the contract is avoided by mis-statement. Those cases have been referred to by my brother Alderson, in a judgment just delivered, that the other party has all the equities against the real that he would have against the apparent contractor.

Foreign bills.—The following case deserves a brief notice:—A foreign bill of exchange stated the

um to be cent. vintg quatre livres sterling, deux pence. At the top of the bill was written 124l. 0s. 2d. but a line was drawn through this, and at the side was put 122l. 2s. The acceptance was in English "for 122l. 2s." It was held to be rightly declared on as a foreign bill for 122l. 2s. and therefore did not require a stamp. (*Amlett v. Bruck*, 7 Law T. 256.)

Promissory note.—To render a negotiable instrument liable to an agreement stamp in addition to the ordinary stamp, the words in the instrument must be clearly such as would of themselves be liable, as constituting an agreement or other instrument, subject to the stamp laws. Thus a note containing the following sentence, "And I have lodged with Mr. Thorn the counterpart leases granted by me to A, B, C, D, &c. as a collateral security for the said 500l. (the amount of the note and interest)," was held not to require any other than the usual note stamp. (*Fancourt v. Thorn*, 7 Law T. 256.)

Meaning of indorsement.—A discussion of the precise meaning of the ordinary traverse of an indorsement would be more lengthy than useful in this summary; but as in *Marston v. Allen*, 8 M. & W. 494, "to indorse" was held to include a delivery for the purpose of completing the transfer, as well as the mere writing the name upon the instrument, and, as some doubt was thrown upon that case in *Hayes v. Caulfield*, 5 Q. B. 81, it may be well to mention that the former was adhered to by the Court of Exchequer in *Boydell v. Eckstein*, 7 Law T. 261, where it was held, that under the plea that the defendant did not indorse, he may give evidence to shew that the bill bearing the indorsements of the drawer of A B and of himself was returned into A. B.'s hands by an arrangement between A. B. and the defendant, the defendant's name being left upon it by mistake, and that the plaintiff took the bill from A. B. with notice of these facts.

CHARTER-PARTY.

Custom of London.—By the custom of the trade in London, a broker procuring a charter-party for a shipowner, is entitled to a commission of 5 per cent. upon the value of the freight provided for in the charter-party, whether the vessel be ultimately loaded according to the charter-party or not, and evidence of this custom may be adduced in an action to recover commission, where the charter-party is not in the ordinary form. (*Hill v. Kitching*, 7 Law T. 257.)

Broker's commission.—In the same case the meaning of the words "in whose immediate and individual behalf the action is brought," in 6 & 7 Vict. c. 85, was considered. By the custom of the trade, if A, a broker, introduce B, another broker, to a shipowner, in order that a charter-party which B has the power of procuring may be effected with the shipowner, A is entitled to half the commission paid to B by the shipowner in respect of procuring the charter-party. In an action against a shipowner for the commission payable to the broker for effecting such a charter-party under such circumstances, B is the only proper person to sue, and not A and B jointly, and A is a competent witness for B under 6 & 7 Vict. c. 85. The test put by Tindal, C. J. was, he might have had a claim against the plaintiff in respect of a sub-contract relative to the transaction, but he "had no right to put his hand upon the sum recovered." He was neither the formal nor substantial plaintiff.

CHEQUE.

When to be presented.—An attempt was made in *Robinson v. Hawkesford*, 7 Law T. 204, to maintain that the drawer of a cheque was freed from his liability from the simple fact that a delay had occurred in its presentation, he having been in no ways injured. The Court, however, expressed at once their most decided opinion, that no delay would have that effect, unless some loss or injury had occurred to the drawer in consequence.

CLERGY.

Toleration Acts.—The importance of the principle involved in *Barnes v. Shore*, 7 Law T. 110, merits a passing notice, although it will probably not be of much practical influence. It decides that by the law of England a person once admitted into holy orders cannot free himself from his vows of canonical obedience, and will not be protected by the Toleration Acts if he is sued for any offence against these laws within his diocese. He is protected against nonconformity, and that only, but not against disobedience to his bishop. It is easy to see that this might be used as a great engine of oppres-

sion, but a rigorous exercise of their powers by the bishops would soon lead to what is especially wanted, a thorough scrutiny, and we need hardly add, great reforms in the Ecclesiastical Courts.

Criticism upon Sermons.—In *Gathercole v. Miall*, 7 Law T., 15 L.J. 179, Ex. the right of comment upon a sermon preached by a clergyman to his congregation only, and not published, was much discussed. Pollock, C.B. and Parke, B. said that such sermons are not public acts; Alderson, B. and Rolfe, B. however, expressed a contrary opinion.

CONSIDERATION.

Compromise of indictment.—The whole law upon the validity of agreements to compromise indictable offences was examined in *Keir v. Leeman*, 6 Q. B. 308, and that case having now been affirmed in error upon very satisfactory reasoning, it may be said that so far as what is there decided, there is no room to doubt. As it will be seen, from the passage presently quoted, it is possible that the supposed validity of an agreement not to prosecute a common assault, is open to be impeached, but with that exception, the compromise of an indictable offence forming part of the consideration of an agreement, the whole would be void. At the same time, if the money were voluntarily paid upon such consideration, and not extorted by the threat of proceedings, it could not be recovered back in an action for money had and received, according to the maxim, *in pari delicto potior est possidentis conditio*. The conclusion of the judgment of the Exchequer Chamber is as follows:—

We have no doubt that in all offences which involve damages to the injured party, for which he may maintain an action, it is competent for him, notwithstanding that they are also of a public nature, to compromise or settle his private damage in any manner he may think fit. It is said, indeed, in the case of an assault, he may also undertake not to prosecute on behalf of the public. It may be so, but we are not disposed to extend this any further. In the case before us the compromise was of an assault and riotous obstruction of a public officer in the execution of his duty, and in no case has it been said that it is lawful to compromise a prosecution for such an offence.

It happened in this case that the compromise had been recommended by the judge who had tried the indictment, but this made no difference, as his recommendation could not make what was illegal legal.

Continuing consideration.—The distinctions are somewhat minute between agreements shewing a past and continuing consideration, but from the subject-matter of the agreement (*Tanner v. Moore*, 7 Law T. 202) ought not to be passed over. The agreement was, "I (the defendant) in consideration of natural love and affection, and in consideration of J. T. having agreed to stay all further proceedings at law against J. B. M. if J. B. M. shall die in the lifetime of his father, will, within six months after his father's death, pay to the said J. T. 165l." And this was held to support a declaration in *assumpsit* that, in consideration of J. T. agreeing to stay proceedings against J. B. M. if J. B. M. should die in his father's lifetime, the defendant promised, &c.

COSTS.

Against the Crown.—There are not many cases to notice under this head; and the point raised as to the power of the Court of Exchequer to order the costs of an amendment to be paid by the Crown, was not decided, in consequence of the defendant, after the amendment, without payment of costs, having applied for time to plead, and so waived the order. (*Attorney-General v. Brown*, 7 Law T. 141.)

Of amendment.—The mode in which the order might have been made, is shewn in *Summers v. Ogden*, 7 Law T. 258. There it was ordered, "that the issue in the cause should be amended," and "that the plaintiff should pay 13s. 4d. costs" to the defendant. It was held, first, that the defendant was entitled to the costs, *whether the amendment was made or not*; and, secondly, that a demand of the costs having been made, and not complied with, the defendant was justified in making the order a rule of court, and was entitled to the costs of so doing. It should not be forgotten, that for the purpose of obtaining these costs under R. G. May 1840, a refusal by the town agent to pay the costs, upon demand, entitles the other party to make the order a rule of court. (*Thompson v. Billing*,

11 M. & W. 361.) An improper refusal of the town agent would probably render him liable to an action. We have already noticed the *Bill* of the country attorney for the acts of his town agent.

Costs of remanet.—According to *Robinson Day*, 5 B. & Ad. 814, where a new trial is granted on payment of costs in a town cause, the costs occasioned by the cause being made a remanet are included; but this was expressly overruled by the Court of Common Pleas, after consulting the six judges. (*Bentley v. Carver*, 7 Law T. 84.) See costs are costs in the cause, and only the costs of the day are payable upon a new trial. It is to be remembered, that although there are certain recognised usages as to the payment of costs, giving or withholding them on motions for a new trial is entirely in the discretion of the Court.

Of remanet when plea is afterwards withdrawn.—If, after a cause is made a remanet, a plea is substituted, and a verdict obtained by the defendant upon it, and for the plaintiff upon other pleas, a plaintiff will be entitled to all the costs upon those pleas, up to the cause being made a remanet, for upon the record at that time the plaintiff must have succeeded. (*Walker v. Blacklock*, 7 Law T. 342.)

Costs upon stay of proceedings.—A novel question arose in *Lipcombe v. Turner*, 7 Law T. 114. The creditors of a deceased party filed a creditor's bill, and a receiver was appointed, but remained from bringing any action without the assent of the Master to whom the suit was referred. It became necessary to sue a debtor to the estate, and for that purpose steps were taken to procure the assent of the Master. The action was afterwards stayed upon the undertaking of the defendant to pay the debt and costs to be taxed as between attorney and client. The costs of obtaining the Master's consent to sue were held not to be due upon this order. They did not arise necessarily out of the action, and if intended to have been paid, the order should have specially provided for them.

Expenses of detaining witnesses.—The courts of common law allow, from the necessity of the case, examinations upon interrogatories; but that such a proceeding is by no means *exonerat* upon either party is illustrated by *Evans v. Walton*, 7 Law T. 259. The defendant had obtained an order for putting off a trial from one assizes to another, and afterwards obtained an order to stay the action upon payment of a certain sum and costs. The plaintiff was held entitled to the cost of detaining a witness in England from the time of the postponement until the time of settling the action, even though he had obtained an order to examine the witness upon interrogatories, which order he had declined to set upon. As Maule, J. very justly observed, the parties ought to be allowed with some liberality to exercise a *bond fide* judgment, whether the same effect is likely to be produced by interrogatories as by a *voir dire* examination. Certainly, as far as our experience has afforded us opportunities of judging, interrogatories are generally very unsatisfactory materials for the jury to form their opinion.

Indorsement upon writ.—If more costs are claimed upon the writ than are due, the proper course for the defendant is to pay the whole, and then apply for taxation. If less is paid, although more than is actually due, and the plaintiff's attorney proceeds with the action, the Court will not compel the plaintiff's attorney to pay the defendant's costs subsequent to the payment. (*Hopkinson v. Flanagan*, 7 Law T. 112.) We may conclude this head by noticing the rule of practice adopted in *Brewer v. Watson*, 7 Law T. 259, that where a judge's order is obtained to stay proceedings until a given day in Term, application may be made to review taxation; if the Court grant a rule nisi they will stay proceedings until cause shewn, even though no direct notice of the motion has been given. This is reasonable, for the fact of the proceedings being stayed is sufficient notice of the motion. Nothing is more common, at least in the Exchequer, than to hear applications made, including stay of proceedings, and refused as to the latter, because notice of the intended motion has not been given.

COUNTY COURT.

Jurisdiction as to freehold.—As the courts to be established under the Small Debts Act resemble much the County Courts, and sec. 58 excepts any question relating to title of corporeal or incorporeal hereditaments, *Finniswood v. Pattison*, 7 Law T. 229, should be noted, as it may be held to apply to these courts. It confirms most fully the old case

of *Cannon v. Smallwood*, 3 Lev. 224, and establishes that the County Court cannot hold further cognizance of any matter in which the freehold is directly or collaterally brought in question. The defendant in replevin made cognizance as bailiff of the mayor, aldermen, and citizens of York, whose soil and freehold the close was. The plaintiff traversed the taking by him as bailiff, and, therefore, on the pleadings, the freehold was admitted to be in the mayor. The Court of Common Pleas, upon writ of false judgment, held that as soon as the cognizance was made the County Court lost its jurisdiction, just the same as when a *modus* is pleaded in a question of tithes in the Ecclesiastical Court.

Court Baron.—As to the proper description of this court, and of the proceedings, see *Brown v. Gill*, 7 Law T. 87.

CORPORATION.

Liability on contracts not under seal.—After our Summary of Hilary Term, the report of *Paine v. The Guardians of the Strand Union*, 6 Law T. 432, 453; 15 L. J. 89, M.C., was published, and we therefore mention it here, together with *Sanders v. Guardians of St. Neots*, 7 Law T. 111; 15 L. J. 104, M.C., the one being a negative, and the other an affirmative illustration of the same rule, viz. that corporations are not liable upon contracts not under seal, subject to the exceptions, of matters so constantly recurring, or of so small an importance, or so little admitting of delay, that ordinary convenience dispenses with the seal, or contracts necessarily incident to the purposes and objects of the corporation. (See judgment and cases cited in *Paine v. Strand Union*.) In that case the Poor Law Commissioners, upon the representation of the board of guardians of the union made at the request of the parish officers of C. one of the Strand Union, ordered the guardians to have a survey and plan made of the parish of C. for the purpose of the stat. 6 & 7 Wm. 4, c. 96. The board of guardians contracted under seal with the plaintiff to execute the survey and plan for 500l. After its completion they verbally ordered him to prepare a reduced plan as a key to the larger plan. It was executed accordingly and delivered to the board of guardians. It was held, that the contract for the reduced plan was not incident to the purposes for which they were incorporated, and therefore not binding on them, without their seal.

In the other case, the guardians defended an action brought for gates erected at the workhouse, upon a verbal order given through one of their officers. The jury found expressly that they were necessary, and the Court of Queen's Bench refused a rule nisi for a new trial, upon this ground principally, mentioning, however, in addition, that the gates had been received, and the contract adopted, by the defendants. As to contracts with Joint Stock Companies under 7 & 8 Vict. c. 110, see the 44th section of that Act.

Liability to indictment.—*Reg. v. North of England Railway*, 7 Law T. 468, appears to be the first case in which an indictment has been held to be against a corporation for a *misfeasance*, but that it is so liable follows of necessity from the decisions that it is liable in trespass, and upon indictments for *nonfeasance*.

DEVISE.

Meaning of "moiety."—The devise of "my moiety" carries with it the interest the devisor took in the subject-matter; thus, the testator being seised in fee of one moiety of a house, devised "my moiety of the house which my son Richard lives in" to my son Richard, which passed the fee, and not a life estate merely. (*Doe dem. Atkinson v. Fawcett*, 7 Law T. 283.)

In manner aforesaid.—It is often difficult to determine the antecedent intended by these words of reference, and *Doe dem. Woodall v. Woodall*, 7 Law T. 322, is, therefore, given here as an illustration. Thomas Morgan by his will, after having devised real estates to his grandson, T. L., with remainder in strict settlement to his issue, devised the same to his (testator's) grandchildren, William, Samuel, Alice, and Hannah, if they should happen to be living at the time of decease of T. L., "for and during the term of their natural lives, and the life of the survivor of them," as tenants in common, with remainder "to all and every the son and sons of the body or bodies of his the testator's said grandchildren 'lawfully to be begotten, and the respective heirs of the body and bodies of all and every such son and sons lawfully issuing,' remain-

der in tail in like manner to all the daughters of the testator's said grandchildren. There was then the following clause: "And in case either of my grandchildren, William, Samuel, Alice, Hannah, shall happen to die, leaving no issue behind him, her, or them, then my will and meaning is, that all and singular the premises herein lastly devised shall go and remain to the survivor of them, and the heirs of his or her body, lawfully to be begotten in manner aforesaid." It was held that the words "in manner aforesaid," in the last clause, referred to the preceding clause of the will, and that, therefore, the said grandchildren of the testator took only life estates under the will.

EJECTMENT.

A husband may maintain ejectment against his wife.—The somewhat strange case of a husband bringing an action of ejectment against his wife occurred for the first time in *Doe dem. Merigan v. Daly*, 7 Law T. 160, and the Court of Queen's Bench decided that it would well lie. It was urged that the legal notion of husband and wife being one person was a bar to such a proceeding, and that the plaintiff on the record being John Doe was only a legal fiction, which should not do injustice,—in *actione juris semper existit equitas*; but the Court seemed to think that that maxim cut both ways, and that the fiction here prevented the technical objection of the unity of husband and wife working injustice.

Devise by executor.—Each executor has the entire interest in his testator's estate, and therefore a devise by two out of three co-executors is good. (*Doe dem. Stace v. Wheeler*, 7 Law T. 231.)

By parish officers.—There is no distinction between ejectment and other actions, as to the rule that proof of acting as a public officer is sufficient *prima facie* proof that the party is such officer duly appointed. (*Doe dem. Bowley v. Barnes*, 7 Law T. 139.) The Court of Exchequer had, a short time previously, decided the same point in *Ganvill v. Utting*, 9 Jur. 1081.

EVIDENCE.

Proceedings in Chancery.—The famous *Angel* case is now, according to Lord Deaman, C. J. perfectly dead and lifeless, but to the end of its long career it furnished discussions and decisions upon all sorts of points. The last is that reported 7 Law T. 81, where the claimant of the last portion of the Surrey property sought to submit his case for a third time to a jury, on the ground that evidence had been improperly rejected. The case turned upon whether one Thomas Angel, from whom the claimant was descended, married at Evesham, was the Thomas Angel, the caterer, clearly descended from the first purchaser of Crowhurst. A copy of the Evesham register was put in, and shewed the burial of that Thomas Angel, with the addition of "descended from Crowhurst." It was proposed to put in a bill in Chancery, filed by the mother of that Thomas Angel, the caterer alone, to shew that the partnership between them, which had previously existed, had been dissolved, and also another bill and answer in which a member of the same family was defendant, as declarations as to the condition in life of that family. Both these were held to have been properly rejected, the bill being no evidence whatever of a fact, for it is the mere statement of counsel, and the other bill and answer were declarations by strangers, and this was not a question of pedigree, but of identity. (See *The Wharton Peerage* case, 12 Cl. & Fin. 295.)

Answer in Chancery.—An important question to professional men was settled in *Wilkins v. Nokes*, 7 Law T. 112, it being there held that an answer in Chancery cannot be used as evidence of any fact stated therein, against the solicitor to the defendant who filed it.

Parol evidence, explaining written contracts.—Parol evidence being admissible to explain the meaning of a term used in a contract according to the usage of the particular trade or custom of the locality, it is useful to observe the distinctions which decide the admissibility of such evidence. Thus, *Smith v. Jeffreys*, 7 Law T. 231, and *Grant v. Madox*, 7 Law T. 187, illustrate the principle. In the former case, evidence was not admissible to shew that in a contract for "Ware" potatoes, the parties meant "Regent's Wares" because, "Ware" had a definite meaning, viz. the best of any particular sort, and to confine it to one particular sort, would be to contradict the written contract. But in the latter case, evidence was admissible to shew that in a written contract with the

manager of a theatre, the terms being so much "a week," the word week meant weeks when the theatre was open, such being the accepted usage of the theatrical world. To put it in another form, in the first instance, no one in the trade would have understood the contract, as it was sought to be construed; whereas in the latter, every one conversant with the theatrical profession would have so understood it.

Proceedings in Insolvent Court.—Many recent statutes make the official copies of "proceedings" in various courts evidence—as, for instance, the 1 & 2 Vict. c. 110, s. 105, relating to the Insolvent Court. This word includes the retainer of an attorney filed in the court, and the copy was held admissible in an action for fees for passing the defendant through the court. (*Bowen v. Hodges*, 7 Law T. 91.)

Manorial rights.—Evidence of reputation is admissible as to manorial rights or boundaries, where the manor is a reputed manor only, as much as where it is an existing manor. (*Doe dem. Molesworth v. Sleeman*, 7 Law T. 252.)

Secondary evidence of contents of documents.—Few questions are oftener discussed at Nisi Prius than the admissibility of secondary evidence of the contents of documents, which are not forthcoming. The sufficiency of the search is the turning point of each case. The principle which should guide the judge was much discussed in the recent case of *Gathercole v. Miall*, 7 Law T.; 15 L. J. 179, Ex.; and we give at some length the opinions of Pollock, C.B., and Alderson, B. as having a general application. The Lord Chief Baron said:—

I think the evidence of a document being lost upon which secondary evidence may be given of its contents may vary very much, according to the paper itself, the custody it is in, and all the surrounding circumstances of the peculiar matter before the court and jury. A paper of considerable importance which is not likely to be permitted to perish may call for a more extended and minute and accurate search than that which may be considered almost as waste paper, which nobody would be likely to take care of, and might, I think, be considered to be lost, so as not to be produced before a court and jury, where, after a search in the first instance at the place where it was likely to be found it is not discovered there, we cannot suggest any one place where it is more likely to be than another.

Mr. Baron Alderson said:—

I think the search should be such as should induce the judge to come to the conclusion, and the Court afterwards, on revising his opinion, to come to the same conclusion, that there is no reason to suppose that the omission to produce the document itself arose from any desire of keeping back, and that there has been reasonable opportunity of producing it which had been neglected. Now the question whether there has been a loss, and whether there has been sufficient search, must depend very much on the nature of each instrument searched for, and I put the case in the course of the argument on the back of a letter. It is quite clear a very slender search would be sufficient to shew that a document of that description had been lost. If we were speaking of an envelope in which a letter had been received, and a person said "I have searched for it among my papers; I cannot find it," would be sufficient.

Mr. Baron Rolfe entirely acquiesced in the above grounds upon which the secondary evidence at the trial had been admitted by Mr. Baron Parke, and the facts which led to the motion are an instructive instance of the principle above laid down. The action was for a libel in a newspaper, and a witness stated that he was president of a literary institution having eighty members; that about the date of the paper proved, one was brought (he could not say by whom) to the reading-room, and left there gratuitously; that a fortnight after it was taken away without his authority, and never returned; that he had searched for it but could not find it, and believed it to be lost or destroyed; that the title of it was the same as that proved, and, as far as he could judge, it contained the libel in question, and he believed it was a copy of that paper. He was not cross-examined, and the secondary evidence was held to have been rightly admitted.

The same general principle was laid down last year in *Reg. v. Kenilworth*, 2 New Sess. Cas. 66; the question being whether the sessions had rightly admitted secondary evidence of an indenture. The Court held, that they had acted properly, and Coleridge, J. commenced his judgment thus:—

I am of the same opinion. The case has been argued on a principle which is not the true test. It is not a strict rule as applicable to pleadings, or to

the proof of actual facts, but rather a preliminary inquiry, for the purpose of satisfying the judicial part of the Court, whether they should go into the proof of facts. Therefore of necessity a somewhat loose rule must be adopted. The object is not to prove actually that the documents lost, but that there should be sufficient evidence of a *bona fide* honest search, so as to shew that it is not kept back. No doubt different rules may prevail according to circumstances.

It was further held in the principal case that there was evidence for the jury that the paper so sent to the institution was a copy of that which contained the libel; and thirdly, that though sent by a person unknown it was evidence against the defendant not to shew malice, but to affect the damages by shewing the extent of circulation.

EXECUTION.

Two important cases call for remark under this head of practice. The first is upon the

Liability of married women to arrest.—The legality of the practice of discharging a married woman arrested upon a judgment against herself and her husband, when she has no separate property, was spoken of as doubtful in a considered judgment of the Court of Exchequer, in *Rayner v. Jones*, 7 Law T. 406, as being an interference by a judge with the clear common law rights of the successful party. However this may be, in the same case it was decided, that upon a judgment in an action brought against her, *dum sola*, and pending which she married, the creditor has a right to take her in execution, and keep her in custody, and an order of Rolfe, B. discharging her from custody was set aside, and the sheriff directed to retake her.

Effect of landlord claiming rent before sale, under a *fi. fa.*—Curiously enough, the true construction of 8 Ann. c. 14, s. 1, as to the legal effect of a landlord claiming rent, after an execution put in upon the demised premises, had never been absolutely decided, until the recent case of *Cocker v. Musgrove*, 7 Law T. 254. The practice very commonly has been, if the value of the goods has appeared insufficient to pay the rents, for the sheriff to withdraw, but if it appeared sufficient, for him to sell, and after satisfying the landlord, hand over the surplus to the execution creditor. This last practice was strengthened by the decision of the Court of Exchequer in *Davies v. Edmonds*, 12 M. & W. 31, that the sheriff had a right to his fees upon the produce of the sale, it being assumed in the argument that he was "bound to levy for the rent." The bare question of law, however, came under the consideration of the Court of Queen's Bench in the principal case. It was an action for a false return, the alleged falsehood consisting in the allegation that "there were no goods whereof the sheriff could levy." Upon the pleadings it was admitted that, after the execution put in, the landlord had given notice of rent being due, and the jury found, as a fact, that had a levy taken place, both the rent and the plaintiff's executions, as well as several others, would have been paid. At the trial, the counsel for the defendants unsuccessfully contended that the plaintiff ought to be nonsuited, but a motion for new trial was granted upon the point, and the rule, after a considerable delay, ultimately made absolute. As nearly all the cases are cited in our report of the argument, we do not therefore refer to them here, but only state the result, viz, that unless the execution creditor pays the landlord after notice, the sheriff cannot, however great the disproportion between the amount of the rent and the value of the goods, be called upon to sell the goods. It seems to follow, from this, that if he does sell, he cannot claim poundage upon the amount paid over to the landlord, for it is not in the performance of his duty. Further, it seems to follow, that, by such sale, he would render himself liable to an action at the suit of the debtor, who would thereby have been deprived of the statutory protection given to him in respect of a sale under a distress for rent, and might have been actually damaged, as well as suffering the legal injury. We believe, in consequence of the comments upon this decision in the pamphlet by Mr. Keane, upon the Small Debts Act (see *supra*, 461), the 107th sect. was inserted, by which the stat. of Anne is declared not to apply "to goods taken in execution under that Act;" but that section has by no means left the matter free from difficulty. It will be seen, at once, that it is not enacted which of the claimants is to have the preference, the landlord or the execution creditor: and while the provision that, notwithstanding a replevin, the execution is to

be satisfied, points to the creditor having the preference, yet, on the other hand, the general language of the section points to the landlord. For, if not, what does the clause mean? To say that the bailiff may detain for both, would then only be saying that the landlord might make him his bailiff for the distress—rather a needless enactment. But, again, the landlord's right extends to all goods upon the premises, yet could the bailiff, under this section, detain upon such goods? However, there is the section, *litera scripta manet*, until the next session, when it is, of course, to be amended!

FEIGNED ISSUES.

8 & 9 Vict. c. 102, ss. 18, 19.—Upon a cursory perusal of 8 & 9 Vict. c. 109, the inference would be that feigned issues in the ordinary form were no longer to be used. The marginal note of the 19th section is "Proceedings under feigned issues abolished," and the words in the 18th section, that rendering suits illegal "for recovering any sum of money alleged to be won upon any wager," seem to point to such a proceeding. But in *Luard v. Bulcher*, 7 Law T. 86, the Court of Common Pleas decided that the 19th section was only an enabling, and not a compulsory clause; and that, consequently, the old form of the feigned issue may still be used.

GUARANTEE.

Consideration.—A guarantee in these words is insufficient, as not shewing that the consideration was a future supply of goods:—"I will see you paid for five or ten pounds' worth of leather on Dec. 6, for T. Lewis, shoemaker." (*Price v. Richmond*, 7 Law T. 186.)

FALSE REPRESENTATION.

The correctness of the doctrine laid down in *Evans v. Collins*, 5 Q. B. 804 (see *supra*, 5, 399), that fraud must co-exist with falsehood, to render the false statement actionable, has not hitherto been impeached in the House of Lords, and will, we doubt not, be upheld by that tribunal, whenever the question arises. But the recent case of *Bailey v. Walford*, 7 Law T. 252, shews that the principle does not permit dishonest persons to avail themselves of the credulity of their neighbours to their own advantage. It suffices to shew that the truth was wilfully uttered with a view to the advantage of the party uttering it, and then the person injured, by acting upon such statement, is entitled to his remedy by action.

HABEAS CORPUS.

Rules nisi.—The modern practice of avoiding the expense of actually bringing up the prisoner, is to obtain a rule *nisi* for the *habeas*, and if made absolute, the prisoner is discharged. This being so, the case, upon the argument of the rule, is to be treated in the same manner as if the prisoner was brought up upon a *habeas* in the first instance, and the Court will, therefore, look at any warrant, which might have been returned had the *habeas* issued, although not in existence at the time the rule *nisi* was obtained. (*Ex parte Bull*, 1 B. C. R. 141.)

INSOLVENT.

Final order under 7 & 8 Vict. c. 96.—In no department of legislation is the patchwork system exemplified so strongly as that which affects the rights of debtors and creditors. Always varying, and always obscure, the wonder is that those who suffer in consequence, being the whole commercial community, have not yet succeeded in obtaining a careful revision of the whole system. *Toomer v. Gingell*, 7 Law T. 230, furnishes a recent instance of this evil, deciding as it does that the final order, under 7 & 8 Vict. c. 96, only protects the person of the insolvent from arrest, and does not bar an action in respect of the very debts which have made him insolvent.

INTERPLEADER.

Liability of Sheriff for a substantive trespass.—An important question was decided in *Olliv. Laurie*, 7 Law T. 260, as to the extent of protection given to the sheriff by the Interpleader Act. Under an execution against A, the sheriff had entered, as he supposed, the house of A, and seized goods there, but B claimed to be the owner of the goods, and in respect of them proceedings were taken under the Interpleader Act, and B's claim was established. B then brought an action in the Common Pleas of trespass against the sheriff for the entry, alleging that the house was hers, and not the debtor's, any more than the goods. The sheriff then attempted to stop the proceedings by a motion, on the ground that the matter had been disposed of in the Court

of Exchequer by the interpleader proceedings. The Court, however, dismissed the application with costs, as it clearly was not within the remedies given by the Interpleader Act that the sheriff should be justified or held harmless for a substantive trespass, in entering a house belonging to a stranger.

LANDLORD AND TENANT.

Notice to quit.—It is daily becoming more common to insert clauses in leases which give to the landlord much greater powers than would arise from the mere relationship between him and his tenant, and enable him to obtain possession of the premises in a more speedy method. The construction of the following clause as to forfeiture should not, therefore, be passed over, although the particular facts need not be detailed. The lease in *Doe dem. Jeffkins v. Houston*, 7 Law T. 182, contained this clause—"And it is mutually agreed that if it shall happen that the said rent shall be behind and unpaid for the space of twenty-eight days next after any day of payment, then and in that case the said John Jeffkins shall be at liberty to give to the said John Houston three months' notice to quit the said premises, which notice he, the said John Houston, hereby agrees to accept and peaceably deliver up the same pursuant thereto." This was held to override all legal presumptions and implications, and to render any demand of rent unnecessary, as preliminary to the landlord availing himself of this quasi forfeiture clause.

LIEN.

Certificated conveyancer.—In *Steadman v. Hockley*, 7 Law T. 211, a professional question of some interest was raised, as to the right of a certificated conveyancer to a lien on deeds sent to him and in respect of which business was to be done by him. The Court of Exchequer held that he had no such lien—a decision which will, of course, apply equally to a special pleader. E. W.

(To be continued.)

THE PRACTICE OF WILLS.

By G. S. ALLNUTT, Esq., Barrister-at-Law.

BOOK II.

PROBATE OF WILLS.

CHAPTER VI.—MODE OF PROOF.

(Continued from page 418.)

There are two modes of proving a will, viz. in common form and in solemn form, or *per testes*.

I.—PROOF IN COMMON FORM.

This proof is made by the executor who produces witnesses as to the execution of the will if necessary, but the proof is made in the absence, and without citing the parties interested. The affidavit required of the executor is generally to the following effect:—

You swear that this writing contains the true last will and testament of A. B., deceased, as far as you know or believe, and that you will perform the same by paying his debts, and then the legacies therein contained, as far as his goods, chattels, and credits will thereto extend and the law charge you, and that you will make a true and perfect inventory of all the said goods, chattels, and credits, and exhibit the same into the registry of the Court of , at the time assigned you by the said Court, and render a just account thereof when lawfully required; that the whole of the goods, chattels, and credits of the said deceased does not amount in value to £ , and that the contents of the affidavit hereto annexed, to which you have subscribed your name, were and are true. So help you God.

The affidavit mentioned in the oath is that as to the value of the property, and is usually in the following form:—

In the Prerogative Court of Canterbury.

In the goods of A. B., deceased.

[Date.]

[Insert the names, residences, titles, or professions of the persons making the affidavit.] Appeared personally, C. D., of, &c. and E. F., of, &c. executors named in the last will and testament [If one or more codicils state so] of the said A. B., late of, &c. deceased, and made oath [in the case of Quakers, solemnly affirmed] that the said deceased died or about the day of , in the year of our Lord , and that the estate and effects of the said deceased, which he in any way died possessed of or entitled to, and for or in respect of which a probate of the said will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [including the beneficial

estates for years of the said deceased, whether absolute or determinable on lives] [as the case may be], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of £ , to the best of these deponents' knowledge, information, and belief. [And they lastly made oath that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, either absolute or determinable on lives to the best of these deponents' knowledge, information, and belief] [as the case may be.]

Sworn, &c.

This affidavit is required by the 38th section of the 55 Geo. 3, c. 184, by which it is enacted that "from and after the expiration of three calendar months from the passing of this Act (11 July, 1815,) no Ecclesiastical Court or person shall grant probate of the will or letters of administration of the estate and effects of any person deceased, without first requiring and receiving from the person or persons applying for the probate or letters of administration, or from some other competent person or persons, an affidavit, or solemn affirmation in the case of Quakers, that the estate and effects of the deceased, for or in respect of which the probate or letters of administration is or are to be granted, exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially, but including the leasehold estates for years of the deceased, whether absolute or determinable on lives, if any, and without deducting any thing on account of the debts due and owing from the deceased, are under the value of a certain sum to be therein specified, to the best of the deponent's or affirmant's knowledge, information, and belief, in order that the proper and full stamp duty may be paid on such probate or letters of administration, which affidavit or affirmation shall be made before the surrogate or other person who shall administer the usual oath for the due administration of the estate and effects of the deceased."

By the 39th section of the same Act, it is enacted that "every such affidavit or affirmation shall be exempt from stamp duty, and shall be transmitted to the said commissioners of stamps, together with the copy of the will, or extract, or account of the letters of administration to which it should relate, by the registrar or other officer of the court, whose duty it shall be to transmit copies of wills, and extracts or accounts of letters of administration to the said commissioners for the better collection of the duties on legacies and successions to personal estate upon intestacy; and if any registrar or other officer whose duty it shall be, shall neglect to transmit such affidavit or affirmation to the said commissioners of stamps as hereby directed, every person so offending shall forfeit the sum of fifty pounds."

It is also required by a rule of the Prerogative Court of Canterbury that the time of the death of the testator shall form part of the oath taken by the executors.

By the ancient canon law a proctor having a special proxy might make oath *in animam constituentis*, instead of the executor or administrator, but now, by the 132nd canon, it is ordered that "forasmuch as in the probate of testaments and suits for administration of the goods of persons dying intestate, the oath usually taken by proctors of courts *in animam constituentis*, is found to be inconvenient; therefore, from henceforth every executor or suitor for administration shall personally repair to the judge in that behalf, or his surrogate, and in his own person, and not by proctor, take the oath accustomed in these cases. But if, by reason of sickness or age, or any other just let or impediment, he be not able to make his personal appearance before the judge, it shall be lawful for the judge (there being faith first made by a credible person of the truth of his said hinderance or impediment), to grant a commission to some grave ecclesiastical person, abiding near the party aforesaid, whereby he shall give power and authority to the said ecclesiastical person in his stead to minister the accustomed oath above mentioned to the executor or suitor for such administration, requiring his said substitute, that by a faithful and trusty messenger he certify the said judge truly and faithfully what he hath done therein."

It has accordingly been the practice, in case the executor or deponent be infirm or live at a distance, to grant a commission to the clergyman of the parish of the executor or deponent, where he resides in England or Ireland, or to the magistrate, or other competent authority, where the executor or

deponent resides elsewhere, to administer the necessary oath.

Where the memorandum of attestation, signed by the witnesses to the execution, shews that all the requisitions of the 1 Vict. c. 26, s. 9, have been complied with, any further evidence upon the subject will generally be dispensed with (See *Burgoyne v. Showler*, 8 Jur. 814), but where this is not the case, an affidavit must be taken by one or both of the witnesses, either before the ordinary, or by commission, as to the particulars of the execution. The following is the form of affidavit usually adopted in such a case:—

In the Prerogative Court of Canterbury.
In the goods of A B, deceased.

[Date.]

Appeared personally, C D, of, &c. and made oath that he is one of the attesting witnesses to the last will and testament now hereunto annexed of the said A B, late of, &c. deceased, the said will being contained on [describe the paper, &c.] and bearing date the day of . And he further made oath that the said deceased, on the said day of , signed her name at the foot or end of the said will, in manner as same now appears, in the presence of him, the affirmer, and E F, the other attesting witness thereto, both being present at the same time, and that they both signed their names to the said will as attesting the due execution thereof in the presence of the said deceased.

If the will be imperfect in the attestation, or in any other respect, the authenticity or correctness of it must either be supported by sufficient affidavits, or there must be an implied or express consent from all parties interested to the probate being granted. (*In the goods of Thomas*, 1 Hagg. 695; *In the goods of Herne*, 1 Hagg. 225; *In the goods of Furrill*, 1 Hagg. 253; and *In the goods of Wenlock*, 1 Hagg. 551; see also, *In the goods of Feicher*, 3 Add. 16; *In the goods of Edmonds*, 1 Hagg. 698; and *In the goods of Adams*, 3 Hagg. 258.)

Where an instrument propounded as a will is imperfect on the face of it, and minors are parties interested, probate in common form to which their consent would be necessary cannot generally be obtained, as they are, on account of their minority, unable to give a proxy of consent. (*In the goods of Gibbs*, 1 Hagg. 376; *In the goods of Ross*, 1 Hagg. 471; and *In the goods of Thomas*, 1 Hagg. 697.)

The probate granted by the Ecclesiastical Court contains an engrossed copy of the will and of any affidavits, which from the imperfect state of the will may have been rendered necessary. The following is the form of certificate under the seal of the court, and attached to the copy of the will, &c. issued by the Prerogative Court of Canterbury; this form has the stamp of the amount of duty paid affixed.

William, by divine providence, Archbishop of Canterbury, Primate of all England, and Metropolitan, do by these presents make known to all men that on the day of in the year of our Lord one thousand eight hundred and , at London, before the worshipful John Danbony, Doctor of Laws, Surrogate of the Right Honourable Sir Herbert Jenner Fust, Knight, also Doctor of Laws, Master Keeper or Commissary of our Prerogative Court of Canterbury, lawfully constituted the last will and testament of A B, late of, &c. deceased, hereunto annexed, was proved, approved, and registered; the said deceased having, whilst living, and at the time of his death, goods, chattels, or credits, in divers dioceses or jurisdictions, by reason whereof the proving and registering the said will, and the granting administration of all and singular the said goods, chattels, and credits; and also the auditing, allowing, and final discharging the account thereof, are well known to appertain only and wholly to us, and not to any inferior judge; and that administration of all and singular the goods, chattels, and credits of the said deceased, and any way concerning his will was granted to C D, the sole executor named in the said will, he having been already sworn well and faithfully to administer the same, and to make a true and perfect inventory of all and singular the said goods, chattels, and credits, and to exhibit the same into the registry of our said court, on or before the last day of next ensuing, and also to render a just and true account thereof. Given at the time and place above written, and in the year of our translation.

CHAS. DYNELEY, } Deputy
JOHN IGGULDEN, } Registrars.
W. F. GOSTLING, }

Extracted by Proctors, Doctors Commons.
Sworn under pounds, and that the testator died on the 18

Double probate.—Where there are several executors, and one of them has taken probate in the usual form, with reservation to the rest, the Ecclesiastical Court has granted what is called a double probate to another of the executors. This executor must be sworn in the usual manner, then a second probate is granted to him; but in the second grant the first grant is recited. This is repeated, if more of the executors should come in afterwards. (4 Burn's Eccl. Law, 244.) It should, however, be noticed, that "an executor derives title, not from the probate, but from the will, and a probate granted to one executor enures to the benefit of all." (*Webster v. Spencer*, 3 Barn. and Ald. 363, per Bayley, J.)

Where a probate is lost, the Court does not grant a second probate, but an exemplification of the first, and such exemplification may be given in evidence. (*Shepherd v. Shorthose*, 1 Str. 412.)

Limited probate.—Where a testator has limited his executor, the Court will grant a limited probate. 1 Cas. temp. Lee, 280. See also *Spratt v. Harris*, 4 Hagg. 408.

Will of feme covert.—A will made by a feme covert, in exercise of a power, may be proved without the consent of the husband, the probate being limited to the property comprised in the power. (*Tappenden v. Walsh*, 1 Phillim. 352; *Moss v. Brander*, 1 Phillim. 254.)

If the will should be contested, the instrument creating the power must be pleaded in the allegation of the executor, and exhibited. (*Temple v. Walker*, 3, Phillim. 394.)

The probate being limited to the property comprised in the power, the husband will be entitled to an administration *ad admodum*. (*Bowley v. Stubbington*, 2 Cas. temp. Lee, 537; *Salmon v. Hays*, Hagg. 388.)

(To be continued.)

NOTICES OF LAW REFORM FOR THE NEXT SESSION.

Mr. Romilly.—To call the attention of the House to the fees paid by the suitors in the various courts, and generally to the mode of defraying the expenses of the administration of justice throughout the country.

Mr. Aglionby.—Bill farther to amend "the Acts for facilitating the enfranchisement of copyhold and customary lands, and for the improvement of such tenure," by providing that such enfranchisement shall be compulsory.

Mr. Ewart.—To move the total repeal of the punishment of death.

Mr. Pusey.—Bill to remove doubts as to the power of owners of settled estates to grant tenant rights on their farms.

Mr. Aglionby.—Bill to amend the Acts to facilitate the enclosure of commons, by providing that all lands allotted under them shall be freehold, whatever the tenure of the lands in respect of which the allotments be made.

Mr. Bright.—Bill to amend the Game Laws.

Mr. Pusey.—Bill to enable occupiers of land to recover damages for injury inflicted by game on their crops.

Mr. Wakley.—Bill to provide for the registration in Great Britain and Ireland of all legally qualified practitioners in medicine and surgery.

Mr. Poulett Scrope.—Bill to exempt from poor-rate the occupiers of tenements under the value of 5l. per annum in rural, and 8l. in town districts, if certified by the medical officer of the district to be well drained and otherwise kept in good sanitary condition.

Mr. Poulett Scrope.—To move resolutions to the effect, that the main principle of English poor-law be extended to Ireland, but relief not limited to admission into a workhouse.

Mr. Ewart.—To move that committees on all private Bills consist of five members, neither personally nor indirectly concerned in the question submitted to their consideration.

Mr. R. Yorke.—To move that the same constitution and regulations now adopted with regard to committees on railway Bills be applied to committees on all private Bills.

[Lords Brougham and Campbell will, no doubt, largely add to this list at the commencement of the session.]

The Lord Chancellor also will very probably bring forward his amendment of the Law of Debtor and Creditor.—*Legal Observer.*

PROMOTIONS, APPOINTMENTS, ETC.

[Clerks of the Peace for Counties, Cities, and Boroughs will oblige by regularly forwarding the names and addresses of all new Magistrates who may qualify.]

The Queen has been pleased to appoint the Earl of Elgin and Kincardine to be Captain-General and Governor-in-Chief of her Majesty's provinces of Canada, New Brunswick, and Nova Scotia, and of the Island of Prince Edward, and Governor-General of all her Majesty's provinces on the continent of North America, and of the Island of Prince Edward.

The Queen has been pleased to nominate, constitute, and appoint the Right Hon. Sir James Robert George Graham, bart. to be one of the Ecclesiastical Commissioners for England, in the room of the Right Hon. Sir George Grey, bart. resigned.

The Queen has been pleased to nominate the Right Hon. Sir George Grey, bart. being one of her Majesty's Principal Secretaries of State, an Ecclesiastical Commissioner for England.

The Queen has been pleased to direct letters patent to be passed under the Great Seal, granting the dignity of a Knight of the United Kingdom of Great Britain and Ireland unto Edward Pine Coffin, esq. Commissary-General of her Majesty's forces.

The Honourable Sir Thomas Wilde, knt. Lord Chief Justice of her Majesty's Court of Common Pleas, has appointed Robert Holyland, of Brierly, near Barnsley, in the county of York, gent. to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, under the Act passed for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance, in and for the West Riding of the county of York.

COURT PAPERS.

LOCAL BANKRUPTCY COURT, NOTTINGHAM.—In consequence of an application made to the Lord Chancellor by the Solicitors of Nottingham, complaining of the heavy expense attending the District Court of Bankruptcy in Birmingham, an order has been issued by his lordship, of which the following is an extract:—

"Under the circumstances of the case, it appears to me to be expedient that matters of bankruptcy, and petitions for protection from process, arising or to arise within the northern division of the county of Leicester, or within the parts of Kesteven and Holland, in the county of Lincoln, within the southern division of the county of Nottingham, or within the town of Nottingham, or within the southern division of the county of Derby, should be heard and determined at the town of Nottingham. Now I do hereby order that the Court of Bankruptcy for the Birmingham District do hold sittings, except as the Lord Chancellor may otherwise direct, in the town of Nottingham, for the opening or proceeding upon all commissions, flats in bankruptcy already issued, or hereafter to be issued, against any person or persons residing within the divisions, towns, and places aforesaid, and for the receiving of any proceeding upon all petitions for protection from process already presented or hereafter to be presented, by persons residing within the divisions, towns, and places aforesaid, and in all matters preparatory to, or arising under, or in the prosecution of, such commissions, flats, or petitions. And I do further order that one of the Official Assignees of the said District Court of Birmingham do have his place for transacting the business appertaining to his office at the town of Nottingham, at which he shall transact all his business in matters of bankruptcy or petitions for protection from process, by virtue of this order to be transacted at the town of Nottingham."

The above order was read in the Birmingham Court on Saturday last, but Mr. Commissioner Balguy did not fix any day for opening the Court at Nottingham. It is believed, however, that it will take place on or about the 9th of October next. It is not at present intended that either of the Commissioners shall take special charge of the New Court, but that, with the aid of the permanent Official Assignee, they shall preside alternately, or as may be most convenient to them.

LEGAL INTELLIGENCE.

FUNERAL OF THE LATE MR. JUSTICE WILLIAMS.—On Wednesday, the remains of this lamented judge were interred in the Benchers' Vault of the Middle Temple, of which honourable society the learned knight was a member. The service was read by the Rev. Mr. Rowlett, the officiating clergyman in the absence of the Rev. Dr. Robinson, Master of the Temple. In addition to the chief mourners, we observed present—Lord Chief Justice Denman, the Lord Chief Baron (Sir F. Pollock). Justices—Sir J. Patteson, Sir J. T. Coleridge, Sir

William Wightman, Sir T. Coltman, Sir C. Cresswell, and Messrs. Cole, Williams, Egan, Humphrey, Bayley, and other members of the equity and common law bar. The coffin of the learned knight was deposited in one of the lower compartments of the vault underneath the coffin of Lord Chancellor Thurlow. The aisle of the church was nearly filled, the public having been freely admitted.

We hear that the Solicitor-General, Mr. Dundas, will be the new judge, in the room of the late Mr. Justice Williams.

THE LIVERPOOL BURGESS LIST.—The *Liverpool Times* says the number of voters last year was 10,515. The total this year, from the additional burgesses that have been placed on the list by the overseers, is 11,184. The objections this year are, however, much more numerous than they were last year, amounting to 1,700, instead of 800.

CORRESPONDENCE.

COPYHOLDS ENFRANCHISEMENT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As you intimate, in your paper of the 6th, that the above subject will be brought before Parliament next session by Mr. Aglionby, it is to be hoped that gentleman will take up the matter in a true reforming spirit; not as the champion of barbaric feudalism, or the jackal of that overpaid and, in too many instances, over-reaching class, the stewards of manors, but boldly and honestly as the stern and unflinching advocate of justice, improvement, and good-will to man.

It is sufficiently obvious that the existing Enfranchisement Act has altogether failed of effecting that general abrogation of the copyhold and customary tenures which it was expected to superintend, and which alone could have justified so elaborate a piece of legislative mechanism, with its clauses No. 1 to 102 inclusive.

And why this failure? Is it not because the old *leaven of the steward* has intruded itself, marrying, as usual, by its unwholesome presence, that which were otherwise sound, healthful, and beneficial?

I use the expression "*old leaven of the steward*," because the interests of that class are so constantly seen and felt as the opposing power to any amelioration of our copyhold system, and yet, strange to tell, are so specially regarded and upheld by the legislature in its professed ameliorative efforts, that one is almost compelled to speak of the thing as of an inviolable lurking agency, rather than in terms applicable to a living and substantial embodiment.

Take, for example, the Act of 55 Geo. 3, c. 192, for dispensing with the surrender to will; here, an acknowledged evil was found to exist, a mischief which called aloud for a simple and straightforward remedy; attached to the continuance of the evil there was a certain emolument accruing to the steward class; one would naturally have supposed, therefore, that, in proceeding to lop off the evil and to bar the consequent emolument, it would have been quite sufficient had a reserve been made of the latter, in favour of the then existing stewards, say for a period of seven years or so, or, at most, during the continuance of such their respective stewardships; but that, in regard to new or future stewards, to those who had never partaken of the emolument, and who, consequently, could not in any sense be considered as deprived thereof, not even dishonestly personified would have been bold enough to put forward the shadow of a claim for compensation; more than thirty years, however, have elapsed, and yet here are her Majesty's dutiful subjects of the present day mulcted of thirteen shillings and fourpence, in every case of admittance on devise, although Mr. Steward has no further trouble on the subject than just to enter in his bill of fees the graceless item of this *sec stat*: *roguey*! Who but must hold in deepest contempt the man, or the memory of him, by whom so nefarious an enactment was conceived or penned? More especially, too, when it is borne in mind that, up to that time, the fee could not be charged unless the party chose actually to make a surrender to will, which was by no means constantly done or requisite; so that, in point of fact, our benevolent legislature changed that which was previously precarious into an absolute and positive certainty, and invented this *perpetual remuneration* for an *unperformed service* lest stewards then unborn and unthought of should, haply, fall to exact, from the tenant class, a sufficient amount of that filthy lucre towards which our manorial stewards in general are so indifferent!

Pass we on to the Wills Act of 1 Vict. c. 26, s. 4. Here we have one of the most wanton and vicious specimens of blindfold law-making that human ingenuity could well have attempted or imagined; let us assume that, occasionally, so direful a circumstance may have occurred as the death of a surrenderee without having first obtained admittance to his copyhold; perhaps it might be that the steward was too idle to hold his court sufficiently often; but, be that as it may, the surrenderee, we say, had departed this life

unadmitted; still "*Actus Dei acini facit injuriam*," and, though the surrenderee be gone, there is to his heir or devisee ready, and liable to take admittance in place of him. What evil, then, to call for redress—what equity requiring Parliamentary assistance? Had not the lord purchased his manor, had not the steward entered upon his office, each forewarned of and open to these pre-existing incidents? The lower depths of rascality could not have spawned up a base lie than to say that this were a case calling for legislative remedy, in behalf either of the lord or steward, nor is it, in my opinion, any thing short of legalised plunder, when they avail themselves of so flagrant an enactment; the enormity is, indeed, gross, in every point of view, that, whether we look at the lord pocketing his double set of fines arbitrary the Revenue exacting its double stamp duty, or the steward grasping and chuckling over his double set of fees for a single service rendered, it were difficult to conjure up a more perfect scene of statute-born wickedness; and I hesitate not to say, that whoever invented and palmed off this thing as an "*amendment of the laws with respect to wills*," deserves little other than to be himself shipped off by the first convict vessel bound for Norfolk Island!

Look at the enactment in another point of view:—it is made to apply to cases of devise only, as contradistinguished from those where the party dies intestate; the former are dealt with as objects of disavow and discouragement; the latter, on the contrary, of protection and relief; and this in direct violation of that principle and policy of our laws which has, hitherto, been adapted to the encouragement of testators in making such provident disposition of their property as it is notorious the law would fail to accomplish for them. Under the present provision, however, an unadmitted owner of copyholds, intending to devise them in favour of his eldest son or other customary heir, should be warned on no account so to do, for, sure as fate, the devisee would have to pay double the amount of fine, fees, and duty where he would have been liable, had his ancestor not been foolish enough to make him an *express* object of testatorial bounty!

Look, again, at those cases where the tenant is by fine certain; a fine, perhaps, of only one penny in amount: will not the lords themselves be absolutely disgusted to see that, under a specious pretext of guarding this small modicum of their interests, a charge is actually enforced, to the amount of some six pounds extra, for steward's fees, without a single iota of service, on the latter's part, to call for an extra farthing?

Is it not monstrous that any thing like this should for a moment disgrace our statute-book? and this, too, under the guise of an "*amendment of the laws with respect to wills*;" the fact being that, in this respect, it is an Act to multiply the fines and fees, theretofore, in certain cases, payable to the lords and stewards of manors; it is an Act to make lords and stewards cling more fondly than ever to their copyhold predilections; it is an Act to make devisees penal and to hinder enfranchisements; and, to sum up in a few words, it is an Act of insistent injustice, and most consummate fraud.

Let us picture to ourselves a case (and that a very possible one) where the father had just completed his purchase of a copyhold, and, in the course of a week or so, is summoned to that "*bourne from whence no traveller returns*." He had not been, he had not an opportunity to be, admitted, but he has left the estate, by will, to his eldest son; the disease which carried off the father is contagious, and too soon are symptoms manifested in the son that he also is doomed to be its victim. He is of age, and he, too, makes his will, thereby disposing of the property in favour of an infant child. The hand of death will not be stayed, the grave-yard will not await the court customary, and he (the son) is gathered to the sepulchre of his fathers. At length the court day arrives, and the infant's maternal guardian prays admittance for her hapless and fatherless babe; the steward strokes his chin, the homage are agape with expectation, wondering if it be possible that he is about to forego some portion of his fees upon this mournful occasion; he looks again and again at the statute; again and again are his eyes directed to the fee table; he coughs, he gathers nerve, and, in mystic voices, ejaculates, "*It is—it must be so—this case comes within the fourth section of the Act for amending the law of wills; and the effect is, that the fines, fees, and stamp duties will be threefold—once as for an ordinary admittance, and twice for that which our immediate testator must needs have paid as devisee of his unadmitted ancestor: yes—the accumulation is actually threefold, and, however extraordinary it may seem that this should be so, still the facts are clear that such is the law, and whilst the latter remains I must of course act up to it.*" What in human nature can out-Herod this bold infamy? Would not the veriest den in St. Giles's cry aloud against such withering extortion? Change the scene, however, in only one minute particular: suppose the son to have died intestate, then smiles the law upon his infant offspring; the latter claims not by devise, and it is accounted unto him for righteousness. The

infant *devisee* were an ungracious urchin let off mildly with a triple mulcture; the infant *heir* is the worthier, the more gladsome object of the law's preference, therefore shall he escape at the single and ordinary fine and charges! This shuts out comment.

Now for the Copholds Enfranchisement Act. What find we in sec. 56? Nothing less than a provision as follows: "That where any compensation shall have been agreed to be paid to the steward, or other officers of the manor, for the loss he or they may sustain by such enfranchisement, which compensation shall in all cases be provided for where a steward shall hold his office by patent or other instrument for the term of his life, or during good behaviour, or where, in the absence of such patent or other instrument, the usage shall have been such as, in the opinion of the said commissioners, to lead to a just expectation that the steward will hold his office during life or good behaviour, the schedule shall contain an apportionment of the sum agreed to be paid." Here, then, we have the cloven foot again poking out, as it were, though stealthily, from beneath the ermine robe. We know, as a fact, that nineteenth-twentieths, at least, of the steward class hold office during the lord's pleasure only. We know, also, that no *compos mentis* lord of a manor would shackle himself with a predicament whereby he should be controlled against "doing as he likes with his own;" yet here is a provision tending directly to the inference (and to one which the Commissioners have doubtless been ready enough to admit), that "the usage is such as to lead to a just expectation that the steward will hold his office during life." Mr. B. is the steward of Lord A. and the latter is a nobleman who, although entitled in fee, is unlikely ever to dispose of the manors whereof he is owner; hence a "just expectation," on B.'s part, that he will be continued in the stewardship during his lord's life, and hence, also, abundant ground-work for the commissioners to opine the required usage. But how stands the fact? Why, positively that the steward has no claim or tenure beyond that of the lord's mere pleasure; a disagreement arises, and behold! he is no longer steward. The lord chooses to enfranchise (as under the old law), and away go the hopes and precious nest-eggs of Mr. Steward. In the caprice of the moment my lord determines to sell; but, depend upon it, he neither asked nor had the previous consent of Mr. Steward; in other and various modes the like result is seen to ensue, nor has the steward any pretence to remonstrate or even to supplicate against it: Whence, then, the principle that he shall be compensated for rights and privileges which never existed? whence but from the badness of heart in those who concocted the specious enactment, and who, professing to facilitate enfranchisements, actually open up a new source of plunder to those who, strong though they be (in their array of fees and charges), have seldom indeed been signalized for their inclination to the *merciful*. What unscrupulous audacity, then, is this; what profanation in the very act of doing worship! as if the steward, forsooth, were entitled to fare better in the case of statutory enfranchisement (perhaps only to the most partial and trifling extent), than he would if the lord made an actual sale of the entire manor, or had chosen to enfranchise independently of these amiable provisions!

Ample scope, then, has Mr. Aglionby to distinguish himself, if he will only grapple with the subject according to its actual merits, or, rather, its demerits and its hideousness, and well will he deserve of his country, should he eventually be the means of putting down the old *leaves of the steward*. I have before me, at the present moment, a steward's bill of fees, on the admittance of a poor widow to her late husband's copyhold estate, value 100*l.*; the steward assured me, and I believe he did so in all sincerity, that these charges were *very moderate*, the amount (with stamps), being 6*l.* 13*s.* 9*d.*; whilst the lord's fine was only sixpence; thus, in order to keep up the lord's right to an occasional sixpence, say once in about fifteen years, this poor woman had to pay more than 227 times that amount, to the steward (or chancellor of the manor), including, amongst the rest,

Surrender to will.	Sec. stat.	0 13 4
Respecting fealty		0 6 8
Clerk and crier		0 4 6
Homage		0 5 0

£ 1 9 6

A sensible set of items, truly, to be exacted from a poor widow, or indeed from any one, at the present day!!! Surely the manor of Hong Kong had not a more brutish institution at the time of its surrender to our enlightened government!

In conclusion, though I may seem to have written harshly, these remarks are the offspring of impressions that are forced upon me, nor do I, upon mature consideration see that there is one word to soften or retract; there are honourable cases of exception to whom many of my remarks would be utterly inapplicable; but from these who form this exception I feel confident of applause rather than reproof.

I am, sir, yours, &c.

Sept. 20, 1846.

UNIT.

QUESTION AS TO CONSTRUCTION OF "REMOVAL OF THE POOR" ACT.

TO THE EDITOR OF THE LAW TIMES.

Darlington, 22nd Sept. 1846.

SIR,—As I have very frequent occasion to advise on Poor-Law questions, I have endeavoured to master the Act which received the royal assent on the 26th ult. "An Act to amend the Laws relating to the Removal of the Poor," but I cannot answer two questions which have arisen in my mind under it.

First, Reading sections 1st and 5th together, I cannot ascertain how parishes in which paupers shall have resided for five years next before the application for the warrant, are to have any benefit from sec. 5.

For, under the 1st section, such persons are not to be removed; but under sec. 5, they are not to acquire any settlement in the parishes whence they are not removable.

Can any of your correspondents or readers tell me how such persons are to be supported?

Must not they be supported by the parishes where they shall become chargeable?

And as they are not to be removed, will they not in effect, though not legally (what a farce!) acquire, if not settlements, what are equivalent to them, in the parishes where they shall so become chargeable?

Then section 8th makes all penalties and forfeitures imposed under this Act "recoverable as penalties and forfeitures under the said Act, for the amendment of the Laws relating to the Poor."

Can any of your readers or correspondents tell me what is the Act referred to. I observe that the 4 & 5 Wm. 4, c. 76, is recited in the early part of the section, but that is "An Act for the amendment and better administration of the Laws relating to the Poor in England and Wales," and can it therefore be the Act under which the penalties, &c. are to be recovered. I cite this from your paper of the 19th inst.

I am, Sir, yours, &c.

A. T. STEAVENSON.

ALLOWANCE OF CONSTABLES' FEES BY JUSTICES.

TO THE EDITOR OF THE LAW TIMES.

Uttoreter, Sept. 17, 1846.

SIR,—I should much like to know whether any solicitor has, besides myself, acted on the opinion given by Mr. Theisger, Fitzroy Kelly, and H. F. Swayne, as to "the allowance of constables' fees by justices."

Last week, on a summary conviction before the Magistrates at petty sessions in a case in which I appeared for the defence, my client having to pay costs, the magistrates included in such costs the hitherto usual fees to the police constable for serving the summons. I objected to this, and to support my objection, was proceeding to read the case and opinion reported in the LAW TIMES of Aug. 15th ult. p. 456, which opinion, as I take it, clearly states that magistrates have no power to allow police constables their fees for doing the duty of the old constables appointed under 18 Geo. 3, c. 19.

The magistrates refused even to hear my argument on the subject, treated the opinion of such eminent lawyers with disdain, and politely informed me to bring before them a "Queen's Bench Report of a Case," and not "a common opinion," and then they might be inclined to look into the matter. Verily the magistrates here want some one to advise them.

I am, Sir, yours, &c.

T. C.

COPARCENERY.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Under the head of Parcenery, in Coke on Littleton, lib. iii. c. 1, sect. 241, it is said: "If a man hath issue two daughters, and the eldest hath issue divers sons and divers daughters, and the youngest hath issue divers daughters, the eldest son of the eldest daughter shall only inherit, for this descent is not in *capite*, but all the daughters of the youngest shall inherit, and the eldest son is coparcener with the daughters of the youngest, and shall have one moiety, viz. his mother's part." "So that men descending of daughters may be coparceners as well as women." Now I have read this in conjunction with the 2nd section 3 & 4 Wm. 4, c. 106, "The Act for the amendment of the Law of Inheritance," and it is said by two friends of mine that if A dies intestate, leaving freehold land which descends on his two daughters, one of whom dies intestate, without having constituted herself a purchaser, leaving a son, the descent of her share must be traced from A, when her son and sister would take equally, and Sugden's V. & P. last edition, 5 & 9; Hayd's Conveyancing, 314; 23 Law Mag. 279; and Doe v. Blackburn, 1 Mood. & Rob. 547, are cited. Feeling very strongly that the 3 & 4 Wm. 4 has not overruled the *dictum* in Co. Lit., I am anxious, through your valuable journal, to see some gentlemen give their opinions on this question of descent.

I am, Sir, yours, &c.

MATTHEW KENNETT.

QUESTION AS TO STAMP DUTIES.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am desirous of being informed on the following point:—"A," by an instrument in writing usually denominated an agreement, "agrees to let to," and B. agrees to take and hire, certain premises, as a tenant from year to year. Is a 2*s.* 6*d.* agreement stamp a sufficient one for such an instrument, assuming it to contain less than 1,080 words, so as to enable "A," to distrain for rent in arrear, or does it require a lease stamp? I have looked through Woollaston's edition of "Woodfall's Landlord and Tenant," but, like most law books, the practical point you look for cannot be found. The doubt raised in my mind is this. If, by the wording of an instrument, it can be construed as an *actual demise*, the power of distress would attach; but if it is a mere agreement only, such power could not be exercised; that such an instrument, which otherwise might be construed as an actual demise, may be so far controlled by incidental circumstances as to operate as an agreement only, and such an incidental circumstance I consider the affixing an agreement stamp to be. The converse of that proposition is certainly true, viz. that when a lease stamp is affixed to an instrument which otherwise would be held to be an agreement to let only, it would then be considered an actual demise. Probably some of your subscribers are better informed on this question than I am, and will, through your columns, give me the benefit of their experience, as the point is a matter of some importance.

I am, Sir, yours, &c.

Ramsgate, Sept. 22, 1846. A SUBSCRIBER.

Heirs-at-Law, Next of Kin, &c. Wanted.

[This is part of a complete list now being extracted for the LAW TIMES from the advertisements that have appeared in the newspapers during the present century. The reference, with the date and place of each advertisement, cannot be stated here without subjecting the paragraph to duty. But the figures refer to a corresponding entry in a book kept at the LAW TIMES OFFICE, where these particulars are preserved, and which will be communicated to any applicant. To prevent importunate curiosity, a fee of half-a-crown for each inquiry must be paid to the publisher, or if by letter, postage stamps to that amount inclosed.]

350. NEXT OF KIN OF BENJAMIN SHELDON, late of Wimeswold, Leicester, gent. (died about 31st Dec. 1832), or their representatives.
351. NEPHEWS AND NIECES, or CHILDREN of deceased nephews and nieces of BENJAMIN SHELDON, late of Wimeswold, Leicester, gent. (died about 31st Dec. 1832), or their representatives.
352. MARY WARD, who about 1837 left Plymouth for the service of Miss Glascock, somewhere at the West end of London, near Hyde Park. Something to her advantage.
353. HEIR-AT-LAW and NEXT OF KIN OF RICHARD PRICE, late of Riley-street, St. Luke, Chelsea, Middlesex, gent. (died June 1834), or their representatives.
354. NEXT OF KIN OF WILLIAM WITHERING, late of Wick House, Brixington, Somerset, Doctor of Laws (died 23rd June, 1833), or their representatives.
355. SECOND COUSINS OF ELIZABETH FOSTER, late of Sherborne, Dorset (died 9th Feb. 1837), of the name of Slade, including females who have changed their names by marriage, or their representatives.
356. NEXT OF KIN OF BARBARA SKINNER, widow, died in 1790.
357. GRAND-NEPHEWS AND NIECES OF JOSEPH SHEERARD, late of Deal, Kent, purser in the Royal Navy (died April 1835), or their representatives.
358. NEXT OF KIN OF GEORGE LOCKYER, formerly of the city of London, afterwards of South Carolina, North America, merchant (died at Charleston, S. Carolina, 10th Jan. 1810), or their representatives.
359. CHILDREN OF WILLIAM POULSON, of Leicester, saddler, deceased, of THOMAS and JOHN POULSON, the three brothers of JOSEPH POULSON, deceased, and the issue of such children as died before the survivor of CHARLES POULSON and MARY POULSON, the two sisters of the said Joseph; also the issue of such of the children of the said W. Poulson (if any) as died in his lifetime, or their representatives.
360. JOHN WILLIAM VOGEL, ANN REID, and the three children of MR. GEORGE, of Hirschberg, Silesia, and TRANTO ADOLF, of Schmiedberg, Silesia, legatees under the will of JOHN WILLIAM PAUL, who was born at Strahlen, Silesia, and at the time of his death, May 1794, was a merchant residing at Hornsey, Middlesex.
361. WILLIAM ROGERS, SON OF DANIEL ROGERS, late of Burnham, Essex, Oyster dredger. Something to advantage.
362. NEXT OF KIN OF — MANNERS, esq. who fell in the battle of Waterloo.
363. WILLIAM JAMES, tailor, Monmouth, JOHN WILLIAMS, carpenter, Monmouth, and PHILIP WILLIAMS, son of the late THOMAS WILLIAMS, legatees under the will of LOUISA WILLIAMS, of 2, Bowling-street, Westminster, died Nov. 21, 1835.
364. The several HEIR-AT-LAW OF PHILIP SMITH, the younger, formerly of Aldgate High-street, London, butcher (died a bachelor, intestate, in 1813), and ANN MARIA SMITH, afterwards the wife of JOHN SOMMERSET, died in 1832, without issue.
365. RELATIONS or NEXT OF KIN OF ELIZABETH JAMES, widow, who died in Bethlehem Hospital, London, a lunatic, on or about Feb. 24, 1837. Mrs. James's maiden name was Gibson. Something to advantage.
366. NEXT OF KIN OF WILLIAM KENDALL, the elder, of the George-yard, Long-acre, Middlesex, livery stable-keeper (died in May 1810), or their representatives.

happens to be found. It may be matter for consideration, whether the property should be vested in the owner or occupier. For many reasons, too numerous to detail now, we should prefer to give it to the occupier, believing that game would thereby be better preserved than now, because the farmer would aid in its preservation. But whether it be vested in one or the other does not in any manner affect the question as to the protection that should be extended to it. Treat it, then, as any other property the produce of the land and exposed to depredation, with no distinctions of punishment, and no special enactments encouraging an impression that it is specially favoured. The certificate duty should be treated simply as a tax levied upon those who choose to enjoy the pleasure of sporting (and it is as fair a tax as any), and not as a measure for protecting game. Farmers, then, would either become sportsmen themselves, and kill their own game for sale, or let the right of taking it to others; in either case for their own interest acting as its preservers.

But this is not the purpose of those who clamour against the Game Laws in the newspapers and at public meetings. They do not desire to make game the property of those who maintain it, but to permit any man who pleases to take it wherever he can find it. If they do not mean this, what do they mean? The question has been often asked, but never satisfactorily answered. Did Mr. BRIGHT, for instance, intend by his committee to advocate the making the property in game more definite—the law protecting it more stringent than now? But how could he touch the property without throwing it open to the public? or how diminish the punishment without depriving this property of that fair protection which is given in our country to all other property?

With such views it seems to us that the committee have come to a very rational conclusion, and we recommend their report to careful perusal.

THE NEW COUNTY COURTS.

THE Edition of the "Small Debts Act," by Mr. PATERSON, comprising a complete Analysis, Observations, and a copious Index, was published on Monday, and may now be obtained at the office. We hear that the Act itself will not anywhere be put into operation before the close of the current year. This delay is attributed to the unwillingness of the judges to come purposely together before the usual period, Michaelmas Term, for the framing of the rules of practice and forms of procedure, —a task which is charged upon them.

NOTICES OF NEW LAW BOOKS.

The Law Magazine. No. VIII. New Series. Benning.

In a recent notice of this magazine, we promised, as less is known of the French Bar in this country than could be desired, to transfer to our pages from this periodical an able, entertaining, and instructive article on this subject; and now, with the full concurrence of its author and the editor of this established and well-conducted review, we acquit ourselves of this obligation to our readers.

THE DISCIPLINE OF THE FRENCH BAR.

THE CASE OF M. CH. LEDRU.

Seventeen centuries have elapsed since Juvenal described the advocates of Britain as learning their art from their brethren in Gaul: *Gallia cauidicos docuit facunda Britannos*. In the present day we should be unwilling to admit an obligation like that imputed to us by the Roman satirist; we may boast with just pride that we possess a school of forensic oratory, at which the whole world may probably take lessons; if of old we were pupils, we are now qualified to be masters. But while thus exulting in its strength, the English bar must at all times be ready to pay its tribute of gratitude to the advocates of France, for the eloquence and fervour with which they have ever maintained the honourableness of their profession, as a matter not of time nor of country,

but inherent at every age in every land where justice has established her abode. Endless would be the task of citing the testimonies of this nature, which are recorded in the works of the French lawyers: we shall here content ourselves with transcribing those words of the Chancellor D'Aguesseau, in which, discoursing of the independence of advocates, he proudly declares their order, *aussi ancien que la magistrature, aussi noble que la vertu, aussi nécessaire que la justice* (D'Aguesseau Œuvres, 1).

This lofty sense of its own dignity would necessarily tend to preserve the bar in the position which it assumed, and may in some degree be at once the origin and effect of the high character which it has uniformly maintained. Yet in France the profession laboured under great disadvantages: instead of being, as in this country, concentrated in the metropolis, it was distributed among a multitude of provincial courts: the career of distinction there open to the advocate was by no means so brilliant as that which here expands before his view: for many ages the *gens de robe*, at least the lay portion of them, were in a position of marked inferiority to the *gens d'épée*, the sword was superior to the gown; it is indeed recorded (Fournel, Hist. des Avocats, i. 333) that in the reign of St. Louis, Gui Foucaud, an advocate of Paris, ascended the Papal throne as Clement IV. but this is a solitary exception, and occurred almost before the order was established on any recognized basis. Yet in spite of all this discouragement, in the midst of the foreign wars and civil commotions which desolated their country, the French advocates maintained a distinguished rank for five hundred years, and only fell, with everything else that was distinguished, in the great revolution. Now something more than ordinary *esprit de corps* seems required to account for such a career accomplished amidst such difficulties, and it may perhaps be found in the internal discipline by which the order was continually regulated, and which was recognized and authorized by law. At a time when the government of our own bar has been a subject of considerable discussion, we think our readers will take some interest in the proceedings of their brethren abroad in like matters, and we propose in this article to give a rapid glance at the history of advocacy in France, and a more detailed account of the discipline which regulates it at the present day.

Few and faint are the traces of the legal profession in the early days of French history. Advocates are mentioned in one of Charlemagne's Capitularies, A.D. 809, and in an edict of Charles the Bald, 861; by a canon of Louis VII., 1148, they were forbidden to take more than the legal fee on pain of losing Christian burial; their duties were defined in the establishment of St. Louis, 1270; and from this time their order was frequently the object of royal legislation: admission to it was limited by very rigid ordinances, and a system of discipline was established, the spirit of which survives in that which we shall presently discuss. We cannot linger on these picturesque times; when an advocate's fees varied with the number of mounted attendants who rode behind him (Fournel, i. 89), when the courts echoed with laughter at a *cause grasse* on Shrove-Tuesday (Boucher d'Argis, cited by Dupin Prof. d'Avocat), when an advocate's wife originated the ornament *ferronnière* (Fournel, ii. 234), when the faculty was required to attend in scarlet and ermine at a royal entry or a red mass (Fournel, ii. 268), when the nobles of France came annually in state to present a basket of roses to the parliament of Paris (Fournel ii. 270), or when an advocate, throwing down his client's glove as the gage of mortal combat, might, by a mistake in form, become liable to do battle in his own person. (Fournel, i. 97.) We can only pause, first, to give an extract showing that legal proceedings were not then exempt from a complaint which has been heard in our own times: thus wrote an advocate and professor of law at Bourges, in 1550, of the Paris parliament:—"In Basilica Parisiensis ad tres annos liberiter versatus sum: tametsi, ut verum fatear, immodicos ac propè inexplicabiles litium anfractus, quibus illud forum præ ceteris abundat, magis quam literas ipse ac judicis, quibus humanum genus carere non posse videtur, pervitutus nec absque ingenti fastidio illic viderim. Vix enim credibile est, quanta ibi hominum, eorumque, gravissimorum et lectissimorum, quam minutis et pusillis in rebus quotidie occupata sit." (Bayle, Dict. art. Duaren, Fr.) Secondly, we note the revolt of the advocates in 1602, which occasioned Loisel's curious "Dialogue des Avocats du Parlement de Paris": "the edict of Blois, 1579, required advocates to sign a receipt for their fees on their briefs, but no attempt was made to enforce the rule until May 1602, when the Paris parliament ordered that it should be obeyed: the whole bar immediately rose en masse, to the number of three hundred and seven; resolved unanimously not to submit; went in procession to the Hall of Audience; flung their hoods and gowns on the floor; and demanded the erasure of their names from the roll of the court: the parliament was obliged to comply, and the consequence was a total cessation of business: the quarrel was settled by a royal ordinance, which re-enacted the statute of Blois, and at the same time allowed the advocates to

be re-admitted: one by one they accepted the terms, but no subsequent attempt was made to enforce the obnoxious decree. (Loisel, Opusculs, Paris, 1652. Reprinted by Dupin, Prof. d'Avoc.) And thirdly, we observe that even in those days of arbitrary power, the organization of the bar enabled it successfully to resist the admission of several persons of high rank and great influence: it is sufficient to mention the case of Poyet, chancellor in the reign of Francis I. (Merlin, Repertoire de Jurisprudence, art. Avocat.)

Together with the parliaments the bar had often stood forth in defence of popular rights; side by side they had been engaged in many a bloody fray; it was fitting, says M. Dupin, that together they should fall. A decree of the Legislative Assembly, Sept. 2, 1790, abolished the order of advocates, the parliaments having been just previously suppressed. Nevertheless, when the darker hours of the revolution came, and victim after victim was hurried to trial (?) before the revolutionary tribunal, ancient advocates were always ready to defend them, although at the imminent risk of sharing their client's fate: many of the order succeeded Malherbes at the guillotine. After a time this devotedness found its reward; a law of the 22nd Vent. xii. March 13, 1804, organized schools of law, and re-established the faculty of advocates; under this law the bar was rapidly recovering its former importance, when Napoleon, with the natural jealousy of a despot, conceived that it was instituted on too liberal a basis, and directed his council to prepare a new decree for its regulation: the emperor rejected the first draft presented to him as too lenient, writing brutally to Cambacères, that advocates were "*des factieux, des artisans de crimes et de trahisons. Tant que j'aurai l'épée au côté, jamais je ne signerai un pareil décret: je veux couper la langue à un avocat, qui s'en sert contre le gouvernement.*" (Dupin, Prof. d'Avoc.) We may suppose that the decree enacted Dec. 14, 1810, was satisfactory to these imperial desires: it continued in force until Nov. 20, 1823, when a royal ordinance, attributed to M. de Peyronnet, regulated anew the position of the bar; pretending to relax the severity of the previous law, this ordinance was still very distasteful to the profession, on account of the mode it prescribed for the appointment of officers; and, immediately after the last revolution, Aug. 27, 1830, it was modified by a short edict of Louis Philippe, which restored the advocates to something like their ancient organization. It is of this system, as it exists at present, that we now proceed to give an account. A candidate for the French Bar must be a Frenchman by birth; he must have gone through a 'university' course of study at a recognized school of law, commenced after the completion of his sixteenth year, and must have obtained his diploma as *bachelier en droit*; this diploma he must submit to the *procureur-général* of the *Cour Royale*, at which he proposes to be admitted, and having received that officer's consent, he must be presented to the court: by a senior advocate, and must take the prescribed oath (of fidelity to the king and obedience to the law); this done, his introduction is recorded by the registrar, and indorsed on his diploma, and he is then admissible, with the sanction hereafter mentioned, to the stage, to commence practice. After having been *stagiaire* for three years, he is eligible to be inscribed on the tablet, *tableau*, or roll of advocates, and thereby to become an advocate complete; his inscription depends entirely on the *Conseil de Discipline* of the court; which is a council elected annually from among themselves by the whole body of advocates already inscribed, and presided over by an officer, termed *bâtonnier*, from his having of old carried a wand, annually chosen in the same manner. It is in the powers conferred by law on the councils of discipline that we discover so strong a guarantee for the honour of the profession in France: they decide, subject to appeal to their respective *Cours Royales*, on the admission of otherwise qualified candidates to the stage, and without appeal (at least this appears the better opinion), on the inscription of *stagiaires* on the tablet; they supervise the conduct and manners of the bar, and are bound to watch carefully over its welfare and honour; and to maintain its fidelity to the national institutions; and they punish, *ex officio*, or on complaint made, all infringements of these principles, not cognizable elsewhere, committed by members of the profession. For the latter purpose, the councils are empowered to inflict four degrees of penalty: 1st. Notice or warning, *avertissement*: 2ndly. Reprimand: 3rdly. Suspension, for any term not exceeding a year: 4thly. Erasure from the tablet, *radiation*, which, so far as practice in open court is concerned, amounts to disbarment. Delinquents are commonly brought before a council either by its *bâtonnier* or by their *Procureur-général* of the district; and the latter officer has an appeal in every case to the *Cour Royale*, while the like privilege is accorded to the accused only upon the infliction of the last two penalties. There is a further appeal on either side in matters of law, such as the jurisdiction of the tribunal, to the Court of Cassation at Paris. If a council declines or neglects to act in any case, the *Cour Royale* may adjudicate upon it *omisso medio*, and the latter is always competent to punish offences.

committed in open court. (*Encyclopédie de Droit, art. Avocat.*) In now proceeding to elucidate this system by cases extracted from the reports of MM. Sirey and Devilleneuve (*Recueil des Lois et des Arrêts*), we shall not aim at minute accuracy of technical detail, our object being to exhibit the spirit rather than the form of operation; and we must observe, that as the decisions of councils are not published, it is only where they are brought before a court of law by appeal, or where the latter acts on its own authority, that the reports afford any information. From the instances of each kind to be found in the books, we shall here select a few, some entertaining, others, as we think, instructive.

In France an advocate can recover his fees at law (*S. & D. 34, 2, 377.*), although it is said that he is liable to *radiation* for bringing an action for them. (*Merlin, Repert. de Jurisprud. art. Avocat.*) Councils of Discipline have the power of reducing the fees received by advocates, and in every case where a client resists payment of his attorney's bill, the amount charged for fees to counsel is referred for their revision. At Florac, in the district of Nîmes, in 1825, the council reduced fees received by one C. from 306 francs to 150, and suspended him for a month. He appealed to the *Cour Royale* of Nîmes, which decided that no appeal lay against the reduction of fees, and dismissed that against the suspension for irregularity. (*Sirey, 26, 2, 67.*)

Something similar to the following case has possibly been heard of at quarter sessions in this country. In 1836 there were seven advocates inscribed on the tablet of the court of Chinon, in the Orleans district. One of them married a daughter of the president of the court, and, thereupon, three others signed a protest, that so long as he continued to plead before his father-in-law, they would not plead before the court of Chinon. One subsequently retracted. At the next election of *bâtonnier* the court refused to recognize the one chosen by the Bar, because the two recusant advocates voted. The matter was brought before the *Cour Royale* of Orleans, which pronounced for the validity of the election, but at the same time held itself competent to adjudicate on the conduct of the two advocates (*S. & D. 37, 2, 234*): what it did is not reported: the former part of the judgment was affirmed, on appeal of the *Procureur-Général*, by the Court of Cassation. (*S. & D. 40, 1, 319.*)

The bar in France is equally jealous with our own of an advocate's pursuing any derogatory occupation or holding certain offices. In 1840, the Council of Discipline at Toulouse erased two advocates from the tablet, on their being appointed *conseillers de préfecture*; on appeal, however, the sentence was reversed. (*S. & D. 41, 2, 100.*) F. secretary to the Chamber of Commerce at Dunkerque, with a salary, applied in 1843 to be inscribed on the tablet, and was rejected by the council,—a decision confirmed, on appeal, by the *Cour Royale* at Douai. (*S. & D. 43, 2, 460.*)

M. Bourdeau, an ex-keeper of the seals and peer of France, erased his name from the tablet of advocates at Limoges, in 1842, writing in the margin that he did so because two old and honourable advocates had been excluded from the council for defending him in an action for defamation. Upon this the council pronounced a formal sentence against him of permanent disbarment. M. Bourdeau took no notice of their proceeding, but the *Procureur-Général* appealed against it. The *bâtonnier* applied to be heard on behalf of the council; but the *Cour Royale* refused his application, and annulled the sentence. The Court of Cassation, on petition from the *bâtonnier*, decided that there were no grounds for an appeal. (*S. & D. 43, 1, 377.*)

At Rouen, in 1835, an advocate, D. defending one B. charged with disturbing public worship, said the disturbance had been owing to the improper conduct of the woman who let the chairs. The imputation was unfounded, and the woman summoned both B. and D. for defamation. The latter justified himself by his instructions, which were immediately disclaimed by B.; but upon this disclaimer B.'s advocate in this second case volunteered to be sworn, and contradicted his own client. These facts being brought before the *Cour Royale*, both the advocates concerned were severely reprimanded; the Court quoting, with reference to the first case, the remark of an eminent jurist, "*que rien n'est plus contraire à la dignité du barreau, que les efforts continus que l'on fait souvent dans certaines causes pour égarer un auditoire, parce que les ris sont pour le peuple et le mépris pour l'avocat.*" (*Merlin Rep. de Jurisprud. S. & D. 35, 2, 211.*) It should be remembered that these are not merely oral reproaches, but form part of the written and recorded judgment of the Court.

The case which we are now about to detail will, we hope, afford our readers some diversion. The advocates practising before the Court at Ambert, smitten with that love for the *moyen âge*, which is far from unknown on this side the channel, adopted the fashion of cultivating moustaches. The mode had prevailed for some time, when on April 17, 1844, the president of the court declared that it was inconsistent with the gravity of legal costume, and required that at the next sitting the advocates should present themselves with lips shorn of their hairy honours. Upon this M. Im-

berdis (certainly not *imberbis*) rose, and begged to know, whether it was an invitation or an injunction which the President had just delivered. He was answered that it was an order, which the Court would rigorously enforce. Nevertheless, at the next sitting, MM. Imberdis and Pacros appeared unshaven, in manifest defiance of the Court's authority. The judges immediately took this contumacy into consideration,—declined to excuse one of their number from acting, who was uncle to one of the culprits,—forbade the latter from appearing in court, until they had made proper use of their razors, and, for what had already passed, sentenced them to censure. The two advocates appealed against this sentence to the Court of Cassation, where, after solemn argument, the judgment of the Court below was affirmed. From the discussion, we learn that the chin was worn smooth at the bar until the reign of Francis I. who let his beard grow to cover a scar which he had received in a tournament,—that when Louis XIII. came to the throne at the age of nine, the fashion began to decline, but revived towards the middle of the same century, with the addition of moustache and royal, and continued to prevail, till the introduction of full wigs and bands under Louis XIV. finally suppressed it. (*S. & D. 44, 1, 577.*)

At the Seine assizes, March, 1829, a prisoner complained aloud of the conduct of two advocates towards him. The Court called upon them for explanation, and deeming their account unsatisfactory, and that the allegations impeached their honour and delicacy, it publicly ordered that the matter should be laid before the Council of Discipline for investigation. The council entirely exonerated the parties inculpated, and added that it had seen with profound regret the manner adopted by the Court in bringing the matter before them, which, according to all precedent, should have been done by private communication, and not by public order. This remonstrance was decreed to be erased from their minutes on appeal of the *Procureur-Général* to the *Cour Royale* of Paris; and a further appeal of the *bâtonnier*, founded on this decree being an excess of jurisdiction, was rejected by the Court of Cassation. (*S. & D. 30, 1, 197.*) Nor was the council at Grenoble more fortunate in 1835, in endeavouring to protect an advocate, who had been severely reprimanded by the *Cour Royale*, for displaying undue irritation; their resolution exonerating him from blame being ordered to be cancelled. (*S. & D. 36, 2, 441.*)

We now come to an important class of cases, founded on that article of the Peyronnet ordinance, which requires Councils of Discipline to maintain fidelity towards national institutions. In 1829, M. Grand, an advocate of Paris, was suspended for a year by the council, for delivering a funeral eulogium over the grave of a member of the Convention, who had voted for the death of Louis XVI. M. Grand appealed against the sentence, but it was confirmed by the *Cour Royale*. (*Dupin, Prof. d'Avocat, 395.*) At Caen, in the same year, M. Seminel published a letter in the "*Journal de Calvados*," reflecting on the conduct of M. Guernon-Ranville, then minister of public instruction in the unfortunate Polignac cabinet. For this the Crown cited him before the Council of Discipline, when he was sentenced to suspension for six months. On appeal, however, this judgment was set aside, on the ground that two-thirds of the council were not present when it was delivered, as required by law. (*S. & D. 31, 2, 77.*)

These two cases occurred before the election of the council had been entrusted to the Bar at large by the ordinance of Louis Philippe: the following (*S. & D. 34, 1, 457*) happened since that period: it is one which produced an immense sensation in all the courts of France, and which still occasions universal reclamation on the part of the Bar. It must be premised, that the advocates of the various courts are accustomed to hold weekly meetings termed conferences, for the purpose of discussing points of law, at which the *stagiaires* are required to attend, and in turn to take part in the debate; these conferences are presided over by the *bâtonnier* of the year, who commonly delivers an address to the bar at the first meeting after his election. In 1833, M. Parquin was elected *bâtonnier* by the advocates of the *Cour Royale* of Paris, and made the usual oration, which was published subsequently in the *Gazette des Tribunaux*; in it he bitterly complained of the delay which had taken place in the promised reform of the laws affecting the Bar, and attributed it in a great degree to certain of the judges of the court, whom he represented as being *ouvertement hostiles à l'ordre des avocats, jaloux de son affranchissement, et disposés à tout faire pour le retarder et l'empêcher.* In consequence of this and similar expressions, the *Procureur-Général*, M. Persil, cited M. Parquin directly before the *Cour Royale*, to receive whatever punishment that Court might be pleased to inflict. The *bâtonnier* immediately convened the Council of Discipline, which decided that he should deny the competence of the Court (on the ground that it could not be possessed of the matter *de plano*, but only by appeal), and assigned three advocates to assist him in maintaining the point. However, the Court considering that if it allowed the plea it might be paralyzed by mere inertia on the part of the council, and

that such a state of things was inconsistent with its dignity, pronounced itself competent, and ordered M. Parquin to answer on the merits; he refused to do so, and being declared in default, was sentenced to suffer the penalty of warning, *avertissement*. In the mean time he had appealed against the former decision to the Court of Cassation; and the hearing the question was argued at very great length, the appellant being represented by M. Dupin whose speech, the reporter observes (*S. & D. 34, 460*), contains a complete treatise on the discipline of the Bar. After congratulating himself that he had argued a question of law and not of fact, and reviewing the whole modern history of the legal profession in France, the learned advocate proceeded to contest that there was nothing offensive to the dignity of the court in its alleged incompetency to act *ex officio* on appeal from a subordinate jurisdiction. The Crown he observed, condescends to appear in the humble tribunals; they were not discussing a question of aristocratic precedence; it was unjust to the Council of Discipline to treat it with contempt, composed as it was of twenty-one most distinguished advocates elected by their fellows. Moreover, the moral effect of its sentences was greater than of those of the superior court; the latter was liable to be charged with personal motives in being the first to notice an affront from without its walls. The Bar and the Bench would be placed in direct hostility; the independence, the honour, the safety of the former would be jeopardized, on the other hand, the court risked nothing. But these arguments were of no avail; the Court of Cassation rejected the appeal on the ground that the Council of Discipline ought to have proceeded *ex officio* against M. Parquin, and that, as it had neglected to do so, the *Cour Royale* was competent, *omisso medio* (*S. & D. 34, 1, 458.*) It may be added, that M. Parquin, having resigned his office of *bâtonnier* in consequence of this decision, was immediately re-elected by the whole body of advocates.

Finally we arrive at the recent case of M. C. Ledru, the facts of which must be fresh in our readers' recollection. This distinguished advocate had conducted a prosecution against an abbé, named Contrafatto, who was found guilty, and sentenced to the galleys for ten years. Circumstances afterwards came to M. Ledru's knowledge which convinced him of the abbé's innocence; and by great exertions he obtained his release. The abbé applied to M. Ledru for a certificate of the facts, that he might present it to his ecclesiastical superior in Italy, and M. Ledru granted his request. But the *Procureur-Général*, M. Hébert, considered that in giving this certificate, M. Ledru cast an imputation upon the Court which had tried the abbé, and cited him to answer a charge to that effect before the Council of Discipline at Paris, which condemned him to suspension for six months. This sentence appearing to M. Hébert not sufficiently severe, he appealed to the *Cour Royale*, which annulled it, and pronounced the heaviest in its power, *radiation*; a judgment which has excited the warmest sympathy for M. Ledru, not only in his own country, but also in ours.

Dim as may be the light which these examples throw upon the operation of the system they relate to, we yet think that they do not leave it wholly in the dark. We have seen Councils of Discipline regulating the amount of fees, sanctioning a protest against supposed favoritism, excluding from the Bar persons engaged in certain other pursuits, vindicating their order from insult, interfering to protect advocates from unjust treatment by the bench, and would it were not so, punishing public offences. We have also seen the courts recording a stern censure upon an advocate's misconduct, gravely discussing the great question of moustaches, and adjudicating upon certain proceedings as contempt. In almost every case cited we have found a contest arise between a Council of Discipline and a *Cour Royale*; and among much to admire in the system, this conflicting jurisdiction appears to us to be a great, if not a fatal defect: it is a legacy from the government of the restoration, the consistent enemy of all free institutions; the ordinance of 1822, which abolished the election of councils and established them on a complicated system of seniority, also conferred upon the officers of the Crown that unlimited power of appeal against their decisions which we see used with such unsparing rigour; but the innovation has not been submitted to in tranquillity; on the contrary, it has been the continual object of petition and remonstrance on the part of the Bar: in 1828, when M. Portalis, himself an illustrious member of the profession, became minister of justice, a requisition was presented to him, very numerous signed, praying for a modification of the law on the subject; and since the revolution of 1830 the topic has been a prolific source of agitation, its consideration having been often promised, and as often postponed. Nor can we wonder at the Bar's anxiety in this matter, when we see the encroachments which the Courts appear desirous to make on the functions of the council, and which the want of a sufficiently distinct boundary between their separate provinces renders temptingly easy. The Council of Discipline is in theory a court of honour, appointed to protect the dignity and purity of the Bar, by watching the

professional conduct of advocates towards one another, towards their clients, and generally in public, and punishing any infringements of what it considers the rule of propriety: so long as it confines itself to the discharge of these duties, the official report of its judgment should be the only communication between it and the officers of the Crown, and should be final so far as the latter are concerned. It may be desirable to allow an appeal to a party accused, to be heard and decided in open court; but we repeat, so long as the matter adjudicated is simply professional, no public officer should be permitted to intervene. Unfortunately for the Councils of Discipline, their attention has not been confined to such matters; they have suffered themselves to become judges of public as well as private offences. What was it to the Council of Caen that one of its members labelled a minister of the Crown? Why was the Council of Paris called upon to punish M. Parquin or M. Ledru for offences against superior courts? By undertaking the task imposed upon them in cases of this nature, the councils necessarily incur the hazard of having their judgments set aside, and thence of being interfered with even when confining themselves to their legitimate duty. In a conflict between a court of honour and a court of law possessed of concurrent or successive jurisdiction, it is quite evident that the former must succumb; and the French law courts have been the reverse of backward in availing themselves of their advantage. The evil seems to arise out of that vague section of the Peyronnet ordinance, which requires Councils of Discipline to maintain fidelity to the national institutions, thereby imposing upon them the onerous duty of trying public offences not directly cognizable at law, and making them the unwilling instruments of bringing such offences within the jurisdiction of the courts. So long as the councils are obliged to perform this invidious task, and to administer law, not merely unwritten and unspoken, but invented for the occasion by the government of the day, we fear they will be doomed to an ineffectual struggle with the power of the superior courts, a struggle in which they may ultimately lose the beneficial influence which they at present possess. And we hold that they are calculated to accomplish a vast amount of good in the profession over which they preside. Instituted on the most liberal basis of election, liable at the year's end to account for any injustice they may exhibit, with jurisdiction limited strictly to professional misconduct, to offences against good manners, etiquette or honour, with powers of punishment extending from friendly caution and stern reprimand to suspension and expulsion, we should see in these tribunals a sure guarantee for the uprightness and dignity of the French Bar: but even this is only a part of the benefit derived from the system; a seat on the council is an object of honourable ambition, and as it can be obtained solely by popular favour, this circumstance must tend to promote kindness and consideration towards the junior advocates, and to tighten the bonds by which the whole order is held together; the post of *bâtonnier* is aspired to like that of public orator at our universities; in short, the scheme supplies ordinary professional *esprit de corps* with form, substance, and energy, and gives it a visible existence. We do not now enter on the question how far similar institutions are adapted to the Bar in this country; but we cannot avoid expressing the feeling that it is far from possessing the influence which is desirable in the admission and retention of its members. We congratulate our brethren in France on their advantages in this respect; we sincerely hope that their Councils of Discipline may be speedily relieved from their extraneous duties and from the obnoxious interference of the *Procureur Général*, and may long continue to uphold the honour of a profession which can make its followers "noble without birth, rich without inheritance, exalted without titles, happy without the aid of fortune." (a)

NECROLOGY

OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

THE EARL OF YARBOROUGH.

The death of this nobleman appears to have been wholly unexpected. The melancholy event took place on the 10th of this month, and intelligence of it was received at Southampton on Thursday morning, and in London on Thursday night. His lordship had a residence in the Isle of Wight, and by the inhabitants of that island he was much regarded for his liberality, and for the many agreeable qualities which marked his character. At the time of his death he was in the 66th year of his age, having been born on the 8th of August, 1781.

Charles Anderson Pelham, the subject of this notice, was the eldest son and heir of the first Baron Yarborough. Having spent his youth and boyhood in acquiring such accomplishments as usually fall to the lot of men who, being eldest sons of great families,

have no motive for encountering the labours of a profession, he married, on the 11th of August, 1806, Henrietta Anne Maria Charlotte Bridgman, who was second daughter of the Hon. John Bridgman Simpson, of Babworth-hall, Nottinghamshire, and granddaughter of Henry, first Lord Bradford. This lady was niece and sole heir of the Right Hon. Sir Richard Worsley, bart., whose estates she inherited. Mrs. Pelham, who never became Lady Yarborough, was born in the month of April, 1788; therefore, at the time of her marriage she was in the 19th year of her age, and at the time of her death, which took place on the 30th of June, 1813, she had only entered on her 26th year. The subject of this notice remained a widower; and three of the four children who were the issue of his marriage still survive. These are the present Earl of Yarborough, Lady Charlotte Copley, and Captain Pelham, R. N. The family from which Lord Yarborough descends is one of no very great antiquity, at least on the paternal side; maternally, however, he reckons amongst his ancestors Sir William Pelham, a military commander of some note in the reign of Queen Elizabeth, one of whose descendants married Mr. Francis Anderson, of Moreby, who was great grandson of Sir Edmund Anderson, a lawyer of eminence, and chief justice of the Common Pleas in the reign of Elizabeth. This Francis Anderson, who afterwards assumed the name of his father-in-law, and Mary Pelham, the descendant of Sir William, became the parents of Charles Anderson Pelham, who was created Baron Yarborough in the year 1794. He married Sophia, daughter and heir of Mr. George Anfrere, and the eldest son of that marriage was the noble earl just deceased. The first Lord Yarborough being a man of considerable fortune and influence, naturally desired that his eldest son should sit in Parliament for the county with which he was connected by residence and property. Accordingly the latter, at the general election in 1806, stood for Lincolnshire, and was returned upon the Whig interest. The subject of this notice supported the short-lived ministry of which the celebrated Charles James Fox was the leader, and having enjoyed that brief period of official connection, he remained on the profitless benches of opposition throughout the long reign of the Tories under Perceval, Liverpool, and Wellington. In 1812, he was a second time returned for Lincolnshire, and again in 1818, upon which occasion he was opposed by Sir Robert Heron. For the fourth time he was returned in 1820; but before the next general election he became a member of the Upper House, and Sir William Ingilby succeeded him in the Lower House. During the entire period that he possessed a seat in the House of Commons it may be said that he answered the expectations of the electors who sent him into that assembly, for they expected to find him a Whig, and there can be no doubt that he scarcely ever voted with the Tories.

On the 23rd of September, 1823, the first Lord Yarborough was gathered to his fathers, and the subject of this notice became a peer; but his friends were still in opposition, and not being influenced by any strong vocation towards a parliamentary career, he gave his attention partly to the pursuits of a country gentleman and partly to those of an amateur sailor. In the latter it is well known that he attained to considerable excellence. Still he continued to give his political party the full benefit of his support. The chief reward of his fidelity was conferred upon him on the 24th of January, 1837, when, for no other reason than the parliamentary services of himself and his eldest son, he was raised to the dignity of an earl, and, certainly, so far as general consistency and devotion to party interests entitle a man to such a distinction, he fully earned his earldom. Upon one important subject, however, he differed from his political friends, for he was a staunch protectionist, and to the last he resisted any attempt to repeal the Corn Laws. As commodore of the Yacht Club he was much respected, and obtained from the Admiralty their especial permission to carry, when sailing in his own yacht, a broad pendant. His lordship left Cowes in the month of July last, and since that time up to the period of his death he had been cruising, and occasionally putting into port. Although for some weeks past he had complained of illness, yet his indisposition did not seem to be so serious as to justify any alarm on the part of his friends; it, therefore, happened that no member of his family was with him at the time of his lamented decease. This melancholy and unexpected event took place when the noble earl was in his own yacht, the *Kestrel*, off Vigo. That vessel is now proceeding homeward, bearing his lordship's remains. Lord Worsley, now Earl of Yarborough, has been a member of the House of Commons during the last sixteen years; but throughout the first half of that period he was known as Mr. Anderson Pelham, for it was not till an earldom had been conferred on the head of the family that the barony of Worsley was created, a title which evidently was chosen to mark the fact that the present peer, in right of his mother, represents that family, of which his grandfather, Sir Richard Worsley, was the head.—*Abridged from the Times.*

LORD METCALFE.

On Tuesday afternoon the mortal remains of Charles Theophilus, first and last Baron Metcalfe, were consigned to their last resting-place. The much-lamented nobleman died at Malahanger, near Basingstoke, but his body was removed on the morning of the funeral to within a few miles of the church of Winkfield, in Berkshire, to be deposited in the vault with his ancestors. The country seat of the Metcalfe family is Fern-hill, in the parish of Winkfield, but for many years past that residence has been held by successive tenants of the deceased peer, the last of whom was Sir Felix Booth; its present occupant is the Dowager Lady Granville. On this account, therefore, the mourners and attendants did not assemble, as under other circumstances they would have done, at Fern-hill, but at Hill-house, the residence of his lordship's nephew, Sir Hesketh Fleetwood. Hill-house is also in the parish of Winkfield. The obsequies of the deceased peer were conducted in a manner quite becoming his high rank and the great personal esteem in which he had ever been held, but at the same time with no unusual or ostentatious display. Amongst the mourners were Lord Monson, Sir Alan M'Nab, Mr. Jas. Metcalfe, Mr. Thomas Metcalfe, Mr. Brownrigg, M.P., Sir Hesketh Fleetwood, Bart., Messrs. Martin, Brownrigg, jun., Smythe, Howell, &c. The private carriages of several noblemen and gentlemen followed the mourning coaches; amongst the latter was that of Lord Ashbrooke, the brother-in-law of the deceased. It is understood that Mr. Brownrigg has been appointed Lord Metcalfe's executor, and that the bulk of his lordship's property will go to Mr. James Metcalfe. His lordship's brother, now in India, inherits the baronetcy, to which the deceased peer succeeded more than 20 years ago.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

BOVILL.—On the 22nd inst. at 20, Bedford-square, the lady of William Bovill, esq. of a son.
FORD.—On the 19th inst. at Millbrooke-house, Kentish-town, the wife of William Ford, esq. of Gray's-inn, of a son.
GOODEVE.—On the 21st inst. in Kensington-square, the lady of J. Goodeve, esq. barrister, of a daughter.
TATHAM.—On the 19th inst. at Highgate-hill, the wife of John L. Tatham, esq. of Lincoln's-inn, of a daughter.
TRENHEERE.—On the 21st inst. at North Lodge, Ealing, the lady of Henry Trenheere, esq. barrister, of a daughter.

MARRIAGES.

DANTRELL, T. W. esq. solicitor, to Dorothy, daughter of the late Capt. A. Meadows, of Wellington Cottage, Wexford, on the 17th inst. at St. Iberias Church, Wexford.
RODGERS, T. W. esq. solicitor, Sheffield, to Jane Eleanor, youngest daughter of the late L. Thomas, esq. of Field Head, on the 18th inst. at the parish church.

DEATHS.

ATHOLL, the Duke of, on the 14th inst. in his 69th year.
SAVAGE, Martha, the wife of Mr. William, solicitor, Furnival's-inn, on the 18th inst. at Peckham.
TEMPLETON, Viscount, on the 21st inst. at Castle Upton, county of Antrim, in his 70th year.
WHITE, Richard Samuel, jun. esq. barrister-at-law, on the 16th inst. at Torquay, in the 39th year of his age.
YARBOROUGH, the Earl of, on the 10th inst. at Vigo, on the coast of Spain, on board his yacht, aged 66.

JOURNAL OF PROPERTY.

A PRACTICAL COMMENTARY

ON

THE LAW OF CONTRACTS RELATING TO REAL PROPERTY.

By WILLIAM HUGHES, Esq. Barrister-at-Law.

(Continued from page 543.)

Distinction between conveyances to use, and conveyances at common law.—The late Mr. Butler, in his valuable edition of Fearn's Contingent Remainders, has very ably pointed out the distinction between conveyances at common law, and those which derive their effect through the Statute of Uses. "A feoffment fine or recovery," he remarks, "are conveyances at the common law, so far as they convey the land to the feoffee, donee, or recoveror; if they are directed to operate to, or to the use of the feoffee, donee, or recoveror, they have no other operation than as conveyances at the common law (*Jenkins v. Young*, Cro. Car. 230; *Altham (Lord) v. Anglessa (Barl of)*, Gilb. Rep. 16); but if they are directed to operate to the use of any other person, then, though they are conveyances at common law so far as they convey the land to such feoffee, donee, or recoveror, they derive their effect under the Statute of Uses, so far as the use is limited by them to the person or persons in whose favour it is declared. A lease and release," he observes, "has a mixed operation; the lease has

(a) D'Aguesseau, De l'Indep. de l'Avocat.

the operation of a bargain and sale, and is in effect a bargain and sale under the statute; but the fee passes to the lessee, and enlarges his estate to an estate of inheritance by the operation of the release at common law; and if the release is directed to operate to the use of the releasee, he is in by the common law; but if the use be declared in favour of another person, the statute again intervenes and executes the use in the person or persons in whose favour it is declared. A bargain and sale inrolled, and a covenant to stand seised, wholly derive their effect from the Statute of Uses; neither having any effect at common law, independently of the statute in conveying the land from the party selling or covenanting to stand seised to those in whose favour they are intended to operate; so that at common law they have no legal operation, and are merely declarations of trust binding the lands in equity. But the statute attaches on them, and divests the land from the party selling or covenanting to stand seised, and vests it in the person to whose use it is limited." (Butler's Fearn, 416.)

A use cannot be limited on a use.—But as a use cannot be upon a use, it cannot be limited by a bargain and sale to any but the bargainee, though an estate limited to arise out of his seisin would be good as a trust in equity. And the like doctrine holds in the case of an appointment in execution of a power, which does not operate as a conveyance of the possession of the estate, but as a limitation of a use, which the statute executing into possession, thus vests the legal estate in the appointee, who is, in fact, the *cestui que use*, and takes in the same manner, when he actually does take, as if he had been named in the original deed by which the power was created. (1 Prest. Abs. 313; Co. Litt. 272, s; 10 Ves. 264.) So if a simple appointment were made to a purchaser, *habendum to him and his heirs, thus vesting the fee in him*, and then limiting the lands to such uses as he should appoint, as in the ordinary dower uses, an appointment afterwards made by him under those limitations would be void in law, although good as a trust in equity. But a consequence, perhaps not less important than this, will result from limitations thus framed; for in the case of a purchaser married previously to 1834, the statute executing the legal estate in him will entitle his wife to dower, and thus one of the most important objects of the dower uses would altogether become nugatory. To prevent an occurrence of this kind, the practice has been, in all well penned appointments where dower uses are inserted, to appoint that the parcels shall be to such uses as the purchaser shall appoint (previously to limiting any estate to the purchaser himself), and in default of appointment, to the purchaser for life, with remainder to a trustee during his life and in trust for him; with the ultimate remainder to him in fee; so that the limitation over in fee will be a remainder, and any appointment made by the purchaser will take effect in the same manner as if inserted in the original deed, by which the power was created, and thus the purchaser's appointee would be in under the original conveyance, and under a title paramount to the claims of the wife. (See Wat. Convey. by Morley, Coote, and Coventry, 88; Butler's note to Fearn, C.R. 347.) Upon the principle also that a use cannot be upon a use, if lands are limited to A to the use of B, to the use of, or in trust for C, the use will be executed in B, and C will take a mere equitable estate. (Symeon v. Turner, 1 Eq. Ca. Abr. 383; Whetstone v. Bury, 3 P. Wms. 146; Wagstaffe v. Wagstaffe, 1b. 258; Attorney-General v. Scott, Forrest, 138; Venables v. Thorne, 7 T.R. 342, 438.) So also if lands be limited to A B, and his heirs, to the use of himself (A B), and his heirs, to the use of, or in trust for C D, and his heirs, the statute will execute the use in A B, and C D will only take a trust estate. (Doe dem. Lloyd v. Passingham, 6 B. & C. 305.)

And where lands are limited to trustees in trust to receive the rents and profits to pay them over to B, B will only take a trust estate, and not a use executed under the statute; because B's interest is not of that nature as would have been construed a use previously to the statute, and it is only such that it will execute into possession; for in the case of a use the feoffees did not actually enter on the lands or receive the rents and profits, but permitted the *cestui que use* to perform those acts himself; and hence it is that the diversity subsists in the construction of a limitation to A in trust to permit B to receive the rents and profits; and a limitation

to A in trust to receive the rents and profits and pay them to B; for the former being descriptive of a use, the statute will execute it in B; whereas the latter describing a different interest, the statute can have no operation upon it, and therefore the land must remain in the trustee in order to enable him to perform the trust. (Symon v. Turner, 1 Eq. Ca. Abr. 382; Bush v. Allen, 5 Mod. 63; Nevil v. Saunders, 1b. S.C. 1 Vern. 415; Jones v. Say and Sele (Lord), 3 Bro. P.C. 75; Silvester dem. Law v. Wilson, 2 T.R. 444; 3 Bos. & Pull. 177.) But where both expressions are used in a will, the last will be allowed to prevail. (Broughton v. Langley, 2 Raym. 873; Right and Phillips v. Smith, 12 East, 455; Doe dem. Leicester v. Bigge, 2 Taunt. 109; Gregory v. Henderson, 4 ib. 772.)

Of resulting trusts.—It may also be proper in this place to offer a few remarks upon the doctrine of resulting trusts. These do not arise from direct words of limitation, but by operation of law from the evident and implied intention of the parties. (Cru. Dig. 421.) As where a conveyance is taken in the name of one person, but another pays the purchase-money, in which case an implied or resulting trust will arise in favour of the latter party, who, in the eye of a court of equity, will be considered as the rightful owner of the property; and this, whether the purchase be taken in the name of the purchaser and others jointly, or whether in one name or in the names of several. (Anon. 2 Ventr. 631; Dyer v. Dyer, 2 Cha. Cas. 108; Gascoigne v. Thwing, 1 Vern. 366; Acherley v. Verror, 1 Cha. Cas. 39; Willis v. Willis, 2 Atk. 71; Lloyd v. Spillett, 1b. 150; Ripley v. Waterworth, 7 Ves. 425.) And the construction will be the same in the case of a purchase of leasehold and copyhold property, as in the case of freeholds. This species of trust being also exempted out of the Statute of Frauds (29 Car. 2, c. 3, s. 8) will equally result in favour of the person advancing the money, although no declaration of trust should ever be made by the person in whose name the conveyance is taken. (Hungate v. Hungate, Toth. 184; Anon. 2 Ventr. 361, n. (3); Gascoigne v. Thwing, 1 Vern. 366; Ambrose v. Ambrose, 1 P. Wms. 321; Ex parte Vernon, 2 ib. 549; Smith v. Baker, 1 Atk. 606; Lloyd v. Spillett, 2 ib. 148; Withers v. Withers, Amb. 15; Lade v. Lade, 1 Wils. 21; O'Hara v. O'Neil, 2 Bro. C. C. 39; Smith v. Camelford (Lord), 2 Ves. 713; Rider v. Kidder, 10 Ves. 360; Wray v. Steele, 2 Ves. & Bea. 388.) Parol evidence in such case will also be admitted to explain the nature of the transaction, though it seems doubtful if it would be admitted against an answer of a trustee denying the trust. (Skett v. Whitmore, 2 Freem. 289; Newton v. Preston, Pre. Cha. 103; Cottingham v. Fletcher, 2 Atk. 155; Bartlett v. Pickersgill, 4 East, 577.) But where the trust is confessed in the answer (Hampton v. Spencer, 2 Vern. 288; Cottingham v. Fletcher, 2 Atk. 155), or by any note, memorandum, or letter, or by any writing in the shape of mutual covenants or agreements, although not under seal or stamp, it will be sufficient. (Ambrose v. Ambrose, 1 P. Wms. 322; Bellamy v. Burron, Ca. temp. Talb. 97; Ryall v. Ryall, 1 Atk. 59; Lane v. Dighton, Amb. 409; Crooke v. Brooking, 2 Vern. 106; Legard v. Hodges, 3 Bro. C. C. 53; Hodges v. Lloyd, 2 ib. 534.)

When the purchase is made with trust moneys.

—In the case also of purchases with trust moneys, a trust will result for the owner of the money. It was, indeed, formerly said, that as money has no ear mark, equity could not follow it in the land in which a trustee had invested it, unless the latter owned, by deed, that he had so laid it out. (Kirk v. Webb, Pre. Cha. 84; Halcott v. Markant, 1b. 168; Deg v. Deg, 2 P. Wms. 414.) But whatever doubt may once have existed upon this matter, it is now clearly settled that, where a trustee lays out the trust-money in the purchase of landed property, the money may be followed in to the land in which it is so invested; and that claims of this nature, like other resulting trusts, may be supported by parol evidence. (Keech v. Sandford, Sel. Cas. in Cha. 61; Holt v. Holt, 1 Char. Cas. 191; Pierson v. Shore, 1 Atk. 480; Abney v. Miller, 2 ib. 597; Edwards v. Lewis, 3 ib. 538; Ex parte Bennett, 10 Ves. 395; Lench v. Lench, 1b. 517; Featherstonhaugh v. Fenwick, 17 Ves. 298.)

As to unappropriated funds.—And in case of wills where real or personal estate is devised or bequeathed for certain specified purposes, and there is no residuary devise or bequest, the unappropriated

part of the real estate, or the proceeds thereof, belong to the testator's heirs (Randall, v. Ben. 2 Vern. 405; City of London v. Garrey, 571; Hobart v. Suffolk, 1b. 694; Anon. 1 C. 345; Wyck v. Packington, 3 Bro. P. C. 1; Starkey v. Brookes, 1 P. Wms. 390; Emley Freeman, Pre. Cha. 541; Baggins v. Jala Mod. 362; Hill v. Bishop of London, 1 Atk. 61; Hopkins v. Hopkins, 1 Ves. sen. 288; Sheldens Barnes, 2 ib. 447; Collins v. Wakeman, 1b. 61; Attorney-General v. Bowyer, 3 ib. 325; Wt v. Major, 11 ib. 203; Gibbs v. Ogier, 12 ib. 4; Wright v. Wright, 16 ib. 188; Williams v. Co. ib. 500; Kellett v. Kellett, 1 Ball & B. 3; Hooper v. Goodwyn, 18 Ves. 156; King v. D. nelson, 1 Ves. & Bea. 260, 272; Mayhew v. A son, 1 Ves. & B. 410; Dunne v. White, 1 ib. & Walk. 593; Jones v. Mitchell, 1 Sim. & 290); and the unappropriated residue of the personal estate to the testator's next of kin. (De v. Lambert, 4 Ves. 725; Dawson v. Clarke, 1b. 416; Menze v. Menze, 18 ib. 348.) And if estates are conveyed for particular purposes, viz. wholly or partially fail of effect, then to the use of such total (Pre. Cha. 162, 541; Digby v. Le gard, 3 P. Wms. 22; Gravenor v. Hulton, Amb. 642; Ackroyd v. Simpson, 1 Bro. C. C. 343), a partial failure (Lloyd v. Spillett, 2 Atk. 150; Davidson, v. Foley, 2 Bro. C. C. 102; Helyar v. Vincent, 2 Ves. 204; Sidney v. Sidg, 1b. 352), as the case may be, a trust will result back to the original owner.

The subject of purchases by a father in the name of a wife or child, and whether such will be considered as an advancement for the party in whose name the purchase is taken, or a resulting trust for the husband or father, having been already treated of in a former part of this work (see ante, p. 151-196), will render a repetition here unnecessary.

(To be continued.)

Public Sales.

By Messrs. MUSGROVE and GADSDEN, at the Mart. A leasehold estate, comprising a factory, wharf, and premises, near the Ragen's canal bridge, Boston; held for 99 years at 1000. per annum; let at 2000. per annum—*bid.* Nine houses, Nos. 1 to 9, Francis-place, New North-road; held for 61 years at 300. per annum; let at 900. per annum—2,550*l.*

Two leasehold farms, called *Yalden* and *Wren House Farms*, in Dagenham and Barking, Essex; let under the Deeds and Canons of Windsor, consisting of upwards of 300 acres of market garden, arable, pasture, and wood lands, with residence, farm house, agricultural buildings, cottages, &c. and eight acres of arable land, sold pursuant to an order of the High Court of Chancery, in the cause of *Wimmill v. Wimmill*, 7,148*l.*

By Messrs. DANIEL SMITH and SON. The freehold estate of Whittlesea, Cambridgeshire, extending over nearly 25,000 acres of land, offered in one lot, but bought in at 169,000*l.* and afterwards offered in two lots as follows, viz.—"The freehold rent-charges, in lieu of tithes, embracing about 17,000 acres—66,000*l.*"

Several farms lying within the manor and parish of Whittlesea, altogether about 2,136 acres of land; also the manor, which extend over 25,000 acres, and embrace the greater part of the town of Whittlesea, and the patronage of the perpetual advowson of the vicarage of Whittlesea—*bid.*

The freehold estate of Addington, Buckinghamshire, comprising the whole parish, with the manor, manse, advowson, several farms, and about 1,143 acres of grazing and dairy land—bought in at 75,300*l.* but afterwards offered in three lots as follows, viz.—

The first lot, comprising the manor and several farms—60,500*l.*

The Mile Tree Farm, comprising a residence and 216a. 1r. 17 p.—12,300*l.*

Four closes of meadow land, containing 4a. 1p.; and tax redeemed, 2,200*l.*

By Mr. F. CHINNOCCK, at the Mart. A freehold house, No. 1, King-street, Kensington, lease; tax redeemed—365*l.*

A leasehold house, No. 5, Westbourne Villas, Harrow-road—730*l.*

An improved rental of 14*l.* 6s. per annum, arising out of a messuage in Edward's-yard, at the back of Langham-place; held for 12½ years—59*l.*

FORD ABBEY.—We understand that this extensive and romantic property was purchased by Messrs. Osborne and Ward, solicitors, for George Miles, esq. of this city, one of the sons of the late P. J. Miles, esq. and brother of the members for Bristol and East Somerset.—*Bristol Paper.*

GREAT SALE OF PROPERTY AT BIRKENHEAD.—An immense sale of property, by auction, took place on Tuesday evening at the Woodside Hotel, and consisted of a large quantity of building land, and no less than ninety-seven mansions, houses, and shops in Birkenhead and the neighbourhood. The mansions and houses did not meet ready sale, which may be fairly attributed to the effects of the late turn-out; but the sale of land proved convincingly that property had not depreciated in value.—*Liverpool Mercury.*

OATLANDS PARK.—The statement which has appeared in the papers is incorrect. This estate was sold in eighty lots by Messrs. Drivers, of Parliament-street, on the 19th of May and 4th of August, 1846, and at the latter sale lot 6, being the bailiff's house, and the farm-yard, was bought by Mr. E. Driver for 1,750l. On finding this to be the case, the agents employed by Mr. Hughes Ball determined to call on Mr. E. Driver to give up the lot, he being the auctioneer engaged to sell the property, which he did, and it was this lot, subdivided into six lots, that Messrs. Shuttleworth and Sons put up at the Auction Mart on Friday last, when it fetched 3,200l. The whole estate, exclusive of the timber and manor, produced more than 70,000l.

The following scale of charges, reduced more than one-third, has been adopted for Advertisements of Estates for Sale, &c. exceeding 10 lines in length:

For the first 70 words 5s.
For every succeeding 30 words . . . 1s.

THE MONEY MARKET.

	Sat.	Mon.	Tues.	Wed.	Thurs.	Frid.
Three per Cents. Consols	95½	95½	95½	95½	95½	95½
Three per Cents. Reduced	95	95	95	95	95	95
New Three-and-a-quarter per Cts	98	98	98	98	98	98
Long Annuities	104	104	104	104	104	104
Bank Stock	210	210	210	210	210	210
India Stock	259	259	259	259	259	259
India Bonds, prem.	28	29	29	29	29	29
Exchange Bills, prem.	13	13	13	13	14	14

FOREIGN.

Spanish Five per Cents.	27	27	27	27	27	27
Spanish Three per Cents.	37½	37½	37½	37½	37½	37½
Russian	112	112	111	111	119	110½
Peruvian	38½	38½	38	36	39½	39½
Portuguese	40	40	40	40	40	40
Mexican	25½	25½	25½	25½	25	25
Deferred	16½	16½	16½	16½	16½	16½
Dutch Two-and-a-Half per Cents.	59½	59½	59½	59½	59½	59½
Four per Cents.	95	95	95	95	95	95
Danish	88	88½	88½	88½	88½	88½
Colombian	16½	16	15½	15½	15½	15½
Chilian	100	100	100	100	101	101
Spanish Ayres	39	39	39	39	39	39
Brazilian	89	89	89	89	89	89
Belgian	97½	97½	97½	97½	97½	97½

THE GAZETTES.

*AMOUNT OF DIVIDENDS DECLARED.

The sum stated as the Dividend means so much declared in the Pound. The Assignees, when chosen, follow this statement.

Tuesday, Sept. 18.

Clark, T. W. brewer, outlawed.—Crampton, J. B. coal merchant, div. next week. Groom, London.—Staines, J. C. tailor, div. next week. Groom, London.

Wednesday, Sept. 16.

Kennedy, L. pawnbroker, last exam. passed.—Noger, T. poultryer, last exam. passed.—Prince, G. wine merchant, last exam. passed.

Thursday, Sept. 17.

Walton, R. victualler, assignees, Oct. 20.

Friday, Sept. 18.

Ashdown, W. ironmonger, last exam. passed.—Tunley, and Potts, carriers, last exam. Dec. 18.—Wilkin, A. merchant, last exam. Oct. 19.

Saturday, Sept. 19.

Browne, T. hatter, outlawed.—Mitchell, W. draper, last exam. Nov. 10.—Milton, S. sail maker, last exam. Oct. 17.

DIVIDENDS.

Bankrupts' Estates.

Official Assignees are given, to whom apply for the Dividends.

Fawcus, H. and R. timber merchants, first and final div. 1s. 11d. Baker, Newcastle.—Gales, T. ship builder, first and final div. 6s. 3d. Baker, Newcastle.—Harrison, J. merchant, second, 23d. Turner, Liverpool.

Insolvents' Estates.

Cockerell, J. P. chief officer in the coast-guard service, Morston and Burnham Overy, 2s. 8d.—Hellyer, C. purser in the navy, 1s. 11d. (in addition to 1s. 1d.)—Tew, J. jun. butcher, first, 4s. 9d. Baker, Newcastle.

ASSIGNMENTS.

To Trustees for the benefit of Creditors.

Gazette, Sept. 18.

Gray, W. cornfactor, Hull, Aug. 24. Trust. J. G. Carhill, accountant, Hull. Sols. England and Co. Hull.—Southey, J. P. auctioneer, Tooley-st. Sept. 10. Trust. J. Brighton, plumber, Tooley-st. Sols. Peace and Co. Tooley-st.

Gazette, Sept. 22.

Edwards, G. B. draper, Thornton-st. Horeleydown, Sept. 14. Trust. H. W. Castle, warehouseman, Love-lane. Sols. Sole and Turner, Aldermanbury.—Fry, E. printer, Plymouth, Sept. 4. Trusts. E. W. Cole, bookseller, Stonehouse, G. Mennie, druggist, Plymouth, and G. S. Lee, stationer, Plymouth. Sol. Estlake, Plymouth.—Hughes, D. P. gent. Burlington-place, Old Kent-road, July 29. Trusts. T. H. Evans, stockbroker, Lothbury, and S. Lamb, spinster, Bromley. Sol. Rusch, Austin-frs.—Hoad, J. innkeeper, Dover, Sept. 15. Trusts. R. S. Court, wine merchant, and W. Norwood, postmaster, both of Dover. Sol. Payn, Dover.

Bankrupts.

DATE OF FIAT AND PETITIONING CREDITORS' NAMES.

Gazette, Sept. 18.

BARROW, THOMAS, shirt and collar maker, Manchester, as a trader indebted jointly with James Morris, druggist and grocer, Bolton-le-Moors, Oct. 1 and 23, at twelve, Manchester; Hobson, off. ass.; Milne and Co. Temple, and Goulden, Manchester, sols. Date of fiat, Sept. 11. M. Pickford, merchant, Manchester, pet. cr.

BLUNDEN, JAMES, grocer and baker, Basingstoke, Sept. 30 and Oct. 29, at twelve, Basinghall-st. Com. Evans; Bell, off. ass.; Johnson and Co. Temple, sols. Date of fiat, Sept. 10. Bankrupt's own petition.

FRYER, JAMES JOSEPH, stock and share broker, 1, Birchington, Cornhill, Sept. 30, at one, and Nov. 5, at eleven, Basinghall-st. Com. Holroyd; Groom, off. ass.; Lindsay and Mason, Cateaton-st. sols. Date of fiat, Sept. 14. E. Jones, tailor and draper, 157, Strand, pet. cr.

HATCHER, JOHN, butcher, Poole, Oct. 7 and Nov. 5, at twelve, Basinghall-st. Com. Holroyd; Edwards, off. ass.; Holme and Co. New-inn, and Parr, Poole, sols. Date of fiat, Sept. 9. R. Slade, merchant, Poole, pet. cr.

KOCH, JOHN EDWARD CAMPBELL, East India merchant, 6, Great Winchester-st. Sept. 28, at twelve, and Oct. 30, at eleven, Basinghall-st. Com. Shepherd; Graham, off. ass.; Messrs. Hilliers, Fenchurch-st. sols. Date of fiat, Sept. 15. Bankrupt's own petition.

RUDOLPH, LEOPOLD ANTON VICTOR, general merchant, Sunderland, Oct. 2, at eleven, Oct. 30, at one, Newcastle, Com. Ellison; Wakley, off. ass.; Cooper, Sunderland, and Loveland and Beckitt, Lincoln's-inn-fields, sols. Date of fiat, Sept. 12. H. F. Blech, merchant, Newcastle-upon-Tyne, pet. cr.

Gazette, Sept. 22.

ASTON, WILLIAM, maltster and dealer in hops, Lopley, Stafford, Oct. 3 and 31, at ten, Birmingham, Com. Balguy; Christie, off. ass.; Jackson, Gray's-inn, and Greatwood, Birmingham, sols. Date of fiat, July 13. Bankrupt's own petition.

BOULT, EDWARD SWANWICK, stock and share broker, Liverpool, Oct. 6 and Nov. 3, at eleven, Liverpool, Com. Perry; Morgan, off. ass.; Humphries and Co. Gray's-inn, and Forshaw and Co. Liverpool, sols. Date of fiat, Sept. 15. Bankrupt's own petition.

BRADY, RICHARD BENBOW, jeweller, cutler, and hardwareman, 96, Bishopgate-st. Without, Oct. 2, at two, Nov. 3, at eleven, Basinghall-st. Com. Shepherd; Graham, off. ass.; Leopard and Co. Cloak-lane, sols. Date of fiat, Sept. 19. Bankrupt's own petition.

EVANS, WILLIAM, draper and mercer, Piccadilly, Oct. 7, at one, Nov. 5, at two, Basinghall-st. Com. Holroyd, Edwards, off. ass.; Lloyd, Milk-at, Chesapeake, sol. Date of fiat, Sept. 14. F. Scorsan, E. Lead, J. W. Barnett, and S. T. Carreger, Wood-st. warehousemen, pet. crs.

GRANT, GEORGE, tailor and victualler, Kidderminster, Oct. 13, at ten, Oct. 27, at half-past twelve, Birmingham, Valpy, off. ass.; Boycot, jun. Kidderminster, sol. Date of fiat, Sept. 17. E. B. Belcher, draper, Kidderminster, and S. Grant, woolsorter, pet. crs.

HODGSON, EBERNEZ, ironmonger, Richmond, York, Oct. 7, and Nov. 5, at eleven, Leeds, Com. West, Young, off. ass.; Fildes, Temple, Simpson, Richmond, and Hart and Co. Leeds, sols. Date of fiat, Sept. 8. C. F. Woolfield, merchant, Birmingham, pet. cr.

LAMONT, JOHN, ship-owner and merchant trader, Well-cloze-aj, Sept. 30, at two, Nov. 5, at one, Basinghall-st. Com. Holroyd, Groom, off. ass.; Linklater, Leadenhall-st. sol. Date of fiat, Sept. 14. J. Harper, shipwright, East Smithfield, pet. cr.

LANCASTER, WILLIAM, ship owner and merchant, Liverpool, Oct. 6 and Nov. 3, at twelve, Liverpool, Com. Perry; Morgan, off. ass.; Cornthwaite and Co. Old Jewry Chambers, and Pemberton, Liverpool, sols. Date of fiat, Sept. 15. Bankrupt's own petition.

NORMAN, MATTHEW, jun. cabinet maker, upholsterer, and building contractor, Richmond, York, Oct. 8 and Nov. 5, at eleven, Leeds, Com. West; Freeman, off. ass.; Jones and Co. John-st. Bedford-row, and Hardie and Clarke, Leeds, sols. Date of fiat, Sept. 16. Bankrupt's own petition.

ORANGE, JOHN, boot and shoe maker, Liverpool, Oct. 6, at one, and Nov. 3, at eleven, Liverpool, Com. Perry; Case-nore, off. ass.; Oliver, Old Jewry, and Evans and Son, Liverpool, sols. Date of fiat, Sept. 15. Bankrupt's own petition.

RICHARDS, JOHN, jun. banker and money scrivener, Reading, Oct. 2, at half-past two, and Nov. 2, at one, Basinghall-st. Com. Shepherd; Turquand, off. ass.; Holmes, Great James-st. sol. Date of fiat, Sept. 15. Bankrupt's own petition.

THORN, PETER, bottled ale and beer merchant, late of Castle-st. Leicester-sp. or elsewhere, Sept. 30 and Oct. 29, at eleven, Basinghall-st. Com. Evans; Johnson, off. ass.; Philip, Great St. Helens, sol. Date of fiat, Sept. 19. Bankrupt's own petition.

Meetings at Basinghall-street.

Gazette, Sept. 18.

Boul, E. grocer, Isleworth, Oct. 16, at half-past two, audit.—Morris, H. builder, South Lambeth New-road, Oct. 6, at twelve, audit.—Spencer, R. victualler, Buckingham-st. Oct. 16, at two, audit.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.
Ains, C. innkeeper, Newport, Oct. 12, at twelve.—Brailsford, E. music seller, Brighton, Oct. 16, at eleven.—Ellis, J. W. cloth merchant, Lawrence-lane, Oct. 9, at eleven.—Kennett and Reynolds, wax chandlers, Lamb-st. Oct. 13, at eleven.—Knight and Knight, stationers, Budge-row, Oct. 13, at two.—M'Kinnell, C. wine merchant, Fenchurch-st. Oct. 13, at one.—Sex, G. job master, Stonecutter-st. Oct. 12, at half-past eleven.—Wadsworth, G. B. apothecary, Broad-st. Golden-sq. Oct. 13, at eleven.

Gazette, Sept. 22.

Barley, C. C. grocer, Wisbech St. Peter's, Isle of Ely, Oct. 20, at twelve, div.—Bird, J. timber merchant, 13, Club-row, Bethnal-green, Oct. 15, at eleven, div.—Bondy, W. builder, Stamford-bridge, Oct. 21, at half-past one, and.—Clarke, C. draper, Goswell-road and Cranbourne, Oct. 21, at half-past twelve, and Oct. 23, at eleven, div.—Garbanati, P. carrier, Woolwich, Oct. 23, at one, and.—Hodges, E. wine merchant, Circus-st. Oct. 22, at twelve, and.—Knight, T. draper, Minorities, Oct. 23, at twelve, and.—Langley, H. C. apothecary, Suffolk-place, Hackney-road,

Oct. 14, at eleven, and.—Miskin, J. R. tea dealer, Chatham, Oct. 16, at eleven, and.—Mitchell, W. furniture dealer, Finsbury-place South, Upper Fitzroy-square, and Kent-st. Oct. 21, at two, and.—Morel, D. A. dentist, Langham-place, Marylebone, Oct. 21, at half-past eleven, and.—Nelson, R. hotel keeper, licensed victualler, and trader, Great Portland-st. Oct. 21, at eleven, and Oct. 23, at half-past eleven, div.—Radman, J. oilman and British wine dealer, 24, Union-st. Bath, Oct. 21, at one, and Oct. 23, at twelve, div.—Smithson, W. M. printer and publisher, and dealer in railway shares, St. George's-fields, near Canterbury, Oct. 15, at one, div.—Tippie, S. tailor, Norwich, Oct. 28, at one, and.—Weatherhog and Weatherhog, farmers, Stone, Oct. 21, at twelve, and.—Wilkins, H. and J. wool merchants, London-wall, and Pima, Saxony, Oct. 15, at twelve, divs.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Elkington, H. chemist, Maida-hill East, Oct. 23, at one.—Garbanati, P. carrier, Woolwich, Oct. 23, at one.—Gray, F. C. lodging-house keeper, Dalston, Oct. 16, at half-past twelve.—Hodges, E. wine mer. Circus-st. New-rd. Oct. 23, at twelve.—Kempster, T. builder, Blackman-st. Fenchurch-buildings, Oct. 14, at twelve.—Makin, J. R. tea dealer, Chatham, Oct. 16, at eleven.—Moger, T. poultryer, Holborn-hill and Coventry-st. Oct. 14, at half-past eleven.—Morel, D. A. dentist, Langham-pl. Oct. 21, at half-past eleven.—Prince, G. wine merchant, Rossey, Oct. 14, at eleven.—Rothschild, B. L. M. diamond merchant, Great Queen-st. Oct. 21, at two.—Rouse, W. baker, Neptune-st. Rotherhithe, Oct. 16, at twelve.—Smithson, W. M. printer, Canterbury, Oct. 16, at one.—Spencer, R. victualler, Buckingham-st. Oct. 16, at two.—Waller and Waller, grocers, Ipswich, Oct. 16, at twelve.

Meetings in the Country.

Gazette, Sept. 18.

Chadwick, J. S. calico printer, Manchester, Oct. 7, at twelve, Manchester (adj. Sept. 2), last exam.—Gee and Gee, drapers, Leeds and Horsforth, Oct. 13, at one, Manchester, joint and sep. auds.—Nagle, C. linen draper, Shropshire, Oct. 16, at twelve, Manchester, div.—Prestley, R. flour dealer and retailer of beer, Manchester and Arwick, Oct. 12, at twelve, Manchester, first and final div.—Rofe, W. music seller, Manchester, Oct. 13, at twelve, Manchester, and.—Stutard, J. cotton spinner, Manchester, Oct. 13, at twelve, Manchester (adj. July 34), last exam.—Taylor and Co. cotton manufacturers, Oct. 13, at twelve, Manchester, and.—Wilkinson, J. grocer, Manchester, Oct. 12, at twelve, Manchester, div.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Bishop, J. painter, Manchester, Oct. 12, at one, Manchester.—Clarke, J. innkeeper, Plymouth, Oct. 14, at eleven, Exeter.—Corless, P. tea dealer, Wigan, Oct. 13, at eleven, Liverpool.—Frankish, R. K. joiner, Scarborough, Oct. 16, at eleven, Leeds.—Smith and Irvine, merchants, Liverpool, Oct. 15, at eleven, Liverpool.—Winfeld, T. potter, Bristol, Oct. 15, at twelve Bristol.

Gazette, September 22.

Brook, W. stuff merchant, Manchester and Goldsmith-st. Oct. 6, at eleven, Manchester (adj. Sept. 15), last exam.—Hall, A. innkeeper and victualler, Manchester, Oct. 15, at twelve, Manchester, to audit, and Oct. 16, at twelve, div.—Gee, G. W. and J. F. drapers and co-partners, Leeds and Horsforth, Oct. 14, at one, Manchester, further joint div. and first and final sep. divs.—Parker, H. Shore, O. Brewin, J. and Rodgers, J. co-partners, Sheffield, Oct. 23, at eleven, Town-hall, Sheffield, to audit, and Oct. 30, at eleven, div.—Phillips, T. hop merchant, Shrewsbury, Oct. 13, at ten, Birmingham, and.—Rofe, W. music seller, 59, King-st. and 43, Burlington-st. Manchester, Oct. 14, at twelve, Manchester, div.—Russell, J. coal merchant, Kidderminster, Oct. 13, at ten, Birmingham (adj. Sept. 5), last exam.—Taylor, J. Ashhead, A. Garner, S. Warren, J. and Hulme, W. all of Stockport, and Barnes, W. Ratcliffe-bridge, Lancashire, cotton manufacturers and co-partners, Oct. 14, at twelve, Manchester, first and final joint div.—Wragford and Co. stock brokers, Bristol, Oct. 6, at eleven, Bristol (adj. Sept. 7), last exam.

MEETINGS FOR ALLOWANCE OF CERTIFICATES.

Beakley, R. bricklayer, Liverpool, Oct. 13, at eleven, Liverpool.—Derham, T. P. linen draper, Bristol, Oct. 16, at one, Bristol.—Hill, J. share broker, Leeds, Oct. 15, at eleven, Leeds.—Puckering and Makins, woollen merchants, Hull, Oct. 14, at ten, Town-hall, Hull.—Watts, W. builder, Cheltenham, Oct. 16, at twelve, Bristol.

Partnerships Dissolved.

Gazette, September 15.

Agar, H. and S. farmers, Burnham, Sept. 4.—Derby, T., Birch, C. and Hickman, G. H. coal masters, Bilston, July 16.—Herbert, W. and Smith, M. surveyors, Worcester, Sept. 7. Debts paid by Goodman, at 18, Foregate.—Horwood, J. and Monk, T. B. die sinkers, St. Dunstan's-court, Sept. 11.—Langworthy, L. and Walkinshaw, R. commission agents, Manchester, Aug. 1.—Larking, H. E., H., A. J., and G. F. cheesemongers, Whitechapel, June 30. Debts paid by A. J. and G. F. Larking.—Le Masson, M. and Kissel, J. boot makers, Exeter-change, March 9.—Lucas, T. and J. farmers, Woodford, Sept. 10. Debts paid by J. Lucas.—Mitroy, A., M'Cullum, D. and Birkhead, E. drapers, Plymouth, Sept. 12.—Owen, J. and Peuch, B. attorneys, Liverpool, Sept. 11.—Paice, C. M. A. C. F. P., F., and L. A. milliners, Princes-st. Cavendish-sq. Sept. 10.—Skipwith, M., Sartor, R. H. and Skipwith, J. G. wine merchants, Nottingham, Sept. 3.—Williams, J. sen. and jun. and R. nail makers, Liverpool, Sept. 10. Debts paid by R. Williams.—Wright, B., Williams, E. and Millard, J. J. jun. coal masters, Tipton, Sept. 10. Debts paid by Wright and Williams.—Upperton, R., Verrall, H. and Veysey, A. attorneys, Brighton, so far as regards Veysey, Sept. 1. Debts paid by the remaining partners.

Gazette, Sept. 18.

Aitken, W. Andrew, W. and S., Broadbent, F. and H., Goodwin, W. Broadbent, J. Hulley, W. Shaw, W. Taylor, J. Kemp, F. Hilton, J. Humbleton, H. Thornley, I. Wilkin-son, D. Schofield, S. Buckley, J. Broadbent, T. Hamer, S. cotton manufacturers, Denton, Aug. 11.—Buckhouse, J. and M'Donald, P. sustain manufacturers, Manchester, Aug. 31.—Barber, W. and C. small ware manufacturers, Macclesfield, Sept. 16. Debts paid by W. Barber.—Barker, R. H. Poppleton, R. and Dawson, S. manufacturers of worsted

yarns, Thomas, Aug. 1. Debts paid by Barker and Dawson.—*Beames, T. and Hatherell, A.* silk mercers, Bristol, Sept. 1.—*Brodie, A. and Allen, F.* manufacturing chemists, Bow-common, Aug. 24.—*Clissold, J. and Thomas, W.* maltsters, Nailsworth, Sept. 10. Debts paid by Clissold.—*Coleman, T. Flockhart, J. Oakley, J. and Bernard, J. S.* leather merchants, Lime-st. Sept. 14.—*Coleman, T. Flockhart, J. and Oakley, J.* wine merchants and agents, Fen-church-st. Sept. 14.—*Hall, R. and J. whitesmiths, Basingstoke, Sept. 16.*—*Harper, H. R. and D. and Rothwell, D. Kay, S. and Atkinson, C.* as regards Kay and Atkinson, Sept. 15. Debts paid by the remaining partners.—*Hindle, T. and Davis, W.* tailors, Bradford, Sept. 14. Debts paid by Hindle.—*Hook, J. and Bile, R.* bricklayers, Liverpool and Toxteth-park. Debts paid by Hook.—*Hunt, J. and Mant-com, H.* wollen drapers, Exmouth-st. Sept. 17.—*Johnstone, F. N. and Marshall, F.* wine merchants, Great Tower-st. Sept. 15. Debts paid by Johnstone.—*Jones, T. and W. millers, Bollington, Sept. 11.* Debts paid by either partner.—*Lee, J. and Bottomley, A.* cotton spinners, Oldham, Sept. 17.—Debts paid by Lee.—*Lepton, W.* sen. and jun. and *Adamkwaite, J.* brewers, Salford, as regards Lepton, sen. July 1.—*Morton, J. and Townesend, R. H.* contractors, Atherton, Sept. 17. Debts paid by Morton.—*Palmer, J. R. and Macphail, J. Dunc, T. and W. Wilson, L. P. Reeves, J. H. and Palmer, E. H.* London, as regards W. Dent, Dec. 31, 1844.—*Poore, G. J. and Chapman, H.* stationers, Liverpool, Sept. 1. Debts paid by Poore.—*Robson, J. Whyte, B. L. and Strickland, J.* brass founders, South Shields, Sept. 11.—*Smith, R. and Henton, T.* pawnbrokers, Manchester, Sept. 16. Debts paid by Smith.—*Walton, R. and Schofield, J.* booters, Warwick, March 31. Debts paid by Schofield.—*Waterman, T. and Elletty, J.* hop merchants, Wellington-chambers, London-bridge, Sept. 12. Debts paid by Waterman.

Insolvents

Petitioning the Courts of Bankruptcy.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Sept. 18.

Birch, B. agent, New-rd. Chelsea, Oct. 3, at eleven.—*Bottle, G.* bricklayer, Finchfield, Sept. 24, at two.—*Christie, F.* schoolmistress, Warner-st. Dover-rd. Sept. 24, at twelve.—*Coatman, J. J.* teacher of drawing, Thorpe, next Norwich, Sept. 24, at twelve.—*Curtis, W.* boot maker, East Peckham, Sept. 23, at one.—*Mears, C.* grocer, Putney, Sept. 24, at twelve.—*Offord, J. P.* miller, Great Yeldham, Oct. 5, at one.—*Richards, J.* master mariner, schooner *Vires*, lying off Pickle Herring-wharf, Sept. 24, at twelve.—*Ringin, F.* scum boiler, John-st. Spitalfields, Oct. 5, at eleven.—*Smith, C.* farmer, Hampton, Sept. 23, at half-past one.

PETITIONS TO BE HEARD IN THE COUNTRY.

Gardiner, J. tea dealer, Liverpool, Sept. 25, at eleven, Liverpool.—*Granger, W. M.* clerk, Manchester, Sept. 24, at twelve, Manchester.—*Jackson, J.* miner, Bentley Hay, Sept. 23, at twelve, Birmingham.—*Patterson, A.* livery stablekeeper, Liverpool, Sept. 25, at twelve, Liverpool.—*Watson, J.* cigar dealer, Manchester, Sept. 25, at twelve, Manchester.—*Wright, J.* surgeon, Liverpool, Sept. 23, at eleven, Liverpool.

MEETINGS IN THE COUNTRY.

Coulson, W. publican, St. Oswald, Oct. 9, at one, Newcastle, div.—*Hughes, H.* Oct. 6, at eleven, Liverpool, div.—*Land, J.* plumber, Bishopwearmouth, Oct. 9, at half-past one, Newcastle, div.—*Lotings, M. S.* surveyor, Bishopwearmouth, Oct. 9, at two, Newcastle, div.—*Walker, J.* woollen draper, Hartlepool, Oct. 9, at half-past twelve, Newcastle, div.

PETITIONS TO BE HEARD AT BASINGHALL-STREET.

Gazette, Sept. 18.

East, S. china dealer, Fulham-road, Oct. 16, at half-past one.—*Firman, F. F.* clerk, Lambeth-st. Whitechapel, Sept. 29, at two.—*Halpin, W. H.* author, Grafton-st. Sept. 29, at two.—*Hawkins, S.* carpenter, Howsberry-road, Sept. 29, at two.—*Leech, J.* coffee-shop keeper, Southgate, Sept. 29, at two.—*Linton, F. W.* traveller to an oilman, Duke-st. St. George's in the East, Sept. 29, at two.

PETITIONS TO BE HEARD IN THE COUNTRY.

Briggs, T. innkeeper, Tadcaster, Oct. 9, at eleven, Leeds.—*Chambers, W.* publican, Halifax, Sept. 23, at eleven, Leeds.—*Eyre, Rev. L.* clerk, Dalby Rectory, near Tetterton, Oct. 9, at eleven, Leam.—*Kirkham, J.* grocer, Walslow, Sept. 26, at twelve, Birmingham.—*Marchant, J. A.* clothier, Trowbridge, Oct. 12, at eleven, Bristol.—*Pailey, W.* butler, Llandaff, Oct. 13, at eleven, Bristol.—*Treenwood, W.* small shopkeeper, Dewsbury, Oct. 9, at eleven, Leeds.

MEETINGS AT BASINGHALL-STREET.

Champion, E. boot-maker, Tonbridge-wells, Oct. 13, at twelve.

From the Gazette of Friday, September 25.

Bankrupts.

Cramp, J. cowkeeper, Carlisle, Kent.—*Garbett, E.* banker, Skinner's-place, Siza-lane.—*Morley, W. M.* warehouseman, Bread-st. Chesapeake.—*Falshaw, J. W.* grocer, Farringdon.—*Shaw, F.* eating-house keeper, Manchester.—*Brett, J.* grocer, Spillaby, Lincolnshire.—*Morgan, W.* draper, Treforest, Glamorganshire.—*Lewis, J.* butcher, Dawley-green, Shropshire.—*Clemson, W.* victualler, Dawley-green, Shropshire.—*Dutchman, H.* ship owner, Toxteth-park, near Liverpool.

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Reigate.

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Whitchurch, Salop.

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Winchester.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

SATURDAY, APRIL 4, 1846.

(DOUBLE NUMBER.)

VOL. VII. No. 157.]

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Dated the 8th day of April, 1846. RA. LEIGH, Clerk of the Peace for the said Borough.

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MESSRS. BULLOCK will **SELL** by **AUCTION**, at the Auction Mart, on **WEDNESDAY** next, April 15, at Twelve, in Lots, **THREE ARABLE FIELDS** and an **OSIER GROUND**, together about 21 acres, let to respectable tenants, at rents amounting to 33*l.* per annum. Also, the Interest during a life aged 28, with a contingent absolute estate in a Copyhold Farm of 36 acres, called Sparlings, in the parish of Felstead, at present considerably underlet at 60*l.* per annum.—Printed particulars may be had at the principal Inns at Bishop's Stortford, Dunmow, Braintree, and Chelmsford; at the Auction Mart, of Mr. Steele, 1, Lincoln's-inn-fields; and of Messrs. BULLOCK, Holborn.

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Absolute and contingent Reversions.

MESSRS. BULLOCK will **SELL** by **AUCTION**, at the Auction Mart, on **WEDNESDAY** next, April 15, at Twelve, the **ABSOLUTE REVERSION** to **ONE-SIXTH SHARE** of 1,572*l.* 15*s.* 10*d.* Three per Cent. Consols, on the death of a lady, aged 62, next October. Also the Contingent Reversion to one-sixth of the sum of 850*l.* 19*s.* 5*d.* Three per Cent. Consols, on the death of the aforesaid.—Particulars of Mr. STEELE, 1, Lincoln's-inn-fields; at the Auction Mart; and of Messrs. BULLOCK, Holborn.

BEDFORD-SQUARE.

MESSRS. BULLOCK are instructed by the Trustees and Executors of the late John Legh, Esq. to **SELL** by **AUCTION**, at the Mart, on **TUESDAY**, May 5, at Twelve (unless previously disposed of by Private Treaty), the **GROUND LEASE** for 284 years, from Midsummer next, of an excellent Residence, No. 26, on the north side of the square. The house is in very good repair, and has the advantage of an extra room on the ground floor, 23 feet by 20 feet, with lead flat roof. The furniture, large glass, pictures, books, fine cellar of wines, plate, &c. will be disposed of shortly after, unless taken by valuation.—Further particulars may be had of Messrs. CLOWES, WEDLAKE, and CLOWES, King's Bench-walk, Temple; and of Messrs. BULLOCK, Holborn.

Highly Valuable Property on Lord Portman's Estate, held for a long term at a peppercorn, and leased for twenty-one years from 1840, at 200*l.* per annum.

MESSRS. BULLOCK have received instructions from the Trustees to **SELL** by **AUCTION**, at the Mart, near the Bank of England, on **TUESDAY**, May 5, at Twelve, the important **LEASES**, for nearly fifty years unexpired, of the Premises known as the Crown Livery Stables, with dwelling-house, farrier's, coachmaker's, and other workshops, situate in Great and Little York-mews, between Gloucester-place and York-place, Marylebone, and embracing a frontage, in Great York-mews, of 67 feet by a depth of 154 feet. The extent and eligible site, being close to the Regent's-park, must always give great value to this property; and the former rental at which it was let, viz. 300*l.* per annum, may be looked forward to at the expiration of the present lease.—Printed particulars and plans will be ready in a few days, and may be had of Messrs. CLOWES, WEDLAKE, and CLOWES, 10, King's Bench-walk, Temple, Solicitors; at the Auction Mart; and of Messrs. BULLOCK, Holborn.

IN THE COUNTY OF ESSEX.—Capital Landed Investment.

MESSRS. BULLOCK are directed to **SELL** by **AUCTION**, at the Auction Mart, on **TUESDAY**, May 5, at Twelve, **TWO** compact **FARMS**, principally freehold, called Great and Little Martins, situate in the parishes of Stowmarket and Cold Norton, five miles from Danbury, seven from Maldon, eleven from Chelmsford, and a short distance from the navigable rivers Crouch and Blackwater. The estate consists of a good farmhouse and outbuildings, substantially built and in excellent repair, and 83 acres of arable and small part pasture land, lying in convenient inclosures round the homestead, and is let for 12 years from Michaelmas, 1859, to Messrs. Taylor, old and punctual tenants, at the very low rent of 83*l.* per annum.—Printed particulars and plans may be had of Messrs. CLOWES, WEDLAKE, and CLOWES, 10, King's Bench-walk, Temple; at the Inns at Chelmsford, Maldon, Colchester, and Witham; at the Auction Mart; and of Messrs. BULLOCK, Holborn.

MILE-END.—Twenty-six Plots of Freehold Building-ground, Land-tax redeemed.

MR. ROBERTS (of Old Jewry) will **SELL** by **AUCTION**, at the Mart, on **FRIDAY**, April 17, at ONE, **TWENTY-SIX PLOTS** of valuable **FREEHOLD GROUND**, most desirably situate on the New-road, called Albert-road, East-street, Mile-end, on the south side of the Eastern Counties Railway, near the Devonshire-street arch, about two miles from the Royal Exchange, and a short remove from the Victoria-park. The soil is sound and dry, and having a deep substratum of gravel, there is an abundant supply of pure and good water at about sixteen feet from the surface. The ground is well stocked with fruit and other trees, and is well adapted for the erection of moderate-sized houses. The roads have been made in the best manner, at an unlimited expense, and the poor and other rates are very low. Each lot will entitle the purchaser to a vote for Middlesex.—Particulars and plans may be had at the Prince Regent Tavern, Globe-road, corner of Devonshire-street, Mile-end; the New Globe, Mile-end-road; at the Auction Mart; of Mr. SCARBOROUGH, 19, Tokenhouse-yard; and of the Auctioneer, 7, Old Jewry.

Valuable Freehold and Leasehold Estates, Homerton, Dalston, and Haggerstone, producing 743*l.* per annum.

MR. ROBERTS (of Old Jewry) will **SELL** by **AUCTION**, at the Mart, on **FRIDAY**, April 17, at Twelve, Three very genteel five-roomed **FREEHOLD HOUSES**, situate King-street, Homerton; Nine capital Houses and Shops, desirably situate, Hertford-terrace, near the Regent's canal-bridge, Haggerstone; Seven neat Residences, containing each seven rooms, kitchen, and large garden, pleasantly situate, Holly-street, Dalston; Two detached Cottages, each containing six rooms and large garden, in Laurel-street, adjoining; Four four-roomed Houses, one with shop, situate Nos. 23 to 26, Woodland-street, Dalston; and Three genteel six-roomed Houses, Nos. 1 to 3, York-street, Kingsland-road, near Haggerstone Church. The whole of the above valuable property is let (part on lease) at low rents. The leaseholds are held for long terms, at low ground rents.—Particulars may be had of J. SCARBOROUGH, Esq., 19, Tokenhouse-yard; at the Lamb and Flag, Homerton; King's Arms, Kingsland-green; at the Mart; and of the Auctioneer, 7, Old Jewry.

Outlands Mansion, Park, and Estate of 900 acres, Surrey, within one mile of the Weybridge or Walton Stations on the South-Western Railway, and within half an hour's ride of the Terminus in London.

MESSRS. DRIVER have been favoured with instructions to offer to **PUBLIC COMPETITION**, at the Auction Mart, Bartholomew-lane, on **TUESDAY**, the 19th of May, at Twelve o'clock, in 64 Lots (unless an acceptable offer for the whole estate should be previously made), the above renowned and highly admired **DOMAIN**, formerly the property and residence of his late Royal Highness the Duke of York. Lot 1 will comprise Outlands Mansion, Offices, delightful Pleasure Grounds, the far-famed Grotto, Kitchen Garden and Lawn, extending to and including part of the magnificent lake called the Broad Water, and containing altogether 97 acres, without exception constituting one of the most desirable and enviable residences, and site of ornamental grounds in the kingdom, and from the house having been recently completely repaired and fitted up in the best style of taste and elegance, forms a most desirable abode for any family. The Park and other Lands south of the Lake will be divided into about 50 lots, varying from 3 to 10 acres each, with the exception of 2 or 3 lots, from 10 to 20 acres, and of the most inviting character for the erection of villas, being upon a peculiarly salubrious soil, and much adorned with ornamental timber, which may be thinned to suit the tastes of the various purchasers. The present Gravel Road, so long the acknowledged and highly admired drive through the Park, leading from Walton to Weybridge, affording at all points fine prospects, will be preserved as the public road and approach to a great number of the lots, and another principal road will be set out to lead through other parts of the park, affording an outlet at the present lodge entrance, where it crosses the South-Western Railway and leads to Cobham, Kingston, and all the adjacent beautiful neighbourhood. The lands on the north of the lake, and extending to the river Thames, will be divided into 7 lots of larger description, one being about 113 acres, and the remainder of the estate, consisting of Weybridge and Child's Farm, containing about 85 acres, will form other lots, besides which there will be 2 other lots in the town of Weybridge of about 10 acres each, admirably adapted for farm ornices.—Printed specifications, with plans annexed, are now prepared, and will be ready for delivery after the 4th of April, and may then be had of Mr. Haines, at the Farm House, Outlands; at the Swan, Chertsey; White Hart, Windsor; Griffin, Kingston; of Messrs. Frere, Foster, and Co. Solicitors, Lincoln's-inn; at the Auction Mart, near the Bank of England; and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Parliament-street, of whom cards to view the mansion may be had.

Immediate Vicinity of Croydon.—Sixty-two Acres of Freehold Land, Tithe Free, and exonerated from Land Tax.

MESSRS. DRIVER have received instructions to submit to **PUBLIC COMPETITION**, at the Auction Mart, Bartholomew-lane, London, on **FRIDAY**, the 8th of May next, at Twelve o'clock, in 10 Lots, the above Sixty-two Acres of **FREEHOLD LAND**, principally Meadow, free of Rectorial Tithes, and exonerated from Land Tax, divided in separate and well-enclosed paddocks, all very eligible situate, adjoining and surrounding Heath Lodge Mansion, lately the residence of Lieut. Col. Utterton, but now of John Morland, Esq. and also adjoining the high road leading from Croydon to Addiscombe and Bromley, and being on a dry gravelly soil, with easy access of water, are peculiarly well adapted for the erection of Villages. The whole is now in the hands of the proprietor, and immediate possession may be had on completion of the purchase.—Printed specifications, with plans annexed, may be had at the Greyhound, Croydon; Lion, Streatham; of F. J. RIDSDALE, Esq. solicitor, 5, Gray's-inn-square; at the Auction Mart; and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Parliament-street.

Votes for the County.—Freehold Building Ground, Two-waters, Herts, contiguous to the Birmingham Railway Station at Boxmoor, and the market town of Hemel Hempstead.

MESSRS. BROOKS and GREEN have received instructions to **SELL** by **AUCTION**, at the Bell Inn, Two-waters, on **THURSDAY**, April 30, at Twelve, 27 Lots of highly desirable **FREEHOLD BUILDING GROUND** on the Manor Farm, having excellent frontages, and offering eligible investments for builders and large or small capitalists. Through the formation of the Birmingham Railway, with its station at Boxmoor, and the consequent facilities for travelling, the applications for residences and apartments for families have been so numerous, that extensive building operations have been most successfully conducted between Two-waters and Hemel Hempstead.—Particulars and plans may be had at the Bell Inn, Two-waters; at the Railway Inns at Hemel Hempstead, Berkhamstead, Tring, Watford, Rickmansworth, and St. Alban's; of Messrs. Smith and Grover, solicitors, Hemel Hempstead; Messrs. Teesdale, Symes, Weston, and Teesdale, solicitors, Fenchurch-street; and of Messrs. BROOKS and GREEN, estate agents, surveyors, and auctioneers, 28, Old Bond-street.

OLD KENT ROAD.—Freehold Residence, producing 3*l.* per annum.

MESSRS. LOVELL and BREMIDGE have been favoured with instructions from the devisees under the will of William Rolls, Esq. deceased, to **SELL** by **AUCTION** at the Auction Mart, on **WEDNESDAY**, April 22, at Twelve, a desirable **FAMILY RESIDENCE**, cheerfully situated in the St. James's-road, Old Kent-road, with front and back Gardens, and Conservatory in the rear. The house has been erected in a very substantial manner, finished and fitted up in a superior style, with suitable arrangements for a small respectable family, and is let to Joseph Rolls, Esq. at the low rent of 36*l.* per annum.—To be viewed by permission of the tenant. Printed particulars may be obtained on the premises; of Mr. J. PRYER, Solicitor, 17, Finsbury Pavement; at the Mart; and of the Auctioneers, 9, Hatton-garden, Holborn.

MARYLEBONE.—Eligible Leasehold Investment.

MESSRS. LOVELL and BREMIDGE have received instructions to **SELL** by **AUCTION**, at the Auction Mart, on **WEDNESDAY**, April 22, at Twelve, a desirable **LEASEHOLD HOUSE** and Appurtenances, with conspicuous and spacious Shop, and two rooms adjoining, situate and being No. 10, Darnley-street, York-place, Marylebone. It contains six rooms above ground story, with two kitchens and washhouse in the basement, and is let on lease to Mr. Thos. Saunders, carrier and gilder, at the moderate rent of 52*l.* 10*s.* per annum, and half for an unexpired term of forty-two years, at a low percentage.—To be viewed; printed particulars may be obtained on the premises; of Messrs. C.W. and C.H. LOVELL, solicitors, No. 14, South-square, Gray's-inn; at the Mart; and of Messrs. LOVELL and BREMIDGE's Offices, No. 4, Hatton-garden, Holborn.

A REDEEMED LAND-TAX of 16*l.* 13*s.* 4*d.* per annum, conferring a Vote for the County of Middlesex.

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FOR

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NICHOLL.—On the 8th inst. the widow of the late Henry Hild Nicholl, D. C. L. of a daughter, still-born.
OLLARD.—On the 11th inst. at Upwell, Cambridgeshire, the wife of William Ludlam Ollard, esq. of a son.
TALBOT.—On the 15th inst. at Whitville, Kidderminster, the lady of William Talbot, esq. solicitor, of a son.

DEATHS.

COBBY, C. W. esq. solicitor, Paternoster-row, on the 8th inst. at 22, Shaftesbury-crescent, Pimlico, aged 30.
DENDY, Samuel, esq. of the firm of Dendy and Morphet, of Bream's-buildings, Chancery-lane, solicitors, on the 15th inst. at his residence in Montague-street, Russell-square, of paralysis, aged 68. He was admitted in Trinity Term, 1801, and practised as a solicitor from his admission till his death, a period of forty-five years.
FIELD, Barron, esq. late Chief Justice of Gibraltar, on the 11th April, at his residence, Meadfoot-house, Torquay, Devon, aged 60.
JONES, Mary Jane, youngest daughter of Charles G. Jones, esq. of Gray's-inn and Craven-hill, Hyde-park-gardens, on the 9th inst. aged 10 years.
LLOYD, Edward, esq. magistrate of Worcester, at that city, aged 67.
MOORE, Mr. Chairman of the Edmonton Petty Sessions, on the 10th inst. at his residence, Church-street, Edmonton, aged 90.
PEARCE, Amy, wife of P. Pearce, esq. of Teignbridge-house, and of Newton Abbott, Devonshire, solicitor, on the 10th inst. aged 36.
PHILLIPS, John Lloyd, esq. barrister-at-law, Registrar of the Supreme Court, &c. Bombay, eldest son of the late Captain Levi Phillips, of Cheltenham, on the 26th ult. at Cairo, on his way to Syria, for the benefit of his health.
STEWART, Patrick Gilbert, esq. for many years an active, efficient, and highly-respected chief magistrate of Perth, the inhabitants of which are indebted to him for many valuable public services, suddenly and unexpectedly, at Perth.
STOUT, John, esq. for twenty-two years a magistrate of the county of Lancaster, on the 11th inst. at his residence, Queen-square, Lancaster, aged 83.
THORPE, William, esq. many years a solicitor of Hastings, on the 11th inst. at that place, aged 62.

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

A. J. J. reminds us that we last week cited the *Debtors and Creditors Act* as 8 & 9 Vict. c. 127, instead of 7 & 8 Vict. c. 70, the former being the Small Debts Act. Thanks.

A YOUNG BEGINNER.—The second volume of Stephens's *Commentaries*.

W. F.—We well remember such a statement. It appeared somewhere among the *Legal Intelligence*, but we have been unable to lay our finger upon it.

The query on a point in Conveyancing is one for Counsel, and is not a point of practice, to which, for obvious reasons, our queries are limited.

H. N. C. (York).—Thanks for pointing out the error. It is almost unavoidable, when the author does not correct his own proofs.

S. Y.—We have no doubt that his conjecture is the true one; but we cannot venture to charge professional malpractices upon a conjecture.

LEX.—We have received no report of this case.

F. A. M. (Cheltenham).—As we do not know whether Mr. Lockwood is an Attorney or only a sham lawyer, we cannot announce him as the latter.

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BUSINESS OF PARLIAMENTARY AGENTS.—Mr. J. Kingdon furnishes us with the following statement, shewing the amount of business transacted by some of the parliamentary agents, viz. the number of railway bills, of which they have the conduct in Parliament:—Bell, Stewart, and Co. 1; Bower and Son, 2; Browne and Son, 4; Bryden, 12; Bulmer and Dumford, 11; Burke and Co. 227; Caldwell, 1; Cameron and Baine, 1; Coppock, 7; Dacre, 1; Deas and Co. 30; Dyson and Co. 79; Dorrington and Co. 131; Everest and Co. 1; Foster, 1; Graham and Co. 43; Gregory and Co. 18; Hilderton, 2; Jackson and Sladen, 1; Jones and Walsley, 1; Lang, 15; Law and Co. 5; McDougall and Co. 5; Parker and Co. 16; Parratt and Walsley, 11; Richardson and Co. 19; Smyth, 7; Spottiswoode and Co. 11; Stal-low and Kingdon, 6; Tyrrell, 2; Waddy, 2; Webster, 30; Williamson and Co. 3; Wright and Co. 7.

HOPS, MALT, BREWERS.—Accounts relating to hops and malt, and of the number of persons licensed as brewers, victuallers, &c. From this return it appears that in the year 1845, there were in the United Kingdom 48,058 1-16 acres of land devoted to the cultivation of hops, on which the duty amounted to 288,526l. 0s. 7½d. Quantity of British hops exported to foreign countries, 151,210 lbs. Foreign ditto exported, 728 cwt. 0 qr. 26 lbs. Imported, 726 cwt. 0 qr. 18 lbs. Malt made between Oct. 10, 1844, and Oct. 10, 1845, 3,749,124 qrs. Between the same dates there were in the United Kingdom 2,637 brewers, of whom 2,324 were resident in England, 198 in Scotland, and 115 in Ireland. There were 87,375 victuallers, of whom 58,035 carried on business in England, 15,846 in Scotland, and 13,474 in Ireland. In England there were 71,594 persons licensed to sell beer to be drunk on the premises, and 3,769 to sell beer not to be drunk on the premises. The brewers consumed in the year 18,972,913 bushels of malt; the victuallers, 7,715,609; and the retailers of beer, 3,304,475.

THE REPORTS.

The following are the names of gentlemen who furnish the *LAW TIMES* with the Reports:—

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Particulars will be ready in due time, and may be obtained of Mr. SINGLETON, Solicitor, Great James-street, Bedford-row; and at the office of Mr. SINGLE, 24, Coleman-street, City.

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Particulars may be obtained of Mr. HUSKEY, Solicitor, Queen-street, Chesham; and at the office of Mr. SINGLE, 24, Coleman-street, City.

MIDDLESEX.—ISLINGTON.—Capital Leasehold Property, detached Residences.

MR. SINGLE will SELL by AUCTION, at the Mart, on WEDNESDAY, April 29, at Twelve for One, in four lots, FOUR well-built and superior semi-detached VILLA RESIDENCES, of attractive elevations, pleasantly situate, 1, 2, 23, and 24, Bellisha Villa, Barnsbury-park, Islington. They each contain, on the ground floor, spacious entrance hall, two handsome parlours communicating by folding doors; first floor, three good bed rooms; second floor, two bed rooms; basement, breakfast room, kitchen, side entrance for domestics, and sundry other conveniences. Nos. 23 and 24 each contain three rooms on second floor, and have washhouses. There are fore-courts in front, and large garden in rear. The situation is high and dry, and the neighbourhood very respectable.

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MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, May 5, at Twelve for One, FOUR well-built HOUSES, and Workshops in rear, situate, 71, Suffolk-street, and 1, 2, and 3, Grand-cane, Southwark, a large and populous neighbourhood. They contain six rooms and kitchen each, and are let to good tenants, at rentals amounting together to about 124l. per annum; held under the Winchester-park Estate for a term, shewen, about 26 years less unexpired, at a ground-rent of 25. per annum on the whole.

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Freehold and Leasehold, Islington, and Southwark, by order of the Executors of the late Mr. J. Runnington, deceased.

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Particulars will be ready in due time, and may be obtained of Mr. GEORGE DREW, Solicitor, Bernersbury; and at the office of Mr. SINGLE, 24, Coleman-street, City.

Twelve Houses, Bernersbury, by order of the Executors of the late Mr. J. Runnington, deceased.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, May 5, at Twelve for One, TWELVE HOUSES, situate Nos. 1 to 7, and 20 to 22, all inclusive, Long-walk, Bernersbury, and a corner shop, No. 1, Little Abbey-street, and No. 2, adjoining; most of them contain about two rooms and wash-house, except No. 20, which contains six rooms. They are all let to good tenants, most of them of long standing, at rentals amounting together to about 140l. per annum. Being in a densely populated neighbourhood, these houses will at all times command good tenants and high rentals.

Particulars will be ready in due time, and may be obtained of Mr. GEORGE DREW, Solicitor, Bernersbury; and at the office of Mr. SINGLE, 24, Coleman-street, City.

WOODFORD.—Freehold Building-land, almost contiguous to the intended Railway-station, in 15 Lots.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, JUNE 2, at 12 for 1, a valuable ESTATE, comprising freehold and copyhold building-ground (fine certain and nominal), divided into 15 lots, presenting desirable building frontages, and situated in and near to Snake's-lane, Woodford. Several of the plots are in the line of the intended railway, and will be required for it, and a station will be erected, it is expected, almost contiguous to the spot. This sale offers a fine opportunity for improving capital, without risk, and open alike to small or large capitalists.—Particulars will be ready in due time, and may be obtained of Mr. Wm. GOVE, Solicitor, 1, Coler-street, north, Dover-road, Southwark; and at the Office of Mr. SINGLE, 24, Coleman-street, City.

Keex, almost contiguous to Brentwood Station.—Two Freehold Estates, Building Land in 20 Plots; a famous situation for a Tavern and for Residences.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, JUNE 2, at Twelve for One, in about 20 plots, Two Valuable FREEHOLD ESTATES, in an elevated and delightful situation, close to the station at Brentwood, on the Eastern Counties Railway, presenting most valuable building frontages on the direct roads from the station. One is situate on the Albert-road, the direct communication from the station to Brentwood, presenting frontages also on a road leading from it, so that at the corner a new leading tavern might at once be erected, which would stand close to the station, and without a rival. The other estate comprises most valuable plots on the main road, known as the Barrack-road, also presenting an invaluable site for a tavern and residence. To those who are sick of inhaling night and day the impure atmosphere of the crowded parts of the metropolis this is an excellent opportunity to purchase a freehold plot of land for the erection of a dwelling, &c. from which they can step into the carriage almost instantaneously, and be in London before they have scarcely had time to fully appreciate the refreshing beauty of the country scenery.—Particulars will be ready in due time, and may be obtained of Mr. THOMAS PRYER, Solicitor, 17, Pavement, Finsbury; and at the Office of Mr. SINGLE, 24, Coleman-street, City.

MILE-END-ROAD.—20 Houses and Building Ground, all held at a peppercorn, comprising good general residences, a large beer-shop, and other shops, and small houses, near the Canal-bridge.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, JUNE 2, at Twelve for One, the above valuable ESTATE, let principally to good and old tenants, and offering an opportunity for a most lucrative investment. The property comprises Nos. 1 to 6, Mile-end-terrace, in Canal-road, Mile-end-road, a capital thoroughfare; each contains, on the second floor, two convenient bed-rooms; first floor, a handsome drawing-room with French ornaments to the floor, and bed-room in the rear; ground floor, two bold parlours; basement, two capital kitchens; and they stand in a most commanding and pleasant situation. Also the 10 houses, some with shops, in a line with the same; together with 25 small houses, comprising the whole of Elizabeth Ann-place, Princess-place, and Providence-row. Mr. Single has collected the rents and had the entire management of this estate for the last eight or ten years, and feels himself justified in recommending it to such as seek investments in property that always commands a ready and good paying tenants.—The average rental is about 200l. per annum. It is held for an unexpired term of about 22 years, without ground rent.—Particulars will be ready in due time, and may be obtained of Mr. W. NOKES, Solicitor, Rectory-place, Woolwich; and at the office of Mr. SINGLE, 24, Coleman-street, City.

CAMBRIDGE-HEATH, near Hackney-road.—21 Houses, in Lots.

MR. SINGLE will SELL by AUCTION, on TUESDAY, JUNE 2, at Twelve for One, TWENTY-ONE HOUSES, as follows: Six Houses, Nos. 21 to 26 inclusive, Melina-place; Three Houses, Ada-street; and Twelve Houses, Nos. 12 to 23 inclusive, George-street, near the Canal-bridge, Cambridge-heath-road, a capital situation for letting. They offer an opportunity for most lucrative investment, being in an old neighbourhood, populous but respectable, and where there are comparatively few small houses; they let remarkably well.—Further particulars will appear in future advertisements, and may be obtained of Mr. WATHEM, Solicitor, St. Swintha's-lane; and at the Office of Mr. SINGLE, 24, Coleman-street, City.

In DURHAM.—Between 2,000 and 2,500 acres of Freehold Land in a Ring-fence, let to yearly tenants, at inadequate rentals, and capable of incredible improvement.

MR. SINGLE will SELL by AUCTION, either in London or at Durham, early in JULY (as he may be determined), a most valuable FREEHOLD ESTATE, in the county of Durham, extending over about 2,500 acres of valuable and improvable land, the full resources of which may be said to be not yet known or developed, let to yearly tenants at rentals so low as to afford any idea of its value, and the whole capable of improvement in a variety of ways. Mr. Single is now going down to survey the estate, for the purpose of selling it by auction, in one or more lots, and on his return he will enter into a more detailed description. The wonderful alteration which has taken place of late throughout the United Kingdom, through the railway, the rapid deterioration in value of some property, and almost instantaneous and unexpected augmentation of value of other parts, must make it manifest to capitalists that such a property as this may, either by good management on the part of a purchaser, or by the vicissitudes of business movements throughout the country, become shortly worth perhaps half as much more—perhaps as much more as it is at present.—Particulars may be obtained at the office of Mr. SINGLE, 24, Coleman-street, City.

Hants, near Hardley-row and a Railway Station.—Forty-two Acres, with a House, &c., and Four five-acre Plots, all Freehold Building Land, in lots, small and large.

MR. SINGLE has arranged to SELL the whole, in lots, by AUCTION, at the Mart, on TUESDAY, JUNE 2, at Twelve for One. The estate is prettily ornamented with thriving plantations, and on it are some of the prettiest sites in England for building. The land is famous for gardening purposes, and what with the probable cheapness of railway conveyance, and the raising of the Government Surveyors and Parliament itself against the increased health and delight from living in the country, thousands of the inhabitants of the metropolis are likely, by and by, to reside in such a locality as this in preference to the metropolis. For a few pence a day, or long one will be whirled from his snug little home, 20 or 30 miles in the country, to his place of business in London, just while he barely has time to arrange the shortest mode of despatching his day's business to get back early to his homelife and delightful home. There will be some rare speculation lots, even for such as may not see any immediate desire for them or inclination to let at present.—Particulars will be ready in due time, and may be obtained of Mr. THOMAS PRYER, Solicitor, 17, Pavement, Finsbury; and at the office of Mr. SINGLE, 24, Coleman-street, City.

IN SURREY, near Frimley and a Railway Station.—120 acres of Freehold Building Land, in small and large lots.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, MAY 5, at Twelve for One o'clock, two acres of FREEHOLD BUILDING LAND, not cut in successive compartments, and situated upon the high road from London to Frimley, about half a mile from Frimley, and not far distant from the Farnborough Railway Station. Offering such a rare opportunity for purchasing for the erection of a residence for one's self, or for letting, at moderate ground-rents on building-land, rarely not again occur in half a century. The unexpired term of five years, through railways, will one long cause building land, in such situations as this, to be more valuable than this now in the neighbourhood of London. People of all grades and classes in London will, in two or three years hence, live a few miles in the country, and, for 4l. or 5l. a year, will be able to come 20 or 30 miles to London and back daily, in such time as they would waste in walking from one part of the town to another. The land is high, beautifully undulating surface, and commands delightful views in all directions.—Particulars will be ready in due time, and may be obtained of Mr. WILLIAM NOKES, Solicitor, Rectory-place, Woolwich; and at the office of Mr. SINGLE, 24, Coleman-street, City.

ESSEX.—Freehold Estates, High-road, West Ham.—Two Family Residences and Paddocks in Plots for building purposes—an Improving Property.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, MAY 5, at Twelve for One o'clock, in lots, a very eligible FREEHOLD ESTATE, situate on the high road from West Ham to Finsbury, comprising two capital old Family Residences, together with a famous Paddock, comprising about five acres. One of the residences contains, on the ground floor, entrance hall, dining room, drawing room, and sitting room, two kitchens, pantry, dairy, ample cellars, &c.; first floor, two good bed rooms and two dressing rooms; second floor, three bed rooms and dressing room; there is a fine large court yard, ample stabling, coach-house, bath, hot and cold, gardeners' cottages, &c.; behind which are capital pigeon-hole, bullock stalls, large and productive kitchen garden, greenhouse, fish pond, and other things too numerous to detail. The other residence, which is also very large, and possesses extensive and valuable premises behind, has been used as a silk factory, and is valuable either as business premises or for a residence. The land will be sold in four plots. West Ham has but just commenced that course of improvement which has gone on for years in other neighbourhoods around London.—Particulars will be ready in due time, and may be obtained at the office of Mr. SINGLE, 24, Coleman-street, City.

DALSTON.—Eight Residences.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, JUNE 2, at Twelve for One, in six lots, SIX well-built RESIDENCES, elegantly situate in Holly-street, Queen's-road, Dalston; one is a corner house, with double-fronted shop, baker's oven, &c. and is let for three years at 40l. per annum clear; the others contain six rooms each, have good gardens, and are of the annual value of 23l. Also two semi-detached cottages, containing about six rooms each; term 75 years; ground rent, 2l. each house.—Further particulars will appear in a future advertisement, and in the mean time may be obtained of Mr. GEORGE FITCH, Solicitor, 15, New Bridge-street, Blackfriars; and at the office of Mr. SINGLE, 24, Coleman-street, City.

WIMBLEDON and WESTHILL PARKS. Surrey, late the properties of the Duke of Sutherland and Earl Spencer. **MESSRS. DANIEL SMITH and SON** respectfully announce that the subdivision of the several beautiful and choice portions of these splendid Domains, about to be appropriated for the Erection of Detached Mansions and Villas, is now arranged, and that the Plans shewing the different sites may be inspected at their Offices in Waterloo-place; and Mr. Hendry, at Tibbett's Lodge (one of the entrances of the Park from Putney-heath), will shew the various lots to any one wishing to select his own site on the spot.

Messrs. S. confidently urge a visit to this singularly attractive and unrivalled spot (only five miles from Hyde-park corner), as it indisputably opens to the Public the most beautiful and eligible sites for Building that can be found within any moderate distance of the Metropolis, especially with regard to the bold undulations and rich scenery of the various grounds; its magnificent Timber and extensive Lake; also as to the proverbial salubrity of the air (embracing the vast and healthy tracts of Wimbledon and Putney Heaths); its favourite and highly respectable neighbourhood, beautiful Rides and Drives, and the advantage of Railroad Communication on both sides.

Waterloo-place, April 23, 1846.

STANMORE HALL. Middlesex, about 24 miles from the Harrow Station on the Birmingham Railway, and one of the most healthy and select neighbourhoods within the same easy reach of the Metropolis.

MESSRS. DANIEL SMITH and SON respectfully apprise the public, that (unless an acceptable offer should be previously made by private treaty) the above beautifully situated **FREHOLD PROPERTY**, on which many thousands of pounds have been recently expended, will be submitted for **PUBLIC SALE**, at the Mart, early in the Spring. It comprises a singularly handsome and admirably constructed Mansion, in the early Tudor style of architecture, with a beautiful tower and oratory. It is most substantially built and faced with the grey Kentish rag and fine Caen stone, on a broad bold terrace, with south-east aspect, leading to a finely timbered and varied pleasure-grounds, opening on three sides to very rich and extensive scenery. It has a capital walled garden, a greenhouse, &c. The Mansion is not completed, but the original house not having been removed, may be used as a convenient residence during the completion of the new edifice.—Particulars, with plans, will be ready when the day of sale is fixed, and may then be had in Waterloo-place, Pall-mall; at the Auction Mart; of Messrs. NELSON and WYNN, Solicitors, Gresham-place, Lombard-street; and in the interim the estate may be viewed with cards; and Messrs. SMITH are fully authorized to dispose of the property.

ST. LEONARD'S, in WINDSOR PARK.—The splendid Seat of the late William Dawson, esq. for the last three years occupied by Lord Haddo, delightfully situated adjoining St. Leonard's Hill (the noble seat of Colonel Harcourt), amidst the most romantic and elevated portions of the Royal Park, with a magnificent View of the Castle, the Thames, and rich surrounding country; also a former portion of the Forest adjoining, situated with venerable Timber, offering a choice Site for Building.

MESSRS. DANIEL SMITH and SON have the honour to announce to the Nobility and others seeking a capital and beautifully situated residence, that they are instructed to **SUBMIT TO PUBLIC SALE**, early in JUNE next (unless an acceptable offer shall be previously made by Private Contract), in Two Lots, the above most justly-admired and elegant noble **MANSION**, admitted to stand unrivalled (except, perhaps, by its princely neighbour St. Leonard's-hill) in the whole circle of the court. The mansion is modern and of an elegant and chaste style of architecture, placed on the verge of a romantic and finely-wooded eminence, perfectly secluded, overlooking a lovely vale and a great breadth of the Royal parks, with the magnificent castle towering in the back ground, with the rich banks of the Thames, Eton College, and other interesting objects. The house contains a splendid suite of rooms, with east and south aspects, a beautiful conservatory, paved terrace, &c. surrounded by a rich small park, of nearly 100 acres, adorned with handsome timber, noble avenue of limes, a sheet of water, with extensive terrace and other walks. About 20 acres adjoining will be offered in a separate lot, extending from St. Leonard's hill to the Winkfield-road, opposite Forest-hill, presenting a fine and romantic building site, bounded on one side by Lot 1, and on the other by some of the private drives and plantations of the royal park, through which and the beautiful grounds of Colonel Harcourt, are the approaches to this delightful domain.—The estate can be viewed only with cards, which may be had at Messrs. SMITH'S Offices, in Waterloo-place, Pall-mall, and Windsor; or of THOMAS WEBSTER, Esq. Solicitor, Queen-street, Cheap-side.

The Maer Hall Estate, in Staffordshire, with Mansion, Manor, beautiful Lake, valuable Farms and Plantations; also the Advowson and a smaller Residence, with 27 acres of Land, adjoining between Drayton and Newcastle-under-Lyne, about midway between Birmingham and Liverpool, and only a mile and a half from a first-class station on the Birmingham Grand Junction Railway.

MESSRS. DANIEL SMITH and SON are commissioned by the Executors of the late Josiah Wedgwood, esq. to **SUBMIT TO PUBLIC SALE**, in JUNE next (unless an acceptable offer shall be previously made by Private Contract), the above very valuable and most desirable **FREHOLD DOMAIN**, comprising, in a ring-fence, about 1,100 acres of excellent, sound, healthy land, finely undulated and ornamentally wooded, surrounding the old family seat of Maer Hall. The handsome lake, or mere, with the fine woods and covers for game, interspersed on the estate, with the patronage of the church, which is close to the mansion, render it an attractive and most enjoyable residence, in addition to its solid recommendations as a safe and improving landed investment. The adjoining residence, with 27 acres of land, is known as Camp Hill, and is only one mile from the Whitmore Railway Station.—The estate may be viewed, and particulars, with plans, will be published when the day of sale is fixed. In the interim, any information may be obtained at their offices in Waterloo-place, Pall-mall, London.

Long Leasehold Estate, Cumberland Market, near the Regent's Park.

MESSRS. DANIEL SMITH and SON will OFFER for absolute **SALE BY AUCTION**, at the Mart, on **TUESDAY, APRIL 23**, at Twelve, by direction of the Administratrix of the late Mr. John Sheppard, a valuable **ESTATE**, held under the Crown for an unexpired term of 79 years, and now producing, from respectable tenants, a net rental (after deducting the ground rent of 24*l.*) of 235*l.* The estate comprises six houses, forming the prominent corner on the east side of Cumberland Market, one a coffee and chop house, and another an old-established dairy. The estate may be viewed by application to the tenants (Messrs. Allen, Peuple, and others), and particulars may be had upon the premises; at the Auction Mart; of Messrs. SMART and BULLER, Solicitors, 56, Lincoln's-inn-fields; and at Messrs. DANIEL SMITH and SON'S Offices, in Waterloo-place, Pall-mall.

Outlands Mansion, Park, and Estate of 900 acres, Surrey, within one mile of the Weybridge or Walton Stations on the South-Western Railway, and within half an hour's ride of the Terminus in London.

MESSRS. DRIVER have been favoured with instructions to offer to **PUBLIC COMPETITION**, at the Auction Mart, Bartholomew-lane, on **TUESDAY**, the 19th of May, at Twelve o'clock, in 64 Lots (unless an acceptable offer for the whole estate should be previously made), the above renowned and highly admired **ROYAL HIGHNESS** of the Duke of York. Lot 1 will comprise Outlands Mansion, Offices, delightful Pleasure Grounds, the far-famed Grotto, Kitchen Garden and Lawn, extending to and including part of the magnificent lake called the Broad Water, and containing altogether 97 acres, without exception constituting one of the most desirable and enviable residences, and site of ornamental grounds in the kingdom, and from the house having been recently completely repaired and fitted up in the best style of taste and elegance, forms a most desirable abode for any family. The Park and other Lands south of the Lake will be divided into about 56 lots, varying from 3 to 10 acres each, with the exception of 2 or 3 lots, from 10 to 20 acres, and of the most inviting character for the erection of villas, being upon a peculiarly salubrious soil, and much adorned with ornamental timber, which may be thinned to suit the tastes of the various purchasers. The present Gravel Road, so long the acknowledged and highly admired drive through the Park, leading from Walton to Weybridge, affording at all points fine prospects, will be preserved as the public road and approach to a great number of the lots, and another principal road will be set out to lead through other parts of the park, affording an outlet at the present lodge entrance, where it crosses the South-Western Railway and leads to Cobham, Kingston, and all the adjacent beautiful neighbourhood. The lands on the north of the lake, and extending to the river Thames, will be divided into 7 lots of larger description, one being about 112 acres, and the remainder of the estate, consisting of Weybridge and Child's Farm, containing about 85 acres, will form other lots, besides which there will be 2 other lots in the town of Weybridge of about 10 acres each, admirably adapted for farm purposes.—Printed specifications, with plans annexed, are now prepared, and will be ready for delivery after the 4th of April, and may then be had of Mr. Haines, at the Farm House, Outlands; at the Swan, Chertsey; White Hart, Windsor; Griffin, Kingston; of Messrs. Frere, Forster, and Co. Solicitors, Lincoln's-inn; at the Auction Mart, near the Bank of England; and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Parliament-street, of whom cards to view the mansion may be had.

Immediate Vicinity of Croydon.—Sixty-two Acres of Freehold Land, Tithie Free, and exonerated from Land Tax.

MESSRS. DRIVER have received instructions to submit to **PUBLIC COMPETITION**, at the Auction Mart, Bartholomew-lane, London, on **FRIDAY**, the 8th of May next, at Twelve o'clock, in 10 Lots, the above Sixty-two Acres of **FREHOLD LAND**, principally Meadow, free of Rectorial Tithes, and exonerated from Land Tax, divided in separate and well-enclosed paddocks, of very eligible situate, adjoining and surrounding Heath Lodge Mansion, lately the residence of Lieut. Col. Utterton, but now of John Morland, esq. and also adjoining the high road leading from Croydon to Addiscombe and Bromley, and being on a dry gravelly soil, with easy access of water, are peculiarly well adapted for the erection of Villas. The whole is now in the hands of the proprietor, and immediate possession may be had on completion of the purchase.—Printed specifications, with plans annexed, may be had at the Greyhound, Croydon; Lion, Streatham; of F. J. RIDSDALE, Esq. solicitor, 5, Gray's-inn-square; at the Auction Mart; and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Parliament-street.

SALE POSTPONED TO THE 21st OF MAY.

Votes for the County.—Freehold Building Ground, Two-waters, Herts, contiguous to the Birmingham Railway Station at Boxmoor, and the market town of Hemel Hempstead.

MESSRS. BROOKS and GREEN have received instructions to **SELL BY AUCTION**, at the Bell Inn, Two-waters, on **THURSDAY, MAY 21**, at Twelve, 27 Lots of highly desirable **FREHOLD BUILDING GROUND** on the Manor Farm, having excellent frontages, and offering eligible investments for builders and large or small capitalists. Through the formation of the Birmingham Railway, with its station at Boxmoor, and the consequent facilities for travelling, the applications for residences and apartments for families have been so numerous, that extensive building operations have been most successfully conducted between Two-waters and Hemel Hempstead.

Particulars and plans may be had at the Bell Inn, Two-waters; at the Railway Inn at Hemel Hempstead, Berkhamstead; Tring, Waterford, Rickmansworth, and St. Alban's; of Messrs. Smith and Grover, solicitors, Hemel Hempstead; Messrs. Teesdale, Symes, Weston, and Teesdale, solicitors, Fenchurch-street; and of Messrs. BROOKS and GREEN, estate agents, surveyors, and auctioneers, 28, Old Bond-street.

Periodical Sales (established in the year 1803) of Reversions, Life Interests, Annuities, Policies of Assurance, Advowsons, Next Presentations, Rent Charges in lieu of Tithes, Post-obit Bonds, Tonlines, Debentures, Ground Rents, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and all Public Undertakings.

MESSRS. SHUTTLEWORTH and SONS respectfully inform the public, that upwards of 30 years' experience having proved the classification of this species of property to be extremely advantageous and economical to vendors, and equally satisfactory and convenient to purchasers, the **PERIODICAL SALES** of reversionary interests, policies of insurance, tonlines, debentures, advowsons, next presentations, all securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through 1846, as follows:—

Friday, May 1	Friday, September 4
Friday, June 5	Friday, October 2
Friday, July 3	Friday, November 5
Friday, August 7	Friday, December 4

Particulars may be had Ten days previous to each sale, at the Royal Hotel, Manchester; the Adelphi Hotel, Liverpool; Dee's Royal Hotel, Birmingham; the Angel, Oxford; the Eagle and Child, Cambridge; at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Periodical Sale.—Established 1803.—Absolute Reversions, Valuable Life Interests, Shares, Policies, &c.

MESSRS. SHUTTLEWORTH and SONS are instructed to include in their **Periodical Sale** of Reversionary Interests, &c. appointed to take place at the Auction Mart, on **FRIDAY, May 1**, at Twelve, the **ARSO-LUTE REVERSIONS** to the several sums of 1,000*l.* and 850*l.* secured upon 24,500*l.* 19*s.* 5*d.* Consols, 1875. The ditto to 3,250*l.* Three per Cent. Consols, 1875. The ditto to 1,769*l.* 18*s.* 3*d.* Three per Cent. Reduced Annuity, 1875. The ditto to 1,039*l.* 10*s.* New Three-and-a-Quarter per Cent. Consolidated Bank Annuities, 1875. The ditto to 1,050*l.* 13*s.* 4*d.* Three per Cent. Consols, 1875. Twenty shares of 10*l.* each, paid in full, and paying a dividend of 4 per cent. in the Norwich Union Reversionary Interest Society. The Life Interest of a gentleman aged 59 in the sum of 18,132*l.* sterling, at present invested upon mortgage at 4 per cent, and producing 722*l.* 8*s.* 6*d.* per annum. A policy for 2,500*l.* on the same 25, effected with the London Life Association, in 1831, reduced premium, 43*l.* 8*s.* 6*d.* A ditto for 1,500*l.* on the same life and with the same office, effected 1834, reduced premium 26*l.* 1*s.* 1*d.* A ditto for 4,000*l.* with a considerable bonus, effected on the same life with the Norwich Union Office in 1834, annual premium 159*l.* A ditto for 4,000*l.* effected with the Economic Assurance Company, June 1837, annual premium 126*l.* 3*s.* 6*d.* The Reversionary Interest in the sum of 4,574*l.* sterling and 915*l.* Consols, secured on the death of the above gentleman and two ladies, aged 57 and 24 years.—Particulars may be had, in due time, of Mr. Fisher, solicitor, 4, Furnival's-inn; of Mr. Lane, solicitor, Argyl-street; of Messrs. Lucas and Parkinson, solicitors, Argyl-street; of Mr. Bockett, solicitor, 60, Lincoln's-inn-fields; at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Commercial-road East.—To Small Capitalists.

MESSRS. SHUTTLEWORTH and SONS are instructed by the Mortgagee to **SELL BY AUCTION**, at the Mart, on **FRIDAY, MAY 5**, at Twelve, five lots, an eligible **LEASEHOLD ESTATE**, comprising five convenient dwelling-houses, desirably situate, Nos. 22 to 26, both inclusive, Bedford-street, Commercial-road East, held for an unexpired term of 56 years, at a ground-rent of 3*l.* per house, and in the occupation of respectable tenants, the rents amounting together to about 180*l.* per annum.—May be viewed with leave of the tenants, and particulars had, ten days previous to the sale, of Messrs. WEFMOUTH and GREEN, Solicitors, 10, Angel-court, Thurgarton-street, at the Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

The Books of the late L. B. Allen, esq. of Dulwich, common.

MESSRS. WINSTANLEY are instructed by the Executors to **SELL BY AUCTION**, at the Residence, on **TUESDAY, April 23**, a **LIBRARY** of about 1,500 volumes, including the Works of Gibbon, Dryden, Bacon, Johnson, Pope, Addison, Sterne, Swift, Cooper, Crabbe, Hume, Rapin, and others, together with well-selected modern Publications of Voyages and Travels, the Encyclopedia Metropolitana, Annual Register of Books & Prints, &c.; also a collection of Law Books, amongst which are the Statutes at Large and State Trials.—On view. Catalogues may be obtained at the residence, and of Messrs. WINSTANLEY, Paternoster-row.

A NEW DISCOVERY.—Mr. HOWARD.

Surgeon-Dentist, 52, Fleet-street, begs to introduce an **ENTIRELY NEW DESCRIPTION OF ARTIFICIAL TEETH**, fixed without springs, wires, or ligatures. The so perfectly resemble the natural Teeth as not to be distinguished from the original by the closest observer; they **NEVER CHANGE COLOR OR DECAY**, and will be found very superior to any Teeth ever before used. The method does not require the extraction of roots or any painful operation, and will give support and preserve teeth that are loose, and is guaranteed to restore articulation and mastication; and that Mr. Howard's improvement may be seen in the reach of the most economical, he has fixed his charge at the lowest scale possible. Decayed teeth rendered sound and useful in mastication.—52, Fleet-street. At home from Ten till Five.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. VII. No. 161.]

SATURDAY, MAY 2, 1846.

(DOUBLE NUMBER.)

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Situations Wanted.

AW.—The Advertiser is desirous of a RE-ENGAGEMENT in a Solicitor's Office in town. is well acquainted with Conveyancing, but would have objection to attend to the Accounts if necessary, and make itself generally useful. Age 27. Salary required, eighty pence. Respectable references will be given. Address to H. H. at Mr. SIBLEY'S, 97, Chancery-lane.

AW.—WANTED, a SITUATION as Copying or Common Law CLERK by a respectable young Man, who writes a good hand and can engross; has been in the Profession several years, and is well acquainted with the general routine of an office of small practice. Address (pre-paid) to M. E. at M. WALTON'S, Law Stationer, Bridgenorth.

AW.—A GENTLEMAN, who has been admitted, wishes for an ENGAGEMENT, to attend the general Practice, or to the Conveyancing department, required, of a Solicitor's office, under the superintendence of the Principal. Address, R. M. LAW TIMES Office.

AW.—The Advertiser, aged 22 years, who has just completed his service under articles, but not admitted, is desirous of obtaining active EMPLOYMENT in the Office of a Solicitor, either in the country or town, where he would have an opportunity of seeing the general routine of the office. A moderate salary will be expected. Address, pre-paid, A. B. 145, Southwark-bridge-road, London.

AW.—WANTED by a Gentleman, aged 30, of active, persevering, and business habits, a situation in a Country Solicitor's Office, to make out bills of sale, keep the accounts, and conduct the business under the superintendence of the principal, having filled for some years a similar situation. References of the first respectability. Apply L. E. X. Mr. HARTON'S, 33, Marylebone-street, Regent-street, London.

LAW.—A respectable young Man, 25 years of age, of business habits, possessing a knowledge of conveyancing, conversant with accounts, and the ordinary routine of a country office, and competent to undertake all the duties of a Poor Law Union, including Registration business, is desirous of being ARTICLED with a gentleman who will accept his services in lieu of a premium, and give a moderate salary. The advertiser has been upwards of nine years in two offices of extensive practice, and can furnish the most satisfactory testimonials, as to character, &c. Apply, by letter, pre-paid, B. A. Post-office, Brigg, Lincolnshire.

LAW.—WANTED, by a Gentleman of experience, an Engagement as MANAGING CLERK in an office of respectability in the country. The advertiser is an admitted attorney, and well acquainted with Conveyancing, Chancery Practice, drawing Bills of Costs of every description, keeping heavy Cash Accounts, Poor-law Union, and all the routine of general business. A Solicitor wishing to increase his practice, or having arrears to get up, would find the advertiser an efficient assistant. A liberal salary expected. Address A. B. Messrs. WILKINSON, Law Stationers, 49, Coleman-street.

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A YOUNG MAN, 21 years of age, WANTS a SITUATION as CLERK in any Commercial Establishment or Merchant's Counting-house. Unexceptionable references will be given as to character and family connection, also testimonials of ability from the gentleman with whom his engagement has just terminated. Address, W. C. LAW TIMES Office, 29, Essex-street.

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LAW.—WANTED, by a firm in the City, a CLERK, thoroughly conversant with Bankruptcy and Conveyancing.—Apply by letter, stating age, salary, and length of practice.

Also an ACTIVE LAD, who can write well. Address to X. Z. care of Messrs. WATERLOW, Law Stationers, 24, Birchin-lane.

Legal Notices.

LINCOLNSHIRE.—The MANOR of BOURN ABBOTS.—THE GENERAL COURT BARON OF W. A. POCHIN, Esq. for the Manor of Bourn Abbots, with its Members, will be held on THURSDAY, the 7th MAY instant, at the Angel Inn, Bourn.

Spalding, May 1, 1846. WILLIAM EDWARDS, Steward.

LANCASHIRE INTERMEDIATE SESSIONS.—NOTICE IS HEREBY GIVEN, that a GENERAL SESSION of the PEACE for the County Palatine of LANCASTER, for the trial of persons committed and held to bail on charges of felony and misdemeanor, will be held at the Court-house in PRESTON, on FRIDAY, the twenty-second day of MAY next, at Ten o'clock in the forenoon, and at the NEW BAILEY Court-house, in SALFORD, on MONDAY, the twenty-fifth day of MAY next, at Ten o'clock in the forenoon.

GORSST and BIRCHALL, Clerk of the Peace's Office, Preston, Dep. C. P. April 29, 1846.

Practice for Sale.

PRACTICE FOR SALE.—In a most delightful neighbourhood, near Bristol, and about two miles from a railway station, an excellent opportunity offers itself for a gentleman to COMMENCE PRACTICE. The Advertiser, having established the business, within the last few years, and leaving the neighbourhood for reasons which will be stated, requires a very small premium. For further particulars apply to D. G. LAW TIMES Office, Essex-street, Strand.

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LAW PARTNERSHIP.—A Solicitor having an established and increasing Practice, will be happy to treat with any gentleman wishing to purchase a share. No one need apply who cannot command from 1,000*l.* to 1,500*l.* Unexceptionable references will be given and required. For particulars apply by letter, pre-paid, to G. C. Z., Mr. Spettigue's, Law Publisher, 67, Chancery-lane, London.

PARTNERSHIP, immediate, or after a term of Clerkship.—An Auctioneer and Valuer, &c. in the City, wishes to ENGAGE a GENTLEMAN in his Office having the command of a moderate amount of capital. This would be found a most favourable opportunity for any gentleman desirous of establishing himself or a son in business.

Apply by letter, pre-paid, to B. T. care of Messrs. WITHERBY, Law Stationers, 9, Birchin-lane.

LAW.—PRACTICE or PARTNERSHIP WANTED; must be well established, of undoubted respectability. The party seeking this has been in practice many years. Any elderly gentleman wishing to retire, or be relieved of a great portion of his labours, will find an opportunity of confiding his connexions to hands that will bear the strictest inquiry.

Apply by letter, to D. D. at the Office of the LAW TIMES, Essex-street, Strand, London.

LAW PARTNERSHIP.—A Gentleman, of business habits and nearly 30 years of age, wishes to join a highly respectable practice in the country as JUNIOR PARTNER. Any solicitor having spent an active life, and wishing partly to retire, would find this an eligible opportunity for forming a connection. A premium proportionate to the amount of share will be paid. None but principals need apply, and only those whose respectability will bear a rigid enquiry. All communications to be strictly confidential.

Apply by letter to A. B. Williams and Co. Wholesale Stationers, 29, Bucklersbury, London.

JOHN BETTINGTON, Esquire, deceased.

—This Gentleman, in 1795, intermarried with the daughter of Mr. Brindley, the celebrated Engineer of that day, then residing at Stafford, or in the county, on which marriage a settlement was made between the parties.

Mr. Bettington, a few years since, removed to Cheltenham, and, it is believed, died there.

Any person who can give information as to the present existence of the said Marriage Settlement, or an attested Copy of it, and where it can be seen, will confer an obligation upon one of the family of the parties, who will also, if required, pay a fee by a Post-office Order of Ten Shillings for the information so given, by application to Mr. D. Baynton, Bristol.

USEFUL LAW BOOKS.

—Statutes at Large, from Magna Charta to 55 George 3rd, 55 vols. 8vo. fine copy, bound, 18*l.*; another copy, from 1 Wm. 4th, 1831, to 8 & 9 Vict. 1845, 15 vols. 8vo. bds. 9*l.*; Tyrwhitt and Tyndale's Digest of the Statutes, 3 vols. 4to. calf, 30*s.* 1826; Digest of the Law Journal Reports, from 1822 to 1840, 4 vols. 4to. half-calf, 2*l.* 15*s.* (cost 7*l.*); Hansard's Parliamentary History of England, from the Norman Conquest to 1800, 35 vols. new, in bds. 3*l.* 10*s.* (cost 40*l.*); Harrison's Digest to all the Reports, 3 vols. 25*s.* 1837; East's Reports, 16 vols. 4*l.* (cost 17*l.*); Justice of the Peace, 1837 to 1844, 8 vols. 4to. fine copy, half-calf, 4*l.* 4*s.* (cost 14*l.*); Evans's Collection of Statutes, 10 vols. 1836, fine copy, bound, 4*l.* 10*s.*; Sugden on Vendors and Purchasers, 3 vols. 2*l.* 10*s.* 1839, on sale at WILBY and SON, 90, Chancery-lane. On Thursday next will be published (gratis), Wildy and Son's Catalogue of Law Books, comprising 15,000 volumes, the whole of which are offered at excessively low prices. Gentlemen, on forwarding their addresses, will have it sent to them postage free. Early application is most respectfully solicited, as a very limited number is printed.

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DEATHS.

CORRIE, Mrs. Catherine, the wife of William Corrie, esq. barrister-at-law, on the 29th ult. in Gower-street.

FLOUNDERS, Benjamin, esq. J. P. for the counties of York, Durham, and Salop, on the 12th ult. at his house at York, aged 77.

NEED, John, esq. at his residence, Sherwood Hall, on the 21st ult. aged 86.

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MR. MARSH (late Fuller and Marsh) respectfully informs the Public, that his PERIODICAL SALES by AUCTION of the above description of PROPERTY will be continued throughout the present year as follows:—

Thursday, May 7.	Thursday, September 3.
Thursday, June 4.	Thursday, October 1.
Thursday, July 2.	Thursday, November 5.
Thursday, August 6.	Thursday, December 3.

Notice of sales intended to be effected by the above means should be forwarded to Mr. MARSH 14 days prior to each date.—No. 27, Bucklersbury, corner of Charlotte-row, Mansion-house, London.

Periodical Sale.—Debentures, Shares, and Bonds, without reserve.

MR. MARSH (late Fuller and Marsh) has received instructions to include in his next Monthly Sale of Reversionary Property, Shares, &c. appointed to take place at the Mart, on THURSDAY, MAY 7, at Twelve, in lots, FIVE 100l. SHARES, 1000l. called and paid in the Croydon Canal Company; one 1,000l. Debenture, secured upon the Bury Turnpike Trust, Arundel, in the county of Sussex, bearing interest at 5 per cent. per annum; one ditto Debenture for 450l.; a Turnpike Debenture for 100l. secured on the Dorking and Horsham Turnpike-road, bearing interest at 4 per cent. per annum; and Two 100l. Bonds, secured on the Storrington and Wiston Turnpike Trust, in the county of Sussex, bearing interest at 5 per cent. per annum.—Particulars may be obtained at the principal inns at Dorking, Horsham, and Arundel; of Messrs. FEW, HAMILTON, and FEWS, Solicitors, Henrietta-street, Covent-garden; at the Mart; and at Mr. MARSH'S offices for the sale of reversions, shares, &c. 27, Bucklersbury.

PERIODICAL SALE.—A contingent Reversionary Interest in the sum of 1,270l. sterling.

MR. MARSH (late Fuller and Marsh) has received instructions to include in his next Monthly Sale of Reversionary Property, appointed to take place at the Mart, on THURSDAY, MAY 7, at Twelve o'clock, A CONTINGENT REVERSIONARY INTEREST in and to the sum of £1,270 sterling, invested, with other trust monies on estates in Derbyshire, Nottinghamshire, and Yorkshire, of ample value, and to which the purchaser will be entitled at the decease of a lady now aged 44 years.—Particulars may be obtained at the Mart; of THOMAS BEARDSHAW, Esq. Solicitor, Workop, Nottinghamshire; and at Mr. MARSH'S Offices, 27, Bucklersbury.

PIMLICO.—Valuable long Leasehold Property on the Grosvenor Estate.

MR. MARSH (late Fuller and Marsh) has been favoured with instructions from the Mortgagee under a power of sale, to SELL by AUCTION, at the Mart, on THURSDAY, MAY 7, at Twelve, in five lots, desirable LEASEHOLD ESTATES, consisting of six modern brick-built dwelling houses, being Nos. 22, 23, 24, 39, 40, and 61, Hindon-street, Vauxhall-bridge-road; also a corner dwelling house and baker's shop, No. 38, Hindon-street; three small private residences, Nos. 2, 3, and 4, Lower-street, Leonard-street; and two cottages in St. Leonard's-court, Lower-street, Leonard-street, Hindon-street, Pimlico, all of which are in the occupation of respectable tenants, at rentals amounting to 254l. 16s. per annum, and are held for upwards of 80 years, at low ground-rents.—May be viewed on application, and by permission of the respective tenants, of whom particulars may be obtained: also at the Star and Garter, Sloane-square, Chelsea; the Admiral Keppel, Brompton; of G. J. PARSON, Esq. Solicitor, Haslemere, Surrey; and at the offices of Mr. MARSH, 27, Bucklersbury, corner of Charlotte-row, Mansion-house.

On the Morden College Estate.—Valuable and secure long Leasehold Investments, contiguous to the Royal Hospital, Greenwich, the Park, and the East Greenwich-pier, apportioned in lots to meet the convenience of small purchasers.

MR. MARSH (late Fuller and Marsh) has been favoured with instructions to submit to public COMPETITION at the Mart, on THURSDAY, MAY 7, at Twelve o'clock, in 19 lots, several eligible and rapidly improving LEASEHOLD ESTATES, consisting of 19 modern, substantially-built, and well-finished dwelling-houses, comprising Nos. 11, 12, 13, and 14, Pelton-road; 1, 2, 3, 4, and 5, Lambton-terrace; 16, 17, and 18, Wellington-street; 22, 24, and 25, Derwent-street; and 4, 5, 6, and 7, Walbridge-street, Pelton-road, East Greenwich. The greatest portion of the before-mentioned houses are most respectably tenanted, and the various lots are held for an unexpired term of 72 years, at nominal ground rents. A portion of this estate has been selected for the site of an intended new church, and the new pier from its commanding situation, it is confidently expected, will considerably enhance the value of the property on this valuable estate.—May be viewed, and particulars of sale obtained of Mr. Webb, at Messrs. Coles, Child, and Co.'s, East Greenwich; at the Grayhound, Greenwich; Green Man Hotel, Blackheath; Crown and Anchor, Woolwich; Dover Castle, Deptford; of Messrs. SCOTT and COMBS, Solicitors, 6, St. Mildred's-court, Poultry; and at Mr. MARSH'S Offices, 27, Bucklersbury, corner of Charlotte-row, Mansion-house. One half the purchase-money of each lot may remain on mortgage for five or seven years.

MARGATE, KENT.

MR. MARSH (late Fuller and Marsh) has received instructions from the Mortgagee, to SELL by AUCTION, without reserve, at the Mart, on THURSDAY, MAY 7, at Twelve, Four LEASEHOLD HOUSES and SHOPS, comprising Nos. 40, 41, 42, and 43, King-street, Margate; also, two Cottages and a Piece of enclosed Garden Ground in the rear, in the occupation of respectable tenants, at rentals amounting to 70l. per annum.—May be viewed, and particulars obtained, ten days prior to sale: on the several premises; White Hart Hotel, Margate; of Mr. Charles Hassell, solicitor, Bristol; of Messrs. Capes and Stuart, solicitors, Field-court, Gray's-inn; and at Mr. MARSH'S Offices, 27, Bucklersbury.

Oatlands Mansion, Park, and Estate of 900 acres, Surrey, within one mile of the Weybridge or Walton Stations on the South-Western Railway, and within half an hour's ride of the Terminus in London.

MESSRS. DRIVER have been favoured with instructions to offer to PUBLIC COMPETITION, at the Auction Mart, Bartholomew-lane, on TUESDAY, the 19th of May, at Twelve o'clock, in 54 Lots (unless an acceptable offer for the whole estate should be previously made), the above renowned and highly admired DOMAIN, formerly the property and residence of his late Royal Highness the Duke of York. Lot 1 will comprise Oatlands Mansion, Offices, delightful Pleasure Grounds, the far-famed Grotto, Kitchen Garden and Lawn, extending to and including part of the magnificent lake called the Broad Water, and containing altogether 97 acres, without exception constituting one of the most desirable and enviable residences, and site of ornamental grounds in the kingdom, and from the house having been recently completely repaired and fitted up in the best style of taste and elegance, forms a most desirable abode for any family. The Park and other Lands south of the Lake will be divided into about 56 lots, varying from 3 to 10 acres each, with the exception of 2 or 3 lots, from 10 to 20 acres, and of the most inviting character for the erection of villas, being upon a peculiarly salubrious soil, and much adorned with ornamental timber, which may be thinned to suit the tastes of the various purchasers. The present Gravel Road, so long the acknowledged and highly admired drive through the Park, leading from Walton to Weybridge, affording at all points fine prospects, will be preserved as the public road and approach to a great number of the lots, and another principal road will be set out to lead through other parts of the park, affording an outlet at the present lodge entrance, where it crosses the South-Western Railway and leads to Cobham, Kingston, and all the adjacent beautiful neighbourhood. The lands on the north of the lake, and extending to the river Thames, will be divided into 7 lots of larger description, one being about 113 acres, and the remainder of the estate, consisting of Weybridge and Child's Farm, containing about 85 acres, will form other lots, besides which there will be 2 other lots in the town of Weybridge of about 10 acres each, admirably adapted for farm or uses.—Printed specifications, with plans annexed, are now prepared, and will be ready for delivery after the 4th of April, and may then be had of Mr. Haines, at the Farm House, Oatlands; at the Swan, Chertsey; White Hart, Windsor; Griffin, Kingston; of Messrs. Frere, Forster, and Co. Solicitors, Lincoln's-inn; at the Auction Mart, near the Bank of England; and of Messrs. DRIVER, Surveyors, &c. 8, Richmond-terrace, Parliament-st. of whom cards to view the mansion may be had.

NOTICE.—THE OATLANDS ESTATE.

—By Messrs. DRIVER, at the Auction Mart, on TUESDAY, the 19th of MAY, Lot 1, comprising the MANSION HOUSE and 97 acres, will be submitted at the Auction on the above day, exclusive of the two Manors of Byfleet and Walton-on-Leigh, though included in Lot 1 of the specifications already published, which said manors will be submitted in a separate lot. The remaining 53 lots will be offered to Auction on the above day, as already advertised. Richmond-terrace, Whitehall, April 27, 1846.

Immediate Vicinity of Croydon.—Sixty-two Acres of Freehold Land, Title Free, and exonerated from Land Tax.

MESSRS. DRIVER have received instructions to submit to PUBLIC COMPETITION, at the Auction Mart, Bartholomew-lane, London, on FRIDAY, the 8th of May next, at Twelve o'clock, in 10 Lots, the above Sixty-two Acres of FREEHOLD LAND, principally Meadow, free of Rectorial Tithes, and exonerated from Land Tax, divided in separate and well-enclosed paddocks, all very eligible situate, adjoining and surrounding Heath Lodge Mansion, lately the residence of Lieut. Col. Utterson, but now of John Morland, esq. and also adjoining the high road leading from Croydon to Addiscombe and Bromley, and being on a dry gravelly soil, with easy access of water, are peculiarly well adapted for the erection of Villas. The whole is now in the hands of the proprietor, and immediate possession may be had on completion of the purchase.—Printed specifications, with plans annexed, may be had at the Grayhound, Croydon; Lion, Streatham; of F. J. RIDSDALE, Esq. solicitor, 5, Gray's-inn-square; at the Auction Mart; and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Parliament-street.

Absolute Sale.—To Builders and others.—Carcases of Four Houses, Chepstow-place, Westbourne-green.

MESSRS. BROOKS and GREEN have received instructions from the Mortgagees in Trust, to SELL by AUCTION, at their Estate Auction Gallery, 28, Old Bond-street, on WEDNESDAY, MAY 20, at One, the roofed-in CARCASSES of FOUR HOUSES, of handsome architectural elevation, most desirably situate in a respectable and rapidly increasing neighbourhood, adjacent to Hyde-park and Kensington-gardens: held on lease at a ground-rent of 10l. per annum each.—Particulars may be had of Messrs. Grey and Berri, solicitors, 12, Grove-place, Lisson-grove; Hall of Commerce, Threadneedle-street; and of Messrs. BROOKS and GREEN, Estate Agents, Surveyors, and Auctioneers, 28, Old Bond-street.

Votes for the County.—Freehold Building Ground, Two-waters, Herts, contiguous to the Birmingham Railway Station at Boxmoor, and the market town of Hemel Hempstead.

MESSRS. BROOKS and GREEN have received instructions to SELL by AUCTION, at the Bell Inn, Two-waters, on THURSDAY, MAY 21, at Twelve, highly desirable FREEHOLD BUILDING GROUND on the Manor Farm, having excellent frontages, and offering eligible investments for builders and large or small capitalists. Through the formation of the Birmingham Railway, with its station at Boxmoor, and the consequent facilities for travelling, the applications for residences and apartments for families have been so numerous, that extensive building operations have been most successfully conducted between Two-waters and Hemel Hempstead.—Particulars and plans may be had at the Bell Inn, Two-waters; at the Railway Inns at Hemel Hempstead, Berkhamstead, Tring, Watford, Rickmansworth, and St. Alban's; of Messrs. Smith and Grover, solicitors, Hemel Hempstead; Messrs. Teesdale, Symes, Weston, and Teesdale, solicitors, Fenchurch-street; and of Messrs. BROOKS and GREEN, estate agents, surveyors, and auctioneers, 28, Old Bond-street.

SIXTY-FIVE SHARES in the ANTWERP STEAM NAVIGATION COMPANY.

MR. FREDERICK CHINNOCK will SELL by AUCTION, at the Auction Mart, London, on WEDNESDAY, MAY 6, at Twelve, in Lots (unless previously disposed of by Private Contract), the above SHARES, which were issued at 2,000 francs, or 80l. value each, and in which the full amount of 80l. sterling has been paid. The Antwerp Steam Navigation Company was established in December, 1835, by several of the most influential merchants at Antwerp, under the immediate patronage of the Belgian Government, for the conveyance of passengers and goods between that city and London, and with a view of establishing it ultimately as the principal line of communication between England and Germany, the Company having already the command of the traffic from and to Antwerp and London. This object the directors have effectually secured by means of their well-known steam vessels the *Prince Victoria* and the *Antwerpen*. The management of the Company is under the directory of the Baron Osi, M. J. A. Dierckx, M. Maximilien, Vanden Bergh, and other influential persons resident at Antwerp. According to the prospectus of the Company, the ships of the Antwerp Steam Navigation Company enjoy privileges granted by the Belgian Government unequalled by the ships of any other country, and exempt others a drawback of more than 10 per cent. on the duties on all goods and merchandise imported. It is also stated in the prospectus that the shareholders are indemnified by the Government statutes from all personal risks beyond the value of their shares; and after receiving 4l. per cent. on the value of their subscriptions, they partake of the profits of the Company. Since the decease of the proprietor of these shares, in August, 1837, the shareholders have received the sum of 1,600l. on account of the dividends payable on the 65 shares, up to and inclusive of the 31st of December, 1845, which is at the rate of 4l. per cent. on the capital. The accounts of the Company, furnished to the executors, for the year ending 31st December last, showing the present state of its finances, are open to inspection, and further particulars and information may be obtained on application to the agents of the Company, Messrs. Legley and Simon, 123, Fenchurch-street; of Messrs. Begg and Son, Solicitors, 55, Lincoln's-inn-fields; of Messrs. Paine and Nettleship, Solicitors, 4, Trafalgar-square; or Mr. F. CHINNOCK'S Auction and Agency Office, 23, Regent-street, Waterloo-place; and at the offices of the *Standard Gazette*, and the *Precursor*, Antwerp, and the English Reading Rooms, No. 4, Borgeand, Brussels.

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Friday, May 1	Friday, September 1
Friday, June 5	Friday, October 1
Friday, July 3	Friday, November 1
Friday, August 7	Friday, December 1

Particulars may be had Ten days previous to each sale at the Royal Hotel, Manchester; the Adelphi Hotel, Liverpool; Dee's Royal Hotel, Birmingham; the Angel, Oxford; the Eagle and Child, Cambridge; at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 25, Poultry.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. VII. No. 162.]

SATURDAY, MAY 9, 1846.

(DOUBLE NUMBER.)

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Legal Notices.

NOTICE.—NEXT OF KIN.—The Estate of the late **ALEXANDER LAW**, the Elder, of **LORD'S HOUSE**, in the Parish of **LITTLEHAM**, in the county of **DEVON**, Esq. deceased.—As solicitors to the Administrator, with the will annexed, of the said Alexander Law, we hereby give **NOTICE**, that the settlement made by the said Alexander Law in favour of his Great Nephew, Alexander, has, by a recent decree of his Honour the Vice-Chancellor of England, been declared to be null and void; and that this estate will be forthwith got in, and the accounts thereof wound up, and finally adjusted; and that securities amounting in value to a considerable sum, will be divisible amongst the Next of Kin of the said Alexander Law, the elder; and that Barbara, the wife of James Gordon, now or lately residing in Leith-walk, Edinburgh, and Mary Pye, Jesse Burgess, and William Law, now or lately residing in Gallowgate, Aberdeen; Joseph Law, now or lately residing in East-street, Finsbury-market, London, and Samuel Law, late of the city of Philadelphia, claim to be such next of kin, as being nephews and pieces of the said Alexander Law, the elder, deceased. They, the said Barbara Gordon, Mary Pye, Jesse Burgess, William Law, Joseph Law, and Samuel Law, and also any other person claiming to be of the same, or a nearer degree of relationship to the said Alexander Law, the elder, deceased, are hereby requested to give us, within one month from the date hereof, a statement in writing of such claim, accompanied by a form of pedigree, and certificates and declarations necessary to corroborate the same.

The object of this notice is to enable us (if possible) safely to advise the said administrator, with the will annexed, to distribute the estate of the said Alexander Law, the elder, without the delay or expense of recourse to the Court of Chancery.
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Dated this 5th day of May, 1846.
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LANCASHIRE INTERMEDIATE SESSIONS.—NOTICE is HEREBY GIVEN, that a **GENERAL SESSION** of the **PEACE** for the County Palatine of **LANCASTER**, for the trial of persons committed and held to bail on charges of felony and misdemeanor, will be held at the Court-house in **PRESTON**, on **FRIDAY**, the twenty-second day of **MAY** next, at Ten o'clock in the forenoon, and at the **NEW BAILEY** Court-house, in **SALFORD**, on **MONDAY**, the twenty-fifth day of **MAY** next, at Ten o'clock in the forenoon.

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MESSRS. DRIVER have been favoured with instructions to offer to **PUBLIC COMPETITION**, at the Auction Mart, Bartholomew-lane, on **TUESDAY**, the 19th of May, at Twelve o'clock, in 64 Lots (unless an acceptable offer for the whole estate should be previously made), the above renowned and highly admired **DOMAINE**, formerly the property and residence of his late Royal Highness the Duke of York. Lot 1 will comprise Oatlands Mansion, Offices, delightful Pleasure Grounds, the far-famed Grotto, Kitchen Garden and Lawn, extending to and including part of the magnificent lake called the Broad Water, and containing altogether 97 acres, without exception constituting one of the most desirable and enviable residences, and site of ornamental grounds in the kingdom, and from the house having been recently completely repaired and fitted up in the best style of taste and elegance, forms a most desirable abode for any family. The Park and other Lands south of the Lake will be divided into about 46 lots, varying from 3 to 10 acres each, with the exception of 2 or 3 lots, from 10 to 20 acres, and of the most inviting character for the erection of villas, being upon a peculiarly salubrious soil, and much adorned with ornamental timber, which may be thinned to suit the tastes of the various purchasers. The present Gravel Road, so long the acknowledged and highly admired drive through the Park, leading from Walton to Weybridge, affording at all points fine prospects, will be preserved as the public road and approach to a great number of the lots, and another principal road will be set out to lead through other parts of the park, affording an outlet at the present lodge entrance, where it crosses the South-Western Railway and leads to Cobham, Kingston, and all the adjacent beautiful neighbourhood. The lands on the north of the lake, and extending to the river Thames, will be divided into 7 lots of larger description, one being about 113 acres, and the remainder of the estate, consisting of Weybridge and Child's Farm, containing about 85 acres, will form other lots, besides which there will be 2 other lots in the town of Weybridge of about 10 acres each, admirably adapted for farm houses.—Printed specifications, with plans annexed, are now prepared, and will be ready for delivery after the 4th of April, and may then be had of Mr. Haines, at the Farm House, Oatlands; at the Swan, Chertsey; White Hart, Windsor; Griffin, Kingston; of Messrs. Fryer, Forster, and Co. Solicitors, Lincoln's-Inn; at the Auction Mart, near the Bank of England; and of Messrs. DRIVER, Surveyors, &c., Richmond-terrace, Parliament-st. of whom cards to view the mansion may be had.

NOTICE.—THE OATLANDS ESTATE.

—By Messrs. DRIVER, at the Auction Mart, on **TUESDAY**, the 19th of May, Lot 1, comprising the **MANSION HOUSE** and 97 acres, will be submitted at the Auction on the above day, exclusive of the two Manors of Byfleet and Walton-on-Leigh, though included in Lot 1 of the specifications already published, which said manors will be submitted in a separate lot. The remaining 63 lots will be offered to Auction on the above day, as already advertised. Richmond-terrace, Whitehall, April 27, 1846.

Glasenwood, near Witham, Essex.—A remarkably unique Freehold Property, land-tax redeemed, comprising the celebrated Horticultural, Orchard, Nursery, Australian and American Gardens, containing upwards of 50 acres (with a capital mansion-house in the centre, in the occupation of the Rev. Sir John Page Wood, bart.); also a genteel newly-erected Villa, besides another residence, with all requisite conservatories and buildings for horticultural and floricultural purposes; the whole property constituting one of the Lions of that part of the county, and admirably adapted either for occupation or investment.

MESSRS. DRIVER have received instructions to OFFER to PUBLIC COMPETITION, at the Auction Mart, London, on **TUESDAY**, the 9th day of JUNE, at Twelve o'clock, in two lots, the above valuable PROPERTY, freehold, and land-tax redeemed, comprising the celebrated Glasenwood Estate, in the parish of Bradwell, next Coggeshall, consisting of above 50 acres of orchard, nursery, and American gardens, a considerable portion of which is well stocked with the choicest fruit trees of the most approved sorts in full bearing, and the remainder planted with a fine and rare collection of American and Australian shrubs and plants, in the most luxuriant and flourishing condition; the whole ornamentally disposed with the greatest taste, and intersected with a capital gravel walk, extensive conservatories, and sundry pits, with a capital mansion-house in the centre of the property (the residence of the Rev. Sir John Page Wood, bart.). Also a genteel newly-erected villa, replete with every accommodation for any respectable family; besides another residence and all requisite buildings for horticultural or floricultural purposes, the whole constituting a remarkably eligible property, either for occupation in its present lucrative trade, or as an investment. It is only about five miles from the Witham Station on the Eastern Counties Railway, surrounded with excellent roads, and resorted to by all persons fond of or admiring horticultural or floricultural pursuits as quite the lion of that part of the county. The entire property is in the hands of the proprietor (excepting the Mansion House, occupied by the Rev. Sir J. P. Wood, bart.), and will be divided into Two Lots. The principal lot, comprising the Mansion House, &c. and upwards of thirty-eight acres. Lot 2, consists of the Villa and the other residence, with Conservatories and Buildings, and twelve acres of Nursery and Orchard Ground attached thereto.

To be viewed, on application to Mr. Curtis, at Glasenwood, of whom printed specifications, with plans annexed, may be had. Specifications may also be had at the Hotel at Chipping-hill, close to the Witham Station; the Saracen's Head, Chelmsford; the Three Cups, Colchester; of E. G. Craig, Esq. Solicitor, Braintree; of W. W. Oldenshaw, Esq. of Tokenhouse-yard, London; at the Auction Mart, near the Bank of England; and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Whitehall, London.

BRILL, BUCKS.—To Hotel and Tavern Keepers, Speculators, and others.

MESSRS. BECKWITH and SALMON are instructed to **SELL BY AUCTION**, at Garraway's, on **TUESDAY**, MAY 19, at Twelve o'clock, an acceptable offer is made previously, the valuable PREMISES known as the SPA HOTEL, at Brill, in Buckinghamshire, which, together with the grounds, occupy about an acre and a half. The premises contain in all about twenty-four rooms, stabling for ten horses, standing for carriages, kitchen and flower gardens, and a quantity of ground unappropriated, which might be turned to good account in building; the whole fitted up in the most superior manner for doing a first-class trade with persons of distinction, and, in the hands of a spirited and enterprising man of business, cannot fail to prove a very valuable property, as an hotel of this description was much wanted to meet the demands of the country frequenting the celebrated Dorton Spa, which, from the excellence of its spring, bids fair to be a powerful rival to the famous spa at Leamington. The premises are of an imposing elevation, standing on an eminence rather out of the town, and commands the most beautiful views of the Spa grounds and surrounding country; they have been erected in the most substantial manner, regardless of expense. This valuable property is held on lease, direct from the freeholder, for about ninety-five years, at the trifling ground rent of 11l. per annum. In the event of the formation of the intended Cambridge and Oxford Railway, of which there is now no doubt, it must prove a fortune.—May be viewed, and particulars had at the SPA Hotel, Brill; Star Inn, Aylesbury; of Messrs. WILLOUGHBY and JACQUET, Solicitors, 13, Clifford's Inn; at Garraway's; and at the Auctioneer's Office, 25, Bucklersbury.

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MESSRS. BECKWITH and SALMON will **SELL BY AUCTION**, at Garraway's, on **TUESDAY**, MAY 19, at Twelve, in 8 lots, Two brick-built Residences, Nos. 43 and 44, Brook-street, Lambeth, let at 49l. 8s. per annum, and held for about 40 years at a ground-rent of 10l. A brick-built Dwelling-house and Shop, No. 46, Vauxhall-walk, let at 30l. per annum, and held for about 33 years at a ground-rent of 5l. 5s. A brick-built semi-detached Dwelling-house, No. 26, Lambeth-terrace, let at 26l. per annum, and held for about 13 years, at a ground-rent of 6l. A brick-built residence, No. 31, Sidney-street, City-road, let at 28l. per annum, and held for about 31 years, at a peppercorn rent. A brick-built Residence, No. 66, White Lion-street, Pentonville, let at 39l. per annum, and held at a ground-rent of 2l. 15s. Three brick-built Residences, Nos. 9, 10, and 12, Melbourne-square, North Brixton, rental 96l. per annum, and held for about 54 years, at a ground-rent of 16l. Three brick-built Residences, Nos. 30, 31, and 33, Brighton-terrace, near the Church, Brixton, rental 73l. per annum, and held for about 64 years, at a ground-rent of 12l. Also an Improved Ground-rent of 45l. per annum, well secured upon ten houses in Martha-street, Lark-row, and John-street, Cambridge-heath, Hackney, held for 41 years, and underleased for the whole term at 55l. 10s. per annum, subject to the payment of 10l. 10s. These are very eligible properties for investment, and some of them particularly so for occupation.—May be viewed by permission of the respective tenants, and particulars had of HENRY HARPUR, Esq. Solicitor, Kennington-crook; at Garraway's; and at the Auctioneer's Office, 25, Bucklersbury.

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N.B. Top of Holborn-hill.

HALF-PINTS PORT AND SHERRY, 10s. 6d.

"Four glasses of capital wine, in a elegant bottle, called a demi-semi-quaver, so ornamentally shaped as to grace any dinner-table."—*Review.*

"In the study, at chambers, or at the office, with a snack or luncheon, nothing can be better, and the wine is certainly first-rate."—*Post.*

"The wine is admirable, and the half-pints, or demi-semi-quaver bottles, a most convenient form."—*Mer.*

Hampers, containing one dozen each, or smaller quantities, may be had as samples. Semi-quavers, or pints, 21s.; quavers, or quarts, 40s.

QUAVER WINE STORES, 70, St. Martin's-lane.

Terms—Cash—Country Orders.

WILLIAM CHARLES, Manager.

ANDREW USHER & CO. 1, Northumberland-street, Strand, beg to call attention to the following—

Best Glenlivet Whisky, Brandy Strength 16s. per Gal.

Genouin Old Cognac, Brandy, Imported, 24s. & 26s. per Gal.

Double Orange Curacao, equal to the Dutch 5s. 6d. per bottle.

East India Pale Ale 6s. per dozen.

Prestonpans Beer 7s. 6d. per dozen.

Edinburgh Ale 7s. 6d. to 9s. per doz.

1, Northumberland-street, Strand.

GENUINE HAVANNAH CIGARS.

EDWIN WOOD, 69, King William-street, City, begs to inform the admirers of a FIRST-RATE HAVANNAH CIGAR, that they will find at this establishment the largest and choicest assortment in London, selected with great care by an experienced Manufacturer in Havana, and consigned direct to the advertiser. The Stock comprises the first qualities from the manufactories of SILVA & CO. Cabana, Woodville, Norridge, La Union, Regalia, &c.; some very superior Old Principles, Government Manillas, and Panchadas; Bengal and Porto Rico Cheroots, with every other description now in demand.

A large and select stock is always kept on hand, from which Gentlemen going abroad can at all times make their own selection.

Annexed is a list of the present prices for cash:—

Genouin Havannahs 12s. 6d.

Dito, superior 12s. 6d.

Dito, the finest imported 12s. 6d.

Dito, Old Principles 12s. 6d.

Regalia 12s. 6d.

Bengal Cheroots 12s. 6d.

Trabucos 12s. 6d.

Wholesale, retail, and for exportation.

A Post-office Order is requested with Country orders.

PEOPLE MINDFUL OF ECONOMY should

recollect that during the present depressed state of the market, the best and useful of all commodities, COFFEE, may be had for either 12s. 24s. or 36s.; 6 lbs. of good COFFEE for 5s. and fine sorts on equally advantageous terms.—**EAST INDIA TEA COMPANY'S OFFICE, No. 9, GREAT ST. HELEN'S CHURCHYARD, BISHOPSGATE.**

BY COMMAND OF HER MAJESTY'S GOVERNMENT, in consequence of the many cures achieved by the constant use of GRIMSTONE'S EYE-SNUFF, manufactured of choice British Herbs. Government having ascertained the above fact, has commanded W. GRIMSTONE, of 434, Oxford-street, to affix a life design stamp on each tin, in 1858, and approved by the Stamp Solicitor in 1857. That this celebrated Grimstone's Eye-Snuff will be sold by all Chemists and Medicine Vendors, in quantities of 8d., 6d., 2s., 4s., 10s., and 2s. each, stamp included, and forwarded through the post. Upon receipt of a Money Order for 3s. 7d. a 2s. 7d. canister will be forwarded from W. GRIMSTONE, Merchant, 434, Oxford-street, London.

DRAINING TILES AND PIPES.—AINSLIE'S

Patent Improvements for Making and Drying Draining Tiles of the First Class, and for laying them in operation, or who are about to erect them, will find the above worthy of their attention. The process combines effect with economy, as the tiles can be made ready for burning at all seasons; generally from ten to thirty hours, according to the nature of the clay.—To be seen at Alport, Acton, Middlesex. Mr. HOWE, Engineer, 119, Great Guildford-street, Southwark; the Polytechnic Institution, Regent-street, London.

Particulars may be had from JOHN AINSIE, Alport, Acton, Middlesex.

YACHTING, DRIVING, AND ANGLING.—

The NEW DREADNOUGHT JACKETS and WRAPPERS will be found by Sailors and Sportsmen to be the best articles ever made up for their use. They will resist the heaviest rain and the fiercest tropical heat for any time, and their durability is equal to their waterproof qualities. Trousers, leggings, coat-wrappers, caps, and gloves, of the same proving. Officers and others going to the colonies will find these articles invaluable. Gentlemen who drive should use CORDING'S new waterproof driving aprons and coats, the most serviceable and complete things of the kind, and approved by all who have tried them. Ladies' light riding capes, with hoods and sleeves. CORDING'S improved sheet India rubber boots are superior to any thing hitherto made for the comfort of anglers and snipe-shooters. They are light, pliable, and never crack; impervious to water for any length of time, and require no dressing to keep them in condition. Patterns and prices sent on application. Any description of article made to order. London: J. C. CORDING, 231, Strand, five doors west of Temple Bar.

GENERAL INTERLOCUTORY AGENCY

OFFICE, 34, GRACECHURCH-STREET, LONDON.—Mr. J. L. COTTON begs to call the attention of the nobility, gentry, the members of the several professions, and others, and particularly those who are interested in Railway matters, to the advantages and facilities afforded by the establishment of a GENERAL LONDON AGENCY OFFICE, and to apprise them that he is prepared—

To negotiate every description of business in London or the neighbourhood for those parties to whom personal attendance may be inconvenient.

To procure, where practicable, accurate information relative to the several Railway Schemes brought before Parliament, and to attend and vote by proxy at the meetings which are now required necessary by the standing orders.

To obtain for clerical men, landowners, and others, any particulars relating to, or copies of, or extracts from, documents deposited with the several departments of official and public business.

To transact for solicitors and others, resident in the country, all matters that do not come within the practice or duties of their ordinary town agent; and generally

To conduct every description of negotiation wherein the services of an Interlocutory Agent may be required.

Forms, where necessary, and other instructions and information, will be forwarded to parties on application to Mr. COTTON, at the office as above.

FURNITURE.—WANTED TO PURCHASE,

from £200 to £500 worth of SECOND-HAND FURNITURE, in large or small quantities, for warehouse or for sale, given in cash, without any deduction for valuation, and removed at the purchaser's expense; Linen, China, Glass, Books, Pictures, and Musical Instruments, included, if required.

Apply to Mr. J. CHAPMAN, 5, Great Russell-street, Covent Garden.

Valuations made for the Legacy Duty, Rents collected, &c.

LITHOGRAPHY in all its Branches, Writing,

Drawing, and Printing, executed in the first style, and on the most moderate terms, at DEAN and CO.'S LITHOGRAPHIC PRINTING OFFICES, 35, 36, to 40, Threadneedle-street, City, where Merchants and the Trade may be supplied with the best German Stones and Transfer Paper, French Chalks, and Inks; and with their improved Lithographic Press, so excellent in principle and construction, that it is warranted to do the finest work with perfect ease and certainty.

DEAN and Co. have devoted the premises, No. 36, to the Stationery Business, where Companies and Merchants may be supplied on advantageous terms.

GROWTH OF THE HAIR.—No great change can

be permanently brought about without going to the root of the evil. The growth of the hair, as in other cases, lies beneath the surface; were ungues to grow over, but will not remove the cause. The only preparation that acts unerringly, because in accordance with these principles, is OLDRIEDGE'S BALM OF COLUMBIA, which produces Whiskers and Eyebrows, prevents the hair from falling out, and the hair application causes it to curl beautifully, frees it from scurf, and stops it from falling off. Price 3s. 6d., 6s., and 11s. per bottle. No other prices are genuine. Ask for OLDRIEDGE'S BALM, 1, Wellington-street, Strand. Sold by all respectable chemists, perfumers, and stationers.

NERVOUSNESS: CURE for the MILLION.

Mr. HENRY NEWTON (late Chemist to the Rev. Dr. Willis Moseley) has made arrangements to extend to every member of the community the benefit of the great discovery for the CURE of NERVOUS COMPLAINTS, which hitherto has been enjoyed by the upper and wealthier classes exclusively. Persons suffering from groundless fear, delusion, melancholy, inquietude, disinclination for society, study, business, &c. confusion, blood to the head, giddiness, failure of memory, insomnia, and every other form of nervous disease, are invited to avail themselves of this never-failing remedy. The most deeply-rooted symptoms are effectually and permanently removed. Hours for consultation daily, from Eleven to Five, and in the evening from Seven to Nine, at Mr. Newton's residence, 7, Northumberland-street, Trafalgar-square.

Letters, with a concise statement of cases, promptly attended to, and the means of cure sent to all parts.

ORNAMENTS for the DRAWING-ROOM,

LIBRARY, and DINING-ROOM, consisting of a new and elegant assortment of VASES, Figures, Groups, Candlesticks, Inkstands, Obelisks, Busts, Watchstands, beautifully inscribed and engraved Tables, Paper-weights, &c. in Italian Alabaster, Marble, Bronze, Derbyshire Spar, &c. imported and manufactured by J. TENNANT (late Maw), 149, STRAND, LONDON.

Mr. TENNANT arranges elementary collections of Minerals, Shells, and Fossils, which will greatly facilitate the interesting study of Mineralogy, Geology, or Cosmology, at 2s., 10s., 20s. to 50s. each. He also gives private instruction in Geological Mineralogy.

SCHWEPPE'S AERATED LIME WATER,

an excellent anti-acid, when taken under medical direction; but the Public are cautioned against an indiscriminate use of this water (under whatever fanciful or disguised name it may be pressed upon their notice), as LIME is well known to produce in some constitutions the most violent and even fatal effects. SCHWEPPE'S AERATED LIME WATER, and MAGNESIA WATER, manufactured as usual upon the largest scale, at their several Establishments in London, Liverpool, Bristol, and Derby. Each bottle is protected with a red label over the cork, bearing the name. German Sellers direct from the Springs at Nassau.—41, Berners-street, London.

THE NEW TOOTH-BRUSH, made on the

most scientific principles, thoroughly cleansing between the teeth, when used up and down, and polishing the surface when used crossways. This Brush so entirely enters between the closest teeth, that the inventor has decided upon marking it with the TOOTH-BRUSH, and to ask for it under that name, marked and numbered as under:—No. 1, full-sized Brushes, marked T.P.W. No. 1, hard; No. 2, less hard; No. 3, middling; No. 4, soft. The narrow Brushes, marked T.P.N. No. 5, hard; No. 6, less hard; No. 7, middling; No. 8, soft. These Brushes will never come out, at 1s. each, or 10s. per dozen, in boxes or 2s. each, or 20s. per dozen, in boxes.

THE TRICHLAPYRATOR, or LIQUID HAIR DYE.—The only Dye that really answers for all colours, and does not require re-doing, but as the hair grows, as it never fades or acquires that unnatural red or purple tint common to all other dyes. ROSS and SONS can, with the greatest confidence, recommend the above Dye as infallible, if done at their establishment; and ladies or gentlemen requiring it are requested to bring a friend or servant with them to see how it is used, which will enable them to do it afterwards without the chance of failure. Several private apartments devoted entirely to the above purpose, and some of these establishments having used it, the effect produced can be at once seen. They think it necessary to add, that by attending strictly to the instructions given with each bottle of the Dye, numerous persons have succeeded equally well without coming to them.

Addres—ROSS and SONS, 119 and 120, Bishopsgate-street, London, the celebrated Perfumers, Perfumers, Hair-cutters, and Hair-dyers. N.B. Parties attended at their own residences, whatever the distance.

A NEW DISCOVERY.—Mr. HOWARD, Sur-

geon-Dentist, 12, Fleet-street, begs to introduce an ENTIRELY NEW DESCRIPTION OF ARTIFICIAL TEETH, fixed without springs, wires, or ligatures. They so perfectly resemble the natural Teeth as not to be distinguished from the original by the closest observer; they will NEVER CHANGE COLOUR or DECAY, and will be found very superior to any Teeth ever before used. This method does not require the extraction of roots or any painful operation, and will give support and preserve teeth that are loose, and is guaranteed to restore articulation and mastication; and that Mr. Howard's improvements may be within the reach of the most economical, he has fixed his charges at the lowest scale possible. Decayed teeth rendered sound and useful in mastication.—22, Fleet-street. At home from Ten till Five.

CARSON'S ORIGINAL ANTI-CORROSION

PAINT, specially patronised by the British and other Governments, the Hon. East-India Company, the principal Dock Companies, and other public bodies, &c. is particularly recommended to the Nobility, Gentry, Agriculturists, Manufacturers, West-India Proprietors, and others, it having been proved, by the practical test of nearly sixty years, to surpass all other Paints as an out-door preservative. It is extensively used for the preservation of wooden houses, farm and other out-buildings, farming implements, conservatories, park paling, gates, iron railings, iron burlies, copper, zinc, lead, brick, stone, old copper and stucco fronts, and tiles to represent slate. The superiority of the ANTI-CORROSION over every other paint, for its out-door purposes, may be easily inferred from the simple fact, that its use has been found to be most strongly approved by colour manufacturers, painters, oil and colourmen, and others interested in the sale of common paints. It is also very economical, any labourer being able to lay it on. Colours—light stone, dark or Portland stone, Bath ditto, light and dark yellow ditto, light and dark red, light and dark lead, light and dark chocolate, bright and dark red, and black. 34s. per cwt.; invisible green, 30s.; bright ditto, 60s.; deep green, 60s. per cwt.; in casks, 25 lb., 35 lb., and 112 lb. each. Oil and Brushes. More detailed particulars will be sent free of postage. The original ANTI-CORROSION PAINT is only to be obtained of WALTER CARSON (successor to the inventors), 15, Tottenham-house-yard, back of the Bank of England, who will send nearly 300 Testimonials received from the Nobility, Gentry, and Clergy, who have used the Anti-Corrosion for many years at their country seats. W. C. is respectfully compelled to caution the Public against the spurious imitations of the Original ANTI-CORROSION PAINT, now offered for sale. He has no agents whatever. All orders are particularly requested to be sent direct.

COCOA-NUT FIBRE.—This substance

envelopes the shell of the milky cocoa-nut, around which it forms a strong protecting net-work. Man's ingenuity has turned the fibre to account by manufacturing it into many useful articles—such as carpets for stairs and passages, matting for churches, public buildings, offices, nurseries, and kitchens, hearth-rugs, door-mats, ropes, netting for sheep-folds, &c.; but among the applications there is not any to which it is better adapted than for the stuffing of mattresses and cushions, as a substitute for horse-hair, wool, and flock. It is very elastic, and affords great ease and support to the body, whether used with or without a feather bed. It has also the additional recommendation of being so obnoxious to vermin that they will not live in it! whilst it is a fact well known that wool, flock, tow, and even horse-hair, will engender animalcules. Possessing peculiar chemical properties that render it a non-absorbent, the fibre is particularly suitable for children's beds, for use of schools, in all large dormitories, and a sea. Cocoa-nut fibre mattresses are only about one-half the price of those made from horse-hair. Priced lists may be had on application at the warehouse, or will be sent free by post.

TRIZLOAR, 49, Ludgate-hill, seven doors from Farringdon-street, and five below Belle Sauvage Inn.

NERVOUSNESS: a Pamphlet containing

novel Observations on the Rev. Dr. Willis Moseley's great Original Discoveries, by which, for thirty years, after curing himself of a deep-rooted nervous complaint of fourteen years' standing, he has had not less than 14,000 applications, and knows not twenty-five uncured who have followed his advice. From noblemen to menials he has for thirty years cured persons of all classes and ages of groundless fear, mental depression, wretchedness, confusion, delusions, involuntary blushing, despair, indecision, dislike of society, blood to the head, sleeplessness, restlessness, thoughts of self-destruction, and insanity itself. This pamphlet is cheerfully sent to every address free of charge, and franked home if but one stamp is inclosed. The original means of cure are sent in a pure and effective state to all parts. At home from Eleven to Three.

18, Bloomsbury-street, Bedford-square.

Periodical Sale of Reversions, Life Interests, Annuities, Life Policies, Advowsons, Next Presentations, and all descriptions of Securities dependent upon human life, Ground and Improved Rents, Post Obitt Bonds, Shares in Railways, Mines, Insurance Companies, and all other public undertakings.

MR. MARSH (late Fuller and Marsh)

respectfully informs the Public, that his PERIODICAL SALES BY AUCTION of the above description of PROPERTY will be continued throughout the present year as follows:—

Thursday, June 4. Thursday, September 3.

Thursday, July 2. Thursday, October 1.

Thursday, August 6. Thursday, November 5.

Thursday, December 3.

Notice of sales intended to be effected by the above means should be forwarded to Mr. MARSH 14 days prior to each date.—No. 27, Bucklersbury, corner of Charlotte-row, Mansion-house, London.

Upton-place, Stratford, and Stamford-hill.—Valuable long

Leasehold Estates, desirable for occupation, in five lots.

MR. MOORE will SELL BY AUCTION,

at the Mart, on FRIDAY, MAY 15, at Twelve, a substantially-built FAMILY RESIDENCE, situate No. 16, Upton-place, on the high-road to Ilford, commanding extensive and beautiful views over Essex, Kent, and the river Thames. The house is in perfect repair, and contains twelve good rooms, with modern improvements, most convenient offices; a fore-court, and large well-stocked garden, as the same is occupied by Mr. Drane, together with a coach-house, two stable and loft, with back entrance to road leading to Upton-lane; held for an unexpired term of 970 years, at the trifling ground-rent of 7½ per annum. Also the house (No. 17) adjoining, of a similar description, but smaller, as occupied by Mr. Greenwood; together with a fire-room cottage in the rear, fronting the road to Upton-lane; term, 970 years; ground-rent, 5½ per annum. And three handsomely-finished semi-detached cottage residences, situate on Mount-pleasant, Warwick-road, near Stamford-hill, overlooking the river Lea, Leyton, Walthamstow, and other parts of Essex; held, direct from the freeholder, for 57 years, at 5½ ground-rent each. The houses are all finished in a convenient style, well drained, land-tax redeemed; fit for the reception of a respectable family; situation four miles from the City, to which conveyances constantly pass; and, as each house will form a lot, are particularly adapted for occupation.—May be viewed, and particulars had of Mr. HUMPHREY'S, Solicitor, East India Chambers, Leadenhall-street; of Mr. Ford, Finner's-hall, Old Broad-street; at the Swan, Stamford-hill; Swan, Stratford; Angel, Ilford; at the Mart; and at the Auctioneer's Office, Mile-end-road.

Freehold and long Leasehold Estates, eligible for investment

at Old Ford, Mile-end, and Poplar, giving Votes for Middlesex; the whole producing 460l. per annum. In Fifteen Lots.

MR. MOORE will SELL BY AUCTION,

at the Mart, on FRIDAY, MAY 15, at Twelve, by order of the executors of Mrs. Mary Branch, deceased, two neat houses, Eagle-place, Mile End-road, held for 324 years, at a nominal rent; also seven freehold houses in Iceland-road, Old Ford, let at 82l. per annum; five freehold houses (two with shops), Lochlade-place, Old Ford, near the White Hart, let at 78l. per annum; a freehold house in Globe-road, Mile-end, near the Rising Sun; a freehold house, No. 8, Cannon-place, Whitechapel-road; nine well and newly-built six-roomed houses, with gardens, in Grundy, Ellortherp, and Thomas-streets, East India Road, Poplar, suitable for occupation, let at 26l. each, term ninety-seven years, direct from the freeholder, ground rent 3s. 3d. each; and two small houses in Henry-street, Back Church-lane, Whitechapel, term fifty years, ground rent 5l.—May be viewed, and particulars had of Messrs. Martin, Thomas, and Hollins, 31, Commercial-Chambers; Messrs. Jarnum and German, 49, Leadenhall-street; Mr. F. R. Smith, Butcher's-inn; Mr. Humphreys, East India Chambers; Mr. Ellortherp, Colet-place, Commercial-road; at the Mart; at the Inns near the property; and at the Auctioneer's office, Mile End-road.

ST. LEONARD'S, in WINDSOR PARK.—The splendid Seat of the late William Dawson, esq. for the last three years occupied by Lord Haddo, delightfully situated adjoining St. Leonard's Hill (the noble seat of Colonel Harcourt), amidst the most romantic and elevated portions of the Royal Park, with a magnificent View of the Castle, the Thames, and rich surrounding country; also a former portion of the Forest adjoining, studded with venerable Timber, offering a choice Site for Building.

MESSRS. DANIEL SMITH and SON have the honour to announce to the Nobility and others seeking a capital and beautifully situated residence, that they are instructed to SUBMIT to PUBLIC SALE, in JUNE next (unless an acceptable offer shall be previously made by Private Contract), in Two Lots, the above most recently-adorned and elegant noble MANSION, admitted to stand unencumbered (except, perhaps, by its princely neighbour St. Leonard's Hill) in the whole circle of the court. The mansion is modern and of an elegant and chaste style of architecture, placed on the verge of a romantic and finely-wooded eminence, perfectly secluded, overlooking a lovely vale and a great breadth of the Royal park, with the magnificent castle towering in the back ground, with the rich banks of the Thames, Eton College, and other interesting objects. The house contains a splendid suite of rooms, with east and south aspects, a beautiful conservatory, paved terrace, &c. surrounded by a rich small park, of nearly 100 acres, adorned with handsome timber, noble avenue of limes, a sheet of water, with extensive terrace and other walks. About 30 acres adjoining will be offered in a separate lot, extending from St. Leonard's hill to the Winkfield-road, opposite Forest-hill, presenting a fine and romantic building site, bounded on one side by Lot 1, and on the other by some of the private drives and plantations of the royal park, through which, and the beautiful grounds of Colonel Harcourt, are the approaches to this delightful domain.—The estate can be viewed only with cards, which may be had at Messrs. SMITH'S Offices, in Waterloo-place, Pall-mall, and Windsor; or of THOMAS WEBSTER, Esq. Solicitor, Queen-street, Chesham.

MAER-HALL, in Staffordshire, bordering on Cheshire and Shropshire, near Newcastle-under-Lyme, many years the residence and property of the late Josiah Wedgwood, Esq. with its splendid Lake or Mere, surrounded by rich park-like pastures, and a bold broken chain of wooded hills, intersected by romantic drives and walks, of several miles in extent, forming one of the most beautiful and desirable domains of its size (about 1,100 acres) in the country; the soil being remarkably fine and healthy, the lands nearly timber-free, and the farm homesteads of a very superior description; also the Advowson and Manor of Maer, and a romantic residence, known as Camp-hill, adjoining; midway between Birmingham, Manchester, and Liverpool, with a first-class station within a mile of the estate, bringing it within about seven hours' journey of London, and two and a half from those important towns.

MESSRS. DANIEL SMITH and SON are directed by the Executors of the late Josiah Wedgwood, Esq. to SELL by AUCTION, at the Mart, near the Bank of England, on TUESDAY, the 23rd of JUNE, at Twelve o'clock, in Three Lots (unless an acceptable offer shall be previously made by private contract), the above important and singularly beautiful FREEHOLD PROPERTY, delightfully situated in a remarkably healthy and picturesque part of the country, between the towns of Newcastle-under-Lyme, Stafford, Drayton, and Eccleshall, on the Shrewsbury-road. It comprises the Mansion of Maer Hall, possessing every comfort for a moderate establishment, capital newly-built stabling, gardens, and park-like pastures, refreshed by a lake of nearly twenty-three acres, studded with venerable timber, and a variety of other fine and beautiful scenery, clothing and crowning the brows and wooded hills of this highly picturesque domain, commanding very extensive and romantic scenery, and forming excellent preserves for game. The farms are let to respectable yearly tenants at low rents, and the two principal farmhouses and homesteads have been entirely newly built in the most substantial manner, and of a superior character. The Manor and the Advowson of the living (a perpetual curacy), with its Parsonage, Glebe, &c., appertain to the estate, as also the small old established inn, the Swan with Two Necks, and several cottages. Camp-hill is a modern compact residence, with twenty-seven acres of romantic wooded grounds on the northward side of the property, about one mile from the railway station.—The estates may be viewed by parties sending their address. Descriptive particulars, with lithographic plans, may be had after the 31st of May, on the premises; at the chief hotels at Birmingham, Liverpool, Manchester, Stafford, &c.; of Messrs. KEMAY and SHEPPARD, solicitors, Stoke-upon-Trent; at the Auction Mart, London; and of DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall, to whom only applications to treat are to be made.

The Sedgell Estate and Farm in Wilts, on the Borders of Dorsetshire, altogether about 310 acres, in the rich vale between Shaftesbury and Fonthill, in a famous sporting country.

MESSRS. DANIEL SMITH and SON are directed to OFFER for PUBLIC SALE, at the end of JUNE next (unless an acceptable offer shall be previously made by private contract), in Two lots, a very desirable FREEHOLD GENTLEMAN'S RESIDENCE, on a moderate scale, though capable of accommodating a good establishment. It is a modern house of a handsome uniform elevation, with all suitable offices, stabling, walled garden, farm buildings, lodge, &c. surrounded by a very rich little park, studded with fine oak and other timber, commanding some highly picturesque scenery, embracing the finely varied range of hills and domain of Fitt House, the seat of John Bennett, esq. and portions of the Fonthill Estate, together with a valuable farm adjoining, with all requisite buildings, labourers' cottages, &c. Also, in a separate lot, a highly-conditioned and compact farm of about 170 acres, a great part pasture, in the parish of Sedgell, with a neat farm-house and homestead, all recently put into substantial repair, and let to a highly respectable tenant.—The estates may be viewed by application on the premises, and descriptive particulars with plans may be had, when the day of sale is fixed, at the inns at Shaftesbury, Salisbury, &c.; of J. BATTEN, Esq. Solicitor, Yeovil, and of DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall, London.

DESIRABLE FREEHOLD ESTATE, with a very superior FARM RESIDENCE, known as STARK CASTLE, bounded by a bold reach of the River Medway, only three miles from the City of Rochester, and about seven from Maidstone, amidst grand and beautiful scenery.

MESSRS. DANIEL SMITH and SON will offer for SALE by AUCTION, in JUNE (unless an acceptable offer shall be previously made by Private Contract), the above very compact and valuable FREEHOLD PROPERTY, comprising a superior Farm Residence, embracing a portion of the old Castle, with a fine Gothic window, capital buildings of the most substantial description, and about 900 acres of arable, pasture, and marsh land, in a ring fence, and in a high state of cultivation, being on lease to Mr. John Pearce, a highly respectable tenant, for an unexpired term of five years, at a low rent, offering a safe and superior investment for capital, as also a desirable property for future occupation, being in a beautiful part of the country.—The estate may be viewed by application to the tenant, and particulars, with plans, may be had on the premises; at the chief inns at Rochester, Maidstone, Canterbury, &c. when the day of sale is fixed; at the Auction Mart; and of DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall.

Whiteknights' Park, near Reading, Berks, Freehold; the greater part land-tax redeemed, and nearly all tithe-free.—Notice of Sale of this unrivalled Estate, subdivided into plots for the erection of an assemblage of mansions and villas, agreeably to a plan which will ensure its becoming a nucleus for the residence of families of the highest respectability, affording to capitalists, builders, and gentlemen desirous of erecting their own private residences an opportunity for investment rarely to be obtained, and for the sale of the whole Estate in one lot previously.

MR. FREDERICK CHINNOCK begs to announce that he has been honoured with instructions from the proprietors to submit for public COMPETITION, at the Great Western Railway Hotel, Reading, Berks, on THURSDAY, JUNE 18, at One, this exceedingly valuable and highly picturesque ESTATE, unless the whole estate, which will be previously offered in one lot (comprising the beautiful undulating park, the well-known and much-admired botanical and American gardens, the charming and romantic wilderness, the splendid lake of water, abounding with fish, the noble avenue of trees, through which it is approached, with the rich pasture and park land, embracing together upwards of 264 acres), shall be sold. The greatest possible care has been taken in apportioning and lotting this truly interesting and picturesque property for sale, so as not only to preserve and retain the natural beauties of the particular spot so allotted, but also to afford that extent of ground necessary to surround the villas or houses which may be erected on its site, and at the same time to preserve intact the leading features of the estate, by offering, in one lot, the site of the old mansion, the lake of water, the botanical kitchen gardens, the avenue of trees and the home park, containing together about 100 acres, and thus afford an opportunity for erecting a mansion on the old foundation of a spot already formed by nature and art to give every characteristic of an ancient family mansion, and render it one of the most compact, delightful, and inexpensive seats in the county of Berks. The wilderness, containing about 36 acres, will be offered in one lot, in the hope that there will be found in the town of Reading or the county a purchaser who will keep up this romantic and charming retreat in the same state of order and cultivation in which it at present stands. Detached villa residences are much needed in this locality, and there are few spots in England presenting such attractions and affording such facilities for this object, whether from the new church which has lately been erected close to the estate, from its contiguity to the town of Reading, from its easy access from every part of the kingdom (which must materially enhance the value of land in the neighbourhood, and of this estate in particular), from the known salubrity of the air, from the delightful drives in the neighbourhood, but, above all, from the natural and artificial beauties of the estate, which are so well known and highly appreciated by all who have had the good fortune to see it, and which might but a bold and noble conception, combined with the most refined taste, alone could produce, in order to afford facilities and encouragement to purchasers, arrangements have been made whereby the conveyance of each purchase shall be fixed at a definite and low sum. Descriptive particulars, with lithographic plans of the estate, will be published early, and may be obtained at the Great Western Railway Hotel; of T. Rogers, esq. solicitor, Friar-street, Reading; of Messrs. Smith and Allistons, solicitors, Warford-court, City; of Messrs. Hillier, Lewis, and Hillier, 6, Raymond-buildings, Gray's-inn; at the White Hart, Bath; of Messrs. Fowler, Clifton, near Bristol; and at Mr. CHINNOCK'S Offices, 28, Regent-street, Waterloo-place.

Valuable Reversions to Money in the Funds.
MR. F. CHINNOCK has received instructions to SELL by AUCTION, at the Auction Mart, on WEDNESDAY, JUNE 3, at Twelve, the following valuable REVERSIONS TO MONEY in the FUNDS, standing in the names of highly respectable trustees, comprising one-eighth share of 5,993 $\frac{1}{2}$ 17s. 10d. in the Three per Cent. Consolidated Annuities, and one-eighth portion of 4,617 $\frac{1}{2}$ 10s. 6d. in the Three-and-a-Quarter per Cent. Annuities, receivable on the death of the survivor of a gentleman and his wife, the former in his 70th and the latter in the 63rd year of her age.—Printed particulars to be obtained of Messrs. PURRIER and WRIGHT, Solicitors, 35, New Broad-street, City; at the Auction Mart; and at Mr. F. CHINNOCK'S Offices, 28, Regent-street, Waterloo-place.

Long Leaseholds, Old Kent-road, producing a Rental of 60l. per annum.
MR. FREDERICK CHINNOCK will SELL by AUCTION, at the Auction Mart, on WEDNESDAY, JUNE 3, TWO brick-built private HOUSES, of modern elevation, with good gardens in front and rear, situate and being Nos. 5 and 6, Ann's-terrace, Old Kent-road, let to highly respectable tenants, at rents amounting to 60l. per annum, held for a term of 68 years from Midsummer, 1843, at a ground-rent of 15l. 6s. per annum.—May be viewed, and particulars had at the Auction Mart; of Messrs. THOMPSON and POWELL, Solicitors, 3, Raymond-buildings, Gray's-inn; and at Mr. CHINNOCK'S Auction and Estate Offices, 28, Regent-street, Waterloo-place.

KENSINGTON-PARK, NOTTING-HILL.—Highly valuable Building Land, on the most important and eligible part of this rapidly improving and highly picturesque Estate, presenting sites for the erection of about 80 detached and semi-detached villas, embracing about nine acres of land, held direct from the freeholder.

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Judd-street and Tunbridge-place, New-road.—Baker's and Fruiterer's House and Shop, held at a low price; and leasehold Ground-rent of 43l. per annum, absolutely secured.

MR. FREDERICK CHINNOCK is instructed to SELL by AUCTION, at the Auction Mart, on WEDNESDAY, JUNE 3, at Twelve o'clock, LEASEHOLD HOUSE, and BAKER'S SHOP, situate at the corner of Judd-street, and Tunbridge-place, New-road, let on lease, which will expire at Christmas, 1851, at 10s. 6d. per annum; a Shop adjoining, let on lease for 21 years, and in the occupation of Mr. Pamment, from 1s. 10d. of 30l. 9s. per annum. And an improved leasehold of 42l. per annum, arising from two houses adjoining Tunbridge-place; let at 110l. per annum. The whole is held on an unexpired term of 60 years, at the very low ground-rent of 12l. 12s. per annum.—May be viewed by permission of the tenants, and particulars obtained at the Auction Mart, of J. TAYLOR, Esq. Solicitor, 15, Farnley-street, Baker; and at Mr. F. CHINNOCK'S Auction and Estate Offices, 28, Regent-street, Waterloo-place.

Lansdowne-terrace, Kensington-park, Notting-hill.—Seat of Sale of Six First-class Residences, most delightfully situated, commanding charming and extensive panoramic views of the surrounding country, held for long periods at exceedingly low ground-rents, affording a most valuable opportunity for either occupation or for a safe investment.

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Valuable Leasehold House and Shop, Coventry-street, Haymarket, producing an improved rental of 300l. per annum.
MR. FREDERICK CHINNOCK will SELL by AUCTION, at the Mart, on WEDNESDAY, JUNE 3, at Twelve, the valuable LEASEHOLD HOUSE and SHOP, situate at the corner of Coventry-street, immediately opposite the Haymarket, possessing every advantage for carrying on an extensive business, and recently undergone considerable embellishment, and is let upon lease for the full term at a rental of 300l. per annum. This property is held on lease from Sir Robert Peel, Bart., for an unexpired term of nine years, at a ground-rent of 7l. 10s. per annum, thereby producing an improved rental of 300l. per annum. May be viewed any time preceding the sale by permission of the tenant.—Printed particulars to be obtained of Messrs. RICHARDSON, SMITH, and SADDLER, solicitors, 28, Golden-square; at the Mart; and at Mr. F. CHINNOCK'S Auction and Agency Offices, 28, Regent-street, Waterloo-place.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. VII. No. 163.]

SATURDAY, MAY 16, 1846.

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CORRESPONDENCE.

LEGAL EDUCATION.

TO THE EDITOR OF THE LAW TIMES.

SIR,—The deep interest which you invariably take in every question that affects the well-being of the Profession, induces me to address a few observations to you on the inquiry about to be instituted into the present system of legal education in England and Ireland, under the auspices of Mr. Wyse, the member for Waterford. I trust that, in the spirit of candour and justice, the committee of the House of Commons will not confine their attention to the nominal exercises of the Inns of Court, but will call for a return of the whole number of pupils (being members of the Inns) for the last three years, in the chambers of barristers, special pleaders, conveyancers, &c. We hear a great deal about the deficient means of legal education; and a large portion of the public are led to suppose that either there are no means of regular legal education at all, or that the present system is a bad one. But is this so? You, sir, I think, will agree with me that this is by no means the case.

Readings and exercises in the halls of the four Inns have, it is true, fallen into desuetude; but another (and experience proves a more efficient) system of legal education has grown up, by which the student is enabled to apply his reading practically, and dive into the inmost recesses of the law. When a return of the number of students, within any required period of three years, is made out, it will, I apprehend, appear that almost every student who intends to practise at the bar, qualifies himself by a course of study in the chambers either of a barrister, special pleader, or conveyancer. Experience proves that entering the chambers of a gentleman actually engaged in the daily practice of the law is the best mode of becoming a lawyer, the most certain and ready means of acquiring proficiency in his profession. This fact accounts for the circumstance that hundreds are ready to pay a fee of 100 guineas to a pleader, while at the same moment they could obtain admission to the Law Lectures of King's College, London, for 5l. 5s. a year, or "perpetual admission" for 10l. 10s. Indeed, I understand that the lectures at that admirable institution (although it may be said to be adjoining the Temple) have been wholly given up in consequence of the non-attendance of pupils. I am perfectly satisfied, therefore, that the benches of our several Inns have not remained quiescent because they are insensible of the importance of this question, or because they have not been anxious to forward the *alumni* of the Inns in their professional career; for the contrary must be notorious to every one of us; but because they know, as a matter of fact, that a large portion of their students are diligently and successfully pursuing their studies in the best possible manner, and because they entertain doubts as to the practical value of public courses of lectures, which may be said to have failed at the Universities. The days of "mootings," it is true, are passed; but yet, as you, sir, are fully aware, the practice of forensic disputation has not been suffered to fall into disuse among the students. There are three efficient societies, composed of members of the four Inns of Court, which meet every week during the greater part of the year in Lyon's-inn Hall, for the discussion of legal questions of difficulty and importance—the Forensic Society, the New Forensic Society, and the Union Society. These societies comprise several hundred members, embracing many Practising Barristers, Special Pleaders, and Conveyancers, and the proceedings are conducted with the greatest regularity and decorum.

But after all, what is the great Educator of the nineteenth century? The printing-press. It is no uncommon thing to hear men talking of the decline of legal education since the days of solemn readings, mootings, and exercises in Norman French; but the multiplication of books during the last two centuries has created a totally new state of circumstances. The treasures of the law are no longer locked up in rare manuscripts or in books of enormous price.

In order to estimate fairly the present state of legal education in England, a return should be called for of the condition of the libraries of the Inns; of the numbers who are in the habit of frequenting them; as well as an accurate account of the number of legal periodicals and law books issued from the press annually in the metropolises.

I do not say that it is impossible to improve our present method of legal education; but, in conclusion, I venture confidently to assert, that it has hitherto answered every practical purpose;—a fact which the galaxy of great and eminent men which the Bar of this kingdom has produced during the last century sufficiently attests.

I am yours, &c.

A MEMBER OF GRAY'S-INN.

CHARITABLE TRUSTS BILL.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am glad to observe that you have given your attention to this important measure; but permit me, with great respect, to say that it appears to

me, that you are deluded, by the title and preamble of the bill, and by the public exposure that has been made of the gross abuses of charities, into an approval of the bill which it does not merit. I have, through another channel, called public attention to the fact, that, through the want of an interpretation clause, defining and limiting the meaning of the term "charity," all the chapels or meeting-houses of dissenters, Wesleyans, Quakers, and Roman Catholics, will come under the superintendence and control of the proposed commissioners, and that the deeds of them must be registered, and, in some cases, deposited in the office of the commissioners, and the chapels be taxed for the maintenance of the new court. This will be the case, although there may be no complaint or ground for complaint of any breach of trust. I apprehend also that, taking the word "charity" to mean, as defined by Lord Camden, "a general public use, which extends to the rich as well as the poor," numerous literary institutions which are not charities, in the popular sense of the word, will come under the superintendence and control of the commissioners. The words "superintendence and control" have no well-defined legal meaning, and may confer a power and authority that may be exercised most vexatiously. It appears to me that if the operation of the bill were confined to the charities referred to in the analytical digest mentioned in the 11th section, it would be a wise and useful measure.

In my lecture to the articulated clerks of the members of the Manchester Law Association, which you reviewed last year, in most complimentary terms, I took notice of the extensive legal meaning of the term "charity;" and I humbly think that, if this bill is to use the word in that sense, the measure will be very harassing to numerous trustees who are faithfully fulfilling the obligations imposed on them.

An interpretation clause has become a "common form" in Acts of Parliament, and I am surprised that this important bill is without one.

I am, Sir, yours, &c.

JOS. GRAVE.

1, Bond-street, Manchester, May 12, 1846.

STAMP DUTY ON MORTGAGE TRANSFERS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am not going to revive the old question as to the transfer duty, which was left far from settled, but regret to find a practice has grown up, and is followed by many solicitors who have extensive practice in mortgage transactions, viz. to affix the *ad valorem* duty on a mere transfer of the security, though no further sum has been advanced, where the heir or devisee, trustees or *cestui que trusts*, &c. of the mortgagor are made parties—treating it, in fact, as a new security. Is this the regular and correct practice? and what is the opinion of the more experienced members of the Profession?

To talk of the conveyancer's or solicitor's charges for the conveyance or mortgage being a serious burden on land is preposterous! Let us all unite, and shew where the real grievance lies. The truth is, those noble lords who receive annual pensions dare not face the real question.

I am, Sir, yours, &c.

May 9, 1846.

R. I.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Having read in your Vol. VII. No. 162, p. 124, the question put by "An Original Subscriber" respecting the right to furnish additional abstract on a transfer of mortgage, and your reply, I take the liberty of saying, it is the privilege of the mortgagee's solicitor to furnish the abstract in question, and not the mortgagor's solicitor.

I am, Sir, yours, &c.

MATTHEW KENNETT.

SELECTIONS FROM CORRESPONDENCE.

"Another Solicitor" thus replies to a query in our last relative to the Lease and Release Act and Transfer of Property Act:—

In answer to the question of a "Solicitor" in your last week's paper, I would confidently submit that the deed therein specified did not require any reference either to 4th Vict. c. 21, or 7 & 8 Vict. c. 76, and that, inasmuch as by the latter statute every person was authorized to convey by any deed (without a prior lease), all such freehold land as previously thereto he might have conveyed by lease and release, and inasmuch also as it is "by a second limb (rather redundantly)," declared that such conveyance shall take effect as if made by lease and release, there can be no question but the old operative word "release" would and did abundantly suffice for the purpose.

The deed did not refer to, and therefore was not made in pursuance of 4 Vict. and as for the 7th & 8th Vict. no such reference was required, but the statute operated of itself, without any invocation of its powers or aid.

"A Subscriber" asks for information on the following point of practice:—

Under the Small Debts Bill, the registrar receives all fees for orders, &c. Supposing the commissioner

make an order on the debtor to pay, by certain instalments, on whom devolves the duty of filling up that order for the signature of the commissioner? The same question is asked with reference to the filling up the summons to the debtor? An answer, if you or any of your readers can give it, will oblige.

"Another Original Subscriber" adds these comments on the right to furnish additional abstract on "Transfer of Mortgage:":—

I believe you are right in your reply to "An Original Subscriber" under this head; but some members of the Profession are at issue on the following case, where it is submitted the privilege alluded to is much stronger. S. prepares mortgage deed with the usual powers of sale as solicitor for both mortgagor and mortgagee, and the mortgagee subsequently takes the title-deeds, with which is an abstract of the title, to another solicitor to realize his security. Before any steps are taken by P. (the new solicitor for the mortgagee) to realize the security, S. (as solicitor for the mortgagor alone) sells the property, and being in possession of the draft of the abstract of title which accompanied the title-deeds, and of the original draft of the mortgage, makes an abstract and sends it to the solicitor for the purchaser without even the knowledge of the mortgagee or his solicitor, and the mortgagee's solicitor is then called upon to produce the deeds and peruse draft conveyance on behalf of the mortgagee. It is submitted that, independent of the infringements upon the professional privileges of the mortgagee's solicitor, S. would, by this conduct, commit a breach of professional confidence towards the mortgagee in exposing his security in which there might be some flaw. Any observation from your pen, or that of your readers on this case, and in reply to the two following queries, would be much valued, and might serve to settle a point which has been much mooted in one of the largest provincial Law Societies.

Is not the mortgagee's solicitor entitled to the privilege of furnishing the abstract?

Was S, who prepared the security, as solicitor for the mortgagee as well as mortgagor, justified in discovering the mortgagee's title to the purchaser, who is a stranger?

THE REPORTS.

PRIVY COUNCIL by THOMAS CAMPBELL FOSTER, of the Middle Temple, Esq. Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GRIFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR OF ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT, by J. VERNY DAWSON, Esq. of the Middle Temple, Barrister-at-Law.

COMMON LAW COURTS.

THE QUEEN'S BENCH, by ADAM BITTLETON, Esq. of the Inner Temple, Barrister-at-Law, and EDWARD WISE, Esq. of the Middle Temple, Barrister-at-Law.

THE COURT OF COMMON PLEAS, by PAUL PARNELL, Esq. of the Middle Temple.

THE COURT OF EXCHEQUER by H. T. COLL, Esq. of the Middle Temple, Barrister-at-Law; and H. BROWN, Esq. of the Inner Temple, Barrister-at-Law.

THE BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

THE EXCHEQUER CHAMBER by HERBERT BECK, Esq. of the Inner Temple, Barrister-at-Law.

BANKRUPT AND INSOLVENT COURTS.

THE COURT OF REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

LONDON COMMISSIONERS' COURTS and the INSOLVENT COURT, by PAUL PARNELL, Esq. of the Middle Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT, by F. T. ALLEN, Esq. of Lincoln's-inn, Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by A. BITTLETON, Esq. of the Inner Temple, Barrister-at-Law.

NORTHERN CIRCUIT, York and Liverpool, by J. E. ASPINALL, Esq. Barrister-at-Law. The other parts of the Circuit, by G. F. H. OLEPHANT, Esq. Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

NORFOLK CIRCUIT by JNO. B. DARENT, Esq. Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS IN THE COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDW. W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

THE LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq. Barrister-at-Law.

QUEEN'S BENCH AND CRIMINAL COURTS by Wm. ST. LEGER BABINGTON, LL.D. Barrister-at-Law.

FISHING.—Reports by the commissioners for the British Fisheries, of their proceedings for the year ending 5th April, 1844, and for the period from 5th April, 1844, to 5th January, 1845. The year ending 5th April, 1844, was the most prosperous on record in the herring fishery. The number of barrels cured in the succeeding year showed a decrease of 43,895, and a total of 623,419 barrels. The season now reported on shows a total of barrels cured of 665,359. The number of barrels of cured fish found entitled to the official brand was 188,928, and the quantity exported 313,516 barrels, showing an increase of 20,275 barrels branded, and of 21,716 exported. In the cod and ling fishery 92,813 cwt. of fish were cured, showing an increase over the preceding year of 15,606 cwt.

ADVERTISEMENTS.

Miscellaneous.

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A stamped number, as a specimen, sent to any person, enclosing three postage stamps.

CRITIC Office, 20, Essex-street, Strand.

Sales by Auction.

Absolute Sale.—To Builders and others.—Carcases of Four Houses, Chepstow-place, Westbourne-green.

MESSRS. BROOKS and GREEN have received instructions from the Mortgagees in Trust, to **SELL by AUCTION**, at their Estate Auction Gallery, 28, Old Bond-street, on **WEDNESDAY, MAY 20**, at One, the roofed-in CARCASSES of **FOUR HOUSES**, of handsome architectural elevation, most desirably situated in a respectable and rapidly increasing neighbourhood, adjacent to Hyde-park and Kensington-gardens: held on lease at a ground-rent of 10l. per annum each.—Particulars may be had of Messrs. Grey and Herri, solicitors, 12, Grove-place, Lisson-grove; Hall of Commerce, Threadneedle-street; and of Messrs. BROOKS and GREEN, Estate Agents, Surveyors, and Auctioneers, 28, Old Bond-street.

Votes for the County.—Freehold Building Ground, Two-waters, Herts, contiguous to the Birmingham Railway Station at Boxmoor, and the market town of Hemel Hempstead.

MESSRS. BROOKS and GREEN have received instructions to **SELL by AUCTION**, at the Bell Inn, Two-waters, on **THURSDAY, MAY 21**, at Twelve, highly desirable **FREEHOLD BUILDING GROUND** on the Manor Farm, having excellent frontages, and offering eligible investments for builders and large or small capitalists. Through the formation of the Birmingham Railway, with its station at Boxmoor, and the consequent facilities for travelling, the applications for residences and apartments for families have been so numerous, that extensive building operations have been most successfully conducted between Two-waters and Hemel Hempstead.—Particulars and plans may be had at the Bell Inn, Two-waters; at the Railway Inns at Hemel Hempstead, Berkhamstead, Tring, Watford, Rickmansworth, and St. Alban's; of Messrs. Smith and Grover, solicitors, Hemel Hempstead; Messrs. Teasdale, Symes, Weston, and Teasdale, solicitors, Fenchurch-street; and of Messrs. BROOKS and GREEN, estate agents, surveyors, and auctioneers, 28, Old Bond-street.

Periodical Sale of Reversions, Life Interests, Annuities, Life Policies, Advowsons, Next Presentations, and all descriptions of Securities dependent upon human life, Ground and Improved Rents, Post Obit Bonds, Shares in Railways, Mines, Insurance Companies, and all other public undertakings.

MR. MARSH (late Fuller and Marsh) respectfully informs the Public, that his **PERIODICAL SALES by AUCTION** of the above description of **PROPERTY** will be continued throughout the present year as follows:—

Thursday, June 4.	Thursday, September 3.
Thursday, July 2.	Thursday, October 1.
Thursday, August 6.	Thursday, November 5.
Thursday, December 3.	

Notice of sales intended to be effected by the above means should be forwarded to Mr. MARSH 14 days prior to each date.—No. 27, Bucklersbury, corner of Charlotte-row, Mansion-house, London.

Oatlands Mansion, Park, and Estate of 900 acres, Surrey, within one mile of the Weybridge or Walton Stations on the South-Western Railway, and within half an hour's ride of the Terminus in London.

MESSRS. DRIVER have been favoured with instructions to offer to **PUBLIC COMPETITION**, at the Auction Mart, Bartholomew-lane, on **TUESDAY, the 19th of May**, at Twelve o'clock, in 64 Lots (unless an acceptable offer for the whole estate should be previously made), the above renowned and highly admired **DOMAIN**, formerly the property and residence of his late Royal Highness the Duke of York. Lot 1 will comprise Oatlands Mansion, Offices, delightful Pleasure Grounds, the far-famed Grotto, Kitchen Garden and Lawn, extending to and including part of the magnificent lake called the Broad Water, and containing altogether 97 acres, without exception constituting one of the most desirable and enviable residences, and site of ornamental grounds in the kingdom, and from the house having been recently completely repaired and fitted up in the best style of taste and elegance, forms a most desirable abode for any family. The Park and other Lands south of the Lake will be divided into about 56 lots, varying from 3 to 10 acres each, with the exception of 2 or 3 lots, from 10 to 20 acres, and of the most inviting character for the erection of villas, being upon a peculiarly salubrious soil, and much adorned with ornamental timber, which may be thinned to suit the tastes of the various purchasers. The present Gravel Road, so long the acknowledged and highly admired drive through the Park, leading from Walton to Weybridge, affording at all points fine prospects, will be preserved as the public road and approach to a great number of the lots, and another principal road will be set out to lead through other parts of the park, affording an outlet at the present lodge entrance, where it crosses the South-Western Railway and leads to Cobham, Kingston, and all the adjacent beautiful neighbourhood. The lands on the north of the lake, and extending to the river Thames, will be divided into 7 lots of larger description, one being about 113 acres, and the remainder of the estate, consisting of Weybridge and Child's Farm, containing about 85 acres, will form other lots, besides which there will be 2 other lots in the town of Weybridge of about 10 acres each, admirably adapted for farm uses.—Printed specifications, with plans annexed, are now prepared, and will be ready for delivery after the 4th of April, and may then be had of Mr. Haines, at the Farm House, Oatlands; at the Swan, Chertsey; White Hart, Windsor; Griffin, Kingston; of Messrs. Fox & Forster, and Co. Solicitors, Lincoln's Inn; at the Auction Mart, near the Bank of England; and of Messrs. DRIVER, Surveyors, &c. 8, Richmond-terrace, Parliament-st. of whom cards to view the mansion may be had.

NOTICE.—THE OATLANDS ESTATE.—By Messrs. DRIVER, at the Auction Mart, on **TUESDAY, the 19th of May**, Lot 1, comprising the **MANSION HOUSE** and 97 acres, will be submitted at the Auction on the above day, exclusive of the 60 Manors of Byfleet and Walton-on-Legh, though included in the list of the specifications already published, which said manors will be submitted in a separate lot. The remaining 63 lots will be offered to Auction on the above day, as already advertised. Richmond-terrace, Whitehall, April 27, 1846.

Sales by Auction.

Glazenwood, near Witham, Essex.—A remarkably unique Freehold Property, land-tax redeemed, comprising the celebrated Horticultural, Orchard, Nursery, Australian and American Gardens, containing upwards of 50 acres (with a capital mansion-house in the centre, in the occupation of the Rev. Sir John Page Wood, bart.); also a genteel newly-erected Villa, besides another residence, with all requisite conservatories and buildings for horticultural and floricultural purposes; the whole property constituting one of the Lions of that part of the county, and admirably adapted either for occupation or investment.

MESSRS. DRIVER have received instructions to **OFFER to PUBLIC COMPETITION**, at the Auction Mart, London, on **TUESDAY, the 9th day of JUNE**, at Twelve o'clock, in two lots, the above valuable **PROPERTY**, freehold, and land-tax redeemed, comprising the celebrated Glazenwood Estate, in the parish of Bradwell, next Coggeshall, consisting of above 50 acres of orchard, nursery, and American gardens, a considerable portion of which is well stocked with the choicest fruit trees of the most approved sorts in full bearing, and the remainder planted with a fine and rare collection of American and Australian shrubs and plants, in the most luxuriant and flourishing condition; the whole ornamentally disposed with the greatest taste, and intersected with delightful gravel walks, extensive conservatories, and sundry pits, with a capital mansion-house in the centre of the property (the residence of the Rev. Sir John Page Wood, bart.). Also a genteel newly-erected villa, replete with every accommodation for any respectable family; besides another residence and all requisite buildings for horticultural or floricultural purposes, the whole constituting a remarkably eligible property, either for occupation in its present lucrative trade, or as an investment. It is only about five miles from the Witham Station on the Eastern Counties Railway, surrounded with excellent roads, and resorted to by all persons fond of admiring horticultural or floricultural pursuits as quite the lion of that part of the county. The entire property is in the hands of the proprietor (excepting the Mansion House, occupied by the Rev. Sir J. P. Wood, bart.), and will be divided into Two Lots. The principal lot, comprising the Mansion House, &c. and upwards of thirty-eight acres. Lot 2. consists of the Villa and the other residence, with Conservatories and Buildings, and twelve acres of Nursery and Orchard Ground attached thereto.

To be viewed, on application to Mr. Curtis, at Glazenwood, of whom printed specifications, with plans annexed, may be had. Specifications may also be had at the Hotel at Chipping-hill, close to the Witham Station; the Saracen's Head, Chelmsford; the Three Cups, Colchester; of E. G. Craig, Esq. Solicitor, Braintree; of W. W. Oldershaw, Esq. of Tokenhouse-yard, London; at the Auction Mart, near the Bank of England; and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Whitehall, London.

Periodical Sales (established in the year 1803) of Reversions, Life Interests, Annuities, Policies of Assurance, Advowsons, Next Presentations, Rent Charges in lieu of Tithes, Post-obit Bonds, Tontines, Debentures, Ground Rents, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and all Public Undertakings.

MESSRS. SHUTTLEWORTH and SONS respectfully inform the public, that upwards of 40 years' experience having proved the classification of this species of property to be extremely advantageous and economical to vendors, and equally satisfactory and convenient to purchasers, the **PERIODICAL SALES** of reversionary interests, policies of insurance, tontines, debentures, advowsons, next presentations, all securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through 1846, as follows:—

Friday, June 5	Friday, October 2
Friday, July 3	Friday, November 6
Friday, August 7	Friday, December 4.
Friday, September 4	

Particulars may be had Ten days previous to each sale, at the Royal Hotel, Manchester; the Adelphi Hotel, Liverpool; Dee's Royal Hotel, Birmingham; the Angel, Oxford; the Eagle and Child, Cambridge; at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 25, Poultry.

Periodical Sale.—Life Interest in 2,656l. 5s. Consols, Equitable Policy, Shares, &c.

MESSRS. SHUTTLEWORTH and SONS are instructed to include in the Monthly Sale of Reversionary Interests, &c. appointed to take place at the Mart, on **FRIDAY, JUNE 5**, by order of the Assignees, the **LIFE INTEREST** of the Bankrupt, aged 73, in 2,656l. 5s. Consols, standing in the names of two highly respectable trustees; a Policy of Assurance for the sum of 500l. with the accumulations thereon, amounting to 97l. 10s. making together the sum of 597l. 10s. effected with the Equitable Assurance, December, 1817; life, 58. One Hundred Shares in the Patent Galvanized Iron Company, of 10l. each, paid in full. The last dividend was at the rate of 8l. per cent. Particulars may be had at the Mart; of E. Edwards, Esq. official assignee; of Mr. Godsell, Solicitor, 6, Farnival's-inn; of Mr. J. C. Fourdrinier, Solicitor, No. 1, Scott's-yard, Bush-lane; and of Messrs. SHUTTLEWORTH and SONS, 25, Poultry.

ST. PAUL'S CHURCHYARD.—Well secured Improved Rent of 125l. per annum.

MESSRS. WINSTANLEY are directed to **SELL by AUCTION**, at the Mart, on **TUESDAY, 19th MAY**, the excellent **SHOP and PREMISES**, No. 58, on the north side of that great leading thoroughfare, St. Paul's Churchyard, let to Mr. Robinson for the whole term, less a few days, at the moderate rent of 300l. per annum; and held by lease for a term, whereof 12 years will be unexpired on Midsummer-day next at 175l. per annum.—To be viewed by permission of the tenant. Printed particulars may be obtained, twenty days previous to the sale, of Mr. FAWCETT, solicitor, Jewin-st. Cripplegate; at the Mart; and of Messrs. WINSTANLEY, Paternoster-row.

RAILWAY SHARES BY PUBLIC SALE.

MESSRS. LAMOND, SMALE, and LAMOND, Railway Share Auctioneers, beg to thank their Friends and the Public for their continued support and patronage, and to announce that their Public Sales of Railway Shares, &c. take place every Tuesday and Friday, at One o'clock, at the Hall of Commerce, Threadneedle-street, London, to which place all favours, containing instructions, are respectfully requested to be addressed.

All Scrip and Share Certificates must be deposited for examination at least one day previously to their being offered; and advices of results will be forwarded by the first post after the sale, and the proceeds immediately disposed of according to instructions.

Offices, Hall of Commerce, Threadneedle-street, London.

UNITED KINGDOM LIFE ASSURANCE COMPANY.

8, WATERLOO-PLACE, PALM-MALL, LONDON.

Established by Act of Parliament in 1834.

DIVISION OF PROFITS AMONG THE ASSURED

DIRECTORS.

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Hananel De Castro, Esq. Deputy Chairman.	F. Charles Maitland, Esq.
Samuel Anderson, Esq.	William Hailston, Esq.
Hamilton Blair Avarne, Esq.	John Ritchie, Esq.
Edw. Boyd, Esq. Resident.	F. H. Thomson, Esq.
E. Lennox Boyd, Esq. Asst. Resident.	
Charles Downes, Esq.	

Surgeon—F. Hale Thomson, Esq. 48, Berners-street.

This Company, established by Act of Parliament, affords the most perfect security in a large paid-up Capital, and in the great success which has attended it since its commencement in 1834.

Its Annual Income being upwards of £82,000.

In 1841 the Company added a Bonus of 2l. per cent. per annum on the sum insured to all policies of the participating class from the time they were effected.

The Bonus added to policies from March, 1834, to the 31st Dec. 1840, is as follows:—

Sum Assured.	Time Assured.	Sum added to Policy
£5,000	6 Yrs. 10 Months.	£563 6s. 6d.
5,000	6 Years	408 8 8
5,000	4 Years	408 8 8
5,000	2 Years	204 4 4

The Premiums nevertheless are on the most moderate basis, and only one-half need be paid for the first Five Years, where the Insurance is for Life.

Every information will be afforded on application to the Resident Directors, **EDWARD BOYD, Esq.** and **E. LENNOX BOYD, Esq.** of No. 8, Waterloo-place, Pall-mall, London.

HAND-IN-HAND FIRE and LIFE INSURANCE SOCIETY, No. 1, New Bridge-street, Blackfriars, London.—Instituted in 1696.—Extended to Life Insurance, 1836.—Immediate, Deferred, and Survivors' Annuities granted.

DIRECTORS.

The Hon. William Ashley.	The Hon. Charles John Murray.
Sir Felix Booth, bart.	William Scott, Esq.
The Hon. Sir Edward Cust.	John Sperling, Esq.
John Lettison Elliot, Esq.	Henry Wymouth, Esq.
James Esdaile, Esq.	Henry Wilson, Esq.
John Gurney Hoare, Esq.	Robert Winter, Esq.
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Auditors.—The Hon. Capt. Cust, James Esdaile, Esq., Thomas Fuller Maitland, Esq.

Bankers—Messrs. Gossling and Sharpe, 19, Fleet-street.

Physician—Robert Richardson, Esq. M.D. 19, Gordon-street, Gordon-square.

Solicitors—Messrs. Oddie, Lumley, Nicholl, and Smith, 18, Carey-street.

Actuary—James M. Terry, Esq.

Secretary—Robert Steven, Esq.

LIFE DEPARTMENT.

The important advantages offered by the plan and constitution of the Life Department of this Society are—

That Insurers are protected by a large invested capital upon which there is no interest to pay, and for which no deduction of any kind is made, which enables the Directors to give the whole of the profits to Insuring Members.

That the profits are divided annually amongst all members of five years' standing, and applied towards reducing Life Insurance to the lowest possible rates of premium, the amount for the years 1842, 1843, and 1844, being at the rate of 45l. per cent. and for the years 1845 and 1846, 58l. per cent.; that is, a policy taken out on or before the 24th of June, 1841, at an annual premium of 100l. will be charged 58l. at this year's premium, and it is expected that an equal share will in future be annually made.

That persons insuring their own lives, or the lives of others, may become members.

That persons who are willing to forego participation in the profits, can insure at a lower rate than that charged to members.

The following table will shew the effect of the reduction of premium made by the society on members' policies that have been five years in force.

Age when Insured.	Sum Insured.	Annual Premium for first 5 years.	Reduction made on the 6th Premium.
30	100	£2 13 5	£1 6 8
40	100	3 7 11	1 13 11
30	500	13 7 1	6 13 6
40	500	16 19 7	8 9 9
45	1000	38 19 2	19 9 7
40	2000	67 18 4	33 19 2
45	5000	194 15 10	97 7 11

ROBERT STEVEN, Secretary.

LONDON:—Printed by HENRY MERRILL Cox, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street, above, and published by the JOHN CROCKFORD, of 39, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the LAW TIMES, No. 22, Essex Street, above, on Saturday, the 10th day of May, 1846.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Registrar, the Magistrate, and the Lawyer.

VOL. VII. No. 164.]

SATURDAY, MAY 23, 1846.

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Apply by letter to A. B. MANNING, Esq., and Son, 19, Bartholomew-lane, London.

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LAW.—PRACTICE or PARTNERSHIP WANTED; must be well established, of undoubted respectability. The party seeking this has been in practice many years. Any elderly gentleman wishing to retire, or be relieved of a great portion of his labours, will find an opportunity of confiding his connections to hands that will bear the strictest inquiry.

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ISLE OF WIGHT, near Ventnor.

TO BE SOLD, a highly desirable stone-built RESIDENCE, in the Elizabethan style, adapted for a nobleman or gentleman requiring a moderate establishment. It possesses every comfort, and is finished in the most expensive manner, with great taste. The gardens are beautiful, and the views present a highly panoramic scene of animated nature, over land and sea, for many miles.—For particulars apply to Messrs. BROOKS and GREEN, Estate Agents, Surveyors, and Auctioneers, 38, Old Bond-street.

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TO BE SOLD, a valuable FREEHOLD ESTATE, whether for residence or investment, comprising a moderate-sized Villa, with Farm-house, and every requisite agricultural building, cottages, and nearly 200 acres of excellent Arable, Meadow, and Pasture Land, all drained, and well watered.—For particulars, apply to Messrs. BROOKS and GREEN, Estate Agents, Surveyors, and Auctioneers, 38, Old Bond-street.

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The exclusive right of Sporting over about 1,500 acres of land (part wood) is required, and also good Fishing, and the house must not be far from a London railway station.

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Notice of sales intended to be effected by the above means should be forwarded to Mr. MARSH 14 days prior to each date.—No. 27, Bucklersbury, corner of Charlotte-row, Mansion-house, London.

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This Society grants Insurances upon the lives of persons in every profession and station wherever resident.

Fourth-fifths of the profits are divided among the assured. The rates are calculated on the lowest scale consistent with security, from the Government returns. The payments may be made, yearly, half-yearly, and quarterly, during life, or for a limited period.

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The Board meets every Wednesday, at half-past Three o'clock, to receive proposals and transact other business; but any assurance for which immediate despatch is required may be effected on the same day that it is proposed.

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Periodical Sales (established in the year 1803) of Reversions, Life Interests, Annuities, Policies of Assurance, Advowsons, Next Presentations, Rent Charges in lieu of Tithes, Post-obit Bonds, Tontines, Debentures, Ground Rents, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and all Public Undertakings.

MESSRS. SHUTTLEWORTH and SONS respectfully inform the public, that upwards of 40 years' experience having proved the classification of this species of property to be extremely advantageous and economical to vendors, and equally satisfactory and convenient to purchasers, the PERIODICAL SALES of reversionary interests, policies of insurance, tontines, debentures, advowsons, next presentations, all securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through 1846, as follows:—

Friday, June 5	Friday, October 2
Friday, July 3	Friday, November 6
Friday, August 7	Friday, December 4.
Friday, September 4	

Particulars may be had Ten days previous to each sale, at the Royal Hotel, Manchester; the Adelphi Hotel, Liverpool; Dea's Royal Hotel, Birmingham; the Angel, Oxford; the Eagle and Child, Cambridge; at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Freehold Mansion, York-Grove, Norwood.

MESSRS. SHUTTLEWORTH and SONS have received instructions to SELL by AUCTION, at the Mart, on FRIDAY, JUNE 26, at Twelve, a FREEHOLD MANSION, or superior Family Residence, of handsome architectural elevation, beautifully situated at the summit of York-grove, Norwood, near St. Luke's Church, and Tulse-hill, commanding picturesque and extensive views, only five miles from the several bridges communicating with the different districts of the metropolis, with excellent and frequent travelling accommodation. The house contains four upper bedchambers, four family bedchambers, two bachelors' bedchambers, with dressing-rooms, water-closets, &c. a handsome entrance-hall and vestibule, communicating with a breakfast-room and library, each 13 feet by 11, an excellent drawing-room, 25 feet by 17, and 13 feet high, an elegant drawing-room, of the same dimensions as the dining parlour, exclusive of a splendid bay window, all finished in good modern taste. On the basement a spacious room, corresponding in dimensions with the dining-room, applicable for a good sized billiard table, housekeeper's and butler's rooms, each 19 feet by eleven, large light kitchen, pantry, scullery, larder, excellent cellars, and servants' entrance, all well supplied with water; also a detached coach-house and three-stall stable, lawn, pleasure-garden, shrubbery walks, and thriving plantations of forest trees, shrubs, and evergreens, the whole comprising about an acre and a half of land.—May be viewed and particulars had 14 days previous to the sale, on the premises; at the Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Periodical Sale; established 1803.—Important and highly valuable Reversionary Interest in a Moiety of 98,097l. 6s. 8d. the accumulations of 3,000l. per annum. Life Interest in 18,132l. sterling, and 2,656l. 5s. Consols, Reversions, Life Policies, Shares in the Galvanized Iron Company, a Bond of His late Royal Highness the Duke of York for 789l. 17s. 6d. with interest, &c.

MESSRS. SHUTTLEWORTH and SONS

are instructed to include in their next Periodical Sale of Reversionary Interests, &c. appointed to take place at the Mart, on FRIDAY, JUNE 5, at Twelve, the valuable REVERSIONARY INTEREST of a gentleman in his 35th year, in a moiety of the sum of 98,097l. 6s. 8d. and the accumulations of 3,000l. per ann. during the life of a lunatic, aged 47; the life interest of a gentleman in the sum of 18,132l. sterling; reversionary interests in 4,576l. and 915l. 2s. 7d. Consols; the contingent reversion to the sums of 1,200l. and 833l. life 30 against 61; the life interest in a rental of 42l. per annum, derived from six leasehold houses in Vine-street, Minorities; the ditto, with dividends, arising from the sum of 2,656l. 5s. Three per Cent. Consolidated Bank Annuities, life 73; the ditto in the dividends arising from the sum of 1,200l. life 30 against 61; a policy of assurance for the sum of 1,000l. effected with the Promoter Life Assurance Company, 22nd of April, 1837, lives 47 and 45; a ditto for the sum of 500l. with accumulations, effected with the Equitable Assurance Society, Dec. 1817, life 58; a ditto for the sums of 2,500l. and 1,500l. effected with the London Life Association; a ditto for the sum of 4,000l. effected with the Norwich Union Society. A Bond of his Royal Highness the late Duke of York, for the sum of 789l. 17s. 6d. with interest at 5 per cent. from December 25, 1823. 100 Shares of 10l. each, paid in full, in the Patent Galvanized Iron Company, at present paying a dividend of 8l. per cent. Four Shares in the County Fire Office, paying good dividends.—Further particulars may be obtained of Mr. Bockett, solicitor, 68, Lincoln's-Inn-Fields; Mr. Poole, solicitor, 4, Old-square, Lincoln's-Inn; Mr. J. W. Powell, solicitor, Mint-yard, Canterbury; Messrs. Vallance and Vallance, solicitors, 20, Essex-street, Strand; Mr. Godsell, solicitor, 6, Lincoln's-Inn-Fields; Messrs. a'Beckett and Symson, solicitors, Golden-square; Mr. J. C. Fourdrinier, solicitor, 1, Scott's-yard, Bush-lane; of Mr. Lake, solicitor, 10, New-square, Lincoln's-Inn; at the Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Valuable Freehold Property, very eligible for investment.—St. John's-square, Clerkenwell.

MESSRS. SHUTTLEWORTH and SONS

are instructed to SELL by AUCTION, at the Auction Mart, on FRIDAY, JUNE 19, at Twelve, in two lots, a valuable FREEHOLD PROPERTY, comprising two substantial dwelling-houses, situate in St. John's-square, Clerkenwell, between which there is a good cart way entrance, enclosed by folding gates, opening into a large yard, with stacks of work-shops, engine-house, smithery, stabling, &c. erected therein, the whole in perfect order, and let on a repairing lease to a highly respectable and responsible tenant for a term of 21 years from Christmas, 1845, at a very low rent of 120l. per annum; and a stack of substantial warehouses of three floors adjoining the preceding, also most respectably tenanted on lease, at a rent of 40l. per annum. May be viewed by leave of the respective tenants, and particulars had of Messrs. WEYMOUTH and GREEN, Solicitors, 10, Angel-court, Throgmorton-street; at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Freehold and Copyhold Ground-Rents, Clerkenwell and Lambeth.

MESSRS. SHUTTLEWORTH and SONS

are instructed by the Executors of T. W. Pitt, esq. deceased, to SELL by AUCTION, at the Auction Mart, on FRIDAY, JUNE 19, at Twelve, in lots, FIVE FREEHOLD GROUND RENTS, amounting together to 45l. per annum, amply secured upon five dwelling-houses in Waterloo-place, Clerkenwell, and eight copyhold ground-rents, amounting together to 49l. per annum, amply secured upon eight dwelling-houses and two cottages, situate in Saville-place and Windmill-street, Lambeth, near the terminus of the South-Western Railway Company, rapidly progressing towards completion. The whole are in the occupation of respectable tenants at considerably improved rents.—May be viewed, with permission of the tenants, and particulars obtained fourteen days previous to the sale; at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

UNITED KINGDOM LIFE ASSURANCE COMPANY,

8, WATERLOO-PLACE, Pall-Mall, LONDON.
Established by Act of Parliament in 1834.

DIVISION OF PROFITS AMONG THE ASSURED

DIRECTORS.
James Stuart, esq. Chairman.
Hannell De Castro, esq. Deputy Chairman.
Samuel Anderson, esq.
Hamilton Blair Avarne, esq.
Edw. Boyd, esq. Resident.
E. Lennox Boyd, esq. Asst. Resident.
Charles Downes, esq.
Surgeon—F. Hale Thomson, esq. 48, Berners-street.

This Company, established by Act of Parliament, affords the most perfect security in a large paid-up Capital, and in the great success which has attended it since its commencement in 1834.

Its Annual Income being upwards of 482,000.

In 1841 the Company added a Bonus of 2l. per cent. per annum on the sum insured to all policies of the participating class from the time they were effected.

The Bonus added to policies from March, 1834, to the 31st Dec. 1840, is as follows:—

Sum Assured.	Time Assured.	Sum added to Policy
£5,000	6 Yrs. 10 Months.	£683 6s. 8d.
5,000	6 Years	500 0 0
5,000	4 Years	400 0 0
5,000	2 Years	300 0 0

The Premiums nevertheless are on the most moderate scale, and only one-half need be paid for the first Five Years, where the Insurance is for Life.

Every information will be afforded on application to the Resident Directors, EDWARD BOYD, Esq. and E. LENNOX BOYD, Esq. of No. 8, Waterloo-place, Pall-mall, London.

Glazenwood, near Witham, Essex.—A remarkably unique Freehold Property, land-tax redeemed, comprising the celebrated Horticultural, Orchard, Nursery, Australian and American Gardens, containing upwards of 50 acres (with a capital mansion-house in the centre, in the occupation of the Rev. Sir John Page Wood, bart.); also a grand newly-erected Villa, besides another residence, with all requisite conservatories and buildings for horticultural and floricultural purposes; the whole property constituting one of the Lions of that part of the county, and admirably adapted either for occupation or investment.

MESSRS. DRIVER have received instructions

to OFFER to PUBLIC COMPETITION, at the Auction Mart, London, on TUESDAY, the 9th day of JUNE, at Twelve o'clock, in two lots, the above valuable PROPERTY, freehold, and land-tax redeemed, comprising the celebrated Glazenwood Estate, in the parish of Sandwell, next Coggeshall, consisting of above 50 acres of orchard, nursery, and American gardens, a considerable portion of which is well stocked with the choicest fruit trees of the most approved sorts in full bearing, and the remainder planted with a fine and rare collection of American and Australian shrubs and plants, in the most luxuriant and flourishing condition; the whole ornamentally disposed with the greatest taste, and intersected with delightful gravel walks, extensive conservatories, and sundry pits, with capital mansion-house in the centre of the property (the residence of the Rev. Sir John Page Wood, bart.). Also a grand newly-erected villa, replete with every accommodation for any respectable family; besides another residence and all requisite buildings for horticultural or floricultural purposes, either for occupation in its present lucrative trade, or as an investment. It is only about five miles from the Witham Station on the Eastern Counties Railway, surrounded with excellent roads, and resorted to by all persons fond of admiring horticultural or floricultural pursuits as quite the Lion of that part of the county. The entire property is in the hands of the proprietor (excepting the Mansion House, occupied by the Rev. Sir J. P. Wood, bart.), and will be divided into Two Lots. The principal lot, comprising the Mansion House, &c. and upwards of thirty-eight acres. Lot 2 consists of the Villa and the other residence, with Conservatories and Buildings, and twelve acres of Nursery and Orchard Ground attached thereto.

To be viewed, on application to Mr. Curtis, at Glazenwood, of whom printed specifications, with plans annexed, may be had. Specifications may also be had at the Hotel at Chipping-hill, close to the Witham Station; the Samaritan Head, Chelmsford; the Three Cups, Colchester; of E. G. Craig, Esq. Solicitor, Braintree; of W. W. Olden, Esq. of Tokenhouse-yard, London; at the Auction Mart, near the Bank of England; and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Whitehall, London.

THE REPORTS.

PRIVY COUNCIL by THOMAS CAMPBELL FORTER, of the Middle Temple, Esq. Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD COATES WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR OF ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLWELL, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT, by J. VINEY DAWSON, Esq. of the Middle Temple, Barrister-at-Law.

COMMON LAW COURTS.

THE QUEEN'S BENCH, by ADAM BRITTON, Esq. of the Inner Temple, Barrister-at-Law, and EDWARD WISE, Esq. of the Middle Temple, Barrister-at-Law.

THE COURT OF COMMON PLEAS, by PAUL FARNELL, Esq. of the Middle Temple.

THE COURT OF EXCHEQUER by H. T. COLE, Esq. of the Middle Temple, Barrister-at-Law; and H. BACON, Esq. of the Inner Temple, Barrister-at-Law.

THE BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

THE EXCHEQUER CHAMBER by HERBERT BLOOM, Esq. of the Inner Temple, Barrister-at-Law.

BANKRUPT AND INSOLVENT COURTS.

THE COURT OF REVIEW by GEO. S. ALLWELL, Esq. of the Middle Temple, Barrister-at-Law.

LONDON COMMISSIONERS' COURTS and the INSOLVENT COURT, by PAUL FARNELL, Esq. of the Middle Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT, by F. T. ALLEN, Esq. of Lincoln's-Inn, Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. REYNOLDS, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by A. BRITTON, Esq. of the Inner Temple, Barrister-at-Law.

NORTHERN CIRCUIT, York and Liverpool, by J. L. ASPINALL, Esq. Barrister-at-Law. The other parts of the Circuit, by G. F. H. OLEPHANT, Esq. Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

NORFOLK CIRCUIT by JNO. B. DASHENT, Esq. Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JNO. LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDW. W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

THE LORD CHANCELLOR'S COURT by WILLIAM DUGGAR, Esq. Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by W. ST. LEGER BASINGTON, LL.D. Barrister-at-Law.

MAER-HALL, in Staffordshire, bordering on Cheshire and Shropshire, near Newcastle-under-Lyme, many years the residence and property of the late Josiah Wedgwood, Esq. with its splendid Lake or Mere, surrounded by rich park-like pastures, and a bold broken chain of wooded hills, intersected by romantic drives and walks, of several miles in extent, forming one of the most beautiful and desirable domains of its size (about 1,100 acres) in the country; the soil being remarkably sound and healthy, the lands nearly timber-free, and the farm homesteads of a very superior description; also the Advowson and Manor of Maer, and a romantic residence, known as Camp-hill, adjoining; midway between Birmingham, Manchester, and Liverpool, with a first-class station within a mile of the estate, bringing it within about seven hours' journey of London, and two and a half from those important towns.

MESSRS. DANIEL SMITH and SON are directed by the Executors of the late Josiah Wedgwood, Esq. to **SELL** by AUCTION, at the Mart, near the Bank of England, on **TUESDAY, JUNE 23**, at Twelve o'clock, in Five Lots (unless an acceptable offer shall be previously made by private contract), the above important and singularly beautiful **FREEHOLD PROPERTY**, delightfully situated in a remarkably healthy and picturesque part of the country, between the towns of Newcastle-under-Lyme, Stafford, Drayton, and Eccleshall, and on the Shrewsbury-road. It comprises the Mansion of Maer Hall, possessing every comfort for a moderate establishment, capital newly-built stabling, gardens, and park-like pastures, refreshed by a lake of nearly twenty-three acres, stored with fish, amidst remarkably thriving plantations, chiefly of larch and oaks, clothing and crowning the brows and wooded hills of this highly picturesque domain, commanding very extensive and romantic scenery, and forming excellent preserves for game. The farms are let to respectable yearly tenants at low rents, and the two principal farmhouses and homesteads have been entirely newly built in the most substantial manner, and of a superior character. The Manor and Advowson of the living (a perpetual curacy), with its Parsonage, Glebe, &c., appertaining to the estate, as also the small old established inn, the Swan with Two Necks, and several cottages. Camp-hill is a modern compact residence, on the northward side of the property, about one mile from the railway station. The estates may be viewed by parties sending their addresses. Descriptive particulars, with lithographic plans, may be had after the 26th of May, on the premises; at the chief hotels at Birmingham, Liverpool, Manchester, Stafford, &c.; of Messrs. KEARY and SHEPPARD, solicitors, Stoke-upon-Trent; of R. S. Ford, Esq. Swinerton, near Stone; at the Auction Mart, London; and of **DANIEL SMITH and SON**, Land Agents, in Waterloo-place, Pall-mall, to whom only applications to treat are to be made.

The Dell—one of the most admired bijoux of Windsor-park, and long distinguished for its unrivalled and surprisingly magnificent view of the Castle.

MESSRS. DANIEL SMITH and SON respectfully announce that the late sale of this estate having been abandoned, they are commissioned by the noble proprietor to **SUBMIT** to **PUBLIC SALE**, at the end of **JUNE**, (unless an acceptable offer shall be previously made by Private Contract), the above delightful and highly distinguished **FREEHOLD VILLA**, at Bishopgate; a remarkably dry and healthy spot, overlooking one of the most romantic portions of the park, through which is its beautiful drive of only three miles to Windsor. It contains an elegant and spacious suite of reception-rooms and carved oak library, and altogether accommodation for a large family, with handsome conservatories, partly surrounding the house; capital stabling and coach-houses, &c.; walled garden, complete farm-yard and cottage, entrance-lodge, beautiful pleasure-grounds, lawn, and paddocks, in all about 17 acres, abundantly supplied with spring and soft water. A cottage, and about seven acres, a little detached, might be a separate lot. The whole is in the most perfect order, and the purchaser may treat for the elegant and useful fittings and furniture with the estate, so as to have immediate possession.

This enviable retreat can only be viewed with cards, which may be had at their offices in Waterloo-place, Pall-mall; or will be forwarded to applicants giving their own address.

NEAR RAMSGATE—Beautiful Marine Villa at Pegwell Bay, for its delightful situation, aspect, tasteful arrangements, and perfect order, unrivalled on the coast; also other valuable Freehold Lands, &c. adjoining.

MESSRS. DANIEL SMITH and SON beg to announce that they will **SELL** by AUCTION, at the Mart, near the Bank of England, on **TUESDAY, JUNE 16**, at Twelve, in five lots (unless an acceptable offer shall be previously made by Private Contract), a singularly beautiful and most comfortable **FREEHOLD VILLA**, at Pegwell Bay (for many years the admired and favourite retreat of the late Sir William Garraw), with its range of elegant conservatories (forming a tasteful pavilion, connected with and screening the whole suite of rooms), excellent salt and freshwater baths, ornamental cottages, good stabling, and various out-offices, walled gardens, and well-dressed secluded lawn, bounded by the bold chalk cliff, and opening with a full south aspect to all the grandeur of this magnificent bay. Also, in separate lots, several enclosures of rich pasture and arable land, commanding invaluable sites for building, with extensive frontages both to the roads and cliff, and embracing splendid sea views.—Particulars, with plans, may be had at the principal hotels and libraries at Ramsgate, Margate, Canterbury, and Dover; at the Mart; of Messrs. SMEDLEY and ROGERS, Solicitors, Jernyn-street, St. James's; and of Messrs. **DANIEL SMITH and SON**, Land Agents, Waterloo-place, Pall-mall.

Freehold Residence, & valuable little Farm, in Windsor Park.
MESSRS. DANIEL SMITH and SON will offer for **SALE** by AUCTION, at the Mart, near the Bank of England, on **TUESDAY, JUNE 16**, at Twelve (unless previously disposed of by private contract), the compact **FREEHOLD ESTATE** of Barton Lodge, within a few miles of Windsor, adjoining the Great Park, comprising a desirable gentleman's Residence, on a moderate scale, with pleasure grounds, good gardens, and a valuable farm of nearly 80 acres, amidst the grand scenery of Windsor Park, a favourite neighbourhood, and in the centre of the Royal hunts. A plan may be seen, and the estate may be viewed, by application at their offices in Waterloo-place, Pall-mall, and at Windsor.

DESIRABLE FREEHOLD ESTATE, with a very superior **FARM RESIDENCE**, known as **STARK CASTLE**, bounded by a bold reach of the River Medway, only three miles from the City of Rochester, and about seven from Maidstone, amidst grand and beautiful scenery.

MESSRS. DANIEL SMITH and SON will offer for **SALE** by AUCTION, at the Mart, near the Bank of England, on **TUESDAY, JUNE 16**, at Twelve (unless an acceptable offer shall be previously made by Private Contract), the above very compact and valuable **FREEHOLD PROPERTY**, comprising a superior Farm Residence, embracing a portion of the old Castle, with its fine Gothic windows, capital buildings of the most substantial description, and above 20 acres of arable, pasture, hop, and marsh land, in a ring fence, and in a high state of cultivation, being on lease to Mr. John Pearce, a highly respectable tenant, for an unexpired term of five years, at a low rent, offering a safe and superior investment for capital, as also a desirable property for future occupation, being in a beautiful part of the country.—The estate may be viewed by application to the tenant, and Particulars, with plans, may be had on the premises; at the chief inns at Rochester, Maidstone, Canterbury, &c.; at the Auction Mart; and of **DANIEL SMITH and SON**, Land Agents, in Waterloo-place, Pall-mall.

STANMORE HALL, Middlesex, about 25 miles from the Harrow Station on the Birmingham Railway, and one of the most healthy and select neighbourhoods within the same easy reach of the metropolis.

MESSRS. DANIEL SMITH and SON respectfully apprise the public, that unless an acceptable offer should be previously made by private treaty, the above beautifully situated **FREEHOLD PROPERTY**, on which many thousand pounds have been recently expended, will be submitted for **PUBLIC SALE**, at the Mart, near the Bank of England, on **TUESDAY, JUNE 16**, at Twelve. It comprises a singularly handsome and admirably constructed Mansion, in the early Tudor style of architecture, with a beautiful tower and oratory. It is most substantially built and faced with the grey Kentish rag and fine Caen stone, on bricked arches, presenting an imposing elevation upon a broad bold terrace, with south-east aspect, leading to finely timbered and varied pleasure grounds, opening on three sides to very rich and extensive scenery. It has a capital walled garden, a green-house, &c. The Mansion is not completed, but the original house not having been removed, may be used as a convenient residence during the completion of the new edifice.—Particulars, with plans, may be had in Waterloo-place, Pall-mall; at the Auction Mart; of Messrs. NELSON and WYNN, Solicitors, Gresham-place, Lombard-street. The estate may be viewed with cards; and Messrs. SMITH are fully authorized to dispose of the property.

FREEHOLD VILLA at OLD WINDSOR, between Windsor and Egham, with its beautiful Grounds, Conservatory, and rich Paddock, commanding a fine view of the Castle, and skirting the picturesque bank of the Thames.

MESSRS. DANIEL SMITH and SON are directed by the Executors of the late proprietor to **SELL** by AUCTION, at the Mart, some time in **JUNE** (unless an acceptable offer shall be previously made by private contract), the above desirable **FREEHOLD FAMILY RESIDENCE**, comprising three or four reception rooms, with conservatory, and the usual appendages for a moderate establishment, beautiful and well-timbered pleasure grounds, and a rich paddock of pasture land adjoining, making altogether about 15 acres, most desirably situated within a pleasant walk of the town and parks of Windsor, of Englefield-green, and Egham, and close to the Thames. Immediate possession may be had.—The estate may be viewed, and particulars had at the inns at Egham and Staines; upon the premises; at the Mart; of Messrs. C. and E. J. JENINGS, Solicitors, Mitre-court-buildings, Temple; or of **DANIEL SMITH and SON**, Waterloo-place, Pall-mall, and Windsor.

Lansdowne-terrace, Kensington-park, Notting-hill.—Notice of Sale of Six First-class Residences, most delightfully situated, commanding charming and extensive panoramic views of the surrounding country, held for long terms, at exceedingly low ground-rents, affording a most desirable opportunity for either occupation or for a safe investment.

MR. FREDERICK CHINNOCK begs to announce he has been favoured with instructions to **SELL** by AUCTION, at the Auction Mart, on **WEDNESDAY, JUNE 3**, at Twelve, **SIX** newly-erected first-class **RESIDENCES**, situate on the highest and best portion of this interesting and picturesque estate, and but a short distance from St. John's Church. The houses are most substantially built, and five of them are finished, with the exception of decoration, which is left to the taste of the purchaser, fit for the reception of, and having accommodation for, large families. They are approached by a bold carriage sweep, screened from the road by a massive ornamental balustrade, and are entered by a lofty portico of the Doric order, with commanding staircase, noble reception and numerous best and secondary bed-chambers, together with a promenade in a pleasure garden most tastefully laid out.—May be viewed, and descriptive particulars obtained of **E. M. ELDERTON**, Esq. Solicitor, 3, Lothbury; at the Auction Mart; and at **MR. CHINNOCK'S** Auction and Estate Offices, 28, Regent-street, Waterloo-place.

Judd-street and Tunbridge-place, New-road.—Baker's and Fruiterer's House and Shops, held at a low ground-rent, and leasehold Ground-rent of 42*l.* per annum, abundantly secured.

MR. FREDERICK CHINNOCK is instructed to **SELL** by AUCTION, at the Auction Mart on **WEDNESDAY, JUNE 3**, at Twelve, a brick-built **LEASEHOLD HOUSE**, and **BAKER'S SHOP**, situate at the corner of Judd-street, and Tunbridge-place, New-road; let on lease, which will expire at Christmas, 1855, at 84*l.* per annum; a Shop adjoining, let on lease for the whole term, and in the occupation of Mr. Panmure, fruiterer, at a rental of 30*l.* 9*s.* per annum. And an improved Ground-rent of 42*l.* per annum, arising from two houses adjoining in Tunbridge-place; let at 110*l.* per annum. The whole is held for an unexpired term of 60 years, at the very low ground-rent of 12*l.* 12*s.* per annum.—May be viewed by permission of the tenants, and particulars obtained at the Auction Mart; of **J. TAYLOR**, Esq. Solicitor, 15, Farnival-inn, Holborn; and at **MR. F. CHINNOCK'S** Auction and Estate Offices, 28, Regent-street, Waterloo-place.

Valuable Reversions to Money in the Funds.
MR. F. CHINNOCK has received instructions to **SELL** by AUCTION, at the Auction Mart on **WEDNESDAY, JUNE 3**, at Twelve, the following valuable **REVERSIONS TO MONEY** in the **FUNDS**, standing in the names of highly respectable trustees, comprising an eighth share of 5,993*l.* 17*s.* 10*d.* in the Three per Cent. Consolidated Annuities, and one-eighth portion of a 10*l.* 10*s.* in the Three-and-a-Quarter per Cent. Annuities, reversionary on the death of the survivor of a gentleman and his wife, former in his 70th and the latter in the 63rd year of her age.—Printed particulars to be obtained of Messrs. **PURRIE and WRIGHT**, Solicitors, 35, New Broad-street, City; at the Auction Mart; and at **MR. F. CHINNOCK'S** Offices, 28, Regent-street, Waterloo-place.

KENSINGTON-PARK, NOTTING-HILL.—Highly valuable Building Land, on the most important and desirable part of this rapidly improving and highly picturesque district, presenting sites for the erection of about 20 detached and semi-detached villas, embracing about nine acres of land, held direct from the freeholder.

MR. FREDERICK CHINNOCK has been directed to **SELL** by AUCTION, at the Auction Mart, on **TUESDAY, JUNE 2**, at Twelve, the valuable **Plots of BUILDING LAND**, situate above, in lots suitable for either the capitalist, builder, or gentlemen desirous of erecting their own residences. The land is situate on the north side of the intended road, 60 feet wide, leading from St. John's Church to Westmoreland-grove, to which it presents a frontage of 70 feet, 2 1/2 of the highest points of ground on the estate, commanding a perfect panoramic view of great beauty and extent, and which about 80 villas may be erected, giving a most excellent space for appropriate pleasure-grounds, the sale of which notice has been given, will be made at the request of the proprietor. A bird's-eye view of the estate, showing villas in different styles of architecture, will be sent, and may be seen at **MR. CHINNOCK'S** Offices, 28, Regent-street, Waterloo-place, where lithographic plans and particulars may be obtained; and of **E. Elderton**, Esq. solicitor, 3, Lothbury, City; Messrs. Bayley and Janssen, solicitors, 1, Leasinghall-street; and at the Auction Mart.

Valuable Reversion and Life Policies.
MR. FREDERICK CHINNOCK is directed to **SELL** by AUCTION, at the Mart, on **WEDNESDAY, JUNE 3**, at Twelve, a **CONTINGENT REVERSION** to the annual sum of 200*l.* after the death of a lady aged 69 years, during the life of a gentleman aged 65, charged upon a competent fine standing in the name of Accountant-General of the Court of Chancery, in a Policy of Assurance in the Law Life Assurance Society, for 300*l.* on the same life. And a Policy in the United, General, and General Life Assurance Society, for 100*l.* on the same life. Particulars may be obtained of **JAMES TILSON**, Esq. solicitor, 15, Farnival-inn, City; at the Mart; and at **MR. CHINNOCK'S** Offices, 28, Regent-street, Waterloo-place.

Building Land, Kensington-park, adapted for the erection of small villas.

MR. FREDERICK CHINNOCK is directed to **SELL** by AUCTION, at the Auction Mart, on **TUESDAY, JUNE 2**, at Twelve, four lots of **BUILDING LAND**, adapted for the erection of small villas, one lot presenting a frontage of 50 feet to Beaufort-street, by a depth of 160 feet. Held under an agreement direct from the holder, at a trifling ground rent. Particulars may be obtained at the Mart; of Messrs. **TILSON and SQUANCE**, Solicitors, 29, Coleman-street; at the Mart; and at **MR. CHINNOCK'S** Offices, 28, Regent-street, Waterloo-place.

Perpetual Advowson of 22*l.* per annum.
MR. FREDERICK CHINNOCK is directed to **SELL** by AUCTION, at the Auction Mart, on **TUESDAY, JUNE 2**, at Twelve, the **PERPETUAL ADVOWSON** or **PRESBYTERIAN MINISTRY** in the parish of Sheppy, of an estimated annual value exceeding 200*l.* the age of the present incumbent is 60; together with Old Chapel of Ease at Sheerness, of which the present incumbent is above 10,000, and which will be greatly increased by the extensive Government works now in progress within the parish.—Particulars may be obtained at the Mart; of Messrs. **TILSON and SQUANCE**, Solicitors, 29, Coleman-street; and at **MR. CHINNOCK'S** Auction and Estate Offices, 28, Regent-street, Waterloo-place.

Freehold Ground Rent, and Vote for Hampshire.
MR. FREDERICK CHINNOCK is directed to **SELL** by AUCTION, at the Mart, on **TUESDAY, JUNE 2**, at Twelve, a **FREEHOLD GROUND RENT** of 15*l.* per annum, arising out of three dwelling-houses, situate on Clifton-terrace, All Saints, Southampton, of the value of 60*l.* per annum, let for 500 years, and giving vote for Hampshire.—Particulars may be obtained of Messrs. **TILSON and SQUANCE**, 29, Coleman-street; at the Mart; and at **MR. CHINNOCK'S** Auction and Estate Offices, 28, Regent-street, Waterloo-place.

Two Leasehold Private Houses, Old Kent-road, producing 60*l.* per annum.

MR. FREDERICK CHINNOCK is directed to **SELL** by AUCTION, at the Mart, on **WEDNESDAY, JUNE 3**, at Twelve, **TWO** brick-built **LEASEHOLD HOUSES**, of modern elevation, with gardens, built in front and rear; let to highly respectable tenants, at rents amounting to 60*l.* per annum. Held for an unexpired term of 40 years, at a ground rent of 15*l.* 6*s.* per annum. May be viewed by permission of the tenants, and particulars obtained at the Mart; of Messrs. **THOMPSON and PORTER**, Solicitors, 3, Raymond-buildings, Gray's-inn; and of **MR. CHINNOCK'S** Auction and Agency Offices, 28, Regent-street, Waterloo-place.

LONDON.—Printed by HENRY MORRELL COX, of 74, New Queen Street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROOKER, of 29, Essex Street, West, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the LAW TIMES, No. 25, Essex Street aforesaid, on Saturday, the 23rd day of May, 1856.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. VII. No. 165.]

SATURDAY, MAY. 30, 1846.

(DOUBLE NUMBER.)

Money Wanted.

MONEY.—WANTED, 9,000*l.* on Property in Ireland. Title and Value unexceptionable. Apply to Messrs. BAYLIS and DREWE, Solicitors, No. 84, Basinghall-street.

Situations Wanted.

LAW.—The Advertiser is desirous of obtaining a SITUATION in a Solicitor's Office, as OFFYING and GENERAL CLERK. He has been upwards of four years in the profession, and can give satisfactory testimonials. Address A. B. C. D. Post-office, Saint ree, Huntingdonshire.

LAW.—WANTED, by a Young Man, whose Articles have lately expired, a SITUATION in an Office of the highest respectability, to attend to the Chancery and Conveyancing department, under the direction of the Principal. The Advertiser can produce unexceptionable testimonials as to ability and industry from the Gentleman with whom he has served his Articles. Apply by letter to B. Post-office, Store-street, Bedford-square.

LAW.—A SOLICITOR, who has been admitted many years, and has had much experience in the profession, is desirous of engaging as MANAGING CLERK to a Solicitor in the country. The Advertiser is well acquainted with Conveyancing, and the usual business of an Attorney and a Solicitor in the country. Satisfactory references will be given.

Apply by letter, post-paid, to N.S. LAW TIMES OFFICE, Strand, London.

LAW.—A CONFIDENTIAL MANAGING CLERK in a CONVEYANCING Office of the first respectability in the Country is desirous of an immediate Engagement. Salary, 300*l.* per annum. Apply by letter, to R.L. LAW TIMES OFFICE, 39, Essex-street, Strand.

LAW.—WANTED, by a Gentleman upwards of thirty-five years of age (who has been some years in the Profession), a SITUATION as MANAGING CLERK in a Solicitor's Office in the Country, in any part of England or Wales; the latter would be preferred. Satisfactory testimonials can be given, and security not to practice, if required. Address N. C. care of Mr. PHILLIPS, 71, Eaton-square, London.

Situations Vacant.

LAW.—WANTED, in a Solicitor's Office in the country, a CLERK, who can write and engross well and expeditiously; a thorough knowledge of accounts, and making out costs requisite. Applications by letter, giving name, age, salary, &c. required to be addressed M. A. H. LAW TIMES OFFICE.

Partnerships Wanted.

TO SOLICITORS.—A Gentleman, possessing capital, and well conversant with his profession, is desirous of entering into such an arrangement, with a respectable Solicitor of established practice as may, if mutually agreeable, lead to a partnership. Address to C. Y. Porter's-Idage, Lincoln's-Inn, Chancery-lane.

Legal Notices.

COUNTY of DENBIGH.—NOTICE IS HEREBY GIVEN, that an ADJOURNMENT of the QUARTER SESSIONS of the PEACE for the County of DENBIGH, for the purpose of Auditing and allowing the Bills due from the County, will be held at the COUNTY HALL in RUTHIN, on MONDAY, the twenty-ninth day of JUNE next, at Eleven o'clock in the forenoon, when and where the business relating to the Assessment, Application, or Management of the County Stock or Rate will commence. AND NOTICE IS HEREBY GIVEN, that the GENERAL QUARTER SESSIONS of the PEACE of the same County will be held at the same place, on TUESDAY, the thirtieth day of JUNE, 1846, at Ten o'clock in the forenoon; and that the business relating to the Assessment, Application, or Management of the County Stock or Rate will commence at Twelve o'clock at noon on the said seventh day of April. AND NOTICE IS HEREBY GIVEN, that the business relating to the Act 3 & 4 Vict. c. 93, intituled "An Act for the Establishment of County and District Constables by the authority of Justices of the Peace," and to the Act 3 & 4 Vict. c. 83, intituled "An Act to amend an Act for the Establishment of County and District Constables," will commence at the said adjourned Sessions, at Twelve o'clock at noon, and at the said General Quarter Sessions at One o'clock p.m. JOSEPH PETERS, Clerk of the Peace. Ruthin, 26th May, 1846.

SOCIETY for PROMOTING the AMENDMENT of the LAW.—The PUBLIC MEETING advertised to be held at the Society's Rooms on Wednesday, the 27th of May inst. is POSTPONED to SATURDAY, the 6th of JUNE, when all persons interested in the important object of the amendment of the Law, in any of its branches, are earnestly requested to attend. The Right Honble. Lord BROUGHAM will take the chair at Three o'clock precisely. 31, Regent-street.

For Sale.

ISLE OF WIGHT, near Ventnor. TO BE SOLD, a highly desirable stone-built RESIDENCE, in the Elizabethan style, adapted for a nobleman or gentleman requiring a moderate establishment. It possesses every comfort, and is finished in the most expensive manner, with great taste. The gardens are beautiful, and the views present a highly panoramic scene of animated nature, over land and sea, for many miles.—For particulars apply to Messrs. BROOKS and GREEN, Estate Agents, Surveyors, and Auctioneers, 28, Old Bond-street.

MESSRS. BROOKS and GREEN are instructed to SELL, by PRIVATE CONTRACT, a most desirable FREEHOLD ESTATE, in Berkshire, near to Windsor and Slough Station, comprising an excellent Family Residence, with upwards of 300 acres of Land, in high condition, with farm-houses, agricultural buildings, &c.—For terms, and to view, apply to Messrs. BROOKS and GREEN, Estate Agents, Surveyors, and Auctioneers, 28, Old Bond-street.

BERKS.

TO BE SOLD, a valuable FREEHOLD ESTATE, whether for residence or investment, comprising a moderate-sized Villa, with Farm-house, and every requisite agricultural building, cottages, and nearly 200 acres of excellent Arable, Meadow, and Pasture Land, all drained, and well watered.—For particulars, apply to Messrs. BROOKS and GREEN, Estate Agents, Surveyors, and Auctioneers, 28, Old Bond-street.

ADVOWSON.—To be SOLD, the ADVOWSON of a RECTORY, in the Country. The principal part of the income of the Rectory is derived from stock in the public funds. There is an excellent house of residence. Population, manufacturing. For particulars, apply to Messrs. KEEN and HAND, Solicitors, Stafford.

CHAMBERS, Raymond Buildings, Gray's-Inn.—A Capital Set on the first floor to be LET, either on lease or by the year. Enquire at the Steward's Office.

Periodical Sale of Reversions, Life Interests, Annuities, Life Policies, Advowsons, Next Presentations, and all descriptions of Securities dependent upon human life, Ground and Improved Rents, Post Office Bonds, Shares in Railways, Mines, Insurance Companies, and all other public undertakings.

MR. MARSH (late Fuller and Marsh) respectfully informs the Public, that his PERIODICAL SALES by AUCTION of the above description of PROPERTY will be continued throughout the present year as follows:—

Thursday, June 4.	Thursday, September 3.
Thursday, July 2.	Thursday, October 1.
Thursday, August 6.	Thursday, November 5.
Thursday, December 3.	

Notice of sales intended to be effected by the above means should be forwarded to Mr. MARSH 14 days prior to each date.—No. 27, Bucklersbury, corner of Charlotte-row, Mansion-house, London.

Freehold Shops, Residences, Ground Rent, and Building Land, near the Elephant and Castle, Old Kent-road, extending to several Acres.

MR SINGLE will SELL by AUCTION, in Lots, TWO capital HOUSES, with Shop, situate in Manor-street, the first two from the Old Kent-road, containing each six or seven rooms; one is in hand, the other let at 32*l.* per annum. A private house adjoining, with eight rooms, finished in a superior manner, and let at only 20*l.* per annum, a rental much below its value. A freehold ground rent of 6*l.* per annum, amply secured upon a valuable corner house in Manor-grove, close by; and a considerable number of valuable freehold plots of building ground, land-tax redeemed, situate Manor-street, St James's street, and Manor-grove, Old Kent-road, in a complete neighbourhood, and not far distant from the station at New-cross. The neighbourhood is decidedly the most healthy and most rapidly improving one around London. Some hundreds of houses have been within two or three years erected about the spot, and a larger number is about to be erected during the next two or three years, so that ground rents may be readily realised. Particulars will be ready in due time, and may be obtained of Mr GROVES, Solicitor, Charlotte street, Bedford row; and at the offices of Mr SINGLE, 34, Coleman-street, City.

SUBSCRIPTION.

For One Year, paid in advance... 7 0
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RAILWAY SHARES by PUBLIC SALE, MESSRS. LAMOND, SMALE, and LAMOND, Railway Share Auctioneers, beg to thank their Friends and the Public for their continued support and patronage, and to announce that their Public Sales of Railway Shares, &c. take place every Tuesday and Friday, at One o'clock, at the Hall of Commerce, Threadneedle-street, London, to which place all favours, containing instructions, are respectfully requested to be addressed.

All Scrip and Share Certificates must be deposited for examination at least one day previously to their being offered; and advices of results will be forwarded by the first post after the sale, and the proceeds immediately disposed of according to instructions. Offices, Hall of Commerce, Threadneedle-street, London.

R. T. DAVIS, LAW BOOKSELLER, 57, CAREY-STREET, LINCOLN'S-INN, respectfully invites the attention of the Profession to his present stock of LAW BOOKS, the whole of which are now offered at very reduced prices for cash. Bythewood's Conveyancing, with Sweet's Index, 11 vols. bds. 4*l.* 4*s.* Ditto, calf, 5*l.* 10*s.* Ditto, by Sweet, 8 vols. bds. 8*l.* 5*s.* Cruise's Digest, by White, 7 vols. bds. 3*l.* 18*s.* Comyn's Digest, by Hammond, 8 vols. half rusia, 6*l.* 6*s.* Maddock's Chancery Practice, 3 vols. bds. 1*l.* 15*s.*

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Just published, **THE LAW OF LANDLORD AND TENANT**, with all the requisite Forms, including the Pleadings in the several actions by and against Landlord and Tenant, and the evidence necessary to support them. By JOHN FREDERICK ARCHBOLD, Esq. Barrister-at-law. Published by SNAW and SONS, 126, 127, 128, Fetter-lane, Price 18*s.*

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Just published, the Second Edition, very considerably enlarged, price 3*s.*

HINTS on the STUDY of the LAW, for the Practical Guidance of Articled and Unarticled Clerks seeking a competent Knowledge of the Legal Profession.

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JOHN CROCKFORD, Publisher, LAW TIMES OFFICE.

Sales by Auction.

Important Landed Estate, comprising Mansion, Farms, Woods, Manor, and Manorial Rights, and 1,200 acres of land, eligible alike for occupation or investment.

MR. LEIFCHILD is instructed to **SELL** the above valuable and important **PROPERTY**, at **GARWAY'S**, on **THURSDAY, JULY 23** (unless in the meantime disposed of by private contract, of which due notice will be given). This highly desirable estate consists of the ancient and spacious mansion called **Chettle-house**, built in the style of **Sir John Vambrough**, on a fine commanding eminence, and embracing views of great beauty and extent, numerous and convenient offices and stabling, beautiful lawns and plantations, paddocks and rookery, capital kitchen garden, and hot-house; the **Chettle farm**, with good dwelling-house, barns, stables, cow-house, piggeries, granary and dove-house, cart and wagon lodges, malt-house and brew-house, with numerous workshops and other buildings, large stack-yards and feeding yards, in which is a powerful spring of fine water, with an engine pump to supply the mansion, farm-house, and offices; spacious wood and timber yards, and every appurtenance necessary to a large establishment, including 548 acres 1 rood of very excellent arable and pasture-land. A very commodious and substantial dwelling-house, with capital offices and stabling, lawns and walled gardens; 30 other good and substantial dwelling-houses and cottages, with shops, offices, and gardens; 160 acres of woodland, abounding in fine timber, and a luxuriant growth of underwood; 160 acres 2 roods of capital down land, affording most excellent pasturage for sheep; several valuable occupation inclosures. Also a very desirable and excellent farm, now occupied by **Mr. Blanchard**, comprising a good dwelling-house and office, barns, stables, piggeries, wagon lodges, yards, garden and orchard, several cottages and gardens, and six inclosures of prime arable and meadow land, containing 165 acres 1 rood; together with the reputed manor or lordship of **Chettle**, with its rights, privileges, and immunities, and the perpetual advowson and right of presentation to the rectory and parish church of **Chettle**, comprising the parsonage-house, with offices and gardens, 21 acres of excellent glebe land, and valuable pasturage or commonage for six beasts and 60 sheep. The tithes are commuted at 1911. per annum. This very desirable and eligible property embraces the whole parish of **Chettle**, which contains 1,113 acres of land, now in the highest possible state of cultivation. Game of all sorts is very plentiful, though not extensively preserved, and several packs of foxhounds are kept in the immediate neighbourhood. **Chettle** abuts on the Great Western road, and is 16 miles from Salisbury, six from Blandford, nine from Shaftesbury, 17 from the port of Poole, 20 from Wareham, 30 from Weymouth, and 98 from London. The estate can be viewed by applying to **Mr. Robert Rogers**, at **Chettle Farm**, of whom full particulars may be had; also at the **White Hart**, Salisbury; **Crown**, Blandford; **King's Arms**, Dorchester; **Russell's Hotel**, Weymouth; **Red Lion**, Wareham; **Antelope**, Poole; **Grosvener Arms**, Shaftesbury; of **John Esplin**, esq.; 3, New Boswell-court, Lincoln's-inn; or of **James Foster Groom**, esq., the official assignee of **Messrs. Chambers and Son**; at **Garway's**; at **MR. LEIFCHILD'S** Head and Timber Office, 62, Moorgate-street, London; and of **MR. DASHWOOD**, Solicitor, Sturminster Newton, Dorset. **My. Leifchild** is fully authorized to dispose of the property to any nobleman or gentleman by private contract.

Safe Investment.—Eligible Freehold and Copyhold Farm, in the county of Essex.

MR. LEIFCHILD has received positive instructions from the Trustees, to **SELL** by **AUCTION**, without reserve, at **Garway's**, on **MONDAY, JUNE 8**, at Twelve for One precisely, a most desirable **FREEHOLD** and **PART COPYHOLD FARM**, delightfully situated at **Debden-green**, in the parish of **Loughton**, comprising a very excellent farm-house, with offices and large garden, spacious well sheltered farm yards, with barns, stables, granary, cow-house, fattening houses, piggeries, and other convenient agricultural buildings, the whole being most judiciously arranged, and in excellent repair, together with 25 handsome enclosures of capital meadow, pasture, and arable land, well supplied with water, and containing in the whole 118a. 3r. 9p. of which 69a. 3r. 3p. are freehold, and the remainder are copyhold of the manor of **Loughton Hall**. This very desirable farm is now held by **Mr. David King**, a most respectable tenant at will, who will show the estate. Also, with the above, two substantial and convenient Copyhold Cottages, with offices and gardens, occupied by **Messrs. Harris and Purkis**. **Debden green** is 12 miles from London and 3 from Epping and Woodford, and nearly all the fields abut on good hard roads.—Particulars and conditions of sale may be had at the **King's Head**, Loughton; **Cock**, Epping; **New Inn**, Waltham Abbey; **Roundings**, at Woodford; at **Garway's**; of **Messrs. FRERE, POSTER, GOODFORD, and CHOLMELEY**, Solicitors, 6, New-square, Lincoln's-inn; and at **MR. LEIFCHILD'S** Land and Timber Office, 62, Moorgate-street, London.

Improveable Copyhold Estate, South Mimms, near Barnet, Herts.

MR. LEIFCHILD has received instructions from the proprietors to **SELL** by **AUCTION**, in one or more lots, at **Garway's**, on **MONDAY, JUNE 8**, at Twelve for One, that old-established and well-known **INN**, called the **White Hart**, admirably situated for business at the junction of the old and new high north road, leading from **Barnet** to **St. Albans**, and near the church, in the pleasant village of **South Mimms**, in the county of **Middlesex**, comprising a large and roomy dwelling-house, containing numerous sleeping-rooms, commodious bar, front and back parlours, and dining rooms, with excellent cellaring, good stabling, large yard, and capital well and spring water; together with a blacksmith's shop, and a long range of stabling on the opposite side of the road, with rick-yards and gardens, and two enclosures of meadow-land, with extensive frontage to the high North-road; the whole is in the occupation of **Mr. George Wild**, under lease, 27 years of which will be unexpired at Christmas next, at the yearly rent of 801.—May be viewed by leave of the tenant any time preceding the sale, and particulars had at all the principal inns in the neighbourhood; at **Messrs. WINTER, WILLIAMS, and Co.**, Solicitors, Bedford-row; on the premises; and at **MR. LEIFCHILD'S** Land and Timber Office, 62, Moorgate-street.

Desirable small compact Farm and Cottages, Loughton, Essex.

MR. LEIFCHILD has received positive instructions from the Trustees to **SELL** by **AUCTION**, at **Garway's**, on **MONDAY, JUNE 8**, at Twelve for One, in Three lots, without reserve, a very eligible **COPYHOLD FARM** pleasantly situated on the west side of **Debden-green**, **Loughton**, abutting on hard roads, and near good markets. It comprises a convenient and substantial cottage residence, with large and productive garden, sheltered farm-yard, barn, cow-house, sheds, and other necessary out-buildings, together with 11 beautiful enclosures of very superior arable and meadow land, well watered and lying close to the house, and containing 63a. 2r. 21p.; also two large copyhold cottages and gardens, let to **Mr. and Mrs. Randall**, and two other very capital copyhold tenements, with good gardens, occupied by **Messrs. Middle and Wood**. The above land is now held by **Mr. David King**, as tenant at will, and the house, buildings, and garden are in hand.—May be viewed by applying to **Mr. M'Callum**, on the premises, of whom particulars may be had; also at the usual principal inns; at the place of sale, of **Messrs. FRERE, POSTER, GOODFORD, and CHOLMELEY**, 6, New-square, Lincoln's-inn; and at **MR. LEIFCHILD'S** Land and Timber Office, 62, Moorgate-street, London.

First-rate Arable and Grazing Farm of 390 acres, near good ports and excellent markets.

MR. LEIFCHILD is instructed to offer for **SALE** by **AUCTION**, at **Garway's**, on **WEDNESDAY, JUNE 17** (unless previously disposed of by private contract, of which due notice will be given), a very desirable and valuable **FREEHOLD ESTATE**, great tithe-free, very pleasantly situated in the parishes of **Hemsey and Dover-court**, in the county of **Essex**, and commanding land and sea-views of great extent and beauty. It comprises a very substantial and gentlemanly residence, containing eight principal and servants' bed rooms, handsome dining and drawing-rooms, and breakfast-room, large kitchen and scullery, numerous other domestic offices, and capital cellarage, with lawn, shrubberies, and pleasure grounds, excellent walled kitchen garden, large and sheltered farm-yard, with barns, stable, cow-house, piggeries, and every other convenience necessary to a first-rate agricultural establishment, together with 58 enclosures of very superior arable, pasture, and marsh land, containing 390a. 1r. 9p., which is land-tax redeemed, and is now in the highest state of cultivation; it is held by a most respectable tenant under lease, which will expire at **Michaelmas, 1844**, at the moderate rent of 6001. per annum.—Particulars may be had at all the principal inns in the counties of **Essex, Suffolk, and Norfolk**; and at **MR. LEIFCHILD'S** Land and Timber Office, 62, Moorgate-street, London. **Mr. Leifchild** is fully authorized to treat with any gentleman for the disposal of the above valuable property by private contract.

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Twelve Acres Freehold, near Lee and Lewisham. in lots.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, JUNE 2, Twelve Acres of FREEHOLD BUILDING LAND, delightfully situated on an inclined plane, with an extensive frontage on the public road from Lee to Bromley, about a mile from Lee, and near to which an intended railway is likely to have a station. The estate will be divided into small and large lots, presenting valuable frontage on serpentine roads and groves, which will be desirable for residences. Lee and Lewisham and the neighbourhood are most improving places; and this property, when some of this land is built upon, the rest will be worth more than double its present value. Particulars may be obtained of Mr. GROVES, Solicitor, Charlotte-street, Bedford-square; and at the offices of Mr. SINGLE, Land Agent, 34, Coleman-street, City.

Essex, almost contiguous to Brentwood Station.—Two Freehold Estates, Building Land in 50 Plots: a famous situation for a Tavern and for Residences.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, JUNE 2, at Twelve for One, in about 50 plots, TWO valuable FREEHOLD ESTATES, in an elevated and delightful situation, close to the station at Brentwood, on the Eastern Counties Railway, presenting most valuable building frontages on the direct road from the station. One is situated on the Albert-road, the direct communication from the station to Brentwood, presenting frontages also on a road leading from it, so that at the corner a commanding Tavern might be at once erected, which would stand close to the station, and without a rival. The other estate comprises most valuable plots on the main road, leading to Ockendon, also presenting an invaluable site for a Tavern and Residence. To those who are sick of inhaling night and day the impure atmosphere of the crowded parts of the Metropolis, this is an excellent opportunity to purchase a freehold plot of land for the erection of a dwelling, &c. from which they can step into the carriage almost instantaneously, and be in London before they have scarcely had time to fully appreciate the refreshing beauty of the country scenery.—Particulars may be obtained of Mr. THOMAS PRYOR, Solicitor, 17, Pavement, Finsbury; and at the offices of Mr. SINGLE, 34, Coleman-street, City.

MILE-END-ROAD.—38 Houses and Building Ground, all held at a peppercorn, comprising good genteel residences, a large beer-shop, and other shops, and small houses, near the Canal-bridge.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, JUNE 2, at Twelve for One, the above valuable ESTATE, let principally to good and old tenants, and offering an opportunity for a most lucrative investment. The property comprises Nos. 1 to 6, Mile-end-terrace, in Canal-road, Mile-end-road, a capital thoroughfare; each contains, on the second floor, two convenient bed-rooms; first floor, a handsome drawing-room, with French casements to the floor, and bed-rooms in the rear; ground floor, two bold parlours; basement, two capital kitchens; and they stand in a most commanding and pleasant situation. Also the 10 houses, some with shops, in a line with the same; together with 22 small houses, comprising the whole of Elizabeth Ann-place, Princess-place, and Providence-row. Mr. Single has collected the rents and had the entire management of this estate for the last eight or ten years, and feels himself justified in recommending it to such as seek investments in property that always commands settled and good paying tenants.—The average rental is about £301. per annum. It is held for an unexpired term of about 22 years, without ground rent.—Particulars may be obtained of Mr. W. NOKES, Solicitor, Rectory-place, Woolwich; and at the office of Mr. SINGLE, Land Agent, 34, Coleman-street, City.

Herts, near Hertley-row and a Railway Station.—Forty-two Acres, with a House, Barn, &c., and Four five-acre Plots, all Freehold Building Land, in lots, small and large.

MR. SINGLE will SELL by AUCTION at the Mart, on TUESDAY, JUNE 2, at Twelve for One, in lots, a FREEHOLD ESTATE, situated near the Outbeef Inn, upon the high roads from London to Farnham, and from Farnborough Station to Winchfield Station, Epsworth and Hertley-row, comprising 42 acres, prettily ornamented with thriving plantations, and on it are some of the prettiest sites in England for building. The land is famous for gardening purposes, and what with the probable cheapness of railway conveyance, and the raising of the Government Surveyors and Parliament itself against the confined and unhealthy state of the metropolis, together with the increased health and delight from living in the country, thousands of the inhabitants of the metropolis are likely, by and by, to reside in such a locality as this in preference to the metropolis. For a few pence a day, ere long, one will be whirled from his snug little home, 20 or 30 miles in the country, to his place of business in London, just while he barely has time to arrange the shortest mode of despatching his day's business to get back early to his healthful and delightful home. There will be some rare speculation lots, even for such as may not see any immediate desire for them or inclination to let at present.—Particulars may be obtained of Mr. THOMAS PRYOR, Solicitor, 17, Pavement, Finsbury; at the Inns in the neighbourhood; and at the offices of Mr. SINGLE, Land Agent, 34, Coleman-street, City.

SYDENHAM, Dartmouth Arms.—Building Land and a Paddock, delightfully situated on the High-road and the Albert-road, between the two Railway Stations.

MR. SINGLE will SELL by AUCTION at the Mart, on TUESDAY, JUNE 16, at Twelve for One, a most valuable FREEHOLD ESTATE, beautifully situated on the high road between the two important stations, Dartmouth Arms and Sydenham, comprising 9 plots of Building Ground in the neighbourhood of most respectable and gentlemanly villas, and peculiarly adapted for the erection of superior residences. Also a small Paddock. The neighbourhood may be said to rival any part of Devonshire itself for beauty of scenery and salubrity of air; but when one reflects that so interesting and delightful a spot is within a few minutes' ride of the City by railway, such property cannot be too highly estimated, nor can the facilities which railway travelling now offers be sufficiently appreciated.—Particulars may be obtained of Messrs. HOLMER and SON, Bridge-street, Southwark; and at the offices of Mr. SINGLE, Land Agent, 34, Coleman-street, City.

TOLLINGTON-PARK.—Freehold Estate, intended Public-house, Ground-rents, and Residences, delightfully situated, in lots.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, JUNE 16, at Twelve for One, a most valuable FREEHOLD ESTATE, desirably situated in the preferable part of Tollington-park, Hornsey-road, comprising a commanding and capital corner intended public-house, with cheerful open bar, bar-parlour, kitchen, and wash-house, handsome lofty parlour and tap-room on the ground floor, a noble room nearly twenty-eight feet long with three French casements therein, and two capital bed rooms on the first floor, four airy rooms on the second floor, incomparable fine cellars on basement, a good piece of ground behind, side-entrance, &c.; a Freehold Ground-rent of 14s. per annum, secured on two large houses adjoining, and three gentlemanly eight-roomed residences, all freehold and close by, commanding delightful views, and being in the most respectable part of the most respectable neighbourhood around London. A purchaser of the intended public-house would, no doubt, at once obtain a license, and he would enjoy an unrivalled and most lucrative trade for years, as there is scarcely a possibility of another being allowed all round the estate: a purchaser of one of the residences would have a delightful home if he should live in it, and a sound investment if he let it; of the ground-rent it is not necessary to say a word.—Particulars may be obtained at the offices of Mr. PRYOR, Solicitor, 17, Pavement, Finsbury; and of Mr. SINGLE, Land Agent, 34, Coleman-street, City.

DALSTON.—Eight Residences.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, JUNE 2, at Twelve for One, in six lots, SIX well-built RESIDENCES, eligibly situated in Henry-street, Queen's-road, Dalston; one is a corner house, with a double-fronted shop, baker's oven, &c. and is let for three years at 40l. per annum clear; the others contain six rooms each, have good gardens, and are of the annual value of 25l. Also two semi-detached cottages, containing about six rooms each; term 75 years; ground-rent 8l. each house.—Particulars may be obtained of Mr. GEORGE FITCH, Solicitor, 15, New Bridge-street, Blackfriars; and at the offices of Mr. SINGLE, 34, Coleman-street, City.

Peckham, near Deptford-lane, Old Kent-road, and New-cross, in the parish of Camberwell.—Freehold Building Land, about five acres, in lots.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, JUNE 30, at Twelve for One, about five acres of FREEHOLD BUILDING LAND, land-tax redeemed, presenting valuable frontages on Bath-road, Clifton-road, and Bath-grove, Bath-road, in which there is a famous arched sewer, is a continuation of Asylum-road, and a direct communication from the Old Kent-road to Deptford-lane, now called Queen's-road. The distance from the city is only two miles and a half, or three miles, and the conveyance both by railway and omnibus is very convenient and cheap. There is a deep gravelly soil throughout this locality, affording also a natural surface drainage, which, together with the mild salubrious air for which the neighbourhood is proverbial, have gained for Peckham its present celebrity for promoting health and longevity. As this spot is one of the most favoured and fashionable, houses upon it will always insure good tenants, and a profitable investment of capital.—Particulars will be ready in due time, and may be obtained of Mr. W. NOKES, Solicitor, Woolwich; and at the offices of Mr. SINGLE, Land Agent, 34, Coleman-street.

IN THE COUNTY OF DURHAM.—The Wolsingham Park Estate, Freehold, comprising about 2,400 acres of Arable, Meadow, Pasture, and beautiful Wood and Moor Land, with invaluable Freestone, and perhaps Ironstone, and a river and a railway passing through it.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, JULY 21, at One precisely, the valuable and highly improvable FREEHOLD ESTATE, known as the Wolsingham Park Estate, comprising about 2,400 acres of arable, meadow, pasture, wood, and moor land, situated only about three quarters of a mile from the Corbridge turnpike-road, and two and a half or three from Wolsingham, and four from Stanhope, both excellent market towns, and only about seventeen miles from the city of Durham, and eighteen from Newcastle-on Tyne, possessing the advantages of a railway through it. There are but two tenants on the estate, and they hold yearly at trifling rentals. The income from the property at present is only about 440l. per annum, which gives no idea of its estimated rental. The whole lies within a ring fence on either side the "Wakerly," a river having its rise at one end, and winding in meandering beauty through the estate, and discharging itself into the river Wear. On one side of the river are beautiful hanging woods and improvable land, on the other good old pasture and arable land, capable of great improvement, lying principally on an inclined plane towards the river, presenting therefore peculiar facilities for drainage, by which the estate might in a short time be made by ordinary good management to produce double the present annual rental with only a trifling outlay, as there is an invaluable slate or stone quarry on the estate, affording materials for drainage at but little cost, as well as valuable stone for other purposes. There are nearly 400 acres of thriving wood land, and the railway which passes through the estate has two stations on the property; there are three farm-houses with homesteads, all stone-built, and a residence capable of being made a snug little sporting-box, lying open to the warm south, and to one of those delightfully picturesque views peculiar to some of the most favoured parts of the county of Durham. There is famous trout-fishing in the river, first-rate grouse and other shooting on the estate, and plenty of fox-hunting in the neighbourhood. The property has for many years been in the hands of a London gentleman, who has neither advantageously let it, or in any way attempted to do it; it offers, therefore, to capitalists an opportunity which seldom occurs for investing money in an improving property. It is believed that a few thousand pounds might be made by improving the land, &c. and a few hundred thousands by the minerals. The tenants on the estate will point out the property, and full particulars, with maps of the estate, will be ready in due time, and may be obtained of AMBROSE CLARE, Esq. Solicitor, 5, Sine-lane, City, London; and of Mr. SINGLE, Land Agent, 34, Coleman-street, City.

Freehold Houses and Corner Shop, Manor-grove, Hatcham-park, Old Kent-road.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, JUNE 30, at Twelve for One, SEVEN FREEHOLD HOUSES, pleasantly situated, Nos. 1 to 7, Manor-grove, Hatcham-park, Old Kent-road. Let at about 18l. per annum each. Further particulars in future advertisements, and in the mean time may be obtained at the offices of Mr. SINGLE, Land Agent, 34, Coleman-street, City.

Freeholds and Leaseholds, High-street, Peckham, and in Church-street, Camberwell.—Seven small Houses, in old neighbourhoods.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, at Twelve for One, in two lots, SEVEN HOUSES, situated as follows:—3 to 7, in the Orchard, High-street, Peckham, a flourishing and daily improving neighbourhood. They contain three or four rooms each, and are let at rentals amounting to about 72l. per annum. The other two houses are leasehold, and are situated 3 and 3, Arthorke-row, opposite Grove-lane, Camberwell, and contain four rooms and wash-houses.—Particulars will be ready in due time, and may be obtained of Messrs. MARTEN, THOMAS, and HOLLAND, Solicitors, Mincing-lane, and at the offices of Mr. SINGLE, Land Agent, 34, Coleman-street.

Residences, Beaumont-square, Mile-end, and Shops, Back-road, St. George's-in-the-East.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, JUNE 30, at Twelve for One, SIX HOUSES, as follows:—Nos. 1 and 2, Bell-street, and Nos. 35 and 36, New-road, St. George's-in-the-East, let at low rentals, amounting to about 90l. per annum, to capital tenants, who, having made money in their shops, could now pay higher rentals; held under the Draper Company, of twenty-one years from Michaelmas, 1878, at 40l. per annum; a purchaser would no doubt get a removal from the company. Also Nos. 20 and 21, Beaumont-square, Stepney; let at rentals amounting together to about 12l. per annum.—Further particulars will appear in future advertisements, and in the meantime may be obtained at the offices of Mr. SINGLE, Land Agent, 34, Coleman-street, City.

Wandsworth-road.—Four Residences, in detached plots, an improvable Property.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, JUNE 30, at Twelve for One, in lots, FOUR well-built LEASEHOLD RESIDENCES, in detached pairs, pleasantly situated, Crumdiagh-grove, near the Stag, Wandsworth-road. They each contain on the ground-floor two parlours, first-floor two rooms, basement two kitchens, wash-house, &c. The present proprietor has taken to the property against his inclination, lives at a distance, and has imagined they would be purchased, house at a time, for occupation, so that he has declined letting them, though they stand in as good a situation for letting as anywhere throughout the whole metropolis. The estimated rental is about 28l. per annum.—Particulars will be ready in due time, and may be obtained of Mr. SHARP, Solicitor, Devonshire-terrace, New-road; and at the Office of Mr. SINGLE, Land Agent, 34, Coleman-street, City.

EDMONTON.—A gentlemanly Freehold Residence, by order of the Trustees, and without reserve.

MR. SINGLE will SELL by AUCTION at the Mart, on TUESDAY, JUNE 30, at Twelve for One, without the slightest reservation, a capital FREEHOLD RESIDENCE, one of a detached pair, built in a very superior manner, and cheerfully situated on the high-road, in the preferable part of Edmonton. It contains on the ground-floor two parlours; first floor, a capital drawing-room and two bed-rooms; second floor, two spacious bed-rooms; third floor, attic; basement, two kitchens, wash-house, pantry, &c. There is stabling, loft, large garden, &c. Being within an omnibus distance of the city, and near to the railway station, it is very desirable either for occupation or mere investment.—Particulars will be ready in due time, and may be obtained of Mr. COMPAGNE, Solicitor, 24, Back-lane; and at the offices of Mr. SINGLE, Land Agent, 34, Coleman-street, City.

Cambridge-heath, near Hackney-road.—Twenty-one Houses.

MR. SINGLE will SELL by AUCTION, on TUESDAY, JUNE 2, at Twelve for One, TWENTY-ONE HOUSES, as follows:—Six Houses, Nos. 21 to 26 inclusive, Melina-place; Three Houses, Ada-street; and Twelve Houses Nos. 12 to 23 inclusive, Gough-street, near the Canal-bridge, Cambridge-heath-road, a capital situation for letting. They offer an opportunity for most lucrative investment, being in an old neighbourhood, populous but respectable, and where there are comparatively few small houses; they let remarkably well.—Particulars may be obtained of Mr. J. B. WATSON, Solicitor, St. Saviour's-lane; and at the offices of Mr. SINGLE, Land Agent, 34, Coleman-street, City.

WOODFORD.—Freehold Building-land, almost contiguous to the intended Railway station, in 16 lots.

MR. SINGLE will SELL by AUCTION, at the Mart, on TUESDAY, JUNE 2, at Twelve for One, a valuable ESTATE, comprising freehold and copyhold building ground (fine certain and nominal) divided into 16 plots, presenting desirable building frontages, and situated in and near to Snake's lane, Woodford. Several of the plots are in the line of the intended railway, and are almost contiguous to the spot. This sale offers a fine opportunity for improving capital without risk, and open also to small or large capitalists.—Particulars may be obtained of Mr. WILLIAM GOVER, 1, Cole-street north, Dove-road, Southwark; and at the offices of Mr. SINGLE, Land Agent, 34, Coleman-street, City.

LONDON.—Printed by HARRY MORRELL, CORN. of 74, Great Queen Street, in the Parish of St. Giles, in the City of London; in the County of Middlesex, Printed by J. B. MORRELL, CORN. of 74 & 75, Great Queen Street, and printed and published by JOHN CROOKER, of 29, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the LAW TIMES, No. 34, Essex Street, Strand, on Saturday, the 28th day of May, 1878.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. VII. No. 166.]

SATURDAY, JUNE 6, 1846.

SUBSCRIPTION.
For One Year, paid in advance... £2 7 0
For Half Year, paid in advance... 1 5 0
Single Numbers, or on credit... 0 1 0
Double Numbers... 0 1 0

Situations Vacant.

TO POOR LAW UNION ACCOUNTANTS.
WANTED in a POOR LAW UNION OFFICE in Yorkshire, an ACCOUNTANT, thoroughly acquainted with the Poor Law Commissioners' System of Account Keeping, capable of calculating the Union averages and apportionments, and carrying out and balancing the whole of the quarterly accounts. No other duties will be required. Satisfactory testimonials as to character and complete efficiency for the situation will be deemed indispensable.

Applications stating salary expected, &c. to be by letter (pre-paid), addressed to C. J. FEARNE, esq. care of Messrs. RODGERS and PAGDIN, Solicitors, 37, King-street, Cheap-side, London.

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LAW.—A Gentleman, just admitted, who is well acquainted with the conveyancing and ordinary routine of a Country Practice, and has passed some time in a large London Agency Office, wishes for an engagement in an office of extensive practice, town or country.
Address J. G. Messrs. Dawson and Sons, 74, Cannon-street, London.

A GENTLEMAN, who has been carrying on a small Practice for about Five Years, is desirous of obtaining the situation of **MANAGING CLERK** in a respectable Office, either in Town or Country,—the latter would be preferred. The best references as to ability and respectability will be given.

Apply by letter, pre-paid, to A. B. 71, Mark lane.

LAW.—CONVEYANCING and CHANCERY CLERK.—WANTED, a SITUATION as CONVEYANCING or CHANCERY CLERK, by a gentleman capable of conducting both or either of those departments without the assistance of the principal. The highest reference given—can introduce considerable Chancery business, if wished.—Apply to A. B. LAW TIMES Office, 29, Essex-street, Strand.

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Address, free, to J. H. care of Messrs. LETHBRIDGE and MACKRELL, 25, Abingdon-street, Westminster. No agents treated with.

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LAW.—WANTED a SHARE in a good PRACTICE, in Town or Country, by a Married Gentleman, admitted three years. It is confidently anticipated that the Advertiser's family and other connection with the county of Devon, and more particularly with the Northern Division of that county, will insure the future establishment of a permanent Practice; and this advertisement is inserted more with the desire of obtaining active occupation and practical experience than present emolument. The Advertiser having been educated and employed in offices of the highest repute in London, trusts that no one will answer this advertisement whose business or character is in any way exceptionable.
Address K. L. M. LAW TIMES Office, Essex-street, Strand, London.

ADVOWSON.—To be SOLD, the ADVOWSON of a RECTORY, in the Country. The principal part of the income of the Rectory is derived from stock in the public funds. There is an excellent house of residence. Population, manufacturing.
For particulars, apply to Messrs. KEEN and HAND, Solicitors, Stafford.

Legal Notices.

WARWICKSHIRE SESSIONS.—NOTICE IS HEREBY GIVEN, that the GENERAL QUARTER SESSIONS of the PEACE for the WARWICK DIVISION of the said County will be held at WARWICK, on MONDAY, the 29th day of JUNE instant, at Eleven o'clock in the morning, and will commence with the County Business, and at Two o'clock the Trial of Prisoners will be proceeded with. On TUESDAY, the 30th, at Ten o'clock in the morning, Motions and Appeals will be heard.
The said QUARTER SESSIONS will be held by adjournment for the COVENTRY DIVISION of the said County, at COVENTRY, on WEDNESDAY, the 1st day of JULY, at Eleven o'clock in the morning; and as soon as the preliminary business is disposed of, the Court will hear motions and Appeals. The Trial of Prisoners will commence in St. Mary's Hall as soon as any bills are found and returned by the Grand Jury.
W. O. HUNT,
Stratford-upon-Avon, June 4, 1846. Clerk of the Peace.

BOROUGH of KINGSTON-UPON-HULL.—NOTICE IS HEREBY GIVEN, that the MIDSUMMER GENERAL QUARTER SESSIONS of the PEACE for the Borough of KINGSTON-UPON-HULL, for the Trial of Prisoners committed and held to Bail on charges of Felony and Misdemeanour, will be held at the Town Hall in the said Borough before MATTHEW TALBOT BAINES, Esquire, Recorder of the said Borough, on FRIDAY, the Third day of JULY next, at Ten o'clock in the forenoon, when and where all persons bound by recognisances, and others having business at the said Sessions (except parties out on bail), are requested to attend. And in all cases where the parties accused are out on Bail, the Prosecutors and Witnesses must be in readiness to attend the Grand Jury at Ten o'clock on SATURDAY morning, the Second day of the Sessions.

AND NOTICE IS HEREBY ALSO GIVEN, that all Appeals must be entered with the Clerk of the Peace before the sitting of the Court on FRIDAY, the Third day of JULY next, and the Hearing of Appeals and Motions will be taken at Nine o'clock on SATURDAY morning, the Fourth day of JULY next (if the Criminal Business should then have terminated, if not, immediately after the termination thereof), and Solicitors are requested to take notice that in Appeals against removal Orders, Copies of the Notice and Grounds of Appeal and Examination of the Pauper must be filed along with the removal Order.
J. H. GALLOWAY, Clerk of the Peace.
Office of the Clerk of the Peace,
Kingston-upon-Hull, 4th June, 1846.

LANCASHIRE MIDSUMMER SESSIONS.—NOTICE IS HEREBY GIVEN that the GENERAL QUARTER SESSION of the PEACE for the County Palatine of LANCASTER, will be held at the Castle of Lancaster, on MONDAY, the 29th day of JUNE inst. at Ten o'clock in the forenoon, and by adjournment at the following places and times, viz.:—

At the Court House in PRESTON on WEDNESDAY, the 1st day of JULY next, at Ten o'clock in the forenoon.

At the New Bailey Court House in SALFORD, near Manchester, on MONDAY, the 6th day of JULY next, at Ten o'clock in the forenoon.

And at the Court House in KIRKDALE, near Liverpool, on WEDNESDAY, the 15th day of JULY next, at Ten o'clock in the forenoon.

And that all business relating to the Assessment application or Management of the County Stock or Rate will commence at such Sessions respectively, at Eleven o'clock in the forenoon of the 1st day thereof.

All Business arising within the Hundred of Lonsdale, is transacted at Lancaster; within the Hundreds of Amounderness, Blackburn, and Leyland, at Preston; within the Hundred of Salford, at Salford; and within the Hundred of West Derby, at Kirkdale.

All appeals are entered with the Clerk of the Peace, and Motions made to the Court respecting them on the first morning of the Sessions at each of the above-named places; and the trial of such appeals takes place, at Lancaster, on the first day at Preston; and at Kirkdale not earlier than Friday, the third day; and at Salford on Wednesday, the third day.
GORTS and BURCHALL,
Deputy Clerks of the Peace.

Clerk of the Peace's Office, Preston,
June 3, 1846.

WANTED TO PURCHASE, a FREEHOLD ESTATE, in the Counties of Worcester, Gloucester, Warwick, or Oxford, the purchase-money for which not to exceed £5,000.

Address, TILLEY and TRAVERS, Solicitors, Moreton-in-Marsh, or Chipping Campden, Gloucestershire.

Sales by Auction.

Periodical Sales (established in the year 1803) of Reversions, Life Interests, Annuities, Policies of Assurance, Advowsons, Next Presentations, Rent Charges in lieu of Tithes, Post-obit Bonds, Tontines, Debentures, Ground Rents, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and all Public Undertakings.

MESSRS. SHUTTLEWORTH and SONS respectfully inform the public, that upwards of 40 years' experience having proved the classification of this species of property to be extremely advantageous and economical to vendors, and equally satisfactory and convenient to purchasers, the PERIODICAL SALES of reversionary interests, policies of insurance, tontines, debentures, advowsons, next presentations, all securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through 1846, as follows:—

Friday, July 3
Friday, August 7
Friday, September 4

Friday, October 2
Friday, November 6
Friday, December 4

Particulars may be had Ten days previous to each sale, at the Royal Hotel, Manchester; the Adelphi Hotel, Liverpool; Doe's Royal Hotel, Birmingham; the Angel, Oxford; the Eagle and Child, Cambridge; at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Foultry.

RAILWAY SHARES BY PUBLIC SALE.

MESSRS. LAMOND, SMALE, and LAMOND, Railway Share Auctioneers, beg to thank their Friends and the Public for their continued support and patronage, and to announce that their Public Sales of Railway Shares, &c. take place every Tuesday and Friday, at One o'clock, at the Hall of Commerce, Threadneedle-street, London, to which place all favours, containing instructions, are respectfully requested to be addressed.

All Scrip and Share Certificates must be deposited for examination at least one day previously to their being offered; and advices of results will be forwarded by the first post after the sale, and the proceeds immediately disposed of according to instructions.

Offices, Hall of Commerce, Threadneedle-street, London.

For Sale.

WARWICKSHIRE.—To be SOLD by Private Contract, STUDLEY CASTLE, with the Park and Home Farm, together with the contiguous Estates of Moreton Baggot and Great Alne, producing a rental of 4,000l. per annum, the whole of which may be purchased with the Castle, or only such a portion of it as the purchaser may desire. The Castle is a stone edifice in the Norman style, erected about 10 years since, containing every convenience, and perfectly adapted to the residence of any nobleman's or gentleman's family, and capable of accommodating a considerable number of visitors. There are pleasure and kitchen gardens, conservatories and hothouses, very extensive stabling, and a complete brewery. The shooting is extensive and excellent, and there are two lakes filled with fish, and a trout stream running through the domain. The Castle is completely and splendidly furnished with furniture of the best description, which may be taken by the purchaser at a valuation. The Castle, buildings, and the farm-house are in good order, and the whole will be found worthy of consideration either as a residence or investment.—For further particulars apply to Mr. W. Murray, solicitor, London-street, Fenchurch-street; and Mr. Samuel Beasley, architect, Soho-square, London; and to Messrs. Lea, Gibbs, and Couchman, solicitors, Henly-in-Arden, Warwickshire.

TO be SOLD, or LET, all that truly desirable FREEHOLD MANSION and ESTATE, called THE STAPLETON GROVE, situate at STAPLETON, in the County of Gloucester, about two miles from Bristol, for some years past in the occupation of the late Proprietor, Michael Hinton Castle, Esq. deceased.

The mansion is approached by a rustic entrance lodge, through ornamental grounds, finely timbered, skirted by the demences of his Grace the Duke of Beaufort and Sir John Smyth, Bart. and divided by the turnpike road from the palace and grounds of the Lord Bishop of Gloucester and Bristol, with a lawn tastefully laid out, flower gardens, and plantations; two large and well-stocked kitchen gardens, with hot-house, grape-house, pinery, &c. and three closes of very rich Meadow Land adjoining, the whole comprising about thirty acres.

For particulars apply to Mr BROOKE SMITH, Solicitor, Small-street, Bristol.

FREEHOLD RESIDENCE.—Coast of DORSET.—By railway in course of construction, three and a-half hours from London, three hours from Taunton and Bridgwater. One of the most beautiful marine Villas in the vicinity of Bournemouth, with conservatory, lawn, shrubberies, &c. and various building sites for sale.

To be SOLD or LET. The much admired and beautifully situated Villa Residence, called BELMONT VILLA, contiguous to that unequalled watering-place Bournemouth. The house is placed in a Southern aspect, on an elevated spot commanding very extensive and beautiful land and sea views, with lawn, garden, and pleasure grounds, comprising altogether about fourteen acres. This unique residence, with an approach of more than a quarter of a mile, must be seen to be duly appreciated, and is within two miles of a railway station. To save trouble, the purchase-money required is 2,500l. Rates and taxes about 12l. per annum.

Tickets for viewing the premises, and further particulars may be obtained on application at the office of M. K. WELCH, Solicitor, Poole, Dorset.

Periodical Sale of Reversions, Life Interests, Annuities, Life Policies, Advowsons, Next Presentations, and all descriptions of Securities dependent upon human life, Ground and Improved Rents, Post Obit Bonds, Shares in Railways, Mines, Insurance Companies, and all other public undertakings.

MR. MARSH (late Fuller and Marsh) respectfully informs the Public, that his PERIODICAL SALES BY AUCTION of the above description of PROPERTY will be continued throughout the present year as follows:—

Thursday, July 2.
Thursday, August 6.

Thursday, September 3.

Notice of sales intended to be effected by the above means should be forwarded to Mr. MARSH 14 days prior to each date.—No. 27, Bucklersbury, corner of Charlotte-row, Mansion-house, London.

Thursday, October 1.

Thursday, November 5.

Thursday, December 3.

Insurance Companies.

EQUITY & LAW LIFE ASSURANCE SOCIETY, No. 26, Lincoln's-Inn-Fields, London. Capital, 1,000,000l. in 10,000 Shares, of 100l. each.

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The Hon. Mr. Justice Erle.
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This Society grants Insurances upon the lives of persons in every profession and station wherever resident. Four-fifths of the profits are divided among the assured. The rates are calculated on the lowest scale consistent with security from the Government returns. The payments may be made, yearly, half-yearly, and quarterly, during life, or for a limited period.

Assurances for the whole Term of Life may also be effected upon an *Increasing Scale*, commencing at a rate much below the ordinary Premiums, and exempt from any augmentation for a period of seven years.

The Board meets every Wednesday, at half-past Three o'clock, to receive proposals and transact other business; but any assurance for which immediate despatch is required may be effected on the same day that it is proposed.

In cases where a life assured by another has gone beyond the limits prescribed by the policy, without the knowledge of the party interested, the Society will, upon his application, and proof of the life being then in a satisfactory state of health (but subject to their medical officers' approval of the risk as applicable to such life), *renew* the policy upon the same terms as they would have required for its continuance had their consent been previously obtained.

The usual commission allowed to all solicitors.

Sales by Auction.

Glazenwood, near Witham, Essex.—A remarkably unique Freehold Property, land-tax redeemed, comprising the celebrated Horticultural, Orchard, Nursery, Australian and American Gardens, containing upwards of 50 acres (with a capital mansion-house in the centre, in the occupation of the Rev. Sir John Page Wood, bart.); also a genteel newly-erected mansions and buildings for horticultural and floricultural purposes; the whole property constituting one of the Lions of that part of the county, and admirably adapted either for occupation or investment.

MESSRS. DRIVER have received instructions to OFFER to PUBLIC COMPETITION, at the Auction Mart, London, on TUESDAY, the 9th day of JUNE, at Twelve o'clock, in two lots, the above valuable PROPERTY, freehold, and land-tax redeemed, comprising the celebrated Glazenwood Estate, in the parish of Bradwell, next Coggeshall, consisting of above 50 acres of orchard, nursery, and American gardens, a considerable portion of which is well stocked with the choicest fruit trees of the most approved sorts in full bearing, and the remainder planted with a fine and rare collection of American and Australian shrubs and plants, in the most luxuriant and flourishing condition; the whole ornamentally disposed with the greatest taste, and intersected with delightful gravel walks, extensive conservatories, and sundry pits, with a capital mansion-house in the centre of the property (the residence of the Rev. Sir John Page Wood, bart.). Also a genteel newly-erected villa, replete with every accommodation for any respectable family; besides another residence and all requisite buildings for horticultural or floricultural purposes, the whole constituting a remarkably eligible property, either for occupation in its present lucrative trade, or as an investment. It is only about five miles from the Witham Station on the Eastern Counties Railway, surrounded with excellent roads, and resorted to by all persons fond of admiring horticultural or floricultural pursuits as quite the lion of that part of the county. The entire property is in the hands of the proprietor (excepting the Mansion House, occupied by the Rev. Sir J. P. Wood, bart.), and will be divided into Two Lots. The principal lot, comprising the Mansion House, &c. and upwards of thirty-eight acres. Lot 2 consists of the Villa and the other residence, with Conservatories and Buildings, and twelve acres of Nursery and Orchard Ground attached thereto.

To be viewed, on application to Mr. Curtis, at Glazenwood, of whom printed specifications, with plans annexed, may be had. Specifications may also be had at the Hotel at Chipping-hill, close to the Witham Station; the Saracen's Head, Chelmsford; the Three Cups, Colchester; of E. G. Craig, Esq. Solicitor, Braintree; of W. W. Oldershaw, Esq. of Tockenhouse-yard, London; at the Auction Mart, near the Bank of England; and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Whitehall, London.

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Capital One Million.

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This Society is now completely registered, and prepared to transact all the usual business of Life Assurance.

It is based upon a principle which will combine the benefits of Mutual Assurance with the guarantee of a Subscribed Capital of ONE MILLION STERLING.

Whilst perfect security is thus given, the number and character of the Shareholders (consisting of nearly 500 Members of the Legal Profession), will command a large amount of business, and consequent advantages will arise to the Assured.

Tables of Premiums have been prepared expressly for this Office, by F. G. P. NEISON, Esq. F.L.S., calculated on the nearest approximation to the real law of mortality.

These Tables will be found to afford peculiar encouragement to the assurance of young lives. They embrace participating and non-participating scales.

In the participating class, the Assured will be entitled to have four-fifths of the profits divided amongst them periodically, either by way of addition to the amount assured, or in diminution of premium, as the parties may elect. No deduction will be made from such profits for interest of capital, or for a guarantee fund.

The Premiums may be paid half-yearly or annually, or by a single payment.

Assurances may be effected through any respectable Solicitor, or by writing to the Secretary.

The Directors meet on Thursdays at Two o'clock; but Assurances may be effected on any day, by applying between the hours of Ten and Four, at the Offices of the Society, where Prospectuses and all other requisite information may be obtained.

CHARLES JOHN GILL, Secretary.

57, Chancery-lane.

UNITED KINGDOM LIFE ASSURANCE COMPANY.

8, WATERLOO-PLACE, PALM-MALL, LONDON.
Established by Act of Parliament in 1834.

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This Company, established by Act of Parliament, affords the most perfect security in a large paid-up Capital, and in the great success which has attended it since its commencement in 1834.

Its Annual Income being upwards of £82,000.

In 1841 the Company added a Bonus of 2l. per cent. per annum on the sum insured to all policies of the participating class from the time they were effected.

The Bonus added to policies from March, 1834, to the 31st Dec. 1840, is as follows:—

Sum Assured.	Time Assured.	Sum added to Policy
£5,000	6 Yrs. 10 Months.	£683 6s. 8d.
5,000	6 Years	600 0 0
5,000	4 Years	400 0 0
5,000	2 Years	200 0 0

The Premiums nevertheless are on the most moderate scale, and only one-half need be paid for the first Five Years, where the Insurance is for Life.

Every information will be afforded on application to the Resident Directors, EDWARD BOYD, Esq. and E. LENNOX BOYD, Esq. of No. 8, Waterloo-place, Palm-mall, London.

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Very important and valuable Freehold Estate, embracing the entire parish of Addington, free of tithes and land-tax, and almost of poor-rates, with its spacious Mansion, excellent Manor for Game, the Adwoson, and several first-rate and Grazing and Dairy Farms (let at about 2,500*l.* per annum, extending nearly to the town of Winslow, and only five miles from the county and borough town of Buckingham, distinguished as the family seat and domain of the late Hon. General Vere Poole, forming a singularly eligible and solid investment for capital in a proverbially rich and sporting country.

MESSRS. DANIEL SMITH and SON are commissioned to announce that the above remarkably valuable and truly important FREEHOLD ESTATE will be SOLD BY AUCTION IN SEPTEMBER next, unless an acceptable offer shall be previously made by private treaty. It comprises the spacious and substantial mansion of Addington, with walled garden, capital stabling, &c. placed on a gentle elevation, nearly in the centre of one of the most fertile domains in the county, embracing the entire parish, nearly encircled by a fine brook, and chiefly rich grazing and dairy land, the whole title free, and let to old respectable tenants at rents amounting to about 2,500*l.* per annum. The perpetual advowson, with its parsonage and glebe, and the manor, which is well stocked with game, appertain to the estate. The timber is nearly all elm—a certain proof of the fertility of the soil. The high turnpike road from Aylesbury to Buckingham passes through the property close to the town of Winslow, and it is within a very easy distance of the market towns of Buckingham, Bicester, Stony Stratford, &c. This description of grass land is unlikely to be affected by any change as to corn laws and tariffs, and the property therefore presents, with its peculiar and great local advantages, an indisputably fine and choice property for the investment of money, with a most enjoyable domain for residence, being in a perfectly rural district, and in the centre of several packs of hounds. A station on the Buckinghamshire Railway will be very near. Descriptive particulars, with plans, will be published when the day of sale is fixed; and in the interim the property may be viewed by application to Mr. King, surveyor, Winslow; and every information obtained of Messrs. DANIEL SMITH and SON, Land Agents and Surveyors, in Waterloo-place, Pall-mall.

FREEHOLD VILLA at OLD WINDSOR, between Windsor and Egham, with its beautiful Grounds, Conservatory, and rich Paddock, commanding a fine view of the Castle, and skirting the picturesque bank of the Thames.

MESSRS. DANIEL SMITH and SON are directed by the Executors of the late proprietor to **SELL BY AUCTION**, at the Mart, on **TUESDAY, JUNE 23**, at 12, (unless an acceptable offer shall be previously made by private contract), the above desirable FREEHOLD FAMILY RESIDENCE, comprising three or four reception rooms, with conservatory, and the usual appendages for a moderate establishment, beautiful and well-timbered pleasure grounds, and a rich paddock of pasture land adjoining, containing altogether above 13 acres, most desirably situated within a pleasant walk of the town and parks of Windsor, of Englefield-green, and Egham, and close to the Thames. Immediate possession may be had.—The estate may be viewed, and particulars had at the inns at Egham and Staines; upon the premises; at the Mart; of Messrs. C. and E. J. JENNINGS, Solicitors, Mitre-court, Temple; or of DANIEL SMITH and SON, Waterloo-place, Pall-mall, and Windsor.

MAER-HALL, in Staffordshire, bordering on Cheshire and Shropshire, near Newcastle-under-Lyme, many years the residence and property of the late Josiah Wedgwood, Esq. with its splendid Lake or Mere, surrounded by rich park-like pastures, and a bold broken chain of wooded hills, intersected by romantic drives and walks, of several miles in extent, forming one of the most beautiful and desirable domains of its size (about 1,100 acres) in the county; the soil being remarkably sound and healthy, the lands nearly title-free, and the farm homesteads of a very superior description; also the Advowson and Manor of Maer, and a romantic residence, known as Camp-hill, adjoining; midway between Birmingham, Manchester, and Liverpool, with a first-class station within a mile of the estate, bringing it within about seven hours' journey of London, and two miles and a half from those important towns.

MESSRS. DANIEL SMITH and SON are directed by the Executors of the late Josiah Wedgwood, Esq. to **SELL BY AUCTION**, at the Mart, near the Bank of England, on **TUESDAY, JUNE 23**, at Twelve o'clock, in Five Lots (unless an acceptable offer shall be previously made by private contract), the above important and singularly beautiful FREEHOLD PROPERTY, delightfully situated in a remarkably healthy and picturesque part of the country, between the towns of Newcastle-under-Lyme, Stafford, Drayton, and Ecclehall, and on the Shrewsbury-road. It comprises the Mansion of Maer Hall, possessing every comfort for a moderate establishment, capital newly-built stabling, gardens, and park-like pastures, refreshed by a lake of nearly twenty-three acres, stored with fish, amidst remarkably thriving plantations, chiefly of larch and oaks, clothing and crowning the brows and wooded hills of this highly picturesque domain, commanding very extensive and romantic scenery, and forming excellent preserves for game. The farms are let to respectable yearly tenants at low rents, and the two principal farmhouses and homesteads have been entirely newly built in the most substantial manner, and of a superior character. The Manor and Advowson of the living (a perpetual curacy), with its Parsonage, Glebe, &c., appertain to the estate, as also the small old established inn, the Swan with Two Necks, and several cottages. Camp-hill is a modern compact residence, with twenty-seven acres of romantic wooded grounds on the northward side of the property, about one mile from the railway station.—The estates may be viewed by parties sending their addresses. Descriptive particulars, with lithographic plans, may be had on the premises; at the chief hotels at Birmingham, Liverpool, Manchester, Stafford, &c.; of Messrs. KEARY and SHEPPARD, solicitors, Stoke-upon-Trent; of R. S. Ford, Esq. Swinerton, near Stone; at the Auction Mart, London; and of DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall, to whom only applications to treat are to be made.

HANTS.—Capital Freehold Farms, the greater part title free, offering one important or several Good Landed Investments, with an excellent Manor for Game, remarkably thriving Woodlands, Trout Fishery, and two valuable Corn Mills, in a picturesque part of the county, with some fine sites for the erection of a mansion.

MESSRS. DANIEL SMITH and SON are commissioned to offer for SALE BY AUCTION, in lots, by direction of the Trustees under the will of the late Francis Bailey, Esq. V.P.R.S. several capital FREEHOLD FARMS, comprising excellent arable and pasture land, with some upland and water meadows, with suitable homesteads, some remarkably fine woods, thickly stored with the most thrifty oak, and intersected by a good trout stream, on which are two valuable corn-mills, situated between Winchester, Stockbridge, Romsey, and Salisbury, within an easy distance of Southampton and Portsmouth, with a railway through the parish. The manor is attached to the property, and the whole estate comprises about 1,500 acres, but will be divided into eligible lots for investments of various amounts, unless an acceptable offer shall be previously made for the whole, which may be bought to pay a clear three and a half per cent.—Particulars and plans may be seen at their offices in Waterloo-place, Pall-mall; or at Mr. BAILY'S, Solicitor, 37, Threadneedle-street, London; and when the day of sale is fixed, may be had at all the neighbouring towns.

The Sedgehill Estate and Farm in Wilts, on the Borders of Dorsetshire, altogether about 310 acres, in the rich vale between Shaftesbury and Fonthill, in a famous sporting country.

MESSRS. DANIEL SMITH and SON are directed to OFFER for PUBLIC SALE, at the end of JUNE inst. (unless an acceptable offer shall be previously made by private contract), in Two lots, a very desirable FREEHOLD GENTLEMAN'S RESIDENCE, on a moderate scale, though capable of accommodation for a good establishment. It is a modern house of a handsome uniform elevation, with all suitable offices, stabling, walled garden, farm buildings, lodge, &c. surrounded by a very rich little park, studded with fine oak and other timber, commanding some highly picturesque scenery, embracing the finely varied range of hills and domain of Fitt House, the seat of John Benett, Esq. and portions of the Fonthill Estate, together with a valuable farm adjoining, with all requisite buildings, labourers' cottages, &c. Also, in a separate lot, a highly-conditioned and compact farm of about 170 acres, a great part pasture, in the parish of Sedgehill, with a neat farm-house and homestead, all recently put into substantial repair, and let to a highly respectable tenant.—The estates may be viewed by application on the premises, and descriptive particulars with plans may be had, when the day of sale is fixed, at the inns at Shaftesbury, Salisbury, &c.; of J. BATTEN, Esq. Solicitor, Yeovil; and of DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall, London.

DESIRABLE FREEHOLD ESTATE, with a very superior FARM RESIDENCE, known as STARK CASTLE, bounded by a bold reach of the River Medway, only three miles from the City of Rochester, and about seven from Maidstone, amidst grand and beautiful scenery.

MESSRS. DANIEL SMITH and SON will offer for SALE BY AUCTION, at the Mart, near the Bank of England, on **TUESDAY, JUNE 16**, at Twelve (unless an acceptable offer shall be previously made by Private Contract), the above very compact and valuable FREEHOLD PROPERTY, comprising a superior Farm Residence, embracing a portion of the old Castle, with its fine Gothic windows, capital buildings of the most substantial description, and above 30 acres of arable, pasture, hop, and marsh land, in a fine fence, and in a high state of cultivation, being on lease to Mr. John Pearce, a highly respectable tenant, for an unexpired term of five years, at a low rent, offering a safe and superior investment for capital, as also a desirable property for future occupation, being in a beautiful part of the country.—The estate may be viewed by application to the tenant, and particulars, with plans, may be had on the premises; at the chief inns at Rochester, Maidstone, Canterbury, &c.; at the Auction Mart; and of DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall.

Choice and valuable LAW LIBRARY of the late F. Hildyard, Esq. Barrister-at-Law.

MR. HAMMOND has instructions to **SELL BY AUCTION**, at his large Rooms, 28, Chancery-lane, on **WEDNESDAY, JUNE 10th**, at Twelve, the above, including a fine series of the Ancient and Modern Law Reports in the Exchequer, Common Pleas, and Queen's Bench; also Statutes, Abridgments, Digests, Commentaries, and general Books of reference and practice, by the most eminent Authors: the whole of which is in very superior condition. To be viewed, and catalogues had, at the Agency Offices, No. 28, Chancery-lane, and 30, Bell-yard.

Valuable and secure Leasehold Profit Rental of 234*l.* per annum, derived from a town mansion and stabling close to Hyde-park.

MESSRS. BULLOCK are directed by the Executors of the late Mrs. Egerton, to **SELL BY AUCTION**, at the Mart, on **TUESDAY**, the 23rd, at Twelve for One, in one lot, the original LEASE of the noble and spacious RESIDENCE, 5, Great Cumberland-street, Hyde-park, held for about 14 years unexpired, at the ground-rent of 17 guineas per annum. The premises are of handsome elevation, stuccoed in imitation of stone, with a Doric porch entrance, and are in excellent order, having been repaired and decorated at the cost of the leasees during the past year. Also the original Ground Lease of No. 9, Frederick Mews, Stanhope-place, Connaught-square, consisting of stabling for four horses, with pump and tank supplied with water, two dwelling-houses, two coach-houses, &c. held for 73 years unexpired, at 7*l.* 15*s.* per annum both of which properties are underlet, in one lease, to the Right Hon. the Dowager Lady Nelson, at the net rent of 260*l.* per annum, for a term of 21 years (determinable by the leasee at 7 or 14) from Lady-day, 1835. All the vendor's fixtures, consisting of presses, closets, &c. are to be included in the purchase money. The original leases and the counterpart underlease will lie in the auctioneers' office for inspection.—Printed particulars at the offices of Messrs. FARRER and Co. 66, Lincoln's-inn-fields; and of Messrs. BULLOCK, 211, High Holborn.

Important and most eligible Investments, in valuable Policies of Life Insurance for 14,000*l.*

MR. LIEFCHILD is instructed to offer for unreserved SALE, at Gurnsey's, on **WEDNESDAY, JUNE 15**, at Twelve for One, in six lots, the following valuable POLICIES of LIFE INSURANCE, viz.—a Law Life Assurance Office for 4,000*l.*; in the Equitable 2,000*l.*; in the London Assurance for 2,000*l.*; and two policies in ditto for 1,000*l.* each; all effected on the life of a gentleman now in his 55th year. Also a valuable Life Policy for 1,000*l.* in the Norwich Union, on the life of a person now in his 64th year.—Particulars and conditions of sale will be issued in a few days, and may be had at Mr. LIEFCHILD'S Land and Timber Office, 62, Moorgate-street, City.

Barking, Limehouse, Mile End, Shadwell, St. George's, East, and Southwark.—Freehold, Copyhold, and Leasehold Estates, producing 200*l.* per annum, eligible for Occupation and Investment, in 7 lots, by order of the Executors of Mrs. Mary Branch, deceased.

MR. MOORE will **SELL BY AUCTION**, at the Mart, on **FRIDAY, JUNE 12th**, a large Freehold House, with half an acre of garden ground in the best part of the town of Barking, Essex, let to Mr. Engho (tenant thereof for 50 years), at the low rent of 5*l.* per annum. Also, a Copyhold House, 12, Gump-street, Salmon's-lane, Limehouse, let on lease at 7*l.* per annum. A seven-roomed Residence, with garden, No. 1, Furness-croft, Stepney; term 45 years, ground-rent 4*l.* A six-roomed Residence, with washhouse, cellars, and garden, No. 1, Upper John-street, Watney-street, Commercial-road; term 45 years, ground-rent only 8*l.* Three Houses, No. 2, and 524, Spring-street, Fox's-lane, Shadwell, let at 5*l.* 36 years, ground-rent 4*l.* Five Houses in Charles, James, and St. Vincent streets, Commercial-road, let for six whole term at 8*l.* 13*s.* 6*d.*, the others let at 6*l.* per annum. Term 47 years, ground-rent 19*l.* 10*s.* And Three Houses and Shops, 13, 13, and 14, Bridge-street, corner of Union-street, Southwark, let on leases and otherwise, at 5*l.* per annum. Held by leases which will expire about 1865, should three gentlemen, aged 43, 51, and 53, so long live, at 1*l.* 10*s.* Particulars (with a plan of the Barking estate, may be had of Messrs. Marten, Thomas, and Hodson, Commercial-chambers, Mincing-lane; Messrs. Morris, Stone, and Trowson, Moorgate-street-chambers; Mr. Prescott, Aldersquare East; Mr. Humphreys, East-India-chambers, Leadenhall-street; Messrs. I. and W. Sheffell, No. 64, Broad-street; at Messrs. Hall, Chancery; Auction Mart; at the Inns nearest the respective properties; and at the Auctioneers' Offices, Mile End-road.

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LONDON:—Printed by HENRY MORRELL CO., of 74, Great Queen Street, in the Parish of St. Giles in the Fields, the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by the JOHN CROOKFORD, of 59, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the LAW TIMES, No. 39, Essex Street aforesaid, on Saturday, the 6th day of June, 1846.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

[Vol. VII. No. 167.]

SATURDAY, JUNE 13, 1846.

(DOUBLE NUMBER.)

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WANTED TO PURCHASE, a **FREEHOLD ESTATE**, containing from 800 to 1,000 Acres of Land, divided into five or six Farms. The purchase-money not to exceed 35,000*l.*

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Legal Notices.

WEST RIDING OF YORKSHIRE.—MIDSUMMER SESSIONS.—NOTICE IS HEREBY GIVEN, that the MIDSUMMER GENERAL QUARTER SESSIONS of the Peace for the West Riding of the County of York will be opened at SKIPTON, on TUESDAY, the 30th day of JUNE instant, at Ten of the clock in the Forenoon; and by adjournment from thence will be holden at BRADFORD, on WEDNESDAY, the 1st day of JULY next, at Ten of the clock in the Forenoon; and also, by further adjournment from thence, will be holden at ROTHERHAM, on MONDAY, the 6th day of the same month of JULY, at half-past Ten of the clock in the Forenoon, when all Jurors, Suitors, Persons bound by Recognizance, and others having business at the said several Sessions, are required to attend the Court on the several days, and at the several hours above mentioned.

Solicitors are required to take Notice, that all Appeals must be entered before the sitting of the Court, on the first day of the Sessions at each of the above-mentioned places; and that the List of such Appeals will be called over by the Clerk of the Peace at the expiration of half an hour from the opening of the Court; and that all Appeals in which Counsel are not then instructed, so as to be ready to proceed immediately (if called upon so to do), will be struck out.

Solicitors are also required to take Notice, that the Order of Removal, copies of the Notice of Appeal, and examination of the Pauper, are required to be filed with the Clerk of the Peace on the entry of the Appeal:—And that no Appeals against Removal Orders can be heard unless the Chairman is also furnished by the Appellants with a copy of the Order of Removal, of the Notice of Chargeability, of the Examination of the Pauper, and of the Notice and grounds of Appeal.

And NOTICE is also HEREBY GIVEN, That at the General Quarter Sessions of the Peace to be holden at SKIPTON aforesaid, an Assessment for the necessary expenses of the said Riding for the half-year commencing the 1st day of OCTOBER next, will be laid at the hour of Twelve at noon.

And NOTICE is also HEREBY GIVEN, that at the same Sessions to be holden at SKIPTON aforesaid, the election of a Clerk in the room of Mr. Procter Hall, deceased, for the Second Division of the Court of Requests, constituted by an Act passed in the third year of the reign of her Majesty Queen Victoria, intituled "An Act for the more easy and speedy recovery of Small Debts within the Parishes of Halifax, Bradford, Keighley, Bingley, Guiseley, Calverley, Batley, Birstal, Mirfield, Hartishead-cum-Clifton, Almondbury, Kirkheaton, Kirkburton, and Huddersfield, and the Lordship or Liberty of Tong, in the County of York," will take place at Twelve o'clock at noon.

C. H. BLSLEY, Clerk of the Peace, Clerk of the Peace's Office, Wakefield, 9th of June, 1846.

WARWICKSHIRE.—To be SOLD by PRIVATE CONTRACT, a valuable **FREEHOLD FARM**, containing 310 acres of arable, meadow, and pasture land, in good condition, let to a responsible tenant, at a low rent of 430*l.* per annum,—title free and land-tax redeemed. The farm-house and buildings are excellent, and are situate in the centre of the farm, which is itself in a ring-fence, and within a few miles of several first-rate market-towns. Price, 12,000*l.*—For particulars apply to TILSLEY and TRAVERS, Solicitors, Chipping Campden, Gloucestershire.

LANCASHIRE MIDSUMMER SESSIONS.—NOTICE IS HEREBY GIVEN that the GENERAL QUARTER SESSION of the PEACE for the County Palatine of LANCASTER, will be held at the Castle of Lancaster, on MONDAY, the 30th day of JUNE inst. at Ten o'clock in the forenoon, and by adjournment at the following places and times, viz:—

At the Court House in PRESTON on WEDNESDAY, the 1st day of JULY next, at Ten o'clock in the forenoon.

At the New Bailey Court House in SALFORD, near Manchester, on MONDAY, the 6th day of JULY next, at Ten o'clock in the forenoon.

And at the Court House in KIRKDALE, near Liverpool, on WEDNESDAY, the 15th day of JULY next, at Ten o'clock in the forenoon.

And that all business relating to the Assessment application or Management of the County Stock or Rate will commence at such Sessions respectively, at Eleven o'clock in the forenoon of the 1st day thereof.

All Business arising within the Hundred of Lonsdale, is transacted at Lancaster; within the Hundreds of Amounderness, Blackburn, and Leyland, at Preston; within the Hudders of Salford, at Salford; and within the Hundred of West Derby, at Kirkdale.

All appeals are entered with the Clerk of the Peace, and Motions made to the Court respecting them on the first morning of the Sessions at each of the above-named places; and the trial of such appeals takes place, at Lancaster, on the first day at Preston; and Kirkdale not earlier than Friday, the third day; and at Salford on Wednesday, the third day.

GORST and BURCHALL,

Deputy Clerks of the Peace.

Clerk of the Peace's Office, Preston, June 3, 1846.

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PRATT, Elizabeth, the wife of Frederick Thomas Pratt, D.C.L. Doctor's Commons, on the 6th inst.
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Age of the Assured, in every case, admitted in the Policy.

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EXTRACTS FROM THE TABLES.

EUROPEAN RATES.

Annual Premium for £100. Half Premium Table.

Age	First Seven Years.	Remainder of Life.
20	£ s. d.	£ s. d.
30	1 0 2	2 0 4
40	1 5 10	3 11 8
50	2 14 5	5 8 10
60	4 11 0	9 2 0

INDIAN RATES.

Annual Prem. for 1000 Rupees.

Age	One Year.	Whole Life.	One Year.	Whole Life.
20	Rs. 31	Rs. 31	Rs. 31	Rs. 31
30	26	32	26	32
40	32	48	32	48
50	42	66	42	66
60	62	98	62	98

Prospectuses and every requisite information may be obtained on application at the office.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. VII. No. 168.]

SATURDAY, JUNE 20, 1846.

(GRATIS DOUBLE NUMBER.)

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Single Numbers, or on credit... 0 1 0
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LAW.—A Gentleman just admitted, who is well acquainted with the Conveyancing and ordinary routine of a country practice, and has passed some months in a large London Agency Office, wishes for an ENGAGEMENT in town or country. Satisfactory references will be given. Address, R. D. J. care of Messrs. Howes and Co. Newspaper and Advertisement Agents, 7, Thavies-inn, Holborn Hill.

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BOROUGH of KINGSTON-UPON-HULL.—ALTERATION OF TIME OF HOLDING SESSIONS.—NOTICE IS HEREBY GIVEN, that the MIDSUMMER GENERAL QUARTER SESSIONS OF THE PEACE for the said Borough, for the Trial of Prisoners committed and held to Bail on charges of Felony and Misdemeanor, will be holden at the Town Hall in the said Borough, before MATTHEW TALBOT BAINES, Esquire, Recorder of the said Borough, on TUESDAY, the Seventh day of JULY next (INSTEAD OF FRIDAY, THE THIRD DAY OF JULY, AS PREVIOUSLY ADVERTISED), at Ten o'clock in the forenoon, when and where all persons bound by recognisances, and others having business at the said Sessions (except as hereinafter mentioned), are requested to attend. And in all cases where the parties accused are out on Bail, the Prosecutors and Witnesses must be in readiness to attend the Grand Jury at Ten o'clock on WEDNESDAY morning, the Second day of the Sessions.

AND NOTICE IS HEREBY ALSO GIVEN, That all Appeals must be entered with the Clerk of the Peace before the sitting of the Court on the said Seventh day of JULY next; and the hearing of Appeals and Motions will be taken at Nine o'clock on WEDNESDAY morning, the Eighth day of JULY next (if the Criminal Business should then have terminated; if not, immediately after the termination thereof); and Solicitors are requested to take notice, that, in Appeals against Removal Orders, Copies of the Notice and Grounds of Appeal, and Examination of the Pauper, must be filed along with the Removal Order.

J. H. GALLOWAY, Clerk of the Peace.

Office of Clerk of the Peace, Kingston-upon-Hull, 16th June, 1846.

LEEDS BOROUGH SESSIONS.—NOTICE IS HEREBY GIVEN, that the next GENERAL QUARTER SESSIONS OF THE PEACE for the Borough of LEEDS, in the County of York, will be holden before THOMAS FLOWER ELLIS, Esquire, Recorder of the said Borough, at the Court-house in LEEDS, on TUESDAY, the 7th day of JULY next, at Nine o'clock in the Forenoon, at which time and place all Jurors, Constables, Police Officers, Prosecutors, Witnesses, Persons bound by recognisances, and others having business at the said Sessions are required to attend.

AND NOTICE IS HEREBY ALSO GIVEN, that all Appeals and Proceedings under the Highway Acts, not previously disposed of, will be heard at the opening of the Court on THURSDAY, the 9th day of JULY next, provided all cases of felony and misdemeanour shall then have been disposed of, or otherwise as soon as the Criminal Business of the Sessions shall be concluded.

By order, JAMES RICHARDSON, Clerk of the Peace for the said Borough.

Leeds, 17th June, 1846.

LAW.—A LAW STATIONER of capital, and working for some of the first firms, wishes to extend his connection; he will give a liberal *douceur* for any business introduced. Address, by letter only, to L. J. S. LAW TIMES Office, 29, Essex-street, Strand.

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Thursday, August 6. Thursday, November 5.
Thursday, September 3. Thursday, December 3.
Notice of sales intended to be effected by the above means should be forwarded to Mr. MARSH 14 days prior to each date.—No. 27, Bucklersbury, corner of Charlotte-row, Mansion-house, London.

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To Capitalists and others.—Long Leasehold Estate. **MESSRS. BROOKS and GREEN** will SELL BY AUCTION, at Garraway's, on MONDAY, JULY 6, at One o'clock precisely, the IMPROVED RENTS, of 533*l.* per annum, arising from 12 well-built eight-roomed houses, in Anderson-street, King's-road, Chelsea; held for an unexpired term of 97*½* years, at the low yearly ground-rent of 140*l.* This property presents an eligible opportunity for investment of large or small capital, as it will be sold in lots.—For particulars and to view apply to Mr. Tyler, Colville Arms, Colville-terrace, King's-road, Chelsea; or Messrs. BROOKS and GREEN, Estate-agents, Surveyors, and Auctioneers, 28, Old Bond-street.

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Losses occasioned by fire from lightning will be made good.

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Insurances may be made for a less term than one year at a reduced premium, and the proportionate part only of the annual duty.

Insurances granted for a year or any longer term may be renewed within fifteen days after the expiration thereof.

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Sum Assured.	Time Assured.	Sum added to Policy
£5,000	6 Yrs. 10 Months.	£683 6s. 8d.
5,000	6 Years	600 0 0
5,000	4 Years	400 0 0
5,000	2 Years	200 0 0

The Premiums nevertheless are on the most moderate scale, and only one-half need be paid for the first Five Years, where the Insurances are for Life.

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Assurances effected on all classes of Lives, including the Lives of persons proceeding to, or residing in India and other parts of the World, of Officers actively employed in Military or Naval Service, and of persons affected with bodily or mental infirmities.

Endowments granted to Widows and existing or future Children.

Tables of rates adapted to suit the circumstances and convenience of every class of Policy-holders.

Indian rates of Premium much lower than in any existing Company.

Age of the Assured, in every case, admitted in the Policy. Impaired state of health admitted in Policies on Insured Lives.

EXTRACTS FROM THE TABLES.

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Annual Premium for £100. Half Premium Table.		
Age	First Seven Years.	Remainder of Life.
20	£ 1 0 2	2 0 4
30	1 5 10	2 11 8
40	1 15 9	3 11 6
50	2 14 5	5 8 10
60	4 11 0	9 2 0

INDIAN RATES.

Annual Prem. for 1000 Rupees.				
Age	Civil Service.		Military Service.	
	One Year.	Whole Life.	One Year.	Whole Life.
20	Rs. 20	31	11	30
30	26	38	16	34
40	32	48	22	42
50	42	65	32	58
60	62	90	54	80

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THE COURT OF EXCHEQUER by H. T. COLE, Esq. of the Middle Temple, Barrister-at-Law, and H. BARNES, Esq. of the Inner Temple, Barrister-at-Law.

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IRISH REPORTS.

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CHUBB'S PATENT FIRE-PROOF and WROUGHT-IRON SAFES and CHESTS.—As several limitations of the above are offered by different makers, bankers, merchants, and the public generally are respectfully informed that no ironmongers, smiths, or furniture brokers are supplied with the above safes or chests, and that they can only be obtained direct from **C. CHUBB and SON, the patentees, 57, St. Paul's-churchyard, London.**

IMPORTANT TO SOLICITORS, &c.
FIRE-PROOF SAFE MANUFACTORY, 125, Aldersgate street, City.—**J. LEADBEATER**, nine years sole manufacturer for Chubb's, of 57, St. Paul's-churchyard, begs most respectfully to announce to the Public that he has continued manufacturing for the above firm, and solicits attention to his present stock of Fire-proof Book-Safes and Chests, Wrought Iron-Proof Doors for strong rooms, Fire-proof Jewell Cases, Cash and Deed Boxes, Fire-proof Plate Chests, &c. &c. every article of which is got up in the most superior manner as regards materials and workmanship, all secured by "Leadbeater's Improved Detector Locks," throwing from three to twenty bolts, and sold at prices 40 per cent. under the charges usually made by that firm. **J. L.** having accomplished many substantial improvements in iron fire-proof articles, which obtained the Messrs. Chubb's unequalled degree of celebrity, and offering to the Public advantages which cannot be obtained elsewhere—namely, the very best security for property against fire and thieves—at prices so much reduced, he looks forward with confidence for the support of the Public. **J. L.** can refer to the testimonials of several bankers, merchants, and private gentlemen, in London and elsewhere, for whom he has erected fire-proof works.—Manufactory, 125, Aldersgate-street, London.

SCHIEDAM HOLLANDS.—Owing to the late enormous duty on this beautiful and wholesome Spirit, comparatively very little has been used in this country. The Public have, therefore, had no opportunity of testing its merits. **VINCENT and PUGH**, after innumerable experiments and immense outlay in machinery, have at length arrived at that state of distillation which has enabled them to produce an ARTICLE equal in every respect to the finest Foreign. **Vincent and Pugh** introduce this splendid malted spirit to the public for their opinion and approbation, which they trust it merits, not only for quality but price, being enabled to offer it at 2s. 6d. per bottle, in square Dutch bottles, with the cork branded (**VINCENT & PUGH**), and sealed for security as to its genuineness. To be had of all the respectable retail dealers in and about the metropolis, or of their agent, Mr. Charles Hodder, Castle, Moorgate-street, City, and wholesale, Vincent and Pugh, Distillers, 16, New Park-street, Borough, and 10, Road-lane, City.

The public attention is particularly called to their Pale Brown British Brandy, which is allowed to be matched.

SUPERIOR FOREIGN WINES ON SALE.—142, Strand.—Old Ports, Sherries, Madraas, &c. &c., several years in bottle. Private families may be supplied with any of the above wines, at the lowest prices, and with the greatest care, by **J. WRIGHT**, late of Mark-lane, comprising many thousand bottles. Finest old Ports, from three to five years in bottle 42s. 48s. 50s. Sherries, various, ditto, ditto 36s. to 48s. Very old India Madraas, ditto 42s. to 56s. Superb old East India 50s. to 72s. Very old Malmsey, in plants 50s. Brandy, ditto, and of the best quality 24s. Brandy of the above may be had in plants, delivered free within five miles of the metropolis.

YACHTING, DRIVING, and ANGLING.—The NEW DREADNOUGHT JACKETS and WRAPPERS will be found by Sailors and Sportsmen to be the best articles ever made up for their use. They will resist the heaviest rain and the fiercest tropical heat for any time, and their durability is equal to their water proof qualities. They are made of the best materials, and are of the same proofing. Officers and others going on board of ships and yachts, and these articles invaluable. Gentlemen who drive should use **CORDBING'S** new waterproof driving aprons and coats, the most serviceable and complete things of the kind, and approved by all who have tried them. Ladies' light riding capes, with hoods and sleeves. **CORDBING'S** improved sheet India rubber boots are superior to any thing hitherto made for the comfort of anglers and snipe-shooters. They are light, pliable, do not crack, and impervious to water for any length of time, and require no dressing to keep them in the condition of new, and prices sent on application. Any description of article made to order. London: **J. C. CORDBING**, 331, Strand, five doors west of Temple Bar.

FURNITURE.—WANTED TO PURCHASE, from £200 to £500 worth of SECOND-HAND FURNITURE, in large or small quantities, for which a fair price will be given in cash, without any deduction for variation, and removed at the purchaser's expense; Linen, China, Glass, Books, Pictures, and Musical Instruments, included, if required. Apply to Mr. J. CHAPMAN, 6, Great Russell-street, Covent Garden. Valuations made for the Legacy Duty, Rents collected, &c.

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The "Far-famed" Old Cigar 12 0

Wholesale, retail, and for exportation.
A Post-office Order is requested with Country orders.

THE DELIGHTFUL COOLNESS of the GOLDEN FLAX CRAVAT COLLAR, together with its perfect fit, however loosely tied on, recommend it especially during this weather. It needs no additional cravat—in one article is combined both collar and cravat. To be had of all hosiers, outfitters, &c. either in pure white for full dress, or printed in neat patterns suitable for morning dress. N.B. Each Cravat-Collar is stamped "John Paterson, London Registered."
Merchants and shippers supplied by any of the wholesale houses in London.

A NEW DISCOVERY.—Mr. HOWARD, Surgeon-Dentist, 52, Fleet-street, begs to introduce an ENTIRELY NEW DESCRIPTION of ARTIFICIAL TEETH, free from springs, wires, or ligatures. They so perfectly resemble the natural Teeth as not to be distinguished from the original by the closest observer; they will NEVER CHANGE COLOUR or DECAY, and will be found very superior to any Teeth ever before used. This method does not require the extraction of roots, nor any painful operation, and will give support and preserve teeth that are loose, and is guaranteed to restore articulation and mastication; and that Mr. Howard's improvements may be within the reach of the most economical, he has fixed his charges at the lowest scale possible. Decayed teeth rendered sound and useful in mastication.—52, Fleet-street. At home from Ten till Five.

SCHWEPPE'S AERATED LIME WATER, an excellent anti-acid, when taken under medical direction; but the Public are cautioned against an indiscriminate use of this water (under whatever fanciful or disguised name it may be pressed upon their notice), as it is well known to produce in some constitutions the most distressing and even fatal effects. It is a very good SOLE POTASS, and MAGNESIA WATERS, manufactured as usual upon the largest scale, at their several Establishments in London, Liverpool, Bristol, and Derby. Each bottle is protected with a red label over the cork bearing their name. German Sellers direct from the Springs at Nassau.—51, Berners-street, London.

LITHOGRAPHY in all its Branches, Writing, Drawing, and Printing, executed in the first style, and on the most moderate terms, at DEAN and CO.'S LITHOGRAPHIC PRINTING OFFICES, 35, 36, to 40, Threadneedle-street, City, where Merchants, Traders, and the Public may be supplied with all the Stationery and Transfer Paper, French Chalks, and Inks; and with their improved Lithographic Press, so excellent in principle and construction, that it is warranted to do the finest work with perfect ease and certainty.

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DIAMOND DUST, direct from the Mines.—Genuine DIAMOND DUST, for giving instantaneously the keenest edge to the bluntest razor or knife, is now regularly imported direct from the mines of Golconda, the principal, and the Oriental Mountains, and may be had at the wholesale depot, 1, Angel-court, opposite Somerset-house, Strand, London, in rosewood boxes (with instructions) at 1s., 2s., 6d., 8s., and 10s. 6d. each; and at the various agents throughout the world. Diamond dust, it is well known, has been used for many years amongst the nobles of the Russian Court as an indispensable adjunct to the comfort of their toilets. His late Majesty George IV. and His Royal Highness the Duke of Sussex were well acquainted with the peculiar properties and application of the diamond dust, having expended for sharpening their razors for upwards of 20 years. Parties using the diamond dust will never require to have their razors set or ground, the use of the hone being rendered perfectly unnecessary. Shippers and country agents supplied on liberal terms. Either of the boxes will be transmitted free to any part of the country.

COCOA-NUT FIBRE.—This substance envelops the shell of the milky cocoa-nut, around which it forms a strong protuberant ring. Man's ingenuity has turned the fibre to account by manufacturing it into many useful articles—such as carpets for stairs and passages, matting for churches, public buildings, offices, nurseries, and kitchens, heating-rugs, door-mats, ropes, netting for sheep folds, &c.; but among the applications there is not any to which it is better suited than for the manufacture of mattresses, as a substitute for horsehair, wool, and flock. It is very elastic, and affords great ease and support to the body, whether used with or without a feather bed. It has also the additional recommendation of being so obnoxious to vermin that they will not live in it; whilst it is a fact well known that about half the price of mattresses made of horsehair, wool, and flock, may be had of those made of cocoa-nut fibre. Possessing peculiar chemical properties that render it a non-absorbent, the fibre is particularly suitable for children's beds, for use of schools, in all large dormitories, and at sea. Cocoa-nut fibre mattresses are only about one-half the price of those made from horse-hair. Priced lists may be had on application at the warehouse, or will be sent free by post.

TRELOAR, 42, Ludgate-hill, seven doors from Farringdon-street, and five below Bell Savage Inn.

THE NEW TOOTH-BRUSH, made on the most scientific principles, thoroughly cleansing between the teeth, when used up and down, and polishing the surface when used crossways. This Brush so entirely enters between the closest teeth, that it does not require the aid of any other article, and the TOOTH-PICK BRUSH; therefore ask for it under name marked and numbered as under—viz., full-sized brushes, marked T. P. W. No. 1, hard; No. 2, less hard; No. 3, middling; No. 4, soft. The narrow Brushes, marked T. P. N. No. 5, hard; No. 6, less hard; No. 7, middling; No. 8, soft. These brushes are only to be had of **ROSS and SONS**, who sell by retail, and they warrant the hair never to come out, at 1s. each, or 10s. per dozen, in boxes; or 2s. each, or 21s. per dozen, in ivory.

THE ATRAPATORY, or LIQUID HAIR DYE.—The only Dye that really answers for all colours, and does not require re-dyeing, but as the hair grows, it never fades or acquires that unnatural red or purple tint common to all other dyes. **ROSS and SONS** can, with the greatest confidence, recommend the above Dye as infallible, if done at their establishment; and ladies or gentlemen requiring it are requested to bring a friend or servant with them to see how it is used, which will enable them to do it afterwards without the chance of failure. Several private apartments devoted entirely to the above purpose, and some of their establishments having used it, the effect produced can be at once seen. They think it necessary to add, that by attending strictly to the instructions given with each bottle of the Dye, numerous persons have succeeded equally well without coming to them.

Address **ROSS and SONS**, 119 and 120, Bishopsgate-street, London, the celebrated Perriers, Perfumers, Hair-cutters, and Hair-dyers. N.B. Parties attended at their own residences, whatever the distance.

BY COMMAND OF HER MAJESTY'S GOVERNMENT.—In consequence of the many cases achieved by the constant use of **GRIMSTONE'S EYE-SNUFF**, manufactured of choice British Herbs, Government having ascertained the above fact, has commanded **W. GRIMSTONE**, of 434, Oxford-street, to affix a medicine stamp on all canisters bearing the label as sanctioned by the Lords of the Treasury in 1825, and approved by the Stamp Solicitor in 1827. This celebrated Grimsone's Eye-Snuff is sold by all Chemists and Medicine Vendors, in canisters at 9d. 1s. 6d., 2s., 3s., 4s., 6s., and 9s. each, stamp included, and forwarded through the post. Upon receipt of a Money Order for 3s., 4s., 2s., 7d. canister will be forwarded from **W. GRIMSTONE**, Merchant, 434, Oxford-street, London.

CARSON'S ORIGINAL ANTI-CORROSION PAINT, specially patronized by the British and other Governments, the Hon. East-India Company, the principal Dock Companies, and other public bodies, &c. is particularly recommended to the Nobility, Gentry, Agriculturists, Manufacturers, West-India Proprietors, and others, it having been proved, by the practical test of nearly fifty years, to surpass all other Paints as an anti-corrosive. It is extensively used for the preservation of wooden houses, farm and other out-buildings, farming implements, conservatories; park paling, gates, iron railings, iron barries, copper, zinc, lead, brick, stone, old copper and stucco fronts, and tiles to represent slate. The superiority of the ANTI-CORROSION over every other paint, for its own purposes, may be easily inferred from the simple fact that its use has been always most strenuously opposed by colour manufacturers, and the sale of colourmen, and others interested in the sale of common paints. It is also very economical, any labourer being able to lay it on. Colours—light stone, drab or Portland ditto, Bath ditto, light and dark yellow ditto, light and dark oak, light and dark lead, light and dark chocolate, bright and dark red, and black, 3s. per cwt.; invisible green, 50s.; bright ditto, 60s.; deep green, 60s. per cwt.; in casks, 25 lb., 50 lb., and 112 lb. each. Oil and Brushes. More detailed particulars will be sent, free of postage. The original ANTI-CORROSION PAINT is only to be obtained of **WALTER CARSON** (successor to the inventory), 15, Ten-henhouse-yard, back of the Bank of England, who will show nearly 300 Testimonials received from the Nobility, Gentry, and Clergy, who have used the Anti-Corrosion for many years at their country seats. **W. C.** is reluctantly compelled to caution the Public against the spurious imitations of his Original ANTI-CORROSION PAINT, now offered for sale. He has no agents whatever. All orders are particularly requested to be sent direct.

SEA and RIVER BATHING.—Wilson's Patent Life Preserving Coats, Jackets, and Waistcoats.—All about to visit the Sea-Side will do well to provide themselves with the invention. Many a valuable life has been lost whilst bathing. By the aid of these waistcoats the art of swimming is soon accomplished, and all risk of drowning prevented. They may also be used for rowing. Youths, 18s. full-sized, 21s. Life Coats and Jackets for Yachting, Boating, Voyaging, and for all Watersports. **R. WILSON**, Tailor and Habit Maker, 30, Edward-street, Portman-square.

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W. BEST begs respectfully to solicit the attention of the Faculty and the Public to his stock of the most celebrated and efficacious MINERAL WATERS, consisting of Carlsbad, Ems, Marienbad, Pollna, Kissingen, Ragotz, Homberg, Seitz, Fachingen, La Grande Grille, Les Celestins, and Hospital of Vichy. The high testimonials of the first physicians on the continent, and indeed some of the most eminent in this country, respecting the important results attending the use of the above Mineral Waters, has induced **W. B.** regardless of expense, to make arrangements with the proprietors of the above Springs, so that the Mineral Waters can be obtained from his Establishment without any of its essential properties (especially the proto-carbonate of iron) being the least deteriorated. For further particulars see prospectus, which may be obtained at the Depot. **Schweppe's Aerated**, and **Naugah's Carrawa Waters**, may be had in any quantity. Agent by appointment to **Sturte's German Spa**, Brighton.

TO ANGLERS.—NEW CATALOGUES are now ready (gratis), containing the prices of 1,000 articles, with the Young Angler's Guide; 4-joint best chiselled salmon rod, 16 feet, with two tops, landing handle, socket spear, and partition bag, 25s.; ditto trout ditto, 12 feet 6 inches, ditto ditto, 20s.; good hickory trout ditto from 7s. 6d. The most splendid assortment of salmon flies in the world, 2s. to 4s. per dozen; best trout flies, 2s. per dozen; 60 yards best town made super salmon line, 10s. 6d.; 40 yards trout ditto, 4s. 6d.—**J. CHEEK**, Golden Pearch, 132, Oxford-street. Merchants and country dealers supplied. N.B. Feathers, &c. for fly dressing.

HEAL and SON'S LIST of BEDDING, containing a full description of weights, sizes, and prices, by which purchasers are enabled to judge the articles that are best suited to make a good set of bedding. Sent free by post, on application to their establishment, the largest in London, exclusively for the manufacture and sale of bedding (no bedsteads or other furniture being kept). **HEAL and SON**, Feather Dressers and Bedding Manufacturers, 136, opposite the Chapel, Tottenham-court-road.

Save from Thirty to Forty per Cent. at least by purchasing your **STATIONERY at PARTRIDGE'S**, 132, CHANCERY-LANE, one doors from FLEET-STREET. WHOLESALE STATIONER and PAPER MERCHANT'S AGENT. The following is the present list of prices for good Papers, all of which can be warranted as the best of their descriptions—
This Bath Note Papers from 2s. 6d. per ream.
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The best Envelopes in London reduced to 4s. 6d. per 1,000, assorted. Partridge's extra-superfine brilliant Wax 3d. per lb. Superfine ditto, generally called the best 6d. "
Good office Wax 2s. 6d. "
Best Irish Wafers, warranted 2s. 6d. "
Partridge's Steel Pens are well known for the ease and freedom with which they write; they are manufactured with the greatest care, of the best material, very carefully selected, and every Pen warranted, at 1s. 3d. per gross. Seconds Pens, 6d. per gross. Partridge's Magnum Bonum Pens, 8s. per gross.

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HALL and Co. PATENTEES of the PANNUS CORIUM, or LEATHER CLOTH BOOTS and SHOES, for Ladies and Gentlemen. These articles have borne the test, and received the approbation of all who have worn them. Such as are troubled with Corns, Bunions, Gout, Chills, or Tenderness of Feet from any other cause, will find them the softest and most comfortable ever invented—they never draw the feet or get hard, are very durable, adapted for every climate; they resemble the finest Leather, and are cleaned with common blacking.

The PATENT INDIA RUBBER GOLOSHES are light, durable, elastic, and waterproof; they thoroughly protect the feet from damp or cold; are excellent preservatives against Gout, Chills, &c.; and when worn over a boot or shoe, no sensible addition is felt to the weight. Ladies and Gentlemen may be fitted with either of the above by sending a boot or shoe.

Hall and Co.'s Portable WATERPROOF DRESSES for Ladies and Gentlemen. This desirable article claims the attention of all who are exposed to the wet. Ladies' Cardinal Cloaks, with Hoods, 18s. Gentlemen's Dresses, comprising Cape, Overall, and Hoods, 21s. The whole can be carried with convenience in the pocket.
* * * HALL and Co. particularly invite attention to their ELASTIC BOOTS, which are much approved; they supersede lacing or buttoning, are drawn on in an instant, and are a great support to the ankle.

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It is based upon a principle which will combine the benefits of Mutual Assurance with the guarantee of a Subscribed Capital of ONE MILLION STERLING.

Whilst perfect security is thus given, the number and character of the Shareholders (consisting of nearly 500 Members of the Legal Profession), will command a large amount of business, and consequent advantages will arise to the Assured.

Tables of Premiums have been prepared expressly for this Office, by **F. G. P. NISBET, Esq. F.L.S.**, calculated on the nearest approximation to the real law of mortality.

These Tables will be found to afford peculiar encouragement to the assurance of young lives. They embrace participating and non-participating scales.

In the participating class, the Assured will be entitled to have four-fifths of the profits divided amongst them periodically, either by way of addition to the amount assured, or in diminution of premium, as the parties may elect. No deduction will be made from such profits for interest of capital, or for a guarantee fund.

The Premiums may be paid half-yearly or annually, or by a single payment.
Assurances may be effected through any respectable Solicitor, or by writing to the Secretary.
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CHARLES JOHN GILL, Secretary.
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NOTICE OF SALE of this UNRIVALED ESTATE, sub-divided into plots for the erection of an assemblage of MANSIONS and VILLAS, agreeably to a plan which will insure its becoming a nucleus for the residence of families of the highest respectability: affording to capitalists, builders, and gentlemen desirous of erecting their own private residences, an opportunity for investment rarely to be obtained; and for the sale of the whole estate in one lot, previously.

MR. FREDERICK CHINNOCK begs to announce that he has been honoured with instructions from the Proprietors to SUBMIT for PUBLIC COMPETITION, at the Great Western Railway Hotel, Reading, Berks., on THURSDAY, July 2, this exceedingly valuable and highly picturesque ESTATE, unless the whole estate, which will be previously offered in One Lot, comprising the beautifully undulating park, the well-known and much-admired botanical and American gardens, the charming and romantic wilderness, the splendid lake of water abounding with fish, the noble avenue of trees through which it is approached, with the rich pasture and park land, embracing together upwards of 294 acres, shall be sold. The greatest possible care has been taken in apportioning and lotting this truly interesting and picturesque property for sale, so as not only to preserve and retain the natural beauties of the particular spot so lotted, but also to afford that extent of ground necessary to surround the villas or houses which may be erected on its site; and at the same time to preserve intact the leading features of the estate, by offering in one lot the site of the old mansion, the lake of water, the botanical and kitchen gardens, the avenue of trees, and the home park, containing together about 100 acres, and thus afford an opportunity for erecting a mansion on the old foundation of a spot already formed by nature and art to give every characteristic of an ancient family mansion, and render it one of the most compact, delightful, and inexpensive seats in the county of Berks. The Wilderness, containing about 36 acres, will be offered in one lot, together with about 30 acres of park land, in the hope that there will be found, in the town of Reading or the county, a purchaser, who will erect a house on its site, and keep up this romantic and charming retreat in the same state of order and cultivation in which it is at present stands. Detached villa residences are much needed in this locality, and there are few spots in England presenting such attractions and affording such facilities for this object, whether from the new church, which has lately been erected close to the estate, from its contiguity to the town of Reading, from its easy access from London, and shortly will be by railway communication from every part of the kingdom (which must materially enhance the value of land in the neighbourhood, and of this estate in particular), from the known salubrity of the air, from the delightful drives in the neighbourhood, but above all from the natural and artificial beauties of the estate, which are so well known and highly appreciated by all who have had the good fortune to see it, and which ought but a bold and noble conception, combined with the most refined taste, alone could produce. In order to afford facilities and encouragement to purchasers, arrangements have been made whereby the conveyance of each purchase shall be fixed at a definite and low sum.

Descriptive particulars, with lithographic plans of the estate, are now ready, and may be obtained at the Great Western Railway Hotel; of T. ROGERS, Esq. Solicitor, Friar-street, Reading; of Messrs. SMITH and ALLSTONS, Solicitors, Warford-court, City; of Messrs. HILLIER, LEWIS, and HILLIER, 6, Raymond's-buildings, Gray's-inn; at the White Hart, Bath; of Messrs. FOWLER, Clifton, near Bristol; and at Mr. CHINNOCK'S Offices, 28, Regent-street, Waterloo-place.

Freehold Residence and Premises, St. Peter's-hill, City, for Perpetual Sale.

MR. FREDERICK CHINNOCK is instructed to SELL by AUCTION, at the Auction Mart, City, on WEDNESDAY, JULY 1, at Twelve, a substantially-built and commanding FAMILY RESIDENCE and PREMISES, situate and being No. 19, St. Peter's-hill, Doctors'-commons, having large hall and vestibule, noble reception rooms, and numerous best and secondary bed-chambers, with conservatory behind.—May be viewed any time prior to the sale; and particulars obtained of JAS. TAYLOR, Esq. Solicitor, 15, Furnival's-inn; at the Mart; and at Mr. CHINNOCK'S Offices, 28, Regent-street, Waterloo-place.

Three Freehold Houses, Westminster, producing 59l. 10s. per Annum.

MR. FREDERICK CHINNOCK will SELL by AUCTION, at the Auction Mart, City, on WEDNESDAY, JULY 1, at Twelve, a capital brick-built DWELLING-HOUSE, being No. 2, New Pye-street, Westminster, let to a tenant of long standing, at 27l. 10s. per annum; and two Freehold Houses, being Nos. 17 and 18, Castle-lane, with large gardens in the rear, 70 feet in length, extending to the grounds of Lady Dacre's Charity, and let at rents amounting to 32l. per annum; they occupy a very eligible site of ground in the direct line of the intended new improvements.—Particulars may be obtained of Messrs. HILL and HEALD, Solicitors, 23, Throgmorton-street, City; at the Mart; and at Mr. CHINNOCK'S Offices, 28, Regent-street, Waterloo-place.

Valuable Reversion and Life Policies—without reserve.
MR. FREDERICK CHINNOCK will SELL by AUCTION at the Mart, on WEDNESDAY, JULY 1, at Twelve, a CONTINGENT REVERSION to the Annual Sum of 2000l. after the death of a lady aged 69 years, during the life of a gentleman aged 53, charged upon a competent fund standing in the name of the Accountant-General of the Court of Chancery. Also, a Policy of Assurance in the Law Life Assurance Society, for 3000l. on the same life. And a Policy in the Clerical, Medical, and General Life Assurance Society, for 4000l. on the same life.—Particulars may be obtained of JAMES TAYLOR, Esq. Solicitor, 15, Furnival's-inn; of Mr. Brown, 2, Hinde-street, Manchester-square; at the Mart; and at Mr. CHINNOCK'S Offices, 28, Regent-street, Waterloo-place.

Valuable Long Leasehold Estate in Houses Let on Lease, and Ground-rents well secured, producing a rental of 649l. per annum.

MR. FREDERICK CHINNOCK is instructed to SELL by AUCTION, at the Auction Mart, City, on WEDNESDAY, JULY 1, at Twelve, in Lots, a valuable LEASEHOLD ESTATE, situate on the summit of Notting-hill, constituting the eastern portion of Ladbroke-terrace, comprising four modern Italian villas, each with large gardens, fitted up and finished in a superior style, and let on leases to highly respectable tenants, at rents amounting to 295l. per annum, and two first class semi-detached family residences, with large gardens, producing a rental of 205l. per annum. Also valuable Leasehold Ground-rents, arising from 13 villa residences, situate in Ladbroke-terrace, in the rear of the Uxbridge-road, amounting to 149l. 8s. per annum. The whole held for an unexpired term of 76 years.—May be viewed by permission of C. BERKELEY, Esq. Solicitor, 52, Lincoln's-inn-fields; and at Mr. CHINNOCK'S Auction and Estate Offices, 28, Regent-street, Waterloo-place.

SOMERSETSHIRE.—Torweston Castle, and most important Freehold Estate of 657 Acres, at Sampford Brett, near Williton and Waterhill.

MESSRS. DRIVER have been favoured with instructions to submit to PUBLIC COMPETITION at AUCTION, in 22 Lots, some time in the month of JULY next, all the above most desirable and valuable FREEHOLD PROPERTY, comprising the ancient celebrated domain called Torweston Castle, a most commanding situation, the principal farm containing 390 acres, lying within a ring fence, is now in the occupation of the Executors of the late Mr. Corner, highly responsible and respectable yearly tenants, who have received notice to quit at Michaelmas 1846; the remainder is also in the occupation of most responsible yearly tenants, with the exception of about 150 acres, which have been long since granted out upon leases for lives, most of which have now only one remaining life, so that the expectation of early possession within a few years may be most reasonably anticipated. Nearly the whole of the parish of Sampford Brett is comprised in this estate; the remainder extends into Stogumber and St. Decuman parishes.

The property is surrounded by capital roads, and is distant from Bridgewater and Taunton about seventeen miles, Wat-chill two miles, Minehead nine miles, and Dunster about three miles.

Printed specifications are in preparation, and a future advertisement will shortly appear, announcing the day of sale. In the mean time any further information may be had from Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Parliament-street, London.

Three valuable perpetual Advowsons and the rights of presentation to the very desirable Rectory of Iden, near Rye, and the two consolidated Rectories of East Guilford, with Playden, adjoining thereto, in the county of Sussex and diocese of Chichester, subject to the present incumbent's life, aged 65 years.

MESSRS. DRIVER are instructed to submit the above valuable PERPETUAL ADVOWSONS and RIGHTS OF PRESENTATION to PUBLIC COMPETITION, at the Auction Mart, Bartholomew-lane, London, on FRIDAY, the 10th day of JULY next, at Twelve o'clock, in Two Lots:—Lot 1 will comprise the Rectory of Iden, situate at the extreme east of the county of Sussex, and immediately on the border of Kent, two miles from the market-town of Rye, twelve miles from the fashionable watering-place of Hastings, and sixty-one from the metropolis, with which, as well as with Dover to the east and Brighton to the west, there will shortly be a direct railroad communication from Rye. The house is ancient, but, with its extensive modern additions, is in complete repair, and capable of accommodating a large family, and forms a most enviable and capital residence. It is surrounded by its small Pleasure-ground and Garden, and stands perfectly retired about a quarter of a mile from the church, in the midst of the glebe, beautifully timbered. The clear annual income of the Rectory of Iden may be fairly calculated to produce upwards of 800l. after making all deductions for allowance to a curate, and payment of all parochial rates. Lot 2 will comprise the consolidated Rectories of East Guilford, with Playden, situate adjoining to Iden, and are now, and have for a very long time, been held therewith. The clear annual income of these consolidated rectories, after making all deductions for allowances to curates, and payment of all parochial rates, may be fairly estimated to produce about 430l. The present incumbent is aged 65 years.—Printed specifications may be had at the Angel and Star Hotels, Oxford; the Hoop, Cambridge; of Messrs. SMITH and SON, Solicitors, 16, Southampton-street, Bloomsbury-square; at the Auction Mart, Bartholomew-lane; and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Parliament-street, London.

OATLANDS MANSION HOUSE and few remaining unsold lots for immediate and absolute Sale by Auction.

MESSRS. DRIVER beg to announce to the Public that the above Mansion House and Grounds, comprising lot 1 at the recent auction, containing 97 acres; the adjoining lots 40 and 41, containing together 56a. 2r. 30p.; lot 2, containing 27a. 0r. 20p.; and the smaller lots, 28, 29, 36, 37, and 61, being the only unsold lots at the recent auction, are now upon SALE by PRIVATE CONTRACT; and unless an acceptable offer shall be made for the Mansion House lot previously to the 15th of July next, it will be then subdivided into lots varying from 10 to 20 acres each, and will be submitted for unreserved SALE by AUCTION, together with the lots above enumerated, at the Auction Mart, on TUESDAY, the 4th day of AUGUST, at Twelve o'clock; together with the extensive Manors of Byfleet and Weybridge, and Walton Leigh; and the valuable Building Materials of the mansion-house, grotto, extensive stabling, offices, and premises, will be advertised for sale in lots, in the first or second week in August, thus affording a most favourable opportunity for any of the purchasers of the beautiful sites of this magnificent Oatlands Estate for purchasing these building materials, and thereby saving great expense of carriage of other materials.—In the meantime further information may be had of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Parliament-street.

WOODFORD, Essex.—Higham Hills Mansion House, Park, and Domain, of about 327 acres, and a desirable Farm adjoining, of about 72 acres.

MESSRS. DRIVER are favoured with instructions to OFFER to PUBLIC COMPETITION, at the Auction Mart, near the Bank of England, on FRIDAY, the 10th day of JULY, at Twelve o'clock, in two lots, the above important and valuable FREEHOLD PROPERTY, containing together about 400 acres, most elegantly situate in the parishes of Woodford and Walthamstow, in the county of Essex, and only about eight miles from London.

Lot One will comprise the Manor of Higham Hills, otherwise Higham Bempstead, and the Impropritate Tithes of about 60 acres, together with Higham Hills Mansion House (the distinguished residence of the late Jeremiah Harman, Esq.), delightfully situate in a splendid Park of about one hundred and fifty acres, beautifully undulating, and enriched with unusually ornamental stately oak timber, and extensive sheets of water, commanding delightful panoramic prospects of the surrounding forest and other scenery. The mansion is of very prepossessing character, and of correct and handsome elevation, upon a scale of accommodation and elegance adapted for any nobleman or gentleman of the first distinction. It contains a noble suite of living apartments, comprising two elegant drawing-rooms, brilliant rooms, a capital dining-room, and library, numerous principal and secondary bed-chambers, and all requisite domestic offices, excellent coach-houses and stabling, and abundance of out-offices, and a well of the purest water, with complete ample machinery for supplying the residence, stabling, and other premises. The lawns and pleasure-grounds surround the mansion, and are most tastefully displayed, and beautifully ornamented with choice shrubs and American plants in the height of luxuriance, with wide dry gravel walks. There is also a magnificent conservatory opening from the dining-room. The kitchen garden contains an area of about two acres, entirely inclosed with lofty brick walls fully staked and clothed with choice fruit-trees in full bearing, in which are two vineries and several succession-pits. The park comprises about 93 acres of rich meadow land, ornamented with a spacious lake of about 11 acres, and surrounding the park are about 54 acres of rich forest scenery and highly ornamental timber, with delightful carriage-drives through the same.

Lot Two will consist of a very desirable small freehold Farm, of 72 acres, surrounding the Park, with comfortable Farm-house, and all requisite agricultural buildings, together with the lease of about 16 years (held at a low rent) of a small Farm containing about sixty acres, occupied with and adjoining the park; and a Leasehold Residence, containing every accommodation for a respectable family, with about 30 acres of productive land, held for an unexpired term of about 7 years, at a very moderate rent; the whole forming a most enviable property either for occupation or investment. Immediate possession may be had on completion of the purchases.

To be viewed, with cards only, from 12 to 6 every day (Sunday excepted), which, with printed specifications and plans annexed, may be had of Messrs. TATAMAN and SON, Land Agents and Surveyors, Bedford-place, Russell-square; of Messrs. MABERLY and SON, Solicitors, Bedford-row, and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Parliament-street. Printed specifications may also be had at the Auction Mart, Bartholomew-lane.

Exceedingly valuable Freehold Property, Storey-lane, Tooley-street.

MR. ROBERTS (of Old Jewry) will SELL by AUCTION, at the Mart, on FRIDAY, JUNE 26, at Twelve, in one lot, an exceedingly valuable FREEHOLD ESTATE, situate on the West side of Surrey-lane, Tooley-street, convenient to the water-side, adjoining Messrs. Scovell's Wharf, and near to Messrs. Baily's the eminent brewers. It comprises extensive premises, with spacious gateway entrance, now subdivided into a warehouse and pottery; the warehouse is let to Messrs. Shurt, at a low rental of 22l. and the pottery to Mr. J. Malt, at the inadequate rental of 20l. Also ten Freehold Houses, adjoining the above, forming a very compact property, let to good tenants at rents amounting to 123l. per annum. The whole of this estate is very substantially built, is surrounded by large establishments, and is in every respect eligible for safe investment.—Particulars may be had of JAMES IVES, Esq. 44, Cannon-street, City; at the Mart; and of the Auctioneer, 7, Old Jewry.

CHURCH-ROAD, EDMONTON.—Freehold Residence and numerous Plots of Building Ground.

MR. ROBERTS (of Old Jewry) will SELL by AUCTION, at the Mart, on FRIDAY, JUNE 26, at Twelve, in lots, a commodious FAMILY RESIDENCE, with portico entrance, and the offices and coach attached thereto, advantageously situate in Church-road, Edmonton, suitable for a Boarding Establishment or private Institution; and a neat Cottage Residence, with large garden, let to Mrs. Legater, who has been in possession many years; also 30 plots of exceedingly valuable Building Ground, adjoining. The whole of the above property is freehold—the building ground is seated high and dry, within a few paces of the High-street, possessing a rich loamy soil, well stocked with fruit and other trees, and efficient drainage, and divided into plots of various sizes, presenting excellent frontages for shops and cottage residences, part having delightful views over the extensive part of F. Snell, Esq. thereby offering eligible investments to builders and capitalists.—Particulars and plans may be had at the Bell, Edmonton; Swan, Tottenham; Three Crowns, Newington; of J. Scarborough, Esq. 19, Tokenhouse-yard; St. Lambert, Surveyor, Coleman-street; at the Mart; and of the Auctioneer, 7, Old Jewry.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. VII. No. 169.]

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MONEY.—WANTED, 800l. on the mortgage of adequate and eligible leasehold property. Also, for SALE, some handsome and well-built eight, six, and four-roomed HOUSES, nearly new, and in a good and airy situation, (let to select quarterly tenants; part free of, and the remainder at very low, ground-rents. Letters addressed, post paid, to R. B. at Mr. King's, General Newspaper Office, Chancery-lane.

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LAW.—A Gentleman who has served his articles in the Country, and was one year in an Office in London prior to passing his examination on his being admitted a Solicitor last Hilary Term, is desirous of obtaining a SITUATION as CLERK in an office of general practice in the Country. A moderate salary only required. Address to J. H. H. care of T. BLANKIN, Law Bookseller, 19, Chancery-lane, London.

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Legal Notices.

BOROUGH of KINGSTON-UPON-HULL.—ALTERATION OF TIME OF HOLDING SESSIONS.—NOTICE IS HEREBY GIVEN, that the MIDSUMMER GENERAL QUARTER SESSIONS OF THE PEACE for the said Borough, for the Trial of Prisoners committed and held to Bail on charges of Felony and Misdemeanor, will be holden at the Town Hall in the said Borough, before MATTHEW TALBOT BAINES, Esquire, Recorder of the said Borough, on TUESDAY, the Seventh day of JULY next (INSTEAD OF FRIDAY, THE THIRD DAY OF JULY, AS PREVIOUSLY ADVERTISED), at Ten o'clock in the forenoon, when and where all persons bound by recognizances, and others having business at the said Sessions (except as hereinafter mentioned), are requested to attend. And in all cases where the parties accused are out on Bail, the Prosecutors and Witnesses must be in readiness to attend the Grand Jury at Ten o'clock on WEDNESDAY morning, the Second day of the Sessions.

AND NOTICE IS HEREBY ALSO GIVEN, That all Appeals must be entered with the Clerk of the Peace before the sitting of the Court on the said Seventh day of JULY next; and the hearing of Appeals and Motions will be taken at Nine o'clock on WEDNESDAY morning, the Eighth day of JULY next (if the Criminal Business should then have terminated; if not, immediately after the termination thereof); and Solicitors are requested to take notice, that, in Appeals against Removal Orders, Copies of the Notice and Grounds of Appeal, and Examination of the Pauper, must be filed along with the Removal Order.

J. H. GALLOWAY, Clerk of the Peace.
Office of Clerk of the Peace,
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NEXT of KIN of the late Reverend JOHN PEDDLE, clerk, vicar of Charlton Horethorne, in the county of Somerset, deceased.—As the solicitors to the Executor of the will of the said Reverend John Peddle, we hereby give notice, that this estate is now fully got in, and the accounts thereof wound up and finally adjusted, and that a sum exceeding 7,000*l.* being the lapsed legacy to Mr. Edward Genge, is payable to the NEXT of KIN of the said JOHN PEDDLE; and that Mr. William Genge, Mrs. Symes, Mr. Thomas Barrington, and Mrs. Elworthy, claim to be such next of kin, as being the only surviving children of the brothers and sisters of the said John Peddle, all of whom are supposed to have died, in his lifetime, and as being the only nephews and nieces who survived the said John Peddle, who died on the 14th day of December, 1839. Any other person claiming to be of the same degree of relationship is hereby requested to give, within one month from the date hereof, notice to Mr. Bowerman, solicitor, of Uffculme, Devon, or to us, in writing, of such claim, accompanied by a form of pedigree and certificates and declarations necessary to corroborate the same. But in order to save trouble and expense, it may be observed that a child of a nephew or niece of the said John Peddle, deceased, whose parent or grand-parent did not survive the said John Peddle, is not entitled to participate with any nephew or niece living at his decease. The object of this notice is to enable the executor to pay over the money without the delay or expense of recourse to the Court of Chancery, if possible, though advised by counsel not to do so.

ALLFORD AND CHANDLER.
Sherborne, 13th day of June, 1846.

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This Company, established by Act of Parliament, affords the most perfect security in a large paid-up Capital, and in the great success which has attended it since its commencement in 1834.

Its Annual Income being upwards of £32,000.

In 1841 the Company added a Bonus of 2*l.* per cent. per annum on the sum insured to all policies of the participating class from the time they were effected.

The Bonus added to policies from March, 1844, to the 31st Dec. 1846, is as follows:—

Sum Assured.	Time Assured.	Sum added to Policy
£5,000	6 Yrs. 10 Months.	£683 6s. 8d.
5,000	6 Years	600 0 0
5,000	4 Years	400 0 0
5,000	3 Years	300 0 0

The Premiums nevertheless are on the most moderate scale, and only one-half need be paid for the first Five Years, where the Insurance is for Life.

Every information will be afforded on application to the Resident Directors, EDWARD BOYD, Esq. and E. LENNOX BOYD, Esq. of No. 8, Waterloo-place, Pall-mall, London.

FREEMANSONS' AND GENERAL LIFE ASSURANCE LOAN, ANNUITY, AND REVERSIONARY INTEREST COMPANY,
11, Waterloo Place, Pall Mall, London.

DIRECTORS.
Swynfen Jervis, esq. Chairman.
The Hon. Captain Carnegie, esq.
M.P.
William Day, esq.
Sir Wm. H. Dillon, R.N.
K.C.H.
Frederick Dodsworth, esq.
Joseph Holl, esq.

THIS Office unites the Benefit of a Mutual Association with the Security of a Proprietary Company, and offers to the Assured the following advantages:—

1. Credit until death, with privileges of payment at any time previously, for one-half of the premiums for the first five years, upon Assurances for the whole of Life, a plan peculiarly advantageous for securing Loans.
2. In Loan transactions the lender secured against the risk of the borrower going out of Europe.
3. Sums assured to become payable AT GIVEN AGES or DEATH, if previous.
4. Policies indefeasible; fraud alone, not error, vitiating them; and in case the Renewal Premium remain unpaid, the Assurance may be revived at any time within six MONTHS, upon satisfactory proof of health, and payment of a trifling fine.
5. Officers in the Army and Navy, and persons residing abroad, or proceeding to any part of the world, assured at low rates.
6. Immediate Survivorship, and Deferred Annuities granted; and Endowments for Children, and every mode of provision for Families arranged.

Information and Prospectuses furnished, on application at the office.

JOSEPH BERRIDGE, Secretary.

THE REVERSIONARY INTEREST SOCIETY. No. 17, King's Arms Yard, Coleman-street, London. Established 1833. Actual paid up Capital above half a million.

Reversionary property, life policies, and deferred annuities, purchased to any amount, and the full value given, without putting the vendors to any unnecessary trouble or expense. Daily attendance from ten to four.
C. G. CHRISTMAS, Secretary.

LAW FIRE INSURANCE SOCIETY.
(Completely Registered under the Act 7 & 8 Vict. c. 110.)

Offices, Nos. 5 and 6, Chancery-lane.

Subscribed Capital, £50,000,000.

TRUSTEES.

The Right Hon. the Earl of Devon.
The Right Hon. Lord Cottenham.
The Right Hon. the Vice-Chancellor of England.
The Right Hon. the Lord Chief Baron.
The Right Hon. Sir Herbert Jenner Fust.
William Wingfield, esq.
Richard Richards, esq. M.P.

DIRECTORS.

(The * denotes a Director of the Law Life, and the † a Director of the Legal and General Life Insurance Society.)

Bethell, R. esq. Q.C.
† Bigg, Edward B. esq.
Boodle, John, esq.
* Brown, Anthony, esq.
Budd, Thomas Wm. esq.
† Chichester, J. H. R. esq.
* Chisholme, Wm. esq.
* Clarke, Thomas, esq.
Cox, John, esq.
Jortin, Lee, esq.
Kinderley, G. H. esq.
Lee, John Benjamin, esq.
† Lyon, James Wittit, esq.
† Rose, Hon. Sir George.
† Simpkinson, Sir F. Q.C.
* Smedley, Francis, esq.
† Tatham, Meaburn, esq.
Tilson, Thomas, esq.
* Twiss, Horace, esq. Q.C.
Tyssen, John R. D. esq.
* Vizard, William, esq.
White, Edward, esq.
Wilde, Edward A. esq.
† Wing, Thomas, esq.

AUDITORS.

Bailey, Charles, esq. Broderip, Francis, esq.
Bockett, Daniel S. esq. Scadding, Edwin W. esq.

SECRETARY.

Edward Blake Beal, esq.

ARCHITECTS AND SURVEYORS.

Thomas Bellamy, esq. and George Pownall, esq.

SOLICITORS.

Messrs. Edward and Charles Harrison.

BANKERS.

Messrs. Coutts and Company.

Persons insured by this society are not liable to be called upon to contribute towards losses.

Agricultural produce and farming stock (live and dead), and implements and utensils of husbandry, may be insured on one farm, in one sum, without the average clause, at three shillings per cent. per annum free of duty.

In order to meet covenants requiring continuance of rent, notwithstanding destruction of buildings by fire, the Society will grant insurances on rent, the amount being specified in the policy.

Losses occasioned by fire from lightning will be made good.

Insurances may be made for more years than one by a single payment; and in such cases a liberal discount will be allowed on both premium and duty: for instance, insurance effected for seven years will be charged the premium and duty for six years only.

Insurances may be made for a less term than one year at a reduced premium, and the proportionate part only of the annual duty.

Insurances granted for a year or any longer term may be renewed within fifteen days after the expiration thereof.

Persons insured with this Society, and who may suffer loss, will receive their indemnity without deduction or discount.

No charge will be made for the policy where the sum insured amounts to 300*l.*

Attendance given at the Office of the Society daily from Nine till Four, where parties may obtain any further information respecting the terms on which insurances may be effected.

E. BLAKE BEAL, Secretary.

DISEASED & HEALTHY LIVES ASSURED.

MEDICAL, INVALID, & GENERAL LIFE OFFICE,
25, Pall Mall, London, and 23, Nassau Street, Dublin.

Subscribed Capital £50,000,000.

THIS OFFICE WAS ESTABLISHED

in 1841, and possesses tables formed on a scientific basis for the assurance of diseased lives. The urgent necessity for an institution like the present may be estimated by the statement that two-thirds of the population are not assurable as healthy lives, and that about one in five of the applicants to other offices is declined on examination. Of the proposals accepted by this Society during the last three years, nearly 300 had been rejected among upwards of 80 other offices. These cases came under the class of the most prevalent diseases, and the various parties could not have participated in the advantages of life assurance had not this Society been in existence, as it is the only one possessing tabulated rates of premium deduced from extensive data.

Premiums have been determined for the assurance of persons at every age, among those afflicted with consumption, asthma, bronchitis, pneumonia, disease of the heart, apoplexy, paralysis, epilepsy, insanity, disease of the liver, dropsy, scrofula, gout, rheumatism, &c.

These circumstances induce the Directors to believe that by the establishment of this office they have conferred an important benefit upon those whose condition made such a provision as insurance necessary, and they are therefore led to expect a powerful support from the public. Increased annuities are granted on sound lives. Healthy lives are assured at lower rates than at most other offices, and a capital of half a million sterling, fully subscribed, affords a complete guarantee for the fulfilment of the Society's engagements.

F. G. P. NEISON, Actuary.

INDIA and LONDON LIFE ASSURANCE COMPANY,

17, Cornhill, London.
Incorporated by Act of Parliament, 7 & 8 Vict. cap. 119.

DIRECTORS.

Richard Hartley Kennedy, esq. Chairman.
George William Anderson, esq. Deputy Chairman.
Sir H. Elphinstone, bart. M.P. Rev. David Johnson.
Harry G. Gordon, esq. John Rango, esq.
Frederick Jones, esq. John Shaw, esq.
Rev. S. Tenison Moser. Archibald Syme, esq.

ADVANTAGES OF THIS INSTITUTION.

Assurances effected on all classes of Lives, including the Lives of persons proceeding to, or residing in India and other parts of the World, of Officers actively engaged in Military or Naval Service, and of persons afflicted with bodily or mental infirmities.

Endowments granted to Widows and existing on future Children.

Tables of rates adapted to suit the circumstances and convenience of every class of Policy-holders.

Indian rates of Premium much lower than in any existing Company.

Age of the Assured, in every case, admitted in the Policy.

Impaired state of health admitted in Policies on Insured Lives.

EXTRACTS FROM THE TABLES.

EUROPEAN RATES.

Annual Premium for £100.
Half Premium Table.

Age	First Seven Years.	Remainder of Life.
30	£ 10 3	£ 2 0 4
31	10 5	2 1 8
32	10 7	2 2 11
33	10 9	2 3 11
34	10 11	2 4 11
35	11 0	2 5 11
36	11 1	2 6 11
37	11 2	2 7 11
38	11 3	2 8 11
39	11 4	2 9 11
40	11 5	2 10 11
41	11 6	2 11 11
42	11 7	2 12 11
43	11 8	2 13 11
44	11 9	2 14 11
45	11 10	2 15 11
46	11 11	2 16 11
47	12 0	2 17 11
48	12 1	2 18 11
49	12 2	2 19 11
50	12 3	2 20 11
51	12 4	2 21 11
52	12 5	2 22 11
53	12 6	2 23 11
54	12 7	2 24 11
55	12 8	2 25 11
56	12 9	2 26 11
57	12 10	2 27 11
58	12 11	2 28 11
59	12 12	2 29 11
60	12 13	2 30 11

INDIAN RATES.

Annual Prem. for 1000 Rupees.

Age	One Year.	Whole Life.	Term.
30	Rs. 20	Rs. 31	Rs. 11
31	20	31	11
32	20	31	11
33	20	31	11
34	20	31	11
35	20	31	11
36	20	31	11
37	20	31	11
38	20	31	11
39	20	31	11
40	20	31	11
41	20	31	11
42	20	31	11
43	20	31	11
44	20	31	11
45	20	31	11
46	20	31	11
47	20	31	11
48	20	31	11
49	20	31	11
50	20	31	11
51	20	31	11
52	20	31	11
53	20	31	11
54	20	31	11
55	20	31	11
56	20	31	11
57	20	31	11
58	20	31	11
59	20	31	11
60	20	31	11

Prospectuses and every requisite information may be obtained on application at the office.

GEORGE N. WRIGHT, M.A. Manager.

THE REPORTS.

The following are the names of gentlemen who have been called to the BAR by the REPORTS OF THE PRIVY COUNCIL by THOMAS CAMPBELL, Esq. of the Middle Temple, Barrister-at-Law.

EQUITY COURTS.
LORD CHANCELLOR'S COURT by RICHARD FITZES WALFORD, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR OF ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

BOLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT, by J. THOMAS DAWSON, Esq. of the Middle Temple, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH, by ADAM BIRTLING, Esq. of the Inner Temple, Barrister-at-Law, and EDWARD WILSON, Esq. of the Middle Temple, Barrister-at-Law.

The COURT OF COMMON PLEAS, by PAUL FARNELL, Esq. of the Middle Temple.

The COURT OF EXCHEQUER by H.T. COLE, Esq. of the Middle Temple, Barrister-at-Law, and E. BOON, Esq. of the Inner Temple, Barrister-at-Law.

The BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by HERBERT BROWN, Esq. of the Inner Temple, Barrister-at-Law.

BANKRUPT AND INSOLVENT COURTS.
The COURT OF REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

LONDON COMMISSIONERS' COURTS and the SOLVENT COURT, by PAUL FARNELL, Esq. of the Middle Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT, by F. T. ALLEN, Esq. of Lincoln's-inn, Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.
CENTRAL CRIMINAL COURT, by E. C. BERNIER, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by A. BIRTLING, Esq. of the Inner Temple, Barrister-at-Law.

NORTHERN CIRCUIT, York and Liverpool, by J. B. ASPINALL, Esq. Barrister-at-Law. The other parts of the Circuit, by G. F. H. OLIPHANT, Esq. Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

NORFOLK CIRCUIT by JNO. B. DASENT, Esq. Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TIBBAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq. Barrister-at-Law.

QUEEN'S BENCH and CRIMINAL COURTS by W. ST. LEECH BARRINGTON, LL.D. Barrister-at-Law.



Miscellaneous.

SCHIEDAM HOLLANDS.—Owing to the late enormous duty on this beautiful and wholesome Spirit, comparatively very little has been used or known in this country. The Public are, therefore, had no opportunity of testing its merits. VINCENT PUGH, after innumerable experiments and immense outlay in machinery, have at length arrived at that acute distillation which has enabled them to produce a pure and sparkling spirit in every respect to the best Foreign. Vincent and Pugh introduce this splendid matchless spirit to the public for their opinion and approbation, which they trust it merits, not only for quality but price, being enabled to offer it at 4s. per bottle in square Dutch bottles, and 5s. per bottle in the branded VINCENT PUGH'S seal for security as to its genuineness. To be had of all the respectable retail dealers in and about the metropolis, or of their agent, Mr. Charles Hodder, Castle, Moorgate-street, City, and wholesale, Vincent and Pugh, Distillery, 16, New Park-street, Borough, and 10, Rood-lane, City.

The public attention is particularly called to their Pale Brown Brandy, which is allowed to be matchless.

SUPERIOR FOREIGN WINES ON SALE.—142, Strand.—Old Ports, Sherries, Madras, &c. &c., several years in bottle. Private families may be supplied with any of the above wines, selected from the best vineyards and bottled with great care, by J. WRIGHT, late of Mark-lane, comprising many thousand dozens. Finest Old Ports, from three to five years in bottle .. 42s. 48s. 50s. Sherries, various, ditto, ditto .. 38s. to 50s. West India, ditto, ditto .. 30s. to 40s. Superb Old East India .. 60s. to 72s. Very Old Malaise, in plums .. 50s. Brandy ditto, and of the best quality .. 34s. Most of the above may be had in plums, delivered free within five miles of the metropolis.

THE DELIGHTFUL COOLNESS of the GOLDEN FLAX CRAVAT COLLAR, together with its perfect fit, however loosely tied on, recommend it especially to the wearers of the collar. It needs no commendation in one article is combined both collar and cravat. To be had of all hosiers, outstuffs, &c. either in pure white for full dress, or printed in neat patterns suitable for morning dress. N.B. Each Cravat-Collar is stamped "John Paterson, London, Regent-street."

Merchants and shippers supplied by any of the wholesale houses in London.

INVENTION OF 1870.

TO avoid piracy and disappointment, ask for HOCKIN'S PREPARATION OF SEDLITZ POWDER in One Bottle, which keeps in every situation. The dose can be apportioned to form a medicine, refreshing beverage, or saline draught, so as to suit all ages and constitutions. It is the FASTESTLY Sold of a natural Spring, and is the best family medicine, as it feeds the blood and system with the necessary saline to prevent cholera, and other bowel affections; it instantly stops sickness in adults and children, from whatever cause arising. A bottle of twelve to thirty doses, 2s. 6d. C. HOCKIN, 39, Duke-street, Minster-square, and 1, Bishopsgate-street Within, London.

SCHWEPPE'S AERATED LIME WATER, an excellent acid, when taken under medical direction; but the Public are cautioned against an indiscriminate use of this water (under whatever name it is sold), as it is not presented upon their notice, as LIME is well known to produce in some constitutions the most distressing and even fatal disorders. SCHWEPPE'S SODA, POTASS, and MAGNESIA WATERS, manufactured as usual upon the largest scale, at their several Establishments in London, Liverpool, Bristol, &c. Each Bottle is protected with a red label over the cork bearing their name. German Sellers direct from the Springs at Naas, 21, Berners-street, London.

THE WEST-END MINERAL WATER DEPOT, 22, Henrietta-street, Cavendish-square, London.

W. BEST begs respectfully to solicit the attention of the Faculty and the Public to his stock of the most celebrated and efficacious MEDICAL PREPARATIONS, as well as to announce to the Public that he has discontinued manufacturing for the above firm, and solicits attention to his present stock of Fire-proof Book-Safes and Chests, Wrought-iron Proof Doors for strong rooms, Fire-proof Jewels Cases, Cash and Steel Trunks, Fire-proof Plate Chests for the safe deposit of all valuables, and in the most superior manner as regards materials and workmanship, all secured by "Leadbeater's Improved Detector Locks," throwing from three to twenty bolts, and sold at prices 40 per cent. under the charges usually made by that firm. J. L. has also completed many substantial improvements in his iron fire-proof articles, which he obtained for the Messrs. Chubb an unequalled degree of celebrity, and offering to the Public advantages which cannot be obtained elsewhere—namely, the very best security for property against fire and thieves—at prices so much reduced, he looks forward with confidence for the support of the Public. J. L. can refer to the testimonials of several bankers, merchants, and private gentlemen, in London and elsewhere, for whom he has erected fire-proof works.—Manufacture, 125, Aldersgate-street, London.

CHUBB'S PATENT FIRE-PROOF and WROUGHT-IRON SAFES and CHESTS.—Attention. As the various institutions of the country are now being fitted up by different makers, bankers, merchants, and the public generally are respectfully informed that no ironmongers, smiths, or furniture brokers are supplied with the above safes or chests, and that they can only be obtained direct from C. CHUBB and SON, the patentees, 57, St. Paul's-churchyard, London.

IMPORTANT TO SOLICITORS, &c.
FIRE-PROOF SAFE MANUFACTORY, 125, Aldersgate-street, City.—J. LEADBEATER, nine years sole manufacturer for Chubb, & Sons, of the above safes and chests, respectfully to announce to the Public that he has discontinued manufacturing for the above firm, and solicits attention to his present stock of Fire-proof Book-Safes and Chests, Wrought-iron Proof Doors for strong rooms, Fire-proof Jewels Cases, Cash and Steel Trunks, Fire-proof Plate Chests for the safe deposit of all valuables, and in the most superior manner as regards materials and workmanship, all secured by "Leadbeater's Improved Detector Locks," throwing from three to twenty bolts, and sold at prices 40 per cent. under the charges usually made by that firm. J. L. has also completed many substantial improvements in his iron fire-proof articles, which he obtained for the Messrs. Chubb an unequalled degree of celebrity, and offering to the Public advantages which cannot be obtained elsewhere—namely, the very best security for property against fire and thieves—at prices so much reduced, he looks forward with confidence for the support of the Public. J. L. can refer to the testimonials of several bankers, merchants, and private gentlemen, in London and elsewhere, for whom he has erected fire-proof works.—Manufacture, 125, Aldersgate-street, London.

YACHTING, DRIVING, and ANGLING.—THE NEW DREADNOUGHT JACKETS and WAFFERS were made up for their use. They will resist the heaviest rain and the fiercest tropical heat for any time, and their durability is equal to their water proof qualities. Trousers, leggings, sun-westers, caps, and gloves, of the same proof, Officers and Gentlemen going to the colonies will find these articles indispensable. Gentlemen who drive should use CORDING'S new waterproof driving aprons and coats, the most serviceable and complete things of the kind, and approved by all who have tried them. Ladies' light riding capes, with hoods and sleeves. Cording's improved sheet and rubber boots are superior to all and find hitherto made for the comfort of anglers and snipe-shooters. They are light, pliable, and never crack; impervious to water for any length of time, and require no dressing to keep them in condition. Patterns and prices sent on application. Any description made by the workmen. London: J. C. CORDING, 21, Strand, five doors west of Temple Bar.

IMPORTANT NOTICE.—GENTLEMEN'S DRESS. in great variety, the newest fashions, and remarkably low price, at SHEARD'S, 166, Strand, the only real maker and inventor of the NEW SUMMER PANTALOT—those comfortable and gentlemanly trousers, all colours, ready made, or made to measure, at 3s. 3s. and 2s. each. Also the greatest variety of fashionable trousers and waistcoats in London. Every article marked the price per yard, also the price of each garment when completed, giving an opportunity to those who purchase, the great advantage of selecting from a stock of superior goods (in woollens, dockings, and fancy waistcoats), the quality and price of which cannot fail to please the most fastidious. Wool dyed Dress Coats, to measure, 2s. 2s.; Double Trousers, 1s. 6d.; Summer Vests, 7s. 6d. each; Cotton and Flannel Coats, 3s. 6d. each. Note the ADDRESS—SHEARD, Tailor and Woollen-dresser, 166, Strand. Three doors from the New Strand Theatre.

FURNITURE.—WANTED TO PURCHASE, from 2500 to 4500 worth of SECOND-HAND FURNITURE, in large or small quantities, for which a fair price will be given in cash, without any deduction for valuation, and removed at the purchaser's expense; Linens, China, Glass, Books, Pictures, and Musical Instruments, included, if required. Apply to Mr. J. CHAPMAN, 6, Great Russell-street, Covent Garden. Valuations made for the Legacy Duty, Remits collected, &c.

GENUINE HAVANNAH CIGARS.

EDWIN WOOD, 69, King William-street, City, begs to inform the admirers of a FIRST-RATE HAVANNAH CIGAR, that they will find at this establishment the largest and choicest assortment in London, selected with great care by an experienced Manufacturer in Havana, and consigned direct to the advertiser. The Stock comprises the first qualities from the manufacturers of SILVA & CO. Cabana, Woodville, Norrings, La Uniona, Regalla, &c. some very superior Old Principles, Government Manillas, and Planchadas; Bengal and Porto Rico Cigars, with every other kind in demand. A large and select stock is always kept in bond, from which Gentlemen going abroad can at all times make their own selection. Annexed is a list of the present prices for cash—

	s. d.		s. d.
Genuine Havannas.....	15	Porto Rico Havannas.....	12s. to 16 0
Ditto, superior.....	20	Porto Rico Cigars.....	9s. to 12 0
Ditto, the finest imported.....	26 0	Chaurah, or Bengal, ditto.....	12 0
Ditto, Old Principles.....	24 0	King's.....	26 0
Regalla.....	13 0	Queen's.....	26 0
Bengal Cigars.....	30 0	The "Far-famed" Old.....	30 0
Trabuco.....	30 0	has.....	12 0

Wholesale, retail, and for exportation.

A Post-office Order is requested with Country orders.

A NEW DISCOVERY.—Mr. HOWARD, Surgeon-Dentist, 52, Fleet-street, begs to announce an ENTIRELY NEW DESCRIPTION of ARTIFICIAL TEETH, fixed without springs, or wires, or ligatures. They so perfectly resemble the natural Teeth as not to be distinguished from the original by the closest observer; they will NEVER CHANGE COLOUR or DECAY, and will be found very superior to any Teeth ever before used. This method does not require the extraction of roots, or any painful operation, and will give support to the teeth that are loose, and is guaranteed to restore articulation and mastication; and that Mr. Howard's improvements may be within the reach of the most economical, he has fixed his charges at the lowest scale possible. Decayed teeth restored, and useful in mastication.—52, Fleet-street. At home from Ten till Five.

LITHOGRAPHY in all its Branches, Writing, Drawing, and Printing, executed in the first style, and on the most moderate terms, at DEAN and CO.'S LITHOGRAPHIC PRINTING OFFICES, 35, 36, to 40, Turell-street, City, where Merchants and the Trade may be supplied with the best German Stones and Transfer Paper, French Chalks, and Inks; and with their improved Lithographic Press, so excellent in principle and construction, that it is warranted to do the finest work with perfect ease and certainty.

DEAN and Co. have devoted the premises, No. 36, to the Stationery Business, where Companies and Merchants may be supplied on advantageous terms.

DIAMOND DUST, direct from the Mines.—Genuine DIAMOND DUST, for giving instantaneously the blindest razor or knife, is now regularly imported direct from the mines of Golconda, the Brasia, and the Uralian Mountains, and may be had at the wholesale depot, 1, Angel-court, opposite Somerset-house, Strand, London, in rosewood boxes (with silver cases) at 1s. 6d. each, and 10s. 6d. each, and at the various agents throughout the world. Diamond dust, it is well known, has been used for many years amongst the nobles of the Russian Court as an indispensable adjunct to the comfort of their toilet. His late Majesty George IV. and His Royal Highness the Duke of Sussex were well acquainted with the peculiar properties and application of the diamond dust, having used it for sharpening their razors for upwards of 20 years. Parties using the diamond dust will never require to have their razors set or ground, the use of the home being rendered perfectly unnecessary. Shippers and country agents supplied on liberal terms. Either of the boxes will be transmitted free to any part of the country.

COCOA-NUT FIBRE.—This substance envelopes the shell of the cocoa-nut, around which it forms a strong protecting work. Man's ingenuity has turned the fibre to account by manufacturing it into many useful articles—such as carpets for stairs and passages, matting for churches, public buildings, offices, nurseries, and kitchens, hearth-rugs, door-mats, ropes, netting for sheep folds, &c. &c. but among the applications the most useful to which it is better adapted than for stuffing mattresses and cushions, as a substitute for horsehair, wool, and flock. It is very elastic, and affords great ease and support to the body, whether used with or without a feather bed. It has also the additional recommendation of being so obnoxious to vermin that they will not live in it; whilst it is a fact well known that wool, flock, tow, and even horsehair, will engender animalcules. Possessing peculiar chemical properties that render it a non-absorbent, the fibre is particularly suitable for those who are fond of cool, and all other domestic, and sea use. Cocoa-nut fibre mattresses are only about one-half the price of those made from horse-hair. Priced lists may be had on application at the warehouse, or will be sent free by post.

TRELOAR, 42, Lodgegate-hill, seven doors from Farringdon-street, and five below Belle Sauvage Inn.

SEA and RIVER BATHING.—Wilson's Patent Life Preserving Coats, Jackets, and Waistcoats. All about to visit the Sea-side will do well to provide themselves with the invention. Many a valuable life has been lost whilst bathing. By the aid of these waistcoats the art of swimming is soon accomplished, and all risk of drowning prevented. They may also be used for rowing. Youths, life full-sized, 21s. Life Coats and Jackets for Yachting, Boating, Voyaging, &c. &c. Wilson, Tailor and Habit Maker, 30, Edward-street, Portman-square.

TO JUDGES OF GOOD COFFEE.
FRENCH COFFEE POTS, now admitted by the New Tariff, are so clever, simple and economical, that they must shortly supersede all others not made on the same principle. By means of these machines a cup of French Coffee is made instantly, hot, brilliant and delicious, the colour of brandy, as Coffee ought to be. There are twelve sizes, commencing at 2s. advancing 4d. per cup, and just as good as if they cost a Guinea.

H. BARKER and Co. Importers, 47, Stamford-street.
COFFEE AS IN FRANCE.—It is a fact beyond dispute, that in order to obtain really fine Coffee, there must be a combination of the various kinds; and to produce strength and flavour, certain proportions should be mixed according to their different properties. Thus it is the astonishment and delight of all who have tasted it, being the produce of four countries, selected and mixed by rule peculiar to our establishment, in proportions not known to any other house.

From experiments we have made on the various kinds of Coffee, we have arrived at the fact, that no one kind possesses strength and flavour. If we select a very strong Coffee it is wanting in flavour; by the same rule we find the finest and most flavoured Coffee are generally wanting in strength; and as they are usually mixed each kind separately, quite regardless of the various properties, the consumer is not able to obtain really fine coffee at any price. There is also another peculiar advantage we possess over other houses—our roasting apparatus being constructed on decidedly scientific principles, whereby the strong aromatic flavour of the Coffee is preserved, which in the ordinary process of roasting, is entirely destroyed; and as we are coffee roasters, we are enabled to keep a full supply of fresh roasted Coffee continually, after the Parisian and Continental method.

The rapid and still increasing demand for this Coffee has caused great excitement in the trade, and several unprincipled houses have copied our papers and profess to sell a similar article. We, therefore, think it right to CAUTION the public, and to state that our superior mixture of four countries is a discovery of our own, and therefore the proportion of each kind is preserved, which is at any other house. In future we shall distinguish it from all others as SPARROW'S CONTINENTAL COFFEE, at 1s. 8d. per lb. Packed in tins of all sizes perfectly air-tight for the country. We have also strong and useful Coffees, from 1s. 1s. 6d. to 1s. 10s. 6d. The Establishments, in Regent-street, adjoining Day and Martin's, leading through into 22, Dean-street.

HENRY SPARROW, Proprietor.

TO ANGLERS.—NEW CATALOGUES are now ready (gratis), containing the prices of 1,000 articles, with the Young Angler's Guide; 4-joint best history salmon rod, 16 feet with two tops, landing handle, socket spear, and partition bag, 30s. ditto trout ditto, 12 feet 6 inches, ditto ditto, 20s.; good history trout rods from 7s. 6d. The most splendid assortment of salmon flies at best world, 9s. to 45s. per dozen; best trout flies, 3s. per dozen; 60 yards trout tackle, super-salmon line, 10s. 6d.; 30 yards trout ditto, 4s. 6d. J. CHEEK, Golden Pearch, 125, Oxford-street. Merchants and country dealers supplied. N.B. Requisites, &c. for fly dressing.

AMERICAN BRASS CLOCKS, 18s.—Per- chasers should see that they buy JEROME'S CLOCKS. These clocks keep exact time, strike the hours in cathedral tones, are hand some, will stand upon a bracket or mantle, or may be suspended, and, without violence, will last for ever. Eight-day clocks, 22s.; eight-day silent ditto, 30s.; ditto, with alarm only, 24s.; one-day clock, 18s. 2s. and 12s. 6d.; with alarm, 24s.; mahogany brackets for ditto, 5s. 6d. They will be sent home free, and set running, within three days of the Post-office. Country orders, with remittance or reference, solicited; the clocks packed in running order and forwarded free of further expense. Warranted to perform well, or the money returned. Manufacturer's Agents, American Clock Depot, 14, John-street, Minster, London.

EYE BROWS, MOUSTACHES, and WHISKERS, produced in a few weeks by GRIMSTONE'S AROMATIC HERBACEOUS, an Essential Spirit drawn by the inventor from choice Aromatic Herbs. The Regenerator will produce new hair on bald places caused by weakness of constitution, &c. and is a certain preventive of Headache and Fainting. Sold in triangular bottles, with name, &c. at 6s. 7s. and 11s. each, government stamp, and a pamphlet of testimonials and advice, included. Sent through the post, at 6s. 6d. 7s. 6d. and 11s. by all Chemists, Medicine Vendors, and W. GRIMSTONE, Herbarist, Highgate, near London.

BED FEATHERS.

	Per lb.		Per lb.
	s. d.		s. d.
Mixed.....	1 0	Best Foreign Grey Goose ..	2 0
Grey Goose.....	1 4	Best Irish White Goose ..	3 0
Foreign ditto ..	1 8	Best Danzig ..	3 0

Warranted sweet and free from dust.
A List of every description of Bedding, containing weights, sizes, and prices, sent free by post, on application to REAL and SON, Feather Dressers and Bedding Manufacturers, 105, Tottenham-court-road, opposite the Chapel.

PURE NERVOUS OR MENTAL COMPLAINTS, CURED ONLY BY REV. DR. WILLIS MOSELEY.

PURE NERVOUS OR MENTAL COMPLAINTS were never cured by any with certainty till the Rev. Dr. Willis Moseley cured himself, and he is the only person now who understands or can cure mental disease as certainly as bodily complaints are cured by other persons. Dr. W. M. has been in the habit of doing this for thirty years, and out of 12,000 applicants in the last twelve years knows not twenty uncurd who have followed his advice. Depression of spirit, inquietude, sleeplessness, involuntary blushing, dislike of society, uneasiness for study, thoughts of self-destruction, and insanity itself are most speedily cured by the EXTRA MEANS of cure at his house, and with no less certainty, but not as soon, at their own. The means of cure are sent to all parts. A NEW PAMPHLET for NOTHING, with cases, testimonials, symptoms, cures, &c. will be sent to any address, and franked home, if one stamp is enclosed. At home from 11 to 3, 18, Bloomsbury-street, Bedford-square.

SOLICITORS' AND GENERAL LIFE ASSURANCE SOCIETY, 57, Chancery-lane, London. Capital One Million.

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This Society transacts all the usual business of Life Assurance.

It is based upon a principle which will combine the benefits of Mutual Assurance with the guarantee of a Subscribed Capital of ONE MILLION STERLING.

Whilst perfect security is thus given, the number and character of the Shareholders (consisting of nearly 500 Members of the Legal Profession), will command a large amount of business, and consequent advantages will arise to the Assured.

Tables of Premiums have been prepared expressly for this Office, by F. G. P. NERSON, Esq. F.L.S., calculated on the nearest approximation to the real law of mortality.

These Tables will be found to afford peculiar encouragement to the assurance of young lives. They embrace participating and non-participating scales.

In the participating class, the Assured will be entitled to have *four-fifths* of the profits divided amongst them periodically, either by way of addition to the amount assured, or in diminution of premium, as the parties may elect. No deduction will be made from such profits for interest of capital, or for a guarantee fund.

The Premiums may be paid half-yearly or annually, or by a single payment.

Assurances may be effected through any respectable Solicitor, or by writing to the Secretary.

The Directors meet on Thursdays at Two o'clock; but Assurances may be effected on any day, by applying between the hours of Ten and Four, at the Offices of the Society, where Prospectuses and all other requisite information may be obtained.
CHARLES JOHN GILL, Secretary.
57, Chancery-lane.

To Building Societies.—Valuable Leasehold Houses and Shops.

MR. MELVIN will **SELL BY AUCTION**, at the Mart, on **MONDAY, JUNE 29**, at One o'clock, in one lot, **TWO neat HOUSES and SHOPS**, with yards, situate 43 and 45, Kenton-street, Brunswick-square, held for 38 years, at 17l. 10s. each house, let to responsible tenants for three years at 90l. per annum. May be viewed by permission.—Particulars had of S. W. JOHN-SON, Esq., 8, Gray's-inn-square; at the Mart; and at the Auctioneers, Hunter-street, Brunswick-square.

Mile-end-road, Old-Kent-road, Pentonville, Vauxhall, Brixton, Lambeth, Hackney, Walworth, St. John's-wood, and Notting-hill.—Freeholds and Leaseholds, many in single-house lots, for occupation, offering the most favourable opportunity of securing a freehold or leasehold residence; also of purchasing for investment.—To Members of Building Societies, and small capitalists generally, this sale presents itself as every way worthy of the best attention.

MESSRS. BECKWITH and SALMON are favoured with instructions to **OFFER TO PUBLIC COMPETITION**, at the Auction Mart, on **TUESDAY, JUNE 30**, at Twelve, in Twenty-five Lots, a compact **LEASEHOLD ESTATE**, consisting of eleven brick-built houses, forming an entire court, called Swan-place, opposite the Jews' Hospital, Mile-end-road; containing two rooms each, with yards, &c. let to excellent weekly tenants, at rents amounting to about 93l. per annum, and held on lease for about sixty years, at a ground-rent of 24l. This very compact little estate, which is in good repair, and in an undeniable situation for letting, will form a very profitable investment.—A well-built Double-fronted Cottage Residence, with stuccoed front, being No. 1, Byron's-place, St. James's-street, Old-Kent-road; it contains eight rooms and offices, with garden, now on hand, but of the estimated value of, per annum, thirty guineas, and held direct from the freeholder, for seventy years, at a ground rent of six guineas.—An extremely well-built and finished freehold residence, No. 8, Minerva-pl. Old Kent-road, containing ten rooms, offices, and garden, with back entrance; it is in the most perfect order, and its conveniences are such, that to a person of moderate pretensions it offers itself as all they can wish or desire. It is placed in the most cheerful part of the road, facing Hatcham Park, of which it commands a view, as it also does of the beautiful Surrey hills, seen immediately behind the New Cross turnpike, which is but a few yards from the house. The New Cross Station, on the Croydon and Dover Railway, is within a quarter of a mile.—Six very pleasantly and desirably situate freehold brick-built houses, containing each six rooms, and large garden, being Nos. 1 to 6, Grove-place, St. James's-street, New Hatcham, Old Kent-road, of the annual value of 34l. each. This property presents to persons desirous of purchasing a freehold residence an opportunity that rarely occurs, and to members of building societies and others is deserving of attention. Three neatly finished and pleasantly situate residences, Nos. 39, 31, and 32, Brighton-terrace, North Brixton, of the yearly value of 36l. each, two are let, and one is on hand, held for 74 years from 1835, at 4l. each.—Three cheerfully situate and well-built residences, Nos. 9, 10, and 12, Melbourne-square, North Brixton; two of the yearly value of 26l. each, and one of 30l.; two are let and one on hand; held for 57 years from 1844, at 5l. each.—A double-fronted cottage residence, No. 36, Lambeth-terrace, facing Lambeth Chapel, let at 26l. and held for 21 years, from 1836, at 6l.—A dwelling-house and established grocer's shop, No. 46, Vauxhall-walk, let at 30l. and held for 66 years, from 1810, at 5l. 5s.—A capital brick-built dwelling-house, No. 68, White Lion-street, Pentonville, let at 39l. and held for 47 years, from 1837, at 2l. 15s.—An improved ground-rent of 45l. per annum, secured upon ten houses at Cambridge-heath, the rack rental of which is about 170l. per annum, let on lease for the whole term at 55l. 10s. subject to the payment of 10l. 10s.—Twelve very excellent brick-built houses, desirably situate, Nos. 3 to 10 inclusive, CANCEL-street, and Nos. 3, 4, 5, and 6, Doctor-street, Elizabeth-street, near the Pilgrim Tavern, Walworth. They are very conveniently fitted up, and contain each six rooms, with suitable domestic requirements, fore-court, and good garden, let to very respectable tenants, who pay all taxes, at 20l. per annum; held for about 60 years, at a ground rent of 4l. each. This property is well worthy the attention of the capitalist who may wish to invest his capital in a profitable manner, being in a locality that must at all times command respectable tenants.—An exceedingly well-built and handsome detached villa residence, containing nine rooms (the principal ones of noble dimensions), and all suitable accommodation, very delightfully situate, 21, Abbey-road, nearly facing Blenheim-terrace, St. John's-wood, surrounded by its own gardens, inclosed with walls, approached from the road by a gate opening into an extensive fore-court, and commands most beautiful views of the Hampstead meadows. This part of St. John's-wood is studded with villas of various designs, and the one now offered is in every way suitable for a highly respectable family; at present on hand, but of the estimated value of 70 guineas per annum; held for 50 years from 1845, the first year at a peppercorn; the second at 6l. and the remainder at 12l. ground-rent. Two extremely well-built and handsome semi-detached villa residences, situate in Blenheim-road, at the corner of the Abbey-road, in all other respects the same as the preceding, but on a somewhat smaller scale, at present on hand, but of the estimated value of 65 guineas per annum, each held for 50 years from 1845, the first year at a peppercorn, the second at 6l. and the remainder at 12l. each ground-rent. Two brick-built Gothic cottages, Nos. 1 and 3, Queen's-place, Queen's-road, Notting-hill, both let for a term to a respectable tenant, at 40l. per annum, and held for 99 years from 1843, at a ground-rent of 5l. This lot will form a very pretty little investment. May be viewed by permission of the tenants, and particulars had of John Townshend, esq. solicitor, 17, Howland-street, Fitzroy-square; of Messrs. Coots and Son, solicitors, 20, Austin-friars; of Messrs. Smith and Taylor, solicitors, 3, Basinghall-street; of H. Harpur, esq. solicitor, Kennington-cross; of Messrs. Holmes, Loftus, and Young, solicitors, New-inn; of Messrs. Vennings, Naylor, and Robins, solicitors, 9, Tokenhouse-yard; of George Selby, jun. esq. solicitor, St. John-street-road; and at the Bricklayer's Arms, Old Kent-road; Pilgrim Tavern, Walworth; Elephant and Castle, Newington Causeway; Angel Inn, Islington; at the Auction Mart; and of the Auctioneers, 26, Bucklersbury.

ST. JOHN'S WOOD.—A desirable Leasehold Residence, within a few Minutes' Walk of the Regent's-park, for Investment or Occupation.

MESSRS. DAVIS and VIGERS are directed by the Mortgagees, under a power contained in the mortgage-deed, to **SELL BY AUCTION**, at the Mart, on **THURSDAY, JULY 2**, at Twelve for One, a **COTTAGE RESIDENCE**, of neat and uniform elevation, situate and being No. 7, Wellington-road, St. John's Wood; containing five bed-rooms, three reception-rooms, and good domestic offices. It has hitherto been let at 75l. per annum, but is now on hand. The property is held by lease for about 74 years, at 30l. per annum.—To be viewed, and particulars of sale to be had on the premises; of Messrs. STONE and TURNER, Solicitors, Jernyn-street, St. James's; at the Mart; and at the Auctioneers' Offices, 3, Frederick's-place, Old Jewry.

MILE-END.—Very desirable Leasehold Estate, producing a net income of 77l. per annum.

MESSRS. DAVIS and VIGERS are instructed to **SELL BY AUCTION**, at the Mart, opposite the Bank of England, on **THURSDAY, JULY 2**, at Twelve for One, in One Lot, a valuable long **LEASEHOLD ESTATE**, comprising three brick-built houses, with shops, newly and substantially erected, situate and being Nos. 9, 10, and 11, Gloucester-terrace, New-road, Whitechapel, and a large residence adjoining, with extensive range of buildings in the rear, now and for many years past used as a soap manufactory, all in the parish of St. Dunstan's, Stepney; let on lease at very low rentals, amounting to 95l. per annum, and held for an unexpired term of forty-one years, at a ground-rent of 18l. per annum. This property presents itself as a secure investment for capital, the under-lessees paying most punctually, and the rents reserved being little more than improved ground-rents.—To be viewed by permission of the occupiers. Particulars and conditions of sale to be had at the Duke of Gloucester Tavern, New-road, Whitechapel; of Messrs. J. C. and H. FRESHFIELD, New Bank-buildings; the Mart; and Auctioneers' Offices, 3, Frederick's-place, Old Jewry.

WORCESTERSHIRE.—Freehold and Copyhold Farm of 257 Acres, producing 470l. per annum; most desirable for Investment of Money, or for profitable and pleasant occupation.

MESSRS. DAVIS and VIGERS are directed to **SELL BY AUCTION**, at the Mart, on **TUESDAY, JULY 28**, at Twelve for One, that very fertile and superior **FARM**, called Alstone, pleasantly situated on the eastern slope of the Oxenton hills, in the parishes of Overbury and Bangrove, on the borders of Gloucestershire and Worcestershire, only seven miles from Cheltenham or Tewkesbury, five from Winchcombe, and nine from Evesham, commanding those excellent markets, and within four miles of the Ashchurch station on the Bristol and Birmingham Railway, consisting of 250s. 3r. 13p. of productive arable, meadow, pasture, and orchards, with a roomy farm-house, dairy, cheese-room, six cottages, and other suitable agricultural buildings, now in the occupation of Mr. John Shipway, under a yearly tenancy, determinable at Michaelmas next, at 470l. per annum; and 6s. 1r. 3pp. of woodland in hand; the whole title free, and lying together within a ring fence, and approached by excellent roads. The soil is superior, the situation very good, and the climate unusually mild and favourable to vegetation; indeed, nothing is wanting but skill and capital to immensely improve the returns, and make this a very productive and attractive farm.—May be viewed by leave of the tenant. Particulars and conditions of sale will shortly be ready; to be had of Mr. Vizard, solicitor, Dursley, Gloucestershire; at the Star and Garter, Worcester; York-house, Bath; White Lion, Bristol; Bell, Gloucester; Plough, Cheltenham; Swan, Tewkesbury; Railway Hotel, Birmingham; Messrs. Blower, Vizard, and Parson, solicitors, 61, Lincoln's-inn-fields, London; at the Mart; and of Messrs. HEWITT, DAVIS, and FRANCIS VIGERS, Land Agents and Auctioneers, 3, Frederick's-place, Old Jewry, London.

Three valuable perpetual Advowsons and the rights of presentation to the very desirable Rectory of Idon, near Rye, and the two consolidated Rectories of East Guilford, with Playden, adjoining thereto, in the county of Sussex and diocese of Chichester, subject to the present incumbent's life, aged 65 years.

MESSRS. DRIVER are instructed to submit the above valuable **PERPETUAL ADVOWSONS and RIGHTS of PRESENTATION to PUBLIC COMPETITION**, at the Auction Mart, Bartholomew-lane, London, on **FRIDAY, the 10th day of JULY** next, at Twelve o'clock, in Two Lots:—Lot 1 will comprise the Rectory of Idon, situate at the extreme east of the county of Sussex, and immediately on the border of Kent, two miles from the market-town of Rye, twelve miles from the fashionable watering-place of Hastings, and sixty-one from the metropolis, with which, as well as with Dover to the east and Brighton to the west, there will shortly be a direct railroad communication from Rye. The house is ancient, but, with its extensive modern additions, is in complete repair, and capable of accommodating a large family, and forms a most enviable and capital residence. It is surrounded by its small Pleasure-ground and Garden, and stands perfectly retired about a quarter of a mile from the church, in the midst of the glebe, beautifully timbered. The clear annual income of the Rectory of Idon may be fairly calculated to produce upwards of 800l. after making all deductions for allowance to a curate, and payment of all parochial rates. Lot 2 will comprise the consolidated Rectories of East Guilford, with Playden, situate adjoining to Idon, and are now, and have for a very long time, been held therewith. The clear annual income of these consolidated rectories, after making all deductions for allowances to curates, and payment of all parochial rates, may be fairly estimated to produce about 430l. The present incumbent is aged 65 years.—Printed specifications may be had at the Angel and Star Hotels, Oxford; the Hoop, Cambridge; of Messrs. SMITH and SON, Solicitors, 16, Southampton-street, Bloomsbury-square; at the Auction Mart, Bartholomew-lane; and of Messrs. DRIVER, Surveyors and Land Agents, 3, Richmond-terrace, Parliament-street, London.

OATLANDS MANSION HOUSE and few remaining unsold lots for immediate and absolute Sale by Auction.

MESSRS. DRIVER beg to announce to the Public that the above Mansion House and Grounds, comprising lot 1 at the recent auction, containing 97 acres; the adjoining lots 40 and 41, containing together 66s. 2r. 39p.; lot 2, containing 37s. 0r. 39p.; and the smaller lots, 23, 29, 36, 37, and 61, being the only unsold lots at the recent auction, are now upon **SALE by PRIVATE CONTRACT**; and unless an acceptable offer shall be made for the Mansion House lot previously to the 15th of July next, it will be then subdivided into lots varying from 10 to 30 acres each, and will be submitted for unsold lots by **AUCTION**, together with the lots above enumerated, at the Auction Mart, on **TUESDAY, the 4th day of AUGUST**, at Twelve o'clock; together with the extensive Manor of Byfleet and Weybridge, and Walton Leigh; and the valuable Building Materials of the mansion-house, pretty extensive stabling, offices, and premises, will be offered for sale in lots, in the first or second week in August, thus affording a most favourable opportunity for any of the purchasers of the beautiful sites of this magnificent Oatlands Estate for purchasing these building materials, and thereby saving great expense of carriage of other materials.—In the meantime further information may be had of Messrs. DRIVER, Surveyors and Land Agents, 3, Richmond-terrace, Parliament-street.

WOODFORD, Essex.—Higham Hills Mansion House, Park, and Domain, of about 327 acres, and a desirable Farm adjoining, of about 73 acres.

MESSRS. DRIVER are favoured with instructions to **OFFER TO PUBLIC COMPETITION**, at the Auction Mart, near the Bank of England, on **FRIDAY, the 10th day of JULY**, at Twelve o'clock, in two lots, the above important and valuable **FREEHOLD PROPERTY**, containing together about 400 acres, most desirably situate in the parishes of Woodford and Walthamstow, in the county of Essex, and only about eight miles from London.

Lot One will comprise the Manor of Higham Hills, otherwise Higham Bempstead, and the Improvements Thence about 60 acres, together with Higham Hills Mansion House (the distinguished residence of the late Jeremiah Harman, esq.), delightfully situate in a splendid Park of about one hundred and fifty acres, beautifully undulating, and encircled with unusually ornamental stately oak timber, and extensive sheets of water, commanding delightful panoramic prospects of the surrounding forest and other scenery. The mansion is of very prepossessing character, and of classic and handsome elevation, upon a scale of accommodation and elegance adapted for any nobleman or gentleman of the first distinction. It contains a noble suite of living apartments, comprising two elegant drawing-rooms, billiard-room, a capital dining-room, and library, numerous principal and secondary bed-chambers, and all requisite domestic offices, excellent coach-houses and stabling, and abundance of offices, and a well of the purest water, with complete machinery for supplying the residence, stabling, and other premises. The lawns and pleasure-grounds surround the mansion, and are most tastefully displayed, and the beautiful ornamental with choice shrubs and American plants in its height of luxuriance, with wide dry gravel walks. There is also a magnificent conservatory opening from the dining-room. The kitchen garden contains an area of about two acres, entirely inclosed with lofty brick walls fully studded and clothed with choice fruit-trees in full bearing, in which are two vineries and several succession-pits. The park comprises about 93 acres of rich meadow land, and surrounding a spacious lake of about 11 acres, and surrounding the park are about 54 acres of rich forest scenery and highly ornamental timber, with delightful carriage-drives through the same.

Lot Two will consist of a very desirable small freehold Farm, of 72 acres, surrounding the Park, with comfortable Farm-house, and all requisite agricultural buildings, together with the lease of about 16 years (held at a low rent) of a small Farm containing about sixty acres, occupied with and adjoining the park; and a Leasehold Residence, containing every accommodation for a respectable family, with above 30 acres of productive land, held for an unexpired term of about 7 years, at a very moderate rent; the whole forming a most enviable property either for occupation or investment. Immediate possession may be had on completion of the purchases.

To be viewed, with cards only, from 12 to 6 every day (Sunday excepted), which, with printed specifications and plans annexed, may be had of Messrs. TATHAM and SON, Land Agents and Surveyors, Bedford-place, Russell-square; of Messrs. MABERLY and SON, Solicitors, King's-road, Bedford-row, and of Messrs. DRIVER, Surveyors and Land Agents, 3, Richmond-terrace, Parliament-street. Printed specifications may also be had at the Auction Mart, Bartholomew-lane.

Periodical Sale of Reversions, Life Interests, Annuities, Life Policies, Advowsons, Next Presentations, and all descriptions of Securities dependent upon human life: Ground and Improved Rents, Post Office Bonds, Shares in Railways, Mines, Insurance Companies, and all other public undertakings.

MR. MARSH (late Fuller and Marsh) respectfully informs the Public, that his **PERIODICAL SALES BY AUCTION** of the above description of **PROPERTY** will be continued throughout the present year as follows:—

Thursday, July 2. Thursday, October 1.
Thursday, August 6. Thursday, November 1.
Thursday, September 3. Thursday, December 1.

Notice of sales intended to be effected for the above year should be forwarded to **MR. MARSH** 14 days prior to each date.—No. 27, Bucklersbury, corner of Chancery-lane, Mansion-house, London.

LONDON.—Printed by HENRY MORRILL COX, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROOKFORD, of 29, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the **LAW TIMES**, No. 27, Bucklersbury, aforesaid, on Saturday, the 27th day of June, 1868.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. VII. No. 170.]

SATURDAY, JULY 4, 1846.

SUBSCRIPTION.
For One Year, paid in advance... £2 7 0
For Half Year, paid in advance... 1 5 0
Single Numbers, or on credit... 0 1 0
Double Numbers... 0 1 0

Money to Lend.

MONEY.—MESSRS. STONE and WALL, Solicitors, Tunbridge Wells, have the following sums to be advanced on good security: 2,000l. 2,500l. 1,700l. 5,000l. 700l. 3,000l. 7,000l. 1,500l. 1,000l. two or three sums of 500l. and smaller sums. Also a sum of 14,000l. trust money, at a low rate of interest.

MONEY.—£19,000 TO BE LENT upon Mortgage Security of lands at 4l. per cent. Address A B, LAW TIMES Office.

Money Wanted.

WANTED, 35,000l. on Mortgage (for a term) of a valuable Freehold Landed Estate in England, at Three and Three-quarters per cent. RICHARDSON, SMITH, and SADLER, 98, Golden-square.

Situations Wanted.

LAW.—A GENTLEMAN who has served his Articles in the Country, and passed his examination last Trinity Term, but has not been admitted, is desirous of obtaining a SITUATION, under the Principal, in an office either in town or country. Address J. J. care of T. Blenkarn, Law Bookseller, 19, Chancery-lane, London.

LAW.—WANTED, a SITUATION as COPYING CLERK, or Copying and Common Law Clerk, by a respectable young man, who has had several years' experience in the profession; is well acquainted with the routine of a country office. Address, post-paid, to G. at Mr. WALTON's, Listley-street, Bridgnorth, Salop.

LAW.—WANTED by the Advertiser, who has been in the profession upwards of fourteen years, a SITUATION in a respectable office in town, to superintend the Chancery Department, or Chancery and Common Law. Address Z. A. at Mr. CHARLES's, Law Stationer, 5, Took's-court, Chancery-lane.

Situations Vacant.

LAW.—WANTED, in an office of extensive practice in town, an experienced CLERK, competent to draw bills of costs of every description; also a young Man, as ASSISTANT COMMON LAW CLERK. Applications, post paid, stating real name, age, previous situations, and amount of salary required, may be addressed to D. C. D., at Mr. Hale's, Law Stationer, Tavistock-row, Covent-garden; but no communication will be noticed which omits any of the above particulars.

LAW.—Wanted immediately, in an Office in the country, a Gentleman, fully competent to make out and arrange the Bills of Costs, Books, and Accounts of an Attorney's Office. The Gentleman would have an engagement of six months at least, and probably longer. A liberal salary would be given. References as to character and ability will be required. Applications may be addressed to Messrs. G. and R. ANDERSON, Solicitors, Ludlow, Shropshire.

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WEST BEST respectfully to solicit the attention of the Faculty and the Public to his stock of the most celebrated and efficacious **MINERAL WATERS**, consisting of Chablis, Remy, Ribonised, Pulna, Kissingen, Ragatz, Homburg, Seltzer, Fachingen, La Fraze, Grail, and several others. The high testimonials of the first physicians on the continent, and indeed some of the most eminent in this country, respecting the important results attending the use of the above Mineral Waters, has induced **W. B.** to regard it as his duty to make arrangements with the proprietors of the above Springs, so that Mineral Waters can be obtained from his Establishment without any of the essential properties (especially the proto-carbonate of iron) being the least deteriorated. For further particulars, and for prospectus, which may be obtained at the Depot, Schaeffer's Aerated and Mineral Waters, may be had in any quantity. Agent by appointment to Struve's German Spa, Brighton.

CHUBB'S PATENT FIRE-PROOF AND WROUGHT-IRON SAFES AND CHESTS.—Caution.—As several impostors, in the absence of the name, have been endeavouring to imitate the Chubb's Patent, and the public generally are respectfully informed, that no ironmongers, smiths, or furniture brokers are supplied with the above safes or chests, and that they can only be obtained direct from **C. CHUBB and SON**, the patentees, 57, St. Paul's churchyard, London.

IMPORTANT TO SOLICITORS, &c.
FIRE-PROOF SAFE MANUFACTORY, 125, Aldersgate street, City.—**J. LEADBEATER**, nine years sole manufacturer for Chubb's, of St. Paul's Church-yard, begs most respectfully to call attention to his establishment, which is the most extensive and complete for the above firm, and solicits attention to his present stock of Fire-proof Book-Safes and Chests, Wrought Iron-proof Doors for strong rooms, Fire-proof Jewel Cases, Cash and Deed Boxes, Fire-proof Plate Chests, &c. every article of which is got up in the most superior manner, as regards materials and workmanship, all secured by "Leadbeater's Improved Detector Locks," throwing from three to twenty bolts, and sold at prices 40 per cent. under the charges usually made by that firm. **J. L.** having accomplished many substantial improvements in fire-proof safes, which he has obtained from the Nobility, Gentry, and the Public, and offering to the Public advantages which cannot be obtained elsewhere—namely, the very best security for property against fire and thieves—at prices so much reduced, he looks forward with confidence for the support of the Public. **J. L.** can refer to the testimonials of several nobles, merchants, and private gentlemen, in London and elsewhere, for whom he has erected fire-proof works.—Manufactory, 125, Aldersgate-street, London.

YACHTING, DRIVING, AND ANGLING.—THE NEW DREADNOUGHT JACKETS and WRAPPERS will be found by Sailors and Sportsmen to be the best articles ever made up for the use. They afford the greatest and the most perfect tropical heat for any time, and their durability is equal to their proof qualities. Trousers, leggings, sand-waters, caps, and gloves, of the same proofing. Officers and others going to the colonies will find these articles invaluable. Gentlemen who drive should use **CORDING'S** new waterproof driving aprons and coats, the most serviceable and complete things of the kind, and approved by all who have tried them. Ladies' light riding capes, with hoods and sleeves. **CORDING'S** improved sheet India rubber boots are superior to any thing hitherto made for the comfort of anglers and snipe-shooters. They are light, pliable, and never crack; impervious to water for any length of time, and require no dressing to keep them in condition. Patterns and prices sent on application. Any description of article made to order. London: **J. C. CORDING**, 231, Strand, five doors west of Temple Bar.

CARSON'S ORIGINAL ANTI-CORROSION PAINT, specially patronized by the British and other Government, the Hon. East-India Company, the principal Dock Companies, and other public bodies, &c. is particularly recommended to the Nobility, Gentry, Agriculturists, Manufacturers, West-India Proprietors, and others, it having been proved, by the practical test of nearly thirty years, to surpass all other Paints as an out-door preservative. Its extensive use for the preservation of wooden houses, farm and other out-buildings, farming implements, park paling gates, iron railings, iron hurdles, copper, zinc, lead, brick, stone, old copper and stucco fronts, and tiles to represent slate. The superiority of the ANTI-CORROSION over every other paint, for out-door purposes, may be easily inferred from the simple fact, that light and dark colours, most strenuously opposed by colour manufacturers, painters, oil and colourmen, and others interested in the sale of common paints. It is also very economical, any labourer being able to lay it on. Colours—light stone, drab or Portland ditto, Bath ditto, light and dark yellow ditto, light and dark green ditto, light and dark blue ditto, black, bright and dark red, and black, 30s. per cwt.; invariable green, 50s.; bright ditto, 60s.; deep green, 60s. per cwt.; in casks, 25 lb., 16 lb., and 12 lb. each. Oil and brushes. More detailed particulars will be sent, free of postage. The ANTI-CORROSION PAINT is only to be obtained of **WALTER CARSON** (successor to the inventor), 3, Totham-lane, back of the Bank of England, who will show nearly 300 Testimonials received from the Nobility, Gentry, and Clergy, who have used the Anti-Corrosion for many years at their country seats. **W. C.** is reluctantly compelled to call on the Public against the spurious imitations of his ORIGINAL ANTI-CORROSION PAINT, and to request for sale. He has no agents whatever. All orders are particularly requested to be sent direct.

FURNITURE.—WANTED TO PURCHASE
from 2000 to 5000, worth of SECOND-HAND FURNITURE, in large or small quantities, for which a fair price will be given in cash, without any deduction for valuation and removed at the purchaser's expense. Linen, china, glass, books, pictures, and musical instruments included, if required.
Apply to **Mr. J. CHAPMAN**, No. 6, Great Russell-street, Covent-garden.—Valuations.

LITHOGRAPHY.—**Mr. COON**, 15, Cheap-side,
begs to inform Solicitors, Auctioneers, Surveyors, &c. that he has commodious offices as above, where he can execute any orders for plans of estates, buildings, elevations, views, &c. with the greatest dispatch and economy. **Mr. Coon** will be happy to wait upon any gentleman with specimens of his improved style of Lithographing in all its branches.
N.B. Estimates supplied gratis.

THE NEW TOOTH-BRUSH, made on the most scientific principles, thoroughly cleansing between the teeth, when used up and down, and polishing the surface when used crossways. This Brush so entirely enters between the closest teeth, that the inventors have decided upon naming it the **TOOTHBRICK BRUSH**; therefore ask for it under that name, marked and numbered as under—viz., full-sized Brushes, marked T.P.W. No. 1, hard; No. 2, less hard; No. 3, middling; No. 4, soft. The narrow Brushes, marked T.P.N. No. 5, hard; No. 6, less hard; No. 7, middling; No. 8, soft. These imitable Brushes are only to be had at **ROSS and SONS**, and they warrant the hair never to come out, at 1s. each, or 10s. per dozen, in leather or 31s. each, or 31s. per dozen, in ivory.

THE ATOMIZATOR, or LIQUID HAIR DYE.—The only Dye that really answers for all colours, and does not require re-doing, but as the hair grows, as it never fades or acquires that unnatural red or purple tint common to all other dyes. **Ross and SONS**, 119 and 121, Bishopsgate-street, London, the celebrated Perfumers, Perfumers, Hair-cutters, and Hair-dyers. N.B. Parties attended at their own residences, whatever the distance.

BY COMMAND OF HER MAJESTY'S GOVERNMENT, in consequence of the many cures achieved by the constant use of **GRIMSTONE'S EYE-SNUFF**, manufactured of choice British Herbs. Government having ascertained the above fact, has commanded **W. GRIMSTONE**, of 434, Oxford-street, to affix a medicinal stamp on all containers bearing the label as sanctioned by the Lord of the Treasury, and approved by the Stamp Solicitor in 1837. That this celebrated Grimstone's Eye-Snuff will be sold by all Chemists and Medicine Vendors, in casks at 9d. 1s. 6d., 2s. 7d., 4s. 6d., and 9s. each, stamp included, and forwarded through the post. Upon receipt of a Letter Order for 7s. 7d., **W. GRIMSTONE** will be forwarded from **W. GRIMSTONE**, Merchant, 434, Oxford-street, London.

HEAL and SON'S LIST OF BEDDING, containing a full description of weights, sizes, and prices, by which makers are enabled to judge of the quality of the goods, and to make a good set of bedding, sent free by post on application to their establishment, the largest in London, exclusively for the manufacture and sale of bedding (no bedsteads or other furniture being kept).—**HEAL and SON**, Feather Dressers and Bedding Manufacturers, 199, opposite the Chapel, Tottenham-court-road.

Save from Thirty to Forty per Cent. at least by purchasing your **STATIONERY AT PARTRIDGE'S**, 125, CHANCERY-LANE, five doors from FLEET-STREET, WHOLESALE STATIONERS, and PRINTER'S AGENTS.
The following is the present list of prices for good Papers, all of which can be warranted as the best of their descriptions—
Thin Bath Note Papers from 2s. 6d. per ream.
Good ditto at 2s. 6d. "
ditto at 2s. 6d. "
Satin Note Paper at 5s. 6d. "
Best Bath ditto at 5s. 6d. "
The New Cream-coloured at 5s. 6d. "
Letter Papers of each of the above qualities at the same proportionate prices.

The best Envelopes in London reduced to 4s. 9d. per 1,000, assorted. Partridge's superior ditto, brilliant 5s. 6d. per lb. Superior ditto, generally called the best 5s. 6d. "
Good office Wax 2s. 6d. "
Best Irish Wafers, warranted 3s. 6d. "
Partridge's Steel Pens are well known for the ease and freedom with which they are manufactured, and are the greatest and the best material, very carefully selected, and every Pen warranted, at 1s. 3d. per gross. Second Pens, 4d. per gross.
Partridge's Magnum Bonum Pens, 5s. per gross.

COMFORT FOR TENDER FEET, &c.
WELLINGTON-STREET, STRAND, LONDON.

HALL and Co. PATENTEES OF THE PANNUS CORIUM, or LEATHER CLOTH BOOTS and SHOES, for Ladies and Gentlemen. These articles have borne the test, and received the approbation of all who have worn them. Such as are supplied with Corns, Bunions, Gout, Chilblains, or Tenderness of Feet from any other cause, will find them the softest and most comfortable ever invented—they never draw the feet or get hard, are very durable, adapted for every climate; they resemble the finest Leather, and are cleaned with common blacking.

The **PATENT INDIA RUBBER GLOVES** are light, durable, elastic, and waterproof; they thoroughly protect the feet from damp or cold; are excellent preservatives against Gout, Chilblains, &c.; and when worn over boots or shoes, no sensible addition is felt to their weight. Ladies and Gentlemen may be fitted with either of the above by sending a boot or shoe.

Hall and Co.'s Portable WATERPROOF DRESSES for Ladies and Gentlemen. This desirable article claims the attention of all who are exposed to the wet. Ladies' Capasul Cloths with Hoods, 15s. Gentlemen's Dresses, comprising Cape, Overall, and Hood, 21s. The whole can be carried with convenience in the pocket.

HALL and Co. particularly invite attention to their **ELASTIC BOOTS**, which are much approved; they supersede lacing or buttoning, are drawn on in an instant, and are a great support to the ankle.

COFFEE AS IN FRANCE.—It is a fact beyond dispute, that in order to obtain really fine Coffee, there must be a combination of the various kinds; and to produce strength and flavour, certain proportions should be mixed according to their different properties. Thus it is we have become celebrated for our delicious Coffee at 1s. 8d. which is the establishment and delight of all who have tasted it, being the produce of four countries, selected and mixed by rule peculiar to our establishment, in proportions not known to any other house.

From experiments we have made on the various kinds of Coffee, we have arrived at the fact, that no one kind possesses strength and flavour. If we select a very strong Coffee it is wanting in flavour; by the same rule we find the finest and most flavoursome Coffees are generally wanting in strength; and as they are usually sold at a high price, and are regarded of their various properties, the consumer is not able to obtain really fine coffee at any price. There is also another peculiar advantage we possess over other houses—our roasting apparatus being constructed on decidedly scientific principles, whereby the strong aromatic flavour of the Coffee is preserved, which in the ordinary process of roasting is entirely destroyed; and as we are coffee roasters, we are enabled to keep a full supply of fresh roasted Coffee continually, after the Parisian and Continental method.

The rapid and still increasing demand for this Coffee has caused great excitement in the trade, and several unprincipled houses have copied our papers and profess to sell a similar article. We, therefore, think it right to CAUTION the public, and to state that our superior mixture of four countries is a discovery of our own, and therefore the proprietors of the Coffee are preserved, which in the ordinary process of roasting we shall distinguish it from all others.

SPARROW'S CONTINENTAL COFFEE, at 1s. 8d. per lb. Packed in tins of all sizes perfectly air-tight for the country. We have also strong and useful Coffees, from 1s. to 1s. 4d. The Coffee is preserved in 56, High Holborn, adjoining Dax and Martin's, we shall distinguish it from all others.

HENRY SPARROW, Proprietor.

GENUINE HAVANNAH CIGARS.
EDWIN WOOD, 69, King William-street, City,
begs to inform the admirers of a FIRST-RATE HAVANNAH CIGAR, that they will find at this establishment the largest and choicest assortment in London, selected with great care by an experienced Manufacturer in Havannah, and consigned direct to the retail vendors. The Stock comprises the first qualities from the manufactories of SILVA & CO. Cabana, Woodville, Norriaga, La Union, Regalla, &c.; some very superior Old Principles, Government Manillas, and Planchadas; Bengal and Porto Rico Cheroots, with every other description from which gentlemen going abroad can at all times make their own selection. Annexed is a list of the present prices for cash:—

Genuine Havannahs	1s. 4d.	British Havannahs	12s. to 16 0
Ditto, superior	22 0	Porto Rico Cheroots	2s. to 12 0
Ditto, the finest imported	26 0	Chinaware, or Bengal, ditto	12 0
Ditto, Old Principles	24 0	King's	35 0
Regallas	18 0	Queen's	35 0
Bengal Cheroots	18 0	The "Favourite"	35 0
Tobacco	30 0	has	15 0

Wholesale, retail, and for exportation.
A Post-office Order is requested with Country orders.

A NEW DISCOVERY.—**Mr. HOWARD**, Surgeon-Dentist, 52, Fleet-street, begs to introduce an ENTIRELY NEW DESCRIPTION OF ARTIFICIAL TEETH, fixed without springs, wires, or ligatures. They so perfectly resemble the natural Teeth as not to be distinguished from the original by the closest observer; they will NEVER CHANGE COLOUR or DECAY, and will be found very superior to any teeth ever before used. This method does not require the extraction of roots or any painful operation, and will give support and preserve teeth that are loose, and is guaranteed to restore articulation and mastication; and that Mr. Howard's improvements may be the means of reaching the most economical mode of procuring them at the lowest scale possible. Decayed teeth rendered sound and useful in mastication.—52, Fleet-street. As home from Ten till Five.

LITHOGRAPHY in all its Branches, Writing, Drawing, and Printing, executed in the first style, and on the most moderate terms, at **DEAN and CO.'S LITHOGRAPHIC PRINTING OFFICES**, 38, 39, to 40, Threadneedle-street, City, where Merchants and the Trade may be supplied with the best German Stones and Transfer Paper, French Chalks, and Ink; and with their improved Lithographic Press, so excellent in principle and construction, that it is warranted to do the finest work with perfect ease and certainty.

DEAN and Co. have devoted the premises, No. 36, to the Stationery Business, where Companies and Merchants may be supplied on advantageous terms.

DIAMOND DUST, direct from the Mines.—Genuine **DIAMOND DUST**, for giving instantaneous to the keenest edge to the bluntest razor or knife, is now regularly imported direct from the mines of Golconda, the Brazil, and the Uralian Mountains, and may be had at the wholesale depot, 1, Angel-court, opposite Somerset-house, Strand, London, in rosewood boxes (with instructions) at 2s., 3s., 6d., each; and at the various agents throughout the world. Diamond dust, it is well known, has been used for many years amongst the nobles of the Russian Court as an indispensable adjunct to the comfort of their toilets. His late Majesty George IV. and His Royal Highness the Duke of Sussex were well acquainted with the peculiar properties and application of the diamond dust, having used it for sharpening their razors for upwards of 20 years. Parties using the diamond dust will never require to have their razors set or ground, the use of the hone being rendered perfectly unnecessary. Wholesalers and country agents supplied on liberal terms. Either of the boxes will be transmitted free to any part of the country.

COCOA-NUT FIBRE.—This substance envelops the shell of the milky cocoa-nut, around which it forms a strong protecting net-work. Man's ingenuity has turned the fibre to account by manufacturing it into many useful articles—such as carpets for stairs and passages, country for churches, public buildings, offices, nurseries, and kitchens, heart-rugs, door-mats, ropes, netting for sheep folds, &c.; but among the applications there is not any to which it is better adapted than for stuffing mattresses and cushions, as a substitute for down, hair, wool, and flock. It is very elastic, and affords great ease and support to the body, whether used with or without a feather bed. It has also the additional recommendation of being so obnoxious to vermin that they will not live in it! whilst it is a fact well known that wool, flock, tow, and even horsehair, will engender animals. Possessed of peculiar properties that render it a non-absorbent, and fireproof fibre is particularly suitable for children's beds, for use of schools, in all large dormitories, and at sea. Cocoa-nut fibre mattresses are only about one-half the price of those made from horse-hair. Priced lists may be had on application at the warehouse, or will be sent free by post.

TRELBOAR, 42, Ladgate-hill, seven doors from Farringdon-street, and five below Belle Sauvage Inn.

SEA and RIVER BATHING.—**Wilson's Patent** Life Preserving Coats, Jackets, and Waistcoats. All who visit the Sea-Side will do well to provide themselves with this invention. Many a valuable life has been lost whilst bathing. By the aid of these waistcoats the art of swimming is soon accomplished, and all risk of drowning prevented. They may be used for rowing, Yachting, Life-saving, &c. Life Coats and Jackets for Yachting, Boating, Voyaging, &c. Life Spancers for Ladies.
R. WILSON, Tailor and Habit Maker, 30, Edward-street, Portman-square.

PURE NERVOUS OR MENTAL COMPLAINTS, CURED ONLY BY REV. DR. WILLIS MOSELEY.

PURE NERVOUS OR MENTAL COMPLAINTS were never cured by any with certainty till the Rev. Dr. Willis Moseley cured himself, and he is the only person now who understands and can cure mental diseases. Dr. Moseley's mode of curing is cured by others persons. Dr. W. M. has been in the habit of doing this for thirty years, and out of 12,000 applicants in the last twelve years knows not twenty uncured who have followed his advice. Depression of spirits, inquietude, sleeplessness, involuntary blushing, dislike of society, thoughts of self-destruction, and many other symptoms, which are most speedily cured by the EXTRA MEANS of cure at his house, and with no less certainty, but not so soon, at their own. The means of cure are sent to all parts. A NEW PAMPHLET for NOTHING, with cases, testimonials, symptoms, &c. will be sent to any address, and franked home, if one stamp is enclosed. At home from 11 to 3, 18, Bloomsbury-street, Bedford-square.

Periodical Sales (established in the year 1803) of Reversions, Life Interests, Annuities, Policies of Assurance, Advertisements, Next Presentations, Rent Charges in lieu of Tithes, Post-office Bonds, Tontines, Debentures, Ground Rents, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and all Public Undertakings.

MESSRS. SHUTTLEWORTH and SONS

respectfully inform the public, that upwards of 40 years' experience having proved the classification of this species of property to be extremely advantageous and economical to vendors, and equally satisfactory and convenient to purchasers, the PERIODICAL SALES of reversionary interests, policies of insurance, tontines, debentures, advertisements, next presentations, all securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through 1846, as follows:—

Friday, July 3 Friday, October 2
Friday, August 7 Friday, November 6
Friday, September 4 Friday, December 4

Particulars may be had Ten days previous to each sale, at the Royal Hotel, Manchester; the Adelphi Hotel, Liverpool; Dea's Royal Hotel, Birmingham; the Angel, Oxford; the Eagle and Child, Cambridge; at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 39, Poultry.

he Sedgell Estate and Farm in Wilts, on the Borders of Dorsetshire, altogether about 310 Acres, in the rich Vale between Shaftesbury and Fonthill, in a famous Sporting Country.

MESSRS. DANIEL SMITH and SON are directed to OFFER for PUBLIC SALE, at the Mart, in JULY (unless an acceptable offer shall be previously made by Private Contract), in two lots, a very desirable FREEHOLD Gentleman's RESIDENCE, on a moderate scale, though capable of accommodating a good establishment. It is a modern house, of a handsome uniform elevation, with all suitable offices, stabling, well laid garden, farm buildings, lodge, &c. surrounded by a very rich little park, studded with fine oak and other timber, commanding some highly picturesque scenery, embracing the finely varied range of hills and domain of Pitt House, the seat of John Benett, Esq. and portions of the Fonthill Estate, together with a valuable Farm adjoining, with all requisite buildings, labourers' cottages, &c. Also (in a separate lot), a highly conditioned and compact Farm, of about 170 acres, in the parish of Sedgell, with a neat farm-house and homestead, all recently put into substantial repair, and let to a highly respectable tenant.—The estates may be viewed by application on the premises; and descriptive particulars, with plans, may be had when the day of sale is fixed, at the inns at Shaftesbury, Salisbury, &c.; of J. BATTEN, Esq. Solicitor, Yeovil; and of DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall, London.

KENT.—Valuable Freehold Farms in the picturesque and healthy parish of Wrotham, about 23 miles from town, and 11 from Maidstone.

MESSRS. DANIEL SMITH and SON are instructed by the Devises in Trust under the will of the late Rev. George Moore, to SELL by AUCTION, at the Mart, near the Bank of England, about the middle of AUGUST, FIVE very desirable FREEHOLD FARMS, with suitable buildings, cottages, &c. in the beautiful, healthy, and fertile parish of Wrotham, the whole in very high condition, having been for some time past in the hands of the late proprietor, rendering them particularly desirable little properties for occupation or investment. Mr. Harrison, the bailiff, will show the farms; and particulars, with plans, may be had when the day of sale is fixed, at the neighbouring inns; at the Mart; of R. LAMBERT, Esq. 32, John-street, Bedford-row; and of DANIEL SMITH and SON, Land Agents, Waterloo-place, Pall-mall.

Barnet, Herts.—The Remaining Estates of the late Right Hon. Sir William Garrow.

MESSRS. DANIEL SMITH and SON respectfully announce that they are directed by the Trustees under the will of the late Right Hon. Sir William Garrow, to offer for SALE by AUCTION, at the Mart, in JULY, in lots, several very eligible FREEHOLD and COPYHOLD ESTATES, in and near the town of Barnet; comprising a freehold residence, with gardens and paddocks, &c. in the best part of the town; some very valuable meadows close to the town, and a small farm about a mile distant, in the parish of Shenley, parts on lease at very moderate rents, rendering them safe and desirable objects for investment.—Further particulars will be published with the day of sale, and in the interim every information may be obtained and plans inspected at their offices in Waterloo-place, Pall-mall; or of Mr. H. LEWIN, solicitor, 8, St. Martin's-place, Charing-cross.

NOTICE as to the Great ESTATE of WHITTLESEA.

MESSRS. DANIEL SMITH and SON are commissioned by the noble Proprietors to announce that the SALE of this very important and valuable FREEHOLD PROPERTY, which was withdrawn last year, will positively take place at the Auction Mart, in September next (unless an acceptable offer shall be previously made). The Estate of Whittlesea lies near the city of Peterborough, and comprises the vast manors of Whittlesea, embracing nearly 25,000 acres, and in which are nearly 200 or 300 copyholders, paying quit rents and fines, the greater part of the flourishing town of Whittlesea, the bank premises, several private residences, inns, shops, &c. being held of the said manor. Also, above 3,100 acres of most fertile land, divided into compact farms, and let at low rents, to a highly respectable and intelligent tenantry, with some very valuable dispersed parcels of land adjoining, and contiguous to the town, portions eligible for building. Also, the Advowson of the Vicarage of St. Mary, and the Freehold Rent Charges in lieu of tithes, extending over nearly 18,000 acres. There is a navigable river and canal through the estate, and the railway from Peterborough to Ely, &c. passes through Whittlesea.—Particulars will be published when the day and arrangements of sale are fixed; and in the interim information may be had of Messrs. JONES, BATEMAN, and BENNETT, Solicitors, Lincoln's-inn; of Mr. JOHN WADDELOW, of Whittlesea, who will show the estates; and of Messrs. DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall, who are authorised to receive offers for the whole property by Private Contract.

OATLANDS MANSION HOUSE and few remaining unsold lots for immediate and absolute Sale by Auction.

MESSRS. DRIVER beg to announce to the Public that the above Mansion House and Grounds, comprising lot 1 at the recent auction, containing 97 acres; the adjoining lots 40 and 41, containing together 88a. 3r. 30p.; lot 2, containing 27a. 0r. 20p.; and the smaller lots, 29, 29, 36, 37, and 61, being the only unsold lots at the recent auction, are now upon SALE by PRIVATE CONTRACT; and unless an acceptable offer shall be made for the Mansion House lot previously to the 15th of July next, it will be then subdivided into lots varying from 10 to 20 acres each, and will be submitted for unreserved SALE by AUCTION, together with the lots above enumerated, at the Auction Mart, on TUESDAY, the 4th day of AUGUST, at Twelve o'clock; together with the extensive Manors of Byfleet and Weybridge, and Walton Leigh; and the valuable Building Materials of the mansion-house, grotto, extensive stabling, offices, and premises, will be advertised for sale in lots, in the first or second week in August, thus affording a most favourable opportunity for any of the purchasers of the beautiful sites of this magnificent Oatlands Estate for purchasing these building materials, and thereby saving great expense of carriage of other materials.—In the meantime further information may be had of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Parliament-street.

WOODFORD, Essex.—Higham Hills Mansion House, Park, and Domain, of about 327 acres, and a desirable Farm adjoining, of about 73 acres.

MESSRS. DRIVER are favoured with instructions to OFFER to PUBLIC COMPETITION, at the Auction Mart, near the Bank of England, on FRIDAY, the 10th day of JULY, at Twelve o'clock, in two lots, the above important and valuable FREEHOLD PROPERTY, containing together about 400 acres, most eligibly situated in the parishes of Woodford and Walthamstow, in the county of Essex, and only about eight miles from London.

Lot One will comprise the Manor of Higham Hills, otherwise Higham Bempstead, and the Improprate Tithes of about 60 acres, together with Higham Hills Mansion House (the distinguished residence of the late Jeremiah Harman, Esq.), delightfully situated in a splendid Park of about one hundred and fifty acres, beautifully undulating, and enriched with unusually ornamental stately oak timber, and extensive sheets of water, commanding delightful panoramic prospects of the surrounding forest and other scenery. The mansion is of very prepossessing character, and of correct and handsome elevation, upon a scale of accommodation and elegance adapted for any nobleman or gentleman of the first distinction. It contains a noble suite of living apartments, comprising two elegant drawing-rooms, billiard-room, a capital dining-room, and library, numerous principal and secondary bed-chambers, and all requisite domestic offices, excellent coach-houses and stabling, and abundance of out-offices, and a well of the purest water, with complete ample machinery for supplying the residence, stabling, and other premises. The lawns and pleasure-grounds surround the mansion, and are most tastefully displayed, and beautifully ornamented with choice shrubs and American plants in the height of luxuriance, with wide dry gravel walks. There is also a magnificent conservatory opening from the dining-room. The kitchen garden contains an area of about two acres, entirely inclosed with lofty brick walls fully stocked and clothed with choice fruit-trees in full bearing, in which are two vinerias and several succession-pits. The park comprises about 93 acres of rich meadow land, ornamented with a spacious lake of about 11 acres, and surrounding the park are about 54 acres of rich forest scenery and highly ornamental timber, with delightful carriage-drives through the same.

Lot Two will consist of a very desirable small freehold Farm, of 72 acres, surrounding the Park, with comfortable Farm-house, and all requisite agricultural buildings, together with the lease of about 16 acres (held at a low rent) of a small Farm containing about sixty acres, occupied with and adjoining the park; and a Leasehold Residence, containing every accommodation for a respectable family, with above 30 acres of productive land, held for an unexpired term of about 7 years, at a very moderate rent; the whole forming a most enviable property either for occupation or investment. Immediate possession may be had on completion of the purchases.

To be viewed, with cards only, from 12 to 6 every day (Sunday excepted), which, with printed specifications and plans annexed, may be had of Messrs. TATHAM and SON, Land Agents and Surveyors, Bedford-place, Russell-square; of Messrs. MABERLY and SON, Solicitors, King's-road, Bedford-row, and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Parliament-street. Printed specifications may also be had at the Auction Mart, Bartholomew-lane.

Three valuable perpetual Advowsons and the rights of presentation to the very desirable Rectory of Iden, near Rye, and the two consolidated Rectories of East Guilford, with Playden, adjoining thereto, in the county of Sussex and diocese of Chichester, subject to the present incumbent's life, aged 65 years.

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30	1 3 9	1 5 2	1 6 8	1 8 4	1 10 0	2 10 5
40	1 11 0	1 13 9	1 15 10	1 18 1	1 20 0	2 8 3

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 The public attention is particularly called to their Pale Brown British Brandy, which is allowed to be matchless.

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 142, Strand.—Old Ports, Sherries, Madeiras, &c. &c., several years in bottle. Private families may be supplied with any of the above wines, selected from the best vineyards and bottled with great care, by J. WRIGHT, late of Mark-lane, compiling many thousands copies. Finest Old Ports, from three to five years in bottle. 42s. 6d., 50s. Sherries, various, ditto, ditto 30s. to 40s. West India Madeiras, ditto, ditto 42s. 6d., 50s. Superb Old East India, ditto, ditto 40s. 6d., 50s. Very Old Malmsay, in pint 50s. Brandy ditto, and of the best quality 24s. Most of the above may be had in pints, delivered free within five miles of the metropolis.

THE DELIGHTFUL COOLNESS of the GOLDEN FLAX CRAVAT COLLAR, together with its perfect fit, however loosely tied on, recommend it especially during this weather. It needs no additional cravat—in one article is combined both collar and cravat. To be had of all hosiery, outfitters, &c., either in pure white for full dress, or printed in neat patterns suitable for morning dress. N.B. Cravat-Collar is stamped "John Paterson, London, Registered."
 Merchants and shippers supplied by any of the wholesale houses in London.

INVENTION OF 1873.
TO HOCKIN'S PREPARATION OF SEDLITZ POWDER in One Bottle, which keeps in every situation. The Dose can be ascertained to suit all ages and constitutions. It is the TASTEFUL Salt of a natural Spring, and is the best Family Medicine, as it feeds the blood and system with the necessary saline to prevent cholera, and other bowel affections; it instantly stops sickness in adults and children, from whatever cause arising. A bottle of twelve to thirty doses, 5s. 6d. C. HOCKIN, 35, Dake-street, Manchester-square, and 1, Bishopsgate-street Within, London.

THE WEST-END MINERAL WATER DEPOT, 22, Henrietta-street, Cavendish-square, London.
WEST-END Mineral Water Depot, 22, Henrietta-street, Cavendish-square, London. BEST begs respectfully to solicit the attention of the Faculty and the Public to his stock of the most celebrated and efficacious MINERAL WATERS, consisting of Carlsbad, Ess, Marienbad, Kissingen, Ragatz, Homberg, Seltzer, Pachelberg, La Grande Grille, &c. &c. The high testimonials of the first physicians on the continent, and indeed some of the most eminent in this country, respecting the importance of attending to the use of the above Mineral Waters, has induced W. R. to send a supply of the above Mineral Waters, with the proprietors of the above Springs, so that the Mineral Waters can be obtained from his Establishment without any of its essential properties (especially the pre-carbonate of iron) being the least deteriorated.
 For further particulars and prospectus, which may be obtained at the depot in any quantity. Agent by appointment to Struve's German Spa, Brighton.

BED FEATHERS.

Mixed.	Per lb.	Per lb.	Per lb.
1	1	1	1
2	2	2	2
3	3	3	3
4	4	4	4
5	5	5	5
6	6	6	6
7	7	7	7
8	8	8	8
9	9	9	9
10	10	10	10
11	11	11	11
12	12	12	12
13	13	13	13
14	14	14	14
15	15	15	15
16	16	16	16
17	17	17	17
18	18	18	18
19	19	19	19
20	20	20	20

A List of every description of Bedding, containing weights, sizes, and prices, sent free by post on application to HEAL and SON, Feather Dressers and Bedding Manufacturers, 195, Tottenham-court-road, opposite the Chapel.

CHUBB'S PATENT FIRE-PROOF AND WROUGHT-IRON SAFES AND CHESTS.—Caution.—As several imitations of the above are now offered for sale by different makers, bankers, merchants, and the public generally are respectfully informed that no ironmongers, smiths, or furniture brokers are supplied with the above safes or chests, and that they can only be obtained direct from C. CHUBB and SON, the patentees, 57, St. Paul's-churchyard, London.

YACHTING, DRIVING, AND ANGLING.—THE NEW DREADNOUGHT COATS AND CAPES, made by J. C. CORDING, will be found by Sailors and Sportsmen to be the best articles ever made up for their use. They will resist the heaviest rain and the fiercest tropical heat for any time, and their durability is equal to their waterproof qualities. Trousers, leggings, sou'-westers, caps, and gloves, of the same proofing. Officers and others going to the colonies will find these articles invaluable. Gentlemen who drive should use CORDING'S new waterproof driving aprons and boots, the most sensible and complete things of the kind, and approved by all who have tried them. Ladies' light riding caps, with hoods and sleeves. CORDING'S improved sheet India rubber boots are superior to any thing hitherto made for the comfort of the rider and the horse. They are light, pliable, and never crack; impervious to water, and of great length of time, and require no dressing to keep them in condition. Patterns and prices sent on application. Any description of article made to order. London: J. C. CORDING, 231, Strand, five doors west of Temple Bar.

FURNITURE.—WANTED TO PURCHASE from 200l. to 500l. worth of SECOND-HAND FURNITURE, in large or small quantities, for which a fair price will be given in cash, without any deduction for removal from the premises. The stock is of the best quality, and includes, if required, Linen, china, glass, books, pictures, and musical instruments included, if required.
 Apply to Mr. J. CHAPMAN, No. 6, Great Russell-street, Covent-garden.—Valuations.

COFFEE AS IN FRANCE.—It is a fact beyond dispute, that in order to obtain really fine Coffee, there must be a combination of the various kinds; and to produce strength and flavor, certain proportions should be mixed according to their different properties. This it is we have become convinced, for our selections of Coffee at 1s. 8d. which is the astonishment and delight of all who have tasted it, being the produce of four countries, selected and mixed by rule peculiar to our establishment, in proportions not known to any other house.

From experiments we have made in the various kinds of Coffee, we have arrived at the fact, that no one kind possesses strength and flavor. If we select a very strong Coffee it is wanting in flavor; by the same rule we find the finest and most flavoured Coffees are generally wanting in strength; and as they are usually sold each separately, quite regardless of their various properties, the consumer is not able to obtain really fine coffee at any price. There is also another peculiar advantage we possess over other houses—our roasting apparatus being constructed on decidedly scientific principles, whereby the strong aromatic flavor of Coffee is preserved, and the oil, and the means of roasting, is entirely destroyed; and as we are coffee roasters, we are enabled to keep a full supply of fresh roasted Coffee continually, after the Parisian and Continental method.

The increasing demand for this Coffee has caused great excitement in the trade, and several unprincipled houses have copied our papers and profess to sell a similar article. We, therefore, think it right to CAUTION the public, and to state that our superior mixture of four countries is a discovery of our own, and therefore the proportions are not known, and can be had at any other house. In future we shall distinguish it from all others as SPARROW'S CONTINENTAL COFFEE, at 1s. 8d. per lb. Packed in this of all sizes perfectly air-tight for the country. We also sell a strong Coffee at 1s. 4d. per lb. Tea Establishment, 56, High Holborn, adjoining Day and Martin's, leading through into 22, Dean-street.
 HENRY SPARROW, Proprietor.

GENUINE HAVANNAH CIGARS.

EDWIN WOOD, 69, King William-street, City, begs to inform the admirers of a FINEST HAVANNAH CIGAR, that he will send at this establishment, at the lowest price, and in the most assortment in London, selected with great care by an experienced Manufacturer in Havannah, and consigned direct to the advertiser. The Stock comprises the first qualities from the manufacturers of SILVA & CO. Cabana, Woodville, Norriega, La Union, Regalia, &c.; some very superior Old Principes, Government Manilla, and Plancha (a Bengal and Porto Rico Cigars, with every other description now in demand. A large and select stock is always kept in hand, from which Gentlemen going abroad can at all times make their own selection.
 Annexed is a list of the present prices for cash—

GENUINE HAVANNAH.	GENUINE HAVANNAH.	GENUINE HAVANNAH.	GENUINE HAVANNAH.
18 0	12 0	12 0	12 0
22 0	12 0	12 0	12 0
26 0	12 0	12 0	12 0
30 0	12 0	12 0	12 0
34 0	12 0	12 0	12 0
38 0	12 0	12 0	12 0
42 0	12 0	12 0	12 0
46 0	12 0	12 0	12 0
50 0	12 0	12 0	12 0
54 0	12 0	12 0	12 0
58 0	12 0	12 0	12 0
62 0	12 0	12 0	12 0
66 0	12 0	12 0	12 0
70 0	12 0	12 0	12 0
74 0	12 0	12 0	12 0
78 0	12 0	12 0	12 0
82 0	12 0	12 0	12 0
86 0	12 0	12 0	12 0
90 0	12 0	12 0	12 0
94 0	12 0	12 0	12 0
98 0	12 0	12 0	12 0
102 0	12 0	12 0	12 0
106 0	12 0	12 0	12 0
110 0	12 0	12 0	12 0
114 0	12 0	12 0	12 0
118 0	12 0	12 0	12 0
122 0	12 0	12 0	12 0
126 0	12 0	12 0	12 0
130 0	12 0	12 0	12 0
134 0	12 0	12 0	12 0
138 0	12 0	12 0	12 0
142 0	12 0	12 0	12 0
146 0	12 0	12 0	12 0
150 0	12 0	12 0	12 0
154 0	12 0	12 0	12 0
158 0	12 0	12 0	12 0
162 0	12 0	12 0	12 0
166 0	12 0	12 0	12 0
170 0	12 0	12 0	12 0
174 0	12 0	12 0	12 0
178 0	12 0	12 0	12 0
182 0	12 0	12 0	12 0
186 0	12 0	12 0	12 0
190 0	12 0	12 0	12 0
194 0	12 0	12 0	12 0
198 0	12 0	12 0	12 0
202 0	12 0	12 0	12 0
206 0	12 0	12 0	12 0
210 0	12 0	12 0	12 0
214 0	12 0	12 0	12 0
218 0	12 0	12 0	12 0
222 0	12 0	12 0	12 0
226 0	12 0	12 0	12 0
230 0	12 0	12 0	12 0
234 0	12 0	12 0	12 0
238 0	12 0	12 0	12 0
242 0	12 0	12 0	12 0
246 0	12 0	12 0	12 0
250 0	12 0	12 0	12 0
254 0	12 0	12 0	12 0
258 0	12 0	12 0	12 0
262 0	12 0	12 0	12 0
266 0	12 0	12 0	12 0
270 0	12 0	12 0	12 0
274 0	12 0	12 0	12 0
278 0	12 0	12 0	12 0
282 0	12 0	12 0	12 0
286 0	12 0	12 0	12 0
290 0	12 0	12 0	12 0
294 0	12 0	12 0	12 0
298 0	12 0	12 0	12 0
302 0	12 0	12 0	12 0
306 0	12 0	12 0	12 0
310 0	12 0	12 0	12 0
314 0	12 0	12 0	12 0
318 0	12 0	12 0	12 0
322 0	12 0	12 0	12 0
326 0	12 0	12 0	12 0
330 0	12 0	12 0	12 0
334 0	12 0	12 0	12 0
338 0	12 0	12 0	12 0
342 0	12 0	12 0	12 0
346 0	12 0	12 0	12 0
350 0	12 0	12 0	12 0
354 0	12 0	12 0	12 0
358 0	12 0	12 0	12 0
362 0	12 0	12 0	12 0
366 0	12 0	12 0	12 0
370 0	12 0	12 0	12 0
374 0	12 0	12 0	12 0
378 0	12 0	12 0	12 0
382 0	12 0	12 0	12 0
386 0	12 0	12 0	12 0
390 0	12 0	12 0	12 0
394 0	12 0	12 0	12 0
398 0	12 0	12 0	12 0
402 0	12 0	12 0	12 0
406 0	12 0	12 0	12 0
410 0	12 0	12 0	12 0
414 0	12 0	12 0	12 0
418 0	12 0	12 0	12 0
422 0	12 0	12 0	12 0
426 0	12 0	12 0	12 0
430 0	12 0	12 0	12 0
434 0	12 0	12 0	12 0
438 0	12 0	12 0	12 0
442 0	12 0	12 0	12 0
446 0	12 0	12 0	12 0
450 0	12 0	12 0	12 0
454 0	12 0	12 0	12 0
458 0	12 0	12 0	12 0
462 0	12 0	12 0	12 0
466 0	12 0	12 0	12 0
470 0	12 0	12 0	12 0
474 0	12 0	12 0	12 0
478 0	12 0	12 0	12 0
482 0	12 0	12 0	12 0
486 0	12 0	12 0	12 0
490 0	12 0	12 0	12 0
494 0	12 0	12 0	12 0
498 0	12 0	12 0	12 0
502 0	12 0	12 0	12 0
506 0	12 0	12 0	12 0
510 0	12 0	12 0	12 0
514 0	12 0	12 0	12 0
518 0	12 0	12 0	12 0
522 0	12 0	12 0	12 0
526 0	12 0	12 0	12 0
530 0	12 0	12 0	12 0
534 0	12 0	12 0	12 0
538 0	12 0	12 0	12 0
542 0	12 0	12 0	12 0
546 0	12 0	12 0	12 0
550 0	12 0	12 0	12 0
554 0	12 0	12 0	12 0
558 0	12 0	12 0	12 0
562 0	12 0	12 0	12 0
566 0	12 0	12 0	12 0
570 0	12 0	12 0	12 0
574 0	12 0	12 0	12 0
578 0	12 0	12 0	12 0
582 0	12 0	12 0	12 0
586 0	12 0	12 0	12 0
590 0	12 0	12 0	12 0
594 0	12 0	12 0	12 0
598 0	12 0	12 0	12 0
602 0	12 0	12 0	12 0
606 0	12 0	12 0	12 0
610 0	12 0	12 0	12 0
614 0	12 0	12 0	12 0
618			

Will contain the commencement of several Series of Papers of Social Importance and Entertainment, by Himself and his EMINENT LITERARY ASSOCIATES; and also a mass of News and Information, well digested and arranged, suitable to family reading.

OFFICE, 169, STRAND,

WHERE PROSPECTUSES CAN BE HAD, GRATIS, OR OF ANY TOWN OR COUNTRY NEWSVENDER.

Sales by Auction.

HATCHAM GROVE.—A capital MANSION, and about 17 Acres of Ornamental Land, only about Three Miles from London-bridge.

MR. SINGLE will SELL by AUCTION, at the Mart, opposite the Bank, on TUESDAY, JULY 21, at Twelve for One, in Three Lots; a most valuable and beautiful ESTATE, comprising a capital mansion, and about 17 acres of valuable and ornamental land, known as Hatcham-grove, situate about three miles from London-bridge, upon the high road, at the junction of the Queen's-road (late Deptford-lane) and the Old Kent-road, near the New-cross station on the Croydon Railway. The residence is approached by a lodge entrance and carriage drive-through an avenue of fine trees, which give an interesting tone to the spot. The ornamental grounds that encircle the dwelling, the beautiful foliage that secluded it from the road, and the peculiar charm that pervades the whole place, lead the mind, at once, far distant from the "busy hum" of London life. The mansion is commanding, spacious, and built in a superior manner, sufficiently modern to secure all the ornamental decoration and comfort which good taste can desire, and not too new to present to the eye that sombre beauty and interesting tone which no seat can possess but in its mature years. There is stabling for seven horses, and standings for four carriages. The dining and drawing rooms open behind on to a lawn and very large and beautiful grounds, ornamentally laid out and adorned with choice shrubberies, which afford that coolness in summer, and warmth of appearance in winter, so congenial with good taste. The close contiguity of the property to New-cross Station, its distance of only three miles from London Bridge, the high respectability of the neighbourhood, the country-like scenery and beauty of the spot, together with the healthfulness of the locality, would infuse constantly unspeakable delight into the mind of the pursuer who might choose to reside there, even should he be one whose professional engagements tend to harass him, or whose mercantile transactions absorb his mind, and tend to deaden the sensibility of his heart; or a member of Parliament, too much concerned in the affairs of his country, too intent upon posthumous fame to spare time to feel that serene quiet which is the real enjoyment of life, and which can be daily experienced in a high degree only through the facilities of quick transition from the excitement of London life to such a delightful home as Hatcham Grove.—Particulars will be ready in due time, and may be obtained of AMBROSE CLARE, Esq. Solicitor, 5, Sise-lane, City, and at the Offices of Mr. SINGLE, Land Agent, 34, Colman-street, City.

CITY of LONDON.—Capital Business Premises.

M^R. SINGLE will **SELL BY AUCTION**, at the Mart, on **TUESDAY, JULY 14**, at Twelve for One, some capital **BUSINESS PREMISES**, comprising large warehouses, stabling, &c. in the **REGENT, NOS. 109, 110, and 102, Houndsditch**, let to good tenants, on lease and otherwise, at rentals amounting to **134l. 10s.** per annum; held on lease direct from the freeholder for thirty-two years, from **1841**, at a ground rent of **65s.** per annum.—Particulars may be obtained of **JOHN BEARDMORE WATHEN**, Esq., Solicitor, St. Swithun's-lane, Lombard-street, and at the Offices of **M^r. SINGLE**, 34, Coleman-street, City.

CAMBRIDGE-HEATH, near Hackney-road.—Twenty-one Houses, in Lots.

MR. SINGLE will **SELL by AUCTION**, on **TUESDAY, JULY 14**, at Twelve for One, **TWENTY-ONE HOUSES**, as follows:—Six Houses, Nos. 21, 26 inclusive, Melina-place; Three Houses, Ada-street; and Twelve Houses, Nos. 12 to 23 inclusive, George-street, near the Canal Bridge, Cambridge-road—a capital situation for letting. They are an opportunity for most lucrative investment, being in an old neighbourhood, populous but residential; let remarkably well. Particulars may be obtained of **MR. J. BEARDMORE WATHEN**; Solicitor, St. Swithin's-lane; and at the **Offices of Mr. SINGLE**, Land Agent, 34, Coleman-street, City.

MILE-END.—Six well-built Houses.

MR. SINGLE will **SELL BY AUCTION**, at the Mart, on **TUESDAY, JULY 14**, at Twelve for One, **SIX** well-built **HOUSES**, desirably situate, 1, 2, 3, 4, 5, and 10, **Single** grove **East, Single** street, **Bridge** street **East, Mile** end road. They each contain six rooms, and are let at rentals amounting to 18l. per annum.—Particulars may be obtained of Messrs. **COOMBE** and **JONES**, Solicitors, 2, Church-court, **Clement's-lane, City**; at the Offices of **Mr. SINGLE**; **Land Agent**, 34, **Coleman** street, **City**.

Twelve Acres Freehold, near Lee and Lewisham, in Lots.

MR. SINGLE will **SELL by AUCTION,** at the Mart, on **TUESDAY, JULY 21,** at Twelve for One, about **TWELVE ACRES OF FREEHOLD BUILDING LAND,** delightfully situate on an inclined plane, with an extensive frontage on the public road; at Further-green, Lewisham, about a mile from Lee, and near to where an intended railway is likely to have a station. The estate will be divided into small and large lots, presenting valuable frontages on serpentine roads and groves, which will be desirable for residences. Lee and Lewisham and the neighbourhood are most improving places; and when some of this land is built upon, the rest will be worth more than double its present value. Particulars may be obtained of Mr. GROVES, Solicitor, Charlotte-street, Bedford-square; at the Inns in the neighbourhood; and at the office of Mr. SINGLE, Land Agent, 34, Coleman-street, City.

IN THE COUNTY OF DURHAM.—The Wolsingham Park Estate, Freehold, comprising about 2,400 acres of Arable, Meadow, Pasture, and beautiful Wood and Moor Land, with invaluable Freestone, and perhaps Ironstone; and a river and a railway passing through it.

MR. SINGLE will **SELL by AUCTION,** at the Mart, on **TUESDAY, JULY 21,** at One precisely, the valuable and highly improvable **FREEHOLD ESTATE,** known as the **Wolsingham Park Estate,** comprising about **2,400 acres** of arable, meadow, pasture, wood, and moor land, situate only about three quarters of a mile from the Hexham and Corbridge turnpike-road, and two and a half or three from Wolsingham, and four from Stanhope, both excellent market towns, about seventeen miles from the city of Durham, and eighteen from Newcastle-on-Tyne, possessing the advantages of a railway through it. There are but two tenants on the estate, and they hold yearly at trifling rentals. The rental from the property at present is only about **440*l.*** per annum, which gives no idea of its estimated rental; and a large portion of the estate is in hand. The whole lies within a ring fence on either side of the "Waskerley," a river having its rise at one end of, and winding in meandering beauty through the estate, and discharging itself into the river Wear. On one side of the river are beautiful hanging woods and improvable land, on the other good old pasture and arable land, capable of great improvement, lying principally on an inclined plane towards the river, presenting therefore peculiar facilities for drainage, by which the estate might in a short time be made by ordinary good management to produce double the present annual rental with only a trifling outlay, as there is an invaluable slate or stone quarry on the estate, affording materials for drainage at but little cost, as well as valuable stone for other purposes. There are nearly **400 acres** of thriving wood land, and the railway which passes through the estate has two stations on the property; there are three farm-houses with homesteads, all stone-built, and a residence capable of being made a snug sporting-box, lying open to the warm south, and to one of those delightfully picturesque views peculiar to some of the most favoured parts of the county of Durham. There is famous trout-fishing in the river, first-rate grouse and other shooting on the estate, and fox-hunting in the neighbourhood. The property has for many years been in the hands of a London gentleman, who has neither advantageously let it, or in any way attempted to it; it offers, therefore, to capitalists an opportunity which seldom occurs for investing money in an improving property. It is believed that a few thousand pounds might be made by improving the land, &c. and a few hundred thousands by the minerals. The tenants on the estate will point out the property, and full particulars, with maps of the estate, will be ready in due time, and may be obtained of **AMBROSE CLARE, Esq. Solicitor, 5, Sise-lane, City, London;** of **JOHN T. HOYLE, Esq. Solicitor, Newcastle-on-Tyne;** and of **Mr. SINGLE, Land Agent, 34, Coleman-street, City.**

WORCESTERSHIRE.—Freehold and Copyhold Farm of 257 Acres, producing 470*l.* per annum; most desirable for Investment, or for profitable and pleasant occupation.

MESSRS. DAVIS and VIGERS are directed to SELL by AUCTION, at the Mart, on TUESDAY, JULY 28, at Twelve for One, that very fertile and superior FARM, called Alstone, pleasantly situated on the eastern slope of the Oxenton hills, in the parishes of Overbury and Bangrove, on the borders of Gloucestershire and Worcester, only seven miles from Cheltenham and Tewkesbury, five from Winchcombe, and nine from Evesham, commanding those excellent markets, and within four miles of the Ashchurch station of the Bristol and Birmingham Railway, consisting of 350a. 3r. 13p. of productive arable, meadow, and pasture land, and orchards, with a roomy farm-house, dairy, cheese-room, eight cottages, and other suitable agricultural buildings, now in the occupation, of Mr. John Shipway, under a yearly tenancy, determinable at Michaelmas next, at 47*l.* per annum; and 6a. 1r. 29p. of freehold woodland in hand; the whole tithe free, lying together, and approached by excellent roads. The soil is superior, the situation very good, and the climate unusually mild and favourable; indeed, nothing is wanting but skill and capital to immensely improve the returns, and to make this a very productive and attractive farm.—May be viewed by leave of the tenant. Particulars and conditions of sale may be had of Mr. VIZARD, Solicitor, Dursley, Gloucestershire; at the Star and Garter, Worcester; York-house, Bath; White Lion, Bristol; Bell, Gloucester Plough, Cheltenham; Swan, Tewkesbury; Railway Hotel, Birmingham; Messrs. BLOWER, VIZARD, and PARSON, Solicitors, 61, Lincoln's-inn-fields, London; at the Mart; and of Messrs. HEWITT, DAVIS, and FRANCIS, VIGERS, Land Agents and Auctioneers, 3, Frederick's-place, Old Jewry, London.

Periodical Sale of Reversions, Life Interests, Annuities, Life Policies, Advowsons, Next Presentations, and all descriptions of Securities dependent upon human life, Ground and Improved Rents, Post Obit Bonds, Shares in Railways, Mines, Insurance Companies, and all other public undertakings.

MR. MARSH (late Fuller and Marsh) respectfully informs the Public, that his PERIODICAL SALES by AUCTION of the above description of PROPERTY will be continued throughout the present year as follows:—

Thursday, August 6. Thursday, October 1.
Thursday, September 3. Thursday, November 5.
Thursday, December 3.

Notice of sales intended to be effected by the above means should be forwarded to Mr. MARSH 14 days prior to each date.—No. 27, Bucklersbury, corner of Charlotte-row, Mansion-house, London.

CLAREMONT, near SOUTHAMPTON.—A delightfully situate and modern spacious Villa, with beautifully planted grounds, &c. the whole being freehold, and within two miles of the town, and commanding grand views of the river, Isle of Wight, and the New Forest, with immediate possession.

MESSERS. DANIEL SMITH and SON are directed to OFFER for PUBLIC SALE, at the Mart, near the Bank of England, on — AUGUST, at Two, unless previously disposed of by private contract, the above very desirable and beautifully situated FREEHOLD RESIDENCE, on a commanding elevated part of Millbrook, within a short distance of the church, and only two miles from Southampton. The mansion is modern, and contains rooms of very handsome dimensions, and ample large airy bedrooms, with dressing-rooms, water-closets, two staircases, all finished with excellent taste and in a superior manner. The domestic offices are very convenient; the grounds, comprising about nine acres, are well laid out, and ornamentally planted. There is a productive walled garden, good stabling, and various out-offices, and the whole very complete, with excellent fixtures, &c. and in the most perfect order both as to repairs and decoration, and fit for instant possession. The estate may be viewed by application to Mr. Perkins, upholder, Southampton, of whom particulars may be had; also at the chief hotels at Southampton; at the Auction Mart; of Messrs. Coombs and Son, Solicitors, Dorchester; of Messrs. Walker and Grant, Solicitors, King's-road, Gray's-inn-lane; and of Messrs. DANIEL SMITH and SON, Waterloo-place, Pall-mall, who are fully authorized to treat for the sale.

The Estate of New Place, with its Mansion and famous Trout Fishery, close to Alresford, Hants, about eight miles from Winchester and 18 from Southampton.

MESSRS. DANIEL SMITH and SON are commissioned to SELL by AUCTION: at the Mart, in AUGUST next, the above valuable FREEHOLD PROPERTY; comprising the mansion of New Place, the prominent feature amidst the picturesque scenery on approaching the town of Alresford from Winchester, at present occupied by Lady Paxton, who will give early planted grounds, having an extensive and important view upon the high road, from which it is screened by ornamental plantations. The estate comprises, in a most perfect and compact ring fence, about 1000 acres, of which there are some 200 in the lower or north side for a mile, including some of the best trout fishing in the county. It is remarkably healthy and a famous sporting part of the country. — It may be viewed with cards, which, with particulars and lithographic plans, may be had at Messrs. Jacob and Johnson's Library, Winchester; at the hotels, Southampton; at the Mart; of Messrs. DUNN, HOPKINS, and CARTER, Solicitors, Alresford; and of Messrs. DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall.

SURREY.—TO be SOLD a most excellent and gentlemanly FREEHOLD MANSION, about 11 miles from London, near a railroad, upon a dry grassy site with about 60 acres of land, very fine ornamental timber, and a handsome sheet of water, good gardens, grape-houses, ice-house, warm and cold baths, and every luxury and comfort that can be desired. The house is in perfect repair, and contains handsome drawing and dining rooms, library, billiard and morning rooms, all of good proportion, and averaging about 30 feet by 20 each. The situation is dry, healthy, and airy, and there is a constant and ample supply of the finest water. The handsome furniture may be had with the house.—Apply to Messrs. DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall.

The beautiful and important Estate of MAER, in Staffordshire.

MESSRS. DANIEL SMITH and SON
respectfully apprise the public that the late negotia-
tion for this very valuable and beautiful property having
terminated by the trustees rejecting the offer made, the
Estate is now fully open to Treaty. It comprises a com-
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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. VII. No. 172.]

SATURDAY, JULY 18, 1846.

(DOUBLE NUMBER.)

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Letters of information to EDWARD JOHN HORTON, No. 14, Fumivall's Inn, London, or Mr. D. BAYNTON, of Bristol, will meet immediate attention.

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MESSRS. LAMOND, SMALE, and LAMOND. Railway Share Auctioneers, beg to thank their Friends and the Public for their continued support and patronage, and to announce that their Public Sales of Railway Shares, &c. take place every Tuesday and Friday, at One o'clock, at the Hall of Commerce, Threadneedle-street, London, to which place all favours, containing instructions, are respectfully requested to be addressed.

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New Publications.

THE EDINBURGH REVIEW, No. 169, is this day published.

1. LIFE and GENIUS of LEIBNITZ.
 2. FRENCH ALGIER—The SAHARA and its TRIBES.
 3. THE LONG PARLIAMENT and SIR SIMONDS D'EWEES.
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 9. WHITE'S SCOTTISH HISTORICAL DRAMAS—EARL of GOWRIE—KING of the COMMONS.
 10. COLONIAL PROTECTION.
- London: Longman and Co. Edinburgh: A. and C. Black.

ARCHBOLD'S PRACTICE.—The Practice of Attorneys in the Courts of Common Law at Westminster, comprising the whole of the modern Practice in Personal Actions and Ejectment, with all necessary Forms, and an Appendix of Questions on all Subjects of Practice. 2 vols. 18mo. price 1*l*. 15s. Second edition. By JOHN FREDERICK ARCHBOLD, Esq. Barrister-at-Law. Published by SHAW and Sons, Fetter-lane.

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MR. MARSH (late Fuller and Marsh) respectfully informs the Public, that his PERIODICAL SALES BY AUCTION of the above description of PROPERTY will be continued throughout the present year as follows:—

Thursday, August 6. Thursday, October 1.
Thursday, September 3. Thursday, November 5.
Thursday, December 3.

Notice of sales intended to be effected by the above means should be forwarded to Mr. MARSH 14 days prior to each date.—No. 27, Bucklersbury, corner of Charlotte-row, Mansion-house, London.

Periodical Sale.—A Policy for 1,000*l*. in the Albion Assurance Company, effected in 1828.

MR. MARSH (late Fuller and Marsh) has received instructions to include in his next Periodical Sale of Reversions, Policies, &c. appointed to take place at the Mart, on THURSDAY, AUGUST 6, at Twelve o'clock, in lots, a POLICY of ASSURANCE for the SUM of 1,000*l*. effected with the Albion Life Insurance Company, the 29th August, 1828, on the life of a gentleman now aged 63, reduced annual premium 42*l*. 12s. 6d.—Particulars may be obtained at the Mart; of Messrs. MOORE and St. BARBE, Solicitors, Lynton, Hants; and at Mr. MARSH's Offices for the Sale of Reversions, Life Annuities, &c. Bucklersbury.

Periodical Sale.—Valuable Absolute Reversionary Interest in the sum of 5,818*l*. 17s. 9d. 3 per Cent. Reduced Bank Annuity; age 73.

MR. MARSH (late Fuller and Marsh) has received directions to include in his next Periodical Sale, appointed to take place at the Mart, on THURSDAY, AUGUST 6, at Twelve, in lots, the ABSOLUTE REVERSION to a One-seventh Part or Share of the Sum of 5,818*l*. 17s. 9d. 3 per Cent. Reduced Bank Annuities, now standing in the name of the Accountant-General of the Court of Chancery, and receivable on the decease of a lady now in her 73rd year.—Particulars may be obtained at the Mart; of EDMUND WARDROPER, Esq. Solicitor, Midhurst, Sussex; and at Mr. MARSH's Offices, 27, Bucklersbury.

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MR. MARSH (late Fuller and Marsh) has received instructions to include in his next Monthly Sale, appointed to take place at the Mart, on THURSDAY, AUGUST 6, at Twelve, the ABSOLUTE REVERSION to Three One-eighth Parts of the sum of 800*l*. sterling, secured on real estates, and part in the Funds, and receivable on the decease of a lady now aged 74 years.—Particulars may be obtained at the Mart; of H. H. HOSKINS, Esq. Solicitor, Loughborough, Leicestershire; and at Mr. MARSH's Offices, 27, Bucklersbury.

Periodical Sale.—Absolute Reversionary Interests in the sums of 3,045*l*. 18s. 10d. Consols, and 2,917*l*. 3s. 11d. 3½ per Cent. Reduced Bank Annuities, receivable on the decease of a gentleman, now in the 73rd year of his age.

MR. MARSH (late Fuller and Marsh) has been favoured with instructions to include in his next Monthly Sale of Reversions, Life Policies, &c. appointed to take place at the Mart, on THURSDAY, AUGUST 6, at Twelve o'clock, in lots, the ABSOLUTE REVERSION in and to a one-seventh part or share of the sum of 2,045*l*. 18s. 10d. Consols, also the Absolute Reversion in and to a one-seventh part or share of the sum of 2,917*l*. 3s. 11d. 3½ per Cent. Reduced Bank Annuities. The before-mentioned sums are standing in the names of Executors and Trustees of great respectability, and divisible on the decease of a gentleman, now in the 73rd year of his age.—Particulars may be obtained at the Mart; of EDMUND WARDROPER, Solicitor, Midhurst, Sussex; and at Mr. MARSH's Offices for the sale of all descriptions of Reversionary Property, 27, Bucklersbury.

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MR. MARSH (late Fuller and Marsh) has been instructed to include in his next Monthly Sale of Reversionary Property, appointed to take place at the Mart, on THURSDAY, August 6, at Twelve, an ANNUITY of 50*l*. per annum, most amply secured on estates producing 708*l*. 16s. per annum (the particulars and locality of which are described in the preceding advertisement), and receivable during the life of a lady, now aged 73.—Particulars may be obtained at the Mart; of EDMUND WARDROPER, Esq. Solicitor, Midhurst, Sussex; and at Mr. MARSH's Offices, Bucklersbury.

Valuable Estates for Sale, in the Isle of Ely and County of Cambridge.

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CROSS and SON, at the University Arms Hotel, Cambridge, on THURSDAY, the 30th day of July, 1846, at Four o'clock in the afternoon, subject to such Conditions of Sale as will be then and there produced, unless sooner disposed of by Private Contract, a valuable Estate, the property of John Hodson, Esq. situate in Well Fen, in the Isle of Ely aforesaid, and consists of a Mansion, erected within the last few years, lodge, with coach-house, stables, out-offices and buildings, a well arranged garden, sloping down from the Mansion to a rivulet, well supplied with fish, plantations, shrubberies; also a farm-house, barns, stables, and all other requisite buildings, cottages for labourers, draining mill; also Five Hundred acres of excellent arable and rich pasture land of the finest quality. The estate lies in a ring fence, and is most advantageously situated, being within eleven miles of Wisbech, seven miles of Downham, and fourteen miles of Ely, and two miles of the projected line of Railway from Ely to Peterborough, and within half a mile is the sixteen feet river, which is navigable into the river Nene, and from thence to Lynn, Cambridge, Peterborough, and other places. The Estate is now occupied by a most respectable and responsible tenant, at the annual rent of 1,120*l*. The excellent productive quality of the land, together with the many other advantages attached to it from its situation and otherwise, will insure to a purchaser a capital investment. The estate will be offered in one lot, and if not then sold, will be offered in the following Lots.

Lot 1 will comprise a building formerly used as a farm-house, and now divided into tenements, barn, suitable out-buildings, stables, and thirteen cottages, and 224*l*. 3s. 3d. (more or less) of land, of which 207*l*. 1s. 6d. are arable, and 15*l*. 1s. 3d. are pasture, and the rest plantation. The property comprised in the above is holden under lease from the Bishop of Ely for twenty-one years from 25th of March last, renewable every seven years.

Lot 2 will comprise 25*l*. 0*l*. 6d. (more or less) of land, of which 17*l*. 0*l*. 17d. are arable, and the rest pasture. The land contained in this lot is copyhold of the manor of Maney.

Lot 3 will comprise the mansion, with the lodge, coach-house, stables, and farm-buildings, and 251*l*. 0*l*. 16d. (more or less) of land, of which 188*l*. 3*l*. 3d. are arable, and 59*l*. 1*l*. 3d. are pasture, and the residue plantation. The property comprised in this lot is also holden under lease from the Bishop of Ely for twenty-one years from the 25th day of March last, renewable every seven years.

Lot 4 will comprise two tenements, with out-buildings, and 1*l*. 2*l*. 22d. (more or less) of garden ground. This lot is copyhold of the manor of Wisbech Barton.

Printed descriptive particulars may be obtained, ten days previous to the day of sale, at the Offices of Mr. J. O. Smeatham, Solicitor, King's Lynn; and Mr. St. Barbe Sladen, Solicitor, 14, Parliament-street, London; and of Mr. John Hodson, or the Auctioneers, Wisbech.

King's Lynn, June 30, 1846.

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The Board meets every Wednesday, at half-past Three o'clock, to receive proposals and transact other business; but any assurance for which immediate despatch is required may be effected on the same day that it is proposed.

In cases where a life assured by another has gone beyond the limits prescribed by the policy, without the knowledge of the party interested, the Society will, upon his application, and proof of the life being then in a satisfactory state of health (but subject to their medical officers' approval of the risk as applicable to such life), renew the policy upon the same terms as they would have required for its continuance had their consent been previously obtained.

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Sum Assured.	Time Assured.	Sum added to Policy
£5,000	6 Yrs. 10 Months.	£683 6s. 8d.
5,000	6 Years	600 0 0
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These Tables will be found to afford peculiar encouragement to the assurance of young lives. They embrace participating and non-participating scales.

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1 17 9	2 3 1	2 9 7	3 5 9	4 1 6	5 1 10	6 5 7	8 1 6

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Age	First Seven Years.	Remainder of Life.	
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30	1 5 10	2 11 8	
40	1 15 9	3 11 6	
50	2 14 5	5 8 10	
60	4 11 0	9 2 0	

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Annual Prem. for 1000 Rupees.			
Age	Civil Service.	Military Service.	
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SATURDAY, JULY 25, 1846.

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 Total additions made to Policies for 5,000l. which had been in force for Twenty-one Years, on the 31st December, 1845.

Age at Commencement.	Gross Additions to the Sum Assured.	Annual Premium on the Policy.	Reduction of Premiums equivalent to the Bonus declared.
10	£791 19 1	£85 4 2	£21 11 11
15	930 1 9	95 9 2	26 10 2
20	1,070 19 3	108 19 2	37 7 5
25	1,095 1 10	120 4 2	43 18 7
30	1,128 7 2	133 10 10	52 14 6
35	1,179 6 5	149 11 8	64 16 0
40	1,271 8 1	169 15 10	84 2 9
45	1,383 16 11	194 15 10	113 11 1
50	1,554 19 9	226 13 4	164 6 8

In this Society the Assured receive Four-fifths of the Profits of a long-established and successful business, the principal of the remaining fifth being further invested for their security, in addition to the guarantee of a numerous and wealthy Proprietary.

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Premiums have been determined for the assurance of persons at every age, among those afflicted with consumption, asthma, bronchitis, pneumonia, disease of the heart, apoplexy, paralysis, epilepsy, insanity, disease of the liver, dropsy, scrofula, gout, rheumatism, &c.

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SPECIMEN OF THE TABLES.
 Premium for Assuring £100.

Age	First Year.	Second Year.	Third Year.	Fourth Year.	Fifth Year.	Remainder of life
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
30	1 3 9	1 5 2	1 6 8	1 8 4	1 10 0	2 19 5
40	1 11 10	1 13 9	1 15 10	1 18 1	2 0 6	3 8 3

This Table is not only suitable to those who, from the prospect of an increasing income, or other circumstances, prefer paying a smaller sum during the first few years, but is also decidedly the best mode of insuring with the view of securing the repayment of temporary loans. It is preferable to a period policy, as it may be continued to the end of life, without requiring new certificates of health, or incurring a higher rate of premium.

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Rev. David Robinson.
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 Assurances effected on all classes of Lives, including the Lives of persons proceeding to, or residing in India and other parts of the World, of Officers actively employed in Military or Naval Service, and of persons affected with bodily or mental infirmities.

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Indian rates of Premium much lower than in any existing Company.

Age of the Assured, in every case, admitted in the Policy. Impaired state of health admitted in Policies on landed Lives.

EXTRACTS FROM THE TABLES.

EUROPEAN RATES.				INDIAN RATES.			
Annual Premium for £100.				Annual Prem. for 1000 Rupees.			
Half Premium Table.				Civil Ser. Military Ser.			
Age	First Seven Years.	Remainder of Life.		Age	One Year.	Whole Life.	Whole Life.
£ s. d.	£ s. d.	£ s. d.		Rs.	Rs.	Rs.	Rs.
20	1 0 2	2 0 4		20	20	21	25
30	1 5 10	2 11 8		30	25	28	35
40	1 15 9	3 11 6		40	32	48	55
50	2 14 5	5 8 10		50	42	65	75
60	4 11 0	9 2 0		60	62	90	105

Prospectuses and every requisite information may be obtained on application at the office.

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IRISH REPORTS.
THE LORD CHANCELLOR'S COURT by **WILLIAM DUGGAN**, Esq. Barrister-at-Law.
QUEEN'S BENCH AND CRIMINAL COURTS by **Wm. ST. LUKE BASINGTON**, LL.D. Barrister-at-Law.

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Sales by Auction.

Important and valuable Copyhold Estates (in tenure equal to freehold). Kentish-town, Middlesex, near to Highgate.

MR. R. A. WITTHALL is directed to SELL by AUCTION, at Garraway's, on THURSDAY, AUGUST 6, at Twelve, very valuable COPYHOLD ESTATES, most desirably and pleasantly situated at Kentish-town, near to Grove-terrace, on the high road from Highgate to London, to which it has a capital frontage of above 300 feet. The property will be apportioned in convenient lots, and comprehends the substantial and commodious Family Residence, known as Woodland House, with all necessary offices and outbuildings, garden, &c. The Ground Rents arising from (with the important reversion to) four extremely well-built modern dwelling-houses, erected within the last two years. Also a range of lively stables, coach houses, stable-yard, &c. complete, known as Lyall's lively stables; and small dwelling-house, with mason's shop, &c. The whole at present realizing an inadequate rental of 134l. per annum. This property claims the attention of builders and capitalists from the extensive frontage to a pretty part of the Highgate road, and the picturesque open prospect over the hilly country at the back. The tenure is unexceptionable, equal in effect to freehold. It is copyhold of the manor of Cantlowes, at quit rents, and fines little more than nominal in amount. The property will have the advantage of being sold with almost immediate possession, being (with one exception) in the occupation of yearly tenants.—Printed particulars and conditions of sale, with lithographed plans, will be issued ten days prior to sale, and may be obtained of the respective tenants, who will shew the premises; also of Mr. BABER, House Agent, 6, Montague-place, Kentish-town; of Mr. WITHALL, Solicitor, 7, Parliament-street; at GARRAWAY'S; and at the OFFICES of the AUCTIONEER, 80, Cheapside.

Over Wyersdale, Bolton-by-the-Sands, Farleton, Cloughton and Halton, Lancashire.

TO be SOLD by AUCTION, by Mr. HODGSON, at the King's Arms Hotel, in Lancaster, on THURSDAY, the 27th day of AUGUST next, at Five o'clock in the afternoon (unless previously disposed of by private contract, of which due notice will be given), the valuable and highly desirable FREEHOLD ESTATES, situate in the townships of Over Wyersdale, Bolton-by-the-Sands, Farleton, Cloughton, and Halton, all in the county of Lancaster, late the property of J. Stout, Esq. dec.; containing together 1300 statute acres, or thereabouts, namely, 814 of inclosed lands, and 486 of uninclosed lands, which will be offered in the following or such other lots as may be agreed upon at the time of sale, and subject to such conditions as will be then and there produced, consisting of—

LOT 1. IN OVER WYERDALE.—All that substantial and commodious Messuage or Farm-house, with the outbuildings, garden, homestead, and the several closes of arable, meadow, pasture, and wood land thereto belonging, situate and being at Over Wyersdale, in the county of Lancaster, and known as the "Catashaw Estate," and containing altogether 373a. 3r. 32p. Catashaw Fell, an excellent moor land pasture, 486a. 0r. 0p. This estate is tithe free, distant from the county town of Lancaster nine miles, and from the market town of Garstang five miles, and is now in lease to Mr. William Rhodes, of which three years will be unexpired on the 14th day of February next. The Farm-buildings are substantial and commodious, and replete with every convenience. The land (which is principally in meadow and pasture) has recently been improved at a very considerable expense, and is of excellent quality as a stock farm. In lease with the farm, are 310 sheep, of different kinds, as specified in the lease, which the lessee is bound to leave upon the property at the end of the term. The Wood upon this estate, which extends over about fifteen acres, is to be taken by the purchaser at a valuation, which will be produced at the time of sale.

LOT 2. IN BOLTON-BY-THE-SANDS.—All those two messuages or farm-houses, with the outbuildings, folds, gardens, and orchards, and the several closes or parcels of land thereto belonging, and occupied therewith, known by the name of the "Bolton Holme Estate," situate at Bolton-by-the-Sands, in the county of Lancaster, and containing altogether 82a. 1r. 0p.

This estate, which is in the occupation of Mr. Christopher Heaton, as yearly tenant, is most delightfully situated on the shores of Morecambe Bay, commands extensive views of the Westmoreland and Cumberland mountains, and possesses building sites rarely equalled for beauty and extensive prospect. The dwelling-houses and farm buildings are suitable and commodious, and in complete repair. The land is in excellent condition, and of superior quality, and conveniently situated within a mile of the picturesque village of Bolton-by-the-Sands, and about four miles from the market town of Lancaster. The Lancaster and Carlisle Railway, about to be opened, passes through a portion of the estate, and will bring the property within three hours of both Manchester and Liverpool. Annexed to this estate is a pew, on the north side of the parish church.

LOT 3. IN FARLETON.—All that messuage or dwelling-house and farm buildings, with the several closes, inclosures, or parcels of arable, meadow, and pasture land, occupied therewith, situate in the township of Farleton, in the county of Lancaster, now in the occupation of Mr. Robert Burrow, as yearly tenant, and containing 50a. 1r. 4p.

All that allotment or parcel of land situate in Cloughton, occupied with the last described premises, and containing 6a. 2r. 10p.—62a. 3r. 30p.

This estate is situate about two miles from the town of Hornby (where a market for cattle is held every fortnight), and seven miles from the market-town of Lancaster.

LOT 4. IN CLAUGHTON.—All those four closes or parcels of land, situate in the township of Cloughton, in the county of Lancaster, in the occupation of Mr. Robert Burrow, as yearly tenant, and containing together 5a. 3r. 20p.

LOT 5. IN HALTON.—All that messuage or farm-house, with the outbuildings, garden, and orchard, and the several closes of rich meadow, pasture, and arable land thereto belonging, situate at Halton, in the county of Lancaster, and known by the name of the "Mansion House Estate," and containing in the whole 82a. 0r. 35p.

This estate, which comprises some of the best land in the neighbourhood, is well adapted for separate lots, and may be offered for sale in portions to suit the wishes of purchasers. With the exception of a small parcel of land, called "Bank and Croft," containing 2a. 0r. 35p. it is in

the occupation of Mr. Thos. Cornthwaite, under a lease for a term of seven years, from Candlemas and May Day, 1841.

LOT 6.—Also, all that messuage or farm-house, with the outbuildings, garden, and several closes or parcels of meadow, pasture, and arable land, thereto belonging, situate at Halton aforesaid, and containing altogether 47a. 3r. 29p.

This farm is in the occupation of Mr. George Shuttleworth, as yearly tenant.

LOT 7. Also, also all that Messuage or Farm-house, with the garden and outbuildings, and the several closes or parcels of excellent meadow, pasture, and arable land, occupied therewith, situate at Halton aforesaid, and containing 91a. 2r. 11p. This farm is also in the occupation of Mr. George Shuttleworth, as yearly tenant.

LOT 8. Also, all those four closes or parcels of excellent meadow and pasture land, situate at Halton aforesaid, and known by the names, and containing the respective quantities following; that is to say,—Broad Meadow, 5a. 0r. 25p.; Back Arrows Meadow, 1a. 0r. 21p.; Do. do. 2a. 0r. 19p.; Back Arrows Top, 3a. 1r. 36p.; total, 11a. 3r. 21p.

LOT 9. Also, all that close of land, situate in Halton aforesaid, and known by the name of "Nittinghaugh," containing 2a. 1r. 27p.

LOT 10. Also, all that close of Land, situate in Halton aforesaid, and known by the name of "Mill Flat," containing 3a. 0r. 4p.

The above lots, 8, 9, and 10, are in the occupation of Mr. Owen Garnett, as yearly tenant.

LOT 11. And also these four closes, inclosures, or parcels of Land, situate at Halton aforesaid, called the "Oakhead Allotments," and containing together 50a. 1r. 13p. These allotments are in the occupation of Mr. George Presow, as yearly tenant.

The respective tenants will shew the property; and for further information application may be made to HIGGIN and MAXTED, Solicitors, Lancaster, at whose office plans and descriptive particulars of the estates may be obtained. Lancaster, 14th July, 1846.

Periodical Sales (established in the year 1803) of Reversions, Life Interests, Annuities, Policies of Assurance, Advertisements, Next Presentations, Rent Charges in lieu of Tithes, Post-obit Bonds, Tontines, Debentures, Ground Rents, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and all Public Undertakings.

MESSRS. SHUTTLEWORTH and SONS

respectfully inform the public, that upwards of 40 years' experience having proved the classification of this species of property to be extremely advantageous and economical to vendors, and equally satisfactory and convenient to purchasers, the PERIODICAL SALES of reversionary interests, policies of insurance, tontines, debentures, advertisements, next presentations, all securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through 1846, as follows:—

Friday, August 7	Friday, October 3
Friday, September 4	Friday, November 6
Friday, December 4	

Particulars may be had Ten days previous to each sale, at the Royal Hotel, Manchester; the Adelphi Hotel, Liverpool; Dea's Royal Hotel, Birmingham; the Angel, Oxford; the Eagle and Child, Cambridge; at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Valuable Estates for Sale, in the Isle of Ely and County of Cambridge.

TO be SOLD by AUCTION, by Messrs.

CROSS and SON, at the University Arms Hotel, Cambridge, on THURSDAY, the 30th day of July, 1846, at Four o'clock in the afternoon, subject to such Conditions of Sale as will be then and there produced, unless sooner disposed of by Private Contract, a valuable Estate, the property of John Hodson, Esq. situate in Well Fen, in the Isle of Ely aforesaid, and consists of a Mansion, erected within the last few years, lodge, with coach-house, stables, out-offices and buildings, a well arranged garden, sloping down from the Mansion to a rivulet, well supplied with fish, plantations, shrubberies; also a farm-house, barns, stables, and all other requisite buildings, cottages for labourers, draining mill; also Five Hundred acres of excellent arable and rich pasture land of the finest quality. The estate lies in a ring fence, and is most advantageously situated, being within eleven miles of Wisbech, seven miles of Downham, and fourteen miles of Ely, and two miles of the projected line of Railway from Ely to Peterborough, and within half a mile is the sixteen feet river, which is navigable into the river Nene, and from thence to Lynn, Cambridge, Peterborough, and other places. The Estate is now occupied by a most respectable and responsible tenant, and the annual rent of 1,120l. The excellent productive quality of the land, together with the many other advantages attached to it from its situation and otherwise, will insure to a purchaser a capital investment. The estate will be offered in one lot, and if not then sold, will be offered in the following Lots.

LOT 1 will comprise a building formerly used as a farm-house, and now divided into tenements, barn, suitable out-buildings, stables, and thirteen cottages, and 234a. 2r. 36p. (more or less) of land, of which 207a. 1r. 5p. are arable, and 18a. 1r. 39p. are pasture, and the rest plantation. The property comprised in the above is held under lease from the Bishop of Ely for twenty-one years from 25th of March last, renewable every seven years.

LOT 2 will comprise 25a. 0r. 6p. (more or less) of land, of which 17a. 0r. 17p. are arable, and the rest pasture. The land contained in this lot is copyhold of the manor of Maney.

LOT 3 will comprise the mansion, with the lodge, coach-house, stables, and farm-buildings, and 251a. 0r. 16p. (more or less) of land, of which 188a. 3r. 87p. are arable, and 59a. 1r. 34p. are pasture, and the residue plantation. The property comprised in this lot is also held under lease from the Bishop of Ely for twenty-one years from the 25th day of March last, renewable every seven years.

LOT 4 will comprise two tenements, with out-buildings, and 1a. 3r. 23p. (more or less) of garden ground. This lot is copyhold of the manor of Wisbech Barton.

Printed descriptive particulars may be obtained, ten days previous to the day of sale, at the Offices of Mr. J. O. Smeatham, Solicitor, King's Lynn; and Mr. St. Barbe Sladen, Solicitor, 14, Parliament-street, London; and of Mr. John Hodson, or the Auctioneers, Wisbech.

King's Lynn, June 30, 1846.

Oatlands Pleasure Grounds and Park, Surrey, containing 236 acres, now divided into building lots, with immediate possession, within one mile of the Weybridge and Walton stations on the South-Western Railway, and half an hour's ride of the terminus in London.

MESSRS. DRIVER have been favoured with instructions to OFFER to PUBLIC COMPETITION, at the Auction Mart, near the Bank of England, on TUESDAY, the 4th of AUGUST, in 16 lots, the remaining portion of the above renowned and highly-admired DOMAIN, formerly the property of his late Royal Highness the Duke of York, together with the valuable Freehold Manors of Byfleet, Weybridge, and Walton-upon-Leigh. The whole of the above property is Freehold, and the lots varying in quantity to 20 acres and upwards, from their available terrace of table land extending down to the magnificent Broadwater Lake, and commanding highly picturesque, and extensive rich views of the surrounding country and the river Thames, and from their inviting character and soil, are so disposed as to form peculiarly eligible sites for the erection of Villa Residences, with the advantage, from the stately and ornamental timber on the several lots, of securing a place already formed. The present gravel road, so long the acknowledged and highly admired drive through the park, leading from Walton to Weybridge, affording, at all points, fine prospects, is preserved as a public road, and forms the approach and frontage to the various lots. There is also a Villa Residence and land, and a farm of 48 acres, with cottage, &c. thereon. The far-famed Grotto, which is divided into four compartments, with its admirable arrangement of, and justly celebrated, fine and costly collection of rare conchs and other valuable shells, large and various specimens of coral, minerals, and petrefactions, &c. will also be included in this sale. The materials of Oatlands Mansion and offices, &c. and the homestead will be sold by auction, in lots, about fourteen days after this sale.—Printed particulars, with plans annexed, may be had of Mr. Haynes, at the Farm at Oatlands; at the White Hart, Windsor; Griffin, Kingston; Swan, Chertsey; of Messrs. FERE, FORSTER, and CO. Solicitors, Lincoln's-inn; at the Auction Mart, near the Bank of England; and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Parliament-street, London.

Freehold Ground Rents, Building Land, and Residence, Bermondsey, Surrey.

MESSRS. DRIVER have been favoured with instructions to offer to PUBLIC COMPETITION, at the Auction Mart, near the Bank of England, on FRIDAY, the 14th day of AUGUST, at Twelve o'clock, nine lots, sundry very valuable FREEHOLD ESTATES, principally exonerated from land-tax, situate in the Grange-road, Bermondsey, comprising ground rents amounting to about 134l. per annum, well and amply secured on numerous dwelling-houses, large yards, and premises, of the estimated annual value of 620l. with the valuable reversion, in 22 years, to the fee thereof.

Likewise, a FREEHOLD DWELLING-HOUSE, adjoining the above, in the occupation of the Rev. Mr. Armstrong, at the low annual clear rent of 42l.

Also, a valuable PLOT of FREEHOLD BUILDING GROUND, containing about half an acre, situate at the rear thereof.

Printed specifications, with plans annexed, may be had at the place of sale; of Robert Thomas Scarles, Esq. Kent-road; of Messrs. POWELL, F. and W. BRODERIP, and WILDE, Solicitors, 9, Lincoln's-inn New-square; and of Messrs. DRIVER, Surveyors and Land Agents, Parliament-street, London.

Valuable Freehold Ground Rents, an excellent Freehold Dwelling-House and Premises, and Two Freehold Houses in the rear (the whole land-tax redeemed) in the High Camberwell-road, Surrey.

MESSRS. DRIVER are favoured with instructions to OFFER to PUBLIC COMPETITION, at the Auction Mart, Bartholomew-lane, on FRIDAY, the 14th of AUGUST, at Twelve o'clock, in Four lots, sundry valuable FREEHOLD ESTATES, exonerated from land-tax, very eligible situate on the high Camberwell-road, comprising a Freehold Ground Rent, of 55l. per annum, most amply secured upon six private Dwelling-Houses, being Nos. 21, 22, 23, 24, 25, and 26, Grosvenor-place, of the annual value of 350l., with the valuable Reversion to the Fee thereof; another Freehold Ground Rent of 5l. per annum, well secured upon a pair of Houses in the rear, of the value of 70l. per annum, also with the valuable Reversion to the Fee thereof; a Freehold Dwelling, No. 29, Grosvenor-place, and extensive Premises behind on lease, to and in the occupation of Mr. Freeman, miller and corn-dealer, at the very moderate clear annual rent of 50l. free from all deductions (property-tax excepted); likewise Two Freehold Houses in Windmill-lane, immediately adjoining the above, in the respective occupations of Mr. Rutland and Miss Cressy, at rents amounting together to about 50l. per annum.—To be viewed by permission of the respective tenants, and printed specifications may be had of Messrs. DESBOROUGH and YOUNG, Solicitors, 6, Sise-lane, Bucklersbury; at the Auction Mart, near the Bank of England; and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Whitehall.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. VII. No. 174.]

SATURDAY, AUGUST 1, 1846.

Money to Lend.

MONEY.—4,000*l.* and Smaller Sums, to be LENT on Landed Security for a term of years, at four per cent.; and on Freehold Buildings at reasonable rates of interest.

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WANTED by the Advertiser, a SITUATION as CLERK to a Gentleman holding the appointment of a District (including a Poor Law Union, &c.). The Advertiser is perfectly acquainted with Union and Parochial business, and the Law of Settlement, and capable of taking the entire management of those departments; is a good Accountant, of business-like habits, and acquainted with the usual routine of a Solicitor's Office. Reference undeniable.

Address X, LAW TIMES Office, 29, Essex-street, Strand.

A SOLICITOR, who for the last six years has conducted a small practice in a country town, is desirous of an ENGAGEMENT as MANAGING CLERK. Address by letter (post-paid) with particulars, including amount of salary, S. T. M. TRIMEN, Law Stationer, 11, Portland-street, Lincoln's-inn-fields.

LAW.—A GENTLEMAN fully competent to conduct the general business of an office under the superintendence of a principal, is desirous of obtaining a SITUATION in a respectable Solicitor's office, either in Town or Country.

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LAW.—WANTED by a Gentleman about twenty-eight years of age, a situation as CLERK in an office where he would copy and engross, and make himself generally useful. Salary, 50*l.* per annum.

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LAW.—WANTED, by an experienced Clerk, who has a thorough knowledge of the general routine of business, including Conveyancing, Abstracting, and making out Bills of Costs, a SITUATION in a Solicitor's Office. Satisfactory references will be given.

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TO COUNTRY SOLICITORS.—The Advertiser, a good Accountant, is desirous of obtaining a SITUATION as CLERK. He is fully qualified to take the entire management of Insolvency business without the assistance of the principal. He understands Railway business generally, including Referencing, Parliamentary, and Surveying. The Advertiser has held the situation he has just left between three and four years.

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Address, post paid, B. 97, Post Office, Liverpool.

LAW.—WANTED in an Office in the Country, a MANAGING CLERK, who thoroughly understands the routine of an attorney's office. The having a knowledge of Union and Magisterial business will be preferred. Unexceptionable references will be required.—Applications, stating age, salary required, and other particulars, may be addressed to A. B. Post-office, Settle.

THE LONG VACATION.—A Professional Gentleman residing in Mid Kent, within five minutes' walk of the South-Eastern Railway station, in a most picturesque and healthful neighbourhood, is anxious to receive a Single Gentleman or Married Couple, either to BOARD and LODGE for the next three months, or he is willing to give up to them a suite of Furnished Apartments, on moderate terms.

Apply, by letter, to A. Z. Post Office, Maidstone, Kent.

A CARD.—A Solicitor residing in Monmouthshire, who wishes to Article his Son from home, proposes to take the Son of another Solicitor whose views may be similar as an Articled Clerk, by way of exchange. The most satisfactory references will be given and required.

Address, M. W. care of Mr. FARRER, Beacon Office, Monmouth.

LAW.—GREAT SAVING.—BRIEFS and ABSTRACTS, 6d. per sheet.—All other Writings and Engrossments on paper, 1d. per folio. Deeds, and all Parchment work, 1*l.* per folio.

Prepaid letters and parcels addressed to KERR and CO. Law Stationers, 13, Chichester House, Chancery-Lane, London, will meet with immediate attention.

Legal Notices.

LANCASHIRE INTERMEDIATE SESSIONS. Notice is hereby given, that a GENERAL SESSION of the Peace for the County Palatine of LANCASTER, for the trial of persons committed and held to bail on charges of felony and misdemeanor, will be held at the Court House in Preston, on FRIDAY, the Twenty-eighth day of August next, at Ten o'clock in the Forenoon; and at the New Bailey Court House in Salford, on MONDAY, the Thirty-first day of August, next, at Ten o'clock in the Forenoon.

GORST and BIRCHALL, Deputy Clerks of the Peace. Clerk of the Peace Office, Preston, July 20, 1846.

ATTORNEYS OF LONDON.—Some of you will lose 500*l.* per annum, some 300*l.*, some 200*l.*, some 100*l.* more or less "for life" by the passing of the proposed Small Debts Act. Surely this is an incentive on behalf of yourselves and families to arouse you to a sense of duty.

A meeting is proposed by a few members of the Profession on TUESDAY EVENING next, at Seven o'clock precisely, at the Gray's-inn Coffee-house, which you are earnestly solicited to attend—not to oppose the passing of the Small Debts Act (because that would be folly and madness), but to struggle to obtain the insertion of a saving optional clause with our clients to sue unrestrictedly in the Superior Courts, if they choose. This is all we can hope for; this is our last struggle. Lend a hand and come forward like men!

E. CLARKE, Hon Sec. pro tem.

N.B.—Nothing to pay.

CAPTAIN, otherwise MAJOR BARNES.

A REWARD of TWO SOVEREIGNS will be paid by a post-office order, or in cash, to any person who will, by letter or otherwise, inform either of the under-named References the residence of the above-named gentleman, whose description is as follows:—He has had the misfortune to lose his right arm; he appears to be from 35 to 36 years of age, about 5 feet 7½ in. high, stout made, and looks rather weather-beaten, and is now, or was lately, an officer in the East India Military Service, with a pension. He some ten or twelve years ago resided at Spalding, in Lincolnshire; afterwards (about four years since) at Tenby, in Pembrokeshire; and about three months ago at Leamington, in Warwickshire, under the name of Johnson.

Letters of information to EDWARD JOHN HORTON, No. 11, Fumival's Inn, London; or Mr. D. BAYNTON, of Bristol, will meet immediate attention.

RAILWAY SHARES BY PUBLIC SALE.

MESSRS. LAMOND, SMALE, and LA-MOND. Railway Share Auctioneers, beg to thank their Friends and the Public for their continued support and patronage, and to announce that their Public Sales of Railway Shares, &c. take place every Tuesday and Friday, at One o'clock, at the Hall of Commerce, Threadneedle-street, London, to which place all favours, containing instructions, are respectfully requested to be addressed.

All Scrip and Share Certificates must be deposited for examination at least one day previously to their being offered; and advices of results will be forwarded by the first post after the sale, and the proceeds immediately disposed of according to instructions.

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Lot 2.—LOWER COMB ESTATE, consisting of an excellent farm-house with convenient farm-buildings in complete repair, and about 102 acres of arable, pasture, and wood land, within a ring fence, situate in the parish of Cadeleigh aforesaid. This estate is near to Lot 1, and, with the exception of the plantation, 4*ac.* 3*r.* 7*p.* which is in hand, is now in the occupation of Mr. Samuel Daw, as tenant thereof, for a term of ten years from Lady-day, 1844, at the yearly rent of 90*l.* The plantation upon this property, 4*ac.* 3*r.* 7*p.* is about twenty years' growth. The above estates are situate four miles from the excellent market-town of Tiverton, and ten miles from Exeter, near the turnpike-road connecting these towns.

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The amount of excision from the other digests may be judged by this, that the Digest before us, although embracing the reports only for *half-a-year*, contains *more cases* than does either of the others for a *whole year*, and the material index of the names of the cases digested occupies no less than *twenty-four* closely printed columns. There is also a table of the statutes cited, arranged in chronological order.

"It will not become us to express an opinion upon this

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Over Wyersdale, Bolton-by-the-Sands, Farleton, Cloughton and Halton, Lancashire.

TO be SOLD by AUCTION, by Mr. HODGSON, at the King's Arms Hotel, in Lancaster, on THURSDAY, the 27th day of AUGUST next, at Five o'clock in the afternoon (unless previously disposed of by private contract, of which due notice will be given), the valuable and highly desirable FREEHOLD ESTATES, situate in the townships of Over Wyersdale, Bolton-by-the-Sands, Farleton, Cloughton, and Halton, all in the county of Lancaster, late the property of J. Stout, Esq. dec.; containing together 1300 statute acres, or thereabouts, namely, 814 of inclosed lands, and 486 of uninclosed lands, which will be offered in the following or such other lots as may be agreed upon at the time of sale, and subject to such conditions as will be then and there produced, consisting of

LOT 1. IN OVER WYERDALE.—All that substantial and commodious Messuage or Farm-house, with the outbuildings, garden, homestead, and the several closes of arable, meadow, pasture, and wood land thereto belonging, situate and being at Over Wyersdale, in the county of Lancaster, and known as the "Catchaw Estate," and containing altogether 373a. 3r. 22p. Catshaw Fell, an excellent moor land pasture, 486a. 0r. 0p. This estate is tithe free, distant from the county town of Lancaster nine miles, and from the market town of Garstang five miles, and is now in lease to Mr. William Rhodes, of which three years will be unexpired on the 14th day of February next. The Farm-buildings are substantial and commodious, and replete with every convenience. The land (which is principally in meadow and pasture) has recently been improved at a very considerable expense, and is of excellent quality as a stock farm. In lease with the farm, are 310 sheep, of different kinds, as specified in the lease, which the lessee is bound to leave upon the property at the end of the term. The Wood upon this estate, which extends over about 15 acres, is to be taken by the purchaser at a valuation, which will be produced at the time of sale.

LOT 2. IN BOLTON-BY-THE-SANDS.—All those two messuages or farm-houses, with the outbuildings, folds, gardens, and orchards, and the several closes or parcels of land thereto belonging, and occupied therewith, known by the name of the "Bolton Holme Estate," situate at Bolton-by-the-Sands, in the county of Lancaster, and containing altogether 82a. 1r. 0p.

This estate, which is in the occupation of Mr. Christopher Heaton, as yearly tenant, is most delightfully situated on the shores of Morecambe Bay, commands extensive views of the Westmoreland and Cumberland mountains, and possesses building sites rarely equalled for beauty and extensive prospect. The dwelling-houses and farm buildings are suitable and commodious, and in complete repair. The land is in excellent condition, and of superior quality, and conveniently situated within a mile of the picturesque village of Bolton-by-the-Sands, and about four miles from the market town of Lancaster. The Lancaster and Carlisle Railway, about to be opened, passes through a portion of the estate, and will bring the property within three hours of both Manchester and Liverpool. Annexed to this estate is a pew, on the north side of the parish church.

LOT 3. IN FARLETON.—All that messuage or dwelling-house and farm buildings, with the several closes, inclosures, or parcels of arable, meadow, and pasture land, occupied therewith, situate in the township of Farleton, in the county of Lancaster, now in the occupation of Mr. Robert Burrow, as yearly tenant, and containing 56a. 1r. 4p.

All that allotment or parcel of land situate in Cloughton, occupied with the last described premises, and containing 6a. 2r. 16p.—62a. 3r. 20p.

This estate is situate about two miles from the town of Hornby (where a market for cattle is held every fortnight), and seven miles from the market-town of Lancaster.

LOT 4. IN CLAUGHTON.—All those four closes or parcels of land, situate in the township of Cloughton, in the county of Lancaster, in the occupation of Mr. Robert Burrow, as yearly tenant, and containing together 5a. 3r. 26p.

LOT 5. IN HALTON.—All that messuage or farm-house, with the outbuildings, garden, and orchard, and the several closes of rich meadow, pasture, and arable land thereto belonging, situate at Halton, in the county of Lancaster, and known by the name of the "Mansion House Estate," and containing in the whole 82a. 0r. 35p.

This estate, which comprises some of the best land in the neighbourhood, is well adapted for separate lots, and may be offered for sale in portions to suit the wishes of purchasers. With the exception of a small parcel of land, called "Bank and Croft," containing 2a. 0r. 35p. it is in the occupation of Mr. Thos. Cornthwaite, under a lease for a term of seven years, from Candlemas and May Day, 1841.

LOT 6.—Also, all that messuage or farm-house, with the outbuildings, garden, and several closes or parcels of meadow, pasture, and arable land, thereto belonging, situate at Halton aforesaid, and containing altogether 47a. 2r. 29p.

This farm is in the occupation of Mr. George Shuttleworth, as yearly tenant.

LOT 7. Also, also all that Messuage or Farm-house, with the garden and outbuildings, and the several closes or parcels of excellent meadow, pasture, and arable land, occupied therewith, situate at Halton aforesaid, and containing 91a. 2r. 11p. This farm is also in the occupation of Mr. George Shuttleworth, as yearly tenant.

LOT 8. Also, all those four closes or parcels of excellent meadow and pasture land, situate at Halton aforesaid, and known by the names, and containing the respective quantities following; that is to say,—Broad Meadow, 5a. 0r. 25p.; Back Arrows Meadow, 1a. 0r. 21p.; Do. do. 2a. 0r. 19p.; Back Arrows Top, 3a. 1r. 36p.; total, 11a. 3r. 21p.

LOT 9. Also, all that close of land, situate in Halton aforesaid, and known by the name of "Nithinghaugh," containing 2a. 1r. 27p.

LOT 10. Also, all that close of Land, situate in Halton aforesaid, and known by the name of "Mill Flat," containing 3a. 0r. 4p.

The above lots, 8, 9, and 10, are in the occupation of Mr. Owen Garnett, as yearly tenant.

LOT 11. And also these four closes, inclosures, or parcels of land, situate at Halton aforesaid, called the "Oakenhead Allotments," and containing together 50a. 1r. 12p. These allotments are in the occupation of Mr. George Presow, as yearly tenant.

The respective tenants will shew the property; and for further information application may be made to HIGGIN and MAXTED, Solicitors, Lancaster, at whose office plans and descriptive particulars of the estates may be obtained.

Lancaster, 14th July, 1846.

The DELL, one of the most admired Bijoux of Windsor Park, and long distinguished for its unrivalled and unsurpassingly magnificent View of the Castle.

MESSRS. DANIEL SMITH and SON respectfully announce that the late sale of this estate having been abandoned, they are commissioned by the noble proprietor to SUBMIT to PUBLIC SALE, at the Auction Mart, on TUESDAY, AUGUST 18, at Twelve (unless an acceptable offer shall be previously made by private contract), the above delightful and highly distinguished FREEHOLD VILLA, at Bishops-gate, a remarkably dry and healthy spot, overlooking one of the most romantic portions of the park, through which is its beautiful drive of only three miles to Windsor. It contains an elegant and spacious suite of reception rooms and carved oak library, and altogether accommodation for a large family, with handsome conservatories, partly surrounding the house, capital stabling and coach-houses, &c. walled garden, complete farm-yard and cottage, entrance lodge, beautiful pleasure grounds, lawn and paddocks, in all about 17 acres, abundantly supplied with spring and soft water. A cottage and about seven acres, a little detached, might be a separate lot. The whole is in the most perfect order, and the purchaser may treat for the elegant and useful fittings and furniture with the estate, so as to have immediate possession.

This enviable retreat can only be viewed with cards, which, with particulars, may be had at their offices in Waterloo-place, Pall-mall; or of Messrs. PEMBERTON, CRAWLEY, and GARDINER, Solicitors, Whitehall-place.

NOTICE as to the GREAT ESTATE of WHITTLESEA.

MESSRS. DANIEL SMITH and SON are commissioned by the noble Proprietors to announce that the SALE of this very important and valuable FREEHOLD PROPERTY, which was withdrawn last year, will positively take place at the Auction Mart, in September next (unless an acceptable offer shall be previously made). The Estate of Whittlesea lies near the city of Peterborough, and comprises the vast manors of Whittlesea, embracing nearly 25,000 acres, and in which are nearly 200 or 300 copyholders, paying quit-rents and fines, the greater part of the flourishing town of Whittlesea, the bank premises, several private residences, inns, shops, &c. being held of the said manor. Also, above 2,100 acres of most fertile land, divided into compact farms, and let at low rents, to a highly respectable and intelligent tenantry, with some very valuable dispersed parcels of land adjoining, and contiguous to the town, portions eligible for building. Also, the Advowson of the Vicarage of St. Mary, and the Freehold Rent Charges in lieu of tithes, extending over nearly 18,000 acres. There is a navigable river and canal through the estate, and the railway from Peterborough to Ely, &c. passes through Whittlesea.—Particulars will be published when the day and arrangements of sale are fixed; and in the interim information may be had of Messrs. JONES, BATEMAN, and BENNETT, Solicitors, Lincoln's-inn; of Mr. John Waddelow, of Whittlesea, who will shew the estates; and of Messrs. DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall, who are authorized to receive offers for the whole property by private contract.

Surrey.—A Capital Mansion, and Sixty Acres of Land, about Ten Miles from London.

MESSRS. DANIEL SMITH and SON respectfully announce that they will shortly offer for SALE by AUCTION (unless previously disposed of by Private Contract), a most excellent and gentlemanly FREEHOLD MANSION, near a railroad, upon a dry gravelly soil, with about sixty acres of land, very fine ornamental timber, and a handsome sheet of water, good gardens, grape-houses, icehouse, warm and cold baths, and every luxury and comfort that can be desired. The house is in perfect repair, and contains handsome drawing and dining-rooms, library, billiard and morning rooms, all of good proportions, and averaging about thirty by twenty feet each. The situation is dry, healthy, and airy, and there is a constant and ample supply of the finest water. The handsome furniture may be had with the house.—For further particulars, with cards to view, apply at their offices in Waterloo-place, Pall-mall.

St. Leonard's, in Windsor Park.—The splendid seat of the late William Dawson, Esq. for the last four years occupied by Lord Haddo, delightfully situated adjoining St. Leonard's Hill (the noble seat of Colonel Harcourt), amidst the most romantic and elevated portions of the Royal Park, with a magnificent view of the Castle, the Thames, and rich surrounding country; also a former portion of the forest adjoining, studded with venerable timber, offering a choice site for building.

MESSRS. DANIEL SMITH and SON have the honour to announce to the nobility and others seeking a capital and beautifully-situated residence, that they are instructed to SUBMIT to PUBLIC SALE, at the Auction Mart, on TUESDAY, AUGUST 18, at Twelve (unless an acceptable offer shall be previously made by private contract), in two Lots, the above most justly-admired and elegant noble MANSION, admitted to stand unrivalled (except, perhaps, by its princely neighbour St. Leonard's-hill) in the whole circle of the court. The mansion is modern and of an elegant and chaste style of architecture, placed on the verge of a romantic and finely-wooded eminence, perfectly secluded, overlooking a lovely vale and a great breadth of the Royal park, with the magnificent Castle towering in the back ground, with the rich banks of the Thames, Eton College, and other interesting objects. The house contains a splendid suite of rooms with east and south aspects, a beautiful conservatory, paved terrace, &c. surrounded by a rich small park of nearly 100 acres, adorned with handsome timber, noble avenue of elms, a sheet of water, with extensive terrace and other walks. About 20 acres adjoining will be offered in a separate lot, extending from St. Leonard's-hill to the Winkfield-road, opposite Forest-hill, presenting a fine and romantic building site, bounded on one side by Lot 1, and on the other by some of the private drives and plantations of the Royal Park, through which, and the beautiful grounds of Colonel Harcourt, are the approaches to this delightful domain.—The estate can be viewed only with cards, which may be had at Messrs. DANIEL SMITH and SON'S Offices, in Waterloo-place, Pall-mall, and Windsor; or of THOMAS WEBSTER, Esq. Solicitor, Queen-street, Cheapside.

The Estate of New Place, with its Mansion and famous Trout Fishery, close to Alresford, Hants, about eight miles from Winchester and 18 from Southampton.

MESSRS. DANIEL SMITH and SON are commissioned to SELL by AUCTION, at the Mart, near the Bank of England, in AUGUST next (unless an acceptable offer shall be previously made by Private Contract), the above valuable FREEHOLD PROPERTY, comprising the mansion of New Place, the prominent feature amidst the picturesque scenery on approaching the town of Alresford from Winchester, at present occupied by Lady Paxton, who will give early possession. The house stands elevated, surrounded by well-planted grounds, having an extensive and important frontage upon the high road, from which it is screened by ornamental plantations. The estate comprises, in a most perfect and compact ring fence, about 105 acres, part very valuable water meadows, extending to and embracing the river, which bounds it on the lower or north side for a mile, affording some of the best trout fishing in the county. It is a remarkably healthy and a famous sporting part of the country. It may be viewed with cards, which, with particulars and lithographic plans, may be had at Messrs. Jacob and Johnson's library, Winchester; at the hotels, Southampton; at the Auction Mart, of Messrs. DUNN, CARTER, and HOPKINS, Solicitors, Alresford; and of Messrs. DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall.

The Sedgehill Estate and Farm in Wilts, on the Borders of Dorsetshire, altogether about 310 Acres, in the rich Vale between Shaftesbury and Ponthill, in a famous Sporting Country.

MESSRS. DANIEL SMITH and SON are directed to OFFER for PUBLIC SALE, at the Mart, near the Bank of England, on FRIDAY, AUGUST 7, at Twelve (unless an acceptable offer shall be previously made by Private Contract), in two lots, a very desirable FREEHOLD Gentleman's RESIDENCE, on a moderate scale, though capable of accommodating a good establishment. It is a modern house, of a handsome uniform elevation, with all suitable offices, stabling, walled garden, farm buildings, lodge, &c. surrounded by a very rich little park, studded with fine oak and other timber, commanding some highly picturesque scenery, embracing the finely varied range of hills and domain of Pitt House, the seat of John Bennett, Esq. and portions of the Ponthill Estate, together with a valuable Farm adjoining, with all requisite buildings, labourers' cottages, &c. Also (in a separate lot), a highly conditioned and compact Farm, of about 170 acres, in the parish of Sedgehill, with a neat farm-house and homestead, all recently put into substantial repair, and let to a highly respectable tenant.—The estates may be viewed by application on the premises; and descriptive particulars, with plans, may be had at the inns at Shaftesbury, Salisbury, &c.; of J. BATTEN, Esq. Solicitor, Yeovil; and of DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall, London.

HANTS.—Borough of Petersfield, near Southampton, Portsmouth, and the Isle of Wight, and within about two miles of the intended direct London and Portsmouth Railway; Delightful Gentleman's Residence, &c.

MR MINCHIN is instructed to SELL by AUCTION, at the Red Lion Hotel, Petersfield, on THURSDAY, the 13th day of AUGUST, 1846, at Twelve o'clock at noon, one of the most pleasantly diversified Estates in the county, entirely Freehold, and free from Land Tax and Rectorial Tithes. It is situate in the parishes of Steep and Froxfield, and comprises a VILLA RESIDENCE, several FARMS, a RENT-CHARGE of 300*l.* per annum, in lieu of Rectorial Tithes, and a MANOR. Also a Molesey of a COPYHOLD WATER CORN-MILL; the whole of which will be sold in 26 Lots, so that purchasers may buy either to a large or small extent, and either for occupation or investment.

The Villa, with about 100 acres of Land, forms the first lot, and it is called Ashford Lodge, and is unquestionably a most delightful spot. The house contains dining, drawing, and morning rooms, and all necessary domestic apartments; the pleasure grounds are tastefully laid out, and contain a beautiful sheet of water; the stables, coach-houses, and other outbuildings are sufficiently large; there are good gardens, with gardener's cottage, &c. The Villa is embosomed in hills of great height, and the scenery from it is of the most pleasing and majestic character; but within the limits of an advertisement it is impossible better to describe it than as a situation singularly adapted for a gentleman's country residence. The present tenant is Admiral Hawks.

Lots 2, 3, 4, 6, 7, 9, 11, and 12, comprise Farms of various sizes, completely surrounding the villa.

Lots 5, 8, 10, 13, 14, 15, 19, 21, and 23, consist of several Messuages and Cottages, abutting on the estate, with small quantities of Land attached thereto.

Lots 16, 18, and 22, are plots of Meadow Land.

Lots 17 and 20 comprise nearly 50 acres of Land, principally covered with fine thriving oak timber.

Lot 24 consists of a moiety of a Water Corn-mill.

Lot 25, comprises the rent charge of 300*l.* per annum, in lieu of rectorial tithes of the parish of Steep; and

Lot 26, 10-13ths of the Manor of Ashford. Upon the estate (which abounds with rock stone, &c.) are splendid sites for the erection of buildings, and the entire property being within the borough of Petersfield, will confer a right to vote therein.

Full descriptive particulars, with lithographic plans and conditions of sale, may be had on application to the Auctioneer, at Petersfield; at the various inns in the neighbourhood; of Messrs. Osborne and Garret, Estate Agents, Fareham; Messrs. SOUTHWELL, Solicitors, Southampton, Suffolk; and Messrs. JENINGS, Solicitors, 1, Mincing-court Buildings, Temple, London.

LONDON:—Printed by HENRY MORRELL COX, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROCKFORD, of 29, Essex Street Strand, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the LAW TIMES, No. 29, Essex Street aforesaid, on Saturday, the 1st day of August, 1846.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. VII. No. 175.]

SATURDAY, AUGUST 8, 1846.

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For One Year, paid in advance... £2 7 6
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Money Wanted.

MONEY.—WANTED to BORROW immediately, from 750*l.* to 800*l.* at 4½ per cent. upon Mortgage Security of an ample nature, consisting of a Freehold Dwelling-house, with commodious Wine and Spirit Cellars, and large productive Walled Garden attached, situate in the county of Dorset.—The party borrowing is highly respectable, and the money would be taken for a term of seven or ten years, if preferred.

Wanted also to Borrow, two sums of 3,000*l.* and 1,500*l.* at 3½ per cent. upon Mortgage Security of Freehold Lands of ample value.

For further particulars apply to Mr. S. H. GUMMER, Solicitor, Bridport.

August 5, 1846.

MONEY.—WANTED, 2,600*l.* upon two Leasehold Houses, in Highbury-crescent, Islington, old for a long term at a moderate ground-rent. Apply to G. R. DODD, Esq. Solicitor, New Broad-street, London, and Reading, Berks.

Situations Vacant.

LAW CLERK WANTED.—A Solicitor and Clerk of a Petty Sessions in a Midland County is in immediate want of a CLERK, who is a good Accountant, and qualified to transact the magisterial business, which is extensive.

Application to be made to A. B. No. 18, Post-office, Nottingham, stating age, salary expected, and how many years' experience he has had in the magisterial department. Also, the address of the party to whom reference may be made for testimonials.

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LAW.—ARTICLED CLERK.—The friends of a young gentleman who has served two years of his time in an office in the country are desirous of ARTICLING him for the remaining three years in a country office of good general business.

Address (stating amount of premium required, &c.) to A. B. care of Messrs. Gates, Son, and Percival, Solicitors, Peterborough.

LAW.—The Advertiser, who has had many years' experience in the Profession, is desirous of a situation as CLERK in Town or country, either as Managing Clerk, under the direction of the Principal, or as Bill Clerk, being quite competent to the making out of Bill of costs of every description.

Address to A. B. No. 2, Wilson-street, Gray's-inn-lane.

LAW.—Any Professional Gentleman in Town or Country requiring temporary or permanent assistance in the Conveyancing Department, Manor Court Business, Drawing Bills of Costs, or otherwise, may hear of a competent person (who has never been articulated) by applying by letter, addressed A. B. at Mr. GARDNER'S, No. 10, Union-street, Stoke Newington, London.

Partnerships Wanted.

LAW PARTNERSHIP WANTED.—A Solicitor, of business habits and with ample command of capital, wishes to purchase a share in a first-rate practice in town or in the country. Such share to yield not less than 400*l.* a year.

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SCHIEDAM HOLLANDS.—Owing to the late enormous duty on this beautiful and wholesome Spirit, comparatively very little has been used or known in this country. The Public have, therefore, had no opportunity of testing its merits. VINCENT and PUGH, after innumerable experiments and immense outlay in machinery, have at length arrived at that state of distillation which has enabled them to produce an ARTICLE equal in every respect to the finest Foreign. Vincent and Pugh introduce this splendid matchless spirit to the public for their opinion and approbation, which they trust it merits, not only for quality but price, being enabled to offer it at 2s. 6d. per bottle square and round, the cork branded (VINCENT & PUGH), and sealed for security as to its genuineness. To be had of all the respectable retail dealers in and about the metropolis, or of their agent, Mr. Charles Hodder, Castle, Moorgate-street, City, and wholesale, Vincent and Pugh, Distillery, 16, New Park-street, Borough, and 10, Old-street, City.

The public attention is particularly called to their Pale Brown British Brandy, which is allowed to be matchless.

SUPERIOR FOREIGN WINES ON SALE.—142, Strand.—Old Ports, Sherries, Madeiras, &c. &c., several years in bottle. Private families may be supplied with any of the above wine selected from the best vineyards and bottled with great care, by J. WRIGHT, late of Mark-lane, conveying many thousands of dozens. Finest old Ports, from three to five years in bottle 42s. 48s. 50s. Sherries, various, ditto, ditto 36s. to 48s. West India Madeiras 42s. to 55s. Superb old East India 40s. to 75s. Very old Malmsiey, in pipes 50s. Brandy ditto, and of the best quality 24s. Most of the above may be had in pipes, delivered free within five miles of the metropolis.

VICKERS'S CURACAO PUNCH.—This DELIGHTFUL LIQUOR stands pre-eminent as a finished specimen of what Punch should be. It is in a high state of concentration; and when diluted, presents to the connoisseur the tangible reality, that which before existed but in imagination. That truly valuable stomachic JAMAICA GINGER, is also most successfully combined with other wholesome ingredients; and introduced as a delicious Liqueur, known as ORANGE GINGERETTE, and in a stronger form (as an anti-spa-modic), under the style of GINGER BRANDY. These, as well as the exquisite IMPERIAL LIQUOR, &c. &c. may be obtained of all the first Merchants in the Kingdom. In more effectually to protect the quality, and to present them to the consumer in a convenient form, these Liqueurs are bottled, sealed, and labelled by the distillers, JOSEPH and JOHN VICKERS and CO. LONDON. N.B. The Curacao Punch and Orange Gingerette will be found admirable adjuncts to Soda Water. Distillery: Stoney-street, Borough Market, London.

LITHOGRAPHY in all its Branches, Mapping, &c.—Writing, Planning, Drawing, and Printing, executed in the first style, and on the most improved Brass (registered) COLOURED LITHOGRAPHIC PRINTING OFFICES, 25, 26, to 40, Threadneedle-street, City, where Merchants and the Trade may be supplied with Stationery, the best German Stones and Transfer Paper, French Chalks, and Inks; and with their improved Lithographic Press, so excellent in principle and construction, that it is warranted to do the finest work with perfect ease and certainty. Solicitors, Auctioneers, and Surveyors, entrusting their Drawings to DEAN and CO. will find them executed with accuracy and great dispatch. Their artists and workmen in the different branches of printing are employed on the premises.

LITHOGRAPHY.—Mr. COON, 15, Cheap-side, begs to inform Solicitors, Auctioneers, Surveyors, &c. that he has commodious offices as above, where he can execute any orders for plans of estates, buildings, elevations, views, &c. with the greatest dispatch and economy. Mr. Coon will be happy to wait upon any gentleman with specimens of his improved style of Lithography in all its branches. N.B. Estimates supplied gratis.

FLOOR-CLOTH WAREHOUSE, No. 253, Strand, near Temple Bar. Established 1815. JOHN WILSON begs respectfully to remind the Public that he continues to supply the most extensive and lowest priced at which the best article can be manufactured. He begs an inspection of his present stock, which for soundness of quality, and variety of patterns, cannot be surpassed.

A LITTLE ADDITION TO COMFORT.—IN WALKING, RIDING, AND HUNTING, almost every man who wears drawers is bothered to keep them in the right place. The simple contrivance known as the "Vici" supports at once both drawers and trousers. This simple contrivance keeps the drawers well up in their place, which is essential to the well fitting of the trousers, and comfort of the wearer. Prices, 2s. 2s. 6d., 3s. 6d., 4s. 6d., to 10s. 6d. A great variety at the outlying warehouse of Mr. J. W. Wilson, 142, Strand, near Temple Bar, where there can be seen a large assortment of the new registered Temper Caps for sleeping, travelling, or sores. The immense sale of which is the strongest proof of the comfort they afford to the many thousands who have tested them. Night-caps, 1s. to 4s.; Travelling, 3s. 6d. to 12s. Either sent to any part of the Kingdom for post-office orders with threepence added to price of each. The finest German Eau de Cologne, 17s. per case of 6 bottles, 3s. per bottle.

CARVING IN WOOD.—The important reduction in the price of carving in wood as executed by the patent process enables the proprietors to encourage the prevailing taste by supplying the most exquisite specimens of genius in the Gothic, Elizabethan, French, and Italian styles, adapted to all architectural purposes, picture frames, and every possible variety of elaborate decoration. The proprietors solicit an inspection of the specimens executed by this simple and beautiful process, at their offices, 44, West Strand, or at their works, Ranelagh, Thames-bank, Published by J. W. Wilson, 59, Mothorn, Parts I., II., III., and IV. price 3s. each (to be continued), containing specimen drawings of elaborate Carvings in Wood, produced by the Patent Wood Carving Company, 44, West Strand.

YACHTING, DRIVING, AND ANGLING.—THE NEW DREADNOUGHT COATS AND CAPES, made by J. C. CORDING, will be found by Sailors and Sportsmen to be the best articles ever made up for their use. They will retain the heaviest rain and the fiercest tropical heat for any time, and their durability is equal to their waterproof qualities. Trousers, leggings, son'-westers, caps, and gloves, of the same proofing. Officers and others going to the colonies will find these articles the most comfortable and useful. They are made of CORDING'S new waterproof driving aprons and coats, three serviceable and complete things of the kind, and approved by all who have tried them. Ladies' light riding caps, with hoods and sleeves. CORDING'S improved best India rubber boots are superior to any thing hitherto made. They are made of the best India rubber, and are light, pliable, and never crack; impervious to water for any length of time, and require no dressing to keep them in condition. Patterns and prices sent on application. Any description of article made to order. London: J. C. CORDING, 351, Strand, five doors west of Temple Bar.

THE SUMMER RIDE OR PROMENADE.—

The peculiar virtues of C. and A. OLDRIE'S BALM of COLUMBIA, remove the difficulty experienced by ladies in preserving their ringlets after exercise; it is so invigorating the hair, that tresses, previously the straightest and most destitute of curl, rapidly acquire a vigour, which maintains in permanent ringlets the head-dress of the most persevering votary of the Ball-room, the Bide, or the Promenade. After the minerals and vegetables of Old World have been compounded in all imaginable ways in fruitless attempts to discover so important a desideratum, we are indebted to the Western Hemisphere for furnishing the basis of Oldrie's Balm of Columbia, the efficacy of which in preserving, strengthening, and renewing the hair, has become a matter of notoriety among all civilized nations.

COFFEE AS IN FRANCE.—It is a fact beyond dispute, that in order to obtain really fine Coffee, there must be a combination of the various kinds; and to produce strength and flavour, certain proportions should be mixed according to their different properties. Thus it is we have become celebrated for our delicious Coffee at 1s. 6d. which is the satisfaction and delight of all who have tasted it, being the produce of four countries, selected and mixed by rule peculiar to our establishment, in proportions not known to any other house.

From experiments we have made on the various kinds of Coffee, we have arrived at the fact, that no one kind possesses strength and flavour. If we select a very strong Coffee it is wanting in flavour; by the same rule we find the finest and most flavoured Coffee are generally wanting in strength; and as they are usually sold each kind separately, quite regardless of their various properties, the consumer is not able to obtain really fine coffee at any price. There is also another peculiar advantage we possess over other houses—our roasting apparatus being constructed on decidedly scientific principles, whereby the strong aromatic flavour of the Coffee is preserved, which, in the ordinary process of roasting, is entirely destroyed; and as we are coffee roasters, we are enabled to keep a full supply of fresh roasted Coffee continually, after the Puritan and Continental method.

The rapid and still increasing demand for this Coffee has caused great excitement in the trade, and several unprincipled houses have copied our papers and professed to sell a similar article. We, therefore, think it right to CAUTION the public, and to state that our superior mixture of four countries is a discovery of our own, and therefore the proportions are not known, nor can it be had at any other house. In future we shall distinguish from all others as follows:—

SPARROW'S CONTINENTAL COFFEE, at 1s. 6d. per lb. Packed in tins of all sizes perfectly airtight for the country. We have also strong and useful Coffees, from 1s. to 1s. 4d. Tea Establishment, 56, High Holborn, adjoining Day and Martin's, leading through into 22, Dean-street.

HENRY SPARROW, Proprietor.

EYE BROWS, MOUSTACHES, AND WHISKERS, produced in a few weeks by GRIMSTONE'S AROMATIC REGENERATOR, an Essential Spirit, drawn by the Inventor from choice Aromatic Herbs. The Regenerator will produce new hair on bald places caused by weakness of constitution, &c. and is a certain preventive of Headache and Falling-out. It is sold in glass bottles, with names, &c. at 4s. 7s. and 11s. each, government stamp, and a pamphlet of testimonials and advice, included. Sent through the post, at 4s. 6d. 7s. 6d. and 11s. by all Chemists, Medicine Vendors, and W. GRIMSTONE, Herbarist, Highgate, near London.

BED FEATHERS. Per lb. Per lb. Mixed, 1 4 Best Foreign Grey Goose 1 0 Grey Goose 1 4 Best Irish White Goose 2 6 Foreign ditto 1 8 Best Dantick 3 0

A List of every description of Bedding, containing mattresses, sheets, and prices, sent free by post, on application to HEAL and SON, Feather Dressers and Bedding Manufacturers, 196, Tottenham-court-road, opposite the Chapel.

TONIC MILK OF ORANGE, a Delicious Cordial, and sweetener of the breath. Patented by the Royal Family and Nobility, and recommended by the Faculty. The Milk of Orange (warranted to be extracted from fruit) warms the stomach, creates an appetite, digests the food, strengthens the lungs, clears the voice, improves the voice for singing, relieves the asthma, dispels colds, and purifies and sweetens the breath. It is particularly recommended to gentlemen on leaving home in the morning or after smoking a cigar, while to ladies it will be equally grateful on going to a party or ball, for its invigorating influence on the mind and spirits, and its refreshing effect on the organs of health. It may be added, that as a lively but gentle stimulant wholly unadmixed with spirituous ingredients, it will prove extremely grateful to that numerous class of persons, who, on principles of sobriety refrain from all intoxicating drinks.

Prepared by A. ROWLAND and SON, 20, Hatton-garden, London. Half-pint, 2s. 6d., Pint, 4s. 6d., Quart, 7s. Sold by them, and by chemists and perfumers.

New Publications.

AN INDEX TO THE LAW. Just published. **THE LAW DIGEST.**—A complete Index to all the Reports that appeared during the Half-year ending the 1st of January last. Price 5s. 6d. in a stout wrapper. To be continued half-yearly.

"The object of this Digest is to enable the Practitioner to find in a moment what has been the law decided on any subject, with reference to the authorities.

"This laborious undertaking is intended to supply the practitioner with a ready reference to all the law decided during the half-year ending on the 1st of January, and it is, if successful, to be continued half-yearly. The plan is simple and convenient. All the cases reported during the half year are arranged under their proper subjects, and these are placed alphabetically. If, therefore, the practitioner wants to ascertain what cases have been decided, say on the law of "Executors," he turns to that title, and under it he will find every case, whereover reported, briefly digested with reference to the report or reports, if more than one, where it appears. Besides this, there is an index to the names of cases, and to the names both of defendants and plaintiffs, so that if one be forgotten the case may still be traced by means of the other. The peculiarity of this work, and thus in which it differs from any other digest, is, that it includes all the reports, whereas all the other digests exclude some, being guided in their selection, not by the wants of the practitioner, but according to the rivalries of publishers. The plan of this digest is to omit none, and its consequent completeness gives it a peculiar value and utility. The amount of abridgement from the other digests may be judged by this, that the Digest before us, although embracing the reports only for half-a-year, contains more cases than does either of the others for a whole year, and the mere index of the names of the cases digested occupies no less than twenty-four closely printed columns. There is also a table of the statutes cited, arranged in chronological order.

"It will not become us to express an opinion upon the merits of this publication. We can only give a description of it, leaving it to the reader from that description to determine whether it is likely to be an acquisition to his office."

Law Times. LAW TIMES OFFICE, 20, Essex-street, Strand; and may be had of all Booksellers in Town and Country.

Insurance Companies.

DISEASED & HEALTHY LIVES ASSURED.

MEDICAL, INVALID, & GENERAL LIFE OFFICE, 25, Pall Mall, London, and 22, Nassau Street, Dublin. Subscribed Capital £50,000.

THIS OFFICE WAS ESTABLISHED

in 1841, and possesses tables formed on a scientific basis for the assurance of diseased lives. The urgent necessity for an institution like the present may be estimated by the statement that two-thirds of the population are not insurable as healthy lives, and that about one in five of the applicants to other offices is declined on examination. Of the proposals accepted by this Society during the last three years, nearly 260 had been rejected among upwards of 60 other offices. These cases came under the class of the most prevalent diseases, and the various parties could not have participated in the advantages of life assurance had not this Society been in existence, as it is the only one possessing tabulated rates of premium deduced from extensive data.

Premiums have been determined for the assurance of persons at every age, among those afflicted with consumption, asthma, bronchitis, pneumonia, disease of the heart, apoplexy, paralysis, epilepsy, insanity, disease of the liver, dropsy, scrofula, gout, rheumatism, &c.

These circumstances induce the Directors to believe that by the establishment of this office they have conferred an important benefit upon those whose condition made such a provision as assurance necessary, and they are therefore led to expect a powerful support from the public. Increased annuities are granted on unexpired lives. Healthy lives are assured at lower rates than at most other offices, and a capital of half a million sterling, fully subscribed, affords a complete guarantee for the fulfilment of the Society's engagements. F. G. P. NEISON, Actuary.

NORTH BRITISH INSURANCE COMPANY, 4, New Bank Buildings, and 10, Pall Mall East.

Tables of increasing premiums have been formed on a plan peculiar to this company, whereby assurance may be effected for the whole of life, the premium commencing very low, and gradually increasing during the first five years, after which a uniform premium is paid during the remainder of life.

SPECIMEN OF THE TABLES. Premium for Assuring £100.

Age	First Year.	Second Year.	Third Year.	Fourth Year.	Fifth Year.	Remainder of life
	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
30	1 3 9	1 5 3	1 6 8	1 8 4	1 10 0	2 10 5
40	1 11 10	1 13 9	1 15 10	1 18 1	1 20 0	2 6 3 8

This table is not only suitable to those who, from the prospect of an increasing income, or other circumstances, prefer paying a smaller sum during the first few years, but is also decidedly the best mode of insuring with the view of securing the repayment of temporary loans. It is preferable to a period policy, as it may be continued to the end of life, without requiring new certificates of health, or incurring a higher rate of premium.

A Prospectus may be obtained of the Secretary, Henry T. Thompson, esq., 4, New Bank-buildings, or of the Actuary, 10, Pall Mall East. JOHN KING, Actuary.

PALLADIUM LIFE ASSURANCE SOCIETY, 7, WATERLOO-PLACE, LONDON.

DIRECTORS. Sir John Barrow, bart. F.R.S. Right Hon. Sir T. F. Fremantle, bart. Lord W. R. K. Douglas, F.R.S. Henry Harvey, esq. F.R.S. Right Hon. Sir Edward Hyde East, bart. F.R.S. James Murray, esq. Charles Elliott, esq. F.R.S. Samuel Skinner, esq. Joseph Ednaile, esq. P. M. Stewart, esq. M.P. Wm. A. Guy, M.D. Sir William Young, bart. **AUDITORS.**—Capt. C. J. Beaumont, R.N.; Jas. Buller East, esq. M.P.; John Young, esq. M.P. **BANKERS.**—The London and Westminster Bank. **PHYSICIAN.**—Seth Thompson, M.D.

The result of the Third Septennial Investigation of the affairs of the PALLADIUM having been announced to the Proprietors and Policy holders, at the General Meeting, 31st ult.

The Directors submit to the public, in evidence of the success which has attended the business of the Society, the following Table, showing— Total additions made to Policies for £,000, which had been in force for Twenty-one Years, on the 31st December, 1845.

Age at Commencement.	Gross Additions to the Sum Assured.	Annual Premium on the Policy.	Reduction of Premiums equivalent to the Bonus declared.
10	£791 19 1	£85 4 2	£21 11 11
15	950 1 9	95 0 2	28 10 2
20	1,070 19 3	108 19 2	37 7 5
25	1,095 1 10	120 4 2	43 18 7
30	1,128 7 2	133 10 10	52 14 6
35	1,179 8 5	149 11 8	64 18 0
40	1,271 8 1	169 15 10	84 2 9
45	1,363 10 11	194 15 10	113 11 1
50	1,554 19 9	225 13 4	164 6 8

In this Society the Assured receive Four-fifths of the Profits of a long-established and successful business, the principal of the remaining fifth being further invested for their security, in addition to the guarantee of a numerous and wealthy Proprietary.

Tables of Rates, and every information respecting Assurance, may be had at the Society's Office, or of the Agents in different parts of the country.

In addition to the ordinary cases provided for in the Society's printed Prospectuses, Special Policies will be granted to meet contingencies of every description.

JEREMIAH LODGE, Secretary and Actuary.

1st June, 1846. Applications for Agencies in places where none are established, to be addressed to the Secretary.

Sales by Auction.

BERKSHIRE.—Valuable and Important FREEHOLD and LEASEHOLD PROPERTY, in the County of Berks, consisting of sundry Farms, large and small, near to the Faringdon-road Station, and the Town of Wantage, in the parishes of East Hanney, Wantage, Goosey, Stanford, Faringdon, Lambourne, and Great Coxwell, containing together about 1,670 Acres of Land.—By Messrs. HOGGART and NORTON, at the Bear Inn, Wantage, on THURSDAY, 17th, and FRIDAY, 18th, of SEPTEMBER, at Twelve for One o'clock precisely, in 41 Lots, by order of the Devises in Trust of the late E. P. Bastard, esq.

THESE ESTATES are situate in the several parishes of East Hanney, Wantage, Stanford, Lambourne, Great Coxwell, Goosey, and Faringdon, comprising altogether about 1,670 acres of fine arable and rich dairy land, part in the rich Vale of White Horse, celebrated for the productiveness of its soil, and highly esteemed by agriculturists. The estates offer first-rate investments for large or small capitalists, and will be sub-divided into lots as follows:—

East Hanney Farm, in the parish of East Hanney, with farm-house, farm buildings, and 270a. 1r. 7p. of arable and pasture land, in the occupation of Mrs. Dormer.

Furzewick Farm, comprising a most desirable property for residence or investment, in a beautiful sporting part of the county, within a mile of the town of Wantage, comprising 306 acres of arable and pasture land, possessing a fine covert for game, and on the margin of a splendid coursing country, adapted for a sportsman, with a good farm-house and all other requisite outbuildings. In the occupation of Mr. James Fereman.

Also, the following valuable Properties, situate in Charlton Upper Field, Charlton Common Meadow, land called Kingsgrove and Bradfield, a Dairy and Arable Farm, near the Great Western Railway, all which estates are near to the town of Wantage, consisting of fine rich pastures, containing together about 140 acres. In the occupation of Mrs. Dormer, Messrs. Barnes, Wiblin, Fereman, Palmer, and others.

Millaway Farm, in the parish of Goosey, with farm-house, farm-buildings, and 30a. 0r. 4p. of arable and meadow land, in the occupation of Mr. A. Barnes.

Stanford Farm, in the parish of Stanford, in the Vale of White Horse, with a fine old manor-house near the church, farm-buildings, and 110a. 1r. 28p. of arable and pasture land, in the occupation of Mr. William Farrant.

Stanford Park Farm, in the parish of Stanford, in the Vale of White Horse, a capital dairy farm, with a good house, farm-buildings, and 310a. 1r. 1p. of arable, pasture, and meadow land, in the occupation of Mr. William Tarrant, Mr. Charles Hunter, and others.

An excellent house, in the village of Great Coxwell, with barn, stable, &c. and 79a. 2r. 15p. of arable, meadow, and pasture land, in the occupation of Mr. James Forman.

66a. 2r. 19p. of arable and pasture land, in Eastbury-field, in the parish of Lambourne, in the occupation of Mr. Spicer.

Bockhampton Farm, in the parish of Lambourne, with farm-house, farm-buildings, and 92a. 2r. 9p. of arable and pasture land, in the occupation of Mr. Spicer.

Hill's Farm, in the parish of Lambourne, with farmhouse, farm buildings, 111a. 3r. 28p. of arable, pasture, and wood land, in the occupation of Mr. Mildenhall.

The remaining lots will consist of accommodation plots of fine productive arable, meadow, and pasture land, in Bradfield, near the village of East Hanney, Goosey Green, in the parish of Great Coxwell, Lambourne, and in Eastbury-field, in quantities varying from 1 to 20 acres.

These estates may be viewed, and particulars with plans had, twenty days prior to the sale, of Messrs. KARSLAKE and CREALOCK, Solicitors, 4, Regent-street; Mr. Ormond, solicitor, Wantage; of Charles Bailey, esq. 5, Stratford-place; and Messrs. Phillips and Westbury, Andover; particulars also at the King's Head, Abingdon; Inn at Faringdon; Bear, Reading; at the Mart; and of Messrs. HOGGART and NORTON, 62, Old Broad-street, Royal Exchange.

N.B. The estates in East Hanney and Wantage only will be in the first day's sale.

The Freehold Manors of Byfleet and Weybridge, and Walton Leigh, Surrey.

MESSRS. DRIVER beg to inform the Public, the SALE of the above MANORS will take place at the Auction Mart, near the Bank of England, on FRIDAY, the 14th instant, at Twelve o'clock, in one lot. Descriptive printed Particulars are now ready, and may be had, on application to Messrs. FRERE, FOSTER, and CO. Solicitors, 6, New-square, Lincoln's-inn; at the Auction Mart, Bartholomew-lane; and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Parliament-street, London.

Freehold Ground Rents, Building Land, and Residence, Bernondsey, Surrey.

MESSRS. DRIVER have been favoured with instructions to offer to PUBLIC COMPETITION, at the Auction Mart, near the Bank of England, on FRIDAY, the 14th day of AUGUST, at Twelve o'clock, in nine lots, sundry very valuable FREEHOLD ESTATES, principally exonerated from land-tax, eligibly situate in the Grange-road, Bernondsey, comprising ground rents amounting to about 135l. per annum, well and amply secured on numerous dwelling-houses, tan-yards, and premises, of the estimated annual value of 930l. with the valuable reversion, in 22 years, to the fee thereof.

Likewise, a FREEHOLD DWELLING-HOUSE, adjoining the above, in the occupation of the Rev. Mr. Armstrong, at the low annual clear rent of 42l.

Also, a valuable PLOT of FREEHOLD BUILDING GROUND, containing about half an acre, situate at the rear thereof.

Printed specifications, with plans annexed, may be had at the place of sale; of Robert Thomas Searles, esq. Kent-road; of Messrs. POWELL, F. and W. BRODERIP, and WILDE, Solicitors, 9, Lincoln's-inn New-square; and of Messrs. DRIVER, Surveyors and Land Agents, Parliament-street, London.

Valuable Freehold Ground Rents, an excellent Freehold Dwelling-House and Premises, and Two Freehold Houses in the rear (the whole land-tax redeemed) in the high Camberwell-road, Surrey.

MESSRS. DRIVER are favoured with instructions to OFFER to PUBLIC COMPETITION, at the Auction Mart, Bartholomew-lane, on FRIDAY, the 14th of AUGUST, at Twelve o'clock, in Four lots, sundry valuable FREEHOLD ESTATES, exonerated from land-tax, very eligibly situate on the high Camberwell-road, comprising a Freehold Ground Rent, of 55l. per annum, most amply secured upon six private Dwelling-Houses, being Nos. 21, 22, 23, 24, 25, and 26, Grosvenor-place, of the annual value of 350l., with the valuable Reversion to the Fee thereof; another Freehold Ground Rent of 5l. per annum, well secured upon a pair of Houses in the rear, of the value of 70l. per annum, also with the valuable Reversion to the Fee thereof; a Freehold Dwelling, No. 20, Grosvenor-place, and extensive Premises behind on lease, to and in the occupation of Mr. Freeman, miller and corn-dealer, at the very moderate clear annual rent of 50l. free from all deductions (property-tax excepted); likewise Two Freehold Houses in Windmill-lane, immediately adjoining the above, in the respective occupations of Mr. Rutland and Miss Creasy, at rents amounting together to about 50l. per annum.—To be viewed by permission of the respective tenants, and printed specifications may be had of Messrs. DESBOROUGH and YOUNG, Solicitors, 6, Sise-lane, Bucklersbury; at the Auction Mart, near the Bank of England; and of Messrs. DRIVER, Surveyors and Land Agents, 8, Richmond-terrace, Whitehall.

Very important and valuable Freehold Estate, embracing the entire Parish of Addington, free of Tithes and Land-tax, and almost of Poor-rates, with its spacious Mansion, excellent Manor for Game, the Advowson, and several first-rate Grazing and Dairy Farms (let at about 2,500l. per annum), extending nearly to the town of Winslow, only five miles from the county and borough town of Buckingham, distinguished as the family seat and domain of the late Honourable General Vere Poulett, forming a singularly eligible and solid investment for capital in a proverbially rich and fine sporting country.

MESSRS. DANIEL SMITH and SON are commissioned to announce that the above remarkably valuable and truly important FREEHOLD ESTATE will be SOLD by AUCTION, in SEPTEMBER next, unless an acceptable offer shall be previously made by private treaty. It comprises the spacious and substantial mansion of Addington, with walled garden, capital stabling, &c. placed on a gentle elevation, nearly in the centre of one of the most fertile domains in the county, embracing the entire parish, nearly encircled by a fine brook, and chiefly rich grazing and dairy land, the whole tithe free, and let to old respectable tenants, at rents amounting to about 2,500l. per annum; the perpetual advowson, with its parsonage and glebe, and the manor, which is well stocked with game, appertain to the estate. The timber is nearly all elm, a certain proof of the fertility of the soil. The high turnpike-road from Aylesbury to Buckingham passes through the property close to the town of Winslow, and it is within a very easy distance of the several markets of Buckingham, Bicester, Stony Stratford, &c. This description of grass land is unlikely to be affected by any change as to corn laws or tariffs, and the property, therefore, presents, with its peculiar and great local advantages, an indisputably fine and choice property for the investment of money, with a most enjoyable domain for residence, being in a perfectly rural district, and in the centre of several packs of hounds. A station on the Buckinghamshire Railway will be very near.—Descriptive particulars, with plans, will be published when the day of sale is fixed, and in the interim the property may be viewed by application to Mr. King, Surveyor, Winslow; and every information obtained of Messrs. DANIEL SMITH and SON, Land Agents and Surveyors, in Waterloo-place, Pall-mall; or of Messrs. KARSLAKE and CREALOCK, Solicitors, Carlton Chambers, Regent-street.

BOGNOR, SUSSEX.—Valuable Land for Building Purposes.

MESSRS. WINSTANLEY respectfully acquaint the public that they have received instructions from the mortgagees to SELL by AUCTION, at the Mart, in London, on THURSDAY, the 27th August, in one lot, about 45 acres of Freehold Building Land, having a considerable frontage to the sea, and situated at Bognor, in the county of Sussex, a delightful, healthy, and improving watering-place, within easy distance of Chichester, Brighton, and Worthing, now possessing the advantage of railway communication with the metropolis. This property offers an eligible opportunity for the employment of capital, and securing an excellent return for letting it off on building leases, at ground-rents.—Printed particulars may be had in London, of Mr. Hodgson, 32, Broad-street Buildings; of Messrs. WINSTANLEY, Paternoster-row; and at the place of sale. Also of Mr. J. M. OGDEN, Solicitor, Sunderland; Mr. Weller and Mr. Wright, at Chichester; the Norfolk Arms, at Little Hampton, and Arundel; the Hotels at Worthing and Bognor; and of Mr. Creasy, Auctioneer, Brighton.

Periodical Sale of Reversions, Life Interests, Annuities, Life Policies, Advowsons, Next Presentations, and all descriptions of Securities dependent upon human life, Ground and Improved Rents, Post Obit Bonds, Shares in Railways, Mines, Insurance Companies, and all other public undertakings.

MR. MARSH (late Fuller and Marsh) respectfully informs the Public, that his PERIODICAL SALES by AUCTION of the above description of PROPERTY will be continued throughout the present year as follows:—

Thursday, August 6. Thursday, October 1.
Thursday, September 3. Thursday, November 5.
Thursday, December 3.

Notice of sales intended to be effected by the above means should be forwarded to Mr. MARSH 14 days prior to each date.—No. 27, Bucklersbury, corner of Charlotte-row, Mansion-house, London.

Periodical Sales (established in the year 1803) of Reversions, Life Interests, Annuities, Policies of Assurance, Advowsons, Next Presentations, Rent Charges in lieu of Tithes, Post-obit Bonds, Tontines, Debentures, Ground Rents, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and all Public Undertakings.

MESSRS. SHUTTLEWORTH and SONS respectfully inform the public, that upwards of 40 years' experience having proved the classification of this species of property to be extremely advantageous and economical to vendors, and equally satisfactory and convenient to purchasers, the PERIODICAL SALES of reversionary interests, policies of insurance, tontines, debentures, advowsons, next presentations, and securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through 1846, as follows:—

Friday, September 4. Friday, November 6.
Friday, October 2. Friday, December 4.

Particulars may be had Ten days previous to each sale, at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 25, Poultry.

The noble Town Mansion of the late Right Hon. Lord Cary, in Belgrave-square.

MESSRS. SHUTTLEWORTH and SONS are honoured with instructions from the Executors, to SELL by AUCTION, on the premises, on MONDAY, SEPTEMBER 14, at Two in the afternoon, the noble TOWN RESIDENCE of the late Right Hon. Lord Cary, situate No. 3, on the north side of Belgrave-square, most elegantly fitted up, and in excellent order, containing numerous principal and secondary bed-chambers, with dressing-rooms, a magnificent suite of reception-rooms, comprising two very spacious lofty drawing-rooms communicating with French windows glazed with plate glass and opening upon balconies, the walls decorated with elegant white stucco and gold paper in compartments, the wood-work and ceiling painted white and enriched with gold mouldings and ornaments to correspond, and a lobby leading to a boudoir, the walls tastefully finished with oak paper and gilt mouldings, a spacious dining-room, with plate glass windows, neatly painted and finished with enriched compo cornice, and communicating, through folding doors, with an ante-room or breakfast parlour, a library with painted walls and compo cornice, water-closet, and an imposing entrance-hall and vestibule paved with stone, principal and secondary stone staircase to the second story. The domestic offices are complete in every department, with extensive cellaring of all descriptions. In the rear of and communicating with the mansion in Belgrave-mews is capital stabling for seven horses, standing for four carriages, with lofty and separate apartments over, and a washhouse with a laundry and sleeping-room over. The property is leasehold, under the Marquis of Westminster, for a term of 50 years unexpired, at a ground rent of only 135l. per annum.—May be viewed by cards only between the hours of Twelve and Four, which, with particulars, may be had of Messrs. SHUTTLEWORTH and SONS, 25, Poultry. Particulars may also be obtained of Messrs. BAKENDALE, TATHAM, UPTON, JOHN-SON, UPTON, and JOHNSON, Solicitors, Great Winchester-street, Broad-street, and Lincoln's-inn-fields.

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MESSRS. SHUTTLEWORTH and SONS will SELL by AUCTION, at the Auction Mart, on FRIDAY, AUGUST 28, at 12, in one lot, a valuable FREEHOLD ESTATE, comprising the Streatham Mineral Springs, well known for nearly 200 years, for their medicinal qualities assimilating to those of Cheltenham, with a convenient cottage residence, divided into two for letting during the summer season, pump-room, well-house, sheds, and buildings, with well-stocked flower-garden and productive orchard, comprising altogether about two acres, pleasantly situate on rising ground, half a mile from the White Lion, Streatham, and only six miles from London on the high Croydon-road, in the county of Surrey, and offering to an enterprising proprietor with a moderate capital, a profitable investment.—Particulars may be had in due time of Messrs. LAW and TINDAL, Solicitors, New-square, Lincoln's-inn; at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 25, Poultry.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. VII. No. 176.]

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Waterloo-place.

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KENT.—Valuable Freehold Farms in the picturesque and healthy parish of Wrotham, about 23 miles from town, and 11 from Maidstone.

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MESSRS. WINSTANLEY respectfully

acquaint the public that they have received instructions from the mortgagees to SELL by AUCTION, at the Mart, in London, on THURSDAY, the 27th August, in one lot, about 45 acres of Freehold Building Land, having a considerable frontage to the sea, and situated at Bognor, in the county of Sussex, a delightful, healthy, and improving watering-place, within easy distance of Chichester, Brighton, and Worthing, now possessing the advantage of railway communication with the metropolis. This property offers an eligible opportunity for the employment of capital, and securing an excellent return for letting it off on building leases, at ground-rents.—Printed particulars may be had in London, of Mr. Hodgson, 32, Broad-street Buildings; of Messrs. WINSTANLEY, Paternoster-row; and at the place of sale, Also of Mr. J. M. OGDEN, Solicitor, Sunderland; Mr. Weller and Mr. Wright, at Chichester; the Norfolk Arms, at Little Hampton, and Arundel; the Hotels at Worthing and Bognor; and of Mr. Creasy, Auctioneer, Brighton.

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Bills in Progress.

OPENING OF THE COURT OF COMMON PLEAS.

This Bill recites that it would tend to the more equal distribution and to the consequent despatch of business in the superior courts of common law at Westminster, and would at the same time be greatly for the benefit of the public, if the right of Barristers-at-Law to practise, plead, and to be heard, extended equally to all the said courts; but by reason of the exclusive privilege of Serjeants-at-Law to practise, plead, and have audience in the Court of Common Pleas at Westminster during Term time, such object cannot be effected without the authority of Parliament; it is therefore to be enacted,

"That from and after the passing of this Act, all Barristers-at-Law, according to their respective rank and seniority, shall and may have and exercise equal rights and privilege of practising, pleading, and audience in the said Court of Common Pleas at Westminster with the said Serjeants-at-Law; and it shall be lawful for the Justices of the said court, or any three of them, of whom the Lord Chief Justice of the said court shall be one, to make rules and orders, and to do all other things necessary for giving effect to this enactment."

GAUGE OF RAILWAYS.—The Bill which has passed the House of Lords, entitled "An Act for Regulating the Gauge of Railways," has been printed. There are nine clauses in the measure following the preamble, "Whereas it is expedient to define the gauge on which railways shall be constructed." After the passing of the Act it is not to be lawful, except in cases mentioned, to construct any railway for the conveyance of passengers on any gauge other than 4 feet 8 inches and half an inch in Great Britain, and 5 feet three inches in Ireland. The exceptions are set forth, and on certain railways the broad gauge is to be used. By the 4th provision it is declared that after the passing of the Act the gauge of any railway used for the conveyance of passengers is not to be altered. Railways constructed contrary to this Act may be abated. There is a provision for the recovery of penalties.

PARLIAMENTARY PAPERS.

ECCLESIASTICAL COMMISSION, IRELAND.—Report of the Commissioners to the Lord-Lieutenant for the year ending August 1, 1845.—The Report states that, for the augmentation of small livings, the commissioners set apart out of the moneys accruing from tithes and glebes disappropriated by orders of

the Lord-Lieutenant and Privy Council, 200l. per annum in 1841 and 612l. 14s. 11d. in 1843, less by the charges incident for poor-rates and other necessary expenses. An increased annual amount of 270l. 3s. 5d. has been insured to the fund by the dropping of leases which the commissioners had refused to renew. They state that within the past year they had been enabled to apply the moneys thus set apart to the augmentation of forty-one benefices, the greater part being livings of very small value, which have been raised to 100l. a year. To beneficiaries of this class they state that their attention had hitherto been solely confined. Lists of such applications for augmentation as the commissioners had received from incumbents in the several dioceses, were sent to the respective dioceses, and their opinion requested as to the merits of these or any other cases which they wished to bring under the notice of the commissioners. The augmentative salaries paid to the clergy from Primate Boulter's Fund within the year amounted to 4,366l. 15s.; and, under the powers vested in the commissioners by the Church Temporalities Acts, 6,409l. 15s. 4d. was paid in the way of stipends to the city of Dublin, and to other curates, and also to diocesan schoolmasters. After providing for various charges, the commissioners within the year appropriated to church works 24,000l. of which 18,460l. 16s. was allocated to repairs, and 5,539l. 4s. to rebuildings, aided by private subscriptions, amounting to 2,359l. 0s. 7d. The repairs undertaken by the commissioners were, they state, only such as appeared absolutely necessary, but in this category they place about three-fourths of the churches in Ireland.

POOR LAW COMMISSIONERS' REPORT.—An account of the money received as poor-rate and expended for the relief of the poor in England and Wales for the parochial year ending Lady-day, 1845. The receipts were 7,009,511l.; the expenditure 6,857,402l. Both amounts corresponded nearly with those of the preceding year. As respects, however, the different counties there were extensive variations: In the six following counties there was a decrease as compared with 1844; Nottingham 12 per cent.; York West Riding 11; Lancaster 9; Chester 5; Durham 5; Stafford 5. In the 8 following counties there was an increase, Huntingdon 12 per cent.; Warwick 9; Anglesey 7; Cambridge 7; Brecon 6; Suffolk 6; Oxford 6; Norfolk 6. It appears that the diminution has chiefly occurred in the manufacturing, and the increase in the agricultural districts. The commissioners attribute this to the extensive and constant demand for manufacturing labour during the year 1845 on the one hand, and on the other hand to the interruption in the employment of the agricultural labourers occasioned by the drought in the summer of 1844, and the length and severity of the cold during the year 1844-5. The total number of paupers relieved during the year 1845 was 1,470,970, being a decrease of 0.1 per cent. upon the number relieved in 1844. In the number of able-bodied paupers relieved in the workhouse during the year 1845 there was a diminution of 10 per cent. as compared with the previous year. In the number of able-bodied paupers who received outdoor relief on account of temporary sickness or accident there was an increase of more than 5 per cent.; but in the number of the same class who received out-door relief on account of all other causes, including vagrants, there was a decrease of nearly six per cent. In the total number of able-bodied persons relieved in 1845, there was a diminution of two 7-16ths per cent. The commissioners state that though they had not then received complete returns of the receipt and expenditure of the poor-rate for the year ending Lady-day, 1846, they were of opinion, that throughout England and Wales, the working classes had, during this period, been steadily employed at wages rather above than below the average rates, as well in the agricultural as the manufacturing parts of the country. The demand for hands in the manufacturing districts, they add, was constant, and the employment of agricultural labourers was much facilitated by the unusual mildness of the winter. During last winter scarcely any workhouse in a rural union was so full as to necessitate the allowance of out-door relief to the able-bodied. Referring to the partial failure of the potato crop for 1845, they state that it had not then in England produced any important influence on the food of the people. Under the head of medical relief, it is stated that in 1845, the number of persons successfully vaccinated was to the number of births as 100 to 140. It appears that during last year, the emigration of poor persons was not so extensive as in former periods, doubtless, in consequence of the greater demand for labour in this country. While the favourable report applies to England, a very different account is applicable to Ireland. There the total number of inmates in workhouses had increased from 41,118 during the week ending December 20, 1845 (being 2,022 more than in the corresponding week of 1844), to 50,717 during the week ending March 28, 1846, being 8,483 more than during the corresponding week of 1845.

EXECUTIONS.—By a return lately printed, obtained by Mr. Ewart (Dumfries), a list is given of the number of persons executed for all crimes, and committed for murder, in England and Wales, from

1813 to 1833, as also the number of persons executed in London and Middlesex from 1825 to 1845 inclusive. In 1813 as many as 120 persons were executed for all crimes, of which 20 were executed at York and 17 in Middlesex (including London). In that year 30 were hung for murder: the number committed for murder was 87. For the three following years the executions (for all crimes) were under 100. In 1817 they numbered 115, in 1819 they were 108, and in the year following 107. In 1821 the number was 114, and from that year to the end of 1833 the number executed in England and Wales for all crimes were under 100 in each year. In 1833 (the last year mentioned), it appears that 25 were executed for all crimes. 52 were committed for murder, in 5 of which there was no prosecution; 30 were acquitted, 4 found to be insane, 9 were convicted, 5 were executed, and 3 committed or pardoned. With respect to the executions in London for the last 21 years (1825 to 1845 inclusive), it appears that the executions in London and Middlesex for all crimes numbered 129, of which 24 were for murder. In the same period 158 were committed for murder, and 71 convicted of the crime. The only trial period in which no execution occurred in London, was 1830, 1835, and 1836. In the seven trial periods embraced in the return respecting London, the following result is given:—In 1825, 1830, and 1837, the number was 53; in the next trial period, 31; in the next, 12; in the next, none; next, 3; next, 4; and the last, 5; so that in the last six years only 12 persons have been executed in London.

DEATH BY ACCIDENTS COMPENSATION.—It gives right of action when death has ensued from an act which, if death had not ensued, would have entitled the injured party to legal redress. Right to bring such action vested in the personal representative of deceased, and damages awarded to go to next of kin according to the canons regulating the distribution of personal estate. proviso, that only one action shall lie in respect to the same subject-matter of complaint.

THE REPORTS.

The following are the names of gentlemen who have the LAW TIMES with the Reports:—
PRIVY COUNCIL by THOMAS CAMPBELL, Esq. of the Middle Temple, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GIFFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR OF ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT, by THOMAS T. DAWSON, Esq. of the Middle Temple, Barrister-at-Law.

COMMON LAW COURTS.

THE QUEEN'S BENCH, by ADAM BENTLEY, Esq. of the Inner Temple, Barrister-at-Law, and EDWARD WILKES, Esq. of the Middle Temple, Barrister-at-Law.

THE COURT OF COMMON PLEAS, by PAUL PEARCE, Esq. of the Middle Temple.

THE COURT OF EXCHEQUER by E. T. COLE, Esq. of the Middle Temple, Barrister-at-Law; and R. BAKER, Esq. of the Inner Temple, Barrister-at-Law.

THE HAIL COURT by T. W. SAVINER, Esq. of the Middle Temple, Barrister-at-Law.

THE EXCHEQUER CHAMBER by HENRY BAKER, Esq. of the Inner Temple, Barrister-at-Law.

BANKRUPT AND INSOLVENT COURTS.

THE COURT OF REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

LONDON COMMISSIONERS' COURTS and the **INSOLVENT COURT**, by PAUL PEARCE, Esq. of the Middle Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT, by F. T. ALLEN, Esq. of Lincoln's-Inn, Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.
CENTRAL CRIMINAL COURT, by R. C. ROBERTS, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by A. BRIDGESTON, Esq. of the Inner Temple, Barrister-at-Law.

NORTHERN CIRCUIT, York and Liverpool, by J. Z. ASPHALL, Esq. Barrister-at-Law. The other parts of the Circuit, by G. F. H. OLFERT, Esq. Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

NORFOLK CIRCUIT by JNO. B. DART, Esq. Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS IN THE COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY THOMAS ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

THE LORD CHANCELLOR'S COURT by WILLIAM DUGGAN, Esq. Barrister-at-Law.

QUEEN'S BENCH AND CRIMINAL COURTS by Wm. ST. LEGER BARRINGTON, LL.D. Barrister-at-Law.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

BITTLESTON.—On the 12th inst. at 17, Southampton-street, Bloomsbury-square, the wife of Adam Bittleston, esq. of a son.

MARRIAGES.

BEVIN. E. J. esq. of Lincoln's-inn, barrister-at-law, to Sarah, eldest daughter of Joseph Badier, esq. of Gordon-place, Tavistock-square, on the 11th inst. at St. Pancras Church.

COLERIDGE. John Duke, esq. eldest son of Hon. Mr. Justice Coleridge, to Jane Fortescue, third daughter of the Rev. G. T. Seymour, of Farringford, Isle of Wight, on the 11th inst. at Freshwater, Isle of Wight.

HAGERMAN. Hon. C. A. one of the Judges of the Court of Queen's Bench, Canada, to Caroline, third daughter of the late William George Daniel Tyssen, esq. of Foley-house, Kent, and Foulden-hall, Norfolk, on the 12th inst. at St. James's Church, Piccadilly.

JUDD. William Copland, esq. of the Middle Temple, barrister-at-law, eldest son of William Judd, esq. of Curzon-lodge, Old Brompton, to Alicia, daughter of the late George Gloster, esq. of Derrynokane, county of Limerick, on the 11th inst. at Trinity Church, Sloane-street.

KENYON. J. R. esq. of Lincoln's-inn, D.C.L. Recorder of Ouseway, and second son of Hon. T. Kenyon, of Pradoc, Salop, to Mary Eliza, only daughter of E. Hawkins, esq. of the British Museum, on the 11th inst. at Tandrige, Surrey.

WILSON. T. L. esq. son of Horace Wilson, esq. Professor of Sanscrit, Oxford, to Jean, only daughter of Dr. A. White, Deputy Inspector-General of Army Hospitals, on the 8th inst. at Bolton, Yorkshire.

DEATHS.

BARCLAY. Thomas Fraser, esq. of the Middle Temple, and late of Tavistock-square, on the 9th inst. at Kensington-gore, in the 94th year of his age.

WALKER. Sarah, relict of the late William Walker, esq. of Brunswick-square, and King's Bench-walk, Temple, on the 8th inst. in Peston-street, Pentonville, aged 77.

CORRESPONDENCE.

CRUELTY TO ANIMALS ACT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—By the 19th sect. of the 5 & 6 Wm. 4, c. 59 (the Cruelty to Animals Prevention Act), all actions, &c. which may be brought or commenced against any person for any thing done in pursuance or under authority of that Act, are to be commenced within one calendar month next after the fact committed, and not afterwards; and fourteen days' notice in writing is to be given of such action. By the 5 & 6 Vict. c. 97, s. 4, it is enacted, "That from and after the passing of this Act, in all cases where notice of action is required, such notice shall be given one calendar month, at least, before any action shall be commenced." From which it would appear, that, as the law now stands, a party aggrieved can have no remedy against any person acting in pursuance or under the authority of the first-mentioned Act, if such person be entitled to notice of action. The point does not appear to have been raised in *Layton v. Hurry*, 15 Law J. Rep. (n. s.) Q.B. 244; probably that case was considered within the principle of *Hopkins v. Crowe*, 7 Car. & P. 373, and therefore notice was not required.

I am, Sir, yours, &c.

Truro, Aug. 6, 1846. F. BRAITHWAITE.

POOR PRISONERS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—On reading your "Notes upon Circuit," in the LAW TIMES of Saturday last, it struck me,—Why should not prisoners who are acquitted have their costs paid by the county? A man, then, conscious of his innocence, would not be afraid to subpoena or bring up his witnesses, if they were not bound over to appear. It appears to me that this would be quite, if not more reasonable than allowing a prosecutor his expenses where the prosecution fails.

I am, Sir, yours, &c.

THOS. SAM'L. WRIGHT.

Leamington, Aug. 11, 1846.

[We quite agree with our correspondent.—Ed.]

RAILWAY BILLS.—Third Report from the Select Committee.—The number of petitions presented are 592; thus:—For railways in England and Wales, 395; Scotland, 120; Ireland, 47.

First Report from the Select Committee on Railways Bills Classification.

COURT OF CHANCERY.—Annual return under the Act 5 & 6 Vict. c. 103, of the state of the several funds standing in the name of the Accountant-General of the Court of Chancery, and the charges upon the same.—On the Sutors' Fund account, the payments for the year ending October 1, 1845, were 99,524l.; leaving a balance in hand, upon the receipts of the year, of 11,933l. On the Fee Fund account, the amount received during the year ending November 24, 1845, for fees, &c. was 134,874l.; the charges, 139,439l.; and the excess of charges, 4,564l.

Miscellaneous.

SCHIEDAM HOLLANDS.—Owing to the late enormous duty on this beautiful and wholesome Spirit, comparatively very little has been used or known in this country. The Public have, therefore, had no opportunity of testing its merits. VINCENT and PUGH, after innumerable experiments and immense outlay in machinery, have at length arrived at that state of perfection which has enabled them to produce an ARTICLE equal in every respect to the finest Foreign. Vincent and Pugh introduce this splendid matchless spirit to the public for their opinion and approbation, which they trust it merits, not only for quality but price, being enabled to offer it at 2s. 6d. per bottle in square Dutch bottles with the cork branded (VINCENT & PUGH), and sealed for security as to its genuineness. To be had of all the respectable retail dealers in and about the metropolis, or of their agent, Mr. Charles Hodder, Castle, Moorgate-street, City, and wholesale, Vincent and Pugh, Distillery, 18, New Park-street, Bowdoin and 10, Good-lane, Old-street, London.

The public attention is particularly called to their Pale Brown British Brandy, which is allowed to be matchless.

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Collectors, Architects, and Surveyors, entrusting their Drawings to DEAN and CO. will find them executed with accuracy and great dispatch. Their artists and workmen in the different branches of printing are employed on the premises.

FLOOR-CLOTH WAREHOUSE, No. 253, Strand, near Temple Bar. Established 1816. JOHN WILSON begs respectfully to remind the Public that he continues to supply seasoned Floor-Cloth at the lowest price at which the best article can be manufactured. He has an inspection of his present stock, which for soundness of quality, and variety of pattern, cannot be surpassed.

A LITTLE ADDITION TO COMFORT. IN WALKING, RIDING, AND HUNTING.

Almost every man who wears drawers is bothered to keep them in the right place. The new Compagno Breech (registered Act 4 and 7 Vict.) supports at once both drawers and trousers. This simple contrivance keeps the drawers well up in their place, and is essential to the full sitting of the trousers, and comfort of the wearer. Prices, 2s. 2d., 3s. 6d., 4s. 6d., to 10s. 6d. A great variety at the outfitting warehouse of the inventor, Henry Powell, 102, New Bond-street, where can be seen a large assortment of the new registered Templer Cape for sleeping, travelling, or soiling. The immense sale of which is the strongest proof of the comfort they afford to the many thousands who have tested them. Night-caps, 1s. to 4s.; Travelling, 5s. 6d. to 12s. Either sent to any part of the Kingdom for post-office orders with threepence added to price of each.

The finest German Eau de Cologne, 17s. per case of 6 bottles, 2s. per bottle.

HEAL and SON'S LIST OF BEDDING, containing a full description of weights, sizes, and prices, by which purchasers are enabled to judge the articles that are best suited to make a good set of bedding. Sent free by post, on application to their establishment, the largest in London, exclusively for the manufacture and sale of bedding (no bedsteads or other furniture being kept).—HEAL and SON, Feather Dressers and Bedding Manufacturers, 126, Tottenham-chapel, Tottenham-road.

YACHTING, DRIVING, AND ANGLING.—THE NEW DREADNOUGHT COATS and CAPES, made by J. C. CORDING, will be found by Sailors and Sportsmen to be the best articles ever made up for their use. They will resist the heaviest rain and the fiercest tropical heat for any time, and their durability is equal to that of the articles of the same quality. Officers and others going to the colonies will find these articles invaluable. Gentlemen who drive should use CORDING'S new waterproof driving-aprons and coats, the most serviceable and comfortable things of the kind, and approved by all who have tried them. Ladies' light riding capes, with hoods and sleeves. CORDING'S improved sheet India rubber boots are superior to any thing hitherto made for the comfort of anglers and snipe-shooters. They are light, pliable, and never crack; impervious to water for any length of time, and require no dressing to keep them in condition. Patterns and prices sent on application. Any description of article made to order. London: J. C. CORDING, 231, Strand, five doors west of Temple Bar.

COFFEE AS IN FRANCE.—It is a fact beyond dispute, that in order to obtain really fine Coffee, there must be a certain amount of roast, and the roasting apparatus being constructed in favour, certain proportions should be maintained for their different properties. Thus it is we have become celebrated for our delicious Coffee at 1s. 8d. is the astonishment and delight of all who have tasted it, being the produce of four countries, selected and mixed by rule peculiar to our establishment, in proportions not known to any other house.

From experiments we have made on the various kinds of Coffee, we have arrived at the fact, that no one kind possesses strength and flavour. If we select a very strong Coffee it is wanting in flavour; by the same rule we find the finest and most flavoured Coffee are generally wanting in strength; and as they are usually sold each kind separately, without regard to their various properties, the consumer is not able to obtain really fine Coffee at any price. There is also another peculiar advantage in our Coffee, and that is, that our roasting apparatus being constructed on decidedly scientific principles, whereby the strong aromatic flavour of the Coffee is preserved, which, in the ordinary process of roasting, is entirely destroyed; and as we are coffee roasters, we are enabled to keep a full supply of fresh roasted Coffee continually, after the Turkish and Continental modes.

The rapid and still increasing demand for this Coffee has caused great excitement in the trade, and several unprincipled houses have copied our papers and profess to sell a similar article. We, therefore, think it right to CAUTION the public, and to state that our superior mixture of four countries is a discovery of our own, and therefore the proportions are not known, nor can it be had at any other house. In future we shall distinguish it from all others as SPARROW'S CONTINENTAL COFFEE, at 1s. 8d. per lb.

Packet in this of all sizes perfectly all-right for the colony. We have also strong and useful Coffee, from 1s. to 1s. 4d. Several Tea Establishments, 35, High Holborn, adjoining Day and Martin's, leading through into 22, Dean-street.

HENRY SPARROW, Proprietor.

THE NEW TOOTH-BRUSH, made on the most scientific principles, thoroughly cleansing between the teeth, when used up and down, and polishing the surface when used sideways. This Brush so entirely enters between the closest teeth, that the inventors have decided upon naming it the TOOTHPEICK BRUSH; therefore ask for it under that name, marked and numbered as under:—No. 1, full-sized Brush, marked T.P.W. No. 1, hard; No. 2, less hard; No. 3, middling; No. 4, soft. The narrow Brushes, marked T.P.N. No. 5, hard; No. 6, less hard; No. 7, middling; No. 8, soft. These diminutive Brushes are only to be had at ROSS and SONS, and the wearer of his hair never to come to the hair falling out.

THE ATRIPLATY, or LIQUID HAIR DYE.—The only Dye that really grows for all colours, and does not require re-doing, but as the hair grows, so it naturally fades or changes to a different colour, or perhaps to a different dye. ROSS and SONS can, with the greatest confidence, recommend the above Dye as infallible, if done at their establishment; and ladies or gentlemen requiring it are requested to bring a friend or servant with them to see how it is used, which will enable them to do it afterwards with the greatest success. Several private apartments devoted entirely to the above purpose, and some of their establishments having used it, the effect produced can be at once seen. They think it necessary to add, that by attending strictly to the instructions given with each bottle of the Dye, numerous persons have succeeded without coming to the hair falling out. Address ROSS and SONS, 119 and 120, Bishopsgate-street, London, the celebrated Perruquiers, Perfumers, Hair-cutters, and Hair-dyers. N.B. Parties attended at their own residences, whatever the distance.

BY COMMAND OF HER MAJESTY'S GOVERNMENT.

IN consequence of the many cures achieved by the constant use of GRIMSTONE'S EYE-SNUFF, manufactured by choice British Chemists, Government having ascertained the above fact, has commanded W. GRIMSTONE, of 43, Oxford-street, to affix a medicine stamp on all caskets bearing the label as sanctioned by the Lords of the Treasury in 1836, and approved by the Stamp Solicitor in 1837. That this celebrated Grimstone's Eye-Snuff will be sold by all Choice British Vendors, in caskets, 1s. 6d., 1s. 3d., 1s. 1d., 6d., 4d., 3d., 2d., 1d., and 1/2d. each, stamp included, and forwarded through the post, upon receipt of a Money Order for 2s. 7d. a 2s. 7d. casket will be forwarded from W. GRIMSTONE, Merchant, 484, Oxford-street, London.

CARSON'S ORIGINAL ANTI-CORROSION

PAINT, specially patronized by the British and other Governments, the Hon. East-India Company, the principal Dock Companies, and other public bodies, &c. is particularly recommended to the Nobility, Gentry, Agriculturists, Manufacturers, West-India Proprietors, and others, it having been proved, by the practical test of nearly thirty years, to surpass all other Paints as an out-door preservative. It is extensively used for the preservation of wooden houses, farm and other out-buildings, farming implements, conservatories, park paling, gates, iron railings, iron hurdles, copper, zinc, lead, brick, stone, old copper and stucco fronts, and tiles to represent slating. The superiority of the ANTI-CORROSION over every other paint, for out-door purposes, may be easily inferred from the simple fact that its use has been always most extensively approved by colour manufacturers, painters, oil and colourmen, and others interested in the paint trade. It is also very economical, any labourer being able to lay it on. Colours—light stone, drab or Portland ditto, Bath ditto, light and dark yellow ditto, light and dark oak, light and dark lead, light and dark chocolate, light and dark green, light and dark blue, light and dark red, 60s.; bright ditto, 60s.; deep green, 60s. per cwt.; in casks, 25 lbs., 56 lbs., and 112 lbs. each. Oil and Brushes. More detailed particulars will be sent, free of postage. The original ANTI-CORROSION PAINT is only to be obtained of WALTER CARSON (successor to the inventors), 15, Tottenham-yard, back of the Bank of England, who will show nearly 300 Testimonials received from the Nobility, Gentry, and Clergy, who have used the Anti-Corrosion for many years at their country seats. W. C. is reluctantly compelled to caution the Public against the spurious imitations of his original ANTI-CORROSION PAINT, now offered for sale. He has no agents whatever. All orders are particularly requested to be sent direct.

CARVING IN WOOD.—The important reduction

in the price of carving in wood as executed by the patent process enables the proprietors to encourage the prevailing taste by supplying the most exquisite specimens of genius in the Gothic, Elizabethan, French, and Italian styles, adapted to all architectural purposes, and every possible variety of elaborate decoration. The proprietors solicit an inspection of the specimens executed by this simple and beautiful process, at their offices, 444, West Strand, or at their works, Ranelagh-road, Thames-bank. Published by J. Woake, 95, Holborn, Part I., II., III., and IV. price 2s. each (to be continued), containing exceedingly beautiful drawings of elaborate Carving in Wood, produced by the Patent Wood Carving Company, 444, West Strand.

A NEW DISCOVERY.—MR. HOWARD, Sur-

geon-Dentist, 62, Fleet-street, begs to introduce an ENTIRELY NEW DESCRIPTION OF ARTIFICIAL TEETH, fixed without springs, wires, or ligatures. They so perfectly resemble the natural Teeth as not to be distinguished from the original, and are so constructed, that they will NEVER CHANGE COLOUR OR DECAY, and will be found very superior to any Teeth ever before used. This method does not require the extraction of roots or any painful operation, and will give support and preserve teeth that are loose, and is guaranteed to restore articulation and mastication; and that Mr. Howard's Artificial Teeth are within the reach of the most economical, he has fixed his charges at the lowest scale possible. Decayed teeth rendered sound and useful in mastication.—62, Fleet-street. At home from Ten till Five.

Save from Thirty to Forty per Cent. at least by purchasing your

STATIONERY AT PARTRIDGE'S,

CHANCERY-LANE, five doors from FLEET-STREET, WHOLESALE AND RETAIL.

The following is the present list of prices for good Papers, all of which can be delivered to the best of their descriptions:

Good Bathing Papers	.....	per ream.
Good ditto	.....	do. do.
Best ditto	.....	do. do.
Best Bathing ditto	.....	do. do.
Best Bathing ditto	.....	do. do.
Note	.....	do. do.

Letter Papers of each of the above qualities at the same proportionate prices.

The best Envelopes in London reduced to 4s. 9d. per 1,000, assorted.

Superfine ditto, generally called the best, 2s. 0d. per lb.

Good office Wafers, 2s. 0d. per lb.

Best Irish Wafers, warranted, 2s. 0d. per lb.

Partridge's Steel Pens are well known for the ease and freedom with which they write; they are manufactured with the greatest care, of the best material, very carefully selected, and every Pen warranted, at 1s. 6d. per gross. Secundo Pens, 4d. per gross.

Partridge's Magnan Bonum Pens, 2s. per gross.

AN INFALLIBLE HAIR DYE.

ROWLAND'S MELACOMIA, the most success-

ful Liquid Preparation, ever known in this or any other country for the cure of the Head, Whiskers, Mustaches, and Eyebrows a natural and permanent brown or black, so exactly resembling the natural colour of the hair as to defy detection. It is perfectly innocent in its nature, is free from any unpleasant smell, and can be used by any lady or gentleman with the greatest ease and secrecy. Its effect is so permanent that it never wears off, and its application will induce it, and it is entirely free from those properties (usual in hair dyes) which give an unnatural red or purple tint to the hair. Price, 5s. Prepared by A. ROWLAND and SON, 20, HATTON GARDEN, London. Sold by them and by Chemists and Perfumers.

SHOOTING SEASON, 1846.

F. JOYCE'S ANTI-CORROSION PERCUSSION CAPS.

The Nobility, Gentry, and Sporting World at large, are respectfully informed, that this well-known and successful invention in every respect, which has now stood the test of many years experience, both at home and abroad, may be had as usual of all respectable Gun-makers and dealers in Gunpowder throughout the United Kingdom. To prevent accident and disappointment to purchasers, from the use of spurious imitations, they are requested to observe the name and address of F. JOYCE, ORIGINAL INVENTOR and SOLE MANUFACTURER, on each sealed packet, without which they are not genuine. This precaution is rendered necessary by some unprincipled individuals having imitated the Labels and Wrappers.

Joyce's Improved Wire Cartridges and Chemically-prepared Wad-dings of a superior description. Goods Manufactured to Pattern. A liberal profit to Exporters and the Trade.

Wholesale Warehouse, 55, Bartholomew Close, London. 3388

Universal Shot.

COCOA-NUT FIBRE.—This substance envelopes

the shell of the nutty coco-nut, around which it forms a strong protective net-work, and is a substance of great value, and is adapted for manufacturing it into many useful articles—such as carpets for stairs and passages, matting for churches, public buildings, offices, nurseries, and kitchens; heart-rugs, door-mats, ropes, netting for sheep-folds, &c.; but among the applications there is not one to which cotton cannot be substituted. It is a substance of great value, and is adapted for horse-hair, wool, and flock. It is very elastic, and affords great ease and support to the body, whether used with or without a feather-bed. It has also the additional recommendation of being so obnoxious to vermin that they will not live in it; whilst, if used in a bed, it will keep the bed cool, even in the hottest weather, and will engender no animalcules. Possessing peculiar chemical properties that render it a non-absorbent, the fibre is particularly suitable for children's beds, for use of schools, in all large dormitories, and as such. Cocoa-nut fibre mattresses are only about one-third the price of those made of hair, and will last much longer. They may be had on application at the warehouse, or will be sent free by post.

TRELLOE, 42, Ludgate-hill, seven doors from Farringdon-street, and five below Belle Sauvage Inn.

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TO be SOLD by AUCTION, early in the month of OCTOBER (unless previously disposed of by private contract, of which due notice will be given), in one or various lots, as may be determined at the time of sale, the valuable buildings and premises known by the name of the TANGIER IRON FOUNDRY, situate at Taunton, in the county of Somerset, where for many years past an extensive business has been conducted. The buildings are all extremely substantial, and so erected that they may, at slight cost, be converted into dwelling-houses. The whole adjoins the proposed site for the new church, and will afford admirable opportunity for any person desirous of continuing the business, or to make a street of excellent houses, in a favourite locality, which would yield a large revenue. Any person desirous of continuing the ironfoundry and smithy might have the buildings for a term, at a moderate revenue.

For further particulars, apply to Mr. C. CORFIELD, Architect, Taunton; W. R. HARRIS, Esq. Solicitor, 22, Lincoln's-inn-fields, London; and, for particulars and to view, at Tangier House, Taunton; or at the office of the Somerset County Gazette, Taunton.

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MR. MARSH (late Fuller and Marsh) respectfully informs the Public, that his PERIODICAL SALES by AUCTION of the above description of PROPERTY will be continued throughout the present year as follows:—

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WEST HAM, ESSEX.—Valuable FREEHOLD HOUSES, and large Garden. Land-tax redeemed.

MR. GEORGE TRIST is instructed to **SELL by AUCTION,** at Garraway's, Change-alley, Cornhill, on WEDNESDAY, AUGUST 26, at Twelve, in one lot, three convenient DWELLING HOUSES, situate Nos. 1, 2, and 3, Prospect-place, close to West Ham church; Nos. 1 and 2 lately let at rents amounting to 47*l.* per annum, and No. 3, at present occupied by a respectable tenant, at the low rent of 16*l.* per annum. The premises occupy a valuable frontage to the Plaistow-road of upwards of 60 feet, and at the rear is a large garden 400 feet deep, offering sufficient space for the erection of numerous small cottages, for which tenants could readily be found, presenting to a purchaser an opportunity of securing a large rental at a comparatively small outlay. The property may be seen, and particulars had of E. SEXTON, Esq. Solicitor, 75, Cornhill; at the Swan Inn, Stratford; at Garraway's; and of Mr. GEORGE TRIST, Auctioneer and Estate Agent, 80, Old Broad-street, Royal Exchange.

Valuable Leasehold Estates, Holloway.

MR. GEORGE TRIST will **SELL by AUCTION,** at Garraway's, Change-alley, Cornhill, on WEDNESDAY, AUGUST 26, at Twelve, in Six Lots, by direction of the Assignees of Mr. Goodale, and with the consent of the Mortgagees, a VALUABLE and IMPROVABLE PROPERTY, comprising eleven well built dwelling-houses, Nos. 7 to 17, inclusive, Rutland-Terrace, Hornsey-road, held for 97 years unexpired, at low ground-rents, and at present of the estimated value of about 400*l.* per annum, but fairly calculated that, upon the completion of the contemplated new roads through a portion of the estates of Miss Sebbons and Mr. Flowers, leading from the Great Northern Road (opposite the Liverpool-road) to Hornsey, a very large increased rental may with certainty be relied upon.—Particulars may be had of W. Whitmore, esq. Official Assignee, 3, Bevinghall-street; T. D. Keighley, esq. Solicitor, 75, Bevinghall-street; Messrs. Beaumont and Thompson, Solicitors, 19, Lincoln's-inn-fields; of F. W. Remnant, esq. Solicitor, 75, Chancery-lane; of Joseph Wheelock, esq. Solicitor, 18, Chancery-lane; of T. W. Angell, esq. Solicitor, 3, Deane's-court, Doctors'-commons; of Mr. Flowers, Brickmaker, opposite Rutland-terrace (who will show the property, and at whose office a plan of the contemplated improvements may be seen); and of Mr. GEORGE TRIST, Auctioneer and Estate Agent, 80, Old Broad-street, Royal Exchange.

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Important Investment.—To Capitalists and Others.

TO be SOLD by AUCTION, by Mr. STAFFORD, at his Rooms, in Milcom-street, on SATURDAY, the 5th day of SEPTEMBER, 1846, at Twelve for One o'clock precisely, the REVERSIONARY INTEREST of an individual expectant on the decease of a lady, now in her sixty-third year, of and in One-Seventh Part or Share of the sum of 32,437*l.* 1*s.* 8*d.* now standing with other moneys in the names of trustees, as follows, viz:—16,539*l.* 5*s.* Consols; 7,564*l.* 10*s.* 3*d.* per Cents; 8,333*l.* 6*s.* 8*d.* 3 per Cents. Total, 32,437*l.* 1*s.* 8*d.*—For further particulars, apply to R. VINER, esq. Solicitor, 24, Charles-street; or at the Auctioneer's Offices, Milcom-street, Bath. Bath, 18th August, 1846.

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Thursday, October 1. Thursday, December 3.
Notice of sales intended to be effected by the above means should be forwarded to Mr. MARSH 14 days prior to each date.—No. 27, Bucklersbury, corner of Charlotte-row, Mansion-house, London.

BOGNOR, SUSSEX.—Valuable Land for Building Purposes.

MESSRS. WINSTANLEY respectfully acquaint the public that they have received instructions from the mortgagees to **SELL by AUCTION,** at the Mart, in London, on THURSDAY, AUGUST 27, in one lot, about 38 acres of Freehold Building Land, having a considerable frontage to the sea, and situated at Bognor, in the county of Sussex, a delightful, healthy, and improving watering-place, within easy distance of Chichester, Brighton, and Worthing, now possessing the advantage of railway communication with the metropolis. This property offers an eligible opportunity for the employment of capital, and securing an excellent return for letting it off on building leases, at ground-rents.—Printed particulars may be had in London, of Mr. Hodgson, 22, Broad-street Buildings; of Messrs. WINSTANLEY, Paternoster-row; and at the place of sale. Also of Mr. J. M. OGDEN, Solicitor, Sunderland; Mr. Weller and Mr. Wright, at Chichester; the Norfolk Arms, at Little Hampton, and Arundel; the Hotels at Worthing and Bognor; and of Mr. Creasy, Auctioneer, Brighton.

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MESSRS. WINSTANLEY are instructed by the Executors and Executrix to **SELL by AUCTION,** at the Mart, on THURSDAY, 27th AUGUST, in one lot, without reserve, FOUR convenient and well-planned FAMILY RESIDENCES, near to St. Luke's Church, at Norwood, each containing ample accommodation for a moderate sized establishment, with the advantage of an abundant supply of spring water. There is a stable and coach-house, front and back gardens, carriage drive, &c. The property is leasehold, for 99 years, at a ground rent of 43*l.* and the lowest estimated rental is 260*l.* per annum, and as an investment offers a desirable opportunity for any person who could occupy one of the houses, and let off the others.—To be viewed by applying on the premises, where particulars may be obtained. Particulars may also be obtained of Messrs. HOLME, LOFTUS and YOUNG, No. 10, at the New Inn; at the Jolly Sailor, Norwood; the White Horse, Brixton-road; the George Canning, Effra-road; and at the Mart.

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TO be SOLD by AUCTION, early in the month of OCTOBER (unless previously disposed of by private contract, of which due notice will be given), in one or various lots, as may be determined at the time of sale, the valuable buildings and premises known by the name of the TANGIER IRON FOUNDRY, situate at Taunton, in the county of Somerset, where for many years past an extensive business has been conducted. The buildings are all extremely substantial, and so erected that they may, at slight cost, be converted into dwelling-houses. The whole adjoins the proposed site for the new church, and will afford admirable opportunity for any person desirous of continuing the business, or to make a street of excellent houses, in a favourite locality, which would yield a large revenue. Any person desirous of continuing the ironfoundry and smithy might have the buildings for a term, at a moderate revenue. For further particulars, apply to Mr. C. CORFIELD, Architect, Taunton; W. R. HARRIS, Esq. Solicitor, 29, Lincoln's-inn-fields, London; and, for particulars and to view, at Tangier House, Taunton; or at the office of the Somerset County Gazette, Taunton.

N.B.—Should not the above be sold or let by private contract, further advertisements will announce the day and place of sale.

DEEDS FOR EXECUTION ABROAD.—Messrs. J. and R. M'CRACKEN, Foreign Agents, No. 7, Old Jewry, beg to inform the Legal Profession, that they undertake to forward Deeds for Execution by Parties abroad, through their correspondents on the Continent, for the costs of transmission, and a simple commission. List of Correspondents, and for further information, apply as above.

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THIS OFFICE WAS ESTABLISHED

in 1841, and possesses tables formed on a scientific basis for the assurance of diseased lives. The urgent necessity for an institution like the present may be estimated by the statement that two-thirds of the population are not insurable as healthy lives, and that about one in five of the applicants to other offices is declined on examination. Of the proposals accepted by this Society during the last three years, nearly 300 had been rejected among upwards of 80 other offices. These cases came under the class of the most prevalent diseases, and the various parties could not have participated in the advantages of life assurance had not this Society been in existence, as it is the only one possessing tabulated rates of premium deduced from extensive data.

Premiums have been determined for the assurance of persons at every age, among those afflicted with consumption, asthma, bronchitis, pneumonia, disease of the heart, apoplexy, paralysis, epilepsy, insanity, disease of the liver, dropsy, scrofula, gout, rheumatism, &c.

These circumstances induce the Directors to believe that by the establishment of this office they have conferred an important benefit upon those whose condition made such a provision as assurance necessary, and they are therefore led to expect a powerful support from the public. Increased assurances are granted on sound lives. Healthy lives are assured at lower rates than at most other offices, and a capital of half a million sterling, fully subscribed, affords a complete guarantee for the fulfilment of the Society's engagements.

F. G. P. NEISON, Actuary.

NORTH BRITISH INSURANCE COMPANY, 4, New Bank Buildings, and 10, Pall-Mall East.

Tables of increasing premiums have been formed on a plan peculiar to this company, whereby assurance may be effected for the whole of life, the premium commencing very low, and gradually increasing during the first five years, after which a uniform premium is paid during the remainder of life.

SPECIMEN OF THE TABLES.
Premium for Assuring £100.

Age	First Year.	Second Year.	Third Year.	Fourth Year.	Fifth Year.	Remainder of life
	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
30	1 3 9	1 5 2	1 6 8	1 8 4	1 10 0	2 10 5
40	1 11 10	1 13 9	1 15 10	1 18 1	1 20 6	3 8 3

This table is not only suitable to those who, from the prospect of an increasing income, or other circumstances, prefer paying a smaller sum during the first few years, but is also decidedly the best mode of insuring with the view of securing the repayment of temporary loans. It is preferable to a period policy, as it may be continued to the end of life, without requiring new certificates of health, or incurring a higher rate of premium.

A Prospectus may be obtained of the Secretary, Henry T. Thompson, esq., 4, New Bank-buildings, or of the Actuary, 10, Pall Mall East.

JOHN KING, Actuary.

PALLADIUM LIFE ASSURANCE SOCIETY, 7, WATERLOO-PLACE, LONDON.

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The result of the Third Septennial Investigation of the affairs of the PALLADIUM having been announced to the Proprietors and Policy holders, at the General Meeting, 21st ult.

The Directors submit to the public, in evidence of the success which has attended the business of the Society, the following Table, showing—
Total additions made to Policies for 5,000l. which had been in force for Twenty-one Years, on the 31st December, 1845.

Age at Commencement.	Gross Additions to the Sum Assured.	Annual Premium on the Policy.	Reduction of Premiums equivalent to the Bonus declared.
10	£791 19 1	£85 4 2	£21 11 11
15	930 1 9	95 9 2	28 10 3
20	1,070 19 3	108 19 2	37 7 5
25	1,095 1 10	120 4 2	43 13 7
30	1,138 7 2	133 10 10	52 14 6
35	1,179 6 5	149 11 8	64 18 0
40	1,271 8 1	169 15 10	84 2 9
45	1,383 16 11	194 15 10	113 11 1
50	1,554 19 9	226 13 4	164 6 8

In this Society the Assured receive Four-fifths of the Profits of a long-established and successful business, the principal of the remaining fifth being further invested for their security, in addition to the guarantee of a numerous and wealthy Proprietary.

Tables of Rates, and every information respecting Assurances, may be had at the Society's Office, or of the Agents in different parts of the country.

In addition to the ordinary cases provided for in the Society's printed Prospectuses, Special Policies will be granted to meet contingencies of every description.

JEREMIAH LODGE, Secretary and Actuary.

1st June, 1846.

Applications for Agencies in places where none are established, to be addressed to the Secretary.

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Prospectuses on Application (if by Letter prepaid), to HENRY R. SYLVESTER, Esq. Solicitor, 19, Great Dover-street, Southwark.
London, August, 1846.

NERVOUS MENTAL COMPLAINTS.—

The Nervous are invited to send to Mr. ADAMS for his pamphlet on the symptoms, treatment, and cure of nervous complaints, which pamphlet he will return post-paid on receipt of two stamps. Persons suffering from groundless fear, delusion and melancholy, inquietude, disinclination for society, study, business, the overflow of blood to the head, head ache, giddiness, failure of memory, irresolution, and every other form of nervous disease, are invited to avail themselves of his never-failing remedy. The most deeply rooted symptoms are effectually and permanently removed without bleeding, blistering, or purging, and without hindrance to habits of business or pleasure.

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We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

M. C. de L. (Manchester).—We referred the communication to our short-hand writer, who states that the judgment was not delivered in the Common Law Courts. To enable us to trace it, our correspondent should name the Equity Court in which he presumes the judgment was delivered.
H. T. (Plymouth).—The lectures of Professor Carey are not published collectively, and can only be obtained in the columns of the LAW TIMES.

T. A. W. (Clifford's-inn).—It is a rule with this journal, often announced, not to give replies to questions on law. A pleader or counsel is the proper party to whom such queries should be submitted.

AN ARTICLED CLERK.—The Real Property division of Stephens, Blackstone, and Preston's Conveyancing. There were several judgments delivered last Term, which, owing to the absence of counsel on circuit and vacation, and the consequent difficulty of getting the pleadings and arguments, are not yet reported, but which will appear as soon as they can be completed.

ERRATUM.—For Major "Baines," in the 1st col. of advertising page, LAW TIMES, No. 173, read Major "Barnes."

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INDEX TO THE LAW.

The LAW DIGEST for the half-year ending Jan. 1 is now ready. It forms a complete Index to the Law decided during the half-year, and contains upwards of 2,000 cases. Price 5s. 6d. in a wrapper. Being stamped, it can be transmitted by post.

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EXTRACTS FROM THE TABLES.

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Annual Premium for £100. Half Premium Table.				Annual Prem. for 1000 Repet.			
Age	First Seven Years.	Remainder of Life.	Age	Civil Ser- vice.	Military Ser- vice.		
				One Year.	Whole Term.	One Year.	Whole Term.
20	5 s. d.	2 s. d.	20	Ra. 30	Ra. 31		
30	1 0 2	2 0 4	30	35	36		
40	5 10 2	2 11 8	40	38	39		
50	1 15 9	3 11 6	50	42	44		
60	2 14 5	5 2 10	60	48	50		
70	4 11 0	9 2 0	70	55	57		

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THE REPORTS.

The following are the names of gentlemen who have in LAW TIMES with the Reports:—

PRIVY COUNCIL by THOMAS CAMPBELL PORTER, of the Middle Temple, Esq. Barrister-at-Law.

LORD CHANCELLOR'S COURT by RICHARD GUSTAVUS WALPOLE, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR OF ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

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VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLENBY, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT, by YERBY T. DAWSON, Esq. of the Middle Temple, Barrister-at-Law.

COMMON LAW COURTS.
THE QUEEN'S BENCH, by ADAM BRITTON, Esq. of the Inner Temple, Barrister-at-Law, and EDWARD WISE, Esq. of the Middle Temple, Barrister-at-Law.

THE COURT OF COMMON PLEAS, by PAUL PARKER, Esq. of the Middle Temple.

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THE HALL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

THE EXCHEQUER CHAMBER by HENRY BACON, Esq. of the Inner Temple, Barrister-at-Law.

BANKRUPT AND INSOLVENT COURTS.
THE COURT OF REVIEW by GEO. S. ALLENBY, Esq. of the Middle Temple, Barrister-at-Law.

LONDON COMMISSIONERS' COURTS and the SOLVENT COURT, by PAUL PARKER, Esq. of the Middle Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT, by F. T. ALLEN, Esq. of Lincoln's-inn, Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND GROWN CASES.
CENTRAL CRIMINAL COURT, by B. C. BROWNE, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by A. BRITTON, Esq. of the Inner Temple, Barrister-at-Law.

NORTHERN CIRCUIT, York and Liverpool, by J. L. ASPINALL, Esq. Barrister-at-Law. The other parts of the Circuit, by G. F. H. OLFERT, Esq. Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

NORFOLK CIRCUIT by JNO. B. DAKETT, Esq. Barrister-at-Law.

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QUEEN'S BENCH and CRIMINAL COURTS by Wm. ST. LEGER BABINGTON, LL.D. Barrister-at-Law.

NECROLOGY.

SIR CHARLES WETHERELL.

THERE never probably departed this life an individual who stood less in need of posthumous praise than the late Sir Charles Wetherell. Though he lived, more especially in the earlier portion of his life, in times of fierce public excitement, and passed the greater portion of his manhood and mature age in the keenest forensic and political encounters, in which he never spared a professional or political adversary, yet such was the openness and candour of his nature—such the sincerity and honesty of his convictions—such the straightforwardness and boldness of his extreme opinions—that he had no personal enemy while living; and now that he has gone unexpectedly to the tomb, his bitterest political opponents—if indeed there were any such—mourn over his melancholy and untimely end as sincerely as his most attached personal friends. This result is owing, not so much to the graces of his mind or the endowments of his understanding, as to the strength, sincerity, and honesty of his convictions. In a corrupt, a venal, and vacillating age he never countenanced professional or political frailty, by his example; he professed to the last the principles with which he started as a public man. As a lawyer and as an advocate, Sir Charles Wetherell attained in his day a very high, if not the highest position. Called to the bar 51 years ago, he commenced his earliest practice in the Court of King's Bench, when that court was presided over by Lord Kenyon, and when the first law offices under the Crown were filled by Sir John Scott, afterwards Lord Eldon, and Chancellor of England, and Sir John Mitford, afterwards Lord Redesdale, and Chancellor of Ireland. The foremost men of the English bar were then not merely lawyers, but scholars and orators, and no better school of dialectical discipline could have been chosen for a young advocate than the arena of the King's Bench. There in the foremost rank stood Erskine, Law, Gibbs, Topping, Mingay, Shepherd, Dallas, Cockell, Garrow, Adair, Adam, Lens, and Park, while the junior briefs were held by such men as Percival, Holroyd, Romilly, Wigley, Chambre, and Bayley. In such a school, where nothing base or mean was tolerated, Mr. Wetherell first learned the nature of the duties of an English advocate, and to the last moment he was faithful to his conception of the high and honourable calling in which he had embarked. After practising for some years in the courts of common law, with no very distinguished success, Mr. Wetherell followed Lord Eldon into the Court of Chancery, and here he soon obtained a considerable share of business. It was supposed from his early connection with the Lord Chancellor that he would have been appointed Solicitor-General in 1816 in place of Sir Samuel Shepherd, but that office was conferred on Mr. Gifford in 1817, a person much Mr. Wetherell's junior in point of years and standing, as well as in general learning. The first case in which Mr. Wetherell greatly distinguished himself, and came prominently before the public, was the defence of Watson, which he volunteered in 1817. It was said at the time that he undertook this defence from a rancorous feeling of disappointment, but they who thus spoke of Mr. Wetherell knew not his character, for rancour was not in his nature. That he might have felt pique is very possible, and is not under the circumstances extraordinary. That he exerted himself strenuously and successfully is very certain, for his client obtained a verdict of acquittal. Within a year and a half after this period—namely, in 1820—Mr. Wetherell was returned to Parliament for the city of Oxford, and from this period his political life may be said to have commenced. He sat in Parliament from the year 1820 until the year 1833, was twice, during that period, Attorney-General, and although during these thirteen years he spoke as often and as vehemently as any man who ever addressed the chair, yet such was the impress of truth and sincerity, with which his language and conduct were stamped, that no man ever thought of questioning his motives, or doubting the ardour and honesty of a zeal which might not have been always prudent or wise.

Of this, in our day, unparalleled political integrity, Sir Charles Wetherell afforded two memorable examples: first, in his refusal to serve the Government of Mr. Canning, in 1827; and, secondly, in his resignation of the office of Attorney-General, under the Duke of Wellington, in 1829. Had he on either occasion preferred interest to principle, he might have held the highest offices in the state, and encircled his brow with a coronet; but, preferring principle to place, he renounced office, official emolument, and titled rank, but maintained his honour, his character, and consistency, to the last.

As a scholar Sir Charles Wetherell was a man of very varied and general attainments. In classical lore his reading was most extensive, and his quotations were often apposite and happy. In English history, too, he was well read, and his memory being exceedingly retentive, he was enabled to bring his

knowledge extensively to bear on questions of an historical-legal character.

As a lawyer, his learning was most recondite and extensive, and he understood law as a science well; but in a knowledge of the practice of the courts, and in the intricacies of particular branches of the profession, he was surpassed by many, even his inferiors in powers of mind and general scholarship.

As an advocate, he was distinguished by strength, forcibleness, and untiring zeal, but he wanted tact, discretion, and consummate skill, though he was neither deficient in acuteness, subtlety, nor ingenuity. His most conspicuous defects were dilative verbosity and endless repetition, and want of a clear arrangement. As a parliamentary speaker, though he almost always amused the House, yet he sometimes wearied it too, and never, therefore, took a high rank. Though abounding with learning of every kind, and fluent, forcible, humorous, and witty by turns, yet such was the effect of his droll manner, of his numerous digressions and repetitions, of his prolixity and occasional involution and obscurity, that attention began to flag and the benches to thin of occupants; but a new jest or a recondite remark, happily hit off, would recall the wanderers, and Sir Charles generally sat down amidst a torrent of applause.

For the last thirteen years that voice, which is now mute for ever, had not been heard within the walls of St. Stephen's, and was not indeed often heard in the Court of Chancery; but although Sir Charles had in a great degree retired from public life, yet he was not forgotten by the English people, who love honesty and reverent consistency; and when the successful intriguers, political impostors, and public knaves of the last twenty years shall be forgotten, or remembered only with loathing and contempt, the name of Wetherell will be cited as embodying all the attributes appertaining to that noblest work of God, an honest man.—*Morning Herald*.

MINT.—Returns for the year ending Dec. 31, 1845, under 7 Wm. 4, c. 9, s. 3, and 4. The monies coined during the year were—gold, 16,029l.; silver, 647,658l.; and copper, 6,944l.

Miscellaneous.

EYE BROWS, MOUSTACHES, AND WHISKERS.—This is an Essential Spirit, drawn by the Laboratory from choice Aromatic Herbs. The Regenerator will remove hair on bald places caused by weakness of constitution, &c. and is a certain preventive of Headache and Fainting. Sold in triangular bottles, with name, &c. at 4s. 7s. and 1s. each, government stamp, and a pamphlet of testimonials and advice, included. Sent through the post at 4s. 7s. 6d. and 1s. by all Chemists, Medicine Vendors, and W. GRIMSTONE, Herbarist, Highgate, near London.

TONIC MILK OF ORANGE.—A Delicious Cordial, and sweetener of the breath. Patronized by the Royal Family and Nobility, and recommended by the Faculty. The Milk of Orange (warranted to be extracted from fruit) warms the stomach, creates appetite, digests the food, strengthens the lungs, clears and improves the Voice for Singing, enlivens the spirits, dispels nervous debility, and purifies and sweetens the breath. It is particularly recommended to gentlemen on leaving home in the morning or after smoking a cigar, while to ladies it will be equally grateful on going to a party or ball, for its invigorating influence on the mind and spirits, and its refreshing effect on the organs of health. It may be added, that as a lively but gentle stimulant wholly unaltered with spirituous ingredients, it will prove extremely grateful to that numerous class of persons, who, on principles of abstinence refrain from all intoxicating drinks.

Prepared by A. ROWLAND and SON, 20, Hatton-garden, London. Half-pints, 2s. 9d.; Pints, 4s. 6d.; Quarts, 9s. Sold by them, and by chemists and perfumers.

VICKERS'S CURACAO PUNCH.—This delightful LIQUEUR stands pre-eminent as a finished specimen of what Punch should be. It is a high state of concentration; and when diluted, presents to the connoisseur in tangible reality, that which before existed but in imagination. That truly valuable stomachic JAMAICA GINGER, is also most successfully combined with other wholesome ingredients; and introduced as a delicious Liqueur, known as ORANGE GINGERETTE, and in a stronger form (as an aromatic stimulant), under the title of GINGER BRANDY. These, as well as the celebrated IMPERIAL LIQUEUR GENEVA, may be obtained of all the Spirit Merchants in the kingdom. In order more effectually to protect the quality, and to present them to the consumer in a convenient form, these Liqueurs are bottled, sealed, and labelled by the distillers, JOSEPH and JOHN VICKERS and CO. LONDON.

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The public attention is particularly called to their Pale Brown British Brandy, which is allowed to be matchless.

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MESSRS. LAMB and BIRCH will **SELL** by PUBLIC AUCTION, at the Royal Oak Inn, in Dover, on WEDNESDAY, the 2nd day of SEPTEMBER, 1846, at One for Two o'clock precisely (by order of the assignees under a fiat in bankruptcy against Mr. Samuel M. Latham), in the following lots:—

Lot 1.—A valuable freehold overshot CORN MILL, in which a very extensive business has been carried on for many years, now in the occupation of Messrs. J. and E. Pilcher, as tenants at will, situate at Buckland, abutting on the London turnpike-road, with the fixtures and going-gear belonging thereto; together with the garden-ground on the south-east side thereof, and the land between the mill and the inclosed garden on the north-west side, and the mill-head and mill-banks, as shown in the plan, so far as the vendors can convey the same or the right thereto. The mill has five lofty stories, and works five pair of stones; but it is capable of being made available for more work, and of grinding 300 quarters per week. It has been well kept up, and is in good working order. The overshot wheel is fitted with iron buckets, is between ten and eleven feet diameter, and is worked by a very powerful fall of water of nearly twelve feet. The garden-ground adjoining the mill contains upwards of a quarter of an acre; and, abutting also upon the high road, is well adapted for building purposes.

Lot 2.—A capital newly-erected Freehold DWELLING-HOUSE, now in the occupation of G. Graham, esq. for a term which will expire at Michaelmas, 1847, with the gardens, lawn, pleasure-grounds, and ornamental enclosure surrounding the premises. The house contains good entrance-hall, breakfast, dining, and drawing-rooms, library, nine bed-rooms, capital cellars, and very convenient domestic offices. It is most substantially built. Its internal arrangement is of the most comfortable kind; and it forms altogether a highly desirable residence, and fit for a large establishment.

Lot 3.—The Freehold PAPER MILLS, on the N.E. side of, and partly built over the River Dour, with the fixtures and materials therein, and the land in the rear thereof, with the garden and bank to the northward, and also a piece of land, supposed to be leasehold, formerly a garden, and now thrown into, and used as a part of Brookditch meadow, after described. The freehold contains about 2r. and 9p. and the part supposed leasehold about 1r. 11p. With this lot will be sold, the road leading out of the turnpike-road, and the carriage bridge over the river, on the terms stated in the particulars, as also the intended reserved road, across Brookditch meadow, so far as the lot extends.

Lot 4.—A very productive WALLED GARDEN, intersected by a running stream of pure spring water, with the valuable trees, plants, and buildings therein, and the barn, yard, valuable pasture land, sheep wash and watercourse, situate on the north-east side of the River Dour. The land forms part of the Brookditch meadow. This lot is bounded on the N.E. and S.E. sides by the high road, on the S.W. by the river Dour, and on the N.W. by a thirty feet reserved through the meadow, connecting the London road with the road from Charlton to Old Park, &c. And the lot contains altogether about 1a. 2r. 5p.

Lot 5.—A piece of most fertile and valuable PASTURE LAND, being the residue of Brookditch meadow, and the bed of the canal there, containing by admeasurement 2a. 3r. 19p. or thereabouts: abutting to the high road towards the N.E. to the beforementioned reserved road towards the S.E. and to Lot 3 towards the S.W.

The above lots form altogether an opportunity for investment rarely to be met with in the neighbourhood of Dover. They are very pleasantly situated, about half a mile from that town, possessing the comforts of the country with all the advantages of a town, and a contiguity to a large business population. The flow of the river Dour is well known as a steady and copious run of water; and the property in question might be adapted to almost any business where water and space are essential or useful.

Printed particulars, with plans and conditions of sale, may be had ten days before the sale, and further particulars obtained on application to Messrs. BRIDGES, MASON, and BRIDGES, Red Lion-square; the Auctioneers, Dover; Mr. A. Small, Land Surveyor, Buckland; or to Messrs. Edw. Knocker and Edw. Elwin, Solicitors to the fiat, Dover.

The Great and Valuable FREEHOLD ESTATE of WHITTLESEA, extending to within two miles of the city of Peterborough.

MESSRS. DANIEL SMITH and SON are commissioned by the noble proprietors to **SELL** by AUCTION, at the Mart, near the Bank of England, in SEPTEMBER (unless an acceptable offer shall be previously made by Private Contract), the above truly valuable and important FREEHOLD PROPERTY between Peterborough and Wisbeach, in Cambridgeshire, comprising the vast manors of Whittlesea, embracing nearly 25,000 acres, and in which are 200 or 300 copyholdings, paying quit-rents and fines, the greater part of the flourishing town of Whittlesea, the bank premises, several private residences, inn, shops, &c. being held of the said manor.

Also above 2,100 ACRES of most FERTILE LAND, divided into COMPACT FARMS, and let at low rents to a highly respectable and intelligent tenantry with some very valuable dispersed parcels of land adjoining and contiguous to the town, portions eligible for building.

Also, the ADVOWSON of the Vicarage of St. Mary, and the FREEHOLD RENT-CHARGES, in lieu of tithes, extending over nearly 18,000 ACRES, of the annual value together of upwards of 6,000l. exclusive of the valuable manors and living; offering, with its many advantages, a fine influential and solid property for the investment of capital. There is a navigable river and canal through the estate, and the railway from Peterborough to Ely, &c. passes through Whittlesea.

The entire property will be first offered in one lot, and if not sold will be immediately put up in three lots, viz. first, the tithe-rent-charges; second, the farms and manors; and, third, the advowson.

Particulars may be obtained of Messrs. JONES, BATEMAN, and BENNETT, Solicitors, Lincoln's-inn-fields; at the Auction Mart; of Mr. JOHN WADELOW, Whittlesea, who will show the estates; and of Messrs. DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall.

KENT.—Valuable Freehold Farms in the picturesque and healthy parish of Wrotham, about 23 miles from town, and 11 from Maidstone.

MESSRS. DANIEL SMITH and SON are instructed by the Devises in Trust under the will of the late Rev. George Moore, to **SELL** by AUCTION, at the Mart, on TUESDAY, AUGUST 25, at Twelve, in lots (unless an acceptable offer shall be previously made by private contract), FIVE very desirable FREEHOLD FARMS, with suitable buildings, cottages, &c. in the beautiful, healthy, and fertile parish of Wrotham, the whole in very high condition, having been for some time past in the hands of the late proprietor, rendering them particularly desirable little properties for occupation or investment. Mr. Harrison, the bailiff, will show the farms; and particulars, with plans, may be had at the neighbouring inns; at the Mart; of R. LAMBERT, esq. 32, John-street, Bedford-row; and of DANIEL SMITH and SON, Land Agents, Waterloo-place, Pall-mall.

The Estate of New Place, with its Mansion and famous Trout Fishery, close to Alresford, Hants, about eight miles from Winchester and 18 from Southampton.

MESSRS. DANIEL SMITH and SON are commissioned to **SELL** by AUCTION, at the Mart, near the Bank of England, on FRIDAY, the 18th day of SEPTEMBER next, at Twelve o'clock, (unless an acceptable offer shall be previously made by Private Contract), the above valuable FREEHOLD PROPERTY; comprising the mansion of New Place, the prominent feature amidst the picturesque scenery on approaching the town of Alresford from Winchester, at present occupied by Lady Paxton, who will give early possession. The house stands elevated, surrounded by well-planted grounds, having an extensive and important frontage upon the high road, from which it is screened by ornamental plantations. The estate comprises, in a most perfect and compact ring fence, about 105 acres, part very valuable water meadows, extending to and embracing the river, which bounds it on the lower or north side for a mile, affording some of the best trout fishing in the county. It is a remarkably healthy and a famous sporting part of the country. —It may be viewed with cards, which, with particulars and lithographic plans, may be had at Messrs. Jacob and Johnson's library, Winchester; at the hotels, Southampton; at the Auction Mart; of Messrs. DUNN, CARTER, and HOPKINS, Solicitors, Alresford; and of Messrs. DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall.

ADDLESTONE, SURREY.—Valuable Freehold and Copyhold Estate, delightfully situated in this much-admired, dry, and healthy village, within a quarter of a mile of the Station on the Egham Branch of the South-Western Railway at Weybridge, one hour's ride from London, and one mile of the capital market-town of Chertsey.

MR. WARREN respectfully announces that he has been favoured with instructions to **SELL**, at the Crown Inn, Chertsey, on WEDNESDAY, the 26th AUGUST, 1846, at Two, in Eight Lots, FORTY ACRES of LAND, of excellent quality, and in part fish-free, most desirably situate in the highly respectable and improving village of Addlestone, and possessing the very extensive frontage of 500 yards to the high road leading from Windsor to Guildford and Brighton, and admirably adapted for building purposes; also a comfortable Farm-house, Barn, Yard, and Outbuildings; the whole having been held on lease by the late Mr. Perry and his Widow, whose term expires at Michaelmas next, when (or before) possession may be had.

May be viewed upon application to Mrs. Perry, at the farm-house, opposite the George Inn, Addlestone, where printed particulars, with plans, may be obtained; also of Messrs. BRIDGES, MASON, and BRIDGES, Solicitors, Red Lion-square; at the Griffin, Kingston; White Lion, Staines; Greyhound, Richmond; Bear, Esher; at the place of sale; and of Mr. WARREN, Land and Timber Surveyor and Valuer, Isleworth.

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TRACT, a FREEHOLD ESTATE, consisting of 100 acres, the greatest part excellent pasture and dairy land, and three fields of arable land, a good farm-house lately built, and suitable outbuildings lying in a ring-fence, in the county of Gloucester, and in the occupation of a most respectable tenant, who has held it for forty years, upon a yearly rent of 160l. per annum, which he pays with punctuality.

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THE LAW TIMES,

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FOR

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VOL. VII. No. 178.]

SATURDAY, AUGUST 29, 1846.

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Legal Notices.

THIS IS TO GIVE NOTICE, that by an Indenture, bearing date 18th day of July instant, WILLIAM WALTON, of Cublington, in the county of Warwick, Plumber, Painter, and Glazier, hath conveyed all his estates and effects whatsoever to GEORGE HINDE, of the same place, Maltster, a creditor, as a trustee upon trust, for the equal benefit of himself and all the other creditors of him the said William Walton, and that the said indenture was duly executed by the said William Walton and George Hinde, on the said 18th day of July instant, in the presence of, and witnessed by, William Charles Empeon, of Leamington Priors, in the said county of Warwick, gentleman, attorney and solicitor; and Notice is further given, that the said Indenture will lie at the office of William Overell, at No. 38, George-street, Leamington Priors aforesaid, gentleman (the successor of the said William Charles Empeon, as an attorney and solicitor there), for the space of two calendar months, from the publication hereof, for execution by any creditors of the said William Walton, all such of whom as shall fail or neglect so to do within that time will be excluded from all participation and benefit thereof and therein.
No. 38, George-street, Leamington,
24th July, 1846.

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CORRESPONDENCE.

PRACTICE OF MAKING BASTARDY ORDERS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—I am induced to trouble you with a line or two on the following subject:—In several places in this neighbourhood, when orders for the support of bastard children are made by magistrates, it is the constant practice of the magistrate's clerk to make out the order in three parts, one to serve on the putative father, another to be sent to the guardians; but the third is invariably kept by the clerk, so that the mother does not get any order at all, though she applies and pays for it. The hardship, as well as impolicy and injustice of such a course, must, I think, be apparent. In a case which recently came under my notice, where a woman had removed out of the jurisdiction where the order was made, and wanted a warrant in the jurisdiction where she then was, against the man, for making default in his payments, she applied to the clerk to the magistrates of the former jurisdiction, to be permitted the favour of having the order, to enable her to get a warrant in another place. The clerk, after a great deal of hesitation, allowed her to have the order, but only on the express understanding that she would return it again as soon as she had the man brought up. In another case, an order was made upon a man several months ago, say at A, who ran off from the neighbourhood at the time. The woman removed from A to N, in another jurisdiction. A few days ago the man was heard of, as having come to N. The poor woman was told she could not take proceedings until she produced the order; but A, where the order was, being several miles distant from N, and the woman having no money to procure a conveyance to reach there in a short time (the man intending to leave N the next morning), he was allowed to escape. Such cases as these have frequently happened here; they have induced me to ask you to notice the matter, in the hope that it may meet the eye of some of those who inflict such hardships on poor, ill-used women; and if no valid reason can be given for it, that a practice alike absurd, uncalled for, and unjust, will be discontinued. There can be no objection to the clerk keeping a copy or duplicate of the order, but he surely, in doing so, is not to deprive the woman of hers.

I am, Sir, yours, &c.

THOS. A. DAVIDSON.

Newcastle-upon-Tyne, Aug. 25, 1846.

THE SMALL DEBTS BILL.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Your editorial article of this week expresses surprise that the attorneys have not bestirred themselves to oppose this Bill, and you appear unable to account for such apathy.

There is no mystery in the matter. The majority of respectable attorneys do not care to be employed in the recovery of debts; it does not fairly remunerate them. For, on the one hand, they have to pay an over proportionate amount for agent's charges, official fees, and other mechanical work; and, on the other hand, in unsuccessful cases, where the defendant absconds or becomes insolvent, they will as often put up with the loss of their costs as inflict a double injury on the employer by sending in a bill. It is a current observation in the country, "I wish I may never see the tail of a writ in my office." The business of recovering small debts is taken up by men of generally less credit and conscientiousness; and they are under some necessity of fleeing their client when they can get no wool from the defendant debtor.

It is unnecessary, in a work like yours, to shew how much of the costs of a suit is thrown away for the merest mechanical work, and how little goes to remunerate the skill and integrity selected by the client. The attorney's interest (like the client's) is a secondary affair among lawyers. The barrister actually claims it as his privilege "to abuse the attorney" *ad libitum*. That the interests of the bar, the London agent, master, secretary, official clerk, &c. are all more tenderly fostered than those of him who stands nearest to the client, is palpable. We need not go for proofs beyond the Law Institution, and the Chancery Compensation job. The cause lies in the more concentrated situation of the former class. All attorneys (except a few mixed up with official situations) are law reformers, and honest ones too. They are more interested in speedy and efficient justice than the other legal employees. If their influence had been paramount, instead of subjected to that of the other classes alluded to, the Court of Chancery would by this time have been one of social utility and convenience, instead of a terror and abhorrence to the prudent man.

The end of this is, to hint the advantage of any measure for recovering small debts being submitted to the revision of some respectable unbeneficed country attorneys.

LEX.

POINT OF PRACTICE.

TO THE EDITOR OF THE LAW TIMES.

SIR,—In answer to your correspondent's inquiry in the LAW TIMES of the 22nd instant, as to the propriety of making the mortgagor, upon a transfer of a mortgage, enter into fresh covenants with the new mortgagee, I humbly submit that the *ad valorem* duty for the entire sum advanced does not attach in the case put by your correspondent.

The mortgage stamp must be regulated by the effect of the instrument constituting the security. (*See dem. Jarman v. Sarder*, 3 Scott, 407; 3 Bing. N. C. 92.) It is the practice with many attorneys to insert a new proviso for redemption, and a new covenant for payment; whilst others omit them. Where the concurrence of the mortgagor can be obtained, Mr. Jarman recommends the insertion of a new proviso and new covenants, as being the preferable mode, because it avoids the necessity of assigning the debt, with power to the transferee to sue in the name of the transferor, which is always inconvenient. And he is also of opinion that the *ad valorem* duty does not attach, on the ground that mortgage money which has once paid the *ad valorem* duty was not intended by the legislature to be again liable. *Vide* Bythewood's Conveyancing, by Jarman, 2nd edit. vol. vi. pp. 269, 292, 324, (notes).

At the same time I would observe that there are opposite opinions upon the point, but which I think cannot be substantiated. It is important to bear in mind that the Courts incline to give the subject the benefit of reasonable doubts arising in the construction of the Stamp Act.

I am, Sir, yours, &c.

W. T. JEFFERSON.

Northallerton, Aug. 25, 1846.

REPRESENTATION OF ATTORNEYS IN PARLIAMENT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Frequent and very just complaints have appeared in your columns of the want of an active member of one branch of the Profession to represent its interests in Parliament. Nearly all class interests are represented there, and why should the solicitors (who are admitted to be a most influential class), not be there represented? During the late committee of the House upon the Small Debts Bill, we were indebted to Mr. Wakley for all that was done upon our behalf. The Attorney-General, of course, took charge of the interests of Barristers, but had it not been for the honourable member for Finsbury, no one would have said any thing for us. We want such a representative for our body as he is for the medical practitioners, but I fear we may wait long for such

an advantage. However, a general election will, in all probability, take place some time next year, and, surely, Sir, we can, within "the length and breadth of the land," find a candidate and constituency who will be the means of affording us a representative in the next Parliament? All the Law Societies should take the matter up immediately, and communicate with each other upon the subject. I feel assured that, if required, a sufficient sum could be raised by subscription amongst our brethren, to defray the expenses of the election. I should be very happy to contribute to such a fund; and we may rest assured, that unless we are represented in the House, it will be wholly useless to attempt obtaining a repeal of the certificate duty, or any other object affecting our professional privileges or interests.

I am, Sir, your's, &c. A SOLICITOR.
Wrexham, August 27, 1846.

THE WILLS ACT.

TO THE EDITOR OF THE LAW TIMES.

SIR,—WILL any of your readers oblige me to inform me who was or were the author or authors of the WILLS Act (1 Vict. c. 26)?

I ask this more particularly in reference to sec. 4, which is, perhaps, the foulest blot that has hitherto been cast upon an otherwise excellent system of modern legislation.

Let me entreat your readers to look steadily at sec. 4, and then, if they can, suppress a feeling of shame that they should be identified with a law capable of inventing and concocting such things as injustice—aye, and actually passing it off as the respectable pretence of an amendment of the law of wills!

Surely, if Satan's very self were lord of a man, not even his chief steward could have concocted anything more vile, mercenary, insolent, or despising than this enactment.

I am, Sir, yours, &c.

August 24, 1846. A TENANT.

THE REPORTS.

The following are the names of gentlemen who have written the LAW TIMES with the Reports:—

PRIVY COUNCIL by THOMAS CHAMBERLAIN, Esq., of the Middle Temple, Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GIFFORDS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

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REGISTRATION COURTS, collected and edited by EDW. W. COX, Esq. of the Middle Temple, Barrister-at-Law.

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THE LORD CHANCELLOR'S COURT by WILLIAM DUGAN, Esq. Barrister-at-Law.

QUEEN'S BENCH AND CRIMINAL COURTS by Wm. St. LEON BARRINGTON, LL.D. Barrister-at-Law.

NECROLOGY.

THE MARQUIS OF THOMOND.

We regret to have to record the decease of the Marquis of Thomond, who expired, on Friday last, at Taplow House, near Maidenhead, after an illness of only ten days.

The deceased William O'Bryen, Marquis of Thomond, Earl and Baron of Inchiquin, and Baron of Barren, county Clare, in the peerage of Ireland; and Baron Tadcaster, of Tadcaster, county York, in the peerage of the United Kingdom, was son of Mr. Edward O'Bryen, brother of the first marquis by Mary, daughter of Mr. Carrick. He was born in 1766, and was consequently in his 80th year. The late marquis married, in September, 1799, Elizabeth Rebecca, only daughter and heir of Mr. Thomas Trotter, of Duleck, county Meath, who survives her husband.

The late marquis entered the army at a comparatively early age, and was in the 12th regiment of Foot, at the capture of Guadaloupe and St. Lucie, and subsequently proceeded to the East Indies with that regiment in active service. He eventually exchanged from the infantry to the 14th Dragoons, but retired from the army in 1800. On the death of his uncle, the first marquis, in February, 1808, he succeeded to the family honours and estates in the county of Cork. The deceased nobleman was, with the exception of the King of Hanover, the senior knight of the most illustrious order of St. Patrick; was a privy councillor for Ireland since 1828, colonel of the Cork City Militia, extra aide-de-camp to the Queen, and his late Majesty William IV., and a representative peer for Ireland since 1816.

In default of male issue, the late marquis is succeeded in the title by his brother, Vice-Admiral Lord James O'Bryen, G.C.H. (now Marquis of Thomond). Lady Susan, married to the Hon. Capt. George F. Hotham, R.N.; Lady Sarah, married to Mr. William Stanhope Taylor; Lady Mary, married to Viscount Berkehaven; and Lady Elizabeth, married to Mr. Geo. Stukeley Bucke, are daughters of the late marquis. He possessed valuable property in Ireland, but had not for many years past visited that country. He was a staunch Conservative, but, from his advanced age, had not lately interfered in politics.

By his last will, a vacant ribbon of the order of St. Patrick falls into the gift of the Treasurer.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 6s.]

MARRIAGES.

SOAMES, Joseph, esq. of Park-street, Grosvenor-square, London, to Louisa, sixth daughter of John S. Jessopp, esq. on the 20th inst. at Clifton Church.

NEVINSON, Edward, esq. of Lincoln's-inn and Hampstead, to Sarah Caroline, eldest daughter of Andrew Basilico, esq. of Hampstead, on the 22nd inst. at St. John's, Hampstead.

WHISHAW, James, esq. of Gray's-inn, barrister-at-law, to Anna Wood, elder daughter of the late Henry White, esq. of Tetbury, Gloucestershire, on the 20th inst. at St. John's, Paddington.

DEATHS.

STANFELD, Josiah, esq. one of her Majesty's justices of the peace for the county of Kent, on the 22nd inst. at his residence, Field-house, New-cross, in his 57th year.

WILSON, Louisa, the wife of George Suttell Wilson, esq. of the Inner Temple, on the 22nd inst. at his house in Alfred-place, Brompton, Middlesex, in her 43rd year.

SEWELL, Mary, the wife of Thomas H. Sewell, esq. of Bedford-place, Hampstead-road, and only daughter of the late James Fry, esq. senior registrar of the Court of Chancery, on the 23rd inst.

TADDY, Elizabeth Frances, daughter and co-heiress of the late R. Lewis, esq. and widow of the late Mr. Sergeant Taddy, ancient sergeant and Attorney-General to the Queen Dowager, on the 24th inst. at Llantillo Crossenney, Monmouthshire.

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N.B.—For Scale for Estate Advertisements, see JOURNAL OF PROPERTY.

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

Lax (Manchester).—We should recommend an education such as that our correspondent requires to be pursued in town, for every reason that now occurs to us.

T. T. T.—The communication will probably appear in our next number.

T.G.—The proper party of whom such a question should be asked, is some established Solicitor.

We have received more than one enclosure of proceedings of "Sham Lawyers," which we are unable to use this week, but they shall not be forgotten.

NOTICE TO SUBSCRIBERS.

The volumes of the LAW TIMES, neatly, strongly, and uniformly bound, for 5s. 6d. each, with the name and address of the owner on the cover, 1s. extra, if sent to the office. If the numbers for binding be transmitted by the post, they must be tied in a parcel open at the ends, and contain some distinguishing mark by which it may be recognised, of which the publisher should be advised by letter and directed how he shall return the bound volume. Advantage may be taken of the same parcel to enclose other books for binding.

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INDEX TO THE LAW.

The LAW DIGEST for the half-year ending Jan. 1 is now ready. It forms a complete Index to the Law decided during the half-year, and contains upwards of 2,000 cases. Price 5s. 6d. in a wrapper. Being stamped, it can be transmitted by post.

The following buildings are certified as places duly registered for solemnizing marriages, pursuant to an Act of the 6 & 7 Wm. 4, c. 85:— Wesleyan Chapel, Hythe, Kent, Robert Thompson, superintendent registrar. Ebenezer Chapel, Burnley, Lancashire; Richard Shaw, superintendent registrar. Independent Methodist Chapel, Lancaster. Catholic Chapel, Stoke-by-Nayland, Suffolk.

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To be had of Sherwood, 25, Paternoster-row; Carvalho, 147, Fleet-street; Hanny, 63, Oxford-street; Mann, 39, Cornhill; and all Booksellers; or direct, by post or otherwise, from the Author, 10, Argyll-place, Regent-street.

Miscellaneous.

SHOOTING SEASON.—The Oldest GUN and PISTOL REPOSITORY in London (established 1770), No. 224, Strand, near Temple Bar. B. COGSWELL (late Essex), begs to inform Gentlemen his Stock for the Season is large, and comprises every London Maker of eminence, which B. C. respectfully requests gentlemen to inspect before purchasing; reference may be had to the makers, and a trial allowed; and to those gentlemen who prefer a less expensive gun, B. C. is enabled to offer sound double Guns, from 60s. ditto in cases complete, from 5 guineas; Single Guns, from 21s. each; Pocket Pistols, from 14s.; Holster Pistols, from 27s. per pair and upwards; six barrels, self-acting Pistols in cases complete, from 8 guineas each. Every article in shooting apparatus, of the best quality at the lowest prices; a large assortment of Bykes's improved Travelling Bottles in leather, wicker, and metal; Joyce's anti-corrosive Percussion Caps, chemically prepared. Gun Waddings and Wire Cartridges. Repairs executed with the greatest attention and dispatch.

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SPARKOW'S CONTINENTAL COFFEE, at 1s. 8d. per lb. Packed in tins of all sizes perfectly air-tight for the country. We have also strong and useful Coffees, from 1s. to 1s. 6d. the finest and most delicious. High Holborn, adjoining Day and Martin's, leading through into 23, Dean-street.

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MESSRS. LAMB and BIRCH will SELL by PUBLIC AUCTION, at the Royal Oak Inn, in Dover, on WEDNESDAY, the 2nd day of SEPTEMBER, 1846, at One or Two o'clock precisely (by order of the assignees under a fiat in bankruptcy against Mr. Samuel M. Latham), in the following lots:—

Lot 1.—A valuable freehold overhot CORN MILL, in which a very extensive business has been carried on for many years, now in the occupation of Messrs. J. and E. Fitcher, as tenants at will, situate at Buckland, abutting on the London turnpike-road, with the fixtures and going-gear belonging thereto; together with the garden-ground on the south-east side thereof, and the land between the mill and the inclosed garden on the north-west side, and the mill-head and mill-banks, as shown in the plan, so far as the vendors can convey the same or the right thereto. The mill has five lofty stories, and works five pair of stones; but it is capable of being made available for more work, and of grinding 300 quarters per week. It has been well kept up, and is in good working order. The overhot wheel is fitted with iron buckets, is between ten and eleven feet diameter, and is worked by a very powerful fall of water of nearly twelve feet. The garden-ground adjoining the mill contains upwards of a quarter of an acre; and, abutting also upon the high road, is well adapted for building purposes.

Lot 2.—A capital newly-erected Freehold DWELLING-HOUSE, now in the occupation of G. Graham, esq. for a term which will expire at Michaelmas, 1847, with the garden, lawn, pleasure-grounds, and ornamental enclosure surrounding the premises. The house contains good entrance-hall, breakfast, dining, and drawing-rooms, library, nine bed-rooms, capital cellars, and very convenient domestic offices. It is most substantially built. Its internal arrangement is of the most comfortable kind; and it forms altogether a highly desirable residence, and fit for a large establishment.

Lot 3.—The Freehold PAPER MILLS, on the N.E. side of, and partly built over the River Dour, with the fixtures and materials therein, and the land in the rear thereof, with the garden and bank to the northward, and also a piece of land, supposed to be leasehold, formerly a garden, and now thrown into, and used as a part of Brookditch meadow, after described. The freehold contains about 2r. and 5p. and the part supposed leasehold about 1r. 11p. With this lot will be sold, the road leading out of the turnpike-road, and the carriage bridge over the river, on the terms stated in the particulars, as also the intended reserved road, across Brookditch meadow, so far as the lot extends.

Lot 4.—A very productive WALLED GARDEN, intersected by a running stream of pure spring water, with the valuable trees, plants, and building thereon, most the terrace, yard, valuable pasture land, sheep walk and watercourse, situate on the north-east side of the River Dour. The land forms part of the Brookditch meadow. This lot is bounded on the N.E. and S.E. sides by the high road, on the S.W. by the river Dour, and on the N.W. by a thirty feet road reserved through the meadow, connecting the London road with the road from Charlton to Old Park, &c. And the lot contains altogether about 1s. 2r. 5p.

Lot 5.—A piece of most fertile and valuable PASTURE LAND, being the residue of Brookditch meadow, and the bed of the canal there, containing by admeasurement 2s. 3r. 19p. or thereabouts; abutting to the high road towards the N.E. to the beforementioned reserved road towards the S.E. and to Lot 3 towards the S.W.

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Printed particulars, with plans and conditions of sale, may be had ten days before the sale, and further particulars obtained on application to Messrs. BRIDGES, MASON, and BRIDGES, Red Lion-square; the Auctioneers, Dover; Mr. A. Small, Land Surveyor, Buckland; or to Messrs. Edw. Knocker and Edw. Elwin, Solicitors to the said, Dover.

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Age	First Seven Years.	Remainder of Life.	Age	First Seven Years.	Remainder of Life.	Age	First Seven Years.	Remainder of Life.	Age
20	1 0 2	2 0 4	20	20	31	31	31	31	31
30	1 5 10	3 11 8	30	30	30	30	30	30	30
40	1 15 0	3 11 6	40	33	40	40	40	40	40
50	3 14 5	5 8 10	50	43	65	65	65	65	65
60	4 11 0	9 2 0	60	62	90	90	90	90	90

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Vol. VII. No. 179.]

SATURDAY, SEPTEMBER 5, 1846.

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Age	First Year.	Second Year.	Third Year.	Fourth Year.	Fifth Year.	Remainder of life
	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
30	1 3	9 1	5 2	1 6	8 1	4 10
40	1 11	10 1	13 9	1 15	10 1	18 1

This table is not only suitable to those who, from the prospect of an increasing income, or other circumstances, prefer paying a smaller sum during the first few years, but is also decidedly the best mode of insuring with the view of securing the repayment of temporary loans. It is preferable to a period policy, as it may be continued to the end of life, without requiring new certificates of health, or incurring a higher rate of premium.

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10	£791 19 1	£85 4 2	£21 11 11
15	950 1 9	96 9 2	28 10 2
20	1,070 19 3	108 19 2	37 7 5
25	1,096 1 10	120 4 2	43 18 7
30	1,138 7 2	133 10 10	52 14 6
35	1,179 6 5	149 11 8	64 18 0
40	1,371 8 1	169 15 10	84 2 9
45	1,383 10 11	194 15 10	113 11 1
50	1,534 19 9	226 13 4	164 6 8

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MAL-PRACTICES OF ATTORNEYS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—Mr. Durrant is entitled to the thanks of the Profession for his conduct at the Essex County Court, reported in your last week's paper. It is high time to put a stop to Mr. Old and his tribe. I am informed, and believe it to be true, that there is a Mr. W. Godfrey, carrying on the business of an attorney, at 25, Southernhay, Exeter, who was never articulated, but was for many years a salary clerk to a Mr. Ford, of Exeter, now deceased, and that he carries on Mr. Ford's business in the name of some gentleman living a great many miles from Exeter, who scarcely ever visits it. This seems to be a worse case than that of Old and Dennes. The attorneys of Exeter should look into this if it be correct, and if it is incorrect perhaps Mr. Godfrey will contradict it in your next paper.

I am, Sir, yours, &c.

A DEVONSHIRE ATTORNEY.

P.S. Perhaps some Exeter solicitor can throw light on this matter. It appears to me that the attorneys are not aware of the consequence of allowing unqualified persons to practise in their names; if they are they would surely not allow their names to be thus used.

THE INFLUENCE OF ATTORNEYS IN THE HOUSE OF COMMONS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As Mr. Wakley is the only gentleman of the six hundred and odd of "Honourable Members," who attempted, in any degree, the advocacy of the cause of the solicitors on the several discussions of this measure, the very least thing we, as a body, can do, is to tender him our acknowledgments for his strenuous endeavours on our behalf; and the best way we can evidence any such feeling is, to offer him some slight memorial, which may bear on its front its object and intent. A *shilling* subscription, among solicitors generally, would abundantly carry out these views, and, I fancy, very speedily, too, if set on foot.

It is obvious that a country town is not a place to commence such a movement; but there are very few country solicitors who would not instruct their agents to contribute to such an object, if some place and person in town, connected with the Profession, could be found to further it.

I respectfully throw out the suggestion, in the hope that something of the sort may be done, to assure this valuable man of the respect which his services have gained for him.

I am, Sir, yours, &c.

Dartford, Kent, Aug. 31, 1846.

C. R. G.

ATTORNEYS' GOWNS.

TO THE EDITOR OF THE LAW TIMES.

SIR,—As the Profession will, doubtless, be now often called upon to appear as advocates in the Courts about to be formed under the "Small Debts Act," a more fitting opportunity cannot possibly occur, than the present, for their resuming the gown. Such a course would enable the sutors of the courts to distinguish the authorized legal practitioner from the numerous *harpies* and *sham lawyers* with which these courts will be infested. It would also add to the dignity of the courts, and the respectability of our "apparently friendless" Profession.

I am, Sir, yours, &c.

Dorchester, Sept. 3, 1846.

AN ATTORNEY.

PUBLIC PETITIONS.—Since the 26th ult. the following petitions have been presented:—For the abolition of flogging in the army and navy, five, bearing 2,763 signatures; for the redemption of tolls upon Waterloo, Southwark, and Vauxhall-bridges, 24, with 5,778 signatures; in favour of the Pawnbrokers' Bill, 15, with 615 signatures; in favour of the Medical Practitioners' Bill 120, with 377 signatures.

ARMY.—From a return presented to the House of Commons, it appears that the number of officers allowed to receive half-pay since 1st April, 1845, while holding a civil appointment, amounts to five; only one of whom, however, receives emolument of any consequence; namely, Lieut.-Col. Bowles, who, as comptroller of the household of the Lord Lieutenant of Ireland, is in the annual receipt of 413l. 13s. 4d.

ADVERTISEMENTS.

ARCHBOLD'S NISI PRIUS.—The Law of Nisi Prius, comprising the whole of the Law as to Personal Actions, Actions upon Bills of Exchange, Promissory Notes, &c. Actions upon Policies of Insurance in all Cases, and Actions of Ejectment upon all Titles; with Forms of all the Pleadings, and the Evidence necessary to support them. 2 vols. 12mo. price 2l. 2s. Second edition.

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AN INDEX TO THE LAW.

Just published.

THE LAW DIGEST.—A complete Index

to all the Reports that appeared during the Half-year ending the 1st of January last. Price 5s. 6d. in a stout wrapper. To be continued half-yearly.

The object of this Digest is to enable the Practitioner to find in a moment what has been the law decided on any subject, with reference to the authorities.

This laborious undertaking is intended to supply the practitioner with a ready reference to all the law decided during the half-year ending on the 1st of January, and it is, if successful, to be continued half-yearly. The plan is simple and convenient. All the cases reported during the half year are arranged under their proper subjects, and these are placed alphabetically. If, therefore, the practitioner wants to ascertain what cases have been decided, say on the law of "Executors," he turns to that title, and under it he will find every case, whereover reported, briefly digested with reference to the reports, or reports, if more than one, where it appears. Besides this, there is an index to the

plaintiffs, so that if one be forgotten the case may still be traced by means of the other. The peculiarity of this work, and that in which it differs from any other digest, is, that it includes *all* the reports, whereas all the other digests exclude some, being guided in their selection, not by the wants of the practitioner, but according to the rivalries of publishers. The plan of this digest is to omit none, and its consequent completeness gives it a peculiar value and utility. The amount of exclusion from the other digests may be judged by this, that the Digest before us, although embracing the reports only for half-a-year, contains more cases than does either of the others for a whole year, and the mere index of the names of the cases digested occupies no less than twenty-four closely printed columns. There is also a table of the statutes cited, arranged in chronological order.

"It will not become as to express an opinion upon the merits of this publication. We can only give a description of it, leaving it to the reader from that description to determine whether it is likely to be an acquisition to his office."—*Law Times*.

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PISTOL REPOSITORY in London (established 1770), No. 224, Strand, near Temple Bar. B. COGSWELL (late Essex), begs to inform Gentlemen his Stock for the Season is large, and comprises every London Maker of eminence, which B. C. respectfully requests gentlemen to inspect before purchasing; reference may be had to the makers, and a trial allowed; and to those gentlemen who prefer a less expensive gun, B. C. is enabled to offer sound double Guns, from 50s. ditto in case complete, from 5 guineas; Single Guns, from 21s. each; Pocket Pistols, from 14s.; Holster Pistols, from 27s. per pair and upwards; six barrels, self-revolving Pistols in cases complete, from 3 guineas each. Every article in shooting apparatus, of the best quality at the lowest prices; a large assortment of Sykes's improved Travelling Baiter in leather, wicker, and metal; Joyce's anti-corrosive Percussion Caps, chemically prepared. Gun Waddings and Wire Cartridges. Repairs executed with the greatest attention and dispatch.

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process enables the proprietors to encourage the prevailing taste by supplying the most exquisite species of carving in the Gothic, Elizabethan, French, and Italian styles, adapted to all architectural purposes, picture frames, and every possible variety of elaborate decorations. The proprietors solicit an inspection of the specimens executed by this simple and beautiful process at their offices, 44, West Strand, or at their works, Remond-place, Thames-bank. Published by J. Ward, 59, Holborn, Part I., II., III., and IV. price 3s. each (to be continued), containing specimen drawings of elaborate Carvings in Wood, produced by the Patent Wood Carving Company, 44, West Strand.

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the shell of the milky coco-nut, around which it forms a strong protecting net-work. Man's ingenuity has turned the fibre to account by manufacturing it into many useful articles—such as carpets for stairs and passages, matting for churches, public buildings, offices, nurseries, and kitchens; hearth-rugs, door-mats, ropes, netting for sleep-folds, &c.; but among the applications there is not any to which it is better adapted than for the stuffing of mattresses and cushions, as substitute for horse-hair, wool, and flock. It is very elastic, and affords great ease and support to the body, whether used with or without a feather bed. It has also the additional recommendation of being so obnoxious to vermin that they will not live in it! whilst it is a fact well known that even fleas, lice, and even horse-hair, will expel their animalcules. Possessing peculiar chemical properties that render it a non-absorbent, the fibre is particularly suitable for children's beds, for use of schools, in all large dormitories, and at sea. Cocoa-nut fibre mattresses are only about one-half the price of those made from horse-hair. Priced lists may be had on application at the warehouse, and will be sent free by post.

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Sales by Auction.

TO be SOLD by AUCTION, early in the month of OCTOBER (unless previously disposed of by private contract, of which due notice will be given), in one or various lots, as may be determined at the time of sale, the valuable buildings and premises known by the name of the **TANGIER IRON FOUNDRY**, situate at Taunton, in the county of Somerset, where for many years past an extensive business has been conducted. The buildings are all extremely substantial, and so erected that they may, at slight cost, be converted into dwelling-houses. The whole adjoins the proposed site for the new church, and will afford admirable opportunity for any person desirous of continuing the business, or to make a street of excellent houses, in a favourite locality, which would yield a large revenue. Any person desirous of continuing the ironfoundry and smithy might have the buildings for a term, at a moderate revenue.

For further particulars, apply to Mr. C. CORFIELD, Architect, Taunton; W. R. HARRIS, Esq. Solicitor, 22, Lincoln's-inn-fields, London; and, for particulars and to view, at Tangier House, Taunton; or at the office of the *Somerset County Gazette*, Taunton.

N.B.—Should not the above be sold or let by private contract, further advertisements will announce the day and place of sale.

The noble Town Mansion of the late Right Hon. Lord Carbery, in Belgrave-square.

MESSRS. SHUTTLEWORTH and SONS are honoured with instructions from the Executors, to **SELL by AUCTION**, on the premises, on **MONDAY, SEPTEMBER 14**, at Two in the afternoon, the noble **TOWN RESIDENCE** of the late Right Hon. Lord Carbery, situate No. 3, on the north side of Belgrave-square, most elegantly fitted up, and in excellent order, containing numerous principal and secondary bed-chambers, with dressing-rooms, a magnificent suite of reception-rooms, comprising two very spacious lofty drawing-rooms communicating with French windows glazed with plate glass and opening upon balconies, the walls decorated with elegant white satin and gold paper in compartments, the wood-work and ceiling painted white and enriched with gold mouldings and ornaments to correspond, and a lobby leading to a boudoir, the walls tastefully finished with oak paper and gilt mouldings, a spacious dining-room, with plate glass windows, neatly painted and finished with enriched cornices, and communicating, through folding doors, with an ante-room or breakfast parlour, a library with painted walls and cornice, a water-closet, and an imposing entrance-hall and vestibule paved with stone, principal and secondary stone staircases to the second story. The domestic offices are complete in every department, with extensive cellaring of all descriptions. In the rear of the mansion is capital stabling for seven horses, standing for four carriages, with lofts and servants' apartments over, and a wash-house with a laundry and sleeping-rooms over. The property is leasehold, under the Marquis of Westminster, for a term of 77 years unexpired, at a ground rent of only 13l. per annum.—May be viewed by cards only between the hours of Twelve and Four, which, with particulars, may be had of Messrs. SHUTTLEWORTH and SONS, 28, Poultry. Particulars may also be obtained of Messrs. BAKENDALE, TATHAM, UPTON, JOHN-SON, UPTON, and JOHNSON, Solicitors, Great Winchester-street, Broad-street, and Lincoln's-inn-fields.

ROMFORD, ESSEX.—The Brook Meadows, numerous detached Arable and Pasture Lands, Cottages, Dwelling-houses, and other Premises.

MESSRS. SHUTTLEWORTH and SONS are directed to **SELL by AUCTION**, at the Mart, in the approaching month of OCTOBER, in twenty lots, numerous eligible **FREEHOLD INVESTMENTS**, situate in and near the capital market town of Romford, in the county of Essex; comprising the Crown Meadows and adjoining inclosures, several detached inclosures of rich arable and pasture land, with numerous dwelling-houses, shops, cottages, yards, buildings, and extensive premises, comprising in the whole nearly eighty acres of land, extremely well situate, in high cultivation, and in the occupation of respectable tenants, at rents amounting to 630l. per annum.—May be viewed, and particulars had fourteen days previous to the sale, at the Red Lion Inn, Romford; of **TIMOTHY TYRRELL**, Esq. Solicitor, Guildhall-yard; at the Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

To Brewers and Publicans.—The Golden Lion Inn, Romford, Essex.

MESSRS. SHUTTLEWORTH and SONS are directed to **SELL by AUCTION**, at the Mart, in the ensuing month of OCTOBER, a **FREEHOLD ESTATE**, comprising the Golden Lion, situate in the High-street and Corn-market, and the corner of Collier-row-lane, in the capital and greatly improving market town of Romford, comprising an old-established and well-frequented inn, distinguished as above, and containing suitable accommodation for company and travellers, extensive yards and stabling, and all necessary appurtenances for an extensive business. In the occupation of Mr. Noah Dunnett, on lease for a short term unexpired, at a net rent of 105l. per annum.—May be viewed, and particulars had, fourteen days previous to the sale, on the premises; of **TIMOTHY TYRRELL**, Esq. Solicitor, Guildhall-yard; at the Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Periodical Sale.—Rent Charge in lieu of Tithes, Mendesham, Suffolk.

MESSRS. SHUTTLEWORTH and SONS are instructed to include in the Monthly SALE of Reversionary Interests, &c. appointed to take place at the Mart, on **FRIDAY, OCTOBER 2**, (unless previously disposed of by private contract,) a **RENT CHARGE**, or clear annual income of 237l. arising from one moiety or half-part of the Tithes of Mendesham, in the county of Suffolk, as committed by the Commissioners appointed for that purpose; held upon lease from the Dean and Chapter of Ely, renewal fee according to custom.—Particulars may be obtained in due time of Messrs. GOLDING and KING, Solicitors, Stowmarket; at the Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

MARSHALLS, near Romford and the Railway Station.—Elegant Residence, Park, and Estate.

MESSRS. SHUTTLEWORTH and SONS are directed to **SELL by AUCTION**, at the Mart, in the approaching month of OCTOBER, a valuable **FREEHOLD ESTATE**, distinguished as **MARSHALLS**; comprising an elegant Country Residence, with interior accommodations adapted for an opulent family, attached and detached offices of every description in the most perfect order, approached through a picturesque and richly timbered park, and judiciously placed on the verge of a beautiful lawn, belted and embellished with delightful shrubbery walks, American plants, evergreens, and stately forest trees; a fine sheet of water crossed by a handsome bridge, an elegant conservatory, flower and kitchen gardens with lofty walls, clothed and stocked with a valuable selection of luxuriant fruit trees, pine pits, peach-house, graperies, melon ground, mushroom-house, ice-house, bath, billiard-room, ayotts, boat-house, fishponds, rural alcoves, and other ornamental appendages; also a farm in the highest state of cultivation, with excellent agricultural buildings: the whole containing 118 acres, chiefly rich meadow land, lying within a ring fence, in the parish of Romford, contiguous to the capital and greatly improving market town of Romford, only 12 miles from London, in the county of Essex, and within half a mile of the railway station.—May be viewed with tickets only, which, with particulars, may be had in due time of Messrs. SHUTTLEWORTH and SONS, 28, Poultry; particulars may also be obtained of **TIMOTHY TYRRELL**, Esq. Solicitor, Guildhall-yard; at the Golden Lion, Romford; and at the Auction Mart.

Outlands Park.

MESSRS. SHUTTLEWORTH and SONS are instructed to **SELL by AUCTION**, at the Auction Mart, on **FRIDAY, SEPTEMBER 18**, at Twelve, in six lots, **OUTLANDS FARM**, a valuable Freehold Estate, consisting of 27 acres of pasture, plantations, garden ground, and orcharding; delightfully situate in the parishes of Weybridge and Walton, in the county of Surrey, about one mile from the Weybridge Station, and only about half-an-hour's ride from London, with a neat residence, containing accommodation for a moderate-sized family, with suitable offices, and extensive stabling. The property is approached by the entrance-lodge by the South-western Railway, and extends through the park to the Outlands drive; the whole being highly ornamented with stately timber, is singularly eligible for the creation of villa residences, for which purpose it will be divided into several lots.—Particulars, with plans annexed, may be had of Mr. Haynes, on the premises; of Messrs. FRERE, FORSTER, and Co. Solicitors, Lincoln's-inn, at the White Hart, Windsor; Griffin, Kingston; Swan, Chertsey; at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

BELGRAVE-SQUARE.—The excellent modern Furniture and Appendages of the Town Mansion of the late Right Hon. Lord Carbery, including noble Pier and Chimney Glasses, Marqueterie Cabinets, Commodore, Tables, and Bookcases, Bronze Equestrian Groups, richly cut Glass Chandeliers, suits of handsome blue Figured Satin, Amber Silk, and Claret Colour Tabaret Curtains, China and Glass, a small Cellar of capital Wines, and numerous Effects.

MESSRS. SHUTTLEWORTH and SONS are honoured with instructions from the Executors of the Right Hon. Lord Carbery to **SELL by AUCTION**, on the Premises, 3, Belgrave-square, on **MONDAY, SEPTEMBER 14**, and following days, at Twelve, the superior modern **FURNITURE**, valuable **Wines**, and **Effects** of the above nobleman; comprising, in the secondary sleeping rooms, half-tester, tent, and other bedsteads and furniture, feather beds and bedding, mahogany and oak chests of drawers, wash-hand stands, and toilet tables. The principal bed chambers include mahogany Parisian bedsteads, with canopy tops and chintz hangings, hair and wool mattresses, feather beds and bedding, washhand-stands, toilet tables, chests of drawers, winged and plain wardrobes, cheval and dressing-glasses. In the reception rooms will be found a rosewood drawing-room suite, covered in blue silk, consisting of loo, card, and sofa tables, couches, chairs, and ottomans, elegant white and gold chairs, covered in white satin and rich silk damask, superb blue figured satin curtains for four windows, noble pier and chimney glasses in handsome carved and gilt frames, chandeliers, console tables with marble tops and plate-glass panel doors, beautiful marqueterie cabinets, tables, commodore, and book cases, Parisian clocks, bronze equestrian groups, elegant or-molu candelabras, Turkey, Brussels, and needle-work carpets, a set of massive Spanish mahogany telescope dining tables, carved pedestal sideboard, sideboard tables, 18 solid mahogany dining-room chairs covered in maroon leather, claret colour silk tabaret curtains for two windows, oak winged library bookcases, china, glass, a cellar of capital wines, about 100 dozen of Port, Sherry, and other wines, china and glass culinary requisites, a Baker's patent mangle, and numerous miscellaneous effects.—May be viewed on Friday and Saturday previous to the sale, when catalogues may be had (at 1s. each) on the premises, and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Periodical Sales (established in the year 1803) of Reversions, Life Interests, Annuities, Policies of Assurance, Advowsons, Next Presentations, Rent Charges in lieu of Tithes, Post-obit Bonds, Tontines, Debentures, Ground Rents, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and all Public Undertakings.

MESSRS. SHUTTLEWORTH and SONS respectfully inform the public, that upwards of 40 years' experience having proved the classification of this species of property to be extremely advantageous and economical to vendors, and equally satisfactory and convenient to purchasers, the **PERIODICAL SALES** of reversionary interests, policies of insurance, tontines, debentures, advowsons, next presentations, and securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through 1846, as follows:

Friday, October 2

Friday, November 6

Particulars may be had Ten days previous to each sale, at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Very important and valuable Freehold Estate, embracing the entire Parish of Addington, free of Tithes and Land-tax, and almost of Poor-rates, with its spacious Mansion, excellent Manor for Game, the Advowson, and several first-rate Grazing and Dairy Farms, extending nearly to the town of Winslow, only five miles from the county and borough town of Buckingham, distinguished as the family seat and domain of the late Honourable General Vere Poulett, forming a singularly eligible and solid investment for capital in a proverbially rich and fine sporting country.

MESSRS. DANIEL SMITH and SON are commissioned to announce that the above remarkably valuable and truly important **FREEHOLD ESTATE** will be **SOLD by AUCTION**, at the Mart, near the Bank of England, on **THURSDAY, SEPTEMBER 24**, at 12, unless an acceptable offer shall be previously made by private treaty. It comprises the spacious and substantial mansion of Addington, with walled garden, capital stabling, &c. placed on a gentle elevation, nearly in the centre of one of the most fertile domains in the county, embracing the entire parish, nearly encircled by a fine brook, and chiefly rich grazing and dairy land, the whole title free, and let to old respectable tenants, at rents amounting to about 2,600l. per annum; the perpetual advowson, with its parsonage and glebe, and the manor, which is well stocked with game, appertain to the estate. The timber is nearly all elm, a certain proof of the fertility of the soil. The high turnpike-road from Aylesbury to Buckingham passes through the property close to the town of Winslow, and it is within a very easy distance of the several markets of Buckingham, Bicester, Stow, Stratford, &c. This description of grass land is unlikely to be affected by any change as to corn laws or tariffs, and the property, therefore, presents, with its peculiar and great local advantages, an indisputably fine and choice property for the investment of money, with a most enjoyable domain for residence, being in a perfectly rural district, and in the centre of several packs of hounds. A station on the Buckinghamshire Railway will be very near.

The property may be viewed by application to Mr. King, Surveyor, Winslow, of whom particulars may be had; of Messrs. KARSLAKE and CREALOCK, Solicitors, Carlton Chambers, Regent-street; of ALEXANDER RIDGWAY, Esq. Leicester-square; of Messrs. WALKER and GRIDLEY, Solicitors, 5, Southampton-street, Bloomsbury; and every information obtained of Messrs. DANIEL SMITH and SON, Land Agents and Surveyors, in Waterloo-place, Pall-mall.

CAMBRIDGESHIRE.—The Great and Valuable **FREEHOLD ESTATE** of WHITTLESEA, extending to within two miles of the city of Peterborough.

MESSRS. DANIEL SMITH and SON are commissioned by the noble proprietors to **SELL by AUCTION**, at the Mart, near the Bank of England, on **THURSDAY, SEPTEMBER 24**, at Twelve, unless an acceptable offer shall be previously made by Private Contract, the above truly valuable and important **FREEHOLD PROPERTY** near Peterborough, comprising the vast manors of Whittlesea, embracing nearly 25,000 acres, and in which are 200 or 300 copyholders, paying quit rents and fines, the greater part of the flourishing town of Whittlesea, the bank premises, several private residences, inn, shops, &c. being held of the said manor.

Also above 2,100 ACRES of most **FERTILE LAND**, divided into **COMPACT FARMS**, and let at low rents to a highly respectable and intelligent tenantry with some very valuable dispersed parcels of land adjoining and contiguous to the town, portions eligible for building.

Also, the **ADVOWSON** of the Vicarage of St. Mary, and the **FREEHOLD RENT-CHARGES**, in lieu of tithes, extending over nearly 18,000 ACRES, of the annual value together of upwards of 8,600l. exclusive of the valuable manors and living; offering, with its many advantages, a fine influential and solid property for the investment of capital. There is a navigable river and canal through the estate, and the railway from Peterborough to Ely, &c. passes through Whittlesea.

The entire property will be first offered in one lot, and if not sold will be immediately put up in three lots, viz. first, the tithe-rent-charges; second, the farms and manors; and, third, the advowson.

Particulars may be obtained of Messrs. JONES, RATEMAN, and BENNETT, Solicitors, Lincoln's-inn-fields; at the Auction Mart; of Mr. JOHN WADDELOW, Whittlesea, who will show the estates; and of Messrs. DANIEL SMITH and SON, Land Agents, in Waterloo-place, Pall-mall.

Freehold and Leasehold Residences, City-road, Dalston, and Mile-end, of the value of nearly 3000l. per annum.

MR. ROBERTS (of Old Jewry) will SELL by AUCTION, at the Mart, on **TUESDAY, SEPTEMBER 8**, at Twelve, in lots. Ten very genteel six-roomed **RESIDENCES**, with spacious fore-courts, and large gardens, pleasantly situate, Nos. 1 to 10, Colford-road, Downham-road, Kingsland-road; Two semi-detached Cottage Residences, containing each six rooms and gardens, in Laurel-street, near the Hope, Holly-street, Dalston; Three genteel six-roomed Houses, Nos. 1, 2, and 3, Napier-street, Wenlock-road, City-road; Three capital six-roomed Houses, Nos. 3, 4, and 5, Lower York-street, Kingsland-road, near Haggerston Church; and Two compact five-roomed Freehold Houses, Nos. 7 and 9, King-street, Cambridge-road, Mile-end. The leaseholds are held for long terms, direct from the freeholders, at low ground rents.—Particulars may be had at the Swan, Kingsland-road; Hope, Holly-street; Queen's Head, Cambridge-road; at the Mart; of J. SCARBOROUGH, Esq. 19, Tokenhouse-yard; and of the Auctioneer, 7, Old Jewry.

LONDON.—Printed by HENRY MORRELL COX, of 74, Great Queen Street, in the Parish of St. Giles in the Fields, in the County of Middlesex, Printer, at his Printing Office, 74 & 75, Great Queen Street aforesaid, and published by JOHN CROOKFORD, of 29, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the LAW TIMES, No. 29, Essex Street aforesaid, on Saturday, the 3th day of September, 1845.

THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. VII. No. 180.]

SATURDAY, SEPTEMBER 12, 1846.

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New Publications.

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In all that and those the towns and lands of Harperstown, Taghmon, and its sub-denominations, part of Clonacree, Paulemarle, and Cloughbulla. And all that and those the town and lands of Traceystown, Moorestown, Hightown, Waddingtown, Aughnegan, part of Drinagh, part of Rochestown, and Mushmade, and in Arpinstown, four acres, all situate in the baronies of Shilmalier, Bargy, and Forth, in the county of Wexford, created by indenture of settlement bearing date the 1st day of September, 1837. And also the Reversion in Fee, expectant on the death of the said Walter Hore, and the death and failure of issue male of his four brothers. The annual rental of this property (1,500 acres or thereabouts, in extent comprising mansion, demesne, farms, limestone quarries, &c.) amounts to upwards of 1,900l. exclusively of the mansion and demesne of Harperstown (with its timber), now in the hands of the said Walter Hore, as tenant for life, and of the estimated annual value of 400l.

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The usual commission allowed to all solicitors.

NECROLOGY

OF LEGISLATORS, MAGISTRATES, AND LAWYERS.

THE MARQUESS OF AILSA.

We have to announce the demise of the Marquess of Ailsa, who, after an illness of several months, expired on Tuesday last, at St. Margaret's, his lordship's seat at Isleworth. We learn that, although the noble marquess had gradually declined in health for the last three years, he, up to the close of July, remained in much the same state, so as not to cause any immediate alarm to his family. Since then his lordship has rapidly sunk, and his approaching dissolution became apparent, and in consequence of anticipated danger, an express was despatched to the Earl of Cassillis, who is abroad, to inform him of the alarming illness of his grandfather. The deceased, Archibald Kennedy, Marquess of Ailsa of the Isle of Ailsa, county Ayr, and Baron Ailsa of Ailsa, in the peerage of the United Kingdom; Earl of Cassillis and Baron Kennedy, in the peerage of Scotland; and a baronet of Nova Scotia; was eldest son of Archibald, 11th Earl of Cassillis, by his second marriage with Anne, daughter of Mr. John Watts. He was born in 1770, and on the 1st of June, 1793, he married Margaret, youngest daughter of Mr. John Erskine. In December 1794 he succeeded, on the death of his father, to the ancient Scottish honours of the family. He is succeeded in the family honours, and extensive estates in Ayrshire, Berwickshire, Forfarshire, &c. by his grandson Archibald, Earl of Cassillis (now, of course, Marquess), eldest son of the late Earl of Cassillis, son of the deceased Marquess, and Eleanor, only child of Mr. Alexander Allardice, who only survived the death of her husband three months. The present marquess was formerly in the 17th Light Dragoons, but retired from the army in 1842.

SIR ROBERT PRESTON, BART.

Sir Robert Preston, bart. the oldest of that class of title in the empire, expired at Blackadder on the 30th ult. in the 90th year of his age. He was born in 1757, being the only son of the celebrated General George Preston (who at one period was commander of the Royal North British Dragoons), by the daughter of James Johnston, esq. He married his cousin, daughter to John Preston, esq. of Gorton, and had issue; amongst other children, Robert Preston, esq. formerly a major in the army, who succeeds to the title and estates. The latter are in Lincolnshire, Somersetshire, and Perthshire, and the family of the deceased were known as the Prestons Walleyfield, in the latter county. The title, a Scotch one, was created in 1637, and the sixth baronet having died in

1834 without any issue on the male line, of the first baronet, the title reverted according to patent of creation to the nearest male collateral relative, the deceased, who was the representative of the first baronet's nearest brother.

BIRTHS, MARRIAGES, AND DEATHS.

[The charge for the insertion of the above is 5s.]

BIRTHS.

ABRAHAM.—On the 3rd inst. the lady of Augustus Abraham, esq. barrister-at-law, of a daughter.
BODEN.—On the 8th inst. at St. George's-terrace, Kensington, the wife of George Boden, esq. barrister-at-law, of a daughter.
CLEOBURY.—On the 7th inst. at Shepherd's-bush, the lady of T. M. Cleobury, esq. of a daughter.
EMPSON.—On the 4th inst. at 32, Acacia Road, Regent's Park, the wife of Henry Empson, esq. solicitor, of a son.

MARRIAGES.

BRUCE, Lewis Bruce Knight, esq. of the Priory, Southampton, second son of the Right Hon. Sir James Bruce Knight Bruce, Vice-Chancellor, &c. to Caroline Margaret Eliza Newte, only daughter of Thomas Newte, esq. on the 31st of May, at the British Embassy, Paris.
CUTTLEWELL, Charles James, esq. of the Inner Temple, barrister-at-law, to Elizabeth Anne, eldest daughter of Capt. Sanders, R.N. of Stoke Damerel, Devonport, on the 2nd inst. at Stoke Damerel aforesaid.
COLL, Henry Thomas, esq. of the Middle Temple, barrister-at-law, to Georgina, daughter of John Stone, esq. barrister-at-law, on the 10th inst. at Cleveland.
GREEN, Frederick, esq. Angel-court, Throgmorton-street, and late of No. 13, King's Bench-walk, Inner Temple, to Emma, relict of the late Capt. George Hardyman Milnes, of the Madras army, on the 2nd inst. at St. Edmund Church, Salisbury.
GARBIT, Thomas, esq. of the Middle Temple, and Boston, Lincolnshire, to Elizabeth Boyd, only daughter of Thomas Broadbent, esq. of Grove House, Ardwick, on the 3rd inst. at the Collegiate Church, Manchester.
KENDALL, Edward, esq. of Cheltenham, to Eliza Lee Homfray, relict of Watkin Homfray, esq. on the 8th inst. at Cheltenham.
LEFROY, Thomas E. P. esq. of the Middle Temple, to Anna Jemima, eldest daughter of the late Rev. B. Lefroy, of Ashe, Hants, on the 9th inst. at Church Oakley, Hants.

DEATHS.

METCALFE, Right Hon. Lord, at Malshanger House, near Basingstoke, on the 5th inst. aged 62.
RUDGE, Edward, esq. of Wimpole-street, London, one of her Majesty's justices of the peace for the counties of Middlesex and Worcester, and a Deputy-Lieutenant of the latter county, at Abbey Manor-house, Evesham, on the 3rd inst. aged 83.
TAYLOR, William, esq. solicitor, late of Great Queen-street, Lincoln's-inn messes, on the 31st ult.
WORSLEY, Charles Cornwall Seymour, esq. at his house in Newport, Isle of Wight, on the 1st inst. aged 69.

To Readers and Correspondents.

We cannot insert, or notice in any way, any communication that is sent to us anonymously; but those who choose to address us in confidence will find their confidence respected. NEITHER CAN WE UNDERTAKE TO RETURN ANY MANUSCRIPTS WHATSOEVER.

AN OLD SUBSCRIBER (Carmarthen).—We believed that every "old subscriber" to, and frequent reader of, this Journal, had seen, over and over again, the announcement that we do not trench upon the province of counsel by advising upon cases, or giving opinion on points of law. The case submitted falls clearly within our rule of exclusion, therefore we respectfully decline compliance with our correspondent's wish.

KING GENN (Cambridge).—This gentleman informs us, with reference to our publishing his application for a debt, in our last number, that he is an accountant, and never pretended to be an attorney. We must, however, inform him that, substantially, by taking upon himself the duty of an attorney, he has done so; for the majority of persons to whom such communications are addressed, conclude, and justly, that they come from a professional man. The expressions of whines and minnows, and the like, with the wispish tone of Mr. Genn's letter, precludes our giving it a place in this Journal.

J. E. E.—(S—d.)—The circular obligingly forwarded has already been given at full length, and commented upon in this Journal. (7 Law T. p. 333.) Last week we received from various parts of the country copies of this audacious advertisement—which must have been freely distributed amongst the Profession. The extent these parties will catch, we may be assured, will neither be covetous nor respectable. If J. E. E. will refer to our Notices to Correspondents in last week's number he will find our opinions and intentions regarding the circular there expressed.

A SUBSCRIBER (Kidderminster).—The clerks only to the new County Courts are required by the Act to be attorneys.

* * * We have received from various parts several circulars of "sham lawyers," which limited space does not admit of our inserting in this number.

The numbers comprising the first volume of the VERULAM REPORTS of Real Property and Conveyancing Cases may also be transmitted for binding in like manner.

INDEX TO THE LAW.

The LAW DIGEST for the half-year ending Jan. 1 is now ready. It forms a complete Index to the Law decided during the half-year, and contains upwards of 2,000 cases. Price 5s. 6d. in a wrapper. Being stamped, it can be transmitted by post.

ARGUS LIFE ASSURANCE COMPANY, THROGMORTON-STREET, BANK.—

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Physician—Dr. Jefferison, No. 2, Finsbury-square.

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That this celebrated Grimstone's Eye-Snuff will be sold by all Chemists and Medicine Vendors, in containers at 9d. 1s. 6d. 2s. 7d. 3s. 6d. 4s. 5s. 6s. 7s. 8s. 9s. 10s. 11s. 12s. 13s. 14s. 15s. 16s. 17s. 18s. 19s. 20s. 21s. 22s. 23s. 24s. 25s. 26s. 27s. 28s. 29s. 30s. 31s. 32s. 33s. 34s. 35s. 36s. 37s. 38s. 39s. 40s. 41s. 42s. 43s. 44s. 45s. 46s. 47s. 48s. 49s. 50s. 51s. 52s. 53s. 54s. 55s. 56s. 57s. 58s. 59s. 60s. 61s. 62s. 63s. 64s. 65s. 66s. 67s. 68s. 69s. 70s. 71s. 72s. 73s. 74s. 75s. 76s. 77s. 78s. 79s. 80s. 81s. 82s. 83s. 84s. 85s. 86s. 87s. 88s. 89s. 90s. 91s. 92s. 93s. 94s. 95s. 96s. 97s. 98s. 99s. 100s. 101s. 102s. 103s. 104s. 105s. 106s. 107s. 108s. 109s. 110s. 111s. 112s. 113s. 114s. 115s. 116s. 117s. 118s. 119s. 120s. 121s. 122s. 123s. 124s. 125s. 126s. 127s. 128s. 129s. 130s. 131s. 132s. 133s. 134s. 135s. 136s. 137s. 138s. 139s. 140s. 141s. 142s. 143s. 144s. 145s. 146s. 147s. 148s. 149s. 150s. 151s. 152s. 153s. 154s. 155s. 156s. 157s. 158s. 159s. 160s. 161s. 162s. 163s. 164s. 165s. 166s. 167s. 168s. 169s. 170s. 171s. 172s. 173s. 174s. 175s. 176s. 177s. 178s. 179s. 180s. 181s. 182s. 183s. 184s. 185s. 186s. 187s. 188s. 189s. 190s. 191s. 192s. 193s. 194s. 195s. 196s. 197s. 198s. 199s. 200s. 201s. 202s. 203s. 204s. 205s. 206s. 207s. 208s. 209s. 210s. 211s. 212s. 213s. 214s. 215s. 216s. 217s. 218s. 219s. 220s. 221s. 222s. 223s. 224s. 225s. 226s. 227s. 228s. 229s. 230s. 231s. 232s. 233s. 234s. 235s. 236s. 237s. 238s. 239s. 240s. 241s. 242s. 243s. 244s. 245s. 246s. 247s. 248s. 249s. 250s. 251s. 252s. 253s. 254s. 255s. 256s. 257s. 258s. 259s. 260s. 261s. 262s. 263s. 264s. 265s. 266s. 267s. 268s. 269s. 270s. 271s. 272s. 273s. 274s. 275s. 276s. 277s. 278s. 279s. 280s. 281s. 282s. 283s. 284s. 285s. 286s. 287s. 288s. 289s. 290s. 291s. 292s. 293s. 294s. 295s. 296s. 297s. 298s. 299s. 300s. 301s. 302s. 303s. 304s. 305s. 306s. 307s. 308s. 309s. 310s. 311s. 312s. 313s. 314s. 315s. 316s. 317s. 318s. 319s. 320s. 321s. 322s. 323s. 324s. 325s. 326s. 327s. 328s. 329s. 330s. 331s. 332s. 333s. 334s. 335s. 336s. 337s. 338s. 339s. 340s. 341s. 342s. 343s. 344s. 345s. 346s. 347s. 348s. 349s. 350s. 351s. 352s. 353s. 354s. 355s. 356s. 357s. 358s. 359s. 360s. 361s. 362s. 363s. 364s. 365s. 366s. 367s. 368s. 369s. 370s. 371s. 372s. 373s. 374s. 375s. 376s. 377s. 378s. 379s. 380s. 381s. 382s. 383s. 384s. 385s. 386s. 387s. 388s. 389s. 390s. 391s. 392s. 393s. 394s. 395s. 396s. 397s. 398s. 399s. 400s. 401s. 402s. 403s. 404s. 405s. 406s. 407s. 408s. 409s. 410s. 411s. 412s. 413s. 414s. 415s. 416s. 417s. 418s. 419s. 420s. 421s. 422s. 423s. 424s. 425s. 426s. 427s. 428s. 429s. 430s. 431s. 432s. 433s. 434s. 435s. 436s. 437s. 438s. 439s. 440s. 441s. 442s. 443s. 444s. 445s. 446s. 447s. 448s. 449s. 450s. 451s. 452s. 453s. 454s. 455s. 456s. 457s. 458s. 459s. 460s. 461s. 462s. 463s. 464s. 465s. 466s. 467s. 468s. 469s. 470s. 471s. 472s. 473s. 474s. 475s. 476s. 477s. 478s. 479s. 480s. 481s. 482s. 483s. 484s. 485s. 486s. 487s. 488s. 489s. 490s. 491s. 492s. 493s. 494s. 495s. 496s. 497s. 498s. 499s. 500s. 501s. 502s. 503s. 504s. 505s. 506s. 507s. 508s. 509s. 510s. 511s. 512s. 513s. 514s. 515s. 516s. 517s. 518s. 519s. 520s. 521s. 522s. 523s. 524s. 525s. 526s. 527s. 528s. 529s. 530s. 531s. 532s. 533s. 534s. 535s. 536s. 537s. 538s. 539s. 540s. 541s. 542s. 543s. 544s. 545s. 546s. 547s. 548s. 549s. 550s. 551s. 552s. 553s. 554s. 555s. 556s. 557s. 558s. 559s. 560s. 561s. 562s. 563s. 564s. 565s. 566s. 567s. 568s. 569s. 570s. 571s. 572s. 573s. 574s. 575s. 576s. 577s. 578s. 579s. 580s. 581s. 582s. 583s. 584s. 585s. 586s. 587s. 588s. 589s. 590s. 591s. 592s. 593s. 594s. 595s. 596s. 597s. 598s. 599s. 600s. 601s. 602s. 603s. 604s. 605s. 606s. 607s. 608s. 609s. 610s. 611s. 612s. 613s. 614s. 615s. 616s. 617s. 618s. 619s. 620s. 621s. 622s. 623s. 624s. 625s. 626s. 627s. 628s. 629s. 630s. 631s. 632s. 633s. 634s. 635s. 636s. 637s. 638s. 639s. 640s. 641s. 642s. 643s. 644s. 645s. 646s. 647s. 648s. 649s. 650s. 651s. 652s. 653s. 654s. 655s. 656s. 657s. 658s. 659s. 660s. 661s. 662s. 663s. 664s. 665s. 666s. 667s. 668s. 669s. 670s. 671s. 672s. 673s. 674s. 675s. 676s. 677s. 678s. 679s. 680s. 681s. 682s. 683s. 684s. 685s. 686s. 687s. 688s. 689s. 690s. 691s. 692s. 693s. 694s. 695s. 696s. 697s. 698s. 699s. 700s. 701s. 702s. 703s. 704s. 705s. 706s. 707s. 708s. 709s. 710s. 711s. 712s. 713s. 714s. 715s. 716s. 717s. 718s. 719s. 720s. 721s. 722s. 723s. 724s. 725s. 726s. 727s. 728s. 729s. 730s. 731s. 732s. 733s. 734s. 735s. 736s. 737s. 738s. 739s. 740s. 741s. 742s. 743s. 744s. 745s. 746s. 747s. 748s. 749s. 750s. 751s. 752s. 753s. 754s. 755s. 756s. 757s. 758s. 759s. 760s. 761s. 762s. 76

Sales by Auction.

GREAT SALE OF LANDS IN BIRKENHEAD AND CLAUGHTON-CUM-GRANGE.

MESSRS. T. WINSTANLEY and SONS have received instructions from the Commissioners of Birkenhead, to offer for SALE, by PUBLIC AUCTION, on WEDNESDAY the 30th of SEPTEMBER, at the Town Hall, Birkenhead, at One o'clock, P.M. in Eligible Lots for BUILDING PURPOSES, their LAND in the following situations in the said Townships, viz.:—Within the New Park at Birkenhead; on the West or Upper Side of the Park (known as the Forest Land); at Flaybrick Hill, near the Intended Cemetery; in Conway-street, near St. James's Church, now erecting; in Hamilton-street, adjoining the New Market; in Livingston-street, near Oakfield and the New Park.

Terms of Payment.—10 per cent. deposit, 10 per cent. at the expiration of twelve months; the remainder of the purchase-money to remain (if required) for ten years from the day of sale, at four per cent. interest.

Plans and particulars will be ready for delivery in a few days, and in the meantime information may be obtained at the Surveyor's Office, Commissioners' Rooms, Hamilton-square, Birkenhead, or at the office of Messrs. MALLABY, TOWNSEND, and NEWALL, Solicitors, Fenwick-street, Liverpool, and Cleveland-street, Birkenhead.

JOSH. MALLABY,

Clerk to the Commissioners.

Commissioners' Rooms, July 3, 1846.

These Freehold Properties will be submitted to public competition by the Commissioners, under circumstances peculiarly favourable to purchasers; in lots, and under such terms and conditions as it is deemed will facilitate a realization to the Capitalist and Builder. The Land thus offered for public sale is wholly within the Township of Birkenhead, and under the protection of its local Acts, and has, by its favourable position, participated largely in the great works carried out and those now in progress, under the powers of the several Acts now in force for the Improvement of the Town.

The Land surrounding the Park, and permanently attached to it, is situated between the carriage drives and the several magnificent roads lately executed in continuous and uninterrupted boundary to that property, and within 2,000 yards average distance from the Ferries. The great extent and acknowledged beauty of the Park (in the formation and completion of which no expense has been spared) has secured a nucleus to the Building Land, forming a prospect commanded by the whole of that property, of very striking and judiciously-varied scenery. The Park is situated on a gentle slope, gradually rising to considerable elevation, and from which extensive marine views, on the Lancashire and Cheshire shores, are embraced. Adjoining the Park Land, with advantages little inferior, is situated the Land called "The Forest Land," now under timber, and very eligible for Villas and other classes of Property.

With a due regard to the principles and preliminary measures upon which Building Land is brought into a condition for immediate realization, the Commissioners have added most materially by the central position of the Property) been enabled to effect a complete union with the leading and conspicuous thoroughfares in the Town.

The Cemetery and Conway-street Estates, within a short distance of the Large Dock Works, now assuming an aspect of rapid progressive importance, have, in the manner in which it has been finally decided on treating them, both as to their connection with the Agricultural districts, and the scene of business in the Great Floating Basin and auxiliary Docks, secured to that property a permanent character and value that cannot be prejudiced.

The Land contiguous to the New Market, forms the entire N.W. Boundary to that building, fronting Hamilton-street, and abutting Market-street, the letter of which it is decided to widen to a corresponding width of twenty yards with Hamilton-street, is divided into small desirable lots, interrupted only by side approaches, and other accesses to the New Building.

It is almost needless to draw public attention to the rapid growth of Birkenhead, or to the great works in progress and prospect, to which, in a degree, may be attributed as the active agent, in combination with the natural resources and commercial and rural position of the district, its rapid increase. The rural and commercial sections of the town have been distinctly and judiciously defined. The park is a gift to the inhabitants, dedicated in perpetuity to the town; and while this noble public work engaged the attention of the Commissioners, it was happily combined with the consideration of affording the superior and middle classes among the merchants of Liverpool and Birkenhead an opportunity, at a comparatively trifling cost, of establishing themselves in a rural district, at an easy stage from their scenes of business; combining the features of a country residence and park range, with the comfort and safety of efficient lighting and watching regulations. This wise provision for the public interest can but meet with the eminent success it deserves.

T. WINSTANLEY and SONS,

Church-street, Liverpool, 31st Aug. 1846.

FREEHOLD GROUND-RENT of 132l. per annum, and FREEHOLD ESTATE of the improved value of 60l. per annum, Ray-street, Clerkenwell.

MESSRS. SHUTTLEWORTH and SONS are instructed to SELL by AUCTION, at the Mart, on FRIDAY, OCTOBER 9, at Twelve, in two Lots, an extensive FREEHOLD ESTATE, situate near the line of the important improvements now in rapid progress from Farringdon-street to the Angel, at Islington, in Crawford-passage, Ray-street, Clerkenwell, in the county of Middlesex, comprising the capital foundry, numerous workshops, warehouses, show-rooms, dwelling-houses, coach-houses, stables, yards, and premises, in the occupation of Mr. Charles Botten, brassfounder, on lease for a term of which forty years are unexpired, at a ground-rent of 32l. per annum. Also a Freehold Estate, comprising two dwelling-houses, a dairyman's shop, large coal store, with warehouse over, and other appurtenances, situate No. 11, Ray-street, and No. 1, Coppice-row, Clerkenwell, a short distance from the above, in the occupation of Messrs. Pullen and Hopkins, yearly tenants, of the improved value of 60l. per annum.—May be viewed with leave of the tenants; and particulars had ten days previous to the sale, at the Mart; and of Messrs. SHUTTLEWORTH and SONS 28, Poultry.

BOXMOOR.—Villa Residences, Meadow Land, and Building Ground.

MESSRS. SHUTTLEWORTH and SONS are instructed to SELL by AUCTION, at the Mart, on FRIDAY, SEPTEMBER 25, at Twelve, in Ten Lots, by order of the Mortgage (unless previously disposed of by private contract), a FREEHOLD ESTATE, situate contiguous to the Boxmoor Station, on the London and North-Western Railway, about one mile from Hemel Hempstead, three from Great Berkhamstead, seven from Watford and Tring, and twenty-four from London, in the parish of Hemel Hempstead, in the county of Herts; comprising Down Cottage Villa, situate on a commanding eminence, embracing beautiful prospects, and containing ample accommodation for a moderate-sized family, with appropriate domestic and external offices, a lawn decorated with shrubs and evergreens, a good garden well stocked with fruit trees, and about four acres of rich meadow land; also, four pair of modern Villa Residences, semi-detached, adapted for small families, with suitable garden-ground to each, and five plots of meadow land, comprising about three acres, applicable for building purposes.—May be viewed, and particulars had ten days prior to the sale, at the Railway Hotel, Boxmoor; King's Arms, Hemel Hempstead; King's Arms, Great Berkhamstead; Essex Arms, Watford; Verulam Arms, St. Alban's; of Mr. WRIGHT, Solicitor, London-street, Fenchurch-street; of Mr. J. B. Shepherd, Surveyor, Chapel-place, Poultry; at the Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Outlands Park.

MESSRS. SHUTTLEWORTH and SONS are instructed to SELL by AUCTION, at the Auction Mart, on FRIDAY, SEPTEMBER 18, at Twelve, in six lots, OATLANDS FARM, a valuable Freehold Estate, consisting of 27 acres of pasture, plantations, garden ground, and orcharding; delightfully situate in the parishes of Weybridge and Walton, in the county of Surrey, about one mile from the Weybridge Station, and only about half-an-hour's ride from London, with a neat residence, containing accommodation for a moderate-sized family, with suitable offices, and extensive stabling. The property is approached by the entrance-lodge by the South-western Railway, and extends through the park to the Outlands drive; the whole being highly ornamented with stately timber, is singularly eligible for the erection of villa residences, for which purpose it will be divided into several lots.—Particulars, with plans annexed, may be had of Mr. Haynes, on the premises; of Messrs. FRERE, FORSTER, and Co. Solicitors, Lincoln's-inn; at the White Hart, Windsor; Griffin, Kingston; Swan, Chertsey; at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Periodical Sale.—Rent Charge in lieu of Tithes, Mendlesham, Suffolk.

MESSRS. SHUTTLEWORTH and SONS are instructed to include in the Monthly SALE of Reversionary Interests, &c. appointed to take place at the Mart, on FRIDAY, OCTOBER 2, (unless previously disposed of by private contract), a RENT CHARGE, or clear annual income of 277l. arising from one moiety or half-part of the Tithes of Mendlesham, in the county of Suffolk, as commuted by the Commissioners appointed for that purpose; held upon lease from the Dean and Chapter of Ely, renewal fee according to custom.—Particulars may be obtained in due time of Messrs. GOLDING and KING, Solicitors, Stowmarket; at the Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

Periodical Sales (established in the year 1803) of Reversions, Life Interests, Annuities, Policies of Assurance, Advertisements, Next Presentations, Rent Charges in lieu of Tithes, Post-obit Bonds, Tontines, Debentures, Ground Rents, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and all Public Undertakings.

MESSRS. SHUTTLEWORTH and SONS respectfully inform the public, that upwards of 40 years' experience having proved the classification of this species of property to be extremely advantageous and economical to vendors, and equally satisfactory and convenient to purchasers, the PERIODICAL SALES of reversionary interests, policies of insurance, tontines, debentures, advowsons, next presentations, and securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through 1846, as follows:—

Friday, October 2 Friday, November 6
Friday, December 4.

Particulars may be had Ten days previous to each sale, at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

TO BE SOLD BY AUCTION, early in the month of OCTOBER (unless previously disposed of by private contract, of which due notice will be given), in one or various lots, as may be determined at the time of sale, the valuable buildings and premises known by the name of the TANGIER IRON FOUNDRY, situate at Taunton, in the county of Somerset, where for many years past an extensive business has been conducted. The buildings are all extremely substantial, and so erected that they may, at slight cost, be converted into dwelling-houses. The whole adjoins the proposed site for the new church, and will afford admirable opportunity for any person desirous of continuing the business, or to make a street of excellent houses, in a favourite locality, which would yield a large revenue. Any person desirous of continuing the ironfoundry and smithy might have the buildings for a term, at a moderate revenue.

For further particulars, apply to Mr. C. CORFIELD, Architect, Taunton; W. R. HARRIS, Esq. Solicitor, 22, Lincoln's-inn-fields, London; and, for particulars and to view, at Tangier House, Taunton; or at the office of the Somerset County Gazette, Taunton.

N.B.—Should not the above be sold or let by private contract, further advertisements will announce the day and place of sale.

LAW FIRE INSURANCE SOCIETY.—

To be DISPOSED OF, from 26 to 30 SHARES in this Society, either together or in portions. Apply personally, or by letter post paid, to Mr. BENNETT, 134, Aldersgate-street, City.

Mile End, Limehouse, Poplar, St. George's East, New North-road, and Camberwell.—FREEHOLD AND LEASEHOLD ESTATES, producing 550l. per annum; in Seventeen Lots, suitable for Occupation and Investment.

MR. MOORE will SELL by AUCTION, at the Mart, on FRIDAY next, SEPTEMBER 18, at Twelve, a Freehold Detached Cottage Residence, known as Park Cottage, Silver-street, Globe-end, Mile-end, overlooking Messrs. Charrington's Park. The Cottage, which contains every domestic comfort, is substantially built and ornamentally finished; estimated annual value 40l.—A six-roomed Residence, with Garden, on the Mercers' Estate, 12, Jubilee-place, Commercial-road, let at 20l. Term 55 years; ground-rent 4l.—Two Newly-built Houses, 46 and 47, King-street, Cambridge-road, Mile-end; contains six rooms, large yard, and gateway. Lease 70 years; ground-rent 5l.—A House and Baker's Shop, with large Bakehouse and Oven, No. 3, Coborn-road, Bow-road, let at the low rent of 25l. Term 55 years; ground-rent 12l.—A House and Tobacconist's Shop, elegantly fitted up, in St. Ann's-place, Commercial-road, opposite Limehouse Church, and next the "Britannia" Tavern; a first-rate business situation; let at 24l. Term 900 years, at a peppercorn rent.—Three Six-roomed Residences, with large Gardens, 6, 8, and 10, Ellertorp-street, Crisp-street, opposite the Church, Poplar, each let at 28l. Term 97 years; ground-rent 3l. 3s.—A Freehold House and Shop, 43, Wells-street, Cotton-street, Poplar, let at 18l. per annum.—A Free Public House in Wellclose-square, St. George's East, near the Docks, newly built, and replete with every business and domestic convenience, together with the Spirit, Beer, and Music Licenses. Term 60 years, at 42l. per annum.—Three well built Residences, containing six rooms, offices, and large garden, Nos. 22, 23, and 24, Walbrook-street, Murray-street, New North-road, each let at 28l. Term 97 years; ground-rent 3l. 10s.—An Eight-roomed House and Shop, No. 25, in the same street, let for three years at 35l. per annum. Term 60 years; ground-rent 4l.—And Two Semi-detached Cottage Residences, Nos. 2 and 3, Champion-grove, Grove-lane, Camberwell, each let at 30l. Term 42 years; ground-rent 10l.—May be viewed by leave of Tenants, and Particulars had of Messrs. Rippingham and Rose, Great Prescott-street; Mr. Prentice, 238, Whitechapel-road; Messrs. Baddley, 12, Leman-street, Whitechapel; Mr. Ellertorp, Colet-place, Commercial-road; Mr. Robinson, 13, Clifford's-lane; Messrs. Everest, White, and Co. 12, Hatton-garden; Mr. Clifton, Romford, Essex; at the Mart; and at the Auctioneer's Offices, Mile-end-road.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. VII. No. 181.]

SATURDAY, SEPTEMBER 19, 1846.

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KRAM and Co. 13, Chichester-roads, Chancery-lane, London.

TO RAILWAY COMPANIES, Solicitors, &c.—The advertiser having had the entire management of books of reference, notices, indices, &c. of several lines during the past seasons, completed in strict conformity with the standing orders, is desirous of making ARRANGEMENTS for the ensuing season upon moderate terms. Surveying and levelling executed in the most efficient manner by contract or otherwise. Address to A. B. care of the proprietors of the Wine Trade Circular, Brabant-court, Philipot-lane, London.

Legal Notices.

BOROUGH OF COLCHESTER, 1846.—NOTICE IS HEREBY GIVEN, that the next GENERAL COURT OF QUARTER SESSION of the PEACE of the said Borough will be holden at the Moot-hall, there, on MONDAY, the twenty-eighth day of SEPTEMBER, instant, at the hour of Ten o'clock in the forenoon, when and where the Grand and Petty Juries, Persons bound by Recognizances to appear, prosecute, and give evidence, and all others who have business to transact, are hereby directed to give their attendance accordingly.
Dated this 12th day of September, 1846.
BARNES, Clerk of the Peace.

LANCASHIRE MICHAELMAS SESSIONS.—NOTICE IS HEREBY GIVEN, that the GENERAL QUARTER SESSION of the PEACE for the County Palatine of LANCASTER will be held at the Castle of Lancaster on MONDAY, the 19th day of OCTOBER next, at Ten o'clock in the forenoon, and by adjournment at the following places and times, viz.

At the Court House in PRESTON, on WEDNESDAY, the 21st day of OCTOBER next, at Ten o'clock in the forenoon.

At the New Bailey Court House in SALFORD, near Manchester, on MONDAY, the 26th day of OCTOBER next, at Ten o'clock in the forenoon.

And at the Court House in KIRKDALE, near Liverpool, on WEDNESDAY, the 4th day of NOVEMBER next, at Ten o'clock in the forenoon.

And that all business relating to the assessment, application, or management of the County Stock or Rate will commence at such Sessions respectively, at Eleven o'clock in the forenoon of the first day thereof.

All business arising within the Hundred of Lonsdale, is transacted at Lancaster; within the Hundreds of Amounderness, Blackburn, and Leyland, at Preston; within the Hundred of Salford, at Salford; and within the Hundred of West Derby, at Kirkdale.

All appeals are entered with the Clerk of the Peace, and Motions made to the Court respecting them on the first morning of the Sessions at each of the above-named places: and the trial of such appeals takes place, at Lancaster, on the first day; at Preston and Kirkdale not earlier than Friday, the third day; and at Salford, on Wednesday, the third day.

GORST and BIRCHALL,
Deputy Clerks of the Peace.

Clerk of the Peace's Offices, Preston,
Sept. 14, 1846.

COUNTY of DENBIGH.—NOTICE IS HEREBY GIVEN, That an Adjournment of the QUARTER SESSIONS of the PEACE for the County of DENBIGH, for the purpose of auditing and allowing the Bills due from the County, will be held at the County Hall, in Denbigh, on MONDAY, the 19th day of OCTOBER next, at Eleven o'clock in the forenoon, when and where the business relating to the assessment, application, or management of the County Stock or Rate, will commence.

AND NOTICE IS HEREBY GIVEN, That the GENERAL QUARTER SESSIONS of the PEACE of the same County will be held at the same place, on TUESDAY, the 20th day of OCTOBER next, at Ten o'clock in the forenoon, and that the business relating to the assessment, application, or management of the County Stock or Rate, will commence at Twelve o'clock at noon, on the said 20th day of October.

AND NOTICE IS HEREBY GIVEN, That the business relating to the Act 3 & 3 Vict. c. 93, intitled "An Act for the Establishment of County and District Constables, by the Authority of Justices of the Peace," and to the Act 3 & 4 Vict. c. 88, intitled "An Act to amend an Act for the Establishment of County and District Constables," will commence at the said ADJOURNED SESSIONS, at Twelve o'clock at noon, and at the said GENERAL QUARTER SESSIONS, at One o'clock, P.M.

AND NOTICE IS HEREBY GIVEN, Pursuant to an order of Court, that instructions for Indictments to be preferred at the said GENERAL QUARTER SESSIONS must be sent to the office of the CLERK of the PEACE at RUTHIN (whenever practicable), four days before the said GENERAL QUARTER SESSIONS, otherwise the Attorney's fees will not be allowed.

JOSEPH PEERS,
Clerk of the Peace.

Ruthin, Sept. 15, 1846.

BOROUGH OF KINGSTON-UPON-HULL.—NOTICE IS HEREBY GIVEN that the MICHAELMAS GENERAL QUARTER SESSIONS of the PEACE for the said Borough, for the Trial of Prisoners committed and held to Bail on charges of Felony and Misdemeanor, will be holden at the Town Hall, in the said Borough, before MATTHEW TALBOT BAINES, Esq. Recorder of the said Borough, on FRIDAY, the 23rd day of OCTOBER next, at Ten o'clock in the forenoon, when and where all persons bound by recognizances and others having business at the said Sessions (except as hereinafter mentioned) are requested to attend, and in all cases where the parties accused are out on Bail, the prosecutors and witnesses must be in readiness to attend the Grand Jury at Ten o'clock on Saturday morning, the second day of the Sessions.

AND NOTICE IS HEREBY ALSO GIVEN that all Appeals must be entered with the Clerk of the Peace before the sitting of the Court on the said 23rd day of OCTOBER next, and the hearing of Appeals and Motions will be taken at Nine o'clock on SATURDAY morning, the 24th day of OCTOBER next (if the Criminal Business should then have terminated; if not, immediately after the termination thereof); and Solicitors are requested to take Notice, that in Appeals against Removal Orders, Copies of the Notice and Grounds of Appeal, and examination of the Pauper must be filed along with the Removal Order.

J. H. GALLOWAY, Clerk of the Peace.

Office of Clerk of the Peace, Kingston-upon-Hull,
September 17, 1846.

New Publications.

ARCHBOLD'S JUSTICE OF THE PEACE.—The Justice of the Peace and Parish Officer, in 3 vols. 12mo. price 3s. Fourth Edition, by JOHN FREDERICK ARCHBOLD, Esq.

Barriester-at-Law;

Comprising the whole of the Criminal Law, the Duties of Justice of the Peace in and out of Sessions, the Practice of Attorneys in Criminal Cases, with Forms in every case. The third volume, comprising the whole of the Poor Law, with Forms, may be had separate, price 1s.

Published by SHAW and SONS, Fetter-lane.

The New Small Debts Act now ready.

THE SMALL DEBTS ACT of 9 & 10 VICT. with a complete Analysis, and Copious Index, By WM. PATERSON, Esq. Barriester-at-Law. This forms No. VI. of LAW TIMES Edition of Important Statutes.

LAW TIMES Office, 29, Essex-street.

On Monday next will be published, **THE PRACTICE of the COURTS** under the 9 & 10 Vict. cap. 95, for the Recovery of Small Debts in England, with Notes, Comments, and Decisions on Analogous Statutes.

By JOHN JAGOE, Esq. Barriester-at-Law. STEVENS and NORTON, 26 and 39, Bell-yard, Lincoln's-inn.

SMALL DEBTS ACT (9 & 10 Vict. c. 95).

On Monday next will be published, **THE NEW COUNTY COURTS ACT** for Debts, Damages, Replevin, &c., with notes, critical and explanatory.

By HENRY UDALL, Esq. of the Inner Temple, Barriester-at-Law. STEVENS and NORTON, 26 and 39, Bell-yard, Lincoln's Inn.

To be published shortly.

THE NEW COUNTY COURTS, the LAW OF. By J. MOSLEY, Esq. Barriester-at-Law.

Part I. containing, titles: Courts, Creation of—Nature of—When held—Where held. Officers, Judicial and Ministerial—Who may be—By whom and how appointed—Powers and Duties of Deputies—Fees—Compensation—Offences by—Actions against, &c.

Parts II. and III. containing, titles: Jurisdiction—Process—Trial, &c.

To be published forthwith.

8vo. price 6d. or postage free 10d.

GILBERT'S SMALL DEBT and LOCAL COURTS ACT, just passed for facilitating by cheap and easy process the Recovery of Small Debts throughout the Kingdom. Also in 8vo. price 6d. or postage free, 8d.

SIR R. PEEL'S NEW CORN BILL and TARIFF ACTS, with an Introduction by EDWARD BIRT ACTON, Esq.

London: JAMES GILBERT, 49, Paternoster-row, and, by order, of all Booksellers.

DEEDS FOR EXECUTION ABROAD.

—Messrs. J. and R. McCracken, Foreign Agents, No. 7, Old Jewry, beg to inform the Legal Profession, that they undertake to forward Deeds for Execution by Parties abroad, through their correspondents on the Continent, for the costs of transmission, and a simple commission.

List of Correspondents, and for further information, apply as above.

Sales by Auction.

TO be SOLD by AUCTION, early in the month of OCTOBER (unless previously disposed of by private contract, of which due notice will be given), in one or various lots, as may be determined at the time of sale, the valuable buildings and premises known by the name of the TANGIER IRON FOUNDRY, situate at Taunton, in the county of Somerset, where for many years past an extensive business has been conducted. The buildings are all extremely substantial, and so erected that they may, at slight cost, be converted into dwelling-houses. The whole adjoins the proposed site for the new church, and will afford admirable opportunity for any person desirous of continuing the business, or to make a street of excellent houses, in a favourite locality, which would yield a large revenue. Any person desirous of continuing the ironfoundry and smithy might have the buildings for a term, at a moderate revenue.

For further particulars, apply to Mr. C. CORFIELD, Architect, Taunton; W. R. HARRIS, Esq. Solicitor, 22, Lincoln's-inn-fields, London; and, for particulars and to view, at Tangier House, Taunton; or at the office of the Somerset County Gazette, Taunton.

N.B.—Should not the above be sold or let by private contract, further advertisements will announce the day and place of sale.

Sales by Auction.

Very important and valuable Freehold Estate, embracing the entire Parish of Addington, free of Tithes and Land-tax, and almost of Poor-rates, with its spacious Mansion, excellent Manor for Game, the Advowson, and several first-rate Grazing and Dairy Farms, extending nearly to the town of Winslow, only five miles from the county and borough town of Buckingham, distinguished as the family seat and domain of the late Honourable General Vere Poulett, forming a singularly eligible and solid investment for capital in a proverbially rich and fine sporting country.

MESSRS. DANIEL SMITH and SON are commissioned to announce that the above remarkably valuable and truly important FREEHOLD ESTATE will be SOLD by AUCTION, at the Mart, near the Bank of England, on THURSDAY, SEPTEMBER 24, at 12, unless an acceptable offer shall be previously made by private treaty. It comprises the spacious and substantial mansion of Addington, with walled garden, capital stabling, &c. placed on a gentle elevation, nearly in the centre of one of the most fertile domains in the county, embracing the entire parish, nearly encircled by a fine brook, and chiefly rich grazing and dairy land, the whole tithe free, and let to old respectable tenants, at rents amounting to about 2,600*l.* per annum; the perpetual advowson, with its parsonage and glebe, and the manor, which is well stocked with game, appertain to the estate. The timber is nearly all elm, a certain proof of the fertility of the soil. The high turnpike-road from Aylesbury to Buckingham passes through the property close to the town of Winslow, and it is within a very easy distance of the several markets of Buckingham, Bicester, Stony Stratford, &c. This description of grass land is unlikely to be affected by any change as to corn laws or tariffs, and the property, therefore, presents, with its peculiar and great local advantages, an indisputably fine and choice property for the investment of money, with a most enjoyable domain for residence, being in a perfectly rural district, and in the centre of several packs of hounds. A station on the Buckinghamshire Railway will be very near.

The property may be viewed by application to Mr. King, Surveyor, Winslow, of whom particulars may be had; and every information obtained of Messrs. DANIEL SMITH and SON, Land Agents and Surveyors, in Waterloo-place, Pall-mall; of Messrs. KARSLAKE and CREALOCK, Solicitors, Carlton Chambers, Regent-street; and of Messrs. WALKER and GRIDLEY, Solicitors, 5, Southampton-street, Bloomsbury.

Tithe Rent Charge of above 3,000*l.* per annum (Freehold), offering an equally secure investment for capital as land, with a higher rate of interest, and no drawback for repairs.

MESSRS. DANIEL SMITH and SON will OFFER for SALE by AUCTION, at the Auction Mart, on THURSDAY, SEPTEMBER 24, in one lot, the very valuable FREEHOLD TITHE RENT CHARGES, arising from about 18,000 acres of first-rate land, in the parish of Whittlesea, close to Peterborough, comprising estates belonging to his Grace the Duke of Bedford, — Chitlers, esq., and other large proprietors, producing about 3,000*l.* per annum, clear of parochial rates. — Particulars may be had at the chief inns at Whittlesea and Peterborough; of Mr. WADDELOW, Whittlesea; of Messrs. JONES, BATEMAN, and BENNETT, Lincoln's-inn; and of DANIEL SMITH and SON, Land Agents, in Waterloo-place, London.

The great and valuable Freehold Estate of Whittlesea, extending to within two miles of the city of Peterborough.

MESSRS. DANIEL SMITH and SON are commissioned by the noble proprietors to SELL by AUCTION, at the Auction Mart, on THURSDAY, SEPTEMBER 24, at Twelve (unless an acceptable offer shall be previously made by Private Contract), the above truly important and valuable FREEHOLD PROPERTY, near Peterborough, comprising the vast manors of Whittlesea, embracing nearly 25,000 acres, and in which are nearly 200 or 300 copyholders, paying quit-rents and fines, the greater part of the flourishing town of Whittlesea, the bank premises, several private residences, inns, shops, &c. being held of the said manor. Also above 2,100 acres of most fertile land, divided into compact farms, and let at low rents, to a highly respectable and intelligent tenantry, with some very valuable dispersed parcels of land adjoining and contiguous to the town, portions eligible for building. Also the Advowson of the Vicarage of St. Mary, and the Freehold Rent Charges in lieu of tithes, extending over nearly 18,000 acres, of the annual value together of upwards of 6,000*l.* exclusive of the valuable manors and living, offering, with its many advantages, a fine, influential, and solid property for the investment of capital. There is a navigable river and canal through the estate, and the railway from Peterborough to Ely passes through Whittlesea. The entire property will be first offered in one lot, and if not sold, will be immediately put up in three lots, viz.: — 1. The Tithe Rent-charges; 2. The Manors and Farms; 3. The Advowson. — Particulars may be obtained of Messrs. JONES, BATEMAN, and BENNETT, Solicitors, Lincoln's-inn; at the Auction Mart; of Mr. JOHN WADDELOW, Whittlesea, who will show the estates; and of Messrs. DANIEL SMITH and SONS, Land Agents, in Waterloo-place, Pall-mall.

Freehold Farm of 225 Acres, Land-tax redeemed, in the preferable part of the County of Essex, forming a desirable investment.

TOPLIS and SON will SUBMIT for SALE by AUCTION, in OCTOBER, unless previously disposed of by Private Contract, RETLEIGH LODGE AND PARK GATE ESTATE, consisting of a Freehold Farm of 225 Acres of Productive Land, in the highest state of Cultivation; there is an excellent Family Residence on the Estate, and is pleasantly situated within a short distance of the town of Rayleigh. It is let on Lease to a highly respectable tenant, for a term, whereof ten years are unexpired, at the low rent of 370*l.* per annum. — Further Particulars may be obtained of TOPLIS and SON, 16, St. Paul's Church-yard.

TO be SOLD by AUCTION, at the Lion Hotel, in Warrington, in the county of Lancaster, at Three o'clock in the afternoon, on the 22nd, 23rd, and 24th days of OCTOBER, 1846, in 63 Lots, and subject to conditions which will be then produced, the Fee-simple and Inheritance of and in the valuable and extensive ESTATES, WATER-CORN-MILL, FARMS, LANDS, and TENEMENTS (late of the Rev. Masie Domville Taylor, deceased), situate in Lymm, in the county of Chester, including therein the capital messuage or mansion house called Lymm Hall, and also one-fourth share of the MANOR of LYMM, and comprising about 600 statute acres of Land. Lymm has been long celebrated among the Cheshire villages for its picturesque and romantic beauty. The neighbourhood is pleasant and the society good. The roads on all sides are excellent, and the Bridgewater Canal, on which there are daily passage boats to and from Manchester and Liverpool, passes through the village. When the Birkenhead, Lancashire, and Cheshire Junction Railway is completed, which will pass at no great distance from it, the village will possess unrivalled facilities of access from the adjoining districts of Lancashire and Cheshire, as well as from all other parts of the country.

The estate, which has been divided into numerous and various lots, to suit purchasers of different classes, will be found to comprise arable, meadow, and pasture land, of the best quality, and in the highest state of cultivation; a portion of the meadow land lies on the banks of the river Mersey. The produce of the estate always finds a ready market at Manchester, to which place it is conveyed by means of the Bridgewater Canal at an inconsiderable expense. The market towns of Altrincham, Knutsford, and Warrington are also within the respective distances of seven, six, and five miles from Lymm, and are all accessible by the best roads. Upon the estate will be found several very eligible sites for residences, with advantages of good drainage, suitable soil, and a variety of pleasing views over the valley of the Mersey, and the surrounding country. Abundance of good stone suitable for building purposes is found on the estate. Lymm Hall, which, with a moderate quantity of land, will be offered in one lot, is a substantial stone edifice, built about the year 1640, with projecting gables, and in the picturesque style of that period, and is surrounded by a sufficiency of ornamental timber. Possession of all the lots may be secured at an early period at the will of the purchasers, the requisite notices having been given to the tenants with a view to the present sale. — The respective tenants or Mr. Thomas Jackson, of Lymm, will shew the estate; and printed particulars with plans may shortly be had at the Spread Eagle and Fleece Inns, in Lymm; at the place of sale; and at the office of Messrs. BEAMONT and URMSON, Solicitors, Warrington.

Semi-detached Villa, for occupation or investment, held for 500 years, near Westbourne-terrace.

MR. FREDERICK CHINNOCK will SELL by AUCTION, at the Mart, on WEDNESDAY, SEPTEMBER 25, at Twelve, a well-built ITALIAN VILLA, being No. 5, Westbourne-villas, Harrow-road, decorated in a very superior style; fit for immediate occupation; held for 500 years, at a trifling ground-rent. — May be viewed any time prior to the sale, and catalogues obtained of T. CATTIAN, Esq. 39, Ely-place; at the Auction Mart; and at Mr. FREDERICK CHINNOCK'S Auction and Estate Offices, 28, Regent-street, Waterloo-place.

Improved Rental of 14*l.* 8*s.* per annum. **MR. FREDERICK CHINNOCK** will SELL by AUCTION, at the Mart, on WEDNESDAY, SEPTEMBER 25, at Twelve, by order of the Executors of the late Mr. James Hammon, an IMPROVED RENTAL of 14*l.* 8*s.* arising out of a leasehold house, lately rebuilt, situate in Edward's-yard, Langham-place. — Particulars and conditions of sale may be obtained of JAMES TAYLOR, Esq. Solicitor, 15, Farnival's-inn; at the Mart; and at Mr. F. CHINNOCK'S Auction Offices, 28, Regent-street, Waterloo-place.

BATTERSEA, near the intended new park. — Seven valuable Leasehold private Houses, of the value of 180*l.* per annum, for pre-emptory sale.

MR. FREDERICK CHINNOCK is directed to SELL by AUCTION, at the Auction Mart, on WEDNESDAY, SEPTEMBER 25, at Twelve, FIVE private Houses, situate in Park-road, and TWO in Oak-terrace, near Battersea-bridge, let to respectable tenants, and held direct from the freeholder, for a term of 84 years, at moderate ground-rents. — May be viewed, and particulars obtained of RICHARDSON, SMITH, and SADLER, 28, Golden-square; at the Auction Mart; and at Mr. CHINNOCK'S offices, 28, Regent-street.

Freehold House and Premises, St. Peter's-hill, City, for pre-emptory sale.

MR. FREDERICK CHINNOCK is instructed to SELL by AUCTION, at the Mart, on WEDNESDAY, SEPTEMBER 25, at Twelve, a substantially built and commanding FREEHOLD HOUSE and PREMISES, situate and being No. 19, St. Peter's-hill, Doctors'-Commons, having large hall and vestibule, noble reception rooms, and numerous best and secondary bed chambers, with conservatory behind. — May be viewed any time prior to the sale, and particulars obtained of JAS. TAYLOR, Esq. Solicitor, 15, Farnival's-inn; at the Mart; and at Mr. CHINNOCK'S Offices, 28, Regent-street, Waterloo-place.

Freehold Houses, Kensington, producing 75*l.* per annum, and ground-rent of 6*l.* per annum.

MR. FREDERICK CHINNOCK will SELL by AUCTION, at the Auction Mart, on WEDNESDAY, SEPTEMBER 25, at Twelve, a FREEHOLD private HOUSE, situated No. 1, King-street, and being at the north-west corner of Kensington-square, with large garden in the rear; let at 30*l.* per annum. Also a capital House, with double-fronted shop, being No. 40, High-street, immediately facing Kensington Church; let on lease to Mr. Oliver, ironmonger, at 45*l.* per annum. A Ground Rent, equal to freehold, of 6*l.* per annum, secured upon a house and shop, of the value of 40*l.* per annum. — May be viewed, and particulars obtained at the Mart; of H. NETHERSOLE, Esq. Solicitor, 3, New-inn, Strand; of J. DEANE, Esq. 2, New-inn-buildings, New-inn; and at Mr. CHINNOCK'S Offices, 28, Regent-street.

FREEHOLD GROUND-RENT of 132*l.* per annum; and FREEHOLD ESTATE of the improved value of 69*l.* per annum, Ray-street, Clerkenwell.

MESSRS. SHUTTLEWORTH and SONS are instructed to SELL by AUCTION, at the Mart, on FRIDAY, OCTOBER 9, at Twelve, in two Lots, an extensive FREEHOLD ESTATE, situate near the line of the important improvements now in rapid progress from Farringdon-street to the Angel, at Islington, in Crawford-passage, Ray-street, Clerkenwell, in the county of Middlesex, comprising the capital factory, numerous workshops, warehouses, show-rooms, dwelling-houses, coach-house, stables, yards, and premises, in the occupation of Mr. Charles Botten, brassfounder, on lease for a term of which forty years are unexpired, at a ground-rent of 22*l.* per annum. Also a Freehold Estate, comprising two dwelling-houses, a dairyman's shop, large coal store, with warehouse over, and other appurtenances, situate No. 11, Ray-street, and No. 1, Copper-row, Clerkenwell, a short distance from the above, in the occupation of Messrs. Pullen and Hopkins, yearly tenants, of the improved value of 60*l.* per annum. — May be viewed with leave of the tenants; and particulars had ten days previous to the sale, at the Mart; and of Messrs. SHUTTLEWORTH and SONS 28, Poultry.

Periodical Sales (established in the year 1803) of Reversions, Life Interests, Annuities, Policies of Assurance, Advowsons, Next Presentations, Rent Charges in lieu of Tithes, Post-obit Bonds, Tontines, Debentures, Ground Rents, Improved Rents, Shares in Docks, Canals, Mines, Railways, Insurance Companies, and all Public Undertakings.

MESSRS. SHUTTLEWORTH and SONS respectfully inform the public, that upwards of 40 years' experience having proved the classification of this species of property to be extremely advantageous and economical to vendors, and equally satisfactory and convenient to purchasers, the PERIODICAL SALES of reversionary interests, policies of insurance, tontines, debentures, advowsons, next presentations, and securities dependent upon human life, shares in docks, canals, mines, railways, and all public undertakings, will be continued through 1846, as follows: —

Friday, October 2 Friday, November 6
Friday, December 4.

Particulars may be had Ten days previous to each sale, at the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

THE REPORTS.

The following are the names of gentlemen who favour the LAW TIMES with the Reports: —

PRIVY COUNCIL by THOMAS CAMPBELL FOSTER, of the Middle Temple, Esq. Barrister-at-Law.

EQUITY COURTS.

LORD CHANCELLOR'S COURT by RICHARD GRIFFITHS WELFORD, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR OF ENGLAND'S COURT, by GEORGE GOLDSMITH, Esq. of the Middle Temple, Barrister-at-Law.

ROLLS COURT, by J. MACAULAY, Esq. of the Inner Temple, Barrister-at-Law.

VICE-CHANCELLOR KNIGHT BRUCE'S COURT by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

VICE-CHANCELLOR WIGRAM'S COURT, by VESLEY T. DAWSON, Esq. of the Middle Temple, Barrister-at-Law.

COMMON LAW COURTS.

The QUEEN'S BENCH, by ADAM BRITTON, Esq. of the Inner Temple, Barrister-at-Law, and EDWARD WISE, Esq. of the Middle Temple, Barrister-at-Law.

The COURT OF COMMON PLEAS, by PAUL PARNELL, Esq. of the Middle Temple.

The COURT OF EXCHEQUER by H. T. COLE, Esq. of the Middle Temple, Barrister-at-Law, and H. BROOM, Esq. of the Inner Temple, Barrister-at-Law.

The BAIL COURT by T. W. SAUNDERS, Esq. of the Middle Temple, Barrister-at-Law.

The EXCHEQUER CHAMBER by HERBERT BROOM, Esq. of the Inner Temple, Barrister-at-Law.

BANKRUPT AND INSOLVENT COURTS.

The COURT OF REVIEW by GEO. S. ALLNUTT, Esq. of the Middle Temple, Barrister-at-Law.

LONDON COMMISSIONERS' COURTS and the INSOLVENT COURT, by PAUL PARNELL, Esq. of the Middle Temple, Barrister-at-Law.

BRISTOL DISTRICT COURT, by F. T. ALLEN, Esq. of Lincoln's-inn, Barrister-at-Law.

NISI PRIUS, CIRCUITS, AND CROWN CASES.

CENTRAL CRIMINAL COURT, by B. C. ROBINSON, Esq. of the Middle Temple, Barrister-at-Law.

CROWN CASES (before all the Judges) by A. BRITTON, Esq. of the Inner Temple, Barrister-at-Law.

NORTHERN CIRCUIT, York and Liverpool, by J. B. ASPINALL, Esq. Barrister-at-Law.

THE CIRCUIT, by G. F. H. OLEPHANT, Esq. Barrister-at-Law.

WESTERN CIRCUIT, by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

NORFOLK CIRCUIT by JNO. B. DASENT, Esq. Barrister-at-Law.

SITTINGS AT NISI PRIUS AFTER TERM, by JOHN LANE, Esq. D.C.L. of the Inner Temple, Barrister-at-Law.

ELECTION LAW.

REGISTRATION APPEALS in the COMMON PLEAS by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law; and HENRY TINDAL ATKINSON, Esq. of the Middle Temple, Barrister-at-Law.

ELECTION COMMITTEES by EDWARD W. COX, Esq. of the Middle Temple, Barrister-at-Law.

REGISTRATION COURTS, collected and edited by EDW. W. COX, Esq. of the Middle Temple, Barrister-at-Law.

IRISH REPORTS.

The LORD CHANCELLOR'S COURT by WILLIAM DOUGAN, Esq. Barrister-at-Law.

QUEEN'S BENCH AND CRIMINAL COURTS by WM. ST. LEGER BARINGTON, LL.D. Barrister-at-Law.

The Written Judgments are reported verbatim in Short-Hand by Mr. H. GREGORY, Short-Hand Writer.

Sales by Auction.

GREAT SALE OF LANDS IN BIRKENHEAD AND CLAUGHTON-CUM-GRANGE.

MESSRS. T. WINSTANLEY and SONS have received instructions from the Commissioners of Birkenhead, to offer for SALE, by PUBLIC AUCTION, on WEDNESDAY the 30th of SEPTEMBER, at the Town Hall, Birkenhead, at One o'clock, p.m. in Eligible Lots for BUILDING PURPOSES, their LAND in the following situations in the said Townships, viz.:—Within the New Park at Birkenhead; on the West or Upper Side of the Park (known as the Forest Land); at Flaybrick Hill, near the Intended Cemetery; in Conway-street, near St. James's Church, now erecting; in Hamilton-street, adjoining the New Market; in Livingston-street, near Oakfield and the New Park.

Terms of Payment.—10 per cent. deposit, 10 per cent. at the expiration of twelve months; the remainder of the purchase-money to remain (if required) for ten years from the day of sale, at four per cent. interest.

Plans and particulars will be ready for delivery in a few days, and in the meantime information may be obtained at the Surveyor's Office, Commissioners' Rooms, Hamilton-square, Birkenhead, or at the office of Messrs. MALLABY, TOWNSEND, and NEWALL, Solicitors, Fenwick-street, Liverpool, and Cleveland-street, Birkenhead.

JOSH. MALLABY,

Clark to the Commissioners.

Commissioners' Rooms, July 3, 1846.

These Freehold Properties will be submitted to public competition by the Commissioners, under circumstances peculiarly favourable to purchasers; in lots, and under such terms and conditions as it is deemed will facilitate a realization to the Capitalist and Builder. The Land thus offered for public sale is wholly within the Township of Birkenhead, and under the protection of its local Acts, and has, by its favourable position, participated largely in the great works carried out and those now in progress, under the powers of the several Acts now in force for the Improvement of the Town.

The Land surrounding the Park, and permanently attached to it, is situated between the carriage drives and the several magnificent roads lately executed in continuous and uninterrupted boundary to that property, and within 2,000 yards average distance from the Ferries. The great extent and acknowledged beauty of the Park (in the formation and completion of which no expense has been spared) has secured a nucleus to the Building Land, forming a prospect commanded by the whole of that property, of very striking and judiciously-varied scenery. The Park is situated on a gentle slope, gradually rising to considerable elevation, and from which extensive marine views, on the Lancashire and Cheshire shores, are embraced. Adjoining the Park Land, with advantages little inferior, is situated the Land called "The Forest Land," now under timber, and very eligible for Villas and other classes of Property.

With a due regard to the principles and preliminary measures upon which Building Land is brought into a condition for immediate realization, the commissioners have aided most materially by the central position of the Property, been enabled to effect a complete union with the leading and conspicuous thoroughfares in the Town.

The Cemetery and Conway-street Estates, within a short distance of the Large Dock Works, now assuming an aspect of rapid progressive importance, have, in the manner in which it has been finally decided on treating them, both as to their connection with the Agricultural districts, and the scene of business in the Great Floating Basin and auxiliary Docks, secured to that property a permanent character and value that cannot be prejudiced.

The Land contiguous to the New Market, forms the entire N.W. Boundary to that building, fronting Hamilton-street, and abutting Market-street, the latter of which it is decided to widen to a corresponding width of twenty yards with Hamilton-street, is divided into small desirable lots, interrupted only by side approaches, and other accesses to the New Building.

It is almost needless to draw public attention to the rapid growth of Birkenhead, or to the great works in progress and prospect, to which, in a degree, may be attributed as the active agent, in combination with the natural resources and commercial and rural position of the district; its rapid increase. The rural and commercial sections of the town have been distinctly and judiciously defined. The park is a gift to the inhabitants, dedicated in perpetuity to the town; and while this noble public work engaged the attention of the Commissioners, it was happily combined with the consideration of affording the superior and middle classes among the merchants of Liverpool and Birkenhead an opportunity, at a comparatively trifling cost, of establishing themselves in a rural district, at an easy stage from their scenes of business; combining the features of a country residence and park range, with the comfort and safety of efficient lighting and watching regulations. This wise provision for the public interest can but meet with the eminent success it deserves.

T. WINSTANLEY and SONS,

Church-street, Liverpool, 31st Aug. 1846.

SURREY, 34 miles from London.—Valuable Estate for Investment, including three Farm-houses, Cottages, and 475 acres of Land, with the Great Tithes or Commutation Rent Charge of the Parish, and Land-tax redeemed.

MESSRS. WINSTANLEY have received instructions to OFFER for SALE by AUCTION, at the Mart, on TUESDAY, OCTOBER 20, at Twelve, in one lot, a valuable ESTATE for investment, situate in the parishes of Crowhurst and Tandridge, in the county of Surrey, only about 34 miles from London, and two from the Godstone Station on the South Eastern Railway, and two from Lingfield; comprising the Mansion House, Church, and Pound Farms, with all suitable agricultural buildings, in excellent repair, together with about 475 acres of productive meadow, pasture, arable, and wood land, lying nearly within a ring fence, in the occupation of two most respectable tenants; also the rent charge in lieu of the great tithes on lands in the parish of Crowhurst: the whole rental amounting together to nearly 630l. per annum. To be viewed by permission of the tenants.—Printed particulars may be obtained of Messrs. SAWYER & BRETTELL, Solicitors, No. 2, Staple-inn, London; Messrs. WINSTANLEY, Paternoster-row; at the inns at Godstone, Westerham, Sevenoaks, East Grinstead, and Croydon; and at the place of sale.

COUNTY OF KENT.—The Fairlawn Estate, near Tunbridge.

MESSRS. WINSTANLEY beg to acquaint the public that they have received directions from the trustees under the will of Edmund Yates, esq. deceased, and in pursuance of an Act of Parliament, to SELL by AUCTION, at the Mart, on TUESDAY, OCTOBER 20, in one lot, an important FREEHOLD PROPERTY, in the county of Kent, distinguished as the FAIRLAWN ESTATE, six miles from Tunbridge and Sevenoaks, and twenty-seven from London; comprising about 1,500 acres of land, lying exceedingly compact (with the exception of a small portion), and including a capital stone-built mansion, lately put into thorough repair, containing all the requirements of a nobleman or man of fortune, with a beautifully timbered park, ornamental lodge, conservatory, orangery and forcing-houses, delightful gardens, wilderness, pleasure grounds, &c. There is also on the property an excellent residence (occupied by a lady of rank), several farm-houses and labourers' cottages, public-house, water corn-mill, &c. The Perpetual Curacy of Shipborne, and the tithes of the parish. The mansion can only be viewed by tickets, to be had, with descriptive particulars and plans, of Messrs. MILNE, PARRY, MILNE, and MORRIS, Solicitors, Harcourt-buildings, Temple; and of Messrs. WINSTANLEY, Paternoster-row, London. Particulars will also be left for distribution at Messrs. Milne and Co.'s, Solicitors, Manchester; at Messrs. Thomas Winstanley and Son's, Auctioneers, at Liverpool; at the inns at Tunbridge and Sevenoaks; the libraries at Tunbridge-wells, Hastings, and St. Leonard's; of Mr. Cressay, Auctioneer, Brighton; at the Ship and the Royal York Hotels, Dover; and at the place of sale.

IRELAND.—COUNTY OF WEXFORD.—Valuable Reversionary Life Interest.

MR. GEORGE CARNE is instructed to offer for SALE by AUCTION, at the Globe Hotel, Plymouth, on THURSDAY, the 24th day of SEPTEMBER next, at Twelve o'clock at noon, either entire or in convenient lots, the LIFE ESTATE (without impeachment of waste), late of Wm. Hore, esq. aged 36, or thereabouts, expectant on the decease of his father, Walter Hore, esq. aged 63, or thereabouts, but now vested in the assignees of the said Wm. Hore. In all that and those the towns and lands of Harpinstown, Taghmon, and its sub-denominations, part of Clonacran, Paulemarie, and Cloughculla. And all that and those the town and lands of Traceystown, Moortown, Hightown, Waddingtown, Aughtnegan, part of Drinagh, part of Rochestown, and Muchmade, and in Arpinstown, four acres, all situate in the baronies of Shinnallier, Bargo, and Forth, in the county of Wexford, created by indenture of settlement bearing date the 1st day of September, 1837. And also the Reversion in Fee, expectant on the death of the said Walter Hore, and the death and failure of issue of the said William Hore, and the death and failure of issue male of his four brothers. The annual rental of this property (1,500 acres or thereabouts, in extent comprising mansion, demesne, farms, limestone quarries, &c.) amounts to upwards of 1,900l. exclusively of the mansion and demesne of Harpinstown (with its timber), now in the hands of the said Walter Hore, as tenant for life, and of the estimated annual value of 400l.

The quit rent and tithe rent charges, amount to 119l. 0s. 7d. or thereabouts. It is anticipated, that one estate will, on the death of a life, now aged 90, or thereabouts, insure a rise of 150l. per annum, at least, on the present rent, and that owing to several portions of the property being held on lease, ere long the annual rental will be considerably enhanced. The whole of this valuable property lies within ten miles of the populous and thriving town of Wexford, but a great portion (including the Lime Stone Quarries) is contiguous to that town. It suffices to state that the improved habits of the neighbourhood of Wexford—its excellent market—its quick communication with Liverpool—the punctuality with which the rents of this property are paid (second in that respect to none throughout Ireland)—the high quality of the land which has given to the Baronies of Bargo and Forth a superiority throughout the whole of the county of Wexford (emphatically styled the granary of Ireland), the immediate and prospective advantages which must be derived from the completion of the railway communication with Dublin; and lastly the opportunity of recovering lands from the sea pursuant to powers for raising money on the property for that purpose contained in the said settlement (such recovered lands to be subjected thereto), all combine to form inducements of no ordinary kind for English capitalists to embark their money in land situate in an Irish district enjoying the peaceful security of an English county.—For further particulars, copy rent roll, &c. application to be made to Messrs. W. W. and R. WREN, Solicitors, 32, Fenchurch-street, London; Mr. J. WHYDDON, Solicitor, Russell-street, Plymouth; and to the Auctioneer, Mr. G. CARNE, Bedford-street, Plymouth.

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THE LAW TIMES,

AND JOURNAL OF PROPERTY,

FOR

The Legislator, the Magistrate, and the Lawyer.

VOL. VII. No. 182.]

SATURDAY, SEPTEMBER 26, 1846.

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Legal Notices.

LANCASHIRE MICHAELMAS SESSIONS.—NOTICE IS HEREBY GIVEN, that the GENERAL QUARTER SESSION of the PEACE for the County Palatine of LANCASTER will be held at the Castle of Lancaster on MONDAY, the 19th day of OCTOBER next, at Ten o'clock in the forenoon, and by adjournment at the following places and times, viz.

At the Court House in PRESTON, on WEDNESDAY, the 31st day of OCTOBER next, at Ten o'clock in the forenoon.

At the New Bailey Court House in SALFORD, near Manchester, on MONDAY, the 28th day of OCTOBER next, at Ten o'clock in the forenoon.

And at the Court House in KIRKDALE, near Liverpool, on WEDNESDAY, the 4th day of NOVEMBER next, at Ten o'clock in the forenoon.

And that all business relating to the assessment, application, or management of the County Stock or Rate will commence at such Sessions respectively, at Eleven o'clock in the forenoon of the first day thereof.

All business arising within the Hundred of Lonsdale, is transacted at Lancaster; within the Hundreds of Amounderness, Blackburn, and Leyland, at Preston; within the Hundred of Salford, at Salford; and within the Hundred of West Derby, at Kirkdale.

All appeals are entered with the Clerk of the Peace, and Motions made to the Court respecting them on the first morning of the Sessions at each of the above-named places: and the trial of such appeals takes place, at Lancaster, on the first day; at Preston and Kirkdale not earlier than Friday, the third day; and at Salford, on Wednesday, the third day.

GORST and BIRCHALL, Deputy Clerks of the Peace.

Clerk of the Peace's Offices, Preston, Sept. 14, 1846.

LEEDS BOROUGH SESSIONS.—NOTICE IS HEREBY GIVEN, that the next GENERAL QUARTER SESSIONS of the PEACE for the Borough of LEEDS, in the County of YORK, will be holden before THOMAS FLOWER ELLIS, Esq. Recorder of the said Borough, at the Court-House in Leeds on TUESDAY, the 27th day of OCTOBER next, at Nine o'clock in the forenoon, at which time and place all Jurors, Constables, Police Officers, Prosecutors, Witnesses, Persons bound by recognizances, and others having business at the said Sessions are required to attend.

AND NOTICE IS HEREBY ALSO GIVEN that all Appeals and proceedings under the Highway Acts not previously disposed of will be heard at the opening of the Court, on THURSDAY the 29th day of OCTOBER next, provided all cases of felony and misdemeanour shall then have been disposed of, or otherwise as soon as the criminal business of the Sessions shall be concluded.

AND NOTICE IS HEREBY ALSO GIVEN that all Appeals must in future be entered with me before the opening of the Court on the first day of each Sessions, unless the contrary shall be allowed by the Court on motion by Counsel, or in case of absence of Counsel, by Attorney on special grounds stated.

By order, JAMES RICHARDSON,

Clerk of the Peace for the Borough of Leeds, 11, Albion-street, Leeds, Sept. 23, 1846.

WARWICKSHIRE SESSIONS.—NOTICE IS HEREBY GIVEN, that the GENERAL QUARTER SESSIONS of the PEACE for the WARWICK DIVISION of the said County, will be held at Warwick, on MONDAY, the 19th day of OCTOBER next, at Eleven o'clock in the morning, and will commence with the County Business; and at Two o'clock the trial of Prisoners will be proceeded with. On TUESDAY, the 20th, at Ten o'clock in the morning, Motions and Appeals will be heard.

The said QUARTER SESSIONS will be held by Adjournment for the COVENTRY DIVISION of the said County, at Coventry, on WEDNESDAY, the 31st day of OCTOBER, at Eleven o'clock in the morning. And as soon as the preliminary business is disposed of, the Court will hear Motions and Appeals. The trial of Prisoners will commence in Saint Mary's Hall, as soon as any Bills are found and returned by the Grand Jury.

W. O. HUNT, Clerk of the Peace.

Stratford-upon-Avon, Sept. 23, 1846.

New Publications.

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Fatnoster Row, Sept. 22, 1846.

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By order of the Board,
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PARLIAMENTARY PAPERS.

POPULATION, TAXATION, &c.—In 1845 the population of Great Britain was 19,572,874; in 1815, it was 13,322,568. In 1845 the National Debt amounted to 768,789,341l., and the interest thereon, 27,897,265l.; in 1815 the debt was 816,311,940l. and the interest 31,576,074l. The exports in 1845 amounted to 150,645,018l.; and in 1815 they were 57,420,437l. The imports in 1845 were 83,330,609l. and in 1815 they were 31,822,053l. In 1845, 1,133,561 qrs. of wheat and flour were imported from all parts but Ireland; and in 1815 there were imported 194,931 qrs. In 1845 308,493 qrs. were retained for home consumption; and in 1815 the quantity was 116,382 qrs. The average price per quarter in 1845 was 50s. 10d. and 63s. 8d. in 1815. The fluctuation per cent. between 1842 and 1845 was 14.31; and between 1815 and 1821 it was 72.59. In 1845 the duty on the average price was 30s.; and in 1815 importation was prohibited. The number of acres enclosed (as far as returned) from 1800 to 1842 was 1,933,049. The proportion per cent. of the population living on foreign corn in 1841 was 5.73; in 1821 it was 3.39. In 1841 the number of days' consumption imported was 34.35; in 1821 it was 20.22. In 1845, the quantity of wheat sold in country markets in England and Wales was 6,666,240 quarters, and in 1822 it was 2,191,807. The price of wheat varied from 1808 to 1818 in the principal ports of Europe after the following rates per cent.—In England 92.67, Sweden 170.41, Rotterdam 84.40, Dordt 50.00, Louvain 89.42, Königsberg 160.35, Danzig 47.10, Mecklenburg 27.08, Oldenburg 72.15, St. Petersburg 70.00, Riga 73.01, Archangel 74.91, France 131.36, Bourdeaux 136.62, Holstein 57.05, Christiania 260.41, Bremen 65.23, Hamburg 71.43, Lubeck 78.47, Trieste 19.23, Roman States 95.75, Bilbao 85.85, Alicante 130.00, and Lisbon 93.65. In 1844 the declared value of British and Irish exports was 27,253,918l.; in 1828 they amounted to 17,824,309l.

PUBLIC RECORDS.—On Wednesday, in a Parliamentary paper, the correspondence between Sir Robert Peel and Lord Langdale, as Keeper of the Public Records in the year 1845, respecting the building of a public record-office, was printed. The subject was mentioned at the close of the late session, and Lord John Russell expressed his anxiety to afford a suitable place as a repository for the numerous public records. On the 30th of May, 1845, Lord Langdale brought the subject before Sir Robert Peel, urging on him to give early directions for providing a proper building for the deposit of these important documents. "It is the word only," his Lordship stated, "if you should think it right to pronounce it," which is wanting. It seems that the Victoria Tower, in the new palace, was selected for the records, but his lordship considered that it would not afford sufficient accommodation. The roofs of the new houses were then considered, but declined, his lordship stating that an easy access to the documents was most desirable. The letter was laid by Sir R. Peel before the Lords of the Treasury. Their lordships did not view the suggestion of the keeper of the records, of enlarging the Rolls estate, and erecting a building thereon, as proper to be entertained, on account of the expense, but thought it advisable to adhere to the plan of applying the Victoria Tower and certain adjacent parts of the new houses of Parliament to the accommodation of the public records. Lord Langdale, on the 16th of August, 1845, in reply to a communication from Mr. Cardwell, as Secretary of the Treasury, again urged the subject, and manifested his anxious desire to deposit the records in a place of safety. He complained that the Lords of the Treasury did not desire to co-operate with him, and that their lordships seemed entirely to forget that upon the Master of the Rolls, for the time being, the task and responsibility of arranging the records rested. On the 27th of August, 1845, Mr. Trevelyan, on the part of their lordships, regretted that the Master of the Rolls, with whom it had been their anxious desire to co-operate in all that related to the public records, should see reason to object so strongly to the appropriation of the Victoria Tower. Their lordships did not feel themselves at liberty, on account of the heavy expense, to erect a new building of an enormous extent, and when the rooms in the Victoria Tower were completed everything would be done for the reception of the records.

TURNPIKE TRUSTS.—WALES.—An abstract of the general statements of the income and expenditure of the Turnpike-roads in South Wales for the year 1845, has just been issued by order of the House of Commons, dated August 15, pursuant to the Act of 7 & 8 Vict. c. 91. It appears therefrom that the total income during the year was 9,917l. 5s. 5d. and the total expenditure 9,236l. 5s. 2d. The following are details of those sums:—The balance in hand at the commencement of the year, or received from officers of trusts, was 6,569l. and the balance due to officers of trusts 376l. The income from tolls was 9,808l.; from county treasurers 58l.; from fines 15l.; and from sale of toll-houses. The items under the head of expenditure were:—For manual labour, con-

stant, 1,878l.; casual, 898l.; materials, 2,087l. new toll-houses, 318l.; tradesmen's bills, 313l.; salaries, 701l.; Public Works Loan Commissioners, 1,956l.; debts of former trusts, 450l.; incidental expenses, 930l. The balance in the treasurer's hands, December 31, 1845, was 6,874l. but after payments on account of contracts of 1,570l. the actual balance was 5,424l. The actual balance due to treasurers, December 31, 1845, was 190l. The total length of roads included in this account is 1,095 miles and 1,596 yards (including 13 miles and 1,090 yards belonging to county bridges, or repaired by private parties). The charge upon the six counties of South Wales, was 203,675l. 16s. 7d. and the annuities payable during the present year amount to 11,040l. 17s. The salaries to officers were—Six clerks to county roads boards, 315l.; nine clerks to district roads boards, 345l.; thirteen surveyors, 1,365l.; three pay clerks, 60l.

LAW CHANGES IN SCOTLAND.—It is reported that Lord Murray will be speedily elevated to the peerage, and his place on the bench conferred upon the present Solicitor-General. Mr. Moncreiff, it is understood, will succeed to the latter office.—*Edinburgh Evening Post.*

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Partridge's Steel Pens are well known for the ease and freedom with which they write; they are manufactured with the greatest care, of the best material, very carefully selected, and every Pen warranted, at 1s. 3d. per gross. Second Price, 1s. 6d. per gross.
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BY COMMAND OF HER MAJESTY'S GOVERNMENT. In consequence of the many cures achieved by the constant use of GRIMSTONE'S EYE-SNUFF, manufactured of choice British Herbs. Government having ascertained the above fact, has commanded W. GRIMSTONE, of 434, Oxford-street, to affix a medicated stamp on all containers bearing the label as sanctioned by the Lords of the Treasury in 1825, and approved by the House of Commons in 1827. That this celebrated Grimstone's Eye-Snuff will be sold by all Chemists and Medicine Vendors, in containers at 9d. 1s. 6d. 2s. 7d. 4s. 6d. and 9s. each, stamp included, and forwarded through the post. Upon receipt of a Money Order for 5s. 7d. a 3s. 7d. container will be forwarded from W. GRIMSTONE, Merchant, 434, Oxford-street, London.

THE NEW TOOTH-BRUSH, made on the most scientific principles, thoroughly cleaning between the teeth, when used up and down, and polishing the surface when used crossways. This Brush so entirely enters between the closest teeth, that the inventors have decided upon naming it the **TOOTHPICK BRUSH**; therefore ask for it under that name, marked and numbered as under—No. 1, Standard Brush, marked T. P. No. 1, hard; No. 2, less hard; No. 3, middling; No. 4, soft. The narrow Brushes, marked T. P. No. 5, hard; No. 6, less hard; No. 7, middling; No. 8, soft. These invaluable Brushes are only to be had at ROSS and SONS, and they warrant the hair never to come out, at 1s. each, or 10s. per dozen, in boxes, or 2s. each, or 21s. per dozen, in tins.

THE ATRIPLATORY, or LIQUID HAIR DYE.—The only Dye that really answers for all colours, and does not require re-dyeing, but as the hair grows, as it never fades or acquires that unsightly red or purple tinge common to all other dyes. ROSS and SONS, with the greatest confidence, recommend the above Dye as infallible, if done at their establishment; and ladies or gentlemen requiring it are requested to bring a friend or servant with them to see how it is used, which will enable them to do it afterwards without the chance of failure. Several parties have reported entirely to the above purpose, and some of their establishments having used it, the effect produced can be at once seen. They think it necessary to add, that by attending strictly to the instructions given with each bottle of the Dye, numerous persons have succeeded equally well without coming to them.
Agents, ROSS and SONS, 119 and 120, Abchurch-lane, London, the celebrated Perfumers, Parfumeurs, Hair-dressers, and Hair-dyers. N.B. Parties attended at their own residences, wherever the distance.

Sales by Auction.

GREAT SALE OF LANDS, IN BIRKENHEAD AND CLAUGHTON-CUM-GRANGE.

MESSRS. T. WINSTANLEY and SONS have received instructions from the Commissioners of Birkenhead, to offer for SALE, by PUBLIC AUCTION, on WEDNESDAY the 30th of SEPTEMBER, at the Town Hall, Birkenhead, at One o'clock, P.M. in Eligible Lots for BUILDING PURPOSES, their LAND in the following situations in the said Townships, viz.:—Within the New Park at Birkenhead; on the West or Upper Side of the Park (known as the Forest Land); at Playbrick Hill, near the Intended Cemetery; in Conway-street, near St. James's Church, now situate in Hamilton-street, adjoining the New Market; in Livingston-street, near Oakfield and the New Park.

Terms of Payment.—10 per cent. deposit, 10 per cent. at the expiration of twelve months; the remainder of the purchase-money to remain (if required) for ten years from the day of sale, at four per cent. interest.

Plans and particulars will be ready for delivery in a few days, and in the meantime information may be obtained at the Surveyor's Office, Commissioners' Rooms, Hamilton-square, Birkenhead, or at the office of Messrs. MALLABY, TOWNSEND, and NEWALL, Solicitors, Fenwick-street, Liverpool, and Cleveland-street, Birkenhead.

JOSH. MALLABY,

Clerk to the Commissioners.

Commissioners' Rooms, July 3, 1846.

These Freehold Properties will be subjected to public competition by the Commissioners, under circumstances peculiarly favourable to purchasers; in lots, and under such terms and conditions as it is deemed will facilitate a realization to the Capitalist and Builder. The Land thus offered for public sale is wholly within the Township of Birkenhead, and under the protection of its local Acts, and has, by its favourable position, participated largely in the great works carried out and those now in progress, under the powers of the several Acts now in force for the Improvement of the Town.

The Land surrounding the Park, and permanently attached to it, is situated between the carriage drives and the several magnificent roads lately executed in continuous and uninterrupted boundary to that property, and within 2,000 yards average distance from the Ferries. The great extent and acknowledged beauty of the Park (in the formation and completion of which no expense has been spared) has secured a nucleus to the Building Land, forming a prospect commanded by the whole of that property, of very striking and judiciously-varied scenery. The Park is situated on a gentle slope, gradually rising to considerable elevation, and from which extensive marine views, on the Lancashire and Cheshire shores, are embraced. Adjoining the Park Land, with advantages little inferior, is situated the Land called "The Forest Land," now under timber, and very eligible for Villas and other classes of Property.

With a due regard to the principles and preliminary measures upon which Building Land is brought into a condition for immediate realization, the commissioners have (aided most materially by the central position of the Property) been enabled to effect a complete union with the leading and conspicuous thoroughfares in the Town.

The Cemetery and Conway-street Estates, within a short distance of the Large Dock Works, now assuming an aspect of rapid progressive importance, have, in the manner in which it has been finally decided on treating them, both as to their connection with the Agricultural districts, and the scene of business in the Great Floating Basin and auxiliary Docks, secured to that property a permanent character and value that cannot be prejudiced.

The Land contiguous to the New Market, forms the entire N.W. Boundary to that building, fronting Hamilton-street, and abutting Market-street, the latter of which it is decided to widen to a corresponding width of twenty yards with Hamilton-street, is divided into small desirable lots, interrupted only by side approaches, and other accesses to the New Building.

It is almost needless to draw public attention to the rapid growth of Birkenhead, or to the great works in progress and prospect, to which, in a degree, may be attributed as the active agent, in combination with the natural resources and commercial and rural position of the district, its rapid increase. The rural and commercial sections of the town have been distinctly and judiciously defined. The park is a gift to the inhabitants, dedicated in perpetuity to the town; and while this noble public work engaged the attention of the Commissioners, it was happily combined with the consideration of affording the superior and middle classes among the merchants of Liverpool and Birkenhead an opportunity, at a comparatively trifling cost, of establishing themselves in a rural district, at an easy stage from their scenes of business; combining the features of a country residence and park range, with the comfort and safety of efficient lighting and watching regulations. This wise provision for the public interest can but meet with the eminent success it deserves.

T. WINSTANLEY and SONS,

Church-street, Liverpool, 31st Aug. 1846.

SURREY, 24 miles from London.—Valuable Estate for Investment, including three Farm-houses, Cottages, and 475 acres of Land, with the Great Tithes or Commutation Rent Charge of the Parish, and Land-tax redeemed.

MESSRS. WINSTANLEY have received instructions to OFFER for SALE by AUCTION, at the Mart, on TUESDAY, OCTOBER 20, at Twelve, in one lot, a valuable ESTATE for investment, situate in the parishes of Crowthurst and Tandridge, in the county of Surrey, only about 24 miles from London, and two from the Godstone Station on the South Eastern Railway, and two from Lingfield; comprising the Mansion House, Church, and Pound Farms, with all suitable agricultural buildings, in excellent repair, together with about 475 acres of productive meadow, pasture, arable, and wood land, lying nearly within a ring fence, in the occupation of two most respectable tenants; also the rent charge in lieu of the great tithes on lands in the parish of Crowthurst: the whole rental amounting together to nearly 630*l.* per annum. To be viewed by permission of the tenants.—Printed particulars may be obtained of Messrs. SAWYER & BRETTELL, Solicitors, No. 2, Staple-inn, London; Messrs. WINSTANLEY, Paternoster-row; at the inns at Godstone, Westerham, Sevenoaks, East Grinstead, and Croydon; and at the place of sale.

TO be SOLD by AUCTION, early in the

month of OCTOBER (unless previously disposed of by private contract, of which due notice will be given), in one or various lots, as may be determined at the time of sale, the valuable buildings and premises known by the name of the TANGIER IRON FOUNDRY, situate at Taunton, in the county of Somerset, where for many years past an extensive business has been conducted. The buildings are all extremely substantial, and so erected that they may, at slight cost, be converted into dwelling-houses. The whole adjoins the proposed site for the new church, and will afford admirable opportunity for any person desirous of continuing the business, or to make a street of excellent houses, in a favourite locality, which would yield a large revenue. Any person desirous of continuing the ironfoundry and smithy might have the buildings for a term, at a moderate revenue. For further particulars, apply to Mr. C. CORFIELD, Architect, Taunton; W. R. HARRIS, Esq. Solicitor, 32, Lincoln's-inn-Fields, London; and, for particulars and to view, at Tangier House, Taunton; or at the office of the *Somerset County Gazette*, Taunton.

N.B.—Should not the above be sold or let by private contract, further advertisements will announce the day and place of sale.

HEREFORDSHIRE.—A valuable Freehold Estate in a ring fence, consisting of Three Farms, called Wern Derris, the Quakers, and the School-house Farms, in the parish of Michaelchurch, Ekeley, in the county of Hereford, comprising altogether about 306*l.* 1*l.* 13*l.*—By Mr. THOMAS COOKE, at the Angel Inn, in the town of Abergavenny, in the county of Monmouth, on THURSDAY, OCTOBER 8, at Three in the Afternoon, by the directions of Devises in trust, and subject to such conditions as shall be then produced.

THE WERN DERRIS FARM contains about 72*l.* 1*l.* 21*l.* of arable, meadow, pasture, and wood land, with a farmhouse, barns, stables, cowhouse, calves' cot, washhouse, and shed; and is in the occupation of Mr. Thomas Jones, a yearly tenant, commencing at Candlemas. The Quakers Farm contains about 71*l.* 3*l.* 5*l.* of arable, meadow, pasture, and wood land, with farmhouse, barn, cowhouse for six cows and ten young cattle, calves' cot, stable, and washhouse; and is in the occupation of Mrs. Mary Meredith, a yearly tenant, commencing at Lady-day. The School-house Farm contains about 62*l.* 8*l.* 7*l.* of arable, meadow, pasture, and wood land, with the barn, cowhouse, and range of stable and shed, nearly new; and is in the occupation of Mr. Howard Howard, a yearly tenant, commencing at Lady-day. The buildings on all the farms are in an excellent state of repair, and a considerable sum has been recently expended on them. The tithes have been commuted to a rent-charge of only 8*l.* 4*l.* 10*l.* upon the three farms, in consequence of the existence of moduses. The estate is situate about 6 miles from Hay, 18 miles from Hereford, and about the same distance from Abergavenny. The tenants will show the farms. For further particulars apply to Mr. THOMAS COOKE, Auctioneer; or to Mr. Apperley, Land Agent, Hereford; or to Messrs. MEREDITH, REEVE, and CO. Lincoln's-inn, London.

BRECKNOCKSHIRE.—Freehold Estate, near the town of Crickhowell, in the parish of St. Michael Cwmdu, called Cwmge, within a short distance of the cuspidate road leading from Crickhowell to Brecon.—By Mr. THOMAS COOKE, at the Angel Inn in the town of Abergavenny, in the county of Monmouth, on THURSDAY, OCTOBER 8, at Three in the afternoon, by direction of Devises in Trust, and subject to such conditions as shall be then produced.

A Most compact and desirable FREEHOLD FARM, nearly in a ring fence, called Cwmge, situate in the parish of St. Michael Cwmdu, in the county of Brecon; consisting of 165*l.* 3*l.* 10*l.* more or less, of arable, meadow, pasture, and wood land, in a high state of cultivation, with a small farm-house, malt-house, double cowhouse, four-stall stable, washhouse, two foldyards and sheds, four good barns in convenient situations, and two workmen's cottages. The whole of the buildings are in a good state of repair. There is an excellent supply of water, and the whole of the meadow lands, about twenty-three acres, can be conveniently irrigated, and are of the most valuable quality. There is a quarry of excellent stone on the property, suitable for building and other purposes; lime-kilns may be also worked, and there is an extensive right of common on the Black Mountain appertaining to the property, and which the situation of the estate affords facilities for making available to its utmost extent. The lands have a southern aspect, lie sheltered, and the property is well and ornamentally timbered. The farm is in the occupation of Mr. William Christopher, at a low rent, as yearly tenant, commencing at Candlemas. This estate is distant from Crickhowell one mile and a half, from Abergavenny eight miles, and from Brecon ten miles, and affords a beautiful site for the erection of gentlemen's villas, which are so much sought after in this neighbourhood, and has advantages for building purposes, possessing both stone and timber. The views from the estate are extensive and diversified, overlooking the mansion and park of Glanusk, the seat of Joseph Bailey, esq. M.P. to which it is adjacent. The estate also commands views of the river Usk, and the rich vale through which that river flows, and with the surrounding country is proverbial for its beauty and picturesque scenery. The land tax is redeemed. The timber on the estate contains oak of a very fine quality.—For further particulars apply to Mr. THOMAS COOKE, auctioneer; or to Mr. APPERLEY, land agent, Hereford; or to Messrs. MEREDITH, REEVE and CO. Lincoln's-inn, London. Mr. Christopher, the tenant, will show the estate.

LAW FIRE INSURANCE COMPANY.

—WANTED to purchase from 25 to 50 SHARES in the above.—Apply by letter post-paid to JOHN E. BENNETT, Estate Agent, &c. No. 134, Aldersgate-street, City, stating amount of premium required.

LONDON ASSURANCE, incorporated by Royal Charter, A.D. 1780, for Life, Fire, and Marine Assurances.

Offices, 7, Royal Exchange, Cornhill, and 10, Regent-street, London.
JOHN LAURENCE, Secretary.

Sales by Auction.

KENT.—To Capitalists and Others.—Entirely valuable Freehold and Leasehold Estate, situated in the village of Lydden, distant ten miles from Canterbury, five miles from Dover.

MR. LAMB has received from the proprietors directions to SELL by AUCTION, at the Royal Oak Inn, in Dover, on Wednesday, the 30th of SEPTEMBER, 1846, at Two for Three o'clock in the afternoon, the following valuable ESTATES, in lots, namely:—

Lot 1.—A valuable Leasehold Estate, called the Court Farm; comprising a convenient brick-built dwelling house, with suitable offices, garden, and appurtenances, together with 188*l.* 3*l.* 21*l.* of excellent arable and pasture land.—Also a rent-charge in lieu of tithes, producing 10*l.* per annum. A sum will be named at the auction for the damages in this lot.

Lot 2.—A Freehold Estate called Bell Farm, containing 61*l.* 1*l.* 30*l.* of good arable land.

Lot 3.—A Freehold Estate, called Coedwyn Farm, containing a large barn and lodge, both having slated roofs, together with a yard and 101*l.* 0*l.* 6*l.* of good arable land.

Lot 4.—A Freehold Estate, called Wern Farm, containing a barn-yard and 94*l.* 3*l.* 7*l.* of good arable and pasture land.

Lot 5.—A Freehold Estate, called Upper Farm; containing 55*l.* 3*l.* 9*l.* of good arable and meadow land.

Lot 6.—A desirable Freehold Estate, called Canons, containing of 6*l.* 3*l.* 9*l.* of meadow and wood land. These lots, held by Mr. Robert Foster, are now in the highest state of agricultural condition. The census in the parish tithes map.

Lot 7.—Three brick-built, substantial, Freehold Cottages with garden, ground, and appurtenances, now occupied by Hawkins, Goldsack, and Mummery.

Lot 8.—A convenient Freehold Cottage, with large garden, occupied by Thos. Prescott.

Lot 9.—A like Freehold Cottage and garden, occupied by Richard Sharp.

Lot 10.—Two newly erected Freehold Cottages, in repair, with garden ground and appurtenances, now occupied by James Martin and John Prescott.

Lot 11.—A convenient Cottage, with garden and appurtenances, occupied by Thomas Prescott, the younger.

Lot 12.—An Extensive Range of Stabling, with ground belonging thereto, many years used by cart makers.

Possession of all the lots to be had Oct. 11, 1846.

The Estates may be viewed on application to Mr. P. H. Lydden Court, and particulars and conditions of sale to Messrs. Kennett and Son, Solicitors, Dover; or to Mr. W. Murton, East Street, Ashford; Land Agent; or to Messrs. HAWKINS, BLOXHAM, STOCKER, and BLOXHAM, Lincoln's-inn; or of the Auctioneer, Stargate-street, Dover, seven days prior to sale.

Periodical Sales (established in the year 1833) of Annuities, Life Interest, Annuities, Policies of Assurance, Advancements, Rent Presentations, Rent Charges, &c. Tithes, Post-obit Bonds, Tonnage Debentures, Grants, Rents, Improved Rents, Shares in Docks, Canals, Railways, Insurance Companies, and all Public Undertakings.

MESSRS. SHUTTLEWORTH and SON respectfully inform the public, that upon 30 years' experience having proved the classification of the sales of property to be extremely advantageous and beneficial to vendors, and equally satisfactory and convenient to purchasers, the PERIODICAL SALES of real estate, rents, policies of insurance, tonnage, debentures, and next presentations, and securities dependent upon life, shares in docks, canals, mines, railways, and public undertakings, will be continued through the following:—

Friday, October 2 Friday, November 1
Friday, December 4.

Particulars may be had Ten days previous to each of the Auction Mart; and of Messrs. SHUTTLEWORTH and SONS, 28, Poultry.

New Publications.

THE PEOPLE'S EDITION!

Price 1*l.* by post 1*l.* 4*l.*

"This is the best Work we have ever seen."
Professor Savage, Surgeon.

Just published, unaltered, the 5th edition of

THE REV. DR. WILLIS MOSELEY'S Twelve Chapters on NERVOUS and MENTAL COMPLAINTS, and on Two great Disorders, of which thousands have been, and all may be cured of NERVOUS or MENTAL DISEASE, with as much certainty as quenches thirst, and Insanity itself with almost equal certainty.

SIMKIN and MARSHALL, London. If by post, send the Author, 18, Bloomsbury-street, Bedford-square.

OR FOR NOTHING.

A PAMPHLET containing the original description of all Nervous Symptoms, under Five Degrees of Oppression, Confusion, Delusion, Excitement, and Intoxication—with forty Cases illustrative of each, and the means of cure. This valuable little Pamphlet will be sent every address, and franked home if One stamp is enclosed. Apply to or address (post paid), Rev. Dr. WILLIS MOSELEY, 18, Bloomsbury-street, Bedford-square. Address 11 to 3.

LONDON:—Printed by HENRY MORRELL COX, at the Queen Street, in the Parish of St. Giles in the County of Middlesex, Printer, at his Printing Office, No. 74 & 75, Great Queen Street aforesaid, and at the JOHN CROCKFORD, of 39, Essex Street, Strand, in the Parish of St. Clement Danes, in the City of Westminster, at the Office of the LAW TIMES, No. 29, Essex-street aforesaid, on Saturday, the 25th day of September, 1846.

